Article III Standing to Appeal in Federal Court: What Business Lawyers Need to Know

By: Robert Brundage and Kimberley Parrish

For over 30 years, Robert Brundage has practiced commercial litigation, emphasizing appellate law, complex motions and jury instructions. He has defended major motor vehicle, motorcycle, and railroad locomotive manufacturers, leading to several of the leading product-liability precedents in California. Outside of product liability, he has represented employers, financial institutions, and a foreign government, among other major clients.

Kimberley Parrish is an associate attorney at Bowman and Brooke LLP, building her practice in product liability litigation. Trial teams look to her for writing, research, and analysis skills to create persuasive arguments on complex issues.

ARE you a civil-procedure nerd? Do you want every edge to win in federal court? If the answer to either question is "yes," you need to know about Article III standing to appeal. This article will get you up to speed.

Federal-court practitioners will likely have heard of the "irreducible minimum"[1] of standing, which Article III of the United States Constitution requires of every plaintiff on every claim: the party invoking the court's jurisdiction

[1] Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982).

must have an actual or imminent, personalized, concrete injury; the injury must be traceable to the conduct complained of in the lawsuit; and there must be a reasonable probability that a favorable court ruling would redress the injury. Lack of Article III standing is a silver bullet: it is jurisdictional, it cannot be waived, the court must notice a standing defect even if no party raises it, and the appellant's lack of standing requires dismissal.

Less well known is that an appellant in federal court – whether plaintiff or defendant – must *separately* have standing to *appeal.* Standing can present a fatal obstacle to appeals of interest to business lawyers, including class-action settlements, bankruptcies, challenges to government action, cases involving intervenors, and even occasionally appeals from jury verdicts. Understanding appellate-standing requirements can help you stop an adversary's appeal cold and can keep you from spending time and money on your own client's appeal that cannot succeed. This article examines the obscure-but-useful area of standing to appeal, highlighting recurring scenarios where parties do or don't have standing and the considerations at play.

I. Article III Standing

A. Basic Requirements for Article III Standing

Article III of the United States Constitution limits the federal judicial power to "Cases" and "Controversies."[2] To reach the merits of a case, an Article III court must have jurisdiction. "One essential aspect of this requirement is that any person invoking the power of a federal court must demonstrate standing to do so."[3] To establish Article III standing, the party invoking a federal court's jurisdiction must establish (1) that he or she has actually suffered, or imminently will suffer, a concrete and particularized "injury in fact;" (2) that the injury is fairly traceable to the defendant's conduct; and (3) that it is "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable

[2] U.S. Const. Art. III § 2.

[3] Virginia House of Delegates v. Bethune-Hill, 139 S. Ct. 1945, 1950 (2019) (quoting Hollingsworth v. Perry, 570 U.S. 693, 704 (2013)); Christian School Tuition Org. v. Winn, 563 U.S. 125, 129 (2011) ("parties seeking relief" must show Article III standing).

decision.'"[4] The Supreme Court has described these three requirements as the "irreducible minimum" of Article III standing.[5]

These requirements serve several purposes. They help assure that legal questions will be resolved in a "concrete factual context conducive to a realistic appreciation of the consequences of judicial action."[6] They additionally are meant to ensure that the party invoking the federal court's jurisdiction has a "'personal stake' in the outcome of the controversy" and that the dispute "touches upon the 'legal relations of parties having adverse legal interests.'"[7] They are also meant to keep federal courts within their lane, restraining them from reaching out to decide issues committed to other branches of government.[8]

These rules also have their own important glosses. A party must demonstrate standing for each claim they press and each form of relief they seek.[9] The party claiming standing must show that he "personally would benefit in a tangible way from the court's intervention."[10] Because the injury must be concrete and personalized, the desire to vindicate "value interests," "psychic satisfaction," and the desire to see that "laws are faithfully enforced" cannot support Article III standing.[11] Only the party invoking the court's jurisdiction (normally the plaintiff in the trial court or the appellant in an appellate court) must have standing; the party objecting to relief against itself (normally the defendant or appellee) need not.[12]

Article III standing is essential to a federal court's subject-matter jurisdiction.[13] Since federal courts are presumed not to have jurisdiction until it is affirmatively shown,[14] the record must contain facts affirmatively establishing

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[4] Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–561 (1992) (citation omitted); *see also* Camreta v. Greene, 563 U.S. 692, 701 (2011); Food & Drug Admin. v. All. for Hippocratic Med., 602 U.S. 367, 374, 144 S. Ct. 1540, 1552, 219 L. Ed. 2d 121 (2024); Murthy v. Missouri, 144 S. Ct. 1972, 219 L. Ed. 2d 604 (2024) (confirming the basic requirements of Article III standing).

[5] *Lujan,* 504 U.S. at 560–561.

[6] *Valley Forge,* 475 U.S. at 472.

[7] U.S. Parole Comm'n v. Geraghty, 445 U.S. 388, 396-397 (1980); Flast v. Cohen, 392 U.S. 83, 100-101 (1968); Baker v. Carr, 369 U.S. 186, 204 (1962); Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-241 (1937). *See also Camreta*, 563 U.S. at 701.

[8] Clapper v. Amnesty Int'l USA, 568 U.S. 398, 408 (2013); *Hollingsworth,* 570 U.S. at 715.

[9] Transunion LLC v. Ramirez, 141 S. Ct. 2190, 2207 (2021).

[10] Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 102 n.5 (1998) (quoting Warth v. Seldin, 422 U.S. 490, 508 (1975)).

[11] *Steel Co.,* 523 U.S. at 107.

[12] Seila Law LLC v. Consumer Financial Protection Bureau, 140 S. Ct. 2183, 2195 (2020); Bond v. United States, 564 U.S. 211, 217 (2011).

[13] FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990).

[14] Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994).

standing, appropriate to the stage of the litigation.[15] If the plaintiff fails to demonstrate standing, the court must usually dismiss the case.[16] As with other subject-matter jurisdiction requirements, the absence of standing cannot be waived or forfeited[17] and a court must notice a standing defect *sua sponte* even if no party raises it.[18]

Article III standing should not be confused with "prudential" standing, a set of principles that formerly limited which plaintiffs could sue even if they had standing in the constitutional sense. The Supreme Court eventually clarified that "prudential standing" was a misnomer. It untangled the prudential-standing doctrine into multiple strands, most of which are irrelevant here.[19] When this article speaks of standing, it means Article III standing unless otherwise specified.

