No. 24-7

In the Supreme Court of the United States

DIAMOND ALTERNATIVE ENERGY, LLC, ET AL.,
PETITIONERS,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR OUR CHILDREN'S TRUST AND PUBLIC JUSTICE AS AMICI CURIAE IN SUPPORT OF NEITHER PARTY

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QUESTION PRESENTED

Whether the redressability component of Article III standing is met by requesting prospective relief, where a party establishes their ongoing or impending injury is traceable to the unlawfulness of an active government policy.

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INTEREST OF AMICI CURIAE[1]

Our Children's Trust is a legal nonprofit working to protect children's rights to life, liberty, and security from the dangers of fossil fuel pollution. Our Children's Trust usually disagrees with petitioners, fossil fuel companies, including on the merits of their present suit. Nevertheless, Our Children's Trust regularly litigates and has expertise on the issue of Article III standing and federal court jurisdiction.

Public Justice is a nonprofit legal advocacy organization that specializes in precedent-setting socially significant civil litigation, with a focus on fighting corporate and governmental misconduct. Public Justice has a long history of challenging weak government regulation and ensuring that aggrieved parties have access to courts.

Amici's interest in this case is to assist the Court in clarifying the Article III redressability test for prospective relief that is consistent with constitutional text, history, tradition, and precedent.

SUMMARY OF ARGUMENT

Article III's Case or Controversy Clause does not impose a redressability requirement to invoke the exercise of judicial power, much less the strict test imposed by the D.C. Circuit below. The constitutional text, the Framers' intent, history and tradition, and this Court's precedents all support a ruling that the

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[1] Pursuant to this Court's Rule 37.6, *amici* state that no counsel for either party authored this brief in whole or in part, and that no person other than *amici* made a monetary contribution to fund the preparation or submission of this brief.

federal judiciary has expansive power to hear cases or controversies on federal questions, which is not extinguished by the remedy sought. The heart of judicial power is to adjudicate controversies. The heart of the standing inquiry is whether there is a real-world, active dispute between parties with adverse legal interests on which the court could pass judgment.

A request for prospective relief, including declaratory relief, vacatur, and injunctive relief (which range from least coercive to most coercive), meets the redressability element of Article III standing. Under this Court's precedents, if the plaintiff meets their burden of demonstrating a concrete injury that is fairly traceable to the defendant's challenged conduct, and the nature and cause of the injury point to prospective (rather than purely retrospective) relief, then an Article III case or controversy exists. In such cases, a prospective remedy at least as coercive as a declaratory judgment would provide sufficient redress. The Court's precedents show that the redressability element of the Case or Controversy Clause does not impose on plaintiffs an evidentiary burden to prove the likely effect of the prospective remedy.

A simple redressability rule for prospective relief is needed. This Court could resolve the present case by extending its redressability analysis for *retrospective* relief in *Uzuegbunam v. Preczewski* to *prospective* relief, making clear that a plaintiff who sues over an ongoing or impending injury and establishes the first two elements of standing (injury and traceability), can establish the third by requesting a form of prospective relief at least as coercive as a

declaratory judgment. 592 U.S. 279, 285, 292–93 (2021). The Court has already made clear that non-monetary, non-coercive remedies provide sufficient redress for Article III purposes, and do not turn judgments on otherwise concrete controversies between adverse parties into advisory opinions. *Nashville, C. & St. L. Ry. v. Wallace*, 288 U.S. 249, 264 (1933). That would realign the courts below to the text and meaning of the Article III Case or Controversy Clause from which they derive their power, and to the clear Acts of Congress, which provide for remedies such as declaratory relief and vacatur, without more.

ARGUMENT

A REQUEST FOR PROSPECTIVE RELIEF BASED ON AN ONGOING OR PROSPECTIVE AND TRACEABLE INJURY-IN-FACT SATISFIES THE REDRESSABILITY ELEMENT OF ARTICLE III

The Article III standing element of redressability is not a high bar. It requires plaintiffs to request an available form of relief that is not moot. A plaintiff's evidentiary burden for standing lies in the injury and causation elements. A simple rule is needed for Article III redressability in declaratory and equitable prospective relief cases, just as this Court established for retrospective relief in nominal damages cases.

