No. 24-453

IN THE

Supreme Court of the United States

EMMANUEL G. LOUIS, JR., ET AL.,

Petitioners,

v.

BLUEGREEN VACATIONS UNLIMITED, INC., ET AL.,

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Eleventh Circuit correctly hold that plaintiffs lack Article III standing where they do not allege any injury fairly traceable to the defendant's alleged wrongful conduct but instead argue that the statutory remedy of voidness independently confers standing?

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Defendant Bluegreen Vacations Unlimited, Inc. is a wholly owned subsidiary of Bluegreen Vacations Corporation, which is in turn a wholly owned subsidiary of Bluegreen Vacations Holding Corporation. Prior to January 17, 2024, Bluegreen Vacations Holding Corporation was a publicly traded corporation, with its Class A Common Stock listed on the New York Stock Exchange under the symbol "BVH" and its Class B Common Stock traded on the OTCQX under the symbol "BVHBB." On January 17, 2024, Hilton Grand Vacations Inc. acquired 100% of Bluegreen Vacations Holding Corporation through a merger pursuant to which Bluegreen Vacations Holding Corporation became an indirect wholly owned subsidiary of Hilton Grand Vacations Inc. As a result of the merger, Bluegreen Vacations Holding Corporation's stock is no longer publicly traded. Hilton Grand Vacations Inc. is a publicly traded company with its common stock listed on the New York Stock Exchange under the symbol "HGV."

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INTRODUCTION

The Military Lending Act ("MLA") has laudable purposes but this lawsuit does nothing to advance them. Under the Eleventh Circuit's decision below, any service member who is actually harmed by any of the abusive practices the MLA is meant to protect against will have standing to seek redress in federal court.

The Eleventh Circuit affirmed in an unpublished opinion here because Bluegreen's comprehensive and accurate disclosures, incorporated into the Complaint by reference, eliminated Plaintiffs' ability to plead facts showing Article III standing. Plaintiffs could not identify any material misstatements or omissions in Bluegreen's disclosures; could not explain how the MLA required materially different disclosures; could not explain how the disclosures misled them as to how much they would have to pay; and could not explain how any different disclosures would have affected their purchase decision.

The Eleventh Circuit then applied well-established principles from this Court to affirm dismissal. First, there is no standing where "the injury is not fairly traceable to any allegedly unlawful conduct of which plaintiffs complain." *California v. Texas*, 141 S. Ct. 2104, 2114 (2021). Second, statutory remedies, like damages or voidness, cannot independently create standing. *See, e.g.*, *TransUnion LLC v. Ramirez*, 141 S.Ct. 2190, 2206 (2021).

The Eleventh Circuit's decision is consistent with this Court's precedent and the decisions of other Circuits. The cases Petitioners contend present a split

instead reflect the Circuits' application of the same standing principles to fundamentally different factual scenarios that lead to different results. Neither the Eleventh Circuit's interpretation of the particular disclosures and pleading here nor its application of this Court's bedrock test for Constitutional standing can justify granting certiorari.

STATEMENT OF THE CASE

A. Facts

Bluegreen is a vacation ownership or timeshare company that offers vacation and travel services to consumers through ownership in the Bluegreen Vacation Club, a multi-site timeshare plan established under a trust agreement. *See* Doc. 16 ¶¶ 2, 4, 5.[1] As part of the sales process, purchasers enter into an Owner Beneficiary Agreement ("OBA") with Bluegreen, where they purchase an interest in real estate described as the "Property," which is a specific week at a specific "condominium unit" at a Bluegreen Resort. Doc. 16 at 27. In doing so, they become "owner beneficiaries" under the terms of a trust agreement and are allocated vacation points for use at Bluegreen resorts throughout the United States. *See* Doc. 16 ¶ 5. In addition to the OBA, buyers who finance part of their purchase also enter into a promissory note and receive additional closing disclosures concerning their loans. *See* Doc. 27-1 and 27-3.

The Louises allege that, on December 20, 2020, they purchased a timeshare interest with Bluegreen.

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[1] Internal quotation marks, citations, alterations, and emphases are omitted from quotations throughout this brief. Citations to Doc. are to documents filed in the district court.

