No. _____

IN THE
Supreme Court of the United States

NEXSTAR MEDIA GROUP, INC., MISSION BROADCASTING, INC., AND WHITE KNIGHT BROADCASTING, INC.,

Petitioners,

v.

DIRECTV, LLC,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Stephen J. Obermeier
Enbar Toledano
Nicholas Cheolas
Frank Scaduto
WILEY REIN LLP
2050 M Street, NW
Washington, DC 20036
(202) 719-7000

Counsel for Petitioner Mission Broadcasting, Inc.

Lauren Willard Zehmer
Counsel of Record
Sameer Aggarwal
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
lzehmer@cov.com

Counsel for Petitioner Nexstar Media Group, Inc.

Additional Counsel Listed on Inside Cover

Craig A. Gilley
Elizabeth C. Rinehart
VENABLE LLP
600 Massachusetts
Avenue, NW
Washington, DC 20001
(202) 344-4000

Kan M. Nawaday
VENABLE LLP
151 West 42nd Street
New York, NY 10036
(212) 307-5500

Counsel for Petitioner
White Knight
Broadcasting, Inc.

QUESTION PRESENTED

To bring an antitrust damages action, a private plaintiff must first establish "antitrust standing." The antitrust standing doctrine sets a higher bar than Article III and requires that a plaintiff's injury be proximately caused by the alleged violation and be the type of injury that the antitrust laws were designed to address. Consistent with that principle, the Ninth and Tenth Circuits have held that a plaintiff who declines to purchase an allegedly overpriced product generally lacks antitrust standing because its damages are necessarily speculative and indirect. But in the decision below, the Second Circuit split from that settled rule and held that a plaintiff had antitrust standing to pursue a price-fixing claim based on hypothetical lost revenue indirectly caused by the decision *not* to purchase from the alleged conspiracy.

The question presented is:

Whether a plaintiff has antitrust standing to recover purported downstream losses flowing from its decision not to purchase an allegedly price-fixed product.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Nexstar Media Group, Inc. (Nasdaq: NXST) was an appellee in the Second Circuit and a defendant in the district court.

Petitioner Mission Broadcasting, Inc. was an appellee in the Second Circuit and a defendant in the district court.

Petitioner White Knight Broadcasting, Inc. was an appellee in the Second Circuit and a defendant in the district court.

Respondent DirecTV LLC was appellant in the Second Circuit and plaintiff in the district court.

CORPORATE DISCLOSURE STATEMENT

Petitioner Nexstar Media Group, Inc. is a publicly held corporation (Nasdaq: NXST). Nexstar Media Group, Inc. does not have a parent corporation. According to information contained in a Schedule 13G/A filed by BlackRock, Inc. (NYSE: BLK) with the Securities and Exchange Commission on April 3, 2025, BlackRock, Inc. owns approximately 10.5% of Nexstar's outstanding stock. No other publicly held company owns 10% or more of Nexstar Media Group, Inc.'s stock.*

Petitioner Mission Broadcasting, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Petitioner White Knight Broadcasting, Inc. is a Delaware corporation and is a wholly owned subsidiary of White Knight Holdings, Inc. There is no publicly held corporation that owns 10% or more of its stock.

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* On August 19, 2025, Nexstar Media Group, Inc. announced that it entered into a definitive agreement to acquire all outstanding shares of TEGNA, Inc. (NYSE: TGNA), subject to regulatory approvals. On March 19, 2026, the U.S. Department of Justice and Federal Communications Commission approved the transaction and the transaction closed. On April 17, 2026, a federal district court issued a preliminary injunction to "preserve the status quo" and prohibit "further integration." *See In re Nexstar-Tegna Merger Litig.*, 2026 WL 1049295, at *29 (E.D. Cal. Apr. 17, 2026). That decision has been appealed to the U.S. Court of Appeals for the Ninth Circuit. *See DirecTV, LLC v. Nexstar Media Grp., Inc.*, No. 26-2490 (9th Cir.).

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *DirecTV, LLC v. Nexstar Media Group, Inc.*, No. 24-981 (2d Cir. Dec. 16, 2025) (reversing and vacating grant of motion to dismiss)
- *DirecTV, LLC v. Nexstar Media Group, Inc.*, No. 23-cv-2221 (S.D.N.Y. Mar. 20, 2024) (granting motion to dismiss)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Nexstar Media Group (Nexstar), Mission Broadcasting, Inc. (Mission) and White Knight Broadcasting, Inc. (White Knight) respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The district court's March 20, 2024 opinion and order granting Defendants' motion to dismiss is reported at 724 F. Supp. 3d 268 and is reproduced at Pet. App. 39a–57a.

The United States Court of Appeals for the Second Circuit's December 16, 2025 decision is reported at 162 F.4th 295 and is reproduced at Pet. App. 1a–38a. The Court of Appeals' January 28, 2026 order denying panel rehearing and rehearing en banc is unreported and is reproduced at Pet. App. 58a.

JURISDICTION

The Second Circuit entered judgment on December 16, 2025 and denied Petitioners' timely rehearing petitions on January 28, 2026. Pet. App. 1a, 58a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

15 U.S.C. § 1 provides in relevant part:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

15 U.S.C. § 15(a) provides in relevant part:

> [A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

INTRODUCTION

The Clayton Act's treble damages remedy provides a powerful incentive for private antitrust enforcement. But this Court has long held that this remedy is not available for "all injuries that might conceivably be traced to an antitrust violation." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 534 (1983) ("*AGC*") (citation omitted). Instead, the antitrust standing doctrine serves as a gatekeeping principle that limits recovery to plaintiffs who have suffered a direct injury of the kind the antitrust laws were designed to prevent.