A. The Text of Article III's Case or Controversy Clause Does Not Include Redress

Article III, Section 2 provides in relevant part that "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, [and] the

Laws of the United States" and "to Controversies to which the United States shall be a Party[.]" U.S. Const. art. III, § 2, cl. 1. Although this clause limits federal judicial power to certain types of disputes (cases or controversies), certain parties (e.g., the United States), and certain causes of action (e.g., federal), the Constitution contains no jurisdictional limit based on the nature, scope, or adequacy of redress. On the contrary, the section's sole reference to remedies—that "[t]he judicial Power *shall* extend to *all Cases*, in Law and Equity"—is expansive and mandatory. *Id.* (emphasis added). The notion that Article III imposes a stringent redressability requirement is thus not supported by, and runs counter to, the text.

An Expansive Grant of Jurisdiction

When interpreting the Constitution, this Court looks to the "original meaning" as it was "understood at the time of the Nation's founding." *Erlinger v. United States*, 602 U.S. 821, 843 (2024).

The delegates to the Constitutional Convention were "almost obsessive[ly] concern[ed]" with the need to limit the legislature's power and ensure a sufficiently strong judiciary. Raoul Berger, *Standing to Sue in Public Actions: Is It a Constitutional Requirement*?, 78 YALE L.J. 816, 832 (1969). For example, Gouverneur Morris of Pennsylvania expressed his "extreme[] apprehensi[on] that the auxiliary firmness & weight of the Judiciary" would not be strong enough to check legislative power, with a weaker executive branch. 2 *The Records of the Federal Convention of 1787*, at 76 (Max Farrand ed., 1911) (Farrand's Records). Oliver Ellsworth of Connecticut noted his hope that

> [t]he aid of the Judges will give more wisdom & firmness to the Executive. They will possess a systematic and accurate knowledge of the Laws, which the Executive can not be expected always to possess. The laws of the Nation also will frequently come into question. Of this the Judges alone will have competent information.

Id. at 73–74. Many delegates—including James Madison and George Mason—agreed. *Id.* at 74.

As the delegates refined the text of the Case or Controversy Clause on August 27, 1787, they busied themselves not with constraining the federal courts' jurisdiction or the standing of litigants but, rather, with expanding judicial power. Each successive proposal to add text further expanding the federal courts' jurisdiction was adopted. *Id.* at 422–25, 428–32. Delegates sometimes checked to ensure that everyone present understood a vague term to carry its broadest meaning. For example, they agreed that the phrase "Cases before mentioned"—i.e., cases mentioned in the Case or Controversy Clause—"meant facts as well as law & Common as well as Civil Law." *Id.* at 431.

After the Convention concluded, both the Constitution's opponents and proponents emphasized the expansive (rather than limited) nature of the federal courts' jurisdiction. George Mason circulated a pamphlet advocating against adoption of the Constitution partly because, in his view, the federal courts' jurisdiction had been so far "extended, as to absorb and destroy the judiciaries of the several States." *Id.* at 638. When George Washington, as

president of the Convention, wrote to Congress recommending adoption of the Constitution, he emphasized the "necessity" that the "judicial authorities should be fully and effectually vested" in the federal government, even though this entailed "delegating [] extensive trust." *Id.* at 666. The historical record illustrates the Framers' intent to create a federal judiciary with expansive power to hear cases or controversies touching on federal questions, not to limit judicial power or citizens' access to the federal courts based on the remedy sought.

Cases of a Judiciary Nature

The only limitation the delegates discussed as they finalized the Case or Controversy Clause was their unanimous agreement that the federal courts' jurisdiction is limited "to cases of a Judiciary Nature." *Id.* at 430. The delegates did not define what they understood "cases of a Judiciary Nature" to mean, but they had recently debated and rejected a proposal to give the judiciary the power to review statutes before they became law. *Id.* at 298. Given that context, "cases of a Judiciary Nature" likely excluded purely legal questions arising from hypothetical facts or unripe decisions.

