

United States Supreme Court Will Address Standing Issue in ADA “Drive-By” Lawsuits

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On Monday, March 27, 2023, the United States Supreme Court indicated it would accept review of a case that calls into question when and why an individual has a right to sue businesses for accessibility issues under the American with Disabilities Act (ADA).

This is significant to employers and businesses across the country, in that hundreds—if not thousands—of ADA “drive-by” or “tester” lawsuits are filed each year by individuals who, more often than not, have never patronized a business or come onto a business’s property at all. The same individual frequently ends up filing dozens (or even hundreds) of lawsuits across many different companies in the same geographic area.

These lawsuits often substantially resemble one another in alleging the same types of ADA non-compliance (e.g., insufficient parking, ramps, etc.), regardless of whether all such issues exist, in fact, from property to property. More concerningly, these lawsuits are often used by individual litigants to force early settlements, as the ADA contains a fee-shifting statute that could ultimately cause a business to have to pay for the plaintiff’s attorneys’ fees in litigating the case.

The issue at the heart of the case before the Supreme Court involves a legal doctrine known as “standing.” This is a constitutional requirement for all cases and controversies, one which requires a party to have some skin in the game, so to speak—that is, some injury that the law recognizes as sufficient and specific enough to allow an individual party to pursue and maintain a lawsuit to redress the injury in question.

In the context of ADA “drive-by” suits, federal appellate courts are split on whether an individual has standing to sue if they do not intend to ever visit the business being sued or use its facilities. The appellate court in this case—the First Circuit Court of Appeals—concluded that an individual does not have to visit or plan to visit a property to have standing to bring suit over accessibility issues.

A decision by the Supreme Court should not only resolve the split of legal authority on the issue, but also help establish a consistent standard for business owners and managers to apply going forward. Stay tuned for further developments.

