No. 25-677

In the

Supreme Court of the United States

CITY OF CLEVELAND, OHIO,

Petitioner,

v.

ALBERT PICKETT, JR., et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a federal court may certify a damages class that contains members who lack any injury other than an intangible harm based on the asserted disparate impact of a race-neutral policy.

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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 an amicus curiae to oppose federal-court adjudication of claims by those who lack Article III standing. *See*, *e.g.*, *Lab'y Corp. of Am. Holdings v. Davis*, 145 S. Ct. 1133, *cert. denied as improvidently granted*, 605 U.S. 327 (2025); *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021); *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442 (2016).

The Sixth Circuit's decision below opens the door to class actions against any defendant whose actions may have an unintentionally disparate impact on a protected group, even if many class members suffer no traditional tangible harm. Because that view virtually eliminates Article III's concrete injury requirement in disparate-impact class actions as a meaningful bulwark of the separation of powers, the Court should grant review.

INTRODUCTION

"Something has gone badly awry when a city can't even make slumlords kill rats without fear of a lawsuit." *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 558 (2015) (Alito, J., dissenting). A decade later, things are no better. As this case shows, trying to equalize

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* No party's counsel authored any part of this brief. No one, other than Washington Legal Foundation and its counsel, helped pay for the brief's preparation or submission. Counsel for WLF timely notified all parties of its intent to file this brief.

group outcomes at the expense of all other considerations is usually a bad idea. Now a city can't even collect delinquent water bills without fear of a class-action lawsuit.

Like most state and local utility providers, the City of Cleveland places liens on homeowners' delinquent accounts to recover unpaid water bills. Black homeowners sued. They don't allege that the City intentionally discriminated against them because of their race. Instead, they allege that the City's facially neutral policy has a disparate racial impact in violation of the Fair Housing Act.

Expert statistics from 2012–2020 show 17,172 liens placed countywide, with the plaintiffs' own expert conceding that up to 20% of affected homeowners incurred no added costs—no penalties, no interest, no foreclosure—because they paid promptly upon notice of the lien. Those homeowners could not point to any concrete, particularized harm they suffered beyond the existence of the policy and the statistical disparity itself.

Even so, the district court certified a class of *all* black Cleveland Water residential customers who had water liens placed on their properties. The Sixth Circuit affirmed, deeming it "irrelevant" under the FHA (and Article III) that as many as one out of every five class members suffered no financial loss from the liens. Pet. App. 18a. As far as the appeals court was concerned, "Plaintiffs have Article III standing by virtue of their FHA claim." *Id.* at 16a.

The Constitution demands more. In a lawsuit—certainly one to recover damages in federal

court—*each* plaintiff must have suffered a concrete injury. Under Article III, plaintiffs without an injury have no suit and slipping them into a class cannot magically create one for them. Just as "the dissemination of an incorrect zip code, without more," could not "work any concrete harm," *Spokeo v. Robins*, 578 U.S. 330, 342 (2016), the routine imposition of a lien that imposes no added costs on the homeowner is not a cognizable injury. Yet the Sixth Circuit's decision blesses certifying a class with many members who suffered no injury.

That holding impermissibly enlarges the legislative and judicial powers at the expense of the executive power. By allowing uninjured individuals to invoke federal-court jurisdiction based solely on a defendant's bare violation of federal law, the decision below unduly expands the federal courts' reach well beyond those "cases" and "controversies" over which they have subject-matter jurisdiction.

As this Court knows well, the pace of class actions filings continues to climb as they take up an ever-greater part of the federal courts' dockets. This avalanche of class-action lawsuits increasingly burdens businesses, distorts markets, and stifles innovation and free enterprise. The Court should grant the Petition to decide, once and for all, whether a class may be certified if it includes members who lack an Article III injury.