The 1773 edition of Samuel Johnson's dictionary defined a "case" as "[t]he state of facts juridically considered" and a "[q]uestion relating to particular persons or things." *Case*, Samuel Johnson's Dictionary (4th folio ed. 1773). The delegates thus likely understood "cases of a Judiciary Nature" to mean suits to be decided by a judge that involved concrete facts, rather than purely hypothetical scenarios.

Moreover, the Convention's delegates looked to English courts as their frame of reference. *See, e.g.*,

Farrand's Records at 75. At the time, English courts were "well aware of the need for proper parties." Ann Woolhandler & Caleb Nelson, *Does History Defeat Standing Doctrine?*, 102 MICH. L. REV. 689, 691 (2004). English courts typically required plaintiffs to have an interest at stake in the litigation, albeit more so in private litigation than public litigation. *See generally* Louis L. Jaffe, *Standing to Secure Judicial Review: Public Actions*, 74 HARV. L. REV. 1265 (1961); Louis L. Jaffe, *Standing to Secure Judicial Review: Private Actions*, 75 HARV. L. REV. 255 (1961); Berger, 78 YALE L.J. 816; William A. Fletcher, *The Structure of Standing*, 98 YALE L.J. 221 (1988). English courts also often inquired whether the plaintiff had sued the right defendant, which involved traceability to the defendant's conduct or authority. *Id.* (all sources). Absent from English practice is anything resembling a jurisdictional redressability requirement. *Id*.

The early Supreme Court interpreted the Case or Controversy Clause consistently with this understanding of "cases of a Judiciary Nature." Chief Justice Marshall held that Article III, Section 2 empowers the federal courts to exercise jurisdiction whenever a federal question "is submitted to [the judicial power] by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the constitution declares, that the judicial power shall extend to all cases arising under" federal law. *Osborn v. Bank of U.S.*, 22 U.S. 738, 819 (1824). One hundred years after *Osborn*, this Court reaffirmed that Article III's case or controversy requirement is met whenever there are "present or possible adverse parties whose contentions are submitted to the court for adjudication." *Old Colony Tr. Co. v. Comm'r of Internal Revenue*, 279 U.S. 716, 724 (1929); *see also*

Nashville, 288 U.S. at 264 ("[T]he Constitution does not require that the case or controversy should . . . invok[e] only traditional remedies"; only that "the case retains the essentials of an adversary proceeding, involving a real, not a hypothetical, controversy, which is finally determined by the judgment below."); *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 325 (1936) (defining Article III's case or controversy requirement as excluding only disputes based on "a hypothetical state of facts"). More recently, this Court defined an Article III case or controversy as any legal dispute in which a concrete, non-hypothetical set of facts "touch[es] the legal relations of parties having adverse legal interests" and a judicial decree would resolve the dispute. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007); *see also Quinn v. Millsap*, 491 U.S. 95, 102–03 (1989) (holding the minimum requirements for Article III standing were met because the case had "the essentials of an adversary proceeding, involving a real, not a hypothetical, controversy," irrespective of the effectiveness of the remedy sought).

In sum, the text and original meaning of the Case or Controversy Clause contain no redressability limitation on federal jurisdiction. At the time the Case or Controversy Clause was written, its drafters understood it to require only a real-world, active dispute between parties with adverse legal interests on which the court could pass judgment. Once that was established, the federal judicial power was properly invoked.

B. A Request for Non-Coercive Prospective Relief Satisfies the Redressability Element for an Ongoing Injury

At issue here is whether a claim for prospective relief, specifically vacatur, based on an allegedly ongoing or impending injury traceable to a government policy, is sufficient to satisfy the Case or Controversy Clause's requirements. Under the redressability rule articulated by the court below and the Fifth Circuit in *Gutierrez*, plaintiffs must prove that a final judgment in their favor will likely produce a certain real-world chain of events with palpable consequences. *See Ohio v. EPA*, 98 F.4th 288, 300–06 (D.C. Cir. 2024); *Gutierrez v. Saenz*, 93 F.4th 267, 274–75 (5th Cir. 2024), *cert. granted*, No. 23-7809. Such a rule finds no support in Article III's text, as shown above.

