No. 25-50

Supreme Court of the United States

MIKE FITZHUGH, ET AL.,
Petitioners,
v.
BRADLEY PATTON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF ALABAMA AND 20 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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AUGUST 11, 2025

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INTEREST OF AMICI CURIAE[1]

The States of Alabama, Alaska, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, and West Virginia, respectfully submit this brief as *amici curiae* in support of the petitioners. "The class action is a powerful tool." *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2566 (2025) (Alito, J., concurring). As frequent targets of this powerful tool, States have an interest in the judiciary's scrupulous adherence to Article III when entertaining class actions.

SUMMARY OF ARGUMENT

Article III demands that a case or controversy exist at all stages of litigation. A plaintiff must have a personal stake at the outset of a case, and that personal stake must persist until final judgment. The existence of a Case or Controversy is not just a guardrail for the federal courts; it is the constitutive feature of judicial power. U.S. Const. art. III, § 2; *see Marbury v. Madison*, 5 U.S. 137, 170 (1803).

Although the class action is an exception to the normal rule that courts resolve only the rights and duties of named parties, class actions are consistent with Article III. A certified class is treated as a legal entity with rights and claims like any other; the court hearing a class action does not adjudicate abstract questions on behalf of concerned bystanders. Still, because the judgment can bind every member of the class, the class action is unusual for a court of limited

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[1] *Amici* complied with Rule 37 by providing timely notice to counsel of record of their intent to file this brief.

jurisdiction because it can alter the legal rights of hundreds, thousands, or millions of people at once. If anything, this extraordinary power is reason to apply the case-or-controversy requirement more carefully, not to craft ad-hoc or pragmatic exceptions for class-action cases.

Federalism concerns likewise militate against trying to find Article III workarounds in the class-action context. Some of the most complex, expensive, and intrusive suits faced by States are class actions asking federal courts to restructure and supervise state agencies at the behest of private parties. Courts should be sure of their jurisdiction at every moment that such invasive relief is contemplated, especially when many high impact cases today proceed at "a rapid-fire pace," and courts must decide instantly the "years-long interim" status of some government action. *CASA*, 145 S. Ct. at 2567-68 (Kavanaugh, J., concurring).

While this Court has carved out narrow exceptions to mootness doctrine for class-action litigation, it has never gone so far as the Sixth Circuit here. The decision below allows litigation to continue without any live case or controversy based solely on the chance that a plaintiff with no live claim *might* file a motion to certify a class. Without a single person properly invoking jurisdiction, the rule invites courts to speculate that the private rights of others might be violated and might be redressed by a class action. That's no ground for the exercise of judicial power, especially against sovereign States in cases that threaten to impose broad and intrusive remedies.

Amici States urge the Court to grant the petition for writ of certiorari and reverse.

ARGUMENT

I. Standing and mootness doctrines protect the separation of powers and federalism.

A. The judicial power "to say what the law is," *Marbury*, 5 U.S. at 177, does not include the power to say "what the law would be upon a hypothetical state of facts," *California v. Texas*, 593 U.S. 659, 672 (2021). Without a "proper case or controversy, the courts have no business deciding" a legal question, let alone "expounding the law in the course of doing so." *Murthy v. Missouri*, 603 U.S. 43, 57 (2024). Because "the province of the court is, solely, to decide on the rights of individuals," *Marbury*, 5 U.S. at 170, the judicial power is "confine[d]" to "real and substantial controversies admitting of specific relief through a degree of conclusive character," *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990) (cleaned up). Simply put, "federal courts do not issue advisory opinions about the law." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 378 (2024) (*AHM*). That proposition flows from the constitutional text itself, *see* U.S. Const. art. III, § 2, for Article III's "precise limits" on jurisdiction "would be nugatory if it did not exclude all ideas of more extensive authority." The Federalist No. 83 (Hamilton).

