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

BRIEF FOR RESPONDENT

JOSEPH J. HASPEL
1 West Main Street
Goshen, NY 10924

JAMES R. SAYWELL
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114

SHAY DVORETZKY
Counsel of Record
EMILY J. KENNEDY
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
(202) 879-3939
sdvoretzky@jonesday.com

Counsel for Respondent

QUESTION PRESENTED

Whether intervenors participating in a lawsuit as of right under Federal Rule of Civil Procedure 24(a) must have Article III standing, or whether Article III is satisfied so long as there is a valid case or controversy between the named parties.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Laroe Estates, Inc., discloses that it is a privately held corporation that has no parent corporation and no publicly traded stock, and no publicly held company owns more than 10% of its stock.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

CONSTITUTIONAL AND STATUTORY AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page(s)

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page(s)

INTRODUCTION

Petitioner, the Town of Chester, claims that Article III's case-or-controversy requirement precludes a court from "decid[ing] any question at any point" unless it does so at the behest of a litigant with standing. Pet. Br., 19. That cannot be right.

As part of an existing case or controversy, courts routinely exercise their power on behalf of litigants who are not required to demonstrate standing. Defendants, permissive intervenors, and amici all ask courts to decide questions, large and small, that often impose burdens on other parties. It would make no sense to require courts to ask whether these litigants have standing first.

That is because Article III requires only a "case" or "controversy." Once a plaintiff establishes standing with respect to a particular claim and request for relief, Article III demands no more. "The judicial power shall extend" to that case or controversy. That is, courts are free to adjudicate the claim, award the requested relief, and decide questions that come up along the way. To be sure, those exercises of authority must conform to the Federal Rules. But within a live dispute about a particular claim, Article III does not create additional constitutional constraints on every action a court takes.

For that reason, federal courts, including this one, have recognized repeatedly that Article III is satisfied as long as at least one plaintiff has standing to bring a particular claim and seek a specific form of relief. So long as other parties assert the same claim and seek the same relief, their presence does not negate the case or controversy.

Based on these principles, the Second Circuit correctly recognized that Respondent, Laroe Estates, Inc., is not required to demonstrate independent standing because it brings the same claim and seeks the same relief as a plaintiff whose standing is undisputed. Petitioner's contrary approach invents a constitutional rule that has no basis in the text or purpose of Article III. It contravenes longstanding judicial practice. It forces courts to engage in burdensome, unnecessary constitutional inquiries that will handcuff the judicial power to resolve live cases. And all for no good reason: Petitioner concedes that there is no evidence that "our courtrooms are currently overrun with improper intervenors." Pet. Br., 50. Rule 24 already ensures that only appropriate intervenors participate in litigation, and courts have ample case-management tools to ensure that intervention does not improperly burden other parties. This Court should affirm the decision below.

STATEMENT

A. The Town Prevents Sherman From Developing His Land

In 2000, Steven Sherman applied to the Town of Chester for approval to subdivide a nearly 400-acre property that he purchased for $2.7 million ("MareBrook"). *See Sherman v. Town of Chester*, 752 F.3d 554, 557 (2d Cir. 2014). "That application marked the beginning of his journey through the Town's ever-changing labyrinth of red tape." *Id.*

The Town enacted a new zoning ordinance in 2003 that required Sherman to redraft his development plan. *See id.* Just as Sherman completed his new

proposal, the Town changed its regulations again—a pattern the Town repeated over and over, forcing Sherman to recreate his proposal each time. *See id.* "On top of the shifting sands of zoning regulations, the Town erected even more hurdles," including "announc[ing] a moratorium on development, replac[ing] its officials, and requir[ing] Sherman to resubmit studies that he had already completed." *Id.* Every time Sherman came close to fulfilling the Town's latest requirement, the Town imposed a new one.

B. Running Out Of Money, Sherman Sells His Property To Laroe

After a decade of the Town's obstructionism, Sherman had spent more than $5.5 million. *See Sherman*, 752 F.3d at 557. And there was still "no end in sight." *Id.* Along the way, Sherman turned to Laroe. Laroe and Sherman signed two agreements regarding MareBrook, in 2003 and 2013. Pet. App. 3a-4a. The combined effect of the two agreements was that Laroe purchased MareBrook from Sherman for $2.5 million, subject to a provision requiring Laroe to transfer some lots back to Sherman depending on the number of lots the Town ultimately approved. *See id.*[1]

[1] The Town and Sherman suggest that Laroe's purchase was contingent on satisfying a preexisting mortgage on the property held by a bank. *See* Pet. Br., 10; Sherman Amicus Br., 8. But whatever the bank's interest, which the 2013 agreement set forth various ways of satisfying, Laroe bought *Sherman's* interest. *See* Pet. App. 4a. And as between Laroe and Sherman, the parties deemed "the purchase price for the property 'paid in full.'" *Id.*

Importantly, Laroe was not "lend[ing]" Sherman money under these agreements. Sherman Amicus Br., 8. As the Second Circuit recognized, Laroe and Sherman entered into agreements "for the purchase of property." Pet. App. 14a n.3. Laroe "agreed to purchase property from Sherman, prepaid a substantial sum of money, and signed a second agreement with Sherman that deemed the purchase price paid in full." Pet. App. 12a n.2. That second agreement "confirm[ed] [an] [earlier] Arbitration Ruling" that had declared Laroe "the sole owner[] of [MareBrook]." CA2 JA at 233, 239, *Laroe Estates, Inc. v. Town of Chester*, No. 15-1086 (2d Cir. 2016), ECF 22-1. Thus, unlike a lender, "[a]t the end of the day, Laroe did not want to be paid *back*—it wanted the property." Pet. App. 14a n.3.

C. Sherman Sues The Town

Meanwhile, the Town continued to prolong the approval process. That drove Sherman to court, where the Town engaged in even more stalling tactics.

Sherman initially sued the Town in 2008 in federal court, alleging that the Town's repeated amendments of its zoning laws wrongfully prevented him from developing MareBrook and constituted a regulatory taking. As the Second Circuit eventually explained, "[t]he Town unfairly manipulated the litigation of th[at] case." *Sherman*, 752 F.3d at 560, 568-69. The Town moved to dismiss because Sherman had not first requested compensation in state court. *See id.* at 563-64. Sherman voluntarily dismissed his federal case and refiled in state court in January 2012. *See* Pet. App. 21a. But the Town then "removed the case [back to federal court]" and again "moved to dismiss

on the ground that the takings claim must be heard in state court." *Sherman*, 752 F.3d at 564, 569. The Town also argued that Sherman's claim was unripe because the Town had not yet reached a final decision on the development project.

The District Court agreed that the Town had not reached a final decision and dismissed Sherman's regulatory-takings claim as unripe. *See* Pet. App. 23a. Sherman appealed. He passed away while that appeal was pending, and his widow, Nancy J. Sherman, was substituted in the litigation as his personal representative. *See Sherman*, 752 F.3d at 560.

The Second Circuit reversed the dismissal of the takings claim. *See* Pet. App. 24a. It found that "[s]eeking a final decision [from the Town] would be futile" because "the finish line will always be moved just one step away until Sherman collapses." *Sherman*, 752 F.3d at 563. Moreover, Sherman's allegations about the Town's conduct—"singl[ing] out Sherman's development" and "suffocating him with red tape to make sure he could never succeed in developing MareBrook"—were sufficient to state a takings claim. *Id.* at 565.

D. Laroe Moves To Intervene

Twelve days after the Second Circuit remanded the case to the District Court, and before the District Court took up the remand, Laroe notified the District Court of its intention to intervene pursuant to Federal Rule of Civil Procedure 24. *See* JA 4. Laroe moved to intervene as of right under Rule 24(a)(2) and, in the alternative, by permission under Rule 24(b). *See* Pet. App. 10a.

Laroe argued that it had "an interest relating to the property or transaction" because it was the equitable owner of MareBrook. Fed. R. Civ. P. 24(a)(2); *see* JA 138. Laroe further claimed that its interest would be impaired or impeded if it were not allowed to intervene, and that Sherman could not adequately represent its interests. *See* JA 144-45. Finally, Laroe's motion was timely. Laroe first learned about Sherman's lawsuit while the Town's motion to dismiss was pending. *See* JA 141. Laroe attempted to intervene within days of when that motion was finally resolved. *See id.* At that point, "the parties ha[d] not even begun discovery," Pet. App. 12a, and the Town was still two and a half years from answering the complaint, *see* JA 16.

The District Court denied Laroe's motion to intervene. Pet. App. 57a. The court did not decide whether Laroe satisfied the requirements for intervention under Rule 24. *See* Pet. App. 53a-59a & n.20. Instead, it concluded that Laroe's motion was "futile" because its interest under its purchase agreements with Sherman did not give it "standing to bring a takings claim." Pet. App. 57a.

E. The Second Circuit Vacates The District Court's Denial Of Laroe's Intervention Motion

On interlocutory appeal, the Second Circuit vacated the District Court's decision. While Laroe argued that it had standing based on its ownership interest in MareBrook, the Second Circuit never reached that question. It had no need to, because it held instead that a party seeking to intervene as of right to pursue the same claim and relief as an

existing plaintiff is not required to "independently have standing" in the first place. Pet. App. 6a.

"[T]he question of standing in the federal courts is to be considered in the framework of Article III, which restricts judicial powers to cases and controversies." *Id.* Because "the existence of a case or controversy has been established in the underlying litigation," the Second Circuit explained that "there is no need to impose the standing requirement upon a proposed intervenor." Pet. App. 7a. The court noted that this Court "has *sub silentio* permitted parties to intervene in cases that satisfy the 'case or controversy' requirement without determining whether those parties independently have standing." Pet. App. 8a (discussing *McConnell v. FEC*, 540 U.S. 93 (2003), *overruled on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010)). The Second Circuit also explained that its approach "accords with that of the majority … [of] sister circuits that have addressed this issue." Pet. App. 7a. For all these reasons, the court held that "[t]he District Court … erred by denying Laroe's motion to intervene based on its failure to show it had Article III standing." Pet. App. 8a-9a.

