No. 20-297

In The
Supreme Court of the United States

TRANS UNION LLC,

Petitioner,

v.

SERGIO L. RAMIREZ,

Respondent.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether Article III and Rule 23 permit a damages class action where most of the class suffered no injury, much less an injury like what the class representative suffered.

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[*]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as *amicus* urging strict adherence to rules barring federal-court adjudication of claims brought by those who lack Article III standing. *See*, *e.g.*, *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615 (2020); *Spokeo v. Robins*, 136 S. Ct. 1540 (2016). WLF also participates in litigation to advance its view that the Constitution's separation of powers bars any one branch from exercising powers rightfully reserved to another branch. *See, e.g.*, *Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302 (2014).

The Ninth Circuit's decision confers Article III standing on thousands of plaintiffs who suffered no concrete injury. This holding expands the legislative and judicial powers—at the expense of the executive power—by allowing the plaintiffs' bar to enforce federal statutes outside Article III's framework. Private-party enforcement of federal law violates the separation of powers central to our republican form of government.

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[*] No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission. All parties filed blanket consents for the filing of *amicus* briefs.

Affirming the Ninth Circuit's holding also allows uninjured individuals to invoke federal court jurisdiction based on the violation of a federal statute unconnected to an actual injury. This would greatly expand federal courts' jurisdiction beyond those "cases" and "controversies" over which they have subject-matter jurisdiction. *See Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1746 (2019). This Court should vindicate the separation of powers by rejecting this attempt at unfettered federal court jurisdiction and reversing the decision below.

STATEMENT

Respondent and his wife applied for a car loan. Relying on TransUnion data, a third-party told the dealership that Respondent's name matched two names on the Office of Foreign Assets Control database. The information provided to the dealership included the dates of birth and middle names of the two men on the OFAC database. Respondent shared neither a date of birth nor a middle name with either man.

Despite the evidence that Respondent was not on the OFAC database, the dealership had his wife buy the car. Respondent then contacted TransUnion, which agreed to exclude the OFAC flag from future credit reports. Even so, Respondent canceled a planned trip to Mexico because of the OFAC flag on his initial report.

Respondent sued TransUnion under the Fair Credit Reporting Act. The District Court certified a class of individuals who learned from TransUnion that they were potential matches to names on the

OFAC database. No third party ever accessed a credit report with the OFAC flag for over 75% of those people.

Most of the class therefore did not suffer an injury. Yet the case still proceeded to trial where the jury learned about Respondent's injury. It then extrapolated Respondent's unique injury to the entire class. Unsurprisingly, the jury returned an outsized verdict for the class. The Ninth Circuit affirmed and held that the District Court properly certified the damages class. This Court granted certiorari on whether class certification was proper.

SUMMARY OF ARGUMENT

I.A. The principle of separation of powers is a central tenet of our constitutional republic. By ensuring any one branch does not have too much power, the Framers sought to prevent the accumulation of power that leads to tyranny. Article III, § 2 of the Constitution safeguards the separation of powers by extending the judicial power of the United States to only cases and controversies. An essential element of any case or controversy is standing. And a plaintiff must suffer a concrete, particularized injury to establish standing to sue in federal court.

B. The Framers limited the judiciary's power to cases and controversies because "neither department may invade the province of the other and neither may control, direct or restrain the action of the other." *Frothingham v. Mellon*, 262 U.S. 447, 488 (1923). The Ninth Circuit's holding is sharply at odds with this Court's historical understanding that

neither Congress nor the judiciary may dilute the case or controversy requirement. This Court has consistently rejected assertions that federal courts may entertain citizen suits to vindicate a generalized interest in the proper administration of the laws, even when Congress has explicitly authorized such suits by statute.

II.A. The Ninth Circuit essentially held that an individual has Article III standing whenever a defendant violates a federal statute benefiting consumers. According to the Ninth Circuit, it is immaterial whether the violation caused any harm. Here, more than 75% of class members suffered no concrete injury. By allowing federal courts to adjudicate the claims of uninjured class members, the decision below expands the judicial power. Simply put, permitting damages class actions where most class members suffered no Article III injury violates the separation of powers.

B. Unless the lower courts adhere strictly to Article III's injury-in-fact requirement, private plaintiffs and the judiciary will enforce the laws—a role exclusively reserved to the Executive Branch. The Framers viewed it as the Executive's "most important constitutional duty[] to take Care that the Laws be faithfully executed." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 577 (1992*)* (quotation omitted). Under the Take Care Clause, the President has the exclusive duty to ensure compliance with federal law.

