No. 16-605

IN THE

Supreme Court of the United States

TOWN OF CHESTER,

Petitioner,

v.

LAROE ESTATES, INC.,

Respondent.

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

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AND INSTITUTE FOR JUSTICE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC accordingly has a strong interest in this case and in the Constitution's guarantee of access to the courts.

Amicus Institute for Justice is a nonprofit, public-interest legal center dedicated to defending the essential foundations of a free society: property rights, economic liberty, educational choice, and freedom of speech. It frequently represents parents as defendant-intervenors in educational choice litigation, where someone sues to strike down an educational choice program and the parents intervene because they intend to use the program for their children. *See, e.g.*, *Zelman v. Simmons-Harris*, 436 U.S. 639 (2002). It also represents entrepreneurs as defendant-intervenors in cases challenging regulatory reforms, where the intervenors are able to start businesses only because of the regulatory reforms under challenge. *See, e.g.*, *Ill. Transp. Trade Ass'n v. City of Chicago*, 839 F.3d 594 (7th Cir.

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[1] The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or its counsel made a monetary contribution to its preparation or submission.

2016); *Joe Sanfelippo Cabs, Inc. v. City of Milwaukee*, 839 F.3d 613 (7th Cir. 2016). *Amicus* Institute for Justice has an interest in this case because intervention in the aforementioned cases is frequently the best way for the individuals it represents to protect their interests. If the plaintiffs in those cases were to succeed, it is possible that the parties *amicus* Institute for Justice represents might then have a cause of action, but they would be faced with a case on the same topic, recently decided the other way (and in which they were unable to present evidence). Even if they won any serial lawsuit they might bring, they would still lose years of a better education for their children or better business prospects. For them, intervention is a far better choice, allowing them to present their case when a court is already deciding the issues, thus saving time for the court and all parties.

SUMMARY OF ARGUMENT

Over a decade ago, Steven Sherman, now deceased, attempted to obtain approval from the Town of Chester to develop a nearly 400-acre piece of land he had purchased for $2.7 million. His efforts proved futile, however, as the Town kept changing its zoning regulations, repeatedly forcing Sherman to change his proposal. Ultimately frustrated by the mounting costs of his efforts, Sherman sold his property to Laroe Estates. He also sued the Town of Chester, alleging that it unlawfully prevented him from developing his land and thereby took his property without paying just compensation in violation of the Fifth and Fourteenth Amendments. Because of its legal interest in the property in question, Laroe moved to intervene in Sherman's takings case, asserting the same claim and seeking the same relief as Sherman. The Town, however, asserts that Laroe is not entitled to intervene in this case, despite its ownership of the property at stake,

unless it can demonstrate that it possesses Article III standing. This effort to constitutionalize intervention is wrong and misguided. It would cut standing law loose from its moorings in Article III's case or controversy requirement and wreak havoc with well-established rules governing intervention.

Rule 24 of the Federal Rules of Civil Procedure provides that, "[o]n timely motion, the court must permit anyone to intervene" who either has "an unconditional [statutory] right to intervene"; or "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a). Rule 24 further provides that "[o]n timely motion, the court may permit anyone to intervene" who has "a conditional [statutory] right to intervene" or "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). Under these rules, entities and organizations across the ideological spectrum have intervened—both on the side of plaintiffs and defendants—in many cases. *See, e.g.*, *Diamond v. Charles,* 476 U.S. 54 (1986) *(*pediatrician intervened to defend constitutionality of state regulation of abortion*); Shaw v. Hunt*, 517 U.S. 899 (1996) (registered voters intervened, some to strike down districting plan, some to defend it); *Grutter v. Bollinger*, 539 U.S. 306 (2003) (students intervened to defend constitutionality of race-conscious admissions process); *Massachusetts v. EPA*, 549 U.S. 497 (2007) (state and local governments intervened on both sides of the case); *Shelby Cty. v. Holder*, 133 S. Ct. 2612 (2013) (civil rights groups intervened to defend constitutionality of Voting Rights Act); *United States v. Windsor*, 133 S.