Because an intervenor seeking the same relief as a plaintiff need not possess Article III standing, "the District Court should have instead focused its analysis on the requirements of Rule 24." Pet. App. 10a. The Second Circuit concluded that "the factual record before [it] [was] insufficiently developed at this stage to allow [it] to confidently resolve [the parties'] arguments" regarding Rule 24. Pet. App. 11a. It therefore remanded the case to the District

Court "to determine in the first instance if Laroe satisfies the requirements of Rule 24." *Id.*

SUMMARY OF ARGUMENT

The Second Circuit correctly held that there is no need to ask whether Laroe has independent standing because Laroe asserts the same claims and seeks the same relief as Sherman, whose standing is undisputed. The Town argues that Article III nevertheless requires courts to engage in potentially complicated standing inquiries whenever *any* litigant asks a court to decide "*any* question at *any* point." Pet. Br., 19 (emphasis added). Not even the United States—the Town's own amicus—agrees with that approach. And all relevant authority, settled practice, and common sense refute it.

I. Article III limits the exercise of judicial power to "cases" and "controversies." U.S. Const. art. III, § 2. The Framers cabined judicial power in this way to prevent courts from encroaching upon the Legislative or Executive Branches by opining on legal issues that do not warrant judicial intervention. Justiciability doctrines, including standing, give meaning to these limits. Standing doctrine requires a plaintiff to show, as to each claim and form of relief, that he has an actual injury that is traceable to the defendant's conduct and that is redressable by a favorable judicial decision. Only then is there a case or controversy that warrants the exercise of judicial power.

Once Article III is satisfied, it does not restrict the exercise of judicial power within the contours of a case or controversy. Nor does it limit the parties who may participate in that case or controversy. Indeed,

this Court and lower courts have long recognized that there is a justiciable case or controversy when at least one plaintiff has standing for each claim and form of relief. Additional plaintiffs who pursue the same claims and relief do not affect the existence of a case or controversy. There is accordingly no need to analyze whether those other plaintiffs have Article III standing. And these same settled principles apply equally to intervenors.

There are good reasons to allow intervenors to ride piggyback on an existing party's standing. Doing so enables courts to avoid deciding the complex and unnecessary constitutional questions that inquiring into every party's standing would entail. At the same time, it promotes the expeditious resolution of related claims. It also respects the difference between mobilizing the judicial machinery in the first instance and participating in a case after the judiciary has already been properly engaged. And it achieves all of this without creating undue burdens for courts or litigants. Courts have ample case-management tools to ensure the efficiency of multiparty litigation.

II. The Town argues that Article III nevertheless requires courts to engage in potentially complicated standing inquiries whenever *any* litigant asks a court to decide "*any* question at *any* point." Pet. Br., 19 (emphasis added). Longstanding practice repudiates that approach.

Courts regularly exercise their power on behalf of litigants who participate in an existing case or controversy, but who are not required to demonstrate independent standing. Take, for example, defendants. It would be nonsensical to demand that

they establish standing before pursuing discovery, issuing subpoenas, or making motions. Indeed, the standing inquiry—which focuses on the party invoking federal jurisdiction to bring a claim—cannot logically be applied to a defendant, who is haled into court involuntarily.

Permissive intervenors, too, take discovery, file motions and briefs, and participate at oral argument. They do so because they become parties to the suit. Rule 24(b), however, does not require permissive intervenors to have a direct interest in the subject of the litigation, as this Court has recognized. The Town's theory would render all of this conduct by permissive intervenors unconstitutional. The Town suggests that courts can cure these constitutional concerns by relegating permissive intervenors to the role of amici. Not only is that contrary to settled practice, but even amicus participation may be unconstitutional under the Town's approach. Amici regularly ask courts to decide questions, consider arguments, and enter orders—all, in the Town's view, invocations of judicial power that are impermissible without standing.

III. Without any constitutional basis to impose Article III's standing criteria on intervenors, the Town and the United States argue that Rule 24(a)(2) *itself* requires standing. In petitioning for certiorari, however, the Town emphasized that Article III's requirements are separate from what Rule 24(a)(2) requires. Indeed, the Town disclaimed reliance on Rule 24(a)(2)'s language. It argued that this case was a particularly good vehicle to decide Article III's threshold requirements because the requirements of

Rule 24(a)(2), which the Second Circuit did not expressly address, are not at issue.

In any event, Rule 24(a)(2) does not incorporate Article III's case-or-controversy requirement. Rule 24(a)(2) asks a different question than Article III. Standing requires an actual injury that is *certainly impending*, traceable to the defendant's conduct, and redressable by the court. Rule 24(a)(2) requires only an interest that *may* be impaired or impeded in the future. Moreover, Rule 24(a)(2) is satisfied if the intervenor's interest *relates to the subject matter of the action*; the interest need not have been harmed *by the defendant's conduct*. And Rule 24(a)(2) focuses on whether intervention might aid the movant's ability to protect its interest *as a practical matter*—not on the tight redressability nexus required by standing doctrine. Rule 24's history confirms that it has an expansive, practical purpose that is incompatible with the exacting requirements of standing. Once Article III has ensured that there is an appropriate case or controversy for judicial resolution, Rule 24 allows potentially affected parties to participate in that existing case to protect their interests and avoid multiplicitous litigation later.

IV. Neither the Constitution nor Rule 24 requires courts to assess the independent standing of intervenors who pursue the same claims and relief as an existing plaintiff, as Laroe does here.

ARGUMENT

I. ARTICLE III EMPOWERS A COURT TO ADJUDICATE A CLAIM AND ISSUE RELIEF THAT AT LEAST ONE PARTY HAS STANDING TO PURSUE

Article III limits the exercise of the judicial power to "cases" and "controversies." U.S. Const. art. III, § 2. That restriction confines the Judicial Branch to its proper role in the tripartite system of government. The Framers did not want courts to be roving arbiters of the actions of the legislature, the Executive, or private parties, in the absence of a live dispute that required judicial intervention.

This Court and others have long recognized that Article III's case-or-controversy requirement is satisfied when at least one plaintiff has standing to assert a claim and seek particular relief. The presence of other parties who pursue the same claim and relief does not implicate Article III's core concern because the court already has authority to resolve that same case or controversy. The Town's own amicus, the United States, agrees that all of these principles are well settled and that they apply with equal force to intervenors.

These principles also make sense. The participation of an additional litigant does not negate the case or controversy as to a particular claim. To the contrary, Article III provides that the "judicial power" "extends" to the entire "case" or "controversy." Moreover, allowing intervenors to piggyback on an existing party's standing avoids "burden[ing] already busy courts with an inquiry that could appropriately be left unaddressed in accordance with ordinary

principles of constitutional avoidance." U.S. Amicus Br., 16. At the same time, courts have ample case-management tools to ensure that intervenors do not create undue burdens for the court or existing parties.

A. Article III's Case-Or-Controversy Requirement Protects The Political Branches From Judicial Encroachment

1. Article III ensures that federal courts exercise the "judicial power" only to resolve "cases" and "controversies." U.S. Const. art. III, § 2. This restriction "state[s] fundamental limits on federal judicial power in our system of government." *Allen v. Wright*, 468 U.S. 737, 750 (1984), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014).

Article III's case-or-controversy requirement ensures that "the judiciary remains truly distinct from both the legislature and the Executive." *The Federalist No. 78* (Hamilton) (The Avalon Project at Yale Law School) (McLean's ed.). "The Framers of our Constitution lived among the ruins of a system of intermingled legislative and judicial powers," and they were acutely aware of the "factional strife and partisan oppression" that such a system produced. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995). The Framers accordingly believed that "there is no liberty, if the power of judging be not separated from the legislative and executive powers." *The Federalist No. 78*, *supra*. This concern applies to claims against the government: After all, if courts had "an unconditioned authority to determine the constitutionality of legislative or executive acts," they

could easily usurp the political branches. *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982). And it applies to disputes among private parties, whether they "aris[e] under … [the] laws of the United States," or involve citizens of different states. U.S. Const. art. III, § 2. Indeed, unwarranted federal-court intervention in state-law claims implicates not only the proper role of courts, but also the delicate balance between state and federal governments.

The case-or-controversy requirement addresses these concerns. It limits the federal judicial power to situations where its exercise is "a necessity in the determination of real, earnest and vital controversy." *Valley Forge*, 454 U.S. at 471. That, in turn, prevents courts from opining at will on "questions of political power, of sovereignty, [and] of government," or otherwise "assum[ing] a position of authority over the governmental acts of another and coequal department." *Massachusetts v. Mellon*, 262 U.S. 447, 485, 489 (1923). In short, "the 'case' or 'controversy' requirement defines with respect to the Judicial Branch the idea of separation of powers on which the Federal Government is founded." *Allen*, 468 U.S. at 750.

2. While the case-or-controversy requirement limits when judicial power may be engaged, it does not impose a straightjacket on the precise manner in which the judiciary manages resolution of actual controversies. Such micromanagement of housekeeping matters is unnecessary to prevent courts from unduly encroaching upon the political branches, the principal objective of Article III. That

end is fully served by requiring a live dispute with respect to each legal claim and request for relief. *See Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996); *Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983).

But once there is a case or controversy, "[t]he judicial power … extend[s]" to all of it. U.S. Const. art. III, § 2. Courts have authority to adjudicate the claim, award the requested relief, and resolve questions that arise along the way. This makes sense: Ancillary case-management questions were not the impetus for Article III's restrictions on judicial power, and are not likely to implicate the core functions of the political branches in the same way as adjudicating claims or granting relief.

To be sure, a case or controversy as to one claim does not extend the judicial power to *different* claims or forms of relief. *See Lewis*, 518 U.S. at 358 n.6; *Lyons*, 461 U.S. at 109. It would work an end run around the core concern of Article III if a party could bootstrap one claim to procure judicial resolution of another, without ensuring that it, too, is an appropriate case or controversy. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006). But contrary to the Town's suggestions (*see, e.g.*, Pet. Br., 18-19), cases recognizing this principle do not suggest that Article III imposes any limit on how far "[t]he judicial power … extend[s]" *within* a case or controversy. U.S. Const. art. III, § 2.[2]

[2] The Town's reliance on *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72 (1988), is misplaced. That case holds merely that a court cannot act *at all*, including as to discovery disputes, in the absence of an underlying case or controversy. *See id.* at 76, 80.

