IN THE

Supreme Court of the United States

No. 10-708

FIRST AMERICAN FINANCIAL CORPORATION,
SUCCESSOR IN INTEREST TO
THE FIRST AMERICAN CORPORATION, AND
FIRST AMERICAN TITLE INSURANCE COMPANY,

Petitioners,

v.

DENISE P. EDWARDS, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

BRIEF OF AMICI CURIAE STATES OF MISSOURI, ALASKA, CALIFORNIA, HAWAII, ILLINOIS, IOWA, MISSISSIPPI, NEVADA, NEW MEXICO, WASHINGTON, AND WEST VIRGINIA, IN SUPPORT OF RESPONDENTS

CHRIS KOSTER
Attorney General of Missouri
JAMES R. LAYTON
SOLICITOR GENERAL
Counsel of Record
P.O. Box 899
Jefferson City, MO 65102
(573) 751-3321
(573) 751-0774 (Facsimile)
James.Layton@ago.mo.gov

Additional Counsel on Inside Cover

JOHN J. BURNS
Attorney General of Alaska
P.O. Box 110300
Juneau, Alaska 99811

KAMALA D. HARRIS
Attorney General of California
California Department of Justice
1300 I Street
P.O. 944255
Sacramento, California 94244-2550

DAVID M. LOUIE
Attorney General of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

LISA MADIGAN
Illinois Attorney General
100 W. Randolph St., 12th Floor
Chicago, Illinois 60601

TOM MILLER
Attorney General of Iowa
Iowa Attorney General's Office
2nd floor, Hoover State Office Building
Des Moines, Iowa 50319

JIM HOOD
Mississippi Attorney General
Post Office Box 220
Jackson, Mississippi 39205

CATHERINE CORTEZ MASTO
Attorney General for the State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701

GARY K. KING
Attorney General of New Mexico
P. O. Drawer 1508
Santa Fe, New Mexico 87504-1508

ROBERT M. MCKENNA
Attorney General of Washington
1125 Washington Street SE
PO Box 40100
Olympia, Washington 98504-0100

DARRELL V. MCGRAW, JR.
West Virginia Attorney General
Office of the Attorney General
State Capitol, Room 26-E
Charleston, West Virginia 25305

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae, the attorneys general for the States of Missouri, Alaska, California, Hawaii, Illinois, Iowa, Mississippi, Nevada, New Mexico, Washington, and West Virginia, have enforcement authority under Section 8(d)(4) of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607(d)(4) (2006). As the chief law enforcement officers of their States, Amici have enforcement authority under myriad other federal and state laws – and a strong interest in seeing the continued enforcement of those laws, particularly those that protect consumers. Amici do not have the resources to litigate for all of their constituents all of the time, not even when statutory violations are most apparent. They depend on private litigation, of the sort at issue here, to aid them in enforcing consumer and other laws that protect the public.

SUMMARY OF THE ARGUMENT

This case arises from an important piece of consumer protection legislation. In such laws, Congress may explicitly empower individuals to sue, in part because Congress recognizes that public officers and entities do not have the resources to ensure that such consumer protection legislation accomplishes its objectives. In this era of declining enforcement budgets, that approach is increasingly significant; states and the federal government must rely more and more on consumer self-help, though private suits, to vindicate statutory consumer rights. If federal courts are unable to hear those consumers' statutory claims, many consumers will simply not have a forum in which to vindicate their rights. Many will lose the chance to bring a federal suit, and those who live in states where the courts often follow this Court's lead on standing issues will lose a state court alternative. The Court should decline to read the "case or controversy" requirement so as to bar the courthouse door to a citizen who arrives with a statutory right in hand and alleges facts to support her claim against a defendant who refuses her relief.

ARGUMENT

This case arises from what has become increasingly common over the last century: a decision by a legislative branch to protect individuals by declaring a particular practice illegal. Legislators, including members of Congress, have never felt constrained to delay enforcement until particular persons appear who are able to prove direct economic harm from proscribed acts. Nor should they; the harm to individuals may be so subtle or so attenuated that such proof is essentially impossible, though the actual impact may be significant.

In that sense, efforts to regulate the financial services industry over the last three years may be a good example. With regard to practices that Congress has chosen or may choose to proscribe in order to deter a future economic crisis, there may be several – perhaps many – persons in the chain between the person who performed the act to be proscribed and the person who eventually suffered. It may be legally impossible or practically infeasible, for example, for a person whose home value plummeted because of a chain that began with the creation and sale of a discredited investment vehicle to bring suit against those who invented, sold, and profited from that vehicle.

