No. 07-552

In The

Supreme Court of the United States

SPRINT COMMUNICATIONS COMPANY L.P. & AT&T CORP.,
Petitioners,

v.

APCC SERVICES, INC. ET AL., *Respondents*

On Writ Of Certiorari to the United States Court of Appeals
For the District of Columbia Circuit

BRIEF FOR THE PETITIONERS

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QUESTION PRESENTED

Whether the assignment of a claim "for purposes of collection" confers standing on an assignee that has no personal stake in the case and that avowedly litigates only "on behalf of" the assignors.

PARTIES TO THE PROCEEDING

Petitioners are Sprint Communications Company L.P. and AT&T Corp.

Respondents are APCC Services, Inc.; Data Net Systems, L.L.C.; Davel Communications Group, Inc.; Jaroth, Inc., d/b/a/ Pacific Telemanagement Service; NSC Telemanagement Corp., n/k/a Intera Communications Corporation; and Peoples Telephone Co.

RULE 29.6 DISCLOSURES

The shares of petitioner AT&T Corp. ("AT&T") are 100-percent owned by AT&T, Inc. AT&T, Inc. has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

Petitioner Sprint Communications Company L.P. ("Sprint") is a wholly owned subsidiary of Sprint Nextel Corporation. Sprint Nextel Corporation has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

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OPINIONS BELOW

The district court's initial order granting petitioners' motion to dismiss (J.A. 295-313) is reported at 254 F. Supp. 2d 135. The district court's subsequent order on reconsideration denying petitioners' motion to dismiss (Pet. App. 83-105) is reported at 281 F. Supp. 2d 41. The district court's orders denying petitioners' motions for reconsideration and certifying the cases for interlocutory appeal (Pet. App. 45-63 and 64-82) are reported at 297 F. Supp. 2d 90 and 297 F. Supp. 2d 101. The court of appeals' initial opinion holding that respondents have standing to sue but no right of action (Pet. App. 4-41) is reported at 418 F.3d 1238. This Court's order vacating the court of appeals' ruling and remanding is reported at 127 S. Ct. 2094. The court of appeals' subsequent decision (Pet.

App. 1-3) remanding the case to the district court is reported at 489 F.3d 1249.

JURISDICTION

The court of appeals entered its judgment on June 8, 2007. The court of appeals denied petitioners' timely request for rehearing on August 7, 2007. Pet. App. 111-112. The petition for a writ of certiorari was filed on October 25, 2007 and granted on January 4, 2008. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

Article III, Section 2, of the United States Constitution provides, in relevant part:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

STATEMENT OF THE CASE

Under Article III of the Constitution, federal court litigation generally may be instituted only by parties that are seeking to protect their own interests. *Warth v. Seldin*, 422 U.S. 490, 515-16 (1975). This bedrock rule requires a plaintiff to demonstrate that it has its own "personal stake in the outcome" of the litigation. *Baker v. Carr*, 369 U.S. 186, 204 (1962). Similarly, a plaintiff lacks Article III standing if it does not stand to gain or lose anything itself from a federal court judgment. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976). Accordingly, a plaintiff may bring an action to vindicate the interests of third parties only in narrow circumstances that guarantee concrete adverseness and that assure that the litigation will protect the legitimate interests of both those third parties and the defendants. Fed. R. Civ. P. 23; *Hunt v. Washington State Apple Adver. Comm'n,* 432 U.S. 333, 343 (1977).

In this case, the court of appeals has adopted an unprecedented and sweeping exception to this basic framework of Article III standing. Under its holding, a nominal plaintiff that has suffered no injuries itself and that will not share in any recovery in the lawsuit has Article III standing to maintain an action in its own name on behalf of thousands of individuals who do not participate in the suit as parties, and who were perfectly capable of bringing suit in their own names. This holding will allow large numbers of damages claims to be brought in collective actions that lack the protections of either Federal Rule of Civil Procedure 23 or the doctrine of associational standing. This novel form of group litigation cannot

be squared with this Court's Article III and prudential standing rulings over the past four decades. Accordingly, the decision below should be reversed.

1. Regulations issued by the Federal Communications Commission (FCC) pursuant to the Federal Communications Act require long-distance telephone companies to compensate payphone operators for "dial around" long-distance calls. See 47 C.F.R. 64.1300(d). In a dial around call, a customer uses a payphone to access, through a toll-free number or access code, a less expensive long-distance service than the payphone operator uses for calls initiated from that phone. See generally *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 127 S. Ct. 1513, 1518 (2007). In *Global Crossing*, a payphone operator sued a long-distance company for failure to provide dial-around compensation in accordance with the FCC's regulations. This Court held that payphone operators can enforce their right to dial-around compensation through a cause of action for damages under Sections 201(b) and 207 of the Communications Act. *Id.* at 1520-21, 1525.

2. This lawsuit is one of many actions brought around the nation (see Pet. App. 71 & n.9) seeking dial-around compensation allegedly owed by long-distance companies to payphone operators. Some suits were brought by the operators themselves. See, *e.g.*, *Global Crossing*, *supra*. By contrast, with only a single exception, this case was brought by "aggregators." Pet. App. 7.[1] Aggregators do not themselves

[1] All of the claims of the payphone operators against petitioner Sprint are being litigated by aggregators. More than 99% of the payphone operators' claims against petitioner AT&T are

own and operate payphones. Instead, they are intermediaries that the operators have hired to collect and distribute the dial around fees paid by long-distance companies to numerous individual operators; this "aggregation" of the claims is said to provide efficiencies in billing and collection to the carriers and the operators. *Id.*

In this case, approximately 1400 payphone operators appointed the aggregators not merely to collect and distribute the dial around payments made by petitioner long-distance companies Sprint and AT&T, but actually to litigate their disputes with petitioners over the amount of compensation that is owed. The documents governing the relationship between the payphone operators and the aggregators explain that, as with the collection of dial-around compensation allegedly owed to the operators, "the parties recognize the efficiencies of [aggregators] taking collective action on behalf of [the payphone operators]" in litigation against long-distance companies. Pet. App. 117. The operators accordingly assigned their dial around claims against petitioners to the aggregators "for

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being litigated by aggregators. One payphone operator, Peoples Telephone Company, is a named plaintiff suing on its own behalf in the AT&T case. Pet. App. 8. Petitioners do not dispute the standing of that entity to assert its own dial-around compensation claim under the FCC regulations. Petitioners challenge the standing of all the aggregators, including the two that assert an ownership interest in individual, non-party payphone operators. *Id.* at 10 n. **.

At the time of the court of appeals' decision, Peoples Telephone Company was the only plaintiff that allegedly owned and operated payphones. In September 2007, respondents amended their complaint and now allege that a few aggregators own and operate payphones.

purposes of collection." *Id.* at 7-8. The assignments bind the aggregators to litigate "on behalf of" the payphone operators and to "pass back to the [payphone operators] any amounts they recovered thereby." *Id.* at 7-8, 114-115. The operators agreed to finance all the costs of the litigation through deductions from ongoing payments collected by the aggregators from petitioners. *Id.* at 126.

Like an ordinary agent or attorney, the aggregators stand to gain or lose nothing from the lawsuit, no matter how it is resolved. Under the assignments, all the proceeds from a judgment (if any) against petitioners go to the payphone operators. Pet. App. 7, 9-10. If the case is settled, each payphone operator "will receive dial-around compensation settlements on a per call basis." *Id.* at 124-125. Likewise, "should legal fees and expenses also be awarded, they will be returned to" the payphone operators. *Id.* at 124-125; see also *id.* at 120.

The assignments further delineate the scope of the aggregators' authority to conduct the litigation. The aggregator is designated the payphone operators' "attorney in fact" and "exclusive agent" to litigate or enter into settlements not in the aggregator's own interests but instead "on behalf of" the payphone operators. Pet. App. 8, 115, 117. In that capacity, the aggregator may take "such action as it deems reasonably necessary and appropriate." *Id.* at 117; see also *id.* (settlement authorized if within "reasonable exercise of [aggregator's] discretion"). If the aggregators fail to follow those directives, however, the operators purport not to be bound by the settlement or judgment in the litigation. *Id.* at 115; *id.* at 118 (pay-

phone operators bound by "reasonable determinations").

Under the assignments, the aggregators will "prosecute the litigation on [the operators'] behalf." Pet. App. 127. But the assignments further state that, "[i]f at any point [the aggregator] is no longer representing [the operator] in the litigation, [the operator] will be able to pursue [its] claims on [its] own, should [it] so choose." *Id.* More specifically, if an operator ceases to authorize the designated surcharge for litigation expenses "or withdraws his/her agreement to allow these deductions [to finance the litigation] prior to conclusion of the suits, [the aggregator] will drop that [service provider] from the plaintiff's list and will have no obligation to represent the [service provider] in the collection of these claims." *Id.* at 126.

