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 *AMICI CURIAE* NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. AND EIGHT OTHER CIVIL RIGHTS ORGANIZATIONS IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

Amici are civil rights organizations committed to the effective enforcement of anti-discrimination laws and the preservation of access to the courts for victims of discrimination.

For over eighty years, the NAACP Legal Defense and Educational Fund, Inc. ("LDF"), has strived to secure the constitutional promise of equal justice under law for all people in the United States. Critical to that mission is securing the ability for plaintiffs who have suffered injuries from discrimination and other violations of their legal rights, to vindicate those rights in federal court. LDF has participated in many such cases. *See, e.g.*, *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021); *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); *Bailey v. Patterson*, 369 U.S. 31 (1962); *Evers v. Dwyer*, 358 U.S. 202 (1958).

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution. The ACLU of Maine is one of the ACLU's statewide affiliates. Both organizations are committed to ensuring equal protection for all, and to fighting discrimination in public accommodations.

The Equal Rights Center is a civil rights organization that identifies and seeks to eliminate unlawful and unfair discrimination in housing,

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part and that no person other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

employment, and public accommodations throughout the Greater Washington, D.C. area and nationwide. The Equal Rights Center uses civil rights testing and other investigative tools to investigate allegations of discrimination. When the Equal Rights Center identifies discrimination, it seeks to eliminate it through various mechanisms, including education, policy advocacy, counseling, and, if necessary, enforcement.

The Howard University School of Law Civil Rights Clinic advocates on behalf of clients and communities seeking to vindicate their rights in state and federal courts. The Clinic has a particular interest in eradicating discrimination and dismantling unjust laws, policies, and practices that undermine vital civil rights.

The Impact Fund is a non-profit legal foundation that provides strategic leadership and support for impact litigation to achieve economic, environmental, racial, and social justice. The Impact Fund provides funding, offers innovative training and support, and serves as counsel for impact litigation across the country. The Impact Fund has served as party or *amicus* counsel in a number of major civil rights class actions before this Court and the Courts of Appeals, including cases challenging employment discrimination, lack of access for persons with disabilities, and limitations on access to justice.

Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") is the nation's oldest and largest nonprofit legal organization working for full recognition of the civil rights of lesbian, gay, bisexual and transgender ("LGBT") people and everyone living

with HIV. Lambda Legal has participated in seminal cases regarding the rights of LGBT people and people living with HIV to be free from the harms of discrimination in every aspect of life. *See, e.g.*, *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020); *Obergefell v. Hodges*, 576 U.S. 644 (2015); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Bragdon v. Abbott*, 524 U.S. 624 (1998).

The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) is a nonprofit civil rights organization founded in 1963 by the leaders of the American bar, at the request of President Kennedy, to secure equal justice for all through the rule of law, targeting in particular the inequities confronting Black Americans and other people of color. The Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have voice, opportunity, and power to make the promises of our democracy real. The Lawyers' Committee has for decades litigated cases seeking to remedy the harm that discrimination and segregation inflict on individual dignity. Civil rights testers play a crucial role in advancing the Lawyers' Committee's goal of preventing discrimination in employment, housing, public accommodations, and digital marketplaces that affect broader access to opportunity.

The National Women's Law Center (NWLC) is a non-profit legal advocacy organization that fights for gender justice, working across the issues that are central to the lives of women and girls. Since its founding in 1972, NWLC has worked to advance educational opportunities, workplace justice, health

and reproductive rights, and income security. NWLC has participated in numerous cases to advocate for equal opportunities and greater inclusion in our society for women, people of color, disabled individuals, immigrants, and LGBTQ individuals.

SUMMARY OF THE ARGUMENT

> Q. If the facilities are of equal quality, you do not seriously object to separate rest rooms for the races in depots, stations, and terminals, do you?
>
> A. I do.
>
> Q. Why do you want to share rest room facilities with white people?
>
> A. I am just as much as he is; the only difference is skin deep. I am a man; he is a man.[2]

Those answers were given by Samuel Bailey in 1961, when he and other Black plaintiffs sued to desegregate privately operated transportation hubs in Jackson, Mississippi. They did not allege any risk of criminal consequences, nor did they allege any tangible reason why they would personally need to access the "whites only" areas of the terminals while passing through. This Court nevertheless held that they had "standing to enforce their rights to nonsegregated treatment." *Bailey v. Patterson*, 369 U.S. 31, 33 (1962) (per curiam). Twenty years later, this Court reached the same conclusion about Sylvia Coleman, a Black fair housing "tester" who had no more need to rent the apartment from which she was turned away than Samuel Bailey had need to use a "white" bathroom. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

The particulars of Deborah Laufer's case are different, but the essential legal principle that supports her standing and theirs is the same: discrimination itself causes cognizable dignitary

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[2] *See infra*, n.3.

harm. And although Petitioner does not dispute this principle, Petitioner's arguments obscure its straightforward application to Ms. Laufer's case. *Amici* therefore submit this brief to clarify the nature of the harm that discrimination causes, the role of federal antidiscrimination law in recognizing and remedying that harm, and the reasons this Court has long recognized the dignitary harm of discrimination itself as a cognizable Article III injury—for "testers" and for anyone else.

I. As this Court has repeatedly and unequivocally recognized, and as Petitioner concedes, discrimination itself inflicts dignitary harm on those who experience it sufficient to satisfy Article III. *See Heckler v. Mathews*, 465 U.S. 728, 739–40 (1984); *Allen v. Wright*, 468 U.S. 737, 755, 757 n.22 (1984). Indeed, that harm is among the most serious injuries recognized by law, and federal courts have long provided a forum to remedy this sort of harm across a range of contexts. *See, e.g.*, *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984).