Consistent with these principles, the courts of appeals have generally held that plaintiffs bringing price-fixing claims who do not purchase at an allegedly supracompetitive price lack standing to recover speculative downstream losses. The Ninth and Tenth Circuits, in particular, have rejected claims by nonpurchasers who allege they were "priced out" of a transaction and seek to recover lost revenue or profits from purchases that were never made.

In the decision below, the Second Circuit now breaks from that approach and holds that a plaintiff who declined to purchase at the challenged price

nonetheless has antitrust standing to recover downstream lost revenue based on a hypothetical transaction that never occurred. In doing so, the court created a direct conflict with the Ninth and Tenth Circuits on a recurring question of federal antitrust law. Indeed, before that decision "no circuit had held that a priced-out non-purchaser," like DirecTV here, "plausibly alleged antitrust standing." Pet. App. 37a (Sullivan, J., dissenting).

The Second Circuit's outlier rule warrants this Court's review. A purchaser who buys a price-fixed good suffers an antitrust injury when it pays supracompetitive rates—an injury that is concrete, nonspeculative, and direct. Lacking such an injury, however, DirecTV claims here that it suffered damages from its decision *not* to purchase an allegedly price-fixed product. Specifically, DirecTV claims downstream lost revenue from subscribers' cancellation based on a multi-step causal chain that requires assumptions about (i) whether the parties would have reached an agreement, (ii) on what terms, (iii) whether any subscribers were lost due to a single "blacked-out" station and if so how many, (iv) whether any losses would have exceeded avoided costs, and (v) whether any purported lost revenue would have been offset by avoided retransmission consent fees.

As Judge Sullivan explained in his dissent, such hypothetical injuries are inherently the kind of indirect and speculative harms that this Court has repeatedly deemed insufficient to confer antitrust standing as a matter of law. Pet. App. 31a–32a.

The question presented is important. The decision below dramatically expands the scope of private antitrust litigation by allowing nonpurchasers to recover treble damages based on transactions that never occurred. By extending antitrust standing to nonpurchasers with remote and speculative injuries, the Second Circuit has exposed sellers to sweeping liability untethered to any actual payment of supracompetitive prices or other direct antitrust injury. That expansion threatens to subject defendants to costly discovery and coercive settlement pressure divorced from any concrete market injury.

If allowed to stand, the Second Circuit's rule will govern a disproportionate share of national antitrust litigation and invite precisely the speculative, expensive, discovery-driven claims this Court has repeatedly sought to prevent. This case is an ideal and clean vehicle to resolve the circuit split and restore the settled rule. The Court should grant the petition and reaffirm that the antitrust laws do not authorize damages by plaintiffs who challenge prices for a purchase they never made.

STATEMENT OF THE CASE

A. Legal Background

The concept of antitrust standing traces to Section 4 of the Clayton Act, which creates a private right of action for violations of the federal antitrust laws and permits "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws" to bring suit and seek treble damages for those injuries. 15 U.S.C. § 15. Although the statute references "any person," this Court has clarified that "Congress did not intend the antitrust laws

to provide a remedy in damages for all injuries that might conceivably be traced to an antitrust violation." *AGC*, 459 U.S. at 534 (quoting *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 263 n.14 (1972)). Plaintiffs "must prove antitrust injury, which is to say injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). A plaintiff must also be an "efficient enforcer" of the antitrust laws, which depends on several factors, including analyzing whether the injury was direct and non-speculative. *See AGC*, 459 U.S. at 540–42; *see also* Pet. App. 20a.

This Court has emphasized that antitrust standing incorporates principles of proximate cause and limits recovery to proper plaintiffs. *See AGC*, 459 U.S. at 532–33. In cases involving economic harm, damages recovery is limited to plaintiffs who have been injured at "the first step" in the causal chain. *Id.* at 534 (citation omitted); *see also* 2A Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 335(e) (2025) ("Areeda & Hovenkamp") ("[M]ore numerous links in the chain of causation connecting the plaintiff with the defendant's violation can make the injury too 'remote,' too uncertain in fact, too speculative to measure, and too far removed from the rationale for finding a violation.").

The proximate causation standard for antitrust standing "is somewhat different from that of standing as a constitutional doctrine" because the court also "must make a further determination whether the plaintiff is a proper party to bring a private antitrust action." *AGC*, 459 U.S. at 535 n.31; *see also Rx Sols.,*

Inc. v. Caremark, LLC, 164 F.4th 436, 443 (5th Cir. 2026) ("An antitrust plaintiff must do more than meet the requirements of Article III to establish its standing to bring suit." (citation omitted)). By imposing a heightened bar, antitrust standing restricts plaintiffs seeking damages based on indirect or speculative harm—such as DirecTV's alleged damages here. Strict application of the antitrust standing doctrine is necessary in light of the antitrust law's powerful treble damages remedy. *See Blue Shield of Va. v. McCready*, 457 U.S. 465, 477 (1982) ("[T]he potency of the remedy implies the need for some care in its application.").

B. Factual Background

Petitioners Nexstar, Mission, and White Knight are broadcast station groups—companies that own broadcast television stations, such as ABC, CBS, NBC, and Fox, in various local markets, called "designated market areas" (DMAs). Pet. App. 5a.[1] Petitioners license the distribution of their stations to subscribers of multichannel video programming distributors (MVPDs)—like Respondent DirecTV—through specific contractual agreements known as retransmission consent agreements (RCAs). Pet. App. 6a. RCAs generally give MVPDs the right to carry the full-time feed of a broadcast station in exchange for a retransmission consent fee. *Id.*

[1] Because this case arises on review of Petitioners' motion to dismiss the complaint, Petitioners accept the allegations as true at this stage. *See Cunningham v. Cornell Univ.*, 604 U.S. 693, 697 n.2 (2025).

