NOTE

Judicial Power in the Laboratory: State Court Treatment of the One Good Plaintiff Rule

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This Note presents original research on whether one of the few exceptions to Article III standing, the One Good Plaintiff Rule (the Rule), should be eliminated in the federal judiciary on practical grounds. Based on a comprehensive survey of parallel state court doctrines, this Note argues that the Rule should be retained.

The One Good Plaintiff Rule emerged in the U.S. Supreme Court in the mid-1960s. It was modified in 2017 by the Court's ruling in Town of Chester v. Laroe Estates, Inc.*, which held that parties without proper Article III standing can remain in federal lawsuits as long as they seek the same form of relief as other plaintiffs in the action that do have proper standing. This "One Good Plaintiff Rule," like several other Article III standing exceptions, enables parties without a redressable, cognizable injury to obtain enforceable judgments against a defendant.*

Allowing judges to bypass individualized standing inquiries of multiple plaintiffs under the Rule saves the federal judiciary a great deal of time. But Laroe*'s Rule also pushes the outer boundaries of Article III judicial power and risks imposing wrongful costs—improper claim preclusion, erroneous awards of attorneys' fees and court costs, and misallocation of trial rights—on litigants and courts. Prompted by these considerations and the rise of the connected issue of nationwide injunctions, the Rule has faced burgeoning criticism over the last few years after dodging scrutiny for close to half a century. Justices of the U.S. Supreme Court, the U.S. Solicitor General, trial judges, legal scholars, and practitioners have all raised concerns about the propriety of federal judges adjudicating the rights of parties other than those directly harmed in specific cases and controversies. The One Good Plaintiff Rule is central to this debate.*

Virtually all of the emerging literature on the One Good Plaintiff Rule solely addresses its constitutional or normative bases. By contrast, few scholars and practitioners have confronted the Rule's practical or positive costs and benefits. With this literature gap in mind, this Note

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leverages the state court systems as a control group for determining whether the Rule's benefits to judicial economy outweigh its negative externalities.

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INTRODUCTION

Article III's strictures and the teachings of experience set the procedural mechanics of the federal courts.[1] These mechanics guard against the judiciary's incursion into political territory by tethering judgments to concrete, justiciable issues.[2]

When, if ever, can Article III's protective command give way to considerations of judicial economy? Under the U.S. Supreme Court's recent decision in *Town of Chester v. Laroe Estates, Inc.*, if one plaintiff demonstrates Article III standing, a second plaintiff (or a third, or a fourth) need only seek the "same relief" as the first plaintiff to join the case.[3] Additional plaintiffs—sometimes termed "derivative,"[4] "dependent,"[5] or "piggyback"[6] plaintiffs—can violate Article III standing doctrine by remaining in a suit without demonstrating "(1) . . . an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision."[7] And, because the U.S. Supreme Court has expressly endorsed *Laroe*'s same relief standard, lower courts are without discretion to insist upon individualized standing inquiries of additional plaintiffs.[8]

This principle, coined the "One Good Plaintiff Rule" (the Rule), is constitutionally objectionable to those subscribing to the view that Article III strictly vests only a dispute resolution function in the federal judiciary.[9] These observers

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1. *See, e.g.*, Kramer v. Caribbean Mills, 394 U.S. 823 (1969) (holding that 28 U.S.C. § 1359 does not permit litigants to manufacture diversity of citizenship to establish subject matter jurisdiction); Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149 (1908) (holding that a suit arises under Article III only in cases where the plaintiff's own cause of action is based on federal law or the Constitution); *see also* U.S. CONST. art. III.

2. *See* Clapper v. Amnesty Int'l USA, 568 U.S. 398, 408 (2013) ("The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches."); *see also* Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 881–85 (1983).

3. 137 S. Ct. 1645, 1651 (2017).

4. Raum v. Bd. of Supervisors of Tredyffrin Twp., 342 A.2d 450, 458 (Pa. Commw. Ct. 1975).

5. Lindsey Creek Area Civic Ass'n v. Consol. Gov't of Columbus, 292 S.E.2d 61, 63 n.4 (Ga. 1982).

6. Schulz v. Williams, 44 F.3d 48, 53 (2d Cir. 1994); Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC, 97 A.3d 135, 139 (Md. 2014).

7. Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547 (2016) (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992)). *But see infra* notes 55–56 and accompanying text (recognizing several exceptions).

8. *See Laroe*, 137 S. Ct. at 1651 (endorsing the same relief standard); League of United Latin Am. Citizens – Richmond Region Council 4614 v. Pub. Interest Legal Found., No. 1:18-cv-00423, 2018 WL 3848404, at *2 (E.D. Va. Aug. 13, 2018) (noting lower courts' lack of discretion to insist upon individualized standing inquiries). For the separate but related topic of standing requirements in class action lawsuits under FED. R. CIV. P. 23, see Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 40 n.20 (1976) ("[E]ven named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.'" (quoting Warth v. Seldin, 422 U.S. 490, 502 (1975))).

9. *See* Aaron-Andrew P. Bruhl, *One Good Plaintiff Is Not Enough*, 67 DUKE L.J. 481, 484 (2017) (referring to the Rule as the "One-Plaintiff Rule" or the "One Good Plaintiff" approach). Before Bruhl, Joan Steinman similarly referred to the Rule as the "look only for one good plaintiff approach." *See* Joan Steinman, *The Effects of Case Consolidation on the Procedural Rights of Litigants: What They Are,*

argue that judgments that reach any party beyond a plaintiff with Article III standing (and an opposing defendant) run counter to the "proper—and properly limited—role" of the federal courts.[10] On the other hand, competing scholars point out that judgments extending beyond narrow "cases" and "controversies" seem to comport with a recognized and well-established judicial function of "law declaration."[11] Both of these opposing views of the One Good Plaintiff Rule's normative integrity are defensible, though neither has marshaled decisive historical evidence.[12] Recognizing each as credible, another less explored aspect of the debate looms large: the practical costs and benefits of the One Good Plaintiff Rule. Although efficiency alone cannot excuse a violation of Article III,[13] establishing that the Rule does not generate practical problems can take a key argument against its use off the table, thereby advancing the debate.[14]

On this issue, the Rule's opponents attack its administrability and argue that it undermines fairness in the adversarial system through interplay with other common law and statutory schemes, such as res judicata, attorneys' fees provisions, and judgment enforcement rights.[15] In response, the Rule's defenders argue that its practical costs are more than offset by the benefit of allowing courts to eschew complicated, time-consuming individualized standing inquiries in multi-plaintiff suits.[16]

On balance, then, do the Rule's benefits outweigh its costs, as its continued application in the federal courts would suggest? Or do its harms warrant its upending after over half a century of use?

This Note analyzes these questions through use of the best available control group: the state court systems. Because these systems—"laboratories" of democracy that allow for the development of legal solutions without risk to the rest of

What They Might Be Part 1: Justiciability and Jurisdiction (Original and Appellate), 42 UCLA L. REV. 717, 729–30 (1995) (internal quotation marks omitted). For further discussion on the power Article III vests in the federal judiciary, see generally Gary Lawson, *Stipulating the Law*, 109 MICH. L. REV. 1191 (2011).

10. Bruhl, *supra* note 9, at 516 (quoting *Warth*, 422 U.S. at 498).

11. *See, e.g.*, Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. REV. 1065, 1087–88 (2018) [hereinafter Frost, *In Defense*]; Henry Paul Monaghan, *On Avoiding Avoidance, Agenda Control, and Related Matters*, 112 COLUM. L. REV. 665, 668–69, 683 (2012); *cf.* Amanda Frost, *The Limits of Advocacy*, 59 DUKE L.J. 447, 496–98 (2009) [hereinafter Frost, *The Limits of Advocacy*] (observing that courts' "law pronouncement" function may be compatible with the goals of the adversarial system).

12. *See infra* notes 48–58 and accompanying text.

13. *See, e.g.*, Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102–03 (1998) (quoting Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992), regarding the "irreducible constitutional minimum of standing").

14. I thank Aaron Bruhl for this helpful framing.

15. *See* Howard Wasserman, *SCOTUS Symposium: More on Standing, Intervenors, and* Laroe Estates, PRAWFSBLAWG (June 5, 2017, 2:23 PM), http://prawfsblawg.blogs.com/prawfsblawg/2017/06/scotus-symposium-more-on-standing-intervenors-and-laroe-estates.html [https://perma.cc/7366-BR57]; *see also* Bruhl, *supra* note 9, at 507. Other purported prejudgment and postjudgment costs include burdensome discovery requests and cross-examination and the wrongful award of court costs. *See infra* Section III.B.

16. *See* Steinman, *supra* note 9, at 729–31.

the country[17]—are not bound by Article III, their treatment of the One Good Plaintiff Rule offers compelling insight into its practical costs and benefits. Granting the absence of polluting variables, if states tend to embrace a comparatively strict Rule, the federal Rule's practical costs are most likely underrecognized. Conversely, if most states adopt a coextensive or more lenient Rule than the one embraced in *Laroe*, then the federal Rule's practical costs may be overstated by its critics.

Based on an analysis of state court decisions, this Note argues that the federal One Good Plaintiff Rule should not be eliminated on practical grounds. Rather, the U.S. Supreme Court should clarify the scope of the Rule to resolve its most significant costs that have surfaced in the various state "laboratories."

The Note begins by providing an overview of the development of contemporary Article III standing doctrine, outlining the origin and evolution of the One Good Plaintiff Rule. It next discusses the conflicting normative bases for the Rule before detailing the arguments concerning the Rule's practical costs and benefits. The Note then provides a warrant for looking to the state courts for guidance on the Rule's practical costs and benefits. After that, it documents the various ways in which the Rule has surfaced in state court systems over the years. Finally, through the lens of state court decisions, the Note analyzes the Rule's practical costs in practice to propose modest alterations to the U.S. Supreme Court's existing One Good Plaintiff Rule.

I. ARTICLE III STANDING AND THE ONE GOOD PLAINTIFF RULE

The One Good Plaintiff Rule has developed against the backdrop of constitutional standing doctrine, which builds upon Article III's bare command that "[t]he judicial Power shall extend to . . . Cases [and] Controversies" that arise under the "Constitution [and] the Laws of the United States."[18]

Addressing the interplay between Article III and standing doctrine, the U.S. Supreme Court has observed that "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies."[19] As the logic goes, the preconditions to standing announced in *Lujan v. Defenders of Wildlife* in 1992—injury in fact, causation, and redressability[20]—guard against the "overjudicialization of the processes of self-governance"[21] by "limiting courts to the resolution of concrete, adverse disputes."[22]

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17. *See* United States v. Lopez, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring); New State Ice Co. v. Liebmann, 285 U.S. 262, 310–11 (1932) (Brandeis, J., dissenting).

18. U.S. CONST. art. III, § 2, cl. 1.

19. *E.g.*, DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 341 (2006) (citation and quotation marks omitted).

20. *See* 504 U.S. 555, 560–61 (1992).

21. Scalia, *supra* note 2, at 881 (citing D. Horowitz, THE COURTS AND SOCIAL POLICY 4–5 (1977)); *see* Erik R. Zimmerman, *Supplemental Standing for Severability*, 109 NW. U. L. REV. 285, 287 (2015).

22. Zimmerman, *supra* note 21, at 287 (citing *DaimlerChrysler Corp.*, 547 U.S. at 341–42).

Curiously, the history of standing is far less categorical than recent U.S. Supreme Court opinions suggest. Its origins reach back to English common law tradition, which granted courts access to parties outside of concrete, adverse disputes in cases involving "the ancient prerogative writs [of] certiorari and prohibition."[23] Early United States legal history also supplies evidence that the Framers did not intend a party's "concrete interest" to serve as an absolute "constitutional prerequisite" to maintaining an action under Article III.[24] Rather, prior to 1920, "standing was answered by deciding whether Congress or any other source of law had granted the plaintiff a right to sue."[25]

Only one limitation, then, seems common to both contemporary and historical approaches to standing: "the judicial [department] shall never exercise the legislative and executive powers, or either of them."[26] Under this view, as long as a single plaintiff properly satisfies *Lujan*'s standing test, the judiciary can rule on an actual case or controversy without issuing an advisory opinion.[27]

U.S. Supreme Court cases from the last half century seem to accord with this notion. Reviewing facial challenges to the constitutionality of state and federal statutes, the Court has repeatedly found that if one plaintiff possesses Article III standing, a court "need not consider whether the other . . . plaintiffs have standing to maintain the suit."[28] Though the exact origins of this language remain unclear, it first surfaced in the U.S. Supreme Court as a quiet ukase in a footnote in *Baggett v. Bullitt* in 1964.[29] In striking down a state loyalty oath statute challenged by teachers and state employees on vagueness grounds, the *Baggett* Court declined to rule on the standing of university students that also attempted to join in the suit:

> Since the ground we find dispositive immediately affects the professors and other state employees required to take the oath, and the interests of the students at the University in academic freedom are fully protected by a judgment in favor of the teaching personnel, we have no occasion to pass on the standing of the students to bring this suit.[30]

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23. *See* Cass R. Sunstein, *What's Standing After* Lujan*? Of Citizen Suits, "Injuries," and Article III*, 91 MICH. L. REV. 163, 171 (1992).

24. *Id.* at 173–77 (discussing the qui tam action and the informers' action, among others).

25. *Id.* at 170.

26. *See* Scalia, *supra* note 2, at 881 (citing MASS. CONST. pt. 1, art. 30).

27. *See* U.S. CONST. art. III, § 2, cl. 1; Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992). If one plaintiff has standing, then a second recognized function of standing—the promotion of sound judicial decisions—is also fulfilled, as a federal court is deciding cases within its domain of expertise. *See* Massachusetts v. EPA, 549 U.S. 497, 517 (2007); Zimmerman, *supra* note 21, at 294.

28. *See* Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264 n.9 (1977).

29. 377 U.S. 360, 366 n.5 (1964); *see also* Bruhl, *supra* note 9, at 502–03. The rule also independently appeared in lower courts beginning in 1960—a period slightly predating *Baggett*. *See*, *e.g.*, Air Line Pilots Ass'n, Int'l v. Quesada, 276 F.2d 892, 894 n.2 (2d Cir. 1960); Bruhl, *supra* note 9, at 505.

