Article

Minimal Justiciability

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Federal courts adjudicate only justiciable disputes. But justiciable as to whom? The Supreme Court has hinted at an answer, holding that at least one plaintiff must show standing for each remedy sought in a federal case. But it has never explained this "one-plaintiff rule," and recently some scholars have criticized it, arguing that Article III instead requires each plaintiff to show standing in every federal case.

This Article offers the missing explanation. Justiciability limits judicial power, it contends, and judicial relief is the constitutionally relevant expression of that power. Thus, Article III requires only one plaintiff with standing and a live, ripe claim for each remedy sought. But, like many of Article III's other limits on federal jurisdiction, this rule is a constitutional floor that Congress can adjust. So the one-plaintiff rule is like the requirement of minimal diversity for federal diversity jurisdiction: Congress cannot require less than one justiciable dispute per remedy, but it can require more.

The Article terms its interpretation "minimal justiciability." By laying the theoretical groundwork for the one-plaintiff rule, it

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defends a longstanding practice that saves courts hundreds of justiciability analyses each year—and that enables well-resourced institutions to join with injured individuals in challenges to government action and other important cases. The theory also reveals Congress's power over the one-plaintiff rule, paving the way for potential legislative solutions to problems like the rule's abuse by states in suits against the federal government. Finally, the theory explains why one plaintiff can show standing for relief that also benefits others, like an injunction that forbids an official to enforce an invalid law. In so doing, it clarifies the connection between standing and remedies and answers an important justiciability objection to nationwide injunctions and other forms of universal relief.

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INTRODUCTION

In a case with multiple plaintiffs, the Supreme Court requires only one plaintiff to show Article III standing for each remedy sought in the complaint.[1] At first, this so-called "one-plaintiff rule" may seem intuitive: If one plaintiff has standing for some remedy, then the court need not—and therefore should not—address any other plaintiff's standing for that remedy.[2] Relying on this simple logic, the Supreme Court has applied the one-plaintiff rule in some of its most important cases, and lower courts have applied it to skip standing for hundreds of plaintiffs in the past few years alone.[3]

Yet recent scholarship has largely criticized this rule.[4] These critics argue that Article III requires each plaintiff to show

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1. *See* Town of Chester v. Laroe Ests., Inc., 137 S. Ct. 1645, 1647 (2017).

2. *See, e.g.*, Whalen v. Roe, 429 U.S. 589, 595 n.14 (1977) (calling analysis of the other plaintiffs' standing "unnecessary"); Bullock v. Carter, 405 U.S. 134, 136 n.2 (1972) (calling it "superfluous").

3. *See, e.g.*, Murthy v. Missouri, 144 S. Ct. 1972, 1985 (2024) (challenge to alleged social media censorship); Haaland v. Brackeen, 143 S. Ct. 1609, 1638 n.9 (2023) (challenge to Indian Child Welfare Act); Biden v. Nebraska, 143 S. Ct. 2355, 2365–68 (2023) (challenge to President Biden's student loan forgiveness plan); Dep't of Com. v. New York, 139 S. Ct. 2551, 2565 (2019) (challenge to citizenship question for 2020 census); Trump v. Hawaii, 138 S. Ct. 2392, 2416 (2018) (challenge to President Trump's travel ban); Massachusetts v. EPA, 549 U.S. 497, 518 (2007) (challenge to EPA's failure to issue regulations); McConnell v. FEC, 540 U.S. 93, 233 (2003) (challenge to Bipartisan Campaign Reform Act); *see also* Texas v. United States, 809 F.3d 134, 151 (5th Cir. 2015) (challenge to Deferred Action for Parents of Americans program), *aff'd by an equally divided court*, 579 U.S. 547 (2016); *infra* Part III.A.1 (surveying district-court decisions applying the rule); 13B CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE & PROCEDURE § 3531.15 nn.36–37, Westlaw (3d ed. updated June 2024) (canvassing lower-court decisions).

4. The leading critique is Aaron-Andrew P. Bruhl, *One Good Plaintiff Is Not Enough*, 67 DUKE L.J. 481 (2017). For agreement, see generally William Baude & Samuel L. Bray, *Proper Parties, Proper Relief*, 137 HARV. L. REV. 153, 171 (2023); Howard M. Wasserman, *Precedent, Non-Universal Injunctions, and Judicial Departmentalism: A Model of Constitutional Adjudication*, 23 LEWIS & CLARK L. REV. 1077, 1096–97 (2020); Michael T. Morley, *Disaggregating Nationwide Injunctions*, 71 ALA. L. REV. 1, 61 (2019); Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 471–72 & n.310 (2017). For an early defense, see Joan Steinman, *The Effects of Case Consolidation on the Procedural Rights of Litigants: What They Are, What They Might Be—Part 1: Justiciability and Jurisdiction (Original and Appellate)*, 42 UCLA L. REV. 717, 728–31 (1995). For the view that state courts apply the rule without incident, see Chris Conrad, Note, *Judicial Power in the Laboratory: State Court Treatment of the One Good Plaintiff Rule*, 108 GEO. L.J. 767 (2020).

standing—and that a federal court's relief may run only to plaintiffs who make that showing.[5] On this view, the one-plaintiff rule is wrong for at least two reasons. First, it allows improper parties to join federal cases, wrongly affording them the benefits of party status and burdening both defendants and courts.[6] Second, it allows proper parties to show standing for relief that benefits improper parties *and* nonparties, enabling the sort of "universal" relief that has led courts to interfere with federal policymaking almost as a matter of course.[7]

Take the recent example of *Trump v. Hawaii*.[8] There, Hawaii sued to block the so-called "travel ban," which forbade nationals of six majority-Muslim countries from entering the United States.[9] To show standing, the state initially alleged injuries to its own interests, like faculty recruitment at the University of Hawaii.[10] But just ten days later, it added a co-plaintiff with a more palpable injury: an imam whose Syrian mother-in-law had been unable to travel to the United States to meet her grandchildren.[11]

Under the one-plaintiff rule, adding the imam yielded at least two strategic advantages. First, even if they rejected Hawaii's standing arguments, the courts would almost certainly find that the imam had standing and so would almost certainly allow the state to remain in the case.[12] Second, adding the imam increased the plaintiffs' chances of obtaining a nationwide

5. *See, e.g.*, Bruhl, *supra* note 4, at 512–14, 517–18; Baude & Bray, *supra* note 4, at 171.

6. *See* Bruhl, *supra* note 4, at 506–11 (outlining effects of granting party status under the one-plaintiff rule).

7. *See* Baude & Bray, *supra* note 4, at 171; Bray, *supra* note 4, at 471–72; Bruhl, *supra* note 4, at 512–13. For the view that universal relief survives even without the one-plaintiff rule, see Alan M. Trammell, *Demystifying Nationwide Injunctions*, 98 TEX. L. REV. 67, 86–88 (2019); Bradford Mank & Michael E. Solimine, *State Standing and National Injunctions*, 94 NOTRE DAME L. REV. 1955, 1974 (2019).

8. 138 S. Ct. 2392 (2018).

9. *Id.* at 2435 (Sotomayor, J., dissenting).

10. Complaint at 14, Hawai'i v. Trump, 245 F. Supp. 3d 1227 (D. Haw. March 29, 2017) (Civ. No. 17-00050); *see also* Hawaii v. Trump, 859 F.3d 741, 764 (9th Cir. 2017) (describing the state's theories of standing).

11. *Compare* Complaint, *supra* note 10 (filed February 3, 2017), *with* First Amended Complaint at 19, *Hawai'i*, 245 F. Supp. 3d 1227 (Civ. No. 17-00050) (filed February 13, 2017).

12. *See* Brief for Plaintiffs-Appellees at 13–14, *Hawaii*, 859 F.3d 741 (No. 17-15589) (citing the one-plaintiff rule).

preliminary injunction, as either the imam or the state could show standing for that relief.[13] And indeed, the state's move proved prescient, as the district court later issued nationwide preliminary relief,[14] and the Supreme Court ultimately predicated its finding of standing on the imam (and two other individual plaintiffs) alone.[15]

As *Trump v. Hawaii* shows, the one-plaintiff rule can be instrumental in public-law litigation. Yet critics are right that it lacks a clear theoretical justification. Efficiency concerns alone cannot support the rule—at least not if Article III requires each plaintiff to show standing as a constitutional matter.[16] Nor can constitutional avoidance justify the rule; again, if Article III requires each plaintiff to show standing, then courts cannot simply ignore that requirement whenever it raises hard questions about standing doctrine.

But does Article III really require each plaintiff to establish standing in every federal case? This Article argues not. Its logic is straightforward: Justiciability limits the judicial power, and remedies—not party joinder—are the tools by which courts project power outside of litigation.[17] And because remedies are the real concern, Article III should require only one plaintiff with standing and a live, ripe claim for each remedy, just as the one-

13. The district court found standing for both plaintiffs. *Hawai'i*, 245 F. Supp. 3d at 1233–34, *aff'd in part*, 859 F.3d at 761–66.

14. *See* Hawaii v. Trump, 265 F. Supp. 3d 1140, 1160 (D. Haw. Oct. 17, 2017), *aff'd in part*, 878 F.3d 662 (9th Cir. 2017). The Supreme Court later stayed this injunction. Trump v. Hawaii, 138 S. Ct. 923 (2018) (mem.).

15. Trump v. Hawaii, 138 S. Ct. 2392, 2416 (2018).

16. *See* Bruhl, *supra* note 4, at 526–30.

17. *See infra* Part II.A.1. Justiciability is the family of doctrines that includes Article III standing, mootness, ripeness, the political question doctrine, and others. *See generally* RICHARD H. FALLON, JR. ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 49 (7th ed. 2015). This Article focuses on the constitutional aspects of standing, mootness, and ripeness. It does not address the prudential components of these doctrines, *see* Bruhl, *supra* note 4, at 546–47 (discussing these), nor does it address other justiciability rules—like the political question doctrine and the rule against advisory opinions—that are issue- rather than party-specific. *See* Simon v. E. Ky. Welfare Rts. Org., 426 U.S. 26, 37–38 (1976) (unlike the political question doctrine, standing "focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated" (citation omitted)). Those rules do not raise the multiparty problems that this Article addresses.

plaintiff rule says.[18] Moreover, once that requirement is satisfied, Article III should leave other questions about who may join a case and benefit from the court's remedy to the Federal Rules of Civil Procedure—and, ultimately, Congress.[19] In sum, Article III neither forbids nor requires the one-plaintiff rule; instead, it prescribes the rule as a default that Congress may change.

This "minimal justiciability" reading of Article III yields several benefits. First, it answers recent criticism of the one-plaintiff rule, preserving an established practice that promotes both efficiency and access to justice. As this Article's original analysis of nearly 650 cases shows, on average, the one-plaintiff rule allows federal courts to skip standing for over 200 plaintiffs each year.[20] In so doing, it not only conserves judicial resources, but it also enables courts to predicate standing on the most obviously injured plaintiffs, thereby avoiding the need to address unsettled questions of standing doctrine.[21] And, as cases like *Trump v. Hawaii* show, the one-plaintiff rule also allows individuals to team up with institutional litigants that have the time and resources—but perhaps not the Article III injuries—to mount major public-law litigation.[22]

Minimal justiciability also clarifies Congress's power over the one-plaintiff rule. Because the rule derives from Article III, Congress cannot authorize courts to ignore it.[23] But it could require plaintiffs to show more. For example, it could require each plaintiff in a federal case to show standing and a live, ripe claim.[24] In this way, the one-plaintiff rule functions as a

18. *See infra* Part II.A.2.

19. *See infra* Part II.B.

20. My research assistants and I reviewed all of the nearly 650 federal cases citing the one-plaintiff rule since *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645 (2017). Of those, we found over 250 cases applying the rule to skip standing for one or more plaintiffs. In total, during the survey period, the rule saved courts over 1,400 individual standing analyses. *See infra* Part III.A.1.

21. *See* Steinman, *supra* note 4, at 729 ("[The one-plaintiff rule] serves judicial economy by allowing courts to avoid deciding potentially difficult issues of standing.").

22. *See infra* Part III.A.2.

23. *See generally infra* Part II.B.

24. Indeed, the Supreme Court has recast aspects of prudential standing as statutory rather than judicially imposed. *See* Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 125–28 (2014) (recharacterizing the "zone of interests" test, which was formerly understood as a prudential standing doctrine, as asking "whether a legislatively conferred cause of action encompasses

constitutional floor that Congress can raise but not lower—much like the requirement of minimal diversity for federal-court jurisdiction.[25]

This Article's final contribution is to clarify the relationship between standing and remedies. If the one-plaintiff rule demands one plaintiff with standing for each remedy, then courts need some way of determining what counts as one "remedy." This is no mere matter of semantics. A broader definition would allow just one plaintiff to pursue a broad remedy that affects the interests of many (like the preliminary injunction in the travel ban case), while a narrower definition would require more plaintiffs—a nationwide class, perhaps—to invoke that same relief.

Minimal justiciability does not answer this question directly, as its reading of Article III does not entail a particular definition of the "remedy" for which one plaintiff must show standing. But courts need a definition to make use of the one-plaintiff rule, and critics have offered a definition that would nullify the rule in practical effect.[26] So this Article proposes its own solution: It suggests that the "remedy" in a one-plaintiff-rule case should be whatever relief a court could award in an otherwise identical case brought by a single plaintiff. For example, if a court could award a single plaintiff an injunction against

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a particular plaintiff's claim"). If Congress can create such standing requirements implicitly, then surely it can do so explicitly.

25. For diversity jurisdiction, Article III requires only one plaintiff and defendant with diverse citizenship, but it allows Congress to require each plaintiff to hail from a different state than each defendant. *See, e.g.*, State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 530–31 (1967) (holding that Article III allows "'minimal diversity,' that is, diversity of citizenship between two or more claimants, without regard to the circumstance that other rival claimants may be co-citizens"); Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373 (1978) (explaining that the diversity statute requires "complete diversity of citizenship," which "does not exist unless *each* defendant is a citizen of a different State from *each* plaintiff"). Thus, just as Congress can (and generally does) require complete diversity for federal-court jurisdiction, *see* 28 U.S.C. § 1332(a), it could require every federal-court plaintiff to show standing and a live, ripe claim. Or, just as Congress can (and sometimes does) require only minimal diversity, *see, e.g.*, 28 U.S.C. § 1332(d) (class actions); *id.* § 1335 (statutory interpleader), it could require only that plaintiffs comply with the one-plaintiff rule.

26. Critics argue that any remedy that benefits two or more people is in fact two or more remedies, each requiring a separate showing of standing. *See, e.g.*, Bruhl, *supra* note 4, at 517–18 ("Relief for different people is necessarily different relief . . . ."). This view would seemingly not only nullify the one-plaintiff rule but also bar *all* nonparties from federal court.

a police department's unlawful use-of-force policy, then that injunction would be one "remedy" for which only one plaintiff would have to show standing in an otherwise identical case brought by multiple plaintiffs. This Article terms its proposed solution *remedial incorporation*, because it incorporates the underlying law of remedies.[27]

Together with the one-plaintiff rule, remedial incorporation dispels much of the confusion surrounding standing's application in complex litigation. For example, it resolves an entrenched circuit split over standing's role in class actions, where the courts of appeals have long sparred over whether the class representatives must show some degree of connection between their alleged injury-in-fact and those of absent class members.[28] One side argues that Federal Rule of Civil Procedure 23 addresses this problem through its requirements of commonality and typicality; the other argues that Article III requires an independent showing of relatedness.[29] This Article's account suggests that neither side is quite right: Instead, courts should simply apply the one-plaintiff rule, requiring at least one (named) plaintiff to show standing for each remedy sought and defining the scope of the "remedy" by reference to the underlying remedial law.

For similar reasons, this Article suggests that even universal relief should count as one "remedy" if the applicable remedial law permits it.[30] Such relief might run afoul of other law—like federal equitable principles or the Due Process Clause—but so

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27. *See infra* Part II.C.

28. *See infra* Part IV.B.

29. *See generally* Angell v. GEICO Advantage Ins. Co., 67 F.4th 727, 734–35 (5th Cir. 2023) (reviewing these two approaches).

30. Scholars have debated this question at length. For critical accounts, see, for example, Bray, *supra* note 4; Wasserman, *supra* note 4; Michael T. Morley, *De Facto Class Actions? Plaintiff- and Defendant-Oriented Injunctions in Voting Rights, Election Law, and Other Constitutional Cases*, 39 HARV. J.L. & PUB. POL'Y 487, 523–27 (2016). For qualified defenses, see Trammell, *supra* note 7; Mank & Solimine, *supra* note 7; Zayn Siddique, *Nationwide Injunctions*, 117 COLUM. L. REV. 2095, 2141 (2017); Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. REV. 1065, 1067 (2018); Zachary D. Clopton, *National Injunctions and Preclusion*, 118 MICH. L. REV. 1 (2019); Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 HARV. L. REV. 920 (2020); Alan M. Trammell, *The Constitutionality of Nationwide Injunctions*, 91 U. COLO. L. REV. 977 (2020); Portia Pedro, *The Myth of the "Nationwide Injunction,"* 84 OHIO ST. L.J. 677 (2023).

long as it addresses at least one plaintiff's injury, there is no Article III standing problem.[31]

The rest of this Article proceeds as follows. Part I tells the story of the one-plaintiff rule and describes recent scholarly critiques. Part II develops the core theory of minimal justiciability, discussing both Article III's minimum requirements and Congress's power over the rule. Part III argues that while Congress could abrogate the one-plaintiff rule, it should not, as the rule promotes efficiency, access to justice, and the rule of law. Finally, Part IV applies minimal justiciability and the associated concept of remedial incorporation to clarify justiciability's role in three complex scenarios: universal relief, class actions, and intervention by defendants.

I. THE ONE-PLAINTIFF RULE AND ITS CRITICS

This Part tells the story of the one-plaintiff rule. First, it shows how the rule emerged in the courts as a partial answer to difficult questions about justiciability's mechanics in multiparty litigation. Then, it turns to recent scholarly critiques.

