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UNITED STATES DISTRICT COURT
for the District of Arizona

The NATIONAL FEDERATION OF THE BLIND, The AMERICAN COUNCIL OF THE BLIND, and DARRELL SHANDROW, Plaintiffs, v. ARIZONA BOARD OF REGENTS and ARIZONA STATE UNIVERSITY, Defendants.	Case No. 2:09-cv-01359-GMS PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF DARRELL SHANDROW FOR LACK OF STANDING (Honorable G. Murray Snow) Oral argument requested

INTRODUCTION

Despite full knowledge that the Amazon Kindle electronic book reader is inaccessible to blind students, Defendant Arizona State University ("ASU") is moving forward with a pilot program to test the Kindle with the goal of accelerating the adoption of electronic textbooks. This pilot program does not include -- and will thus neither seek nor receive feedback from -- any blind students. Although plaintiff Darrell Shandrow -- a blind junior at ASU -- is not in any of the pilot program classes, given ASU's stated plans for wider adoption of the Kindle, it is very likely that it will be used in his future classes. ASU will harm Mr. Shandrow by providing advanced e-book features to his sighted classmates while relegating him to inferior and error-ridden alternative formats. In addition, ASU's Kindle program harms Mr. Shandrow because he is offended and made to feel unwelcome by his university's pursuit of inaccessible technology through a pilot program that excludes him and other students with his disability. Finally, Mr. Shandrow is injured by having to pay tuition to support this discriminatory technology.

FACTS

1. Electronic Book Readers

An electronic book ("e-book") is a digital file consisting of the content of a book formatted to be read on a computer or similar device. Because an e-book consists of digital code, it is not inherently legible, audible, or tactile. Rather, an e-book is read using a device that renders the code visually, aurally, or tactilely.[1]

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[1] Compl. (Doc. No. 1) ¶ 10.

The Kindle -- sold by Amazon.com, Inc. -- is a dedicated device for reading e-books. For readers of print, it renders the e-book into visible text on electronic paper to simulate the experience of reading a print book. The most recent versions of the Kindle -- the Kindle 2 and the Kindle DX -- also have a text-to-speech ("TTS") function that renders the e-book into audible speech; thus, if the Kindle menus were accessible, blind people would have access to the same content as sighted people through these Kindles.[2]

The Kindle's wireless modem allows users to download books directly -- and immediately -- without use of a computer or other intermediate device. Users can take notes using the Kindle's keyboard, highlight text, and look up the definitions of words.[3] Adrian Sannier, ASU's Vice President and University Technology Officer, has stated: "Electronic texts provide the capabilities that today's students have come to expect -- they are searchable, flexible, easy to annotate, and cost less than traditional texts because they don't have to be printed and shipped."[4]

Blind people cannot use the Kindle independently. Although the Kindle DX renders text audibly through its TTS function, the menus (for selecting a book, activating features, device settings, etc.) are visible on-screen only, with no audio option. If a person cannot see the screen, she cannot know which book she has selected, what the configuring settings are or how to change them, or how to navigate the on-screen menu. Similarly, without audible screen navigation, the Kindle DX web browser, Kindle Store,

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2 *Id.* ¶¶ 12-13.

3 *Id.* ¶¶ 16-18.

4 Dep. of Adrian Sannier (Sannier Dep."), Ex. 3 (Declaration of Amy F. Robertson ("Robertson Decl.") Ex. 1); *see also* Complaint ¶¶ 26-27.

and other features will simply not work for blind people.[5]

2. The Kindle Pilot Program.

ASU is one of six colleges and universities participating in Amazon's pilot program to test the use of the Kindle in college classes.[6] It is clear that the ultimate goal of the ASU pilot program is university-wide adoption of the Kindle. Dr. Sannier stated that he is "pumped to work with Amazon and to see how the Kindle can help the University accelerate the adoption of electronic textbooks into a variety of courses."[7] Kari Barlow, an ASU Assistant Vice President in the University Technology Office, has stated that "[o]ur initial pilot is for our undergraduate honors program, but we plan to extend the Kindle availability to all ASU students soon . . .."[8]

The current pilot program involves three sections of a single freshman course.[9] Students in these sections will receive a free Kindle and, in exchange, will agree to provide feedback.[10] "Feedback from the pilot, including accessibility issues, will be considered by ASU in making future decisions about using the Kindle DX."[11]

Although Dr. Sannier has testified that "[p]art of the feedback ASU will provide to Amazon is the experience of any participating disabled students, including its

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5 Compl. ¶ 19.