RCAs are often set for a specific term and are thus negotiated from time to time. If negotiations are unsuccessful and the prior RCA expires, the MVPD is not authorized to distribute the broadcaster's stations, and the stations are "blacked out" for the MVPD's subscribers until a new agreement is reached. *Id.* A "blackout" occurs when the MVPD and broadcaster did not reach a meeting of the minds, and the MVPD did not purchase the broadcaster's product. The broadcast stations remain available to consumers for free, as the signals "can be captured . . . by any television set within [an] antenna's range." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 627 (1994).

Under the FCC's regulatory scheme in place at the time DirecTV filed its complaint, a single broadcast station group was not allowed to own or operate more than one of the "top four stations" in the same DMA. 47 C.F.R. § 73.3555.[2] If a broadcaster acquired a second top-four affiliate, it had to divest one of the stations to another broadcaster. But the FCC permitted the divested and divesting stations to enter "sharing arrangements," whereby one station can provide services to the other, such as common facilities or technical services. Pet. App. 42a. Divested stations often rely on divesting stations for many aspects of their operations, but they may not coordinate on certain matters such as RCA negotiations. Pet. App. 7a, 42a.

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[2] The Eighth Circuit recently vacated the FCC's 2023 order retaining the top-four prohibition after "find[ing] the Commission's decision to retain the rule arbitrary and capricious." *Zimmer Radio of Mid-Mo., Inc. v. FCC*, 145 F.4th 828, 854 (8th Cir. 2025).

Nexstar owns or operates 200 broadcast stations in the United States. Pet. App. 7a. It has divested some of its stations to Mission and White Knight, each of which have "sharing arrangements" with Nexstar. *See* Pet. App. 7a, 42a. Mission owns top-four stations in twenty-three DMAs, while White Knight owns stations in two DMAs. Pet. App. 7a.

In 2019, DirecTV entered into three-year RCAs with Mission and White Knight. Compl. ¶¶ 90, 95. In June 2022, prior to the expiration of those agreements, DirecTV opened renewal negotiations with Mission and White Knight. Pet. App. 8a. DirecTV alleges that Mission and White Knight had "an agreement 'with Nexstar to raise prices and extract supra-competitive retransmission consent fees from DirecTV in overlap markets,'" *i.e.*, those where both Nexstar and either Mission or White Knight each own a top-four station. *Id.* (quoting Compl. ¶ 9). Mission and White Knight do not operate in any overlap markets.

In October 2022, DirecTV withdrew from negotiations, causing Mission's and White Knight's stations to be blacked out and unavailable on DirecTV. Pet. App. 9a, 44a. According to DirecTV, these blackouts caused some consumers to cancel their DirecTV subscriptions, which allegedly decreased DirecTV's revenue and injured DirecTV. Pet. App. 10a, 44a.

DirecTV claims that the "conspiracy" between Nexstar, Mission, and White Knight served two purposes: (1) Nexstar would "benefit directly from the higher prices" because it "receives substantially all of th[e] profits" from Mission and White Knight, and

(2) Nexstar was "preparing for its own contract renewal negotiations with DirecTV" and could rely on the higher rates with Mission and White Knight "to demand similarly inflated rates." Pet. App. 9a (citation omitted). But DirecTV did not reach an agreement with Mission and White Knight from which Nexstar could receive supracompetitive profits. And even absent agreements with Mission and White Knight, DirecTV executed a new RCA with Nexstar in September 2023. Dkt. 72 (S.D.N.Y. Oct. 5, 2023).

C. Procedural History

In March 2023, DirecTV brought this suit against Nexstar, Mission, and White Knight, alleging antitrust violations under § 1 of the Sherman Act, 15 U.S.C. § 1, and various state law claims under New York law. Pet. App. 9a. DirecTV contends that Nexstar, Mission, and White Knight "engaged in a horizontal price-fixing conspiracy that was specifically intended to force DirecTV to accede to higher retransmission consent fees or face the loss of programming." Pet. App. 10a.

The district court granted Petitioners' motion to dismiss the complaint. Pet. App. 40a, 57a. The district court held that DirecTV lacked antitrust standing because it had not suffered an antitrust injury and was not an efficient enforcer of the antitrust laws. Pet. App. 40a. With regard to antitrust injury, the district court found that DirecTV failed to plead that "the harm claimed by the plaintiff corresponds to the rationale for finding a violation of the antitrust laws in the first place." Pet. App. 49a–50a (quoting *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 342 (1990)). The court held that DirecTV's purported

injury—"lost profits resulting from the blackouts"—"d[id] not flow from that which makes [Petitioners'] acts unlawful" because DirecTV did not "pa[y] anti-competitive rates but instead made the unilateral decision to abandon RCA negotiations." Pet. App. 50a. In other words, DirecTV's losses "flow[ed] from its own choice to exit the market," and even if that choice "may have been influenced by [Petitioners'] demands, it does not result from [Petitioners'] claimed unlawful acts, i.e., the extraction of supracompetitive prices." Pet. App. 50a–51a.

The district court further held that DirecTV was not an efficient enforcer of the antitrust laws because its injuries were "too indirect and speculative to confer antitrust standing." Pet. App. 54a. The district court surveyed the relevant precedent and the leading treatise on antitrust law and found unanimous consensus that nonpurchasers are "typically inefficient enforcers of the antitrust laws, as their damages are both too indirect and speculative." Pet. App. 53a–54a. Consistent with that principle, the district court found DirecTV's lost profits too indirect and speculative to render it an efficient enforcer.

