No. 25-1243

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

REPLY BRIEF FOR PETITIONERS

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CORPORATE DISCLOSURE STATEMENT

Petitioners have no changes to the corporate disclosure statement accompanying the petition for a writ of certiorari.

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INTRODUCTION

DirecTV's opposition never answers the petition's central point: before this case, no court of appeals had permitted a nonpurchaser to bring a price-fixing claim based on downstream losses arising from a transaction that never occurred. The Second Circuit's decision therefore conflicts with decisions of the Ninth and Tenth Circuits applying settled antitrust-standing principles. Rather than confront that conflict, DirecTV recasts the question presented as whether nonpurchasers can ever establish antitrust standing. That is not the question before this Court.

Instead, the question presented is whether a consumer who did not pay any higher price (the canonical harm of a price-fixing conspiracy) nonetheless has antitrust standing based on alleged losses occurring several causal steps downstream from its decision *not* to make a purchase. On *that* question, as Judge Sullivan recognized, the Second Circuit's decision breaks ground from decisions in other circuits. The Ninth and Tenth Circuits have held these types of nonpurchaser claims fail because any purported injury is too far removed from an alleged antitrust violation and instead rests on multiple layers of conjecture about transactions that never occurred and profits that never materialized. The Second Circuit, by contrast, held that DirecTV's claims may proceed despite the same speculative causal-link defects in the allegations here, including purchasing decisions by independent third-party subscribers.

The question of whether a nonpurchaser's downstream lost profits can support antitrust standing in a price-fixing case is important, recurring, and now subject to a circuit split. Without any basis in this Court's precedent, the Second Circuit created a novel exception to the general rule that nonpurchasers lack antitrust standing. This Court's intervention is warranted to restore uniformity among the circuits as to whether antitrust defendants can be subjected to burdensome antitrust discovery for speculative injuries far removed from the objective of the antitrust laws.

ARGUMENT

I. The Circuit Split Is Concrete and Outcome Determinative.

As Judge Sullivan observed, "[b]efore [this case] no circuit had held that a priced-out non-purchaser like DirecTV plausibly alleged antitrust standing" to recover hypothetical lost revenues from a failed transaction. Pet. App. 37a. The Second Circuit's novel exception conflicts with both this Court's precedent and decisions by the Ninth and Tenth Circuits. This case does not present mere fact-bound error correction, but rather the circuits' fundamentally different and contradictory approaches to antitrust standing.

DirecTV's opposition confirms there are several points of agreement. For instance, DirecTV does not dispute that the Second Circuit became the first appellate court to conclude that a nonpurchaser has antitrust standing to challenge an alleged price-fixing scheme. Nor does DirecTV contest that the other courts that have considered similar antitrust claims seeking recovery for hypothetical downstream losses have rejected the claims as "indirect" and "highly speculative." *City of Oakland v. Oakland Raiders*, 20

F.4th 441, 448-49, 458-60 (9th Cir. 2021); *Montreal Trading Ltd. v. Amax Inc.*, 661 F.2d 864, 867 (10th Cir. 1981) (nonpurchaser's claim for lost profits "would be inherently speculative"); *see also Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 542 (1983) ("*AGC*") ("indirect" and "speculative" claims cannot support antitrust standing).

Instead, to downplay the circuit split that the Second Circuit created, DirecTV has erroneously refashioned the question presented. According to DirecTV, Petitioners advance "a categorical" and "bright-line rule" that nonpurchasers *always* lack antitrust standing in *all* circumstances. BIO 11. But Petitioners have never contended that nonpurchasers "necessarily" lack antitrust standing for any type of injury. BIO i. Nor is that the question on which Petitioners seek this Court's review.

Petitioners ask this Court to decide a distinct important question: whether under this Court's antitrust precedents that require an antitrust injury to be direct and non-speculative, a plaintiff who never consummated a purchase may nonetheless recover speculative downstream losses allegedly flowing from that unrealized transaction. *See* Pet. i. The nature of the alleged losses is critical because in antitrust cases, "it is appropriate … 'to consider whether a claim rests at bottom on some abstract conception or speculative measure of harm.'" *AGC*, 459 U.S. at 543 (citation omitted).

DirecTV's claims also do not fit into any recognized exception to the default rule that nonpurchasers generally lack antitrust standing. Although DirecTV cites challenges to group boycotts involving nonpurchasers (BIO 20), those cases involved a competitor suffering the direct harm of being driven out of the market. By contrast, DirecTV is a consumer (not a competitor) and challenges a price-fixing conspiracy despite never paying the allegedly supracompetitive price.