Ct. 2675 (2013) (Bipartisan Legal Advisory Group of the House of Representatives intervened to defend constitutionality of Defense of Marriage Act).

Petitioner, however, insists that Rule 24 is unconstitutional to the extent it permits intervention by those who lack Article III standing, claiming that because "[a]n intervenor exercises the same rights as an original party," a "court may not authorize a person to exercise those rights unless she has Article III standing." Pet'r Br. at 5. The Town claims that its insistence that every intervenor must possess Article III standing "will not work a sea change in litigation practices," but will merely ensure that "as our Founders intended, the scarce resources of the judiciary . . . are spent only 'in the last resort, and as a necessity in the determination of real, earnest and vital controversy.'" Pet'r Br. at 50 (quoting *Chi. & Grand Trunk Ry. Co. v. Wellman,* 143 U.S. 339, 345 (1892)). This is wrong on both counts. Constitutionalizing intervention does nothing to advance the goals of Article III—which are satisfied when a single plaintiff demonstrates that there is a "'real, earnest and vital controversy,'" *id.*—and it will radically remake intervention law, displacing the rules for intervention set forth in Rule 24 and forcing courts to weigh in on difficult questions of standing whenever a litigant seeks to enter an existing case or controversy.

Article III of the Constitution limits the jurisdiction of the federal courts to certain "Cases" or "Controversies." This Court's decisions have long held that "the core component of standing is an essential and unchanging part of the case-and-controversy requirement of Article III," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992), reflecting that "[i]f a dispute is not a proper case or controversy, the courts have no business

deciding it, or expounding the law in the course of doing so." *Daimler Chrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). Here, Sherman's suit against the Town for taking his property is plainly a case or controversy as required by Article III, and the question is whether Laroe Estates, which has a substantial interest in the property in question, may join this case to raise an identical takings claim. No further showing of Article III standing is required. As the United States recognizes, "[i]f a dispute between opposing parties with concrete interests in the outcome otherwise qualifies as an Article III 'Case[]' or 'Controvers[y]', the presence of an additional litigant, in and of itself, does not negate the requisite adversity." U.S. Br. at 15.

Moreover, the Town's claim that any litigant who seeks to intervene must independently possess Article III standing to join an existing Article III case or controversy runs headlong into a host of problems. First, for decades, this Court has held that when one plaintiff has Article III standing, it need not consider whether other plaintiffs do so as well. *See, e.g.*, *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 & n.9 (1977); *Bowsher v. Synar*, 478 U.S. 714, 721 (1986); *Horne v. Flores*, 557 U.S. 433, 446 (2009). This Court has applied the same reasoning to intervention, refusing to consider whether intervenors that sought to defend the constitutionality of challenged statutes on appeal had Article III standing because defendants clearly did. *McConnell v. FEC*, 540 U.S. 93, 233 (2003), *overruled in part on other grounds*, *Citizens United v. FEC*, 558 U.S. 310 (2010); *Windsor*, 133 S. Ct. at 2687-88 (holding that, because the United States had standing to appeal, "the Court need not decide whether BLAG would have standing to challenge the District Court's ruling and its affirmance in the Court

of Appeals on BLAG's own authority"). The Town's argument that any litigant must have Article III standing to be a party would render this longstanding practice unconstitutional.

Second, the Town's sweeping Article III argument would render permissive intervention unconstitutional in most if not all cases, taking away the discretion that the Federal Rules give district courts to allow interested parties to intervene based on a showing that they have a "claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). The Town would tie the hands of district court judges, insisting that a party could intervene permissively only on the condition that the litigant "not independently invoke the court's authority in any way." Pet'r Br. at 49. This would, of course, impose a far-reaching limitation on permissive intervention.