6 *Id.* ¶¶ 12-22, 24.

7 Sannier Dep. Ex. 3 at 2.

8 *Id.* Ex. 23 (Robertson Decl. Ex. 1).

9 Decl. of Ted Humphrey ("Humphrey Decl."), Mot. to Dismiss Pl. Shandrow for Lack of Standing, Ex. 1 (Doc. No. 29-2) ¶ 4.

10 *Id.* ¶ 5.

11 Decl. of Adrian Sannier ("Sannier Decl."), Mot. to Dismiss Pl. Shandrow for Lack of Standing, Ex. 2 (Doc. No. 29-2) ¶ 11.

accessibility to visually impaired students,"[12] ASU admits both that there are no blind students in the pilot program[13] and that it was aware when it signed up for the pilot program that the Kindle was not accessible.[14] Indeed, Defendants have indicated that they anticipate that blind students will continue to obtain textbooks in the same -- highly inferior -- way they always have: through the school's Disability Resource Center ("DRC").[15] However, Plaintiff Darrell Shandrow's past experience with the DRC demonstrates that it is far from equivalent to the experience provided by the Kindle.

The DRC insists that Mr. Shandrow -- a blind student at ASU[16] -- purchase textbooks at full price and provide invoices before the DRC will start the process of attempting to obtain an accessible version for him. As a result, his receipt of usable textbooks is significantly delayed. On one occasion, the course instructor changed the course textbook and Mr. Shandrow did not learn of the change until shortly before the course started. He never got the new book in an accessible format; rather, he had to use an older, audio-recorded version.[17] What Mr. Shandrow receives from the DRC is often full of errors and there is often no pagination, headings, or other structural data, so Mr. Shandrow has to wade through the text unsure whether he is reading the assigned text.[18]

The DRC recognizes its own inability to provide accessible textbooks on an equal

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12 Sannier Decl. ¶ 8.

13 Humphrey Decl. ¶ 7.

14 Sannier Dep. at 60.

15 *See* Defs.' Opp'n to Mot. for Prelim. Inj. at 8.

16 Decl. of Darrell Shandrow ("Shandrow Decl.") ¶ 4.

17 *Id.* ¶¶ 7, 9-10.

18 *Id.* ¶¶ 7-8.

basis even with traditional printed texts; this inequality is magnified when contrasted with textbooks available on the Kindle. For example, the DRC warns blind students that, "[t]extbook/print conversion is a time-intensive process, especially for technical subject matter, and can require up to four months."[19] This means that blind students have far less flexibility in their schedules. Perhaps recognizing that this system will often provide inferior results, the DRC "strongly recommend[s]" that students with disabilities become familiar with methods of obtaining accessible materials on their own.[20] Ultimately, the DRC admits that this process can lead to an inferior educational experience, as it recommends that students who need accessible materials "discuss the possibility of a reduced reading load."[21]

The alternative formats provided to blind students by the DRC are inferior to sighted students' experience of reading printed text. When sighted students are provided the additional advantage of the Kindle, this disparity increases enormously. In contrast, an accessible Kindle would eliminate all of these difficulties and provide textbooks on an equal basis with equal accuracy and timing. Unlike print books, the electronic files that constitute e-books are already accessible. The only thing lacking for a blind student to fully use and enjoy the Kindle is an accessible menu.

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[19] http://www.asu.edu/aad/manuals/usi/usi701-07.html (last visited August 23, 2009) (Robertson Decl. Ex. 2).

[20] http://www.asu.edu/studentaffairs/ed/drc/services_alternative.htm (last visited August 23, 2009) (Robertson Decl. Ex. 3).