All told, DirecTV tackles a strawman when it contends there is no circuit split because the Ninth and Tenth Circuits have declined to "adopt a categorical rule that would deny standing to all priced-out nonpurchasers." BIO 12-13 (citing *Montreal Trading*, 661 F.2d at 868; *City of Oakland*, 20 F.4th at 458-59 n.11). The other circuits' decisions confirm that the courts of appeals are now divided on how to apply the principles that antitrust injury must be "direct" and "non-speculative" to nonpurchaser claims.

In *City of Oakland*, the City claimed that its injuries included hypothetical "lost investment value"; "lost income" from fees and surcharges; "lost tax revenues" from tickets, concessions, and parking; and "devaluation of the [stadium] property." 20 F.4th at 451. As DirecTV notes, the court did not state a "categorical rule" blocking *all* nonpurchaser suits when it rejected the City's claims. BIO 13; *see* 20 F.4th at 459 n.11. There was no need to do so. The Ninth Circuit applied well-established principles of antitrust standing to conclude that the lack of "directness of the injury" and the "speculative nature of the harm" prevented the "reasonable level of certainty" that would be required to "confer antitrust standing" on a nonpurchaser like the City. 20 F.4th at 458-61; *see also* 2A Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their*

Application ¶ 391(b)(1) (2025). That conclusion was confirmed by the City's proposed damages, which would have been "exceedingly difficult to calculate." *City of Oakland*, 20 F.4th at 460. That inquiry affects antitrust standing because "[o]nce it becomes clear—especially early in the litigation—that damage measurements will be unduly speculative, the courts generally dismiss the damage suit." *Id.* at 461 (quoting Areeda & Hovenkamp ¶ 335(c)(5)).

Similarly, in *Montreal Trading*, the nonpurchaser plaintiff sought to recover the lost revenue it would have gained from "resell[ing]" potash "to customers in North Korea." 661 F.2d at 866. The court did not need to adopt a categorical rule to reject the plaintiff's "inherently speculative" claim. *Id.* at 867. The Tenth Circuit explained that the plaintiff's theory of harm left the court "unsure about many things," such as whether the initial purchase would have occurred, the price and quantity of the initial purchase, and the price and quantity of the future resale. *Id.* at 867-68. Applying well-established principles of antitrust standing, "these problems and uncertainties" were sufficient to reject the plaintiff's speculative claims. *Id.* at 868.

A majority of the Second Circuit took a materially different approach to a functionally identical problem. Like the nonpurchaser plaintiffs in *City of Oakland* and *Montreal Trading*, DirecTV's claims require conjecture on the economic consequences of an unconsummated transaction several steps removed from the alleged antitrust violation (including decisions by independent actors)—the same concern that doomed those prior plaintiffs' claims. *See* Pet. App. 37a (Sullivan, J., dissenting). Yet, the court created a new exception and permitted DirecTV's speculative claims based largely on the single set of prior agreements. Pet. App. 26a-27a.

DirecTV argues that the Second Circuit's decision is consistent with those of the other circuits because there was "an established course of dealing" here between Petitioners and DirecTV that distinguishes this case and eliminates concerns about speculation. BIO 14-15. That is not so. Neither the majority nor DirecTV cites any example of this Court or another appellate court permitting nonpurchasers to sue based on a prior course of dealing, confirming that the underlying decision stands alone. Pet. App. 37a-38a (Sullivan, J., dissenting); Pet. 19. And DirecTV overstates the factual differences between the cases. Presented with comparable facts, the circuit courts approached the issue of antitrust standing fundamentally differently.

City of Oakland involved a longstanding course of dealing between the City and the Raiders over 22 years. Pet. 18-19. Notwithstanding that history, the Ninth Circuit held the City had failed to demonstrate antitrust standing because "many uncertain links in the chain of causation" remained, and the City thus failed to demonstrate antitrust standing. 20 F.4th at 460. Given the much more robust history of prior dealing in *City of Oakland*, it strains credulity to suggest that the single set of prior agreements here meaningfully distinguishes the legal standards articulated by the Second and Ninth Circuits.

