No. 26-____

IN THE

Supreme Court of the United States

MATTHEW GOFORTH, MALINDA GOFORTH, MG MANAGEMENT CO., LLC, AND MALINDA'S SUGAR AND SPICE, LLC,

Petitioners,

v.

TRANSFORM HOLDCO, LLC, HOMETOWN MIDCO, LLC, ESL INVESTMENTS, INC., AND ESL PARTNERS, L.P.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Clayton Act gives a claim for damages to a person "injured in his business or property," and this Court has held that "each time a plaintiff is injured by an act of the defendants a cause of action accrues to him to recover the damages caused by that act." 15 U.S.C. § 15(a); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971).

In June 2019, Sears Authorized Hometown Stores, LLC, which respondents own, filed an arbitration against one of its independent dealers to enforce an agreement not to compete. After the dealer's contract expired, he became a competitor and opened his own appliance store. But in November, Sears obtained an order enforcing the restraint of trade and forced its only competitor in the relevant market to close.

The Eighth Circuit held that the competitor's antitrust claim for the resulting damages was a compulsory counterclaim under Rule 13(a) because it "accrued when Sears initiated the first arbitration," and not later when Sears actually enforced the restraint of trade. The court held that the claim arose at filing "[e]ven if the subsequent enforcement did constitute an overt act." *See* Pet. App. 12a, 15a. That was the only ground of the judgment below.

The question presented is:

When one party files a proceeding to enforce an agreement not to compete and later obtains an order enforcing it, does the other party's antitrust claim for the damages caused by that restraint of trade accrue immediately when the proceeding is filed, or only later when the restraint of trade causes an antitrust injury?

PARTIES TO THE PROCEEDING

Petitioners are Matthew Goforth, an individual; Malinda Goforth, an individual; MG Management Co., LLC, a Missouri limited liability company; and Malinda's Sugar and Spice, LLC, a Missouri limited liability company, all of whom were plaintiffs in the district court and appellants in the court of appeals.

Respondents are Transform Holdco, LLC, a Delaware limited liability company; Hometown Midco, LLC, a Delaware limited liability company; ESL Investments, Inc., a Delaware corporation; and ESL Partners, L.P., a Delaware limited partnership, all of whom were defendants in the district court and appellees in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioners MG Management Co., LLC and Malinda's Sugar and Spice, LLC are Missouri limited liability companies. Neither has a parent corporation, and no publicly held company owns 10% or more of the membership interests in either.

RELATED PROCEEDINGS

Goforth v. Transform Holdco LLC, No. 6:23-cv-03167-MDH, United States District Court for the Western District of Missouri. Summary judgment granted and judgment entered June 12, 2025.

Goforth v. Transform Holdco, LLC, No. 25-2306, United States Court of Appeals for the Eighth Circuit. Judgment entered July 28, 2026. Rehearing and rehearing en banc denied August 28, 2026.

No other proceedings in state or federal trial or appellate courts, or in this Court, are directly related to this case within the meaning of Rule 14.1(b)(iii). The appellate arbitration award discussed in the petition was confirmed in two other proceedings:

Sears Authorized Hometown Stores, LLC v. MG Management Co., LLC, No. 1:20-cv-02207, United States District Court for the Northern District of Illinois. Judgment entered July 14, 2023.

MG Management Co., LLC v. Sears Authorized Hometown Stores, LLC, No. 1:21-cv-00746, United States District Court for the Northern District of Illinois. Judgment entered July 14, 2023.

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OPINIONS BELOW

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JURISDICTION

The court of appeals entered its judgment on July 28, 2026. Pet. App. 43a-44a. The court denied a timely petition for rehearing and rehearing en banc on August 28, 2026. Pet. App. 42a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND RULE PROVISIONS INVOLVED

Rule 13 of the Federal Rules of Civil Procedure provides in relevant part:

> (a) Compulsory Counterclaim.
>
> (1) In General. A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:
>
> (A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

...

(e) Counterclaim Maturing or Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

Section 1 of the Sherman Act, 15 U.S.C. § 1; Sections 4, 4B, and 16 of the Clayton Act, 15 U.S.C. §§ 15(a), 15b, 26; and the dealer agreement are reproduced in relevant part at Pet. App. 45a-53a.

INTRODUCTION

This petition is about a claim that was too early until it was too late.

Matt and Malinda Goforth run an appliance store in Bolivar, Missouri. Until July 6, 2019, Matt ran the town's only Sears Hometown store under a dealer agreement. Section 15.8 of that agreement was a naked horizontal division of products and markets. For two years after the agreement expired, it barred Matt and his family from selling almost anything within fifty miles of any retail store in the country. *See* Pet. App. 47a-49a; C.A. App. 347, 351.

Sears Authorized Hometown Stores, LLC ("Sears") demanded arbitration on June 7, 2019, twenty-nine days before the agreement expired, and Matt filed an answer without a counterclaim. The Goforths opened their own store that fall, and it was open for business on November 20, 2019, when Sears obtained an order

enforcing that restraint of trade against the store for the first time. Once that order took effect, the store closed. An appellate arbitrator later held that the restraint protected no legitimate interest and was therefore unreasonable as a matter of law, and the Goforths sued the owners of Sears, the respondents here, who enforced the restraint through Sears, for the profits that the store lost while it was closed. *See* Pet. App. 2a-5a, 10a, 31a; C.A. App. 020, 364.

The Eighth Circuit held that the Goforths lost that claim by not filing it as a counterclaim in the arbitration, because the claim "accrued when Sears initiated the first arbitration." Pet. App. 15a. On that day the dealer agreement had not expired, the store had not opened, and any injury was still five months away. If the Goforths had filed the claim when the court said it was due, the claim for damages would have failed because the store hadn't lost a dollar. When they filed it after the restraint of trade closed the store, the courts below held that it was too late. That means there was never a day when the Goforths could have brought this claim at all.

