

No. 16-605

IN THE
Supreme Court of the United States

TOWN OF CHESTER,

Petitioner,

v.

LAROE ESTATES, INC.,

Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

**OPPOSITION TO MOTION OF NANCY SHERMAN
REQUESTING THAT SHE BE DEEMED A RESPONDENT**

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February 16, 2017

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INTRODUCTION

Petitioner Town of Chester opposes the motion of nonparty Nancy Sherman to be deemed a respondent in this case. As Sherman repeatedly acknowledges, she was not a party to the proceedings in the Court of Appeals, and she has no interest in the limited legal question on which this Court granted certiorari. Therefore, she has no right to be deemed a party. There are no special circumstances that warrant an exception to the Court's basic rule limiting party status to the participants below. To the contrary, Sherman's motion suggests that she is interested in arguing a variety of extraneous issues that have no bearing on this Court's consideration of the question presented: "[w]hether intervenors participating in a lawsuit as of right under Federal Rule of Civil Procedure 24(a) must have Article III standing." Pet. i.*

ARGUMENT

I. SHERMAN CHOSE NOT TO BE A PARTY TO THE PROCEEDING IN THE COURT WHOSE JUDGEMENT IS BEING REVIEWED AND SHOULD NOT BE A PARTY IN THIS COURT.

Supreme Court Rule 12.6 states that "[a]ll parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court." Sherman does not qualify as a party under that rule. On January 13, 2017, this Court granted the Town of Chester's Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit. *See* Pet. at 1; Supreme Court Order List, Jan. 13, 2017. Sherman, as she forthrightly admits, was not a party to the appeal at the Second Circuit. *See, e.g.*, Mot. at 3 ("Sherman

* Respondent Laroe Estates, Inc. has also filed an opposition to Sherman's motion.

did not participate at the U.S. Second Circuit * * * .”); *id.* at 8 (“Sherman chose not to participate in the appeal * * * .”). She did not enter an appearance in the Court of Appeals, *id.* at 13, and thus was “bar[red] * * * from being heard,” 2d. Cir. L.R. 12.3(c). That is dispositive.

There is no reason for the Court to make an exception to its rule to allow Sherman to participate as a party. Sherman argues that her situation is special because she is still a plaintiff in the District Court even though she was not a party in the Second Circuit. Mot. at 12. She submits that Rule 12.6 “did not anticipate the present situation.” *Id.* at 14. But there is nothing unique about Sherman’s situation. This Court routinely considers issues that have been pressed on appeal by some, but not all, of the parties. *See, e.g., Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2254 (2014) (considering appeal brought by only one of three recipients of subpoenas); *Speer v. Colbert*, 200 U.S. 130, 131 (1906) (“From that judgment Mrs. Speer, together with some of the parties defendant in the suit, appealed, and brought the case here for review.”). In fact, courts often hear cases concerning the denial of a motion to intervene where only the applicant for intervention and the party that opposed the motion in the district court appear before the court. *See, e.g., United Airlines, Inc. v. McDonald*, 432 U.S. 385, 390-391 (1977) (only defendant, and not plaintiff, challenged motion to intervene and was party in this Court); *Donaldson v. United States*, 400 U.S. 517 (1971) (similar); *Patricia Hayes Assocs., Inc. v. Cammell Laird Holdings U.K.*, 339 F.3d 76, 78 (2d Cir. 2003) (considering appeal of denial of motion to intervene, and stating that

“none of [the original plaintiffs] are a party to this appeal”). Sherman also argues that it would be unfair to deprive her of the ability to litigate in a case in which her interests are directly affected. But Sherman acknowledges that “the narrow [legal] issue being appealed at the Second Circuit (standing) was not materially relevant to the Estate.” Mot. at 12. That is precisely the “narrow legal issue” on review before this Court. Her belief that her interests will be affected seems predicated on the misguided belief that this Court might consider a wider range of issues and factual disputes. *Id.* at 10-11; *but see* S. Ct. R. 14.1(a) (limiting the Court’s review to the question presented).

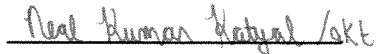
Moreover, many of the interests Sherman claims she wants to vindicate are simply extraneous to the question of whether an intervenor as of right needs Article III standing and would only confuse the issues before the Court. *See, e.g.*, Mot. at 6 n.9 (discussing how Sherman’s attorney would have charged Laroe differently). The other interests she claims are precisely the sorts of policy interests that are regularly ventilated in an amicus brief. *See, e.g.*, Mot. at 12 (discussing how she can provide input about how a standing rule will affect absent party plaintiffs).

Petitioner, as it has already informed Sherman, does not object to her filing an amicus brief and takes no position on the appropriate scheduling. Petitioner does object to any attempt by Sherman to participate in oral argument in any capacity.

CONCLUSION

For all of the foregoing reasons, this Court should deny Sherman's motion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

As required by Supreme Court Rule 29.5, I, Neal Kumar Katyal, a member of the Supreme Court Bar, hereby certify that one copy of the Opposition to Motion of Nancy Sherman Requesting that She Be Deemed a Respondent in *Town of Chester v. Laroe Estates, Inc.*, No. 16-605, was served via electronic mail on February 16, 2017 and by Federal Express on February 16, 2017 on:


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