Doc. 16 ¶ 4. Their OBA disclosed "PURCHASE TERMS" that listed the financial terms of what the Louises were buying. These Purchase Terms showed that the "Purchase Price of Property payable by Purchaser" was $11,500, and the Louises were also required to pay an "Administrative Fee" of $450. The Purchase Terms further specified that the Louises were making an Initial Deposit of $1,600, which was the sum of the "Down Payment" of $1,150 and the $450 Administrative Fee. Accounting for the down payment, the Purchase Terms provided that the remaining balance on the property price, $10,350, is the "Amount Financed," which would be financed for 120 months at 16.990%. As a result, the Louises would make "Monthly Payments" of "$ 179.81." Immediately below the "Purchase Terms," the Louises initialed next to a line that indicated that they "have reviewed and agreed to the Purchase Terms above." Doc. 16 at 28.

The closing disclosure provided even greater detail. On the front page, the closing disclosures addressed "Projected Payments" and specified an "Estimated Total Monthly Payment" of "$179.81." DE 27-3 at 2.

The closing disclosure also contained a section titled "Calculating Cash to Close." That section listed "Cash to Close" as $1,600, comprising $1,150 as "Down Payment/Funds from Borrower" and $450 for "Adjustments," as detailed lower on the same page. The only "Adjustments" listed was the $450 "Administrative Fee to Seller." Doc. 27-3 at 4. Therefore, the closing disclosure made clear that the Louises were paying the administrative fee in cash and the fee is not part of the $10,350 being financed.

The closing disclosures also included detailed "Loan Calculations," including an "Annual Percentage Rate" of 16.990%:

Loan Calculations	
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	$21,578.94
Finance Charge. The dollar amount the loan will cost you.	$11,228.94
Amount Financed. The loan amount available after paying your upfront finance charge.	$10,350.00
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	16.990%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	108.49%

Doc. 27-3 at 6.

B. Decisions Below

1. The Magistrate Report and Recommendation

The Magistrate Judge issued a report and recommended dismissing the Louises' Complaint[2] for lack of Article III standing.

[2] References to "Complaint" in this brief refer to the operative First Amended Class Action Complaint, Doc. 16.

The Magistrate Judge first addressed Plaintiffs' allegation that Defendants "disclosed an annual rate of 16.990% when the MAPR [Military Annual Percentage Rate] was actually 18.097% — an issue caused by Defendants not including a $450 administrative fee in their rate calculation." Pet. App. 23a. The Magistrate Judge found this allegation failed to establish Article III standing for three separate reasons—

(1) The rate disclosed was accurately calculated:

> [T]he closing disclosures [DE 27-3] memorializing the transaction between the parties reveal that the $450 administrative fee paid at closing covered title search and recording expenses. In other words, the fee does not fall within the types of fees that must be included within the MAPR . . . . As such, the disclosed interest rate of 16.990% was the MAPR.

Pet. App. 26a.

(2) All pertinent numbers were disclosed:

> [T]he OBA clearly discloses the fee of $450. It also clearly shows that the $450 fee is not being financed, but that it is instead being paid along with the 10% down payment of $1,150 (for a Total Deposit of $1,600). . . . Even if the MLA technically requires the MAPR to be disclosed in a different format, the [disclosures] nonetheless make[] clear

> that all pertinent numbers were disclosed. Accordingly it is implausible that any technical violation by Defendants caused any concrete harm.

Pet. App. 25a.

(3) There were no allegations that Plaintiffs were required to pay more than had been disclosed or that different disclosures would have changed the Plaintiffs' purchase decision:

> Plaintiffs do not claim that the alleged miscalculation of the MAPR led to them having to pay anything extra or different than what they expected. Nor do they allege that proper calculation and presentation of the MAPR or any of the (unspecified) unmade disclosures would have had any bearing on their decision to accept the contract. Although Plaintiffs contend in their response to the Motion that they were misled, their Complaint does not contain any allegations that they were misled by Defendants' bare procedural violations. At any rate, even if Plaintiffs had alleged they were misled, they have failed to explain how they were misled.

Pet. App. 23a.