B. Article III Standing Applied to Appeals

"Although rulings on standing often turn on a plaintiff's stake in initially filing suit, 'Article III demands that an 'actual controversy' persist throughout all stages of litigation.'"[20] Thus "[t]he requirement of standing 'must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance.'"[21] An appellant–or petitioner in the Supreme Court –must satisfy *Lujan*'s three requirements, tailored to initiating an appeal rather than filing an initial lawsuit. The test for standing looks to injury *to the appellant* caused by the *lower court's judgment* instead of injury *to the plaintiff* caused by the *defendant's conduct*. "To show standing under Article III, an appealing litigant must demonstrate that it has suffered an actual or imminent injury that is 'fairly traceable' to the judgment below and that could be 'redress[ed] by a favorable ruling'" from the appellate

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[15] *TransUnion,* 141 S. Ct. at 2208.

[16] *See, for example*, DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 354 (2006); *but see* Gill v. Whitford, 138 S. Ct. 1916, 1933-1934 (2018) (acknowledging usual rule that failure to demonstrate standing triggers dismissal, but ordering lower courts to provide opportunity for plaintiffs to submit new evidence demonstrating standing).

[17] *Bethune-Hill,* 139 S.Ct. at 1951; Joan Steinman, *Shining a Light in a Dim Corner: Standing to Appeal and the Right to Defend a Judgment in the Federal Courts*, 38 GA. L. REV. 813, 818–831 (2004) (discussing the general doctrine of standing to sue).

[18] Bender v. Williamsport Area School Dist., 475 U.S. 534, 541 (1986).

[19] Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 125-127 (2014).

[20] *Bethune-Hill*, 139 S. Ct. at 1951 (2019) (quoting *Hollingsworth*, 570 U.S. at 704).

[21] *Seila Law LLC*, 140 S. Ct. at 2195–2196 (quoting *Hollingsworth*, 570 U.S. at 705).

court.[22] If the appellant lacks standing to appeal, the court must dismiss the appeal.[23]

For example, in *Monsanto Co. v. Geertson Seed Farms*[24] the Animal and Plant Health Inspection Service (APHIS), a division of the United States Department of Agriculture, had decided to deregulate a variety of generally engineered alfalfa. The district court held that APHIS violated a federal statute by issuing the deregulation decision without sufficiently assessing the environmental consequences. It vacated APHIS's deregulation decision, ordered APHIS to prepare an environmental impact statement before deciding the deregulation petition, enjoined planting of the genetically engineered seeds pending APHIS's completion of the environmental impact statement, and issued related relief. The government and owners of the intellectual-property rights in the seeds appealed, challenging the scope of the relief. The court of appeals affirmed, and the Supreme Court granted review. The respondents who opposed review (conventional seed farms and environmental groups) argued that the government and intellectual-property owners lacked standing to appeal.

The Supreme Court held that the appellants (petitioners in the Supreme Court) did have standing to appeal. Its decision illustrates how the standing requirements apply to appeals as well as some of the intricacies in evaluating standing. The Court started with the bottom line: "Petitioners are injured by their inability to sell or license [the genetically modified seeds] to prospective customers until such time as APHIS completes the required EIS. Because that injury is caused by the very remedial order that petitioners challenge on appeal, it would be redressed by a favorable ruling from this Court."[25]

The respondents' counter-arguments, which the Supreme Court rejected on the facts, also help illustrate how the traditional standing requirements translate to appeal. The respondents contended that the petitioners lacked standing to appeal because their inability to

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[22] *See* Food Marketing Institute v. Argus Leader Media, 139 S. Ct. 2356, 2362 (2019) (quoting Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 149–150 (2010)); West Virginia v. Environmental Protection Agency, 142 S. Ct. 2587, 2606 (2022) ("In considering a litigant's standing to appeal, the question is whether it has experienced an injury 'fairly traceable to the *judgment below*' . . . . If so, and a 'favorable ruling' from the appellate court 'would redress [that] injury,' then the appellant has a cognizable Article III stake.") (quoting *Food Mktg. Inst.*, 139 S. Ct. at 2362) (emphasis added).

[23] *See, for example, Bender*, 475 U.S. at 549 (because appellant lacked standing to appeal, the case was remanded with instructions to dismiss the appeal for lack of jurisdiction).

[24] 561 U.S. 139 (2010).

[25] 561 U.S. at 149–150.

sell or license the seed was caused by a part of the injunction that petitioners did not challenge, namely the district court's setting aside of APHIS's deregulation decision. Thus, the argument apparently went, a favorable ruling on appeal would not redress the injury caused by the district court's judgment (the third *Lujan* requirement) because even a favorable ruling would not remedy petitioners' injury (their inability to sell or license the seed). The Supreme Court rejected the argument because the petitioners had always contended that their own proposed judgment should be entered, and that judgment would have allowed planting, and thus sales, of the seed. Additionally, the Court held, the judgment prevented even partial deregulation of the seed without an environmental impact statement, and the appellants were harmed by the preclusion of even partial deregulation. To the respondents' argument that the injury from precluding partial deregulation was not "actual or imminent" (the first *Lujan* requirement) because APHIS might not partially deregulate even if allowed to, the Supreme Court explained that APHIS' litigation conduct showed that there was "more than a strong likelihood that APHIS would partially deregulate [the seed] were it not for the District Court's injunction."[26]

Even a party that seeks United States Supreme Court review of a state-court decision must meet these standing requirements – and can obtain review even if the state-court suit did not satisfy Article III. In *ASARCO, Inc. v. Kadish*,[27] plaintiffs brought a state-court suit against an Arizona land agency, seeking a declaration that a state statute governing mineral leases on state lands was void under both federal law and the state Constitution. Mineral lessees of state school lands intervened as defendants. The trial court upheld the statute, but the Arizona Supreme Court reversed and held the state statute invalid as applied to certain mineral leases. The U.S. Supreme Court granted the mineral lessees' petition for certiorari. It explained that while the original plaintiffs did not have a sufficient injury to have Article III standing to bring suit in federal court, state courts were free to entertain suits that federal courts cannot. The parties seeking to invoke the jurisdiction of a *federal* court – the United States Supreme Court – were defendants that had lost in the Arizona Supreme Court: leaseholders who had been granted leases under the law and procedures held invalid by the Arizona Supreme Court.[28] They had Article III

[26] *Id*. at 1154.
[27] 490 U.S. 605 (1989).
[28] *Id.* at 618.