When legislators see problems such as those that led to our current economic condition and decide to proscribe a particular act or practice, they must consider not just what to proscribe, but how to enforce the proscription. When legislators choose to make something a criminal offense, they use two tools: penal fines and restrictions on personal liberty

(imprisonment, parole, and probation). When legislators leave enforcement in the civil realm, they have a broader range of choices. Among those choices is the civil analog to criminal fines: civil monetary penalties.

Such penalties are sought and obtained by federal agencies, including the U.S. Department of Justice and the Federal Trade Commission. And they are sought and obtained by state officials, including attorneys general. Typically, those penalties are not tied to proven injuries to individuals. Rather, they are assessed based on violations of the law, regardless of whether there is proof of actual injury. For example, a court "may award to the state [of Missouri] a civil penalty of not more than one thousand dollars per violation" of Missouri's consumer protection law. § 407.100.6, Mo. Rev. Stat. (2000). Actual monetary damage is not a prerequisite (*see* § 407.020), and the penalties are paid in addition to any actual damages (§ 407.100.4).

The Missouri example is a traditional civil monetary penalty; the payment is sought by and made to the State. But legislators are not limited to such civil monetary penalties when creating enforcement mechanisms that are not restricted to proof of actual, measurable financial injury. Rather, they may include within a scheme what might be called "statutory damages" – amounts that are paid to individual plaintiffs whose statutory rights were violated. Such "statutory damages" have become common in federal law. *See* Appendix A.

Legislators – and even courts – may prefer that civil monetary penalties or "statutory damages" be

sought by and paid to governments. But in the current economic environment, there is a significant limit on the legislators' ability or willingness to restrict enforcement to government action: the ability or willingness of legislators to fund the efforts of those agencies. The ability of state and federal agencies to pursue enforcement of proscriptions enacted by the legislative branch has been, and continues to be, significantly constrained by declining budgets.

In the "statutory damages" statutes, Congress and state legislatures have, in essence, created systems of dual public-private enforcement – and courts have repeatedly recognized the importance of the private role in ensuring that rights created by law are vindicated.[1] The steps to creation begin with

---

[1] *E.g., Feeney v. Dell Inc.*, 908 N.E.2d 753, 764 (Mass. 2009) (as purposes of Massachusetts's consumer-protection statute reflect, "availability of the Attorney General's enforcement authority is . . . not sufficient to ensure that the goals of the statute are realized"); *Cooper v. QC Fin. Servs., Inc.*, 503 F. Supp.2d 1266, 1289 (D. Ariz. 2007) ("The mere possibility that a state agency may at some time file an enforcement action should not preclude Plaintiff and other similarly situated consumers from seeking a legal remedy . . . ."); *Ting v. A T&T*, 182 F. Supp.2d 902, 920 (N.D. Cal. 2002), *aff'd in part, rev'd in part*, 319 F.3d 1126 (9th Cir. 2003) (rejecting argument that FCC is forum before which class members can "effectively vindicate" right to recover damages from AT&T); *Gentry v. Superior Court*, 165 P.3d 556, 569 (Cal. 2007) (rejecting argument that availability of enforcement by Labor Commissioner is "adequate substitute for classwide arbitration"); *Kinkel v. Cingular Wireless LLC*, 857 N.E.2d 250, 276 (Ill. 2006) (state attorney general's authority to bring action insufficient, given office's need to allocate "scarce resources to a variety of issues affecting consumers"); *Vasquez-Lopez v. Beneficial Or., Inc.*, 152 P.3d 940, 950 (Or. App. 2007) ("possibility of state action cannot reliably serve as a substitute for private actions," given attorney general's contention that

enactment of a private cause of action, but also include provision for payments by violators to plaintiffs.

Such financial incentives are required, of course, if the private role is to have meaning. They are particularly important where the amount that an individual plaintiff may recover, if limited to her actual damages caused by a particular practice, is small or difficult to prove. The Ninth Circuit explained that in the context of a case involving a claim under the Fair and Accurate Credit Transactions Act ("FACTA"):

> The need for statutory damages to compensate victims is plain. The actual harm that a willful violation of FACTA will inflict on a consumer will often be small or difficult to prove. As the Seventh Circuit similarly noted in *Murray*, under the [Fair Credit Reporting Act] "individual losses, if any, are likely to be small–a modest concern about privacy, a slight chance that information would leak out and lead to identity theft. That actual loss is small and hard to quantify is why statutes such as the Fair Credit Reporting Act provide for modest damages without proof of injury." [*Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 953 (7th Cir. 2006)].