30. *Baggett*, 377 U.S. at 366 n.5.

Roughly a decade after *Baggett*, the Rule emerged in a cluster of cases.[31] Since 1980, it has appeared in at least eighteen separate U.S. Supreme Court rulings, along with several lower court opinions.[32]

The drivers of the Rule's proliferation likely differ between the lower federal courts and the U.S. Supreme Court. For the lower courts, its invocation operates as a talisman to ward off the burden of conducting individualized standing inquiries of many plaintiffs—especially when courts feel that original plaintiffs are destined to fail on the merits regardless.[33] The Rule's staying power in the U.S. Supreme Court, however, owes to the Rule's practical insignificance where judgments set precedent for all.[34] Whether one holds the view that the Court's rulings immediately bind nonparties or that its rulings simply control lower courts in their application of the law to factually similar cases via vertical stare decisis principles, the outcome is the same: the U.S. Supreme Court's rulings set the law for everyone, now or later.[35]

This "practical insignificance" has not entirely shielded the Rule from modern U.S. Supreme Court scrutiny. In *Town of Chester v. Laroe Estates, Inc.*, the Court

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31. *See, e.g.*, Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 299 n.11 (1979); Baldwin v. Fish & Game Comm'n, 436 U.S. 371, 377 n.14 (1978); Carey v. Population Servs. Int'l, 431 U.S. 678, 682 (1977); Whalen v. Roe, 429 U.S. 589, 595 n.14 (1977); *Vill. of Arlington Heights*, 429 U.S. at 264 n.9; Bellotti v. Baird, 428 U.S. 132, 139 n.9 (1976); Buckley v. Valeo, 424 U.S. 1, 12 (1976) (per curiam); Cal. Bankers Ass'n v. Shultz, 416 U.S. 21, 44–45 (1974); Doe v. Bolton, 410 U.S. 179, 189 (1973).

32. *See, e.g.*, Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1651 (2017); Horne v. Flores, 557 U.S. 433, 446–47 (2009); Crawford v. Marion Cty. Election Bd., 553 U.S. 181, 189 n.7 (2008) (plurality opinion); *Massachusetts v. EPA*, 549 U.S. at 518; Rumsfeld v. Forum for Acad. & Institutional Rights, Inc., 547 U.S. 47, 52 n.2 (2006); McConnell v. FEC, 540 U.S. 93, 233 (2003); Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls, 536 U.S. 822, 826 n.1 (2002); Dep't of Commerce v. U.S. House of Representatives, 525 U.S. 316, 330 (1999); Clinton v. City of New York, 524 U.S. 417, 431 n.19 (1998); Lee v. Weisman, 505 U.S. 577, 584 (1992); Dep't of Labor v. Triplett, 494 U.S. 715, 719 (1990); Bowen v. Kendrick, 487 U.S. 589, 620 n.15 (1988); Pennell v. City of San Jose, 485 U.S. 1, 8 n.4 (1988); Bowsher v. Synar, 478 U.S. 714, 721 (1986); Sec'y of the Interior v. California, 464 U.S. 312, 319 n.3 (1984); Dir., Office of Workers' Comp. Programs v. Perini N. River Assocs., 459 U.S. 297, 305 (1983); Gen. Bldg. Contractors Ass'n v. Pennsylvania, 458 U.S. 375, 402 n.22 (1982); Watt v. Energy Action Educ. Found., 454 U.S. 151, 160 (1981).

For a non-exhaustive list of lower court references to the One Good Plaintiff rule, see, e.g., *International Brotherhood of Teamsters v. U.S. Department of Transportation*, 861 F.3d 944, 951 (9th Cir. 2017), *Bostic v. Schaefer*, 760 F.3d 352, 370–71 (4th Cir. 2014), *Pension Benefit Guaranty Corp. ex rel. St. Vincent Catholic Medical Centers Retirement Plan v. Morgan Stanley Investment Management, Inc.*, 712 F.3d 705, 710 n.1 (2d Cir. 2013), and *1064 Old River Road, Inc. v. City of Cleveland*, 137 F. App'x 760, 765 (6th Cir. 2005).

33. *See* Utah Ass'n of Ctys. v. Bush, 316 F. Supp. 2d 1172, 1185 n.6 (D. Utah 2004).

34. *See, e.g.*, *Cal. Bankers Ass'n*, 416 U.S. at 44–45 ("Since . . . determination of the Association's standing would in no way avoid resolution of any constitutional issues, we assume without deciding that the Association does have standing."); *see also* LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 3–4 (2d ed. 1988); Arthur S. Miller, *Constitutional Decisions as De Facto Class Actions: A Comment on the Implications of* Cooper v. Aaron, 58 U. DET. J. URB. L. 573, 574–75 (1981).

35. *See* Cooper v. Aaron, 358 U.S. 1, 17–18 (1958) (embracing the view that the U.S. Supreme Court's rulings bind all nonparties). For a competing view, see generally Josh Blackman, *The Irrepressible Myth of* Cooper v. Aaron, 107 GEO. L.J. 1135 (2019) (arguing that *Cooper v. Aaron*'s recognition of the U.S. Supreme Court's judicial "supremacy" and "universality" is inconsistent with fundamental principles of judicial power).

slightly narrowed the Rule's common formulation. The original plaintiff in *Laroe*, Steven Sherman, sought to develop a 400-acre plot of land he purchased in Chester, New York.[36] Soon after, the town of Chester obstructed the land's development through zoning regulations.[37] Sherman later agreed to sell the land to a buyer, Laroe Estates, Inc., for $6 million pending Chester's approval of development.[38] Laroe paid Sherman $2.5 million before the bank ultimately foreclosed on the property.[39] Around the same time, Sherman brought regulatory takings claims against Chester under the Fifth and Fourteenth Amendments.[40] As the case ping-ponged between federal and state court, Sherman died.[41] To save the deal, Laroe filed a motion to intervene of right under Fed. R. Civ. P. 24(a)(2), arguing that, as an equitable owner of the property, it had an interest that would be impaired if it could not intervene.[42] The district court dismissed the motion, holding that Laroe lacked standing to bring a takings claim based on its "status as contract vendee to the property."[43] The Second Circuit reversed the lower court's decision and acknowledged a circuit split over "whether an intervenor of right must meet the requirements of Article III."[44] The U.S. Supreme Court then vacated the Second Circuit's ruling, observing that "an intervenor must meet the requirements of Article III if [it] wishes to pursue relief not requested by [the original] plaintiff."[45] The Court added that "[t]he same principle applies when there are multiple plaintiffs. At least one plaintiff must have standing to seek each form of relief requested in the complaint."[46] This view stands in contrast to the Rule's comparatively broad reach in predecessor cases, in which the U.S. Supreme Court observed that if one party has standing in an action, a court need not reach the issue of the standing of other parties.[47]

II. THE NORMATIVE CHALLENGE TO THE ONE GOOD PLAINTIFF RULE

Setting aside *Laroe*'s modification, the Rule's widespread embrace throughout the strata of the federal judiciary over the last half century makes it difficult to imagine that courts have overlooked a constitutional flaw.

Criticism of the Rule nevertheless bears some scrutiny. If Article III's "cases" and "controversies" language limits the judicial power of federal courts to the determination of complaining parties' individual rights, there is a strong argument that *each* litigant ought to be properly before a court for that court to issue a

36. *Laroe*, 137 S. Ct. at 1648.
37. *Id.*
38. *Id.* at 1649.
39. *Id.*
40. *Id.* at 1648.
41. *Id.* at 1649 n.1.
42. *Id.* at 1649.
43. *Id.* (citation omitted).
44. *Id.* at 1650.
45. *Id.* at 1648.
46. *Id.* at 1651.
47. *See, e.g.*, Bowsher v. Synar, 478 U.S. 714, 721 (1986); Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264 n.9 (1977).

judgment on the merits.[48] Under this view, judgments must be party specific, even if they set precedent for all.[49] No plaintiff should be involved in a case unless that plaintiff can demonstrate his or her own Article III standing.

Still, other commentators point to evidence supporting the Rule's normative integrity. As shown in Part I, the text of the Constitution is silent on the scope of judicial power.[50] And prior to the Judiciary Act of 1789, traditional equity courts issued rulings granting enforceable rights to nonparties with respect to defendants.[51] A "bill of peace," for example, provided remedies to "individuals closely connected and similarly situated to the [original] plaintiff."[52]

U.S. Supreme Court precedent also offers no definitive guidance on the matter. Early cases lend support to the position that each plaintiff must establish standing under Article III.[53] Yet, the Court has since embraced associational standing[54] and the adjudication of cases that are "capable of repetition, yet evading review."[55] The Court also remains virtually silent on district courts' issuance of nationwide injunctions, which bind nonparties to litigation.[56] But, on the other hand, it has not welcomed all proposed expansions to Article III standing. In *DaimlerChrysler Corp. v. Cuno*, the U.S. Supreme Court rejected, on constitutional grounds, an Article III exception for "supplemental standing," which would have allowed "a plaintiff with standing for one claim to assert related

48. *See* Bruhl, *supra* note 9, at 516–17; *see also* Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 471 (2017) ("Article III of the Constitution of the United States confers the 'judicial Power.' This is a power to decide a case for a particular claimant." (footnote omitted)).

49. *See* Bruhl, *supra* note 9, at 517–18.

50. *See* EDWARD S. CORWIN, THE DOCTRINE OF JUDICIAL REVIEW 16 (1914) ("[A]s to *what* [the judicial] power is, what are its intrinsic nature and scope, [the Constitution] says not a word."); *see also* Frost, *In Defense*, *supra* note 11, at 1080.

51. Bray, *supra* note 48, at 421 (noting that "traditional equity lacked [a] sharply defined rule" against injunctions binding nonparties); *see also* Frost, *In Defense*, *supra* note 11, at 1080–81.

52. Frost, *In Defense*, *supra* note 11, at 1080–81. However, as Samuel Bray observes, "[P]arties and non-parties who could jointly benefit from a bill of peace were a preexisting cohesive social unit like a group of parishioners." *See* Samuel Bray, *More Notes on the Historians' Brief*, VOLOKH CONSPIRACY (Nov. 17, 2018, 3:29 PM), https://reason.com/2018/11/17/more-notes-on-the-historians-brief/ [https://perma.cc/TE9W-VJTX].

53. *See, e.g.*, Muskrat v. United States, 219 U.S. 346, 361 (1911) ("[J]udicial power, as we have seen, is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction.").

54. *See, e.g.*, Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977).

55. *See, e.g.*, Roe v. Wade, 410 U.S. 113, 125 (1973) (citing S. Pac. Terminal Co. v. ICC, 219 U.S. 498, 515 (1911)).

56. *See generally* Trump v. Hawaii, 138 S. Ct. 2392, 2423 (2018) ("Our disposition of the case makes it unnecessary to consider the propriety of the nationwide scope of the injunction issued by the District Court."). *But see id.* at 2425 (Thomas, J., concurring) ("I am skeptical that district courts have the authority to enter universal injunctions. These injunctions did not emerge until a century and a half after the founding. And they appear to be inconsistent with longstanding limits on equitable relief and the power of Article III courts.").

claims, even if the plaintiff lacked standing for those other claims."[57] Likewise, the Court barred the use of third-party standing in *Warth v. Seldin*.[58]

III. THE PRACTICAL COSTS AND BENEFITS OF THE ONE GOOD PLAINTIFF RULE

Given the relative equipoise of normative theories for and against the Rule, its advocates and critics advance arguments concerning the Rule's workability.[59]

The Rule's opponents raise two main criticisms. First, they argue that courts cannot easily discern whether an additional plaintiff without standing seeks the same type of relief as an original plaintiff (definitional impracticability). Second, they argue that the Rule imposes wrongful prejudgment and postjudgment costs on parties (wrongful costs). In response, defenders of the Rule counter that it allows courts to avoid laborious individualized standing inquiries while sidestepping thorny constitutional issues (judicial economy).

A. DEFINITIONAL IMPRACTICABILITY

Though Justice Alito's 2017 majority opinion in *Laroe* provides the most comprehensive statement of the Rule to date, it offers little to aid lower courts in policing what constitutes the same relief in multi-plaintiff suits for damages and injunctions. The majority opinion in *Laroe* bars additional plaintiffs from seeking damages *in their own name* without demonstrating Article III standing independent of the original plaintiff.[60] But because Laroe, the additional plaintiff in the case, changed its position on the damages it sought throughout the course of litigation, the Court chose not to apply its own test.[61] It nevertheless suggested that

57. Zimmerman, *supra* note 21, at 287; *see* DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 351–53 (2006) ("What we have never done is . . . permit a federal court to exercise supplemental jurisdiction over a claim that does not itself satisfy those elements of the Article III inquiry . . . .").

58. 422 U.S. 490, 499 (1975) ("[T]he plaintiff . . . cannot rest his claim to relief on the legal rights or interests of third parties.").

59. Article III does not cede to practical considerations alone. *See* Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102–03 (1998). Administrability is relevant, however, to weighing a doctrine's continued embrace by the federal courts. *See* Vikram David Amar & Michael Schaps, *When Does Congress's Recognition of an Injury Count to the Supreme Court? Standing and the* Spokeo v. Robins *Case*, VERDICT (Nov. 6, 2015), https://verdict.justia.com/2015/11/06/when-does-congresss-recognition-of-an-injury-count-to-the-supreme-court [https://perma.cc/VN3Z-ZSZV] ("Most every jurist and commentator seems to agree that injuries that are not particularized do not suffice—perhaps for reasons of judicial administrability—to get a plaintiff into federal court.").

60. Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1652 (2017) ("If Laroe wants only a money judgment of its own running directly against the Town, then it seeks damages different from those sought by [the original plaintiff] and must establish its own Article III standing in order to intervene.").

