

How *Town of Chester v. Laroe Estates, Inc.* Turned the One-Good-Plaintiff Rule into the One-Good-Remedy Rule

JESSE D.H. SNYDER*

TABLE OF CONTENTS

I.	INTRODUCTION	706
II.	ARTICLE III STANDING AND THE ONE-GOOD-PLAINTIFF RULE	709
	A. <i>Federal Courts are Limited to Cases or Controversies</i>	710
	B. <i>Fomenting the Idea that One Plaintiff is Good Enough</i>	713
III.	TOWN OF CHESTER: NOT JUST A CASE ABOUT INTERVENORS	721
	A. <i>How a Land Development Project Turned Into a Lawsuit About Standing</i>	722
	B. <i>Town of Chester and the Rise of the One-Good-Remedy Rule</i>	726
IV.	THE RIPPLING EFFECTS OF TOWN OF CHESTER ON DAMAGES, PRELIMINARY INJUNCTIONS, AND LITIGATION ADMINISTRATION	730
V.	CONCLUSION	737

* © Jesse D.H. Snyder. 2016–2017 to the Honorable Eugene E. Siler, Jr., of the United States Court of Appeals for the Sixth Circuit; 2015–2016 Law Clerk to the Honorable Jimmie V. Reyna of the United States Court of Appeals for the Federal Circuit; 2012–2013 Law Clerk to the Honorable Jorge A. Solis of the United States District Court for the Northern District of Texas. I earned my J.D., *summa cum laude*, from Texas Wesleyan University and my B.S. from the United States Air Force Academy. While in law school, I served as editor-in-chief of the *Texas Wesleyan Law Review*. I would like to commend the top-notch efforts of James de Haan, Preston Bennett, and the entire staff of the *San Diego Law Review*. I would also like to thank my wife, Amy, for all her support over the years.

I. INTRODUCTION

Twenty-six states in 2014 joined a lawsuit challenging the implementation of President Barack H. Obama's immigration program to defer certain deportation consequences for particular subsets of immigrants and residents.¹ The U.S. Court of Appeals for the Fifth Circuit concluded that the states had standing to participate in the lawsuit because Texas—by itself—satisfied the rigors of Article III.² In another lawsuit filed in 2017, certain states, organizations, and individuals challenged President Donald J. Trump's executive orders on immigration.³ Although the Ninth Circuit addressed the standing component for each plaintiff,⁴ in another case involving a different group of plaintiffs, the Fourth Circuit followed the approach taken by the Fifth Circuit, satisfying the constitutional inquiry based on the status of one of several plaintiffs.⁵ To refresh, Article III circumscribes the

1. *Texas v. United States*, 809 F.3d 134, 146 (5th Cir. 2015) (“Twenty-six states . . . challenged DAPA under the Administrative Procedure Act . . . and the Take Care Clause of the Constitution; in an impressive and thorough Memorandum Opinion and Order issued February 16, 2015, the district court enjoined the program on the ground that the states are likely to succeed on their claim that DAPA is subject to the APA’s procedural requirements.” (footnotes omitted)).

2. *Id.* at 155, 162 (“At least one state—Texas—has satisfied the first standing requirement by demonstrating that it would incur significant costs in issuing driver’s licenses to DAPA beneficiaries. . . . The states have standing.”).

3. *Hawaii v. Trump*, 859 F.3d 741, 760 (9th Cir. 2017) (per curiam) (“The State of Hawai’i . . . filed a motion for a TRO seeking to enjoin EO1, which the District of Hawai’i did not rule on because of the nationwide TRO entered in the Western District of Washington. After EO2 issued, the State filed an amended complaint challenging EO2 in order ‘to protect its residents, its employers, its educational institutions, and its sovereignty.’ Dr. Elshikh, the Imam of the Muslim Association of Hawai’i, joined the State’s challenge because the Order ‘inflicts a grave injury on Muslims in Hawai’i, including Dr. Elshikh, his family, and members of his Mosque.’ In 2015, Dr. Elshikh’s wife filed an I-130 Petition for Alien Relative on behalf of her mother—Dr. Elshikh’s mother-in-law—a Syrian national living in Syria.”); *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 577 (4th Cir. 2017) (“This action was brought by six individuals, all American citizens or lawful permanent residents who have at least one family member seeking entry into the United States from one of the Designated Countries, and three organizations that serve or represent Muslim clients or members.”); *Washington v. Trump*, 847 F.3d 1151, 1157 (9th Cir. 2017) (per curiam) (“Two days later, Washington’s Complaint was amended to add the State of Minnesota as a plaintiff and to add a claim under the Tenth Amendment.”).

4. *Hawaii*, 859 F.3d at 762–66 (analyzing separately the standing of Dr. Elshikh and Hawaii); *Washington*, 847 F.3d at 1161 (analyzing the claims of both Washington and Minnesota and “conclud[ing] that the States have alleged harms to their proprietary interests traceable to the Executive Order”).

5. *Int’l Refugee Assistance Project*, 857 F.3d at 586 (“And because we find that at least one Plaintiff possesses standing, we need not decide whether the other individual Plaintiffs or the organizational Plaintiffs have standing with respect to this claim.”).

exercise of federal jurisdiction to actual cases or controversies.⁶ A party has standing if a case or controversy exists; the absence of standing renders a judicial decision an unconstitutional advisory opinion.⁷

The idea that just one plaintiff needs to satisfy Article III for a lawsuit to proceed is sometimes called the one-good-plaintiff rule.⁸ This maxim is so paradigmatic that a slight refinement to the law could destabilize multi-plaintiff lawsuits, forcing claimants to clamor over demonstrating their personal attachment to the dispute.⁹

Though disagreements exist over how accessible courts should be,¹⁰ the aforementioned immigration-policy cases demonstrate that a searching probe into standing among all plaintiffs will affect interests attendant to both conservative and progressive advocacy. No matter the partisan inclination—as 2017 challenges to the remnants of the Obama Administration’s immigration policies demonstrate—plaintiffs of all types sometimes want to band together.¹¹ And when that happens, Justice Stephen G. Breyer reminds

6. U.S. CONST. art. III, § 2, cl. 1; *see also* *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (“Although the Constitution does not fully explain what is meant by ‘the judicial Power of the United States,’ it does specify that this power extends only to ‘Cases’ and ‘Controversies.’” (citations omitted)).

7. *See* *Campbell–Ewald Co. v. Gomez*, 136 S. Ct. 663, 679 (2016) (Roberts, C.J., dissenting) (“If either the plaintiff or the defendant ceases to have a concrete interest in the outcome of the litigation, there is no longer a live case or controversy. A federal court that decides the merits of such a case runs afoul of the prohibition on advisory opinions.”).

8. Howard M. Wasserman, *Argument Preview: Standing for Intervention*, SCOTUSBLOG (Apr. 10, 2017, 3:23 PM), <http://www.scotusblog.com/2017/04/argument-preview-standing-intervention/> [<https://perma.cc/6RZQ-NRCN>] [hereinafter Wasserman, *Argument Preview*] (“The second is from Aaron-Andrew Bruhl, a professor at William & Mary Law School. Bruhl urges the court to go one step further and reject the ‘one good plaintiff’ rule in favor of requiring that all participating plaintiffs demonstrate standing in all cases, even when all plaintiffs present the same issues and seek the same remedies.”).

9. *See, e.g.*, *Clinton v. City of New York*, 524 U.S. 417, 431 n.19 (1998); *Sec’y of the Interior v. California*, 464 U.S. 312, 312 n.3 (1984); *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 263–64 (1977); *Doe v. Bolton*, 410 U.S. 179, 187 (1973).

10. *See, e.g.*, *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1884 (2017) (Breyer, J., dissenting) (“Given these safeguards against undue interference by the Judiciary in times of war or national-security emergency, the Court’s abolition, or limitation of, *Bivens* actions goes too far. If you are cold, put on a sweater, perhaps an overcoat, perhaps also turn up the heat, but do not set fire to the house.”); *Arthur v. Dunn*, 137 S. Ct. 1521, 1522 (2017) (Sotomayor, J., dissenting) (“Prisoners possess a ‘constitutional right of access to the courts.’” (quoting *Bounds v. Smith*, 430 U.S. 817, 821 (1977))).

11. Lyle Denniston, *States Seek End of Last Parts of Obama Immigration Orders*, NAT’L CONST. CTR. (June 30, 2017), <https://constitutioncenter.org/blog/states-seek-end-of-last-parts-of-obama-immigration-orders> [<https://perma.cc/GL5S-QSCG>] (“Ten of the

that today's win could be tomorrow's loss: "After all, in the law, what is sauce for the goose is normally sauce for the gander."¹²

On June 5, 2017, in *Town of Chester v. Laroe Estates, Inc.*, the Supreme Court clarified the one-good-plaintiff rule, concluding that when parties assert remedies in their name, those parties must satisfy an individualized standing inquiry.¹³ Writing for a unanimous court, Justice Samuel A. Alito, Jr. made manifest that, in the context of intervenors of right under Federal Rule of Civil Procedure 24(a)(2), third-party intervenors seeking relief different from extant plaintiffs must have Article III standing to join the lawsuit.¹⁴ This principle, Justice Alito explained, applies each time "the plaintiff and the intervenor seek separate money judgments in their own names."¹⁵ Stated differently, plaintiffs and prospective intervenors pursuing mirror-image legal theories must have individualized standing if they seek a separate damages award.¹⁶ The Court vacated and remanded because the record was unclear as to whether the intervenor was "seeking damages for itself or is simply seeking the same damages sought by [the original plaintiff]."¹⁷

Town of Chester and its refinement of the one-good-plaintiff rule received little attention among commentators.¹⁸ Although the Court mandated standing for parties seeking novel relief, the Court was reticent about whether standing is irrelevant for existing parties seeking relief in a singular name. The remand order could be viewed as acquiescing to one party satisfying Article III when all damages are the same, but that conclusion is quixotic for multi-plaintiff lawsuits in which each plaintiff wants a slice of the pie. When Justice Alito prescribed that "[f]or all relief sought, there must be a litigant

states that had succeeded in a sweeping challenge to President Obama's 2014 order that would have delayed deportation of more than 4 million undocumented immigrants acted on Thursday to force an end to a similar 2012 Obama order to protect about 1 million younger immigrants.").

12. *Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1418 (2016).

13. 137 S. Ct. 1645, 1648 (2017) ("The parties do not dispute—and we hold—that such an intervenor must meet the requirements of Article III if the intervenor wishes to pursue relief not requested by a plaintiff.").

14. *Id.* at 1651.

15. *Id.*

16. *Id.* ("That principle dictates the disposition of this case. It is unclear whether Laroe seeks the same relief as Sherman or instead seeks different relief, such as a money judgment against the Town in Laroe's own name.").

