No. 24-304

IN THE

Supreme Court of the United States

LABORATORY CORPORATION OF AMERICA HOLDINGS, D/B/A LABCORP,

Petitioner,

v.

LUKE DAVIS, JULIAN VARGAS, AND AMERICAN COUNCIL OF THE BLIND, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR PETITIONER

Noel J. Francisco
Counsel of Record
Brinton Lucas
Madeline W. Clark
David Wreesman
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-3939
njfrancisco@jonesday.com

Counsel for Petitioner

QUESTION PRESENTED

Whether a federal court may certify a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) when some members of the proposed class lack any Article III injury.

PARTIES TO THE PROCEEDINGS

Petitioner Labcorp was the defendant in the district court and the appellant in the court of appeals. Respondents Luke Davis, Julian Vargas, and the American Council of the Blind were plaintiffs in the district court and the appellees in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Laboratory Corporation of America Holdings (Labcorp) is wholly-owned by Labcorp Holdings Inc., more than 10% of which is owned by Vanguard Group, Inc. The stock of Labcorp Holdings Inc. is traded on the New York Stock Exchange.

STATEMENT OF RELATED PROCEEDINGS

United States District Court (C.D. Cal.):

Davis v. Laboratory Corp. of America Holdings, No. 20-cv-893 (May 23, 2022) (certifying class), as amended on June 13, 2022, and refined Aug. 4, 2022.

United States Court of Appeals (9th Cir.):

Davis v. Laboratory Corp. of America Holdings, No. 22-80053 (Sept. 22, 2022) (granting Rule 23(f) interlocutory appeal).

Davis v. Laboratory Corp. of America Holdings, No. 22-55873 (Feb. 8, 2024) (affirming class certification).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL AND STATUTORY AUTHORITIES

OTHER AUTHORITIES

INTRODUCTION

In 2017, Labcorp, one of the world's leading providers of laboratory services, introduced a new way for patients to check-in for appointments—self-service kiosks. While these kiosks are independently accessible to most patients, they are not so to the blind without assistance. So Labcorp improved its front-desk services at the same time—incorporating the same "express" technology used in its kiosks—to ensure that blind patients have a similarly easy check-in option there.

Even so, in 2020, a group of legally blind plaintiffs sued Labcorp in federal court in California, claiming its kiosks violated the Americans with Disabilities Act (ADA). They also asserted a claim under California's "Unruh Act." According to plaintiffs, any violation of the ADA is a *per se* violation of the Unruh Act, which carries a minimum of $4,000 in state-law statutory damages per violation.

A key difficulty for plaintiffs' class action, though, is that it is very hard to find blind patients actually harmed by the availability of Labcorp's new kiosks. Undisputed record evidence indicates that many blind patients have zero interest in using them, preferring instead to use the front-desk option that has served them well for years. Even one of the named plaintiffs (who is also a named plaintiff in a similar suit against Quest Diagnostics) said his experience at Labcorp was "respectful" and "helpful," and that he was processed in "20 minutes or so." Nor did plaintiffs identify an example of anyone unable to access Labcorp's testing services because they could not use one of its kiosks.

Given this defect, plaintiffs defined their proposed damages class to include all blind patients who had merely been *exposed* to the kiosks in California—*i.e.*, those who had walked into a Labcorp facility with a kiosk, regardless of whether they knew about or wanted to use it. So defined, plaintiffs estimated the class could be north of 100,000 people. And they pegged statutory damages at up to *half a billion dollars* per year.

The district court certified the class, and the Ninth Circuit affirmed. Neither court, however, disputed that the class contained a sizable number of members who lacked any Article III injuries. That makes good sense, because a person merely *proximate* to an allegedly unlawful kiosk has not suffered any concrete injury—at a bare minimum, he must *want* to use it. But applying circuit precedent, both courts concluded that this simply did not matter for purposes of Article III or Rule 23(b)(3).

The Ninth Circuit's lax approach to certification suffers from two related flaws. First and foremost, it defies Article III. Classes are merely procedural devices for aggregating claims. As such, an individual cannot obtain through a class what he cannot obtain on his own; and if a person would be unable to get through the front door of a federal court independently, he cannot be smuggled in through the back via a class. Just as an uninjured litigant cannot use intervention under Rule 24 to pursue his own damages in another's lawsuit, he cannot use a class action under Rule 23 to do the same. In either context, a federal court has no power to assess his claim, full stop—even if bundled with the claims of those who do have standing.

Second, Rule 23(b)(3) does not permit the certification of a putative class saturated with uninjured members. That rule authorizes a class only where common questions of law and fact *predominate* over individual ones. But when the class contains an appreciable number of members lacking Article III injuries, a court must separate those who have suffered harm from those who have not. And those individualized inquiries into standing will overwhelm any common questions—destroying predominance.

These are not procedural niceties easily dispensed with for a class's convenience. While this Court has allowed cases for *injunctive* relief to proceed when at least one plaintiff has standing, it has never held that courts can indiscriminately join new plaintiffs seeking their own *damages* and then weed out the unharmed at a later time. The rule that an uninjured class member cannot recover damages at the end of the case would do little good if he can participate in a certified class that seeks them. For in class actions, certification is often the ballgame. Once a class has been certified, the next step is usually settlement, not trial. And that likelihood becomes a near inevitability where a massive class hazards colossal liability. So if a plaintiff can inflate the size of a class with uninjured persons, it can drive up potential liability, and thus manufacture leverage to extort a settlement for *all* members, whether harmed or not. The result is that weak claims win, and tens-of-millions of dollars (if not more) are extracted from parties who have done nothing wrong—but nonetheless cannot tolerate a massive litigation risk. That is most decidedly not the purpose of Rule 23.

It is therefore critical that Article III standing be policed at the front end, ensuring that the class is limited only to individuals who have actually been injured by the allegedly unlawful conduct. Anything less would violate the Constitution's restrictions on the judicial power, thwart Rule 23(b)(3)'s procedural protections, and threaten defendants with coercive liability.

OPINIONS BELOW

The Ninth Circuit's decision (JA.393-400) is not reported but is available at 2024 WL 489288. The amended opinion of the district court certifying the class (JA.335-71) is likewise not reported but available at 2022 WL 22855520.

JURISDICTION

The Ninth Circuit issued its judgment on February 8, 2024. Labcorp filed a timely petition for certiorari on September 13, 2024. This Court granted review on January 24, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Article III, §§ 1-2 of the United States Constitution is reproduced at Pet.App.64a. Federal Rule of Civil Procedure 23 is reproduced at Pet.App.66a.

STATEMENT

A. Labcorp offers a new check-in process.

Labcorp is one of the world's leading providers of laboratory services. In the United States alone, it performs millions of tests every week, roughly 20% of which are performed on samples collected from its more than 2,000 patient service centers. Tens of millions of visits occur at these centers every year.

This case concerns the check-in process for patients visiting a Labcorp service center. Traditionally, Labcorp patients could check in at the front desk. But in 2017, Labcorp offered its patients an additional way to check in using a new self-service kiosk: A touchscreen iPad (branded a "Labcorp Express" kiosk) that allowed patients to check in on their own on-site, without first going to the front desk. Kiosks have since been installed at over 90% of Labcorp's locations. C.A.App.508.

During the kiosk rollout, Labcorp was careful to ensure its check-in process would remain accessible to all. Kiosks were designed to be accessible to patients using wheelchairs or with low vision. JA.331. And for any patient who either could not or did not want to use the kiosks, Labcorp updated its front-desk check-in capabilities, ensuring that the same "express" technology (and experience) was present at the front desk as well. *See* JA.304-05, 311-12, 331-32. Today, Labcorp also offers patients the ability to check in ahead of time online. C.A.App.509.

Labcorp's approach is in accord with regulations issued by the Department of Health and Human Services just last year. Those regulations endorse "work-around procedures" that "would allow persons with disabilities who cannot use kiosks because of their inaccessible features to access" services "without using kiosks." 89 Fed. Reg. 40066, 40128 (May 9, 2024). Under the regulations, providers may "allow persons with disabilities to go directly to the personnel at the main desk to register for necessary services," so long as that option offers "the same access, the same convenience, and the same confidentiality that the kiosk system provides." *Id.*

B. Plaintiffs pursue this class action.

1. In January 2020, Luke Davis and Julian Vargas—both legally blind—filed a putative class action against Labcorp based on their inability to use the kiosks. That September, the American Council of the Blind (Council)—a group representing 20,000 blind and visually impaired persons across the country—joined the suit with an amended complaint.