DirecTV appealed, and a divided panel reversed. The majority determined that DirecTV suffered an antitrust injury and is an efficient enforcer of the antitrust laws. Pet. App. 5a. It held that the relevant antitrust injury was not limited to "the payment of supracompetitive prices" and also should have included the injury of "reduced output." Pet. App. 18a. The majority believed that when DirecTV "refused to pay the supracompetitive prices, the price-fixing conspiracy" reduced output "through blacked-out stations," and the alleged "lost profits flowed directly from this

output reduction." Pet. App. 19a. The majority also believed that DirecTV could efficiently enforce the antitrust laws, even though it did not pay the alleged supracompetitive rates, because "the object" of the conspiracy was to "forc[e] DirecTV to choose between increased prices and reduced output." Pet. App. 22a. And the injuries were not "speculative," in the majority's view, because DirecTV's "injury of lost profits is direct" based on its "concrete losses of subscribers and profits" and its "prior course of dealing" with Mission and White Knight. Pet. App. 26a–27a.

Judge Sullivan dissented. In his view, DirecTV failed to overcome the "serious defects" created by the "indirect and speculative nature of [its] purported harm." Pet. App. 31a. He explained that "non-purchasers—those buyers who did not buy at higher prices stemming from collusive price-fixing—will struggle to show a direct injury because they did not pay higher prices by virtue of the conspiracy." Pet. App. 32a (cleaned up). "That makes sense" because the antitrust laws "fashion a remedy for those who '*pay* excessive prices,'" not for "*all* injuries that might conceivably be traced to an antitrust violation." *Id.* (citation omitted). Judge Sullivan observed that "[o]ther circuits have recognized as much" including the Ninth and Tenth Circuits, and that the majority's decision departed from that understanding. Pet. App. 33a. Before the majority's decision here, "no circuit had held that a priced-out non-purchaser like DirecTV plausibly alleged antitrust standing." Pet. App. 37a. The "key principle" to establishing antitrust standing, Judge Sullivan continued, "is proximate cause," and "the highly speculative quality of DirecTV's damages torpedo the required direct connection between the

harm and the alleged antitrust violation." Pet. App. 38a (internal quotation marks omitted). And because "there is no direct connection" between DirecTV's alleged lost profits and Petitioners' alleged conspiracy, Judge Sullivan cautioned that "[g]reenlighting DirecTV's attenuated theory of injury . . . undercuts the very foundation of the antitrust laws." Pet. App. 33a–34a.

On December 30, 2025, Petitioners sought en banc review, citing to the conflict between the majority's opinion and prior Second Circuit (and Supreme Court) precedent and the creation of a split in authority with the Ninth and Tenth Circuits. Dkt. 108 at 7–16 (2d Cir. Dec. 30, 2025). On January 28, 2026, the Second Circuit denied the petition for en banc rehearing. Pet. App. 58a. As a result, only this Court can address and resolve the circuit split and restore the settled rule.

REASONS FOR GRANTING THE PETITION

The courts of appeals are divided 2–1 on the question presented. Specifically, the Second, Ninth, and Tenth Circuits have now split over whether a non-purchaser has antitrust standing to assert a price-fixing claim when it did not pay any alleged supracompetitive prices. The courts all acknowledge that "Congress did not intend the antitrust laws to provide a remedy in damages for all injuries that might conceivably be traced to an antitrust violation." *AGC*, 459 U.S. at 534 (citation omitted). But they disagree about whether a plaintiff who did not purchase from an alleged price-fixing conspiracy nonetheless has antitrust standing based on alleged lost revenue or profits indirectly traceable to the failed transaction. The Ninth and Tenth Circuits, relying on this Court's

precedent in cases like *AGC* and *Standard Oil*, have held that such claims fail because they are based on indirect and speculative harm. But in the decision below, the Second Circuit held that a buyer who refuses to pay an allegedly inflated price may nevertheless seek to recover treble damages for speculative lost profits allegedly arising from a transaction that never occurred.

The Second Circuit's novel rule both creates a square circuit split and is plainly incorrect. Under this decision, sellers are exposed to an effectively unlimited universe of potential antitrust liability because an entire class of plaintiffs can now assert injuries from purported price fixing by claiming they would have made a purchase if the price were lower. The majority's rule is inconsistent with how courts, including this Court, have applied antitrust standing principles. The Court has cautioned that claims that are "indirect" and "speculative" cannot give rise to antitrust standing. *AGC*, 459 U.S. at 542. As Judge Sullivan explained in dissent, nonpurchasers "will struggle to show a direct injury" from alleged price-fixing "because they did not pay higher prices by virtue of the conspiracy." Pet. App. 32a (cleaned up). And because their theory of damages would thus necessarily "rel[y] on a chain of speculative assumptions," it "would be exceedingly difficult to apply." Pet. App. 34a (cleaned up).

The Second Circuit's erroneous decision concluding otherwise has now authorized a multitude of new antitrust claims based on speculative harms, which will force defendants into "expensive" discovery with the threat of exorbitant liability from potential treble damages. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,

558 (2007). Because many antitrust cases arise in the Second Circuit, it is particularly important that this Court review the majority's decision, resolve the circuit split, and clarify the rules of antitrust standing.

I. The Circuits Have Split on Whether Nonpurchasers Have Antitrust Standing to Challenge Price-Fixing Conspiracies.

The courts of appeals are now divided 2–1 on whether a plaintiff who did not purchase from an alleged price-fixing conspiracy may nonetheless recover damages for downstream losses based on a hypothetical transaction that never occurred. *Compare* Pet. App. 4a–5a, *with City of Oakland v. Oakland Raiders*, 20 F.4th 441, 448–49 (9th Cir. 2021) (nonpurchaser city allegedly priced out of NFL team market); *Montreal Trading Ltd. v. Amax, Inc.*, 661 F.2d 864, 867 (10th Cir. 1981) (nonpurchaser unable to purchase cartelized product).