Judge Sullivan underscored the point, emphasizing that DirecTV's allegations do not even plausibly plead a course of dealing because the "few threadbare paragraphs of the complaint" relevant to the past dealings were "wholly conclusory." Pet. App. 37a-38a. Indeed, DirecTV appears to now recognize this defect, claiming it "could have pleaded more detail had it been required to do so." BIO 23. But the majority's decision was based on those "conclusory" and "threadbare" allegations and invites other nonpurchaser plaintiffs to manufacture antitrust standing simply by referencing a single prior purchase and their would-be intent to buy again.[1]

Finally, even putting aside the purported prior course of dealing, there remains a circuit split over whether downstream losses from failed negotiations are sufficiently "direct" to support antitrust standing. The Ninth and Tenth Circuits recognized both the indirect and speculative nature of the claimed injuries, finding that the several layers of assumptions between a nonpurchaser's failed transaction and eventual downstream losses defeat the "proximate causation" required for antitrust standing. *Montreal Trading*, 661 F.2d at 867-68 (explaining chain of speculation); *City of Oakland*, 20 F.4th at 459 (same). In contrast, the decision below treated DirecTV's injuries as occurring "at the first step," Pet. App. 21a, even though there were several intervening steps—including by independent third parties—between the

[1] DirecTV also disputes (BIO 16-17) the relevance of decisions from other circuits that reference the "existing rule" applied by the Ninth and Tenth Circuits that nonpurchasers lack standing to recover speculative losses. *See Acad. of Allergy & Asthma in Primary Care v. Amerigroup Tenn., Inc.*, 155 F.4th 795, 814 (6th Cir. 2025); *Host Int'l, Inc. v. MarketPlace, PHL, LLC*, 32 F.4th 242, 250 (3d Cir. 2022). Those decisions further confirm that the decision below departed from the prior consensus.

alleged conspiracy and the purported lost revenue. There is no plausible way to reconcile the Second Circuit's proximate cause analysis with the decisions from the Ninth and Tenth Circuit.[2]

In sum, DirecTV argues there is no split because the facts here are different from those in *City of Oakland* and *Montreal Trading*. BIO 14. But all cases will necessarily differ in the precise facts. And as Judge Sullivan explained, the underlying principles are the same, and the "[o]ther circuits have recognized" that a nonpurchaser's claim for inherently speculative lost revenue "undercuts the very foundation of the antitrust laws." Pet. App. 33a.

II. The Court of Appeals Erred.

DirecTV's opposition also does not resolve the errors in the majority's reasoning below.

In defense of the majority's opinion, DirecTV repeats its invented charge that Petitioners seek a bright-line rule, despite quoting the petition's acknowledgment that the antitrust standing inquiry turns on several factors. BIO 18-19; Pet. 5, 20. Indeed, the petition is clear that the Second Circuit's errors stem not from its failure to apply a categorical

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[2] DirecTV also argues this case fits with *City of Oakland* and *Montreal Trading* because, unlike in those cases, there are "no more direct victims" here. BIO 15 (citation omitted). But Petitioners have entered retransmission consent agreements with other multichannel video programming distributors and DirecTV cannot manufacture antitrust standing by omitting those agreements. In any event, whether there are more direct victims is only one factor in the antitrust standing analysis and not relevant to the question presented.

rule, but rather its failure to heed the fundamental principles driving this Court's antitrust standing precedent. Pet. 20-22 (discussing *AGC*, 459 U.S. at 534, 540-42). In *AGC*, the Court explained that factors like the "indirect[]" nature of the plaintiff's injury, the "tenuous and speculative character of the relationship between the alleged antitrust violation and the [plaintiff's] injury," and the "problems of identifying damages" meant the plaintiff's allegations were "insufficient as a matter of law." 459 U.S. at 545. Until the decision below, courts applying *AGC* understood that, under these principles, nonpurchasers would "struggle to show a direct injury" sufficient to recover alleged future losses. Pet. App. 32a (Sullivan, J., dissenting). This Court can thus use this case to reaffirm and clarify the governing standards, lest a broad and unprincipled exception erode them.

DirecTV also errs in arguing that resolving this case would amount to "factbound error correction." BIO 3, 18. As this Court has explained, the "common-law principles" that govern antitrust claims will often require the Court to "identify factors" and apply those factors to a particular case to help "circumscribe and guide the exercise of judgment" in future cases. *AGC*, 459 U.S. at 533-36; *see also Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 899 (2007) ("[T]he Court has treated the Sherman Act as a common-law statute."). The absence of "bright-line" rules in some areas of antitrust law is not a reason to deny certiorari here, but rather a reason to grant and provide clarity to ensure consistent application of those common-law principles.