Plaintiffs asserted violations of the ADA and California's Unruh Act, among other laws. JA.7-8. And they claimed that ADA violations are "*per se* violations" of the Unruh Act, such that every time someone is exposed to an ADA violation, that is an independent Unruh Act violation. C.A. Ans. Br. 40-41. *Each* Unruh Act violation triggers "no … less than" $4,000 in statutory damages, as well as "attorney's fees." Cal. Civ. Code § 52(a).

According to plaintiffs, Labcorp discriminated against them and all similarly situated blind individuals by not making its kiosks independently accessible to the blind. As they put it, Labcorp has "denied" blind patients "full and equal access" to its patient service centers because "touchscreen kiosks for self-service check-in" are "inaccessible" to them. JA.8; *see* JA.15-18 (describing allegations).

To be clear, no plaintiff alleges that Labcorp has denied a single patient testing or diagnostic services on account of a disability. Nor do they claim that a single patient was unable to access those services. This suit is instead based entirely on the fact that if plaintiffs choose to check in at a Labcorp center, they cannot use the kiosks without assistance and, instead, must check-in at the front desk.

Take the experience of Julian Vargas, the sole named representative for the damages subclass. Fresh off joining a similar class action against Quest Diagnostics (where he is also a named plaintiff), Mr. Vargas made his first-ever visit to a Labcorp patient service center to "familiarize" himself with the facility. JA.99, 109-10. There, an attendant told him that the kiosk was not independently accessible for a blind person, but assured him that someone would be available to assist him at the front desk. JA.99.

And that is exactly what happened when, a few days later, Mr. Vargas returned for his second (and final) trip to a Labcorp facility. As Mr. Vargas attested, a Labcorp employee at the front desk assisted him in "three to five minutes" and took him back for his appointment within "20 minutes or so" after he walked in the front door. JA.105-07. To check in, Mr. Vargas was required only to give his identification material to the employee; he never needed to disclose any private information out loud. JA.103-04; *see* 89 Fed. Reg. at 40128 (front-desk procedures permissible if they grant "the same confidentiality that the kiosk system provides"). And on his telling, Labcorp's staff was "respectful," "helpful," and provided him all the "services" he requested. JA.127.

Mr. Vargas filed this lawsuit two weeks later.

2. Plaintiffs asked the district court to certify two classes: (i) a nationwide injunctive class, premised on their federal claims; and (ii) a California damages subclass, premised on their Unruh Act claim. The definition for the damages class—the only class before this Court—is as follows:

> All legally blind individuals who visited a LabCorp patient service center with a LabCorp Express Self-Service kiosk in California during the applicable limitations period and who, due to their disability, were unable to use the LabCorp Express Self-Service kiosk.

JA.387. As plaintiffs explained, this definition covers any legally blind person who has been "exposed" to an allegedly ADA-violative kiosk—regardless of whether he knew about or even *wanted* to use it. C.A. Ans. Br. 35, 38, 41. Class membership instead turns on "(1) whether a LabCorp Express kiosk was in use on site on the date of [a patient's] visit and (2) whether [that patient] is legally blind." *Id.* at 39-40. The mere presence of a kiosk at a Labcorp is enough.

Plaintiffs were not particularly concerned about whether this definition would sweep in patients without Article III standing. As they put it, the definition "does not tautologically exclude uninjured Class members but limits the Class to individuals 'who were unable to use the kiosk.'" *Id.* at 60. In their words, "[w]hether that constitutes a legal injury and injury-in-fact" was something to be decided *after* the class was certified. *Id.*

The class definition thus covers any legally blind patient who "visited" a Labcorp patient service center "with a kiosk," even if he had no interest in using the machine. *Id.* at 36. And those patients are not a small portion of the class. Unrebutted record evidence shows that *over a third* of all Labcorp patients prefer not to use a kiosk: About a quarter check in at the front desk, and another tenth prefer

to do so online. C.A.App.509. And there is every indication that those figures are even higher for blind patients in particular. As the Council's representative testified, its members' preferred option was to have "a staff member be available to check in people" at the facility. JA.328-29.

The individual record evidence tells the same story. For example, John Harden, a Council member and regular Labcorp patient, stated his preferred mode of check-in is the front desk, which he has happily used without issue for years. JA.285-88. In his words: The ADA says a "business needs to make reasonable accommodations for the disabled," and Labcorp "certainly" does so. JA.288.

3. For all this, plaintiffs seek statutory damages under the Unruh Act—at least $4,000 for each ADA violation—and attorney's fees. *See* JA.7-8, 357. They do "not seek class recovery for actual damages, personal injuries or emotional distress." JA.22.

According to plaintiffs' expert, the damages class could contain up to 112,140 members. JA.252-53. He also posited a "conservative[]" estimate of one Unruh Act violation per year for each member. *Id.* Given the Act's statutory damages, that amounts to damages of nearly *half a billion* dollars *per year*, if not more. *Id.*

C. The district court certifies the class.

After months of discovery, the plaintiffs moved to certify both of their proposed classes under Rule 23. As relevant here, they claimed that the proposed damages class met both (i) the general requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy), and (ii) the specific requirements of Rule 23(b)(3) (predominance and superiority).

The district court agreed. It acknowledged that plaintiffs had not provided a common way to show that class members had "used," "encountered," or even been "exposed" to a kiosk—*i.e.*, even *potentially* suffered an Article III injury. JA.358-59. The court also took note of Labcorp's argument that "proposed class members [had not] suffered any injury." JA.347. And it recognized that at some point, there would need to be a process for "confirm[ing]" who was "eligib[le]" for relief. JA.357-58.

The district court nevertheless held that, for purposes of class certification, it did not matter whether the class "'contain[ed] some individuals who have suffered no harm as a result of'" Labcorp's conduct. JA.379. According to the court, there were other common questions to resolve—such as how the kiosks worked—and therefore the "individualized inquiries into standing" that it agreed it would need to resolve at some point did not defeat predominance. JA.386. Applying circuit precedent, the court concluded that those inquiries—like "individualized questions regarding damages"—did not preclude certification. JA.386-87. In the court's view, the possibility that there were a significant number of "'uninjured class members'" posed no issue under Rule 23. *Id.*[1]

Labcorp sought an interlocutory appeal under Rule 23(f) of the district court's certification order. The Ninth Circuit agreed to take the appeal, and the district court stayed proceedings.

---

[1] The district court also certified the plaintiffs' proposed nationwide class seeking injunctive relief. JA.370.

D. The Ninth Circuit affirms.

The Ninth Circuit affirmed the district court's certification of both classes in an unpublished order. The court first held that Article III posed no bar to certifying the damages class. JA.394-96. Applying its decision in *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022) (en banc), the Ninth Circuit held that it did not matter if "some potential class members may not have been injured." JA.397 n.1. A named plaintiff (Mr. Vargas) was injured, and that was enough "to convey Article III standing" to the entire damages class. JA.396-97 & n.1.

As for Rule 23(b)(3)'s predominance requirement, the Ninth Circuit held that common questions could predominate even if the class contained numerous uninjured members. *See* JA.396-97. Labcorp had argued that filtering out those members would involve many "individualized" inquiries. *Id.* But under circuit precedent, this too did not matter: Rule 23(b)(3) does not bar "certification of a class that potentially includes more than a de minimis number of uninjured class members." JA.397 n.1 (quoting *Olean*, 31 F.4th at 668).

The Ninth Circuit denied rehearing. JA.401. This Court granted review, limiting the question presented to whether a federal court may certify a Rule 23(b)(3) damages class when some members of the proposed class lack any Article III injury.

SUMMARY OF ARGUMENT

I. It is common ground that Article III requires all members of a Rule 23(b)(3) class to have suffered an injury-in-fact in order to *recover* individual damages. The Ninth Circuit nevertheless held that a court may certify a class containing uninjured members who *seek* that relief. The Constitution forbids that line.

A. Article III requires litigants to demonstrate standing for each claim they seek to press and for each form of relief sought. That is no less true when multiple litigants join together in a single lawsuit: Each party seeking his own relief must establish an injury-in-fact to proceed in federal court.