61. *Id.* at 1651–52 ("[A]t some points during argument in the Court of Appeals, Laroe made statements that arguably indicated that Laroe is not seeking damages different from those sought by [the original plaintiff]. . . . At other points, however, the same counsel made statements pointing in the opposite direction. . . . Taken together, these representations at best leave it ambiguous whether Laroe is seeking damages for itself or is simply seeking the same damages sought by [the original plaintiff]."); *see also id.* at 1652 n.4 ("Before this Court, Laroe's counsel represented that Laroe is not seeking damages of its own and is seeking only to maximize [the original plaintiff's] recovery. But in light of the ambiguous record and the lack of a reasoned conclusion on this question from the Court of Appeals, we are not inclined to resolve it in the first instance." (citation omitted)).

if Laroe, together with the original plaintiff, had sought "exactly one fund, and [the defendant did not] have to do anything except turn over the fund," it could have proceeded in the suit without Article III standing.[62]

As some scholars have pointed out, this language fails to specify whether an award of damages is the same relief when "a second plaintiff seeks to share in the judgment without changing the total amount sought from the defendant."[63] Seeking "damages different from those sought by [the original plaintiff]"[64] is distinct from "attempting to cleave damages from the whole."[65]

The same relief standard is just as puzzling in the context of injunctions. Justice Alito's statement that "standing is not dispensed in gross,"[66] paired with his observation that an additional plaintiff "must demonstrate Article III standing when it seeks additional relief beyond that which the [original] plaintiff requests,"[67] would seem to suggest that courts must narrowly tailor injunctive relief to ensure that it is *particularized* to the original plaintiffs.[68] One practitioner frames the resulting inquiry:

> The question is not whether B can use A's standing for the same relief, the question is whether A can obtain particularized relief from which B benefits obliquely. If the narrowly tailored injunction as to A makes B whole, then standing is probably not necessary for B. But if the court homes in on A to the exclusion of B, B will need standing to sue independently to join in the scope of the injunction.[69]

This seems simple enough until one considers nationwide preliminary injunctions.[70] In the wake of *Laroe*, courts will certainly still be able to strike down a law "when a plaintiff with standing proves that the law is unconstitutional."[71] But broad preliminary injunctions enjoining Executive Branch policies like the Obama Administration's transgender bathroom policy[72] and the Trump Administration's travel ban[73] seem untenable in light of *Laroe* because they reach outside the scope of particularized relief. *Laroe* may therefore require lower courts to draw "an impossible distinction in practice."[74]

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62. *Id*. at 1651 (internal quotation marks and citation omitted).
63. *See, e.g*., Bruhl, *supra* note 9, at 499; Wasserman, *supra* note 15.
64. *Laroe*, 137 S. Ct. at 1651.
65. Jesse D.H. Snyder, *How* Town of Chester v. Laroe Estates, Inc. *Turned the One-Good-Plaintiff Rule into the One-Good-Remedy Rule*, 54 SAN DIEGO L. REV. 705, 730 (2017).
66. *Laroe*, 137 S. Ct. at 1650 (quoting Davis v. FEC, 554 U.S. 724, 734 (2008)).
67. *Id*. at 1651.
68. *See* Snyder, *supra* note 65, at 731.
69. *Id*. at 731.
70. *Id*. at 731–32.
71. *Id*. at 732.
72. Texas v. United States, 201 F. Supp. 3d 810, 836 (N.D. Tex. 2016).
73. *See* Int'l Refugee Assistance Project v. Trump, 241 F. Supp. 3d 539, 566 (D. Md.), *aff'd in part*, *vacated in part*, 857 F.3d 554 (4th Cir.), *and vacated and remanded*, 138 S. Ct. 353 (2017) (mem.).
74. Wasserman, *supra* note 15.

B. WRONGFUL COSTS

The Rule also wrongfully confers legal rights and obligations that impose costs on courts and litigants throughout a case's life cycle.

1. Front-End Costs

Looking first at front-end costs, additional plaintiffs under the Rule enjoy full party status in the pretrial and trial stages of litigation: they can request discovery, call witnesses, and participate in direct examination and cross-examination.[75]

Concededly, trial courts can protect defendants from the excessive burdens imposed by plaintiffs without Article III standing. In multiparty cases, judges can manage discovery pursuant to wide discretionary authority under the Federal Rules of Civil Procedure,[76] impose time limits by giving each side a specified number of trial days to present its case, [77] and limit direct examination and cross-examination to one lawyer per side.[78] Case-management decisions of trial courts are also afforded great deference by reviewing courts, and are seldom reversed on appeal.[79]

Still, as the Advisory Committee on Civil Rules notes, the front-end costs of multiparty litigation are intractable.[80] District courts do not "consistently or sufficiently use[]" pretrial case management tools.[81] All sides in multiparty cases can examine and cross-examine deponents.[82] And although a trial court can regulate the manner by which additional plaintiffs question witnesses at trial, it cannot entirely strip them of their right to participate "substantially and fairly" in cross-examination.[83] In short, though trial courts are generally entitled to deference on matters of case and trial management, their discretion reaches only so far because

75. *See, e.g.*, League of United Latin Am. Citizens – Richmond Region Council 4614 v. Pub. Interest Legal Found., No. 1:18-cv-00423, 2018 WL 3848404, at *2 (E.D. Va. Aug. 13, 2018) (permitting the additional plaintiff, League of United Latin American Citizens, to remain in a suit and request discovery); *see also* Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC, 97 A.3d 135, 140 (Md. 2014).

76. *See, e.g.*, FED. R. CIV. P. 16(3); FED. R. CIV. P. 26(b)(2)(A) ("By order, the court may alter the limits in [the Federal Rules of Civil Procedure] on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36."); *see also* Crawford-El v. Britton, 523 U.S. 574, 598 (1998); David L. Noll, *Qualified Immunity in Limbo: Rights, Procedure, and the Social Costs of Damages Litigation Against Public Officials*, 83 N.Y.U. L. REV. 911, 928 (2008).

77. *See* William W. Schwarzer, *Reforming Jury Trials*, 132 F.R.D. 575, 579 (1991).

78. *See id.* at 579–80.

79. *See* United States v. Clarke, 573 U.S. 248, 255–56 (2014).

80. *See* FED. R. CIV. P. 16 advisory committee's note to 2015 amendment ("Litigation involving complex issues, multiple parties, and large organizations, public or private, may be more likely to need extra time to establish meaningful collaboration between counsel and the people who can supply the information needed to participate in a useful way.").

81. Steven S. Gensler & Lee H. Rosenthal, *Four Years After Duke: Where Do We Stand on Calibrating the Pretrial Process?*, 18 LEWIS & CLARK L. REV. 643, 645 (2014).

82. John H. Langbein, *The Disappearance of Civil Trial in the United States*, 122 YALE L.J. 522, 546–47 (2012); *see* FED. R. CIV. P. 30(c)(1) ("The examination and cross-examination of a deponent proceed as they would at trial . . . .").

83. *See* Argentine v. United Steelworkers of Am., 287 F.3d 476, 486 (6th Cir. 2002) (citing Francis v. Clarke Equip. Co., 933 F.2d 545, 551 (6th Cir. 1993)).

their decisions must factor "fairness to *all* litigants."[84] Even if a court could fully protect defendants from the Rule's negative externalities, the court itself would still bear the burden of supervision costs—a significant tax on already limited judicial resources.

2. Back-End Costs

Looking at back-end costs, under the Rule, legal rights and obligations can attach curiously to additional plaintiffs in the absence of proper Article III standing. This can impose unjust liability across the board.

For one, with few exceptions, the preclusive effects of judgments typically bind only the parties to a suit.[85] Because additional plaintiffs enjoy party status under the One Good Plaintiff Rule, a favorable or adverse judgment with respect to the original plaintiff effectively bars relitigation *by all plaintiffs* under principles of res judicata and collateral estoppel.[86] And, because dismissal for lack of standing only precludes a federal court's authority to hear a plaintiff's claim, an additional plaintiff that remains in a suit under the One Good Plaintiff Rule may lose the opportunity to bring a separate claim in state court "where the standing requirements may be more lenient."[87]

Second, additional plaintiffs can enforce favorable judgments despite their lack of standing. By way of example, Aaron-Andrew Bruhl, Associate Dean at William and Mary Law School, describes actions taken by the lower courts on remand in *Massachusetts v. EPA*, where the U.S. Supreme Court bypassed individualized standing inquiries of several "additional plaintiff" states through use of the Rule:

> The D.C. Circuit remanded [the plaintiffs'] petitions for review to the EPA for the agency to take regulatory action. After the EPA had not taken action for a year, the various petitioners asked the D.C. Circuit for a writ of mandamus ordering the agency to act. The majority denied the request, but it does not appear that the non-Massachusetts petitioners seeking enforcement—parties whose standing remained uncertain—were treated any differently in the enforcement proceedings than the one party found to have standing.[88]

84. *See* Muñoz v. Orr, 200 F.3d 291, 305 (5th Cir. 2000) (emphasis added).

85. *See* Taylor v. Sturgell, 553 U.S. 880, 898–902 (2008) (recognizing a few narrow exceptions to the common law rule against preclusive effects of judgments on nonparties, including privity and "public-law" cases).

86. *See* Bruhl, *supra* note 9, at 507–08.

87. *See id.* at 510–11. Analyzing the preclusive effect of a federal court's dismissal of a suit for lack of standing, state courts have recognized that "[Article III] standing is . . . a threshold issue. It neither depends on nor determines the merits of a plaintiff's claims." Watkins v. Resorts Int'l Hotel & Casino, Inc., 591 A.2d 592, 601 (N.J. 1991) (citation omitted). If a plaintiff without standing obtained an unfavorable decision on the merits in federal court because of the One Good Plaintiff Rule, that plaintiff would forfeit the opportunity to litigate the claim in state court.

88. Bruhl, *supra* note 9, at 508 (footnotes omitted); *see* Massachusetts v. EPA, 549 U.S. 497, 521, 535 (2007); Massachusetts v. EPA, 249 F. App'x 829, 830 (D.C. Cir. 2007).

Even if the EPA challenged the ability of the additional plaintiffs to enforce the lower court's judgment on justiciability grounds, it would have failed; "res judicata and collateral estoppel principles [typically] will defeat a post-judgment challenge to a plaintiffs' standing."[89]

Third, additional plaintiffs can often recover attorneys' fees and court costs under the Rule.[90] Historically, courts in certain statutory causes of action have liberally apportioned attorneys' fees to additional plaintiffs, even when those plaintiffs are separately represented.[91] In the aftermath of *Laroe*, however, defendants are likely to argue that plaintiff-specific attorneys' fees constitute "damages different from those sought by [the original plaintiff]."[92] *Laroe*, after all, recognizes that a plaintiff's complaint offers "the best evidence of the relief [they] seek[]."[93] And what self-respecting plaintiffs' attorney would fail to state a claim for *attorneys' fees* on a client's behalf under an appropriate statutory right of action?

But under most statutory attorneys' fees provisions, a court may also award costs of litigation sua sponte to a prevailing party, regardless of whether the party itself makes a request. If plaintiffs' complaints offer the best evidence of the relief they seek, a court's ability to issue awards on its own cuts against attorneys' fees qualifying as relief for purposes of the Rule.[94]

What's more, both Congress and the courts have clarified the purpose of statutory attorneys' fees provisions as "ancillary and incident to securing compliance" with laws that are vindicated only through private rights of action.[95] It would seem odd, then, to equate these fees with traditional compensatory relief.

Finally, court costs, which trial and appellate judges apportion to a prevailing party incident to a judgment under the Rule, are also overlooked. The U.S.

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89. *See* Steinman, *supra* note 9, at 731 n.39; *see also* Cutler v. Hayes, 818 F.2d 879, 887–90 (D.C. Cir. 1987).

90. Bruhl, *supra* note 9, at 509.

91. *See id.* at 509; *see also* Samuel R. Berger, *Court Awarded Attorneys' Fees: What is "Reasonable"?*, 126 U. PA. L. REV. 281, 303–04, 303 n.104 (1977) (citing at least seventy-five statutes through which Congress conferred upon federal courts the power to award attorneys' fees).

92. Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1651 (2017); *see also id.* at 1652 (observing that "[i]f Laroe wants only a money judgment of its own running directly against the Town, then it seeks damages different from those sought by [the original plaintiff] and must establish its own Article III standing in order to intervene"); Woollard v. Sheridan, No. JFM-10-2068, 2010 WL 5463109, at *1 n.1 (D. Md. Dec. 29, 2010) ("Because [the additional plaintiff's] standing is currently irrelevant, I will also deny Defendants' request to conduct discovery on this issue. If [the additional plaintiff] obtains relief different from that sought by [the original plaintiff] whose standing has not been questioned, including attorney's fees, I will at that time address the issue of [the additional plaintiff's] standing to bring suit." (internal quotation marks omitted)).

93. *See Laroe*, 137 S. Ct. at 1651.

94. *See, e.g.*, 33 U.S.C. § 1365(d) (2012) ("The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate.").

95. *See, e.g.*, N.C. Dep't of Transp. v. Crest St. Cmty. Council, Inc., 479 U.S. 6, 19 (1986) (Brennan, J., dissenting) (quoting S. REP. NO. 94-1011, at 5 (1976)); Dennis v. Chang, 611 F.2d 1302, 1306 n.10 (9th Cir. 1980) (same); S. REP NO. 94-295, at 40–41 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 774, 807–08; *see also* Berger, *supra* note 91, at 306–09.

Supreme Court in 2009, for example, issued court costs to an additional plaintiff that had not demonstrated standing.[96] Because plaintiffs often fail to seek these costs in their initial complaints,[97] *Laroe*'s "best evidence" dicta cuts against counting these costs as different relief.

C. JUDICIAL ECONOMY

The Rule does offer benefits that provide counterbalance to its practical costs. Most notably, individualized standing inquiries consume an extraordinary amount of judicial bandwidth in large multi-plaintiff suits.[98] On occasion, courts have even cited this issue as a justification for applying the Rule.[99] Additionally, the Rule's use enables "courts to avoid deciding potentially difficult issues of standing," which can consume already limited judicial resources.[100] As certain circuits have recognized, this benefit dovetails with the established canon of constitutional avoidance.[101] However, as opponents of the Rule have observed, punting on standing questions for the sake of judicial economy can also inhibit the development of key standing doctrine.[102] The law of congressional standing, for example, remained in a prolonged disorganized state after the Court, through use of the Rule, bypassed reaching the issue in *Bowsher v. Synar*.[103]

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In sum, the Rule's costs appear substantial and its limited benefits, though material, seem to generate additional consequences that negatively impact the judicial system.