SUMMARY OF ARGUMENT

Permitting liability without concrete harm "blur[s] the distinction between vindicating public rights and private rights." *Spokeo*, 578 U.S. at 349 (Thomas, J., concurring). Article III's requirement of a concrete, particularized injury for every plaintiff "remains firmly grounded in the Constitution's text and purpose." *Id.* at 340. This Court has twice granted certiorari to resolve a circuit split over when, if ever, federal courts may certify class actions when some class members are uninjured. *See Lab'y Corp.*, 145 S. Ct. at 1133, *cert. denied as improvidently granted*, 605 U.S. at 327; *Tyson Foods*, 577 U.S. at 460. This division among the circuits has widespread practical importance for businesses and governments alike. Not only has this split persisted, but it has now metastasized, magnifying its practical significance.

Just five years ago in *TransUnion*, this Court rebuked the Ninth Circuit for allowing a district court to enter judgment for uninjured plaintiffs. There, the district court lacked jurisdiction to enter the judgment because class members who suffered no injury lacked Article III standing to sue in federal court. But *TransUnion* did "not address the distinct question whether every class member must demonstrate standing before a court certifies a class." 141 S. Ct. at 2208 n. 25.

As the Petition shows, some courts of appeals hold that district courts cannot certify classes that include uninjured members. Pet. 15–17. Not so in the Seventh, Ninth, Eleventh—and now—Fifth Circuits. *Id.* at 17–18. The Sixth Circuit has now added to this divide by holding that every member of an FHA

disparate-impact class has an Article III injury—regardless of economic loss. Pet. App. 16a–20a. This case offers an ideal vehicle for providing clarity to the lower courts on the limits of Article III.

The Framers limited the Judiciary's ambit to remedying concrete injuries so that it could not encroach on the other branches' powers. The Sixth Circuit's holding—that class actions pressing disparate-impact claims are permissible despite the presence of class members with no injury—is sharply at odds with this Court's historical understanding that neither Congress nor the Judiciary may dilute the concrete-injury requirement. And this Court has consistently rejected assertions that federal courts may entertain citizen suits to vindicate a generalized interest in enforcing the law, even when Congress has explicitly authorized such suits by statute. The Court should grant the writ to restore the Executive Branch's proper relationship with the Judicial and Legislative Branches.

I.A. Article III's injury-in-fact requirement is grounded in separation-of-powers concerns. Anglo-American courts historically were limited to deciding only cases or controversies between adverse parties. The Constitution allows the courts to say what the law is only by remedying concrete injuries in tractable disputes. Congress, on the other hand, makes the laws, while the President enforces them. Requiring all plaintiffs to prove a tangible injury thus helps ensure that federal courts do not interfere with the other branches' constitutional prerogatives.

Absent some harm or injury, a bare statistical disparity is not a traditional tangible injury. Even if

the FHA says otherwise, an injury-in-law is not an injury-in-fact. Here, plaintiffs' own expert conceded that up to 20% of affected homeowners incurred *no* added costs and thus suffered *no* economic injury. Yet the trial court certified a class of *all* black homeowners who received water liens on their properties, regardless of economic loss—and the Sixth Circuit affirmed. That decision jettisons this Court's rigorous approach to Article III and warrants review.

B. Under the Take Care Clause, the Framers confirmed that the President's most important duty is to ensure that the laws be faithfully executed. The core of the President's enforcement authority is the exercise of discretion—the power to control the initiation, prosecution, and termination of legal actions to enforce federal law. Only the President (or his officers) may direct federal suits against a defendant without alleging an injury caused by the defendant's misconduct. When, as here, some class members suffer no concrete injury, including those uninjured members in a certified class deprives the President of the prosecutorial discretion that lies at the heart of the President's Take Care power.

Congress cannot delegate the President's prosecutorial discretion to private parties unless the President retains enough control over that party to ensure that the President can perform his Article II duties. Because the FHA does not give the President control over private lawsuits, the Sixth 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 reviewed—and reversed.

II. It is no answer that *some* class members have Article III standing. A class action is merely "an exception to the usual rule that litigation is conducted by and on behalf of individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (cleaned up). A damages class cannot be certified if some of its members lack the ability to sue individually. For a federal court to certify a damages class, every member of that class must satisfy Article III. Class certification here thus stands on a baseless fallacy. This Court should grant review and vindicate both the Constitution and the rule of law.