It is also not supported by this Court's precedents regarding non-coercive prospective relief. This Court has stated that its doctrines should be "workable," that is, capable of being "understood and applied in a consistent and predictable manner" across a variety of circumstances. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 280–81 (2022). The D.C. Circuit's rule below is unworkable and will result in inconsistent application because it directly conflicts with this Court's redressability precedents concerning non-coercive relief.

Prospective remedies range in their measure of coerciveness. The least coercive form of prospective relief is arguably declaratory relief because, in addition to not ordering anyone to do anything, a declaratory judgment cannot be enforced with contempt. *Steffel v. Thompson*, 415 U.S. 452, 471

(1974). By contrast, injunctions are unquestionably coercive. Administrative vacatur lies somewhere in between; jurists debate whether it is more like a declaratory judgment or an injunction. *See* Tr. of Oral Arg. at 5–6, 47–48, 76–79, *United States v. Texas*, 599 U.S. 670 (2023) (disagreement between the Solicitors General of the United States and Texas on this point); John Harrison, *Vacatur of Rules Under the Administrative Procedure Act*, 40 YALE J. ON REG. Bull. 119 (2023). Yet vacatur is unquestionably *at least* as coercive as declaratory relief. Therefore, if a declaratory judgment satisfies Article III's redressability requirement, so does vacatur. This Court's precedents regarding declaratory relief thus serve as a litmus test for determining the Case or Controversy Clause's minimum requirements.

A Request for Declaratory Relief, Without More, Satisfies this Court's Redressability Element

This Court has consistently held that plaintiffs seeking only declaratory relief have Article III standing if they establish injury and causation. *See, e.g.*, *Nashville*, 288 U.S. at 264; *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227 (1937); *Steffel*, 415 U.S. at 459; *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 74 (1978); *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992); *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 25–26 (1998); *MedImmune*, 549 U.S. at 127–34; *Reed v. Goertz*, 598 U.S. 230, 234 (2023). These precedents demonstrate that the burden of proof in Article III standing does not lie in the redressability element. *See also ASARCO Inc. v. Kadish*, 490 U.S. 605, 623–24 (1989) (implying that concrete injury is the only truly indispensable element of Article III's standing requirements).

The Court's precedents also treat redressability and traceability as two sides of the same inquiry. *See FDA v. All. for Hipp. Med.*, 602 U.S. 367, 380 (2024) ("flip sides of the same coin"); *California v. Texas*, 593 U.S. 659, 671 (2021) (redressability is traceability from a different "point of view"); *Bennett v. Spear*, 520 U.S. 154, 168 (1997) (analyzing traceability and redressability as a single inquiry); *Duke Power*, 438 U.S. at 74 (redressability is traceability "put otherwise").

In short, under this Court's precedents, if the plaintiff meets their burden of demonstrating a concrete injury fairly traceable to the defendant's challenged conduct, and the nature and cause of the injury point to prospective (rather than purely retrospective) relief, then an Article III case or controversy exists, and a prospective remedy at least as coercive as a declaratory judgment would provide sufficient redress. These precedents show that the redressability element of the Case or Controversy Clause does not impose an evidentiary burden on plaintiffs to prove the likely future effect of the remedy requested.

Judging the Case or Controversy Is the Heart of Article III Judicial Power

A request for non-coercive prospective relief alone is sufficient to establish the redressability element of Article III standing for four reasons.

First, it makes logical sense. Whenever a plaintiff has established a concrete ongoing injury traceable to a defendant's ongoing conduct, it follows that a declaration of law *necessarily* effectuates a change in the legal status of the defendant's conduct or between the parties. In every case, "the practical consequence

of that change would amount to a significant increase in the likelihood" that the plaintiff "would obtain relief that directly redresses the injury suffered." *Reed*, 598 U.S. at 234 (internal quotations omitted) (quoting *Utah v. Evans*, 536 U.S. 452, 464 (2002)). Any reasonable person would, upon receiving a judgment that their conduct is unlawful, be significantly more likely to refrain from, or to alter, the unlawful conduct going forward.[2] Even if there may be other independent obstacles to a particular plaintiff getting real-world redress, there is no basis in Article III to deny a particular plaintiff a federal forum to remove one particular obstacle. *See, e.g.*, *Khodara Env't, Inc. v. Blakey*, 376 F.3d 187, 193–95 (3d Cir. 2004) (analogizing such a denial to the "two hunters" problem in torts).