II. Federal courts' Article III authority to remedy the inherent dignitary harm of discrimination is especially clear when Congress has recognized and elevated that harm by passing a federal antidiscrimination statute. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204–05 (2021). Indeed, a major purpose of such statutes is to "'vindicate the deprivation of personal dignity.'" *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2314 (2023) (quoting *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250 (1964)). The Americans with Disabilities Act ("ADA") is an antidiscrimination statute of this sort, and thus

recognizes and makes actionable the discriminatory treatment and resulting dignitary harm that Ms. Laufer alleges here.

III. It is therefore undisputed that discrimination itself causes Article III injury-in-fact. *See Haaland v. Brackeen*, 143 S. Ct. 1609, 1638 (2023); *TransUnion*, 141 S. Ct. at 2204–05. Indeed, a plaintiff who alleges that they have personally faced discriminatory treatment in violation of federal law, such as the ADA, has standing to sue in federal court, and to seek prospective relief if they are likely to experience discriminatory treatment again. And while discrimination often carries additional material or emotional consequences for its victims, nothing more is needed to satisfy Article III's injury-in-fact requirement. *See Heckler,* 465 U.S. at 739–40; *Allen*, 468 U.S. at 755, 757 n.22. The harm of being treated as "less than" has always been enough.

IV. Despite acknowledging that discrimination causes cognizable dignitary harm, Petitioner tries to obscure the significance of that principle as applied to the facts of this case. Most notably, Petitioner questions Ms. Laufer's motivations, suggesting that her dignitary harm is not genuine or sufficient because it is "self-inflicted." But these arguments fundamentally mischaracterize the cause of the harm, and how civil rights laws operate: the person who discriminates is always the one who inflicts the harm, and the onus is on them to avoid it. To hold otherwise would undermine the very purpose of public accommodations laws. Moreover, black-letter law forecloses these arguments. *See FEC v. Ted Cruz for Senate*, 142 S. Ct. 1638, 1647 (2022). For Article III standing, it does not matter why a plaintiff was in a

position to experience a defendant's discriminatory treatment and resulting harm, or why they may be again in the future. It has therefore long been settled that "testers" have standing, just like any other victim of discrimination. *See Havens Realty*, 455 U.S. 363*; Evers v. Dwyer*, 358 U.S. 202 (1958) (per curiam). For standing purposes, Ms. Laufer's situation is like that of any other "tester." And Petitioner's further arguments that seeking prospective relief or to enforce the law somehow changes the calculus are similarly unavailing.

V. Petitioner also repeatedly questions whether Ms. Laufer actually experienced discrimination or is protected by the ADA at all. But these arguments are merits arguments that have no place in the threshold standing inquiry. For purposes of standing, courts must take a plaintiff's merits claims at face value. *See Dep't of Educ. v. Brown*, 143 S. Ct. 2343, 2353 (2023).

Thus, regardless of how Ms. Laufer's claims may ultimately be addressed on the merits, Petitioner's alleged discrimination and the dignitary harm it inherently caused Ms. Laufer are sufficient to resolve the question presented in favor of standing. Ms. Laufer alleges a personal right to be free from discriminatory treatment, guaranteed to her by federal law. Moreover, Ms. Laufer alleges that she was *personally* denied the equal treatment that federal law guarantees her. Even if nowadays businesses deal with the public via websites and apps, shifting into the digital realm the kinds of interactions that standing doctrine has long recognized as personal and particularized, the principle remains the same. Whether in a website or a waiting room, the dignitary harm of personally

experiencing discrimination in a place of public accommodation suffices for Article III standing.

ARGUMENT

I. By its very nature, discrimination injures the personal dignity of those who experience it.

As this Court has "repeatedly emphasized," those "who are personally denied equal treatment" experience "serious non-economic injuries" that federal courts have long been empowered to recognize and remedy as cognizable dignitary harms, sufficient for standing. *Heckler v. Mathews,* 465 U.S. 728, 739–40 (1984); *see Allen v. Wright*, 468 U.S. 737, 755, 757 n.22 (1984). Petitioner does not dispute this well-established principle. *See* Pet'r Br. 38–39.

That is because, by its nature, a discriminatory act "deprives persons of their individual dignity." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 625 (1984). By imposing "'archaic and stereotypic notions,'" "discrimination itself" treats those it targets "as 'innately inferior' and therefore as less worthy participants in the political community." *Heckler*, 465 U.S. at 739 (quoting *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 725 (1982)). Illegal discrimination deprives individuals of a personal right to the "equal treatment" that has been "guaranteed by" law. *Sessions v. Morales-Santana*, 582 U.S. 47, 72 n.21 (2017). It degrades the dignity of those who personally endure discrimination, giving rise to a concrete and particularized injury that federal courts are empowered to recognize and remedy.

These principles were central to some of this Court's most canonical cases that dismantled *de jure*

segregation in the Jim Crow era. Most notably, *Brown v. Board of Education* was decided in part upon this Court's recognition of the dignitary harms that segregation inflicted on Black students. 347 U.S. 483, 493–94 (1954). The issue in *Brown* was whether Black students experienced unconstitutional harm from segregated education, even when "'tangible' factors" such as curricula, facilities, and teacher qualifications were supposedly "equalized" for white and Black students. *See id.* at 492–93. The Court's answer was a resounding yes. Segregated education had a "detrimental effect" on Black children because it sent a message asserting "the inferiority of" Black people. *Id.* at 494. That injury—though "intangible," *see id.* at 493—is among the most profound and significant harms that federal courts have ever been charged with remedying.