The Magistrate Judge then ruled that the inclusion of an arbitration provision in the OBA could not confer standing because there were no allegations that Bluegreen had sought—or would seek—to enforce the arbitration provision:

> [Plaintiffs] do not even attempt to explain how this [arbitration] provision caused them any concrete harm. *There is no allegation that Defendants have exercised, threatened to exercise, discussed, or even contemplated invoking the arbitration provision. There is no allegation that the inclusion of the arbitration provision impacted Plaintiffs' decision to accept the contract* (nor could there plausibly be), and therefore there are no allegations connecting the payments Plaintiffs have made to the existence of the arbitration provision. *In other words, they are seeking relief based on a mere technicality that has not impacted them in any way (let alone any real or material way).*

Pet. App. 26a (additional emphasis added).

2. The District Court Affirmed

The District Court affirmed and adopted the report and recommendation of the Magistrate. Pet. App. 12a.

The District Court reviewed the Complaint and explained why Plaintiffs had failed to plead any basis for Article III standing under *Spokeo* and its progeny:

> As illustrated by the allegations in the Amended Complaint, Plaintiffs fail to identify any concrete harm they have experienced as a result of the statutory violations. Notably, there is no indication that the required disclosures

> or the inclusion of an arbitration provision—both of which constitute the alleged MLA violations—impacted Plaintiffs in any way. By merely alleging the MLA was violated without establishing any "downstream consequences," Plaintiffs lack standing to proceed. *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020).

Pet. App. 10a.

The District Court then went on to explain why Plaintiffs' principal argument for standing "directly contradicts the Supreme Court's holding in *Spokeo*":

> Plaintiffs attempt to distinguish between the Eleventh Circuit's treatment of analogous consumer protection statutes and the MLA, claiming "it was the Congressional intent that any contract that violates any provision of the MLA is automatically void from inception." Objections at 5. This line of reasoning directly contradicts the Supreme Court's holding in *Spokeo* that "Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." 578 U.S. at 341.

> Indeed, the Court recently reaffirmed this principle in *TransUnion LLC v. Ramirez*, explaining that Congressional authorization of suits alleging only statutory violations "would flout constitutional text, history, and precedent." 141 S. Ct. 2190, 2206 (2021). Put simply, "Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 926 (11th Cir. 2020) (*en banc*) (quoting *Spokeo*, 578 U.S. at 339) (internal quotation marks omitted). Thus, the Court finds that Defendant's purported violations of the MLA do not—and cannot—automatically result in a concrete injury suffered by Plaintiffs.

Pet. App. 11a.

3. The Eleventh Circuit Affirmed

The Eleventh Circuit affirmed. Emphasizing the Louises' specific allegations, the court held that "[t]heir claimed injuries, including the $1,600 down payment and the later monthly payments, cannot be fairly traced to Bluegreen's alleged violations of the MLA—failing to provide disclosures, misrepresenting the MAPR, and requiring arbitration." Pet. App. 4a-5a. The court explained that "[a]s the Louises conceded during oral argument, the Louises did not allege that their down payment was made because

they were not provided the required disclosures or because the OBA included an arbitration provision." *Id.* at 5a. The Eleventh Circuit rejected Plaintiffs' argument that "their injury—payments and ongoing obligations on a contract they claim is void—is traceable to Bluegreen's MLA violations because these violations render the OBA void." *Id.* The court reasoned that "the fact that the contract may be void serves merely as a possible remedy" and does not satisfy the causation requirement for standing. *Id.* at 5a-6a.

REASONS FOR DENYING THE WRIT

I. This Court's Precedent Compelled the Eleventh Circuit's Conclusion.

The Eleventh Circuit correctly applied this Court's established standing precedent and ruled that exercising jurisdiction here would have violated Article III of the United States Constitution. The Complaint lacks any allegations that Bluegreen's conduct violated the MLA in a way that harmed the Louises. The decision below broke no new ground in determining that conclusory allegations of procedural statutory violations and the possibility of a statutory remedy are plainly insufficient to confer standing. The straightforward application of these principles to the facts of this case does not merit this Court's review.