17. *Id.* at 1652.

18. See, e.g., Adam Liptak, *Justices Act on Voting Rights and Cellphone Privacy*, N.Y. TIMES (June 5, 2017), https://www.nytimes.com/2017/06/05/us/politics/us-supreme-court-affirms-north-carolina-districts-rely-too-much-on-race.html?rref=collection%2Fbyline%2Fadam-liptak&action=click&contentCollection=undefined®ion=stream&module=stream_unit&version=search&contentPlacement=10&pgtype=collection (covering other opinions and orders released that day, while neglecting any discussion of *Town of Chester*).

with standing,” the one-good-plaintiff rule became the one-good-remedy rule.¹⁹ And that small change could have big consequences.

This Article argues that *Town of Chester* reframes the one-good-plaintiff rule, turning an inquiry focused on at least one plaintiff with standing for each asserted claim into one in which courts must assay standing for the entire field of damages seekers. In three parts, the Article reviews Article III standing juxtaposed with the advent of the one-good-plaintiff rule, discusses *Town of Chester*, and explores how *Town of Chester* affects the future of the one-good-plaintiff rule. Although *Town of Chester* did not address existing plaintiffs or how their extant damages theories can anchor other parties, the Court’s rationale is a salvo against the idea that a lawsuit can proceed based on one plaintiff’s standing. By focusing on the need to separate plaintiffs attendant to whether damages are sought collectively or individually, *Town of Chester* will force plaintiffs to craft and solidify damages theories early in litigation without the benefit of discovery. *Town of Chester* presages more narrowly tailored injunctions, nudging against the continued utility of nationwide preliminary injunctions. *Town of Chester* also could limit access to the courts for certain types of lawsuits,²⁰ like politicized cases challenging executive policies. By demanding fulsome analysis on all plaintiffs, courts no doubt will face ineluctable administrative burdens each time they must satisfy themselves of not encroaching upon an advisory opinion for a party without standing. The upshot is a shift from *who* has standing to *how* certain relief is supported by standing. *Town of Chester* offers a minor adjustment with major implications, reconstructing the one-good-plaintiff rule into the one-good-remedy rule.

II. ARTICLE III STANDING AND THE ONE-GOOD-PLAINTIFF RULE

Article III limits the exercise of judicial power to “Cases” and “Controversies.”²¹ This axiom preserves the “tripartite structure” of the federal government, preventing the judiciary from “intrud[ing] upon the powers given to the other branches” and “confin[ing] the federal courts to

19. *Town of Chester*, 137 S. Ct. at 1651.

20. *Cf. BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1560 (2017) (Sotomayor, J., concurring in part and dissenting in part) (“The majority’s approach grants a jurisdictional windfall to large multistate or multinational corporations that operate across many jurisdictions. Under its reasoning, it is virtually inconceivable that such corporations will ever be subject to general jurisdiction in any location other than their principal places of business or of incorporation.”).

21. U.S. CONST. art. III, § 2, cl. 1.

a properly judicial role.”²² Understanding the fundamentals of Article III standing enables appreciation of the one-good-plaintiff rule’s inception.

A. Federal Courts are Limited to Cases or Controversies

Chief Justice John Marshall declared in *Marbury v. Madison* that “[t]he judicial power of the United States is extended to all cases arising under the constitution.”²³ That admonition about the judiciary begins and ends with whether an actual case exists, with no exceptions. Over 200 years later, the Supreme Court has not equivocated that “[i]f a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so.”²⁴ Indulging such an explication would be an unconstitutional advisory opinion.²⁵ “No principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.”²⁶

When a federal court determines that a party lacks standing, it must dismiss that case for want of subject-matter jurisdiction because it lacks the constitutional power to hear the case.²⁷ The fulcrum of any standing inquiry is whether a plaintiff has “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.”²⁸ This inquiry resolves “whether the litigant is entitled to have the court decide the merits of the dispute or particular issues.”²⁹

At its “irreducible constitutional minimum,” Article III standing requires a plaintiff to demonstrate injury, causation, and redressability:

22. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

23. 5 U.S. (1 Cranch) 137, 178 (1803).

24. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006).

25. *See Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 679 (2016) (Roberts, C.J., dissenting) (“If either the plaintiff or the defendant ceases to have a concrete interest in the outcome of the litigation, there is no longer a live case or controversy. A federal court that decides the merits of such a case runs afoul of the prohibition on advisory opinions.”).

26. *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976).

27. *FED. R. CIV. P. 12(b)(1)*; *see also Home Builders Ass’n of Miss. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (“A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case.” (quoting *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1187 (2d Cir. 1996))).

28. *Baker v. Carr*, 369 U.S. 186, 204 (1962).

29. *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

(1) an injury in fact (*i.e.*, a “concrete and particularized” invasion of a “legally protected interest”); (2) causation (*i.e.*, a “fairly traceable” connection between the alleged injury in fact and the alleged conduct of the defendant); and (3) redressability (*i.e.*, it is “likely” and not “merely speculative” that the plaintiff’s injury will be remedied by the relief plaintiff seeks in bringing lawsuit).³⁰

These three elements are the constitutional bulwark to ensure a court is competent to hear a case.³¹ More than pleading requirements, they are “an indispensable part of the plaintiff’s case,” in which “each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof.”³²

Cases from October Terms 2015 and 2016 have enriched how courts view a cognizable injury in fact.³³ An asserted injury must be both concrete and particularized.³⁴ Particularized harm “affect[s] the plaintiff in a personal and individual way.”³⁵ Concrete harm is harm that “actually exist[s],” irrespective of whether it is tangible or intangible.³⁶ And it cannot be overstated that “a loss of even a small amount of money is ordinarily an ‘injury.’”³⁷

Congress can confer standing by defining aggrieved persons to whom statutory protection is entitled.³⁸ Private individuals, for example, have standing to sue on behalf of the government as *qui tam* relators when a statute deputizes individuals to investigate and vindicate sovereign injuries.³⁹ As the Court has reflected, “Congress is well positioned to identify intangible harms that meet minimum Article III requirements, [and] its judgment is

30. *Sprint Commc’ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 273–74 (2008) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)); *see also* *Pub. Citizen, Inc. v. Bomer*, 274 F.3d 212, 217–18 (5th Cir. 2002) (analyzing the injury requirement, which is one of three requirements for standing).

31. *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000) (quoting *Lujan*, 504 U.S. at 560).

32. *Lujan*, 504 U.S. at 561; *see also* *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 114–15 (1979) (construing statutory prescriptions to determine who constitutes an aggrieved person for standing purposes).

33. *See, e.g.*, *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016).

34. *Id.* (quoting *Lujan*, 504 U.S. at 560).

35. *Id.* (quoting *Lujan*, 504 U.S. at 560 n.1).

36. *Id.* at 1548–49.

37. *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017).

38. *See Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1303 (2017).

39. *See Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 787–88 (2000) (“We hold that a private individual has standing to bring suit in federal court on behalf of the United States under the False Claims Act, but that the False Claims Act does not subject a State (or state agency) to liability in such actions.” (citation omitted)).

also instructive and important.”⁴⁰ Still the Court has cautioned that statutory violations alone do not confer standing.⁴¹ Allegations of “a bare procedural violation, divorced from any concrete harm” cannot buoy a statutory violation into a justiciable violation.⁴² Difficulty in proving or quantifying harm should not obstruct an argument for standing; yet bare procedural violations alone require “additional harm” flowing from the violation.⁴³

Certain entities have the capacity to assume and acquire standing for a group of injured individuals.⁴⁴ Unions generally have standing as representatives of aggrieved employees seeking judicial recourse.⁴⁵ Doctors have standing in certain instances to sue on behalf of their patients.⁴⁶ Even vendors of beer can sometimes sue on behalf of their patrons.⁴⁷

Standing, at bottom, answers who can sue in federal court and what kinds of claims can be heard.⁴⁸ Bald injuries dispersed among many create justiciable cases or controversies for all injured parties, not in thrall to the existence or whim of one particular party with standing.⁴⁹ Mass injuries comport with the idea that common injuries inure to a common lawsuit: “The fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance. The victims’ injuries from a mass tort, for example, are widely shared, to be sure, but each individual suffers a particularized harm.”⁵⁰

40. *Spokeo*, 136 S. Ct. at 1549.

41. *Id.*

42. *Id.*

43. *See id.*

44. *See id.* at 1548 n.7.

45. *See, e.g., United Food & Commercial Workers Union Local 751 v. Brown Grp.*, 517 U.S. 544, 549 (1996) (“Since the union is the ‘representative of employees aggrieved,’ it is a person who may sue on behalf of the ‘persons similarly situated’ in order to ‘enforce such liability.’”).

46. *See, e.g., Doe v. Bolton*, 410 U.S. 179, 188 (1973) (“We conclude, however, that the physician-appellants, who are Georgia-licensed doctors consulted by pregnant women, also present a justiciable controversy and do have standing despite the fact that the record does not disclose that any one of them has been prosecuted, or threatened with prosecution, for violation of the State’s abortion statutes.”).

47. *See, e.g., Craig v. Boren*, 429 U.S. 190, 192–93 (1976) (“The question thus arises whether appellant Whitener, the licensed vendor of 3.2% beer, who has a live controversy against enforcement of the statute, may rely upon the equal protection objections of males 18–20 years of age to establish her claim of unconstitutionality of the age-sex differential. We conclude that she may.”).

48. *See Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017) (“A decision in petitioners’ favor is likely to redress that loss. We accordingly conclude that petitioners have standing.”).

49. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) (noting that “standing cases confirm that a plaintiff must demonstrate standing for each claim he seeks to press”).

50. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 n.7 (2016).

The still enduring inquiry is what happens when some, but not all, plaintiffs proffer sufficient allegations to satisfy Article III. Would exercise of jurisdiction over the case offend Article III on the basis that some have joined the bandwagon to root for the team despite the absence of legitimate standalone claims? Are they true fans, or just latecomers to potential success?