Until last year, the prevailing view had been that "'[n]on-purchasers who are priced out of the market' present a 'special problem due to the speculative nature of the harm.'" Pet. App. 37a (Sullivan, J., dissenting) (quoting *City of Oakland*, 20 F.4th at 460) (alterations adopted). Courts were "likely to find that the claims of those who refused to purchase at the cartel price are *speculative*" because "[a]nyone could claim that he or she would have purchased at the competitive price but was priced out of the market as a result of the anticompetitive pricing." Areeda & Hovenkamp ¶ 391(b)(1).

That view was endorsed by the Ninth and Tenth Circuits, which both considered this question and correctly held that a nonpurchaser lacks antitrust

standing to bring a claim based on alleged price-fixing because any purported injury is too remote and speculative to maintain the suit. The Second Circuit has now reached the opposite conclusion, holding that a nonpurchaser may recover lost revenue based on a transaction that never occurred. That holding squarely conflicts with the reasoning of the Ninth and Tenth Circuits and warrants this Court's review.

The Ninth Circuit addressed nonpurchasers' antitrust standing in *City of Oakland*, which arose from the relocation of the Oakland Raiders professional football team from Oakland to Las Vegas. As relevant here, the City of Oakland alleged that the NFL and its teams (including the Raiders) worked together "in a classic horizontal price-fixing scheme" to "constrain[] the supply of NFL teams" and thereby "driv[e] up the price of hosting an NFL team far beyond the marginal costs of operating an NFL team." 20 F.4th at 451. The City was "priced out of the market," and because "it could not pay" the alleged "supra-competitive prices, Oakland lost the Raiders and any chance to host an NFL team." *Id.* The City alleged that the price-fixing scheme imposed several injuries including lost investment value, lost income, lost tax revenues, and devaluation of the stadium property. *See id.*

The Ninth Circuit held that the City lacked antitrust standing. As the court explained, "[a]lthough buyers who pay collusive overcharges (direct purchasers) ordinarily have antitrust standing to challenge a horizontal price-fixing scheme, buyers . . . who are priced out [of] the market—and hence do not purchase the product or pay the overcharge—ordinarily do not." *Id.* at 448–49. "A nonpurchaser's injury," the court

observed, "is less direct than the injuries of actual purchasers and highly speculative" because the court "cannot know whether, in the absence of [the seller's] restrictions on output, the nonpurchaser would have made a purchase and, if so, under what terms." *Id.* According to the court, "there is no way of knowing" "what would have occurred in a more competitive marketplace," and the City's theory of standing relied on "too many speculative links in the chain of causation between [d]efendants' alleged restrictions on output and the City's alleged injuries." *Id.* at 459–60 (citing *AGC*, 459 U.S. at 540).

The Ninth Circuit's decision aligned with the Tenth Circuit's holding in *Montreal Trading*. There, the plaintiff alleged that it was unable to purchase potash because the defendants colluded to "deliberately limit[] potash production to drive up prices." 661 F.2d at 865. The plaintiff alleged that this scheme was successful, and the plaintiff was thus "unable to buy potash it could have resold at a profit." *Id.* at 867.

The court held that the plaintiff lacked antitrust standing because permitting nonpurchasers to sue could "result in potentially disastrous recoveries by those only tenuously hurt." *Id.* "[T]he fact of a party's injury . . . would be inherently speculative," and opening the door to suits by nonpurchasers would create "a seemingly unlimited number of plaintiffs" that "could assert a virtually unlimited quantity of lost purchases." *Id.* at 867–68. The court suggested that a nonpurchaser's injury "may not be inherently speculative" if it can "show a regular course of dealing with the conspirators," but the plaintiff failed to do so. *Id.* at 868. As the court explained, a price-fixing conspiracy is "certainly aimed at those who purchase the

product at the inflated price" because their injury is both "more direct and more proximately caused than those [buyers] who are unable to purchase." *Id.* at 867.

The Second Circuit faced similar circumstances to those in *City of Oakland* and *Montreal Trading*, but it reached the opposite conclusion. The majority held that DirecTV has antitrust standing to challenge Petitioners' alleged price-fixing even though DirecTV cut off negotiations and never paid any alleged supracompetitive prices. The majority believed that the causal link between the alleged violation and DirecTV's injuries was sufficiently "direct" because "[t]here were no intermediate victims whose injuries caused DirecTV to suffer harm in turn." Pet. App. 22a. And its asserted injuries were not "speculative" because the parties had "a prior course of dealing" that could create "a distinct measure of damages." Pet. App. 27a.

The conflict is direct and irreconcilable. The majority's conclusions contradict the Ninth and Tenth Circuits' holdings on materially similar facts. In both *City of Oakland* and *Montreal Trading*, the courts concluded that nonpurchasers generally lack antitrust standing due to "the speculative nature of the harm," and courts thus "require a reasonable level of certainty before [they] will confer antitrust standing on such consumers." *City of Oakland*, 20 F.4th at 460 (citing *Montreal Trading*, 661 F.2d at 868); *see also Acad. of Allergy & Asthma in Primary Care v. Amerigroup Tenn., Inc.*, 155 F.4th 795, 814 (6th Cir. 2025) (under the "existing rule," "*potential* purchasers who do not buy at a cartel price but who would have bought at the market price" are "bar[red] . . . from suing given

the speculation required to decide whether they would have bought" (citing *Montreal Trading*, 661 F.2d at 867–68)).

By contrast, the Second Circuit now permits nonpurchasers to bring claims rooted in speculative damages, so long as they can allege any "preexisting business relationship" with the defendants. Pet. App. 27a. In so doing, the majority's opinion lowered the bar for all nonpurchasers.