3. Courts have developed justiciability doctrines to ensure that there is a live dispute warranting their intervention with respect to a particular claim or request for relief. Standing doctrine identifies the types of "disputes which are appropriately resolved through the judicial process." *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014). And ripeness and mootness doctrines ensure that courts do not intervene too soon (if the dispute is not ripe) or too late (if the dispute is moot). *See, e.g.*, *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974) (per curiam); *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967).

To establish standing, a plaintiff must show that he "suffered an injury in fact," "that is fairly traceable to the challenged conduct of the defendant," and "that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). These criteria advance Article III's purposes. When a litigant has an "actual injury redressable by the court," that "tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge*, 454 U.S. at 472. By contrast, if a plaintiff has not been injured, if his injury is not traceable to the defendant's conduct, or if a favorable court decision would not redress it, there is no "real, earnest and vital controversy" that makes judicial intervention "a necessity." *Id.* at 471. "[A]llowing courts to oversee legislative or executive action [under those circumstances] would significantly alter the allocation of power away from a democratic form of government." *Summers v. Earth Island Inst.*, 555

U.S. 488, 493 (2009). That, in turn, would give rise to the sort of "unconditioned authority" to opine on legislative or Executive acts that the Framers sought to avoid. *Valley Forge*, 454 U.S. at 471.

The threshold requirement of standing accordingly prevents federal courts from deciding claims or granting relief that they would not otherwise have authority to consider. *See DaimlerChrysler*, 547 U.S. at 353; *see, e.g.*, *Lewis*, 518 U.S. at 349 ("[S]tanding … prevents courts of law from undertaking tasks assigned to the political branches[.]"). When a plaintiff has standing, however, these concerns abate. In the words of a leading scholar on this topic, it is then appropriate to "mobilize the judicial machinery." David L. Shapiro, *Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators*, 81 HARV. L. REV. 721, 726 (1968).

B. Courts Have Long Held That Article III Is Satisfied If One Plaintiff Has Standing To Pursue A Particular Claim And Form Of Relief

For decades, this Court and others have recognized that there is an Article III case or controversy warranting the exercise of judicial power when at least one plaintiff has standing to bring a particular claim and seek particular relief. Article III therefore does not require courts to consider the standing of additional plaintiffs who pursue the same claim and relief. These principles apply equally to intervenors. *See infra* 24-27.

1. As explained above, "the tripartite allocation of power that Article III is designed to maintain would

quickly erode" if a plaintiff could invoke the judicial power to resolve one claim by establishing standing as to a different claim. *DaimlerChrysler*, 547 U.S. at 353. But this same concern is not implicated when multiple plaintiffs pursue an identical claim and relief. As long as one plaintiff has standing to do so, an Article III case or controversy exists. The court therefore "acts within the limits prescribed by the Constitution" by adjudicating that claim. U.S. Amicus Br., 15.

Other plaintiffs can participate in that same case or controversy without overstepping the bounds of Article III because the underlying claim and relief remain appropriate for judicial intervention. *Cf. Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 558 (2005) (recognizing that multiple plaintiffs' claims can be "part of the same Article III case or controversy"). As long as the additional plaintiffs do not pursue additional claims or relief—by, for example, seeking a broader injunction or seeking monetary damages on top of those alleged by the plaintiff with standing—their presence "does not negate the requisite adversity" or "the existence of an Article III 'Case' or 'Controversy.'" U.S. Amicus Br., 15.

2. Scores of decisions from this Court and lower federal courts confirm these settled principles.

a. This Court has recognized repeatedly that "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006); *see also Dir., Office of Workers' Comp. Programs v. Perini N. River Assocs.*,

459 U.S. 297, 305 (1983). Thus, upon finding that at least one party "has demonstrated standing" with respect to a particular claim, this Court generally does not consider whether other parties have standing to assert the same claim. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 & n.9 (1977).[3]

These cases do more than just confirm the Court's ability to "decide a question presented" or "a particular issue." Pet. Br., 32 (emphasis deleted). This Court has repeatedly *affirmed judgments that awarded relief* to parties whose standing the Court declined to consider. *Department of Commerce*, for example, affirmed an order granting summary judgment and injunctive relief to a group of plaintiffs who challenged the legality of a Census Bureau plan—without considering the standing of every

[3] *See also, e.g.*, *Horne v. Flores*, 557 U.S. 433, 446 (2009); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (plurality op.); *Massachusetts v. E.P.A.*, 549 U.S. 497, 518 (2007); *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls*, 536 U.S. 822, 826 n.1, (2002); *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 330 (1999); *Clinton v. City of N.Y.*, 524 U.S. 417, 431 n.19 (1998); *U.S. Dep't of Labor v. Triplett*, 494 U.S. 715, 719 (1990); *Bowen v. Kendrick*, 487 U.S. 589, 620 n.15 (1988); *Pennell v. City of San Jose*, 485 U.S. 1, 8 n.4 (1988); *Bowsher v. Synar*, 478 U.S. 714, 721 (1986); *Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 402 n.22 (1982); *Watt v. Energy Action Educational Found.*, 454 U.S. 151, 160 (1981); *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 299 n.11 (1979); *Duke Power Co. v. Carolina Envtl. Study Grp., Inc.*, 438 U.S. 59, 72 n.16 (1978); *Baldwin v. Fish & Game Comm'n of Mont.*, 436 U.S. 371, 377 n.14 (1978); *Carey v. Population Servs., Int'l*, 431 U.S. 678, 682 & n.2 (1977); *Whalen v. Roe*, 429 U.S. 589, 595 n.14 (1977); *Buckley v. Valeo*, 424 U.S. 1, 12 (1976) (per curiam).

plaintiff who secured that victory. *See* 525 U.S. at 327, 330, 334; *see also, e.g.*, *Clinton*, 524 U.S. at 431 n.19, 449 (affirming judgment for group of plaintiffs without determining that each of them had standing); *Bowsher*, 478 U.S. at 719, 721, 736; *Carey*, 431 U.S. at 681-82 & n.2. If Article III required each *party* to establish standing before requesting relief from a court (*see, e.g.*, Pet. Br., 13), this Court could not have affirmed those judgments without assuring itself that every plaintiff had standing. *See infra* 39-40; *cf. Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998) ("Every federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review[.]").

b. Countless decisions from the Courts of Appeals also recognize that "[t]he law is abundantly clear that so long as at least one plaintiff has standing to raise each claim[,] … [a court] need not address whether the remaining plaintiffs have standing." *Florida ex rel. Att'y Gen. v. U.S. Dep't of Health & Human Servs.*, 648 F.3d 1235, 1243 (11th Cir. 2011), *aff'd in part*, *Nat'l Fed. Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).[4] And like this Court, many of those courts

[4] *See, e.g.*, *Tierney v. Advocate Health & Hosps. Corp.*, 797 F.3d 449, 451 (7th Cir. 2015); *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 471 (5th Cir. 2014); *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 316 n.7 (4th Cir. 2013); *Taylor v. Roswell Indep. Sch. Dist.*, 713 F.3d 25, 29 n.1 (10th Cir. 2013); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 84 n.2 (2d Cir. 2012); *In re Navy Chaplaincy*, 697 F.3d 1171, 1178 (D.C. Cir. 2012); *Lozano v. City of Hazleton*, 620 F.3d 170, 182-83 (3d Cir. 2010); *Sch. Dist. of City of Pontiac v. Sec'y of U.S. Dep't of Educ.*, 584 F.3d 253, 261 (6th Cir. 2009) (en banc); *Washington Legal*

affirm relief awarded to plaintiffs without considering their standing. *See, e.g.*, *Lozano*, 620 F.3d at 176, 182-83; *Glassroth v. Moore*, 335 F.3d 1282, 1284, 1293 (11th Cir. 2003); *Brennan*, 608 F.3d at 1334, 1344; *cf. Hardaway v. D.C. Housing Auth.*, 843 F.3d 973, 979 (D.C. Cir. 2016) (co-plaintiffs could proceed on their claims, including those seeking monetary relief, because at least one of them had standing).

c. District courts, too, repeatedly assure themselves of the standing of only one plaintiff at the outset of litigation—even though additional plaintiffs may participate in discovery or otherwise "impose burdens on other parties." Pet. Br., 20.[5]

(continued…)

Found. v. Massachusetts Bar Found., 993 F.2d 962, 972 (1st Cir. 1993); *Nat'l Wildlife Fed'n v. Agric. Stabilization & Conservation Serv.*, 955 F.2d 1199, 1203 (8th Cir. 1992); *Legal Aid Soc'y v. Brennan*, 608 F.2d 1319, 1334 (9th Cir. 1979).

[5] *See, e.g.*, *Juliana v. United States*, No. 6:15-cv-01517, 2016 WL 6661146, at *14 n.5 (D. Or. Nov. 10, 2016); *Citizens of Karst, Inc. v. U.S. Army Corps of Eng'rs*, 160 F. Supp. 3d 451, 458 (D.P.R. 2016); *ImagePoint, Inc. v. JPMorgan Chase Bank, Nat'l Ass'n*, 27 F. Supp. 3d 494, 514 n.8 (S.D.N.Y. 2014); *North Dakota v. Heydinger*, 15 F. Supp. 3d 891, 906 n.8 (D. Minn. 2014); *Harman v. Ahern*, No. 14-cv-03051, 2014 WL 5209205, at *2 (N.D. Cal. Oct. 14, 2014); *Ctr. for Biological Diversity v. Salazar*, 791 F. Supp. 2d 687, 700 (D. Ariz. 2011); *Women's Med. Prof'l Corp. v. Taft*, 114 F. Supp. 2d 664, 668 (S.D. Ohio 2000); *PSINet, Inc. v. Chapman*, 108 F. Supp. 2d 611, 619-20 (W.D. Va. 2000); *Hoohuli v. Ariyoshi*, 631 F. Supp. 1153, 1157 & n.19 (D. Haw. 1986); *Georgia Socialist Workers Party v. Fortson*, 315 F. Supp. 1035, 1037 (N.D. Ga. 1970).