A. HISTORICAL DEVELOPMENT

The one-plaintiff rule first emerged in the 1960s without much fanfare.[32] An early example is *Doe v. Bolton*,[33] a companion

31. *See, e.g.*, Morley, *supra* note 30, at 528–30 (arguing that injunctions in voting rights cases may violate due process); Bray, *supra* note 4, at 424 (arguing that the national injunction was absent from traditional equity). *But see* Trammell, *supra* note 30, at 979 (distinguishing standing from remedial scope).

32. There was no need for the one-plaintiff rule until the twentieth century, when the modern doctrines of standing, mootness, and ripeness first emerged. *See* Cass R. Sunstein, *What's Standing After* Lujan*? Of Citizen Suits, "Injuries," and Article III*, 91 MICH. L. REV. 163, 169–70 (1992) (tracing standing doctrine to the 1920s); F. Andrew Hessick, *Standing, Injury in Fact, and Private Rights*, 93 CORNELL L. REV. 275, 289–90 (2008) (similar); Evan Tsen Lee, *Deconstitutionalizing Justiciability: The Example of Mootness*, 105 HARV. L. REV. 603, 611 (1992) (tracing constitutional mootness doctrine to the 1960s). *But see* Ann Woolhandler & Caleb Nelson, *Does History Defeat Standing Doctrine?*, 102 MICH. L. REV. 689, 691 (2004) (arguing that standing emerged earlier). Previously, courts addressed issues of party propriety using the common law forms of action and limits on equitable jurisdiction. *See* Baude & Bray, *supra* note 4, at 153; Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 STAN. L. REV. 1371, 1395 (1988).

33. 410 U.S. 179 (1973). Although illustrative, *Doe* was not the Court's first such case. *See* Baggett v. Bullitt, 377 U.S. 360, 366 (1964) (holding that

case to *Roe v. Wade*[34] in which Mary Doe, a pregnant woman, challenged a Georgia abortion law along with a group of doctors, nurses, clergy, social workers, and other plaintiffs.[35] The Supreme Court held that Doe had standing because of her pregnancy and that the doctors had standing because the law threatened them with prosecution.[36] The other plaintiffs' standing was less clear,[37] but the Court ultimately did not address the issue. Instead, it noted that Doe and the doctors had "adequately presented" the constitutional question and that "nothing [was] gained or lost by the presence or absence" of the other plaintiffs.[38]

And so the one-plaintiff rule began to take hold. In the 1960s and '70s, the Court applied the rule almost exclusively in challenges to federal and state statutes.[39] Like *Doe*, these cases often

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professors had standing to challenge loyalty oath, so no need to address students' standing); Bond v. Floyd, 385 U.S. 116, 137 (1966) (holding that legislator-elect had standing to challenge legislature's refusal to seat him, so no need to address constituents' standing); *see also* Bruhl, *supra* note 4, at 487–505 (discussing the one-plaintiff rule's history).

34. 410 U.S. 113 (1973).

35. *Doe*, 410 U.S. at 184.

36. *Id.* at 187–88.

37. The Georgia law did not regulate these plaintiffs directly, but they argued that they could be charged as conspirators for advising women to have abortions. *Id.* at 189.

38. *Id.*

39. *See* Baggett v. Bullitt, 377 U.S. 360, 366 (1964) (declining to consider standing of university students where professors had standing to challenge a state statute requiring them to take loyalty oaths); Bond v. Floyd, 385 U.S. 116, 137 (1966) (declining to consider standing of a state legislator's constituents where the legislator had standing to challenge his exclusion from the legislature); Bullock v. Carter, 405 U.S. 134, 136 (1972) (declining to consider standing of one candidate for local office where another candidate had standing to challenge a statutory filing fee); Cal. Bankers Ass'n v. Shultz, 416 U.S. 21, 44 (1974) (declining to consider standing of a bankers' association where a bank had standing to challenge federal banking regulation); Nat'l League of Cities v. Usery, 426 U.S. 833, 836–37 n.7 (1976) (declining to consider organizations' standing to challenge Fair Labor Standards Act amendments because states and municipalities, to whom the amendments applied, had standing); Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264 (1977) (declining to consider the standing of other corporate and individual plaintiffs where a low-income housing corporation had standing to challenge denial of a zoning permit as racially discriminatory); Whalen v. Roe, 429 U.S. 589, 595 (1977) (declining to consider a physicians association's standing where physicians had standing to challenge a state statute requiring them to record purchasers of

involved controversial issues, and the plaintiffs for whom the Court invoked the rule often had less at stake in the litigation than the plaintiffs (or plaintiff) whose standing the Court chose to analyze.[40] Nevertheless, in each case, the Court held that because at least one plaintiff had standing, the issues were properly presented, and there was no need to address the other plaintiffs' standing.[41]

As time went on, the Court began to apply the rule in other contexts. In 1976, for example, the Supreme Court applied the rule in what would today be a mootness case.[42] In the 1980s, the Court began to apply a version of the rule on appeal, holding that only one petitioner must show "standing" (i.e., an injury from the lower court's judgment) to seek certiorari.[43] The Court later

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controlled substances); Carey v. Population Servs. Int'l, 431 U.S. 678, 682 (1977) (declining to consider standing of physicians and an adult user of contraceptives where the corporation and minister who distributed contraceptives had standing to challenge a state statute forbidding such distribution by those not licensed as pharmacists); Baldwin v. Fish & Game Comm'n, 436 U.S. 371, 377 n.14 (1978) (declining to consider standing of other nonresident hunters, hunting outfitters, and association of outfitters where two nonresident plaintiffs who had previously hunted in the state had standing to challenge a state hunting regulation); Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 299 n.11 (1979) (declining to consider standing of individual farmworkers, agents, and union supporters where union had standing to challenge state's farm labor statute).

40. *See generally supra* note 39 (identifying the plaintiffs in these cases).

41. *See Whalen*, 429 U.S. at 595 n.14 (assessment of other plaintiffs' standing was "unnecessary"); *Bullock*, 405 U.S. at 136 n.2 (assessment of other plaintiffs' standing would be "superfluous").

42. Baxter v. Palmigiano, 425 U.S. 308, 310–11 n.1 (1976) (holding that an intervenor could challenge prison policy even though the original plaintiffs had either died or been paroled); *see also* Cutter v. Wilkinson, 544 U.S. 709, 712 n.1 (2005) (holding that a dispute over a prison policy was not moot even though some petitioners had been released); WRIGHT ET AL., *supra* note 3, § 3533.1 ("And as with standing, where it suffices to find one plaintiff with standing, a live action remains despite mooting as to some parties so long as there is a nonmoot dispute between at least one plaintiff and one defendant."). Lower courts have since applied the rule in ripeness cases too. *See, e.g.*, Action for Child.'s Television v. FCC, 59 F.3d 1249, 1257 (D.C. Cir. 1995) (addressing a challenge to regulations where only one plaintiff had a ripe dispute with the agency); *see also* Bruhl, *supra* note 4, at 494 & nn.53–54 (citing cases).

43. *See* Dir., Off. of Workers' Comp. Programs v. Perini N. River Assocs., 459 U.S. 297, 302–05 (1983) (on certiorari from a federal court of appeals); *see also* Diamond v. Charles, 476 U.S. 54, 62–64 (1986) (same); Horne v. Flores, 557 U.S. 433, 434 (2009) (same); *cf.* U.S. Dep't of Lab. v. Triplett, 494 U.S. 715, 719, 728–32 (1990) (on certiorari from a state court); ASARCO, Inc. v. Kadish, 490

applied this "one-appellant rule" to proceedings in the federal courts of appeals.[44] The Court has also applied the one-plaintiff rule in suits between private parties,[45] although even today it appears most often in public-law litigation.[46]

U.S. 605, 613–18 (1989) (same). The exact contours of the one-appellant rule remain somewhat murky, largely thanks to the two cases from which it first emerged. In the first, the Supreme Court declined to decide whether the director of an agency had standing to appeal the Second Circuit's affirmance of the agency's denial of a worker's compensation claim, explaining that the injured worker was "before the Court as well," having filed a brief in support of the director's petition for certiorari. *Perini*, 459 U.S. at 302–05. In the second, the Court dismissed an appeal from a Seventh Circuit judgment holding unconstitutional certain parts of an Illinois abortion law. *See Diamond*, 476 U.S. at 62–64. A doctor who had intervened as a defendant in the district court but suffered no injury from the Seventh Circuit's judgment noticed an appeal as of right to the Supreme Court, as federal law then allowed. *Id.* at 61–64; *see* 28 U.S.C. § 1254(2) (1982). The State of Illinois did not join the doctor's notice of appeal, and although it filed a "letter of interest" indicating that it agreed with the doctor's position, the Court held that the letter was "insufficient to bring the State into the suit as an appellant." *Diamond*, 476 U.S. at 62–63. In a concurrence, Justice O'Connor argued that the Court's decision was "needlessly inconsistent" with *Perini*, where the worker's brief in support of certiorari *was* sufficient to make him an appellant in the case. *Id.* at 72.

44. *See* Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania, 140 S. Ct. 2367, 2379 n.6 (2020) (direct appeal); *see also* Massachusetts v. EPA, 549 U.S. 497, 516–18 (2007) (petition for review of agency action).

45. Gen. Bldg. Contractors Ass'n v. Pennsylvania, 458 U.S. 375, 402 n.22 (1982) (private suit under federal antidiscrimination law); *Triplett*, 494 U.S. at 728–32 (attorney discipline proceeding); Am. Elec. Power Co. v. Connecticut, 564 U.S. 410, 420 (2011) (common law nuisance action).

46. *See* Watt v. Energy Action Educ. Found., 454 U.S. 151, 160 (1981) (declining to consider standing of city or private individuals where California had standing to challenge federal agency's oil and gas lease bidding practices); Bowsher v. Synar, 478 U.S. 714, 721 (1986) (declining to consider standing of Members of Congress or of a union where the union's members had standing to challenge reporting provisions of the Balanced Budget and Emergency Deficit Control Act); Pennell v. City of San Jose, 485 U.S. 1, 8 (1988) (declining to consider a landlord's standing where a landlords' association had standing to challenge a local rent control ordinance); Bowen v. Kendrick, 487 U.S. 589, 620 (1988) (declining to consider standing of Jewish clergy or of a Jewish association where taxpayers had standing to challenge a federal grant program under the Establishment Clause); Lee v. Weisman, 505 U.S. 577, 584 (1992) (declining to consider a father's taxpayer standing where his daughter had standing to challenge a school graduation prayer); Clinton v. City of New York, 524 U.S. 417, 431 n.19 (1998) (declining to consider each plaintiff's standing where two plaintiffs had standing to challenge the president's cancellation of federal spending under the Line Item Veto Act); Dep't of Com. v. U.S. House of Representatives, 525 U.S. 316, 330 (1999) (declining to consider standing of all plaintiffs where

The Court addressed the one-plaintiff rule's relationship to remedies in the 2017 case of *Town of Chester v. Laroe Estates*.[47] There, land developer Steven Sherman sued the Town of Chester over its delay of his planned residential development, which he argued amounted to a taking of his property without compensation.[48] Laroe Estates, a company with a security interest in the land, moved to intervene under Federal Rule of Civil Procedure 24(a), which authorizes a party who shows an interest in the subject of a lawsuit to intervene as a matter of right.[49] The district court denied the motion, holding that Laroe lacked Article III standing, but the Second Circuit reversed, holding that a would-be intervenor of right need not show standing.[50]

The Supreme Court granted certiorari and reversed, holding in a unanimous decision that Rule 24(a) intervenors must show standing—at least to become plaintiffs, as Laroe had sought to do.[51] But there was a wrinkle. From the record, it was unclear whether Laroe sought a money judgment in Sherman's name or

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one had standing to challenge the proposed 2000 census plan that would result in a loss of a seat in the House of Representatives for his state); Bd. of Educ. v. Earls, 536 U.S. 822, 826 n.1 (2002) (declining to consider standing of a student whose failing grades made him ineligible to participate in interscholastic sports where another student had standing to challenge a school drug testing policy); Rumsfeld v. F. for Acad. & Institutional Rts., Inc., 547 U.S. 47, 52 n.2 (2006) (declining to consider other plaintiffs' standing where an association of law schools had standing to challenge a requirement that schools that receive federal funding permit military recruiters on campus); *Massachusetts*, 549 U.S. at 516–18 (declining to consider standing of private organizations, local governments, and other states where Massachusetts had standing to challenge EPA's failure to regulate greenhouse gas emissions).

47. 137 S. Ct. 1645 (2017). Before *Laroe*, the Court had held that a *single* plaintiff who seeks different remedies (e.g., injunctive relief and damages) must show standing separately for each. *See* City of Los Angeles v. Lyons, 461 U.S. 95 (1983); Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 185 (2000); DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 350–53 (2006).

48. *See Laroe*, 137 S. Ct. at 1648 (describing claims).

49. *Id.* at 1649; *see also* FED. R. CIV. P. 24(a) ("[T]he court must permit anyone to intervene who . . . claims an interest relating to . . . the subject of the action . . . .").

50. *See Laroe*, 137 S. Ct. at 1650 (describing the Second Circuit's holding).

51. *Id.* at 1651 ("[A]n intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing.").

its own.[52] And if Laroe sought a judgment in its own name, the Court said, Laroe would have to show standing for it separately.[53] Why? In a case with multiple plaintiffs, "[a]t least one plaintiff must have standing to seek *each form of relief requested in the complaint*."[54] With that guidance, the Court remanded for the lower courts to determine in the first instance what relief Laroe sought and whether it had standing to seek that relief.[55]

On the Court's telling, *Laroe* simply extended to the multi-plaintiff context the more general rule—which applies equally in single-plaintiff cases—that standing must be shown separately for each remedy sought in the complaint.[56] But the Court did not explain why *only* one plaintiff needs to show standing for each remedy,[57] and it did not address the suggestion—made by Professor Aaron-Andrew Bruhl in an amicus brief—that Article III might instead require *each* plaintiff to show standing for at least

52. *Id.* at 1651–52; *see also* Transcript of Oral Argument at 43–46, *Laroe*, 137 S. Ct. 1645 (No. 16-605) (noting discrepancies in counsel's description of the relief sought at oral argument and the relief sought in the complaint).

53. *Laroe*, 137 S. Ct. at 1651–52 ("If Laroe wants only a money judgment of its own . . . [it] must establish its own Article III standing in order to intervene.").

54. *Id.* at 1651 (emphasis added).

55. *Id.* at 1652. On remand, the district court granted Laroe's motion to intervene. *See* Sherman v. Town of Chester, 339 F. Supp. 3d 346, 360 (S.D.N.Y. 2018). Sherman had died while the appeal was pending, and the court held that Laroe sought to assert claims on behalf of Sherman's estate (managed by his widow), which had "very limited funds for litigation" and would be "strained" without financial and logistical support from Laroe. *Id.* Shortly after Laroe intervened, the case settled. *See* Settlement, Release, & Withdrawal Agreement at 2, *Sherman*, 339 F. Supp. 3d 346 (Civ. No. 12-00647).

56. *Laroe*, 137 S. Ct. at 1650–51 ("[In a single-plaintiff case, the] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought . . . . The same principle applies when there are multiple plaintiffs. At least one plaintiff must have standing to seek each form of relief requested in the complaint. Both of the parties accept this simple rule." (internal citations omitted)).

57. For this reason, some lower courts still hold that *all* intervenors must show standing on the theory that this rule is technically consistent with *Laroe*'s requirement that "at least" one intervenor show standing. *See* Old Dominion Elec. Coop. v. Fed. Energy Regul. Comm'n, 892 F.3d 1223, 1232–33 (D.C. Cir. 2018) (adhering to circuit precedent for that reason); Sierra Club v. Entergy Ark. LLC, 503 F. Supp. 3d 821, 849–50 (E.D. Ark. 2020) (same) (citing Mausolf v. Babbitt, 85 F.3d 1295, 1300 (8th Cir. 1996)); *see also* Zachary N. Ferguson, Note, *Rule 24 Notwithstanding: Why Article III Should Not Limit Intervention of Right*, 67 DUKE L.J. 189, 193 (2017) (critiquing this view).

one remedy in order to remain in the case.[58] As a result, *Laroe* left the one-plaintiff rule badly undertheorized—and wide open to the scholarly critique that soon followed.

B. SCHOLARLY CRITIQUE

Since *Laroe*, criticism of the one-plaintiff rule has been robust. Building on the arguments made in his amicus brief, Professor Bruhl has offered two primary critiques, and a growing chorus of scholars have agreed with his views.[59]

First, Bruhl argues that the one-plaintiff rule wrongly allows plaintiffs who cannot show Article III standing to participate in litigation.[60] Standing limits the Article III "judicial power," he says, which is basically a power to issue judgments.[61] And judgments are person-specific, meaning that they can affect only the legal rights of people who have properly been made parties to the case.[62] Accordingly, every party who invokes the court's judgment-issuing power—that is, every plaintiff—must show standing. Otherwise, at least in theory, once one plaintiff shows standing, an unlimited number of other plaintiffs could join the case without having to make that showing.[63]

Second, Bruhl argues that the one-plaintiff rule wrongly allows persons who lack standing to benefit from judicial relief.[64] Again, if judgments are person-specific—meaning that they can affect only the rights of specific people who have properly been

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58. *See* Brief of Amicus Curiae Professor Aaron-Andrew P. Bruhl in Support of Petitioner at 9, *Laroe*, 137 S. Ct. 1645 (No. 16-605).

59. *See generally supra* note 4 (listing authorities).

60. *See* Bruhl, *supra* note 4, at 506–11. Bruhl focuses on standing, although he acknowledges that the rule applies to the other branches of justiciability doctrine. *See, e.g.*, *id.* at 494 (identifying mootness, ripeness, and prudential standing as examples of doctrines where "courts have applied the [one-plaintiff] rule with regard to multiple-plaintiff cases").

61. *See id.* at 517 ("The judicial power is a power to issue dispositive judgments in cases over which the courts have jurisdiction."); *see also* William Baude, *The Judgment Power*, 96 GEO. L.J. 1807 (2008) (advancing this definition of the "judicial power").