standing to seek Supreme Court review because they were injured by the Arizona Supreme Court's judgment. The state supreme court's decision "poses a serious and immediate threat to the continuing validity of those leases by virtue of its holding that they were granted under improper procedures and an invalid law."[29] If the United States Supreme Court agreed with petitioners' legal argument, it would reverse the Arizona court's decision and remove the decision's disabling effect on the petitioners. Thus, the petitioners "first invoking the authority of the federal courts" had met all of the Article III standing requirements: the state courts' adverse adjudication of their legal rights was "the kind of injury cognizable in this Court on review from the state courts." They had personally suffered actual or threatened injury as a result of the putatively illegal conduct. The injury could fairly be traced to the challenged action, and the injury was likely to be redressed by a favorable decision.[30] "When a state court has issued a judgment in a case where plaintiffs in the original action had no standing to sue under the principles governing the federal courts, we may exercise our jurisdiction on certiorari if the judgment of the state court causes direct, specific, and concrete injury to the parties who petition for our review, where the requisites of a case or controversy are also met."[31]

An intervenor can also have standing to appeal, *if* it meets the Article III requirements. In *Food Marketing Institute v. Argus Leader Media*,[32] the district court compelled the United States Department of Agriculture to disclose certain data about grocery stores under the Freedom of Information Act. The USDA declined to appeal, but the Food Marketing Institute (a trade association of grocery stores) intervened and appealed. The court of appeals affirmed, and the Supreme Court granted review. Discussing whether the Institute had Article III standing to appeal, the Supreme Court explained that the disclosure ordered by the trial court "likely would cause [the association's members] *some* financial injury" because the grocery-store industry was highly competitive and disclosure of store-level SNAP data would help competitors win business from the Institute's members.[33] Further, this

[29] *Id.*
[30] *Id.* at 619.
[31] *Id.* at 623–624.
[32] *Food Mktg. Inst.*, 139 S. Ct. at 2362. *See also West Virginia v. EPA*, 142 S. Ct. at 2632 (intervening states had Article III standing to petition Supreme Court for review of D.C. Circuit decision vacating administrative agency's decision).
[33] *Food Mktg. Inst.*, 139 S. Ct. at 2362.

"concrete injury is … directly traceable to the judgment ordering disclosure," and a "favorable ruling from this Court would redress the retailers' injury by reversing the judgment."[34]

C. Distinction Between Standing to Sue and Standing to Appeal

An appellant's standing to appeal is different from the plaintiff's standing to file the lawsuit in the first place. While an appellate court is obligated to satisfy itself that jurisdiction, and thus standing, existed in the lower court as well as in the appellate court,[35] they are separate inquiries.

For example, a party that did not even have Article III standing in the trial court may still be injured by the judgment and have Article III standing to appeal. In *Seila Law LLC v. Consumer Financial Protection Bureau*,[36] the Consumer Financial Protection Bureau had issued a civil investigative demand to a law firm, Seila Law LLC. The CFPB petitioned the district court to enforce the demand. Seila opposed the petition, contending that the CFPB's leadership structure violated the United States Constitution because the President could only remove the agency's director for cause. The district court enforced the demand, and the court of appeals affirmed. The Supreme Court granted Seila's petition for review, and an amicus argued that Seila lacked standing to appeal because the demand would have been issued even in the absence of the CFPB director's removal protection. The Supreme Court held that the argument did not defeat the district court's jurisdiction. Seila, it explained, "is *the defendant* and did not invoke the [District] Court's jurisdiction," and "[w]hen the plaintiff has standing, 'Article III does not restrict the opposing party's ability to object to relief being sought at its expense.'"[37] The Court continued that Seila's "appellate standing is beyond dispute" because it had been "compelled to comply with the civil investigative demand and to provide documents it would prefer to withhold," that "injury is traceable to the decision below and would be fully redressed if we were to reverse the judgment of the Court of Appeals …."[38]

In *ASARCO, Inc. v. Kadish*,[39] a party injured by a state-court decision on a question of federal law obtained United States Supreme Court review, even though there would not have been standing to bring the action in federal court to begin with. By adjusting legal

[34] *Id*.
[35] *Bender,* 475 U.S. at 546–547.
[36] 140 S. Ct. 2183 (2020).
[37] *Id.*. at 2195 (quoting Bond v. United States, 564 U.S. 211, 217 (2011)).
[38] *Id.* at 2196; *accord Bond*, 564 U.S. at 217.
[39] 490 U.S. 605 (1989).

relations, the state court's judgment can cause the losing party an Article III injury even if there would not previously have been an injury sufficient to support standing.[40]

II. How Article III Standing Can Make or Break an Appeal

Even where a client is upset enough about a trial judge's ruling to spend the time and expense to appeal, Article III standing can block the appeal unless a favorable ruling from the appellate court will concretely and personally benefit the client. The issue most often arises in cases seeking injunctive or declaratory relief rather than money, but it can occasionally arise on appeal from a damages judgment as well. To illustrate, we walk through some recurring (and overlapping) scenarios where appeals have been dismissed for lack of standing, then examples where the courts upheld standing even though on the surface the appellant appeared to lack the required personal stake in the outcome. These scenarios are not exhaustive, but they illustrate the considerations involved and should be of the most interest to business lawyers.

A. Example Situations Where Appeals are Dismissed for Lack of Standing

1. Appellants Challenge Aspects of the Judgment That Do Not Adversely Affect Them

If the appellant was not injured by the challenged aspect of the lower court's judgment, or an appellate decision could not effectively redress that injury, the appellant lacks Article III standing to appeal.

In *Waid v. Snyder (In re Flint Water Cases)*,[41] appellants objected to a provision in a class-action settlement. They objected to a provision in the district court's decision awarding 17% of their recovery to lead class counsel and 8% to their independently retained counsel. But, if that provision were struck down, those appellants would instead pay 25% of their recovery to lead class counsel. Either way, they would pay 25% in common benefit awards and fees. "[B]ecause [these] Objectors would fare no better with or without the Common Benefit Assessments applicable to their claims, they fail to demonstrate that they have suffered

[40] *Id.* at 618 (even though original case in state court would not have met Article III requirements, "[t]he state proceedings ended in a declaratory judgment adverse to petitioners, an adjudication of legal rights which constitutes the kind of injury cognizable in this Court on review from the state courts.").

[41] 63 F.4th 486 (6th Cir. 2023).

an injury in fact. Accordingly, [these] Objectors lack standing to appeal the Common Benefit Assessments" at issue.[42] They also could not challenge common benefit fund assessments associated with child plaintiffs, because the objectors were adults and would not be affected by any change to the common-benefit fund related to minors.[43]

An appellant similarly lacks Article III standing to appeal a ruling that only harms someone else. In *Kimberly Regenesis, LLC v. Lee County*,[44] the plaintiff noticed the deposition of a county commissioner in a disability-discrimination case. The county moved for a protective order, arguing that the commissioner had quasi-judicial immunity from discovery, but the commissioner did not. When the district denied the protective-order motion, the county appealed. The Eleventh Circuit held that the county lacked Article III standing to appeal because any immunity belonged solely to the commissioner, not the county, so the county was not adversely affected by the order.[45]

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[42] *Id.* at 503; *accord* Shields Law Group v. Stueve Siegel Hanson LLP, 95 F.4th 1251, 1267-1269 (10th Cir. 2024) (explaining that lawyers objecting to class-action settlement lacked standing to challenge district court's approval of class-action settlement agreement, which did not affect objecting lawyers' share of funds).