IV. THE STATE COURT SYSTEMS AS A CONTROL GROUP

Does this initial accounting of the Rule's costs and benefits overstate the magnitude of the Rule's costs *in practice*? The Rule has enjoyed widespread acceptance by federal trial and appellate courts for over half a century with little to no

96. *See* Horne v. Flores, 557 U.S. 433, 446 (2009); Bruhl, *supra* note 9, at 509.

97. *See, e.g.*, Miller v. United States, 204 Fed. App'x 9, 10 (Fed. Cir. 2006); *cf.* Ashby v. McKenna, 110 Fed. App'x 86, 87 n.1 (10th Cir. 2004).

98. *See* Steinman, *supra* note 9, at 729–30, 738.

99. *See, e.g.*, Utah Ass'n of Ctys. v. Bush, 316 F. Supp. 2d 1172, 1185 n.6 (D. Utah 2004) ("[I]n the interest of judicial economy the Court will not further address the standing question [of additional plaintiffs] in this Opinion.").

100. Steinman, *supra* note 9, at 729.

101. *See* Ry. Labor Execs.' Ass'n v. United States, 987 F.2d 806, 810 (D.C. Cir. 1993) ("It is a longstanding principle that courts should avoid passing on constitutional issues unless the resolution of these issues is necessary to the disposition of the case. In accordance with this principle, the Supreme Court has repeatedly held that if one party has standing in an action, a court need not reach the issue of the standing of other parties when it makes no difference to the merits of the case." (citation omitted)).

102. *See, e.g.*, Bruhl, *supra* note 9, at 511 ("The one-plaintiff rule . . . can indirectly lead to overly broad injunctive relief and inhibit the development of precedent that would clarify standing doctrine.").

103. 478 U.S. 714, 721 (1986); *see* Raines v. Byrd, 521 U.S. 811, 829–30 (1997) (denying standing to plaintiff legislators without promulgating a general set of principles in the wake of *Bowsher*); *see also* Nat Stern, *The Indefinite Deflection of Congressional Standing*, 43 PEPP. L. REV. 1, 35–37 (2015).

resistance. Have these courts been acting on inertia alone, or does the Rule provide a benefit not immediately identifiable from case law?

The lower federal courts shed little light on this issue as a control group. After all, we assume they try in earnest to "get the law right," which means adhering to binding U.S. Supreme Court precedent that interprets the Constitution—however unclear that precedent may be.[104] One district court, for example, noted "the undesirable outcomes of an overbroad application of the 'One Good Plaintiff Rule,' including improper awards of fees and costs, confusion over preclusive effects of judgments, excessively broad injunctions, and the inhibition of precedent development."[105] Yet, that court conceded that "the Supreme Court . . . [has] held that the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement," allowing the additional organizational plaintiff to survive a motion to dismiss on jurisdictional grounds.[106]

To assess properly the practical ramifications and optimal limitations of the One Good Plaintiff Rule, then, we should look to the state court systems, which are not governed by Article III's strictures. Their experimentation with different novel approaches to the Rule can teach the federal judiciary without "risk to the rest of the country"—a principle that has long enjoyed endorsement by the U.S. Supreme Court.[107] Further, these judicial systems are subject to less stringent standing requirements under their respective state constitutions,[108] and sometimes

104. *See* Sarah M.R. Cravens, *In Good Conscience: Expressions of Judicial Conscience in Federal Appellate Opinions*, 51 DUQ. L. REV. 95, 122 (2013). Indeed, "[i]t is a basic commitment and expectation at every level of judging that [judges] will not simply make up the law as they go along, but will respect the rule of law and the doctrine of stare decisis." *Id*. at 115.

105. League of United Latin Am. Citizens – Richmond Region Council 4614 v. Pub. Interest Legal Found., No. 1:18-cv-00423, 2018 WL 3848404, at *2 n.2 (E.D. Va. Aug. 13, 2018) (citing Bruhl, *supra* note 9, at 506).

106. *Id*. at *1–3.

107. *See, e.g.*, New State Ice Co. v. Liebmann, 285 U.S. 262, 310–11 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."); *see also* Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n, 135 S. Ct. 2652, 2673 (2015); United States v. Lopez, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring) ("[T]he States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear.").

108. Many state court systems, not bound by Article III, have relaxed standing requirements to authorize suits that serve an important public purpose. *See, e.g.*, ACLU of New Mexico v. City of Albuquerque, 188 P.3d 1222, 1226 (N.M. 2008) ("'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.' Indeed, this Court has exercised its discretion to confer standing and reach the merits in cases where the traditional standing requirements were not met due to the public importance of the issues involved." (citation omitted)); Goldston v. State, 637 S.E.2d 876, 882 (N.C. 2006) ("[T]he nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine."); Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y., 275 A.2d 433, 434 (N.J. 1971) ("The New Jersey cases have historically taken a much more liberal approach on the issue of standing than have the federal cases.").

lack a controlling command altogether.[109] As a result, a state court that accepts or rejects the federal One Good Plaintiff Rule is more likely to do so on predominantly practical grounds.

This Note devises a simple test: if a majority of states embrace a comparatively strict One Good Plaintiff Rule that answers to some or all of the practical costs raised under *Laroe*'s existing regime, it is likely that the Rule's elimination or modification is warranted on practical grounds. Conversely, if a majority of states adopt the same or a more lenient version of the Rule, the opposite may be presumed—the Rule's practical costs are overstated, and it should remain in force in the absence of a superseding constitutional command.

Certainly, there are limitations to this empirical approach. First, several state court systems are guided by state constitutions that employ "cases or controversies" language substantially similar to that of Article III. These states, influenced by normative forces, are less powerful in providing definitive guidance on the practical implications of the Rule. Even if they align with the federal Rule, though, their practical explanations for the positions they embrace are worthy of consideration. Second, some states may implicitly reject the Rule without explanation by insisting on individualized standing inquiries for all plaintiffs. Without any clear pronouncement, no cost–benefit calculation can be imputed on these courts, and their positions can carry little weight in the overall analysis. Finally, a few states have developed or expanded the Rule in lower courts, which are technically nonbinding on the state's highest court.[110] However, as Part V illustrates, state Rules can and do originate in lower courts before finding favor in a state's highest court. Accordingly, an intermediate appellate court's invocation may fairly represent a state's Rule in the absence of an appellate split or subsequent conflicting treatment by a higher binding authority.

Notwithstanding these imperfections, an analysis of the Rule's treatment throughout the states offers a strong basis for accepting or rejecting its practical soundness and, by extension, justifying its continued use in the federal courts.

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109. *See* Sears v. Hull, 961 P.2d 1013, 1019 (Ariz. 1998) ("Because our state constitution does not contain a 'case or controversy' provision analogous to that of the federal constitution, we are not constitutionally constrained to decline jurisdiction based on lack of standing."). In cases where states lack a controlling constitutional command, courts have developed standing doctrines to promote judicial restraint and incentivize zealous advocacy as a reflection of the practical realties of their adjudicative role. *See id.* ("Arizona courts consistently have required as a matter of judicial restraint that a party possess standing to maintain an action."); *see also* Lansing Schs. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 690 (Mich. 2010) ("The purpose of the [Michigan] standing doctrine is to assess whether a litigant's interest in the issue is sufficient to 'ensure sincere and vigorous advocacy.' Thus, the standing inquiry focuses on whether a litigant 'is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable.'" (citation omitted)).

110. Oregon serves as an instructive example. The Rule initially surfaced in the Oregon Court of Appeals in *Thunderbird Motel, Inc. v. City of Portland*, 596 P.2d 994, 998 n.2 (Or. Ct. App. 1979)—twenty-seven years before its first invocation by the Supreme Court of Oregon in *MacPherson v. Department of Administrative Services*, 130 P.3d 308, 312–13 (Or. 2006) (en banc).

V. THE ONE GOOD PLAINTIFF RULE IN THE STATES

The One Good Plaintiff Rule assumes myriad forms throughout the states. These forms fall into three broad categories: (A) strict rules; (B) rules coextensive with the federal rule; and (C) lenient rules. Strict rules bar from suit additional plaintiffs that would otherwise meet *Laroe*'s same relief standard. Coextensive rules grant access to the exact same set of plaintiffs that *Laroe* would. And lenient rules permit additional plaintiffs without standing to join a suit in a manner inconsistent with *Laroe*. The allocation of the state courts among these three categories offers evidence of the practical soundness of the federal Rule. The reasoning for and against the Rule that these states provide also offers insight into ways the federal Rule can be modified to more effectively balance the interests of courts and litigants.

A. STRICT RULES

Six state court systems embrace a Rule that is stricter than the federal Rule.

Georgia courts limit their Rule's application to zoning cases.[111] The Supreme Court of Georgia has observed that this narrow exception owes to considerations of judicial economy and fairness to "individual property owners."[112]

Four states—Indiana, Alabama, Texas, and Nebraska—closely align with the federal One Good Plaintiff Rule but adopt a slightly stricter version that applies exclusively to suits for injunctive or declaratory relief.

Indiana's intermediate appellate court initially adopted an expansive Rule akin to the pre-*Laroe* federal renditions.[113] However, more recently, it cited to a Seventh Circuit case, *Crawford v. Marion County Election Board*,[114] for the proposition that "only one plaintiff with standing is required" when "only injunctive relief is sought."[115] Compared to the *Laroe* standard, this formulation does not allow additional plaintiffs without standing to join actions for damages.

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111. *See, e.g.*, Lindsey Creek Area Civic Ass'n v. Consol. Gov't of Columbus, 292 S.E.2d 61, 63 n.4 (Ga. 1982) ("Normally the standing of one party is not dependent upon the standing of another party. Nevertheless, in zoning cases we find this 'dependent standing' preferable to (a) detailed inquiry as to the membership of the civic association to determine its independent standing, or (b) requiring those individual property owners who have standing to bear the entire burden of opposing the rezoning.").

112. *Id.* at 63.

113. *See* Hawk Dev. Corp. v. Van Prooyen, No. 45A03-0706-CV-277, 2008 WL 509471, at *8 (Ind. Ct. App. Feb. 27, 2008) ("[T]he trial court did not err when it concluded that the HOA had standing. Because the HOA has standing, we need not address the arguments regarding Van Prooyen's standing."); *see also* City of Greenwood v. Town of Bargersville, 930 N.E.2d 58, 67 n.10 (Ind. Ct. App. 2010) ("Because we conclude that Greenwood has standing, we need not determine whether the other Appellants have standing."); Penn-Harris-Madison Sch. Corp. v. Joy, 768 N.E.2d 940, 944 n.4 (Ind. Ct. App. 2002) ("Penn observes that Tiffany Petill was not subject to suspicionless drug testing. The school corporation also claims that parents Linda Petill and Steven Ward have no standing. . . . [T]he issue of the parents' standing does not change our review of the case, as other named plaintiffs have standing to prosecute this action. Thus, we need not address the standing issue.").

114. 472 F.3d 949 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008).

115. *See* Bd. of Comm'rs v. Ne. Ind. Bldg. Trades Council, 954 N.E.2d 937, 943 (Ind. Ct. App. 2011) ("The Commissioners argue that Kinder and Stoller have not shown they will suffer direct harm and that the remaining Appellees' standing is wholly dependent on Stoller's standing to sue in his own right.

Curiously, the U.S. Supreme Court's *Crawford* decision predated the Indiana intermediate appellate court's initial formulation of its Rule.[116] *Crawford* was also appealed to the U.S. Supreme Court, which affirmed the Seventh Circuit's holding, albeit employing a more relaxed version of the Rule.[117] For the time being, though, Indiana's position remains anchored to the Seventh Circuit's original language in *Crawford*.[118] Alabama, without citing to federal precedent, has adopted a similar Rule.[119]

Texas embraces a standing doctrine that parallels *Lujan*, and the state courts "turn for guidance to precedent from the U.S. Supreme Court" on standing issues.[120] Yet, Texas's One Good Plaintiff Rule, which dates to the mid-1990s,[121] does not extend to damages suits: "[a]n exception to [the traditional requirement of standing] applies where there are multiple plaintiffs in a case, *who seek injunctive or declaratory relief (or both)*, who sue individually, and who all seek the same relief."[122] As the Supreme Court of Texas explains, "[t]he reason behind this exception is that, if that plaintiff prevails on the merits, the same prospective relief would issue regardless of the standing of the other plaintiffs."[123] Nebraska courts, in adopting an identical Rule, import Texas's language.[124]

However, as implied above, the Trades Council can sue in its associational capacity on behalf of any and all of its members and is not limited to representing Stoller as the sole union member named a plaintiff. Even if Kinder and Stoller lack standing in their own right, such a conclusion would not require dismissal of the lawsuit or entitle the Commissioners to judgment in their favor." (citing to *Crawford*, 472 F.3d at 951, for the proposition that "where only injunctive relief is sought, 'only one plaintiff with standing is required'")).

116. *Compare Crawford*, 472 F.3d at 951 (decided in 2007), *with Van Prooyen*, 2008 WL 509471, at *8 (decided in 2008).

117. *See* Crawford v. Marion Cty. Election Bd., 553 U.S. 181, 189 n.7 (2008) ("We also agree with the unanimous view of those judges that the Democrats have standing to challenge the validity of SEA 483 and that there is no need to decide whether the other petitioners also have standing."); *see also id*. at 209 n.2 (Souter, J., dissenting) ("I agree with the lead opinion that the petitioners in No. 07–25 have standing and that we therefore need not determine whether the remaining petitioners also have standing.").

118. *See Bd. of Comm'rs*, 954 N.E.2d at 943.

