

No. 19-1366

In the Supreme Court of the United States

SHIYANG HUANG, PETITIONER

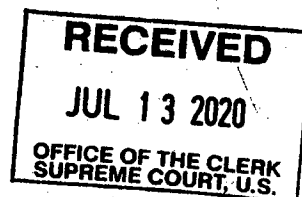
v.

VALESKA SCHULTZ, MELANIE WAUGH, ROSALIND STALEY,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED, ET AL.,

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT*

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

Petitioner Shiyang Huang respectfully submits this brief in light of the Court's decision in *Thole v. U.S. Bank, N.A.*, 140 S. Ct. 1615 (U.S. Jun. 1, 2020).

In May 2020, petitioner Shiyang Huang filed a petition for a writ of certiorari to review the Eighth Circuit's opinions that all plaintiffs in this case (particularly petitioner himself, an *unnamed* class member) have Article III standing for a final judgment under Federal Rules of Civil Procedure 23.

The petition noted (at 12, 15) that this Court's decision in *Thole* may support petitioner's key argument that he *himself* is a class member without any prospective injury for standing. **Compare** C.A. Plaintiffs Br. 31 ("former participants like [petitioner] have no stake in forward-looking relief") **with** *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1053 (2016) (Roberts, C.J., concurring) ("Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not.") *Deposit Guar. Nat. Bank v. Roper*, 445 U.S. 326, 332 (1980) (noting Rule 23 as only an "ancillary" device.)

After the petition was filed, this Court decided *Thole* and indeed held that *Thole* petitioners lack Article III standing. 140 S. Ct. at 1619. Petitioner emphatically agrees with respondents' position below that "former participants like [petitioner] have **no stake in forward-looking relief**". C.A. Plaintiffs Br. 31. (emphasis added). As petitioner's lack of Article III standing for future relief is abundantly clear, this Court should grant the writ and use this excellent vehicle to close Courts of Appeals' unyielding four-way conflict on Article III standing standards for **unnamed** and **uninjured** class members under Rule 23. Petition 12-14. *Thole* also may suggest GVR as option, with "reasonable probability" that the Eighth Circuit may overturn its prior judgment. *Lawrence v. Chater*, 516 U.S. 163, 167 (1996).

First, *Thole* agrees with petitioner Huang and plaintiffs respondents' position that Huang is an *uninjured* class member who cannot be *redressed* by "prospective relief". Petition 1. This Court in *Thole* similarly held litigants with "no concrete stake in the lawsuit" lack Article III standing for a judgment to "affect their *future* benefit". *Thole*, 140 S. Ct. at 1619-20 (emphasis added). The judgments below must be reversed for lack of subject-matter jurisdiction, and the mandatory, non-opt-out class certification below—with nearly half the purported "class" without standing for prospective relief—cannot be upheld. *McNutt v. GMAC*, 298 U.S. 178, 189 (1936). (Article III standing must be justified by a "preponderance of evidence.")

In this case, Huang has *no risk of future harm* as a ***past participant***. Petition 8 & n.4. That is even less than *Thole*¹ in the prospective sense—Huang cannot benefit from prospective relief to a Plan *he is no longer a member of*. *Ibid*. Settling parties' *Plan-wide* injunctions "would not affect [Huang's] future benefit", and Huang "ha[s] no concrete stake in the lawsuit." *Thole*, *supra*. Huang lacks Article III standing for prospective relief, and the judgment below is irreconcilable with threshold Article III minimum that any party must prove Article III standing for *each form of relief*. Petition 1 (quoting *Town of Chester v. Laroe Estates*, 137 S. Ct. 1645, 1650 (2017)).

Second, the Eighth Circuit erred in its Article III standing examination, particularly to *absentees* such as petitioner under Fed. R. Civ. Proc. 23. The Solicitor General's CVSG brief in *Thole* argued that the Eighth Circuit also erred to decide *Thole* for "statutory standing". Brief for the United States as Amicus Curiae, *Thole v. U.S. Bank*, 2019 WL 2209252, *13-14 (U.S. May

¹ The full Court agrees that *Thole* petitioners may still sue if their *future* payments cannot be received, *Thole*, 140 S. Ct. at 1621, 1622 n.2 (noting the "last wrinkle" as only presented by *amici*); *id.* at 1630 (dissenting op.) (noting *Thole* petitioners remain interested "in their retirement plan's financial integrity" as *current* Plan members).

21, 2019). This Court agreed with the Solicitor General by adding the Article III question and later affirmed dismissal on lack of standing. *Thole*, 140 S. Ct. at 1619-20. But here, the Eighth Circuit's erroneous affirmance below remains an advisory opinion. *See* Pet. App. 2a; Petition 14 (noting the Eighth Circuit's self-contradictory precedents on absent class members' Article III standing); *Id.* at 16 (arguing petitioner himself lacks standing). *Thole* agrees that petitioner has "no concrete stake" for future relief, and parties here agreed also. *Id.* at 8 n.4. Once petitioner's standing is shaved to the past, the Court can also reach the second question presented—whether a *mandatory* class-action may bypass opt-out safeguards under Due Process and contort class members' monetary relief claims.

This is an exceptionally clean vehicle to review "whether a Rule 23 class-action may include uninjured class members", such as petitioner. This is now a diverging jurisdictional hazard splitting nine circuits into four sides, with three circuits already self-split. *See* Petition 12-14. If the Court decides to GVR, it should ask the Eighth Circuit to particularly focus on petitioner's lack of Article III standing for prospective relief.

CONCLUSION

The petition should be granted.

Respectfully Submitted,

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