---

amount of consumer fraud in state "far exceeds" ability to investigate and prosecute it); *Scott v. Cingular Wireless*, 161 P.3d 1000, 1004 (Wash. 2007) (noting declaration by consumer-protection chief that attorney general's office lacked "sufficient resources to respond to many individual cases" and often relied on private class actions).

> In addition to that compensatory function, FACTA's actual and statutory damages provisions also effectuate the Act's deterrent purpose. *See* [*Los Angeles News Serv. v. Reuters Television Int'l, Ltd.*, 149 F.3d 987, 996 (9th Cir. 1998)] (noting that statutory damages help "sanction and vindicate the statutory policy of discouraging infringement" (internal quotation marks omitted)). In fashioning FACTA, Congress aimed to "restrict the amount of information available to identity thieves." 149 Cong. Rec. 26,891 (2003) (statement of Sen. Shelby). Allowing consumers to recover statutory damages furthers this purpose by deterring businesses from willfully making consumer financial data available, even where no actual harm results.

Bateman v. Am. Multi-Cinema, Inc., 623 F.3d 708, 718 (9th Cir. 2010).

In terms of encouraging private plaintiffs to pursue their statutory rights, the Real Estate Settlement Procedures Act ("RESPA") works the same way as FACTA. In RESPA, Congress barred certain referral fees and kickbacks (12 U.S.C. § 2607(a), (b)), practices that Congress deemed likely to cause injury to many consumers. And Congress did not just authorize government enforcement of that ban; it gave individuals in the real estate market an incentive to enforce it as well: RESPA imposes on those who violate the ban liability for "an amount equal to three times the amount of any charge paid for … settlement service," payable to the person who purchased the "settlement service." 12 U.S.C. § 26907(d)(2).

Congress enacted its scheme, including the private enforcement mechanism, not because any particular purchaser of real estate might suffer dramatically – or even measurably – because of a kickback or rebate. Rather, Congress recognized that certain practices naturally tend to affect consumers across the country, perhaps eventually harming all purchasers, and took steps to end the practice regardless of whether particular individuals can prove personal economic harm.

In someone's ideal world, perhaps, Congress would have provided enforcement agencies sufficient resources to identify and pursue every kickback and every referral fee. But we do not live in that world. Instead, we live in a world of scarce government resources. So Congress included "statutory damages" – enlisting private citizens to enforce their own statutorily created rights rather than waiting for the government to protect them. Again, Congress imposed on those engaging in illegal practices liability to private plaintiffs – here, to those whose real estate purchases include payment for settlement services in which persons engaged in the banned actions. The ability of an individual to recover under RESPA is not tied to being able to prove that she paid more than what she might have paid without the kickback or referral fee. The individual is simply authorized to recover from the lawbreaker based on the violation of her statutory rights.

Petitioners make no claim that the government cannot prosecute a case in federal court for violation of a statute unless the government proves that a measurable injury results from that violation. Petitioners instead question whether a private

plaintiff may bring such a suit or bring a suit to vindicate her own statutory right. In Petitioners' view, a live dispute among these private parties, each of whom had a role in a real estate transaction and has a direct monetary stake in the result of this suit, is not enough to create a "case or controversy" such as to allow federal court jurisdiction. At a somewhat superficial level, at least, that position seems absurd: the Constitution requires a real, currently-active dispute between the parties; the plaintiffs claim to be entitled to money from the defendants under RESPA for violation of their rights; and the defendants deny that liability; hence there is a live controversy.

We do not file as amici, however, to address the real meaning of "injury" in the language used by this Court in its standing jurisprudence. Nor do we address the petitioners' insistence that some proven economic "injury" is constitutionally required before a live dispute can be brought to federal court – insistence that seems to have no logical basis in the "case or controversy" concept. Rather, we file because of our desire to ensure that when this Court addresses whether federal courts can hear claims by individuals seeking monetary amounts promised under a statute, it keeps two things in mind.

First, private enforcement is an even more important part of the regulatory scheme now than it was just a few years ago. Restricting the ability of Congress to use the private "statutory damages" technique for ensuring compliance with the law would, in this era of decreasing government resources, diminish protection from the ills that statutes such as RESPA were enacted to address. Congress, by providing for payments to individuals

based not on proven economic harm but on violations of statutory rights, deliberately gave individuals the incentive and tools to parallel the government's enforcement efforts. To deprive plaintiffs, such as those who brought this case, the ability to sue in federal court would blunt, if not destroy, the private enforcement tool. In good economic times, Congress might respond by beefing up federal enforcement efforts. But as Congress cuts budgets for federal enforcement agencies, it becomes increasingly difficult for those agencies to themselves enforce the legislative will. There is little hope that in the short term, that situation will change.