3. Invoking these assignments, the respondent-aggregators filed this suit in the aggregators' own names against petitioners. J.A. 26-27, 29-31. As noted, the aggregators do not own payphones, are not themselves owed dial-around compensation under the FCC regulations, and do not stand to gain or lose anything from their suit. The complaint instead explains that the aggregators are suing "on behalf of hundreds of entities that own and operate over 400,000 public payphones located throughout the United States." J.A. 27-28. The complaint does not allege that the aggregators themselves have suffered any injuries, it merely alleges that "independent payphone service providers have been damaged" by the petitioners' failure to pay dial-around compensation. J.A. 41, 46. The complaint further requests the pay-

ment of damages to respondents "as the billing and collection agent for compensation" for the payphone operators. J.A. 47.[2]

Petitioners asserted counterclaims seeking, *inter alia*, moneys owed to them by the payphone operators. But because the operators are not parties to the suit, petitioners could only name the aggregators (rather than the payphone operators) as counterclaim defendants. See Defendant's Answ. and Counterclaims, *APCC Servs., Inc., et al. v. AT&T Corp.*, No. 1:99-cv-696 (ESH) (filed Mar. 23, 2000). Petitioners also sought discovery with respect to the nature and scope of the claims to dial-around compensation underlying the suit, as well as respondents' relationship to the payphone operators and respondents' interest in the outcome of the suit. Respondents took the position that the operators themselves were immune from party discovery because they were not participating in the suit. Plaintiffs' Response to AT&T's Motion to Compel at 8-9, *APCC Servs., Inc., et al. v. AT&T Corp.*, No. 1:99-cv-696 (ESH) (filed July 8, 2008). When discovery revealed all of the details of the assignment from the operators to respondents, petitioners moved to dismiss the case for lack of standing.

4. The district court initially dismissed the AT&T case, J.A. 295-313, reasoning that respondents lacked Article III standing because the "assignments on which plaintiffs rely for standing do not shift the loss suffered by the [payphone operators] to the aggrega-

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[2] Citations to the Complaint refer to the Complaint filed against petitioner AT&T. The Complaint filed against petitioner Sprint was identical in all material respects.

tors that represent them." J.A. 302. The court further noted that the plaintiffs did not provide any consideration to the payphone operators in exchange for the assignments. *Id.* In addition, the assignments "grant only the right to sue and not a right to a remedy," which the court concluded was insufficient to confer standing, because respondents "do not have a concrete private interest in the outcome of this suit." J.A. 302, 305. "[T]he outcome of the suit," the court elaborated, "will not affect [respondents] in a personal and individual way * * * since, unlike a typical assignment, none of the remedies sought will flow to [them] as assignees." J.A. 305.

Respondents sought reconsideration of the district court's initial standing ruling. In the event their reconsideration motion was denied, respondents moved to add the payphone operators as individual party plaintiffs or in the alternative to proceed as a class action with a payphone operator as the class representative. See J.A. 314-368; Aggregators' Motion for Leave to Amend, *APCC Servs., Inc., et al. v. AT&T Corp.*, No. 1:99-cv-696 (ESH) (filed May 23, 2003). The district court granted respondents' motion for reconsideration, holding that the aggregators have standing, and denied as moot respondents' motions to interpose payphone operators as the party plaintiffs. Pet. App. 83-106. The court reasoned that, although the "assignments do not give [the aggregators] the right to retain or share in any proceeds of the litigation," Article III was nevertheless satisfied because "the assignment transfers legal title to the claim," rather than "merely transfer[ing] a power of attorney." *Id.* at 94. In the court's view, it was dispositive

that the assignments "purport to transfer *ownership* of the [payphone operators'] right to collect," without regard to whether the transfer authorized the aggregators to keep any of the proceeds. *Id.* at 94.

The district court separately ruled that the payphone operators have a private right of action to enforce the FCC's regulations. Pet. App. 46, 65; see *APCC Servs., Inc. v. Cable & Wireless, Inc.*, 281 F. Supp. 2d 52 (D.D.C. 2003). The district court certified its standing and right of action rulings for interlocutory appeal under 28 U.S.C. 1292(b). Pet. App. 63, 81.

5. The court of appeals granted the petitions for interlocutory appeal, Pet. App. 43, and affirmed in part and reversed in part, *id.* at 4-41.

a. A sharply divided court first affirmed the district court's holding that respondents have Article III standing. The majority reasoned that the assignment was valid and was not "anything less than a complete transfer to the aggregator of the [payphone operators'] dial-around compensation claim." Pet. App. 12. The majority recognized that any proceeds of the suit would go to the payphone operators, but construed that fact as "a mere reflection of the aggregator's promise to pass back to the [operator] whatever it is able to collect." *Id.*

The majority then concluded that an assignee has standing even though it "will reap no direct benefit from the suit." Pet. App. 13. The majority deemed it sufficient as a matter of law that the assignments "transfer to the assignees the entire interest of the [operators] in their dial-around compensation claims." *Id.* at 14. In so holding, the majority relied

on Federal Rule of Civil Procedure 17(a), under which an assignee's status as a "real party in interest" is generally unaffected by the assignee's obligation to "account for the proceeds of a suit brought on the claim." Pet. App. 15. The majority said that it could identify "no basis for distinguishing the personal stake required under Rule 17(a) from the interest required for standing." *Id.* at 16.

Judge Sentelle dissented from the majority's holding that respondents have standing. Pet. App. 28-35. He stressed that the payphone operators, not respondents, are the only entities "with a real stake in the outcome of the controversy." *Id.* at 29. Judge Sentelle found the majority's reliance on the assignment to be misplaced because "[t]he doctrine of assignee standing does not wholly erase the basic requirements of standing." *Id.* "Only an assignment that gives the assignee an actual interest in the recovery is sufficient for standing." *Id.*; see also *id.* ("The assignee standing doctrine recognized by the Supreme Court * * * clearly refers to an actual assignment of an interest that secures a portion of the recovery."). Aggregators, Judge Sentelle reasoned, have no such interest because they "are a pass-through entity," *id.* at 32, "merely act[ing] as the [payphone operators'] exclusive *agent for billing and collection*," *id.* at 33 (emphasis in original). See *id.* (respondents "ha[ve] no actual financial interest in the recovery"). In his view, "[w]here the 'assignment' relationship is in substance a mere 'agency' relationship such that the 'assignee' enjoys no right to keep a part of the recovery, the irreducible constitutional minimum of standing is left unsatisfied." *Id.* at 31-32.

b. The court of appeals separately ruled (over then-Chief Judge Ginsburg's dissent) that payphone operators do not have a private right of action to enforce the FCC's dial-around compensation regulations, and it therefore ordered the dismissal of the aggregators' suit on behalf of the operators. Pet. App. 16-28, 35-41.

6. Respondents filed a petition for a writ of certiorari. This Court granted the petition, vacated the court of appeals' judgment dismissing the action, and remanded for reconsideration in light of *Global Crossing*. *APCC Servs, Inc. v. Sprint Commc'ns Co.*, 127 S. Ct. 2094 (2007).

On remand, the court of appeals held that, in light of *Global Crossing*, respondents have a private right of action to enforce the FCC's dial-around compensation regulations. Pet. App. 1-3. Noting that the court had separately upheld respondents' standing to sue on the operators' behalf to enforce those regulations, *id*. at 2, the court of appeals remanded the case to the district court for further proceedings, *id*. at 3. This Court granted certiorari to review the court of appeals' holding that the respondent-aggregators have standing to bring this suit. *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 128 S. Ct. 830 (2008).

SUMMARY OF THE ARGUMENT

The court of appeals' holding that aggregators have standing to sue conflicts with foundational principles of Article III and prudential standing.

1. Article III confines the federal judicial power to the adjudication of "cases" and "controversies," and the requirement that the plaintiff possess "standing" enforces that command. To establish standing, the

plaintiff must both (i) have personally suffered an injury, and (ii) demonstrate that the injury will be redressed through the litigation. Respondents cannot satisfy either requirement.

Respondents have not suffered any injury of their own – they are not payphone operators whom the FCC regulations protect and have no independent legal claim against petitioners. Respondents instead invoke the doctrine that an assignee has standing in some cases to assert the injury in fact suffered by the assignor. But respondents were assigned nothing more than a "right" to serve as a collection agent for the operators, unaccompanied by any independent right to recovery. Such assignments "for collection" only do not confer an "injury" for Article III purposes, much less an injury that will be redressed by their complaint.

First, assignments that are solely for purposes of collection do not transfer the assignors' putative injuries. Any assertion that respondents have incurred a personal harm that they seek to vindicate in this litigation is belied by the fact that they are avowedly litigating "on behalf of" the payphone operators, as the operators' "agents." The operators, in turn, claim the right not to be bound to the outcome of the suit if respondents deviate from their circumscribed authority. Respondents' only practical interest in the outcome of this suit is their desire to see their clients compensated, a "psychological consequence" that makes respondents little more than "concerned bystanders." That falls far short of the mark for an Article III injury-in-fact. *Valley Forge Christian College*

v. Americans United For Separation of Church and State, Inc., 454 U.S. 464, 485 (1982).

Second, even if the assignments enabled the respondents to assert injuries incurred by the operators, those injuries could not be redressed through this litigation because respondents have no stake in the outcome of this case and thus cannot "benefit in a tangible way" from the judgment in this suit. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 n.5 (1998). Respondents were assigned a right to sue on behalf of payphone operators, but were not assigned a personal right to or interest in the recovery, which remains entirely in the hands of the payphone operators. Win or lose, respondents' own interests are unaffected by the outcome of the litigation, and even a court judgment in their favor cannot afford them any redress.

Third, the court of appeals' holding that a nominal transfer of legal "title" is sufficient elevates form over substance, contrary to this Court's precedent, which demands redressability in fact as much as injury in fact. Moreover, even assuming that title passed to some extent, what is dispositive here for Article III purposes is that the legal right to the proceeds – the question to which the constitutional redressability inquiry is directed – was left in the hands of the operators. Time and again, this Court has held that standing is not "a kind of gaming device" (*ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989) (plurality opinion of Kennedy, J.)), but instead must be judged by the realities of the plaintiff's interest in the suit. Parties cannot contract themselves out of Article III's requirements.