That cannot be the case. It is not this Court's rule. An antitrust claim accrues "when a defendant commits an act that *injures* a plaintiff's business." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971) (emphasis added). Each act that injures the plaintiff gives him a claim "to recover the damages caused by that act," and a claim for future damages that cannot yet be proved "will accrue only on the date they are suffered." *Id.* at 338, 339.

The court of appeals quoted this Court's rule but applied a different one. It quoted the first of those statements, but left out the other two. Then, it held

that the claim accrued when Sears filed its demand, "[e]ven if the subsequent enforcement did constitute an overt act," which by that court's own definition means even if obtaining the order *was* a new act that caused a new injury. *See* Pet. App. 10a-12a. Read as a rule of accrual, that holding conflicts directly with *Zenith*. Read as a rule for Rule 13 purposes alone, it conflicts with this Court's refusal to infer that a claim accrues at different times for different purposes. *See Reiter v. Cooper*, 507 U.S. 258, 267 (1993).

The Eighth Circuit has made this mistake before. In 2024, this Court reversed that court's holding that a challenge to an agency's rule accrued when the rule was published, explaining that a claim does not arise "as soon as the defendant acts, but only after the plaintiff suffers the injury required to press her claim in court." *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799, 811 (2024). Under the rule this Court rejected, the time to sue ran out "before Corner Post swiped its first debit card." *Id.* at 806. Under the rule applied here, the claim arose before the Goforths' store had sold its first appliance.

The decision below is a published interpretation of Rule 13(a), which the arbitration agreement applied, and it now binds the federal courts in seven States. No other court of appeals reads Rule 13(a) that way, and the courts of appeals are divided on whether enforcing an earlier agreement gives rise to a new claim at all. A person sued in those States to enforce a noncompete agreement must file a counterclaim for treble damages before any injury occurs, or forever lose the claim. And the question will rarely get this far. When a noncompete agreement is enforced in arbitration, an arbitrator's mistake about accrual can't be corrected

by a judge. When it is enforced in state court, that court can't hear the federal claim at all. This case got here only because Sears went bankrupt and the Goforths sued its owners. The Court should grant the petition and summarily reverse the judgment below.

STATEMENT OF THE CASE

The dates are not in dispute. Sears demanded arbitration on June 7, 2019, Matt answered on July 15, and the order enforcing the restraint was entered on November 20. *See* Pet. App. 3a-4a, 54a-57a.

A. Section 15.8 of Sears's dealer agreement was a naked horizontal division of products and markets.

There is only one store that sells major home appliances in Bolivar, Missouri. Today, it's Goforth Home & Lawn, owned by Matt and Malinda Goforth. Until July of 2019, it was a Sears Hometown store operated by Matt. *See* C.A. App. 006; Pet. App. 18a. The complaint defines the relevant market as the market for major home appliances in Bolivar. *See* Pet. App. 39a-40a. Matt liked the idea of owning the place, and at the end of 2015 his company, MG Management Co., LLC, signed a dealer agreement with Sears that was effective until July 6, 2019. *See* C.A. App. 002, 342; Pet. App. 18a. Sears advertised its Hometown stores the same way, locally owned, with marketing materials that said in large bold letters, "I Don't Work for Sears. I Own This Place." C.A. App. 342.

Section 15.8 of the agreement was a restraint of trade that applied only after the dealer agreement expired. That timing is what made it horizontal. While the agreement lasted, Matt sold for Sears. But once

the agreement expired, he sold only in competition with Sears. For two years after the expiration, Section 15.8 prohibited the dealer, its owner, and "any member of Owner's immediate family" from owning, working for, or selling to any business that sold merchandise or services "similar to" those sold by Sears, and even from repairing appliances. *See* Pet. App. 48a-49a. (Matt married Malinda in 2017, after the agreement was signed. *See id.* at 3a.)

That division of markets didn't stop at Bolivar. It applied within fifty miles of the store, within fifty miles of any other Sears Hometown store, and within fifty miles of any other "Business." The agreement defined that term to take in Kmart stores, Lands' End stores, and "other Sears and third-party retail stores and wholesale operations," all "whether existing on, or opened after, the date of this Agreement." *Id.* at 47a-49a. That means the allocated territory was drawn around *any* retail store, even stores that didn't exist.

Even Sears couldn't explain what the restraint of trade actually covered, or where. The arbitrator who later enforced it found that it prohibited "the sale of almost anything," in a region "quite large and scattered conceivably around the entire country." C.A. App. 289, 351. Sears's own witness "admitted he would have a hard time understanding what this restriction means and that the only way of figuring out what you could sell and where you could sell it would be to check with Sears first." *Id.* at 350.

The agreement required arbitration and borrowed one rule from federal court. Each party had to "file all compulsory counterclaims (as defined by Rule 13 of the Federal Rules of Civil Procedure) within 30 days of the date of the arbitration demand." Pet. App. 50a.

B. Matt answered Sears's demand months before the restraint of trade caused any injury.

On June 7, 2019, twenty-nine days before the dealer agreement expired, Sears filed a demand for arbitration against Matt and MG Management. The demand simply called the dispute a "[b]reach" of the dealer agreement, claimed $995,000, and asked for unspecified "Emergency Relief." Pet. App. 54a-56a. It did not mention the restraint of trade, which did not yet apply. Matt and MG Management answered on July 15, 2019. The answer form has a line for the amount of any counterclaim, which they left blank, and the only relief they asked for was "Attorney's fees, Arbitration Costs." *Id.* at 57a. On that day, the Goforths' new store had not opened. Sears had not enforced the restraint of trade, and the restraint had not caused any injury at all. *See id.* at 3a-4a.

After a local news article reported on July 20 that Malinda was remodeling the building for a new store, Sears moved to enforce the restraint of trade. *See* Pet. App. 4a, 19a. Goforth Home & Lawn, which belongs to Malinda's company, Malinda's Sugar and Spice, LLC, started doing business in September at the old store's location and held its grand opening on November 8. *See id.* at 4a, 18a-19a; C.A. App. 014. By then, Sears's arbitration had been pending for five months, and the store was "completely unaffected by [Sears's] arbitration and Section 15.8." C.A. App. 014.

