No. 24-464

IN THE

Supreme Court of the United States

THOMAS J. DART, SHERIFF, COOK COUNTY, ILLINOIS, ET AL.,
Petitioners,

v.

QUINTIN SCOTT,
Respondent.

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

REPLY BRIEF FOR PETITIONERS

EILEEN O'NEILL BURKE
COOK COUNTY STATE'S ATTORNEY
CATHY MCNEIL STEIN
LYLE HENRETTY
JONATHON D. BYRER*
JOHN POWER
CHRISTINA FAKLIS ADAIR
500 Richard J. Daley Center
Chicago, IL 60602
(312) 603-4366
jonathon.byrer@cookcountysao.org
Counsel for Petitioners

**Counsel of Record*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

STATUTES, RULES AND REGULATIONS

REPLY BRIEF FOR THE PETITIONERS

The County's arguments regarding standing are undisputed in all material respects. Most significantly, Scott does not dispute that *Roper* must be overruled because it cannot be reconciled with modern Article III jurisprudence. Pet. 28-29. Rather, he *admits* that, under modern precedent, Article III standing would be a "nullity" if litigation costs conferred standing. Opp. 20. That admission only confirms the Chief Justice's conclusion that individuals lack Article III standing to pursue incentive awards, *Campbell-Ewald* v. *Gomez*, 577 U.S. 153, 178 n.1 (2016) (Roberts, C.J., dissenting), since incentive awards "compensate named plaintiffs for the costs incurred" litigating class actions, App. 11a, and litigation costs are not Article III injuries-in-fact, *Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 772-73 (2000).

Scott also does not dispute that neither law nor equity grants federal courts authority to compel defendants to pay incentive awards to class representatives. Pet. 30-36; App. 46a. Nor does he dispute that Rule 23(e) cannot grant such authority without running afoul of the Rules Enabling Act. Pet. 23. The undisputed absence of any authority to compel defendants to pay incentive awards deprives Scott of standing, App. 36a, because Article III requires redressability, which is absent when the federal courts lack authority to grant the requested relief.

The responses Scott does muster only dig the hole deeper. First, Scott's response literally *triples* the number of circuit splits at issue here, only confirming that the inconsistencies in this Court's precedents have left the lower courts in complete disarray regarding Article III jurisdiction to appeal denials of class certification. Second, Scott's meritless vehicle objections disregard rudimentary principles of federal jurisdiction. Third, Scott's scant arguments regarding standing show that this case can be easily resolved by simply reiterating that normal, settled Article III principles apply to class actions and individual suits alike, disavowing the stray statements to the contrary in this Court's early precedent, and applying those settled Article III principles here. We address these failings in turn.

I. Scott's Response Does Not Avoid A Circuit Split – It *Triples* Them.

Notably, Scott does not dispute the existence of an entrenched circuit split regarding the federal courts' authority to grant incentive awards, Pet. 12-17, nor does he dispute that a lack of authority to grant incentive awards negates redressability and, thus, Article III standing, *id.* at 37; App. 36a.

Rather, he flees from that conflict and its consequences by claiming that he seeks to shift litigation expenses to the class, declaring that he "know[s] of no circuit case holding that a similarly situated plaintiff lacks standing to appeal a denial of class certification." Opp. 12; accord *id.* at 13 (claiming "no split on whether Scott has standing"). Scott further claims that he would have had standing in the Eleventh Circuit, which recognizes a private-attorney-general theory. *Id.* at 12-13 (citing *Love* v. *Turlington*, 733 F.2d 1562, 1565 (11th Cir. 1984)).

In fleeing *one* circuit conflict, Scott has plunged headlong into the jaws of *two* others – indeed, Scott cites the very cases creating those conflicts. Opp. 10 n.3 (citing *Ruppert* v. *Principal Life Ins. Co.*, 705 F.3d 839, 844 (8th Cir. 2013); *id.* at 11 n.4 (citing *Lewis* v. *Becerra*, 111 F.4th 65, 68 (D.C. Cir. 2024)). Those additional circuit conflicts directly result from uncertainties arising out of ambiguities in this Court's precedents, confirming that review is warranted.

A. The *Ruppert* Cost-Shifting Conflict.

The Eighth Circuit's decision in *Ruppert* shows that the circuits are in direct conflict on whether a supposed interest in shifting litigation costs to class members can support Article III standing to appeal. There, the district court denied class certification, then entered judgment pursuant to a settlement agreement which "purport[ed] to reserve Ruppert's right to appeal the denial of class certification." 705 F.3d at 840. Despite that agreement, *Ruppert* held it was "require[d]" to address whether the "interest in shifting litigation costs to a class if the certification ruling is reversed" afforded him standing to appeal, and concluded that he lacked "a case or controversy, because his individual claims have become moot in the Article III sense." *Id.* at 844 (cleaned up).