62. *See* Bruhl, *supra* note 4, at 517–18 ("The one-plaintiff rule's crucial error is that it overlooks the person-specific nature of judgments . . . ."); Baude & Bray, *supra* note 4, at 171 (arguing that identifying which party has standing is "exceptionally important for determining what relief a court should ultimately issue").

63. *See* Bruhl, *supra* note 4, at 506–11.

64. *See id.* at 508–09.

made parties to a case—then the remedies that judgments contain should likewise benefit only proper parties.[65] The one-plaintiff rule contravenes that logic, allowing one plaintiff to show standing for a "remedy" that benefits others, including improper plaintiffs and nonparties. In this way, Bruhl says (and others agree), the one-plaintiff rule circumvents what would otherwise be a major standing obstacle to nationwide injunctions and other forms of universal relief.[66]

Professor Bruhl's critique rests on the premise that Article III, when fairly read, requires each plaintiff to show standing.[67] From there, Bruhl reasons that the one-plaintiff rule improperly disregards this constitutional requirement for essentially prudential reasons, like efficiency and constitutional avoidance.[68] But if instead Article III can accommodate the one-plaintiff rule—that is, if it does not necessarily require each plaintiff to show standing—then this critique begins to falter. Part II turns now to that key question of constitutional interpretation.

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65. *See, e.g.*, Baude & Bray, *supra* note 4, at 171; Bray, *supra* note 4, at 472 ("Article III gives the judiciary authority to remedy the wrongs done to [the] litigants, not the wrongs done to others."); *see also* Bruhl, *supra* note 4, at 513–14 (courts should "generally" eschew nonparty relief).

66. *See* Bruhl, *supra* note 4, at 511–14; *see also* Bray, *supra* note 4, at 471–72 (arguing that a court "has no constitutional basis to decide disputes . . . for those who are not parties"); Wasserman, *supra* note 4, at 1096–97 (suggesting that the one-plaintiff rule prompts courts to consider a "universe of similarly situated persons whose rights do not affect the plaintiff's rights"); Morley, *supra* note 4, at 61–62 (agreeing with Bruhl that the judgment power is limited to "specific people" with standing, not all parties). Other scholars have suggested that the one-plaintiff rule exacerbates problems with the Supreme Court's state standing jurisprudence. *See* Seth Davis, *The New Public Standing*, 71 STAN. L. REV. 1229, 1234–35 (2019) (arguing that the rule allows states to sue the federal government in large, politically aligned coalitions using only one state's—often tenuous—claim of injury); Ann Woolhandler & Michael G. Collins, *Reining in State Standing*, 94 NOTRE DAME L. REV. 2015, 2026 (2019) (similar); *see also* Baude & Bray, *supra* note 4 (attributing this phenomenon in part to inattention to remedies and party propriety). *But see* Z. Payvand Ahdout, *Enforcement Lawmaking and Judicial Review*, 135 HARV. L. REV. 937, 987–88 (2022) (defending this practice as an effective response to enforcement lawmaking by the executive branch). Part III suggests that, under this Article's framework, Congress could enact legislation to address this problem. *See infra* Part III.C.

67. *See* Bruhl, *supra* note 4, at 516–17.

68. *See* Bruhl, *supra* note 4, at 530 (contending that arguments in favor of the one-plaintiff rule rely on a "pragmatic concern for judicial economy").

II. THEORETICAL FOUNDATIONS

This Article's core theoretical claim is that Article III requires only one plaintiff to show standing and a live, ripe claim for each remedy—although it allows Congress to require more. The case for that thesis, elaborated below, can be summarized briefly.

First, in a case with only one plaintiff, the Supreme Court has held that Article III requires the plaintiff to show standing and a live, ripe claim for each remedy sought in the complaint.[69] This rule suggests that remedies are the constitutionally relevant expression of judicial power, which in turn explains why, in a case with two or more plaintiffs, only one plaintiff must show standing for each remedy.[70] Like other aspects of Article III jurisdiction, however, that rule should be understood as a constitutional minimum; thus, Congress could require each plaintiff to show standing and a live, ripe claim either to join a case or to benefit from a federal court's remedy.[71] Finally, to determine what makes up one "remedy," courts should look to the underlying remedial law rather than Article III itself.[72]

A. ARTICLE III'S MINIMUM REQUIREMENTS

1. Single-Plaintiff Cases

Procedural law often specifies the object of some analysis—like a "claim" or a "case"—and then instructs courts to measure that object's dimensions. For example, claim preclusion holds that a plaintiff's "claim" determines the preclusive effect of a prior judgment, and then it defines the "claim" to encompass all rights to relief that arise out of the same factual nucleus as the prior case.[73] Similarly, supplemental jurisdiction directs a federal court to hear any claim that falls within the same "Article III case or controversy" as the claims over which it has an independent basis for subject-matter jurisdiction,[74] and then it uses the factual-nucleus test to measure the scope of that "case or

69. *See infra* Part II.A.1.
70. *See infra* Part II.A.2.
71. *See infra* Part II.B.
72. *See infra* Part II.C.
73. RESTATEMENT (SECOND) OF JUDGMENTS § 24(1) (AM. L. INST. 1982).
74. *See* 28 U.S.C. § 1367(a) (authorizing supplemental jurisdiction).

controversy."[75] In both cases, courts first identify and then measure an analytical object to determine the doctrine's scope.

For some time, the precise object of standing analysis was unclear. Early on, the Supreme Court spoke of justiciable "cases," "controversies," and "disputes," but it seemed to use these terms interchangeably and without clear definitions in mind.[76] Later cases spoke of the plaintiff's "claim," but that term usually traced back to earlier cases that involved only one claim (often a constitutional claim) and so shed no light on the problem of scope.[77] Nor did this gap escape scholarly attention. In an article published in 1995, Joan Steinman argued that a showing of justiciability for one claim should extend to any other claims within the same Article III "case," a unit that she defined as including all claims properly joined under valid procedural rules.[78]

But the Supreme Court eventually took a different tack. In *DaimlerChrysler v. Cuno*,[79] a group of taxpayers challenged a pair of state and local tax credits designed to entice the car manufacturer DaimlerChrysler to expand its plant in Toledo, Ohio.[80] Under the Court's taxpayer standing cases, the plaintiffs had standing to challenge only the local credit,[81] but they

75. United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 725 (1966) (holding that for supplemental jurisdiction, the "state and federal claims must derive from a common nucleus of operate fact"). Other examples include the compulsory counterclaim rule, *see* FED. R. CIV. P. 13(a)(1) ("A pleading must state as a counterclaim any claim [that] arises out of the [same] transaction or occurrence . . . ."), and pendent personal jurisdiction, *see* Louis J. Capozzi III, *Relationship Problems: Pendent Personal Jurisdiction After* Bristol-Myers Squibb, 11 DREXEL L. REV. 215, 222–28 (2018) (detailing the development of this doctrine).

76. *See generally, e.g.*, *supra* notes 39, 46 and accompanying text.

77. *See* DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 335 (2006) ("[A] plaintiff must demonstrate standing for each claim he seeks to press."); *see also* Town of Chester v. Laroe Ests., Inc., 137 S. Ct. 1645, 1650 (2017) ("[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." (quoting Davis v. FEC, 554 U.S. 724, 734 (2008)); Jesse D.H. Snyder, *How* Town of Chester v. Laroe Estates, Inc. *Turned the One-Good-Plaintiff Rule into the One-Good-Remedy Rule*, 54 SAN DIEGO L. REV. 705, 706 (2017) (rejecting a requirement to show standing for each "claim," argument, or legal theory).

78. *See* Steinman, *supra* note 4, at 731–48.

79. 547 U.S. at 332.

80. *Id.* at 337–38 (describing plaintiff's claims).

81. *See* Frothingham v. Mellon, 262 U.S. 447, 486–88 (1923) (holding that taxpayer status generally does not create standing to challenge government expenditures but noting an exception for municipal expenditures).

nevertheless claimed standing to challenge the state credit, arguing that it shared a "common nucleus of operative fact" with the local credit.[82] The Court rejected this theory of "supplemental standing," holding instead that "a plaintiff must demonstrate standing separately for *each form of relief sought*."[83]

Cuno demonstrates that for justiciability, the object of analysis is the plaintiff's sought-after remedy.[84] Thus, when a court encounters an issue of standing, mootness, or ripeness, it must first determine what remedies the plaintiff seeks and then confirm that the plaintiff has shown standing and a live, ripe claim for each one.[85] And although the Supreme Court has never

82. *Cuno*, 547 U.S. at 347–49 (rejecting plaintiffs' argument that "their status as *municipal* taxpayers gives them standing to challenge the *state* franchise tax").

83. *Id.* at 352 (emphasis added) (quoting Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 185 (2000)). Prior cases had required separate showings of standing for different *forms* of relief, like injunctive relief, damages, and civil penalties. *See* City of Los Angeles v. Lyons, 461 U.S. 95, 105–06 (1983) (injunctive relief and damages); *Laidlaw*, 528 U.S. at 185 (damages and penalties). *Cuno* went beyond these cases, showing that the same rule applies even when plaintiffs seek two items of the same form of relief (i.e., two injunctions against two separate laws).

84. *Cuno* itself dealt with standing, but lower courts have since applied its rule to mootness. *See, e.g.*, Robert v. Austin, 72 F.4th 1160, 1163 (10th Cir. 2023) (noting the court must decide "whether a case is moot as to each form of relief sought"); Sos v. State Farm Mut. Auto. Ins. Co., No. 21-11769, 2023 WL 5608014, at *9 (11th Cir. Aug. 30, 2023) ("We decide whether a case is moot 'separately for each form of relief sought.'" (quoting *Cuno*, 547 U.S. at 352)); Thompson v. Whitmer, No. 21-2602, 2022 WL 168395, at *2 (6th Cir. Jan. 19, 2022) ("[M]ootness rules must be met for each form of relief that a plaintiff seeks."); Pulphus v. Ayers, 909 F.3d 1148, 1152 (D.C. Cir. 2018) ("This [mootness] requirement applies independently to each form of relief sought."); Carter v. Fleming, 879 F.3d 132, 137 (4th Cir. 2018) (stating mootness requirements "apply independently to each form of relief sought" (alterations omitted)). And its logic extends to ripeness determinations as well.

85. In a recent article, Curtis Bradley and Ernest Young criticize this "remedial standing rule," arguing that once a plaintiff shows standing for one form of relief (like damages) an Article III "case" or "controversy" exists, and the question whether the plaintiff can seek another form of relief (like an injunction) is a matter for the underlying remedial law. *See* Curtis A. Bradley & Ernest A. Young, *Standing and Probabilistic Injury*, 122 MICH. L. REV. 1557, 1578–83 (2024). Thus, Bradley and Young reject *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), which held that a plaintiff whom police had placed in an unlawful chokehold had standing to seek damages for his injuries but not an injunction against the police department's continued implementation of its alleged policy of using chokeholds. But *Lyons* can be critiqued on the separate ground that the

explained why these doctrines work this way, the rule makes good sense. Justiciability limits the judicial power,[86] and remedies are the means by which courts project power outside of litigation.[87] By linking remedies and judicial power in this way, *Cuno* suggests an answer to the next question, which is whether—in a case with two or more plaintiffs—*each* plaintiff must show standing and a live, ripe claim for each remedy, or whether one plaintiff per remedy suffices.

2. Cases with Two or More Plaintiffs

In a case with two or more plaintiffs, the Supreme Court requires only one plaintiff with standing for each remedy sought.[88] But it has never explained that rule as a matter of constitutional theory or policy. This subsection will canvass justiciability's separation-of-powers policies and demonstrate that they support the one-plaintiff rule.[89]

Court was insufficiently solicitous of the plaintiff's claim of future injury; one need not necessarily reject the remedial standing rule to reject the result in *Lyons*.

86. *See infra* notes 90–92 and accompanying text (citing sources).

87. *See, e.g.*, FED. R. CIV. P. 64 (authorizing seizure of person or property to satisfy a judgment); FED. R. CIV. P. 70 (authorizing contempt and other sanctions for noncompliance with remedial orders).

88. *See* Town of Chester v. Laroe Ests., Inc., 137 S. Ct. 1645, 1651 (2017) ("[W]hen there are multiple plaintiffs[,] [a]t least one plaintiff must have standing to seek each form of relief requested in the complaint.").

89. This Article applies the Court's settled methodology for determining the scope and content of justiciability doctrine, which looks to "the implicit policies embodied in Article III, and not history alone." Flast v. Cohen, 392 U.S. 83, 96 (1968). It does not engage with the ongoing debate over the proper role of historical analysis in answering questions like these. *See, e.g.*, James E. Pfander, *Scalia's Legacy: Originalism and Change in the Law of Standing*, 6 BRIT. J. AM. LEGAL STUD. 85, 87 (2017) (arguing that Justice Scalia's approach to standing "most closely resembles the form of common-law constitutionalism that he was quick to criticize in other settings"). *But see* TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2216–18 (2021) (Thomas, J., dissenting) (looking instead to founding-era practice). For similar reasons, it does not engage with the substantial literature that criticizes the Supreme Court's justiciability jurisprudence as incoherent and ahistorical. *See, e.g.*, Sunstein, *supra* note 32, at 215–18; Hessick, *supra* note 32, at 276; Woolhandler & Nelson, *supra* note 32, at 690; Winter, *supra* note 32, at 1372; Heather Elliott, *The Functions of Standing*, 61 STAN. L. REV. 459, 466 (2008); Jonathan R. Siegel, *A Theory of Justiciability*, 86 TEX. L. REV. 73, 75 (2007); Gene R. Nichol, Jr., *Standing for Privilege: The Failure of Injury Analysis*, 82 B.U. L. REV. 301, 304 (2002); William A. Fletcher, *The Structure of Standing*, 98 YALE L.J. 221, 221 (1988); Mark V. Tushnet, *The New Law of Standing: A Plea for Abandonment*, 62 CORNELL L. REV. 663, 663 (1977).

As the Supreme Court has said again and again, standing and related doctrines are "built on a single basic idea—the idea of separation of powers."[90] They promote this value in at least two ways. First, they limit federal courts to the kinds of cases that courts traditionally handle, excluding cases that seek advisory opinions, lack concrete facts or adverse parties, or are otherwise ill suited for judicial resolution.[91] Second, they safeguard the work of the political branches, excluding cases that seek to vindicate widely held complaints about government policies (the province of legislatures) or to ensure general compliance with the law (the province of executive officials).[92]

To see why the one-plaintiff rule is consistent with these separation-of-powers policies, consider an example. Suppose a prison provides inadequate medical care to the people incarcerated there. One such person, Plaintiff 1, falls ill and sues the prison in federal court, seeking an injunction directing the prison to hire more medical staff.[93] Another incarcerated person, Plaintiff 2, is healthy and so lacks standing to sue over the prison's medical services, but he nevertheless wishes to join Plaintiff 1's lawsuit.[94] Because he seeks the same relief and raises the same issues as Plaintiff 1, the Federal Rules of Civil Procedure would allow Plaintiff 2 to join Plaintiff 1's suit.[95]

Is there a separation-of-powers reason to displace that result? No matter whether Plaintiff 2 joins the case, the issues addressed and the relief granted will be the same: Either way, the

90. *TransUnion*, 141 S. Ct. at 2203 (citation omitted). For scholarly accounts, see, for example, Elliott, *supra* note 89, at 461–63 (arguing that standing promotes adversity, protects the political process, and prevents citizen suits); F. Andrew Hessick, *The Separation-of-Powers Theory of Standing*, 95 N.C. L. REV. 673, 675 (2017) (arguing that standing confines courts to their historical role, protects the political process, preserves judicial legitimacy, and prevents interference with the executive's duty to enforce the laws); Baude & Bray, *supra* note 4, at 162–63 (arguing that standing ensures that cases are well litigated, avoids politicization, and allows people to keep their affairs out of court).

91. *Flast*, 392 U.S. at 95 (identifying these as examples of nonjusticiable cases).

92. *Id.* at 96 (noting that justiciability implements the separation of powers under Article III); *see also TransUnion*, 141 S. Ct. at 2203–04 (similar).

93. *See* Estelle v. Gamble, 429 U.S. 97, 103 (1976) (holding that the Eighth Amendment protects a right to medical care for incarcerated persons).

94. *See* Lewis v. Casey, 518 U.S. 343, 350 (1996) (hypothesizing that a plaintiff would lack standing in this scenario).

95. FED. R. CIV. P. 20 (requiring only a common issue of law or fact and some common relief sought for party joinder).

court will decide whether the prison's medical care is adequate and, if it is not, order the prison to hire more medical staff. Plaintiff 1's injury will provide the factual context needed to frame the issues,[96] and the adverse interests of Plaintiff 1 and the prison will ensure vigorous advocacy.[97] And, if the court does order relief, Plaintiff 2 will benefit in the same way as any other person incarcerated at the prison: Incidentally, from the medical staff hired to redress Plaintiff 1's injury.[98]

True, that all might change if Plaintiff 2 sought additional relief (a new medical facility, perhaps, or a specific procedure that only he needs). But in that case, Plaintiff 2 would have to show standing for that relief separately, since the one-plaintiff rule requires one plaintiff with standing *for each remedy*.[99] Alternatively, critics might argue that if Plaintiff 2 could join the case, then so too could anyone else incarcerated at the prison—or perhaps even anyone with an abstract interest in prisoners' rights.[100] But while that result may (or may not) be bad policy,[101] from a separation-of-powers perspective, it is neither here nor there: So long as the new plaintiffs do not seek new remedies, they do not raise distinct separation-of-powers concerns.[102]

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96. *See, e.g.*, *TransUnion*, 141 S. Ct. at 2203 ("Under Article III, federal courts do not adjudicate hypothetical or abstract disputes.").

97. *See, e.g.*, Flast v. Cohen, 392 U.S. 83, 95 (1968) ("[Justiciability] limit[s] the business of federal courts to questions presented in an adversary context . . . ."); *see also* Steinman, *supra* note 4, at 729 (standing ensures that parties have "sufficient personal concern to effectively litigate the matter" (citation omitted)).