[21] *Id.*

3. Notice to ASU Concerning The Inaccessibility of the Kindle.

On May 7, 2009, a representative of the Reading Rights Coalition ("RRC"), which includes Plaintiffs National Federation of the Blind ("NFB") and American Council of the Blind ("ACB"), wrote to the president of ASU and explained that "[t]he controls and navigation features of the Kindle are inaccessible to blind and visually impaired students and faculty who will not be able to independently navigate Kindle's menus, change settings, locate books or documents, or be able to identify critical information, such as device settings."[22]

Given this notice and Dr. Sannier's admission that he knew the Kindle was inaccessible,[23] ASU did not need a pilot program to learn that it is adopting inaccessible and therefore discriminatory technology. Trying to learn about accessibility through the Kindle pilot program is like building a new high-tech classroom building with steps at every entrance, scheduling only classes without students who use wheelchairs in the new building, and then declaring a one-year pilot program to evaluate the building, including its accessibility to students who use wheelchairs. ASU would not need a pilot program to know that steps render the building inaccessible and violate the school's obligation to its disabled students. To carry the analogy further, ASU's response (that blind students can continue to get their materials from the DRC) is like telling students who use wheelchairs that they can always use the old building -- with its pre-Internet-age wiring, peeling paint,

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[22] Letter from Daniel F. Goldstein to Michael M. Crow dated May 7, 2009 (Robertson Decl. Ex. 4).

[23] Sannier Dep. at 60; *see also* Compl. ¶¶ 34-36.

and faulty acoustics -- just like they always have, while their non-disabled classmates enjoy the advantages of the new building. On the other hand, insisting that Amazon provide an accessible Kindle so that ASU can comply with the law is as straightforward as insisting that a contractor provide a building with ramps.

4. Injury-in-Fact to Plaintiff Shandrow.

Mr. Shandrow is threatened by the discrimination and harm that will occur when his sighted classmates are provided advanced but inaccessible e-book readers while he is relegated to the existing, inferior, alternative formats. In light of ASU's announced plans, it is likely that ASU will adopt the Kindle for wider use after the conclusion of the pilot program. Ms. Barlow has stated that ASU "plan[s] to extend the Kindle availability to all ASU students soon,"[24] and Dr. Sannier testified that he has "actively sought out . . . other courses in which to deploy the Kindle," and that "those classes could be ones that Darrell Shandrow could enroll in."[25] Indeed, students currently enrolled in the pilot program are not limited to using their Kindles for the Human Event class, but will have access to this inaccessible technology for other classes as well as extracurricular reading, benefits denied Mr. Shandrow. This constitutes injury to Mr. Shandrow because the Kindle is inaccessible to him and its use in ASU classes thus discriminates and will discriminate against him.

Furthermore, Mr. Shandrow has been aware of ASU's Kindle pilot program since it was announced in May, 2009. Since then, he has suffered the dignitary harm of

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[24] Sannier Dep. Ex. 23.

[25] Sannier Dep. at 42.

observing his university adopt and trumpet a technology that it knows is inaccessible to him and others with his disability, and test that technology -- with the goal of adopting it more broadly -- through a pilot program that excludes feedback from him and others with his disability. ASU's discrimination has caused Mr. Shandrow to feel offended, excluded, and unwelcome in his own university.[26]

Finally, Mr. Shandrow is injured because his tuition is being used to support known inaccessible technology and a pilot program that is testing that technology without meaningful feedback from blind students.[27]

5. Legal Background.

Mr. Shandrow, the NFB, and the ACB bring suit under title II of the Americans with Disabilities Act ("Title II" or "ADA")[28] and section 504 of the Rehabilitation Act ("Section 504").[29] Both statutes prohibit discrimination on the basis of disability, the former by public entities, the latter by entities that receive federal financial assistance. ASU has admitted that it is covered by both statutes.[30]

The ADA was enacted in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities ."[31]

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[26] Shandrow Decl. ¶¶ 12-13.

[27] *Id.* ¶ 12.

[28] 42 U.S.C. § 12131 *et seq.*

[29] 29 U.S.C. § 794.

[30] Defs.' Opp'n to Mot. for Prelim. Inj. at 7.

[31] 42 U.S.C. § 12101(b)(1); *see also PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001) (holding that the ADA provides a "broad mandate" to eliminate discrimination against people with disabilities).

The ADA and Section 504 prohibit, among other things, denying people with disabilities the opportunity to participate in a benefit or service, and providing a benefit or service to people with disabilities that is not equal to or as effective as that provided others.[32] While blind students have, for years, had to be content with inferior alternative formats to hard-copy textbooks, the advent of e-books puts virtually identical access easily within reach. Commentary by the Department of Education, which is charged with enforcing Section 504 in the education context, makes clear that "the provision of unnecessarily separate or different services is discriminatory."[33] By adopting a technology that is unnecessarily inaccessible, Defendants are in violation of the ADA and Section 504.