A. Bluegreen's Disclosures Accurately Disclosed All Information Material to Plaintiffs' Purchase Decision

The Petition asserts that "Bluegreen misrepresented the true cost of credit," "Bluegreen misrepresented the interest rate," and "failed to provide the written and oral disclosures the statute

requires," Pet. 2, 9, but Petitioners did not plead any factual basis for these conclusory assertions and even now do not grapple with Bluegreen's incorporated disclosures.

Bluegreen accurately disclosed the annual percentage rate for the loan. In the Complaint, the sole basis for Plaintiffs' allegation that Bluegreen misrepresented the MAPR was the contention that the $450 Administrative Fee was financed. Doc. 16 ¶¶ 21, 64-67, 78-83. Yet the actual purchase documents and disclosures directly refute that allegation and show that the Administrative Fee was paid with cash at closing. *See* pp. 2-4, *supra*. The Magistrate Judge so found explicitly: "[The OBA] clearly shows that the $450 fee is not being financed," Pet. App. 25a. Notably, despite its conclusory assertions, the Petition nowhere attempts to explain how the interest rate was incorrect or direct the Court's attention to any facts in support.

Similarly, Bluegreen's disclosures were complete. The OBA and the closing disclosures clearly stated all pertinent numbers, including the amount of the purchase being financed, the monthly payment amount and the total amount that the Louises would pay over the life of the loan. *See* pp. 2-4, *supra*. As the Magistrate Judge observed, even "the OBA attached to the Complaint is sufficient on its own to show that all material information was disclosed." Pet. App. 25a. Again, the Petition makes only conclusory assertions of missing disclosures but does not direct the Court to any factual allegations in support.

Petitioners do not and cannot challenge the finding by five different judges that they never identified any disclosures that Bluegreen made or

omitted that would have any impact on what they paid or affected their purchase decision. That includes the arbitration provision that Bluegreen never enforced or even sought to enforce.

B. Given Bluegreen's Disclosures, a Straightforward Application of This Court's Precedent Established that the Louises Had No Standing.

Given Bluegreen's comprehensive and accurate disclosures, the Eleventh Circuit correctly applied this Court's precedent to find that Plaintiffs have no standing.

1. The "irreducible constitutional minimum" to establish Article III standing requires that the "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the *challenged conduct* of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (emphasis added). To establish standing at the motion to dismiss stage, the Louises were required to "plausibly and clearly" allege the elements of standing. *Thole v. U. S. Bank N.A.*, 590 U.S. 538, 544 (2020); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

2. Time and time again, this Court has ruled that "plaintiff must allege some threatened or actual injury resulting from the putatively illegal action." *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41 (1976). As this Court put it more recently, the alleged injury must be "fairly traceable to any allegedly unlawful conduct of which plaintiffs complain." *California v. Texas*, 141 S. Ct. 2104, 2113 (2021).

The Eleventh Circuit properly applied these principles to rule that "[t]he complaint lacks specific allegations that link their claimed injury to Bluegreen's alleged misconduct." Pet. App. 5a. "[A]s the Louises conceded during oral argument, the Louises did not allege that their down payment was made because they were not provided the required disclosures or because the OBA included an arbitration provisions." *Id.*

3. The Louises argue that "a plaintiff's injury *need only be traceable to the defendant* not the specific statutory provision that the defendant violated," Pet. 2, but that would be a breathtaking expansion of the jurisdiction of the federal courts. "The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). "[L]egal, moral, ideological, and policy objections" "alone do not establish a judicial case or controversy in federal court." *FDA v. Alliance for Hippocractic Medicine*, 602 U.S. 367, 397 (2024). But the Louises would open the courthouse doors to any plaintiff that has signed a contract with a defendant to assert such objections, even where the plaintiff has not suffered any legally cognizable harm caused by a defendant's conduct. That would be an unparalleled expansion of the jurisdiction of the federal courts.

Of course, this Court has never embraced that position. The Eleventh Circuit quoted directly from this Court's decision in *Collins v. Yellen*, that " 'for the purpose of traceability, the relevant inquiry is whether the plaintiffs' injury can be traced to

allegedly unlawful conduct of the defendant, not to the provision of law that is challenged.' " Pet. App. 6a (quoting *Collins*, 141 S. Ct. 1761, 1779 (2021)). As the Eleventh Circuit summarized *Collins:*

> [T]he injury was fairly traceable to the Federal Housing Finance Agency's unlawful conduct—specifically, amendments to an agreement between the government and the plaintiff-shareholders' companies . . . —because its actions affected shareholders' financial interests.