During the last two decades, there have been times, of course, when federal resources have been redirected from enforcement of consumer protection statutes like RESPA, and the states, through their attorneys general, have picked up part of the slack. But that cannot happen this time. State budgets are even more constrained than the federal budget. As legislatures reduce appropriations for attorneys general, statutorily mandated functions – such as prosecutions, appeals in criminal cases, and defending the state in civil cases – must come first. Consumer protection is often a discretionary area – very, very valuable to citizens in the short- and long-term, but not absolutely essential to the functioning of state government and the criminal justice system. Today, it is simply not possible for attorneys general, individually nor collectively, to make up for new federal enforcement deficiencies.

Second, this Court's decision may have a ripple effect beyond federal courts and federal statutes. Declaring that there is no constitutionally sufficient "case or controversy" when an individual seeks

through federal court litigation a monetary amount that Congress has authorized that individual to obtain for violation of her statutory rights could affect the ability not just of private citizens but of attorneys general to use even state courts to protect their citizens. We recognize that this Court's decisions concerning federal court jurisdiction are not directly binding on state court systems. But they are treated as if they were binding in some states, and are persuasive authorities in others. *See* Appendix B. Though attorneys general sometimes invoke federal jurisdiction to enforce laws that protect their constituents as consumers or otherwise, they rely regularly on state court jurisdiction to enforce consumer protection and other remedial laws. Were state courts to follow a lead by this Court and carve out from their jurisdiction cases in which attorneys general or private plaintiffs seek to enforce civil monetary obligations without proof of direct individual harm, the ability of the states to protect their citizens could be severely hurt.

The petitioners' proposed interpretation of the "case or controversy" requirement could have a severe adverse impact on protections for American consumers and the American economy. And it would do so by removing from federal court jurisdiction – and perhaps, by derivation, from state court jurisdiction – cases in which everyone recognizes that there is a live controversy among parties with a direct personal stake in the outcome. The Constitution of the United States simply does not require that result.

CONCLUSION

For the reasons stated above, the Court should affirm the decision of the Court of Appeals.

Respectfully submitted,

CHRIS KOSTER
Attorney General of Missouri

JAMES R. LAYTON
SOLICITOR GENERAL
Counsel of Record
P.O. Box 899
Jefferson City, MO 65102
(573) 751-3321
(573) 751-0774 (Facsimile)
James.Layton@ago.mo.gov

October 18, 2011

APPENDIX A

EXAMPLES OF FEDERAL "STATUTORY DAMAGES" PROVISIONS

The Copyright Act, 17 U.S.C. § 504(c). *See Bus. Trends Analysts, Inc. v. Freedonia Group, Inc.*, 887 F.2d 399, 403 (2d Cir. 1989) (noting that statutory damages are an appropriate remedy in the absence of proof of actual damages). *See also Harris v. Emus Records Corp.*, 734 F.2d 1329 (9th Cir. 1984); *Engel v. Wild Oats, Inc.*, 644 F. Supp. 1089, 1091 (S.D.N.Y. 1986); *Reader's Digest Ass'n, Inc. v. Conservative Digest, Inc.*, 642 F. Supp. 144 (D.D.C. 1986) *aff'd*, 821 F.2d 800 (D.C. Cir. 1987).

Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. § 1681n(a). *See Murray*, 434 F.3d at 952-53 (holding individual damages issues did not preclude class certification because the class representative could seek statutory damages "without proof of injury" in lieu of actual damages); *Ashby v. Farmers Ins. Co. of Or.*, No. CV 01-1446-BR, 2004 WL 2359968, at *5 (D. Or. Oct. 18, 2004) (holding that no "actual harm" need be proved in an action under § 1681m(a) because "Congress ... has stated in plain terms that statutory damages are available as an alternative remedy to actual damages"); *Accord Gillespie v. Equifax Info. Servs.*, No. 05 C 138, 2008 WL 4614327, at *7 (N.D. Ill. Oct. 15, 2008) (relying on the same reasoning in determining that class treatment was appropriate for a violation of § 1681g(a)(1)'s disclosure requirements); *Murray v. New Cingular Wireless Services, Inc.*, 232 F.R.D. 295, 302-03 (N.D. Ill. 2005)

(reaching a similar conclusion with respect to a FCRA claim premised on a violation of § 1681b(e)); *see also, Beaudry v. TeleCheck Services, Inc.*, 579 F.3d 702, 705-707 (6th Cir. 2009) *cert. denied*, 130 S. Ct. 2379, 176 L. Ed. 2d 768 (U.S. 2010).