119. *See* DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 273 (Ala. 1998) ("Here, the Propane Dealers sought injunctive relief. Therefore, if any of the Propane Dealers had standing under some other rationale then we need not decide whether the others also had standing, for if the injunction was proper as to one of the Propane Dealers then it will clearly benefit all of the Propane Dealers."); *see also id*. at 274 ("[B]ecause Suburban Gas sought injunctive relief it is unnecessary for us to decide at this point whether any of the other Propane Dealers have standing as well."). *But see* McInnish v. Bennett, 150 So. 3d 1045, 1058 (Ala. 2014) (Moore, C.J., dissenting) (mem.) ("Therefore, Goode, a presidential candidate on the 2012 general-election ballot who filed his complaint before the election, has standing to pursue this case. Because Goode has standing and his coplaintiff, McInnish, *alleges the same claims as Goode*, I need not address whether McInnish also has standing." (citing Watt v. Energy Action Educ. Found., 454 U.S. 151, 160 (1981) (emphasis added)).

120. Heckman v. Williamson County, 369 S.W.3d 137, 154 (Tex. 2012).

121. *See* Tex. Workers' Comp. Comm'n v. Garcia, 893 S.W.2d 504, 519 (Tex. 1995).

122. *Heckman*, 369 S.W.3d at 152 n.64 (emphasis added).

123. *Id*.

124. *See* Stewart v. Heineman, 892 N.W.2d 542, 563–64 (Neb. 2017) (citing, *inter alia*, *Rumsfeld v. Forum for Academic & Institutional Rights, Inc*., 547 U.S. 47, 52 n.2 (2006), and *Heckman*, 369 S.W.3d at 152 n.64, for the proposition that: "In an action where multiple plaintiffs seek identical *injunctive or declaratory relief*, once the court determines that one of the plaintiffs has standing, it need not decide the

Texas's treatment of the Rule is notable for another reason. In *Patel v. Texas Department of Licensing and Regulation*, the Texas Supreme Court weighed in on the issue of the Rule's definitional impracticability and postjudgment costs.[125] Responding to the defendant's assertion that "because the [additional plaintiffs] seek attorneys' fees, the relief ultimately awarded will not necessarily be identical," the court replied: "[S]tanding is determined at the beginning of a case, and whether the relief ultimately granted is the same for all parties is not determinative of the question. Here, [the original plaintiffs] have standing to seek relief and that is all we need to determine."[126]

This response provides evidence that even Texas, one of the few states to embrace a Rule stricter than the federal judiciary's One Good Plaintiff Rule, is comfortable with the practical costs imposed by *Laroe*.

Finally, one state, Maryland, only applies the Rule to appeals.[127] Maryland's prohibition on the Rule's use in trial courts is unique among the states and flows from several decades of doctrinal fluctuation in the Maryland Court of Appeals, the state's highest court. This treatment, on which recent cases have expounded, is worth examining in further detail, as it suggests potential revisions to the existing federal Rule.

The Maryland Rule originated in the mid-1970s in litigation involving a facial challenge to statutes granting Baltimore jurisdiction over building code violations.[128] Its initial iteration—"[s]ince one of the plaintiffs . . . had standing to bring the action, it is unnecessary for us to consider the matter of Baltimore City's standing"[129]—appeared without any limiting principle or underlying justification. Context, however, suggests that the court was straining to avoid a complex state sovereignty issue.[130]

The Rule then resurfaced, unchanged, in several cases over the ensuing seventeen years.[131] Only in 1992 did the Maryland Court of Appeals begin to tighten its limitations, observing that "the presence of [the original plaintiff] was not

standing of the others in order to determine that the action is justiciable. For if one plaintiff prevails on the merits, the same prospective relief will issue regardless of the standing of the other plaintiffs." (emphasis added)).

125. 469 S.W.3d 69, 78 (Tex. 2015).

126. *Id.*

127. *See* Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC, 97 A.3d 135, 139–40 (Md. 2014).

128. *See* State's Att'y of Balt. v. City of Balt., 337 A.2d 92, 96 (Md. 1975).

129. *Id.*

130. *Id.* at 97 ("Under these sections, while the General Assembly has the authority to determine what powers are to be exercised by Baltimore City or the charter counties, the General Assembly may not enact a *public local law* for the City or any charter county which modifies the powers so granted. If the General Assembly wishes to diminish the powers granted to Baltimore City or a charter county, it must do so by amending the acts which granted the powers.").

131. *See, e.g.*, Sugarloaf Citizens Ass'n v. Ne. Md. Waste Disposal Auth., 594 A.2d 1115, 1119 (Md. 1991); Bd. of License Comm'rs v. Haberlin, 578 A.2d 215, 217 (Md. 1990); State v. Burning Tree Club, Inc., 554 A.2d 366, 385 (Md. 1989); Montgomery County v. Bd. of Supervisors of Elections, 536 A.2d 641, 643 n.3 (Md. 1988).

required *to obtain appellate review* at any level in [the] case."[132] This language drew little attention for over two decades until the Court of Appeals again revisited the issue of additional plaintiff standing in 2014. In *Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC*, several organizational plaintiffs sought to participate as parties in a zoning hearing before the Maryland Board of Appeals.[133] When the Board of Appeals dismissed the organizations for lack of standing, the organizations petitioned the Court of Appeals, arguing that the presence of other plaintiffs with proper standing at the hearing conferred standing to all parties.[134] Describing the One Good Plaintiff Rule as "piggy-back standing," the Court of Appeals forcefully rejected petitioners' argument:

> Nothing we said in [our precedents] suggested that this "piggy-back" standing rule would apply in an administrative proceeding or trial, where different considerations abound. Indeed, if we adopted Petitioners' position, unlimited persons who held views aligned with a party—however this would be determined—could join an administrative proceeding or trial, and be accorded the right to present witnesses, cross-examine opposing witnesses, make motions, and have other rights of a party. We can only imagine how unwieldy and even circus-like such a proceeding might be.[135]

It further explained that its precedents limited the Rule's use to appellate proceedings as a method of streamlining decisions.[136] It added that the Rule would be wholly inappropriate in judicial contexts in which "a primary concern is to facilitate presentation of evidence in a fair and efficient manner."[137]

B. RULES COEXTENSIVE WITH THE FEDERAL RULE

Three states—Alaska, Massachusetts, and North Dakota—have adopted a position identical to the contemporary federal Rule in *Laroe*. Notably, these states appear to have achieved this parity coincidentally, as their positions either predate the U.S. Supreme Court's ruling in 2017 or fail to mention it. The independent paths these court systems have taken to reach the Rule lend further support to the logic of the U.S. Supreme Court's holding in *Laroe*.

Alaska, the first state to identify a same relief standard, adopted its position in 1977.[138] Its courts have passed on individualized standing inquiries in cases

132. People's Counsel for Balt. Cty. v. Crown Dev. Corp., 614 A.2d 553, 560 (Md. 1992) (emphasis added). In the following years, the Maryland Court of Appeals continued to hint at the Rule's purpose of providing appellate convenience. *See* Garner v. Archers Glen Partners, Inc., 949 A.2d 639, 645–46 (Md. 2008) ("It is a settled principle of Maryland law that, where there exists a party having standing to bring an action . . . *we* shall not ordinarily inquire as to whether another party on the same side also has standing." (alteration in original) (emphasis added) (internal quotation marks omitted)).

133. *See* 97 A.3d 135, 137–39 (Md. 2014).

134. *Id.* at 138.

135. *Id.* at 140.

136. *Id.* at 141.

137. *Id.*

138. *See* Hicklin v. Orbeck, 565 P.2d 159, 162 n.4 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518 (1978).

where the relief requested would issue regardless and additional plaintiffs would not impact the merits of the litigation.[139] Alaska's courts, however, rarely make use of their Rule, and recently rejected an expansion of its application to consolidated cases.[140]

By contrast, Massachusetts courts use the Rule frequently at every tier of the state judiciary.[141] It initially surfaced in 1975 as a broad grant for additional plaintiffs to enter into any suit in which standing for one plaintiff was established.[142] Only in 2014 did the Supreme Judicial Court of Massachusetts

139. *See* Alaska Inter-Tribal Council v. State, 110 P.3d 947, 969 (Alaska 2005) ("We do not need to consider the standing of these dismissed plaintiffs. We ruled above that the superior court did not err in rejecting the remaining plaintiffs' equal protection claims on their merits, and there has been no suggestion that the dismissed plaintiffs could have offered additional evidence that could have changed the outcome on any of the equal protection claims. . . . Because the dismissed plaintiffs have not explained how their identical claims might have been resolved more favorably after trial, any possible error in dismissing them from the case was harmless."); *Hicklin*, 565 P.2d at 162 n.4 ("Since the other plaintiffs have standing to seek all the relief requested, we find it unnecessary to consider whether plaintiff Hicklin was properly made a party to this suit, whether he has standing, and whether he should have pursued administrative remedies.").

140. *See* Keller v. French, 205 P.3d 299, 305 (Alaska 2009) ("The Keller plaintiffs also seem to argue that they have interest-injury standing because the subpoenaed plaintiffs in the consolidated case had interest-injury standing. But the standing of the Kiesel plaintiffs does not confer standing on the Keller plaintiffs. Each party's standing is evaluated independently, and one party's standing does not confer standing on another. Because the Keller plaintiffs allege no plausible injury to their own interests, they lack interest-injury standing." (footnote omitted)).

141. *See, e.g.*, Krafchuk v. Planning Bd., 903 N.E.2d 576, 584 n.14 (Mass. 2009) ("The Fagans also argue that the judge erred in ruling that they failed to rebut Brear's presumed standing. Given our conclusion that Krafchuk had standing, we need not consider this argument. It is only necessary to determine that one plaintiff has standing to challenge the board's action."); Mazzone v. Att'y Gen., 736 N.E.2d 358, 362 n.4 (Mass. 2000) ("We have often chosen not to reach the question of organizational or official standing to challenge the certification of an initiative petition where the standing of the individual voters was sufficient to sustain the action."); Tax Equity All. for Mass., Inc. v. Comm'r of Revenue, 516 N.E.2d 152, 155 (Mass. 1987) ("We need not decide whether the Tax Equity Alliance for Massachusetts, Inc., has standing because the individual plaintiffs do."); Cohen v. Zoning Bd. of Appeals, 624 N.E.2d 119, 121 (Mass. App. Ct. 1993) ("Although the plaintiffs may be divided into two groups because of their ownership of separate parcels and only the Dunkin' Donuts parcel abuts the defendant's land, both of these parcels are within the same arterial commercial zone as the defendant's property. Our analysis proceeds with the recognition that in a multiple party appeal it is only necessary to determine whether any one plaintiff is aggrieved in order to determine the standing issue." (citation omitted)); Murray v. Bd. of Appeals, 494 N.E.2d 1364, 1367 n.7 (Mass. App. Ct. 1986) ("It is not necessary for the judge to determine that *all* of the plaintiffs had standing. The fact that only *one* of the plaintiffs was an aggrieved person is sufficient to permit an appeal from the board's decision."); Christensen v. Bos. Redevelopment Auth., No. 002314F, 2001 WL 1334189, at *3 (Mass. Super. Ct. Feb. 13, 2001) ("Because I find that the 86 South St. plaintiffs have sufficiently demonstrated standing, I need not decide whether any of the other plaintiffs have done the same.").

142. *See* Save the Bay, Inc. v. Dep't of Pub. Utils., 322 N.E.2d 742, 749–50 (Mass. 1975) ("Given the form of the petition filed by Save the Bay, more particularly its lack of precise allegation with respect to intervention, the demurrer might well have been sustained. However, on the basis of this record, we need not decide whether Save the Bay could properly have been considered an[] intervener because the combined petition brought by certain individuals, particularly Manuel Pereira, is sufficient to meet the standing requirements . . . .").

narrow this scope to additional plaintiffs that seek the same relief as original plaintiffs.[143]

Finally, North Dakota charted a convoluted path to its current version of the same relief standard. As an early adopter of the Rule, the state originally limited its application to constitutional attacks on state statutes.[144] However, in 2010 (almost fifty years after its first use), the Supreme Court of North Dakota pivoted, constraining the Rule's application to appeals.[145] Then, less than a decade later, the court changed course again, this time embracing *Laroe*'s same relief standard with the added caveat that additional plaintiffs must also raise identical issues.[146] Though the state's approach seems settled for now, it is unclear whether additional plaintiffs in the state's trial courts can deploy the Rule without running afoul of the state supreme court's earlier rulings.

C. LENIENT RULES

Finally, thirty-four states, the District of Columbia, and the Virgin Islands embrace a Rule that technically permits additional plaintiffs without standing to

143. *See* Doe v. Acton-Boxborough Reg'l Sch. Dist., 8 N.E.3d 737, 740 n.8 (Mass. 2014) ("The American Humanist Association sought essentially the same relief in this case as the individual plaintiffs. The individual plaintiffs, Jane Doe and John Doe, are members of the association. Because it is clear that the individual plaintiffs have standing to pursue their claims, asserting their rights individually and the rights of their children, we need not consider whether the association, by itself, has standing to bring the types of claims made in the case.").

144. *See, e.g.*, Teigen v. State, 749 N.W.2d 505, 508–09 (N.D. 2008) ("We need not decide if the Farmers Union and the Dakota Resource Council have standing to challenge the *constitutionality* of the trade association clause, however, because it is sufficient to confer standing if at least one of the plaintiffs have standing to challenge the *constitutionality* of the clause, and here, the State does not dispute that the individual plaintiffs have standing. Any opinion by this Court regarding standing is not necessary for the disposition of the individual plaintiffs' *constitutional* challenges, and we therefore do not address the standing issue." (emphasis added) (citations omitted)); Int'l Printing Pressmen & Assistants Union v. Meier, 115 N.W.2d 18, 20 (N.D. 1962) ("Whether this rule would bar the plaintiff Conrad in this case need not be decided here, for there is a second plaintiff in this action. And, even though the plaintiff Conrad should be barred from raising the question of *constitutionality* of this statute, such bar would not apply to the second plaintiff in the action and this rule could not be urged against such second plaintiff." (emphasis added)).