[43] *Id.*; *see also* Carl F. Schier PLC v. Nathan (*In re* Capital Contracting Co.), 924 F.3d 890 (6th Cir. 2019) (holding that Article III district court properly dismissed appeal from bankruptcy court because appellant lacked Article III standing; order being appealed could not financially harm appellant; and reversal would not increase his recovery); Spencer v. Casavilla, 44 F.3d 74, 78–79 (2d Cir. 1994) (plaintiffs lacked Article III standing to appeal district court's grant of judgment as a matter of law to defendants on certain claims; since jury had awarded no damages on those claims, plaintiffs would not recover additional damages even if challenged order were reversed); Dixon v. Wallowa County, 336 F.3d 1013, 1021 (9th Cir. 2003) (sheriff's deputies lacked Article III standing to appeal after judgment from denial of qualified immunity; the only arguable injury from denial of immunity was having to stand trial, trial had already occurred, and a reversal could not undo that injury); Schultz v. Alabama, 42 F.4th 1298, 1317–1318 (11th Cir. 2022) (where district court's injunction compelled sheriff to follow specified procedures to allow bail for pretrial detainees, state-court judges lacked standing to appeal injunction because it did not command them to do anything and they could not be held in contempt for violating it). *See generally* 15A WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 3902 n.5 (2d ed. 2022) (citing cases holding that appellants lacked standing to appeal because the trial court's judgment did not harm them or appellate court could not provide effective redress).

[44] 64 F.4th 125, 1259–1260 (11th Cir. 2023).

[45] *Id*.

2. The Original Party Does Not Appeal, An Intervenor Does Appeal, But the Intervenor Lacks Independent Standing

Diamond v. Charles[46] and *Hollingsworth v. Perry*[47] each illustrate how the appellant must personally stand to obtain a concrete benefit from a favorable appellate ruling – and the corollary that when only an intervenor appeals, the intervenor must personally stand to gain a concrete benefit. In *Diamond,* plaintiffs, challenging the constitutionality of an Illinois law restricting abortion, sued state officials charged with enforcing it. The would-be appellant, pediatrician Eugene Diamond, intervened as a defendant supporting the law. The district court enjoined enforcement of certain provisions but not others; all parties appealed; and the court of appeals affirmed and expanded the injunction. Diamond appealed to the Supreme Court, but the state did not.

The Supreme Court held that Diamond lacked Article III standing to prosecute the appeal. To continue the suit in the absence of the defendant state, Diamond, himself, had to satisfy Article III.[48] None of the benefits he hoped to achieve through a favorable ruling, the Court explained, satisfied Article III. If the Court held the Illinois law constitutional, Diamond could not compel the state to enforce the law. A private citizen lacks a cognizable interest in the prosecution of someone else.[49] Nor did he have a concrete interest on the theory that a law banning abortion would yield more live births and, eventually, more patients for him as a pediatrician. That benefit was speculative.[50] His desire, as a doctor, to litigate the standards that should apply to physicians practicing abortion did not suffice, because "Article III requires more than a desire to vindicate value interests."[51] In short, "Diamond has an interest, but no direct stake, in the abortion process" and his "abstract concern … does not substitute for the concrete injury required by Art. III."[52]

In *Hollingsworth v. Perry*,[53] California state voters had passed a ballot initiative amending the state constitution to preclude same-sex marriage. Plaintiffs, same-sex couples who wanted to marry, sued in federal court, contending the state constitutional amendment violated the Due Process and Equal Protection Clauses of the Fourteenth

[46] 476 U.S. 54 (1986).
[47] 570 U.S. 693 (2013).
[48] 476 U.S. at 69.
[49] *Id.* at 64.
[50] *Id.* at 66.
[51] *Id.*
[52] *Id.* at 66–67 (citation omitted).
[53] 570 U.S. 693 (2013).

Amendment. They named as defendants California's governor and other state and local officials charged with enforcing California's marriage laws. The officials refused to defend the law, so the district court allowed the initiative's proponents to intervene to defend it. After trial, the district court declared the amendment unconstitutional and enjoined the public officials named as defendants from enforcing it. Those officials did not appeal, but the intervening initiative proponents did. The California Supreme Court meanwhile held that official proponents of a ballot initiative have authority under state law to assert the state's interest in defending the constitutionality of the initiative when public officials refuse to do so. The court of appeals held that the intervenors had standing to defend the law and affirmed the district court's order on the merits.

The Supreme Court reversed, holding that the intervening proponents did not have Article III standing to appeal. The Court reiterated that standing "must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance."[54] It explained that plaintiffs had standing to file the case in the district court, against the officials responsible for enforcing the state constitutional amendment. But once the district court issued its order, the Court held, the plaintiffs no longer had any injury to redress. The state officials had not appealed. The "only individuals who sought to appeal" were the ballot proponents. But they had not been ordered to do or refrain from doing anything. Their only interest was to vindicate the validity of a generally-applicable California law. Under settled law, the Court continued, such a "generalized grievance," no matter how sincere, is insufficient to confer Article III standing.[55] The intervenors had no "personal stake" in defending the law that was distinguishable from the general interest of every California citizen, which was not a "particularized interest" sufficient to create a case or controversy under Article III.[56] Even though the California Supreme Court had held that the initiative proponents could assert the state's interest, "standing in federal court is a question of federal law, not state law. And no matter its reasons, the fact that a State thinks a private party should have standing to seek relief for a generalized grievance cannot override our settled law to the contrary."[57]

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[54] 570 U.S. at 705 (quoting Arizonans for Official English v. Arizona, 568 U.S. 43, 91 (1997)).

[55] *Id.* at 706 (quoting *Lujan,* 504 U.S. at 573-574).

[56] *Id.* at 707.

[57] *Id.* at 715.

3. The Appellant's Only Remaining Interest is Overturning an Attorney-Fee Award

Diamond and *Lewis v. Continental Bank Corp.*[58] also illustrate that wanting to overturn an attorney-fee award is not enough to confer standing to appeal the underlying substantive decision.