Third, the Town's argument would require district courts to create a new body of standing law to decide whether a party who seeks to intervene on the defendant's side satisfies Article III standing. Currently, district courts do not ask whether the defendant has standing when a case is filed. While there is a body of law concerning a defendant's standing to appeal, the Town's sweeping view of Article III would force district judges to determine at the outset of a case whether a litigant who wants to join in defending against plaintiff's suit has standing to do so. No good reason exists for requiring courts to decide these often difficult questions about standing—which occasionally arise when the named defendant and a defendant-intervenor disagree, *see, e.g.*, *Diamond*, 476 U.S. at 64-68—in every case in which a litigant seeks to intervene as a defendant.

In sum, there may or may not be reasons to deny Laroe the right to intervene in this case, but Article III of the Constitution surely is not one of them. The court of appeals correctly declined the Town's invitation to constitutionalize the law governing intervention, and its judgment should be affirmed.

ARGUMENT

I. A LITIGANT SEEKING TO INTERVENE IN AN EXISTING CASE OR CONTROVERSY NEED NOT ESTABLISH ARTICLE III STANDING.

Article III of the Constitution broadly extends the "judicial Power" to nine categories of "Cases" and "Controversies," including "all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ." U.S. Const. art. III, § 2, cl. 1. Article III's plain language empowers the "judicial department" to "decide all cases of every description, arising under the constitution or laws of the United States," extending to the federal courts the obligation "of deciding every judicial question which grows out of the constitution and laws." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 382, 384 (1821).

This Court has long held that Article III's limitation on cases and controversies requires a plaintiff to establish standing to sue. "'One element of the case-or-controversy requirement' is that plaintiff 'must establish that they have standing to sue.'" *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1146 (2013) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). To satisfy the case-or-controversy limitation and invoke the jurisdiction of the federal courts, "a plaintiff must show (1) an 'injury in fact,' (2) a sufficient 'causal con-

nection between the injury and the conduct complained of', and (3) a 'likel[ihood]' that the injury 'will be redressed by a favorable decision.'" *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (quoting *Lujan*, 504 U.S. at 560-61). The case-or-controversy limitation ensures that Article III courts "exercise judicial review and interpret the Constitution . . . in the course of carrying out the judicial function of deciding cases." *Daimler Chrysler*, 547 U.S. at 340. "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *Id.* at 341.

The Town argues that Article III standing requirements also apply when a litigant seeks to intervene in an already existing case or controversy, insisting that "a party may not invoke the judicial power . . . unless she has standing." Pet'r Br. at 13. Because intervenors become parties to the case, the Town claims that they must "demonstrate standing, and the constitutional principles that Article III protects depend on the strict enforcement of this constitutional command." *Id.* at 29. The Town's argument cannot be squared with the text of Article III and would cut standing doctrine loose from its moorings in the case-or-controversy requirement.

The doctrine of Article III standing concerns whether "a matter before the federal courts is a proper case or controversy under Article III," *Daimler Chrysler*, 547 U.S. at 341, and therefore "serves to identify those disputes which are appropriately resolved through the judicial process," *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). That is why this Court has called the "core component of standing" an "essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan*, 504 U.S. at 560.

The question of intervention is fundamentally different. It does not concern at all whether a case may be heard by the judiciary, but rather whether third parties that possess a "significantly protectable interest," *Donaldson v. United States*, 400 U.S. 517, 531 (1971), in the subject matter of the litigation may participate in circumstances in which they may not be adequately represented by the existing parties. As this Court's case law demonstrates, the range of interests that support intervention as of right is broad, and includes interests that might not be sufficient to create a case or controversy. *See Diamond*, 476 U.S. at 68 (noting that "certain public concerns" may support intervention as of right); *Trbovich v. United Mine Workers*, 404 U.S. 528, 537-39 (1972) (permitting union member to intervene in Secretary of Labor's suit to set aside union election); *Cascade Nat. Gas Corp. v. El Paso Nat. Gas Co.*, 386 U.S. 129, 135 (1967) (permitting State of California and a gas company disadvantaged by sale of a company to intervene in an antitrust suit to protect "the public interest in a competitive system"); *cf. Arizona v. California*, 460 U.S. 605, 614 (1983) (permitting Indian Tribes to intervene in original suit between states "to participate in an adjudication of their vital water rights"). Permissive intervention, which "plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation," *SEC v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 459 (1940), allows for even broader intervention in the discretion of the district court judge. This helps ensure efficient use of scarce judicial resources, permitting all interested parties to join together in one case. *See* Resp't Br. at 9 (observing that intervention "promotes the expeditious resolution of related claims").