Second, this Court has already definitively settled that declaratory relief provides sufficient redress for Article III purposes, even if it is the only relief requested. *Nashville*, 288 U.S. at 264. Because *Nashvill*e persuaded Congress to pass the Declaratory Judgment Act, there are significant reliance interests at stake for stare decisis. U.S. Senate Rep. No. 73-1005, at 5–6 (1934); Edwin M. Borchard, *The Federal Declaratory Judgments Act*, 21 VA. L. REV. 35, 37 (1934). If this Court were to endorse a "high-bar" redressability rule that required plaintiffs to predict and prove a judgment's future effects, such a rule would make non-coercive remedies effectively

[2] "It is not in the nature of judicial work to make everyone happy. . . . Nevertheless, for the past several decades, the decisions of the courts, popular or not, have been followed[.]" Chief Justice John Roberts, *2024 Year End Report on the Federal Judiciary* 8 (2024).

unavailable. That, in turn, would undermine and nullify Congress's purposes in enacting the Declaratory Judgment Act to codify the availability of a non-coercive form of relief on its own, and in various administrative statutes to provide the remedy of vacatur. U.S. Senate Rep. No. 73-1005, at 5–6 (1934); 28 U.S.C. § 2201; 42 U.S.C. § 7607; 5 U.S.C. § 706(2).

Third, the Constitution's tripartite government structure supports the notion that a judicial declaration of the law alone is all the redress that Article III requires. The federal judiciary's fundamental duty in the separation of powers lies not in enforcing the law, but in saying what the law is. *See Marbury v. Madison*, 5 U.S. 137, 177 (1803). "The judiciary," unlike the other branches,

> has no influence over either the sword or the purse . . . and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

THE FEDERALIST NO. 78, at 428 (Alexander Hamilton) (Colonial Press, 1901). Moreover, the delegates to the Constitutional Convention habitually referred to the judiciary as the law's "expositor," not its executor. Farrand's Records at 73, 75, 78–79, 298. Whereas a high-bar redressability rule, like the D.C. Circuit's rule here, would improperly suppose that the judiciary's purpose is to affect the sword or the purse, Article III's silence on redressability necessitates a low bar for the third prong of standing, which is already divorced from constitutional text. A simple redressability requirement for plaintiffs to seek

available relief comports with the courts' role as umpire in our tripartite system of government.

Finally, history and tradition support this understanding of Article III's redressability element. Various forms of non-coercive prospective relief have existed in our legal tradition for centuries. *See* Edwin M. Borchard, *Declaratory Judgment: A Needed Procedural Reform*, 28 YALE L.J. 1, 11 (1918) (discussing Roman *actiones praejudiciales*); *id.* at 25 (history of declaratory judgments in England); U.S. Senate Jud. Comm. Rep. No. 73-1005, at 5–6 (1934) (same); *id.* at 4 (finding that "[t]he declaratory judgment has existed in Scotland for over 400 years"). The Scottish model influenced the Framers' drafting of Article III. *See generally* James E. Pfander & Daniel D. Birk, *Article III and the Scottish Judiciary*, 124 HARV. L. REV. 1613 (2011). To suppose that Article III requires plaintiffs to show how a judgment will alter entities' future conduct and change plaintiffs' real-world circumstances, would be to ignore centuries of judicial declarations providing sufficient prospective relief.

