No. 17-540

IN THE
Supreme Court of the United States

STARR INTERNATIONAL COMPANY, INC.,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Federal Circuit

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether a private party with Article III standing may be barred from asserting constitutional claims for money damages against the federal Government because of the equitable doctrine of "third-party prudential standing."

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INTERESTS OF *AMICUS CURIAE*

The Washington Legal Foundation (WLF) is a non-profit public interest law firm and policy center with supporters in all 50 states.[1] WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, a limited and accountable government, and the rule of law.

WLF has frequently appeared before this and other federal courts in cases involving claims arising under the Fifth Amendment's Takings Clause. *See, e.g., Phillips v. Washington Legal Found.*, 524 U.S. 156 (1998); *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23 (2012); *Horne v. Dep't of Agriculture*,135 S. Ct. 2419 (2015). WLF also regularly opposes efforts by the federal government to invoke "prudential" principles to prevent the adjudication of claims asserted against the Government, reminding federal courts of their "virtually unflagging" obligation to hear and decide cases within their jurisdiction. *See, e.g., Weyerhaeuser Co. v. U.S. Fish & Wildlife Service*, No. 17-71 (U.S., cert. petition filed July 11, 2017); *Bennett v. Spear*, 520 U.S. 154 (1997).

WLF is concerned that the decision below undermines the right of judicial review by invoking prudential standing to prevent adjudication of claims

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[1] Pursuant to Supreme Court Rule 37.6, WLF states that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than WLF and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. More than 10 days prior to the due date, counsel for WLF provided counsel for Respondent with notice of its intent to file. All parties have consented to the filing; letters of consent have been lodged with the Court.

by parties who, all concede, have suffered catastrophic financial losses directly traceable to actions taken by the federal government. If the decision below is allowed to stand, the ability of citizens to seek judicial redress from the federal government when their property is confiscated will be substantially curtailed.

In *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014), the Court called into serious question the continued vitality of the prudential standing doctrine. *Lexmark* eliminated much of that doctrine but said that consideration of the continued viability of one aspect of the doctrine—limits on the standing of plaintiffs seeking to assert the rights of third parties—should "await another day." 134 S. Ct. at 1387 n.3. WLF submits that the proper day has arrived. WLF is concerned that the Federal Circuit has applied third-party standing principles in a manner that is wholly inconsistent with this Court's case law and that illustrates the dangers of continuing to classify those principles as an aspect of prudential standing.

STATEMENT OF THE CASE

The facts of the case are set out in detail in the Petition. WLF wishes to highlight several facts of particular relevance to the issues on which this brief focuses.

In connection with an $85 billion loan granted by the Federal Reserve Bank of New York (FRBNY) to American International Group, Inc. (AIG) at the height of the 2008 financial crisis, the United States obtained a 79.9% equity share of AIG. The practical effect of

that transaction was to transfer 79.9% of the common stock owned by AIG shareholders in 2008 into the hands of the United States. The transfer was not mere collateral for the loan; the United States retained its equity stake in AIG even after AIG repaid the loan in full with interest.

Petitioner Starr International Co., Inc. was, at all relevant times, one of the largest shareholders of AIG common stock. In 2011, it filed suit (on behalf of itself and similarly situated shareholders) against the United States in the U.S. Court of Federal Claims (CFC). Starr alleged that the Government used unlawful means to obtain its equity share in AIG. It alleged that the transfer of the 79.9% equity interest from shareholders to the Government amounted to an "illegal exaction," in violation of shareholders' Fifth Amendment due process rights.[2] It also alleged that the Government violated their rights under the Fifth Amendment's Takings Clause by failing to provide just compensation for the transferred equity interest. Starr sought damages of at least $25 billion.