This decision created a direct conflict among the circuits. In concluding standing was lacking, *Ruppert* specifically rejected the D.C. Circuit's holding that a putative class representative has Article III standing to appeal a denial of class certification for the purpose of "shifting the fees and expenses of class litigation" 705 F.3d at 844 (citing *Richards* v. *Delta Air Lines, Inc.*, 453 F.3d 525, 529 (D.C. Cir. 2006)).

Attempting to get around this circuit split, Scott declares *Ruppert* not "a precedential opinion," and its discussion of Article III mere "dicta." Opp. 10, n. 4. This is wrong, twice over. First, *Ruppert*'s publication info speaks for itself, confirming it was a published, precedential opinion. Second, *Ruppert*'s discussion of Article III was an alternative jurisdictional holding, on an issue the court was "require[d]" to address. 705 F.3d at 844. It is long settled that, in such circumstances, "where a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum*." *Woods* v. *Interstate Realty Co.*, 337 U.S. 535, 537 (1949).

B. The *Lewis* Private-Attorney-General Conflict.

The D.C. Circuit's decision in *Lewis* creates another direct circuit conflict regarding whether putative class representatives have Article III standing to appeal under a private-attorney-general theory. Like Scott, the *Lewis* plaintiffs "won. But they nevertheless appeal[ed], seeking to challenge the district court's earlier denial of class certification." 111 F.4th at 68. And like Scott, the plaintiffs rested their Article III standing to appeal on a private-attorney-general theory that they had a "right to represent the interests of absent class members." *Id.* at 71.

The D.C. Circuit rejected that theory. As the court explained, the plaintiffs' "discontent with the denial of class certification" was "a generally available grievance about the government" and thus "does not state an Article III case or controversy." 111 F.4th at 71-72. This was particularly true for "any alleged misapplication of Rule 23", the court went on, because "Rule 23 creates no substantive right to serve as a class representative" and could not legally do so under the Rules Enabling Act. *Id.* at 72. Absent any personal stake in the matter, *Lewis* concluded, the court lacked appellate jurisdiction. *Ibid.*

This conclusion is in direct conflict with the holdings of other circuits. Indeed, *Lewis* expressly rejected the Second Circuit's contrary holding that "the interest of the private attorney general" is "sufficient to satisfy the personal stake requirement" of Article III. 111 F.4th at 72-73 (quoting *Jin* v.

Shanghai Original, Inc., 990 F.3d 251, 258-59 (2d Cir. 2021)). *Lewis* also directly conflicts with Eleventh Circuit precedent recognizing a private-attorney-general theory of Article III. *Love*, 733 F.2d at 1565. Indeed, the Second Circuit relied on *Love* when adopting that theory. *Jin*, 990 F.3d at 260.

C. Only This Court Can Resolve This Tripartite Circuit Conflict.

It should go without saying that a case involving three separate, dispositive circuit conflicts implicating federal jurisdiction strongly necessitates this Court's review. The necessity is made even more paramount by the fact that these conflicts stem from uncertainties arising from this Court's precedent. As already explained, the conflict over judicial authority to grant incentive awards arises out of an interpretive conflict regarding this Court's precedents. Pet. 17. Similarly, the additional conflicts Scott interjects into this case arose because the lower courts are uncertain how to reconcile *United States Parole Comm'n* v. *Geraghty*, 445 U.S. 388, 390 (1980), with modern Article III jurisprudence. See *Lewis*, 111 F.4th at 73 (rejecting Second Circuit's reliance on *Geraghty* because it "does not reflect current law" of standing); *Ruppert*, 705 F.3d at 844 (rejecting D.C. Circuit's reading of *Geraghty*). That uncertainty stems, in large part, from the fact that *Geraghty* expressly reserved the question at issue here: "whether a named plaintiff who settles the individual claim after denial of class certification may, consistent with Art. III, appeal from the adverse ruling on class certification." 445 U.S. at 404 n.10. Only this Court can answer that question and resolve the conflicts that arise from ambiguities in its precedents, making review particularly appropriate.

II. This Case Is An Excellent Vehicle.

Although Scott deems this case a poor vehicle, this contention is easily disposed of.

Scott begins by insisting that resolution of the question presented does not affect the result of this case because he "had standing to appeal." Opp. 13; accord *id.* at 14 (claiming "Scott has standing"). But the question presented concerned *whether* he had standing to appeal, Pet. i, so Scott's argument is nothing but a circular claim that answering the question presented will not affect the outcome of this case *if this Court resolves that question in his favor*. That shows only that the question presented is outcome-determinative, not that this is a poor vehicle.