Finally, the frailty of respondents' claim to Article III standing is evidenced by the fact that the only authority they can cite for their position is two decisions that not only predate the advent of this Court's modern Article III jurisprudence, see *Titus v. Wallick*, 306 U.S. 282 (1939); *Spiller v. Atchison, Topeka & Santa Fe Ry.*, 253 U.S. 117 (1920), but also had nothing to do with standing. Those decisions addressed only the validity of the assignments held by the plaintiff, not whether the plaintiff satisfied constitutional standing requirements. Respondents' reliance on Federal Rule of Civil Procedure 17 fares no better. That provision is concerned with identifying real parties in interest, not with establishing standing. In any event, a rule of procedure cannot change the foundational command of Article III.

2. Even if the assignments conferred Article III standing on respondents, their attempt to pursue damages claims on behalf of 1400 absent third party PSPs violates the doctrine of prudential standing and its "judicially self-imposed limits on the exercise of federal jurisdiction." *Elk Grove Unified Sch. Dist. v. Newdow,* 542 U.S. 1, 11 (2004). "In the ordinary case, a party is denied [prudential] standing to assert the rights of third persons." *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 263 (1977). As this Court has long held, this general rule applies where, as here, the absent third parties are fully capable of bringing claims in their own names and where, as here, the putative plaintiff is seeking to maintain claims that require "individualized proof" of the injuries suffered by the absent third parties. *Warth v. Seldin,* 422 U.S. 490, 515-16 (1975).

To permit federal courts to adjudicate claims in such circumstances creates unacceptable risks that the litigation will be neither fair nor final.

The judgment accordingly should be reversed.

ARGUMENT

Article III of the Constitution confines the judicial power to the resolution of actual "Cases" and "Controversies." U.S. Const. art. III, § 2. That limitation is an indispensable "ingredient of [the] separation and equilibration of powers, restraining the courts from acting at certain times," *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998), and "confin[ing] federal courts to a role consistent with a system of separated powers," *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982). As this Court has reconfirmed in each of its last two Terms, "[n]o principle is more fundamental to the judiciary's proper role in our federal system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *DaimlerChrysler Corp. v. Cuno*, 126 S. Ct. 1854, 1861 (2006) (brackets in original) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)); see *Hein v. Freedom from Religion Foundation, Inc.*, 127 S. Ct. 2553, 2562 (2007) (plurality) (same); *id.* at 2583 (Scalia, Thomas, JJ., concurring in the judgment).

An "essential and unchanging" component of the case-or-controversy requirement is that a plaintiff invoking the jurisdiction of the federal courts must have standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). That doctrine confines the judiciary's role to the resolution of disputes "of the sort

traditionally amenable to, and resolved by, the judicial process." *Steel Co.*, 523 U.S. at 102. If a party lacks standing — and thus if the case "is not a proper case or controversy" — the federal "courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler*, 126 S. Ct. at 1860-1861.

Respondents' theory is that the assignments from the payphone operators give them Article III standing, even though under the assignments they stand to win or lose nothing themselves no matter what happens in the lawsuit. That theory has no moorings in this Court's precedent. This Court repeatedly has held that Article III requires a plaintiff to demonstrate that it has a direct, personal stake in the outcome of the litigation. Respondents have no such interest here. Because the assignments bind respondents to remit to the payphone operators any and all sums collected in the litigation down to the last penny, the respondents will not personally benefit in any tangible way from a judgment in their favor.

I. RESPONDENTS LACK ARTICLE III STANDING BECAUSE THEY HAVE NO PERSONAL STAKE IN THE LITIGATION

The "irreducible constitutional minimum of standing" requires that the plaintiff (1) "have suffered an 'injury in fact'" in the form of the "invasion of a legally protected interest," that is both "concrete and particularized"; (2) identify a "causal connection between the injury and the conduct" of which he complains, such that the alleged injury is "fairly * * * trace[able] to the challenged action of the defendant"; and (3) show that it is "likely, as opposed to merely

speculative, that [its] injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 560-561 (internal quotation marks and citation omitted). Standing must exist at every stage of the litigation, *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997), and the party invoking the jurisdiction of the federal courts bears the burden of demonstrating its standing, *Lujan,* 504 U.S. at 561. See also *Warth*, 422 U.S. at 518. Meeting that burden is "substantially more difficult" when, as here, the plaintiff complains not about the defendant's violation of his own rights, but of the rights of "someone else." *Lujan*, 504 U.S. at 562.

Respondents cannot meet that burden. Respondents have suffered no injury of their own, and the assignments they hold "for collection" do not suffice to transfer the payphone operators' injuries. But in any event, any injury that could be said to have been transferred to respondents cannot be redressed through this litigation, in which they have no stake in the outcome. We first take up the failure of respondents to satisfy the redressability prong of this Court's test for Article III standing, and then turn to their failure to satisfy the injury-in-fact prong.

A. This Suit Presents No Case Or Controversy Because The Aggregator-Plaintiffs Have Not Suffered A Redressable Injury

1. Article III Requires That The Plaintiff Have A Direct, Personal Stake In The Outcome Of Its Own Case That Can Be Redressed By A Judgment In Its Favor.

Although this Court "has packaged the requirements of a constitutional 'case' or 'controversy' some-

what differently," one central requirement has remained constant over the years: "The plaintiff personally [must] benefit in a tangible way from the court's intervention." *Steel Co.*, 523 U.S. at 103 n.5; see *Warth v. Seldin*, 422 U.S. 490, 508 (1975) (same). An interest in litigating a suit is not enough; otherwise every lawyer would have standing to litigate claims in his own name whenever a client had retained him to pursue those claims. Instead, the plaintiff must have a "'concrete private interest in the outcome of [the] suit,'" *Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 772 (2000) (quoting *Lujan*, 504 U.S. at 573), and must seek relief that "directly and tangibly benefits him," *Lance v. Coffman*, 127 S. Ct. 1194, 1196 (2007) (per curiam). See *Lujan*, 504 U.S. at 581 (Kennedy, J., concurring in part & concurring in the judgment) (standing requirements assure "that the parties before the court have an actual, as opposed to professed, stake in the outcome"); see also *Larson v. Valente*, 456 U.S. 228, 244 n.15 (1982) (Article III requires a plaintiff to show that a judicial decision "will relieve a discrete injury to himself"). The requirement that the plaintiff have a "personal stake in the outcome of the controversy" ensures that there is "concrete adverseness" between the parties, thereby "sharpening the presentation of issues upon which the court so largely depends for illumination." *Baker*, 369 U.S. at 204; see *United States v. Richardson*, 418 U.S. 166, 179 (1974) ("claimant must have a personal stake in the outcome") (internal quotation marks omitted).

Applying that core principle, this Court has held time and again that plaintiffs who cannot personally benefit from the judgment they seek lack Article III standing. In *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976), for example, the Court held that indigents lacked standing to challenge the Secretary of the Treasury's grant of favorable tax treatment to hospitals that had withheld medical services from the poor. There was no dispute (for purposes of the standing decision) that the hospitals' non-profit tax status required the provision of some medical services to indigents or that the indigents had been denied needed medical services based on their inability to pay. *Id.* at 32-33. The plaintiffs thus had suffered an Article III injury and had a legal claim to assert. *Id.* at 40-41.

But Article III required more. This Court held that the plaintiffs in *Simon* lacked Article III standing because the relief they requested – a judgment invalidating the Secretary of the Treasury's grant of non-profit tax treatment to the hospitals – would not provide any redress running to the plaintiffs themselves. Instead, the requested judgment would only adjust the relationship between the defendant and third parties not before the court. *Simon*, 426 U.S. at 42-43. The plaintiffs themselves did not "stand to profit in some personal interest," *id.* at 39, and, indeed, it was "speculative" whether the judgment would result in the provision of hospital services to the plaintiffs, rather than a hospital's decision to forgo favorable tax treatment, *id.* at 42-43. The plaintiffs accordingly had failed to "allege[] such a personal stake in the outcome of the controversy as to

warrant [*their*] invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on [*their*] behalf." *Id.* at 38 (second emphasis added); see *Baker*, 369 U.S. at 204 (same). Because there was "no substantial likelihood that victory in this suit would result in respondents[] receiving the [relief] they desire," *id.* at 45-46, any exercise of federal court jurisdiction "would be gratuitous and thus inconsistent with the Art. III limitation," *id.* at 38.

Similarly, in *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973), the plaintiff had suffered a legal injury from the failure of her child's father to pay child support. But that did not invest her with Article III standing to seek an order requiring the enforcement of criminal sanctions against the father because that relief would not run to the plaintiff herself. The plaintiff "no doubt suffered an injury," but "the bare existence of an abstract injury meets only the first half of the standing requirement." *Id.* at 618. Because the redress that she sought – the jailing of the child's father – would not result in the payment of any child support or otherwise be of any personal benefit to the plaintiff, she lacked Article III standing. *Id.*; see *id.* at 619 ("[A] citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution."); see also *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).

2. The Payphone Operators' Assignment Of Their Claims To Respondents Does Not Confer A Right That Can Be Redressed To The Personal Benefit Of Respondents.

The court of appeals reasoned that respondents have Article III standing because the payphone operators have nominally assigned to respondents all right, title, and interest in their claims against petitioners. But that is not enough under this Court's Article III precedent.

To begin with, the court of appeals just assumed, without any discussion, that the assignments constitute a valid transfer of legal title to the payphone operators' claims. That is a state law question, and the court of appeals offered no explanation for its apparent assumption that the assignments effectively transferred legal title to the operators' claims. More fundamentally, even if the assignments were valid and complete under state law, Article III's redressability requirement cannot be altered by state law.