Both the presence of standing and the absence of mootness are required for a case or controversy. First, standing is the "core component" of Article III's restriction on federal jurisdiction. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006). "The purpose of the standing doctrine is to ensure that courts do not render advisory opinions rather than resolve genuine controversies between adverse parties." *Lujan v.*

Defenders of Wildlife, 504 U.S. 555, 598 n.4 (1992) (Blackmun, J., dissenting). Standing requires the party bringing suit to establish injury in fact, traceability, and redressability. *Id.* at 560-61 (majority opinion). Without these elements, there is no case or controversy for a court to hear. *See Murthy*, 603 U.S. at 57.

While standing gets a case into the courthouse, mootness can eject it. Mootness has been called "the doctrine of standing set in a time frame." *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980). Although it has "some added wrinkles that standing lacks," *Friends of the Earth v. Laidlaw Env't Servs.*, 528 U.S. 167, 213 (2000) (Scalia, J., dissenting), mootness is no less required by Article III.[2]

Mootness doctrine demands the controversy be "extant at all stages of review, not merely at the time the complaint is filed." *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013). If a case becomes moot, it is "no longer a 'Case' or 'Controversy' for the purpose of Article III" and must be dismissed. *Already,* 568 U.S. at 91. Federal courts "may no more pronounce on past actions that do not have any 'continuing effect' in the world than they may shirk decision on those that do." *FBI v. Fikre*, 601 U.S. 234, 241 (2024) (quoting *Spencer*, 523 U.S. at 18).

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[2] *See* Tyler B. Lindley, *The Constitutional Model of Mootness*, 48 BYU L. REV. 2151, 2153 (2023) (citing, *inter alia*, *United States v. Sanchez-Gomez*, 584 U.S. 381, 385-86 (2018); *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013); *Spencer v. Kemna*, 523 U.S. 1, 18 (1998); *Liner v. Jafco, Inc.*, 375 U.S. 301, 306 n.3 (1964)). "The Court has dismissed moot cases as beyond its power to decide since at least the late nineteenth century." *Id.* at 2156.

B. The case-or-controversy requirement is "more fundamental to the judiciary's proper role" than any other. *Raines v. Byrd*, 521 U.S. 811, 818 (1997). In "our system of separated powers," *AHM*, 602 U.S. at 378, "interpreting and applying" the law is the judiciary's "duty," but only "in cases properly brought before the courts." *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923). "Respecting the case-or-controversy requirement is therefore necessary to prevent the Federal Judiciary from intruding upon the powers given to the other branches." *Moody v. NetChoice, LLC*, 603 U.S. 707, 754 (2024) (Thomas, J., concurring) (cleaned up).

Beyond the danger of encroachment on other branches, there is a special "need to act with proper judicial restraint when intruding on state sovereignty." *North Carolina v. Covington*, 581 U.S. 486, 488 (2017). "The Constitution limited but did not abolish the sovereign powers of the States, which retained a 'residuary and inviolable sovereignty.'" *Murphy v. National Collegiate Athletic Association*, 584 U.S. 453, 470 (2018) (quoting The Federalist No. 39 (Madison)). In our system of "dual sovereignty," "both the Federal Government and the States wield sovereign powers." *Id.* (cleaned up). But the desire to pursue a "deserving end" can tempt the judiciary to "forget[] its constitutionally mandated role" at the expense of State sovereignty. *Missouri v. Jenkins*, 515 U.S. 70, 138 (1995) (Thomas, J., concurring). "The true 'essence' of federalism is that the States *as States* have legitimate interests which the National Government is bound to respect even though its laws are supreme." *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S.

528, 581 (1985) (O'Connor, J., dissenting) (quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971)).

Thus, the limitations of Article III "may sound technical, but they enforce 'fundamental limits on federal judicial power.'" *Biden v. Nebraska*, 600 U.S. 477, 523 (2023) (Kagan, J., dissenting) (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984)). "They keep courts acting like courts." *Id.*

II. The importance of Article III's constraints is heightened in the class-action context.

Class actions can still comply with Article III even though they deviate from the "usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 348 (2011). But "to justify [the] departure," the named plaintiffs must have standing for their individual claims and prove that they can adequately represent the class and its claims. *See id.* at 348-49; *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 n.6 (2016). The class itself "acquire[s] a legal status separate from ... the named plaintiff" only through the certification process of Rule 23. *Sanchez-Gomez*, 584 U.S. at 387-88.