B. Fomenting the Idea that One Plaintiff is Good Enough

That at least one plaintiff enables a lawsuit to move forward has become axiomatic for federal courts.⁵¹ But its journey to that point seems almost accidental and untested. An amalgam of cases grafted together demonstrates that one plaintiff's satisfaction of standing suffices for all similar claimants, and that one good party permits the lawsuit to persist.⁵² Although the impetus and inception of the idea is difficult to discern, starting in the 1970s, the Supreme Court explicated apace about how one plaintiff alone avails the exercise of federal judicial review.⁵³

In 1973, in *Doe v. Bolton*, Justice Harry A. Blackmun authored a clear articulation that one plaintiff with standing can satisfy the case-or-controversy requirement of Article III for all plaintiffs.⁵⁴ “Mary Doe, 23 other individuals (nine described as Georgia-licensed physicians, seven as nurses registered in the State, five as clergymen, and two as social workers), and two nonprofit Georgia corporations that advocate abortion reform” filed a lawsuit challenging certain portions of Georgia’s statute on abortion procedures.⁵⁵ When addressing the challenge to standing, Justice Blackmun, joined by six other justices, explained how Doe and the physicians performing abortions have standing, noting that questionable standing among the other plaintiffs “is perhaps a matter of no great consequence.”⁵⁶ The Court observed that Doe and the physicians stand to suffer prospective criminal prosecution and “should not

51. See *Horne v. Flores*, 557 U.S. 433, 446 (2009) (“Because the superintendent clearly has standing to challenge the lower courts’ decisions, we need not consider whether the Legislators also have standing to do so.”).

52. See *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 (2006) (“The Court of Appeals did not determine whether the other plaintiffs have standing because the presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement. Because we also agree that FAIR has standing, we similarly limit our discussion to FAIR.” (citations omitted) (citing *Forum for Acad. & Institutional Rights v. Rumsfeld*, 390 F.3d 219, 228 n.7 (3d Cir. 2004))).

53. See *Doe v. Bolton*, 410 U.S. 179, 187 (1973).

54. See *id.*

55. *Id.* at 184–85 (footnote omitted).

56. *Id.* at 188.

be required to await and undergo a criminal prosecution as the sole means of seeking relief.”⁵⁷ Justice Blackmun, however, denigrated the claims of the nurses, clergy, social workers, and corporations as “another step removed” from those with standing because their only plausible tie to the case would have been as accessories or coconspirators to those dispensing medical advice.⁵⁸

The Court nonetheless reached the merits of the case because one plaintiff with standing was good enough:

We conclude that we need not pass upon the status of these additional appellants in this suit, for the issues are sufficiently and adequately presented by Doe and the physician-appellants, and nothing is gained or lost by the presence or absence of the nurses, the clergymen, the social workers, and the corporations.⁵⁹

All plaintiffs succeeded on the merits.⁶⁰ Chief Justice Warren E. Burger and Justice William O. Douglas filed concurrences.⁶¹ And Justice Byron R. White and then Justice William H. Rehnquist dissented.⁶² None of them addressed the analysis on standing.

Five years later, in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, Justice Lewis F. Powell Jr., writing for himself and five other justices of an eight-member court, concluded that standing for one plaintiff among many permitted review on the merits.⁶³ Two corporations and several individuals challenged the denial of a rezoning request, asserting violations of the Fourteenth Amendment and the Fair Housing Act of 1968.⁶⁴ Observing that the residents and corporations desire different relief under different theories of harm, Justice Powell concluded that one good plaintiff can support the lawsuit:

But we need not decide whether the circumstances of this case would justify departure from that prudential limitation and permit MHDC to assert the constitutional rights of its prospective minority tenants. For we have at least one individual plaintiff who has demonstrated standing to assert these rights as his own.⁶⁵

The Court further explained that “the presence of this plaintiff” obviated the need to “consider whether the other individual and corporate plaintiffs

57. *Id.* (citing *Crossen v. Breckenridge*, 446 F.2d 883, 839–40 (6th Cir. 1971); *Poe v. Menghini*, 339 F. Supp. 986, 990–91 (D. Kan. 1972)).

58. *Id.* at 189.

59. *Id.*

60. *See id.* at 194, 198–99, 201.

61. *Id.* at 207 (Burger, C.J., concurring), 209 (Douglas, J., concurring).

62. *Id.* at 221 (White, J., dissenting).

63. 429 U.S. 252, 263–64 & n.9 (1977).

64. *Id.* at 254, 258–59.

65. *Id.* at 263–64 (citations omitted).

have standing to maintain the suit.”⁶⁶ The Court remanded for further review on the merits.⁶⁷ The dissents by Justices White and Thurgood Marshall did not mention standing.⁶⁸

In 1984, in *Secretary of the Interior v. California*, Justice Sandra Day O’Connor authored a 5–4 opinion about the Department of the Interior’s sale of oil and gas leases off the coast of California.⁶⁹ California, along with several environmental groups and local governments, sued to enjoin the sale of certain tracts of land.⁷⁰ Without much fanfare or elucidation, the Court addressed the merits on the basis of California’s standing alone: “Since the State of California clearly does have standing, we need not address the standing of the other respondents, whose position here is identical to the State’s.”⁷¹ The plaintiffs did not prevail on the merits.⁷² The dissent by Justice John Paul Stevens took no issue with the standing analysis.⁷³ Although the Court suggested that the positions among the plaintiffs were identical, it is less clear whether California alone articulated and represented all relief sought among the parties. As this case suggests, perhaps the one-good-plaintiff rule is most acute when in the valiance of injuries associated with state sovereignty, elevating the state to special status as a super plaintiff for relief sought by its constituents.⁷⁴

Two years later, in *Bowsher v. Synar*, Chief Justice Burger, joined by four other justices, addressed “whether [an] assignment by Congress to the Comptroller General . . . under the Balanced Budget and Emergency Deficit Control Act of 1985 violate[d] the doctrine of separation of powers.”⁷⁵

66. *Id.* at 264 n.9.

67. *Id.* at 271 (“Respondents’ complaint also alleged that the refusal to rezone violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* They continue to urge here that a zoning decision made by a public body may, and that petitioners’ action did, violate § 3604 or § 3617. The Court of Appeals, however, proceeding in a somewhat unorthodox fashion, did not decide the statutory question. We remand the case for further consideration of respondents’ statutory claims.”).

68. *See id.* at 271–72 (Marshall, J., dissenting), 272–73 (White, J., dissenting).

69. 464 U.S. 312, 315 (1984).

70. *Id.* at 319.

71. *Id.* at 319 n.3.

72. *Id.* at 343 (“But our review of the history of CZMA § 307(c)(1), and the coordinated structures of the amended CZMA and OCSLA, persuade us that Congress did not intend § 307(c)(1) to mandate consistency review at the lease sale stage.”).

73. *See id.* at 344–76 (Stevens, J., dissenting).

74. *See, e.g.,* *Washington v. Trump*, 847 F.3d 1151, 1157, 1161, 1164–65 (9th Cir. 2017) (*per curiam*).

75. 478 U.S. 714, 717 (1986).

Several members of Congress who voted against the law challenged it on grounds of their special status as federal legislators,⁷⁶ while the National Treasury Employees Union filed a separate lawsuit alleging “its members had been injured as a result of the Act’s automatic spending reduction provisions, which have suspended certain cost-of-living benefit increases to the Union’s members.”⁷⁷ Beyond reasonable dispute the union members and legislators had distinct injuries and would have been entitled to different remedies upon success; yet the Court addressed the merits on the basis of a single union member’s standing:

A threshold issue is whether the Members of Congress, members of the National Treasury Employees Union, or the Union itself have standing to challenge the constitutionality of the Act in question. It is clear that members of the Union, one of whom is an appellee here, will sustain injury by not receiving a scheduled increase in benefits. This is sufficient to confer standing under § 274(a)(2) and Article III. We therefore need not consider the standing issue as to the Union or Members of Congress.⁷⁸

All plaintiffs won on the merits.⁷⁹ None of the separate opinions, either concurring in judgment or dissenting, questioned or challenged this analysis.⁸⁰

In 1998, in *Clinton v. City of New York*, Justice Stevens, writing for himself and five other justices, explained how several unions were able to participate in a lawsuit because of the standing of a city and some healthcare organizations.⁸¹ In two separate lawsuits, one hailing from New York and the other from Idaho, the plaintiffs challenged certain actions by President William J. Clinton and his officials on grounds that canceling direct spending and limited tax benefits to some healthcare programs violated the Presentment Clause of Article I.⁸² The New York case involved “the City of New York, two hospital associations, one hospital, and two unions representing health care employees.”⁸³ Justice Stevens noted that the city and healthcare organizations were injured because both “will be assessed by the State for substantial portions of any recoupment payments that the State may have to make to the Federal Government.”⁸⁴ Although the Court did not expound on standing for the unions, the justices proceeded to the merits of the unions’

76. *Id.* at 719.

77. *Id.*

78. *Id.* at 721 (citation omitted).

79. *Id.* at 736 (“We conclude that the District Court correctly held that the powers vested in the Comptroller General under § 251 violate the command of the Constitution that the Congress play no direct role in the execution of the laws.”).

80. *Id.* at 736–37 (Stevens, J., concurring), 759 (White, J., dissenting), 776–77 (Blackmun, J., dissenting).

81. 524 U.S. 417, 431 n.19 (1998).

82. *Id.* at 421, 425–26.

83. *Id.* at 425.

84. *Id.* at 431.

claims under the following justification: “Because both the City of New York and the health care appellees have standing, we need not consider whether the appellee unions also have standing to sue.”⁸⁵ Implicit in that statement is that the harms alleged and relief sought by the unions differed from those with standing—otherwise why not include the unions in the analysis with the others? All plaintiffs prevailed on the merits.⁸⁶ Although separate opinions were filed, either dissenting or concurring in part and dissenting in part, no justice questioned standing for the New Yorkers.⁸⁷

That same year, in *Department of Commerce v. United States House of Representatives*, in a complicated ruling in which several justices joined different parts of opinions to form a majority, Justice O’Connor delivered the opinion of the Court in a case involving the Census Bureau’s “plan to use two forms of statistical sampling in the 2000 Decennial Census to address a chronic and apparently growing problem of ‘undercounting’ certain identifiable groups of individuals.”⁸⁸ The Court reviewed two cases challenging the plan, one brought by the House of Representatives and another brought by four counties and the residents of thirteen states.⁸⁹ After reviewing expert opinions on how the plan would create “intrastate vote dilution” across several states, the Court reached the merits “because the record before us amply supports the conclusion that several of the appellees have met their burden of proof regarding their standing to bring this suit.”⁹⁰ The totality of the standing analysis focused on the plight of one Indiana resident alongside expert extrapolations.⁹¹ The plaintiffs won on

85. *Id.* at 431 n.19.

86. *Id.* at 448–49 (“Third, our decision rests on the narrow ground that the procedures

87. *See, e.g., id.* at 453 (Scalia, J., concurring in part and dissenting in part) (“In my view, the Snake River appellees lack standing to challenge the President’s cancellation of the ‘limited tax benefit,’ and the constitutionality of that action should not be addressed. I think the New York appellees have standing to challenge the President’s cancellation of an ‘item of new direct spending’; I believe we have statutory authority (other than the expedited-review provision) to address that challenge; but unlike the Court I find the President’s cancellation of spending items to be entirely in accord with the Constitution.”).