If the assignments had genuinely given respondents the full legal right and title to *both the claim and the recovery*, so that the damages (if any) paid in the case would legally belong to respondents to dispose of as they see fit, then the respondents likely would have Article III standing. Assignments of that type are common in, for example, the insurance industry and governmental benefit programs, where the assignee provides benefits in exchange for the assigned right to obtain reimbursement from third parties who may be liable to the beneficiary. See, *e.g.*, *Empire Healthchoice Assurance, Inc. v. McVeigh*, 126

S. Ct. 2121, 2128 n.1 (2006); *Blessing v. Freestone*, 520 U.S. 329, 334 (1997). Such assignments convey to the assignee the full chose in action – the legal right to the recovery as well as to prosecute the claim – and thereby give the assignee an injury in fact and a personal stake in the outcome of the case that can be redressed. See, *e.g.*, *Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387, 393 (1938) (Article III jurisdiction extends to action by State on bonds where the State "was the absolute owner of the bonds and was prosecuting the claim upon its own behalf").

But as Judge Sentelle explained in his dissent below, "there are 'assignments,' and then there are assignments." Pet. App. 29. The central flaw in the majority's theory is its failure to recognize that the assignment "for collection" in this case does not in fact or in law give rise to a right that can be redressed by a court decision in respondents' favor. Even if respondents were to prevail, they stand to gain absolutely nothing – not one cent – from the judgment. It is the payphone operators, and not the respondents, who would reap the proceeds of any favorable ruling because the assignments require respondents to remit to the operators any sums collected in the litigation. Pet. App. 12, 117, 126-127. The payphone operators thus have a personal stake in the outcome of the litigation, but respondents do not. [3]

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[3] Unlike ordinary collection agents, respondents have no right to a bounty or share in the recovery under the assignments. See, *e.g.*, *State ex rel. Frieson v. Isner*, 168 W. Va. 758, 772 (W. Va. 1981); 15a Am. Jur. 2d Collection & Credit Agencies § 11 (2007).

Respondents cannot overcome that glaring redressability problem. They principally contend that under Article III, "the *assignor's* injury in fact is what matters," BIO 5, relying on this Court's statement in *Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 773 (2000), that "the assignee of a claim has standing to assert the injury in fact suffered by the assignor." But that is only half of the standing requirement. Respondents ignore that Article III standing requires redressability as well as injury in fact. That an assignee may have the legal right to assert a once-removed injury suffered by another party cannot bestow Article III standing on the assignee if the court's judgment would not vindicate any personal interest of the assignee itself.

At bottom, respondents' contention fundamentally misapprehends this Court's redressability analysis in *Vermont Agency*. That case addressed the Article III standing of *qui tam* relators under the False Claims Act ("FCA"). The FCA guarantees *qui tam* relators a "bounty" – a share of the proceeds of a successful suit they bring on behalf of the United States. The Court stressed at the outset that the Article III "judicial power exists only to redress or otherwise to protect against injury *to the complaining party*," 529 U.S. at 771 (quoting *Warth*, 422 U.S. at 499). The Court then held that the bounty the *qui tam* relator receives if the suit is successful gives the relator the "concrete private interest in the outcome of the suit," *id*. (quoting *Lujan*, 504 U.S. at 573), required for Article III standing. The bounty – that is, the opportunity for personal redress by the court's judgment – alone does not give *qui tam* relators Article III stand-

ing. But the Court held that the opportunity for redress (the bounty) combined with the "partial assignment of the Government's damages claim," which gives the *qui tam* relator an "injury in fact" to assert, taken together "suffice[] to confer standing" on *qui tam* relators. *Id.* at 773-774. Both elements – redressability through the bounty and injury in fact through the assignment – were critical to the Court's opinion. That is underscored by the Court's reliance on historic practice, in every instance of which the assignee and relator plaintiffs had not only the right to assert an injury to a third party, but also their own discrete and independent stake in the outcome of the case. See *Vermont Agency*, 529 U.S. at 773-778; see also Pet. App. 31 (Sentelle, J., dissenting). Reinforcing the significance of the bounty, the Court explained that the assigned injury provided the basis for the relator not to sue just to recover money for the United States, but also "for his bounty." *Vermont Agency*, 529 U.S. at 773.

By contrast, in *Steel Co.*, this Court held that a party lacked standing where the monetary relief it sought was not "payable to respondent," but would instead be paid to a third party – the federal Treasury, 523 U.S. at 106. In so holding, the Court expressly rejected the argument that proof of a direct injury is sufficient to establish standing. "If that were so," the Court explained, "the redressability requirement would be entirely superfluous." *Id.* at 106 n.7. The Court accordingly held that proof of an Article III injury accompanied only by a request for relief that would be "worthless to *respondent*" or that would

be paid to a third party did not establish Article III standing. *Id.* (emphasis added).[4]

Resting Article III standing on the assignment of a claim to litigate that has been unhinged from any right to redress flies in the face of that precedent. If the legal validity of the assignment of a claim to litigate were all that Article III required (see Pet. App. 12), then this Court in *Vermont Agency* would have had no reason to discuss the *qui tam* relator's bounty at all, let alone to explain that the bounty satisfied *Lujan*'s requirement of a "concrete private interest in the outcome of [the] suit," *Vermont Agency*, 529 U.S. at 772. And, if an Article III injury to assert (assigned or not) were sufficient to provide standing to obtain relief that runs only to third parties, then this Court would have granted Citizens for a Better Environment standing to obtain penalties payable to the United States Treasury, see *Steel Co.*, *supra*. But the redressability requirement is not "superfluous." *Steel Co.*, 523 U.S. at 106 n.7. Thus respondents, who "cannot benefit in a tangible way from the court's intervention," *id.* at 103 n.5, lack Article III standing.

3. Litigants May Not Contract Themselves Out Of Article III's Standing Requirements.

The court of appeals suggested alternatively that respondents have standing because the assignments nominally encompass not merely the payphone op-

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[4] Cf. *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs., Inc.*, 528 U.S. 167, 187 (2000) (civil penalties satisfy the redressability requirement only where it is "likely" that they "would redress [the plaintiff's] injuries by abating current violations and preventing future ones").

erators' claims, but also their right to recover the judgment. The court of appeals viewed the operators' undisputed right to all the proceeds of the suit as merely reflecting a distinct contractual promise by the aggregators – supposedly irrelevant for Article III purposes – to pay over to the operators any judgment or settlement. Pet. App. 12, 16. That notion was wrong both factually and legally. As a factual matter, the operators have always possessed the contractual right to the proceeds. As a legal matter, Article III is concerned with the practical reality of the parties' rights and obligations, and thus parties cannot evade the Constitution's bedrock requirement of a case or controversy through artful contractual arrangements.

First, there was no separate promise concerning return of the proceeds in this case. There is only one assignment, and it contains interlocking promises, not distinct ones. This assignment purposefully decoupled the right to bring suit on the payphone operators' claims, which was assigned to the aggregators (albeit with significant constraints), from the legal right to the recovery on those claims, which remains with the payphone operators. Any compensation recovered in the litigation belongs solely and completely to the payphone operators. See Pet. App. 12 (noting the aggregators' "promise to pass back to the [service provider] whatever it is able to collect"); *id*. at 117 ("exclusive agent for collection"); *id*. at 118-119 (respondents agree to pay any settlement proceeds to payphone operators). Under the assignment and accompanying agreements, see Pet. App. 114-

127, aggregators (unlike *qui tam* relators) may not retain a penny for themselves.

But even if the court of appeals were right that the assignment could be read to encompass two distinct promises – the operators' assignment of the right to their remedy and the aggregators' agreement to pay back the proceeds – that contractual arrangement would not change the Article III analysis. In a long line of cases, this Court has refused to ignore reality and, instead, has looked behind a plaintiff's formal legal status or title to determine whether the plaintiff has the type of genuine stake in the litigation that would support federal jurisdiction. The standing doctrine, after all, "is not a kind of gaming device that can be surmounted merely by aggregating the allegations of different kinds of plaintiffs." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989) (plurality opinion of Kennedy, J.). Quite the contrary, "when the inquiry involves the jurisdiction of a federal court, the presumption in every stage of a cause [is] that it is without the jurisdiction of a court of the United States, unless the contrary appears from the record." *Miller & Lux v. East Side Canal & Irrigation Co.*, 211 U.S. 293, 302 (1908).

Beginning well over a century ago, this Court held that other jurisdictional limitations imposed by the Constitution cannot be circumvented by assignments that give the assignee no genuine stake in the outcome of the case. In *Woodside v. Beckham*, 216 U.S. 117 (1910), this Court held that the assignment of thirty claims to a single individual to prosecute against a mining company did not confer jurisdiction on the federal courts. The Court noted that the

plaintiff had no personal stake in the litigation, since his own claim against the company had previously been resolved in separate litigation. *Id.* at 119-120. Moreover, similar to the case at hand, the assignments were made "for the sole purpose of beginning suit in [the plaintiff's] name and to thus save expenses." *Id.* at 120. The plaintiff himself "had no interest in any of said claims or judgments" and the "actual ownership" of any proceeds from a judgment "belong to the several assignors, and [the plaintiff was] to account to them and to pay them such proceeds in case [he] collect[ed] them." *Id.* This Court held that diversity jurisdiction was lacking because the plaintiff was "not in fact the owner of the claims sued upon." *Id.*; see also *Waite v. Santa Cruz*, 184 U.S. 302, 328-329 (1902) (where plaintiff holds bonds in suit "for collection only, the circuit court was without jurisdiction," where the real individual owners' claims would not satisfy the amount in controversy requirement).

