NO. 24-1126

In the Supreme Court of the United States

AVON CAPITAL, LLC,
A WYOMING LIMITED LIABILITY COMPANY,

Petitioner,

v.

UNIVERSITAS EDUCATION, LLC,

Respondent.

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

PETITION FOR REHEARING

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CORPORATE DISCLOSURE STATEMENT

Avon-WY has no parent company or publicly issued stock and no public company owns 10% or more of its stock.

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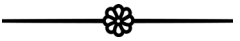
PETITION FOR REHEARING

Avon Capital, LLC, a Wyoming limited liability company ("Avon-WY") respectfully petitions for rehearing of this Court's October 6, 2025 Order denying Avon-WY's petition for a writ of certiorari.



REASONS FOR GRANTING REHEARING

This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." Critically, petitioner Avon-WY argued in the Tenth Circuit and then in its Petition for Writ of Certiorari that the respondent, Universitas Education, LLC ("Universitas") failed to meet its burden of pleading Article III Standing and subject matter jurisdiction — and it is undisputed that Universitas never even filed a pleading in this case. Contrary to the result in this case, multiple Courts of Appeals issued opinions and orders in October and September of 2025 requiring that a party's pleadings meet the burden of providing facts in support of federal court jurisdiction.

Respectfully, this case is even more important than this Court's 9-0 rebuke of the Tenth Circuit in *Waetzig v. Halliburton* dealing with the Tenth Circuit's misunderstanding of Rule 60(b) and how it is meant to work in the reopening and reconsideration of a case. Unlike *Waetzig*, the Tenth Circuit's erroneous decision

in this case challenges several longstanding principles of this Court.

1. The challenge of a District Court's jurisdiction can be challenged at any time, including for the first time at the Supreme Court. *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004) ("A litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance."); *Capron v. Van Noorden*, 6 U.S. 126, 2 Cranch 126, 127, 2 L. Ed. 229 (1804) (judgment loser successfully raised lack of diversity jurisdiction for the first time before the Supreme Court).

2. There is no personal jurisdiction over a party until the party is properly served — which Universitas must admit as there is no evidence in the record of actual service, or even attempted service, upon a party /respondent after the Universitas claims became moot and the District Court lost Article III standing in December 2020. *See Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97 (1987) ("Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.").

3. This Court has never allowed a nonparty to be held responsible for a judgment against a party under ancillary jurisdiction principles. As Justice Thomas stated in *Peacock v. Thomas*, 516 U.S. 349, 357–58 (1996) (citing *H.C. Cook Co. v. Beecher*, 217 U.S. 497, 498-99 (1910)), this Court rejected the attempt to do so in *H.C. Cook Co.* ("We have never authorized the exercise of ancillary jurisdiction in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment."). It is undisputed that Avon-WY is indisputably

not a party to the New York Judgment as determined by the District Court. (Doc. 85) ("The post[-]judgment turnover order issued by the District Court for the Southern District of New York referred only to Delaware and Connecticut entities, making it clear that Avon-WY was not a party to that order.") (citing *Universitas Educ., LLC v. Nova Grp., Inc.*, No. 11CV1590-LTS-HBP, 2014 U.S. Dist. LEXIS 109077, at *22 (S.D.N.Y. Aug. 7, 2014)).

In 2023, the Tenth Circuit held in this case that Universitas lost Article III Standing in December 2020. The latest decision by the Tenth Circuit in this case on December 31, 2024 does not explain how Universitas regained Article III standing after December 2020 and how the District Court possessed subject matter jurisdiction and personal jurisdiction: (1) without Universitas filing any claims; (2) without Universitas attempting service or actually serving any party/respondent; and (3) the District Court's September 13, 2017 Order [Dkt 92] holds that Avon-WY was dissolved in 2014 and no longer exists. The judgment against Avon-WY that is the subject of this proceeding is clearly improper, and obviously highly irregular. Without a pleading, Universitas could not proceed against an uninvolved party and could not have met its burden of pleading facts that Avon-WY somehow did "concrete harm" to Universitas anywhere at any time, which is the cornerstone requirement of Article III Standing.

Notably, on October 9, 2025, the United States Court of Appeals for the Tenth Circuit issued its opinion in *Samaritan Ministries Int'l v. Kane*, No. 24-2187, 2025 U.S. App. LEXIS 26297, 2025 WL 2876772 (10th Cir. October 9, 2025). In summary, the *Samaritan Ministries* opinion addresses a key constitutional and

procedural requirement — that a plaintiff's pleading must establish subject matter jurisdiction — and holds that the plaintiff failed to meet this requirement.

Next, also on October 9. 2025, the United States Court of Appeals for the Ninth Circuit issued its order in *Marshall v. Ameriprise Fin. Servs.*, LLC, No. 24-4575, 2025 U.S. App. LEXIS 26399 (9th Cir. October 9, 2025). In summary, the *Marshall* Court wrote that the plaintiffs failed to plead the citizenship of the parties or the amount in controversy in the complaint, and a party seeking to invoke the jurisdiction of the federal courts always has the burden of pleading the necessary jurisdictional facts)." *Marshall*, No. 24-4575, 2025 U.S. App. LEXIS 26399 at *1.

Next, the Court of Appeals for the Federal Circuit wrote in its *US Inventor* opinion that the plaintiff "bears the burden of showing that he has standing for each type of relief sought." *US Inventor, Inc. v. United States Pat. & Trademark Off.*, No. 2024-1396, 2025 U.S. App. LEXIS 25742, *6, 2025 WL 2810576 (Fed. Cir. October 3, 2025) (cit. omitted).