In *Diamond*, the Court held that petitioner Diamond did not have standing on the merits, as already discussed. The Court then held that Diamond did not have Article III standing to appeal on the ground that a successful appeal would overturn the attorney-fee award against him. The district court had ordered him, as a losing defendant, to pay attorney fees of the prevailing plaintiffs. That award would be overturned if the Supreme Court reinstated the law on appeal. The Supreme Court held that even this concrete, direct pecuniary interest in the outcome of the appeal did not provide Article III standing. Standing, the Court held, "requires an injury with a nexus to the substantive character of the statute or regulation at issue" but the "fee award … bears no relation to the statute whose constitutionality is at issue here…. [T]he mere fact that continued adjudication would provide a remedy for an injury that is only a byproduct of the suit itself does not mean that the injury is cognizable under Art. III."[59]

Lewis similarly holds that an interest in attorney fees is not enough to satisfy Article III. Continental Bank, an Illinois bank holding company, applied to Florida to establish and operate an industrial savings bank. The Florida state controller, Lewis, refused to process the application because two state statutes prohibited out-of-state holding companies from operating industrial savings banks. Continental sued Lewis in federal court, claiming Florida's statutes violated the Commerce Clause of the United States Constitution. The district court agreed with Continental and ordered Lewis to process the application. Lewis appealed, and the court of appeals affirmed. But while the appeal was pending, Congress changed the governing federal statute so that it now authorized states to prohibit out-of-state ownership of the kind of bank Continental wanted to open. The Supreme Court held the Commerce Clause challenge moot because Florida's statutes were now authorized by a federal statute.[60] And just as *Diamond* had held that an interest in *overturning* an attorney-fee award was not enough to confer Article III standing, the Court held that Continental's interest in *preserving* its attorney-fee award as a prevailing party also

[58] 494 U.S. 472 (1990).

[59] 476 U.S. at 70–71.

[60] 494 U.S. at 477–480, 482.

did not keep the case alive. The "interest in attorney's fees is, of course, insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim."[61]

These holdings articulating that Article III is not satisfied by a litigant's interest in an attorney-fee award are hard to reconcile with the Court's classic and still-good-law holding that a class representative *does* have a sufficient Article III stake to appeal denial of class certification at the end of the case, even though the class representative's own claim has been adjudicated. The Court held that the class representative's interest in shifting attorney fees to absent class members, by obtaining class certification, was a sufficient stake to satisfy Article III.[62] It is difficult to understand why a plaintiff's interest in obtaining attorney fees from a defendant, or a defendant's interest in overturning an attorney-fee award against itself, is insufficient, but a plaintiff's interest in forcing other plaintiffs to bear some of the attorney fees is sufficient.

4. The Appellant's Personal Stake Disappears During the Litigation

Sometimes the plaintiff's personal stake, which conferred Article III standing at the commencement of the litigation, disappears during the litigation or on appeal. But "[t]he 'case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate.'"[63] As such, the Supreme Court has consistently held that there is no longer an Article III case or controversy when the appellant's personal stake disappears during an appeal.

Wittman v. Personhuballah[64] illustrates this holding. After the Commonwealth of Virginia adopted new congressional districts to reflect the results of the 2010 census, voters in one of the affected districts sued, claiming the redrawing of their district's lines was an unconstitutional racial gerrymander. Members of Congress from several Virginia districts intervened to defend the redistricting. A three-judge district court agreed with the voters and set a deadline for the Virginia Legislature to adopt a new redistricting plan. The Commonwealth of Virginia did not

[61] *Id.* at 480. (citing *Diamond*, 476 U.S. at 70–71).
[62] Deposit Guaranty Nat'l Bank v. Roper, 456 U.S. 326, 334 & n.6, 336–337 (1980).
[63] Chafin v. Chafin, 568 U.S. 165, 172 (2013) (quoting *Lewis,* 494 U.S. at 477).
[64] 578 U.S. 539 (2016).

appeal, but the intervening members of Congress did. The *only* parties seeking to defend the redistricting plan, and seeking review of the district court's conclusion that it was unconstitutional, were the intervening members of Congress. While the appeal was pending, the Virginia Legislature failed to meet the district court's redistricting deadline, so a special master appointed by the district court developed a new districting plan. The Supreme Court held that because of events during the litigation, "the intervenors now lack standing to pursue the appeal."[65]

One of the three members of Congress claiming standing was Representative Randy Forbes, the incumbent in District 4. He had maintained that unless the legislature's plan was upheld, his district would be transformed from a 48% Democratic district into a safe 60% Democratic district, harming his reelection chances there. As a result, he said, he was running in District 2 instead. He had maintained that the Supreme Court's decision would make a concrete difference. He would run in District 2 under the current plan, but District 4 if the legislature's plan were reinstated. His attorney ultimately informed the Court that Forbes would seek election in District 2 regardless of whether the legislature's plan were reinstated. The Court held that given this letter, "we do not see how any injury that Forbes might have suffered 'is likely to be redressed by a favorable judicial decision.'"[66] Redressability is an essential element of standing, as detailed above. The Court explained that it "need not decide whether, at the time he first intervened, Representative Forbes possessed standing. Regardless, he does not possess standing now."[67]

Still, the two other appealing members of Congress – representing Districts 1 and 7 – claimed they had standing to challenge the district court's order because, unless the legislature's plan were reinstated, a portion of their electorate would be replaced with voters unfavorable to them, reducing their likelihood of winning reelection. The Supreme Court rejected this argument because the record contained no evidence supporting it. The Court explained that "'the party invoking federal jurisdiction bears the burden of establishing' that he has suffered an injury by submitting 'affidavit[s] or other evidence.'"[68] When challenged by a court or opposing party concerned about standing, "the party invoking the court's

[65] *Id.* at 541.

[66] *Id.* at 544 (quoting *Hollingsworth*, 133 S. Ct. at 2661).

[67] *Id*.

[68] *Id*. at 545 (quoting *Lujan,* 504 U.S. at 561).

jurisdiction cannot simply allege a nonobvious harm, without more."[69] The representatives claimed that unless the legislature's plan were reinstated, "their districts will be flooded with Democratic voters and their chances of reelection will accordingly be reduced," but they "have not identified record evidence establishing their alleged harm."[70] Given the holdings about the three representatives, "we conclude that none of the intervenors has standing to bring an appeal in this case. We consequently lack jurisdiction and therefore dismiss this appeal."[71]

Trump v. New York[72] also treated the disappearance of the plaintiff's personal stake as a lack of standing to appeal. *Trump* concerned the decennial census of population in the United States. The President had issued a memorandum announcing a policy of excluding aliens who were not lawfully in the country from the decennial census. The memorandum directed the Secretary of Commerce to report, to the extent possible, not only the tabulation of population, but information permitting the President to carry out the new policy. Several plaintiffs, including the State of New York, challenged the memorandum. The district court held that the plaintiffs had Article III standing because the memorandum was chilling aliens and their families from responding to the census, degrading the quality of census data used to allocate federal funds and forcing plaintiffs to spend resources to combat the chilling effect. The district court enjoined the Secretary from reporting the newly requested information. The government appealed to the Supreme Court.