145. *See* Hagerott v. Morton Cty. Bd. of Comm'rs, 778 N.W.2d 813, 818 (N.D. 2010) ("We therefore conclude Donald Hagerott has been aggrieved by the Morton County Commission's decision and has standing to appeal the decision. Because Donald Hagerott's standing is sufficient to require consideration of the merits of this appeal, we need not consider whether Mark Hagerott has standing to appeal the decision."); *see also* Schmidt v. City of Minot, 883 N.W.2d 909, 913 (N.D. 2016) ("A court may decide an appeal if a party has standing to litigate the issues. . . . In *Hagerott*, we discussed a person's standing to appeal a county's decision to grant another person a conditional use permit to operate a feedlot under a statute authorizing an appeal by any person 'aggrieved' by the county's decision. We concluded a person owning land within one mile of the proposed feedlot was an aggrieved person and had standing to appeal the decision without deciding whether the property owner's son also had standing to appeal." (citations omitted)).

146. *See* N.D. Legislative Assembly v. Burgum, 916 N.W.2d 83, 100 (N.D. 2018) ("The Legislative Assembly argues that the Attorney General lacks standing to challenge the constitutionality of the budget section provisions of House Bill 1020 and Senate Bill 2013. The Legislative Assembly concedes that the Governor has standing to challenge these provisions. *Because the issues raised and the relief requested by the Governor and the Attorney General are identical*, we need not resolve whether the Attorney General has standing in his own right to bring the cross petition." (emphasis added)).

join a suit in a manner inconsistent with the *Laroe* Rule.[147] These jurisdictions have adopted their positions in cases in which the relief issued would be the same for each plaintiff in the sense that *Laroe* contemplates. However, they all have yet to speak more precisely and thus permit a technically broader range of additional plaintiffs to join a suit.

These jurisdictions divide into two groups: (1) jurisdictions that draw upon federal precedent, and (2) jurisdictions that have developed their own One Good Plaintiff Rules organically within their court systems.

1. Jurisdictions That Draw Upon Federal Precedent

Ten states and the Virgin Islands cite federal appellate cases in adopting their Rules.[148] Because these adoptive holdings predate *Laroe*, they employ more lenient language than the existing federal Rule.

First, in leveraging federal precedent, several states have created Rules that require additional plaintiffs without standing to hold similar litigative positions to original plaintiffs. Maine[149] and Montana[150] bypass individualized standing inquiries when additional plaintiffs raise the same issues as original plaintiffs with standing. Similarly, Iowa[151] and New Mexico[152] do not reach the issue of standing of additional plaintiffs when "it makes no difference to the merits of the case."[153]

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147. These states include Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Virginia, Washington, West Virginia, and Wisconsin, as well as the District of Columbia and the Virgin Islands.

148. These states and territories include Arizona, California, Hawaii, Iowa, Maine, Missouri, Montana, New Mexico, Ohio, Washington, and the Virgin Islands.

149. *See* Conservation Law Found., Inc. v. Town of Lincolnville, No. AP-00-3, 2001 WL 1736584, at *6 (Me. Super. Ct. Feb. 28, 2001) ("If Osgood has standing to proceed as a party in this action, then the question of CLF's standing loses significance.") (citing Bowen v. Kendrick, 487 U.S. 589, 620 n.15 (1988)); *see also* Passadumkeag Mountain Friends v. Bd. of Envtl. Prot., 102 A.3d 1181, 1184 n.1 (Me. 2014) ("Although PF challenges PMF's standing to seek review of the Board's decision, we decline to address this issue because *PMF has not raised any issues that were not raised by the Cupraks*, for whom standing is uncontested." (emphasis added)).

150. *See* Aspen Trails Ranch, LLC v. Simmons, 230 P.3d 808, 818–19 (Mont. 2010) ("As a practical matter . . . the District Court, Landowners, and the Commission were correct in agreeing that if standing was established for one of the Landowners the suit could go forward, *because the Landowners both sought to void the preliminary plat*. . . ." (citing Clinton v. City of New York, 524 U.S. 417, 431 n.19 (1998)) (emphasis added)).

151. *See* Sanchez v. State, 692 N.W.2d 812, 821 (Iowa 2005) ("Because it is undisputed that the Sanchez class had standing to bring this suit and because we have already determined that the district court properly dismissed the suit, we need not decide whether the Doe class also had standing. '[T]he Supreme Court has repeatedly held that if one party has standing in an action, a court need not reach the issue of the standing of other parties *when it makes no difference to the merits of the case*.'" (alteration in original) (first citing Ry. Labor Execs.' Ass'n v. United States, 987 F.2d 806, 810 (D.C. Cir. 1993); and then citing Duke Power Co. v. Carolina Envtl. Study Grp., 438 U.S. 59, 72 n.16 (1987)).

152. *See* City of Artesia v. Pub. Emps. Ret. Ass'n of N.M., 316 P.3d 188, 191 (N.M. Ct. App. 2014) ("Because Raley has standing to assert the substantive relief sought in this case, we need not independently address the City's standing." (citing Comcast Corp. v. FCC, 579 F.3d 1, 6 (D.C. Cir. 2009))).

153. *Sanchez*, 692 N.W.2d at 821; *City of Artesia*, 316 P.3d at 191.

By contrast, courts in the remaining states and territories that borrow from the federal system—Arizona,[154] California,[155] Hawaii,[156] Missouri,[157]

154. *See, e.g.*, Ariz. Indep. Redistricting Comm'n v. Brewer, 275 P.3d 1267, 1271 (Ariz. 2012) ("Respondents argue that the IRC is not a jural entity and therefore lacks standing to sue except in certain constitutionally specified areas. Respondents also contend that the IRC suffered no distinct and palpable injury. But Mathis, who was displaced from office, unquestionably has standing to challenge the legality of the Governor's removal action. Therefore, we need not decide whether the IRC also has standing." (citations omitted)).

155. *See, e.g.*, McKeon v. Hastings Coll. of the Law, 230 Cal. Rptr. 176, 185 (Cal. Ct. App. 1986) ("Because it has already been determined that McKeon and Montgomery have standing, it is not strictly necessary to determine whether COFAR has a similar status. Nevertheless, in the interest of completeness, the question of COFAR's standing will also be examined." (first citing Sec'y of Interior v. California, 464 U.S. 312, 319 n.3 (1984); and then citing Watt v. Energy Action Educ. Found., 454 U.S. 151, 160 (1981))); *accord* San Diego Cty. Council, Boy Scouts of Am. v. City of Escondido, 92 Cal. Rptr. 186, 190–91 (Cal. Ct. App. 1971) ("Because of our previous holding, we need not determine whether Scott and Darby Ann Deaver, the former as a member of the boy scouts of the Palomar District, and the latter as a girl scout in the Escondido area, have standing to sue for themselves and on behalf of the other boy and girl scout beneficiaries of the area to enforce the trust. One suit to enforce the trust in which both branches of the scouts of the area are adequately represented is sufficient. In these consolidated appeals, the attorneys representing all of the plaintiffs concede the first action is the more appropriate vehicle with which to litigate the controversy. We agree.").

156. *See, e.g.*, McDermott v. Ige, 349 P.3d 382, 391 (Haw. 2015) ("Once the standing of one plaintiff is established, the court can proceed to a decision on the merits of the case and need not determine whether the other Appellants also have standing." (citing Planned Parenthood of Idaho, Inc. v. Wasden, 376 F.3d 908, 918 (9th Cir. 2004))), *abrogated by* Tax Found. of Haw. v. State, 439 P.3d 127 (Haw. 2019).

157. Missouri's long development of the Rule began in 1992 in the Eastern District of the state's intermediate appellate court, the Missouri Court of Appeals, which imported a lenient standard directly from the U.S. Supreme Court's decision in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). *See* Miller v. City of Manchester, 834 S.W.2d 904, 906 (Mo. Ct. App. 1992) ("Moreover, since we have determined that Miller has the requisite standing, we need not determine whether Held has standing to maintain this action." (citing *Vill. of Arlington Heights*, 429 U.S. at 264 n.9)). Despite the Western District's 1993 interim adoption of a narrower same relief standard, see, for example, *State ex rel. Stricker v. Hanson*, 858 S.W.2d 771, 775 (Mo. Ct. App. 1993), the Eastern District reaffirmed adoption of the pre-*Laroe* federal standard in 1997. *See* Mo. Growth Ass'n v. Metro. St. Louis Sewer Dist., 941 S.W.2d 615, 620 (Mo. Ct. App. 1997) (citing *Vill. of Arlington Heights*, 429 U.S. at 264 n.9). The Western District's position ultimately won over the Supreme Court of Missouri, which deployed the federal pre-*Laroe* Rule in a case that same year. *See* Mo. Coal. for Env't v. Joint Comm. on Admin. Rules, 948 S.W.2d 125, 132 (Mo. 1997) (en banc) ("The Coalition's second attempt to establish standing is that 'members of the Coalition reside in the vicinity of solid waste disposal areas and solid waste processing facilities located within Missouri. The Coalition brings this suit to redress the injuries to its members . . .' Because we have found that the individual relators have personal standing, the question of whether the coalition can assert such 'associational' standing is moot and need not be addressed." (alteration in original) (citation omitted)); *see also* Nat'l Solid Waste Mgmt. Ass'n v. Dir. of Dep't of Nat. Res., 964 S.W.2d 818, 819 (Mo. 1998) ("From our review of the record, the circuit court correctly concluded that 'enforcement of SB 60 has and will cost the state funds for salaries, expenses, and other costs that would not otherwise be made.' It follows that taxpayer Schlemeier has standing, and for that reason, we need not address the standing of the other two respondents."). In 2019, the Missouri Supreme Court remained consistent. *See* Cope v. Parson, 570 S.W.3d 579, 584 (Mo. 2019) (en banc) ("The MDP alleges it has associational standing 'because Governor Parson's purported appointment of a Lieutenant Governor will create an electoral disadvantage for the Party and its members, Democratic voters in the State of Missouri.' The injury alleged is that *if* Kehoe decides to run as an incumbent in the next election, it *will* result in an electoral disadvantage. However, in light of the holding that Cope has standing to proceed, the question of MDP's associational standing need not be addressed." (citing *Mo. Coal. for Env't*, 948 S.W.2d at 132)).

Ohio,[158] Washington,[159] and the Virgin Islands[160]—hold only that once a court establishes the standing of one plaintiff, it need not inquire into the standing of additional plaintiffs. This broad language stems from the pre-*Laroe* U.S. Supreme Court cases of the 1970s. Of these seven states and territories, only California courts have expressed reluctance; they continue to supervise litigation coordination among multiple plaintiffs and analyze standing "in the interest of completeness."[161]

2. Jurisdictions That Have Developed Rules Organically

Separately, twenty-four state court systems[162] and the District of Columbia have developed lenient Rules without citation to the federal judiciary—a remarkable tally that presents a strong argument for the Rule's practical merits. These court systems have adopted similar Rules to those outlined in the previous section, but stake out positions independently and through more elaborative reasoning.

Courts in Colorado,[163] New Hampshire,[164] and Pennsylvania[165] limit application of their Rules to additional plaintiffs that raise the same arguments and

158. *See, e.g.*, Cincinnati Golf Mgmt., Inc. v. Testa, 971 N.E.2d 929, 932 (Ohio 2012) ("First, the presence of the city as a party in this litigation does not affect the subject-matter jurisdiction of either the BTA or this court. To be sure, lack of standing in administrative proceedings is a jurisdictional defect if no proper party has timely joined. But CGMI, whose standing is undisputed, joined with the city in common notices of appeal both at the BTA and at the court. It follows that there is no jurisdictional necessity to determine the city's standing in this case." (citation omitted)); State *ex rel.* Ohio Gen. Assembly v. Brunner, 872 N.E.2d 912, 919 (Ohio 2007) ("[B]ecause we conclude that relators Harris and Husted have standing, we do not reach the question whether the General Assembly has standing to sue in this case." (citing Rumsfeld v. Forum for Acad. & Institutional Rights, Inc., 547 U.S. 47, 52 n.2 (2006))).

159. *See* League of Educ. Voters v. State, 295 P.3d 743, 748 n.3 (Wash. 2013) (en banc) ("As the legislator respondents may properly bring this dispute, we need not consider whether the other respondents may as well." (citing Bowsher v. Synar, 478 U.S. 714, 721 (1986))).

160. *See* Bryan v. Fawkes, 61 V.I. 416, 444 n.10 (2014) ("Although not determinative to our analysis given that Hansen clearly possessed standing to challenge any decision to remove her name from the general election ballot, it is not clear to this Court how the five voters possessed standing to challenge Hansen's failure to appear on the ballot." (citing Bowsher v. Synar, 478 U.S. 714, 721 (1986))).

161. *See* McKeon v. Hastings Coll. of the Law, 230 Cal. Rptr. 176, 185 (Cal. Ct. App. 1986).

162. These states include Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Kentucky, Louisiana, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Virginia, West Virginia, and Wisconsin.

163. *See* Lobato v. State, 218 P.3d 358, 367–68 (Colo. 2009) (en banc) ("[T]he court need not evaluate the plaintiff school districts' standing provided that they *raise claims identical to those of the plaintiff parents*. Thus, the school districts may continue as plaintiffs in this case, and we reverse the judgment of the court of appeals on this issue." (emphasis added) (footnote omitted)); *In re* Title, Ballot Title & Submission Clause, 3 P.3d 11, 14 (Colo. 2000) (en banc) ("Sanderson, as a registered elector in Colorado, clearly has standing to challenge the Title Board's actions on Initiative No. 215. Because his arguments *are identical to those of CMA*, we decline to address CMA's standing." (emphasis added) (citation omitted)); Chostner v. Colo. Water Quality Control Comm'n, 327 P.3d 290, 296 (Colo. App. 2013) ("Given that the Coalition and the District Attorney *assert identical arguments* on appeal, we need not reach the issue of whether the District Attorney has standing independent of the Coalition." (emphasis added)).