Because a party seeking to intervene in litigation is, by definition, seeking to enter an existing "case or controversy," Article III's requirements have necessarily already been satisfied, and there is no reason to require a putative intervenor to independently show that she has standing. Indeed, there is no textual basis in Article III for such a requirement. Article III requires a case or controversy—and therefore provides a constitutional warrant for standing doctrine—but it does not limit who may intervene in an existing case or controversy.

The Town's own *amici* effectively recognize this point. As the United States argues, "[i]f a dispute between opposing parties with concrete interests in the outcome otherwise qualifies as an Article III 'Case[]' or 'Controvers[y],' the presence of an additional litigant, in and of itself, does not negate the requisite adversity." U.S. Br. at 15 (quoting U.S. Const. art. III, § 2, cl. 1). The United States observes that "an amicus curiae that lacks Article III standing may present legal arguments to a court in the form of written submissions and may seek leave to participate in a hearing or oral argument. No one supposes that the participation of such a litigant negates the existence of an Article III 'Case[]' or 'Controvers[y],' where one would otherwise exist." *Id.* This same reasoning applies to litigants who intervene in a case because they have an interest in the subject matter of the litigation that is not being adequately represented by the parties.

To be sure, in some circumstances, intervenors need Article III standing to take certain actions. For example, an intervenor cannot appeal an adverse judgment on his or her own without satisfying Article III standing requirements. Thus, in *Diamond*, this Court held that a pediatrician who had intervened to defend the constitutionality of state laws regulating abortion

could not appeal from a judgment striking down those statutes. "Had the State sought review, . . . Diamond, as an intervening defendant below, also would be entitled to seek review . . . . But this ability to ride 'piggyback' on the State's undoubted standing exists only if the State is in fact an appellant before the Court; in the absence of the State in that capacity, there is no case for Diamond to join." 476 U.S. at 64; *see Arizonans for Official English v. Arizona*, 520 U.S. 43, 65 (1997) ("An intervenor cannot step into the shoes of the original party unless the intervenor independently 'fulfills the requirements of Article III.'" (quoting *Diamond*, 476 U.S. at 68)); *Wittman v. Personhuballah*, 136 S. Ct. 1732, 1736 (2016) (same). When one of the original parties drops out of the litigation, the intervenor must have standing to ensure there continues to be a case or controversy, as Article III requires. This exception proves the rule: generally an intervenor need not satisfy Article III standing to join an existing case or controversy.

The Town observes that "an intervenor without standing might pour a vast quantity of time and money into suit in the district court, only to be left in the cold when the parties with standing elect not to appeal an unfavorable judgment." Pet'r Br. at 42. According to the Town, it would be "[f]ar better to simply resolve" the question of Article III standing, "up front, when the interest question is already squarely presented to the court." *Id.* But, in our system of government, the power of the courts to interpret the meaning of the Constitution is grounded in the "necessity to do so in the course of carrying out the judicial function of deciding cases." *Daimler Chrysler*, 547 U.S. at 340. "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is

that [courts] ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Spector Motor Serv. v. McLaughlin*, 323 U.S. 101, 105 (1944); *see Clinton v. Jones*, 520 U.S. 681, 690 (1997) (explaining that "the importance of avoiding the premature adjudication of constitutional questions . . . is applicable to the entire Federal Judiciary"). The Town's argument would require districts courts to adjudicate prematurely difficult questions of Article III standing without any warrant in the case-or-controversy requirement to do so. A solution that requires courts to multiply by ten-fold unnecessary constitutional rulings cannot be right.