This theme is echoed in *New Hampshire v. Louisiana*, 108 U.S. 76 (1883). In that case, citizens of New Hampshire and New York assigned to their respective state attorneys general bonds from Louisiana. *Id.* at 77, 79. In *New Hampshire*, as here, the assignment was expressly "for the collection of said claim" and "for the recovery of the money due upon such claim," and the attorney general had the authority to take all steps necessary to bring suit and to carry any resulting judgment into effect. 108 U.S. at 78, 79. And, as here (Pet. App. 119-120, 126), the assignors agreed to pay the costs of litigation. 108 U.S. at 77, 79. While any judgment would technically be

paid to the attorneys general in *New Hampshire*, the states were obligated to turn over all moneys collected (after deducting the costs of litigation) to the assignors, even though the states were the legal owners of the bonds. 108 U.S. at 78-79.

New Hampshire and New York then filed an original action in this Court against Louisiana. This Court held, however, that it lacked jurisdiction. Looking at the documents as a whole, the Court concluded that the plaintiffs were "mere collecting agent[s]" for the assignors, because the assignors "pay all expenses and get[] all the money that is recovered." *New Hampshire*, 108 U.S. at 89. Whatever the external form, the Court concluded, the actions "are prosecuted and carried on altogether by and for" the assignors. *Id.* The Court accordingly concluded that the action was not a controversy between two states that was within the Court's original jurisdiction. See also *Lehigh Mining & Mfg. Co. v. Kelly*, 160 U.S. 327, 336-342 (1895) (no diversity jurisdiction where transfer of legal title to claims to a newly created corporation was done without any consideration and where sole benefit of claims remained with stockholders of grantor, who also controlled the plaintiff corporation).

In cases such as *New Hampshire* and *Lehigh*, this Court (unlike the court of appeals) refused to "shut [its] eyes to the fact that there exists * * * an agreement" under which a plaintiff, who "neither paid or assumed to pay anything," "was invested with the technical legal title for the purpose only of bringing a

suit in the federal court." *Lehigh*, 160 U.S. at 337, 342.[4]

That does not mean, however, that Article III standing is absent any time the proceeds of a suit will be "turned over or accounted for to another." BIO 6. Article III standing would exist, for example, if the judgment were subject to garnishment, had been independently obligated by the assignee to another in exchange for an acquisition or relief of indebtedness, or was promised as a charitable donation. The plaintiff in such cases would retain a direct stake of its own in the outcome of the litigation because the judgment would benefit him personally by relieving indebtedness, satisfying a legal obligation, making an acquisition possible, or fulfilling eleemosynary goals. What is critical is that the plaintiff in those cases

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[4] See, *e.g.*, *Lincoln Property Co. v. Roche*, 546 U.S. 81, 91-92 (2005) (discussing cases); *Navarro Savings Association v. Lee*, 446 U.S. 458, 465 (1980); *Oklahoma v. Atchison, Topeka & Santa Fe Ry.*, 220 U.S. 277, 289 (1911) (no original jurisdiction where State has no "direct interest of its own" and "seeks not to protect its own property, but only to vindicate the wrongs of some of its people"); *Little v. Giles*, 118 U.S. 596, 605, 607 (1886) (no diversity jurisdiction where, although plaintiff was conveyed full power of attorney to sue, dispose of lands, and manage and control property, no consideration was paid for the conveyance and plaintiff "really had no interest in the matter, and * * * the deed to him was made for the sole purpose of giving the circuit court jurisdiction"); *Inhabitants of the Township of Bernards v. Stebbins*, 109 U.S. 341, 355 (1883) (no jurisdiction over bonds transferred to plaintiff "for the purpose of collection"); *Wood v. Davis*, 59 U.S. (18 How.) 467, 469 (1855) (no diversity jurisdiction where named parties had no "interest of their own in the subject in controversy"); cf. *Kramer v. Caribbean Mills, Inc.*, 394 U.S. 823, 827 (1969) (assignment "for purposes of collection only" is collusive and barred by 28 U.S.C. 1359).

(whether an assignee or not) would have the legal right to receive judicial redress for itself, to control the litigation in its own interests, and independently to redirect the proceeds to satisfy the plaintiff's own obligations, interests, or needs.

Here, by contrast, respondents never had any right to receive the proceeds of the litigation for themselves, let alone the authority to divert the relief to satisfy their own legal obligations or interests. The right to redress on the dial-around claims never left the payphone operators' hands and was never any part of the assignment. Instead, the assignment simply deputized respondents to serve as "exclusive agent[s] for [the] collection" process, Pet. App. 117. Even if the arrangement were perfectly valid as a matter of assignment or contract law, Article III standing requires respondents to have the kind of "concrete interest in the outcome of the proceedings," *Winkelman v. Parma City Sch. Dist.*, 127 S. Ct. 1994, 2008 n.3 (2007) (Scalia, J., concurring), that the assignment in this case deliberately withheld.

B. The Assignments' Designation Of A Circumscribed Collection-Agent Role For Respondents Is Insufficient To Transfer The Payphone Operators' Injuries-In-Fact To Respondents.

The collection-agent role assigned to respondents is so circumscribed as to fail not only Article III's redressability requirement, but also the injury-in-fact requirement. An interest only in litigating "on behalf of" others to collect money for them is not the type of individualized and particularized "legally protected

interest" that is cognizable under Article III. *Lujan*, 504 U.S at 560.

Because respondents themselves stand neither to gain nor lose anything as a result of their collection action, their only interest in pursuing the litigation is their desire to see the law enforced on their clients' behalf. But this Court has repeatedly held that "the psychological consequence presumably produced by observation of conduct with which one disagrees * * * is not an injury sufficient to confer standing under Art. III." *Valley Forge Christian College v. Americans United For Separation of Church and State, Inc.*, 454 U.S. 464, 485 (1982). "[M]otivation is not a substitute for the actual injury needed by the courts and adversaries to focus litigation efforts and judicial decisionmaking." *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 226 (1974). Respondents are at best "concerned bystanders," *Valley Forge*, 454 U.S. at 473, in what is fundamentally a dispute between petitioners and the payphone operators. Respondents' interest is no different than the lawyers who represent them. If anything, the lawyers may have more of an interest if their fees are contingent. But lawyers clearly do not have standing to pursue litigation in the lawyers' name on behalf of their clients. Article III's requirement of a concrete and individualized injury in fact is designed "to put the decision as to whether review will be sought in the hands of those who," unlike respondents, "have a direct stake in the outcome" of the litigation, *id.* (quoting *Sierra Club v. Morton*, 405 U.S. 727, 740 (1972)). See

Warth, 422 U.S. at 510 ("an incidental congruity of interest" does not establish Article III standing).[5]

In concluding that the injury-in-fact requirement was satisfied, the court of appeals surmised that the assignment conveyed "all rights, title and interest" in the claims to respondents. Pet. App. 11-12 (quoting assignment). But the formal transfer of title made no difference in *New Hampshire* and *Lehigh*, where Article III's original and diversity jurisdiction were invoked. *Lehigh*, 160 U.S. at 336-342; *New Hampshire*, 108 U.S. at 78-89. There is no reason for a different outcome when the issue is whether the Constitution's case-or-controversy requirement is satisfied. See U.S. Const. art. III, § 2.

Oklahoma ex rel. Johnson v. Cook, 304 U.S. 387 (1938), similarly runs counter to the court of appeals' supposition that the proclaimed transfer of legal title to the operators' claims created federal jurisdiction. In *Cook*, this Court rejected Oklahoma's invocation of original jurisdiction to enforce the liability of a shareholder of a state bank. Although the State had acquired "legal title to [the] cause of action against the defendant," the Court "look[ed] beyond the mere legal title of the complaining State to the cause of action asserted and to the nature of the State's interest." *Id.* at 392-393. Because "recovery is sought solely for the benefit of the depositors and creditors of

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[5] Respondents thus have *less* financial interest in the outcome of the suit than plaintiffs who attempt to assert federal taxpayer standing. While an individual taxpayer's interest in the moneys she paid into the federal treasury "is comparatively minute and indeterminable," *Hein v. Freedom from Religion Foundation, Inc.*, 127 S. Ct. 2553, 2563 (2007), it is not non-existent.

the bank," making the State "a virtual trustee for the benefit of the creditors of the bank," the State's legal title did not "confer jurisdiction upon this Court." *Id.* at 395-396. The Court concluded that the "taking of legal title by the State [wa]s a mere expedient for the purpose of collection," and the State "must show a direct interest of its own" to establish original jurisdiction under Article III. *Id.* at 396. See also *Kansas v. United States*, 204 U.S. 331, 340-341 (1907) (Court lacked original jurisdiction over suit by State as trustee for the benefit of a railway company). Likewise here, respondents' assumption of "legal title" to litigate the payphone operators' claims "is a mere expedient for the purpose of collection," not a "direct interest of its own" that can support Article III standing. *Cook*, 304 U.S. at 396.

In any event, a plaintiff cannot contract itself around Article III, so the determinative inquiry must focus on what "right, title and interest" was assigned. And the language in the assignment at issue that immediately precedes the words "rights, title, and interest" explicitly states that the assignment transferred only the right "of collection," Pet. App. 114, not of ownership or control over the allegedly unpaid funds or even control over the litigation. Indeed, when read as a whole, the assignment and its accompanying documents constitute nothing more than a contract for legal services. While the arrangements authorized respondents to conduct and superintend the mechanics of litigation "on behalf of" the payphone operators, it gave them no more personal interest in the litigation than an attorney who files suit in her own name rather than that of her client.