The majority suggested that this case differed from *City of Oakland* and *Montreal Trading* because DirecTV's "history" of deals with Petitioners "provide[d] a benchmark for assessing the effect of the alleged conspiracy." Pet. App. 27a. But that is no real distinction at all. As Judge Sullivan explained in his dissent, the sparse record of DirecTV's prior dealings with Petitioners does not provide a reliable benchmark for what the alleged competitive price and terms should have been. *See* Pet. App. 37a–38a. Nor does it resolve the speculation inherent in determining how many subscribers left DirecTV because of the blackouts rather than independent reasons. *Id.*

Even if there had been a "course of dealing" here, the majority's distinction fails because the other circuits' cases rejecting nonpurchasers' antitrust standing also involved a prior "course of dealing." In *City of Oakland*, for example, the Raiders had a 22-year long relationship with the City, which included a lease agreement with multiple renewals, an "operating loan," funding for "construction" and "stadium modernization efforts," and support for public initiatives. 20 F.4th at 448. Despite that extended history establishing the City's business dealings with the

Raiders, the court held that the City lacked antitrust standing due to the "many uncertain links in the chain of causation." *Id.* at 460. In other words, under the Ninth Circuit's reasoning, it makes no difference whether a nonpurchaser had a "course of dealing" with a defendant—a price-fixing claim based on hypothetical lost profits still will not give rise to antitrust standing when the plaintiff did not pay the alleged supracompetitive price.

Moreover, nothing in *AGC* or this Court's precedent recognizes a prior course of dealing exception for antitrust standing. Instead, those precedents focus on directness and administrability. By granting review here, the Court can clarify that there is no such exception to the bedrock antitrust standing principles requiring a direct and non-speculative injury.

In his dissent, Judge Sullivan recognized the conflict that the majority's opinion created with the other courts of appeals, specifically the Ninth and Tenth Circuits. As he explained, before the majority's decision, "no circuit had held that a priced-out nonpurchaser like DirecTV plausibly alleged antitrust standing." Pet. App. 37a. He was also "unconvinced" by the majority's purported distinction with the Ninth and Tenth Circuit cases based on DirecTV's prior business relationship with Petitioners. *Id.* As Judge Sullivan explained, to the extent there is any "prior course of dealing" exception to general antitrust standing principles, the allegations about the prior relationship were "wholly conclusory" and "too sparse" to provide a benchmark to assess the effects of the alleged conspiracy. Pet. App. 37a–38a.

Because there is no meaningful distinction between the case below and those before the Ninth and Tenth Circuits, there is now a square 2–1 circuit split on the question of whether nonpurchasers have antitrust standing to challenge a price-fixing conspiracy based on lost profits. This important question now warrants this Court's review, and this case is an ideal vehicle to do so.

II. The Second Circuit's Decision Is Wrong.

This Court's review is also warranted because the majority erred in concluding that DirecTV has antitrust standing to maintain its claims and, if permitted to stand, the court's decision will open the floodgates to speculative antitrust claims and coercive settlements.

In *AGC*, this Court explained that antitrust law permits a damages remedy for those who "pay excessive prices," but does not provide a remedy "for all injuries that might conceivably be traced to an antitrust violation." 459 U.S. at 534 (citation omitted). The Court identified several "factors" to determine whether a plaintiff is a "proper party" including (among others) the "directness or indirectness of the asserted injury" and the "chain of causation" and whether damages are "highly speculative." *Id.* at 540–42.

Under *AGC*, DirecTV's theory fails at least three independent requirements for antitrust standing: (1) directness, (2) speculative damages, and (3) risk of duplicative recovery. DirecTV did not pay the allegedly supracompetitive price. Its claimed injury instead depends on a chain of assumptions: that an agreement would have been reached, that prices

would have differed, that subscribers would have stayed, and that profits would have resulted. Each step is uncertain; together they are massively conjectural.

Despite these factors, the majority permitted DirecTV to pursue its claims even though the "chain of causation" between the alleged price-fixing and DirecTV's purported lost profits depends on "several somewhat vaguely defined links." *Id.* at 540. As Judge Sullivan explained, DirecTV's claims first require a court to "assume[]" that DirecTV and Petitioners "would have reached an agreement" for DirecTV to carry Petitioners' broadcast stations, but without knowing when or at what price. Pet. App. 34a. Even assuming an agreement, the court must next assume that DirecTV's customers "would have stayed with DirecTV but for [Petitioners'] supra-competitive prices" despite that DirecTV "had been hemorrhaging customers in recent years." Pet. App. 35a. Even assuming some customers cancelled their service, the court must next "estimate how *many*" of DirecTV's customers "cancelled their subscriptions due to *these* blackouts," which would include "ascertaining the motivations of those who *did* cancel their subscriptions"—*i.e.*, would require discovery into the motivations and decisions of a distinct, intermediate group. Pet. App. 36a. And even assuming some of these figures, the court must next "calculate DirecTV's lost profits," including whether its lost revenue may have been "offset" by the fees it did not have to pay to Petitioners. *Id.*

Each step in DirecTV's theory depends on speculation. But this Court's precedent and long-standing principles of antitrust law do not permit plaintiffs to

assert claims, like this one, that are built on speculative fact after speculative fact. *See AGC*, 459 U.S. at 542–43 (disfavoring "highly speculative" damages claims for efficient-antitrust enforcers). Indeed, lower courts have interpreted *AGC* and other precedent to require antitrust plaintiffs to show that they are "efficient enforcer[s] of the antitrust laws," which turns on several "factors" including "the directness or remoteness of the injury suffered by the plaintiff" and "the speculative nature of the damages sought." *See, e.g.*, *N. Brevard Cnty. Hosp. Dist. v. C.R. Bard, Inc.*, 162 F.4th 1268, 1276–77 (10th Cir. 2025) (citations omitted); *Sunbeam Tel. Corp. v. Nielsen Media Rsch., Inc.*, 711 F.3d 1264, 1271 (11th Cir. 2013) (similar). And commenters have observed that nonpurchasers' injuries are innately "*speculative*," since "[a]nyone could claim that he or she would have purchased at the competitive price but was priced out of the market as a result of the anticompetitive pricing." Areeda & Hovenkamp ¶ 391(b)(1).