The cornerstone of the Executive's enforcement authority is the exercise of prosecutorial discretion—the power to control the initiation, prosecution, and termination of actions to enforce federal law. When,

as here, a class member suffers a statutory violation with no resulting harm, permitting a damages class action deprives the Executive of the prosecutorial discretion that lies at the heart of the President's power to execute the laws.

Congressional delegation of the Executive Branch's prosecutorial discretion to private parties is permissible only when the Executive retains "sufficient control over" that party to ensure that the Executive can perform its constitutional duties under the Take Care Clause. *Morrison v. Olson*, 487 U.S. 654, 696 (1988). Because the FCRA does not give the Executive any control over private lawsuits, much less "sufficient control," the Ninth Circuit's holding impermissibly transfers a core Article II function to private plaintiffs. By authorizing federal courts to require compliance with federal law at the behest of uninjured individuals, the decision below harms the Constitution's careful separation of powers and should be reversed.

III. It is immaterial that Respondent has Article III standing. For a federal court to certify a class, every member of the class must have Article III standing. Otherwise, a court would be exercising jurisdiction even with no case or controversy between the uninjured class members and the defendant. The exercise of such jurisdiction defies this Court's well-settled precedent.

ARGUMENT

I. INJURY-IN-FACT STANDING IS CRITICAL TO THE SEPARATION OF POWERS.

The Constitution extends the "judicial Power" of the United States to only "Cases" and "Controversies." U.S. Const. art. III, § 2. A plaintiff's standing to sue is a necessary element of a case or controversy. *Lujan*, 504 U.S. at 560. Standing includes a prerequisite that the plaintiff "suffered an injury in fact." *Spokeo*, 136 S. Ct. at 1547. Some in Congress have recently criticized this requirement. *See, e.g.*, Louie Gohmert, Twitter (@replouiegohmert) (Jan. 1, 2021 11:29 p.m.), https://bit.ly/39SqoG3. But such criticism proves the point: Article III's standing requirements are necessary to maintaining the separation of powers.

A. The Constitution Demands A Clear Separation Of Powers Among The Three Branches Of Government.

The Framers viewed tyranny as both the abuse of power and the accumulation of power. When discussing the separation of powers, James Madison stated, "[n]o political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty" than the separation of powers. *Dep't of Transp. v. Ass'n of Am. Railroads*, 575 U.S. 43, 74 (2015) (Thomas, J., concurring) (quoting *The Federalist* No. 47, 301 (C. Rossiter ed. 1961)). The Constitution thus "vest[s] the authority to exercise different aspects of the people's sovereign power in distinct entities." *Gundy v. United*

States, 139 S. Ct. 2116, 2133 (2019) (Gorsuch, J., dissenting).

"To the [F]ramers," the powers vested to each branch "had a distinct content." *Gundy*, 139 S. Ct. at 2133 (Gorsuch, J., dissenting). This Court has thus recognized that the "principle of separation of powers was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787." *INS v. Chadha*, 462 U.S. 919, 946 (1983) (quoting *Buckley v. Valeo*, 424 U.S. 1, 124 (1976) (*per curiam*)).

This focus on the separation of powers was not new. Montesquieu explained that, without the separation of powers, "there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner." Charles de Montesquieu, *Spirit of the Laws*, 113 (Lonang Institute ed., T. Nugent trans. 2005) (1748). Similarly, "there is no liberty if the power of judging be not separated from the legislative and executive powers." *Id.* This is because citizens "would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of the oppressor." *Id.*

The Framers adopted the Montesquieu model. The Constitution divides federal power among three branches—Legislative, Executive, and Judicial. Each may perform only specific duties. This tripartite distribution of power "is not merely a matter of convenience or of governmental mechanism." *O'Donoghue v. United States*, 289 U.S. 516, 530

(1933), *superseded on other grounds*, District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473. Rather, this Court has long recognized that the "ultimate purpose" of the separation of powers is "to protect the liberty and security of the governed." *Metro. Wash. Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991).

This structure "assure[s] full, vigorous, and open debate on the great issues affecting the people and [provides] avenues for the operation of checks on the exercise of governmental power." *Bowsher v. Synar*, 478 U.S. 714, 722 (1986). So "[w]hile the Constitution diffuses power * * * to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government." *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2245 (2020) (Kagan, J., concurring and dissenting) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring)).

Although "each branch has traditionally respected the prerogatives of the other two," this "Court has been sensitive to its responsibility to enforce the principle when necessary." *Metro. Wash. Airports Auth.*, 501 U.S. at 272. Unfortunately, this is another in a recent string of cases in which this Court's intervention is needed to protect the separation of powers.