On November 20, 2019, twelve days after the grand opening, Sears obtained an order enforcing the restraint of trade for the first time. *See* Pet. App. 4a. The order directed the Goforths to "comply with the post-expiration non-competition covenant contained

in the Dealer Agreement," and the district court later described it as an order enjoining them "from operating Goforth Home and Lawn." C.A. App. 292; Pet. App. 20a. Sears then posted a $150,000 bond, which was "a condition for an injunction to be in effect." C.A. App. 293. Sears obtained the order after every pleading in the arbitration had been served. *See* Pet. App. 7a; C.A. App. 025.

The Goforths appealed. Under the dealer agreement, the order could not be enforced while the appeal was pending, so the order took effect when an appellate arbitrator affirmed it on March 16, 2020. *See* Pet. App. 5a, 52a. The store then closed. The mayor then in office testified that, with the town's only appliance store closed, "consumers in Bolivar were forced to leave town to purchase major home appliances." C.A. App. 449. A customer asked Malinda whether she still had any refrigerators for sale. Malinda answered, "I have refrigerators... I just can't sell them within 50 miles of my store." *Id.* at 321.

In his final award, in September 2020, the arbitrator found the restraint of trade "patently overbroad" as written, but he narrowed it and upheld it. *See* C.A. App. 351; Pet. App. 5a. The Goforths appealed again, and on January 14, 2021, a different appellate arbitrator reversed that ruling. *See* Pet. App. 5a, 20a-21a. He held that the facts "do not show that [Sears] had a legitimate business interest either in good will or in confidential information." C.A. App. 364. Sears had no store in Bolivar to protect. It had no lease on the old location, and the first arbitrator found no other building in town big enough for a new store. *See id.* at 350, 361. As the appellate arbitrator put it, "Goforth is simply giving consumers other choices of

refrigerators, washers, exercise equipment, etc. This is the essence of competition." *Id.* at 361. That made the noncompete agreement "an illegitimate restraint of trade which cannot stand." *Id.* at 364. A restraint of trade that protects no legitimate interest does nothing but suppress competition, which makes it a naked restraint, and unreasonable as a matter of law under the common law and Sherman Act alike.[1] A federal court later confirmed the award. *See id.* at 365-367.

C. The courts below held that the claim for the store's losses accrued before it lost anything.

The Goforths first brought their antitrust claims against Sears, in a second arbitration, seeking the store's lost profits and the fees they had spent defending the first arbitration. *See* Pet. App. 5a, 7a, 13a. A different arbitrator ruled for Sears in May 2022, in part because he concluded that the Goforths should have brought them in the first arbitration. *See id.* at 6a-7a, 21a. The Goforths appealed within the arbitration, and the appeal has been on hold since Sears went bankrupt. *See id.* at 7a n.2, 22a.

Respondents own Sears, and they owned Sears when it obtained the order. Respondent ESL Investments, Inc. and its affiliates held about 58% of Sears's parent before the demand, and respondent Transform Holdco, LLC bought out the other

[1]The Sherman Act's rule of reason comes from the common law, where it tested "the enforceability of covenants in restraint of trade which are ancillary to a legitimate transaction." National Society of Professional Engineers v. United States, 435 U.S. 679, 688-689 (1978). The appellate arbitrator applied that test under Illinois law. *See* C.A. App. 359-360, 364.

stockholders in a merger that closed on October 23, 2019, four weeks before the order. *See* Pet. App. 2a, 8a; C.A. App. 377, 379; D. Ct. Doc. 83-34, at 3, 6. Sears's bankruptcy has left the Goforths nothing to recover from Sears. Sears is in chapter 7, and its trustee is suing respondents, alleging that the estates "have insufficient funds to satisfy the claims of the Debtors' creditors." C.A. App. 423; *see id.* at 382-383, 390. So on June 6, 2023, the Goforths sued respondents in the Western District of Missouri under Section 1 of the Sherman Act for enforcing the restraint of trade through Sears. *See* Pet. App. 22a, 25a; D. Ct. Doc. 1, ¶ 63. The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1337(a). The complaint alleges that the store could not fully reopen until April 2021. *See* D. Ct. Doc. 1, ¶¶ 60, 69. It "seeks damages corresponding to the time Goforth Home and Lawn was closed." Pet. App. 31a.

The district court denied respondents' motion to dismiss and called July 6, 2019, "the earliest date upon which the noncompete agreement could have conceivably been enforced." *Id.* at 40a. At summary judgment, the same court held that the claim "accrued upon the initiation of the first arbitration by [Sears] on June 7, 2019," and was barred because the Goforths had not filed it as a compulsory counterclaim. *See id.* at 25a. The court also held that the Goforths could have joined respondents in the first arbitration because, on the complaint, respondents were "acting through [Sears]" when they sought "to enforce the non-compete provision." *Id.* at 26a.

The Eighth Circuit affirmed in a published opinion. It framed the question as whether the claim "accrued when Transform *sought to enforce* the

agreement through its initial arbitration proceeding, or only when the arbitration panel issued the injunctive relief *actually enforcing* the provision." Pet. App. 10a. The parties agreed that the agreement incorporated Rule 13, so the court looked to this Court's decisions on when an antitrust claim accrues. *See ibid.* It chose the first date, in two steps.

First, the court held that Sears's "first arbitration filing constituted an overt act" that made any claim related to the enforcement of the restraint a compulsory counterclaim, and that the later order "was not a subsequent act of Sears." *Id.* at 12a.

Second, the court held that "[e]ven if the subsequent enforcement did constitute an overt act, ... the initial seeking of the preliminary injunction was the necessary act that gave rise to the claim under Federal Rule of Civil Procedure 13." *Id.* at 12a-13a. That is, the claim arose when Sears first asked for an order, five months before Sears got one.

The court also relied on what Matt knew in 2019, on the Goforths' request for defense costs, and on its view that they should have asked for an injunction. *See id.* at 13a-15a. It concluded that the claims "accrued when Sears initiated the first arbitration and were, therefore, compulsory counterclaims," and it affirmed on that ground alone. *See id.* at 15a & n.5. It then denied rehearing en banc. *See id.* at 42a.