Other early desegregation cases acknowledge the same. In *McLaurin v. Oklahoma State Regents for Higher Education*, the Court held that a Black law student's "personal and present right" to equal treatment was violated by racially segregated classrooms, despite "no indication" that he suffered "any disadvantage of location" in the segregated facilities. 339 U.S. 637, 640–42 (1950). Later cases desegregating public parks and recreational facilities recognized that "[t]he sufficiency of Negro facilities" was "beside the point." *Watson v. City of Memphis*, 373 U.S. 526, 538 (1963). Racial discrimination itself violated the "plain and present" rights, justifying "affirmative judicial action" to "vindicate" the harm. *Id.* at 539.

Though many cases from this era involved constitutional claims, this Court recognized the same

harms under statutory law as well. In early desegregation cases governed by the Interstate Commerce Act, most notably *Henderson v. United States*, this Court enjoined private rail carrier rules providing "equal but separate" service in dining cars that set Black diners apart by a curtain or partition. *See* 339 U.S. 816, 821 & n.4 (1950). The Court explained that those "curtains, partitions and signs emphasize the artificiality of a difference in treatment," which caused harm to Black "passengers holding identical tickets and using the same public dining facility." *Id.* at 825.

Black plaintiffs who bravely challenged these Jim Crow practices were clear about the dignitary harms they endured from segregation. Take, for example, the exchange highlighted in the introduction to this brief. When deposed in the trial court proceedings in *Bailey v. Patterson*, 369 U.S. 31, (1962) (per curiam), plaintiff Samuel Bailey was repeatedly asked to explain what interest he had in using desegregated restrooms in travel hubs in and around Jackson, Mississippi, "[i]f the facilities are of equal quality." These questions attempted to highlight the absence of tangible harm. But Mr. Bailey's response emphasized the centrality of his personal equal dignity to his harm and resulting decision to litigate:

> A. I am just as much as he is; the only difference is skin deep. I am a man; he is a man.[3]

Similarly, plaintiff James Broadwater was asked what "irreparable injury" he suffered while passing through segregated waiting areas, adorned with ubiquitous signs distinguishing between "White" and "Colored" seating. He responded that his harm was: "The mere fact of those signs, walking by and seeing your people []humiliated by it."[4]

This Court recognized that the dignitary harms described by Mr. Bailey, Mr. Broadwater, and other Black plaintiffs in desegregation cases were serious injuries to be redressed in federal court. As the Court put it in *Bailey*, the plaintiffs were "aggrieved parties and have standing to enforce their rights to nonsegregated treatment." 369 U.S. at 32–33.

That was true even when there were no findings of material differences in the separate waiting areas, and even when courts found that the plaintiffs faced no threat of criminal prosecution. *See id.* at 32–33 (holding that plaintiffs had standing to enforce equal protection rights, even though no threat of charges meant they lacked standing to enjoin prosecutions under Jim Crow laws); *Bailey v. Patterson*, 199 F. Supp. 595, 610 (1961) (Rives, J., dissenting)

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[3] Deposition of Samuel Bailey at 45, *Bailey v. Patterson*, 199 F. Supp. 595 (S.D. Miss. 1961) (No. 3,133), https://www.naacpldf.org/wp-content/uploads/Deposition-of-Samuel-Bailey-BAILEY-V-PATTERSON.pdf.

[4] Deposition of Joseph Broadwater at 20, *Bailey v. Patterson*, 199 F. Supp. 595 (S.D. Miss. 1961) (No. 3,133), https://www.naacpldf.org/wp-content/uploads/Deposition-of-Joseph-Broadwater-BAILEY-V-PATTERSON.pdf.

(describing the segregated facilities); *see also, e.g.*, *Turner v. City of Memphis*, 369 U.S. 350, 351, 353 (1962) (per curiam) (exercising jurisdiction and ordering injunctive relief on a claim seeking "nonsegregated service" from a privately operated airport restaurant).

Other cases before and since have recognized that racial discrimination in public life imposes serious and actionable dignitary harms, even without any accompanying so-called "tangible" injury. For example, this Court's cases prohibiting discrimination in jury selection have long recognized that exclusion of Black people from juries on account of race is "'practically a brand upon them [and] an assertion of their inferiority.'" *Flowers v. Mississippi*, 139 S. Ct. 2228, 2239 (2019) (quoting *Strauder v. West Virginia*, 100 U.S. 303, 308 (1879)). Those cases accordingly provide remedies for the "harm . . . to the 'dignity of persons'" experienced by jurors themselves. *Georgia v. McCollum*, 505 U.S. 42, 48 (1992) (quoting *Powers v. Ohio*, 499 U.S. 400, 402 (1991)); *see also Carter v. Jury Comm'n of Greene Cnty.*, 396 U.S. 320, 329–30 (1970). And this Court's "racial gerrymandering" cases similarly reflect a determination that such practices cause dignitary injuries that constitute actionable harm. *See Shaw v. Reno*, 509 U.S. 630, 650 (1993) (racial gerrymandering "injures voters" in part by "reinforc[ing] racial stereotypes").