In some such cases, additional plaintiffs seek the same declaratory or injunctive relief as an existing party. In others, the plaintiffs all seek a single damages award (i.e., the additional plaintiffs do not seek any damages on top of those sought by the party with standing). To discuss just one example, in *Archer v. Gipson*, 108 F. Supp. 3d 895 (E.D. Cal. 2015), a husband and wife sued a city for seizing their property. Only the wife held title to the property, and the city argued that the husband "lack[ed] standing to bring th[e] action because he [wa]s not the property owner of record and he ha[d] no community property interest to confer standing." *Id.* at 906. Explaining that the wife "unquestionably" had standing and that the husband's presence in the suit would not affect "the potential relief in the case," the court allowed the unlawful-seizure claim to proceed to trial without considering the husband's standing. *See id.* at 906-07, 916. Both plaintiffs participated in discovery, *see, e.g.*, Mid-Discovery Status Report, *Gipson*, No. 1:12-cv-00261, ECF 64, and they ultimately recovered compensatory damages for their single injury, *see Archer v. Gipson*, No. 1:12-cv-00261, 2015 WL 9473409, at *1 (E.D. Cal. Dec. 28, 2015). *See also, e.g.*, *Brown Jordan Int'l, Inc. v. Carmicle*, No. 14-cv-60629, 2014 WL 11350232, at *1 (S.D. Fla. Aug. 29, 2014) (applying one-plaintiff rule where multiple plaintiffs sought single damages award for indivisible injury).

3. Cases cited by the Town in which courts have dismissed some, but not all, plaintiffs for lack of standing typically involve dismissed parties who raised distinct claims that *no plaintiff* had standing to bring. *See* Pet. Br., 19-20.

For instance, *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), affirmed the dismissal of two plaintiffs who sought not only the same declaratory and injunctive relief as parties with standing, but also their own individualized monetary damages. *See id.* at 95, 112 n.25, 115; *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 371 (1982) (dismissed plaintiffs sought individualized damages in addition to injunctive and declaratory relief). And in *Nunez Colon v. Toledo-Davila*, 648 F.3d 15 (1st Cir. 2011), the dismissed plaintiffs sought their own damages—of more than $12.5 million each—on top of those alleged by a plaintiff with standing. *See id.* at 18; Amended Complaint, *Nunez Colon v. Toledo-Davila*, No. 06-2060 (D.P.R.), 2007 WL 1339912. In those situations, adjudicating the additional claims or granting relief beyond that requested by a plaintiff with standing would overstep the bounds of Article III. *See DaimlerChrysler*, 547 U.S. at 353; *Lewis*, 518 U.S. at 358 n.6.

By contrast, it does not destroy an existing case or controversy for multiple parties to seek the same injunctive relief or a single damages award for an indivisible injury. While stray courts have dismissed plaintiffs under those circumstances, Article III does not *require* them to do so, or even speak to the issue at all. *Cf. United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725-26 (1966) (federal courts have "power" to exercise supplemental jurisdiction but need not do so in every case). And although courts have broad authority to manage the cases before them, they should avoid unnecessarily resolving constitutional questions about standing. *See infra* 27-28; *see also* U.S. Amicus Br., 16.

C. These Same Principles Apply To Intervenors

The Town concedes that "[t]here is no difference between a plaintiff and an '*intervenor*-plaintiff' that would justify a constitutional constraint on one but not the other." Pet. Br., 5. So does the United States. *See* U.S. Amicus Br., 16. A court need not evaluate the standing of intervenors any more than that of additional plaintiffs who raise the same claims and seek the same relief as a plaintiff with standing.

1. This Court has already recognized an intervenor's "ability to ride 'piggyback'" on a party's standing. *Diamond v. Charles*, 476 U.S. 54, 64 (1986). *Diamond* involved a constitutional challenge to an Illinois abortion law. *See id.* at 56. Shortly after plaintiffs—four physicians who provided abortion services in Illinois—filed their complaint against the State, Diamond sought to intervene to defend the statute. *See id.* at 57-58. The district court allowed him to intervene and, later, granted plaintiffs' request for injunctive relief. *See id.* at 58, 61. After the Seventh Circuit affirmed the district court's judgment, the State did not seek further review. *See id.* at 61. Diamond did, but in the State's absence, "there [was] no case for [him] to join." *Id.* Because Diamond lacked appellate standing, this Court dismissed the appeal for lack of jurisdiction. *See id.* at 64-71.

In doing so, the Court explained that, "[h]ad the State of Illinois invoked this Court's appellate jurisdiction … and sought review of the Court of Appeals' decision," Article III's "'case' or 'controversy'

requirement would have been met." *Id.* at 62. Diamond then could have "rid[den] 'piggyback' on the State's undoubted standing" and participated like any other party: He would have been "entitled to seek review," "file a brief on the merits," and "seek leave to argue orally." *Id.* at 64.[6]

McConnell confirmed these principles. A group of elected officials intervened as of right to defend the constitutionality of the Bipartisan Campaign Reform Act of 2002, 116 Stat. 81. *See* 540 U.S. at 160, 233. Some plaintiffs argued that intervention was improper and "must be reversed" because the intervenors "lack[ed] Article III standing." *Id.* at 233. But the intervenors' "position," *McConnell* explained, was "identical to the [Federal Election Commission's]"—a party that "clear[ly] … ha[d] standing." *Id.* Relying on decisions applying the settled rule that only one plaintiff needs standing, the Court concluded that it "need not address the [intervenors'] standing." *Id.* (citing *Clinton*, 524 U.S. at 431-32 n.19; *Bowsher*, 476 U.S. at 721). *McConnell*

[6] The Town claims that *Diamond* did not decide whether intervenors require standing to intervene in district court. *See* Pet. Br., 31. But *Diamond*'s logic with respect to appellate standing applies equally to intervention in the district court. The Town also claims that *Diamond* merely recognized that intervenors can participate in the same capacity as amici. *Id.* But the Court recognized that Diamond would have been "entitled to seek review" and "to file a brief on the merits." *Diamond*, 476 U.S. at 64. As an intervenor with party status, he would also have been entitled to participate in any settlement negotiations. And if his arguments had ultimately persuaded the Court, he would have obtained relief from the attorney's fees assessed against him. *See id.* at 70-71. Amici have none of these rights—in the district court or on appeal.

thus affirmed the district court judgment that the intervenors had helped secure. *See id.*; *see also Triplett*, 494 U.S. at 719 ("Since the [plaintiff] has standing, we need not inquire whether the [intervenor] does as well.").

2. In other contexts, too, this Court has recognized that parties may intervene even when they could not have initiated a separate lawsuit.

First, in *Arizona v. California*, 460 U.S. 605 (1983), the Court allowed several Indian tribes to intervene in an original action involving a water-rights dispute among states and the federal government. The Eleventh Amendment barred the tribes from bringing their claims against the States in a separate proceeding. *See id.* at 614. But there was already an existing case or controversy as to those claims because the United States had asserted identical claims against the States. *See id.* Because the tribes "d[id] not seek to bring *new* claims or issues against the States," the Court determined that its "judicial power over [the existing] controversy [was] not enlarged by granting leave to intervene." *Id.* (emphasis added).

Second, in *Trbovich v. United Mine Workers of America*, 404 U.S. 528 (1972), a union member sought to intervene in a case involving violations of the Labor Management and Reporting and Disclosure Act of 1959 (LMRDA), 73 Stat. 534, 29 U.S.C. § 482(b). Although the LMRDA barred him from initiating his own suit, the Court held that he could intervene in an existing suit by the Secretary of Labor that was "plainly authorized by the statute." *Trbovich*, 404 U.S. at 531, 537. The LMRDA's

"provision for exclusive enforcement by the Secretary," *Trbovich* explained, was "a device for eliminating frivolous complaints and consolidating meritorious ones." *Id.* at 535. But that did not bar a union member from "participat[ing] in a pending suit" by the Secretary. *Id.* at 531. Because the Secretary had already brought suit, allowing the union member to pursue the same "claims of illegality presented by the Secretary's complaint" would not give rise to a frivolous suit or subject the defendant "to burdensome multiple litigation." *Id.* at 536-37. *Trbovich* accordingly allowed the union member to intervene as of right under Rule 24(a)(2) "to present evidence [in district court] and argument in support of the Secretary's complaint." *Id.* at 537.

The principles in *Arizona* and *Trbovich* support intervention by those who raise the same claims that are already properly raised by a party with standing. Whether or not Article III would permit the intervenor to bring those claims in a separate suit, the "judicial power" is not "enlarged" by allowing him to raise them in the context of an existing case or controversy. *See Arizona*, 460 U.S. at 614.

D. Allowing Intervenors To Piggyback On An Existing Party's Standing Makes Sense

There are good reasons to allow additional parties, including intervenors, to present the same claims and seek the same relief as parties that have already demonstrated standing.

First, courts should avoid passing unnecessarily on constitutional issues. *See, e.g.*, *Camreta v. Greene*, 563 U.S. 692, 705 (2011). Because "the presence of

one party with standing is sufficient to satisfy Article III's case-or-controversy requirement," *Rumsfeld*, 547 U.S. at 52 n.2, there is no constitutional need for courts to decide whether additional parties have standing to raise that same claim. *See supra* 13-27; U.S. Amicus Br., 15-16. "[L]ongstanding principle[s] of judicial restraint" counsel in favor of "leav[ing] [the] issue for another day," if and when the additional party brings a separate claim or seeks additional relief. *Camreta*, 563 U.S. at 705-06.

To be sure, an intervenor who raises new claims or seeks relief beyond that requested by a party with standing must satisfy Article III.[7] *See supra* 15. Nothing is gained, however, from requiring all intervenors to demonstrate standing at the threshold. *See* Pet. Br., 41-42; U.S. Amicus Br., 22-23. Intervenors will not necessarily raise new claims or seek new forms of relief as a case progresses.[8] They will bring their own perspective, make arguments,

[7] For that reason, the Second Circuit's decision does not create an "end-run around" Article III. *See* Pet. Br., 41. Additional plaintiffs and intervenors stand on the same footing: They can piggyback on an existing party's standing only if they raise the same claims and seek no additional relief.