Fair Debt Collection Practices Act of 1978, 15 U.S.C. § 1692k(a). *See Fed. Home Loan Mortg. Corp. v. Lamar*, 503 F.3d 504, 513 (6th Cir. 2007) ("a consumer may recover statutory damages if the debt collector violates the FDCPA even if the consumer suffered no actual damages"); *see also Robey v. Shapiro, Marianos & Cejda*, L.L.C., 434 F.3d 1208, 1212 (10th Cir. 2006).

Truth in Lending Act of 1968, 15 U.S.C. § 1640(a)(2)(A). *See Purtle v. Eldridge Auto Sales, Inc.*, 91 F.3d 797, 800 (6th Cir. 1996) (holding that a consumer did not need to show that she "suffered actual monetary damages" or that she "was actually misled or deceived" in order to prevail on a TILA claim for statutory damages and attorney's fees); *accord Edwards v. Your Credit Inc.*, 148 F.3d 427, 441 (5th Cir. 1998); *see also McGowan v. King, Inc.*, 569 F.2d 845, 849 (5th Cir. 1978).

The Wiretap Act, 18 U.S.C. § 2510 et seq. *See Apampa v. Layng*, 157 F.3d 1103, 1105 (7th Cir. 1998) (because the statute permits the recovery of "actual damages ... or statutory damages of not less than $50 and not more than $500," 18 U.S.C. § 2520(c)(1)(A), "the plaintiff need not prove any actual harm.").

Stored Communications Act, 18 U.S.C. §§ 2701-2712. *See Pure Power Boot Camp, Inc. v. Warrior Fitness Boot Camp, LLC*, 759 F. Supp. 2d 417, 427-428 (S.D.N.Y. 2010) (finding, where plaintiffs

expressly waived any claim of actual damages or "harm" under SCA, they were nonetheless entitled to statutory damages for SCA violations); *but see, Van Alstyne v. Elec. Scriptorium, Ltd.*, 560 F.3d 199, 204-06 (4th Cir. 2009) (plain text of SCA required proof of actual damages as prerequisite to recovering statutory damages).

Driver's Privacy Protection Act, 18 U.S.C. § 2724(b). *See Kehoe v. Fid. Fed. Bank & Trust*, 421 F.3d 1209, 1217 (11th Cir. 2005) (plaintiff could recover statutory damages notwithstanding the plaintiff's failure to show any actual damages resulting from the violation).

Agricultural Workers Protection Act, 29 U.S.C. § 1854(c)(1). *See Alvarez v. Longboy*, 697 F.2d 1333, 1338 (9th Cir. 1983) (affirming award of statutory damages to the plaintiffs in the face of the "uncertain damage each may have suffered from the particular violation").

APPENDIX B

States that follow the Court's doctrine:

Alabama, *see Alabama Alcoholic Beverage Control Bd. v. Henri-Duval Winery, L.L.C.*, 890 So. 2d 70 (Ala. 2003), *quoting Lujan*, 504 U.S. at 560-61 (To show standing, a party must show "(1) an ... 'injury in fact' ...; (2) a 'causal connection between the injury and the conduct complained of'; and (3) a likelihood that the injury will be 'redressed by a favorable decision.'").

Arizona, *see McComb v. Superior Court In & For County of Maricopa*, 189 Ariz. 518, 943 P.2d 878, 882 (Ct. App. 1997) (citing *Lujan*).

California, *see Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 246 P.3d 877, 886 (2011) (Prop.64, § 1, subd. (e) ["It is the intent of the California voters in enacting this act to prohibit private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact under the standing requirements of the United States Constitution.").

Delaware, *see Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 900 (Del. 1994) (Delaware test for standing is derived from the United States Supreme Court case of *Ass'n of Data Processing Serv. Organizations, Inc. v. Camp*, 397 U.S. 150 (1970)).

Florida, s*ee State v. J.P.*, 907 So. 2d 1101, 1113 n.4 (Fla. 2004) (relying on federal authority in defining three requirements that constitute the "irreducible constitutional minimum" for standing).

Georgia, *see Feminist Women's Health Ctr. v. Burgess*, 282 Ga. 433, 651 S.E.2d 36, 38 (2007) ("In the absence of our own authority, we frequently have looked to United States Supreme Court precedent concerning Article III standing to resolve issues of standing to bring a claim in Georgia's courts.").

