



The Supreme Court to Soon Resolve Divide over Certification Where Some Class Members Lack Standing

APRIL 3, 2025

On January 24, 2025, the United States Supreme Court ordered expedited briefing to resolve the current circuit split over whether a federal court may certify a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) when some members of the proposed class lack any Article III injury. Briefing will close this month ahead of argument, which is scheduled for April 29, 2025, and a decision could be issued as early as June.

The case is *Laboratory Corporation of America Holdings v. Davis*. Plaintiffs, a group of legally blind individuals, sued LabCorp, alleging unequal access to LabCorp’s patient service centers because self-service check-in kiosks are allegedly inaccessible to blind individuals in violation of the Americans with Disabilities Act and the California Unruh Civil Rights Act.

After the district court certified both a nationwide injunctive class under Rule 23(b)(2) and a damages subclass under Rule 23(b)(3), LabCorp appealed, arguing that many class members suffered no cognizable injury and lacked standing because they either did not know that the LabCorp kiosks existed or, if they did, they had no interest in using them, preferring instead to check-in at the front desk. But the Ninth Circuit held that Article III standing was satisfied and upheld the class certification orders. 2024 WL 489288 at *1-2 (9th Cir. Feb. 8, 2024). LabCorp petitioned for review by the Supreme Court.

The federal circuits are deeply divided on this issue and, as the cert petition in *Laboratory Corporation* explained, can be roughly divided into three different camps:

- 1. The Article III Circuits:** The Second and Eighth Circuits hold that a class cannot be certified if it includes any members who have not suffered an Article III injury and therefore, lack standing. See *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006) (holding that “no class may be certified that contains members lacking Article III standing”); *Johannesson v. Polaris Indus. Inc.*, 9 F.4th 981, 988 & n.3 (8th Cir. 2021) (“[A] class cannot be certified where it is defined in such a way to include individuals who lack standing.”); *Halvorson v. Auto-Owners Life Ins. Co.*, 718 F.3d 773, 778 (8th Cir. 2013) (“In order for a class to be certified, each member must have standing.”).
- 2. The De Minimis Circuits:** The D.C. and First Circuits hold that a class cannot contain more than a *de minimis* number of uninjured persons to satisfy Rule 23(b)(3)’s predominance requirement. See *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d 244, 252 (D.C. Cir. 2013) (“The plaintiffs must also show that they can prove,

through common evidence, that all class members were in fact injured by the alleged conspiracy.”); *In re Nexium Litig.*, 777 F.3d 9, 31-32 (1st Cir. 2015) (holding that only the named plaintiffs must have standing for certification).

3. The Back-End Circuits: Along with the Seventh and Eleventh Circuits, the Ninth Circuit has allowed certification even when there was more than a *de minimis* number of uninjured class members. In these circuits, courts have held that some individualized issues of member standing or damages can be addressed on the back end, following certification. See *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1267 (11th Cir. 2019) (holding only that the “named plaintiff must have standing” for a class to be certified); see also *Kohen v. Pac. Inv. Mgmt. Co.*, 571 F.3d 672, 677 (7th Cir. 2009) (holding that the Rule 23(b)(3) predominance line is crossed only if a “great many” of the class members are unharmed).

In granting certiorari, the Supreme Court narrowed the question presented to focus on certification of classes seeking damages under Federal Rule of Civil Procedure 23(b)(3) specifically, perhaps signaling that the predominance requirement will feature centrally in the court’s decision.

Beyond resolving the circuit split, the Supreme Court’s decision in this case will undoubtedly have a meaningful impact on class action litigation. Especially regarding claims where statutory minimum damages are available, including a large number of potentially uninjured class members necessarily inflates a defendant’s potential liability, and increases plaintiffs’ leverage to secure settlement payouts from defendants. Moreover, should the Supreme Court endorse the “back-end” approach and affirm the Ninth Circuit, settlements precipitated by certification could very well include payments to persons who were unharmed. On the other hand, requiring plaintiffs to show Article III injury for every, or nearly every, class member would likely prolong and increase the costs of litigation pre-certification, as well as undermine the intended efficiency of class actions.

KEY TAKEAWAY:

Given that the Supreme Court has set an expedited briefing schedule, *LabCorp* is expected to be decided this term. Depending on the outcome, class action litigants should consider potential motions for reconsideration or interlocutory appeal where class certification was granted despite, or denied because of, absent class members’ lack of standing or injury.

3 Min Read

Authors

[Shawn R. Obi](#)

[Linda Greene](#)

Sophie Borne

Related Topics

[Class Certification](#)

[Class Actions](#)

Related Capabilities

[Class Actions & Group Litigation](#)

Related Professionals



Shawn R. Obi



Linda Greene

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.