The depth and breadth of the harms caused by Jim Crow, and other forms of entrenched racial discrimination that persist to this day, have a unique place in our nation's history. But other forms of discrimination also result in serious dignitary

injuries. For example, this Court has emphasized that sex-based discrimination causes "stigmatizing injury, and the denial of equal opportunities that accompanies it." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 625 (1984). Sex discrimination, like other forms of discrimination, "thereby . . . deprives persons of their individual dignity." *Id.*; *see also J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 142 (1994) (explaining that gender discrimination in jury selection "denigrates the dignity of the excluded juror, and, for a woman, reinvokes a history of exclusion from political participation"). The Court has similarly recognized the dignitary harms inherent in discrimination based on sexual orientation. *See, e.g., United States v. Windsor*, 570 U.S. 744, 775 (2013).[5]

In sum, this Court has long emphasized the serious dignitary injuries caused by discrimination. And in many different contexts, spanning from some of its seminal desegregation cases to more recent case law concerning other protected classes, it has repeatedly recognized the need for federal courts to remedy those harms.

II. By enacting antidiscrimination statutes, Congress recognizes and authorizes

[5] The Free Exercise Clause also protects against dignitary harms. It forbids government action that "discriminates against some or all religious beliefs" by conveying "an official purpose to disapprove of a particular religion or of religion in general." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532, 537–38 (1993). That protection applies, and is enforceable, even when official discrimination against religion causes only "intangible" harms. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016) (both citing *Lukumi*).

federal court remedies for the dignitary harm of discrimination.

The kinds of dignitary injuries that courts have long recognized as redressable harms in constitutional cases also arise from violations of statutory antidiscrimination law. Federal statutes afford a wider range of antidiscrimination protections than the Constitution itself, and often define the rights they confer with more exacting particularity. But whenever constitutional or statutory antidiscrimination rights are violated, the fundamental nature of the injury is the same: those who personally experience unlawful discrimination suffer harm to their personal dignity and, as Congress intended, have standing to seek judicial relief. *See, e.g.*, *Henderson v. United States*, 339 U.S. 816, 821 & n.4 (1950) (discussed *supra*, at 11).

Indeed, the harms of discrimination are most clearly cognizable when a federal antidiscrimination statute is violated, because in those cases Congress—by conferring a legal right to be free of a particular kind of discrimination—has recognized the dignitary harm at issue and affirmed that harm as actionable.

"Congress is well positioned to identify intangible harms that meet minimum Article III requirements." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016). Accordingly, "[c]ourts must afford due respect to Congress's decision to impose a statutory prohibition or obligation on a defendant, and to grant a plaintiff a cause of action to sue over the defendant's violation of that statutory prohibition or obligation." *TransUnion,* 141 S. Ct. at 2204. "In that way, Congress may 'elevate to the status of legally

cognizable injuries concrete, *de facto* injuries'" even in circumstances where those injuries "'were previously inadequate in law.'" *Id.* at 2204–05.

Antidiscrimination statutes perform this function for dignitary harms of discrimination, even when the discrimination prohibited by Congress may not give rise to a federal constitutional claim. That is because they extend a federal legal right to equal treatment and equal citizenship to individuals under their protection, lending Congress's imprimatur to the need to redress the intangible dignitary harms at issue. *See TransUnion*, 141 S. Ct. at 2204–05 (providing "discriminatory treatment" as an example of an injury Congress can "elevate"). And because the Court has long recognized such dignitary harm, such statutes support Article III standing for those whose rights are violated.

Someone who personally experiences discrimination prohibited by federal law suffers deprivation of a personal legal right that Congress has conferred. They have standing, based on the injury to their personal dignity, to seek federal court relief. This Court recently emphasized this function of antidiscrimination law, explaining that "public accommodations laws 'vindicate the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.'" *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2314 (2023) (quoting *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250 (1964)).

The Civil Rights Act of 1964 is the paradigmatic example of congressional legislation that elevated the dignitary harm of discrimination to legally protected

status, even in circumstances where plaintiffs would not have a federal constitutional claim. As *Heart of Atlanta Motel* explained, the vindication of personal dignity was the "fundamental object" of the statute's public accommodations provision, Title II. 379 U.S. at 250. Guaranteeing equal dignity was an animating purpose of the statute's other antidiscrimination protections as well. *See id.* at 291–92 (Goldberg, J., concurring) (describing the Act's "primary purpose" as "the vindication of human dignity").

Title VII illustrates the point. This Court's "hostile work environment" cases have long emphasized that "Title VII is not limited to 'economic' or 'tangible' discrimination." *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64–66 (1986). A plaintiff need not even suffer "tangible *psychological* injury" to state a claim under Title VII. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (emphasis added). Instead, "even without regard to these tangible effects," discriminatory harassment within the terms of the statute "offends Title VII's broad rule of workplace equality." *Id.* at 22; *see, e.g.*, *Reeves v. C.H. Robinson Worldwide, Inc.*, 594 F.3d 798 (11th Cir. 2010) (en banc) (recognizing a triable hostile work environment issue based on alleged personal exposure to vulgar and demeaning language about women, without physical contact or tangible employment actions). Title VII thus defines and confers a personal legal right to equal dignity in the workplace, one that is enforceable in federal court when the statute is violated.

As relevant here, the ADA similarly confers a personal legal right to be free from the intangible harms of discrimination. Like other

antidiscrimination laws, the ADA is a "barrier-lowering, dignity-respecting" national commitment to the equal rights of disabled people. *Tennessee v. Lane*, 541 U.S. 509, 538 (2004) (Ginsburg, J., concurring). The ADA prohibits public accommodations from providing access to goods or services that is unequal to that available to people without disabilities. 42 U.S.C. § 12182(b)(1)(A)(ii). Those "broad" antidiscrimination protections target "the many forms such discrimination takes." *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001). Thus, the ADA represents Congress's "judgment that there should be a 'comprehensive national mandate for the elimination of discrimination against individuals with disabilities.'" *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 374 (2001).