[8] The Town claims that a litigant who shows that "existing parties" do not "adequately represent" his interest "will necessarily ask a court to exercise its authority in a way different than the original parties." Pet. Br., 29; *see also* U.S. Amicus Br., 8. Not so. An intervenor whose pleading is limited to the same claims and relief as an existing party does not change the direction of a case in a constitutionally relevant way. Indeed, amici also have an "interest" that they believe is not adequately represented, *see* Fed. R. App. P. 29(4)(D), but they do not ask the court to exercise its authority in ways that implicate Article III, as properly understood.

and possibly present evidence—but all with respect to the claims they raise in their initial pleading. *See* Fed. R. Civ. P. 24(c). And if intervenors later seek to raise new claims or request additional relief, they likely would do so just as any other party would: through an amended pleading. The court may need to conduct a standing analysis at *that* point. But a determination that an intervenor has Article III standing to assert the claims raised in its initial pleading says nothing about whether it has standing to raise *different* claims later. A threshold standing requirement would therefore be both premature and pointless.[9]

Second, requiring a court to inquire into every party's standing would waste judicial resources. *See* U.S. Amicus Br., 16. A party's standing "often turns on imprecise distinctions and requires difficult line-drawing." *Campbell v. Louisiana*, 523 U.S. 392, 397 (1998). Standing determinations can entail additional discovery, briefing, and evidentiary hearings. *See, e.g.*, *Friends of Tims Ford v. Tennessee*

[9] Rejecting such a requirement does not work a "bait and switch" for intervenors who are "left in the cold when the parties with standing elect not to appeal an unfavorable judgment." Pet. Br., 42-43. That is a risk that intervenors assume when they piggyback on someone else's standing—just like the risk that the named parties will settle the underlying dispute or that a party with standing will voluntarily dismiss his claims. *Cf.* Mot. of Sherman for Reconsideration at 2, No. 16-605 (Mar. 9, 2017). *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370 (1987), which recognized that intervenors have a right to appeal conditions on their intervention following final judgment, is not to the contrary. *See id.* at 375-76. If an intervenor lacks standing, he has no guarantee of an ongoing case or controversy from which to appeal.

Valley Auth., 585 F.3d 955, 965-66 (6th Cir. 2009). And because a federal court needs to assure itself that there is standing throughout the life of a case, *see, e.g.*, *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523, 1528 (2013), already overburdened judges may need to repeat this process many times over.

Even after district courts resolve questions of standing, their decisions routinely generate appeals that, in turn, may precipitate remands. *See, e.g.*, *Susan B. Anthony List*, 134 S. Ct. at 2340-41, 2347; *Schnitzler v. United States*, 761 F.3d 33, 35 (D.C. Cir. 2014). Moreover, appellate courts have an independent obligation "to satisfy [themselves] not only of [their] own jurisdiction, but also that of the lower courts in a cause under review, even [if] the parties are prepared to concede it." *Steel Co.*, 523 U.S. at 95; *see also Renne v. Geary*, 501 U.S. 312, 316 (1991) ("We presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record."). The far simpler approach is to permit courts to bypass these questions unless an intervenor seeks to interject new claims or requests additional relief.

Third, a rule allowing intervenors to piggyback on the standing of an existing party allows related claims to be decided together. Even the Town acknowledges that "intervention may ultimately minimize the stresses on the judicial system by allowing for a set of linked claims or defenses to be decided in one suit or one settlement, rather than many." Pet. Br., 46. That is true even if an intervenor lacks standing to bring a separate suit. An interest that does not currently rise to an "actual injury" may ripen into one later, leading to

multiplicitous litigation. *See infra* 43-44 (discussing difference between interest and actual injury). Worse yet, the disposition of the earlier action may have irreparably impaired the intervenor's interest—thwarting the very purposes of intervention. *See infra* 49-51.

Fourth, this rule respects the critical difference between initiating a lawsuit and joining one that already exists. From a constitutional standpoint, initiating litigation triggers concerns at the heart of Article III about courts opining at will on the actions of the political branches. But once there is a valid case or controversy that warrants judicial intervention, allowing additional parties to participate in that same case or controversy does not create these same problems. *See supra* 17-27; *see also* U.S. Amicus Br., 15-16.

There is also a practical difference between initiating litigation and intervening in an ongoing suit. *See* Shapiro, *supra*, at 726-29. "The principal intrusion on [a party's] affairs" occurs when it is "summoned into court." *Trbovich*, 404 U.S. at 536. Allowing an intervenor to join that suit, even to "present evidence," subjects the existing parties "to relatively little additional burden." *Id.* And because an intervenor cannot raise new claims or seek additional relief without satisfying Article III, intervention will not "compel [an opposing party] to respond to a new and potentially groundless suit." *Id.* Indeed, intervention will often protect a party from "burdensome multiple litigation." *Id.*

Finally, allowing intervenors to raise claims or request relief within the confines of an existing case

or controversy does not burden courts or litigants. As an initial matter, Rule 24 already protects against "[i]mproper intervention," ensuring that mere "concerned bystanders" do not inject themselves where they do not belong. Pet. Br., 28, 47. Even the Town concedes that courtrooms are not "overrun with improper intervenors." Pet. Br., 50.

And once a party is permitted to intervene, courts have tools to ensure that they do not create a "drain on the judicial system" or "interfere with … access to justice." Pet. Br., 47-48. "[D]istrict courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases." *Dietz v. Bouldin*, 136 S. Ct. 1885, 1892 (2016) (collecting cases). The Federal Rules likewise grant courts considerable discretion "to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1.

Courts accordingly can control the "frequency and extent of discovery," either by barring certain requests or limiting "the number of depositions," "interrogatories," and requests for admission. Fed. R. Civ. P. 26(b)(1), (2)(A)-(C), (c)(1); *see* Fed. R. Civ. P. 16(c)(2)(F) (authority to "control[] and schedul[e] discovery"). They can "exercise reasonable control over the mode and order" that parties "present[] evidence." Fed. R. Evid. 611(a). And they routinely limit the number and length of briefs, as well as parties' ability to participate in oral argument. *See, e.g.*, S.D. Cal. L.R. 7.1(h); S.D.N.Y. L.R. 6.1(c); *Phifer ex rel. Phifer v. City of N.Y.*, No. 99-4422, 1999 WL 722013, at *3 (S.D.N.Y. Sept. 16, 1999). This broad discretion is at its peak in multiparty suits, where

the need "to regulate the actions of parties" is especially acute. *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 172 (1989); *see* Fed. R. Civ. P. 16(c)(2)(L) (encouraging courts to "adopt[] special procedures for managing potentially difficult or protracted actions that may involve … multiple parties").

Contrary to the Town's assertion (Pet. Br., 10), courts have ample discretion to impose conditions on Rule 24(a)(2) intervenors. *See Stringfellow*, 480 U.S. at 383 (Brennan, J., concurring) ("[R]estrictions on participation may also be placed on an intervenor of right and on an original party."); *San Juan Cty. v. United States*, 503 F.3d 1163, 1189 (10th Cir. 2007) (en banc); Shapiro, *supra*, at 727, 756. "By its terms, Rule 24(a)(2) does not require that an intervenor be accorded the same treatment as a plaintiff with standing." U.S. Amicus Br., 23 n.5. The Advisory Committee Notes to Rule 24 provide that "[a]n intervention of right … may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings." Fed. R. Civ. P. 24, adv. comm. notes 1966. And indeed, courts regularly impose limits on the ability of intervenors as of right to file briefs, raise new arguments, and participate at trial. *See, e.g.*, *Trbovich*, 404 U.S. at 537; *Forest Cty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 15-16 (D.D.C. 2016). They also do not hesitate to restrict intervenors' participation in discovery, including by prohibiting them from "initiating unilateral, independent discovery" without court approval. *Planned Parenthood Minn., N.D., S.D. v. Daugaard*, 836 F. Supp. 2d 933, 943 (D.S.D. 2011); *see, e.g.*,

United States v. Duke Energy Corp., 171 F. Supp. 2d 560, 565 (M.D.N.C. 2001).

* * *

In sum, the text and purpose of Article III, settled precedent, and common sense all confirm that intervenors need not demonstrate independent standing to present the same claims and seek the same relief as another party that has already established a case or controversy.

II. THE TOWN'S CONTRARY RULE CONTRAVENES ESTABLISHED PRACTICE AND LEADS TO ABSURD RESULTS

The Town nevertheless insists that a court may not "decide any question at any point" unless it does so "at the request of a litigant with standing." Pet. Br., 18-19. The Town's own amicus—the United States—disavows that theory. *See* U.S. Amicus Br., 14-16. And with good reason: The Town's view is irreconcilable with longstanding judicial practice and makes no sense as applied to the different parties that properly and routinely ask courts to act on their behalf.

A. Article III "extend[s]" the "judicial power" to allow courts to take the steps necessary to resolve a case or controversy. U.S. Const. art. III, § 2. Thus, courts regularly exercise their judicial power on behalf of litigants who are participating in an existing case or controversy. Many of those litigants—including defendants, permissive intervenors, and amici—cannot demonstrate "an injury in fact," "fairly traceable to [another party's] challenged conduct," "that is likely to be redressed by a favorable judicial decision." *Spokeo*, 136 S. Ct. at

1547. To be sure, these litigants must have a proper reason to appear before the court. But the Federal Rules—not Article III—guide those determinations. *See, e.g.*, Fed. R. Civ. P. 12, 24; Fed. R. App. P. 29. A separate requirement that these litigants also demonstrate standing would cause a sea change in established judicial practice.

1. Defendants use the judicial power to "impose burdens on [their] fellow litigants" all the time. Pet. Br., 13. They demand discovery and issue subpoenas. *See* Fed. R. Civ. P. 17, 26. They also ask courts to resolve discovery disputes, *see, e.g.*, *Godsey v. United States*, 133 F.R.D. 111, 113 (S.D. Miss. 1990), impose sanctions, *see, e.g.*, *Saunders v. Lucy Webb Haynes-Nat'l Training Sch. for Deaconesses & Missionaries*, 124 F.R.D. 3, 4 (D.D.C. 1989), hold hearings, *see, e.g.*, *Cruz-Martinez v. Hosp. Hermanos Melendez, Inc.*, 475 F. Supp. 2d 140, 142 (D.P.R. 2007), dismiss claims, *see, e.g.*, *Finley v. Dun & Bradstreet Corp.*, 471 F. Supp. 2d 485, 496 (D.N.J. 2007), and enter judgments, *see, e.g.*, *Callahan v. City of N.Y.*, 90 F. Supp. 3d 60, 76 (E.D.N.Y. 2015). Under the Town's theory, all of this conduct is unconstitutional unless the defendant establishes that it has standing. *See* Pet. Br., 18-19, 27-28.