III. These constitutional defects have real-world consequences. Class actions—including class actions that bring disparate-impact claims—are not exempt from Article III's standing requirement. Nor will the adverse effects be limited to housing-related policies or actions. The Sixth Circuit's decision, if left to stand, will have far-reaching impacts on the economy and expose many businesses to class action lawsuits, increasing costs to consumers.

REASONS FOR GRANTING THE WRIT

I. PERMITTING FEDERAL COURTS TO ADJUDICATE CLAIMS BY UNINJURED CLASS MEMBERS VIOLATES THE SEPARATION OF POWERS.

Any time one branch of government encroaches on the constitutional prerogatives 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 courts to adjudicate claims by uninjured class members, as the Sixth Circuit did here, violates the separation of powers by enlarging judicial and legislative power at the expense of executive power. Likewise, authorizing federal courts to enforce federal law at the behest of private citizens who have suffered no injury interferes with the President's duties under the Take Care Clause. This Court should intervene.

A. The Decision Below Contravenes Article III.

Article III's injury-in-fact requirement 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). But the Sixth Circuit's rule allows private litigants who have suffered no concrete injury to challenge otherwise neutral policies as having disproportionate racial effects—thereby injecting rarefied debates into the judicial process. That way madness lies. Such a rule "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).

The Sixth Circuit affirmed class certification while acknowledging that as many as one out of five class members suffered no economic injury. Pet. App.

16a ("[N]ot every member of the Water Lien class will necessarily collect damages."). The panel held that the FHA recognizes a "cognizable intangible harm" (*id.* at 19a)—one that Congress, by creating a disparate-impact cause of action, supposedly elevated to the level of a concrete injury. In the Sixth Circuit's view, because the FHA's prohibition on practices with discriminatory effects is analogous to the kind of racial discrimination the Constitution condemns, all class members' claims "fall[] squarely within the FHA's scope and [are] thus comparable to traditional harms found in the Constitution." *Id.* at 20a.

That reasoning cannot be squared with *TransUnion*, which clarifies that an intangible harm qualifies as "concrete" for standing purposes only if it "has a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts" or is itself "specified by the Constitution." 594 U.S. at 425. A bare disparate-impact claim—unaccompanied by any traditional economic or concrete injury—meets neither condition.

At common law, no cause of action existed for a facially neutral policy that produced a statistically disproportionate racial effect. There is no historical analog in tort, contract, or property law for liability based solely on disparate impact, divorced from discriminatory intent or individualized injury. *See id.* at 424–25 (surveying traditional harms). The Sixth Circuit identified none, and we are aware of none.

Nor does the Constitution itself recognize disparate impact as a harm. On the contrary, this Court has repeatedly held that the Equal Protection Clause reaches only intentional discrimination, not

facially neutral policies with disparate effects. *Vill. of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 264–65 (1977); *Washington v. Davis*, 426 U.S. 229, 239 (1976). If the Constitution's own bar on racial discrimination does not extend to disparate impact, a statutory claim pressing that theory cannot plausibly be described as "comparable to traditional harms found in the Constitution."

In short, the FHA changes nothing. Congress remains free, of course, to prohibit practices that have discriminatory effects and to grant private rights of action to enforce that prohibition. But "broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury." *Sierra Club v. Morton*, 405 U.S. 727, 738 (1972). Article III still requires a concrete injury. The creation of a statutory cause of action, without more, cannot supply one.

Congress cannot "erase Article III standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997) (citing *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 100 (1979)). *TransUnion* was unequivocal on that point. 594 U.S. at 424–26. Because the uninjured class members here allege no cognizable injury under Article III, they lack standing to pursue these claims in federal court. But that is what the Sixth Circuit allows here. It permits uninjured class members to sue for alleged FHA violations that never harmed them.

In other words, the Sixth Circuit reads the FHA, combined with Rule 23, as giving uninjured plaintiffs the right to seek money damages in federal court. But not even Congress may "expand the jurisdiction of the federal courts beyond the bounds established by the Constitution." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 491 (1983). And a mere procedural rule cannot salvage an action the court lacks the constitutional authority to adjudicate in the first place.