REASONS FOR GRANTING THE PETITION

The Eighth Circuit held that a claim for the damages caused by a restraint of trade accrued more than five months *before* Sears enforced it. No matter how you read that ruling, it conflicts with this Court's decisions. If obtaining the order was a new act by

Sears, then the injury it caused gave the Goforths a new claim. If the demand was Sears's only act, then until the order came, the store's losses were future damages, and the claim for those losses accrued when the store suffered them. Either way, the Goforths didn't have the claim when the court said it was due. The Eighth Circuit has "decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). Its decision also conflicts with decisions of other courts of appeals, and the error is clear enough for summary reversal.

I. The decision below conflicts with this Court's decisions on when an antitrust claim accrues.

A. A claim for antitrust damages accrues when the plaintiff is injured, and Rule 13(a) requires a party to file only the claims it has.

A claim for damages asks a court for money to make up for a loss. Until there is a loss, there is nothing to measure and nothing to award, which is why the Clayton Act gives its damages claim to a person "injured in his business or property." 15 U.S.C. § 15(a). So an antitrust claim accrues "when a defendant commits an act that injures a plaintiff's business," which this Court called "plain from the treble-damage statute itself." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971). The Court has since called that "the ordinary Clayton Act rule," a "pure injury accrual rule." *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 188 (1997).

Two things follow from that rule, and this Court has confirmed both. The first is that each act that injures the plaintiff gives him a separate claim. When

the violation continues, "each time a plaintiff is injured by an act of the defendants a cause of action accrues to him to recover the damages caused by that act." *Zenith*, 401 U.S. at 338. In *Hanover Shoe*, where an unlawful leasing policy first hurt the plaintiff in 1912, this Court rejected the argument that the claim "arose during that year," because a plaintiff that could have sued in 1912 "was equally entitled to sue in 1955." *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481, 502 n.15 (1968).

The second is that a claim for future damages that cannot yet be proved does not accrue until the damages happen. *Zenith* says so on the next page:

> [I]t is hornbook law, in antitrust actions as in others, that even if injury and a cause of action have accrued as of a certain date, future damages that might arise from the conduct sued on are unrecoverable if the fact of their accrual is speculative or their amount and nature unprovable.
>
> In antitrust and treble-damage actions, refusal to award future profits as too speculative is equivalent to holding that no cause of action has yet accrued for any but those damages already suffered. In these instances, the cause of action for future damages, if they ever occur, will accrue only on the date they are suffered; thereafter the plaintiff may sue to recover them at any time within four years from the date they were inflicted.

401 U.S. at 339 (citations omitted). So the Court asked "whether Zenith could have recovered those damages if it had brought suit for them in 1954, for if it could not, it would follow ... that it must be permitted to recover them now." *Id.* at 340. That is a holding. In this Court's later words, *Zenith* "held that, in such a case, a claim for the injuries that had been speculative would accrue when those injuries occurred, even though the act that caused them had taken place more than four years earlier." *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 191 (1997).

The same is true of any claim that requires an injury. The majority and the dissent in *Corner Post* both quoted the rule, as a unanimous Court had in *Gabelli*, that a "right accrues when it comes into existence." *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799, 810 (2024); *id.* at 850 (Jackson, J., dissenting); *Gabelli v. Securities and Exchange Commission*, 568 U.S. 442, 448 (2013). The two opinions disagreed about a facial challenge to an agency's rule, where the dissent thought the plaintiff's injury was "utterly irrelevant" to the claim. *Corner Post*, 603 U.S. at 843 (Jackson, J., dissenting). Nobody thinks injury is irrelevant to a claim the Clayton Act gives only to a person "injured in his business or property." 15 U.S.C. § 15(a).

Rule 13(a) works the same way. A compulsory counterclaim is a claim that a party loses by not filing it, and nobody should lose a claim for failing to file it before it existed. So the Rule requires a pleading to state only a claim that, when the pleading is served, "the pleader *has* against an opposing party." Fed. R. Civ. P. 13(a)(1) (emphasis added). The Rule leaves a claim that "matured or was acquired by the party after

serving an earlier pleading" to a later pleading, which the court "may permit" but which the Rule never requires. *See* Fed. R. Civ. P. 13(e).

And a claim doesn't mature for Rule 13 before it accrues for everything else. A claim either exists on a given day or it doesn't. Nothing in the Rule says otherwise, and this Court will not infer a claim that "accrues at one time for the purpose of calculating when the statute of limitations begins to run, but at another time for the purpose of bringing suit." *Reiter v. Cooper*, 507 U.S. 258, 267 (1993).

The same principle limits even a final judgment, which "cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case." *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 328 (1955). This Court repeated the point unanimously in 2020 and gave the reason, which is that later events can create a new claim "in themselves, or taken in conjunction with the antecedent facts." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 590 U.S. 405, 414-415 (2020) (internal quotation marks omitted). If a judgment could not have extinguished a claim that did not yet exist, a deadline for filing counterclaims could not have extinguished it either.

B. The Eighth Circuit held that the claim accrued five months before Sears enforced the restraint of trade, even if enforcing it was a new "overt act."

The Eighth Circuit began with *Zenith*, and you can see what went wrong by putting the court's quotation next to the page it came from. The court quoted the

first sentence of the rule and italicized the words "a defendant commits an act." Pet. App. 10a. This case turns on the words the court did not italicize, which are "that injures a plaintiff's business." The court then passed over the sentence that says a claim accrues "each time a plaintiff is injured by an act of the defendants." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971). The court quoted part of the next sentence, which lets a plaintiff recover the damages he "will suffer in the future from the particular invasion." Pet. App. 10a. And it stopped just before the passage, on a page it cited, that begins "On the other hand" and says that a claim for future damages that cannot yet be proved accrues "only on the date they are suffered." *Zenith*, 401 U.S. at 339.