In 2012, the Government filed a motion to dismiss, alleging (among other things) that Starr lacked standing because (it alleged) the interests forming the basis for Starr's constitutional claims belonged to AIG, not Starr. The CFC rejected the no-standing claim, finding that "Starr has pled facts

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[2] Starr alleged that the exaction was "illegal" because (it contended) Congress never authorized the Government to demand an equity interest in the borrower in connection with a loan extended under Section 13(3) of the Federal Reserve Act, 12 U.S.C. § 357(3).

sufficiently alleging a harm to the suing stockholders independent of any harm to AIG." *Starr Int'l Co. v. United States*, 106 Fed. Cl. 50, 62 (2012). The court concluded that "AIG's shareholders were harmed uniquely and individually to the same extent as the Government benefited" when "the Government extracted from the public shareholders, and redistributed to itself" 79.9% of the equity of AIG. *Id.* at 65 (citations omitted). The CFC again rejected the no-standing claim when the Government re-raised it in 2013, concluding that shareholders "have adequately alleged that they conveyed a portion of the economic value and voting power to the Government, and as a result, suffered a direct and substantial impact to their own property rights." *Starr Int'l Co. v. United States*, 111 Fed. Cl. 459, 482 (2013).

Following a 37-day trial, the CFC ruled in Starr's favor on the illegal exaction claim. Pet. App. 94a. It concluded that although the FRBNY possessed authority to issue interest-bearing loans under Section 13(3) in a time of "unusual and exigent circumstances," "Section 13(3) did not authorize the Federal Reserve Bank to acquire a borrower's equity as consideration for the loan." *Ibid.* The court concluded that the exaction violated shareholders' due process rights without regard to whether AIG could be deemed to have agreed to the exaction as the necessary price for obtaining a loan, explaining, "Voluntary acceptance ... is not a defense to an illegal exaction claim." *Id.* at 97a-98a. The court held that its ruling in Starr's favor on the illegal exaction claim necessarily required rejection of Starr's Fifth Amendment taking claim. *Id.*

at 96a.[3]

The CFC nonetheless concluded that Starr was not entitled to recover any damages for the Government's illegal exaction. The court explained, "[I]f the Government had done nothing to rescue AIG, the company would have gone bankrupt, and the shareholders' equity interest would have been worthless." Pet. App. 100a.[4] The court stated that it was "troubled" by this outcome because "the Government is able to avoid any damages notwithstanding its plain violations of the Federal Reserve Act." *Id.* at 101a. The parties cross-appealed from the CFC's judgment.

The Federal Circuit never reached the merits of Starr's claim that the Government exceeded its powers under Section 13(3) and violated Starr's constitutional rights. Instead, while accepting that Starr had demonstrated injury-in-fact directly traceable to the Government's conduct and thus possessed Article III

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[3] The court held that a litigant cannot successfully assert both an illegal exaction claim and a taking claim. It held that the two claims are based on mutually exclusive findings: a taking claim requires a showing that the Government was authorized to appropriate private property, while an illegal exaction claim requires a showing that the Government lacked such authority. *Ibid.*

[4] Although it ultimately concluded that the appropriate compensation was zero, the Court affirmed that Starr was entitled *to seek* compensation for the illegal exaction. It held that Starr is an intended beneficiary under the Federal Reserve Act, explaining that Congress adopted Section 13(3) to benefit all segments of the financial system, including loan recipients. *Id.* at 181a.

standing, the appeals court ruled that Starr lacked prudential standing to assert those claims. Pet. App. 1a-41a. It held that Starr's injuries were "merely incidental to injuries to AIG" and that its claims were "exclusively derivative in nature and belong to AIG." *Id.* at 41a.

The appeals court stated that its invocation of prudential standing was based on "the third-party standing requirement." Pet. App. 19a-20a. The court held that prudential standing requires a plaintiff "to demonstrate that it is not raising a third party's legal rights," *id.* at 19a, and that Starr had failed to make that showing. According to the court, the "principle of third-party standing limits access to the federal courts to those litigants best suited to assert a particular claim." *Id.* at 22a. Even though it had "no reason to doubt" Starr's injury and Article III standing, *id.* at 41, the appeals court held that Starr lacked prudential standing because AIG was the party best suited to raise the constitutional claims at issue. *Id.* at 22a-41a.