Idaho, *see Boundary Backpackers v. Boundary County*, 128 Idaho 371, 913 P.2d 1141, 1154 (1996) (following *Lujan* and a host of other federal authorities).

Illinois, *see Greer v. Illinois Hous. Dev. Auth.*, 122 Ill. 2d 462, 524 N.E.2d 561, 574 (1988) (observing that court was not required to follow federal law on issues of justiciability and standing, but adopting test based on federal precedent).

Indiana, *see Smith v. Brendonwood Common, Inc.*, 949 N.E.2d 422, 424 (Ind. Ct. App. 2011) (To determine whether a person is "injured" for the purposes of standing, we apply the [*Lujan*] test).

Iowa, *see Godfrey v. State*, 752 N.W.2d 413, 419 (Iowa 2008) (The two-prong Iowa test parallels the landmark test established in *Ass'n of Data Processing Serv. Organizations, Inc.*).

Kansas, *see Harrison By & Through Harrison v. Long*, 241 Kan. 174, 734 P.2d 1155, 1158 (1987) (relying on federal precedent in defining standing under state law).

Massachusetts, *see Wigfall v. Goncalves*, No. 9406510F, 1998 WL 1184196 (Mass. Super. Jan. 14, 1998) (acknowledging that Article III does not apply to state courts, but observing "Massachusetts courts do generally adopt the requirement that actual

injury be present in order for a litigant to have his day in court"); *Johnson v. Martha's Vineyard Comm'n*, No. 941243, 1996 WL 1185088 (Mass. Super. May 17, 1996) (The constitutional requirement embodies the three common standing elements required by the Supreme Court under Article III of the Constitution).

Minnesota, *see Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007) (relying on federal precedent in describing standing requirements in state court).

Mississippi, *see Clark Sand Co., Inc. v. Kelly*, 60 So. 3d 149, 154-55 (Miss. 2011) (applying *Lujan* in evaluating standing in state court).

Missouri, *see Ste. Genevieve Sch. Dist. R II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. 2002) (applying federal law in describing requirements for standing in Missouri courts).

Montana, *see Druffel v. Bd. of Adjustment*, 339 Mont. 57, 60, 168 P.3d 640, 643 (2007) ("the concept of standing arises from two different doctrines: first, discretionary doctrines intended to manage judicial review of the legality of public acts and, second, constitutional doctrines drawn from Article III of the United States Constitution.").

Nebraska, *see State v. Baltimore*, 242 Neb. 562, 495 N.W.2d 921, 926 (1993) (observing "While not a constitutional prerequisite for jurisdiction of courts of the State of Nebraska ... existence of an actual case or controversy, nevertheless, is necessary for the exercise of judicial power in Nebraska" and applying some federal precedent).

Nevada, *see In re Amerco Derivative Litig.*, 252 P.3d 681, 694 (Nev. 2011) *quoting Doe v. Bryan*, 102 Nev. 523, 728 P.2d 443, 444 (1986) ("Although state courts do not have constitutional Article III standing, 'Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief.'").

New York, *see Soc'y of Plastics Indus., Inc. v. County of Suffolk*, 77 N.Y.2d 761, 573 N.E.2d 1034, 1040 (1991) (noting there is no state law analogue to Article III, but still looking to federal precedent because common law also requires injury in fact).

North Carolina, *see Teague v. Bayer AG*, 195 N.C. App. 18, 671 S.E.2d 550, 554 (2009) ("Although North Carolina courts are not bound by the 'case or controversy' requirement of the United States Constitution with respect to the jurisdiction of federal courts, similar 'standing' requirements apply 'to refer generally to a party's right to have a court decide the merits of a dispute.'") (internal citations omitted).

North Dakota, *see State v. Carpenter*, 301 N.W.2d 106, 107 (N.D. 1980) (relying entirely on federal law in assessing standing).

Ohio, *see Brinkman v. Miami University*, 2007 WL 2410390, *8 n. 5 (Ohio App. 12 Dist. Aug. 27 2007) *quoting* Solimine, Recalibrating Justiciability in Ohio Courts, 51 Cleve.St.L.Rev. at 541 ("We recognize, of course, that federal decisions on the issue of standing are not binding on Ohio state courts. Nevertheless, 'Ohio courts have long adopted, voluntarily, federal standing requirements.'") (internal citation omitted).