C. A Simple Redressability Rule for Prospective Relief is Needed

This Court's precedents "do not draw the brightest of lines between" actions for non-coercive prospective relief "that satisfy the case-or-controversy requirement and those that do not." *MedImmune*, 549 U.S. at 127. Many of this Court's Article III standing decisions relating to such relief either did not engage in a redressability analysis—such as *MedImmune*, 549 U.S. at 127—or did not obtain a majority for the redressability portion of their analyses. *See*, *e.g.*, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 568 (1992)

(Section III.B signed by four justices); *ASARCO*, 490 U.S. at 612 (Section II.B.1 signed by four justices). For example, although six Justices endorsed *Lujan*'s general theory of the three-part test for Article III standing and the general expectation that evidence should be commensurate with the stage of litigation, *Lujan*, 504 U.S. at 560–61 (Section II), only four could agree on how the stated rule for redressability could apply to the prospective relief at issue in *Lujan*. *See id.* at 568–71 (Section III.B). Consequently, the courts below need a corrective rule that realigns the redressability analysis in prospective relief cases with constitutional text and historical meaning, the Framers' intent, and this Court's longstanding precedent. Under that rule, Article III requires plaintiffs to meet their factual burden of satisfying the injury and causation elements of standing to demonstrate a live case or controversy, and request relief within the judiciary's power to award—like declaratory relief, vacatur, or injunctive relief.

The lower courts' confusion is evident. On one hand, the Third and Eighth Circuits hold, consistent with text and tradition, that if a plaintiff has demonstrated injury and traceability, redressability is ipso facto satisfied. *See Khodara*, 376 F.3d at 193–95 (redressability ipso facto satisfied if there is injury and traceability, despite other barriers to relief); *Alexis Bailly Vineyard, Inc. v. Harrington*, 931 F.3d 774, 780 (8th Cir. 2019) (redressability ipso facto satisfied because plaintiff showed injury and causation). Similarly, the First and Sixth Circuits hold that redressability is satisfied if the plaintiff identifies logically—without requiring evidentiary proof—how the declaratory judgment's change in legal status removes *at least one* legal or practical barrier to

ameliorating their concrete injury, even if other barriers remain. *Antilles Cement Corp. v. Fortuno*, 670 F.3d 310, 318 (1st Cir. 2012) (plaintiff need only show that judgment "could potentially lessen its injury", even if other barriers to relief existed); *Parsons v. U.S. Dep't of Just.*, 801 F.3d 701, 716–17 (6th Cir. 2015) (reasonable to assume a likelihood of redress if plaintiff has established injury and traceability, although other independent causes of injury existed).

None of these circuits requires plaintiffs to make an evidentiary showing of redressability. The Third Circuit rejected as "absurd" the notion that Article III requires plaintiffs to establish that a declaration in their favor could, on its own, remove all independent barriers to actual redress. *Khodara*, 376 F.3d at 195. In *Khodara*, because the plaintiff company demonstrated a concrete, particularized injury-in-fact fairly traceable to the challenged federal statute, declaratory relief alone satisfied Article III redressability, even though the company faced "independent obstacles" to amelioration "that [we]re potentially removable but that [could] not be challenged in" the present litigation. *Id.* at 193–95.

Conversely, the Fifth Circuit and the D.C. Circuit in the instant case have taken the opposite view. They follow a stringent redressability rule whereby a plaintiff must prove that their requested relief alone is likely to remove *all* obstacles to future real-world amelioration of their ongoing, particularized, concrete injury. *See Ohio v. EPA*, 98 F.4th at 300–06; *Gutierrez*, 93 F.4th at 274–75. For example, the Fifth Circuit held that Article III redressability requires a "fact-specific evaluation" of "how the decision is *likely* to affect a relevant actor," including how a declaratory

judgment would remove all other obstacles to ameliorating the injury. *Gutierrez*, 93 F.4th at 274–75. That new test confounds the Framers' intent and the text of Article III, Section 2, by diminishing the power allocated to the judiciary to decide cases or controversies.

The lower courts' confusion demonstrates that there is significant need for the Court to provide a clear, bright-line rule for the redressability prong of Article III standing for non-coercive prospective relief, just as this Court clarified the rule for retrospective relief in *Uzuegbunam*.