In reaching that conclusion, the court relied primarily on its understanding of Delaware corporation law. *Id.* at 23a-30a. The court said that because it dismissed Starr's claims on prudential standing grounds, "We need not reach the remaining issues on appeal with respect to the Equity Claims, including the question of whether the equity term was permissible under § 13(3) of the Act." *Id.* at 41a. In other words, the appeals court deemed it unnecessary to review the CFC's finding that the Government had effected a illegal exaction in violation of shareholders' due process rights, Starr's claim that the Government violated the Takings Clause, and Starr's claim that it was entitled

to compensation for the violation of its constitutional rights.

SUMMARY OF ARGUMENT

The petition raises an issue of exceptional importance. The multi-billion dollar exaction imposed by the Government in this case was unprecedented; the Government had never previously demanded an equity share in a private corporation as the price of extending a loan under Section 13(3), nor has it done so since. Neither the Government nor the Federal Circuit disputes the Article III standing of Starr and its fellow shareholders: they suffered injury-in-fact directly traceable to the Government's alleged wrongdoing. Yet, the Federal Circuit invoked prudential standing to prevent the shareholders from ever having their day in court.

The decision below is in considerable tension with the principle, long recognized by this Court, that "a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark*, 134 S. Ct. at 1386. Indeed, it was the Court's recognition of that tension that caused the Court in *Lexmark* to disavow much of the prudential standing doctrine. Other federal appeals courts have recognized that *Lexmark* called into question whether the prudential standing doctrine has *any* appropriate applications.

Disregarding those warning signs, the court below applied the prudential standing doctrine as its basis for declining to permit adjudication of constitutional claims that, it conceded, fell within the

Article III jurisdiction of the federal courts. It did so because, it concluded, Starr failed "to demonstrate that it [was] not raising a third party's legal rights" and that it was among "those litigants best suited to assert [the] particular legal claim." Pet. App. 19a, 22a. That conclusion was based on a fundamental misunderstanding of this Court's third-party standing case law. Review is particularly warranted because third-party standing is the one strand of the prudential standing doctrine that *Lexmark* did not address. This case provides the Court with an excellent vehicle for addressing the issue that *Lexmark* expressly put off for "another day." 134 S. Ct. at 1387 n.3.

The Court has never understood the third-party standing doctrine as a limitation on the prudential standing of those, such as Starr, who profess to be asserting their own legal rights. Rather, the Court has simply said that a party "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Case law addressing third-party standing has focused on whether a plaintiff who *concedes* that he is asserting someone else's rights fits within an exception to the general rule. When, as here, a well-pled complaint asserts that the defendant has violated rights bestowed on the plaintiff under federal law, the third-party standing doctrine never comes into play. A court may, of course, ultimately determine *on the merits* that the defendant has not violated rights recognized by federal law. But any such determination has nothing to do with the plaintiff's standing and does not justify barring the courthouse door to the plaintiff. Indeed, the Court so held in *Lexmark* when it ruled that a

plaintiff's *standing* does not depend on whether his claimed injury falls within the zone of interest of the federal law on which the plaintiff relies.

Starr asserts that the Government took actions not authorized under federal law and thereby violated its rights under the Due Process and Takings Clauses of the Fifth Amendment. The Federal Circuit concluded that, under Delaware corporation law, the rights asserted by Starr were derivative of those belonging to AIG and thus that Starr lacked prudential standing under the third-party standing doctrine. But by so ruling, the appeals court improperly short-circuited a merits-based analysis of Starr's claims. The Federal Circuit never addressed whether (as held by the CFC): (1) the Government's actions were unauthorized by Section 13(3) of the Federal Reserve Act; (2) the rights of Starr and other AIG shareholders fell within the zone of interest protected by the Act; and (3) those injured by the Government's actions were authorized under federal law to seek compensation by filing suit in the CFC. Regardless whether Starr would ultimately have prevailed on those issues in the Federal Circuit, case law is clear that Starr possessed standing to press those claims. Review is warranted to address this conflict between the decision below and this Court's standing case law.