ARGUMENT

I. Applicable Standards

Defendants move pursuant to Rule 12(b)(1) to dismiss Plaintiff Shandrow for lack of standing.[34] In order to establish that he has standing to sue, Mr. Shandrow must show that he has "'suffered an injury in fact -- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical."[35] Although plaintiffs are also required to establish causation and

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[32] 28 C.F.R. § 35.130(b)(1)(i)-(iii); 34 C.F.R. § 104.4(b)(1)(i)-(iii).

[33] 34 C.F.R. pt. 104, app. A, "Analysis of Final Regulation."

[34] Mot. to Dismiss Pl. Shandrow for Lack of Standing ("Mot. to Dismiss," Doc. No. 29) at 1.

[35] *D'Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1036 (9th Cir. 2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

redressability,[36] Defendants here challenge only the injury-in-fact prong.[37]

Defendants make a facial challenge to Mr. Shandrow's standing.[38] Ordinarily, "[g]iven the nature of a facial attack, a court is required to accept the allegations in the complaint as true and view them in the light most favorable to the plaintiff."[39] In this case, Defendants have submitted extrinsic evidence; however, such evidence serves to bolster rather than rebut Mr. Shandrow's standing. Plaintiffs also submit extrinsic evidence, which amplifies and explains matters pleaded in the Complaint.

In the Ninth Circuit, "[i]n evaluating whether a civil rights litigant has satisfied the standing requirements of Article III, '[t]he Supreme Court has instructed us to take a broad view of constitutional standing . . . especially where, as under the ADA, private enforcement suits "are the primary method of obtaining compliance with the Act."'"[40]

II. Mr. Shandrow Has Standing Based On The Threat of Discrimination From Wider Adoption of the Kindle at ASU.

As the Ninth Circuit has noted, "[t]he Supreme Court has consistently recognized that threatened rather than actual injury can satisfy Article III standing requirements."[41] Article III standing "does not require a certainty or even a very high probability that the

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36 *D'Lil*, 538 F.3d at 1036.

37 Mot. to Dismiss at 3. Defendants do not challenge the NFB's or ACB's standing.

38 *Id.* at 2 n.1.

39 *Madison v. First Magnus Fin. Corp.*, 08-CV-1562-PHX-GMS, 2009 WL 648500, at *2 (D. Ariz. Mar. 12, 2009) (citing *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1988)).

40 *D'Lil*, 538 F.3d at 1036 (quoting *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1039-40 (9th Cir. 2008) and *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972)).

41 *Harris v. Bd. of Supervisors, Los Angeles County*, 366 F.3d 754, 761 (9th Cir. 2004) (internal quotations omitted).

plaintiff is complaining about a real injury, suffered or threatened;" such standing exists "as long as there is some nonnegligible, nontheoretical, probability of harm that the plaintiff's suit if successful would redress. . . . the fact that a loss or other harm on which a suit is based is probabilistic rather than certain does not defeat standing."[42] In this case, it is very likely that Mr. Shandrow will be harmed by the adoption of the Kindle in future classes in which he is enrolled and by the use of the Kindle in his classes by other students, including those in the pilot program. This will deny him access to the features and advantages of the Kindle enjoyed by his sighted classmates.

The Supreme Court recently provided an excellent example of standing based on potential future discrimination in the education context. In *Parents Involved in Community Schools v. Seattle School District No. 1*,[43] an organization of parents of middle school children challenged a race-based plan to assign students to high schools. The defendant argued that the members did not have standing because none was currently being affected by the plan, and would only be affected *if* they sought enrollment in a covered high school, and *if* that high school were oversubscribed, and *if* such oversubscription were sufficiently racially imbalanced to trigger application of the race-based assignment plan.[44] Despite these contingencies, the Supreme Court held that the members had standing because they "may be 'denied admission to the high schools of

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[42] *MainStreet Org. of Realtors v. Calumet City, Ill.*, 505 F.3d 742, 744 (7th Cir. 2007).

[43] 551 U.S. 701 (2007).