That cannot be right. Courts do not ask whether *defendants* have Article III standing. That is because the standing inquiry does not "[l]imit[] the class of litigants who can appear before the federal courts." Pet. Br., 17. Rather, it focuses on the *plaintiff*—"the party who invokes the court's authority" by initiating a case or controversy. *Valley Forge*, 454 U.S. at 472; *see also, e.g.*, *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000).

Once that authority is properly invoked, courts do not ask whether every action taken at the behest of every party involved in the case is independently justified by that party's standing. Indeed, it would be incoherent to require a defendant to "show that *he* personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the [*plaintiff*]." *Valley Forge*, 454 U.S. at 472 (emphasis added). [10] That impossible-to-satisfy standard would handcuff defendants from contesting the claims against them. *Cf. Bond v. United States*, 564 U.S. 211, 217 (2011) ("The requirement of Article III standing ... ha[s] no bearing upon [a defendant's] capacity to assert defenses in the District Court.").[11]

---

[10] Discovery disputes are not "illegal conduct" that inflict an "injury" on parties. "[I]njur[ies] that [are] only a byproduct of the suit itself" are not "cognizable under Art. III." *Diamond*, 476 U.S. at 70-71; *see also Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 773 (2000); *Steel Co.*, 523 U.S. at 107-08.

[11] Although a defendant must have standing to bring a counterclaim, *see, e.g.*, *Already, LLC v. Nike, Inc.*, 133 S. Ct. 721, 727 (2013), that is because he acts as a plaintiff by invoking the court's jurisdiction over a separate claim, *see, e.g.*, *Altvater v. Freeman*, 319 U.S. 359, 363-65 (1943). Likewise, while defendants need standing to appeal, that is because they are invoking the authority of a new court in order to "continue proceedings." *See, e.g.*, *Bond*, 564 U.S. at 217. Moreover, the criteria for appellate standing differ from the test for determining whether a plaintiff can sue in the first instance. "The most obvious difference … is that the focus shifts to injury caused by the judgment rather than injury caused by the underlying facts." 15A C. Wright, et al., *Federal Practice & Procedure* § 3902 (2d ed. Jan. 2017 update).

2. The Town's view of judicial power also jeopardizes the constitutionality of intervention by defendants and by permissive intervenors under Rule 24.

Although Laroe is a plaintiff-intervenor, intervenors commonly participate as defendants, too. *See, e.g.*, *McConnell*, 540 U.S. at 233. Defendant-intervenors, like plaintiff-intervenors, are treated as "part[ies]" and have the same rights as original defendants. 7C C. Wright, et al., *Federal Practice & Procedure* § 1920 (3d ed. Jan. 2017 update). Under the Town's view, their participation is unconstitutional unless they first demonstrate standing. But defendant-intervenors do not have standing in any cognizable sense of that term. Requiring them to show that they have "suffered some actual or threatened injury as a result of the putatively illegal conduct of the [plaintiff]," *Valley Forge*, 454 U.S. at 472, makes no more sense than requiring any other defendant to do so. *See supra* 35-36.

Permissive intervention is also unconstitutional under the Town's view. Rule 24(b) allows a court to "permit anyone to intervene who … has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). Permissive intervenors, like all intervenors, become "part[ies] to [a] suit" upon being granted intervention. *See Stringfellow*, 480 U.S. at 375; Wright, *supra* § 1920. They can partake in discovery, file motions and briefs, and participate at trial and argument. *See, e.g.*, *Venegas v. Mitchell*, 495 U.S. 82, 85-86 (1990); *Shaw v. Hunt*, 154 F.3d 161, 166 (4th Cir. 1998); *Am. Humanist Ass'n v. Maryland-Nat'l Capital*

Park & Planning Comm'n, 303 F.R.D. 266, 271 (D. Md. 2014). This Court has even awarded them costs. *See Shaw*, 154 F.3d at 163 (describing order in *Shaw v. Hunt*, Nos. 94-923, 94-924). According to the Town, all of these practices require standing. But this Court has recognized that Rule 24(b) "plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." *Sec. & Exch. Comm'n v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 459 (1940); *cf. Shaw*, 154 F.3d at 163 (describing this Court's award of costs to permissive intervenors who lacked standing).

Recognizing that Rule 24(b) does allow "an interested individual without standing to become a permissive intervenor," the Town suggests that a court can cure constitutional concerns by "limiting that individual's rights to ensure that she does not independently invoke the court's authority in any way." Pet. Br., 49. But courts have never understood that they *must* limit permissive intervenors in this manner. *See, e.g.*, *Am. Humanist*, 303 F.R.D. at 271. The Town's approach, which precludes permissive intervenors from asking courts to "decide any legal issue, large or small," Pet. Br., 13, would relegate permissive intervenors to the role of mere amici, a status that inherently commands less attention from the court. That is contrary to this Court's precedent and settled practice.

3. Even amici are vulnerable under the Town's radical view of Article III. Amici regularly ask courts for permission to file briefs over the parties' objections or to participate in oral argument, requiring courts to issue opinions or orders. *See, e.g.*,

Voices for Choices v. Ill. Bell Tel. Co., 339 F.3d 542 (7th Cir. 2003); *Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 134 (3d Cir. 2002). And "the time and other resources required for the … study of, and response to, amicus briefs drive up the cost of litigation." *Voices for Choices*, 339 F.3d at 544. Parties are often compelled, as a practical matter, to address amici's arguments. *See infra* 47-48 (responding to arguments of the United States). And courts often resolve cases based on those arguments. *See, e.g.*, *Mapp v. Ohio*, 367 U.S. 643, 646 n.3 (1961). Sometimes the presence of amici can even prompt judicial recusals, depriving the parties of adjudication by a judge familiar with the matter or of a hearing by a full court. *Cf. Perry v. Schwarzenegger*, 630 F.3d 909, 914 n.5 (9th Cir. 2011).

It does not matter that these particular exercises of judicial power may not formally "compel other litigants." Pet. Br., 5. Under the Town's view, Article III's restrictions sweep far more broadly than formal compulsion. If Article III truly precludes a court from "decid[ing] any question at any point" other than at the request of a litigant with standing (Pet. Br., 19), the longstanding practice of amicus participation is unconstitutional.

B. The Town's approach is also irreconcilable with other settled practices. *First*, as discussed above, this Court routinely declines to consider the standing of parties who raise the same claims and seek the same relief as another party that has standing. *See supra* 19-20. Under the Town's logic, this Court's decades-old practice has been unconstitutional from the start. If a party cannot participate in discovery or ask a court to decide "any question" without first

demonstrating standing, then many of the lower-court judgments that this Court has reviewed have been procured through serial violations of Article III. *See* Pet. Br., 18-19, 21. Parties without standing may well have participated in discovery, shaped the record, and made arguments in ways that were dispositive to the judgments below. Affirming those tainted judgments without considering whether the parties who obtained them had standing would violate the "special obligation" of every court "to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review." *Steel Co.*, 523 U.S. at 95.

Second, the Town's position is incompatible with supplemental jurisdiction. That longstanding doctrine recognizes that certain state- and federal-law claims are so related that they "comprise[] but one constitutional case" and "there is power in federal courts to hear the whole." *Gibbs*, 383 U.S. at 725; *see also* 28 U.S.C. § 1367(a) (granting "supplemental jurisdiction over all other claims that are so related to claims in the action within … original jurisdiction that they form part of the same case or controversy under Article III"). If every discovery dispute or other judicial action were its own case or controversy that required independent standing, there could be no such thing as supplemental jurisdiction over distinct claims that "form part of the same case or controversy under Article III." 28 U.S.C. § 1367(a).

III. THE TOWN'S RELIANCE ON THE LANGUAGE OF RULE 24 IS MISPLACED

Without any constitutional basis for its rule, the Town resorts to the alternative argument, also

advanced by the United States, that Rule 24(a)(2) itself incorporates the requirements of Article III standing. That theory is not properly presented here, and it fails in any event.

A. In Persuading This Court To Grant Certiorari To Consider The Requirements Of Article III, The Town Disclaimed Any Need To Construe Rule 24

Rule 24's requirements—as opposed to Article III's—are not at issue here. In its certiorari-stage briefing, the Town emphasized that the question of what Article III requires of intervenors is separate from the question of what Rule 24(a)(2) requires. *See, e.g.*, Pet. Reply, 6, 10-11. The Town claimed that only the former—whether, "in addition to satisfying the requirements of Rule 24(a), an intervenor must have Article III standing"—is presented here. Pet. 9; *see also id.* at 14, 19. Indeed, the Town insisted that "this case is a clean vehicle to decide the [threshold Article III] issue *because* [the lower courts] based their opinions on Article III standing exclusively." Pet. Reply, 10. "Rule 24 brings into play other considerations and factual matters that do nothing to illuminate the purely legal Article III question presented." *Id.*

Nevertheless, the Town now urges the Court to "put[] aside what the Constitution requires," and hold that the drafters of Rule 24(a)(2) intended for intervenors to show an interest "equivalent to Article III standing." Pet. Br., 33, 37. That is not the issue on which the Town "persuaded [the Court] to grant certiorari." *Visa v. Osborn*, 137 S. Ct. 289 (2016)

(mem.) (dismissing the writ as improvidently granted); *see also Czyzewski v. Jevic Holding Corp.*, -- S. Ct --, 2017 WL 1066259, at *15 (U.S. Mar. 22, 2017) (Thomas, J., dissenting). Nor is it properly presented here, given that the courts below did not expressly address it. *See* Pet. Reply, 10; *cf. City & Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1773 (2015) ("The Court does not ordinarily decide questions that were not passed on below."). The Court should not countenance the Town's bait and switch.