88. 525 U.S. 316, 320 (1999).

89. *Id.* at 327–28.

90. *Id.* at 330, 334.

91. *See id.* at 331–34 (“Appellee Hofmeister’s expected loss of a Representative to the United States Congress undoubtedly satisfies the injury-in-fact requirement of Article III standing.”).

the merits.⁹² None of the separate opinions challenged the standing analysis.⁹³ And even in dissent, Justice Stevens, joined by Justices Ruth Bader Ginsburg and Breyer, disagreed with the merits but nevertheless noted that “at least one of the plaintiffs in each of these cases has standing.”⁹⁴

In 2006, in *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, Chief Justice John G. Roberts Jr., writing for a unanimous Court, made a limited inquiry into standing to resolve a case about whether law schools can restrict visits by military recruiters based on the schools’ free-speech rights under First Amendment.⁹⁵ Two sentences contained the entirety of the reticent standing analysis:

The Court of Appeals did not determine whether the other plaintiffs have standing because the presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement. Because we also agree that [the association of law schools and law faculties] has standing, we similarly limit our discussion to [the association].⁹⁶

The plaintiffs lost on the merits “[b]ecause Congress could require law schools to provide equal access to military recruiters without violating the schools’ freedoms of speech or association.”⁹⁷

That same year, the Court released *DaimlerChrysler Corp. v. Cuno*, clarifying that “a plaintiff must demonstrate standing for each claim he seeks to press.”⁹⁸ In a case about whether taxpayers have standing to challenge certain Ohio tax breaks for auto manufacturers by arguing those incentives violated the Commerce Clause, Chief Justice Roberts delivered the opinion for a unanimous Court, holding that the taxpayers did not have standing to sue in federal court.⁹⁹ The Court reasoned that the taxpayers could not challenge the state tax “by virtue of their status as taxpayers,” on grounds similar to an Establishment Clause challenge, or as municipal taxpayers.¹⁰⁰ Piecing together precedent, the Chief Justice reified that “a plaintiff must demonstrate standing separately for each form of relief

92. *Id.* at 343 (“For the reasons stated, we conclude that the Census Act prohibits the proposed uses of statistical sampling in calculating the population for purposes of apportionment.”).

93. *See id.* at 344 (Scalia, J., concurring in part), 350 (Breyer, J., concurring in part and dissenting in part), 357 (Stevens, J., dissenting).

94. *Id.* at 357 (Stevens, J., dissenting).

95. 547 U.S. 47, 51 (2006).

96. *Id.* at 52 n.2 (citation omitted) (citing *Forum for Acad. & Institutional Rights v. Rumsfeld*, 390 F.3d 219, 228 n.7 (3d Cir. 2004)).

97. *Id.* at 70.

98. 547 U.S. 332, 352 (2006).

99. *Id.* at 332, 338.

100. *Id.* at 346, 349, 354.

sought.”¹⁰¹ Justice Ginsburg authored a concurrence in part and concurrence in judgment, suggesting that taxpayer lawsuits are nonjusticiable in themselves.¹⁰² Although previous cases hinted that standing is required for each form of relief sought, *DaimlerChrysler* made that point unequivocal.¹⁰³

One year later, in a case all about standing, the Court again relied on without criticism the one-good-plaintiff rule in *Massachusetts v. Environmental Protection Agency*.¹⁰⁴ Twelve states, four local governments, and a slew of private organizations alleged that the Environmental Protection Agency (EPA) “ha[d] abdicated its responsibility under the Clean Air Act to regulate the emissions of four greenhouse gases, including carbon dioxide.”¹⁰⁵ Writing for four other justices, Justice Stevens endorsed the one-good-plaintiff rule: “In response, EPA, supported by 10 intervening States and six trade associations, correctly argued that we may not address those two questions unless at least one petitioner has standing to invoke our jurisdiction under Article III of the Constitution.”¹⁰⁶ After stating the rule that “[o]nly one of the petitioners needs to have standing to permit us to consider the petition for review,”¹⁰⁷ the Court reflected that Massachusetts is entitled to special solicitude “in protecting its quasi-sovereign interests.”¹⁰⁸ With analysis limited to Massachusetts only, the plaintiffs prevailed in arguing that the EPA failed to follow federal law when refusing to regulate certain emissions:

In sum—at least according to petitioners’ uncontested affidavits—the rise in sea levels associated with global warming has already harmed and will continue to harm Massachusetts. The risk of catastrophic harm, though remote, is nevertheless real. That risk would be reduced to some extent if petitioners received the relief they seek. We therefore hold that petitioners have standing to challenge EPA’s denial of their rulemaking petition.¹⁰⁹

Although expressing disagreement with the outcome, the two dissents were sanguine about the one-good-plaintiff rule. Chief Justice Roberts conceded that organizations can latch onto one good member to satisfy standing: “Just as an association suing on behalf of its members must show

101. *Id.* at 352 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 185 (2000)).

102. *Id.* at 354–55 (Ginsburg, J., concurring in part and concurring in judgment).

103. *See id.* at 352.

104. 549 U.S. 497, 505 (2007).

105. *Id.*

106. *Id.* (footnotes omitted).

107. *Id.* at 518.

108. *Id.* at 520.

109. *Id.* at 526.

not only that it represents the members but that at least one satisfies Article III requirements, so too a State asserting quasi-sovereign interests as *parens patriae* must still show that its citizens satisfy Article III.”¹¹⁰ Justice Antonin Scalia in dissent likewise did not asperse the one-good-plaintiff rule.¹¹¹

By 2009, in *Horne v. Flores*, Justice Samuel A. Alito, joined by four other justices, recapped what had become axiomatic: “Here, as in all standing inquiries, the critical question is whether at least one petitioner has ‘alleged such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal-court jurisdiction.’”¹¹² A group of English language-learner students and their parents filed a declaratory-judgment action against Arizona, its legislative board of education, and a school superintendent, alleging that Arizona was violating the Equal Educational Opportunities Act of 1974.¹¹³ In a posture in which the Court addressed the standing of defendants to appeal from the entry of an injunction, Justice Alito discussed why the standing analysis need go no further than the superintendent: “Because the superintendent clearly has standing to challenge the lower courts’ decisions, we need not consider whether the Legislators also have standing to do so.”¹¹⁴ Justice Alito also suggested that this status enabled the superintendent to challenge orders that applied to him as well as others.¹¹⁵ The Court remanded the case for further review on the merits.¹¹⁶ Justice Breyer’s dissent did not question that “at least one plaintiff” makes a lawsuit.¹¹⁷

The one-good-plaintiff rule has been justified on administrative grounds and for pragmatic reasons.¹¹⁸ Resolving standing for one party prevents courts from the burdensome and possibly cumulative review of the same

110. *Id.* at 538 (Roberts, C.J., dissenting).

111. *Id.* at 549 (Scalia, J., dissenting).

112. 557 U.S. 433, 445 (2009) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)).

113. *Id.* at 439–40.

114. *Id.* at 446.

115. *Id.* at 446 n.2 (“We do not agree with the conclusion of the Court of Appeals that ‘the Superintendent’s standing is limited’ to seeking vacatur of the District Court’s orders ‘only as they run against him.’ Had the superintendent sought relief based on satisfaction of the judgment, the Court of Appeals’ conclusion might have been correct. But . . . petitioners’ Rule 60(b)(5) claim is not based on satisfaction of the judgment. Their claim is that continued enforcement of the District Court’s orders would be inequitable. This claim implicates the orders in their entirety, and not solely as they run against the superintendent.” (citation omitted) (quoting *Flores v. Arizona*, 516 F.3d 1140, 1165 (9th Cir. 2008))).

116. *Id.* at 472 (“We reverse the judgment of the Court of Appeals and remand the cases for the District Court to determine whether, in accordance with the standards set out in this opinion, petitioners should be granted relief from the judgment.”).

117. *See id.* at 472–516 (Breyer, J., dissenting).

118. *See, e.g., California ex rel. Brown v. Watt*, 683 F.2d 1253, 1271 (9th Cir. 1982), *rev’d on other grounds*, *Sec’y of the Interior v. California*, 464 U.S. 312 (1984).

arguments without differing presentations.¹¹⁹ That purposive justification rationalizes that “[a]llowing additional parties to present the same arguments would not affect the outcome of [the] case.”¹²⁰ Administrative burdens also accumulate because remand on isolated grounds for a few plaintiffs “would constitute a waste of scarce judicial resources.”¹²¹

As the cases above suggest, whether the plaintiffs win or lose on the merits does not change the calculus for discerning whether a case or controversy exists for many on the basis of one. These cases edify that an actual case or controversy requires just one plaintiff with standing for each form of relief sought. *Town of Chester* clarified whether a form of relief is the same when different parties seek individualized damages under the same legal theory.

III. *TOWN OF CHESTER*: NOT JUST A CASE ABOUT INTERVENORS

Effacing as a case about the requirements to intervene as of right under Federal Rule of Civil Procedure 24(a), *Town of Chester* is a stalking horse whose effects may commandeer the one-good-plaintiff rule. Rule 24 permits parties to intervene in a lawsuit, facilitating participation, in full or in part, as an original party.¹²² Parties can invoke Rule 24(a) to intervene as of right by showing (1) “an unconditional right to intervene by a federal statute,” or (2) “an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.”¹²³ Nongovernmental third parties can seek permissive intervention under Rule 24(b) by showing (1) “a conditional right to intervene by a federal statute,” or (2) “a claim or defense that shares with the main action a common question of law or fact.”¹²⁴ In

119. *See id.* (“Our review of the more than one thousand pages of the eighteen briefs filed in this case, as well as the extensive argument and our own research, convince us that no stone was left unturned in presenting all aspects of the CZMA issue to this court.”).

120. *Id.*

121. *Id.*

122. *See, e.g.,* *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 378, 383 (1987) (“First, restrictions on participation may also be placed on an intervenor of right and on an original party. If we were to accept CNA’s theory of constructive denial, then it would follow that an intervenor of right also could appeal restrictions placed on its participation as a constructive denial of the right to intervene. And if an intervenor of right is to be afforded such an appeal, there is no reason to deny an appeal to an original party.” (footnote omitted)).

123. FED. R. CIV. P. 24(a).

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

1986, in *Diamond v. Charles*, the Court declined to decide whether intervenors of right must have Article III standing before they can intervene in an existing lawsuit.¹²⁵ The Court returned to that question in *Town of Chester*.¹²⁶ Due in part to the development of the parties' arguments and rationale undergirding the Court's eventual opinion, a case about intervenors could shape the contours of who gets to be a plaintiff.