[44] *Id.* at 718.

their choice when they apply for those schools in the future.'"[45]

In *Ocean Advocates v. United States Army Corps of Engineers*, the Ninth Circuit held that an environmental organization had standing to challenge a proposed dock extension based on the risk that it would lead to increased tanker traffic, which increased traffic posed a risk of an oil spill, which oil spill would lead to decreased opportunity for the organization's members to use the area for observation and recreation.[46] The court explained that "the alleged injury is not conjectural or hypothetical, as 'an increased risk of harm can itself be injury in fact for standing,' and nothing necessitates a showing of existing environmental harm."[47] In *Harris v. Board of Supervisors*, the Ninth Circuit held that the chronically ill plaintiffs had standing to challenge the closing of one hospital and reduction of the number of beds in another on the grounds that "reducing the resources available will further impede the County's ability to deliver medical treatment to plaintiffs in their times of need," thereby threatening to harm them.[48]

Here, ASU has announced that a goal of the pilot program is to "accelerate the adoption of electronic textbooks"[49] and that it plans to "extend the Kindle availability to all ASU students soon."[50] Dr. Sannier has stated that this could include courses in which

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45 *Id.* (internal quotations omitted).

46 402 F.3d 846, 860 (9th Cir. 2005).

47 *Id.* (quoting *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1151 (9th Cir. 2000)).

48 366 F.3d at 762.

49 Sannier Dep. Ex. 3 at 2.

50 *Id.* Ex. 23.

Mr. Shandrow is enrolled.[51] It is thus very likely that Mr. Shandrow will, in the future, be enrolled in classes in which his sighted classmates will use Kindles while he will be excluded from this program and relegated to the inferior, error-ridden alternative system through which ASU currently attempts to provide accessible textbooks. The likelihood that Mr. Shandrow will suffer this injury is far greater than the highly contingent chance that the plaintiffs in *Parents Involved* would be excluded from the high school of their choice based on their race or that the plaintiffs in *Ocean Advocates* would be harmed by an oil spill. As the Ninth Circuit observed in *Harris*, "demanding that plaintiffs wait until they suffer physical harm to sue "would eliminate the claims of those most directly threatened but not yet [damaged] . . .. Article III does not bar such concrete disputes from court."[52] The threat of harm to Mr. Shandrow -- when ASU adopts the Kindle more widely -- is thus sufficient to confer standing.

III. The Dignitary Harm Suffered By Mr. Shandrow Is Also Sufficient To Satisfy Article III.

The Ninth Circuit has held that "the dignitary harm to a disabled person of observing . . . overtly discriminatory conditions," is sufficient to constitute an injury-in-fact supporting Article III standing.[53] The *Smith* case addressed the standing of a "tester," a disabled individual who worked with a fair housing organization to visit apartment complexes and assess their compliance with the Fair Housing Amendments Act

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51 Sannier Dep. at 42.

52 366 F.3d at 762 (internal quotations omitted; brackets in original).

53 *Smith v. Pac. Props. and Dev. Corp.*, 358 F.3d 1097, 1104 (9th Cir. 2004).

("FHAA").[54] Plaintiff Smith visited one of the defendant's developments and observed various barriers in the common area; however, the fair housing organization admitted that none of its members -- including Mr. Smith -- had any interest in purchasing or renting property from the defendant.[55] The district court dismissed for lack of standing.[56]

The Ninth Circuit reversed, holding that Mr. Smith's dignitary harm -- from observing discriminatory conditions at the complex -- was sufficient to constitute injury-in-fact and that an interpretation to the contrary would "undermine[ ] the specific intent of the FHAA, which is to prevent disabled individuals from feeling as if they are second-class citizens."[57] The ADA's intent is similar to that of the FHAA. The statutory text recognizes that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals,"[58] and the legislative history states that "[p]rovision of segregated accommodations and services relegate persons with disabilities to second-class citizen status."[59]

The dignitary harm suffered by Mr. Shandrow here is arguably more significant than that suffered by the plaintiff in *Smith*. The latter observed discriminatory conditions only briefly during a single visit to an apartment complex in which he did not reside or

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54 Pub. L. No. 100-430, 102 Stat. 1619 (codified as amended at 42 U.S.C. §§ 3601-3619, 3631 (1988)).

55 *Smith*, 358 F. 3d at 1102.

56 *Id.* at 1100.

57 *Id.* at 1104.

58 42 U.S.C. § 12101(a)(1), (8).

59 H.R. Rep. No. 101-485, pt. 3 at 56, *reprinted in* 1990 U.S.C.C.A.N. 445, 479.

desire to reside. Mr. Shandrow is daily confronted with the reality that his own university has elected to adopt a technology that excludes him and others with his disability, and that they are doing this with full knowledge of the discriminatory features of the technology. This constitutes injury-in-fact under the ADA and Section 504.