Consequently, "the harm" the ADA seeks to remedy is a long history of "pervasive unequal treatment" of disabled people. *Tennessee v. Lane*, 541 U.S. 509, 524 (2004); *see PGA Tour*, 532 U.S. at 674–75). The statute's purpose is "to advance equal-citizenship stature for persons with disabilities." *Lane*, 541 U.S. at 536 (Ginsburg, J., concurring). And it furthers that purpose by conferring enforceable rights to be free from practices that, by demeaning and excluding them, inflict dignitary harm.

Like other antidiscrimination laws, the ADA thus constitutes formal recognition by Congress of the intangible harm that "discriminatory treatment" inflicts on disabled people. *See TransUnion*, 141 S. Ct. at 2205. It endorses private litigation and federal judicial action to "'vindicate the deprivation of personal dignity'" that occurs when a disabled person is subjected to discrimination that the ADA prohibits.

See 303 Creative LLC, 143 S. Ct. at 2314 (quoting *Heart of Atlanta Motel*, 379 U.S. at 250).

The design and purpose of the ADA therefore confirm that Ms. Laufer has plausibly alleged cognizable dignitary harm. That is because Petitioner's interaction with her falls within the ADA's capacious definition of discrimination. Ms. Laufer alleges that Petitioner offers a reservation website that is sufficient and suitable for people without disabilities, but insufficient and exclusionary for disabled people. Such a reservation system causes dignitary harm to disabled people by excluding them from the basic digital commerce tools that are readily available to people without disabilities. Ms. Laufer suffered cognizable dignitary harm when she personally visited Petitioner's online reservation system and personally experienced its discriminatory features.

III. Those who personally experience illegal discrimination incur dignitary injury that is cognizable under Article III.

As the foregoing discussion makes clear, unlawful discrimination, on its own, inflicts serious dignitary harm on those who experience it. And, as this Court has repeatedly acknowledged, and Petitioner concedes, that harm constitutes injury-in-fact for standing purposes. In *Allen v. Wright*, this Court had "no doubt" that the "stigmatizing injury often caused by racial discrimination . . . is one of the most serious consequences of discriminatory government action." 468 U.S. 737, 755 (1984). Such dignitary harms are "sufficient . . . to support standing." *Id.*; *see also Carello v. Aurora Policemen*

Credit Union, 930 F.3d 830, 833–34 (7th Cir. 2019) (Barrett, J.).

Most recently, in *TransUnion*, this Court again emphasized that "intangible harms can also be concrete," specifically citing *Allen* and "discriminatory treatment" as an example. 141 S. Ct. at 2204–05. In *Haaland v. Brackeen*, the Court reaffirmed that alleged "racial discrimination" "counts as an Article III injury." 143 S. Ct. 1609, 1638 (2023).

The dispositive question for standing purposes is whether a plaintiff who alleges discriminatory treatment causing dignitary injury *personally experienced* the discrimination. *Allen* establishes a straightforward rule that dignitary injury "is judicially cognizable," but only as to "'those persons who are personally denied equal treatment.'" 468 U.S. at 757 n.22, 755 (citation omitted). Thus, in racial gerrymandering cases, the question is simply whether the plaintiff lives in the district at issue. *See United States v. Hays*, 515 U.S. 737, 745, 747 (1995); *Gill v. Whitford*, 138 S. Ct. 1916, 1930 (2018). There is no need to show additional tangible harm, or "downstream consequences" of the discrimination. If the plaintiff was personally subjected to unlawful discrimination, they have suffered dignitary harm that is concrete and particularized, and therefore have suffered Article III injury-in-fact.[6]

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[6] Personal experience of harm is also the test for standing when it comes to other intangible injuries. In the Establishment Clause context, for example, this Court has focused on the need

All parties agree on these points. Petitioner concedes that plaintiffs can "sustain[] a stigmatic injury that satisfies Article III's concreteness requirement, separate and apart from any deprivation of information." Pet'r Br. 28. Moreover, Petitioner specifically concedes that the facts of *Havens Realty*, where a Black plaintiff was denied equal treatment while presenting herself as a prospective renter to determine if an apartment complex was engaged in racial steering, are a textbook example of dignitary harm that supports standing. *See id.* And the Solicitor General agrees. *See* U.S. *Amicus* Br. 12–13.

IV. The dignitary harm of discrimination remains a cognizable injury even when a "tester" knows they may incur it.

Petitioner argues that testers like Ms. Laufer "deliberately inflict" dignitary harm upon themselves, and therefore somehow improperly "manufacture standing." Pet'r Br. 42–43. But this argument is premised on a fundamental misunderstanding of the nature of discrimination, and the dignitary harm it causes. It is also foreclosed by precedent.

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for plaintiffs to personally experience the harm. *See, e.g.*, *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 129 (2011). Justices of this Court have recently discussed the difficulties of identifying the "personal experience" line when, as in the Establishment Clause context, the harm may arise from proximity to an inanimate object. *See Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2098–103 (2019) (Gorsuch, J., concurring). That concern is not implicated when, as here, a plaintiff is personally subject to discriminatory treatment.

A. The dignitary harm of discrimination is never "self-inflicted"; it is inflicted by the person who illegally discriminates.

