20-3806(L)

20-3815 (CON)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, COMMONWEALTH OF PENNSYLVANIA, STATE OF CALIFORNIA, STATE OF COLORADO, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF OREGON, STATE OF RHODE ISLAND, STATE OF WASHINGTON, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA,
Plaintiffs-Appellees,

v.

EUGENE SCALIA, ESQ., SECRETARY OF THE UNITED STATES DEPARTMENT OF LABOR, UNITED STATES DEPARTMENT OF LABOR, UNITED STATES OF AMERICA,
Defendants-Appellants,

INTERNATIONAL FRANCHISE ASSOCIATION, THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, HR POLICY ASSOCIATION, NATIONAL RETAIL FEDERATION, ASSOCIATED BUILDERS AND CONTRACTORS, AMERICAN LODGING AND HOTEL ASSOCIATION,
Intervenors-Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of New York
(Case No. 1:20-cv-01689) (District Judge Gregory H. Woods)

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* SUPPORTING APPELLANTS AND VACATUR

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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).

INTRODUCTION

In November, few Americans knew about Article III standing or why it matters. But, following recent events, Article III standing became a topic of dinner-table conversations. Citizens learned States, Congressmen, and even the President of the United States must have standing to sue in federal court. *See Trump v. New York*, 141 S. Ct. 530, 534-36 (2020) (*per curiam*); *Texas v. Pennsylvania*, 2020 WL 7296814, *1

[*] No party's counsel authored any part of this brief. No one, apart from WLF and its counsel, contributed money intended to fund the brief's preparation or submission. All parties consented to WLF's filing this brief.

(U.S. Dec. 11, 2020) (*per curiam*); *Gohmert v. Pence*, 2021 WL 18454, *1 (5th Cir. Jan. 2, 2021) (*per curiam*).

This lawsuit has not garnered the same headlines. Yet Article III's standing requirement does not vary based on the space the New York Times dedicates to the case. Rather, it remains the same no matter the issue. Federal courts may hear only cases in which the plaintiff can show a concrete, cognizable, and redressable injury.

The District Court forged ahead despite the States' lack of standing and invalidated the Joint Employer Rule. The States quickly realized that one of their three standing arguments—*parens patriae*—was meritless. So they dropped it at summary judgment. Another argument—decreased tax revenue—involved competing expert opinions. The District Court thus could not resolve that disputed question at summary judgment.

This left the States' three-legged stool to stand on one leg. They argued that, given their reliance on federal rules, the Joint Employer Rule obligated them to expend more funds updating and enforcing state regulations. In short, the States argued that any time a State voluntarily ties its laws to a federal-law regime it has Article III standing to

challenge a federal regulation. If adopted, this theory of "injury" would pervert Article III's standing requirement for States. A State could always manufacture standing. Because the Supreme Court has repeatedly admonished that parties cannot confer jurisdiction on federal courts, *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851 (1986) (citation omitted), this Court should hold that the States lack standing here.

STATEMENT

In 1958, the Department of Labor adopted regulations saying that an employee can have multiple employers for Fair Labor Standards Act purposes. Department of Labor, *Joint Employment Relationship Under Fair Labor Standards Act of 1938*, 23 Fed. Reg. 5,905, 5,906 (Aug. 5, 1958). Fifteen years later, the Supreme Court recognized that the FLSA permits joint employment. *See Falk v. Brennan*, 414 U.S. 190, 195 (1973). Over the next several decades, presidential administrations often issued administrative guidance about FLSA joint employment. *See*, *e.g.*, Department of Labor, Interp. No. 2016-1, *Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act*, 2016 WL 284582 (Jan. 20, 2016); Department of

Labor, Interp. No. 2014-2, *Joint employment of home care workers in consumer-directed, Medicaid-funded programs by public entities under the Fair Labor Standards Act*, 2014 WL 2816951 (June 19, 2014); Department of Labor, *Migrant and Seasonal Agricultural Worker Protection Act*, 62 Fed. Reg. 11,734 (Mar. 12, 1997).