II. THIS COURT HAS PERMITTED PARTIES TO INTERVENE IN AN EXISTING CASE OR CONTROVERSY WITHOUT SATISFYING ARTICLE III STANDING REQUIREMENTS.

The Town dismisses as "facile" the fact that "the text of Article III is satisfied so long as some 'case' or 'controversy' exists." Pet'r Br. at 30. But this Court has closely hewed to the text of Article III in its past cases, repeatedly holding that one plaintiff with standing is sufficient to create a case or controversy, and has permitted litigants to intervene without considering whether they had Article III standing. The implication of the Town's argument is that, in so doing, this Court has been deciding cases in a manner that flouts the Constitution. This is just one of a host of problems that the Town's argument would introduce into the law.

To start, this Court's precedent positively refutes the Town's claim that "a party may not invoke the judicial power . . . unless she has standing." Pet'r Br. at 13. For decades, this Court has held that when one plaintiff has Article III standing, and therefore a case

or controversy exists, it need not consider whether other plaintiffs do so as well. *See, e.g.*, *Village of Arlington Heights*, 429 U.S. at 263-64 ("As a corporation, MHDC has no racial identity and cannot be the direct target of the petitioners' alleged discrimination. . . . But we need not decide whether the circumstances of this case would . . . permit MHDC to assert the constitutional rights of its prospective minority tenants. For we have at least one individual plaintiff who has demonstrated standing to assert these rights as his own."); *Bowsher*, 478 U.S. at 721 ("A threshold issue is whether the Members of Congress, members of the National Treasury Employees Union, or the Union itself have standing to challenge the constitutionality of the Act in question. It is clear that members of the Union . . . will sustain injury by not receiving a scheduled increase in benefits. This is sufficient to confer standing under . . . Article III. We therefore need not consider the standing issue as to the Union or Members of Congress."); *Horne*, 557 U.S. at 446 ("Because the superintendent clearly has standing to challenge the lower courts' decisions, we need not consider whether the Legislators also have standing to do so."); Resp't Br. at 18-20.

The holding of these cases, which "is consistent with Article III's text" and "accords with common sense," U.S. Br. at 15, makes clear that "[a]n additional requirement that a court inquire into the standing of every litigant, including co-plaintiffs who assert the same claims and seek the same relief as plaintiff whose standing has been established, would burden already busy courts with an inquiry that could appropriately be left unaddressed in accordance with ordinary principles of constitutional avoidance." *Id.* at 15-16. Because one plaintiff with standing creates an Ar-

ticle III case or controversy, a court need not separately analyze the standing of other plaintiffs, even though plaintiffs whose standing is not addressed in the case will have the authority to invoke the judicial process in all the ways the Town complains of. *See* Pet'r Br. at 23-24.

These same principles apply equally to motions to intervene, as this Court's precedents establish. In *McConnell*, members of Congress intervened to defend the constitutionality of federal campaign finance laws. The plaintiffs in the case insisted that these members of Congress should not have been allowed to intervene because they lacked Article III standing. But this Court held that, because the Federal Election Commission had standing, "we need not address the standing of the intervenor-defendants, whose position here is identical to the FEC's." *McConnell*, 540 U.S. at 233.

In *Windsor*, this Court, once again, permitted intervenors to participate as parties to a case without considering whether they could satisfy Article III's standing requirements. In that case, the Bipartisan Legal Assistance Group of the U.S. House of Representatives was permitted to intervene to defend the Defense Against Marriage Act after the Executive Branch refused to defend it. This Court held that, because the United States had standing to appeal from the judgment ordering it to pay a refund to Windsor, "Article III requirements are met here; and, as a consequence, the Court need not decide whether BLAG would have standing to challenge the District Court's ruling and its affirmance in the Court of Appeals on BLAG's own authority." *Windsor*, 133 S. Ct. at 2688.