98. Nor will Plaintiff 2's joinder somehow transform the case into a citizen suit, generalized grievance, or other forbidden form of adjudication. *See* Lujan v. Defs. of Wildlife, 504 U.S. 555, 576–77 (1992) (rejecting suits based on generalized grievances); Elliott, *supra* note 89, at 463 (noting Justice Scalia's critiques of citizen suits).

99. *See supra* notes 84–85 and accompanying text (citing cases and scholarly discussion of this "remedial standing rule"); *see also infra* Part II.C (on "additional" relief).

100. *See* Bruhl, *supra* note 4, at 506–11 (arguing that there are practical consequences to the one-plaintiff rule cause by parties who lack standing).

101. Part III contends that it is in fact good procedural policy, particularly in light of the various procedural safeguards that Part III identifies.

102. Concededly, in these hypotheticals it is relatively clear that the various remedies sought are distinct. Part II.C offers a general rule for determining when two such remedies are "the same," including in cases where the boundaries are less obvious.

Plaintiff 2's inability to seek additional relief without showing standing for it separately might lead one to wonder why he would want to join the case in the first place. But there could be many reasons. Plaintiff 2 might want to make different legal arguments or present different evidence.[103] He might have more money or better lawyers, and he might be willing to share those resources only in exchange for party status.[104] His presence might stress the importance of the case, particularly if many others joined him.[105] He might also have important dignitary interests at stake.[106] Those are all valid reasons to join a lawsuit, and if they trigger no separation-of-powers concerns, then Article III standing should not displace them.

Nor is the one-plaintiff rule the only rule of justiciability doctrine that allows parties to participate in cases in which they would otherwise lack a sufficient stake. For example, various exceptions to the mootness doctrine allow courts to hear cases even if no party has a live claim,[107] and the rule of "tester" standing allows plaintiffs who do not intend to rent or buy housing to sue

103. *See, e.g.*, Students for Fair Admissions, Inc. v. President of Harv. Coll., 807 F.3d 472 (1st Cir. 2015) (addressing motion to intervene by students of color who sought to make arguments in favor of Harvard University's affirmative action policy that they thought the university likely would not make).

104. *See* Sherman v. Town of Chester, 339 F. Supp. 3d 346, 360 (S.D.N.Y. 2018) (noting that Laroe sought to intervene because Sherman's estate had "very limited funds for litigation").

105. For example, in an action seeking to clarify the "medical emergency" exception to Texas's abortion bans, the original plaintiffs amended their complaint twice to add eight and then seven other women who had been denied abortions despite serious medical complications. *See* Plaintiffs' Second Amended Verified Petition for Declaratory Judgment & Application for Temporary & Permanent Injunction at 3, Zurawski v. State, No. D-1-GN-23-000968, 2023 WL 11833566 (Tex. Dist. Sept. 15, 2023), *vacated*, State v. Zurawski, 690 S.W.3d 644 (Tex. 2024). This demonstrated that the "abortion bans continue to harm pregnant people every day." *Id.*

106. Rachel Bayefsky, *Remedies and Respect: Rethinking the Role of Federal Judicial Relief*, 109 GEO. L.J. 1263, 1267 (2021) (advocating for remedies for "dignitary harm").

107. *See* DeFunis v. Odegaard, 416 U.S. 312, 318–19 (1974) (per curiam) (discussing mootness exceptions for cases where the plaintiff's injury is capable of repetition yet evading review and where the defendant voluntary ceases its alleged misconduct); Sonsa v. Iowa, 419 U.S. 393, 399–400 (1975) (discussing an exception for class actions where the named plaintiff's claim becomes moot).

for violations of federal antidiscrimination law.[108] As doctrines like these show, the Supreme Court shapes justiciability to serve many purposes, some of which go beyond simply resolving disputes that come before the federal courts. The one-plaintiff rule fits comfortably within that tradition.[109]

B. CONGRESS'S ROLE

Although Article III requires only one justiciable dispute for each remedy,[110] Congress has broad power to condition joinder or remedial benefit on the satisfaction of statutory requirements that operate much like justiciability rules. For example, for federal-law claims, it is uncontroversial that Congress can specify the class of persons entitled to sue.[111] And even for nonfederal claims, Congress has wide latitude to set the procedural conditions for joinder.[112] Because Congress can require by statute what Article III does not—for example, a showing of "standing" by each plaintiff, or even some subset of plaintiffs—the one-plaintiff rule represents a constitutional floor that Congress can raise by enacting substantive, procedural, or jurisdictional rules.[113]

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108. Havens Realty Corp. v. Coleman, 455 U.S. 363, 373–74 (1982) (holding that a "tester" plaintiff had standing to challenge racially discriminatory housing practices). *But see* Acheson Hotels, LLC v. Laufer, 144 S. Ct. 18 (2023) (dismissing on mootness grounds a suit challenging *Havens Realty*'s continued vitality).

109. My thanks to Amanda Frost for suggesting this point.

110. *See supra* Part II.A.2.

111. The Supreme Court has read many federal statutes to contain such "standing" requirements. *See, e.g.*, Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 125–28 (2014) (Lanham Act); Holmes v. Sec. Inv. Prot. Corp., 503 U.S. 258, 265 (1992) (RICO); Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 117–18 (1989) (ERISA); Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 535 n.31 (1983) (requiring "antitrust standing" under the Sherman Act).

112. For example, it could easily dilute the one-plaintiff rule's effect by increasing the "interest" required to join or intervene in litigation. *See* FED. R. CIV. P. 19(a) (defining the "interest relating to the subject of the action" for required joinder); FED. R. CIV. P. 20(a) (defining the "right to relief" needed for permissive joinder); FED. R. CIV. P. 24(a)(2) (defining the "interest" needed for intervention).

113. The Supreme Court has long held that Congress's greater power to create the lower federal courts embraces a lesser power to control their jurisdiction. *See, e.g.*, Michael C. Dorf, *Congressional Power to Strip State Courts of Jurisdiction*, 97 TEX. L. REV. 1, 11 (2018) ("[M]ore or less since the enactment of the

On this point, federal diversity jurisdiction provides a useful analogy. Article III confers federal jurisdiction in cases "between citizens of different states,"[114] a provision that the Supreme Court has read to create a federal forum for out-of-state defendants who might face bias at the hands of in-state judges.[115] Cases with two or more parties raise the further question whether *each* plaintiff must be diverse from *each* defendant (complete diversity) or whether only one plaintiff and defendant must hail from different states (minimal diversity). The Supreme Court has read Article III to require minimal diversity,[116] but that requirement is only a minimum, and Congress can require more. So, for example, the federal diversity statute requires both complete diversity and over $75,000 in controversy in most cases—and it does so at least in part to reduce federal caseloads.[117] Conversely, the applicable statutes require only minimal diversity for class actions and statutory interpleader, two cases where a requirement of complete diversity would make the underlying procedural mechanism too unwieldy.[118]

Judiciary Act of 1789, it has been understood that Congress's greater power to create no lower federal courts includes the lesser power to create lower federal courts and vest in them only some of the jurisdiction that could be vested in them consistent with Article III, Section Two."); *see also* Patchak v. Zinke, 138 S. Ct. 897, 906 (2018) ("Congress's greater power to create lower federal courts includes its lesser power to 'limit the jurisdiction of those Courts.'" (quoting United States v. Hudson, 11 U.S. (7 Cranch) 32, 33 (1812))). For the Supreme Court itself, Congress's power derives from the Exceptions Clause. U.S. CONST. art. III, § 2 (authorizing "exceptions and regulations" to the Court's appellate jurisdiction).

114. U.S. CONST. art. III, § 2.

115. *See, e.g.*, Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 552–54 (2005) (holding that diversity jurisdiction "provide[s] a neutral forum for . . . civil actions between citizens of different States, between U.S. citizens and foreign citizens, or by foreign states against U.S. citizens."). *But see* Scott Dodson, *Beyond Bias in Diversity Jurisdiction*, 69 DUKE L.J. 267, 286 (2019) (questioning whether the bias rationale is sufficient to support modern diversity jurisdiction and exploring other potential rationales).

116. State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 530–31 (1967).

117. *See* 28 U.S.C. § 1332(a); *Allapattah*, 545 U.S. at 552 (explaining that Congress adopted a $75,000 amount-in-controversy requirement "[t]o ensure that diversity jurisdiction does not flood the federal courts with minor disputes"); Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373 (1978) (describing the complete diversity requirement); Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, 267–68 (1806) (establishing that requirement).

118. *See* 28 U.S.C. § 1332(d) (class actions); *id.* § 1335 (statutory interpleader).

On this Article's account, justiciability works the same way. Congress could require every plaintiff to show standing and a live, ripe claim, just as it requires each plaintiff in a diversity case to hail from a different state than each defendant. It could impose that requirement generally (as it has done with complete diversity) or only in some cases (as it has done with minimal diversity). And it could do so for policy reasons, just as it requires complete diversity at least in part to reduce caseloads. Overall, a picture emerges of broad congressional power over the one-plaintiff rule, which serves a constitutional default rule only where Congress has not yet acted.

C. REMEDIAL INCORPORATION

As the prison hypothetical posed above suggests, a key question in applying the one-plaintiff rule is what constitutes the "remedy" for which only one plaintiff must show standing. This question is of considerable theoretical significance. Just as a broader definition of a plaintiff's "claim" bolsters its preclusive effect and a broader definition of the "case or controversy" can expand a court's supplemental jurisdiction, a broader definition of the "remedy" under the one-plaintiff-rule would enlarge the quantum of relief for which only one plaintiff must show standing in any given case.[119]

No doubt realizing this, critics argue that any relief that benefits more than one person is in fact so many different "remedies."[120] Accordingly, no two plaintiffs can ever seek "the same" relief, and Article III requires each beneficiary to show standing

119. This problem mainly concerns declaratory, injunctive, or other nonmonetary relief. In suits for monetary relief, the Supreme Court generally requires each plaintiff to show standing in order to recover, which suggests a commonsense rule that separate monetary awards are separate "remedies." *See* TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2208 & n.4 (2021). Exceptions to this rule will be rare, as courts ordinarily do not give "joint" money judgments. *See, e.g.*, Pearson v. Target Corp., 968 F.3d 827, 837 (7th Cir. 2020) (distributing disgorged funds through pro-rata money judgments). *But see* Sherman v. Town of Chester, 339 F. Supp. 3d 346, 359–60 (S.D.N.Y. 2018) (allowing Laroe Estates to sue alongside Sherman's estate, apparently in pursuit of a money judgment that the two might share); *supra* note 56 and accompanying text.

120. Bruhl, *supra* note 4, at 499 ("[R]elief to different people is always different relief."); *see also id.* at 518; Wasserman, *supra* note 4, at 1091–104 (discussing the need for remedies to be particularized to the parties in the case).

separately.[121] Put differently, critics say that even if the remedy is standing's *object*, its *dimensions* should be drawn so narrowly as to render the one-plaintiff rule a nullity.

Consider an example. In *M.M.V. v. Garland*,[122] 126 plaintiffs challenged various unwritten policies that federal officials allegedly adopted to enforce the Trump Administration's "Transit Rule," which required asylum-seekers at the nation's southern border to have first sought asylum in a third country through which they had traveled to reach the United States.[123] One such policy required a fraud-detection unit to review any credible-fear determination favorable to an asylum-seeker.[124] After finding that only eighteen plaintiffs had actually been subject to fraud-detection review (and that it lacked jurisdiction to review the other challenged policies), the district court dropped the other 108 plaintiffs from the case and denied joinder to many more.[125] In an opinion by Judge Katsas, the D.C. Circuit affirmed, but it did so in part on the ground that an order shielding one plaintiff from removal was different "relief" than an order shielding another.[126] Thus, the D.C. Circuit's decision suggested not only that the district court had *discretion* to drop the plaintiffs from the case, but also that Article III *required* their dismissal because they sought individualized remedies.[127]

In support of this view, critics of the one-plaintiff rule point to the "person-specific nature of judgments," arguing that because judgments usually bind and benefit only parties so too should the court's relief.[128] But the rule that judgments affect only the rights of parties has many exceptions.[129] For example, the doctrine of nonmutual issue preclusion allows a stranger to

121. *See, e.g.*, Bruhl, *supra* note 4, at 511–13; Baude & Bray, *supra* note 4, at 171.

122. 1 F.4th 1100, 1110 (D.C. Cir. 2021).

123. *Id.* at 1105.

124. *Id.* at 1110–11.

125. *See* M.M.V. v. Barr, 456 F. Supp. 3d 193, 220–23 (D.D.C. 2020).

126. *Garland*, 1 F.4th at 1110.

127. *See id.* (holding that the one-plaintiff rule "does not apply" because the plaintiffs seek "individualized relief"—namely, an injunction against "removing any one plaintiff without providing that plaintiff with further individualized adjudicatory process"); *see also id.* at 1111 (citing Bruhl, *supra* note 4, at 492).

128. *See supra* notes 60–63 and accompanying text.

129. *See* Taylor v. Sturgell, 553 U.S. 880, 893–96 (2008) (listing six exceptions).

use a prior judgment both defensively, to prevent relitigation of issues that the plaintiff previously lost, and sometimes even offensively, to establish such issues against a defendant in support of the stranger's claims.[130] And in any case, more fundamentally, the argument confuses preclusion with remedies. Unlike judgments, the Supreme Court has never adopted a presumption that remedies benefit only parties; instead, it has told courts to tailor their remedies to the extent of the defendant's violation.[131] Indeed, perhaps for this reason, the Federal Rules of Civil Procedure contemplate nonparty relief expressly.[132]

But if the critics' dimensional test is flawed, how can courts applying the one-plaintiff rule tell where one "remedy" ends and another begins? One alternative might be to borrow the distinction between "divisible" and "indivisible" remedies that courts sometimes apply in the class-action context.[133] According to this

130. *See* Blonder-Tongue Lab'ys, Inc. v. Univ. of Ill. Found., 402 U.S. 313, 328–30 (1971); Parklane Hosiery Co. v. Shore, 439 U.S. 322, 331 (1979) ; *see also* Clopton, *supra* note 30, at 1 (arguing that nonmutual issue preclusion supports national injunctions).

131. *See, e.g.*, Califano v. Yamasaki, 442 U.S. 682, 702 (1979) ("[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs."). True, the Court has admonished in several cases that relief should be "limited to the inadequacy that produced [the plaintiff's] injury in fact." Gill v. Whitford, 138 S. Ct. 1916, 1930 (2018) (quoting Lewis v. Casey, 518 U.S. 343, 357 (1996)); *see also* DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 353 n.5 (2006) (denying "that [a] litigant can, by virtue of his standing to challenge one government action, challenge other governmental actions that did not injure him"). But even in those cases, the Court spoke approvingly of relief that would still benefit *some* nonparties—just fewer than did the lower court's remedy. *See Gill*, 138 S. Ct. at 1934 (remanding for plaintiffs to assert district-wide gerrymandering claims (citing Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254, 264 (2015) (doing the same for racial gerrymandering))); *Lewis*, 518 U.S. at 350 (acknowledging courts generally may "order[] the alteration of an institutional organization or procedure that causes [a plaintiff's] harm"). For the argument that these cases are best understood as speaking to the scope of federal remedial power, not standing, see *infra* notes 247–52 and accompanying text.

132. FED. R. CIV. P. 71 ("When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party."). True, Rule 71 does not *authorize* nonparty relief, but it would be superfluous if such relief were categorically forbidden.

133. *See* PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 2.04 (AM. L. INST. 2024); Samuel Issacharoff, *Private Claims, Aggregate Rights*, 2008 SUP. CT. REV. 183, 206 (2008); David Marcus, *Groups and Rights in Institutional Reform Litigation*, 97 NOTRE DAME L. REV. 619, 620 (2022); Maureen Carroll,

distinction, a remedy is indivisible only if, "as a practical matter," affording it to one beneficiary "determines the application or availability of the same remedy to other claimants."[134] Claims for indivisible remedies are eligible for aggregation under the more permissive procedures of Federal Rule of Civil Procedure 23(b)(2),[135] while claims for divisible remedies can be aggregated only under the more stringent Rule 23(b)(3).[136]

As a policy matter, it might make sense to transpose this distinction into the one-plaintiff rule context and hold that a plaintiff's sought-after remedy counts as one "remedy" under the rule only if it is indivisible. But as a separation-of-powers matter, the suggestion is problematic. Reading the distinction between divisible and indivisible remedies into the one-plaintiff rule would effectively elevate that distinction from a judicial gloss on Rule 23 to a principle of constitutional doctrine that neither Congress nor procedural rulemakers could modify. The test might function well in the mine run of cases, but in marginal cases—that is, where Congress wants one plaintiff to be able to seek relief that the courts think is divisible—it would override Congress's remedial authority.[137]

How to avoid constitutionalizing the law of remedies in this way? One solution might simply be for courts to look to the existing remedial law. Under this approach, courts would treat two items of relief as one "remedy"—meaning that a single plaintiff could show standing (and so on) for both of them—if, under the

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Aggregation for Me, but Not for Thee: The Rise of Common Claims in Non-Class Litigation, 36 CARDOZO L. REV. 2017 (2015); *see also* Gates v. Rohm & Haas Co., 655 F.3d 255, 273 (3d Cir. 2011) (adopting this distinction).

134. PRINCIPLES OF THE L. OF AGGREGATE LITIG., *supra* note 133, § 2.04(b). The classic divisible remedy is money damages. *See id.* § 2.04 cmt. a. An example of an indivisible remedy might be the injunction sought by Plaintiff 1 in our prison hypothetical.

135. *See* FED. R. CIV. P. 23(b)(2); Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 360 (2011) (holding that Rule 23(b)(2) applies only if the class seeks "a single injunction," not "a different injunction" for each class member); *see also* Maureen Carroll, *Class Actions, Indivisibility, and Rule 23(b)(2)*, 99 B.U. L. REV. 59, 68 (2019).