Review is also warranted because the Federal Circuit's errors were attributable at least in part to lack of clarity in this Court's third-party standing case law. In general, the Court has upheld the standing of any litigant who could demonstrate Article III standing and who asserted violation of his own (not some third party's) rights. But in one pre-*Lexmark* case, a closely

divided Court denied prudential standing to a litigant who possessed Article III standing and who asserted a violation of his own First Amendment rights. *Elk Grove Unified School District v. Newdow*, 542 U.S. 1 (2004). The federal appeals court had upheld the plaintiff's prudential standing, concluding that his claims (alleged interference with his interests in inculcating his child with his views on religion) fell within the zone of interest protected by the First Amendment's Free Exercise Clause. This Court's rationale for reversing that holding was opaque, at times suggesting that a plaintiff who satisfies the zone-of-interest test may nonetheless be denied prudential standing if the plaintiff's interests conflict with the interests of third parties with competing claims. *See, e.g.*, 542 U.S. at 17-18.

This lack of clarity may have contributed to the Federal Circuit's misunderstanding of the third-party standing doctrine, including its conclusion that the allegedly superior claims of a third party (AIG) were sufficient to deny prudential standing to Starr. Review is warranted to provide much-needed clarification of the third-parity standing doctrine, whose requirements (the Court has candidly admitted) "are harder to classify." *Lexmark*, 134 S. Ct. at 1387 n.3.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW IS INCONSISTENT WITH THIS COURT'S MANDATE THAT FEDERAL COURTS SHOULD HEAR AND DECIDE CASES WITHIN THEIR JURISDICTION

For purposes of its decision, the Federal Circuit conceded that "Starr has satisfied the requirements of constitutional standing derived from Article III" of the Constitution. Pet. App. 19a. That is, Starr has demonstrated that its claims properly invoke the Article III jurisdiction of the federal courts by adequately demonstrating an "actual or imminent" "injury in fact" that is fairly traceable to the challenged action of the Government and likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Moreover, Congress has explicitly waived the Government's sovereign immunity from claims of this nature. 28 U.S.C. § 1491(a)(1) ("The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress.") The Federal Circuit nonetheless declined to exercise jurisdiction over Starr's claims, citing "prudential" reasons.

That refusal to exercise jurisdiction is inconsistent with this Court's repeated admonitions that "[j]urisdiction existing, ... a federal court's obligation to hear and decide a case is virtually unflagging." *Sprint Communications, Inc. v. Jacobs*, 134 S. Ct. 584, 591 (2013) (internal quotations omitted). "Federal courts, it was early and famously

said, have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'" *Id.* at 590 (quoting *Cohens v. Virginia*, 6 Wheat. (19 U.S.) 264, 404 (1821)). Review is warranted to resolve the inconsistency between the decision below and the Court's case law, particularly in light of the unprecedented nature of the exaction imposed upon AIG shareholders and the huge amount of damages at issue.

Indeed, *Lexmark* explicitly recognized the "tension" between the "obligation" of federal courts to exercise their jurisdiction when properly invoked and any refusal to do so on the basis of prudential standing principles. *Lexmark*, 134 S. Ct. at 1386. In recognition of that tension, *Lexmark* disavowed much of the prudential standing doctrine. *Id.* at 1386-88. The petition provides the Court with an appropriate opportunity to consider whether to jettison the doctrine entirely.

The Court has explained that "prudential standing" embodies "judicially self-imposed limits on the exercise of federal jurisdiction." *Allen v. Wright*, 468 U.S. 737, 751 (1984). It has identified three strands of the prudential standing doctrine: "the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked." *Ibid.* For only the first of those three strands—the limitation on raising the rights of third parties—is it even arguably still appropriate to engage in a prudential standing

analysis.