The class-action device cannot end-run these bedrock requirements. Like joinder, consolidation, or intervention, a class action is merely a mechanism for aggregating claims. So if a person cannot pursue his own damages in court by himself, he cannot do so by joining a certified Rule 23(b)(3) class. Otherwise, Rule 23 would run afoul of both the Rules Enabling Act (by expanding a plaintiff's substantive rights) and the separation of powers (by allowing a court to declare the rights of an uninjured litigant).

B. Plaintiffs' counterarguments all fail. Contrary to their complaints, heeding the strictures of Article III at certification would not compel proponents of a damages class to prove their case before trial. At certification, a named plaintiff need not even *identify* every class member, let alone definitively *prove* that each one has suffered an injury. But that does not mean he is free to define the class in a way that sweeps in the uninjured. In all events, the separation of powers cannot yield to grumbles over inefficiency.

Plaintiffs fare no better in pointing to decisions allowing an action pursuing injunctive relief to proceed so long as at least one plaintiff has standing. While courts can issue injunctions to an injured party that provide incidental relief to the unharmed, no one claims they can award individual damages to uninjured litigants, whether in a class action or otherwise. Thus, as far as Labcorp is aware, this Court has never applied this "one plaintiff" rule when a plaintiff whose Article III standing was in question sought to pursue his own monetary relief.

Plaintiffs therefore fall back to contending that Article III only requires courts to excise uninjured class members from the case before they grant relief at the end of the proceeding. But the Constitution's limits on the judicial power persist through all stages of the litigation. A plaintiff who has suffered no Article III injury thus cannot pursue a claim for his own relief in federal court. That is why an intervenor seeking his own damages must establish standing to join the case. The same showing is required if he seeks to join a class action through certification. And in any event, the promise of back-end review here is illusory given the *in terrorem* effect on class-action settlement of certifying inflated classes.

II. Even if plaintiffs could square the Ninth Circuit's approach with Article III, they would still be unable to escape Rule 23(b)(3).

A. Rule 23(b)(3) forbids certification of a damages class unless common questions predominate over those affecting only individual members. If a class contains an appreciable number of uninjured members, however, it will not be able to rely on

common proof to establish injury-in-fact on a classwide basis. Instead, the parties will need to engage in individualized, adjudicatory inquiries to determine which class members were injured and which ones were not. And those individualized mini-trials will invariably swamp other common issues. That is why numerous lower courts have held that a class cannot be certified if it contains more than a *de minimis* number of uninjured class members.

B. Neither the Ninth Circuit nor plaintiffs have offered a plausible explanation for how a class full of uninjured members could survive the predominance inquiry. The court of appeals analogized questions of member standing to ones of individualized damages, and apparently concluded that neither could defeat predominance. But this Court has already held that individualized damages questions can destroy predominance, and there is no reason to subject Article III inquiries to any lesser scrutiny.

For their part, plaintiffs merely complain that faithfully applying the predominance requirement in this context will impede class-action efficiency. But their concerns are overblown, as no one maintains that a class must invariably be decertified whenever an uninjured member is found hiding in the ranks. In any event, if Rule 23(b)(3) makes it difficult to certify overbroad classes that threaten to spawn scads of Article III mini-trials, that is the result of the exacting requirements Congress imposed.

ARGUMENT

I. ARTICLE III PROHIBITS CERTIFICATION OF A PROPOSED RULE 23(B)(3) CLASS THAT CONTAINS UNINJURED MEMBERS.

All agree that Article III forbids federal courts from *awarding* individual damages to class members who lack a cognizable injury. Yet the Ninth Circuit held that uninjured class members could *pursue* that relief through a certified Rule 23(b)(3) class. That is not how Article III works. Had any uninjured patient here sought to intervene in a case to seek his own damages, he would find the courthouse doors closed. As far as the Constitution is concerned, his decision to pursue the same relief through a class action instead is beside the point. After all, a class action is simply a mechanism for aggregating individual claims. And if Article III prohibits an individual from pursuing his claim on his own, neither may he pursue that very same claim as part of a class.

A. Uninjured plaintiffs cannot use the class-action device to evade Article III.

Article III limits not only the relief a federal court can award, but who can seek it in the first place. These bedrock constitutional restrictions do not go out the window in the class-action context.

1. Article III confines the "judicial Power" of federal courts to the resolution of "Cases" and "Controversies." U.S. Const. art. III, § 2. If that constitutional limit means anything, it is that those who lack "standing may not litigate as suitors in the courts of the United States." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 475-76 (1982).

To establish standing, a litigant "must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Standing must be resolved at the "threshold" in "every federal case," as it goes to "the power of the court to entertain the suit" and a litigant's entitlement "to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975)

Critically, the limits of Article III do not vanish so long as there exists *any* "case or controversy." As this Court has emphasized time and again, "'standing is not dispensed in gross.'" *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006); *accord, e.g.*, *Murthy v. Missouri*, 603 U.S. 43, 61 (2024). Rather, courts must determine "'whether the particular plaintiff is entitled to an adjudication of the *particular* claims asserted.'" *Cuno*, 547 U.S. at 352. For that reason, "a plaintiff must demonstrate standing for each claim he seeks to press" and "'for each form of relief sought.'" *Id.* So even if there exists a "controversy" allowing a plaintiff to pursue "a claim for damages," for example, that does not mean he can advance "an injunctive claim in a federal forum" as well. *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). In short, a federal court's jurisdiction does not "extend[] to all claims sufficiently related to a claim within Article III to be part of the same case, regardless of the nature of the deficiency that would keep the former claims out of federal court if presented on their own." *Cuno*, 547 U.S. at 351.

The same principle applies when multiple parties ask a federal court for independent forms of relief. The existence of one particular "case or controversy" between a plaintiff and a defendant, for instance, does not excuse the defendant from demonstrating "standing to pursue" a separate "counterclaim." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91-92 (2013).

The analysis does not change when the relevant litigants are on the same side of the *v.* As this Court held in *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433 (2017), a litigant may not join a case through intervention to pursue his own damages claim unless he establishes Article III standing in his own right. *Id.* at 439-40. There, the lower court had held that a real-estate company did not have to satisfy Article III to intervene in a developer's takings lawsuit to press its *own* regulatory takings claim. *Id.* at 437-38. This Court vacated that ruling, emphasizing that "an intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing," such as when the intervenor is "seeking damages for itself." *Id.* at 440-41. Because it was unclear whether the real-estate company was either "seeking damages of its own" or "seeking only to maximize [the developer's] recovery," this Court remanded the case for the lower court to resolve that question. *Id.* 441 n.4. But it made clear that whether a litigant wants to "join[] the lawsuit as a plaintiff, a coplaintiff, or an intervenor of right," it "must demonstrate Article III standing when it seeks additional relief beyond that which the plaintiff requests." *Id.* at 439.

2. Class members are not excused from these Article III requirements. "'That a suit may be a class action adds nothing to the question of standing,'" including when it comes to the rule that the "remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." *Lewis v. Casey*, 518 U.S. 343, 357 (1996) (ellipsis omitted).

In *TransUnion*, this Court therefore had no trouble holding that "[e]very class member must have Article III standing in order to recover individual damages." 594 U.S. at 431. As it explained, "Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *Id.* (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 466 (2016) (Roberts, C.J., concurring)).

While *TransUnion* had no occasion to "address the distinct question whether every class member must demonstrate standing *before* a court certifies a class," Article III does not permit a different answer. *Id.* at 431 n.4. If a plaintiff cannot get *relief* at the back-end of a lawsuit, he has no business *litigating* his case on the front-end. *See California v. Texas*, 593 U.S. 659, 673 (2021) ("to have standing, a plaintiff must seek 'an acceptable Article III remedy' that will 'redress a cognizable Article III injury'"). After all, Article III establishes a "threshold" requirement that must be met *before* a court can "'proceed at all.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). No one thinks an uninjured plaintiff could litigate a claim on his own just because the court would deny him relief eventually.

Nor does it matter that uninjured members happen to be pooled together with injured ones. A class action, after all, is just a "method[] for bringing about aggregation of claims." *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 291 (2008). As such, it "leaves the parties' legal rights and duties intact." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (plurality).

A class action therefore does not alter what individual members must show to get into federal court. Rather, it is akin to other procedural tools like joinder, consolidation, and intervention. And as this Court has held in the context of Rule 24 intervention—applying the very logic above—a litigant seeking "damages different from those sought" by the plaintiff "must establish its own Article III standing in order to intervene." *Laroe*, 581 U.S. at 442. To intervene to "pursue relief that is different from that which is sought by a party with standing," such as "separate money judgments," a litigant "must have Article III standing." *Id.* at 440.