B. Article III's Injury-In-Fact Requirement For Standing Is Grounded In Separation-Of-Powers Concerns.

To invoke federal-court jurisdiction, plaintiffs must seek redress for an "injury in fact." *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). This bedrock requirement of Article III jurisdiction "cannot be removed." *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009).

The Constitution's strict limits on federal jurisdiction ensure that courts stay within their lanes. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857 (2017). Article III's standing requirements therefore ensure that federal courts decide only cases "traditionally thought to be capable of resolution through the judicial process." *Raines v. Byrd*, 521 U.S. 811, 819 (1997) (quoting *Flast v. Cohen*, 392 U.S. 83, 97 (1968)).

In short, Article III's concrete injury-in-fact requirement is "a crucial and inseparable element" of separation-of-powers principles embedded in the Constitution. Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 881 (1983). It is the injury-in-fact requirement that "makes possible the gradual clarification of the law through judicial application." *Allen v. Wright*, 468 U.S. 737, 752 (1984), *abrogated on other grounds, Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014); *see DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 340-41 (2006).

Failure to enforce Article III's core standing requirements leads to "an over-judicialization of the processes of self-governance." Scalia, 17 Suffolk U. L. Rev. at 881 (citing Donald Horowitz, *The Courts and Social Policy* 4-5 (1977)). The Ninth Circuit's decision, however, severely erodes the Constitution's carefully balanced separation of powers. This Court should reject this undermining of separation-of-powers principles.

II. PERMITTING FEDERAL COURTS TO ADJUDICATE CLAIMS BY CLASS MEMBERS WHO LACK A CONCRETE INJURY VIOLATES THE SEPARATION OF POWERS.

Any time one branch of government increases its power at the expense of another or undermines the constitutionally granted powers of another, even without enlarging its own power, it violates the separation of powers. *See Clinton v. Jones*, 520 U.S. 681, 701 (1997). Allowing federal-court adjudication of claims by uninjured class members, as the Ninth Circuit did, violates the separation of powers by enlarging judicial and legislative power at the expense of executive power. At the same time, authorizing federal courts to enforce federal statutes at the behest of class members who have suffered no concrete injury would permit Congress to interfere with the Executive Branch's constitutional duty to enforce the nation's laws under the Take Care Clause.

A. Claims By Uninjured Class Members Are Neither Cases Nor Controversies.

A federal court's adjudication of claims absent an injury-in-fact violates fundamental separation-of-powers principles. "[I]f the judicial power extended * * * to every question under the laws * * * of the United States," then "[t]he division of power [among the three branches of government] could exist no longer, and the other departments would be swallowed up by the judiciary." 4 Papers of John Marshall 95 (C. Cullen ed. 1984); *see Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 133 (2011).

Ultimately, the courts' seizure of power comes at the expense of the people and their elected representatives. By preventing an unelected judiciary from exercising executive or legislative powers—which are the exclusive province of the political branches—Article III's injury-in-fact requirement cabins the federal judiciary to its historical adjudicatory role.

By allowing the judiciary to decide only cases and controversies, "the Constitution restricts it to the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of the law." *Summers*, 555 U.S. at 492. The injury-in-fact requirement thus "ensures that the courts will more properly remain concerned with tasks that are, in Madison's words, 'of a Judiciary nature.'" John G. Roberts, Jr., *Article III Limits on Statutory Standing*, 42 Duke L.J. 1219, 1232 (1993) (citation omitted).

The injury-in-fact requirement also ensures that cases will be resolved "not in the rarified atmosphere of a debating society" but with "a realistic appreciation of the consequences of judicial action." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 472 (1982). The Ninth Circuit's rule, on the other hand, "create[s] the potential for abuse of the judicial process, distort[s] the role of the Judiciary in its relationship to the Executive and the Legislature, and open[s] the Judiciary to an arguable charge of providing 'government by injunction.'" *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 222 (1974) (citation omitted).

Despite Respondent's insistence to the contrary, an injury-in-law is not an injury-in-fact. Respondent tries to blur this distinction by suggesting that the inquiry here is "fact-bound." BIO 15. But this mischaracterizes the record. Over three-fourths of the class's members undisputedly suffered no actual injury. Yet Respondent and the Ninth Circuit said that is fine because—in some alternative universe—they may have suffered an injury. This conflicts with well-settled precedent.

An Article III injury "must be likely, as opposed to merely speculative." *United States v. Windsor*, 570 U.S. 744, 757 (2013) (quotation omitted). Here, the uninjured class members' purported injury is pure speculation because TransUnion never disclosed their credit reports to a third party. No matter, Respondent contends, they suffered an injury because if a credit report *had been* disclosed to a third party, it *would have* included an OFAC flag.