136. *See* PRINCIPLES OF THE L. OF AGGREGATE LITIG., *supra* note 133, § 2.04 cmt. a; FED. R. CIV. P. 23(b)(3) (requiring that questions of law or fact common to class members predominate over individualized questions); *see also id.* at 23(c)(2)(B) (requiring notice to class members and opt-out procedures for 23(b)(3) classes).

137. *See, e.g.*, Guar. Tr. Co. v. York, 326 U.S. 99, 105 (1945) (recognizing Congress's legislative authority over the federal courts' equity powers).

remedial applicable law, a court could, in its discretion, award them both to a single plaintiff in an otherwise identical hypothetical case. We might call this rule "remedial incorporation."

Consider an example. Suppose you own a rowhouse in a city. The city recently enacted a real property tax that you think violates federal law, so you decide to sue the city in federal court and to seek an injunction barring city officials from enforcing the tax. You mention the lawsuit to your tenant, who rents the basement apartment below your house. Your tenant does not own property, but she opposes the tax on ideological grounds (and may buy a house in the city one day), so she moves to join your suit as a plaintiff. Assuming that justiciability principles would prevent her from suing alone,[138] can she nevertheless join your suit and seek an injunction shielding her from the tax?

Under the critics' one-remedy-per-person approach, the answer would be no. Even if the applicable remedial law (say, a federal statute) allowed you to seek relief on behalf of everyone in the city, you and your tenant would each have to show standing and a live, ripe claim because you would each seek different "remedies"—and Article III requires, at a minimum, one plaintiff with a justiciable claim for each remedy. By narrowing the scope of the "remedy" at the front end, then, the critics' view would not only exclude your tenant from the case, but it would also prevent you from obtaining relief that shields her—and anyone else who cannot (or does not) join your case—from the tax. In short, it would represent a major break from current law.

By contrast, under the principle of remedial incorporation, the answer would depend on the applicable remedial law. If that law would allow you to seek relief for everyone in the city (including your tenant), then the injunction would be a single "remedy" calling for only one showing of standing. Or, if the law would allow only an injunction that shields *you* from the tax (or otherwise excludes your tenant from the scope of allowable relief), then you and your tenant seek different remedies—two injunctions, one for each of you—and must show standing separately. The applicable test might be the distinction between divisible and indivisible remedies, a rule of federal equity, or some other

138. *See, e.g.*, Clapper v. Amnesty Int'l USA, 568 U.S. 398, 410–14 (2013) (holding that a speculative chain of possibilities cannot establish injury based on future acts).

rule prescribed by Congress or even some other part of the Constitution, like the Due Process Clause—but not Article III.

This approach has many advantages. It is consistent with current doctrine, as it accommodates the few Supreme Court cases that apply the one-plaintiff rule to different remedies.[139] It mirrors other justiciability rules that incorporate rather than override existing remedial law.[140] It defers consideration of the court's final relief until later, asking at the outset only whether the relief sought falls within the court's remedial discretion.[141] And, most importantly, it refuses to smuggle in through the one-plaintiff rule a constitutional law of remedies, instead allowing federal remedial law to develop at the behest of Congress, procedural rule makers, and the courts themselves.

* * *

To review, this Article's minimal justiciability framework has three parts. *First*, Article III requires at least one plaintiff to show standing and a live, ripe claim for each remedy sought in a federal case. Once that showing is made, justiciability's internal separation-of-powers concerns are satisfied, and further questions about who may participate in the case and benefit from the court's remedy are for Congress. *Second*, Article III allows Congress to limit joinder and remedies, including by barring joinder of—or the issuance of relief that benefits—plaintiffs who cannot show justiciability on their own. But such rules would reflect Congress's policy judgment rather than the dictates of Article III. *Third*, in response to critics who suggest a

139. *See* Town of Chester v. Laroe Ests., Inc., 137 S. Ct. 1645, 1652 (2017) (separate money judgments are separate remedies); DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 350–53 (2006) (same, for injunctions against enforcement of separate tax credits); Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 185 (2000) (same, for injunction and civil penalties); City of Los Angeles v. Lyons, 461 U.S. 95, 105–06 & n.7 (1983) (same, for injunction and damages).

140. *See* Juliana v. United States, 947 F.3d 1159, 1171 (9th Cir. 2020) (finding that the redressability prong of standing asks whether the relief sought "is within the power of an Article III court"); *cf.* TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2205–06 (2021) ("[U]nder Article III, an injury in law is not an injury in fact."). *But see* Uzuegbunam v. Preczewski, 141 S. Ct. 792, 797–98 (2021) (looking to the "forms of relief awarded at common law" to assess redressability for nominal damages).

141. *See* WRIGHT ET AL., *supra* note 3, § 3531.6 ("[U]ncertainty about appropriate remedies often should not be resolved at the outset of an action by denying standing.").

definition of the "remedy" so narrow that it would effectively nullify not only the one-plaintiff rule but also all nonparty relief in federal court, this Article provides an alternative definition that looks to the existing remedial law, obviating the need to layer yet another set of Article III rules over Congress's legislative power. Taken as a whole, this framework grounds the one-plaintiff rule in Article III and paves the way for a robust discussion of its merits as a matter of procedural policy.

III. POLICY PRIORITIES

Turning from constitutional interpretation to procedural policy, this Part asks whether Congress should exercise its constitutional power to alter or abolish the one-plaintiff rule. This Part surveys the rule's benefits, identifies safeguards, and explores possibilities for modest reform. On the whole, it shows that the rule's benefits predominate, and any drawbacks can be addressed through legislation or perhaps even procedural rulemaking. So, just as scholarly critiques of the one-plaintiff rule do not justify its overruling by the Supreme Court, neither do they favor its abrogation by Congress.

A. BENEFITS

The one-plaintiff rule offers two main policy benefits. First, it promotes efficiency by saving federal courts from having to analyze justiciability for hundreds of plaintiffs in scores of cases each year.[142] Second, it facilitates coalition-building, which can promote access to justice and otherwise facilitate effective judicial review.[143]

1. Efficiency

The first benefit of the one-plaintiff rule is simple: It saves federal courts from having to analyze standing, ripeness, and mootness for every plaintiff in every federal case. Others have noted this benefit,[144] but so far no one has attempted to measure it. For this Article, my research assistants and I identified over 250 cases applying the one-plaintiff rule since 2017, when the

142. Steinman, *supra* note 4, at 729.

143. *See* Ahdout, *supra* note 66, at 988 (arguing that the one-plaintiff rule allows interested parties a voice in litigation despite not meeting standing requirements).

144. *See, e.g.*, Steinman, *supra* note 4, at 729.

Supreme Court decided *Laroe*.[145] During the six-and-a-half-year study period, courts used the rule to skip standing for more than 1,400 plaintiffs—over 200 per year, on average. Moreover, because standing is a mandatory jurisdictional inquiry, without the rule courts might have had to address standing for some of those plaintiffs even if no party raised or briefed the issue.[146]

Perhaps even more striking are the eight massive cases that we had to exclude from this study to avoid skewing its results. These cases involved President Trump's executive order barring holders of diversity visas from entering the United States during the COVID-19 pandemic, which the State Department initially read as also forbidding the issuance of such visas.[147] In the summer of 2020, as the statutory deadline for issuing that year's quota of diversity visas approached, a total of 1,076 plaintiffs—all of whom had won that year's diversity visa lottery but had not yet received appointments for their required consular

145. This analysis proceeded in three steps. First, I searched Westlaw for district-court decisions citing the one-plaintiff rule between June 5, 2017 (the day the Court decided *Laroe*) and December 31, 2023. That search yielded 2,350 results. Next, I reviewed the responsive text (or "search snippets") for each result and identified 646 cases that in fact cited the rule. Finally, my research assistants and I reviewed each of those cases to determine whether they *applied* the rule (that is, whether the court found standing for at least one remedy after assessing standing for fewer than all of the plaintiffs in the case). That review yielded 255 results. For each result, we counted: (1) the number of plaintiffs for whom the court expressly found standing; and (2) the total number of plaintiffs in the case. Using those numbers, we calculated that courts "skipped" standing for a total of 1,411 plaintiffs during the study period.

A few notes on methodology. First, we limited the study to the period after *Laroe* to account for variations that the decision likely precipitated in the rule's application by district courts. Second, for simplicity's sake, we limited the study to Article III standing and did not address mootness or ripeness. Third, we did not distinguish between cases based on the number of claims that the plaintiffs asserted. (That is to say, we would count a case where four plaintiffs asserted two claims and the court found one plaintiff with standing for each the same as a case where four plaintiffs asserted one claim and the court found two plaintiffs with standing to assert it. Both cases would find standing for two plaintiffs and involve four.) Finally, to avoid skewing our results, we omitted a small group of very large non-class actions (with tens of thousands of plaintiffs total). Those cases are discussed more fully below.

146. United States v. Hays, 515 U.S. 737, 742 (1995); Adarand Constructors, Inc. v. Mineta, 534 U.S. 103, 110 (2001).

147. Gomez v. Trump (*Gomez I*), 485 F. Supp. 3d 145, 157 (D.D.C. 2020). The statutory diversity visa program offers up to 55,000 immigrant visas each year to foreign nationals from countries with relatively low levels of immigration. *Id.* at 159. *See generally* 8 U.S.C. § 1153(c) (creating the program).

interviews—filed five cases seeking to force the Department to "reserve" a quantity of visas for them after the statutory deadline expired.[148] The district court granted that relief, holding that the Department had erred in interpreting President Trump's ban on *entry* to bar the *issuance* of diversity visas.[149] And although President Biden lifted the ban in early 2021, by then the statutory deadline for that year was only seven months away, and the Department had decided to prioritize processing family-based visas.[150] So, in 2021, over 24,000 diversity visa selectees again sued the Department in three separate lawsuits, alleging that they too were unlikely to receive their visas before the statutory deadline.[151]

The district court used the one-plaintiff rule in both sets of cases,[152] identifying just seven plaintiffs with standing across the eight cases.[153] Based on that finding, the court concluded that it had power to reserve a pool of visas for allocation among over 25,000 named plaintiffs (and at least as many absent class members).[154] Balking at that assertion of judicial power, the

148. *Gomez I*, 485 F. Supp. 3d at 157, 164 (describing the five consolidated cases).

149. *Id.* at 204. At first, the district court refused to order the Department to reserve visas and instead ordered it to process diversity visa applications expeditiously before the statutory deadline (the end of the fiscal year), which was less than thirty days away. *Id.* at 205–06. On the last day of the fiscal year, when the Department processed most but not all of the plaintiffs' applications, the court ordered it to reserve nearly 10,000 diversity visas and certified a class of selectees who would be eligible to receive them. Gomez v. Trump (*Gomez II*), 490 F. Supp. 3d 276, 290, 292 (D.D.C. 2020), *rev'd*, Goodluck v. Biden, 104 F.4th 920 (D.C. Cir. 2024). It later ordered the Department to distribute the visas randomly among named plaintiffs and absent class members. Gomez v. Biden (*Gomez III*), No. 20-CV-01419, 2021 WL 3663535, at *24 (D.D.C. Aug. 17, 2021), *rev'd*, *Goodluck*, 104 F.4th 920. By then, a sixth case had been filed, bringing the total number of named plaintiffs to 4,173. *Id.* at *7 & n.3.

150. Filazapovich v. Dep't of State (*Filazapovich I*), 560 F. Supp. 3d 203, 218 (D.D.C. 2021), *rev'd*, *Goodluck*, 104 F.4th 920.

151. *Id.* at 220–21.

152. *Gomez I*, 485 F. Supp. 3d at 173; *Gomez III*, 2021 WL 3663535, at *6; *Filazapovich I*, 560 F. Supp. 3d at 225.

153. The court dismissed one of the three cases filed in 2021 after finding that no named plaintiff had standing. *Filazapovich I*, 560 F. Supp. 3d at 228. For the view that, in consolidated cases like these, only one plaintiff *across all of the cases* needs to show standing, see Steinman, *supra* note 4, at 728.

154. In *Filazapovich II*—the case with 24,000 named plaintiffs—the court explained that, because *Gomez* was a class action, "[t]here are *fewer* Plaintiffs

Department at one point argued that *each* of the plaintiffs (then about 24,000) had to show standing individually.[155] But the court properly rejected that argument, calling it "simply incorrect" and explaining that courts may award even broad "programmatic relief" once a single plaintiff shows standing.[156]

Though outliers, the diversity visa cases illustrate the critical role that the one-plaintiff rule plays in multiparty litigation. Without the rule, plaintiffs' counsel would have had to collect affidavits from each of the tens of thousands of plaintiffs harmed by the Department's unlawful actions—or, more likely, drop thousands of plaintiffs from the case.[157] For critics, burdens like these are nonnegotiable; Article III does not yield to efficiency concerns.[158] But under a minimal justiciability reading of Article

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before the court now than there were in *Gomez*." Filazapovich v. Dep't of State (*Filazapovich II*), 567 F. Supp. 3d 83, 94 (D.D.C. 2021) (emphasis added), *rev'd*, *Goodluck*, 104 F.4th 920.

155. *Filazapovich II*, 567 F. Supp. 3d at 90. The Department made two arguments. First, it cited the Supreme Court's decision in *TransUnion v. Ramirez*, 141 S. Ct. 2190 (2021). Filazapovich *II*, 567 F. Supp. 3d at 90–91. But as the district court explained, *TransUnion* held that "[e]very class member must have Article III standing in order to recover *individual damages*," 141 S. Ct. at 2208 (emphasis added), and the diversity visa cases involved requests for injunctive relief. *Filazapovich II*, 567 F. Supp. 3d at 90–91. Second, the Department cited *M.M.V. v. Garland*, 1 F.4th 1100 (D.C. Cir. 2021), where the D.C. Circuit refused to apply the one-plaintiff rule to relief that it characterized as "individualized." *Id.* at 1110; *see also supra* notes 122–27 and accompanying text (discussing this case in more detail). But here, the district court explained, it was not ordering the Department to issue a visa to any plaintiff; instead, it was merely "reserving" a batch of visas so that the Department could issue them to qualified plaintiffs after the deadline. *Filazapovich II*, 567 F. Supp. 3d at 92.

156. *Filazapovich II*, 567 F. Supp. 3d at 90, 92. The D.C. Circuit later reversed the district court's decision, holding that the court lacked the authority to reserve the visas under both the relevant federal statutes and traditional principles of equity. *Goodluck*, 104 F.4th at 923–26. But the D.C. Circuit did not address the district court's application of the one-plaintiff rule.

157. Nor is it clear that plaintiffs' counsel could have solved this problem by filing a class action. Although class certification formalizes absentees' party status in a sense, *see* 1 WILLIAM B. RUBENSTEIN, NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 1:5 (6th ed. 2022), they still must *eventually* show standing for each "remedy" they seek, *see TransUnion*, 141 S. Ct. at 2208 n.4. So, if critics are right that the district court's "remedy" was in reality 25,000 separate "remedies," plaintiffs' counsel presumably would have had to establish standing for all 25,000 plaintiffs before the court entered its final judgment (class action or not). By contrast, if there was just one "remedy" for which one plaintiff could show standing, class certification would be unnecessary. *See Gomez I*, 485 F. Supp. 3d at 204 (initially denying certification on this ground).

158. Bruhl, *supra* note 4, at 526.

III, these burdens are precisely the sort of factors that Congress can and should consider when assessing the rule as a policy matter.

In addition to serving efficiency directly, the one-plaintiff rule also facilitates constitutional avoidance.[159] By allowing courts to predicate justiciability on the plaintiff for whom standing, mootness, and ripeness are most obvious, it permits them to avoid harder questions raised by other plaintiffs.[160] Critics call this benefit a drawback, saying that it stunts doctrinal development.[161] But unlike other contexts where a more active approach by courts can clarify individual rights—qualified immunity, for example[162]—there is no clear reason to strain to address open questions of Article III standing.

2. Coalition-Building

In many ways, the State of Hawaii led the challenge to President Trump's travel ban.[163] The state's attorney general filed the initial complaint and argued the appeal in the Ninth Circuit,[164] and the state engaged a former acting U.S. solicitor general as co-counsel to argue the case in the Supreme Court.[165] The other plaintiffs, including the Honolulu imam, brought important voices into the litigation and strengthened the case atmospherically.[166] But from a justiciability perspective, their main contributions were the injuries required for standing—a

159. The principle of constitutional avoidance holds that courts should decide cases on constitutional grounds only if no other ground is available. *See* Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 347 (1936).

160. *See* Steinman, *supra* note 4, at 729 n.35 (noting this benefit).

161. *See* Bruhl, *supra* note 4, at 514 (making this point).

162. *See, e.g.*, Pearson v. Callahan, 555 U.S. 223, 232 (2009) (identifying the need to clarify the content of constitutional rights as a reason that the Court previously required courts to address the plaintiff's rights first in the qualified immunity analysis).

163. Other cases challenged earlier iterations of the ban. *See* Washington v. Trump, 847 F.3d 1151, 1156–57 (9th Cir. 2017) (first iteration); Int'l Refugee Assistance Project v. Trump, 857 F.3d 554, 574 (4th Cir. 2017) (second iteration); *cf.* Hawaii v. Trump, 878 F.3d 662, 674 (9th Cir. 2017) (third iteration).

164. Complaint, *supra* note 10, at 1.

165. *Id.*; *Professor Neal Katyal Argues Travel Ban Case in Supreme Court*, GEO. L. (Apr. 24, 2018), https://www.law.georgetown.edu/news/professor-neal-katyal-argues-travel-ban-case-in-supreme-court [https://perma.cc/4MGK-E5K3].