These principles do not change based on the majority's decision to relabel DirecTV's speculative lost revenue as flowing from a "reduction in output," rather than an increase in price. Pet. App. 19a. DirecTV does not allege that a "reduction in output" was the purpose of the alleged price-fixing conspiracy. Instead, the blackouts occurred because DirecTV voluntarily chose to exit the market. DirecTV also does not allege that it was harmed by the lack of programming itself, but rather that the absence of programming caused some unidentified and hypothetical number of subscribers to leave, which in turn led to lost revenues. Thus, any harm resulting from the

blackouts implicates the same concerns Judge Sullivan identified about the "chain of speculative assumptions" that arises if a nonpurchaser is permitted to assert antitrust claims. *See* Pet. App. 34a. Under well-established tenets of antitrust law, those nonpurchasers still lack antitrust standing because of the "difficulty . . . in identifying those who are injured by the deadweight welfare loss" associated with the alleged reduction in output. Areeda & Hovenkamp ¶ 391(b)(1).

More fundamentally, by reframing DirecTV's injury from its refusal to pay supracompetitive prices as a downstream "output reduction," the majority introduces a basic proximate-causation problem. Imposing a higher bar than Article III, antitrust standing requires a plaintiff to show that a defendant *proximately* or *directly* caused his injury, under which "the general tendency of the law . . . is not to go beyond the first step." *AGC*, 459 U.S. at 534. Despite the majority's assertion that DirecTV's injury occurs at the "first step following the defendants' price-fixing conspiracy," *see* Pet. App. 21a, that analysis is simply not correct. The alleged "output reduction"—and DirecTV's associated lost revenue—is felt only in DirecTV's consumer-facing market, several steps removed from the alleged conspiracy and well beyond the "first step" in the causal chain. Specifically, DirecTV's damages claim requires showing: (1) Petitioners allegedly demanded supracompetitive rates; (2) DirecTV responded by ending negotiations; (3) after DirecTV's RCAs with Mission and White Knight expired, their stations became blacked out; (4) after the blackouts, unidentified consumers allegedly unsubscribed from DirecTV; and (5) the lost

revenue from those subscriptions was greater than the avoided costs of paying retransmission consent fees. In other words, any alleged injury from the anticompetitive conduct followed several intervening steps, including customers' independent purchasing decisions.

The Ninth and Tenth Circuits have correctly applied this Court's controlling principles to nonpurchasers' claims challenging an alleged price-fixing scheme. When a plaintiff fails to offer any way to "know[] what would have occurred in a more competitive marketplace," "[t]here are too many speculative links in the chain of causation between [the defendants'] alleged restrictions on output and the [plaintiff's] alleged injuries." *City of Oakland*, 20 F.4th at 460; *Montreal Trading*, 661 F.2d at 870 (plaintiff "has not shown more than a speculative and insubstantial effect").[3]

III. The Question Presented Is Important, Recurring, and Squarely Presented.

The Court should also review this case because the question presented is exceptionally important and defines the scope of who has standing to recover treble damages under the antitrust laws—a threshold issue in every private antitrust case. Permitting the Second Circuit's decision to stand will enable plaintiffs to

[3] The Third Circuit has also addressed antitrust standing in a similar context, holding that a plaintiff lacked antitrust standing after it "chose to walk away from the table because it did not like the [contract] terms [the defendant] offered." *Host Int'l, Inc. v. MarketPlace, PHL, LLC*, 32 F.4th 242, 250 (3d Cir. 2022). The Third Circuit's reasoning in *Host* is also in tension with the Second Circuit's decision below.

bring speculative and indirect damages claims, based on conclusory pleading, and thus coerce settlements given the expense of discovery and treble damages threat.

The petition also provides an ideal vehicle for this Court to clarify the antitrust standing doctrine, which it has not substantively addressed in the 40 years since *AGC* was decided. Since then, the lower courts have applied the multi-factor test with increasingly divergent results, including the square circuit split on the nonpurchaser question.

The Court has required alleged antitrust injuries to be direct and nonspeculative because of the "strong interest" in "keeping the scope of complex antitrust trials within judicially manageable limits." *AGC*, 459 U.S. at 543. Without limits on standing, "the courts and the defendants would be subject to endlessly proliferating suits," and courts would be "burden[ed]" with "increasingly speculative determinations about the amount and source of remote injuries." Areeda & Hovenkamp ¶ 335(g).

Under the majority's holding, nonpurchasers could bring all kinds of speculative lawsuits under the guise that they lost profits or suffered other injuries based on their decision not to purchase an allegedly overpriced product, so long as they could point to any prior business dealings with the seller. In other words, a market participant could manufacture antitrust standing by claiming it would have purchased an allegedly overpriced good at a lower price.

And that theory has no natural stopping point. It would expose defendants to expansive discovery and coercive settlement pressure based on hypothetical

transactions that never occurred. If left alone, the decision will reshape incentives in negotiations across all industries by converting failures to reach agreement into antitrust claims that are able to survive a motion to dismiss and require expensive antitrust discovery. For that reason, courts have long "require[d] a reasonable level of certainty" before "confer[ring] antitrust standing on such consumers." *City of Oakland*, 20 F.4th at 460.