A. How a Land Development Project Turned Into a Lawsuit About Standing

Around 2000, Steven Sherman sought approval from the town of Chester, New York, to develop a 400-acre plot of land into a residential subdivision.¹²⁷ Chester allegedly stymied the project by enacting zoning regulations with the effect of frustrating the approval process.¹²⁸ In 2003, Sherman agreed to sell Laroe Estates, Inc. three parcels from the 400 acres for \$6 million, with full payment contingent on approval of the project.¹²⁹ Laroe made \$2.5 million in interim payments before a bank foreclosed on the property.¹³⁰ Around 2008, Sherman filed a takings lawsuit in state court against Chester and two of its municipal boards.¹³¹ After removal to U.S. District Court for the Southern District of New York, District Judge Edgardo Ramos dismissed the lawsuit as unripe.¹³² The U.S. Court of Appeals for the Second Circuit reversed and remanded for further review of the alleged taking.¹³³

125. 476 U.S. 54, 68–69 (1986) (“However, the precise relationship between the interest required to satisfy the Rule and the interest required to confer standing, has led to anomalous decisions in the Courts of Appeals. We need not decide today whether a party seeking to intervene before a district court must satisfy not only the requirements of Rule 24(a)(2), but also the requirements of Art. III.” (footnote omitted)).

126. See Kate Howard, *Petition of the Day*, SCOTUSBLOG (Jan. 2, 2017, 11:13 PM), <http://www.scotusblog.com/2017/01/petition-of-the-day-1065/> [<https://perma.cc/M4Q9-KJGU>].

127. Wasserman, *Argument Preview*, *supra* note 8; Howard M. Wasserman, *Opinion Analysis: Standing, Intervention and a Narrow Disposition*, SCOTUSBLOG (June 5, 2017, 2:14 PM), <http://www.scotusblog.com/2017/06/opinion-analysis-standing-intervention-narrow-disposition/> [<https://perma.cc/UP5B-A5K2>] [hereinafter Wasserman, *Opinion Analysis*].

128. Wasserman, *Argument Preview*, *supra* note 8.

129. Wasserman, *Opinion Analysis*, *supra* note 127.

130. *Id.*

131. Wasserman, *Argument Preview*, *supra* note 8.

132. *Sherman v. Town of Chester*, No. 12 Civ. 647 (ER), 2013 U.S. Dist. LEXIS 38774, at *42 (S.D.N.Y. Mar. 20, 2013) (“Because the case was brought before this Court by removal and the Court *no* longer has subject-matter jurisdiction, the case is remanded to state court.”).

133. *Sherman v. Town of Chester*, 752 F.3d 554, 569 (2d Cir. 2014) (“Because the *Williamson County* ripeness requirements are satisfied, we VACATE the District Court’s decision to the extent it dismissed Sherman’s federal non-takings claims solely on ripeness grounds. On remand, the District Court may consider whether Sherman has sufficiently stated those claims.”).

At that point, Sherman had passed away and the lawsuit involved only Sherman's estate—through Steven's wife, Nancy J. Sherman—as adverse to Chester.¹³⁴

Upon return to the district court, Laroe moved to intervene as of right as a plaintiff adverse to Chester “on the basis that as holder of ‘equitable title’ to [the property], Laroe is the owner of the property.”¹³⁵ Judge Ramos denied the motion as “futile” because Laroe lacked standing.¹³⁶ Although unclear whether the outcome relied on application of state law, federal law, or some combination of the two, Judge Ramos explained that as a vendee to a contract for the purchase of real property, Laroe did not have standing because it was not the owner of an interest in property at the time of the taking.¹³⁷ Status as a holder of equitable interest likewise did not confer standing, Judge Ramos observed, because the legal relationship in that instance was between Laroe and Sherman—not Laroe and Chester.¹³⁸

The Second Circuit vacated and remanded, concluding that intervenors of right are not required to demonstrate standing to participate in a lawsuit.¹³⁹ Circuit Judge Raymond J. Lohier explained that intervenors did not need to demonstrate standing because the existence of an Article III case or controversy already existed through the underlying lawsuit.¹⁴⁰ Judge Lohier cited several Supreme Court cases touching on the issue, albeit obliquely: “So it is fair to say that while the Supreme Court has not explicitly endorsed our approach, it has *sub silentio* permitted parties to intervene in cases that satisfy the ‘case or controversy’ requirement without determining whether those parties independently have standing.”¹⁴¹ Declining to approbate the

134. Sherman v. Town of Chester, No. 12 Civ. 647 (ER), 2015 U.S. Dist. LEXIS 43322, at *2 n.2 (S.D.N.Y. Mar. 31, 2015) (“Mr. Sherman passed away in October 2013. His widow, Nancy J. Sherman has replaced him as the Plaintiff. For conformity with past decisions, this Court refers to . . . Plaintiff by using masculine pronouns.”).

135. *Id.* at *3.

136. *Id.* at *39 (“Although legal futility is not mentioned in Rule 24, courts have held that futility is a proper basis for denying a motion to intervene.” (citing *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, Nos. 02 MDL 1484 (JFK), 02 Civ. 8472 (JFK), 2008 U.S. Dist. LEXIS 53923, at *5 (S.D.N.Y. June 26, 2009))).

137. *Id.* at *40–42.

138. *Id.* at *41.

139. Laroe Estates, Inc. v. Town of Chester, 828 F.3d 60, 62 (2d Cir. 2016) (“In this appeal we consider whether a proposed intervenor must demonstrate that it has standing even when there is a genuine case or controversy between the existing parties that satisfies the requirements of Article III of the Constitution. The answer is no.”).

140. *Id.* at 64 (citing *U.S. Postal Serv. v. Brennan*, 579 F.2d 188, 190–91 (2d Cir. 1978)).

141. *Id.* at 65.

district court's standing analysis, the panel reflected that "trying to identify the precise nature of Laroe's interest in the property is difficult at this stage of the litigation, when the factual record has not been fully developed."¹⁴² The court therefore remanded for purposes of determining in the first instance whether Laroe met the requirements of Rule 24(a) "separate and apart from the question of whether it would have standing in its own right."¹⁴³

Just under three weeks before the nomination of Justice Neil M. Gorsuch to fill the seat of Justice Scalia,¹⁴⁴ the Supreme Court granted a petition for writ of certiorari to the Second Circuit.¹⁴⁵ The Court agreed to hear "[w]hether intervenors participating in a lawsuit as of right under Federal Rule of Civil Procedure 24(a) must have Article III standing (as three circuits have held), or whether Article III of the Constitution is satisfied so long as there is a valid case or controversy between the named parties (as seven circuits have held)."¹⁴⁶ The Court granted the acting solicitor general's motion for leave to participate in oral argument as *amicus curiae*,¹⁴⁷ but denied the motion of Sherman's estate requesting leave to be added as a respondent and to participate in oral argument.¹⁴⁸

Briefing on the merits focused on whether standing was indispensable for intervenors of right.¹⁴⁹ Chester argued that intervenors of right must have standing in all instances because standing both constrains the range of litigants who can invoke judicial power and alleviates the burdens on litigants.¹⁵⁰ Article III demands, said Chester, that exercise of judicial power and the imposition of burdens should be levied only "at the behest" of parties who have concrete and particularized interests in the case.¹⁵¹ Chester asserted that standing avoids the usurpation of a lawsuit via novel claims and procedural demands for a constitutionally nonexistent controversy. Although supporting Chester in large part, the federal government maintained that standing is not necessary for intervenors supporting the same claims

142. *Id.* at 68.

143. *Id.* at 69.

144. Amy Howe, *Trump Nominates Gorsuch To Fill Scalia Vacancy*, SCOTUSBLOG (Jan. 31, 2017, 9:15 PM), <http://www.scotusblog.com/2017/01/trump-nominates-gorsuch-fill-scalia-vacancy/> [<https://perma.cc/2S4H-PLVV>].

145. *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 810, 811 (2017) ("Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit granted.").

146. Howard, *supra* note 126.

147. *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1395, 1395 (2017) ("Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.").

148. *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1222, 1222 (2017) ("Motion of Nancy Sherman, Executrix to be added as a respondent and for leave to participate in oral argument denied.").

149. Wasserman, *Argument Preview*, *supra* note 8.

150. *Id.*

151. *Id.*

as the original parties.¹⁵² Still both the government and Chester conceded that satisfying the rigors of Rule 24(a) would amount to having standing, insinuating that the question presented could have minor practical effect.¹⁵³ While both acknowledged the one-good-plaintiff rule, neither contested the efficacy of its precepts.¹⁵⁴

Laroe countered that the one-good-plaintiff rule applies because a claimant-intervenor is the functional equivalent of a preexisting plaintiff.¹⁵⁵ Laroe maintained that intervenors who are unable to immediately satisfy Article III should have the ability to participate in a lawsuit that may eventually imperil their rights.¹⁵⁶ Laroe conceded that a separate standing inquiry is necessary “when the intervenor seeks to assert new claims or new remedies beyond those requested by the party with standing.”¹⁵⁷ Yet Laroe noted an inconsistency with that approach, reflecting that intervenor-defendants do not need standing.¹⁵⁸

In addition to the federal government, six merits-stage amicus briefs were filed, two of which presenting unique positions.¹⁵⁹ Sherman’s estate argued that Laroe should be able to assist in the case—but not intervene.¹⁶⁰ The brief proposed an idiosyncratic solution in which an intervenor of right attains “full party status” if it has standing; otherwise the third party falls to some inferior status, under which “it is allowed to proceed only to the extent it assists or aids the party supported and does not seek to control the supported party’s lawsuit.”¹⁶¹ Another brief filed by Professor Aaron-Andrew P. Bruhl—through counsel of record at West Virginia-based Bailey & Glasser LLP—attacked the continued utility of the one-good-plaintiff

152. *Id.*

153. *Id.*

154. *Id.*

155. *See id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Town of Chester v. Laroe Estates, Inc.*, SCOTUSBLOG, <http://www.scotusblog.com/case-files/cases/town-of-chester-v-laroe-estates-inc/> [https://perma.cc/N34J-4Z4M].

160. *See* Brief for Plaintiff Nancy Sherman, Executrix, as Amicus Curiae in Support of Neither Petitioner nor Respondent, Urging Reversal at 13, *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645 (2017) (No. 16-605), <http://www.scotusblog.com/wp-content/uploads/2017/03/16-605-np-amicus-nancy-sherman.pdf> [https://perma.cc/4EJ9-554S].