Petitioner's contention that Ms. Laufer's dignitary harms are not cognizable because they are "self-inflicted" misapprehends the nature of discrimination, and the dignitary harm it causes. As this Court has recognized, it is "discrimination itself" that "stigmatiz[es] members of the disfavored group as 'innately inferior' . . ." *Heckler*, 465 U.S. at 739 (citation omitted). In other words, it is the "*acts* of invidious discrimination" that cause the "unique evils" of dignitary harm. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 628 (1984) (emphasis added). Those acts were carried out by Petitioner, not Ms. Laufer.

Public accommodations laws provide members of protected classes with a legal right to access *any* covered public accommodation, and to be free from unlawful discrimination. They are meant to ensure "*equal access* to publicly available goods and services." *Id.* at 624 (emphasis added). And this right of equal access is critical to protect people from "'the deprivation of personal dignity'" caused by "'denials of equal access'" to public spaces. *Heart of Atlanta Motel*, 379 U.S. at 250 (quoting S. Rep. No. 88-872 at 16–17 (1964)). It would contravene the basic purpose of these laws if (as Petitioner suggests) courts denied standing whenever a plaintiff expected their rights to be violated.

By characterizing Ms. Laufer's dignitary harms as self-inflicted, Petitioner would put the onus on people who face discrimination to avoid public spaces (including public spaces on the Internet) where they

might be subjected to discrimination. Even if a person reasonably expects to experience discrimination in a particular place or at the hands of a particular defendant, they do not "manufacture" discrimination by going to that place or interacting with that defendant. Rather, they *in fact* experience harm caused by the discriminator. *See Heckler*, 465 U.S. at 739; *Allen*, 468 U.S. at 755, 757 n.22; *TransUnion*, 141 S. Ct. at 2204–05. And it is therefore the discriminator who bears the responsibility not to cause those injuries.

B. Knowingly incurred injuries do not negate standing, for "testers" or anyone else.

The rule that discrimination itself creates a judicially cognizable dignitary injury applies with full force to civil rights "testers," who suffer the same harm as any other plaintiff and have the same standing to sue when they personally experience discrimination. *See Havens Realty*, 455 U.S. at 373–74; *Carello v. Aurora Policemen Credit Union*, 930 F.3d 830, 833 (7th Cir. 2019) (Barrett, J.).

The only difference between a "tester" and other plaintiffs is their *motive* for interacting with the defendant at the moment when the defendant discriminates against them. And standing does not turn on a plaintiff's motivation, only the harm they suffer. *See, e.g.*, *Evers v. Dwyer*, 358 U.S. 202, 204 (1958) (per curiam). A person who is motivated to verify compliance with the law experiences the same dignitary harm as any other member of the protected class when a defendant discriminates against them. *See Laufer v. Arpan LLC*, 65 F.4th 615, 617 (11th Cir.

2023) (Newsom, J., concurring in denial of rehearing en banc) (explaining that "would-be travelers" and Ms. Laufer have "the exact same experience" of being discriminated against).

This Court recently reaffirmed these settled principles in *FEC v. Ted Cruz for Senate*, 142 S. Ct. 1638 (2022). In *Cruz*, it was undisputed that the plaintiffs' "sole and exclusive motivation" for incurring an injury was "to establish the factual basis for" litigation challenging the constitutionality of a campaign finance regulation. 142 S. Ct. at 1647. The defendants argued that plaintiffs lacked standing because their injuries were "self-inflicted." *Id.*

The Court squarely rejected that argument, stressing that "[w]e have never recognized a rule of this kind under Article III." *Id.* The Court emphasized that an injury is an injury for Article III purposes, "even if the injury could be described in some sense as willingly incurred." *Id.* In so doing, *Cruz* relied on *Havens Realty*'s holding that "a 'tester' plaintiff posing as a renter for purposes of housing-discrimination litigation still suffered an injury under Article III." *Id.* (citing *Havens Realty*, 455 U.S. at 374). *Cruz* also invoked *Evers v. Dwyer*, which held that a "plaintiff subject[ing] himself to discrimination 'for the purpose of instituting th[e] litigation' did not defeat his standing." *Id.* (quoting *Evers*, 358 U.S. at 204).

In *Evers*, a Black man sought a declaratory judgment against a Tennessee law that required segregated seating on municipal buses. *Evers*, 358 U.S. at 203. The district court dismissed the complaint on standing grounds, finding no "actual

controversy" because the man "boarded the bus for the purpose of instituting th[e] litigation." *Id.*[7] This Court reversed, holding that the plaintiff had standing to challenge his discriminatory treatment, regardless of his motivations. The fact that the plaintiff boarded the bus to institute litigation was simply "not significant." *Id.* at 204; *see also, e.g.*, *Henry v. Greenville Airport Comm'n*, 279 F.2d 751 (4th Cir. 1960) (similar).

Petitioner claims that "[n]othing in *Havens Realty* or any other case suggests that a litigant can establish Article III injury by threatening to deliberately inflict stigma on herself for stigma's sake." Pet'r Br. 42–43. But Ms. Laufer is not

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[7] Indeed, the district court's reasoning in *Evers* echoes the arguments made by Petitioner in this case:

> Plaintiff admitted . . . that he is the owner of an automobile at the present time and that he owned one at the time of the particular incident—the only occasion on which he had ridden a bus. It is thus obvious that he was not a regular or even an occasional user of bus transportation; that in reality he boarded the bus for the purpose of instituting this litigation; and that he is not in the position of representative of a class of colored citizens who do use the buses in Memphis as a means of transportation. This is, therefore, not a case involving an actual controversy. Moreover, plaintiff has not suffered the irreparable injury necessary to justify the issuance of an injunction. In fact, his own testimony shows that he has not been injured at all.