While at one time the Court grounded its reluctance to hear "generalized grievances" on "prudential" grounds, it has more recently concluded that such grievances do not constitute Article III "Cases" or "Controversies" and thus that federal courts are constitutionally barred from exercising jurisdiction over them. *See, e,g.*, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344-46 (2006); *Lujan*, 504 U.S. at 573-74.

In *Lexmark*, the Court concluded that whether a plaintiff's complaint falls within the zone of interests protected by the law invoked does not raise a standing question at all. It explained, "'[P]rudential standing' is a misnomer as applied to the zone-of-interests analysis, which asks whether this particular class of persons has a right to sue under the substantive statute." 134 S. Ct. at 1387 (citations omitted). The zone-of-interest analysis requires a court to closely examine the statute or constitutional provision at issue to determine whether it provides a cause of action to the plaintiff. Whether a cause of action exists is a question of statutory interpretation: "[w]e do not ask whether in our judgment Congress *should* have authorized [the plaintiff's suit] but whether Congress in fact did so." *Id*. at 1388 (emphasis in original). A federal court "cannot limit a cause of action that Congress has created merely because 'prudence' dictates." *Ibid*.

The third-party standing strand of the prudential standing doctrine remains in place, but it is hanging by a thread. The Court in *Lexmark* stated that because the case did not address any issue of third-party standing, "consideration of that doctrine's

place in the standing firmament can await another day." *Id.* at 1387 n.3.[5] Numerous federal appeals court decisions have, in light of *Lexmark*, questioned whether it *ever* remains appropriate for a federal appeals court to decline to exercise jurisdiction over a case on "prudential standing" grounds. *See, e.g., City of Oakland v. Lynch*, 798 F.3d 1159, 1163 n.1 (9th Cir. 2015); *Duty Free Americas, Inc. v. Estee Lauder Cos.*, 797 F.3d 1248, 1273 n.6 (11th Cir. 2015); *Excel Willowbrook, L.L.C. v. JP Morgan Chase, N.A.*, 758 F.3d 592, 603 (5th Cir. 2014). Only the Federal Circuit has swum against that tide, expansively interpreting the third-party standing doctrine to prevent Starr from litigating its constitutional claims.

The Federal Circuit's invocation of a prudential-standing bar is particularly problematic with respect to Starr's Taking Clause claim. The Court recently reiterated that when the Government takes private property, it has a "categorical duty" to provide "just compensation" to the former owner. *Arkansas Game and Fish Comm'n*, 568 U.S. at 31. Starr alleges that the Government has taken its property and that it is entitled to compensation. The federal courts may ultimately determine on the merits that no taking occurred or that the "just compensation" is zero, but they are not authorized to decline to exercise their jurisdiction over Starr's taking claim based on prudential considerations.

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[5] *Lexmark*'s brief discussion of third-party standing doctrine noted the Court's own inconsistent treatment of that issue, *ibid*, thereby implicitly recognizing the need to revisit the issue in an appropriate case.

Indeed, Starr's right under the Tucker Act to seek compensation from the Government for its losses is not dependent on whether Congress has explicitly authorized such a cause of action. The Court has explicitly held that the Fifth Amendment's "just compensation" guarantee does not depend on the good graces of Congress, explaining:

> [A] landowner is entitled to bring an action in inverse condemnation as a result of the self-executing character of the constitutional provision with respect to compensation. ... [I]t has been established at least since *Jacobs v. United States*, 290 U.S. 13 (1933), that claims for just compensation are grounded in the Constitution itself. "The right [to just compensation] was guaranteed by the Constitution. ... Statutory recognition was not necessary. A promise to pay was not necessary. Such a promise was implied because of the duty to pay imposed by the Fifth Amendment. ..." *Id.* at 16. *Jacobs*, moreover, does not stand alone, for the Court has frequently repeated the view that, in the event of a taking, the compensation remedy is required by the Constitution.