166. *See, e.g.*, Third Amended Complaint at 7–8, Hawai'i v. Trump, 245 F. Supp. 3d 1227 (D. Haw. March 29, 2017) (Civ. No. 17-00050).

fact that the Supreme Court confirmed when it ultimately predicated standing on those plaintiffs alone.[167]

Trump v. Hawaii illustrates a second benefit of the one-plaintiff rule: Sometimes, the rule allows a well-resourced institutional plaintiff (like Hawaii) to join with an injured but comparatively less well-resourced individual (like the imam) to pursue litigation that neither plaintiff could realistically pursue alone. The institutional plaintiff brings its resources, expertise, and public profile to bear on the case, and the individual provides the necessary constitutional injury.[168] In this way, the rule promotes access to justice and enables judicial review where it otherwise might not be had.[169]

Critics might argue that institutional litigants should pursue other solutions to this problem, like filing amicus briefs or, better yet, representing individuals as their attorneys.[170] But amicus briefs afford little control over litigation,[171] and control can be an asset to institutions with scarce time and resources to invest in litigation. Moreover, although institutions often do

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167. *See* Trump v. Hawaii, 138 S. Ct. 2392, 2416 (2018).

168. *See, e.g.*, City of Chicago v. Shalala, 189 F.3d 598, 602–03 (7th Cir. 1999) (declining to assess standing for Chicago, the original plaintiff, where the plaintiff-intervenors, legal permanent residents denied welfare benefits by the challenged federal welfare reform law, had standing); Kachalsky v. County of Westchester, 701 F.3d 81, 84 n.2 (2d Cir. 2012) (declining to assess standing for a gun rights organization where individual plaintiffs had standing to challenge New York's concealed-carry law); *see also* Ahdout, *supra* note 66, at 988 (arguing that the rule "give[s] a voice to states, institutions, and private parties that may not formally meet the standing requirements," allowing them to "bring resources," "publicize the case," and create "a particularly able separation-of-powers suit against the Executive").

169. True, the Supreme Court's state standing doctrine may be eroding the need for individual plaintiffs. *See infra* note 213. And associations can rely on injuries suffered by their members to show standing. Students for Fair Admissions, Inc. v. President of Harv. Coll., 143 S. Ct. 2141, 2157 (2023); *see also* Katherine Mims Crocker, *An Organizational Account of State Standing*, 94 NOTRE DAME L. REV. 2057, 2059 (2019) (comparing state standing to organizational standing). But both doctrines have been heavily criticized. *See supra* note 66; *see also infra* note 213; Heather Elliott, *Associations and Cities as (Forbidden) Pure Private Attorneys General*, 61 WM. & MARY L. REV. 1329, 1332 (2020); Michael T. Morley & F. Andrew Hessick, *Against Associational Standing*, 91 U. CHI. L. REV 1539, 1542 (2024) (arguing that associational standing creates too large an exception to Article III standing).

170. Bruhl, *supra* note 4, at 534.

171. *See, e.g.*, Pres. Coal., Inc. v. Pierce, 667 F.2d 851, 862 (9th Cir. 1982) (raising issues in an amicus brief does not preserve them for appeal).

furnish individuals with attorneys, those attorneys often remain free to pursue the institution's interests in the underlying litigation.[172] For transparency's sake, then, it may be better for the institution to appear as a plaintiff alongside the individual.

Coalition-building also benefits even plaintiffs who can afford to mount major litigation on their own. For example, in *Department of Commerce v. New York*, eighteen states, sixteen municipalities, five immigration advocacy organizations, and a mayoral association challenged the Trump Administration's decision to add a question about the respondent's citizenship to the 2020 census.[173] The Supreme Court found standing based only on New York and a few other states,[174] and New York's attorney general—with the help of attorneys from the ACLU and a Washington, D.C. law firm, among other groups—ably tried the case and argued the ensuing appeals.

So why did the thirty-nine other plaintiffs participate? There are many possible reasons. Joining more plaintiffs can mitigate litigation risk, increasing the likelihood that the court will ultimately find one plaintiff with a justiciable claim. It can signal broad opposition to a challenged law or policy. It can raise public awareness of important litigation. It can allow those who otherwise would not satisfy justiciability to introduce theories, narratives, and personal experiences that bear directly on the legal issues before the court.[175] And it can serve dignitary interests,[176] allowing those who *feel* wronged to have their day in

172. The Supreme Court long ago relaxed the ethical obligations that public-interest attorneys owe their clients. *See* NAACP v. Button, 371 U.S. 415, 419, 428–29 (1963) (holding that the NAACP's methods of association between members and lawyers were modes of expression and association protected by the First and Fourteenth Amendments and holding that Virginia may not prohibit these activities as improper solicitation of legal business). Scholars have since criticized this rule, arguing that it undermines the interests of marginalized communities. *See* Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 478–79, 500 (1976) (arguing that, with *Button*'s protection, NAACP attorneys had pursued integration even in majority-black neighborhoods where most residents would have preferred to focus on improving the quality of existing majority-black schools); *see also* Nicole M. Brown, Note, NAACP v. Button*: The Troubling Intersection of the Civil Rights Movement and Public Interest Law*, 24 GEO. J. LEGAL ETHICS 479, 481 (2011) (critiquing *Button* on several additional grounds).

173. *See* 139 S. Ct. 2551, 2563 (2019).

174. *See id.* at 2565.

175. *See supra* note 105 (citing an example).

176. *See* Bayefsky, *supra* note 106, at 1265.

court. These are all benefits that Congress can and should consider in determining whether to keep the one-plaintiff rule, and they all counsel in favor of its retention.

B. SAFEGUARDS

For critics, the one-plaintiff rule's drawbacks outweigh these benefits. Their chief objection is that, once one plaintiff shows standing and a live, ripe claim, the rule would theoretically allow any number of additional plaintiffs to join the case and seek the same relief without showing standing (and so on).[177] And although those plaintiffs could not seek additional relief (at least not without showing standing for it separately), they could exercise all the other privileges of party status, like propounding discovery, seeking attorney's fees, and enforcing the court's final judgment.[178] In this way, critics say, the one-plaintiff rule burdens both defendants and courts.

Part II explained that this objection sounds in procedural policy and so cannot establish that the rule fails as a matter of constitutional law.[179] This Part addresses the objection on its merits, contending that it overlooks at least two sets of procedural safeguards.[180] First, the joinder rules give injured

177. *See* Bruhl, *supra* note 4, at 525–26.

178. *See id.* at 506–11. Absent from this list (perhaps conspicuously so) is a concern that plaintiffs who join litigation under the one-plaintiff rule will unilaterally appeal adverse judgments. *See, e.g.*, *id.* Presumably this is because the requirement of standing to appeal would prevent such a thing. If a plaintiff lacked standing to sue at the outset, that plaintiff would also lack standing to appeal a judgment for the defendant. Only if an injured plaintiff also appealed could the uninjured plaintiff join the appeal under the one-appellant rule. *See supra* notes 43–44.

179. *See supra* note 101 and accompanying text.

180. There also seems to be scant evidence to support the objection. Courts are often happy to apply the rule, and defendants are more likely to make constitutional objections than to cite litigation burdens. *See* Steinman, *supra* note 4, at 729–30 ("[T]he failure to exclude improper plaintiffs who raise issues identical to those raised by proper plaintiffs will not impose on defendants any greater burden of defense than the proper plaintiffs alone could impose."); *see also Filazapovich I*, 560 F. Supp. 3d 203, 246 (D.D.C. 2021) (rejecting defendants' constitutional concerns). Professor Bruhl's best case appears to be *Horne v. Flores*, 557 U.S. 433 (2009), where the Supreme Court awarded costs to a petitioner whose standing to appeal it did not evaluate. *See* Bruhl, *supra* note 4, at 509. But costs on appeal are hardly the lion's share of litigation expenses, and even the respondents did not mention them in their briefing. *See* Brief for Respondents Miriam Flores and Rosa Rzeslawski at 21–23, *Horne*, 557 U.S. 433 (Nos. 08-289, 08-294).

plaintiffs and district courts control over who may participate in litigation using the one-plaintiff rule.[181] Second, the requirement of standing to enforce a judgment, which at least two courts of appeals have endorsed, would prevent uninjured plaintiffs from enforcing judgments unliterally, as critics fear they might.[182]

1. Joinder

The Federal Rules of Civil Procedure on joinder represent the first major check on the one-plaintiff rule. Three rules are particularly significant: Rule 20, on permissive party joinder; Rule 21, on misjoinder; and Rule 24, on intervention.[183]

Rule 20 allows two plaintiffs to sue together if they "assert any right to relief jointly, severally, or in the alternative" arising out of the same transaction or occurrence and raise "any" common questions of law or fact.[184] By limiting joinder in this way, Rule 20 also limits the one-plaintiff rule, as any plaintiff seeking to join a case under the latter rule would also need to satisfy the former. Moreover, Rule 20 makes the plaintiffs who have justiciable claims the gatekeepers of the complaint. If those plaintiffs refuse to join with others who cannot show standing (and so on), the others will be unable to file suit separately (and, consequently, unable to file suit at all).

Rule 21 gives the district court a veto too, authorizing it to "add or drop" a party from a case "at any time, on just terms."[185] In practice, courts use Rule 21 more often to *add* plaintiffs to

181. *See infra* Part III.B.1.

182. *See infra* Part III.B.2.

183. In theory, Federal Rule of Civil Procedure 12(b)(6) might also provide an important check, as plaintiffs who lack standing might often also fail to state a claim on which relief can be granted. But courts mostly apply the one-plaintiff rule in constitutional challenges to state and federal statutes, where the line between standing and a plaintiff's "claim for relief" is too blurry for Rule 12(b)(6) to be of much use. *See* John Harrison, *Ex Parte* Young, 60 STAN. L. REV. 989, 1020–22 (2008); Samuel L. Bray & Paul B. Miller, *Getting into Equity*, 97 NOTRE DAME L. REV. 1763, 1776 (2022); *see also* Caleb Nelson, *Intervention*, 106 VA. L. REV. 271, 291–92 (2020) (noting the "bizarre" result that "intervenors can become parties to a case as a whole without being proper parties to any claim for relief").

184. FED. R. CIV. P. 20(a).

185. FED. R. CIV. P. 21.

cure procedural and jurisdictional defects,[186] but they do sometimes use it to drop plaintiffs who lack standing.[187] Moreover, unlike justiciability, Rule 21 is discretionary, meaning that the district court may (but need not) consider whether to drop a party *sua sponte*. By contrast, the critics' plaintiff-by-plaintiff analysis could theoretically require courts to address standing issues that no party raises.[188]

Intervention works largely the same way. Would-be plaintiff-intervenors who lack standing will usually seek permissive intervention under Rule 24(b),[189] and that form of intervention

186. Mullaney v. Anderson, 342 U.S. 415, 416–17 (1952) (adding a party with Article III standing to preserve the litigation on appeal); Royal Am. Mgmt., Inc. v. WCA Waste Corp., 154 F. Supp. 3d 1278, 1286 (N.D. Fla. 2016) (same, in district court). Courts add parties under Rule 21 to cure other defects as well. *See* Visendi v. Bank of Am., 733 F.3d 863, 870 (9th Cir. 2013) (joinder); Anrig v. Ringsby United, 603 F.2d 1319, 1325 (9th Cir. 1978) (venue); *see also* Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 832–38 (1989) (holding that courts may drop parties who would destroy diversity jurisdiction so long as they are not required under Rule 19).

187. *See* M.M.V. v. Barr, 456 F. Supp. 3d 193, 221 (D.D.C. 2020); Charlatan v. Clayton Cnty., No. 19-CV-00199, 2020 WL 9598956, at *1 (M.D. Ga. Nov. 23, 2020), *report and recommendation adopted*, 2021 WL 1976631 (M.D. Ga. Apr. 20, 2021); Howell v. Kelley, No. 15CV00316, 2016 WL 420402, at *2 (E.D. Ark. Jan. 11, 2016), *report and recommendation adopted in relevant part*, 2016 WL 398175 (E.D. Ark. Feb. 1, 2016).

188. *See supra* note 146 and accompanying text. What of Rule 21's requirement that courts drop parties only on "just terms?" Rule 21 does not define that phrase, but similar rules suggest that courts should consider the plaintiff's likely contributions to the litigation. *See, e.g.*, FED. R. CIV. P. 20(b) (stating that a court may order separate trials "to protect a party against embarrassment, delay, expense, or other prejudice"); FED. R. CIV. P. 24(b)(3) (requiring that, when deciding whether to allow permissive intervention, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights"); FED. R. CIV. P. 42 (stating a court may consolidate cases "[f]or convenience, to avoid prejudice, or to expedite and economize"); *see also* Walker v. Martin, No. 20-cv-77, 2023 WL 6050231, at *2 (W.D. Ky. Sept. 15, 2023) (concluding that "just terms" refers to "equitable considerations"). If the plaintiff offers resources or expertise that will clarify the legal issues or make the case easier to manage, then the court should allow the plaintiff to remain. *See supra* note 168 (citing cases). By contrast, if the plaintiff promises only expense or delay, the court could exclude it. *See* Women's Med. Ctr. of Providence, Inc. v. Roberts, 512 F. Supp. 316, 319–20 (D.R.I. 1981) (evaluating standing for all plaintiffs because they could recover attorney's fees—but finding standing).

189. FED. R. CIV. P. 24(b). Intervention as of right under Rule 24(a) requires "an interest" in the underlying litigation. *See* FED. R. CIV. P. 24(a) (requiring

requires both a "common question of law or fact" with the main action and the district court's discretionary approval.[190] In deciding whether to give that approval, moreover, the court "must" consider whether the proposed intervenor "will unduly delay or prejudice the adjudication of the original parties' rights."[191]

These joinder rules substantially blunt critics' objections about the litigation costs generated by the one-plaintiff rule. For example, critics emphasize that the rule might allow plaintiffs without standing to recover fees and costs from a defendant.[192] But courts have wide latitude to exclude such plaintiffs when they seek only to run up the defendant's legal bills. And if the court instead finds that a coplaintiff will contribute to the litigation, and if a fee-shifting statute applies,[193] then the defendant should foot the coplaintiff's bill. The same is true of any other burden that a plaintiff admitted to litigation under the one-plaintiff rule might impose. If the plaintiff's discovery requests are meant to harass or embarrass the defendant, for example, then the court can drop that plaintiff; by contrast, if the requests seem designed to produce useful information, then their expense is not necessarily unjustified simply because they were propounded by a coplaintiff who would have lacked standing to sue in the first place.[194]

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the proposed intervenor to identify an "interest relating to the property or transaction" at issue in the lawsuit). Intervenors who prevail under this rule will often be able to show standing. *See* Nelson, *supra* note 183, at 284–94 (arguing that the requirements are distinct). But where they do not, Rule 24(a) reflects a policy judgment that they should be allowed to participate regardless, so long as they seek no new relief. *See* Sherman v. Town of Chester, 339 F. Supp. 3d 346, 360 (S.D.N.Y. 2018) (granting intervention).

190. FED. R. CIV. P. 24(b).

191. If the district court has concerns, it may permit intervention only for a specific purpose. *See* FED. R. CIV. P. 24 advisory committee's note to 1966 amendment (explaining that intervention "may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings"); David L. Shapiro, *Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators*, 81 HARV. L. REV. 721, 752 (1968) ("[S]omething short of full status as a party [sometimes] will be adequate to protect the interests of the intervener, especially if the restriction will enhance the ability of the tribunal to act without undue delay").

192. Bruhl, *supra* note 4, at 508–11, 534.

193. *See, e.g.*, 42 U.S.C. § 1988(b) (authorizing prevailing plaintiffs in civil rights cases to seek attorney's fees).

194. One could also imagine an argument in which a plaintiff who lacks standing—and who therefore might be more concerned with a case's

Finally, the one-plaintiff rule's interaction with the joinder rules solves one of the rule's more enduring mysteries. As critics have observed, even though the one-plaintiff rule deals with justiciability—a mandatory, jurisdictional requirement—courts often treat it as permissive, retaining authority to assess each plaintiff's standing as they see fit.[195] The joinder rules explain that conundrum: Justiciability *is* mandatory for at least one plaintiff, but the joinder rules effectively (and properly) give courts discretion to say which uninjured plaintiffs may remain in the litigation.

2. Judgment Enforcement

Critics also object that the one-plaintiff rule might allow uninjured plaintiffs to be parties to the court's final judgment.[196] This might matter for two reasons. First, as parties to the judgment, uninjured plaintiffs could wield and be subject to claim and issue preclusion.[197] Second, if the judgment is favorable, uninjured plaintiffs could seek to enforce it against the defendant (or so the objection goes).[198]

On closer examination, the first problem is not especially troubling. Insofar as claim and issue preclusion might *bind* uninjured plaintiffs, they undertook that risk voluntarily by joining the case.[199] And although issue preclusion might *benefit* them in

precedential impact than with securing relief for the injured parties—would complicate settlement negotiations. But Federal Rule of Civil Procedure 41 allows a plaintiff to dismiss an action voluntarily "by court order, on terms that the court considers proper." FED. R. CIV. P. 41(a)(2). So, again, the court could allow the injured plaintiff to settle with the defendant, leaving only the uninjured plaintiff, whose claims it could then dismiss for lack of standing. And if for some reason the court refused, the injured plaintiff could amend the complaint to remove its claims with the *defendant's* consent, which the defendant would freely give. FED. R. CIV. P. 15(a)(2); *see also* Perry v. Schumacher Grp. of La., 891 F.3d 954, 958 (11th Cir. 2018) (noting that an amendment under Rule 15, not voluntary dismissal under Rule 41, is the proper way to dismiss fewer than all of the claims in an action).

195. Bruhl, *supra* note 4, at 492; *see also* M.M.V. v. Garland, 1 F.4th 1100, 1110 (D.C. Cir. 2021) (affirming dismissal of plaintiffs who lacked standing).

196. *See* Bruhl, *supra* note 4, at 507–08.

197. *See, e.g.*, RESTATEMENT (SECOND) OF JUDGMENTS § 17 (AM. L. INST. 1982) ("A valid and final personal judgment is conclusive *between the parties* . . . ." (emphasis added)); *see also* Steinman, *supra* note 4, at 730 (recognizing this concern).

198. *See* Bruhl, *supra* note 4, at 507–08.