The Supreme Court held that the appeal no longer presented an Article III case or controversy. The chilling effect that had supported standing in the district court no longer existed, because the census response period had ended.[73] The threatened impact of an unlawful apportionment on congressional representation and federal funding did not suffice, because it was not yet clear whether or how the President's policy would be implemented or what effect it would have on apportionment.[74] The Supreme Court concluded that under the current facts, the plaintiffs lacked Article III standing, and the case was not ripe.[75]

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[69] *Id.*
[70] *Id.* at 539–540.
[71] *Id.* at 545–546.
[72] 592 U.S. __, 141 S. Ct. 530 (2020).
[73] *Id.* at 534–535.
[74] *Id.* at 535–537.
[75] *Id.* at 536.

5. The Appellant Obtained All its Requested Relief in the Trial Court, But Wants Review of Alternative Grounds or Unfavorable Findings

Though not technically grounded in Article III, a closely-related doctrine normally precludes appeal unless the appellant is "aggrieved" by the judgment or order being appealed. A party that received all the relief it requested in the trial court normally cannot appeal because the relief was granted on one ground rather than another,[76] or to review unfavorable findings unnecessary to the judgment.[77] "Ordinarily, only a party aggrieved by a judgment or order of a district court may exercise the statutory right to appeal therefrom. A party who receives all that he has sought generally is not aggrieved by the judgment affording the relief and cannot appeal from it."[78] The "rule is one of federal appellate practice, however, derived from the statutes granting appellate jurisdiction and the historic practices of the appellate courts; it does not have its source in the jurisdictional limitations of Art. III."[79] So "[i]n an appropriate case, appeal may be permitted from an adverse ruling collateral to the judgment on the merits at the behest of the party who has prevailed on the merits, so long as that party retains a stake in the appeal satisfying the requirements of Art. III."[80]

The prudential "aggrieved" requirement may be ripe for reappraisal. The most-commonly-used appeal statutes do not say the appellant must be aggrieved. The Supreme Court's 2014 decision in *Lexmark International v. Static Control Components, Inc.* suggests that courts should not apply "prudential" doctrines to conclude that parties lack standing, but should decide non-constitutional standing issues as a matter of statutory interpretation.[81] A judge-made "aggrieved" requirement that limits who can appeal, but is not

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[76] New Orleans v. Emsheimer, 181 U.S. 153 (1901).

[77] Mathias v. WorldCom Techs., Inc., 535 U.S. 682, 683–684 (2002) (per curiam); Lindheimer v. Illinois Tel. Co., 292 U.S. 151 (1934); New York Telephone Co. v. Maltbie, 291 U.S. 645 (1934); Thomas v. Broward County Sheriff's Office, 71 F.4th 1305, 1313 (11th Cir. 2023) (defendant could not establish injury in fact from jury verdict that defendant retaliated against plaintiff; because jury awarded plaintiff no damages or other relief on retaliation count, defendant had no injury in fact and lacked standing to appeal).

[78] *Roper*, 445 U.S. at 333–334 (1980) (citing Public Service Comm'n v. Brashear Freight Lines, Inc., 306 U.S. 204 (1939); *Maltbie*, 291 U.S. 645 (1934); Corning v. Troy Iron Nail Factory, 15 How. 451 (1854); 9 J. MOORE, FEDERAL PRACTICE ¶ 203.06 (2d ed. 1975)).

[79] *Roper*, 445 U.S. at 334; *see also Camreta,* 563 U.S. at 701–702.

[80] *Id*.

[81] *Lexmark*, 572 U.S. at 126–128 & n.3-4.

found in the Constitution or statute, is arguably in tension with *Lexmark*.[82] Several lower federal appellate courts have grappled with how *Lexmark* applies to the judge-made "person-aggrieved" limitation in bankruptcy appeals. Though sometimes changing terminology in response to *Lexmark,* they have continued to apply the person-aggrieved requirement.[83]

6. The Appellant's Interest is in Advancing Values or Vindicating The Rule of Law

The personal stake required by Article III must be concrete, and the issue must particularly affect the party invoking federal-court jurisdiction.[84] Consequently, one cannot appeal to vindicate value interests,[85] the rule of law, or to obtain psychological satisfaction.

The Supreme Court's decision in *Hollingsworth v. Perry*[86] illustrates this principle. As discussed above, state voters passed a ballot initiative amending the state constitution to define marriage as a union between a man and a woman. The district court held the amendment unconstitutional and enjoined the defendant officials from enforcing it. The proponents appealed, but the state officials did not. The Ninth Circuit affirmed the district court's order. The Supreme Court reversed,

[82] *See* John A. Peterson III and Joshua A. Esses, *The Future of Bankruptcy Appeals: Appellate Standing After* Lexmark *Considered*, 37 EMORY BANKR. DEV. J. 285, 296–315 (2021).

[83] *See, e.g.,* NexPoint Advisors v. Pachulski Stang Ziehl & Jones LLP (*In re* Highland Capital Mgmt, L.P.), 74 F.4th 361, 368–369 (5th Cir. 2023); Carl F. Schier PLC v. Nathan (*In re* Capital Contracting Co.), 924 F.3d 890, 896–897 (6th Cir. 2019) (raising but not deciding *Lexmark*'s effect on bankruptcy "person aggrieved" prudential standing requirement, and deciding appellant lacked Article III standing); U.S. Bank v. SFR Investments Pool 1, LLC *(In re* Petrone), 754 F. App'x 590, 591 (9th Cir. 2019) (concluding that person-aggrieved test comports with *Lexmark*); Arlington Capital, LLC v. Bainton McCarthy LLC (*In re* GT Automation Grp., Inc.), 828 F.3d 602, 604–605 & n.1 (7th Cir. 2016) (raising but not resolving question whether *Lexmark* affects "person aggrieved" test; concluding that appellant lacked Article III standing).

[84] Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1545 (2016); *Arizonans for Official English*, 520 U.S. at 64.

[85] *Arizonans for Official English,* 520 U.S. at 65.