First English Evangelical Lutheran Church v. Los Angeles, 482 U.S. 304, 315-16 (1987) (citations omitted). Review is warranted to resolve the sharp conflict between the decision below and this Court's repeated admonitions that federal courts must not refrain from exercising the jurisdiction granted to

them.

II. THE FEDERAL CIRCUIT'S REFUSAL TO EXERCISE JURISDICTION WAS BASED ON A FUNDAMENTAL MISUNDERSTANDING OF THE THIRD-PARTY STANDING DOCTRINE

The Court has repeatedly stated that "the plaintiff [in a federal court proceeding] must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth*, 422 U.S. at 499. *See, e.g.*, *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) (group opposing same-sex marriage lacked standing to appeal a decision striking down a California law as unconstitutional; group not permitted to assert California's interests in defending the law). The Court has advanced two rationales for that rule:

> First, the courts should not adjudicate [the] rights [of third persons not parties to the litigation] unnecessarily, and it may be that in fact the holders of those rights do not wish to assert them, or will be able to enjoy them regardless of whether the in-court litigant is successful or not. ... Second, third parties themselves usually will be the best proponents of their own rights. The courts depend on effective advocacy, and therefore should prefer to construe legal rights only when the most effective advocates of those rights are before them.

Singleton v. Wulff, 428 U.S. 106, 113-14 (1976).

The third-party standing doctrine creates several very limited exceptions to the bar against litigating someone else's legal rights. The most frequently invoked exception requires a showing that "the party asserting the right has a close relationship with the person who possesses the right and there is a hindrance to the possessor's ability to protect his own interests." *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689 (2017) (quoting *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004)).[6] Almost invariably, case law addressing the third-party standing doctrine arises in the context of a plaintiff who concedes that the legal rights at issue belong to another but contends that he nonetheless ought to be permitted to litigate those rights.

The court below applied the third-party standing doctrine in an entirely different context. Starr has never asserted that it ought to be permitted to assert someone else's legal rights. Rather, Starr alleges that its injuries were directly traceable to the Government's violation of *its own* constitutional rights. The Federal Circuit did not accept that allegation. Instead, based on its analysis of Delaware corporation law, the appeals court concluded that Starr's injuries were

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[6] Encompassed within that exception is "next friend" standing, which "has long been an accepted basis for jurisdiction in certain circumstances." *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990). "Most frequently, 'next friends' appear in court on behalf of detained prisoners who are unable, usually because of mental incompetence or inaccessibility, to seek relief themselves." *Ibid.* Similarly, estates are routinely granted standing to assert non-penal civil claims based on the deceased's rights. *See, e.g., Malvino v. Delluniversita*, 840 F.3d 223 (5th Cir. 2016).

attributable to an exaction of property belonging to AIG, not to Starr and other AIG shareholders; and thus that the constitutional rights at issue belong to AIG alone. Application of the third-party standing doctrine in these circumstances is wholly inconsistent with the Court's third-party standing case law, discussed above. Review is warranted to resolve the tension between that case law and the decision below, as well as to determine whether third-party standing issues ought to continue to be analyzed within a "prudential standing" framework.

WLF notes that the Court's two stated reasons for barring a litigant from asserting a third party's rights are inapplicable to this case. *Singleton* noted that the third party might oppose the assertion of his rights. 428 U.S. at 113-14. But if, as here, the plaintiff asserts that the rights being asserted are his own, the third party cannot possibly be adversely affected by the litigation. The court's consideration *of the merits* will require it to assess whether the plaintiff actually possesses the rights he asserts. If not, the claim will fail; and if so, the third party has no basis for objecting. *Singleton* also observed that those who possess the rights at issue are likely to be the best proponents of those rights. *Ibid*. But if, as the litigant claims, the rights at issue belong to him, then he is the best proponents of those rights. The correctness of that claim should be determined in a merits-based proceeding, not based on a federal court's decision not to exercise jurisdiction for prudential reasons.