Similarly, the Court of Appeals for the Ninth Circuit wrote in its *Rosenwald* opinion on September 24, 2025: "[t]he party seeking to invoke the district court's diversity jurisdiction always bears the burden of both pleading and proving diversity jurisdiction" and then held the plaintiff failed to plead the necessary facts in support of jurisdiction *Rosenwald v. Kimberly-Clark Corp.*, No. 24-299, 2025 U.S. App. LEXIS 24772, *9, 2025 WL 2715322 (9th Cir. September 24, 2025).

The conflicting results seen in these opinions vividly illustrate the difficulties that lower courts will

have discerning when, or if, a plaintiff must plead facts establishing subject matter jurisdiction.

I. The *Samaritan Ministries* and Other Recent Opinions Revive the Requirement That a Plaintiff's Pleading Establish Federal Court Subject Matter Jurisdiction

The *Samaritan Ministries* opinion made it clear that the party asserting federal court jurisdiction must plead facts establishing subject matter jurisdiction:

> "The party invoking federal jurisdiction bears the burden of establishing standing." [*Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014)] (internal quotation marks omitted). At the pleading stage, "plaintiff[s] must clearly allege facts demonstrating each element [of standing]," *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016) (ellipsis and internal quotation marks omitted), and "plaintiff[s] must demonstrate standing for each claim [they] seek[] to press and for each form of relief that is sought," *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008) (internal quotation marks omitted).

Samaritan Ministries, No. 24-2187, 2025 U.S. App. LEXIS 26297 at *5. The *Samaritan Ministries* Court then reviewed the pleadings, expressly refused to consider post-complaint statements, and held that the pleadings failed to establish standing, and thus subject matter jurisdiction. *Id.*, at *5, *8.

As noted above, the *Marshall*, *US Inventor* and *Rosenwald* opinions also require that a plaintiff bears the burden of both pleading and proving jurisdiction.

II. Universitas's Pleadings Failed to Establish Jurisdiction — Universitas Never Filed Pleadings

In this case, the Court of Appeals held in its August 4, 2023 Opinion that the District Court did not have jurisdiction to enter the February 11, 2021 Order granting Universitas' motion for summary judgment which entered final judgment on Avon-WY:

> Universitas *lacked a legally cognizable interest* in the outcome once its *judgment expired in December 2020*, the case became *moot* and the district court *lacked Article III jurisdiction to enter its order, rendering the order void*.

Universitas Educ., Ltd. Liab. Co. v. Avon Capital, Ltd. Liab. Co., Nos. 21-6044, 21-6049, 21-6133, 21-6134, 2023 U.S. App. LEXIS 20356, at *1 (10th Cir. Aug. 4, 2023) (footnote omitted) (emphasis added).

This Court's *Arbaugh* Opinion sets forth the requirement that subject matter jurisdiction be established by a pleading containing a colorable claim:

> The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28 U.S.C. §§ 1331 and 1332. Section 1331 provides for "federal-question" jurisdiction, § 1332 for "diversity of citizenship" jurisdiction. A plaintiff properly invokes § 1331 jurisdiction when she pleads a colorable claim "arising under" the Constitution or laws of the United States. *See Bell v. Hood*, 327 U.S.

> 678, 681-685, 66 S. Ct. 773, 90 L. Ed. 939 (1946). [A plaintiff] invokes § 1332 jurisdiction when [the plaintiff] presents a claim between parties of diverse citizenship that exceeds the required jurisdictional amount, currently $ 75,000. *See* § 1332(a).

Arbaugh v. Y & H Corp., 546 U.S. 500, 513 (2006).

The requirement that a plaintiff plead the basis for federal jurisdiction appears in Federal Rule of Civil Procedure 8(a)(1), which requires the complaint to provide "a short and plain statement of the grounds for the court's jurisdiction." Because Universitas failed to file a pleading, Universitas failed to meet the requirements of Rule 8(a)(1) and also this Court's, *Spokeo* and *Arbaugh* opinions, thus there is no subject matter jurisdiction.

A court without jurisdiction lacks authority to act. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). Because no pleading asserting causes of action against Avon-WY were filed in the District Court, Universitas wholly failed to plead facts establishing standing and subject matter jurisdiction.

This failure of Universitas to re-establish Article III Standing or to plead the facts necessary to establish subject matter jurisdiction is now doubly important because in a related case the Tenth Circuit recently (September 25, 2025) contradicts its August 2023 Order and erroneously discusses the December 31, 2024 Order in the second Universitas appeal in which Carpenter is not a party, and cited an inapposite 1945 case, stating that it lacked jurisdiction to review a District Court's jurisdiction until a defendant is convicted and sentenced, despite this Court's crystal clear precedents

in *Arbaugh* and *Kontrick*. *See United States v. Carpenter (In re Contempt Proc. Against Daniel E. Carpenter)*, No. 24-6138, 2025 U.S. App. LEXIS 24838, 2025 WL 2731679 (10th Circuit September 25, 2025). If for no other reason than to update the Tenth Circuit's jurisprudence on Article III Standing, subject matter jurisdiction and personal jurisdiction, the Court should grant this Petition for Rehearing.

CONCLUSION

For the foregoing reasons, and those stated in the petition for a writ of certiorari, the Court should grant rehearing, grant the petition for writ of certiorari, and vacate the judgment below.

Respectfully submitted,

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October 29, 2025

RULE 44.2 CERTIFICATE

I hereby certify that that this Petition for Rehearing is presented in good faith and not for delay. In addition, the grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

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