B. The Decision Below Violates Article II's Take Care Clause.

Unless lower courts adhere strictly to Article III's injury-in-fact requirement, private plaintiffs and the Judiciary will enforce the laws—a role the Constitution exclusively reserves for the Executive. Certifying a class containing uninjured members thus invades the exclusive province of the President to take care that federal law is faithfully executed. *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)).

The 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 v. Wright*, 468 U.S. 737, 761 (1984).

Because they lack any concrete injury-in-fact, uninjured class members seek only 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 v. Defenders of Wildlife*, 504 U.S. 555, 576 (1992) (emphasis removed). The separation of powers bars Congress from giving private parties the ability to vindicate the public interest; 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 v. Valeo*, 424 U.S. 1, 138 (1976) (*per curiam*).

By allowing named plaintiffs to pursue claims on behalf of uninjured class members, the Sixth Circuit's holding effectively transfers the President's enforcement duty under the Take Care Clause to politically unaccountable private parties. Such a move "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 private 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 citizen to sue whenever the law is violated, diminishes the President's political accountability.

Allowing uninjured plaintiffs to pursue claims also disrupts "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 Sixth Circuit's decision disrupts this balance by giving named plaintiffs the ability to vindicate the rights of uninjured class members. Again, this job belongs to the President—not the Congress or the plaintiffs' bar.

The President's ability to control the initiation, prosecution, and termination of actions brought to ensure compliance with federal law is crucial to taking care that the laws are enforced. 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.*

Even a statute divesting the President 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 v. Olson*, 487 U.S. 654, 696 (1988). *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, in its view, satisfied the Take Care Clause. *Id.*

Under the Ethics in Government Act, the Attorney General could "remove the counsel for 'good cause,'" control the scope of the litigation, and ensure that the prosecution was pursued in the public interest. *Morrison*, 487 U.S. at 696. Yet none of *Morrison*'s limited statutory safeguards are present here. Although FHA class-action plaintiffs are subject to no control or oversight by the Executive Branch, the Sixth Circuit insists they may sue to fundamentally change the allegedly disproportionate effects of a policy under federal law. Nor does the FHA require private plaintiffs to notify the Attorney General of their suit. And unlike 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 Sixth Circuit's understanding of the reach of uninjured-class-member standing violates Article II.

II. THIS COURT SHOULD CLARIFY THAT THE SAME STANDING RULES APPLY TO BOTH ABSENT AND NAMED CLASS MEMBERS.

The Sixth Circuit emphasized that all named plaintiffs experienced some harm from the water liens Cleveland Water placed on their property. Pet. App. 5a n.4. But even if that is true, standing "is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). Because Rule 23 does not alter that reality, that the named plaintiffs here may have suffered an Article III injury changes nothing.

The concrete-injury requirement "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). 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*, 578 U.S. at 338 n.6 (quoting *Simon v. E. Kentucky Welfare Rts. Org.*, 426 U.S. 26, 40 n.20 (1976)); *see Warth v. Seldin*, 422 U.S. 490, 502 (1975).

It follows that "unnamed class members" who suffered no 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.,* 718 F.3d 773, 778–79 (8th Cir. 2013) (citations omitted). A class cannot be

certified if some of its members lack the ability 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).

This Court's caselaw confirms that district courts cannot certify a class with *any* uninjured members. After all, standing is a "jurisdictional doctrine." *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 8 (2023) (Thomas, J., concurring). It forbids courts "from exercising power over people who never fell within the sweep of a court's authority." *Speerly v. Gen. Motors*, 143 F.4th 306, (6th Cir. 2025) (Thapar, J, concurring) (citation omitted). Upon certification, they become bound by the judgment, receiving the same Article III scrutiny as named plaintiffs to avoid nonjusticiable claims.

Judgment is improper if "no reasonable juror" could believe, based on the representative evidence, that each class member was injured. *Tyson Foods, Inc.*, 577 U.S. at 459. Chief Justice Roberts, joined by Justice Alito, concurred in *Tyson Foods* while expanding on the Article III analysis. "Article III," the Chief Justice wrote, "does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *Id.* at 466. And because no federal court can grant monetary relief to them, uninjured parties cannot be included in a class of claimants seeking money damages.