161. *Id.* at 4.

rule.¹⁶² The brief impugned the rule as inconsistent with a matured understanding that all plaintiffs must have standing—even if they seek the same relief.¹⁶³

B. Town of Chester and the Rise of the One-Good-Remedy Rule

The Supreme Court heard oral argument in *Town of Chester* on April 17, 2017, with Professor Howard M. Wasserman observing that “[a]ll sides faced sharp questioning from many corners of the Supreme Court.”¹⁶⁴ Neal Katyal, arguing on behalf of Chester, exhorted (twice) that “standing is not dispensed in gross,” explaining that intervenors must have standing in all instances by implication that existing parties have not represented sufficiently their interests.¹⁶⁵ Katyal noted that courts have greater control over permissive intervenors, positing that bystanders satisfying Rule 24(a) without standing could in effect overwhelm litigation.¹⁶⁶ Justice Elena Kagan expressed interest in whether a difference should exist between “an intervenor asserting a claim for relief and one contributing to how the court thinks about the case.”¹⁶⁷ Chief Justice Roberts and Justice Breyer seemed curious about whether a court had to inquire about standing “at the outset,” or “when an intervenor sought something more.”¹⁶⁸

Assistant to the Solicitor General Sarah Harrington argued that an intervenor must demonstrate standing along with the “statutory requirement of showing that current parties cannot adequately represent the would-be intervenor’s interests.”¹⁶⁹ Harrington explained that “no [material] difference [exists] between intervenor-plaintiffs and intervenor-defendants, because the standing of intervenors (unlike that of original plaintiffs) is tied to the potential injury from the disposition or outcome of the lawsuit.”¹⁷⁰ “An intervenor’s standing is analyzed much as a defendant’s standing to appeal,” said Harrington, “which is based on an injury caused by an adverse lower-court judgment.”¹⁷¹

162. See Brief of Amicus Curiae Professor Aaron-Andrew P. Bruhl in Support of Petitioner at 3–4, *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645 (2017) (No. 16-605), http://www.scotusblog.com/wp-content/uploads/2017/03/16-605_amicus_pet_professor_aaron_andrew_p_bruhl.pdf [https://perma.cc/FS5L-F639].

163. See *id.* at 2.

164. Howard M. Wasserman, *Argument Analysis: Intervention, Standing and Control Over Litigation*, SCOTUSBLOG (Apr. 18, 2017, 12:51 PM), <http://www.scotusblog.com/2017/04/argument-analysis-intervention-standing-control-litigation/> [https://perma.cc/VCG7-PG3L] [hereinafter Wasserman, *Argument Analysis*].

165. *Id.*

166. See *id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

Shay Dvoretzky, on behalf of Laroe, countered that the “constitutionalization of every intervention motion” is a “solution in search of a problem.”¹⁷² He reminded the Court that standing serves to prevent courts from issuing advisory opinions about actions by the political branches, which does not compel “micromanag[ing]” discovery.¹⁷³ Dvoretzky distinguished between Rule 24(a) and Article III standing, noting that Article III keeps federal courts from addressing non-live disputes, whereas Rule 24 protects those who may be affected by live disputes.¹⁷⁴ In response to a question from Justice Gorsuch, sitting for his first oral argument,¹⁷⁵ Dvoretzky explained that Laroe was not seeking a distinct remedy in this case, just to “maximize” Sherman’s recovery, in which “Laroe has an interest.”¹⁷⁶ When Justice Gorsuch rejoined that he would be “grateful” if Dvoretzky commented on whether a distinction exists between “a plaintiff seeking a judgment [in another’s name] and . . . an intervenor seeking judgment in its own name,” Dvoretzky continued to tie his answer to the scope of the judgment.¹⁷⁷ Although Justice Gorsuch relented—“I’ll let you go”—Chief Justice Roberts redoubled that it is “circular” to suggest that “[an] intervenor can seek the same relief on the same claim but still exercise [the court’s authority to issue] subpoenas beyond what the plaintiff seeks.”¹⁷⁸ Dvoretzky also disagreed with Justice Sonia Sotomayor’s framing of the issue as “whether or not you’re asking for relief different from someone with a case or controversy,” positing that the standing inquiry only becomes salient upon the presence of a different request for relief by an intervenor.¹⁷⁹

Less than two months later, the Court released *Town of Chester* on June 5, 2017, the first opinion day of the final month of October Term 2016.¹⁸⁰

172. *Id.*

173. *Id.*

174. *Id.*

175. Amy Howe, *Justice Neil Gorsuch Takes the Bench, Jumps into the Fray*, SCOTUSBLOG (Apr. 17, 2017, 1:06 PM), <http://www.scotusblog.com/2017/04/justice-neil-gorsuch-takes-bench-jumps-fray/> [https://perma.cc/7KYV-HXA5].

176. Wasserman, *Argument Analysis*, *supra* note 164.

177. *Id.*

178. *Id.*

179. *Id.*

180. Mark Walsh, A “View” from the Courtroom: *Different Shades of Black*, SCOTUSBLOG (June 5, 2017, 4:40 PM), <http://www.scotusblog.com/2017/06/view-courtroom-different-shades-black/> [https://perma.cc/4ZCF-B5SP].

Town of Chester received little press coverage.¹⁸¹ When Justice Alito announced the unanimous opinion, members of press purportedly joked that the case name reminded them of “Chesty LaRue,” a cheeky name referenced on *Seinfeld* and *The Simpsons*.¹⁸² Although the Court vacated and remanded for further consideration of whether Laroe sought the same remedy as Sherman’s estate, its discreet tweak to the one-good-plaintiff rule augurs broader implications lying in wait.¹⁸³

Justice Alito began with the customary refrain: “At least one plaintiff must have standing to seek each form of relief requested in the complaint.”¹⁸⁴ That at least one plaintiff with standing is necessary for the continuity of a lawsuit is not groundbreaking,¹⁸⁵ and the concatenation of one good plaintiff to each form of relief is not novel.¹⁸⁶ Although the Court need not accept concessions by the parties for constitutional questions,¹⁸⁷ the Court cited the briefing alone for those propositions, thereby indicating what had become evident.¹⁸⁸ Justice Alito further explicated that those principles are the same for intervenors: “For all relief sought, there must be a litigant with standing, whether that litigant joins the lawsuit as a plaintiff, a coplaintiff, or an intervenor of right.”¹⁸⁹

Justice Alito then offered a refinement to what it means to assert different forms of relief, vacating and remanding for findings on “whether Laroe seeks the same relief as Sherman or instead seeks different relief, such as a money judgment against the Town in Laroe’s own name.”¹⁹⁰ The question of standing at least applies, according to the Court, when parties seek different forms of relief, which includes when the same theory for relief is used to

181. See, e.g., Adam Liptak, *Justices Act on Voting Rights and Cellphone Privacy*, N.Y. TIMES (June 5, 2017), <https://www.nytimes.com/2017/06/05/us/politics/us-supreme-court-affirms-north-carolina-districts-rely-too-much-on-race.html>.

182. Walsh, *supra* note 180; see also *Seinfeld: The Gum* (NBC television broadcast Dec. 14, 1995); *The Simpsons: Homer to the Max* (Fox television broadcast Feb. 7, 1999).

183. *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1648, 1652 (2017) (“Must a litigant possess Article III standing in order to intervene of right under Federal Rule of Civil Procedure 24(a)(2)? The parties do not dispute—and we hold—that such an intervenor must meet the requirements of Article III if the intervenor wishes to pursue relief not requested by a plaintiff. . . . This confusion needs to be dispelled. If Laroe wants only a money judgment of its own running directly against the Town, then it seeks damages different from those sought by Sherman and must establish its own Article III standing in order to intervene.”).

184. *Id.* at 1651.

185. See, e.g., *Horne v. Flores*, 557 U.S. 433, 445 (2009).

186. See, e.g., *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006).

187. See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2028 (2017) (Sotomayor, J., dissenting) (“Constitutional questions are decided by this Court, not the parties’ concessions.”).

188. *Town of Chester*, 137 S. Ct. at 1651.

189. *Id.*

190. *Id.*

justify separate damages awards.¹⁹¹ Justice Alito explained that the complaint is the best evidence for determining relief sought, but acknowledged the need for flexibility as litigation progresses and the parties' arguments and concessions shift.¹⁹² The Court made plain the question to answer on remand: "If Laroe wants only a money judgment of its own running directly against the Town, then it seeks damages different from those sought by Sherman and must establish its own Article III standing in order to intervene."¹⁹³

Interest was scant and the chorus was mute in the wake of the opinion.¹⁹⁴ Professor Wasserman reflected that the opinion suggests—though does not make explicit—that “an intervenor need not show standing if its litigation activities do not extend beyond asserting the same claim for the same remedies as the original plaintiff.”¹⁹⁵ Lisa Soronen, executive director of the State and Local Legal Center, which filed an amicus brief in the case, conceded that same point, suggesting that “it is unclear whether Laroe Estates wants the damages Sherman requested (damages for Sherman) or damages in Laroe Estates’ name.”¹⁹⁶ Professor Wasserman also observed two additional areas in which the Court was reticent: *when* in the litigation to resolve intervenor standing, and *whether* satisfying Rule 24(a) necessarily satisfies Article III standing.¹⁹⁷ In a supplemental article, Professor Wasserman added that the Court left the one-good-plaintiff rule intact.¹⁹⁸ Although accurate, that does not mean *Town of Chester* failed to speak to the issue.

191. *Id.*; see also *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 185 (2000) (“Laidlaw is right to insist that a plaintiff must demonstrate standing separately for each form of relief sought.”).

192. See *Town of Chester*, 137 S. Ct. at 1651–52.

193. *Id.* at 1652.

194. See, e.g., Liptak, *supra* note 181 (covering other opinions and orders released that day, while neglecting any discussion of *Town of Chester*).

195. Wasserman, *Opinion Analysis*, *supra* note 127.

196. Lisa Soronen, *Supreme Court Rules for City in Standing Case*, NAT’L CONF. ST. LEGISLATURES: NCSL BLOG (June 7, 2017), <http://www.ncsl.org/blog/2017/06/07/supreme-court-rules-for-city-in-standing-case.aspx> [<https://perma.cc/6XF4-HYCV>].

197. See Wasserman, *Opinion Analysis*, *supra* note 127.

198. Howard M. Wasserman, *SCOTUS Symposium: More on Standing, Intervenors, and Laroe Estates*, PRAWFSBLAWG (June 5, 2017), <http://prawfsblawg.blogs.com/prawfsblawg/2017/06/scotus-symposium-more-on-standing-intervenors-and-laroe-estates.html> [<https://perma.cc/ZA8T-VD68>] [hereinafter Wasserman, *SCOTUS Symposium*].