The Administrative Procedure Act, however, allows executive agencies to amend previously issued regulations. So the Department of Labor proposed revisions to the joint-employer regulation. Department of Labor, *Joint Employer Status Under the Fair Labor Standards Act*, 84 Fed. Reg. 14,043 (Apr. 9, 2019). After considering 57,173 comments, the Department of Labor promulgated the Joint Employer Rule. Department of Labor, *Joint Employer Status Under the Fair Labor Standards Act*, 85 Fed. Reg. 2,820 (Jan. 16, 2020).

The Joint Employer Rule focuses on vertical joint employment. It provides that if "the employee has an employer who suffers, permits, or otherwise employs the employee to work, but another person simultaneously benefits from that work" then "[t]he other person is the employee's joint employer only if that person is acting directly or

indirectly in the interest of the employer in relation to the employee." 29 C.F.R. § 791.2(a)(1) (citations omitted).

Relying on a Ninth Circuit decision, the Joint Employer Rule describes four relevant factors in the joint-employer inquiry. *See* 29 C.F.R. § 791.2(a)(1)(i-iv). "Standard contractual language reserving a right to act," therefore, "is alone insufficient for demonstrating joint employer status." *Id.* § 791.2(a)(3)(i). Rather, "some actual exercise of control" is necessary for the other employer to be considered a joint employer. *Id.*

A group of States then sued because they disagreed with the Joint Employer Rule. In their view, the Joint Employer Rule does not classify enough companies as joint employers. The District Court held that the States have standing to sue because they face costs updating their own regulations that track federal regulations. It then placed more weight on guidance that did not satisfy notice-and-comment rulemaking than it did on the Joint Employer Rule—which did. In short, the District Court substituted its policy preferences for those of the Department of Labor and invalidated the Joint Employer Rule.

ARGUMENT

THE STATES LACK STANDING.

Federal courts can only adjudicate actual "cases" and "controversies." *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1746 (2019) (quotation omitted). A plaintiff's standing is a necessary element of a case or controversy. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559-60 (1992). "[T]he irreducible constitutional minimum of standing consists of three elements: The Plaintiffs must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo,* 136 S. Ct. at 1547 (quotation omitted). As plaintiffs, the States bear the burden of establishing standing. *See FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990). Here, the States cannot carry that burden.

A. The States Cannot Establish *Parens Patriae* Standing.

"States are not normal litigants for the purposes of invoking federal jurisdiction." *Massachusetts v. EPA*, 549 U.S. 497, 518 (2007). Rather, States may have standing for reasons unavailable to normal litigants. For example, a State may protect "all the earth and air within its domain." *Id.* (quoting *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237

(1907)). Similarly, States can assert *parens patriae* standing to protect "the health and welfare of its citizens." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982).

In opposing the motion to dismiss, the States argued that they could assert *parens patriae* standing. They argued that the Joint Employer Rule decreases their citizens' wages which is an economic harm they could protect. Even the States recognized that this argument was dubious: They dropped it at the summary-judgment stage. Still, it is important to explain why the States lack *parens patriae* standing.

Unless Congress provides otherwise "[a] State does not have standing as *parens patriae* to bring an action against the Federal Government." *Alfred L. Snapp*, 458 U.S. at 610 n.16 (citing *Massachusetts v. Mellon*, 262 U.S. 447, 485-86 (1923)); *see Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1178 (9th Cir. 2011). Contrary to the States' assertion, there is no exception for States enforcing their residents' federal rights.

States can bring APA claims as *parents patriae* when Congress explicitly allows such suits—as it did in the Natural Gas Act. *See Md. People's Counsel v. FERC*, 760 F.2d 318, 321-22 (D.C. Cir. 1985). The

FLSA, however, lacks any such permission. The States therefore lack *parens patriae* standing here. *See Manitoba v. Bernhardt*, 923 F.3d 173, 180-81 (D.C. Cir. 2019).