The court's first holding was that Sears's "first arbitration filing constituted an overt act," so that "any claim related to the same transaction or occurrence" was a compulsory counterclaim. *See* Pet. App. 12a. That answers only one of the two questions Rule 13(a) asks. The same-transaction test only sorts the claims a party *has*, and it doesn't give him one. The Goforths didn't have a claim for the store's lost profits until the store lost profits.

The court added that the later order "was not a subsequent act of Sears." *Ibid.* It was. An arbitrator issued the order, but somebody other than the party issues every order, and an order enforcing a noncompete agreement is the act of the party that obtained it. Respondents argued in the district court that "the arbitrator, not Defendants, enforced the noncompete agreement," and that court disagreed. As it said, Sears "sought enforcement through arbitration." Pet. App. 35a-36a. Sears moved for this

order, posted the $150,000 bond the order required, and demanded that the Goforths certify in writing that they had stopped selling. *See* Pet. App. 4a; C.A. App. 292-293, 301. (Arbitrators don't post bonds.)

The result would be the same if the demand had been Sears's only act. *Zenith* was that kind of case, and the rule is an old one. When an act is not legally injurious until its consequences occur, "*no cause of action accrues until the loss or damage occurs*." *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799, 810-811 (2024) (quoting *Ballentine's Law Dictionary* 16 (2d ed. 1948)) (this Court's emphasis). Sears's demand could not injure a store that hadn't opened, and the restraint of trade injured the store for the first time when Sears enforced it. *See* Pet. App. 4a; C.A. App. 014-015.

The court's second holding did not depend on the first. "Even if the subsequent enforcement did constitute an overt act," the court said, "the initial seeking of the preliminary injunction was the necessary act that gave rise to the claim under Federal Rule of Civil Procedure 13." Pet. App. 12a-13a. An overt act, in this Court's words, is one "that is part of the violation and that injures the plaintiff." *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189 (1997) (internal quotation marks omitted). In the Eighth Circuit, an overt act "must inflict new and accumulating injury on the plaintiff." *Varner v. Peterson Farms*, 371 F.3d 1011, 1019 (8th Cir. 2004). So the court assumed a new act and a new injury, and it *still* held that the claim for that injury arose five months earlier. *Zenith* has an "even if" of its own, and it points the other way. "[E]ven if injury and a cause of action have accrued as of a certain date," a claim for

later damages that could not be proved accrues when the plaintiff suffers them. *See Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 339 (1971).

A necessary act is just a cause, and a claim accrues "on [the] date that damage is sustained and not [the] date when causes are set in motion which ultimately produce injury." *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799, 810 (2024) (quoting *Black's Law Dictionary* 37 (4th ed. 1951)). The court's test also has no stopping point. Without Section 15.8, there would have been nothing to enforce, so did the claim accrue when the agreement was signed? Respondents asked the district court to start the clock there, and the district court refused. That court called July 6, 2019, "the earliest date" on which the agreement "could have conceivably been enforced," and under the decision below, the claim accrued twenty-nine days before then. *See* Pet. App. 15a, 33a, 40a.

For its assumption that the order was an overt act, the court cited *Weber*, in which the defendant sued to enforce a noncompete agreement and obtained a preliminary injunction. *See Weber v. Consumers Digest, Inc.*, 440 F.2d 729, 731 (7th Cir. 1971). The court read *Weber* as "finding that the obtaining of a preliminary injunction was the 'last overt act,'" assumed the same two acts here, and counted from the *first*. *See* Pet. App. 12a. That drops the "last" from the "last overt act" rule, and a footnote left open whether that rule "could ever apply in certain Rule 13 contexts." *Id.* at 12a n.4. But Rule 13 has no accrual rule of its own, and a claim exists no earlier for a counterclaim deadline than for a limitations period. *See Reiter v. Cooper*, 507 U.S. 258, 263, 267 (1993).

Zenith asks whether the plaintiff could have recovered the damages if it had sued for them on the earlier date, so put July 15, 2019, where *Zenith* has 1954. Suppose that Matt had filed with his answer a counterclaim for the profits a store not yet open would lose if Sears later moved to enforce the restraint of trade, and if the arbitrator granted the motion, and if the order were affirmed on appeal. Sears would have moved to dismiss, and Sears would have been right. Section 4 of the Clayton Act "requires a plaintiff to show actual injury," *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 111 (1986), and on July 15, there was no order and no lost sale.

Nothing changes if you pick a later day. The store opened in September and sold appliances without interruption until Sears enforced the restraint, so on any day before the order, a claim for its lost profits was a claim for damages that might never happen. *See* Pet. App. 4a; C.A. App. 014-015. The Goforths could not "file suit and obtain relief" for the store's losses on any of those days. *See Green v. Brennan*, 578 U.S. 547, 554 (2016) (internal quotation marks omitted). If the Goforths could not have recovered those damages then, it follows that they "must be permitted to recover them now." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 340 (1971).

In their answer, respondents themselves allege that the Goforths' damages are "too remote, speculative, and/or uncertain to allow for a recovery." D. Ct. Doc. 57, at 16. If that is what the damages are after the restraint of trade closed the store, it is hard to see what they were before the store opened. Yet respondents argued on appeal that the Goforths' "alleged antitrust injury was triggered as soon as

[Sears] initiated the First Arbitration, even though they had not yet closed their store." Transform C.A. Br. 24. The store hadn't even opened.

C. None of the court's other reasons moves the injury back to June.

The court gave three more reasons, and each is about something other than the claim in this case.

The first was defense costs. But defense costs are not the antitrust injury of a market division. Antitrust injury is "the type of loss that the claimed violations ... would be likely to cause." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977) (internal quotation marks omitted). The violation claimed here is the restraint of trade, not the arbitration. Section 15.8 was a naked horizontal division of products and markets, and what a restraint like that does to a competitor is keep it out of the market. As Judge Posner put it, exclusion from a market "is a conventional form of antitrust injury that gives rise to a claim for damages as soon as the exclusion occurs." *Brunswick Corp. v. Riegel Textile Corp.*, 752 F.2d 261, 271 (7th Cir. 1984). The restraint of trade shut the Goforths' store out when Sears enforced it, and on no day before that. What would the antitrust injury have been in June 2019, when the store hadn't opened and nobody had been kept out of anything?