In addition, the agreement explicitly advises payphone operators that, if they discontinue funding the litigation, Pet. App. 126, or otherwise withdraw from representation by respondents, "you [the the payphone operator] will be able to pursue *your claims* on your own," *id.* at 127 (emphasis added). The payphone operators thus have retained the rights not only to the full proceeds of the litigation and to ensure that the litigation is conducted in their interests and "on their behalf," but also to take their supposedly assigned claims back at any time they choose just by discontinuing payment of the litigation fees. The terms of the collection agreement thus belie any suggestion that respondents acquired through assignment a sufficient injury to satisfy Article III.

Respondents also ignore that history was central to the Court's ruling in *Vermont Agency* that *qui tam* relators have Article III standing to assert the United States' injuries. Indeed, the Court anchored its holding in "the long tradition of *qui tam* actions in England and the American Colonies" through which, for a bounty, private individuals could assert the government's claims. 529 U.S. at 774. The Court traced the English common law origins of *qui tam* suits all the way back to the thirteenth century, "when private individuals who had suffered injury began bringing actions in the royal courts on both their own and the Crown's behalf." *Id.* at 775. The Court further noted that, when "common-law *qui tam* actions gradually fell into disuse" in the fourteenth and fifteenth centuries, "Parliament began enacting statutes that explicitly provided for *qui tam* suits." *Id.* The Court found of particular relevance to the modern-day standing of

qui tam relators under the FCA were English statutes from the 15th Century forward "that allowed informers to obtain a portion of the penalty as a bounty for their information, even if they had not suffered an injury themselves." *Id.* Turning to the early American practice, the Court observed that "[*q*]*ui tam* actions appear to have been as prevalent in America as in England, at least in the period immediately before and after the framing of the Constitution." *Id.* at 776. The Court explained that it canvassed the history of Anglo-American *qui tam* actions in which relators suing for a bounty were authorized to assert the government's injuries because "Article III's restriction of the judicial power to 'Cases and Controversies' is properly understood to mean 'cases and controversies of the sort *traditionally* amenable to, and resolved by, the judicial process.'" *Id.* (quoting *Steel Co.*, 523 U.S. at 102) (emphasis added). And given the deep roots of *qui tam* actions that its survey had uncovered, the Court declared the history to be "well nigh conclusive with respect to * * * whether * * * a *qui tam* relator under the FCA has Article III standing." *Id.* at 777-78. It was thus the 700 years of tradition and practice of *qui tam* actions in England and America that led the Court in *Vermont Agency* to conclude that the FCA's partial assignment of the United States' injuries conferred Article III standing on bounty-driven *qui tam* relators. There is no comparable tradition and practice of standing by assignees for collection only, who lack any direct or personal stake in the outcome of litigation brought to vindicate the assignors' injuries.

C. *This Court's Decisions in Titus and Spiller Provide No Support For Respondents' Claim Of Article III Standing.*

This Court's decisions in *Titus v. Wallick*, 306 U.S. 282 (1939), and *Spiller v. Atchison, Topeka & Santa Fe Railway*, 253 U.S. 117 (1920), do nothing to support respondents' claim of Article III standing. First, the question of federal court jurisdiction was not discussed in either case. This Court has made clear that "drive-by jurisdictional rulings" – in which jurisdiction is "assumed without discussion by the Court" – "have no precedential effect." *Steel Co.*, 523 U.S. at 91; see *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 511 (2006) (same); *Lewis v. Casey*, 518 U.S. 343, 352 n.2 (1996) ("[W]e have repeatedly held that the existence of unaddressed jurisdictional defects has no precedential effect."). That is particularly true when, as here, the decisions predate the development of this Court's modern Article III standing jurisprudence. Accordingly, the fact that this Court permitted the cases in *Titus* and *Spiller* to proceed says nothing about whether those plaintiffs or respondents here have Article III standing. Nor are *Titus* or *Spiller* otherwise instructive with respect to the question presented by this case.

In *Titus*, the Ohio Supreme Court had failed to accord full faith and credit to a New York state judgment obtained by Titus. The Ohio court had concluded that the New York judgment was procured by fraud because Titus had sued under an assignment that "was given for the purpose of enabling [Titus] to bring the suit," *id.* at 288, and any proceeds "were to be turned over or accounted for to another," *id.* at

289. This Court held that the Ohio Supreme Court erred in failing to accord full faith and credit to the New York judgment. *Id*. at 289-292.

Respondents read *Titus* as foreclosing petitioners' standing objection (BIO 6), because the decision concluded that the assignment's "legal effect was not curtailed by the recital that the assignment was for purposes of suit and that its proceeds were to be turned over or accounted for to another." *Id.* (quoting *Titus*, 306 U.S. at 289). But that statement is of no help to respondents. All the Court said was that the assignment was legally valid *under state law*, as evidenced by its preceding citation of eight New York state cases as authority for the legality of the assignment. *Titus*, 306 U.S. at 289; see *id.* (explaining in the sentence introducing the language on which respondents rely that the assignment "was sufficient under the New York statutes and authorities to give petitioner dominion over the claim," and it was "[i]n that respect," that its "legal effect was not curtailed").

The validity of an assignment under state law does not, however, automatically create Article III standing for the assignee. Indeed, this Court has held that "the undisputed legality of [an] assignment under [state] law" does not "necessarily render[] it valid for purposes of federal jurisdiction," because "[t]he existence of federal jurisdiction is a matter of federal, not state law." *Kramer*, 394 U.S. at 829. Whether the assignment in *Titus* was sufficiently broad to confer Article III standing is a question about which the opinion is wholly silent.

Nor, in any event, would there have been any occasion for this Court to address the question of Arti-

cle III standing of assignees in *Titus*, even if it had been raised. Titus was *not* suing as an assignee when he filed suit in Ohio under the Constitution's Full Faith and Credit Clause, art. IV, § 1. "The suit in Ohio [and thus before the Supreme Court] was not upon the assigned cause of action," this Court explained, "but upon the judgment of which petitioner is the record owner," and "[i]t is the judgment and not the cause of action which gave rise to it for which credit is claimed" under the Full Faith and Credit Clause. *Titus*, 306 U.S. at 291. Here respondents are suing solely under the assignment.

Respondent's reliance on *Spiller v. Atchison, Topeka & Santa Fe Railway*, 253 U.S. 117 (1920), fares no better. Spiller sued in federal court to enforce a reparation order issued by the Interstate Commerce Commission in his favor. *Id*. at 120, 124. The order made an award both to Spiller, who was the secretary of the Cattle Raisers' Association and an assignee of a number of the Association's members, and to other shippers of cattle. *Id*. at 122, 124, 125. The defendants argued in federal court, *inter alia*, that the Commission lacked the authority to enter an award in favor of Spiller because the assignments allegedly failed to vest legal title in the claims. *Id*. at 133. This Court rejected that argument, holding that the assignments were valid as a matter of law. *Id*. at 134. In so holding, this Court explained that, although legal title had been validly conveyed, "the beneficial or equitable title" remained in the Association's members. *Id.* The Court concluded that beneficial title "was not necessary to support the right of the assignee to claim an award of reparation

and enable him to recover it by action at law brought in his own name but for the benefit of the equitable owners of the claim." *Id.*

That aspect of *Spiller* is of no help to respondents. As in *Titus*, this Court addressed only the legal validity of the assignment, which is not at issue before this court. The question of Article III standing was neither raised nor discussed by the Court, and the case thus established no precedent governing assignee standing. See, *e.g.*, *Arbaugh*, *supra*. Nor did the case present the opportunity for this Court to resolve any such standing question. Spiller sued as assignee before a federal agency, the Interstate Commerce Commission. The jurisdiction of federal agencies is not bound by Article III's case-or-controversy limitation. In federal court, Spiller did not sue as an assignee. Rather, Spiller's suit in federal court was brought to enforce an agency judgment that had been duly entered in his own name. See *id.* at 120. In any event, because Spiller was the head of a trade association, and had been assigned the agency's claims in that capacity, *id.* at 124, he also had associational standing to seek an order enforcing the Commission's decision in favor of the Association's members. See, *e.g.*, *Hunt*, 432 U.S. at 342-43; cf. *Spiller*, 253 U.S. at 125 ("The reparation claims in controversy appear to have been filed in due season by the Cattle Raisers' Association in behalf of its members.").

In sum, respondents' reliance on *Spiller* and *Titus* is entirely misplaced. Neither decision endorses the Article III standing of assignees (such as respon-

dents) who have only a right to sue but no personal right to redress.[6]

D. Federal Rule Of Civil Procedure 17 Does Not Affect Respondents' Standing.

The court of appeals (Pet. App. 14-16) and respondents (BIO 7-8 & nn. 5-6) contend that respondents have standing because they are a real party in interest to the litigation under Federal Rule of Civil Procedure 17(a). That Rule provides that "[a]n action must be prosecuted in the name of the real party in interest." Even assuming that respondents are real parties in interest for purposes of Rule 17, that status would do nothing to advance respondents' Article III standing. The problem for respondents is that Rule 17 "address[es] party joinder, not federal-court subject-matter jurisdiction." *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 90 (2005). Indeed, Federal Rule of Civil Procedure 82 expressly directs that the Rules "shall not be construed to extend or limit the jurisdiction of the United States district courts." See also *Lincoln Property*, 546 U.S. at 90.