199. *See* Steinman, *supra* note 4, at 730.

a later case against the defendant (claim preclusion would not), they often would have been able to secure that benefit anyway through nonmutual issue preclusion.[200]

The second worry is more pressing. To see why, return briefly to the prison example. Suppose the court rules for the plaintiffs and orders the prison to hire more medical staff, but some years later Plaintiff 1 has died, and Plaintiff 2—who is still healthy—sues the prison for noncompliance with the injunction. Usually, any party to a judgment can initiate proceedings to enforce it,[201] but here Plaintiff 2 lacked standing at the outset and seems to have acquired no personal stake in the case in the meantime.

The Seventh Circuit confronted a problem like this in *Shakman v. Clerk of Cook County*.[202] In 2019, the Clerk of Cook County, Illinois moved to vacate a pair of consent decrees preventing her from hiring and promoting employees based on political party membership.[203] Citing changes in the law of Article III standing since the first decree was entered in 1972, the Clerk argued that the plaintiffs now lacked standing to enforce both decrees.[204] The district court denied the Clerk's motion,[205] and the Seventh Circuit affirmed.[206] Although it agreed with the Clerk that the decrees had to be vacated unless the plaintiffs could show standing to enforce them—that is, an injury traceable to the Clerk's noncompliance and redressable by an

200. *See* Blonder-Tongue Lab'ys, Inc. v. Univ. of Ill. Found., 402 U.S. 313, 327 (1971) (recognizing defensive nonmutual issue preclusion, which permits a defendant to rely on the preclusive effect of an issue decided against the plaintiff in a prior case to which the defendant was not a party); Parklane Hosiery Co. v. Shore, 439 U.S. 322, 337 (1979) (recognizing offensive nonmutual issue preclusion, which allows a plaintiff to do the same to a defendant in certain circumstances). True, by joining cases against the federal government under the one-plaintiff rule, plaintiffs who lack standing could circumvent the rule that nonmutual issue preclusion does not apply against the federal government. United States v. Mendoza, 464 U.S. 154, 158 (1984). But that rule been widely criticized. *See generally* Clopton, *supra* note 30.

201. *See* Steinman, *supra* note 4, at 730.

202. 994 F.3d 832, 835 (7th Cir. 2021).

203. *Id.*

204. *Id.* at 840. The plaintiffs were an independent political candidate who allegedly refused to engage in political patronage, a class of similarly situated independent candidates and their voters, and an organization comprised of such voters. *Id.*

205. *Id.* at 838.

206. *Id.* at 844.

enforcement order—the Seventh Circuit held that at least one plaintiff had made that showing.[207] In other words, the court applied what we might call the "one-judgment-plaintiff rule": It looked for at least one plaintiff with standing to enforce the decrees in 2019—not fifty years earlier, when the original plaintiffs first sought them.[208]

The Seventh Circuit's one-judgment-plaintiff rule makes sense. In many ways, it is analogous to the one-appellant rule, which requires at least one appellant to show an injury traceable to the lower court's judgment and redressable by its reversal.[209] Like an appeal, a proceeding to enforce a judgment is often separate from the initial suit, and it sometimes proceeds in a different court.[210] Moreover, just as the one-appellant rule ensures that a plaintiff admitted to a case under the one-plaintiff rule cannot unilaterally appeal an unfavorable judgment,[211] the one-*judgment*-plaintiff rule ensures that the same plaintiff cannot unilaterally enforce a favorable judgment. Thus, in our prison example, if Plaintiff 2 is still healthy when he sues to enforce the judgment, he will lack standing to prosecute that proceeding. By contrast, if he has since fallen ill, he *will* have standing, even though he would have lacked standing to sue at the outset.

Why does this result matter? Suppose that in our example Plaintiff 1 has died, Plaintiff 2 is still healthy, but a third

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207. *Id.* at 840–41. That plaintiff was an organization of independent voters, at least one of whose members was a current Cook County employee. *See id.*

208. *Id.* at 841. At least one other court of appeals has taken a similar approach. *See* Cadle Co. v. Neubauer, 562 F.3d 369, 371 (5th Cir. 2009) (affirming the denial of a motion to vacate an order that substituted a new judgment creditor as plaintiff following registration of an Arizona district court judgment, but only after assessing the new judgment creditor's standing); *see also* Planned Parenthood of Idaho, Inc. v. Wasden, 376 F.3d 908, 918 n.6 (9th Cir. 2004) ("Only a proper party to an action can enforce an injunction that results from a final judgment."); Lasky v. Quinlan, 558 F.2d 1133, 1137 (2d Cir. 1977) (vacating a consent decree concerning jail conditions where the original plaintiffs were no longer incarcerated at the jail but suggesting that Federal Rule of Civil Procedure 71 "may support a separate action by a present inmate to enforce the order obtained by the plaintiffs").

209. *See supra* notes 43–44 and accompanying text.

210. *See, e.g.*, 28 U.S.C. § 1738A (providing that a judgment plaintiff may enforce a state-court judgment by filing a new proceeding in federal court); *cf.* FED. R. CIV. P. 69 (outlining procedures for enforcing money judgments); FED. R. CIV. P. 70 (providing expedited procedures for enforcing federal-court judgments by registration).

211. *See supra* note 178.

incarcerated person, Plaintiff 3, has fallen ill and is receiving inadequate medical care in violation of the court's order. Under the proposed approach, Plaintiff 3 would have standing to enforce the judgment even though he was not a party to the original suit.[212] Moreover, under the one-judgment-plaintiff rule, Plaintiff 2 could join the enforcement action despite still being healthy—just as he joined Plaintiff 1's suit initially. In short, this rule prevents the prison's obligations from lapsing because of Plaintiff 1's death, while still requiring at least one person to show a present injury to support enforcement of the court's prior order.

C. MODIFICATIONS

As many scholars have noted, states have recently taken on an outsized role in public-law litigation against the federal government.[213] Critics of this trend attribute it primarily to the Supreme Court's increasingly permissive state standing doctrine, which allows state attorneys general—who are often popularly elected and so arguably the quintessential ideological litigants—

212. *See Shakman*, 994 F.3d at 841 (noting that the voters' organization formally joined the litigation the year *after* the decrees were entered, confirming that the relevant time was the time of enforcement). Procedurally, he could accomplish this by filing a motion in the original case under Federal Rule of Civil Procedure 71, which says that "[w]hen an order grants relief for a nonparty . . . the procedure for enforcing the order is the same as for a party." FED. R. CIV. P. 71; *see* Floyd v. Ortiz, 300 F.3d 1223, 1224 (10th Cir. 2002) (allowing an incarcerated person to enforce a consent decree under Rule 71 even though he was not a party to the original case).

213. *See generally* Davis, *supra* note 66; Woolhandler & Collins, *supra* note 66; Baude & Bray, *supra* note 4; Jessica Bulman-Pozen, *Federalism All the Way up: State Standing and "The New Process Federalism*,*"* 105 CALIF. L. REV. 1739 (2017); F. Andrew Hessick & William P. Marshall, *State Standing to Constrain the President*, 21 CHAP. L. REV. 83 (2018); Jonathan Remy Nash, *Sovereign Preemption State Standing*, 112 NW. U. L. REV. 201, 202 (2017); Shannon M. Roesler, *State Standing to Challenge Federal Authority in the Modern Administrative State*, 91 WASH. L. REV. 637, 638 (2016); Ann Woolhandler & Michael G. Collins, *State Standing*, 81 VA. L. REV. 387, 389 (1995). For a recent symposium on the topic, see, for example, Tara Leigh Grove, *Foreword: Some Puzzles of State Standing*, 94 NOTRE DAME L. REV. 1883, 1888 (2019); Ernest A. Young, *State Standing and Cooperative Federalism*, 94 NOTRE DAME L. REV. 1893 (2019); Seth Davis, *The Private Rights of Public Governments*, 94 NOTRE DAME L. REV. 2091 (2019).

to drive hot-button issues into the federal courts.[214] But a secondary culprit is the one-plaintiff rule, which allows states to band together in large, politically homogenous coalitions based only on one state's often tenuous claim of injury.[215] Democratic and Republican state attorneys general alike have mounted challenges to their opponents' federal policies, often relying on the one-plaintiff rule to establish standing and to sue alongside friendly states.[216]

Only the Supreme Court can retool substantive state standing doctrine.[217] But under minimal justiciability, Congress can reduce the one-plaintiff rule's complicity in the problem. Specifically, Congress could require that, when two or more states join together to sue the federal government, each state must show Article III standing, mootness, and ripeness separately.[218] Such a rule would fall squarely within Congress's constitutional authority: Just as Congress can require complete *diversity* in some cases but not others,[219] so too can Congress require complete *justiciability* where it sees fit. And although the merits of this proposal are beyond this Article's scope, minimal justiciability at least clears the way for a potential legislative solution to this problem.

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214. *See* Davis, *supra* note 66, at 1234; Woolhandler & Collins, *supra* note 66, at 2026. *But see* Ahdout, *supra* note 66 (arguing that these suits can counter "enforcement lawmaking" by the executive branch).

215. *See* Davis, *supra* note 66, at 1234 n.19; Woolhandler & Collins, *supra* note 66, at 2026.

216. *See, e.g.*, Biden v. Nebraska, 143 S. Ct. 2355, 2365–68 (2023) (student loan reform); Dep't of Com. v. New York, 139 S. Ct. 2551, 2565 (2019) (citizenship question); Trump v. Hawaii, 138 S. Ct. 2392, 2416 (2018) (travel ban); Massachusetts v. EPA, 549 U.S. 497, 516–18 (2007) (EPA's failure to promulgate regulations); *see also* Texas v. United States, 809 F.3d 134, 151 (5th Cir. 2015) (Deferred Action for Parents of Americans, or DAPA), *aff'd per curiam by an equally divided court*, 579 U.S. 547 (2016).

217. *See* Baude & Bray, *supra* note 4, at 154 (predicting that the Court may do so).

218. Alternatively, the Supreme Court could amend the Federal Rules of Civil Procedure to impose additional joinder requirements on states. *See* FED. R. CIV. P. 20(a) (setting out the current requirements). And procedural rules can take effect without Congress's express approval, potentially allowing reformers to circumvent what might otherwise be a cumbersome legislative process. 28 U.S.C. § 2072.

219. Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 553–54 (2005).

IV. DOCTRINAL IMPLICATIONS

Parts II and III defended the one-plaintiff rule as a matter of constitutional law and procedural policy. This Part leverages the insights derived from that defense—including the minimal justiciability reading of Article III and the associated concept of remedial incorporation—to clarify justiciability's application in three complex scenarios: suits for universal relief, class actions, and intervention by defendants against whom no relief is sought.

A. UNIVERSAL RELIEF

Although *Laroe* is the Supreme Court's most recent word on the one-plaintiff rule, it is the unusual one-plaintiff-rule case in that it involved a claim for damages.[220] Far more often, courts apply the rule in suits for injunctive and other nonmonetary relief—and especially for so-called "universal" injunctions, which forbid an official to enforce a law against anyone, not just the plaintiffs.[221] Plaintiffs seeking this and other forms of universal relief implicitly rely on the one-plaintiff rule, treating their sought-after relief as a one "remedy" that calls for only one showing of standing and a live, ripe claim.[222]

On this Article's account, Article III is agnostic on the propriety of universal relief. If the applicable remedial law would allow one plaintiff to seek such a remedy, then under the principle of remedial incorporation it is one "remedy," and only one plaintiff needs to show standing and a live, ripe claim for it.[223]

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220. Town of Chester v. Laroe Ests., Inc., 137 S. Ct. 1645, 1648–50 (2017).

221. *See, e.g.*, Bray, *supra* note 4, at 419 (explaining the concept of universal injunctions); *see also supra* note 30 (canvassing the debate).

222. *See* Mila Sohoni, *The Power to Vacate a Rule*, 88 GEO. WASH. L. REV. 1121, 1122–23 (2020) (discussing "universal vacatur" under the Administrative Procedure Act). Many of the Supreme Court's recent one-plaintiff-rule cases involved claims for universal relief. *See* Biden v. Nebraska, 143 S. Ct. 2355, 2365 (2023) (noting a "nationwide preliminary injunction" against a student debt relief plan); Dep't of Com. v. New York, 139 S. Ct. 2551, 2574–76 (2019) (affirming a nationwide vacatur of decision to adopt a citizenship census question); Trump v. Hawaii, 138 S. Ct. 2392, 2423 (2018) (reversing a nationwide preliminary injunction against a travel ban but declining to hold that it was overbroad).

223. For example, some courts have read the Administrative Procedure Act's instruction to "set aside" unlawful agency action, 5 U.S.C. § 706(2), as authorizing nationwide vacatur of agency rules. *See* Sohoni, *supra* note 222, at 1123–24; *see also* New York v. U.S. Dep't of Homeland Sec., 969 F.3d 42, 87 (2d Cir. 2020) ("[C]ourts have long held that when an agency action is found unlawful under the APA, 'the ordinary result is that the rules are vacated—not that their

By contrast, if the applicable remedial law were to limit universal relief, the one-plaintiff rule would incorporate those limits. Thus, for example, if Congress were to say that federal courts may enjoin the enforcement of laws only in the judicial district where at least one plaintiff lives,[224] then an injunction barring a law's enforcement in one district would be a different "remedy" than an injunction barring its enforcement in another, and a group of plaintiffs who sought both would have to show standing and a live, ripe claim for each. Or if the Supreme Court were to hold as a matter of federal equity that an injunction can benefit only parties,[225] then a plaintiff seeking a universal injunction would in fact seek at least two different remedies—one for the plaintiff and one for nonparty beneficiaries—and Article III would require a showing of standing for both (and thus bar the latter doubly, on constitutional as well as remedial grounds).

That being said, on this Article's account, Article III does not categorically forbid universal relief.[226] Other parts of the Constitution may limit the courts' power to afford (and Congress's power to authorize) universal relief,[227] and such relief may also run afoul of nonconstitutional principles of federal equity.[228] But

application to the individual petitioners is proscribed.'" (quoting Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs, 145 F.3d 1399, 1409 (D.C. Cir. 1998))). If that reading is correct, then the APA is an example of a legislatively authorized universal remedy.

224. *See, e.g.*, Siddique, *supra* note 30, at 2141 (proposing that the geographic scope of universal relief be "no further than necessary to provide complete relief"); *see also* Gill v. Whitford, 138 S. Ct. 1916, 1930 (2018) (ruling that gerrymandering plaintiffs may seek relief only for their legislative districts).

225. *See* Bray, *supra* note 4, at 471–72 (defending such a rule).

226. Most critics urge statutory or equitable limits, although some urge constitutional ones too. *See, e.g.*, Trump v. Hawaii, 138 S. Ct. at 2425 n.2 (Thomas, J., concurring) ("Even if Congress someday enacted a statute that clearly and expressly authorized universal injunctions, courts would need to consider whether that statute complies with the limits that Article III places on the authority of federal courts."); Bray, *supra* note 4, at 471–73 (arguing that equity's historical traditions bar nonparty relief but also citing Article III); Morley, *supra* note 30, at 524 (relying on Article III); *see also* Pedro, *supra* note 30, at 690–701 (taxonomizing objections to universal injunctions by source of law).

227. The most obvious example here is the requirement of notice and opt-out in damages class actions, which due process requires. Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985) ("[W]e hold that due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an 'opt out' or 'request for exclusion' form to the court.").

228. Bray, *supra* note 4, at 471–73.

so long as a universal remedy redresses one plaintiff's injury, the question whether it may also prevent harm to others is for those rules, not standing doctrine.[229]

B. CLASS ACTIONS

Minimal justiciability also resolves persistent confusion over the role of Article III standing in class actions for declaratory or injunctive relief.[230] The Supreme Court applies a version of the one-plaintiff rule in class actions, holding that at least one class representative must show standing for each remedy sought in the class complaint.[231] In making that showing, the class representatives may not rely on injuries suffered by absentees.[232]

Occasionally, the Court has suggested that, in class actions for declaratory or injunctive relief, the representatives must also show that the absentees' injuries-in-fact are sufficiently related to their own. For example, in *Blum v. Yaretsky*, a group of Medicaid beneficiaries sued on behalf of a class of Medicaid-eligible

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229. *See* Trammell, *supra* note 30, at 981 ("Standing presents a quintessential threshold question, whereas the appropriate scope of remedy—including whether a remedy may directly benefit a nonparty—is a logically distinct matter."); Frost, *supra* note 30, at 1083 ("In short, standing is required to get into federal court, but it does not govern the scope of the remedy a court may issue."). The question whether other aspects of Article III might limit universal relief remains open. *See, e.g.*, Younger v. Harris, 401 U.S. 37, 43–45 (1971) (grounding the limit on federal injunctive relief against state criminal proceedings in "Our Federalism" and English equity practice); *cf.* Juliana v. United States, 947 F.3d 1159, 1171 (9th Cir. 2020) (concluding that Article III prohibits injunction directing federal government to address climate change).

230. *See* FED. R. CIV. P. 23(b)(2) (authorizing such class actions). In a damages class action under Rule 23(b)(3), there is no such confusion, as the Supreme Court has said that each plaintiff, including the absentees, must eventually show standing. *See* TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2208 (2021) ("Every class member must have Article III standing in order to recover individual damages."); *see also id.* at 2208 n.4 (reserving the question whether they must do so before the class is certified).

231. *See* RUBENSTEIN, *supra* note 157, § 2:3.