The cost of defending a proceeding is the antitrust injury of a different claim, which is a claim that the proceeding itself was the violation. That was the case the court relied on. *See* Pet. App. 14a; *Handgards, Inc. v. Ethicon, Inc.*, 601 F.2d 986, 996-997 (9th Cir. 1979). The claim here is not that claim. *See* Pet. App. 25a; D. Ct. Doc. 1, ¶¶ 63, 69. The demand and the enforcement

were different acts. The demand cost the Goforths legal fees, and the restraint of trade closed their store. Those are two claims, and the claim in this case is the second one. Neither a defendant nor a court gets to choose which violation the plaintiff claims.

The Goforths did ask for their fees along with the store's losses. *See* Pet. App. 13a-14a. That doesn't move the store's injury back five months, because "[t]he limitations-period analysis is always conducted claim by claim." *Green v. Brennan*, 578 U.S. 547, 563 (2016). Even a plaintiff who has already been injured, and already has a claim, gets a separate claim for later damages that could not be proved earlier, and that claim accrues when the plaintiff suffers those damages. *See Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 339 (1971); *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190-191 (1997).

The second reason was that Matt knew enough in 2019 to allege a violation, because he argued then that the agreement was unenforceable. *See* Pet. App. 13a. He was right. *See* C.A. App. 364. But each act that injures the plaintiff restarts the period "regardless of the plaintiff's knowledge of the alleged illegality at much earlier times." *Klehr*, 521 U.S. at 189 (internal quotation marks omitted). Knowing that a restraint is unlawful is not the same as being injured by it.

The third reason was that the Goforths "should have sought a preliminary injunction preventing the enforcement." Pet. App. 15a. But that reason proves the Goforths' point: you can only *prevent* something that hasn't happened yet. A threat of injury will support an injunction under Section 16 of the Clayton Act, which "is characteristically available even though the plaintiff has not yet suffered actual injury." *Zenith*

Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 130 (1969). A threat won't support a claim for damages under Section 4, which requires an injury that *has* happened. In *Lawlor*, the earlier complaint had sought "injunctive relief which, if granted, would have prevented the illegal acts now complained of," and this Court still held that the two claims did "not congeal into a single cause of action merely because equitable relief is also sought." *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 328-329 (1955).

The claim for what the restraint of trade did to the store accrued no earlier than November 20, 2019, and the Goforths sued within four years. This Court's rule is settled, the dates are undisputed, and the conflict is on the face of the opinion, so the Court should reverse summarily. A summary reversal "does not decide any new or unanswered question of law, but simply corrects a lower court's demonstrably erroneous application of federal law." *Maryland v. Dyson*, 527 U.S. 465, 467 n.* (1999) (per curiam). All the Court has to say is that the claim for these damages did not accrue before Sears enforced the restraint of trade. It's simple. Everything else goes back to the courts below.

II. The courts of appeals are divided over whether enforcing a noncompete agreement gives rise to a new claim, and only the Eighth Circuit holds that it makes no difference.

No other court of appeals has held that a claim for an injury first inflicted when an order enforced a noncompete agreement accrued when the proceeding that produced the order was filed. The Eighth Circuit got there in two steps, and each one puts it in direct conflict with other courts of appeals.

A. The courts of appeals disagree about whether an act that enforces an earlier agreement gives rise to a new claim.

The court's first holding was that the order enforcing the noncompete agreement was not a new overt act. The court said that "unabated inertial consequences of previous acts" do not start a new period, and that the order "was not a subsequent act of Sears" and so not "an overt act by the defendant." Pet. App. 11a-12a (internal quotation marks omitted). That holding takes one side of a conflict that courts on both sides have acknowledged.

The Ninth Circuit has "repeatedly held that acts taken to enforce a contract were overt acts that restarted the statute of limitations." *Samsung Electronics Co. v. Panasonic Corp.*, 747 F.3d 1199, 1204 (9th Cir. 2014). The plaintiff in that case "was not in the SD card market" when the defendants first acted, so it could "file suit once the harm crystallized." *Id.* at 1204-1205. In the Fifth Circuit, injurious acts are not "immunized from suit simply because an allegedly unlawful pre-limitations contract purports to authorize the commission of such acts." *Imperial Point Colonnades Condominium, Inc. v. Mangurian*, 549 F.2d 1029, 1042 (5th Cir. 1977).

The Third Circuit called that position "well-reasoned" and adopted it. A supermarket chain had enforced an exclusivity clause in its 1971 lease and forced a competitor out of a shopping center in 1974, and the court held the competitor's suit timely for the same two reasons the Goforths rely on here. Its lost profits were "damages that could not be anticipated in 1971," and the 1974 act gave rise to a claim

"independent of any claim that may have accrued in 1971." *Harold Friedman Inc. v. Thorofare Markets Inc.*, 587 F.2d 127, 138-139 (3d Cir. 1978).

A defendant later asked the Third Circuit, citing a Sixth Circuit decision, to hold that "no cause of action accrues" from acts that "are merely 'reaffirmations' of acts done or decisions made outside the limitations period," and the court rejected that standard as "inconsistent with controlling precedent." *West Penn Allegheny Health System, Inc. v. UPMC*, 627 F.3d 85, 106 (3d Cir. 2010). And the Seventh Circuit, in the case the court below cited, counted an injunction enforcing a noncompete agreement as an overt act. *See Weber v. Consumers Digest, Inc.*, 440 F.2d 729, 731 (7th Cir. 1971). In those four circuits, the order Sears obtained to enforce the restraint was a new act, and the claim for what it did to the store was a new claim.