The cases the States relied on below showcase why they abandoned this failed argument. The States argued that *Massachusetts v. EPA* suggests they have *parens patriae* standing here. But there the Commonwealth was asserting standing on its own behalf—not as *parens patriae*. *Massachusetts*, 549 U.S. at 519-20 & n.17. The same is true for *Carey v. Klutznick*, 637 F.2d 834, 838 (2d Cir. 1980) (*per curiam*)—another case the States cited below.

Even if the States were not legally barred from proceeding as *parens patraie*, their standing claim would still fail. A State can proceed as *parens patriae* only if "a substantial portion of the State's population" is harmed. *Alfred L. Snapp*, 458 U.S. at 605 (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 592 (1923)). Here, the States cannot make that showing. If anything, the Joint Employer Rule benefits many of the States' residents.

The Joint Employer Rule allows companies to train employees to detect human trafficking without fear of being found a joint employer.

See Lisa Nagele-Piazza, *Labor Department Releases Final Joint-Employer Rule*, Society for Human Resource Management (Jan. 13, 2020), https://bit.ly/34XhCot. Without the Joint Employer Rule's clear guidance, companies could stop providing human-trafficking training. So unless the States think more human trafficking is beneficial, the Joint Employer Rule helps—not hurts—their residents.

The same is true of sexual harassment training. Many franchisors train franchisees' employees to avoid sexual harassment. Nagele-Piazza, *supra*. Again, preventing sexual harassment benefits the States' residents. The States do not deny this fact. Rather, they turn a blind eye to the benefits that the Joint Employer Rule provides their residents. This attempt at avoiding a key requirement for *parens patriae* standing shows why the argument fails. No wonder they have since abandoned it.

The District Court thus correctly held that the States could not assert *parens patriae* standing at the motion to dismiss stage. Realizing one error in their ways, the States dropped the argument at summary judgment. And this Court should not find standing on this alternative ground.

B. At Most There Is A Genuine Issue Of Material Fact About Potential Decreased Tax Revenue.

Having dropped their *parens patriae* argument at summary judgment, the States went from a three-legged to a two-legged standing stool. One remaining leg was the States' argument that the Joint Employer Rule would cost them tax revenue. "A state has Article III standing to challenge a federal regulation if it can show 'a direct injury in the form of a loss of specific tax revenues.'" *XY Planning Network, LLC v. SEC*, 963 F.3d 244, 252 (2d Cir. 2020) (quoting *Wyoming v. Oklahoma*, 502 U.S. 437, 448 (1992)). The direct injury, however, "must be likely, as opposed to merely speculative." *United States v. Windsor*, 570 U.S. 744, 757 (2013) (quotation omitted).

The same week that the District Court erred by ignoring the speculative nature of the States' alleged injury, a three-judge court made the same mistake in *New York v. Trump*, 2020 WL 5422959 (S.D.N.Y. Sept. 10, 2020) (*per curiam*). There, a similar group of States sued the federal government over the 2020 census arguing that the Secretary of Commerce could not follow a Presidential memo. The Southern District of New York held those States had standing because they would lose funding under the proposal for counting non-citizens.

The Supreme Court reversed. *See generally Trump*, 141 S. Ct. 530. It concluded that the States' alleged loss of funding was mere speculation. *Id.* at 534-36. Explaining the flaws in the lower court's reasoning, the Court said that "[t]he impact on funding" was not "certain." *Id.* at 536. Rather, the proposal would "not inexorably have the direct effect on downstream access to funds or other resources." *Id.*

The States' pleas here are no less speculative. They speculate about how businesses will react to the Joint Employer Rule. This speculation about how a non-party will act is the quintessential speculative injury insufficient for Article III standing. Yet the States' argument relies on even more speculation. The States speculate that decreased revenue caused by the Joint Employer Rule will dwarf the increased tax revenue from higher productivity.

Simply put, the States' argument is speculation built on more speculation. This speculation fails as a matter of law. So the District Court could have rejected the States' argument on that ground alone.