232. *See, e.g.*, Simon v. E. Ky. Welfare Rts. Org., 426 U.S. 26, 40 (1976) ("Our decisions make clear that an organization's abstract concern with a subject that could be affected by an adjudication does not substitute for the concrete injury required by Art. III."); Warth v. Seldin, 422 U.S. 490, 502 (1975) ("Petitioners must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent."). *But see* Sosna v. Iowa, 419 U.S. 393, 402 (1975) (holding that absentees can support the class action if the named plaintiffs' claims later become moot).

nursing home residents in New York, challenging the state's procedures for transferring patients to different levels of care.[233] The district court certified the class and enjoined the state to follow certain procedures before transferring patients between levels of care.[234] The Second Circuit affirmed, but the Supreme Court reversed, holding that the class representatives—all of whom stood to be transferred to *lower* (i.e., less intensive) levels of care—lacked "standing" to assert claims on behalf of patients who sought transfer to *higher* levels of care.[235] According to the Court, the latter transfers—which generally cost the state more, not less—raise "sufficiently different" concerns that "any judicial assessment of their procedural adequacy would be wholly gratuitous and advisory."[236]

Two decades later, the Court reached the opposite result in *Gratz v. Bollinger*.[237] There, two freshman applicants sued after being denied admission to the University of Michigan's undergraduate program, arguing that the University's use of race in admissions violated their equal protection rights.[238] The district court certified a class of rejected applicants in "[certain] racial or ethnic groups, including Caucasian,"[239] but it concluded that the University's current policies were lawful and denied the plaintiffs' request for injunctive relief.[240] The Supreme Court reversed, rejecting the argument that the plaintiff whom the district court had designated as the class representative lacked standing to challenge the University's *freshman* admissions policies, because he had since enrolled as a freshman elsewhere and intended to reapply only as a *transfer* student.[241] At the outset, the Court doubted whether the "relevance of this variation, if any, is a matter of Article III standing at all or whether it goes to the propriety of class certification."[242] But either way, the

233. 457 U.S. 991, 1000–01 (1982).

234. *Id.* at 996–97.

235. *Id.* at 998, 999–1002.

236. *Id.* at 1001.

237. 539 U.S. 244, 265 (2003).

238. *Id.* at 251–52.

239. *Id.* at 252–53.

240. *Id.* at 259.

241. *Id.* at 262–68 (rejecting the argument that the class representative lacked standing because he intended to reapply only as a transfer student); *see also id.* at 285–92 (Stevens, J., dissenting) (making this argument).

242. *Id.* at 263 (majority opinion).

Court concluded, there was no standing barrier because the University used race similarly in the two admissions processes, and so—unlike in *Blum*—they did not raise "significantly different set[s] of concerns."[243]

Lower courts have struggled to make sense of *Blum* and *Gratz*. Most courts follow *Gratz*'s suggestion that issues of relatedness go to class certification and hold that Article III is satisfied if at least one class representative shows standing for each claim in the class complaint.[244] Others have sought to follow *Blum*, holding that class representatives must show that their injuries are sufficiently related to the absentees'.[245]

Minimal justiciability suggests that neither approach is quite right. Absentees cannot create standing, so they are functionally equivalent to parties who lack standing but have joined the litigation under the one-plaintiff rule and stand to benefit from the court's remedial order (like Plaintiff 2 in our prison example). Accordingly, to ask whether a class representative must show "standing" for relief that benefits an absentee is to ask

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243. *Id.* at 265.

244. The leading case is *Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410 (6th Cir. 1998), where the Sixth Circuit held that a participant in an employer-sponsored healthcare plan had standing to sue on behalf of a class of participants in all other healthcare plans offered by the employer. *See id.* at 423; *see also* Prado-Steiman *ex rel.* Prado v. Bush, 221 F.3d 1266, 1280 (11th Cir. 2000) (remanding for the district court "to ensure that at least one named representative of each class or subclass has standing for each proffered class or sub-class claim"); Melendres v. Arpaio, 784 F.3d 1254, 1262 (9th Cir. 2015) ("[A]ny issues regarding the relationship between the class representative and the passive class members—such as dissimilarity in injuries suffered—are relevant only to class certification, not to standing." (citation omitted)); Boley v. Universal Health Servs., Inc., 36 F.4th 124, 133 (3d Cir. 2022) ("[C]oncerns regarding the representation of absent class members might implicate class certification or damages but are distinct from the requirements of Article III.").

245. Here, the leading case is NECA-IBEW Health & Welfare Fund v. Goldman Sachs, 693 F.3d 145 (2d Cir. 2012). There, the Second Circuit held that a plaintiff who bought residential-mortgage-backed securities from an investment bank lacked standing to pursue securities-fraud claims against the bank on behalf of a class of purchasers of similarly misleading, but distinct, investments. *See id.* at 162; *see also In re* Asacol Antitrust Litig., 907 F.3d 42, 48–50 (1st Cir. 2018) (similar). For an overview of the two approaches, see Angell v. GEICO Advantage Ins. Co., 67 F.4th 727, 734–35 (5th Cir. 2023) (certification proper under either approach); Chavez v. Plan Benefit Servs., Inc., 108 F.4th 297, 297–98 (5th Cir. 2024) (same); RUBENSTEIN, *supra* note 157, § 2:6. *See generally* Jacqueline Dewart, Note, *Class Standing Analysis: The Requirements of Article III and Rule 23*, 9 ST. THOMAS J. COMPLEX LITIG. 87 (2023).

whether the representative and the absentee seek the same "relief" under the one-plaintiff rule. And the answer to that question depends, in turn, on the result of the remedial incorporation analysis—that is, whether the court could order that relief in a hypothetical non-class action brought by the class representative alone.[246] If it could, then the representative's standing satisfies Article III, and Rule 23 is the only hurdle; if it could not, then the absentee must join the case and show standing whether or not Rule 23 would permit class certification.

On this view, *Blum* and *Gratz* are not about standing in class actions but rather about the proper scope of federal remedial authority. *Blum* is best read to reflect an implicit judgment that a lower-level transferee could not have sought relief to benefit higher-level transferees in a non-class action, meaning that the injunctions for the two groups were two different "remedies," each calling for its own showing of standing.[247] By contrast, *Gratz* represents the opposite determination that, in a non-class action brought by the transfer student alone, a federal court *would* have remedial authority to issue an injunction that constrains the University not only as to transfer admissions but also as to freshman admissions.[248] The inquiry in both cases is simply a flexible, context-specific judgment about the scope of federal remedial power.

This insight has major implications for the relationship between standing and remedies even beyond the class-action context. For example, in *Lewis v. Casey*, the Supreme Court vacated an injunction directing prisons in Arizona to improve access to law libraries and legal representation for their incarcerated populations, holding that the injuries shown by the two class representatives—people incarcerated in different prisons who could not read or write and so could not effectively pursue legal claims—did not support an order covering all of the state's prisons.[249] But the Court explained that its holding "[did] not rest upon the application of standing rules," and that the applicable remedial principles were "no less true with respect to class

246. *See supra* Part II.C (describing the remedial incorporation analysis).

247. *See* Blum v. Yaretsky, 457 U.S. 991, 1001–02 (1982).

248. Gratz v. Bollinger, 539 U.S. 244, 264–65 (2003).

249. 518 U.S. 343, 359–60 (1996) (explaining that "[t]he constitutional violation has not been shown to be systemwide").

actions than with respect to other suits."[250] And sure enough, the Court later applied those principles in *Gill v. Whitford*, a non-class action where the Court held that partisan gerrymandering claims must proceed "district-by-district."[251] Each of these cases—*Blum*, *Gratz*, *Lewis*, and *Gill*—is best read as concerning the proper scope of relief, a matter fixed by subconstitutional principles that filter into the justiciability analysis through remedial incorporation.[252]

A key feature of this conclusion is that—once again—it allows Congress to set the proper scope of relief in both class and non-class actions. If *Blum*, *Gratz*, *Lewis*, and *Gill* are decisions about remedies, then Congress could override them, authorizing program-wide relief in Medicare transfer cases, systemwide relief in conditions of confinement cases, or statewide relief in gerrymandering cases (or barring schoolwide relief in affirmative action cases). That is not to say, of course, that Congress's power in this area is unlimited; Congress would still have to comply with the demands of due process, which might require notice to the affected beneficiaries and some opportunity to opt out.[253] But Article III standing doctrine would be no bar.

C. INTERVENTION BY DEFENDANTS

Minimal justiciability also sheds light on standing's application to defendant-intervenors. In *Laroe*, the Supreme Court held that a plaintiff-intervenor must show standing in the same manner as an initial plaintiff.[254] But the Court has never said whether defendants must show standing to intervene, and some courts and commentators think they must.[255]

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250. *Id.* at 357, 360 n.7.

251. 138 S. Ct. 1916, 1934 (2018) (citing Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254, 264 (2015)).

252. And although these cases tell courts to consider the plaintiff's injury-in-fact when ordering relief, *see supra* note 131 and accompanying text, that instruction is itself a remedial principle that may be balanced against other concerns, like fairness and the practical realities of administering relief.

253. *Cf.* Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811–12 (1985) (requiring these protections for damages class actions under Rule 23(b)(3)).

254. Town of Chester v. Laroe Ests., Inc., 137 S. Ct. 1645, 1651 (2017).

255. Matthew I. Hall, *Standing of Intervenor-Defendants in Public-Law Litigation*, 80 FORDHAM L. REV. 1539, 1550 (2012) (arguing that an intervening defendant must show standing); *see, e.g.*, Old Dominion Elec. Coop. v. Fed. Energy Regul. Comm'n, 892 F.3d 1223, 1232–33 (D.C. Cir. 2018) (adhering to pre-*Laroe*

Minimal justiciability rejects that view. If Article III requires only one plaintiff with standing for each remedy sought, then just as a plaintiff-intervenor who seeks no new relief need not show standing, neither does a defendant-intervenor against whom no new relief is sought.[256] This view is largely consistent with the Supreme Court's cases on the issue,[257] and it treats plaintiffs and defendants the same. There is no "one-defendant rule" (because there is no such thing as standing to defend), but when the Court applies the redressability prong of standing, it asks whether the plaintiff has identified at least one defendant against whom relief redressing her injury might run.[258] In other words, under current doctrine, *at least one plaintiff* must show that each remedy will redress an injury caused by *at least one defendant*. By contrast, a requirement of standing to defend would anomalously demand that each defendant-intervenor

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circuit precedent holding that intervenor-defendants must show standing); Sierra Club v. Entergy Ark. LLC, 503 F. Supp. 3d 821, 849–50 (E.D. Ark. 2020) (citing Liddell v. Special Admin. Bd., 894 F.3d 959, 964 (8th Cir. 2018)) (same).

256. Of course, if a plaintiff later asserts a claim against the defendant-intervenor, the plaintiff (not the defendant-intervenor) must show standing and a live, ripe claim for the relief sought.

257. Nearly all of the cases cited by the leading scholarly account involved a defendant showing standing to appeal, which is a separate requirement. *See* Hall, *supra* note 255, at 1553–56 (first citing Diamond v. Charles, 476 U.S. 54, 69 (1986); then citing ASARCO Inc. v. Kadish, 490 U.S. 605, 618 (1989); and then citing City of Erie v. Pap's A.M., 529 U.S. 277, 288 (2000)); *see also* Arizonans for Off. Eng. v. Arizona, 520 U.S. 43, 64 (1997) (mentioning standing "to sue or defend" but indicating parenthetically that it meant "standing to defend *on appeal*" (emphasis added) (first citing Ne. Fla. Chapter of the Associated Gen. Contractors of Am. v. City of Jacksonville, 508 U.S. 656, 663–64 (1993); and then citing *Diamond*, 476 U.S. at 56)). In *McConnell v. FEC*, the Court refused to reverse on Article III standing grounds the district court's order allowing Members of Congress to intervene as defendants in a challenge to the Bipartisan Campaign Reform Act (BCRA), holding that it was unnecessary to address the argument because the FEC (also a defendant) had "standing." 540 U.S. 93, 233 (2003). But this two-sentence paragraph is best read as reserving the question whether an intervenor under Federal Rule of Civil Procedure 24(a) must show standing (BCRA gave Members of Congress an unconditional right to intervene), not ruling without substantial discussion that Article III standing requirements apply to defendants and plaintiffs alike. *See id.* at 233 (citing *Diamond*, 476 U.S. at 68–69 n.21) (noting parenthetically that it "reserv[ed the Rule 24(a)] question for another day"); *see also* Order Granting Motion to Intervene at 5–6, 8, McConnell v. FEC, 251 F. Supp. 2d 176 (D.D.C. 2003) (No. 02-582) (assuming without deciding that standing applied and concluding it was satisfied).

258. Franklin v. Massachusetts, 505 U.S. 788, 803 (1992).

show standing to remain in the litigation, while simultaneously calling for only one showing of standing per remedy from the plaintiffs' side.

Incidentally, this view saves the so-called "enforce-but-don't-defend" strategy from a potentially fatal flaw. Per that strategy, a government official who concludes that a law is unconstitutional enforces it but refuses to defend it in court.[259] This maneuver helpfully reconciles departmentalism with the official's duty to enforce the law, but it creates a prudential standing problem: Any pre-enforcement suit to obtain judicial review of the law would involve two nominally opposing parties who agree that the law is invalid.[260] Thus, the challenger would have constitutional standing,[261] but the suit's collusive nature would counsel dismissal on prudential grounds.[262]

This problem appeared in *United States v. Windsor*, in which both the plaintiff and the Obama Administration agreed that the Defense of Marriage Act (DOMA) was

259. United States v. Windsor, 570 U.S. 744, 760–62 (2013) (invalidating the Defense of Marriage Act, which the federal government had enforced but refused to defend); Immigr. & Naturalization Serv. v. Chadha, 462 U.S. 919, 939–40 (1983) (invalidating a statute allowing one House of Congress to direct an individual's deportation, which the federal government had enforced but refused to defend); Hollingsworth v. Perry, 570 U.S. 693, 702 (2013) (upholding Proposition 8, which California had enforced but refused to defend). For commentary, see Aziz Z. Huq, *Enforcing (But Not Defending) 'Unconstitutional' Laws*, 98 VA. L. REV. 1001, 1007 (2012) (arguing the executive branch favors "enforcement-litigation gaps" for Article II issues only); Neal Devins & Saikrishna Prakash, *The Indefensible Duty to Defend*, 112 COLUM. L. REV. 507, 510 (2012) (positing the duty to defend is not constitutionally mandated). For discussion of enforce-but-don't-defend and the one-plaintiff rule, see Ryan W. Scott, *Circumventing Standing to Appeal*, 72 FLA. L. REV. 741, 779–80 (2020) (describing the benefit of intervenor-defendants for standing to appeal a judgment when the state court believes their law to be unconstitutional).

260. *See, e.g.*, *Chadha*, 462 U.S. at 939 (noting that Chadha and the federal government agreed that the law requiring Chadha's deportation was unconstitutional).

261. *See id.* (holding that the government's agreement that the deportation law was unconstitutional did not affect its standing to appeal the lower court's judgment of unconstitutionality); *Windsor*, 570 U.S. at 757–58 (similar).

262. *See Windsor*, 570 U.S. at 759–60 (quoting *Chadha*, 462 U.S. at 940 n.12) (characterizing the adverseness requirement as a rule of "prudential standing"). *See generally* WRIGHT ET AL., *supra* note 3, § 3530 ("The principle remains today that if both parties affirmatively desire the same result, no justiciable case is presented.").

unconstitutional.[263] To ensure the statute received a capable defense, the Bipartisan Legal Advocacy Group (BLAG)—an entity created by the U.S. House of Representatives to represent its interests in court—moved to intervene as a defendant.[264] The district court granted the motion,[265] and that court and the Second Circuit both ruled for the plaintiff.[266] BLAG then used the one-appellant rule to join the government's petition for certiorari, and it ultimately defended the law before the Supreme Court.[267]

None of that would have been possible if the district court had required BLAG to show standing to intervene. BLAG stood to suffer no "injury" from DOMA's invalidation, so it would have lacked standing, and the adverseness problem would have resurfaced and jeopardized the case once again.[268] Minimal justiciability avoids this result and confirms what the district court in *Windsor* rightly perceived: Would-be defendants need not show standing to intervene.[269]

CONCLUSION

To coexist, justiciability and procedure need boundaries. The one-plaintiff rule provides that boundary for issues of joinder and remedies, marking the line where justiciability's separation-of-powers concerns end and Article III's concern for

263. *Windsor*, 570 U.S. at 759.

264. *Id.* at 754.

265. Windsor v. United States, 797 F. Supp. 2d 320, 325 (S.D.N.Y. 2011).

266. Windsor v. United States, 699 F.3d 169, 188 (2d Cir. 2012).

267. *Windsor*, 570 U.S. at 761.

268. A somewhat similar result obtained in *Hollingsworth v. Perry*, 570 U.S. 693 (2013), the challenge to California's ban on same-sex marriage. *Id.* at 697–98. The district court allowed the ban's supporters to intervene as defendants, but the state did not appeal the district court's favorable decision, and the Supreme Court held that, under the one-appellant rule, the supporters could not appeal on their own. *Id.* at 702, 707; *see* T. Patrick Cordova, Note, *The Duty to Defend and Federal Court Standing: Resolving a Collision Course*, 73 N.Y.U. ANN. SURV. AM. L. 109, 143 (2017) (criticizing the decision for foreclosing judicial review).

269. In truth, the district court followed the Second Circuit's pre-*Laroe* precedent and held that *no* intervenors have to show standing. *Windsor*, 797 F. Supp. 2d at 325. *Laroe* abrogated that rule for plaintiff-intervenors, but minimal justiciability confirms its validity for defendant-intervenors. For the view that parties may not intervene only to seek judicial review in suits for universal relief, see Monica Haymond, *Intervention and Universal Remedies*, 91 U. CHI. L. REV. 1859, 1864 (2024).

Congress's legislative power over jurisdiction, procedure, and remedies begins.

Recent criticism of the one-plaintiff rule blurs this line between constitutional and procedural law. Departing from Article III's ordinary stance of deference towards Congress, critics offer a code-like reading that controls not only what kinds of cases courts may decide but also who may join those cases and what relief may issue. But that model of justiciability's role has no clear limiting principle, threatening to engulf Congress's flexible power over procedure in a thicket of constitutional doctrine.

Minimal justiciability avoids that mistake. It folds justiciability into Article III's larger scheme for federal-court procedure, which envisions wide spheres of legislative control bounded only by distant constitutional minima. By placing the one-plaintiff rule on surer footing, it saves courts time and allows uninjured plaintiffs to vindicate both practical and dignitary interests. And it has robust doctrinal implications, clarifying Congress's power to change the one-plaintiff rule and revealing the rule's role in matters like universal relief, class actions, and intervention. For all these reasons, courts should embrace minimal justiciability, reject calls to abandon the one-plaintiff rule, and deploy the rule to clarify justiciability's role in complex, multiparty situations.

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