But the Second and Sixth Circuits hold the opposite. In the Sixth Circuit, "the enforcement of a non-compete clause is not an overt act extending the statute of limitations under the continuing violations doctrine." *Z Technologies Corp. v. Lubrizol Corp.*, 753 F.3d 594, 604 (6th Cir. 2014). The Second Circuit agrees, and it counts the Eighth Circuit on its side: "like the Sixth, Eighth, and Ninth Circuits, we think of the performance of a contract as a manifestation of the 'overt act,' the decision to enter the contract, rather than an independent overt act of its own." *US Airways, Inc. v. Sabre Holdings Corp.*, 938 F.3d 43, 69 (2d Cir. 2019). (It listed the Ninth Circuit too, which is not how the Ninth Circuit describes its own cases.) A district court there has said that the Second Circuit "acknowledged the split among the district courts and among other Circuits." *Giordano v. Saks Inc.*, 654 F.

Supp. 3d 174, 191 (E.D.N.Y. 2023), *aff'd on other grounds sub nom. Giordano v. Saks & Co.*, No. 23-600-cv, 2025 WL 799270 (2d Cir. Mar. 13, 2025).

The Fourth Circuit has rejected the reasoning the Eighth Circuit used. A district court there counted from the defendant's last overt act instead of the later date when the plaintiffs were first injured, because what happened on that date was "not an overt act by Actelion." *Mayor of Baltimore v. Actelion Pharmaceuticals Ltd.*, 995 F.3d 123, 128 (4th Cir. 2021) (internal quotation marks omitted). The Fourth Circuit vacated the dismissal. "[W]ithout injury, a cause of action does not exist and therefore cannot accrue," the court held, and starting the limitations period at "an overt act ... without injury" is a proposition that "makes no sense." *Id.* at 129, 131.

The court below took its rule for lawsuits from *Pace*, but on the court's own assumption, *Pace* points the other way. Pace won in the trial court, and the opinion describes no order enforcing the noncompete agreement against Pace. *See Pace Industries, Inc. v. Three Phoenix Co.*, 813 F.2d 234, 236 (9th Cir. 1987). Pace alleged that the *suit itself* delayed its entry into the market, which is why the Ninth Circuit could say that "no new injury results from the act of appealing that the defendant does not already endure as a result of the act of filing the action initially." *Id.* at 238; *see id.* at 240. Sears's demand kept *nobody* out, and the store opened while the arbitration was pending. *See* Pet. App. 4a. Where *Pace* found no new injury, the court below assumed one, and under *Pace* itself, "the statute runs from the last overt act." 813 F.2d at 237. And *Pace* was a limitations case. Pace "should have counterclaimed or filed a separate action within the

time mandated by the statute," which gave Pace four years from the filing. *See* 813 F.2d at 239, 241. The Goforths sued within four years of Sears's demand, and under the decision below, they had only thirty days. *See* Pet. App. 50a, 56a; D. Ct. Doc. 1.

B. Only the Eighth Circuit reads Rule 13(a) to require a counterclaim for an injury that the opposing party has not yet inflicted.

The court's second holding stands alone. The court held that "[e]ven if" the enforcement was an overt act, the claim for the injury it caused was a compulsory counterclaim in an answer served four months before the order. *See* Pet. App. 12a-13a. An overt act means a new injury, and a claim for an injury inflicted after the answer is a claim a party acquires after he answers. No other court of appeals reads Rule 13(a) to reach that claim. In the Fifth Circuit, a counterclaim "acquired by a defendant after he has answered is not considered compulsory, even if it arises out of the same transaction as does plaintiff's claim." *Dillard v. Security Pacific Brokers, Inc.*, 835 F.2d 607, 609 (5th Cir. 1988). The brokerage there sued a customer and then, after he answered, had him prosecuted, and his claims based on the prosecution were not compulsory because they "arose after his answer." *Ibid.*

The Tenth Circuit agrees with the Fifth, in nearly the same words. *See Arch Mineral Corp. v. Lujan*, 911 F.2d 408, 412 (10th Cir. 1990). In the First Circuit, a claim based on a sale that enforced a judgment was not compulsory, because the sale, "coming after judgment, falls outside the rule." *Carteret Savings & Loan Association v. Jackson*, 812 F.2d 36, 39 (1st Cir. 1987). The Eighth Circuit has said so itself, and in the

same terms. "Even if it arose out of the same transaction or occurrence, a claim for relief that has not matured need not be asserted as a compulsory counterclaim." *Cochrane v. Iowa Beef Processors, Inc.*, 596 F.2d 254, 264 n.9 (8th Cir. 1979).

Judge Posner called the reason obvious. "For rather obvious reasons, Rule 13(a) does not require the defendant to file as a compulsory counterclaim a claim that hasn't accrued yet," including one that "has not yet come into being." *Allan Block Corp. v. County Materials Corp.*, 512 F.3d 912, 920 (7th Cir. 2008). An omitted compulsory counterclaim is lost, and "[i]t would be bizarre to attach this sanction to a counterclaim that could not have been filed with the answer because it did not exist when the answer was due." *Harbor Insurance Co. v. Continental Bank Corp.*, 922 F.2d 357, 360 (7th Cir. 1990) (Posner, J.).

In *Burlington Northern Railroad Co. v. Strong*, 907 F.2d 707, 708-709 (7th Cir. 1990), an injured employee sued his railroad and won a judgment, and the railroad then sued him to recover sickness benefits that duplicated the judgment. The employee's suit was the necessary act that gave rise to the railroad's claim, because without it there would have been no judgment to duplicate. On the Eighth Circuit's reasoning, the railroad's claim was due with its answer, before the employee had won a dollar. The Seventh Circuit held that it wasn't. "[E]ven if we were to assume, *arguendo*, that these claims involve the same transaction, Burlington's claim need not have been brought as a counterclaim. It did not exist until the conclusion of the first suit when Mr. Strong obtained his judgment." *Id.* at 712.

In the First, Fifth, Seventh, and Tenth Circuits, Rule 13(a) does not reach a claim a party acquires after he answers. In the Eighth Circuit, it now does.