But even if the States showed a direct link between potential tax-revenue loss and the Joint Employer Rule, they failed to show that they will lose tax revenue. There remains a genuine issue of material fact

about likely tax revenue. Appellants presented persuasive evidence that the States' tax revenue will increase because of the Joint Employer Rule. *See, e.g.*, J.A. 679.

Contrary to the District Court's dicta, this analysis makes sense. The then-Chairman of the Federal Reserve testified before Congress about how regulatory uncertainty hurts economic growth. *See* Senate Budget Committee, *Testimony of Chairman Ben Bernanke*, YouTube (Feb. 7, 2012), https://bit.ly/380rMXv (starting at 4:30). The IMF's chief economist has echoed those sentiments. KR Srivats, *Policy certainty, structural reforms are key to growth: IMF's Gita Gopinath*, The Hindu Business Line (Dec. 20, 2019), https://bit.ly/3n0eM8x. Others agree. *See* Leonard J. Kennedy & Heather A. Purcell, *Wandering Along the Road to Competition and Convergence-the Changing CMRS Roadmap*, 56 Fed. Comm. L.J. 489, 547 (2004).

But the States presented weaker evidence showing an expected decrease in tax revenue. *See, e.g.*, J.A. 91-92 (citations omitted). Last year, this Court rejected many of the same States' arguments about a similar issue. California and others "assume[d] away" the potential economic benefits of a regulation. *XY Planning Network*, 963 F.3d at 253.

The States do the same thing here. Their "theory of injury rests too heavily on 'conclusory statements and speculative economic data.'" *Id.* (quoting *Wyoming v. U.S. Dep't of Interior*, 674 F.3d 1220, 1232-33 (10th Cir. 2012)).

Although Appellants presented stronger factual arguments, the factual dispute was not appropriate for resolution at the summary-judgment stage. Rather, the District Court—as fact-finder—needed to hear the expert testimony and make factual findings. The District Court chose not to go down that path. It thought the quickest resolution was finding the States had standing because of increased regulatory costs. But that shortcut led to a dead-end; the increased regulatory cost leg of the standing stool also fails.

C. Increased Costs Of Changing State Regulations Are Not Fairly Traceable To The Joint Employer Rule.

There must be a "direct link" between the challenged policy and the increased regulatory costs to satisfy Article III. *XY Planning Network*, 963 F.3d at 252 (quoting *Pennsylvania v. Kleppe*, 533 F.2d 668, 672 (D.C. Cir. 1976)). Here, the States' "link" is as direct as a Rube Goldberg machine. This falls well short of what Article III demands.

Left in place, the District Court's flawed holding would grant States and localities standing to challenge *any* regulation or other document published in the Federal Register. It found that "requiring" "state and local government entities" "to review the new regulation" directly cost the States money. SPA 44. Unsurprisingly, the District Court did not cite decisions from this Court or the Supreme Court in its analysis. Rather, the District Court relied on decisions from other district courts.

There are no such citations in the District Court's opinion because the Supreme Court's precedent is clear: Reading a new regulation is inadequate for Article III standing. The Supreme Court affirmed this principle just last month in *Trump*. As described above, there States challenged a memorandum from the President to the Secretary of Commerce—which was published in the Federal Register. Those States had to read this memorandum because it could affect their congressional delegations over the next decade. Even so, the Supreme Court held that those States lacked standing to challenge the memorandum. *See Trump*, 141 S. Ct. 534-36.

The Supreme Court would have reached the opposite conclusion if reading documents published in the Federal Register was a direct link to

financial injury. But that is exactly what the District Court held here and what the States argued below. The States' argument therefore cannot be squared with the Supreme Court's December 2020 decision.

This Court's decision in *XY Planning Network* is similarly on point. There, a group of States sued to block an FCC regulation—which they read in the Federal Register. Relying on *Spokeo*, this Court explained that any potential injury to the States was merely "conjectural or hypothetical." *XY Planning Network*, 963 F.3d at 253. Again, this Court would have reached the opposite conclusion if merely reading the proposed regulation in the Federal Register constituted a direct injury.