Moreover, if the court of appeals were correct that the personal stake required by Article III and the personal interest required by Rule 17 are one and the

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[6] Even assuming that respondents are correct in reading *Titus* and *Spiller* as establishing Article III standing precedent, the two decisions have long since been superseded by this Court's modern standing jurisprudence, which unequivocally holds that Article III standing does not exist when the plaintiff lacks a personal stake in the outcome of the litigation. Tellingly, this Court has not cited *Titus* or *Spiller* in any of its modern-day Article III standing decisions. In fact, this Court has not cited either decision for any purpose in decades: *Titus* was last cited in 1951, and *Spiller* in 1966.

same (Pet. App. 16), then Congress could legislatively nullify Article III's standing requirements. That is because Rule 17 provides that a party "authorized by statute" may sue as a real party in interest. This Court, however, has made clear that any grant by Congress of statutory standing still must conform to the Constitution's commands. See *Lujan*, 504 U.S. at 571-578 (limiting scope of citizen-suit provision of the Endangered Species Act, 16 U.S.C. 1540(g)); *Valley Forge*, 454 U.S. at 487 n.24 (no "congressional enactment[] can lower the threshold requirements of standing under Art. III"); *Sierra Club v. Morton*, 405 U.S. 727, 738 (1972) ("But [statutorily] broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury.").

Rule 17 thus takes standing law as it finds it and addresses only the follow-on question of whether and when an individual or entity that has Article III standing may sue in its own name without joining the person on whose behalf the action is litigated. See 6A C. Wright & A. Miller, *Federal Practice & Procedure* § 1542, at 330 (2d ed. 1990) ("[E]lements of the standing doctrine are clearly unrelated to the rather simple proposition set out in Rule 17(a), and plaintiff must *both be the real party in interest and have standing*.") (emphasis added).

II. RESPONDENTS' SUIT IS FORECLOSED BY THE PRUDENTIAL STANDING DOCTRINE.

Separate and apart from its Article III standing principles, this Court has developed a prudential

standing doctrine, which embodies "judicially self-imposed limits on the exercise of federal jurisdiction." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004) (internal quotations omitted). The prudential standing doctrine serves to protect the institutional interests of the federal judiciary. See *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990). Thus, under the prudential standing doctrine, even when a plaintiff has Article III standing, federal courts may decline, as a prudential matter, to hear the plaintiff's suit.[7]

Respondents' suit against petitioners runs afoul of three core elements of this Court's prudential standing doctrine. First, respondents are litigating over the asserted rights of third parties – the payphone operators – to monetary compensation. Second, there is no barrier to the operators bringing suit themselves to recover the money allegedly owed to them. Third, respondents do not come within the zone of interest of the law on which their claim for relief on behalf of the payphone operators rests. Accordingly, even if this Court were to conclude that respondents have Article III standing, it should hold that respondents' suit is foreclosed on prudential standing grounds.

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[7] In the decision below, the majority ignored prudential standing considerations altogether, notwithstanding that the parties briefed the issue.

A. *Respondents' Assertion Of The Legal Rights Of Third Parties Counsels Against The Exercise Of Jurisdiction.*

This Court consistently has expressed "reluctance to exert judicial power when the plaintiff's claim to relief rests on the legal rights of third parties." *Warth*, 422 U.S. at 501; see *Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 955-956 (1984) (a plaintiff ordinarily "cannot rest his claim to relief on the legal rights or interests of third parties"); *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 263 (1977) ("In the ordinary case, a party is denied standing to assert the rights of third persons."); *Singleton v. Wulff*, 428 U.S. 106, 113 (1976) (federal courts "must hesitate before resolving a controversy, even one within their constitutional power to resolve, on the basis of the rights of third persons not parties to the litigation").

This Court's strong reluctance to exercise jurisdiction in such cases is rooted in the basic proposition that standing principles are designed to ensure that the parties to the litigation are adverse to each other, and that the litigation will be fair and final. The Court repeatedly has recognized that those purposes are more likely to be achieved when the individual whose rights are at stake is a party to the litigation and is indisputably bound by any final judgment. See *United Food and Commercial Workers Union v. Brown Group*, 517 U.S. 544, 556 (1996) (requiring the presence of the individuals whose rights are most directly at stake "may well promote adversarial intensity"); *Holden v. Hardy*, 169 U.S. 366, 397 (1898) (assertion of third parties' rights would come with

"greater cogency" from the third parties themselves); cf. *Taylor v. Sturgell*, No. 07-371 (cert. granted Jan. 11, 2008) (considering the claim preclusive effect of "virtual representation").

Those prudential standing considerations loom particularly large when, as here, the plaintiffs seek not group-wide injunctive or declaratory relief, but rather, individualized damages on behalf of absent third parties. Indeed, this Court has expressly cautioned against the "hazard[s]" of having a plaintiff litigate the damages claims of third parties. *Brown Group*, 517 U.S. at 556. For example, in *Warth*, this Court explained that, when damages claims are "peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof," then each individual "who claims injury as a result of [the defendants'] practices must be a party to the suit," rather than represented by a third party. 422 U.S. at 515-516.

The Court further emphasized, in *Brown Group*, that prudential limitations on vicarious damages litigation "guard against the hazard of litigating a case to the damages stage only to find the plaintiff lacking detailed records or the evidence necessary to show the harm with sufficient specificity." 517 U.S. at 556. In addition, the prudential bar "hedge[s] against any risk that the damages recovered by the [plaintiff] will fail to find their way into the pockets of the members on whose behalf injury is claimed," *id.*, or, alternatively, that the third parties will disavow or attempt to avoid the binding effect of any judgment entered on the claims, spawning collateral and duplicative litigation. While those prudential concerns may be

overcome by statutory directive or perhaps even common-law rule, see *Brown Group*, 517 U.S. at 557, respondents' collection-agent theory of standing has no such support.

Compounding the risks inherent in suits to recover damages for third parties are the myriad difficulties in conducting meaningful discovery in such suits. The heart of the problem is that third parties who do not participate in the litigation simply are not subject to the normal discovery process under Federal Rules of Civil Procedure 26 and 33 to 36, and they are not directly subject to trial management orders. See generally Brief of *Amicus Curiae* Qwest Communications Corp. in Support of Petitioners at 4-5 (discussing the "haphazard results from informal discovery" and failure of service providers to respond to questionnaires). In addition, petitioners have asserted numerous counterclaims. But the payphone operators assigned respondents only the authority to collect on the operators' claims. The operators have not assigned their liabilities to respondents or authorized respondents to litigate those liabilities on their behalf. Nor have the operators promised to abide by judgments procured by the respondents that impose liability on the operators. See *id.* at 5-6.

In addition, the terms of the assignment raise the specter of collateral litigation over whether the resulting judgment (if any) in respondents' favor would be binding on the service providers. The payphone operators agree to be bound by a final judgment only if respondents litigate "in the Company's interest." Pet. App. 115. The accompanying documents also require respondents to exercise "reasonable discretion"

in litigation decisions and to take only those measures that are "reasonably necessary and appropriate" to collect the service providers' damages. *Id.* at 117; see *id.* at 118 (respondents can take "reasonable step[s]"; service providers will accept only "reasonable determinations" by respondents). Indeed, the accompanying agreement acknowledges only that a settlement "*may* preclude any further claim by [the service provider] for the amounts in dispute." *Id.* at 119 (emphasis added).

A central function of Article III's standing requirement is to ensure that claims are presented by the party "whose interests entitle him to raise it," *Valley Forge,* 454 U.S. at 474, rather than to consume judicial authority and resources in shadow litigation that may or may not definitely resolve, in a full and fair adversarial form, the claims presented for resolution. Litigation that may have no controlling effect either on the plaintiffs or the entities on whose behalf they purport to litigate does not constitute a "case" or "controversy" within the meaning of Article III. Cf. *United States Nat'l Bank of Oregon v. Independent Insurance Agents*, 508 U.S. 439, 446 (1993) ("The exercise of judicial power under Article III of the Constitution depends on the existence of a case or controversy," and "a federal court [lacks] the power to render advisory opinions.").

In short, if the operators wish to enjoy the possible fruits of recovering damages in federal court litigation, then they should file suit themselves and subject themselves to the authority of the court, ordinary discovery processes, full adversarial proceedings, and the attendant risk of a binding adverse judgment. If

the prudential standing doctrine has any force, it means that federal courts should not exercise jurisdiction over suits brought on behalf of companies that have contracted out all litigation obligations, burdens, and risks, while retaining exclusively for themselves all the benefits of a favorable outcome.

B. There Is No Barrier To Suits By The Payphone Operators Themselves To Recoup The Money That Respondents Seek To Recover On Their Behalf.

The "ordinary rule" of the prudential standing doctrine that militates against granting standing to a plaintiff to assert the rights of third parties promotes the integrity and functioning of the judicial process. *Valley Forge*, 454 U.S. at 474. Accordingly, departures from that rule should be approved sparingly. In considering whether to make an exception and permit the plaintiff to assert the rights of a third party, this Court has examined whether the third party would be unable "to advance his own rights." *Caplin & Drysdale, Chtd. v. United States*, 491 U.S. 617, 623 n.3 (1989); see *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (considering "whether there is a 'hindrance' to the possessor's ability to protect his own interests"); *Diamond v. Charles*, 476 U.S. 54, 65-66 (1986) (standing of doctor to assert right of "individuals who are unable to assert those rights themselves"). If there is, in fact, "a genuine obstacle" to the third party's prosecution of his own suit, then this Court has relaxed its prudential standing restrictions and held that a federal court can exercise jurisdiction over a suit brought to vindicate the third party's rights. *Singleton*, 428 U.S. at 116.