III. The question matters wherever a noncompete agreement is enforced, and it will rarely reach this Court.

The decision below changes what a party must do on the day it is sued. When a company sues a former dealer in federal court in Missouri to enforce a noncompete agreement, the dealer's answer is due twenty-one days later. *See* Fed. R. Civ. P. 12(a)(1)(A)(i). Under the decision below, his claim for whatever damages an injunction might later cause has already accrued, which makes it a compulsory counterclaim now. He must either file a treble-damages claim for an injury he hasn't suffered and can't prove, or lose it. That doesn't make sense.

This Court has rejected accrual rules that force a party to file a protective claim, because they produce "dormant, unripe cases" and "senseless duplication." *McDonough v. Smith*, 588 U.S. 109, 121 (2019); *Reed v. Goertz*, 598 U.S. 230, 237 (2023).

The Eighth Circuit's rule also lets the party that would be sued set the deadline for the claim against it. That party chooses when to file, the answer is due a few weeks later, and the order comes when it comes. A party that files early enough can make sure the claim against it is due before it has done any harm, which is the "partial immunity from civil liability for future violations" that this Court refused to allow in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 329 (1955). Sears filed its demand twenty-nine days before the restraint of trade could even apply.

Restraints like this one are common, and so are the arbitration clauses that come with them. The appellate arbitrator described the relationship here as "more that of a licensor/licensee, or a franchisor/franchisee," and the Federal Trade Commission's list of the "terms and conditions of a typical franchise relationship" includes both "[n]on-competition covenants after the franchise is terminated or expires" and "[d]ispute resolution by arbitration or mediation." C.A. App. 360; 72 Fed. Reg. 15,444, 15,495 (Mar. 30, 2007); 16 C.F.R. § 436.5(q) (2026). What federal law offers a party injured by such a restraint is an antitrust claim, one case at a time, and that works only if he can tell when to bring it.

In this form, the question will rarely reach this Court. When a noncompete agreement is enforced in arbitration, no court can correct an arbitrator's mistake about accrual, because "convincing a court of an arbitrator's error—even his grave error—is not enough." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 572 (2013). When one is enforced in a state court, that court can't hear the federal antitrust claim. *See Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985). In federal court, the rule will rarely be tested either, because the defendant who obeys it and files the protective counterclaim has nothing to appeal. This case got through only because Sears went bankrupt and the Goforths sued its owners in federal court. *See* Pet. App. 2a, 8a. The court of appeals denied rehearing en banc, and the decision now binds every district court in seven States. *See id.* at 42a.

IV. This case presents the question as the only ground of a published decision, and the dates that decide it are undisputed.

The question was pressed and decided at every stage, and the answer was the only ground of a published decision after a final judgment. *See* Pet. App. 9a-15a, 23a-25a. The Goforths argued in the court of appeals both that obtaining the order was a later act that gave rise to its own claim and that a counterclaim filed before the order would have been dismissed under *Zenith*. *See* Pet. C.A. Br. 16-20.

Arbitration doesn't make this a contract case, because this agreement made Rule 13 the test by name. Respondents themselves told the court of appeals that "[t]he only question then for purposes of this appeal is when Plaintiffs-Appellants' antitrust claim accrued for purposes of that Rule." Transform C.A. Br. 14; *see* Pet. App. 50a. That is still the only question, and the court of appeals answered it under this Court's accrual decisions. *See* Pet. App. 10a-12a. Had Sears sued in federal court and obtained the same injunction, Rule 13(a) would have applied of its own force, and under the decision below, the answer would have been the same. The agreement's thirty-day deadline changes nothing, because it applies only to the counterclaims Rule 13 makes compulsory and it too passed before the order. *See* Pet. App. 50a.

The second arbitrator's award is no obstacle. It was on appeal within the arbitration, but that appeal was stayed indefinitely. Respondents admitted that the award "has not been confirmed." D. Ct. Doc. 67, at 23 n.7; *see* Pet. App. 7a n.2, 22a. Under the agreement, only an appellate arbitrator's award is "conclusive and

binding" once an appeal is taken, and neither court below gave the award any preclusive effect. *See* Pet. App. 15a n.5, 27a, 52a. The award was also plainly wrong on the merits. It dismissed the store's losses as "injury to [the Goforths] as a competitor, not injury to the market and its consumers," and it demanded "evidence of a measurable increase in price or reduction in output in a relevant market." D. Ct. Doc. 67-7, at 5, 7. But being shut out of the market is exactly the injury a market division inflicts on a competitor, and proof of higher prices or lower output goes to whether a restraint is unlawful, not to whether it injured the plaintiff. Otherwise the per se rule would mean nothing, because every plaintiff would have to prove the same effects that the rule presumes.

No court has accepted any other ground for the judgment. The district court rejected six of them when it denied the motion to dismiss, and neither court below reached res judicata, so that argument is "ripe for consideration on remand." *Skinner v. Switzer*, 562 U.S. 521, 537 (2011); *see* Pet. App. 15a n.5, 27a, 32a-41a. The merits are not close. Section 15.8 was a naked horizontal division of products and markets, and this Court has held an agreement of that kind "unlawful on its face." *Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46, 49-50 (1990) (per curiam) (licensor and licensee agreed "not to compete in the other's territories"). The courts below never reached the merits, and the question presented does not depend on them, because a claim accrues on the same day whether the plaintiff wins or loses in the end.

So everything turns on one date. The Eighth Circuit chose June 7, 2019, five months before the injury. But under this Court's decisions, the date is

the day the restraint of trade injured the store. The claim for the store's losses accrued then, so nobody "ha[d]" that claim on any earlier day, Fed. R. Civ. P. 13(a)(1), and the judgment's only ground falls away.

CONCLUSION

A rule that waits for the plaintiff's injury "respects our deep-rooted historic tradition that everyone should have his own day in court." *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799, 824 (2024) (internal quotation marks omitted). For the Goforths, that day never came. Their claim was too early until it was too late.

The petition for a writ of certiorari should be granted and the judgment of the court of appeals summarily reversed. In the alternative, the petition should be granted and the case set for argument.

Respectfully submitted.

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