The same rules that apply to intervention apply here as well. Certifying a Rule 23(b)(3) class is materially indistinguishable from granting Rule 24 intervention to a litigant who seeks additional damages separate and apart from the existing plaintiff. "'The certification of a suit as a class action has important consequences for the unnamed members of the class.'" *United States v. Sanchez-Gomez*, 584 U.S. 381, 387 (2018). Like an intervenor, those members gain the legal right to enter the action. *See* Fed. R. Civ. P. 23(c)(2)(B)(iv). Like an intervenor, they are "'bound by the judgment' and are considered parties to the litigation in many

important respects." *Sanchez-Gomez*, 584 U.S. at 387; *see Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 75 (2013) (certification serves to "join additional parties to the action"). And once a class is certified and putative members decline to opt-out, those members' claims, like an intervenor's, become part of the case. *See Devlin v. Scardelletti*, 536 U.S. 1, 7-10 (2002).

Because each member's claim "seeks damages different from those sought by" the named plaintiff, each member "must establish its own Article III standing." *Laroe*, 581 U.S. at 442. Otherwise, there would not "be a litigant with standing" "[f]or all relief sought." *Id.* at 439. So even though Rule 23 affords unnamed class members the luxury of having their claims adjudicated without their direct participation, it does not reduce the Article III hurdles they must clear for their claims to be heard in the first place.

3. Allowing uninjured litigants to seek their own damages as part of a certified class, in contrast, would put Rule 23 on a collision course with the Rules Enabling Act. That law generally forbids the Federal Rules of Civil Procedure, including Rule 23, from "abridg[ing], enlarg[ing] or modify[ing] any substantive right." 28 U.S.C. § 2072(b). To ensure that Rule 23 complies with the Rules Enabling Act, "[e]ach of the … members" of a class must be able to "bring a freestanding suit asserting his individual claim" in order to pursue that claim as part of a class. *Shady Grove*, 559 U.S. at 408. Otherwise, the class-action device would alter the parties' "legal rights," even though its only function is to "enable[] a federal court to adjudicate claims of multiple parties at once, instead of in separate suits." *Id.*

That analysis holds true when a class member cannot "bring a freestanding suit asserting his individual claim" for *jurisdictional* reasons. *Id.* It is only when "the district court has jurisdiction over the claim of each individual member of the class" that "Rule 23 provides a procedure by which the court may exercise that jurisdiction over the various individual claims in a single proceeding." *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979). This Court has therefore held that "[e]ach plaintiff in a Rule 23(b)(3) class action must satisfy the jurisdictional" amount-in-controversy requirement under 28 U.S.C. § 1332, and that "any plaintiff who does not must be dismissed from the case"—"even though others allege jurisdictionally sufficient claims." *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 300-01 (1973). When it comes to jurisdiction, one class member "'may not ride in on another's coattails.'" *Id.* at 301.

While Congress abrogated that specific amount-in-controversy holding by enacting 28 U.S.C. § 1367 in 1990, *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 566 (2005), the more fundamental point still stands—"the membership of the class" must be "limited to those who meet the requirements of" the "jurisdictional statutes." *Califano*, 442 U.S. at 700-01; *see Zahn*, 414 U.S. at 299 ("Rule 23" cannot "change … the jurisdictional-amount requirement"). After all, a court has no power, "by rule, to extend … the jurisdiction conferred by a statute." *Sibbach v. Wilson & Co.*, 312 U.S. 1, 10 (1941). That limit "applies *a fortiori* to any effort to extend by rule the judicial power … described in Article III." *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992); *see* Fed. R. Civ. P. 82 (the "rules do not extend … jurisdiction").

Certifying a Rule 23(b)(3) class with uninjured members, however, would do just that. If an uninjured litigant tried to "bring a freestanding suit asserting his individual claim" for damages, a federal court would be duty-bound to dismiss that lawsuit. *Shady Grove*, 559 U.S. at 408; *see* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Neither Article III nor the Rules Enabling Act allows him to smuggle that very same claim into federal court through the device of a class action. As with intervention under Rule 24, Rule 23 permits a litigant "'seeking additional damages'" to "join[] the lawsuit" only if he shows "Article III standing." *Laroe*, 581 U.S. at 439-440. Only that will ensure "Rule 23's requirements" are "interpreted in keeping with Article III constraints, and with the Rules Enabling Act." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997).

4. The Ninth Circuit's decision to bless the certification of the Rule 23(b)(3) class in this case departs from the demands of Article III. The class here is defined to include those who have merely been "exposed" to an allegedly unlawful kiosk—*i.e.*, legally blind people who walked into a Labcorp patient service center that happened to include a kiosk. *Supra* at 7-8.

By its terms, that definition includes those who have suffered no Article III injury. Simply being proximate to a kiosk one is unable to use—without any knowledge or even desire to use it—is not a "'concrete'" harm. *TransUnion*, 594 U.S. at 440 (ruling that plaintiffs were not injured by formatting violations in mailings they never "'*opened*'").

Someone who learned about the kiosks through this lawsuit has not been injured by them. *Id.* at 433-34, 438. So too someone with zero intention to use one—any more than a vegan could challenge how a restaurant prepares its meat. To be sure, the desire to use a Labcorp kiosk may not be *sufficient* to satisfy Article III; "'some day' intentions," for instance, are "simply not enough." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992). But it is at least *necessary* if the injury-in-fact requirement is to mean anything.

Of course, when any individual genuinely suffers discrimination—whether under the ADA or otherwise—that is an Article III injury. But such a person must be "*personally* subject to discriminatory treatment." *Allen v. Wright*, 468 U.S. 737, 757 & n.22 (1984) (emphasis added). Here, however, the class definition sweeps in Labcorp patients who do "not even harbor 'some day' intentions of" using the kiosks. *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 12 (2023) (Thomas, J., concurring in the judgment) (quoting *Lujan*, 504 U.S. at 564). And that "lack of intent … eviscerates any connection to" a class member's "purported legal interest in … accessibility." *Id.* As Judge Sutton observed, a person who lacks "any interest" in using an allegedly discriminatory service by definition lacks standing to challenge it. *Brintley v. Aeroquip Credit Union*, 936 F.3d 489, 491 (6th Cir. 2019). Yet under the decision below, such individuals are free to participate in the Rule 23(b)(3) certified class.

B. The arguments for ignoring the Article III problem fail.

The Ninth Circuit gave little explanation for how Article III could tolerate the certification of this damages class when "some potential class members may not have been injured." JA.397 n.1. Instead, it assumed that the alleged injury of a single named plaintiff sufficed "to convey Article III standing" to everyone in the class. JA.396. But just as "named plaintiffs" must show that "they personally have been injured, not that injury has been suffered by other, unidentified members of the class," so too must unnamed class members establish their own injury, not piggyback on the standing of class representatives. *Lewis*, 518 U.S. at 357 (internal quotation marks omitted). Otherwise, this Court in *TransUnion* would have had no need to clarify that "[e]very class member must have Article III standing in order to recover individual damages," let alone subject the members to different analyses depending on their injury. 594 U.S. at 431; *see id.* at 430-43.

For their part, plaintiffs at least accept that every member of a Rule 23(b)(3) class must establish his own standing "at the time the claims are resolved on the merits." BIO 30. They nevertheless offer several arguments why courts need not bother with Article III when certifying such a class in the first place. None withstand scrutiny.

1. Plaintiffs first pick a fight with a strawman, arguing that it makes no sense for them to have to definitively "prove" that every member has been injured for a class to be certified. BIO 31. Nobody says otherwise.

Rather, here, as elsewhere, the "manner and degree of evidence required" is shaped by the "stage[] of the litigation." *Lujan*, 504 U.S. at 561. And at the certification stage, a plaintiff's burden is threefold. At a minimum, he must (i) define the class in a way that does not include those lacking an Article III injury; (ii) plausibly establish that all class members have been so harmed; and (iii) show that he can prove, through common evidence, that all class members were in fact injured by the at-issue conduct. *See, e.g.*, *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d 244, 252 (D.C. Cir. 2013) (*Rail Freight I*); *Halvorson v. Auto-Owners Ins. Co.*, 718 F.3d 773, 778-79 (8th Cir. 2013).