[86] 570 U.S. 693 (2013).

concluding that the proponents did not have standing to appeal. Whereas a "litigant must seek relief for an injury that affects him in a 'personal and individual way,'" and "possess a 'direct stake in the outcome of the case,'" the proponents had no "'direct stake' in the outcome of their appeal."[87] "Their only interest in having the District Court order reversed was to vindicate the constitutional validity of a generally applicable California law" – and such a "generalized grievance," held in common with the public at large, is "insufficient to confer standing."[88] Vindication of "value interests," the Court repeated, is "not a 'particularized' interest sufficient to create a case or controversy under Article III."[89]

Carl F. Schier PLC v. Nathan (In re *Capital Contracting Co.*)[90] illustrates many of the limits on Article III standing to appeal. The facts are complicated, but the Article III holding is simple. The would-be appellant, Carl F. Schier LLP, was a law firm. It had represented the bankruptcy debtor, Capital Contracting, in a state-court lawsuit. Capital Contracting filed bankruptcy, and in the bankruptcy proceedings, Schier filed a claim for legal fees. The bankruptcy trustee then countersued Schier, claiming Schier had committed malpractice in the state court. They settled, and Schier withdrew its fee claim. When the bankruptcy trustee filed a final report, Schier objected that the appeal in the state-court litigation was a valuable asset of the bankruptcy estate that the trustee had failed to administer or abandon. The bankruptcy judge overruled the objection and approved the report, and Schier appealed to the district court. The district court dismissed the appeal, and Schier appealed to the Sixth Circuit.

The Sixth Circuit held that Schier lacked Article III standing to appeal to the district court.[91] It recited that to establish injury in fact under Article III, the plaintiff must show an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical. On appeal, the focus shifts to injury caused to the appellant by the judgment, rather than caused to the plaintiff by the underlying facts.[92] The court concluded that "Schier has not shown that it suffered an Article III injury from the bankruptcy court's order approving the trustee's final report" despite the report's failure to list as an asset the right to appeal in the state-court lawsuit.[93] "[T]he failure to list those rights could not *financially* harm Schier" because

[87] *Id.* at 705–706 (citations omitted).
[88] *Id.* at 706.
[89] *Id*. at 708.
[90] 924 F.3d 890 (6th Cir. 2019).
[91] *See id.*
[92] *See id.* at 897.
[93] *Id.*

Schier had settled with the trustee and withdrawn its attorney fee claim.[94] Even if a state-court appeal would reduce the state-court judgment against Capital Contracting to zero (and, in the process, vindicate Schier's position that it had not committed malpractice), "that reversal could not provide Schier with one cent more in attorney's fees," since it had withdrawn its fee claim.[95] The bankruptcy court's order did not affect Schier in a "personal and individual way."[96] Schier's "strong feelings … over the validity of its proposed appeal" did not provide standing, because "Article III courts are not the place for 'concerned bystanders' to vindicate 'value interests.'"[97] Schier could not gain standing by saying the trustee and bankruptcy court were required to fix the purported error in omitting the appeal rights as an asset, because "vindication of the rule of law" is not a basis for Article III standing, nor is Schier's "psychic satisfaction" from enforcement of the law.[98]

7. The Facts Claimed to Establish Standing are Not Set Forth in the Record

Standing to appeal creates a potential trap for the unwary. Appeals are typically decided on the factual record made before the trial court. But the appellant's lack of standing to *appeal* may not come into focus until the appeal is well under way. Standing to appeal sometimes fails because the facts relied on to establish it are not in the record.

In *Bender v. Williamsport Area School District*,[99] students contended that the school district violated the First Amendment by refusing to allow a student religious club to use school facilities on the same basis as other student clubs. The district court ruled in the students' favor. The school district did not appeal, but one member of the school board (Youngman) did appeal. No one raised any question about his standing in the court of appeals, which ruled in his favor. After the Supreme Court granted the students' petition for certiorari, it noticed that neither the school board nor any defendant besides Youngman opposed the students' position, and only Youngman had

[94] *Id.*
[95] *Id.*
[96] *Id.* at 897–898 (quoting *Robins,* 578 U.S. at 339).
[97] *Id.* at 898 (quoting *Valley Forge*, 454 U.S. at 473).
[98] *Id.* at 898 (quoting *Steel Co.,* 523 U.S. at 106, 107).
[99] 475 U.S. 534 (1986).

appealed. The Supreme Court held that he lacked standing to appeal. He did not have standing to appeal in his capacity as a member of the school board, because he was only one member of the board, and the board, as a whole, had decided not to appeal.[100] His alternate theory of standing contended that the judgment injured him in his personal capacity as parent of a child in the school. The Supreme Court rejected that argument, partly because the record did not contain evidence of that injury. As relevant here, it explained that the "presumption … is that the court below was without jurisdiction unless the contrary appears affirmatively from the record," that the "factual predicate may not be gleaned from the briefs and arguments themselves," and "[t]here is nothing in the record indicating anything about Mr. Youngman's status as a parent" or that "he or his children have suffered any injury as a result of the District Court's judgment, or as a result of the activities of [the club] since subsequent to the entry of that judgment."[101]

D. Appeals Allowed Despite Superficial Absence of Standing

Even where these principles would normally require dismissal for lack of Article III standing, the Supreme Court, in some instances, allows appeals for policy reasons. These holdings apparently confirm at least the first part of Oliver Wendell Holmes' famous observation that "[t]he life of the law has not been logic; it has been experience."[102]

1. Appeal by Individual Plaintiff, Who Has Received All Possible Individual Relief, From Denial of Class Certification

In 1980, the Supreme Court held in *Deposit Guaranty National Bank v. Roper*[103] that if class certification is denied and individual judgment is eventually entered in the plaintiff's favor, the plaintiff can then appeal the denial of class certification in a post-judgment appeal. *Roper* held that the plaintiffs, despite having judgment in their favor for all the damages they could hope to obtain, had Article III standing to challenge denial of class certification because

[100] *Id.* at 543–545.

[101] *Id.* at 545–547. The Court also held that he could not appeal in his individual capacity because he had not participated in the district court as a parent, but only as a school board member. *Id.* at 547–549 & n.9.

[102] O.W. HOLMES, THE COMMON LAW (London: Macmillan 1881).