Once a class is certified, "the number of plaintiffs" can jump from "one to one million." *Flecha v. Medicredit, Inc.*, 946 F.3d 762, 770 (5th Cir. 2020) (Oldham, J., concurring). Thereafter, the court's rulings control the rights of all members, whether they win or lose. *See Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 379 (1996); *Cf. Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 593 (2013) ("[A] proposed class action cannot legally bind members of the proposed class before the class is certified.").

Article III is never negotiable, but adjudicating the rights of a class undoubtedly raises the stakes. Almost by definition, the constitutional harm that can flow from a court exceeding its judicial role is greater in a class action. Federal courts are not supposed to conduct "general legal oversight," *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021), or "resolve a question of legal interpretation for the entire realm," *CASA*, 145 S. Ct. at 2555, but the power to issue relief to a class of indefinite size is perhaps as close as it gets, *see id.* at 2255-56.

Given the wide reach of the court's judgment in a class action, use of this "powerful tool" demands caution. *Id.* at 2566 (Alito, J., concurring). The device is regularly used to bring "extremely complex" cases against States, *Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1180 (M.D. Ala. 2017), that might call for broad institutional reform affecting thousands of people for years or decades to come, *see, e.g.*, *Dunn v. Dunn*, 148 F. Supp. 3d 1329, 1332 (N.D. Ala. 2015). For a plaintiff who wants to overhaul state systems like prison healthcare, *Brown v. Plata*, 563 U.S. 493 (2011); foster care, *31 Foster Child. v. Bush*, 329 F.3d 1255 (11th Cir. 2003); indigent defense, *Redd v. Guerrero*, 84 F.4th 874 (9th Cir. 2023); or English language instruction, *Horne v. Flores*, 557 U.S. 433 (2009), the class action is a popular vehicle. Defending against a class action is so burdensome and risky that in litigation with private defendants, class certification itself may "coerce … costly settlements" that spur "widespread and significant" harms far beyond the defendant. *Lab. Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 333 (2025) (Kavanaugh, J., dissenting).

Rule 23 contains one set of procedural restrictions that keep this enormous judicial power in check. *See, e.g.*, *Smith v. Bayer Corp.*, 564 U.S. 299, 315-16 (2011). But Article III is another, more fundamental check, which cannot be overridden no matter how Rule 23 should be interpreted. Such costly and sweeping litigation should not be entertained lightly, and it certainly should not result from an advisory opinion or hypothetical controversy. "In an era of frequent litigation, class actions," and other broad relief, "courts must be more careful to insist on the formal rules of standing, not less so." *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 146 (2011).

III. The court below placed the class action on a collision course with Article III.

"Article III is just as important in class actions as it is in individual ones." *Flecha*, 946 F.3d at 771 (Oldham, J., concurring); *see also Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 n.20 (1976). Because of the "important consequences" for "unnamed members" and the "separate" "legal status" of a class, *Sosna v. Iowa*, 419 U.S. 393, 399, n.8 (1975), the rules of standing doctrine may apply differently to class actions. But *before* certification, the plaintiff does not represent anyone. "Normally" then, if no named plaintiff has a stake in the outcome by the time of certification, the case is moot. *See Sanchez-Gomez*, 584 U.S. at 386 (citing *Sosna*, 419 U.S. at 402 n.11).

The Court has recognized narrow exceptions to the general rule. First, in cases where a motion for class certification is erroneously denied, "a corrected ruling on appeal 'relates back' to the time of the erroneous denial of the certification motion." *Genesis*

HealthCare, 596 U.S. at 74-75 (citing *Geraghty*, 445 U.S. at 404 n.11). This exception, however, applies only "to cases in which the named plaintiff's claim remains live *at the time* the district court denies class certification." *Id.* at 75 (emphasis added).