164. *See* Bach v. N.H. Dep't of Safety, 143 A.3d 246, 250 (N.H. 2016) ("We also note that the parties dispute whether the ANJRPC has standing in this case. We, however, need not decide that issue because

claims as original plaintiffs. Rather than parroting U.S. Supreme Court dicta like courts in Maine, Montana, Iowa, and New Mexico,[166] however, courts in these states speak directly to the practical concerns underlying their positions. The Colorado Supreme Court, for instance, recognizes a duty to "respect the integrity of the issues raised by the pleadings between the original parties and to prevent the injection of new issues by intervention."[167]

The other organic Rule court systems—Connecticut,[168] Delaware,[169] Florida,[170] Idaho,[171] Illinois,[172] Kentucky,[173] Louisiana,[174] Michigan,[175]

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there is no dispute that Bach has standing, and Bach and the ANJRPC *advance the same arguments* as to the merits of the issues before us." (emphasis added)).

165. *See* Robinson Twp. v. Commonwealth, 83 A.3d 901, 918 (Pa. 2013) ("[B]ecause Coppola and Ball both have standing to sue as landowners and residents and *they assert the same claims* in both individual and official capacities, we need not address whether they have a separate interest as local elected officials sufficient to confer standing." (emphasis added)); Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth, 877 A.2d 383, 393 (Pa. 2005) ("[W]e find it unnecessary to resolve Respondents' standing challenge to the non-legislative Petitioners as the Petitioners that Respondents concede have standing, together with the contested Petitioners, collectively assert the various legal challenges to the Gaming Act."); *cf.* City of Phila. v. Commonwealth, 838 A.2d 566, 579 n.8 (Pa. 2003) ("Because of our conclusion that the City has standing, we need not consider whether Mayor Street also has standing.").

166. *See supra* notes 149–53 and accompanying text.

167. Crawford v. McLaughlin, 473 P.2d 725, 728 (Colo. 1970) (en banc) (quoting Moreno v. Commercial Sec. Bank, 240 P.2d 118, 119 (Colo. 1952) (en banc)).

168. *See* Nowicki v. Planning & Zoning Bd., 172 A.2d 386, 388 (Conn. 1961); DeRito v. Zoning Bd. of Appeals, 556 A.2d 632, 634 (Conn. App. Ct. 1989); Straw Pond Assocs., LLC v. Planning & Zoning Comm'n, No. CV054005175S, 2012 WL 669848, at *10 (Conn. Super. Ct. Feb. 3, 2012); Louis A. Abriola & Son Funeral Home, Inc. v. Zoning Bd. of Appeals, No. CV92 29 23 86 S, 1993 WL 171415, at *1 (Conn. Super. Ct. May 11, 1993); *see also infra* notes 194–95 and accompanying text.

169. *See* City of Wilmington v. Lord, 378 A.2d 635, 638 n.2 (Del. 1977) ("It is disputed that all plaintiffs live within the limits of the City of Wilmington, but the issue need not be resolved here since at least some of the plaintiffs admittedly live within the city limits and have standing to bring this action."); *see also* Tusi v. Mruz, No. 18563-NC, 2002 WL 31499312, at *2 n.8 (Del. Ch. Oct. 31, 2002) ("Because Tusi has standing, I need not resolve the extended debate among the parties about whether GBCA also has the right to pursue this action."). *But see* Baker v. Del. Dep't of Nat. Res. & Envtl. Control, No. S13C-08-026-THG, 2015 WL 5971784, at *10–12 (Del. Super. Ct. Oct. 7, 2015), *aff'd*, 137 A.3d 122 (Del. 2016).

170. *See* Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 403 n.4 (Fla. 1996) ("The school boards claim standing to challenge a constitutional violation which renders them unable to adequately discharge their duties. . . . Because the school boards are allegedly prevented from carrying out their statutory duties, we agree that they have standing to litigate this matter. While we question the standing of the coalition, we need not discuss that issue because of the standing of the other plaintiffs."), *superseded by constitutional amendment on other grounds*, FLA. CONST. art. IX, § 1; State v. N. Fla. Women's Health & Counseling Servs., Inc., 852 So. 2d 254, 259 (Fla. Dist. Ct. App. 2001) ("Because the physicians who are plaintiffs here have standing to assert the rights of their minor patients, the circuit court properly reached the merits of the complaint that these physicians (albeit together with other plaintiffs) filed."), *invalidated on other grounds by* 886 So.2d 612 (Fla. 2003).

171. *See* Farrell v. Bd. of Comm'rs, 64 P.3d 304, 309 (Idaho 2002), *overruled on other grounds by* City of Osburn v. Randel, 277 P.3d 353 (Idaho 2012); *see also infra* notes 202–05 and accompanying text.

172. *See* Buettell v. Walker, 319 N.E.2d 502, 505 (Ill. 1974) ("Since we hold that Crown and Buettell have standing, we need not consider whether the remaining plaintiffs also have standing . . . .").

173. *See* Commonwealth *ex rel.* Beshear v. Commonwealth *ex rel.* Bevin, 498 S.W.3d 355, 368–69 (Ky. 2016) ("We note, however, that no one has asked that the legislators be dismissed from the claim.

Minnesota,[176] Nevada,[177] New Jersey,[178] New York,[179] North Carolina,[180] Oklahoma,[181] Oregon,[182] Rhode Island,[183] South Carolina,[184] South

Instead, the legislators' standing has been challenged in the context of a two-pronged attack that depends on the Attorney General also not having standing. If both lack standing, then the entire case should be dismissed. But the Governor's standing claim is framed as an *alternative* ground for affirming the Franklin Circuit Court's decision, and he acknowledges that it would require this court to conclude that *none* of the parties have standing. Even so, as to justiciability of this action, clearly only *one* plaintiff need have standing for the case to proceed. Since the Attorney General does have standing, this case remains a justiciable action properly before this Court." (internal quotation marks omitted)).

174. *See In re* Tufts Oil & Gas-III, 871 So. 2d 476, 479 (La. Ct. App. 2004) ("We raise Robert Tufts' status in this appeal as a preliminary issue. The record shows that Robert Tufts answered the original petition in his capacity as a limited partner of TOG–III. But we need not reach the issue of Robert Tufts' standing to appeal because TOG–III is clearly a proper party appellant and we are thus able to address the merits of this appeal."). This language hints that application of Louisiana's Rule may be limited to appeals. However, the opinion does not go as far as saying so in express terms.

175. *See* House Speaker v. Governor, 506 N.W.2d 190, 199 (Mich. 1993) ("Because we find that the MUCC and MEPF have standing to bring this lawsuit, we need not decide whether the remaining plaintiffs have legislator standing.").

176. *See In re* Hill, 509 N.W.2d 168, 172 (Minn. Ct. App. 1993) ("Because we conclude Louis Fors Hill had standing to participate in the district court proceeding and this appeal, we need not reach the issue of Louis W. Hill, Jr.'s standing to appeal.").

177. *See* Citizens for Pub. Train Trench Vote v. City of Reno, 53 P.3d 387, 394 (Nev. 2002) ("We also need not reach the question whether the nongovernmental respondents have standing to challenge the initiative's validity, because the City's standing was clearly sufficient to sustain the action.").

178. *See* S. Burlington Cty. NAACP v. Township of Mount Laurel, 336 A.2d 713, 717 n.3 (N.J. 1975); Urban League of Essex Cty. v. Township of Mahwah, 370 A.2d 521, 525 (N.J. Super. Ct. App. Div. 1977); *see also infra* notes 208–09 and accompanying text.

179. *See* Saratoga Cty. Chamber of Commerce, Inc. v. Pataki, 798 N.E.2d 1047, 1052–53 (N.Y. 2003); Maraia v. Orange Reg'l Med. Ctr., 882 N.Y.S.2d 287, 289 (N.Y. App. Div. 2009); *see also infra* notes 200–01 and accompanying text.

180. *See* Guilford Cty. Bd. of Comm'rs v. Trogdon, 478 S.E.2d 643, 647 (N.C. Ct. App. 1996) ("Regardless of the issue of whether the Guilford County Board of Commissioners has standing, we hold the two taxpayer plaintiffs, McNally and Kelly, have standing.").

181. *See* Davis v. Fieker, 952 P.2d 505, 508 (Okla. 1997) ("Both of these plaintiffs have a direct, immediate and substantial interest in the enforcement of the statutes and regulations at issue in this case . . . . We need not address the standing of the plaintiffs which are members of the Oklahoma Legislature since we find that the other two plaintiffs have standing.").

182. *See* AAA Or./Idaho Auto Source, LLC v. State, 423 P.3d 71, 73 (Or. 2018) (en banc); MacPherson v. Dep't of Admin. Servs., 130 P.3d 308, 312–13 (Or. 2006) (en banc); *see also infra* notes 196–99 and accompanying text.

183. *See* Associated Builders & Contractors of R.I., Inc. v. Dep't of Admin., 787 A.2d 1179, 1186 (R.I. 2002) ("[A]t least one, and probably more, of the plaintiffs . . . has demonstrated to the Court that the facts alleged cause injury to it which is sufficiently real and immediate so as to give it standing to bring this proceeding. . . . [T]herefore we need not, as we have done on rare occasions, relax our standing requirements because of substantial public interest in having a matter resolved." (footnote and quotation marks omitted)); Thompson v. Carlson, No. PC 04-2755, 2005 WL 3435312, at *4 (R.I. Super. Ct. Dec. 14, 2005) ("As at least one of the parties has standing, this Court need not address whether Fox Point also has standing to pursue the appeal."); *see also* Boyer v. Bedrosian, 57 A.3d 259, 271 (R.I. 2012) ("Further, we assume, without deciding, that *at least one* of the plaintiffs had standing to bring this suit at the time the initial complaint was filed." (emphasis added)).

184. *See* Town of Hilton Head Island v. Coal. of Expressway Opponents, 415 S.E.2d 801, 804 (S.C. 1992); David v. Martins Point Prop. Owners Ass'n, Inc., No. 2011-UP-086, 2011 WL 11733104, at *2 n.1 (S.C. Ct. App. Mar. 1, 2011) (per curiam); *see also infra* notes 192–93 and accompanying text.

Dakota,[185] Virginia,[186] West Virginia,[187] Wisconsin,[188] and the District of Columbia[189]—grant additional plaintiffs virtually unfettered access to their courts when an original plaintiff demonstrates standing. These jurisdictions also often qualify their positions with independent reasoning.[190] And perhaps most interestingly, many of these Rules appear to be changing over time—a function of the need to harmonize state appellate court splits and to expedite rulings on legal issues tied to complicated fact patterns.[191]

The Supreme Court of South Carolina, for example, initially purported to constrain its Rule to suits for declaratory relief.[192] But soon thereafter, lower courts broadened the Rule's scope to reach other types of remedies.[193]

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185. *See* Lake Hendricks Improvement Ass'n v. Brookings Cty. Planning & Zoning Comm'n, 882 N. W.2d 307, 313–14 (S.D. 2016), *superseded by statute*, S.D. CODIFIED LAWS § 11-2-61 (2016); *see also infra* notes 206–07.

186. *See* Blanton v. Amelia County, 540 S.E.2d 869, 871 n.* (Va. 2001) ("We have concerns whether all the plaintiffs have standing to challenge the County's ordinances. However, since it is clear from the record that [some] plaintiffs . . . do have standing to challenge the County's ordinances, we need not determine whether the remaining plaintiffs have the requisite standing." (citations omitted)).

187. *See In re* Estate of Kovarbasich, No. 15-1032, 2016 WL 6651583, at *3 (W. Va. Nov. 10, 2016) ("[W]e need not consider whether Respondent Consolidation Coal had standing to petition the county commission in this matter, inasmuch as Respondent Sheriff . . . joined in the appeal of the county commission's denial of the petitions. We are guided by our prior admonition that no action can be dismissed, if the basis for the dismissal is that the action was not prosecuted by the real party in interest, until a reasonable opportunity is provided to allow the proper real party in interest to maintain this action. . . . [J]ustice requires that a case proceed on its merits when a real party in interest becomes a participant." (citations and internal quotation marks omitted)).

188. *See* Norquist v. Zeuske, 564 N.W.2d 748, 752 n.4 (Wis. 1997) ("We need not consider the standing of the other petitioners as we conclude that Jorgensen has standing to challenge the statute.").

189. *See* Friends of McMillan Park v. D.C. Zoning Comm'n, 149 A.3d 1027, 1031 n.1 (D.C. 2016) ("Two other associations . . . also petitioned for review of the Zoning Commission's order. Although VMP argues that these associations lack standing to challenge the Commission's order, [defendant] does not dispute [plaintiff's] standing. Because [plaintiff] has standing and has adopted all of the arguments made by the other two associations, we need not decide whether the other two associations have standing."); Sahrapour v. LesRon, LLC, 119 A.3d 704, 707 n.1 (D.C. 2015) ("The parties dispute whether those appellants have standing to participate in the present appeal. We need not decide that issue, however, because Ms. Sahrapour was a party in the trial court and has standing to raise all of the arguments being raised in this appeal."); Moore Energy Res., Inc. v. Pub. Serv. Comm'n, 785 A.2d 300, 306 n.5 (D.C. 2001) ("Having concluded that this court has jurisdiction over Moore Energy's petition for review, we need not reach the issue of whether Douglas Moore would have standing to challenge the Commission's decision in his personal capacity."); Hazel v. Barry, 580 A.2d 110, 110 n.3 (D.C. 1990) ("We conclude that the Trustees and the Director have standing, and thus we need not decide whether the patron has standing as well.").

190. West Virginia courts, for example, apply their Rule as being when "justice requires." *See In re* Estate of Kovarbasich, 2016 WL 6651583, at *3.

191. *See infra* notes 192–209 and accompanying text.

192. *See* Town of Hilton Head Island v. Coal. of Expressway Opponents, 415 S.E.2d 801, 804 (S.C. 1992) ("Clearly, the Town has standing to obtain a declaration of its duties under the initiative and referendum statute. This Court *can render a declaratory judgment* when a justiciable controversy settling legal rights of the parties exists. We hold that the master-in-equity did not err in holding that respondents have standing to bring this action." (emphasis added) (citation omitted)).

193. *See* David v. Martins Point Prop. Owners Ass'n, Inc., No. 2011-UP-086, 2011 WL 11733104, at *2 n.1 (S.C. Ct. App. Mar. 1, 2011) (per curiam) (enforcing a restrictive covenant via injunction).