IV. THE RIPPLING EFFECTS OF *TOWN OF CHESTER* ON DAMAGES, PRELIMINARY INJUNCTIONS, AND LITIGATION ADMINISTRATION

The ostensibly forgettable *Town of Chester* bears the overtures of transforming the one-good-plaintiff rule into a question of whether standing exists for each individualized request for relief. Beyond cavil *Town of Chester* treats intervenors of right as synonymous with affirmative claimants.¹⁹⁹ The rules laid out for intervenors of right therefore apply to plaintiffs, absent a reason for disparate treatment unidentified by the Court. Although intervenors of right differ from permissive intervenors,²⁰⁰ any lesser status for permissive intervenors due to judicial control is *sui generis* and foreign to the application of parties seeking access to the courts as plaintiffs. So any future analysis of Rule 24(b) for permissive intervenors should not affect how *Town of Chester* considered intervenors of right vis-à-vis extant plaintiffs.

Centering the analysis on relief sought, *Town of Chester* has ushered in a new epoch in which the one-good-plaintiff rule has become the one-good-remedy rule. Three not readily discernable consequences emerge involving damages, preliminary injunctions, and administrative burdens. Each will complicate, to a certain degree, how litigants and courts operate.

Plaintiffs seeking damages in a singular lawsuit will now need to establish standing if any claimants wish to pursue relief in their name. In the past, organizations, unions, and union members could potentially bring a lawsuit and rely on only one party's damages theory to maintain—and sometimes win—the case.²⁰¹ The same was true for complex lawsuits in which housing discrimination was alleged by corporate entities and individual residents.²⁰² Those cases are now in tension with, if not antithetical to, *Town of Chester*. Assuming *Town of Chester* approbated *sub silentio* that plaintiffs seeking damages under the same name need only show one party with standing, for all others in a lawsuit, a demonstration of standing is required for anyone attempting to cleave damages from the whole. The effect is a change in the calculus for how each plaintiff must justify its own individualized case, requiring earlier showings of differentiated proof and more precise evidence of seemingly attenuated harm.²⁰³ Clear victims will remain, but damages

199. See *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017).

200. See *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 378 (1987).

201. See, e.g., *Bowsher v. Synar*, 478 U.S. 714, 715 (1986).

202. See, e.g., *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 262–64 (1977).

203. Cf. Dahlia Lithwick, *The Russia Conspiracy Goes to Court*, SLATE (July 13, 2017, 7:09 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2017/07/democrats_are_suing_the_trump_campaign_for_leaking_their_emails_will_they.html [https://perma.cc/7TRZ-2DCY] (“The complaint, which relies heavily on newspaper accounts and

seekers requiring discovery to connect the alleged illicit acts may have to wait. And concepts like *res judicata* and collateral estoppel may prejudice would-be plaintiffs seeking complex theories for damages.²⁰⁴

Grants of preliminary injunctive relief may change as well, limiting redressability to the isolated plight of only those who can demonstrate particularized relief. Professor Wasserman's analysis suggests that, after *Town of Chester*, injunctions good for one should be good for all:

Enjoining enforcement of a law so A can engage in some conduct (attend an integrated school, hold a rally, get married, not buy health insurance) is a different remedy from enjoining enforcement of a law so B can engage in the "same" conduct himself. This decision does nothing to end that practice. Courts generally understand this type of injunction as the equivalent of a single pie for each party to put to its own use, rather than a single order requiring something from the defendant to each plaintiff.²⁰⁵

But that conclusion is inconsistent with the admonishment that "[s]tanding is not dispensed in gross,"²⁰⁶ and it discounts the more nuanced argument that relief must be tailored to individualized injuries.²⁰⁷ The question is not whether B can use A's standing for the same relief, the question is whether A can obtain particularized relief from which B benefits obliquely. If the narrowly tailored injunction as to A makes B whole, then standing is probably not necessary for B. But if the court homes in on A to the exclusion of B, B will need standing to sue independently to join in the scope of the injunction.

The disquieting impact on equitable relief after *Town of Chester* is most pronounced when considering the recent phenomena of nationwide preliminary injunctions.²⁰⁸ Discounting an individual state's interest in interstate

current events, details the systematic effort by the Russians to influence the 2016 election. . . . One of the principal hurdles for the plaintiffs here will be, as Wright points out, the sufficiency of the evidence alleged.").

204. See *McLaughlin v. Bradlee*, 602 F. Supp. 1412, 1417 (D.D.C. 1985) ("It is especially appropriate to impose sanctions in situations where the doctrines of *res judicata* and collateral estoppel plainly preclude relitigation of the suit").

205. Wasserman, *SCOTUS Symposium*, *supra* note 198.

206. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008) (quoting *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996)).

207. *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976) ("Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art[icle] III limitation.").

208. See Amanda Frost, *Academic Highlight: Bray on Reforming the National Injunction*, SCOTUSBLOG (Nov. 23, 2016, 2:05 PM), <http://www.scotusblog.com/2016/11/academic-highlight-bray-on-reforming-the-national-injunction/> [https://perma.cc/8VKB-64LM].

comity, Texas asserted its own injuries alone in the twenty-six state lawsuit against the Obama Administration's immigration policies.²⁰⁹ The Fifth Circuit affirmed the entry of a nationwide preliminary injunction on the basis of Texan injuries.²¹⁰ Although some suggest that federal laws involving foreign affairs should be uniform when possible,²¹¹ that notion alone does not supplant the constitutional mandate that federal courts hear and redress only live cases. And the only proven case before the Fifth Circuit in that instance involved Texas's grievances.²¹² The same holds true for the challenges to the Trump Administration's immigration policies.²¹³ Individuals and organizations have different injuries apart from the states, none of which require temporary nationwide relief to redress their personal injuries. Focusing on the Trump Administration's differing treatment as to refugees in general and more specific restrictions on foreign nationals from certain countries, fealty to *Town of Chester* requires exacting orders depending on the foreign national's status.²¹⁴ That these types of cases are typically preliminary in nature necessarily means argument and evidence of individualized irreparable harm must be proffered before discovery, which further hobbles the legitimacy and efficacy of nationwide relief.

Doubtless statutes can be struck down for everyone when a plaintiff with standing proves that the law is unconstitutional,²¹⁵ yet *Town of Chester* suggests that courts should be circumspect before ordering heavy doses of relief when the only proven injury can be assuaged through a modest course

209. *Texas v. United States*, 809 F.3d 134, 146 (5th Cir. 2015) ("Twenty-six states . . . challenged DAPA under the Administrative Procedure Act . . . and the Take Care Clause of the Constitution; in an impressive and thorough Memorandum Opinion and Order issued February 16, 2015, the district court enjoined the program on the ground that the states are likely to succeed on their claim that DAPA is subject to the APA's procedural requirements." (footnotes omitted)).

210. *Id.* at 155, 162 ("At least one state—Texas—has satisfied the first standing requirement by demonstrating that it would incur significant costs in issuing driver's licenses to DAPA beneficiaries. . . . The states have standing.").

211. *E.g.*, Frost, *supra* note 208.

212. *Texas*, 809 F.3d at 146 n.2.

213. *See, e.g.*, Int'l Refugee Assistance Project v. Trump, 857 F.3d 554, 586 (4th Cir. 2017) ("And because we find that at least one Plaintiff possesses standing, we need not decide whether the other individual Plaintiffs or the organizational Plaintiffs have standing with respect to this claim.").

214. *See* Trump v. Int'l Refugee Assistance Project, 137 S. Ct. 2080, 2084 (2017) ("In addition to the §2(c) suspension of entry, this injunction covered the §6(a) suspension of refugee admissions, the §6(b) reduction in the refugee cap, and the provisions in §§2 and 6 pertaining only to internal executive review.").

215. *See, e.g.*, Matal v. Tam, 137 S. Ct. 1744, 1771 (2017) ("For these reasons, we hold that the disparagement clause violates the Free Speech Clause of the First Amendment. The judgment of the Federal Circuit is affirmed.").

of treatment.²¹⁶ Although the immigration cases asserted constitutional infirmities imperiling the scheme of executive action,²¹⁷ outside of extreme cases with extraordinary allegations, *Town of Chester* counsels in favor of diffidence before entering nationwide relief.²¹⁸ And as Professor Marty Lederman suggests, the scope of preliminary relief is concatenated to which courts and which plaintiffs best vindicate a prudent remedy.²¹⁹

In *Trump v. International Refugee Assistance Project*, a per curiam opinion released on the last day of October Term 2016, the Supreme Court harkened toward a more refined inquiry consistent with *Town of Chester*.²²⁰ In the face of reviewing nationwide preliminary injunctions entered on the basis that the federal government has no interest in pursuing broad-scale unlawful actions—even if some plaintiffs might not have standing—the Court granted in part the government’s application to stay those injunctions by parsing

216. Cf. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1864 (2017) (“Yet even a modest extension is still an extension.”).

217. See, e.g., *Int’l Refugee Assistance Project*, 857 F.3d at 601 (“EO-2 cannot be divorced from the cohesive narrative linking it to the animus that inspired it. In light of this, we find that the reasonable observer would likely conclude that EO-2’s primary purpose is to exclude persons from the United States on the basis of their religious beliefs. We therefore find that EO-2 likely fails *Lemon*’s purpose prong in violation of the Establishment Clause. Accordingly, we hold that the district court did not err in concluding that Plaintiffs are likely to succeed on the merits of their Establishment Clause claim.” (footnote omitted)).

218. Josh Blackman, *Symposium: Understanding the Supreme Court’s Equitable Ruling in Trump v. IRAP*, SCOTUSBLOG (July 12, 2017, 10:40 AM), <http://www.scotusblog.com/2017/07/symposium-understanding-supreme-courts-equitable-ruling-trump-v-irap/> [https://perma.cc/X2HH-EAZR] (“If the 4th Circuit is correct that the entire executive order is tainted by unconstitutional animus, then the government’s interest in enforcing it as to all aliens would indeed be nonexistent. The government has no interest in implementing an unconstitutional policy, even if certain parties lack standing to challenge it. Likewise, if the 9th Circuit was correct that the entire executive order was unlawful because the president lacked the statutory authority to promulgate it, then the government’s interest in enforcing the order as to all aliens would also be nil. The government cannot act unlawfully, even if other parties lack standing to challenge the government’s action. The Supreme Court’s per curiam decision, which allows the order to be enforced against some aliens, does not support either conclusion.”).

219. See Marty Lederman, *Back to the Supreme Court on the Scope of the Entry Ban Injunction: First Thoughts*, JUST SECURITY (July 17, 2017, 8:10 AM), <https://www.justsecurity.org/43191/supreme-court-scope-entry-ban-injunction-thoughts/> [https://perma.cc/A46Z-HKUK].