DirecTV further contends that it must be able to bring this suit because it was the "specific and direct target" of the alleged conspiracy, and if DirecTV "were not a proper plaintiff," the scheme "would be completely insulated from private antitrust litigation." BIO 21-22. But a speculative injury does not become a direct antitrust injury merely because no one else can sue. The "alleged injury must be analyzed" on its own merits "to determine whether it is of the type that the antitrust statute was intended to forestall." *AGC*, 459 U.S. at 540 (citation omitted). If the claimed injuries are "indirect" and "speculative"—like DirecTV's purported losses here—the plaintiff lacks standing. *Id.* at 542; *cf. FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 396 (2024) ("[E]ven if no one would have standing, this Court has long rejected that kind of 'if not us, who?' argument as a basis for standing.").

DirecTV also cannot argue that its "historical dealings" with Petitioners alleviate these concerns. BIO 22-24. The meager history DirecTV cites—a single set of agreements—does not remedy the core problem that DirecTV's claims will require examining "several somewhat vaguely defined links." *AGC*, 459 U.S. at 540; *supra* at 7. As Judge Sullivan explained, the connection between the alleged price fixing and DirecTV's purported losses involves myriad insurmountably speculative questions: Would the parties have reached an agreement? When and at what price? Which subscribers, if any, cancelled because of the blackouts, instead of for other reasons? Did lost subscription margin exceed avoided retransmission fees? *See* Pet. App. 34a-36a (Sullivan, J., dissenting); Pet. 21-24. To sustain its claims, DirecTV must be able to answer these and many other "highly speculative" questions, which preclude antitrust standing as a matter of law. *AGC*, 459 U.S. at 542.

DirecTV attempts to rebut some assumptions (BIO 24-26), but leaves the core questions unanswered. For instance, DirecTV does not address that its claims require assuming that customers "would have stayed with DirecTV but for [the] supra-competitive prices" even though DirecTV "had been hemorrhaging customers in recent years" for reasons unrelated to blackouts. Pet. App. 34a-35a (Sullivan, J., dissenting). Nor does it address that its claims require examining the mindset of each customer who cancelled their subscriptions during the blackout period—where public data suggests *most* likely canceled for other reasons. Pet. App. 36a (Sullivan, J., dissenting).

There is no black-and-white cause and effect here.[3] Whether, why, and how many subscribers cancelled their subscriptions because of the alleged "output" reduction is the crux of DirecTV's case, and is inherently speculative as a matter of law. The "tenuous and speculative character" of the connection between the alleged anticompetitive conduct and the injury thus defeats antitrust standing, *AGC*, 459 U.S. at 545.

III. The Question Presented Warrants Review.

DirecTV does not dispute that this case is a clean vehicle and instead suggests that the question presented is "rare[]" and "hardly … cr[ies] out for this Court's guidance." BIO 28. But antitrust standing is

[3] DirecTV calls the chain of inferences a "Rube Goldberg-style" distortion and compares it to the electrical steps between flipping a switch and illuminating a room. BIO 25 & n.6. But a light switch's effect is automatic. DirecTV's proposed analogy fails in its attempt to compare independent and contingent human and commercial decisions to predictable physical consequences.

a threshold issue applicable in every private antitrust litigation, and the split arose in the two most common venues for antitrust cases (the Ninth and Second Circuits). This case presents an ideal vehicle for this Court to clarify this important doctrine, specifically as applied to nonpurchasers.

In departing from every relevant precedent, the Second Circuit has created a pleading roadmap that substantially expands antitrust standing and subjects defendants to "expensive" antitrust discovery based on plaintiffs' unilateral description of the but-for world. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007). Under the Second Circuit's new regime, nonpurchasers with *any* purported prior business dealing can now exert significant pressure on defendants with a treble-damages-loaded gun.

If left alone, the decision below will allow plaintiffs who never completed a purchase to recover speculative downstream losses based on a chain of hypothetical events. No other appellate court permits that result. The conflict is real, the issue is recurring, and this case is an ideal vehicle to resolve it. The Court should grant review and reaffirm that antitrust standing imposes meaningful limits to avoid "burden[ing] the courts" and "undermin[ing] the effectiveness of treble-damages suits." *AGC*, 459 U.S. at 545.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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