Next, Scott claims that his pending "routine motion" to amend his complaint and add plaintiffs could make the resolution of the question presented unimportant, by allowing the "case" to proceed regardless of Scott's standing. Opp. 14.[1]

This fundamentally misunderstands federal jurisdiction in at least two respects. First, standing is not dispensed in gross, *Town of Chester* v. *Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017), so merely adding *other* plaintiffs cannot negate *Scott's* personal lack of standing. Nor could it moot the County's financial interest in dismissing Scott to end his quest to force the County to pay him an incentive award.

Second, no amendment of Scott's complaint can possibly moot the question whether Scott had standing to appeal. If the Seventh Circuit lacked jurisdiction to reverse the district court's final judgment, that judgment would deprive the district court of jurisdiction to allow amendment of the complaint. *Johnson* v. *Levy Org. Dev. Co.*, 789 F.2d 601, 611 (7th Cir. 1986). Since orders entered without jurisdiction are void ab initio, depriving the district court of jurisdiction would not leave an amendment order unscathed, but rather require it be vacated, along with any subsequent proceedings. *Kern* v.

[1] Scott's counsel's focus on their larger "case" is telling, because it reveals their concern is not about protecting *Scott's* claims, but about protecting *their* "case" and *their* attorney's fees. That only emphasizes the dangers of elevating class attorneys to the status of real principals in class litigation – it only incentivizes counsel to jettison the class representatives they represent.

Huidekoper, 103 U.S. 485, 493 (1880).[2]

Scott next claims that the question presented is "advisory" because he has not yet requested an incentive award. Opp. 14-15. This forgets that the question here concerns Article III jurisdiction – a question of which the power to issue incentive awards is only one part, because it goes to redressability. That issue is hardly advisory, since answering it in the negative would require the Seventh Circuit's judgment be vacated, on the ground that Article III standing "must be extant at all stages of review." *Preiser* v. *Newkirk*, 422 U.S. 395, 401 (1975). Again, vacating that judgment would restore the judgment of the district court, requiring vacatur of all subsequent district court orders and proceedings for want of jurisdiction. *Kern*, 103 U.S. at 493.

Even assuming Scott means to claim this case arises in an interlocutory posture, see Opp. 14-15 (citing *Mount Soledad Mem'l Ass'n* v. *Trunk*, 567 U.S. 944, 945-46 (2012) (Alito, J.)), his argument fails. Questions of Article III jurisdiction can *never* be rendered interlocutory by the possibility of further proceedings on the merits, because a court lacking

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[2] In characterizing his motion as "routine," Scott neglects to mention it is *six years* overdue, see R. 31 (scheduling order), and thus cannot be granted absent a showing of diligence despite the passage of so much time, *Alioto* v. *Town of Lisbon*, 651 F. 3d 715, 720 (7th Cir. 2011).

jurisdiction has no power to adjudicate a claim meritless *or* meritorious. *Ex parte McCardle*, 74 U.S. 506, 514 (1869). Put another way, the merits are ultimately irrelevant because the loser can always undo its loss by challenging jurisdiction.

That said, even if litigation on the merits could render jurisdiction interlocutory, review is appropriate if it avoids "extraordinary inconvenience and embarrassment." *Am. Constr. Co.* v. *Jacksonville, T. & K. W. R. Co.*, 148 U.S. 372, 384 (1893). That requirement is easily satisfied by the extensive additional litigation Scott contemplates – amending the complaint, class discovery regarding his new plaintiffs, class certification, merits discovery, summary judgment proceedings, and a trial – all before a district court having no jurisdiction to begin with.

Finally, Scott declares that "[f]airness" makes this case a poor vehicle because the County supposedly committed "inequitable conduct" by questioning his Article III standing to appeal after he accepted its offer of judgment. Opp. 15. This argument is baseless, because nothing in the offer of judgment states that the County agreed that Scott had standing to appeal. Nor could Scott have reasonably believed the County implicitly consented to his standing, since parties may not consent to jurisdiction. *Ry. Co.* v. *Ramsey*, 89 U.S. 322, 327 (1874); *Wright* v. *Calumet City*, 848 F.3d 814, 817 (7th Cir. 2017) (agreement reserving right to appeal certification denial "is insufficient to establish the concrete interest necessary under Article III"). Nor could he have reasonably thought the County agreed to acquiesce to jurisdiction, since the offer of judgment contains no such agreement, which also could not prevent consideration of jurisdiction. *E.g.*, *Ruppert*, 705 F.3d at 840. Such an agreement would have been illegal, because attorneys cannot contract away their ethical duty to candidly advise federal courts of jurisdictional defects.