Review is warranted as a follow-up to *Lexmark*, to determine whether limitations on a litigant's ability to assert the rights of a third party should continue to

be viewed through a prudential-standing lens. There are good reasons to follow *Lexmark*'s lead and to determine that, instead, those limitations should be policed by examining the plaintiff's Article III standing as well as whether Congress intended to encompass the plaintiff within the class of plaintiffs authorized to assert the cause of action it created. WLF notes that many plaintiffs asserting the rights of third parties will not be able to establish Article III standing—that is, the causal chain will be too attenuated and they will not be able to establish that their injuries are directly traceable to the violation of someone else's rights. If they can establish Article III standing, then the standing issue is more appropriately analyzed as a matter of statutory interpretation rather than prudential standing.

As this Court has repeatedly held, Congress is entitled to grant statutory standing that is "as broad as is permitted by Article III of the Constitution," even when the claims asserted by the plaintiff might not otherwise seem to fall within the zone of interest protected by the statute. *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 109 (1979); *Bennett v. Spear*, 520 U.S. at 1162-63. Granting review will permit the Court to determine whether it is *ever* appropriate for a federal court to decline to exercise its jurisdiction based on discretionary third-party grounds when the relevant right of action extends to the plaintiff's claims and perhaps even to anyone who can establish the requisite Article III standing.

The petition provides a good vehicle for resolving the issue left open by *Lexmark*. The petition raises the prudential standing issue cleanly; there are no

disputed issues of fact. Rather, the only issue is one of law that has not been, but should be, resolved by this Court: whether a party with Article III standing may be barred from asserting Fifth Amendment monetary claims against the Government based solely on an alleged absence of third-party prudential standing.

III. REVIEW IS WARRANTED TO RESOLVE THE CONFLICT BETWEEN THE DECISION BELOW AND THIS COURT'S DECISION IN *LEXMARK*

Review is also warranted because the Federal Circuit's decision directly conflicts with *Lexmark*. Although the appeals court framed its prudential-standing decision as one based on the third-party standing doctrine, its analysis was incompatible with *Lexmark*, which warned courts against declining to exercise their jurisdiction for discretionary reasons. 134 S. Ct. at 1386.

Lexmark directed federal courts to look to congressional intent when determining whether those possessing Article III standing can state a cause of action for violation of an alleged right. *Id.* at 1387-88. The Federal Circuit never undertook that analysis. Instead, despite acknowledging that "[b]ecause Starr presses the Equity Claims under federal law, federal law dictates whether Starr has direct standing," Pet App. 22a,[7] the court relied exclusively on Delaware law

[7] In making that acknowledgment, the appeals court cited this Court's statement that "any common law rule necessary to effectuate a private cause of action ... is necessarily federal in character." *Ibid* (citing *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 97 (1991)).

in concluding that Starr lacked prudential standing; it determined that under Delaware law the rights asserted by Starr actually belonged to AIG. The appeals court challenged neither Starr's Article III standing nor that at least *someone* possessed constitutionally protected property rights. Yet it never explained why—despite *Lexmark*'s clear direction to the contrary—it was appropriate to examine the cause-of-action issue through a prudential-standing lens.

Starr was highly prejudiced by the Federal Circuit's approach. By dismissing the case on prudential standing grounds, the Federal Circuit never addressed whether (as asserted by Starr and held by the CFC): (1) the Government's actions were unauthorized by Section 13(3) of the Federal Reserve Act; (2) the rights of Starr and other AIG shareholders fell within the zone of interest protected by the Act; and (3) those injured by the Government's actions were authorized under federal law to seek compensation by filing suit in the CFC. Regardless whether Starr would ultimately have prevailed on those issues in the Federal Circuit, *Lexmark* makes clear that consideration of those issues fell within the jurisdiction of the federal courts. Starr has stated a cause of action alleging violation of its Fifth Amendment rights; federal courts "cannot limit a cause of action that Congress has created merely because 'prudence' dictates." *Lexmark*, 134 S. Ct. at 1388.