B. The Requirements Of Rule 24 Are Distinct From Those Of Article III

In any event, the text, history, and purpose of Rule 24 confirm that it does not require intervenors to demonstrate Article III standing.

1. The text of Rule 24 does not require standing

Rule 24(a)(2) asks a different question than Article III. "[T]he 'irreducible' constitutional minimum' of standing consists of three elements": "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo*, 136 S. Ct. at 1547. Rule 24(a)(2), by contrast, grants intervention as of right to "anyone" who (1) "claims an interest relating to the property or transaction that is the subject of the action"; (2) "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest"; and (3) is not "adequately represent[ed]" by "existing parties." Fed. R. Civ. P. 24(a)(2). Many intervenors will satisfy both sets of criteria (as Laroe

does here, *see infra* 55). But these criteria nevertheless differ in important ways, and even when they yield the same outcome, they still pose different inquiries.

a. The first element of the standing analysis, "injury in fact," has multiple components. A plaintiff must show not only a particularized injury—i.e., "an invasion of a legally protected interest"—but also that the injury is "actual or imminent, not conjectural or hypothetical." *Spokeo*, 136 S. Ct. at 1548. This latter component of injury is absent from Rule 24(a)(2). Rule 24(a)(2) rejects the notion that the injury to a movant's interest must be "*certainly* impending." *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1147 (2013). It does not even require an *actual invasion* of a legally protected interest at all. Instead, Rule 24(a)(2) allows intervention whenever a movant's "ability to protect its interest" "may as a practical matter [be] impair[ed] or impede[d]." Fed. R. Civ. P. 24(a)(2). *Impairment of an ability to protect* an interest asks a different question than *invasion* of the interest. And even an invasion of a legally protected interest is not cognizable under Article III if it merely "*may*" occur as a "*practical matter*." *See Clapper*, 133 S. Ct. at 1147 (an "objectively reasonable likelihood" of future injury is insufficient to establish standing).

It makes sense that Rule 24 would permit intervention under these circumstances. *See* Shapiro, *supra*, at 726. The plaintiff in the underlying litigation *has* suffered an actual injury; otherwise there would be no case or controversy in which to intervene. Allowing potentially affected parties to participate in that existing case to protect their

interests and to avoid multiplicitous litigation later is consistent with Rule 24's expansive purpose. *See infra* 49-52; *cf. Trbovich*, 404 U.S. at 536.

The Town focuses exclusively on the interest component of injury in fact. *See* Pet. Br., 33-35. But a plaintiff may have a legally protected interest yet lack standing if invasion of that interest is not "*certainly* impending." *Clapper*, 133 S. Ct. at 1147. In *Clapper*, for instance, the plaintiffs had a legally protected interest in the privacy of their communications. They nevertheless lacked standing because they failed to establish that their interest had actually been injured. *See id.* at 1148; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562-63 (1992) (a legally cognizable interest is insufficient to demonstrate an injury in fact). Rule 24(a)(2) does not incorporate the full scope of an Article III injury in fact.

Even as to the requisite "interest," while there is overlap between Rule 24 and Article III, *see* Brief in Opp., 11-13; *see also Donaldson v. United States*, 400 U.S. 517, 531 (1971), that overlap is not complete. Whatever the ultimate scope of Rule 24(a)(2)'s interest requirement, it was intended to focus "on the practical effect of litigation on a prospective intervenor rather than legal technicalities." *San Juan*, 503 F.3d at 1188; *see infra* 49-52. This Court accordingly has held that a private company can intervene as of right to protect its interest in preserving competition within the gas industry—even though that interest did "not even remotely resemble [a] direct and concrete stake in the litigation." *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.,* 386 U.S. 129, 147 (1967) (Stewart,

J., dissenting); *see id.* at 136 (majority op.) (concluding that "Rule 24(a)(2) is broad enough to include" proposed intervenor). Similarly, for example, while the proponents of a ballot initiative lack Article III standing to defend the initiative when the state declines to do so, they nevertheless may have an interest sufficient to satisfy Rule 24(a)(2). *See Prete v. Bradbury*, 438 F.3d 949, 955-56 (9th Cir. 2006). Indeed, the Town itself has previously noted that "the majority of circuits" allow intervention to protect "interests" that are "too attenuated" to support standing. Pet., 20.

b. The Town does not even argue that Rule 24(a)(2) incorporates the remaining elements of standing—traceability and redressability. Nor could it.

While Article III standing asks whether the invasion of a plaintiff's interest is "*fairly traceable* to the *challenged conduct* of the *defendant*," *Spokeo*, 136 S. Ct. at 1547 (emphasis added), Rule 24(a)(2) asks whether the intervenor's interest is one "*relating to* the property or transaction that is the subject matter of the action." Fed. R. Civ. P. 24(a)(2) (emphasis added). The words "relating to" have a "broad," "deliberately expansive" meaning, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992), underscoring that any nexus required by Rule 24(a)(2) is looser than the traceability required to show standing, *see DaimlerChrysler*, 547 U.S. at 346. In addition, Rule 24(a)(2) ties any impairment of the intervenor's ability to protect its interest to the court's "*disposi[tion] of the action*"—not to the *conduct of the defendant*. Fed. R. Civ. P. 24(a)(2) (emphasis added). Thus, while Article III requires a

plaintiff to show that the defendant has actually injured him, Rule 24(a)(2) requires an intervenor to show only that the disposition of a suit may interfere with his ability to protect his interests in the future.[12]

Rule 24(a)(2) likewise does not incorporate the redressability component of standing. Standing requires a plaintiff to show that it is "likely, as opposed to merely speculative," that his "injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561. And a favorable judicial decision must "remedy [the plaintiff's] alleged injury" as a *legal* matter. *Id.* at 568. Thus, even "an authoritative construction" of a statute by this Court does not redress a plaintiff's injury unless the defendant who caused the plaintiff's injury is legally bound by it. *See id.* at 570-71 & n.5. Rule 24(a)(2), by contrast, eschews these technicalities and instead focuses on whether intervention might aid "the movant's ability to protect its interest" "as a practical matter." Fed. R. Civ. P. 24(a)(2).[13]

c. All of these differences make it particularly inappropriate for this Court to make an abstract pronouncement regarding the relationship between Rule 24 and Article III. The United States

---

[12] For similar reasons, the requirement that an intervenor's interest "relat[e] to a judicial proceeding that is already in progress" does not "assure" an "actual injury" that is imminent *now*. U.S. Amicus Br., 19.

[13] Contrary to the United States' suggestion, nothing in Rule 24(a)(2) requires an intervenor to demonstrate that he "*will* [as opposed to may] receive a *tangible* [as opposed to practical] benefit if the court considers and accepts [his] legal arguments." U.S. Amicus Br., 20 (emphasis added).

nevertheless claims that Rule 24(a)(2) should be interpreted to require a standing analysis as a matter of constitutional avoidance. *See* U.S. Amicus Br., 9-10, 22. In other words, to avoid deciding *once* whether Article III imposes a threshold prerequisite on intervenors, the United States would require courts to conduct a constitutional analysis in *every* case involving intervention as of right. That is an exceedingly odd and paradoxical application of a principle that encourages courts to "forbear [from] resolving" constitutional questions. *Camreta*, 563 U.S. at 705.

It is also not clear what rule the United States is asking the Court to adopt. At some points, the United States suggests that courts should *replace* Rule 24(a)(2)'s criteria with Article III's standing analysis. *See* U.S. Amicus Br., 18-20. But that would improperly disregard the plain language of Rule 24(a)(2). *Cf. Watson v. United States*, 485 F.3d 1100, 1107 (10th Cir. 2007) (Gorsuch, J.) ("[I]t is our office to apply, not second guess, congressionally approved policy judgments … delineated by the plain terms of [the Federal Rules.]"). Moreover, because "the factual record … is insufficiently developed" here, Pet. App. 11a, this Court could not provide meaningful guidance on how courts should reconcile the differences between Rule 24(a)(2)'s language and Article III's case-or-controversy requirement. A bare declaration that Rule 24(a)(2) incorporates Article III standing would only generate confusion among the lower courts.

At other points, the United States suggests that Rule 24(a)(2) should be read to require the standing analysis *in addition* to its textual requirements. U.S.

Amicus Br., 17, 22. There is no basis, however, to add words to Rule 24(a)(2). *See Watson*, 485 F.3d at 1107. That is especially true when doing so would render aspects of the rule superfluous. *Cf. Washington Market Co. v. Hoffman*, 101 U.S. 112, 115-16 (1879). A court would never need to inquire, for example, whether a movant's interest "*may* be impaired or impeded" because Article III's actual injury prong would ensure that it *has in fact* been injured. Requiring Article III standing on top of Rule 24(a)(2)'s elements also would burden courts by forcing them to evaluate standing before there is any constitutional need to do so. *See supra* 29-30.

2. The purpose and history of Rule 24 confirm that it does not require standing

The differences between Rule 24's language and the Article III standing inquiry reflect their different purposes. Article III ensures that the judicial power is not invoked unless there is an actual case or controversy that necessitates judicial intervention. *See supra* 13-14. Rule 24 ensures that, once there is a case or controversy, parties whose rights may be affected can participate. *See infra* 49-52. Of course, there is overlap between the sweep of these two provisions. But they nevertheless serve different objectives and ask different questions, making it particularly inappropriate to ignore their textual distinctions. Indeed, Rule 24's history confirms its purpose to allow people to intervene "who would be affected *in a practical sense* by the disposition of an action"—not in the exacting, legal sense contemplated by Article III's standing analysis. *San Juan*, 503 F.3d at 1189.

a. "The practice of allowing a stranger to intervene was first developed in the civil, the ecclesiastical, and the admiralty courts." James WM. Moore & Edward H. Levi, *Federal Intervention I. The Right to Intervene and Reorganization,* 45 YALE L.J. 565, 568 (1936). Originating in Roman law, intervention later made its way into France, Spain, England, and other European countries. *Id.*; *see* 2 C.L. Bates, *Federal Equity Procedure: A Treatise on the Procedure in Suits in Equity in the Circuit Courts of the United States Including Appeals and Appellate Procedure* 659 (1901). In the United States, the practice long predates the merger of law and equity. *See* Moore & Levi, *supra*, at 572.