Although the District Court did not devote much space to this legal conclusion, its analysis is telling. It is beyond a stretch to say that reading the Federal Register is a legally cognizable injury under Article III. Yet the District Court's reliance on such a standing theory shows its determination to reach a desired result—finding that the States have standing to challenge the Joint Employer Rule.

Next, the District Court found that the States' expenditures to update state rules tracking the FLSA was a direct Article III injury. This holding ignores the Supreme Court's admonishment that parties "cannot

manufacture standing." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 402 (2013).

The States manufactured standing by updating their own regulations. There is nothing in the Joint Employer Rule or federal law requiring such updates. Rather, the States chose to update their own rules because of the federal regulatory change.

The fact the States can choose whether to update their own rules is fatal to their standing argument. In *Pennsylvania v. New Jersey*, 426 U.S. 660 (1976) (*per curiam*), New Jersey taxed Pennsylvania residents' income earned in New Jersey. Pennsylvania then gave its residents a tax credit for taxes paid to New Jersey. Unhappy that this cost it money, Pennsylvania sued New Jersey. The Supreme Court explained that "nothing prevent[ed] Pennsylvania from withdrawing [a tax] credit for taxes [its residents] paid to New Jersey." *Id.* at 664.

The Pennsylvania General Assembly, however, chose not to withdraw the tax credit. The Supreme Court denied Pennsylvania leave to file a bill of complaint because its alleged injuries "were self-inflicted, resulting from decisions by" its General Assembly. *Pennsylvania*, 426

U.S. at 664. These self-inflicted injuries were insufficient for Article III standing. *See id.*

The same is true here. The States made a policy decision tying their joint-employer rules to federal regulations. They now complain about that choice and seek a decision commandeering the federal government to craft policies they prefer. As the Supreme Court explained in *Pennsylvania*, this is insufficient for Article III standing.

The Supreme Court reiterated that parties cannot rely on self-inflicted injuries for Article III standing in *Clapper*. Reversing this Court's decision, the Supreme Court explained that allowing a party to expend money to establish standing "improperly waters down the fundamental requirements of Article III." *Clapper*, 568 U.S. at 416.

The States' standing argument therefore tracks the hypothetical *Clapper* found insufficient for standing. Instead of spending money on a plane ticket, however, the States are spending money to update their rules. This Court should not make the same mistake it did in *Clapper*. Rather, it should apply the Supreme Court's precedent holding that such expenditures are not enough for standing.

Other courts of appeals have followed the Supreme Court's decisions in *Pennsylvania* and *Clapper* by rejecting self-inflicted injuries as the bases for Article III standing. For example, in *Zimmerman v. City of Austin*, the Fifth Circuit held a candidate lacked standing to challenge a campaign-finance law because "standing cannot be conferred by a self-inflicted injury." 881 F.3d 378, 389 (5th Cir. 2018) (citation omitted).

Similarly, the D.C. Circuit held that an organization lacked standing to challenge a grant program because "self-inflicted harm doesn't satisfy the basic requirements for standing." *Nat'l Family Planning & Reprod. Health Ass'n, Inc. v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006). It explained that self-inflicted harm "does not amount to an 'injury' cognizable under Article III." *Id.* (citation omitted). But even if it were an injury, a self-inflicted harm "would not be fairly traceable to the defendant's challenged conduct." *Id.* (citation omitted).

The District Court ignored binding Supreme Court precedent. Instead, it relied on three inapposite decisions in holding that the States' increased administrative costs established Article III standing.

In another challenge to a Department of Labor Regulation, the D.C. District Court found that States had standing because the regulation

"expressly depends on state insurance regulators for oversight and enforcement to, among other things, prevent fraud, abuse, incompetence and mismanagement, and avoid unpaid health claims." *New York v. U.S. Dep't of Labor*, 363 F. Supp. 3d 109, 127 (D.D.C. 2019) (quotation omitted). The court contrasted that situation with one where a State's expenditures are "merely incidental to the federal agency action." *Id.* (citation omitted).