III. Scott Has No Real Response On The Merits Of *This* Case.

Regarding his standing, Scott has little to say; what little he says is meritless. For instance, Scott claims he had standing to appeal because certification would make him an assignee of the class recovery. Opp. 21. This argument is irreconcilable with the rule that putative class representatives must have *individual* standing. *Simon* v. *E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 n.20 (1976). That rule also conclusively disposes of Scott's private-attorney-general theory. Opp. 12-13. To the extent *Geraghty* endorses that theory, it must be overruled. See *Lewis*, 111 F.4th at 73 (*Geraghty* "does not reflect current law" of standing).

Scott's theories of standing based on cost-shifting, Opp. 10, and incentive awards, *id.* at 11, are also easily disposed of. Scott admits Article III would be a "nullity" if litigation costs conferred standing, Opp. 20, and does not dispute that *Roper* must be overruled, Pet. 28-29. Nor does he dispute that Rule 23(e) is invalid if interpreted to supersede this Court's rulings and create a cost-shifting remedy. Pet. 30-31. Rather, Scott claims only that the Seventh Circuit neither treated incentive awards as litigation costs, nor held that Rule 23(e) supersedes this Court's precedents, Opp. 20-21. Both arguments are irreconcilable with the unambiguous statements below that incentive awards "compensate named plaintiffs for the *costs* incurred," App. 11a (emphasis added), and that "*Greenough* and *Pettus* have been *superseded* . . . by Rule 23," App. 17a (cleaned up; emphasis added).[3]

Recognizing that he cannot prevail on Article III standing, Scott focuses on an issue not presented here – namely, whether incentive awards may be incorporated into settlement agreements or paid out from common funds. Opp. 16-18, 20. But this case involves no class settlement authorizing an incentive award; it could not, since no class has been certified.

[3] In making the former argument, Scott claims – without elaboration – that incentive awards are "like costs and fees" but also somehow "akin to a damages payment." Opp. 20 (cleaned up). In other words, he effectively concedes they are a legal fiction, a "jackalope" stitched together from disparate pieces of other laws. Pet. 30.

Pet. 31.[4] Nor does it involve claims against a common fund – indeed, Judge Wood, who authored the decision below, emphasized this fact *seven* times at oral argument. CA7 Arg. at 15:29; 17:20; 18:54; 19:30; 19:48; 21:15; 21:28. Rather, as Judge Easterbrook observed, this case concerns the entirely different question of Article III standing when a putative class representative who received full damages nevertheless wants the court to "order [the defendants] to hand over more." App. 46a.

On that issue, Scott has tellingly little to say, none of it persuasive. Scott's primary argument is that *Greenough* restricts only the *amount* of incentive awards. Opp. 18-19. But *Greenough* expressed no concern about the amount sought, as confirmed by *Cent. R. & Banking Co. v. Pettus*, which describes *Greenough* as categorically rejecting compensation for "personal services and private expenses," without any mention of the amount sought. 113 U.S. 116, 122 (1885). In other words, as Judge Easterbrook recognized, *Greenough* and *Pettus* "say that litigants cannot be paid for their efforts—that their reward must be damages for harm done, not a salary for services as plaintiffs." App. 43a.

[4] This differentiates this case from the earlier petitions Scott notes, Opp. 16, as well as the petition in *Isaacson* v. *Meta Platforms, Inc.*, No. 24-269, which all involve settlements.

That leaves Scott to invoke the *China Agritech* footnote mentioning incentive awards, Opp. 17, but that case arose under the securities laws, in which Congress expressly allows incentive awards, Pet. 21 n.3. If extended to other contexts, that footnote must be rejected as unreasoned dicta. This Court just made clear it "need not follow" such a "footnote just because it exists; our adherence instead depends on whether it withstands analysis." *Royal Canin U.S.A., Inc.* v. *Wullschleger*, No. 23-677, 2025 U.S. LEXIS 365 at *23-*24 (U.S. Jan. 15, 2025). As explained, the *China Agritech* footnote flunks careful analysis because nothing in federal law or equity authorizes courts to force defendants to pay incentive awards outside the securities context. Pet. 30-37.

Scott lacked Article III standing to appeal to force on County taxpayers relief unauthorized by law. The Seventh Circuit's judgment must be vacated, and over seven years of litigation finally brought to a close.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

EILEEN O'NEILL BURKE
COOK COUNTY STATE'S ATTORNEY
CATHY MCNEIL STEIN
LYLE HENRETTY
JONATHON D. BYRER*
JOHN POWER
CHRISTINA FAKLIS ADAIR
500 Richard J. Daley Center
Chicago, IL 60602
(312) 603-4366
jonathon.byrer@cookcountysao.org
Counsel for Petitioners

**Counsel of Record*

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