The history of intervention "show[s] the development of a device by the courts to keep their processes from doing injury to third persons." *Id.* at 573. In its earliest phases, it was not "always necessary that the intervenor show a legal interest." *Id.* at 569. Sometimes "a humanitarian interest would suffice." *Id.* And French code allowed intervenors to "guard a present or future interest, or one certain, contingent, or collateral." Bates, *supra*, at 659. Even in the United States, intervention has long been available on broad terms. Equity Rule 37, a predecessor to Rule 24, provided: "Anyone claiming an interest in the litigation may at any time be permitted to assert his right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding." Wright, *supra*, § 1903 & n.2.

b. When the Federal Rules of Civil Procedure were first adopted in 1938, they sought to both "amplif[y] and restate[] the present federal practice

at law and in equity." *Id.* § 1903; *see also Cascade*, 386 U.S. at 134 ("[S]ome elasticity was injected."). In its original form, Rule 24 granted intervention as of right when (1) a statute "confers the unconditional right to intervene;" (2) "when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action;" or (3) "when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof." Fed. R. Civ. P. 24 (1938). "[T]he limitation of Equity Rule 37, that intervention must be 'in subordination to, and in recognition of, the propriety of the main proceeding,' was not carried forward into Rule 24." Wright, *supra*, § 1903.

Courts and commentators viewed Rule 24 as too narrow. *First*, the requirement that an applicant be both bound by a decision and inadequately represented by existing parties created a null set. "If the representation of an absent party was inadequate, the absentee could not be bound by the judgment in the action[.]" *Id.* *Second*, and more importantly, subdivision (3)'s stipulation that "property" be in the "custody" of the court was "unduly restricted." Fed. R. Civ. P. 24, adv. comm. notes 1966. "If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene, and his right to do so should not depend on whether there is a fund to be distributed or otherwise disposed of." *Id.* Courts accordingly construed Rule 24(a)(3)'s requirement "so loosely" that they could "find a fund in almost any in personam action." *Id.*

In 1966, with this Court's and Congress's approval, the Standing Committee amended Rule 24 to address both of these concerns. The amendments substantially revised subdivisions (2) and (3), combining them into a single provision that allows intervention as of right "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Fed. R. Civ. P. 24(a)(2) (1966).

Together, these changes "refocus[ed]" the rule on practicalities rather than "legal technicalities," and "expand[ed] the circumstances in which intervention as of right would be appropriate." *San Juan*, 503 F.3d at 1188; *see* Fed. R. Civ. P. 24, adv. comm. notes 1966. They are thus consistent with the "expansion" throughout "[m]odern intervention practice" of what has "always been the underlying principle" of intervention: "the purpose of the courts to prevent their processes from being used to the prejudice of the rights of interested third parties." Moore & Levi, *supra*, at 573.

Construing Rule 24 to require an exacting Article III standing analysis conflicts with these purposes. Nothing in Rule 24's history suggests that its drafters meant the distinct language of Rule 24 to impose a standing requirement on intervenors. Indeed, the Standing Committee has amended Rule 24 four times since 1966 without any substantive changes to the provision governing intervenors as of right. *See* Fed. R. Civ. P. 24, adv. comm. notes 1987, 1991, 2006,

2007. If Rule 24's drafters had intended to incorporate a standing requirement, they had ample opportunity to say so by using the "well-developed, off-the-shelf body of law governing standing." Pet. Br., 37. Instead, they used the very different language of Rule 24—language expressly focused on practicalities rather than legal technicalities, and language that courts do not use to describe Article III's standing requirements. There is no basis to replace or supplement that language with the requirements of Article III.

3. Rule 19 offers no support for the Town's position

For all these reasons, the Town's reliance on the textual similarities between Rule 19 and Rule 24 is unavailing. *See* Pet. Br., 37-39. Rule 19 no more incorporates Article III's standing criteria than Rule 24 does.

The Town claims that it is "inconceivable that someone could have an interest sufficient … under Rule 19(a)(1)(B), but nonetheless lack Article III standing." Pet. Br., 38. From this, the Town reasons that Rule 19 must require standing. *See id.* Rule 19(a), however, applies to both plaintiffs and defendants. Surely it does not impose a standing requirement on *joined* defendants when there is no such requirement for *original* defendants. *See supra* 35-36. Moreover, the Town fails to cite a single case in which a court has evaluated standing in the context of mandatory joinder, and Laroe has found none. Parties who oppose joinder, *see, e.g.*, *Ward v. Apple Inc.*, 791 F.3d 1041, 1048 (9th Cir. 2015), would have every incentive to raise the issue. The absence

of authority evaluating standing in this context suggests that no court or litigant has thought it is required.

IV. ARTICLE III POSES NO BARRIER TO LAROE'S ABILITY TO INTERVENE

These principles establish that Laroe need not establish Article III standing to intervene in order to pursue the same claim and seek the same relief as the plaintiff. The Second Circuit properly so held, and its judgment should be affirmed. But, in any event, Laroe can demonstrate standing if it is required to do so. Because the Second Circuit did not reach that question, this Court should not decide it in the first instance.

A. A court need not determine whether Laroe has Article III standing because it seeks to participate in this case only to support the same takings claim asserted by Sherman—a party whose standing is undisputed. Indeed, Laroe's intervenor-complaint explicitly states that the cause of action for "regulatory taking of plaintiffs' real property" "tracks the Cause of Action pleaded by Sherman." JA 157 & n.5. Both complaints allege that the Town's "repeated zoning changes and other roadblocks" constituted a taking of MareBrook "without due process or the payment of just compensation." *Compare* JA 157, 161, *with* JA 102, 104. And both complaints seek the same relief: "[a]n award of compensation for the taking" of MareBrook. *See* JA 122, 162; *see also* JA 22 (defining Sherman's "real property" to include "398 acres of land" known as "MareBrook").

Importantly, Laroe is not asking the court to award damages beyond what Sherman himself already seeks. "[T]here is one tract of land and one taking," and Laroe has never "suggest[ed] that the Town's exposure to Laroe is independent from its exposure to Sherman." Reply Br. at 12, *Laroe Estates*, No. 15-1086, ECF 60-1. Indeed, during oral argument below, counsel for Laroe explained that "there is only one pot of money," and Laroe is "not saying Sherman's and [Laroe's] damages are not the same damages." Oral Arg. Audio 27:08-27:18, *Laroe Estates*, No. 15-1086 (Jan. 27, 2016). Rather, there is "exactly one fund, and the Town doesn't have to do anything other than turn over the fund." *Id.* at 53:50-53:57. The Second Circuit correctly concluded that Laroe "asserts the same legal theories and seeks the same relief as [Sherman]," and that factual finding is not at issue here. Pet. App. 9a.

Under these circumstances, Article III does not require Laroe to demonstrate standing. *See supra* 13-27. After all, there is no dispute that Sherman has standing to pursue the takings claim. Nor can there be any dispute that Sherman continues to pursue that claim today. *See* Mot. of Sherman for Party Status at 7-8, No. 16-605 (Feb. 7, 2017) (describing Sherman's continued efforts to litigate takings claim). Accordingly, Sherman's standing establishes a live case or controversy regarding the Town's unconstitutional taking of MareBrook. Article III demands no more. *See supra* 13-17.

B. If Laroe were required to show standing, however, it could easily do so. As the Second Circuit recognized, Laroe "agreed to purchase property from Sherman, prepaid a substantial sum of money, and

signed a second agreement with Sherman that deemed the purchase price paid in full." Pet. App. 12a n.2. Under New York law, these actions made Laroe a contract vendee. *See Carnavalla v. Ferraro*, 281 A.D.2d 443, 443 (N.Y. App. Div. 2001). A contract vendee has equitable title to the property and enjoys the full rights of ownership. *See id.*; *Bean v. Walker*, 95 A.D.2d 70, 72 (N.Y. App. Div. 1983); *In re Site for Jefferson Houses*, 117 N.E.2d 896, 898 (N.Y. 1954); *New York Cent. & Hudson River R.R. Co. v. Cottle*, 187 A.D. 131, 144 (N.Y. App. Div. 1919), *aff'd* 129 N.E. 896 (N.Y. 1920); *Williams v. Haddock*, 39 N.E. 825, 826 (N.Y. 1895). And the owner of property has standing to challenge its unconstitutional taking. *See, e.g.*, *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1012-13 (1992).

C. Contrary to the Town's repeated suggestions (*e.g.*, Pet. Br., 5, 44), the Second Circuit did not pass upon Laroe's standing. It did not need to, in light of its holding that Article III does not require intervenors to demonstrate standing when there is "a genuine case or controversy between the existing parties." Pet. App. 2a. If this Court determines that Article III requires intervenors to demonstrate that they have independent standing, it should not decide Laroe's standing in the first instance but should leave the question to be resolved by the Second Circuit on remand. *See, e.g.*, *Manuel v. City of Joliet*, -- S. Ct. --, 2017 WL 1050976, at *8 (U.S. Mar. 21, 2017); *see also* Pet., 26 ("The Court should grant the petition, … vacate the decision below[,] and remand the case for further proceedings.").

* * * * *

The Constitution does not require courts to assess the independent standing of intervenors who pursue the same claims and seek the same relief as an existing plaintiff. Nor does Rule 24(a)(2). And the Town itself concedes that allowing intervention under these circumstances—as the overwhelming majority of circuits have done for decades—has not created an influx of improper intervenors. At bottom, the Town's argument for imposing an Article III overlay on all intervenors is a solution in search of a problem. And the principle underlying the Town's argument would create vast problems of its own, by jeopardizing established practices and imposing untenable standing requirements on defendants, defendant-intervenors, permissive intervenors, amici, and other participants in multiparty litigation.

CONCLUSION

For these reasons, the judgment below should be affirmed.

Respectfully submitted,

JOSEPH J. HASPEL
1 West Main Street
Goshen, NY 10924

JAMES R. SAYWELL
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114

SHAY DVORETZKY
Counsel of Record
EMILY J. KENNEDY
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
(202) 879-3939
sdvoretzky@jonesday.com

March 27, 2017