Oklahoma, *see Toxic Waste Impact Group, Inc. v. Leavitt*, 890 P.2d 906, 910 n.7 (Okla. 1994) ("Federal court jurisprudence articulating standards for standing pursuant to Art. III of the United States Constitution do not necessarily define standing pursuant to Art. VII of the Oklahoma Constitution. However, in that our standing standards are analogous to those pronounced by the United States Supreme Court its jurisprudence on the subject is instructive.").

Rhode Island, *see McKenna v. Williams*, 874 A.2d 217, 225 (R.I. 2005) (adopting own rules based on federal precedent).

South Carolina, *see ATC S., Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337, 339 (2008) (applies federal Art. III standing test to litigant in state court).

South Dakota, *see Arnoldy v. Mahoney*, 791 N.W.2d 645, 653 (S.D. 2010) ("Standing is established through being a 'real party in interest' and is controlled by statute. SDCL 15-6-17(a) provides that '[e]very action shall be prosecuted in the name of the real party in interest.' 'The real party in interest requirement for standing is satisfied if the litigant can show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant.'"), *But see Cable v. Union County Bd. of County Com'rs*, 769 N.W.2d 817, 825-26 (S.D. 2009) (applying 3-part federal *Lujan* test to assess standing).

Tennessee, *see Am. Civil Liberties Union of Tennessee v. Darnell*, 195 S.W.3d 612, 619-20 (Tenn.

2006) (applying federal precedent in analyzing standing in state court).

Texas, *see Brown v. Todd*, 53 S.W.3d 297, 305 (Tex. 2001) (in assessing the "distinct injury" and "controversy" requirements for standing under Texas law, holding "To guide our decision on this issue of first impression for Texas, we may look to the similar federal standing requirements for guidance.").

Utah, *see Brown v. Div. of Water Rights of Dep't of Nat. Res.*, 228 P.3d 747, 750-51 (Utah 2010) ("Accordingly, in Utah, as in the federal system, standing is a jurisdictional requirement.").

Vermont, *see Parker v. Town of Milton*, 169 Vt. 74, 726 A.2d 477, 480 (1998) ("The standing requirement originates in Article III of the United States Constitution, which states that federal courts have jurisdiction only over actual cases or controversies… This requirement has been adopted in Vermont.").

Virginia, *see Chesapeake Bay Found., Inc. v. Com. ex rel. Virginia State Water Control Bd.*, 56 Va. App. 546, 695 S.E.2d 549, 552-53 (2010) (following federal precedent (*Lujan*) regarding Article III standing in assessing standing in state action).

Washington, *see State v. Wise*, 148 Wash. App. 425, 200 P.3d 266, 274 (2009) (following Article III standing analysis/precedent in analyzing standing under state constitution).

West Virginia, *see Coleman v. Sopher*, 459 S.E.2d 367, 373 n.6 (W. Va. 1995) (following federal

precedent under Article III to assess "controversy" requirement for standing under state constitution).

Wyoming, *see Washakie County Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 318 (Wyo. 1980) (in developing its own standing rules, court looks to the law of other states as well as federal cases).

States that decline to follow the Court's doctrine:

Alaska, *see Fannon v. Matanuska-Susitna Borough*, 192 P.3d 982, 987 (Alaska 2008) ("The United States Supreme Court, however, has interpreted the federal constitution to limit standing in a way that Alaska's constitution does not.").

Arkansas, *see Chubb Lloyds Ins. Co. v. Miller County Cir. Ct.*, 2010 Ark. 119, --- S.W.3d ----, 2010 WL 841254 (2010) ("Arkansas, however, has not followed the federal analysis and definition of 'justiciability' to include standing as a matter of subject-matter jurisdiction.").

Colorado, *see Grand Valley Citizens' Alliance v. Colorado Oil & Gas Conservation Comm'n*, No. 09CA1195, 2010 WL 2521747 (Colo. Ct. App. June 24, 2010) *cert. granted*, No. 10SC532, 2011 WL 976732 (Colo. Mar. 21, 2011) (Colorado "does not require" as much as federal cases require. Accordingly, "the test in Colorado has traditionally been relatively easy to satisfy.").

Connecticut, *see Andross v. Town of W. Hartford*, 285 Conn. 309, 939 A.2d 1146, 1158 (2008) ("This court has recognized, however, that '[w]e are not required to apply federal precedent in determining the issue of aggrievement.'").