Pet. App. 6a. Thus, the Eleventh Circuit correctly recognized that standing traceability meant finding a causal connection between the FHFA's challenged conduct (the amendment of the agreement) and the alleged injury (financial harm to shareholders), and did not require a causal connection to the specific statutory provision (the removal restriction on the FHFA director that was the basis for the plaintiffs' constitutional challenge). *See Collins*, 141 S. Ct. 1778-79.

4. Petitioners argue over and over again that the MLA remedy of voidness confers standing, *see, e.g.*, Pet. 1-4, 9-11, 13, 16, 18, but neglect to mention that it is under its "Penalties and Remedies" section that the MLA declares a "prohibited" "contract" void, 10 U.S.C. § 987 (f)(3). This Court has repeatedly held that Congress, through a naked grant of a remedy such as damages, cannot create Article III standing.

In *Spokeo Inc. v. Robins*, a case brought under the Fair Credit Reporting Act (FCRA), this Court

established that "Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." 578 U.S. at 339. In *Thole v. U.S. Bank, N.A.*, this Court held that, under ERISA, "a general cause of action to sue for restoration of plan losses and other equitable relief" "does not affect the Article III standing analysis." 590 U.S. at 544 And, finally, in *TransUnion LLC v. Ramirez*, another case brought under the FCRA, this Court held that the provision of misleading credit reports to third-party businesses created an injury-in-fact but misleading internal credit files not reported to third parties did not. 141 S. Ct. at 2208-13. "Under Article III, an injury in law is not an injury in fact," and "[o]nly those plaintiffs who have been concretely harmed by a defendant's statutory violation may sue that private defendant over that violation in federal court." *Id.* at 2205. The Court explained that "[t]he plaintiffs did not allege that they failed to receive any required information, and argued only that they received it in the wrong format." Yet plaintiffs did "not demonstrate that they suffered any harm *at all* from the formatting violations" and the absence of any "downstream consequences" from the purported disclosure deficiency precluded plaintiffs from satisfying Article III. *Id.* at 2213-14 (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020)).

The Eleventh Circuit held that the Louises lack standing not because it used the wrong test, but because the Louises tried to locate their injury in, and causation from, not any statutory violation by Bluegreen but rather the possibility of a statutory remedy. Just as this Court has held that the naked

grant of the statutory remedy of damages does not create Article III standing, so too here the naked grant of the statutory remedy of voidness cannot create standing.

Similarly, the mere existence of an arbitration provision in the OBA does not create standing to seek injunctive or declaratory relief where there are no allegations of a sufficient likelihood of future injury. As this Court has repeatedly recognized, "when a plaintiff seeks prospective relief such as an injunction, the plaintiff must establish a sufficient likelihood of future injury." *Food and Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 381 (2024); *see also, TransUnion LLC v. Ramirez*, 141 S.Ct. 2190, 2212 (2021); *Clapper v. Amnesty International USA*, 568 U.S. 398, 401 (2013); *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). The Louises made no attempt to allege that the inclusion of the arbitration provision caused them to pay more or incur any additional fees or charges, that it had any meaningful effect on their decision to finance their timeshare purchase, or that Bluegreen has ever sought to enforce the arbitration provision against the Louises. Bluegreen has not.

II. There Is No Conflict Among the Circuit Courts of Appeals.

The Louises try to conjure a circuit split by glossing over the deficiencies in their allegations compelled by Bluegreen's disclosures and citing cases from other Circuits considering different issues and presenting fundamentally different scenarios. The cases the Louises cite from the Second, Eighth, and Ninth Circuits considered none of the issues raised here and contained a key component absent from the

Louises' allegations—in those cases, the defendants' allegedly wrongful conduct was the but-for cause of the plaintiffs entering into the subject contract. Those courts therefore found standing based on allegations of actual injury stemming from the alleged misconduct of defendants, not bare procedural violations of law with the possibility of a statutory remedy. Thus, there is no split that this Court need remedy at this time.