A second "limited exception" is when "the pace of litigation" and "inherently transitory nature of the claims" make it "difficult" to have a named plaintiff with a live claim at the time of certification. *Sanchez-Gomez*, 584 U.S. at 388 (citing *Sosna*, 419 U.S. at 402 n.11; *Gerstein v. Pugh*, 420 U.S. 103, 110-11 & n.11 (1975)). If a named plaintiff's inherently transitory claim becomes moot, "certification could potentially 'relate back' to the filing of the complaint." *Genesis HealthCare*, 569 U.S. at 76 (quoting *Gerstein*, 420 U.S. at 110 n.11; *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991)). For this exception, the court must be "certain that there would always be some [potential plaintiff] subject to the challenged practice." *Sanchez-Gomez*, 584 U.S. at 386.

The Court has "never" crafted another exception for "when the named plaintiff's case becomes moot *before the motion to certify* the class has been filed." Johnathan Lott, *Moot Suit Riot: An Alternative View of Plaintiff Pick-Off in Class Actions*, 2013 U. CHI. LEGAL F. 531, 531 (2013) (emphasis added). By its own terms, the *Geraghty* exception was limited to cases where the plaintiff's claim is live at the time class certification is denied. *Genesis HealthCare*, 596 U.S. 75 (citing *Geraghty*, 445 U.S. at 404 n.11). And the *Gerstein* exception has been applied in cases where the plaintiff had at least filed a motion to certify. *See* 420 U.S. at 107; *McLaughlin*, 500 U.S. at 48; *cf. Sanchez-Gomez*, 584 U.S. at 388 (*Gerstein*'s rule is "tied" to its

"setting"). Thus, the two exceptions teach no more than the rule that mootness arising while a motion for certification is pending does not cause an automatic dismissal. Lott, *supra*, at 540-41. But there is no uniform rule for dealing with mootness before any such motion is filed.

The decision below pushes the exceptions further than the Court's reasoning permits. On the Sixth Circuit's theory, the mere filing of a complaint "can serve as the prerequisite for arguing the 'inherently transitory' exception for class-action claims." Pet.App.23a. Filing a complaint entitled Patton an "opportunity to litigate claims on behalf" of unknown others whom he "seeks to represent." *Id.* And what is his personal stake in the outcome? His own "claim that he is entitled to represent a class." *Id.* (quoting *Geraghty*, 445 U.S. at 402). What class? The one that does not exist, may never exist, and to which *Patton does not belong*. In other words, all he needed to keep this case in federal court, despite the extinction of his claims (*i.e.*, the only claims) was an alleged intent to litigate on behalf of others—perhaps as little as the word *class* on the face of the complaint.

This theory should be rejected for several reasons. First, it marks a "significant departure from our traditional understanding of mootness." Lott, *supra*, at 554. By letting a case proceed with no known personal interest and "no motion for class certification even pending," a federal court "defies the limits on federal jurisdiction expressed in Article III." *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011), *overruled on other grounds*, 796 F.3d 783 (7th Cir. 2015). The tension with Article III is palpable: Courts must hear and States must defend claims brought by

someone with nothing to gain and nothing to lose. Plaintiffs known to be improper can still "continue litigation" without having "solidified any extra-personal stake by filing the motion for certification." Lott, *supra*, at 554. At that point, the class itself has no "legal status separate from the interest asserted" by the plaintiff. *Sosna*, 419 U.S. at 399. As far as the court knows, no member of the class has a live claim either. To proceed without even a plaintiff's attempt to certify is to *assume* the satisfaction of a "bedrock constitutional requirement," *AHM*, 602 U.S. at 378, that adheres at "all stages," *Genesis HealthCare*, 569 U.S. at 71. But Article III courts cannot so lightly cast aside what Article III gives them "an obligation to assure." *Trump v. Hawaii*, 585 U.S. 667, 697 (2018).