Statement as to Jurisdiction, Appendix I at 14–15, *Evers v. Dwyer*, 358 U.S. 202 (1958) (No. 382) (reproduced from the papers of the NAACP in the collections of the Manuscript Division, Library of Congress), https://www.naacpldf.org/wp-content/uploads/Statement-as-to-Jurisdiction-Appendix-I-Per-Curiam-EVERS-V-DWYER-1958-60-Appendix-only.pdf.

"inflict[ing] stigma on herself"; it is Petitioner's conduct that discriminates, not Ms. Laufer's. *See supra*, Section IV.A, at 21–23. Just as Senator Cruz did not "manufacture" a campaign finance restriction by extending himself a loan, victims of discrimination do not "manufacture" injury by entering a space where they expect discrimination. It was the responsibility of the bus company to remedy the discrimination endured by O.Z. Evers when he boarded a segregated bus for the purpose of instituting litigation, not the responsibility of Mr. Evers to avoid the bus.

Petitioner's argument is also foreclosed by *Havens Realty* (as *Cruz* recognizes) and the other cases cited above. Those cases establish that a plaintiff's dignitary harm from discrimination is a judicially cognizable injury, and a plaintiff's purposefully (and courageously) exposing themself to discrimination for the purpose of testing compliance does not undermine the significance of that harm. *See Cruz*, 142 S. Ct. at 1647; *Havens Realty*, 455 U.S. at 373–74; *Evers*, 358 U.S. at 204.

C. Petitioner's other efforts to obscure the cognizable dignitary harm here are unavailing.

Petitioner also suggests this case is somehow an exception to the longstanding principle that the dignitary harms of discrimination are cognizable because Ms. Laufer seeks prospective relief, or is motivated to enforce the law. Those arguments are also meritless.

First, it does not matter that Ms. Laufer seeks prospective relief. That was a common feature of

many of the cases discussed above, where plaintiffs bringing test cases endured dignitary harms and sought injunctive relief to prevent them from occurring again in the future. *See, e.g.*, *Bailey v. Patterson*, 369 U.S. 31, 32–33 (1962) (per curiam); *Turner v. City of Memphis*, 369 U.S. 350, 353 (1962) (per curiam). And dignitary harm certainly does not, as Petitioner appears to suggest, *see* Pet'r Br. 42–43, diminish with the risk of repeated exposure. If anything, being denied a personal right to equal treatment is exacerbated by enduring it (or facing a substantial risk of enduring it) over and over.

Petitioner's attempt to analogize this case to *Clapper*'s discussion of prospective relief also fails. *See* Pet'r Br. 43 (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013)). In *Clapper*, the plaintiffs could not show that they had been or were likely to be subjected to the policy they challenged, which is why this Court held that the costs the plaintiffs incurred to protect against the policy were not cognizable harm for standing purposes. *See* 568 U.S. at 416. Here, Ms. Laufer was indisputably subject to the alleged discrimination and faces a risk of the same discrimination in the future. In fact, in discussing *Clapper*, Petitioner has to fall back on an argument about informational injury and ignores the dignitary injury Ms. Laufer has endured (and likely will endure in the future). *See* Pet'r Br. 43 (arguing that Ms. "Laufer cannot manufacture standing by intentionally visiting a website that she knows lacks *information* she does not need," without mentioning the dignitary harm she would experience from being subjected to discrimination) (emphasis added).

Petitioner is similarly wrong to suggest that Ms. Laufer's interest in "seeking to enforce the law," undermines her standing. Pet'r Br. 13. Again, standing does not turn on a plaintiff's subjective motivation. *See, e.g., Cruz*, 142 S. Ct. at 1647; *Evers*, 358 U.S. at 204. In fact, the efficacy of civil rights statutes like the ADA often depends upon plaintiffs who, like Ms. Laufer, are willing to subject themselves to the harms of discrimination to enforce the law. *See, e.g., Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 401 (1968) (per curiam) (acknowledging that "private litigation" is needed to enforce antidiscrimination laws).

While Ms. Laufer may be "seeking to enforce the law," she is also (and contrary to Petitioner's assertion) "really seeking to remedy her own injuries." Pet'r Br. 13, 47. Those injuries resulted from Petitioner's alleged discriminatory treatment of her. This is not a case where a plaintiff brought suit because they saw someone else subjected to discriminatory treatment (as would arise if, for example, someone read about a hotel that failed to comply with the Reservation Rule, or heard about a violation from an acquaintance). Rather, Ms. Laufer was personally subjected to discrimination by Petitioner's failure to comply with the Reservation Rule when she visited Petitioner's online reservation system and found it devoid of features necessary to make the system useful to a person with her disabilities. By designing its online reservation system to exclude Ms. Laufer and others like her, Petitioner was discriminating against her. She therefore personally experienced the dignitary harm of discrimination, as she alleged. *See* J.A. 19a ¶ 7 (Ms.

Laufer's declaration in this case, averring that she "suffered humiliation and frustration at being treated like a second class citizen, being denied equal access").