The Federal Circuit's holding also conflicts with *Allegheny Corp. v. Breswick Co.*, 353 U.S. 151 (1957). The Court held there that shareholders possessed standing to challenge Interstate Commerce Commission (ICC) orders that resulted in issuance of

new corporate stock (and thereby diminished the plaintiffs' equity share in the corporation). 353 U.S. at 160 (stating that "the threatened 'dilution' of the equity of the common shareholders provided sufficient financial interest to give them standing."). The appeals court's efforts to distinguish *Allegheny*, Pet. App. 34a-36a, are unavailing; at no point did this Court suggest that whether it could appropriately exercise jurisdiction over the shareholders' claims should turn on an examination of state corporation law.

Indeed, the Court in *Allegheny* ultimately denied the shareholders' claim, finding that the shareholders had failed to state a claim for violation of the Interstate Commerce Act because the ICC possessed the statutory authority to issue the orders in question. *Id.* at 163-171. Yet the Court's ruling that the shareholders had failed to state a cause of action did not affect its conclusion that they possessed standing to assert their claim. In contrast, the Federal Circuit's holding that Starr lacked prudential standing—and thus that it should not exercise jurisdiction over Starr's claims—was based in large measure on its analysis of Delaware law and what it viewed as the effect of that law on the viability of Starr's cause of action.

IV. THE PETITION PROVIDES A GOOD VEHICLE FOR ELIMINATING CONFUSION IN THE COURT'S THIRD-PARTY STANDING CASE LAW

Review is also warranted because the Federal Circuit's errors may have been attributable at least in part to lack of clarity in this Court's third-party standing case law. As *Lexmark* candidly conceded, that case law has rendered "[t]he limitations on third-party

standing ... harder to classify." 134 S. Ct. at 1387 n.3.

As described above, the Court's prudential limitations on third-party standing have focused almost exclusively on litigants who concede that they are asserting another's rights but nonetheless seek an exception to the general rule against such claims. *See, e.g., Sessions*, 137 S. Ct. at 1689; *Craig v. Boren*, 429 U.S. 190 (1976). In general, the third-party standing doctrine has not been thought to restrict the prudential standing of litigants who plausibly allege the violation of their own rights.

But in one pre-*Lexmark* case, a closely divided Court denied prudential standing to a litigant who possessed Article III standing and who asserted a violation of his own First Amendment rights. *Elk Grove Unified School District v. Newdow*, 542 U.S. 1 (2004). The federal appeals court had upheld the plaintiff's prudential standing, concluding that his claims (alleged interference with his interests in inculcating his child with his views on religion) fell within the zone of interest protected by the First Amendment's Free Exercise Clause.[8]

This Court's rationale for reversing that holding was opaque. Language in the opinion can be read as holding that the plaintiff lacked prudential standing because his claims fell outside the zone of interest protected by the First Amendment. *See, e.g.*, 542 U.S.

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[8] The plaintiff alleged that his noncustodial daughter's school district, by mandating that its kindergartens begin each day with a recitation of the Pledge of Allegiance, infringed his right to expose his daughter to his religious views.

at 16-17. Other language in the opinion, however, suggests that a plaintiff who satisfies the zone-of-interest test may nonetheless be denied prudential standing if the plaintiff's interests conflict with the interests of third parties with competing claims. *See, e.g.*, 542 U.S. at 17-18.

This lack of clarity may have contributed to the Federal Circuit's misunderstanding of the third-party standing doctrine, including its conclusion that the allegedly superior claims of a third party (AIG) were sufficient to deny prudential standing to Starr. Review is warranted to provide much-needed clarification of the third-parity standing doctrine.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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