As a threshold matter, "questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster v. Fall*, 266 U.S. 507, 511 (1925); *see also Cooper Industries, Inc. v. Aviall Services, Inc.*, 543 U.S. 157, 170 (2004). None of the cases Petitioners cite addressed standing under the MLA, whether a harm tied to the defendant but not the defendant's unlawful conduct can create standing, or whether a statutory remedy of voidness can create standing after *Spokeo*.

In *Graham v. Catamaran Health Solutions LLC*, the Eighth Circuit held that plaintiffs had standing to sue for violations of state insurance law. 940 F.3d 401, 407-08 (8th Cir. 2017). In that case, plaintiffs alleged that defendants sold group accident disability policies to credit card holders. This conduct was illegal, plaintiffs alleged, because credit card holders did not qualify as a permissible "group" under Arkansas law, and because defendants did not comply with a statutory registration requirement necessary before defendants could sell the insurance policies in the state. Plaintiffs argued that the policies were void *ab initio* but did not rely on a statutory provision declaring them void upon any violation of insurance

law. *Id.* at 404-05. The Eighth Circuit concluded that "if the policy is deemed void *ab initio* due to non-compliance with state law, then Graham will have suffered a compensable economic injury *fairly traceable to the defendants' actions*." *Id.* at 408 (emphasis added).

The Second Circuit's decision in *Dubuisson v. Stonebridge Life Insurance Company* is nearly identical to *Graham* in facts and reasoning. In *Dubuisson*, plaintiffs brought quasi-contract claims alleging defendants sold illegal group insurance policies to credit card holders, who were not "eligible entities" under New York Insurance law, and alleging that the policies violated New York law because they were not filed and approved with the Department of Insurance and did not contain certain required provisions required under law. 887 F.3d 567, 569, 571 (2d Cir. 2018). The Second Circuit agreed with *Graham* and held that the plaintiffs had standing because plaintiffs alleged that "they paid premiums for disability and medical expense insurance policies that are illegal under New York law and are therefore void *ab initio* . . . . Where a plaintiff alleges a concrete, economic injury *resulting from a defendant's violation of a statutory provision*, the plaintiff has alleged a sufficient injury to establish Article III standing . . . ." *Id.* at 574 (emphasis added).

The factual context and claims in *Graham* and *Dubuisson* differ markedly from the Louises' allegations here. Plaintiffs in those cases alleged that they paid for insurance policies that they never should have been able to purchase because the defendants illegally offered it to credit card holders who lacked the characteristics necessary to qualify for (and reap

the benefits of) group insurance coverage, and because the policies were not registered with the state regulators as required before it could be sold to the public. In that context, the causal connection between the economic harm and the alleged wrongful conduct is clear: plaintiffs' premium payments stem from defendants' offering illegal policies. Notably, neither case relied upon an alleged disclosure violation or a statutory penalty provision as the source of plaintiff's injury. By contrast, the MLA does not prohibit selling timeshares to service members, and none of Bluegreen's alleged MLA violations caused any harm to the Louises.

The Ninth Circuit decision the Louises cite similarly does not support the Louises' position, and further reinforces the importance of the specific factual allegations in determining whether a plaintiff's claim that a contract is void supports standing. In *V.R. v. Roblox Corp.*, V.R., a minor, alleged that his purchases of a video game virtual currency were void and that he was entitled to have his money returned. No. 23-15216, 2023 WL 8821300, at *1 (9th Cir. Dec. 21, 2023). V.R. had "two theories by which his purchases of [the currency] are void." *Id.* Under the first theory, V.R. relied on California's law providing that "minors may generally contract as adults, but retain the power to disaffirm contracts before or within a reasonable time after reaching the age of majority." *Id.* V.R. therefore argued that he was subject to "an ongoing injury—Roblox's wrongful possession of his money after disaffirmance." *Id.* The Ninth Circuit found that V.R. lacked standing under this theory. The Court found that the alleged injury "is not *fairly traceable to any alleged misconduct by*

Roblox . . . [because V.R.] does not plausibly allege that Roblox has a policy in writing or in practice of not granting refunds to disaffirming minors." *Id.*