These cases establish that an intervenor need not possess Article III standing to intervene. In both cases, this Court held that the intervenors could "ride 'piggyback,'" *Diamond*, 476 U.S. at 64, on the standing

of the existing parties, concluding that plaintiff's lawsuit against the defendant "establishe[d] a controversy sufficient for Article III jurisdiction." *Windsor*, 133 S. Ct. at 2686. This Court did not independently analyze the standing of the intervenors—as the Town insists the Constitution requires. As these cases show, an intervenor may participate in an existing case or controversy without demonstrating that he or she meets Article III's standing requirements. The Town's arguments cannot be squared with *McConnell* and *Windsor*.

The Town's unsupported view of Article III would not only render this Court's settled practice unconstitutional, it would result in a radical revision of Rule 24, sharply limiting the scope of judicial authority to permit intervention and thus curbing federal trial courts' discretion under Rule 24. While the Town's brief focuses on intervention as of right, *see* Pet'r Br. at 15-32, its sweeping view of the demands of Article III cannot be so limited. There is no principled way to constitutionalize intervention and limit its scope to cases such as this one. *See* Resp't Br. at 34 (explaining that "[t]he Town's view is irreconcilable with longstanding judicial practice and makes no sense as applied to the different parties that properly and routinely ask courts to act on their behalf").

"Federal Rule of Civil Procedure 24 distinguishes a permissive intervenor from an intervenor of right by the stake each has in the litigation. The intervenor of right has an interest in the litigation that it cannot fully protect without joining the litigation, while the permissive intervenor does not." *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 381 (1987) (Brennan, J., concurring). For that reason, permissive intervention merely requires that an intervenor assert "a claim or defense that shares with the main action a

common question of law or fact," Fed. R. Civ. P. 24(b)(1)(B), and thus "plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation," *U.S. Realty*, 310 U.S. at 459. Indeed, this Court has recognized that permissive intervention may be appropriate even though the litigant may only possess a "public" interest and lack "any personal, financial or pecuniary interest in the property in the custody of the federal court." *Id.* at 460; *Shaw v. Hunt*, 154 F.3d 161, 165 (4th Cir. 1998) (recognizing that "a party who lacks standing can nonetheless take part in a case as a permissive intervenor"); Resp't Br. at 37-38.

The Town's argument would render permissive intervention unconstitutional in most if not all cases, effectively eliminating Rule 24's distinction between intervention as of right and permissive intervention. Any party seeking to intervene would have to possess Article III injury-in-fact—whether that party sought to intervene as of right or by permission. If a litigant seeking to intervene must possess Article III standing, it is hard to see what would be left of the broad discretion courts have under Rule 24 to permit interested litigants to intervene. Indeed, the Town's effort to constitutionalize Article III would render permissive intervention practically a dead letter. The Town effectively concedes as much, suggesting that district court judges would have the authority to grant permissive intervention only if accompanied by severe restrictions that would prohibit the intervening party from taking any action to "independently invoke the court's authority in any way." Pet'r Br. at 49. In other words, groups that under Rule 24(b) would have the authority to intervene by permission of the court would effectively be reduced to the status of *amicus curiae*.

Finally, requiring every intervenor to possess Article III standing would introduce particular complications in cases in which litigants seek to intervene on behalf of a defendant. District courts do not currently assess whether a defendant—who has not suffered any injury, but has allegedly caused injury—has standing. *See* Resp't Br. at 35 ("Courts do not ask whether *defendants* have Article III standing."). The Town's view of Article III would require district courts to create a new body of law to decide the standing of those litigants that seek to intervene on the defendant's side. While courts could model this new law of standing on the body of existing law that concerns a defendant's standing to appeal, the considerations are not necessarily the same and, in any event, courts would be thrust into the position of deciding the meaning of Article III in a host of cases in which they do not currently do so. This illustrates the basic disjuncture between Article III, which requires a case or controversy, and intervention, which concerns whether additional litigants may join an existing case properly within the jurisdiction of the federal courts. That disjuncture makes clear why the Town's arguments are wrong and would effect a radical change in the law of intervention. They should not be accepted.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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