That is far from "infeasible." BIO 32. At certification, plaintiffs need not "identi[fy]" every class member, *id.*, much less "submit evidence" of each one's "individual standing," *Johannessohn v. Polaris Indus. Inc.*, 9 F.4th 981, 988 n.3 (8th Cir. 2021). Nor do they have to show "the precise amount of damages incurred by each class member." *Rail Freight I*, 725 F.3d at 252. They do, however, at least have to avoid proposing a class that "is defined in such a way to include individuals who lack standing." *Johannessohn*, 9 F.4th at 988 n.3.[2]

---

[2] To be clear, in defining a class to ensure that all members have standing, a plaintiff must be sufficiently specific; a class defined as "all those who suffered an injury-in-fact" will not do. *See, e.g.*, *Randleman v. Fidelity Nat'l Title Ins. Co.*, 646 F.3d 347, 352 (6th Cir. 2011) (rejecting class definition that included only those "who are 'entitled to relief'" as an "improper fail-safe class that shields the putative class members from receiving an adverse judgment").

While that will prevent enterprising attorneys from artificially swelling the size of a class to extort a settlement, it will not "'eviscerate'" class actions. BIO 32. Proving the point, such lawsuits are alive and well in the circuits that heed the dictates of Article III. *See, e.g.*, *Denney v. Deutsche Bank AG*, 443 F.3d 253, 266 (2d Cir. 2006) (affirming certification where "each … member has suffered an injury-in-fact").

By the same token, calling for evidence that all class members have been "injured" does not require anyone "to prove entitlement to relief." BIO 32. Here, for instance, proof that every class member wanted to use the kiosks, while necessary to establish an injury-in-fact, would not automatically show they deserved to win on "'the merits.'" BIO 31. At any rate, while "standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal, it often turns on the nature and source of the claim asserted." *Warth*, 422 U.S. at 500 (internal citation omitted). And that makes the "necessity of touching aspects of the merits in order to resolve preliminary matters"—"jurisdiction" included—"a familiar feature of litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011). For example, those plaintiffs "able to allege injury as a direct result of having *personally* been denied equal treatment" may "carry the burden of proving their standing, as well as their case on the merits." *United States v. Hays*, 515 U.S. 737, 746 (1995). But that does not excuse a plaintiff from the duty to show that he personally suffered discrimination to litigate such a claim in the first place. *See Allen*, 468 U.S. at 757 & n.22.

In all events, plaintiffs' concerns about Article III impeding the "efficiency" of class actions are misplaced. BIO 32. Even if it were "more efficient or convenient to simply say" that only one injured class member is necessary for certification, "'the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution.'" *TransUnion*, 594 U.S. at 429-30.

2. Turning to substance, plaintiffs insist that under this Court's precedents, the demands of Article III are invariably satisfied "as long as *one* plaintiff can establish standing at the outset of the suit." BIO 3; *see* BIO 30-31. Not so.

To be sure, this Court has at times allowed a case to proceed when "'at least one individual plaintiff … has demonstrated standing.'" *Horne v. Flores*, 557 U.S. 433, 446 (2009). But as even the Ninth Circuit recognized, this Court's "one plaintiff" cases involved requests for "injunctive or declaratory relief" rather than "money damages." *Olean*, 31 F.4th at 682 n.32.

That is an important distinction. Unlike damages awards, injunctions often benefit "nonparties"—or uninjured plaintiffs—"incidentally" as part of providing relief to the plaintiff that is properly before the court. *United States v. Texas*, 599 U.S. 670, 693 (2023) (Gorsuch, J., concurring in the judgment). When a plaintiff asks a court to order his school desegregated, for example, it is impossible to grant him "effective relief … without altering the rights of third parties." *McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997).

In fact, the first time this Court apparently used its "one plaintiff" rule involved just this type of situation. After reversing the dismissal of a suit by professors for an injunction against loyalty oaths, this Court saw "no occasion to pass on the standing of the students" who joined the suit, as their interests "in academic freedom are fully protected by a judgment in favor of the teaching personnel." *Baggett v. Bullitt*, 377 U.S. 360, 366 n.5 (1964); *see* Aaron-Andrew P. Bruhl, *One Good Plaintiff Is Not Enough*, 67 DUKE L.J. 481, 502 (2017).

When multiple litigants seek individual "damages claims," by contrast, the right to relief is inherently "peculiar to the individual." *Warth*, 422 U.S. at 515. Awarding relief to the one party who has established standing thus cannot provide any incidental relief to the others. Rather, a court would need to order "*additional* relief beyond that which the plaintiff requests" to reach those litigants. *Laroe*, 581 U.S. at 439 (emphasis added). And that requires them to "demonstrate Article III standing." *Id.*

Granted, some courts more recently have taken to issuing sweeping injunctions that extend beyond "redress[ing] the injury that gives rise to [their] jurisdiction in the first place." *DHS v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in grant of stay). But there is an ongoing debate whether that practice can be described as "acting in the judicial role of resolving cases and controversies" under Article III. *Id.* Whatever the status of those injunctions, no one seriously contends that courts can grant "individual *damages*" to an "uninjured" litigant, "'class action or not.'" *TransUnion*, 594 U.S. at 431 (emphasis added).

Unsurprisingly, then, plaintiffs have not identified a single decision of this Court holding that one plaintiff with standing is enough when another litigant "is seeking damages for itself." *Laroe*, 581 U.S. at 441. Nor is Labcorp aware of one. And that is because if a litigant "seeks separate monetary relief" from a plaintiff with standing, a separate "'Article III inquiry would be required.'" *Id.* at 440; *see Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 95, 113 n.25, 115-16 (1979) (affirming dismissal of two uninjured plaintiffs who "requested monetary" redress alongside "injunctive[] and declaratory relief" but allowing other plaintiffs to proceed).

The one-plaintiff rule therefore applies not only "most clearly in cases involving injunctive relief," but *exclusively* to them. BIO 31; *see* 15 Moore's Federal Practice – Civil § 101.23 (2025) (explaining that the "one plaintiff" rule "must logically be confined to suits in which generalized equitable relief is sought"). That is because even if "an Article III 'case or controversy' exists when one plaintiff has standing," BIO 30, "'a case or controversy as to one claim does not extend the judicial power to *different* claims or forms of relief,'" *Laroe*, 581 U.S. at 439 n.3 (alteration omitted).

Indeed, plaintiffs' contrary theory proves too much. If a "single class member's injury suffices" to satisfy Article III "irrespective of the relief sought," then unnamed Rule 23(b)(3) class members would *never* need to show standing. *Id.* Instead, they could freeride all the way to judgment on the standing of the named plaintiff. Even plaintiffs, however, do not defend that untenable position. And wisely so, for *TransUnion* rejected it. 594 U.S. at 431.

3. Plaintiffs instead retreat to contending that Article III only calls for "uninjured class members" to "be weeded out before remedies are granted." BIO 3. In their telling, there is no need to worry about certifying a class with uninjured members because "procedural solutions" can take care of interlopers on the back end. BIO 33. But that solution is no cure at all for two reasons—one legal and one practical.

a. As a legal matter, "[c]oncerns of justiciability go to the power of the federal courts to entertain disputes" in the first place, not merely to award judgments at the end. *Renne v. Geary*, 501 U.S. 312, 316 (1991). That is why "an intervenor must meet the requirements of Article III" if he wishes to even "*pursue* relief not requested by a plaintiff." *Laroe*, 581 U.S. at 435 (emphasis added). Contrary to plaintiffs' belief, the separation of powers is not a nicety to be sorted out at some point down the road.

That makes sense. The requirement that a litigant establish standing under Article III serves "to protect citizens from … the excessive use of judicial power." *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 77 (1988); *see Valley Forge*, 454 U.S. at 471. And courts exercise the judicial power throughout the entirety of the case, not just when it comes time to grant relief. *See, e.g.*, *U.S. Catholic Conference*, 487 U.S. at 76-77 (Article III limits confine a court's ability to issue a subpoena); *see also* Martin H. Redish & Sopan Joshi, *Litigating Article III Standing: A Proposed Solution to the Serious (but Unrecognized) Separation of Powers Problem*, 162 U. PA. L. REV. 1373, 1399 (2014) ("[C]ourts exercise their coercive power over litigants well before final judgment").