The States' increased spending here is incidental to the Joint Employer Rule. The D.C. District Court explained that such incidental expenditures are insufficient for Article III standing. *See New York*, 363 F. Supp. 3d at 127. So rather than supporting the District Court's holding, *New York* supports Appellants' position.

The D.C. Circuit's decision in *Air All. Houston v. EPA*, 906 F.3d 1049 (D.C. Cir. 2018) (*per curiam*) is similarly distinguishable. There, the States did not challenge a regulation. Rather, they challenged a regulation's delayed implementation. The regulation addressed chemical releases. And the States bore the costs of clean-up after those chemical releases. So delayed implementation of the regulation directly affected States' administrative costs. *Id.* at 1059-60. But here the States are not

responsible for enforcing the FLSA. *Air Alliance Houston* therefore cannot bear the weight the District Court and States' wish.

The District Court also cited the Northern District of California's decision in *City & Cnty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, 408 F. Supp. 3d 1123 (N.D. Cal. 2019). Unlike the two cases discussed above, this case supports the District Court's holding. But it is unpersuasive for another reasons. The Ninth Circuit found the States had standing because they would lose over $1 billion in reimbursements. *See City & Cty. of San Francisco v. United States Citizenship & Immigration Servs.*, 944 F.3d 773, 787 (9th Cir. 2019); *see also New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 60 (2d Cir. 2020). At an early stage of litigation, this was enough to plead a direct Article III injury.

Here, the FLSA does not provide funding for the States. Rather, it provides a national floor for employment-law protections. Nothing about the Joint Employer Rule causes the States to receive less federal funding. So *City and County of San Francisco* is not persuasive.

But even taking the Northern District of California's analysis at face value, this Court should reject it. The Supreme Court's precedent

and decisions from other courts of appeals show that the States' increased administrative costs are not Article III injuries directly linked to the Joint Employer Rule. Rather, they are speculative, self-inflicted injuries not linked to the Joint Employer Rule. This Court should follow the Supreme Court's precedent and that of other courts of appeals in rejecting the States' argument that increased administrative costs are enough for Article III standing.

The States' argument about having to file more joint-employer actions also fails. The Fourth Circuit rejected a similar argument in *Virginia ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253 (4th Cir. 2011). There, Virginia tried to challenge the Affordable Care Act because it conflicted with a Virginia statute. But the Fourth Circuit explained that a State lacks standing when the challenged federal statute or regulation "does not affect [the State's] ability to enforce the [state statute]." *Id.* at 270.

Here, the States can fully enforce their own wage-and-hour laws. The FLSA does not preempt such laws when they provide greater protections than state law. *See Hayward v. IBI Armored Servs., Inc.*, 954 F.3d 573, 575-76 (2d Cir. 2020) (*per curiam*). So if a State wants to have a broader definition of joint employment, it may do so. That the States

must then enforce their own statues, however, does not grant the States standing to sue. Rather, as the Fourth Circuit explained in *Cuccinelli*, it shows that they lack standing.

* * *

Federal courts may exercise their limited jurisdiction over only "cases" and "controversies." *See* U.S. Const. art. III, § 2 cl. 1. Because standing is a necessary element of a case or controversy, it is a threshold issue for federal courts. The District Court here has obliterated the standing requirement for all States to sue.

Under the District Court's contrived reasoning, Texas had standing to sue Pennsylvania over the presidential election results because of possible increased regulatory costs under a new president. And the similar group of States had standing to sue over the 2020 census because of a potential revenue stream loss. But the Supreme Court rejected both arguments last month. This Court should do the same here and hold that the States lack standing to maintain this action.

CONCLUSION

This Court should vacate the District Court's order and remand with instructions to dismiss the case for want of jurisdiction or, alternatively, reverse the District Court's order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limits of Second Circuit Rule 29.1 because it contains 4,181 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

I also certify that this brief complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and (6) because it uses 14-point Century Schoolbook font.

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