In *TransUnion*, the full majority embraced Chief Justice Roberts's view and clarified that "[e]very class member must have Article III standing

in order to recover individual damages." 594 U.S. at 431. But because the Court resolved *TransUnion* on narrower grounds, it left for another day "whether every class member must demonstrate standing before a court certifies a class." *Id.* at 431 n.4.

This case, which has the advantages of a fully developed record on the question presented and superb counsel on both sides, offers the Court an ideal vehicle to clarify whether unnamed plaintiffs must satisfy Article III to be joined in the case to judgment. The Court should answer that question and end one or more entrenched circuit splits. Permitting certification of a class with members 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. In both cases, an Article III court is venturing far beyond its charge to resolving discrete and tractable disputes. 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 which violations of federal law to vindicate. Here, however, absent uninjured class members are not choosing to vindicate a right. Rather, Plaintiffs and their counsel are purportedly vindicating interests on behalf of these uninjured individuals. But vindicating the interest of others is the President's job. *See Lujan*, 504 U.S. at 576. The Constitution does not allow the courts to transfer that duty to the Congress—far less to the plaintiffs' bar. This Court should grant review

to clarify that all class members must have suffered a concrete injury under Article III.

III. THE QUESTION PRESENTED IS ONE OF VITAL IMPORTANCE.

At the root of much class litigation is the resistance to a basic truth: some claims simply aren't amenable to class treatment. That is no tragedy. On the contrary, it is a virtue of our civil-justice system. Rule 23's "stringent requirements" for class certification are a salutary product of society's commitment to due process and the rule of law. Failure to enforce Article III's core standing requirements in class actions leads to "an over-judicialization of the processes of self-governance." Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 881 (1983) (citing Donald Horowitz, *The Courts and Social Policy* 4–5 (1977)).

Nor is that all. Class certification is very often "the whole shooting match." David L. Wallace, *A Litigator's Guide to the 'Siren Song' of 'Consumer Law' Class Actions*, LJN's Prod. Liab. L. & Strategy 10 (Feb. 2009); see *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 834 (7th Cir. 1999). "With vanishingly rare exception, class certification sets the litigation on a path toward resolution by way of settlement, not full-fledged testing of the plaintiffs' case by trial." Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 99 (2009). As this Court has noted, "extensive discovery and the potential for uncertainty and disruption in a lawsuit allow plaintiffs with weak claims to extort settlements from innocent companies." *Stoneridge*

Inv. Partners, LLC v. ScientificAtlanta, 552 U.S. 148, 163 (2008) (citing *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 740-41 (1975)).

Yet class actions have exploded in recent years. *See, e.g.*, U.S. Chamber Institute for Legal Reform, *The Food Court: Trends in Food and Beverage Class Action Litigation* (2017) (discussing exploding class actions for food companies alone). They no longer merely aggregate individual claims; instead they distort outcomes and markets by magnifying and transforming claims. *See, e.g.*, Richard Epstein, *Class Actions: Aggregation, Amplification, and Distortion*, 2003 U. Chi. Legal Forum 475, 478–80 (2003) (discussing this and other issues).

The ever-increasing burden of class-action litigation has serious stifling effects for free markets and innovation, as class-action plaintiffs' lawyers increasingly target innovative technologies and raise theories of harm that bear little semblance to real-world consequences. *See, e.g., The Food Court, supra* (discussing plaintiffs' theories of fraud because food is allegedly "not natural" as marketed); *Huskey v. State Farm Fire & Cas. Co.*, 2023 WL 5848164, at *1 (N.D. Ill. Sept. 11, 2023) (disparate-impact class action under the FHA predicated on the theory that an insurance company used an algorithm to process claims); *Louis v. Safarent Sols., LLC*, 685 F. Supp. 3d 19, 26 (D. Mass. 2023) (same, for a tenant-screening service that used an algorithm). Only this Court's intervention can arrest this trend.

CONCLUSION

This Court should grant the writ.

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