[103] 445 U.S. 326 (1980).

they had an economic interest in shifting part of their attorney fees to class members (which required class certification).[104]

Roper is limited to situations where the appellant asserts a continuing economic interest in shifting attorney fees and costs to others. Where the appellant asserts no such interest, *Roper* does not apply.[105] The Supreme Court has also strongly suggested that *Roper* is unique to class actions. It likely does not apply even to the superficially similar issue of denial of collective-action status under the Fair Labor Standards Act.[106]

While *Roper's* holding has diminished in importance given the subsequent enactment of Federal Rule of Civil Procedure 23(f) (authorizing courts to allow immediate appeal from denial of class certification), it creates an apparent inconsistency in Article III dogma. The usual rule is that Article III is not satisfied by the appellant's interest in either recovering, or avoiding having to pay, attorney fees incurred in the litigation itself. The *Roper* opinion makes clear that the Court was animated largely by a desire to prevent defendants from "picking off" class representatives by offering the representatives full relief to moot their individual claims, denying them the injury needed to satisfy Article III on appeal and obtain class certification.[107] The Court apparently seized on the only available injury to satisfy Article III. Regardless, *Roper* makes the appellant's desire to shift attorney fees sufficient to satisfy Article III in the setting of denial of class certification, when it is insufficient elsewhere. The Supreme Court has noted, but not resolved, the inconsistency.[108]

2. Appellant Prevailed on the Judgment, But is Allowed to Appeal for Policy Reasons

Normally, a party that received an entirely favorable judgment cannot appeal to obtain review of an unfavorable determination, because of the statutory rule that a party

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[104] *Id.* at 332–334; *see also* Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 77–78 (2013) (*Roper* "found that … the named plaintiffs possessed an ongoing, personal economic stake in the substantive controversy – namely, to shift a portion of attorney's fees and expenses to successful class litigants," and its holding "turned on" this finding).

[105] *Genesis Healthcare,* 569 U.S. at 78 (holding that *Roper* did not allow appeal from denial of certification as collective action under Fair Labor Standards Act after plaintiff's individual claim was satisfied, partly because plaintiff "failed to assert any continuing economic interest in shifting attorney's fees and costs to others").

[106] *Id.* at 78–79.

[107] 445 U.S. at 332–334; *see also Genesis Healthcare,* 569 U.S. at 78–79 (describing *Roper's* "picking off" rationale and limiting it to "the unique significance of certification decisions in class-action proceedings").

[108] *Genesis Healthcare Corp.*, 569 U.S. at 78 n.5.

must be aggrieved by the judgment.[109] However, the Supreme Court has sometimes recognized exceptions to this rule when there is a "policy reason … of sufficient importance to allow an appeal" by the winner below.[110]

One example involves patent cases. When a patentholder sues a defendant for infringement, the defendant can defend on the grounds, among others, that it is not infringing the patent or that the patent is invalid. Suppose the trial court finds that the patent is valid but the defendant did not infringe it. Can the defendant appeal the conclusion that the patent is valid? Yes, but the scope of review depends on the procedural setting.

Electrical Fittings Corp. v. Thomas Betts Co.[111] was a patent-infringement suit. The defendant raised an affirmative defense that the patent was invalid. The trial court held one claim of the patent to be valid, but not infringed. The successful defendant appealed, seeking reversal of the finding that the claim was valid. The court of appeals dismissed the appeal based on the rule that the prevailing party cannot appeal a judgment in its favor. The Supreme Court reversed. It held that the prevailing defendant could not force the appellate court to review the finding that the patent was valid, which did not affect the outcome as the defendant had not infringed the patent anyway. But, the Court held, the defendant was entitled to have the validity decision eliminated from the trial court's judgment.[112]

As the Court later explained, in *Electrical Fittings*, "policy considerations permitted an appeal."[113] The finding that the patent was valid might scare other potential infringers into complying with the patent rather than challenging it, and there was a public interest in eliminating invalid patents.[114] The dispute was not moot in the Article III sense, because the defendant still "alleged a stake in the outcome."[115] And when the defendant files a *counterclaim* seeking a declaratory judgment that the patent is invalid, that counterclaim provides a separate basis for jurisdiction, and the court has jurisdiction to entertain defendants appeal from the validity determination.[116]

Another policy-driven exception to the requirement that a prevailing party cannot appeal concerns civil-

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[109] *See supra* Section II.C.5D.5.)
[110] *Camreta*, 563 U.S. at 704 (quoting *Roper,* 445 U.S. at 336 n.7).
[111] 307 U.S. 241 (1939).
[112] *Id.* at 242.
[113] *Roper*, 445 U.S. at 335.
[114] *See* Cardinal Chem. Co. v. Morton International, Inc., 508 U.S. 83, 99–102 (1993).
[115] *Roper*, 445 U.S. at 335.
[116] *Cardinal Chem. Co.*, 508 U.S. at 94–99.

rights cases. A public official sued for damages for a civil-rights violation under 42 U.S.C. § 1983 can defend not only on the basis that his or her conduct did not violate the plaintiff's constitutional rights, but also based on qualified immunity – that it was not clearly established that such conduct violated constitutional rights. Suppose an official is sued for a civil-rights violation, is found to have violated the plaintiff's rights, but obtains a defense judgment based on qualified immunity. Can the official appeal to obtain review of the finding that he or she violated the plaintiff's rights? The Supreme Court has held that at least the Supreme Court itself can review such an appeal, if the official regularly engages in such conduct as part of her job. In that event, the official retains the personal stake required by Article III and both she, the plaintiff, and the public all have an interest in resolving going forward whether the conduct violates the Constitution.[117] An official who obtains a defense judgment in the trial court on the basis of qualified immunity can appeal to challenge the holding that her conduct violated the Constitution. Otherwise, the holding that such conduct violated the Constitution would affect the official's and others' conduct going forward, and there is a public interest in moving forward with such an appeal.[118] The Court left open whether federal courts of appeals can review such appeals.[119]

The *Electrical Fittings, Camreta* and *Roper* exceptions are narrow. But, they are not necessarily exhaustive. A party that received an entirely favorable judgment in the trial court, but wants review of an unfavorable decision reached by the trial court, should consider whether the issue to be reviewed affects an important public interest going forward such that it should be resolved or the adverse finding, at least, eliminated. If so, and if the party has a continued personal stake required by Article III, there could be a policy-based reason for allowing it to appeal.

III. Conclusion

"Chance favors the prepared mind."[120] The lawyer who knows the standing requirements, and pauses to ask why the appellant has standing, will occasionally be rewarded with a silver bullet that stops the adversary's appeal cold.

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[117] *Camreta*, 563 U.S. at 702–703.

[118] *Id*. at 704–709 (official who prevailed based on qualified immunity could appeal to challenge holding that his conduct violated Constitution; otherwise holding that the conduct violated the Constitution would affect appellant's and others' conduct going forward).

[119] *Id.* at 708–709.

[120] L. Pasteur, Lecture, UNIV. OF LILLE (Dec. 7, 1854).

Occasionally the careful lawyer may also discover a fatal defect in her own appeal, or even a way to cure the standing problem, before spending the client's money on an appeal that will be dismissed. Either way, knowing the Article III standing requirements can give you an edge, or at least give you something to talk about at law-nerd conventions.