220. *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2089 (2017) (“Accordingly, the petitions for certiorari are granted, and the stay applications are granted in part.”); see also Mark Walsh, *A “View” from the Courtroom: A Day for Drama on the Bench*, SCOTUSBLOG (June 26, 2017, 3:51 PM), <http://www.scotusblog.com/2017/06/view-courtroom-day-drama-bench/> [https://perma.cc/GM2G-TVVG].

to whom relief could be entitled.²²¹ The Court modified the breadth of preliminary relief, tailoring the scope to redress those plaintiffs with perceived legal grievances and others similarly situated.²²² The Court concluded that only those foreign nationals with a “credible claim of a bona fide relationship with a person or entity in the United States” could benefit from the preliminary injunctions because those individuals are most likely to have a “legally relevant hardship.”²²³ Not unsurprisingly the Court did not cite *Town of Chester*, but implicit in the opinion was the idea that relief should benefit only those who have demonstrated a case or controversy.²²⁴ To suggest otherwise nudges towards an advisory opinion.²²⁵

The third upshot of *Town of Chester* is the demonstrable benefit inuring to defendants and the coordinate burdens placed on plaintiffs and the courts. October Term 2016 provided several cases in which the Court declined to relax mainstream views on where a plaintiff could file a lawsuit.²²⁶ Some commenters suggest that an animating principle from October Term 2016 is a trend toward “mak[ing] it more difficult for large groups of plaintiffs

221. *Int’l Refugee Assistance Project*, 137 S. Ct. at 2088 (“But the injunctions reach much further than that: They also bar enforcement of § 2(c) against foreign nationals abroad who have no connection to the United States at all. The equities relied on by the lower courts do not balance the same way in that context. Denying entry to such a foreign national does not burden any American party by reason of that party’s relationship with the foreign national. And the courts below did not conclude that exclusion in such circumstances would impose any legally relevant hardship on the foreign national himself.”).

222. *Id.* at 2087–88.

223. *Id.* at 2088. *But see* Chris Hajec, *Symposium: When (If Ever) May We Consider Religion at the Border?*, SCOTUSBLOG (July 13, 2017, 3:01 PM), <http://www.scotusblog.com/2017/07/symposium-ever-may-consider-religion-border/> [<https://perma.cc/Z47C-8CW9>] (“Rather, the plaintiffs contend that their own rights, as Americans who are Muslim, are violated by President Donald Trump’s order suspending entry into the country by nationals of six majority-Muslim countries. This order, they claim, is based on religious animus and causes them to feel excluded from the American community because of their religion.”).

224. *See* Steve Vladeck, *Symposium: How the Acting Solicitor General (Sort Of) Saved the Travel Ban*, SCOTUSBLOG (July 12, 2017, 2:18 PM), <http://www.scotusblog.com/2017/07/>

(“Although many have suggested that the court’s interim June 26 ruling is proof that the justices are likely to side with the government on the merits if and when the time comes, the fact that a majority voted to leave the injunctions in place as applied to any non-citizen with a ‘bona fide connection’ to the United States strongly implies the opposite.”).

225. *See* *Campbell–Ewald Co. v. Gomez*, 136 S. Ct. 663, 679 (2016) (Roberts, C.J., dissenting) (“If either the plaintiff or the defendant ceases to have a concrete interest in the outcome of the litigation, there is no longer a live case or controversy. A federal court that decides the merits of such a case runs afoul of the prohibition on advisory opinions.”).

226. *See, e.g., BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1560 (2017) (Sotomayor, J., concurring in part and dissenting in part) (“The majority’s approach grants a jurisdictional windfall to large multistate or multinational corporations that operate across many jurisdictions. Under its reasoning, it is virtually inconceivable that such corporations will ever be subject to general jurisdiction in any location other than their principal places of business or of incorporation.”).

to sue a corporate defendant in their state court of choice for conduct that harms consumers nationwide.”²²⁷ Others have expressed stronger sentiments about a perceived constriction of access to the courts:

This anti-litigation bent is of a piece with a more general conservative skepticism about the social value of litigation that has fueled a broad-ranging attack on our civil justice system in recent decades. The leaders of that assault have sought to cast litigation as excessive and efficiency-killing, and litigation regimes as awash in frivolous claims and bad-faith actors, even where the empirics suggest otherwise. In cases like [*California Public Employees' Retirement System v. ANZ Securities, Inc.*], the more measured view—that litigation is an imperfect but necessary regulatory tool that compensates for the limited resources of enforcement agencies and prosecutor's offices—has mostly faded from view, along with any empirics that might support it. The Court's procedural jurisprudence, in my view, is worse for it.²²⁸

While *Town of Chester* offers another way for defendants to challenge lawsuits and trim claims, the reformed burdens on plaintiffs are less apparent. “The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements.”²²⁹ Plaintiffs no doubt will have to marshal evidence to justify individualized relief earlier in litigation. And if courts interpret *Town of Chester* as requiring a threshold probe into Article III standing, some plaintiffs could be culled away without the benefit of discovery.²³⁰ They can, of course, intervene later²³¹—but that approach is probably not a claimant's preferred litigation strategy. *Town of Chester* might sharpen the presentation of individualized harms when parties seek unique relief, but that proof would have been necessary regardless for parties readying for trial. *Town of Chester* at least requires plaintiffs to articulate their individual case at earlier stages in litigation. And the case may preclude

227. MOLOLAMKEN, SUPREME COURT BUSINESS BRIEFING 1, 4 (July 2017), <http://www.mololamken.com/assets/htmldocuments/2017%20SCBB%20—%20Web%20Version.pdf> [<https://perma.cc/3X2C-B2Y3>].

228. David Freeman Engstrom, *Presupposition and Procedure in CalPERS v. ANZ Securities*, STAN. L. SCH.: LEGAL AGGREGATE (July 11, 2017), <https://law.stanford.edu/2017/07/11/presupposition-and-procedure-in-calpers-v-anz-securities/> [<https://perma.cc/V8QR-JRVS>].

229. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990)).

230. Cf. Lithwick, *supra* note 203 (“One of the principal hurdles for the plaintiffs here will be, as Wright points out, the sufficiency of the evidence alleged. The issue here is that two fairly recent Supreme Court decisions, *Bell Atlantic Corp. v. Twombly* (2007) and *Ashcroft v. Iqbal* (2009) dramatically heightened the requirements for pleading in civil cases in federal court.”).

231. Fed. R. Civ. P. 24.

the inclusion of certain plaintiffs until discovery unfolds and intervention becomes necessary to secure individualized remedies.

Just as *Town of Chester* adds more than a scintilla for plaintiffs to think about, the judiciary stands to endure inexorable administrative burdens. If parties seek damages in their names, or seek equitable relief tailorable to large groups, the court cannot use the one-good-plaintiff rule to administratively avoid addressing standing for all. After *Town of Chester*, to rule without addressing how a decision affects parties with uncertain standing is tantamount to an advisory opinion.²³² Reliance on one injury alone to prop up a multi-plaintiff lawsuit may constitute an unconstitutional exercise of judicial power to the benefit or detriment of parties encumbered with indeterminate standing.²³³ *Town of Chester* projects upon federal courts the obligation to review and ensure individualized cases and controversies for each type of relief sought. A court could take a pragmatic approach by finding standing for one and ruling just for one. But piecemeal litigation only goes so far. In view of *Town of Chester*, a court might, for example, hesitate before finding standing for one and then ruling against all forms of relief. Certainly losing plaintiffs with yet-to-be-determined standing will complain of an advisory opinion against their interests. They will argue that any such ruling should have no preclusive effect on their status as future litigants,²³⁴ and *Town of Chester* suggests that they might be right. Courts reduced to the status of “‘green-eyeshade accountants’ (or whatever the contemporary equivalent is)”²³⁵ rooting out standing for all is not farfetched. The interpretation, application, and evolution of *Town of Chester* will influence how courts approach cases with multiple sets of remedies across plaintiffs.

Town of Chester is a svelte legal development on its face, but it carries the auspice of a harbinger for upsetting expectations writ large for how courts and litigants approach standing in multi-plaintiff lawsuits. The one-good-plaintiff rule has just become the one-good-remedy rule.

232. See *Campbell–Ewald Co. v. Gomez*, 136 S. Ct. 663, 679 (2016) (Roberts, C.J., dissenting).

233. See, e.g., *Texas v. United States*, 809 F.3d 134, 194 (5th Cir. 2015) (King, J., dissenting).

234. See *Taylor v. Sturgell*, 553 U.S. 880, 892–93 (2008) (“A person who was not a party to a suit generally has not had a ‘full and fair opportunity to litigate’ the claims and issues settled in that suit. The application of claim and issue preclusion to nonparties thus runs up against the ‘deep-rooted historic tradition that everyone should have his own day in court.’” (quoting *Richards v. Jefferson County*, 517 U.S. 793, 798 (1996))).

235. *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1187 (2017) (quoting *Fox v. Vice*, 563 U.S. 826, 838 (2011)).

V. CONCLUSION

Frabjous²³⁶ celebration for defendants seeking to whittle down plaintiffs is premature after *Town of Chester*, but a subdued chortle of eventual triumph is acceptable. *Town of Chester* no doubt requires each plaintiff seeking individualized relief to have standing. How courts interpret this case when addressing individualized requests for damages and injunctive relief will perforce impact how litigation is presented and how opinions are written. Certainly linking at least one good plaintiff to each remedy avoids unconstitutional advisory opinions; yet tension exists between *Town of Chester* and the cases before it, many of which simply require one good plaintiff to maintain—and sometimes win—the lawsuit.²³⁷ Justice Breyer confronted the dilemma of what to do when substantive or procedural obstacles preclude vindication of a legal right, posing the following: “If you are cold, put on a sweater, perhaps an overcoat, perhaps also turn up the heat, but do not set fire to the house.”²³⁸ With time, all involved will know whether the recalibration from the one-good-plaintiff rule to the one-good-remedy rule merely turns up the heat for plaintiffs or effectively burns down multi-party litigation amid procedural and administrative conflagration.

236. I discovered the word “frabjous” while listening to a podcast in May 2017. *The Talking TED Talks Edition: Slate Money on Cathy O’Neil’s TED Talk, What Goes On at TED Talks Conferences, and the Industry of Highly Paid Speeches*, SLATE (May 6, 2017, 2:00 AM), http://www.slate.com/articles/podcasts/moneybox/2017/05/cathy_o_neil_s_ted_talk_what_goes_on_at_ted_talks_conferences_and_the_industry.html. I am now dedicated to promoting its usage. *Frabjous*, WEBSTER’S NEW WORLD DICTIONARY (Michael Agnes ed., 4th ed. 2003) (“splendid”).

237. See *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 586 (4th Cir. 2017); *Texas*, 809 F.3d at 150, 155.

238. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1884 (2017) (Breyer, J., dissenting).