Under the second theory, V.R. argued that his purchase of the virtual currency as a minor was an illegal contract and was void *ab initio* based on a California law "precluding minors from making certain contracts, including those 'relating to any personal property not in the immediate possession or control of the minor,'" which V.R. alleged applied to the virtual currency. *Id.* at *2. On this theory, the court found standing to challenge "Roblox's wrongful possession of his money resulting from purchase V.R. contends were void *ab initio*, an injury ongoing since the time of the purchase." *Id.*

Like in *Graham* and *Dubuisson*, V.R.'s second theory had a clear causal connection between the injury and the wrongful conduct. V.R. established standing when alleging that the defendant entered into an illegal contract with him, a contract that he, as a minor, could not make. The defendants' wrongful conduct caused his economic injury to make payments he would not otherwise have been able to make. Also as in *Graham* and *Dubuisson*, V.R. did not rely on a statutory remedy provision as the source of his injury and causation. At the same time, the Ninth Circuit's decision confirms, like the Eleventh Circuit's decision below, that simply alleging that a contract is void and seeking the return of money paid is not enough to establish Article III standing. Rather, the allegations must plausibly allege wrongful conduct that causes the injury sought to be remedied. V.R.'s allegations failed to make that connection in support of his first

theory of liability, and thus, like the Louises, V.R. lacked standing to assert that claim.

In sum, the Louises squint to see a circuit split that is a mirage. The Petition blithely glosses over the factual and legal specifics of the Louises' claims and the decisions of other Circuits in urging that this Court grant certiorari to decide that every plaintiff categorically has standing if they merely allege that a contract is void *ab initio* and seek the return of funds paid. None of the cases cited in the Petition supports that proposition.

The Petition does not identify any other Circuit decision confronting constitutional standing requirements in which plaintiffs rely exclusively on a statutory remedy to argue that a contract is void *ab initio* on account of statutory violations that otherwise cause no harm to the plaintiffs. There is thus no conflict for this Court to resolve, and certiorari is not warranted unless additional courts have occasion to confront that question and an actual conflict emerges.

III. The Eleventh Circuit's Decision Does Not Raise an Important Federal Question

The Eleventh Circuit's Constitutional standing analysis does not compromise the MLA's protections for military families or undermine military readiness. The Petition's and amici's sweeping descriptions of the predatory lending practices that financially harmed service members and prompted the passage and development of the MLA find no resemblance in the facts of this case, nor does the Eleventh Circuit's decision create an impediment to asserting claims against such harmful conduct.

For example, amici Military and Veterans Organizations describe specific lending practices that had targeted them, such as "payday loans with sky-high interest rates," "hidden fees and ancillary financial products," "follow-on loans just to cover the cost of prior loans," "direct access to military families' [bank] accounts," and "taking the title of borrowers' vehicles as collateral," and how the MLA protects against these practices with caps on interest rates, required disclosures for interest rates and payment obligations, and prohibitions on the various practices. Br. for Mil. and Veterans Orgs. as Amici Curiae Supporting Petitioners, 3, 9. And, according to amici, the MLA has been effective and reducing predatory practices and improving military members' credit. *Id.* at 11-13.

Yet none of those practices is at issue here. The 16.990% APR for the Bluegreen loan to the Louises was less than half the statutory maximum of 36%. *See* 10 U.S.C. § 987(b). Bluegreen provided extensive, accurate disclosures in compliance with the Truth in Lending Act that specified how much the Louises would be required to pay monthly and in total. There are no allegations of a successive loan or inappropriate use of bank accounts or other collateral. The Louises could allege no way in which Bluegreen's general practices that purportedly violate the MLA harmed them and other military families, or that the Louises' individual circumstances rendered these practices harmful to them.

Again, the MLA's policy objectives are laudable. At the same time, the federal courts are required to ensure that they have jurisdiction to decide the claims brought before them. Where plaintiffs cannot allege

any harm stemming from defendants' conduct, there is no case or controversy to satisfy the requirements of Article III, and Congress's provision of a statutory remedy alone cannot be used to circumvent those minimum standing requirements.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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