The injury in *Smith* was similar to the one recognized by the Ninth Circuit in *Harris v. Itzhaki*, in which the plaintiff, an African-American resident of an apartment complex, overheard the on-site manager state that "[t]he owners don't want to rent to Blacks."[60] The plaintiff later became aware that a test of the apartment by a fair housing organization indicated discrimination on the basis of race.[61] Despite the fact that the plaintiff already lived in the complex, the Ninth Circuit held that she had standing "based solely on [the] indirect injury because she had alleged that she suffered 'a distinct and palpable injury' resulting from the differential treatment" of the testers.[62]

Ultimately, "[a]n injury need not be economic or tangible in order to confer standing."[63] The Supreme Court has held that standing can be conferred by such inchoate harm as deprivation of the social benefits of living in an integrated community.[64] Similarly, the Ninth Circuit has held that a feeling of unwelcomeness in or aversion to

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60 183 F.3d 1043, 1048 (9th Cir. 1999).

61 *Id.*

62 *Id.* at 1050. The plaintiff had also been injured by receiving several notices to pay rent, which she immediately satisfied. *Id.* at 1049-50. The Ninth Circuit considered that injury separate from the one above involving Ms. Harris's observation and knowledge of discrimination against others. *Id.* at 1050.

63 *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 425 (2d Cir. 1995).

64 *See, e.g., Trafficante*, 409 U.S. at 208-210.

facilities -- based on disagreement with the discriminatory views of the entity controlling the facilities -- was sufficient to confer standing. In *Barnes-Wallace v. City of San Diego*, that court held that lesbian and agnostic couples had standing to challenge a city's lease of land to the Boy Scouts because -- based on the Boy Scouts' policy of discrimination in membership against individuals who are gay or agnostic -- the plaintiffs "had an aversion to the facilities and felt unwelcome there."[65] This was so despite the fact that the plaintiffs had not applied to use nor been excluded from the facilities, nor had any non-Scout group been denied use.[66]

Like the plaintiffs in *Smith*, *Harris v. Itzhaki*, and *Barnes-Wallace*, Plaintiff Shandrow is harmed by his knowledge that the university he attends -- his community -- is moving forward with technology that is unnecessarily inaccessible, relegating him to delayed and error-ridden alternatives that will effectively segregate him from his peers both academically and technologically. He has testified that this is offensive to him, and makes him feel unwelcome.[67] This is sufficient to establish injury-in-fact.

IV. Mr. Shandrow Is Harmed by Paying Tuition to Support Unnecessarily Inaccessible Technology.

Mr. Shandrow has suffered a tangible, economic injury because his tuition is being used to support technology that is known to be inaccessible and a pilot program that does not include him or individuals with his disability. In *Hack v. President and Fellows of*

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[65] 530 F.3d 776, 783 (9th Cir. 2008). *See also Buono v. Norton*, 371 F.3d 543, 547 (9th Cir. 2004) (holding that the plaintiff had standing to challenge presence of cross on public land because he was offended by it and would avoid the area where it was located).

[66] *Barnes-Wallace*, 530 F.3d at 782.

[67] Shandrow Decl. ¶¶ 12-13.

Yale College, the Second Circuit held that Orthodox Jewish students had standing to challenge the requirement that they live in co-ed dormitories based on the "tangible, economic injury" of being forced to pay for dormitory rooms that were effectively unavailable to them because of their religion.[68] Mr. Shandrow's injury is similar to that of the *Hack* plaintiffs. ASU resources are being used on the inaccessible pilot program. For example, the University paid for 35 of the Kindles and for a coordinator for the pilot program.[69] "The fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury."[70] The fact that Mr. Shandrow's tuition is supporting this inaccessible technology is sufficient to confer standing.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court deny Defendants' Motion to Dismiss Plaintiff Shandrow for Lack of Standing.

Plaintiffs respectfully request oral argument on this motion.

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[68] 237 F.3d 81, 88 (2d Cir. 2000), *abrogated on other grounds by Swierkiewicz v. Sorema N. A.*, 534 U.S. 506 (2002).

[69] Sannier Dep. at 74.

[70] *Crawford v. Marion County Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-84 (2000)).

Respectfully submitted,

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