The upshot is that if a court exercises the judicial power to "declare[] the rights of individuals" who lack standing before the remedies stage, it will expand its authority beyond the bounds of Article III. *Valley Forge*, 454 U.S. at 471. And that is exactly what it would do in certifying a Rule 23(b)(3) class: Certification not only joins the unnamed class members as parties to the litigation, but also "gives an Article III court the power to 'render dispositive judgments' affecting unnamed class members," and thereby "dramatically change the rights and obligations" of the parties. *Flecha v. Medicredit, Inc.*, 946 F.3d 762, 770 (5th Cir. 2020) (Oldham, J., concurring); *see supra* at 19-20.

That helps explain why the "one plaintiff" rule has no relevance here. When courts invoke that rule, they typically are not applying the judicial power with respect to a plaintiff whose standing is in question. For instance, when this Court resolves the merits of the question presented in a particular case, nothing about that exercise of judicial power turns on whether just one petitioner has standing or all of them do. *See, e.g.*, *Horne*, 557 U.S. at 446. Likewise, when a district court denies a motion to dismiss because at least one plaintiff has standing, it is simply *declining* to exercise the judicial power to determine whether the other plaintiffs satisfy Article III as well. By contrast, when a court rules that a litigant may *join* a case via class certification to pursue its own damages, it is declaring the rights of that individual and expanding the range of claims and forms of relief before the court. And that requires a showing that the individual actually suffered an injury-in-fact.

Indeed, plaintiffs identify no authority for their "certify first, ask questions later" approach to limits on federal court jurisdiction. At most, they assert that in *Tyson Foods*, this Court remanded for the trial court "to identify class members, if any, who had no damages." BIO 33 (citing 577 U.S. at 460-62). But in *Tyson Foods*, this Court merely declined to address a "new argument" that a named plaintiff must either prove that "all class members are injured" or identify a "mechanism for ensuring that uninjured class members do not recover damages." 577 U.S. at 460. It explained that this argument was "premature" because the parties disputed whether such a tool was available in that case and the district court had yet to confront the question. *Id.* at 460-62; *see id.* at 464 (Roberts, C.J., concurring) (agreeing "to leave that issue to be addressed in the first instance by the District Court").

Thus, as Judge Katsas would later observe, this aspect of *Tyson Foods* merely "rested on the inappropriateness of raising new issues for the first time in Supreme Court merits briefing." *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 934 F.3d 619, 626 (D.C. Cir. 2019) (*Rail Freight II*). "It does not," as plaintiffs suggest, "permit district courts considering class certification to defer questions about" whether "a certified class may contain any uninjured members." *Id.* at 625-26; *see* BIO 33.

b. As a practical matter, relegating Article III to an afterthought "invite[s] plaintiffs to concoct oversized classes stuffed with uninjured class members," which lets them "inflate the potential liability (and ratchet up the attorney's fees based in part on that amount) to extract a settlement, even if

the merits of their claims are questionable." *Olean*, 31 F.4th at 692 (Lee, J., dissenting). In other words, it allows Rule 23(b)(3)'s procedural device for *aggregating* claims to be transformed into a tool for *manufacturing* them—all in service of extracting an "in terrorem" settlement, as soon as the proposed class has been certified. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011).

In litigation generally, "extensive discovery and the potential for uncertainty and disruption in a lawsuit allow plaintiffs with weak claims to extort settlements from innocent companies." *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta*, 552 U.S. 148, 163 (2008); *see Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559 (2007) ("the threat of discovery expense will push cost-conscious defendants to settle even anemic cases before reaching" summary judgment). Certifying a Rule 23(b)(3) class increases that pressure by orders of magnitude. It is a "transformative" decision—one that "dramatically change[s]" the size, nature, and stakes of a particular suit. *Flecha*, 946 F.3d at 770 (Oldham, J., concurring). It can "change the number of plaintiffs from one to one million," and turn an individual action into bet-the-company litigation. *Id.* Certification therefore often "ends the litigation as a practical matter," even when the victim of coercion has a "'meritorious defense.'" *Microsoft Corp. v. Baker*, 582 U.S. 23, 29 n.2 (2017).

Adding platoons of the uninjured to a class's ranks makes the plaintiffs' offer one a defendant cannot refuse. When "damages allegedly owed to tens of thousands" (if not hundreds of thousands) are on the table, then "the risk of an error" will quickly "become unacceptable." *Concepcion*, 563 U.S. at 350.

That is especially true where, as here, the "plaintiffs seek statutory damages," for then the "class action poses the risk of massive liability unmoored to actual injury." *Shady Grove*, 559 U.S. at 445 n.3 (Ginsburg, J., dissenting). Indeed, classes crammed full of unharmed members frequently surface where hefty statutory violations are in play, whether under the Unruh Act, FCRA, or the TCPA. *See, e.g., TransUnion*, 594 U.S. at 419; *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1265 (11th Cir. 2019). The promise that a court will "jettison uninjured members from the certified class" down the line is therefore "a phantom solution because defendants will have little choice but to settle before then." *Olean*, 31 F.4th at 691 (Lee, J., dissenting).

To make matters worse, even if the uninjured can be filtered out on the back end, that ordinarily does not affect the bottom-line payment to the class. Defendants often end up covering the claims of *all* class members, even the uninjured ones. The common practice—adopted by treatises, the Federal Judicial Center, and a number of courts—is for a company to pay a lump sum distributed to class members via an administrative process. *See* Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* 30 (3d ed. 2010); 4 *Newberg and Rubenstein on Class Actions* § 12:17 (6th ed. 2024).

Of course, if the class contained uninjured members, those claimants will be unable to collect, leaving a pot of unclaimed funds. *See TransUnion*, 594 U.S. at 431. But here, the common practice is for that money to go somewhere *besides* the company.

That is because the practice of allowing "any unclaimed funds" to "revert to the defendant … is generally disfavored." Rothstein & Wilging, *supra*, at 20; *see* 4 *Newberg and Rubenstein* § 12:29 ("reversion to the defendant is likely the least popular way of dealing with unclaimed funds"). Instead, "the entire settlement fund" may be distributed to the injured claimants on a "prorat[ed]" basis, for instance. Rothstein & Wilging, *supra*, at 20. Or, more likely, the remainder will end up as a *cy pres* award—probably "the most prevalent method for disposing of unclaimed funds." 4 *Newberg and Rubenstein* § 12:32; *see Marek v. Lane*, 571 U.S. 1003, 1006 (2013) (Roberts, C.J., statement respecting denial of certiorari) (noting that "[*c*]*y pres* remedies" are "a growing feature of class action settlements"). The bottom line is that if the parties and the court are following the common practice, the defendants will end up paying for uninjured class members, even if that money is ultimately funneled elsewhere.

All of this is a problem not only for Article III, but Article II as well. By empowering "private plaintiffs (and their attorneys)" to enforce the law via coercive class actions stacked with "*unharmed* plaintiffs," the Ninth Circuit's approach removes "the choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law" from "the discretion of the Executive Branch." *TransUnion*, 594 U.S. at 429. Here, for example, rather than leaving the ADA's enforcement to the government—which has endorsed Labcorp's approach to kiosk accessibility, *see* 89 Fed. Reg. at 40128—the decision below allows private litigants to take on the role of disability-discrimination cop.

In short, if a plaintiff can augment a putative class with uninjured members, the benefits of that maneuver will vest *upon certification*—it will turbo-charge the plaintiff's ability to force a settlement and drive up that settlement's price. That makes *TransUnion*'s rule that uninjured class members cannot recover damages a paper tiger to the plaintiffs' bar and cold comfort to defendants for whom certification is a death knell. 594 U.S. at 431.

* * *

Ultimately, the theory of Article III advanced by plaintiffs and embraced by the Ninth Circuit is one this Court has seen—and rejected—before. In their telling, "a single class member's injury suffices to create a justiciable controversy," thereby flinging the courthouse doors open to any uninjured litigant with a similar damages claim, even though he never would have been able to get into court by himself. BIO 31. But standing is not "commutative"—litigants cannot piggyback their own requests for additional relief on a plaintiff with standing when those claims would have been tossed "out of federal court if presented on their own." *Cuno*, 547 U.S. at 351. If they could, federal courts would soon find themselves "deciding issues they would not otherwise be authorized to decide," and "the standing requirement's role in maintaining" the separation of powers would quickly "be rendered hollow rhetoric." *Id.* at 353.