The majority's unprecedented expansion of antitrust standing (1) to a nonpurchaser, (2) at the end of a speculative causal chain, and (3) against defendants that are "in no way enriched" by the alleged conspiracy erodes the limits on antitrust standing. Pet. App. 33a (Sullivan, J., dissenting) (citation omitted). The court's regime now opens the door to claims of "virtually unlimited quantity," "wholly out of proportion" to any real-world harm, *Montreal Trading*, 661 F.2d at 867–68 (treble damages are intended, in part, to "deprive violators of the fruits of their illegality," but "alleged conspirators gain[] no fruits from nonsales"); *see also* Frank H. Easterbrook, *Detrebling Antitrust Damages*, 28 J.L. & Econ. 445, 463 (1985) (explaining "there are infinite number of noncustomers who did not buy arbitrarily large quantities of goods" and "[i]t is best to concentrate the recovery on consumers who bought"). That concern is especially prominent in the antitrust context because the fear of treble damages can be sufficient to force sellers to capitulate to potential buyers' demands. *See AGC*, 459 U.S. at 545.

The consequences would be exceptional in any court, but they are especially pronounced now that the Second Circuit has countenanced this overly broad

view of antitrust standing. Because the Second Circuit adjudicates a disproportionate share of antitrust cases, it has "led the way in developing the nation's antitrust jurisprudence," often "set[ting] the standard by which other courts judge similar questions." Saul P. Morgenstern, Jennifer B. Patterson & Terri A. Mazur, *Antitrust Jurisprudence in the Second Circuit*, 85 Fordham L. Rev. 111, 111 (2016); *see also Antitrust Litigation 2025: USA – New York Trends & Developments*, Chambers & Partners (rev. Sep. 18, 2025), https://tinyurl.com/ycyypm84 ("At the 100th anniversary of the Sherman Act, the [Second] Circuit courts were noted as having decided more antitrust cases than any other circuit courts.").

Plaintiffs are especially incentivized to bring these claims—and to do so in the Second Circuit—given the costs and pressures that antitrust litigation imposes on defendants. *See, e.g.*, David F. Herr, *Annotated Manual for Complex Litigation* § 30 (4th ed., updated May 2022) (noting that antitrust litigation "involve[s] voluminous documentary and testimonial evidence, extensive discovery, complicated legal, factual, and technical (particularly economic) questions, numerous parties and attorneys, and substantial sums of money"). And defendants often feel pressured to settle since the consequences of liability can be "economically devastating." Edward D. Cavanagh, *The Private Antitrust Remedy: Lessons from the American Experience*, 41 Loy. U. Chi. L.J. 629, 633–34 (2010).

As this Court has explained, guardrails at the pleadings stage are particularly important in antitrust cases given the "unusually high cost of discovery." *Twombly*, 550 U.S. at 558. Absent this

Court's review, antitrust defendants are poised to be subjected to an influx of new and creative claims, designed to impose discovery costs and extract coerced settlements.

This risk is not merely hypothetical. Broadcasters' negotiating leverage in retransmission consent negotiations depends on their ability to withhold consent, subject to the FCC's good-faith negotiation requirements. Under the majority's rule, however, MVPDs could respond to that leverage by walking away from negotiations, confident in their ability to threaten a costly antitrust suit. Even the threat of such litigation would distort negotiations and materially weaken broadcasters' bargaining position.

And the consequences of the majority's decision reach far past simply the broadcasting industry. For instance, any potential purchaser of sneakers could allege that a group of shoe manufacturers entered into a price-fixing conspiracy that harmed the purchaser because he could not buy the allegedly overpriced shoes and thus was unable to earn profits by reselling those sneakers on eBay. Like the present case, such a fact pattern would be rife with speculative hypotheticals including whether the consumer would have actually bought the sneakers at the "competitive" price and how much—if any—resale profits he could have made in the but-for world. But under the Second Circuit's rule, defendants across the board could face sprawling claims from consumers' ordinary decisions to not complete a purchase (including those that may never have intended to do so). And these plaintiffs would be empowered to subject defendants to expensive discovery and the risk of treble damages to extort

settlements before fact discovery could debunk their conclusory claims.

Finally, this case is an ideal vehicle to address the question presented. The decision below squarely rests on antitrust standing, was resolved at the pleading stage, and presents no alternative grounds for affirmance. The question presented was the sole basis for the Second Circuit's reversal. There are no obstacles to this Court's review of the important question, nor is there any reason to wait for further percolation given the square circuit split and destabilizing effects of the Second Circuit's opinion. *See Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 452 (2009) ("We have repeatedly emphasized the importance of clear rules in antitrust law.").

It has been over 40 years since this Court last addressed the antitrust standing doctrine in *AGC*. Antitrust litigants would benefit greatly from this Court's guidance on the doctrine and whether private plaintiffs are entitled to bring *per se* price-fixing conspiracy claims for a purchase they never made.

CONCLUSION

The petition should be granted.

Respectfully submitted,

Stephen J. Obermeier
Enbar Toledano
Nicholas Cheolas
Frank Scaduto
WILEY REIN LLP
2050 M Street, NW
Washington, DC 20036
(202) 719-7000

Counsel for Petitioner Mission Broadcasting, Inc.

Craig A. Gilley
Elizabeth C. Rinehart
VENABLE LLP
600 Massachusetts Avenue, NW
Washington, DC 20001
(202) 344-4000

Kan M. Nawaday
VENABLE LLP
151 West 42nd Street
New York, NY 10036
(212) 307-5500

Counsel for Petitioner White Knight Broadcasting, Inc.

Lauren Willard Zehmer
Counsel of Record
Sameer Aggarwal
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
lzehmer@cov.com

Counsel for Petitioner Nexstar Media Group, Inc.

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