But that alternative reality never materialized. In the real world, over three-fourths of the absent class members suffered no injury-in-fact. Any injury that those class members suffered is therefore "theoretical." *Huff v. TeleCheck Servs., Inc.*, 923 F.3d 458, 462 (6th Cir. 2019) (citation omitted). And theoretical injuries are insufficient for Article III standing. *Id.* (citation omitted).

For an alleged injury to satisfy Article III's injury-in-fact requirement, it also cannot be "based on third parties'" potential actions. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 418 n.7 (2013) (citing *Laird v. Tatum*, 408 U.S. 1, 10-14 (1972)). As the District of Columbia Circuit has explained, courts "reject as overly speculative [an] assumption regarding the future behavior of third parties." *Turlock Irr. Dist. v. FERC*, 786 F.3d 18, 24 (D.C. Cir. 2015) (citation omitted). The flaw with Respondent's argument is even more glaring. Rather than rely on third-party behavior that may occur, his argument relies on third-party behavior that never occurred.

According to Respondent, a third party could have requested the uninjured class members' credit reports and then could have taken adverse action based on the OFAC flags. But we know with certainty that never occurred for more than 75% of the absent class members. So this is not a theoretical injury that might occur. Rather, it is a theoretical injury that we know never occurred.

By "ignoring the concrete injury requirement" the Ninth Circuit "discard[ed] a principle so fundamental to the separate and distinct constitutional role of the Third Branch—one of the

essential elements that identifies those 'Cases' and 'Controversies' that are the province of the courts rather than of the political branches." *Lujan*, 504 U.S. at 576.

Nor may Congress "erase Article III standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Raines*, 521 U.S. at 820 n.3 (citing *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979)). But that is what the Ninth Circuit assumed here. By examining what injury a class member could have suffered in an alternative universe, it gave uninjured class members the ability to sue for FCRA violations. Like Congress, the courts lack this authority.

B. The Decision Below Contravenes Article II's Requirement That The President Take Care That The Laws Are Faithfully Executed.

Allowing recovery for uninjured class members also invades the exclusive province of the Executive Branch to enforce federal law under the Take Care Clause. *See* U.S. Const. art. II, § 3. "As Madison stated on the floor of the first Congress, 'if any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and *controlling* those who execute the laws.'" *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 492 (2010) (quoting 1 Annals of Cong. 463 (1789) (emphasis added)).

This Court has recognized that "[t]he Constitution does not leave to speculation who is to administer the laws enacted by Congress." *Printz v.*

United States, 521 U.S. 898, 922 (1997). It is "the President," both "personally and through officers whom he appoints" who enforces federal law. *Id.* The Take Care Clause thus imposes on the Executive Branch a duty to undertake all necessary means, including suing in federal court, to ensure compliance with federal law. *Allen*, 468 U.S. at 761.

Lacking any concrete injury-in-fact, the uninjured class members seek to vindicate the public interest triggered by a bare violation of federal law. But "[v]indicating the public interest * * * is the function of Congress and the Chief Executive." *Lujan*, 504 U.S. at 576 (emphasis removed). The separation of powers bars Congress from giving private parties the ability to vindicate the public interest because that is the exclusive province of the Executive Branch. "A lawsuit is the ultimate remedy for a breach of the law," and the Constitution entrusts the Executive—not the other branches—"to take Care that the Laws be faithfully executed." *Buckley*, 424 U.S. at 138.

By allowing Respondent to pursue claims on behalf of uninjured class members, the Ninth Circuit's holding effectively transfers the Executive Branch's enforcement duty under the Take Care Clause to politically unaccountable private parties. This it may not do. Such a construction "violates the basic principle that the President cannot delegate ultimate responsibility or the active obligation to supervise that goes with it, because Article II makes a single President responsible for the actions of the Executive Branch." *Free Enter. Fund*, 561 U.S. at 496 (quotation omitted).

Consistent with Article II, a plaintiff lacks standing to seek the mere "vindication of the rule of law." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 106 (1998). Indeed, this Court's precedents weigh "against recognizing standing in a case brought, not to enforce specific legal obligations whose violation works a direct harm, but to seek a restructuring of the apparatus established by the Executive Branch to fulfill its legal duties." *Allen*, 468 U.S. at 761. A contrary view, one allowing any private individual to sue whenever the law is violated, diminishes the political accountability of the Executive to enforce the laws.