II. RULE 23(B)(3) PROHIBITS CERTIFICATION OF A PROPOSED CLASS WITH AN APPRECIABLE NUMBER OF UNINJURED MEMBERS.

Even if plaintiffs could somehow hurdle the Article III problems with sneaking a host of uninjured plaintiffs into federal court, they would run still into the fact that Rule 23(b)(3) itself forbids this gambit. Before a court can certify a class action for individualized monetary damages—and transform a bread-and-butter lawsuit into a bet-the-company one—Rule 23(b)(3) demands proof that common questions will predominate over individual issues.

When a class definition sweeps in uninjured members, however, the case will quickly devolve into a series of "individualized mini-trials to figure out who suffered an injury." *Olean*, 31 F.4th at 691 (Lee, J., dissenting). Unable to show injury-in-fact using evidence common to the class, plaintiffs will be forced to present member-by-member proof of Article III harm. And defendants in turn will have the right to challenge that evidence and raise their own defenses as to each individual member. If courts are spared from this quagmire, it will only be because defendants choose to throw in the towel and settle after certification of an inflated class.[3]

---

[3] This Court could reverse based on this defect alone while reserving whether the certification of a class with uninjured members *also* raises an Article III problem. As this Court has explained, "'class certification issues'" can be resolved "first" when they are "logically antecedent to the existence of any Article III issues." *Amchem*, 521 U.S. at 612.

A. Individual questions will predominate when a class includes an appreciable number of uninjured members.

1. The class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Califano*, 442 U.S. at 700-701. To justify a departure from that baseline, "a party seeking to maintain a class action 'must affirmatively demonstrate his compliance' with Rule 23." *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). That requires proof that the class not only meets Rule 23(a)'s four general requirements (numerosity, commonality, typicality, and adequacy), but also qualifies for least one of Rule 23(b)'s specific provisions. *Id.*; *see* Fed. R. Civ. P. 23(a), (b).

Where, as here, the proposed class seeks individualized monetary claims, it must also comply with Rule 23(b)(3)'s "greater procedural protections." *Wal-Mart*, 564 U.S. at 362. The most important of these is the predominance requirement, which requires proof that "the questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). A question is common to the class if "'the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof.'" *Tyson Foods*, 577 U.S. at 453 (cleaned up). An individual question, by contrast, is one that requires the class "'to present evidence that varies from member to member.'" *Id.* The predominance requirement demands proof that individualized issues would not "overwhelm questions common to the class" if certification is granted. *Comcast*, 569 U.S. at 34.

Take *Amchem*, for instance. There, the district court certified a Rule 23(b)(3) class of hundreds of thousands of individuals who had been "exposed" to the defendants' asbestos products, whether or not they had "manifested any asbestos-related condition" at all as a result. 521 U.S. at 602. Writing for the Court, Justice Ginsburg explained that the class flunked the predominance requirement because the members who had only been exposed to asbestos (and who currently suffered no apparent "'physical injury"') had "'little in common"' with those who were "presently injured." *Id.* at 624. Although the Court reserved the question whether the "exposure-only claimants" even had "standing to sue," it held that their presence in the class at least raised "disparate questions" foreclosing certification under the predominance requirement. *Id.* at 612, 624. Given "the significance" of such "uncommon questions," the presence of an "overarching dispute about the health consequences of asbestos exposure" was not enough to establish "predominance." *Id.* at 624.

2. The predominance defect at issue in *Amchem* applies in spades to a Rule 23(b)(3) class containing an appreciable number of uninjured members. As in *Amchem*, a court must sift through thousands of plaintiffs to determine who was "injured" and who was not. *Id.* Judge Katsas has captured the problem well: "Uninjured class members cannot prevail on the merits, so their claims must be winnowed away" at some point. *Rail Freight II*, 934 F.3d at 624. But without common evidence establishing that all class members have standing, the district court must find some way to "'segregate the uninjured from the truly injured.'" *Id.* at 625.

No viable tool exists for that job. While plaintiffs suggest that courts will be able to adopt a simple "process to identify" uninjured members and "exclude them from sharing in a classwide damages award," that ignores the realities of class-action litigation. BIO 33. As Judge Katsas observed, the presence of a meaningful number of unharmed class members poses an insuperable dilemma: Any "winnowing mechanism" must simultaneously be both "truncated enough to ensure that the common issues predominate, yet robust enough to preserve the defendants' Seventh Amendment and due process rights to contest every element of liability and to present every colorable defense." *Rail Freight II*, 934 F.3d at 625. One will search in vain for that magical sifting device.

Even when it comes to a class that is not seeking individual damages under Rule 23(b)(3), a defendant must "have the right to raise any individual affirmative defenses it may have." *Wal-Mart*, 564 U.S. at 367. If the law were otherwise, Rule 23 would run afoul of "the Rules Enabling Act by giving plaintiffs and defendants different rights in a class proceeding than they could have asserted in an individual action." *Tyson Foods*, 577 U.S. at 458; *see supra* Pt. I.A.3. Courts therefore cannot replace a defendant's rights to "individualized proceedings" with "Trial by Formula" merely because a class action is involved. *Wal-Mart*, 564 U.S. at 367. Nor can they certify a class "on the premise" that a defendant "will not be entitled to litigate its statutory defenses to individual claims" later on. *Id.*; *see Tyson Foods*, 577 U.S. at 458 (similar).

A court adjudicating a damages class action must provide even more individualized protections. Given that money damages are at stake, a district court would have to protect a defendant's Seventh Amendment rights in addition to his due-process ones. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 845-46 (1999). The court would thus not only have to conduct "individualized determinations" of each member's "eligibility for" relief, but also provide the defendant with a panoply of procedural safeguards in doing so—including the right to cross-examine, assert affirmative defenses, provide evidence to prove those defenses, and have a jury resolve any factual disputes. *Wal-Mart*, 564 U.S. at 366. Trial by affidavit is simply not an option. *See In re Asacol Antitrust Litig.*, 907 F.3d 42, 53 (1st Cir. 2018).

The upshot is that only "full-blown, individual trials" will be able to winnow out the injured sheep from the uninjured goats while protecting the rights of the defendant. *Rail Freight II*, 934 F.3d at 625. And with that, the class action would quickly "degenerate … into multiple lawsuits separately tried"—the precise outcome the predominance requirement is meant to prevent. Fed. R. Civ. P. 23(b)(3) adv. comm. note. Indeed, if the prospect of "'a trial in which thousands of class members testify'" as to their own individual injuries is not enough to destroy predominance, it is hard to see what would. *Rail Freight II*, 934 F.3d at 627.

These are not abstract concerns. Even setting this case aside, the Federal Reporter teems with class actions threatening to clog the courts with injury-in-fact mini-trials. Take, for instance, an antitrust class action requiring "individualized adjudications" of

"injury" for over 2,037 members. *Rail Freight II*, 934 F.3d at 625. Or consider a TCPA action where the proposed class was defined to include 16,870 "individuals who received multiple calls during the relevant time period, regardless of whether they ever asked to no longer be called"—thus requiring "individualized" inquiries into whether each one had ever "communicated" to the defendant that he "did not wish to be called." *Cordoba*, 942 F.3d at 1275. Or look to a case where the defendant sought to contest whether thousands of individual class members would have switched to a lower-priced generic drug had it been available. *See Asacol*, 907 F.3d at 51-58. And the list goes on. *See, e.g.*, *Sandusky Wellness Ctr. v. ASD Specialty Healthcare, Inc.*, 863 F.3d 460, 470 (6th Cir. 2017) (individual issues predominated in TCPA class that would have forced court to review tens of thousands of individual consent forms and conduct "'myriad mini-trials'" over their validity).

To be sure, Rule 23(b)(3), unlike Article III, may not require a class unsullied by *any* uninjured member. If the predominance requirement would otherwise be satisfied, the possibility that a defendant "might attempt to pick off the occasional class member here or there" might not automatically "cause individual questions to predominate." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 276 (2014). But such cases, to the extent they exist at all, will be few and far between. While the prospect of the occasional "individualized rebuttal" to the "presumption" that plaintiffs have shown reliance in a securities-fraud action may not defeat predominance, *id.*, Article III "'presume[s] that federal courts lack jurisdiction unless the contrary

appears affirmatively from the record,'" meaning each member has "the burden of establishing" injury, *Cuno*, 547 U.S. at 342 n.3. So unless it is clear there will be only "a very small absolute number" of challenges to the standing of individual members, such that it is "administratively feasible" to handle them through "a manageable, individualized process at or before trial," the separate inquiries necessary to filter out the uninjured will be "fatal" to certification. *Asacol*, 907 F.3d at 53.