"That the complaint identifies the suit as a class action is not enough by itself to keep the case in federal court." *Damasco*, 662 F.3d at 896. The distinction between a complaint and a motion to certify matters. "Rule 23 does not set forth a mere pleading standard." *Wal-Mart Stores, Inc.* 564 U.S. at 350. It requires that a party "affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Id.* This "rigorous analysis" requires a court "to probe behind the pleadings." *Id.* at 351. Accordingly, motions for class certification are held to a higher standard than a complaint; they are often more detailed, backed by evidence, and require additional representations to the court, which must also satisfy Federal Rule of Civil Procedure 11. Why should the continued exercise of judicial power over what seems to be a moot lawsuit rest on anything less?

Because there is "no binding caselaw," the Sixth Circuit answers. Pet.App.20a. True, the Court has not yet disavowed the Sixth Circuit's rule directly, but it still contradicts the text of Article III and the principles animating the Court's mootness decisions. Among those cases, *Genesis HealthCare Corporation v. Symczyk* involved a "collective action" brought under the Fair Labor Standards Act (FLSA) on behalf of the plaintiff and "other employees similarly situated." 569 U.S. at 69. The plaintiff had not yet moved for "conditional certification" under the FLSA when her claim became moot, so the district court dismissed the case for lack of subject-matter jurisdiction. *Id.* at 70, 75. Applying what it took to be the logic of the class-action exceptions, the Third Circuit reversed, allowing litigation to continue. *Id.* at 70-71; *see* 656 F.3d 189, 196 (3d Cir. 2011) (wielding "equitable" power "to conceive of the named plaintiff as a part of an indivisible class … even before the class certification question has been decided") (citing *Geraghty*, 445 U.S. at 399).

But this Court reversed. The *Geraghty* exception was "inapposite," the Court held, because it was "explicitly limited ... to cases in which the named plaintiff's claim remains live *at the time* the district court denies class certification." 569 U.S. at 75. The fact that the plaintiff's claim became moot prior to a motion for certification "foreclose[ed] any recourse to *Geraghty*." *Id.* There was "simply no certification decision to which respondent's claim could have related back." *Id.* The same is true here, but the Sixth Circuit here largely ignored *Genesis HealthCare*, which arose in the context of FLSA but spoke "[m]ore fundamentally" to the nature of a class's "independent

legal status." *Id.* Once there *is* a class, dismissing the suit as moot can "frustrate the objectives of class actions," but "conditional certification" under FLSA (like merely filing a complaint) is "not tantamount to class certification." *Id.* at 78.

The Court again declined to expand the exceptions to mootness in *United States v. Sanchez-Gomez*, where four criminal defendants challenged both the use of restraints "in their respective cases" and "the restraint policy as a whole." 584 U.S. at 384. Because their underlying criminal cases ended before the Ninth Circuit could rule, the case should have been dismissed as moot. But instead, the lower court deemed it a "'functional class action' with 'class-like claims' seeking 'class-like relief.'" *Id.* at 385. It then applied the line of civil class-action mootness exceptions to keep the case alive. *Id.* Reversing, this Court emphasized that not only was the case *not* a Rule 23 class action; it did "not involve *any* formal mechanism for aggregating claims." *Id.* at 389. A "functional class action" cannot spring from "the mere presence of allegations." *Id.* at 390 (cleaned up).

Like the Ninth Circuit's decision to invent "functional class" status for a non-class, the Sixth Circuit's rule also uproots the class-action mootness exceptions from their mooring in Rule 23. Certification is the moment of legal significance; it is not a "meaningless 'verbal recital.'" *Pasadena City Bd. of Ed. v. Spangler*, 427 U.S. 424, 430 (1976); *cf. Genesis HealthCare*, 569 U.S. at 75 ("[E]ssential to our decisions in *Sosna* and *Geraghty* was the fact that a putative class acquires an independent legal status once it is certified under Rule 23."). Every time the Court has applied a class-based exception to mootness,

certification had been granted, denied, or at least sought by a party. *See* Lott, *supra*, at 541.