D. Extending *Uzuegbunam*'s Reasoning to Prospective Relief Conforms with Article III

This Court recently issued a bright-line Article III redressability standard for *retrospective* relief in *Uzuegbunam v. Preczewski*, 592 U.S. 279, 285, 292–93 (2021). There, plaintiff Chike Uzuegbunam sought nominal damages to redress a purely past constitutional injury where the State's illegal conduct had ceased and was unlikely to recur. *Id.* at 292. Contrary to petitioners' assertion here, Mr. Uzuegbunam did not allege an economic injury. Pet. for Cert. at 15, No. 24-7; Br. for Pet'rs at 24, No. 24-7. He alleged only a deprivation of his freedom to speak. His injury was purely in the past, with no danger of recurring, and difficult to quantify economically.

This Court held that when a plaintiff has demonstrated a concrete *past* injury traceable to the defendant's *past* conduct, "a request for nominal damages satisfies the redressability element of standing," and the plaintiff need not factually

demonstrate a pathway through which the relief will ameliorate their injury. *Uzuegbunam*, 592 U.S. at 292.

Uzuegbunam did not expressly hold that a request for declaratory relief likewise satisfies the redressability element of standing if the plaintiff has factually established ongoing injury and traceability. But it came close: this Court held that because "[t]he award of nominal damages was one way for plaintiffs at common law to 'obtain a form of declaratory relief in a legal system with no general declaratory judgment act,'" there was no question "that nominal damages historically could provide prospective relief" for Article III redressability purposes. *Id.* at 285 (quoting D. Laycock & R. Hasen, MODERN AMERICAN REMEDIES 636 (5th ed. 2019)). Laycock explains that "the policy of the declaratory judgment acts is generally to reduce the risk of legal uncertainty." Laycock & Hasen at 636. "Declaratory remedies authoritatively resolve disputes about the parties' rights," even though "they do not end in a personal command to defendant." *Id.* at 3.

This Court could resolve the present case by extending its redressability analysis in *Uzuegbunam* to prospective relief, making clear that a plaintiff who sues over an ongoing or impending injury and establishes the first two elements of standing (injury and traceability) can establish the third by requesting a form of prospective relief at least as coercive as a declaratory judgment. *See Uzuegbunam*, 592 U.S. at 285, 292–93.

Extending *Uzuegbunam* in this manner aligns this Court's standing test with Article III, history and tradition, and past precedent. It also makes logical sense. Currently, the redressability doctrine is

fractured into a double standard. On the one hand, the redressability rule for *retrospective* relief follows the *Uzuegbunam* rule, whereby a request for nominal relief alone is sufficient to redress a purely past injury. The Court did not require Chike Uzuegbunam to identify the exact causal chain through which $1 was likely to provide real-world redress for his past experience of being silenced from speaking. Nor did this Court require him to furnish evidence of the likelihood that such redress would occur. Instead, this Court simply stated: "True, a single dollar often cannot provide full redress," but effectuating some remedy is enough. *Id.* at 801.

On the other hand, the redressability doctrine for prospective relief follows a patchwork of decisions and inconsistencies, especially among the lower courts. According to the court below, the rule for prospective relief is that a plaintiff seeking prospective relief to address an allegedly ongoing or future injury must furnish "actual evidence" of "how the regulated parties would respond" to the judgment and establish a "substantial probability" that such a response will in fact occur. *Ohio v. EPA*, 98 F.4th at 301–05. Such a significantly divergent double standard for the minimum required showing of Article III redress is difficult to justify—especially considering that any form of prospective relief, through a change in federal policy, has arguably more real-world impact than one nominal dollar in Mr. Uzuegbunam's pocket, because the judgment will affect the parties' behavior going forward and resolve an ongoing controversy.

In an almost unanimous opinion, *Uzuegbunam* provided courts and litigants below with a clear Article III redressability rule for retrospective relief.

This Court should articulate a companion rule for prospective relief consistent with *Uzuegbunam*, and Article III, for the lower courts' and litigants' sake.