3. The class here fits that description to a tee. Its definition covers any legally blind patient who merely happened to be *exposed* to a Labcorp kiosk in California, even if the patient had no intent of ever using one. *See supra* Pt. I.A.4. And there is every indication in the record that these uninjured members permeate the class. Plaintiffs' expert estimates the class size here to be up to 112,140 patients. JA.252-53. But at the same time, nearly a third of *all* Labcorp patients prefer to check in at the front desk or online, rather than use a kiosk. *Supra* at 8-9.

For legally blind patients, that percentage is almost certainly much higher. Indeed, the Council's representative testified that front-desk check-in is the *preferred* option for its members. *Id.* at 9. And when it surveyed around 4,500 of its members about their experience with Labcorp's kiosks, only 12 offered a relevant response. *Id.* In fact, one of them, Mr. Harden, explained that he *prefers* to check in at the front desk—something he and his wife, who is also blind, have done without issue for approximately 32 visits over the course of four years. *Id.*; *see* JA.289-90.

This case therefore involves the prospect of up to 112,140 mini-trials to determine which class members even *wanted* to use the kiosks at issue. Given all that, "any overarching dispute about" Labcorp kiosk "exposure cannot satisfy Rule 23(b)(3) predominance." *Amchem*, 521 U.S. at 624.

B. The arguments for ignoring the Rule 23 problem fail.

The Ninth Circuit barely grappled with any of this. That is because under its precedent, there was no need to. In that court's telling, "Rule 23 permits 'certification of a class that potentially includes more than a de minimis number of uninjured class members." JA.397 n.1. Neither the court below nor plaintiffs can justify that rule.

1. In defense of its approach, the Ninth Circuit asserted that "individualized inquiries" into "the injury status of class members" were "analogous" to the need "to prove individualized damages" for predominance purposes. *Olean*, 31 F.4th at 668-69. From there, it invoked circuit precedent holding that "such individualized issues do not predominate." *Id.* at 669.

That is no defense at all. In contrast to the Ninth Circuit, this Court has held that "[q]uestions of individual damages calculations will inevitably overwhelm questions common to the class" unless "damages are capable of measurement on a classwide basis." *Comcast*, 569 U.S. at 34. Thus, the fact that *the Ninth Circuit* has adopted a flawed rule giving "a free pass to the intractable problem of highly individualized *damages* analyses" under Rule 23(b)(3) is no reason for *this Court* to let that

error metastasize to the *Article III* context. *Olean*, 31 F.4th at 690 (Lee, J., dissenting) (emphasis added) (explaining this rule "conflicts with" this Court's precedent). Instead, it should make clear that a "court's duty to take a 'close look' at whether common questions predominate over individual ones" applies to *all* issues, whether damages, Article III injury, or anything else. *Comcast*, 569 U.S. at 34; *see Tyson Foods*, 577 U.S. at 453 (courts must "give careful scrutiny to the relation between common and individual questions in a case").

In an attempt to shore up its damages-specific predominance rule, the Ninth Circuit noted that in *Tyson Foods*, this Court had remarked that "[w]hen one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages." *Olean*, 31 F.4th at 668 (quoting *Tyson Foods*, 577 U.S. at 453). But nothing in that prefatory statement overruled *Comcast*'s predominance holding *sub silentio*. Rather, it was merely *dicta* because the plaintiffs there *were* in fact able to establish the "damages" for "each individual" in the class "through generalized, class-wide proof." 577 U.S. at 463 (Roberts, C.J., concurring); *see id.* at 459 (majority) (explaining the evidence "here could have been sufficient to sustain a jury finding as to hours worked if it were introduced in each employee's individual action"). And even if that language were part of *Tyson Foods*' holding, it would in no way establish that Rule 23(b)(3) singles out questions of *individualized* damages for less demanding scrutiny.

In all events, this Court should not extend any damages-specific predominance rule to questions of class member standing. Unlike other questions implicated in a Rule 23(b)(3) action, a member's status under Article III goes to the "threshold" question of the court's "*power* to adjudicate" his claims in the first place. *Steel Co.*, 523 U.S. at 88-89; *see supra* Pt. I. Thus, as even the Ninth Circuit noted, courts "'have an independent duty'" to "address standing" in certifying a class, whether or not the parties ever raise the issue. JA.394-95. That makes it particularly misguided to presume that questions going to "which members of the … class had suffered an injury" are ancillary matters to be dealt with at "the damages stage." *Olean*, 31 F.4th at 681; *see supra* Pt. I.B.3.

Indeed, questions of member standing are different in kind from other questions of law or fact because they go to the *size* of the class and, in turn, the *specter* of liability. Excusing a class with uninjured members—even if there are other common questions—thus presents a distinct defect. It "tilts the playing field in favor of plaintiffs" by giving them leverage to "extract a settlement" upon certification. *Olean*, 31 F.4th at 692 (Lee, J., dissenting). And *that* directly imperils the protections and principles underlying Rule 23(b)(3). *See supra* at 32-36.

2. In defense of the Ninth Circuit's hyper-permissive approach, plaintiffs try to sweep the predominance problem under the rug by claiming that any other framework would produce "practical conundrums" in tension with "Rule 23's structure and purpose." BIO 32. But again, no one maintains that a party seeking certification must "identi[fy]" all

class members, let alone supply "proof that all class members were injured." *Id.*; *see supra* at 24-25. The proponent of certification does, however, have to "show Rule 23(b)(3) predominance," and the difficulty of ferreting out the uninjured without inundating common questions will make that an impossible task. *Comcast*, 569 U.S. at 34.

By the same token, nobody claims that the predominance requirement compels "decertification based on a showing, at *any* stage, that *any* members of a certified class were uninjured." BIO 32. The mere discovery of an uninjured "class member here or there" may be able to be dealt with on an individualized basis without throwing out the whole class. *Halliburton*, 573 U.S. at 276; *see supra* at 42-43. But if it comes to light that "any class member" chosen at random "may be uninjured"—or that there are "thousands who in fact suffered no injury"—then decertification will follow. *Asacol*, 907 F.3d at 53. That may make it harder to pad a class with unharmed individuals in the hopes of cudgeling the defendant into a settlement, but that in no way will "thwart[]" the operation of Rule 23. BIO 32.

Instead, if anyone's theory would "create practical conundrums at odds with Rule 23's structure and purpose," it is plaintiffs'. *Id.* Under their "'no harm, no foul'" approach to certification, there is "no logical reason" why Rule 23(b)(3) would preclude certification of class when "forty-nine percent or even ninety-nine percent" of its members were unharmed. *Asacol*, 907 F.3d at 56. After all, by plaintiffs' lights, a district court could simply "exclude them from sharing in a classwide damages award." BIO 33. That cannot be right.

In any event, plaintiffs' claim that a looser standard would lead to "efficiency" gets things backwards. BIO 32. The predominance requirement is not supposed to be easy. The Rule 23(b)(3) class action was an "'adventuresome innovation'" that markedly expanded the "set of circumstances" where a class was available. *Wal-Mart*, 564 U.S. at 362. Given the transformative effect of a Rule 23(b)(3) certification, the "'rigorous analysis'" required for all classes is "even more demanding" for predominance. *Comcast*, 569 U.S. at 33-34. Courts must take a "'close look'" to ensure certification would not undermine "'procedural fairness'" or hazard "'other undesirable results.'" *Amchem*, 521 U.S. at 615. So the fact that some plaintiffs may find Rule 23(b)(3) difficult to meet is only proof that it is working. It is not an occasion for "judicial inventiveness … to amend the rule" in particular cases. *Id.* at 620.

* * *

Whether measured against Article III or Rule 23, the judgment below cannot stand. The Ninth Circuit upheld the certification of a class that contains uninjured members, and a significant number of them at that. The result is a class suffering from twin flaws. Article III does not allow an uninjured plaintiff to pursue damages through a class action when he could never get into federal court on his own. And Rule 23(b)(3) does not allow a court to certify a class where individual questions predominate, which will inevitably be the case when appreciable numbers of individualized inquiries into standing are required. Either way, the class here cannot proceed in court, and the Ninth Circuit's decision to bless it cannot stay on the books.

CONCLUSION

This Court should reverse the judgment below.

March 5, 2025

Respectfully submitted,

Noel J. Francisco
Counsel of Record
Brinton Lucas
Madeline W. Clark
David Wreesman
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-3939
njfrancisco@jonesday.com

Counsel for Petitioner