Hawaii, *see Citizens for Prot. of N. Kohala Coastline v. County of Hawai'i*, 979 P.2d 1120, 1127 (Haw. 1999) ("the United States Supreme Court's doctrine on the issue of standing does not bind us."), *But see Corboy v. Louie*, 30049, No. 30049, 2011 WL 1687364 (Haw. Apr. 27, 2011), *reconsideration denied*, 251 P.3d 601 (Haw. 2011) ("Because this court is not bound by the same 'cases or controversies' limitation as the federal courts, federal cases concerning standing are not dispositive on this issue. Nevertheless, the Ninth Circuit Court of Appeals' analysis in *Carroll v. Nakatani*, 342 F.3d 934 (9th Cir. 2003), is persuasive.").

Kentucky, *see HealthAmerica Corp. of Kentucky v. Humana Health Plan, Inc.*, 697 S.W.2d 946, 947 (Ky. 1985) (developing state standing rules without looking to any federal precedent).

Louisiana, *see Louisiana Indep. Auto Dealers Ass'n v. State*, 295 So. 2d 796, 799 (La. 1974) (noting that Louisiana constitution contains no equivalent to Article III and therefore that "the federal decisions should be considered persuasive to the extent that they recognize 'justiciability', but are not necessarily limitations on the jurisdiction of the state courts.").

Maine, *see Seven Islands Land Co. v. Me. Land Use Regulation Comm'n*, 450 A.2d 475, 484 n.5 (Me. 1982) (in this case (and others), court adopts its own test for standing and observes "The doctrine of 'standing to sue' in the federal courts has its own unique significance, often requiring consideration of whether there is a justiciable controversy within the meaning of Article III, Section 2, of the United States Constitution.").

Maryland, *see Nefedro v. Montgomery County*, 414 Md. 585, 996 A.2d 850, 854 (2010) (refusing to apply three-prong federal test from *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), holding "[t]hat test sets forth the prudential requirements for standing in federal court, but it is not applicable to state courts.").

Michigan, *see Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ.*, 487 Mich. 349, 792 N.W.2d 686, 695 (2010) (Federal case or controversy standing requirement does not apply in Michigan; Michigan's power to decide controversies is broader than the United States Supreme Court's interpretation of Article III case or controversy limits on federal judicial power because a state sovereign possesses inherent powers that the federal government does not).

New Hampshire, *see Asmussen v. Comm'r, New Hampshire Dept. of Safety*, 145 N.H. 578, 587, 766 A.2d 678, 689 (2000) (develops own rules without citation to federal precedent).

New Jersey, *see Salorio v. Glaser*, 82 N.J. 482, 490-491, 414 A.2d 943, 947 (1980) ("It is important to recognize that New Jersey State courts are not bound by the 'case or controversy' requirement governing federal courts…"); *Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York*, 58 N.J. 98, 275 A.2d 433 (1971) ("Our State Constitution contains no analogous provision limiting the subject-matter jurisdiction of the Superior Court. See N.J. Const. art. VI, § 3, ¶ 2 . This Court remains free to fashion its own law of standing consistent with notions of substantial justice and sound judicial administration. We therefore find it unnecessary to

consider whether federal standing requirements have been met.").

New Mexico, *see San Juan Agr. Water Users Ass'n v. KNME-TV*, 257 P.3d 884, 893 (N.M. 2011) *quoting ACLU of New Mexico v. City of Albuquerque*, No. 2008-NMSC-045, 144 N.M. 471, 188 P.3d 1222 (2008) ("Unlike the federal courts, 'New Mexico state courts are not subject to the jurisdictional limitations imposed on federal courts by Article III, Section 2 of the United States Constitution.'").

Oregon, *see Kellas v. Dep't of Corr.*, 341 Or. 471, 145 P.3d 139, 143 (2006) ("…we cannot import federal law regarding justiciability into our analysis of the Oregon Constitution and rely on it to fabricate constitutional barriers to litigation with no support in either the text or history of Oregon's charter of government.").

Pennsylvania, *see Johnson v. Am. Standard*, 607 Pa. 492 (2010) ("While standing in a federal court is derived from the United States Constitution, the same is not true in Pennsylvania, as the Pennsylvania Constitution contains no reciprocal Article III requirement. Rather, and as will be explained in greater detail infra, Pennsylvania courts have consistently required a 'substantial, direct, and immediate' interest in the outcome of litigation to obtain standing.").

Wisconsin, *see Foley-Ciccantelli v. Bishop's Grove Condominium Ass'n, Inc.*, 797 N.W.2d 789, 798 (Wis. 2011) ("Standing in Wisconsin is not to be construed narrowly or restrictively, but rather should be construed liberally." Wisconsin courts assess standing as a matter of judicial policy rather

than a jurisdictional prerequisite ala the federal courts).