"Permitting Congress to confer standing on anyone by denominating rights as individualized entitlements would disrupt the balance that the Framers created to protect the executive from legislative power." James Leonard & Joanne C. Brant, *The Half-Open Door: Article II, the Injury-In-Fact Rule, and the Framers' Plan For Federal Courts of Limited Jurisdiction*, 54 Rutgers L. Rev. 1, 115 (2001). The Ninth Circuit's decision disrupts this balance by giving Respondent the ability to vindicate the rights of uninjured class members. Again, this is the Executive Branch's—not the plaintiffs' bar's—job.

The Executive's ability to control the initiation, prosecution, and termination of actions brought to ensure compliance with federal law is crucial to carrying out its enforcement duties. The keystone of this enforcement authority is the exercise of prosecutorial discretion. Such discretion "creates a troubling potential for abuse, even when it is exercised by a governmental entity that is subject to

constitutional and other legal and political constraints." Tara Leigh Grove, *Standing as an Article II Nondelegation Doctrine*, 11 U. Pa. J. Const. L. 781, 790 (2009). That is why "the Constitution prohibits Congress and the Executive Branch from delegating such prosecutorial discretion to private parties, who are subject to no such requirements." *Id.*

A statute divesting the Executive Branch of some measure of prosecutorial discretion must "give the Executive Branch sufficient control * * * to ensure that the President is able to perform his constitutionally assigned duties." *Morrison*, 487 U.S. at 696. *Morrison* involved a constitutional challenge to the Ethics in Government Act of 1978, which authorized the appointment of an independent counsel to prosecute high-ranking government officials. *See id.* at 660-61. In upholding the law, the Court emphasized that the challenged statute included "several means of supervising or controlling the prosecutorial powers that may be wielded by an independent counsel," which satisfied the Take Care Clause. *Id.* at 696.

Under the Ethics in Government Act, the Attorney General, could "remove the counsel for 'good cause,'" controlled the scope of the litigation, and ensured that the prosecution was pursued in the public interest. *Morrison*, 487 U.S. at 696. None of the statutory safeguards identified in *Morrison* is present in the FCRA. Respondent is subject to no control or oversight by the Executive Branch. In fact, the FCRA does not even require plaintiffs to notify the Attorney General of their suit. Further, in stark contrast to the independent counsel at issue in *Morrison*, the motivation for uninjured private plaintiffs is financial

gain unrelated to the public good. Without "sufficient control" by the Executive, the Ninth Circuit's understanding of the reach of uninjured-class-member standing violates Article II.

III. THE SAME STANDING RULES APPLY TO ABSENT CLASS MEMBERS AND NAMED CLASS MEMBERS.

It does not matter that Respondent suffered an Article III injury. Standing "is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). And Rule 23 does not change that reality. Federal courts can "provide relief to claimants, in individual or class actions," but only if those claimants "have suffered, or will imminently suffer, actual harm." *Id.* at 349. "That a suit may be a class action," in other words, "adds nothing to the question of standing" under Article III. *Spokeo*, 136 S. Ct. at 1547 n.6 (quotation omitted).

It follows that "unnamed class members" who have not suffered an injury-in-fact "lack a cognizable injury under Article III." *Flecha v. Medicredit, Inc.*, 946 F.3d 762, 768 (5th Cir. 2020). Because the "constitutional requirement of standing is equally applicable to class actions," "each [class] member must have standing." *Halvorson v. Auto-Owners Ins. Co.*, 718 F.3d 773, 778-79 (8th Cir. 2013) (citations omitted). As a result, a class cannot be certified if it includes members who would lack standing to sue individually. In other words, "a named plaintiff cannot represent a class of persons who lack the ability to bring suit themselves." *In re Zurn Pex Plumbing Prod. Liab. Litig.*, 644 F.3d 604, 620 (8th Cir. 2011) (quotation omitted).

Permitting certification of a class including those who suffered no Article III injury raises the same separation-of-powers issues as allowing uninjured plaintiffs to sue individually on their own behalf. In both cases, the President cannot exercise his core power under the Take Care Clause. This strikes at the heart of our constitutional structure.

If anything, the concerns here are greater than when a single uninjured plaintiff sues in federal court. In those cases, the uninjured plaintiff decides what violations of federal law to vindicate. Here, however, the uninjured class members are not choosing to vindicate a right. Rather, Respondent and his counsel are purportedly vindicating interests for these uninjured individuals.

Vindicating the interest of others is the President's job. *See Lujan*, 504 U.S. at 576. The Constitution does not give that duty to the plaintiffs' bar. Yet Respondent asks this Court to bless a rule permitting those enforcement actions. This Court should reject this invitation to ignore important separation-of-powers principles and hold that the District Court erred by certifying this class.

CONCLUSION

This Court should reverse.

Respectfully submitted,

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