The Sixth Circuit adopts its constitutionally problematic and incongruent rule largely for "good, practical reasons." Pet.App.25a. However important, those reasons touch upon "exercise rather than the existence of judicial power." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). But mootness determines the existence of judicial power, as it "deprives" a court of the "power to act … even if [it] were disposed to do so." *Spencer*, 523 U.S. at 18. Thus, "purely practical considerations have never been … controlling by themselves on the issue of mootness." *Richardson v. Ramirez*, 418 U.S. 24, 36 (1974); *cf. AHM*, 602 U.S. at 396 (explaining that the Court "has long rejected" an "'if not us, who?' argument as a basis for standing").

In the face of "a strict constitutional prohibition," the Sixth Circuit's rule "amounts to an ad-hoc workaround" to deal with one problem, "the pick-off problem." Lott, *supra*, at 557. In *Genesis HealthCare*, the Third Circuit worried that "calculated attempts by some defendants to 'pick off' named plaintiffs with strategic Rule 68 offers before certification" could undermine the utility of class actions. 569 U.S. at 70.

The Court diminished the "pick off" problem as a concern stated "in dicta" in a single previous case. *Id.* at 78 (discussing *Deposit Guar. Nat. Bank, Jackson, Miss. v. Roper*, 445 U.S. 326 (1980)). And even then, it was important that the plaintiffs' claims not be mooted by Rule 68 only because they "possessed an ongoing, personal economic stake in the substantive controversy—namely, to shift a portion of attorney's fees and expenses to successful class litigants." *Id.* In

other words, their claims were not moot, and the Court had no need to fashion a general prudential exception to mootness for dealing with "pick off" problems. Neither has the Seventh Circuit, despite rejecting the Sixth Circuit's approach over a decade ago. *See Damasco*, 662 F.3d at 896 ("A simple solution … is available, and it does not require us to forge a new rule that runs afoul of Article III: Class-action plaintiffs can move to certify the class at the same time that they file their complaint."); *see also* Pet.App.25a (citing four courts, none in the Seventh Circuit, complaining about premature motions).

The Sixth Circuit had no good "reason to wade into uncertain constitutional waters" here. Lott, *supra*, at 554, 557. The court freed itself from the strictures of Article III on the hypothesis that, otherwise, plaintiffs might feel compelled to file "placeholder motions for class certification." Pet.App.25a. At this point, the court delved into pure policymaking—motivated by the "judicial resources" it would take to deal with "premature and meritless placeholder motions" in other cases. *Id.*

But Article III does not turn on matters of judicial economy. And the notion that poor motions would crowd court dockets only undermines the Sixth Circuit's logic. If a class certification motion filed before the plaintiff's claim became moot would be "meritless," then there's no basis to continue exercising jurisdiction. *Gerstein* could proceed, for example, because the Court was "certain" that there were "other persons similarly situated." 420 U.S. at 110 n.11. Perhaps that was a "workaround," *CASA*, 145 S. Ct. at 2556, to avoid the procedures for substitution or intervention; in any

event, it reflects confidence that the *Gerstein* class's claims would survive the loss of the named plaintiffs.

But the court below suggested that an attempt to certify would be "meritless" in many or most cases. If that's true, then "the courts have no business" letting the case proceed once the plaintiff loses standing. *Murthy*, 603 U.S. at 57. If it's not true, *i.e.*, motions brought before mootness arises would have merit, then there's no unfairness in requiring plaintiffs to bring their motions sooner. Given the Sixth Circuit's "certain[ty]" that "hundreds" "are suffering the [same] injury" that Patton had alleged, it seems that his motion to certify would have been well received, not "premature and meritless." Pet.App.20a, 25a.

The best way to decide whether mootness of the named plaintiff's claims affects the class is to have before the court a certified class with actual claims; the next best way is to have a "rigorous" motion that tries to "affirmatively demonstrate" the existence of the class and its claims. *Wal-Mart Stores, Inc.* 564 U.S. at 350. But in no circumstance should a court exercise Article III power without a plaintiff, without a class, and without anyone so much as asking the court to resolve a live case or controversy.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse.

Respectfully submitted,

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AUGUST 11, 2025

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