That is true even though Ms. Laufer may have no practical need to use Petitioner's reservation system, and visited it for the purpose of helping to vindicate the rights of others—just as it was true for O.Z. Evers, who had no practical need to ride the bus, and Sylvia Coleman, who had no practical need to rent an apartment, and both acted to promote others' rights to do so. It also does not matter that modern technology makes it easier for Ms. Laufer to access Petitioner's discriminatory reservation system (and others like it) than it was for Mr. Evers to physically board a discriminatory bus or for Ms. Coleman to visit a discriminatory leasing office. Each still personally endured concrete and particular dignitary injury upon confronting the discriminatory service, and the judicially cognizable nature of that injury remains unchanged.

V. Many of Petitioner's attempts to refute Ms. Laufer's dignitary harm are actually arguments about the merits, not standing.

A common thread runs through Petitioner's attempts to diminish the dignitary harm Ms. Laufer experienced: Petitioner's real dispute is with the merits of her claims, not her standing to sue.

Petitioner's brief is replete with arguments that, while framed as standing arguments, essentially suggest that Ms. Laufer's claim of having experienced discrimination on Petitioner's web site lacks merit or should not be taken seriously:

- Petitioner argues that it did not discriminate against Ms. Laufer. *See* Pet'r Br. 40 ("Acheson did not treat Laufer differently from anyone else.").
- Petitioner argues that it did not violate the ADA. *Id.* at 30–32 (arguing at length that Ms. Laufer "has not been subject to 'discrimination' under the ADA"); *Id.* at 36 (arguing that the ADA does not "confer[]" the "right" that Ms. Laufer seeks to assert).
- Petitioner argues that "merely visiting a website, without more, should not be sufficient . . . ." *Id.* at 24.
- Petitioner questions the validity of the Reservation Rule itself, suggesting that in defining the failure to provide accessibility information on a website as discrimination, it exceeds the authorization of the governing statute. *See id.* at 28–29.

Petitioner also repeatedly questions the *degree* of the harm that Ms. Laufer suffered:

- Petitioner says Ms. Laufer's claimed harm is "particularly weak in view of its self-inflicted nature." *Id.* at 46.
- Petitioner also contrasts the facts of this case with the "particularly egregious" discrimination at issue in *Havens*. *Id.* at 39.

Petitioner's dismissive view of Ms. Laufer's claims may be best encapsulated by its assertion that "[i]f Laufer's emotional harm was so severe as to be actionable, it is unlikely she would intentionally inflict it on herself." *Id.* at 46.

Ultimately, these arguments boil down to assertions that Ms. Laufer did not experience the right "type of discrimination" that should merit protection under the ADA. *Id.* at 38. Petitioner suggests that Ms. Laufer's experience is somehow less than the experience of other antidiscrimination plaintiffs—that their harms are "egregious" and worthy of a hearing in federal court, while hers are no more than "subjective[]" "feelings" that do not warrant a court's time. *See Id.* at 38, 44. By this, Petitioner seems to mean that what Ms. Laufer experienced was somehow trivial or unworthy of protection—and that it therefore should not be considered discriminatory treatment at all.

These are all merits arguments that have no place in the standing analysis. In "reviewing the standing question, the court must be careful not to decide the questions on the merits for or against the plaintiff, and must therefore assume that on the merits the plaintiffs would be successful in their claims." "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 502 (1975); *see also, e.g., City of Waukesha v. EPA*, 320 F.3d 228, 235 (D.C. Cir. 2003) (same). As this Court reaffirmed just last Term, a plaintiff's "merits contention[s]" must be treated as valid "for purposes of analyzing standing." *Dep't of Educ. v. Brown*, 143 S. Ct. 2343, 2353 (2023).

Petitioner may vehemently take issue with the rights the ADA, through the Reservation Rule, provides. Petitioner may even honestly doubt the

Reservation Rule's validity and wish this case could become a vehicle for second-guessing the Rule's interpretation of the ADA. *See* Pet'r Br. 28–29. But for purposes of *standing*, none of that matters.

Petitioner's arguments also reflect its failure to recognize the very real harm that Ms. Laufer, like so many disabled people, experiences when she is denied rights protected by the ADA and encounters barriers that people without disabilities do not experience. Ms. Laufer has alleged that she was personally denied equal treatment while visiting Petitioner's online reservation system, where she had the experience of "being treated like a second class citizen" in violation of the ADA. *See supra,* at 29 (quoting J.A. 19a). That is precisely the injury that Congress recognized, and provided a right of action to prevent, when it enacted the ADA: Petitioner's operation of a discriminatory reservation system perpetuates continued "unequal treatment" of disabled people, such as Ms. Laufer, *see Tennessee v. Lane*, 541 U.S. 509, 524 (2004), and it conveys their exclusion from the "economic and social mainstream of American life," *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001) (internal quotation marks and citation omitted). *See supra*, at 17–19. For the threshold question of standing, the validity of these allegations is assumed.

These distractions obscure what is ultimately a straightforward inquiry. The threshold question of standing in this case can be resolved by the established rule that unlawful discrimination—of all types—inflicts a concrete and particularized dignitary harm when an individual personally experiences it. And that straightforward inquiry—accepting as it does Ms. Laufer's claims that her

interactions with Petitioner via its web-based reservation system constituted discrimination in violation of the ADA—yields a similarly straightforward conclusion: Ms. Laufer personally experienced discrimination, and she expects to experience the same discrimination again. She therefore has standing to bring her claims.

CONCLUSION

For the foregoing reasons, the Court should hold that Ms. Laufer has pleaded concrete and particularized dignitary injury sufficient to establish her standing, and affirm the judgment of the United States Court of Appeals for the First Circuit.

Respectfully submitted,

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