No such obstacle exists in this case. The payphone operators are commercial entities seeking monetary damages from other commercial entities. Indeed, the fact that at least one of the operators here was fully capable of suing in its own right underscores the absence of any significant hindrance. Pet App. 8, 10 **. At bottom, the operators do not appear to be disabled by anything, other than perhaps a lack of motivation, "from asserting their own right[s]." *Warth*, 422 U.S. at 510. But a central purpose of prudential limitations on standing is to avoid the adjudication of rights of persons who may not be motivated to assert those rights. See *Duke Power Co. v. Carolina Envt'l Study Grp., Inc.*, 438 U.S. 59, 80 (1978). Where, as here, there is "no genuine obstacle" to a third party asserting his own rights, his "absence from court * * * suggest[s] that his right is not * * * truly important to him," and "it may be that in fact the holders of those rights * * * do not wish to assert them." *Singleton*, 428 U.S. at 113-114, 116.

Respondents have suggested that the payphone operators prefer consolidation of their claims in a single lawsuit for efficiency reasons. That may be so, but this may simply be another way of saying they lack motivation. In any event, the operators' preferences do not constitute a "genuine obstacle" to the filing of their own suit. If the operators want to sue collectively, then they should have jointly filed this action or sought certification of a class action under Rule 23 rather than (as discussed below) bypassing the vital safeguards that Rule provides for class members, defendants, and the courts.

C. *Respondents Do Not Fall Within The Zone Of Interests Of The Law On Which The Asserted Rights Of The Payphone Operators Are Predicated.*

Prudential standing strictures may give way when the plaintiffs fall within the "zone of interests" protected by the law on which the rights of third parties are predicated. *Bennett v. Spear*, 520 U.S. 154, 162 (1997). This Court has said that such play in the joints of prudential standing exists because, unlike the mandates of Article III standing, prudential standing concerns "can be modified or abrogated by Congress" through statutory expansion of interests protected by a law. *Id.* The problem for respondents is that Congress took no such action here.

Respondents are suing under the provisions of the Federal Communications Act dealing with payphone compensation issues and the FCC's regulations implementing those provisions. But on their face, the statute and regulations govern relations between the long-distance carriers and payphone operators, not between long-distance carriers and aggregators who contract with operators, and the statute and regulations are designed to provide a mode of compensation for the operators, not for the aggregators. See *Global Crossing*, 127 S. Ct. 1518. Nothing in the statute remotely suggests that Congress intended courts to lift prudential restrictions on third-party standing in actions for dial-around compensation. By its terms, Section 207 of the Communications Act only allows a private right of action for the person actually "damaged" – *i.e.*, the payphone operator – by a common carrier's alleged violation of the Act (*i.e.*, Section

201(b)). See 47 U.S.C. §§ 201(b), 207 . That limitation is manifested in the FCC's implementing regulations. See *Pay Telephone Reclassification and Compensation Provisions*, Report & Order, 18 F.C.C.R. 19975 ¶ 32, 2003 WL 22283556 (2003) ("PSPs [have] remedies to recover [payphone] debt from the delinquent carriers"); 47 C.F.R. 64.1300(d) (2007) (allowing compensation for the "payphone service provider"). There is nothing in the language of Section 201(b), Section 207, or the FCC's regulations that places third-party assignees who have agreed to pass all proceeds back to the payphone operators within the zone of interests protected by those laws. Indeed, as this Court observed in *Global Crossing*, "[t]he history of these sections * * * simply reinforces the language, making clear the purpose of § 207 is to allow *persons injured by § 201(b) violations* to bring federal-court damages actions." 127 S. Ct. at 1518 (emphasis added).

In light of the plain language of the statute and regulations, respondents do not come within the zone of interest protected by the law on which the asserted rights of the payphone operators are predicated. Thus, there is no reason for this Court to lower the prudential standing bar to suits that seek to vindicate the rights of third parties.

D. Finding Standing In These Circumstances Would Evade The Limits That This Court Has Imposed On Associational Standing.

Relaxing the prudential standing doctrine here would also be inconsistent with this Court's "associational standing" jurisprudence. Under that body of law, this Court has carved out an exception to the

general rule barring litigants from raising the claims of third parties for cases in which an association asserts a claim on behalf of its members. This Court however, has established firm limitations on the standing of associations. In particular, the Court has held that an association has standing to bring claims on behalf of its members only when "(a) the members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose, and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt*, 432 U.S. at 343 (1977); see *International Union, UAW v. Brock*, 477 U.S. 274 (1986). Respondents do not meet the standard.

Respondents are not an association and the payphone operators are not members of the respondents. The respondents are "incorporated entities * * * and their clients [the operators] are no more their 'members' than a law firm's clients are the firm's 'members.'" Pet. App. 35. Moreover, the claims asserted by respondents, which are for alleged damages suffered by the payphone operators individually, require the participation of the payphone operators for fair and effective adjudication. *Warth*, 422 U.S. at 515-516 (1975) (association lacks standing to pursue damages claims on behalf of individual members); see *Hunt*, 432 U.S. at 344 (association had standing to seek declaratory and injunctive relief on behalf of its members because such relief did not "require[] individualized proof" and thus could be "properly resolved in a group context").

E. Vesting Respondents With Standing Would Substantially Undermine Class Action Protections.

A further prudential barrier to standing is that collection-agent standing circumvents the important protections for class action members embodied in Federal Rule of Civil Procedure 23. Those procedures have been developed by Congress and the judiciary through many decades of study and experience as the best vehicle to protect the interests of both the courts and the parties in cases in which a named plaintiff sues on behalf of unnamed persons.

This litigation bears all of the hallmarks of a Rule 23 class action. A handful of named plaintiffs (respondents) seek to pursue claims on behalf of a much larger group of unnamed persons who are not participating in the litigation (the payphone operators). See *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 832 (1999) (class action device enables a "few [to] sue for the benefit of the whole"). And as in a Rule 23 class action, the named plaintiffs maintain that a single, consolidated lawsuit would be a more efficient and practical mode of litigation than multiple, individualized lawsuits. *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979) (A "[c]lass action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion.").

Indeed, when the district court initially dismissed the respondents' suit against AT&T for lack of Article III standing, respondents moved to have the case certified as a class action with a payphone operator as

the class representative. See *supra* at 8.[8] That request, however, would have required respondents to demonstrate that proceeding in a class action would comport with the "safeguards provided by the Rule 23(a) and (b) class qualifying criteria." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 621 (1997). See 7B C. Wright et al., *Federal Practice and Procedure* § 1798 (3d ed. 1998) ("The burden of establishing a right to maintain an action under Rule 23 falls, of course, on the party seeking to utilize the procedure * * *.") Those safeguards protect the interests of class action defendants and absent class members by ensuring that it is fair for all concerned to proceed on a collective basis, contrary to "the usual rule that litigation is conducted by and on behalf named parties only." *Califano*, 442 U.S. at 700-01. See also *International Union,* 477 U.S. at 296 (Rule 23 "safeguards * * * ensure that the diverse interests of class mem-

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[8] Notably, six payphone operators sued Sprint for asserted violations of the FCC's dial-around payphone compensation regulations, and moved to certify a class of payphone operators. But after the district court's decision in the AT&T case holding that respondents had Article III standing to sue petitioners (which was affirmed by the court of appeals), the operators who had sued Sprint realized that they did not have to satisfy the Rule 23 class certification requirements anymore. Accordingly, they voluntarily dismissed their class action suit in favor of the suit brought on their behalf by aggregator-respondents. *D & B Tels., Inc. v. Sprint Commc'ns Co. L.P.*, No. 03-1444, Order Granting Motion for Voluntary Dismissal (D.D.C. Sept. 29, 2003). This same pattern of a putative class action brought by operators followed by a suit brought in the operators' behalf by aggregators occurred in related litigation against *amicus curiae* Qwest Communications Corp. See Brief of *Amicus Curiae* Qwest Communications Corp. in Support of Petitioners, at 10-11.

bers are properly represented by the named plaintiff seeking to bring a case on their behalf"). The district court could have certified the class only after conducting a "rigorous analysis" and concluding that Rule 23 safeguards were met. *General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 161 (1982).

Ultimately, respondents never were required to prove that the case was suitable for class certification with a payphone operator as the class representative, because the district court reversed itself and held that the assignments from the operators bestowed Article III standing on the respondents to sue on the operators' behalf outside the Rule 23 framework. Pet. App. 83-106. The ease with which the assignments enabled respondents to bring what is, in substance, a class action free of Rule 23's protective restrictions raises serious prudential standing concerns. The careful calibration of the Rule 23 class action mechanism would be frustrated, and the protections it affords would dissolve, if assignees for collection purposes only are deemed to have standing to sue on behalf of a putative class. The court of appeals' ruling that plaintiffs who have suffered no personal injury and have no stake in the outcome of the litigation can sue based on nothing more than a collection-agent assignment is an invitation evasion of Rule 23's protections. See *East Texas Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977) (class representatives "must be part of the class and possess the same interest and suffer the same injury as the class members" on whose behalf they are suing (internal quotations omitted)); see also *O'Shea v.*

Littleton, 414 U.S. 488, 494 (1974).[9] This Court should decline the invitation.

[9] At the time the complaint was filed, a small number of aggregators held an ownership stake in a few individual PSPs. The complaint, however, did not purport to pursue those aggregators' claims on that basis. Nor would such a marginal ownership share give those aggregators a sufficient direct stake in the outcome of the case to confer standing, either under Article III or at least as a matter of prudential standing. See generally *Franchise Tax Bd. v. Alcan Aluminium, Ltd.*, 493 U.S. 331, 336 (1990); *Pagan v. Calderon*, 448 U.S. 16, 28-29 (1st Cir. 2006) (citing cases).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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