E. A Simple Redressability Rule Maintains Article III's Limits

An *Uzuegbunam*-aligned redressability rule for prospective relief does not guarantee entry to court because it concerns only one element of standing. *Uzuegbunam*, 592 U.S. at 292. "It remains for the plaintiff to establish the other elements of standing (such as a particularized injury); plead a cognizable cause of action; and meet all other relevant requirements." *Id.* at 293 (citing *Planck v. Anderson* (1792) 101 Eng. Rep. 21, 23 (K.B.) (lack of concrete injury is fatal)). Moreover, the redressability inquiry is duplicated by Article III's other requirements. *See, e.g.*, *All. for Hipp. Med.*, 602 U.S. at 380 (traceability); *Uzuegbunam*, 592 U.S. 279 (no mootness). For example, plaintiff's burden to show injury and traceability and defendant's burden to show mootness do the work of reserving prospective relief for ongoing or impending (rather than purely past) injuries. *Collins v. Yellen*, 594 U.S. 220, 244 (2021) (injury and traceability); *Uzuegbunam*, 592 U.S. at 284 (mootness). The guardrails of injury and traceability weed out challenges by potential plaintiffs who merely disagree with the defendants' conduct. *See, e.g.*, *United States v. Texas*, 599 U.S. 670, 676–77 (2023) (injury); *California v. Texas*, 593 U.S. at 669–70 (traceability). And these guardrails are effective: the First, Third, Sixth, and Eighth Circuits follow a simple, *Uzuegbunam*-aligned redressability rule that has not opened the floodgates to cases that defy Article III's principles.

This rule also retains defendants' ability to moot a claim for prospective relief, without defeating plaintiff's standing: by permanently ceasing the allegedly unlawful conduct and showing it is unlikely to recur. "It is the doctrine of *mootness*, not standing, that addresses whether 'an intervening circumstance [has] deprive[d] the plaintiff of a personal stake in the outcome of the lawsuit.'" *W. Virginia v. EPA*, 597 U.S. 697, 719 (2022) ("The distinction matters because the Government, not petitioners, bears the [heavy] burden to establish that a once-live case has become moot."). By preserving defendants' power to moot the case, this rule protects defendants from petty "I-was-right-and-defendant-was-wrong" suits just as effectively as the rule for nominal damages articulated in *Uzuegbunam*.

This understanding of redressability is also fair to plaintiffs and protects the judicial power established in Article III. A simple redressability rule avoids the absurdity of giving defendants the power to defeat plaintiffs' Article III standing, and thus the courts' power to judge, by attesting that they would refuse to abide by a declaration in the plaintiff's favor. *See, e.g.*, Br. of Resp'ts at 18, *Gutierrez v. Saenz*, No. 23-7809 (U.S. Jan. 17, 2025) (example of a defendant's argument that his own refusal to comply with the district court's judgment defeated plaintiff's Article III standing).

The Chief Justice's concern about redressability in *Uzuegbunam* evaporates in the context of prospective relief to redress an ongoing or future injury. *See* 592 U.S. at 294 (Roberts, C.J., dissenting) (For a past constitutional injury, "an award of nominal damages does not alleviate the harms suffered by a plaintiff,

and is not intended to."). Prospective remedies, unlike remedies for purely past harm, retain the possibility of attenuating ongoing or future harm because defendants and third parties can always abide by court judgments and behave differently toward the plaintiff going forward. *See* Borchard, 28 YALE L.J. at 6; Richard H. Fallon, Jr., *Constitutional Remedies: In One Era and Out the Other*, 136 HARV. L. REV. 1300, 1322 (2023).

This Court held that any amount of money changing hands, however small, "'affect[s] the behavior of the defendant towards the plaintiff' and thus independently provide[s] redress." *Uzuegbunam*, 592 U.S. at 291 (original brackets omitted). By the same reasoning, prospective remedies provide redress too, because they resolve an active controversy between the parties over federal law and affect the defendant's behavior toward the plaintiff going forward. "[T]hat power of judgment can nonetheless bind the Executive and Legislature." *Id.* at 295 (Roberts, C.J., dissenting). Even if the government's behavior, or that of affected third-party actors, is not fully altered, this Court has already made clear that non-monetary, non-coercive remedies provide sufficient redress for Article III purposes, and do not turn judgments on otherwise concrete controversies between adverse parties into advisory opinions. *Nashville*, 288 U.S. at 264.

CONCLUSION

This Court should clarify the proper standard for the redressability element of Article III's case or controversy requirement to be consistent with constitutional text, history and tradition, and its precedents from *Marbury* to *Uzuegbunam*.

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