Connecticut originally limited its Rule to the context of zoning.[194] But after several decades, its courts started deploying the Rule in cases involving other subject matter.[195]

In Oregon, courts originally granted party status to additional plaintiffs without standing if it made "no practical difference" in awarding relief.[196] The Court of Appeals of Oregon subsequently updated this standard, insisting that additional plaintiffs hold the same "substantive and litigative positions."[197] A decade later, the same court issued four conflicting contemporaneous opinions which required additional plaintiffs without standing to make either "similar arguments" or "the same arguments" as the original plaintiff.[198] Perhaps in recognition of an emerging fissure, the Supreme Court of Oregon weighed in and adopted a broad Rule that eliminated all distinctions based on argument or claim.[199]

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194. *See* Nowicki v. Planning & Zoning Bd., 172 A.2d 386, 388 (Conn. 1961) ("Any aggrieved person has the right to appeal from the action of a zoning authority. The court concluded that the plaintiffs were aggrieved persons. The Kivics will be specially and adversely affected by the change and clearly are aggrieved persons under the statute. It is therefore unnecessary to review the conclusion of the court that the other plaintiffs, also, were aggrieved persons." (citation omitted)); *see also* DeRito v. Zoning Bd. of Appeals, 556 A.2d 632, 634 (Conn. App. Ct. 1989) ("[T]he defendants do not challenge the standing of the plaintiff town of Middlebury to appeal the ZBA's decision. . . . Thus, even without DeRito as a party to the appeal of the ZBA's decision, the trial court had subject matter jurisdiction over the appeal by virtue of the presence of the plaintiff town of Middlebury. The question of DeRito's standing to appeal was one that the trial court need not have decided."); Louis A. Abriola & Son Funeral Home, Inc. v. Zoning Bd. of Appeals, No. CV92 29 23 86 S, 1993 WL 171415, at *1 (Conn. Super. Ct. May 11, 1993) ("Only one plaintiff must be aggrieved to confer standing to maintain the appeal, so it is unnecessary to resolve whether the named plaintiff can prove aggrievement." (citation omitted)).

Nowicki was decided before the U.S. Supreme Court first introduced the Rule in *Baggett v. Bullitt*, 377 U.S. 360, 366 n.5 (1964), before any other state court adopted it, and only one year after its first known appearance in *Air Line Pilots Ass'n, International v. Quesada*, 276 F.2d 892, 894 n.2 (2d Cir. 1960).

195. *See, e.g.*, Town of Middlebury v. Conn. Siting Council, 161 A.3d 537, 539 n.2 (Conn. 2017) (permitting); J.E. Robert Co. v. Signature Props., LLC, No. X04HHDCV075026084S, 2010 WL 5064472, at *6 (Conn. Super. Ct. Nov. 19, 2010) (foreclosure); State v. Ortiz, 1992 WL 67392, at *1 (Conn. Super. Ct. Mar. 19, 1992) (forfeiture).

196. Thunderbird Motel, Inc. v. City of Portland, 596 P.2d 994, 998 n.2 (Or. Ct. App. 1979) ("The relief plaintiffs seek in this case is that a contract be declared void and enjoined. It makes no practical difference whether we can afford that relief to more than one of the plaintiffs . . . .").

197. deParrie v. State, 893 P.2d 541, 542 (Or. Ct. App. 1995) ("Because Neet and Graham have standing, and the substantive and litigative positions of the other plaintiffs in the same action are exactly the same as theirs, it is immaterial whether the other plaintiffs independently have standing.").

198. Friends of Metolius v. Jefferson County, 116 P.3d 220, 221 n.1 (Or. Ct. App. 2005) ("[B]ecause [both plaintiffs] *make the same arguments* on review, we do not need to consider whether [the additional plaintiff] has standing." (emphasis added)); Barton v. City of Lebanon, 88 P.3d 323, 326 (Or. Ct. App. 2004) (same); Milne v. City of Canby, 96 P.3d 1267, 1270 (Or. Ct. App. 2004) (same); Just v. City of Lebanon, 88 P.3d 312, 314 n.2 (Or. Ct. App. 2004) (same).

199. AAA Or./Idaho Auto Source, LLC v. State, 423 P.3d 71, 73 (Or. 2018) (en banc) ("Petitioners assert that they have standing for several reasons, including that Auto Source is a vehicle dealer who is subject to the tax. Respondent agrees that Auto Source is affected by the tax. Therefore, it is undisputed that Auto Source has standing."); MacPherson v. Dep't of Admin. Servs., 130 P.3d 308, 312–13 (Or. 2006) (en banc) ("[I]n a case in which there are multiple plaintiffs, only one plaintiff must show some injury or other impact upon a legally recognized interest beyond an abstract interest in the correct application or validity of a law." (citation and quotation marks omitted)).

New York has followed a similar path. The state first employed narrow "same arguments" language[200] before expanding the scope of its Rule to apply whenever courts conclude that at least one plaintiff has standing.[201]

The courts of Idaho and South Dakota have undertaken even lengthier commutes than those of the courts in South Carolina, Connecticut, Oregon, and New York. In the early 1990s, the Idaho Supreme Court rejected the Rule outright,[202] only to reverse course less than a decade later by refusing to perform individualized standing inquiries where "at least one [plaintiff had] standing on each issue raised."[203] This backtrack was aided by the specific litigative posture of the case, in which the same counsel wrote briefs for every plaintiff.[204] Still, the opinion's language imposes no restraint on the Rule's more generalized application.[205]

Similarly, the Supreme Court of South Dakota originally rejected the Rule in 1995[206] only to embrace the Rule in 2016.[207]

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200. Feight v. Lesser, 446 N.E.2d 133, 135 (N.Y. 1983) ("Inasmuch as petitioner Feight does have standing and presents the same arguments as the hospital, we do not address the question of whether the hospital has standing.").

201. *See* Saratoga Cty. Chamber of Commerce, Inc. v. Pataki, 798 N.E.2d 1047, 1052–53 (N.Y. 2003) ("For generations, New York courts have treated standing as a common-law concept, requiring that the litigant have something truly at stake in a genuine controversy. We have addressed the issue in a number of contexts, including standing for organizations and associations, legislators, and in challenges to administrative actions. A number of organizations, legislators and citizen-taxpayers are plaintiffs in this action and the State has contested standing as to all of them. Because we conclude that the citizen-taxpayers have standing, it is not necessary to address the State's challenge as to the other plaintiffs." (footnotes omitted) (citations omitted)); *see also* Maraia v. Orange Reg'l Med. Ctr., 882 N.Y.S.2d 287, 289 (N.Y. App. Div. 2009) ("[Plaintiff] All Bright has standing. Since the standing of All Bright has been established, it is not necessary to address the standing of the other plaintiffs." (citations omitted)).

202. *See* Idaho Schs. for Equal Educ. Opportunity v. Evans, 850 P.2d 724, 729, 735 (Idaho 1993) ("[I]n order to have standing, a party must have a 'personal stake' in the outcome of the litigation. That is, a party must suffer a 'distinct palpable injury' and there must be a 'fairly traceable' causal connection between the claimed injury and the challenged conduct. Applying this standard . . . we conclude that the citizen/taxpayers do not have standing.").

203. Farrell v. Bd. of Comm'rs, 64 P.3d 304, 309 (Idaho 2002) ("The standing argument is a fine point that does not merit much discussion. . . . At least one appellant has standing on each issue raised in the appellants' brief . . . . All issues may be heard even if an individual issue may only relate to one appellant. That all appellants may not have standing as to all issues in a brief written on behalf of all appellants is of no consequence if at least one appellant, as is the case, has standing for each issue argued."), *overruled on other grounds by* City of Osburn v. Randel, 277 P.3d 353 (Idaho 2012).

204. *Id.*

205. *See id.*

206. *See* Agar Sch. Dist. No. 58-1 Bd. of Educ. v. McGee, 527 N.W.2d 282, 285 (S.D. 1995) ("We are therefore unable to conclude that Agar School District or the Board of Education have 'a definite interest in the matters in contention in the sense that [their] rights will be significantly affected by a resolution of the contested point.' The trial court's decision to dismiss Agar School District and the Board of Education for lack of standing is affirmed. However, because the Agar taxpayers have standing to bring suit, we must address the remaining issues presented in this case with reference to those plaintiffs." (alteration in original)); *see also* New Leaf, LLC v. FD Dev. of Black Hawk LLC, 793 N.W.2d 32, 34–36 (S.D. 2010) ("Following a hearing, the circuit court ruled that. . . only New Leaf and the Dvoraks had standing to enforce the covenant and dismissed the remaining plaintiffs. . . . Affirmed.").

207. *See* Lake Hendricks Improvement Ass'n v. Brookings Cty. Planning & Zoning Comm'n, 882 N.W.2d 307, 314 n.3 (S.D. 2016) ("We need not address whether Lake Hendricks Improvement or City of Hendricks, Minnesota has standing because it makes no difference in the resolution of this case."), *superseded by statute*, S.D. CODIFIED LAWS § 11-2-61 (2016).

New Jersey alone has shown signs of retreat from a broad application of the Rule. The New Jersey Supreme Court originally adopted the state's lenient position in its landmark 1975 decision, *Southern Burlington County NAACP v. Township of Mount Laurel*.[208] But a recent intermediate appellate opinion, evaluating the Rule in the context of permissive intervention, seemingly hinted at the appropriateness of *Laroe*'s standard to New Jersey's procedural mechanics.[209] Nevertheless, the state's current approach, embraced by its highest binding authority, seems well entrenched for the time being.

VI. IMPLICATIONS FOR THE FEDERAL ONE GOOD PLAINTIFF RULE

The state courts provide guidance on the sheer workability of the Rule. They also teach, through their case law, how the federal Rule might be amended to minimize practical costs.

A. QUANTITATIVE FINDINGS

One observation seems clear: states that adopt a formal position on the Rule tend to take a lenient approach. Of the fifty-two court systems surveyed (the states, D.C., and the Virgin Islands), thirty-nine (75%) embrace Rules that meet or surpass the leniency of the *Laroe* standard.[210] Moreover, thirty-six (~69%) welcome plaintiffs into their courts even though the federal Rule would otherwise bar those plaintiffs.[211] Even the six states that employ Rules stricter than the *Laroe* standard have adopted *some* form of the Rule.[212] That leaves only seven states that have yet to commit one way or the other.[213] Of these states, one—Utah—is expressly noncommittal.[214] Several others hint at rejection.[215] But even

208. 336 A.2d 713, 717 (N.J. 1975).

209. *See* N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp., 181 A.3d 257, 267 (N.J. Super. Ct. App. Div. 2018) ("[I]n June 2017, the Supreme Court definitively stated in [*Laroe*], 'an intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing.' We are not, of course, bound by this federal precedent, but we find it persuasive, given the nearly verbatim equivalency between our Rules and their source, the Federal Rules of Civil Procedure. Moreover, the core concepts contained in [state intervention rules] find equal voice in our standing jurisprudence." (citations omitted)).

210. *See supra* Sections V.B & V.C.

211. *See supra* Section V.C.

212. *See supra* Section V.A.

213. These states include Arkansas, Kansas, Mississippi, Tennessee, Utah, Vermont, and Wyoming.

214. *See* Gregory v. Shurtleff, 299 P.3d 1098, 1107 n.12 (Utah 2013) ("At least with respect to the federal system, the Supreme Court [of the United States] has repeatedly held that if one party has standing in an action, a court need not reach the issue of the standing of other parties when it makes no difference to the merits of the case. Because we determine that all Appellants lack traditional standing on all four of their claims, that all Appellants have public-interest standing on the Article VI Claims, and that all Appellants lack public-interest standing on the Article X Claims, we need not consider whether this principle applies in Utah law." (citation and quotation marks omitted)).

215. *See, e.g.*, Pulaski County v. Ark. Democrat-Gazette, Inc., 260 S.W.3d 718, 720 (Ark. 2007) ("It is necessary to conduct an *in camera* review to determine whether the e-mails at issue are public records, and thus should be disclosed pursuant to the FOIA. We cannot decide the issues of whether the Intervenor has standing or whether the Intervenor has waived any privacy rights until we know the outcome of the *in camera* review."); Hartman v. City of Mission, 233 P.3d 755, 758 (Kan. Ct. App. 2010) ("Hartman's claims are lost because Hartman lacks standing to pursue them, not because someone

assuming that all seven of the remaining states ultimately reject the Rule outright, the ratio of "lenient" and "coextensive" states to "strict" and "rejection" states would still be three-to-one. This data offers compelling evidence that the One Good Plaintiff Rule's practical costs, as measured by the states, do not outstrip its benefits to judicial economy in the eyes of reviewing state courts. The federal Rule should therefore survive on practical grounds.

B. QUALITATIVE IMPLICATIONS FOR THE FEDERAL RULE

Looking beyond the tally, several additional trends emerge, which serve as a basis for updating the existing federal One Good Plaintiff Rule.

First, states do not apply the Rule to damages suits. This is true even in states that adopt Rules which permit this sort of application. This reticence—a kind of prudential limitation—seems to stem from the uncomfortable prospect of awarding damages to undeserving strangers that have suffered no injury in fact. Texas's strict Rule, which reaches only suits for "injunctive or declaratory" relief, reflects this contour.[216] Several other pre-*Laroe* federal rulings also align with this position.[217]

There is a possibility that the impracticability of defining damages under the same relief standard has affected the rulings of the three states that have embraced a Rule coextensive with *Laroe*'s.[218] This issue surfaced in the context of attorneys' fees in Texas.[219] But *Laroe*'s litigative posture was unusual and probably resulted from the U.S. Supreme Court's prior broad interpretations of the Rule, which addressed only injunctions.[220] It seems improbable, then, that

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else chose not to continue in the lawsuit."); Hayes v. City of Memphis, No. W2014-01962-COA-R3-CV, 2015 WL 5000729, at *1 (Tenn. Ct. App. Aug. 21, 2015) ("The Shelby County Chancery Court dismissed the lawsuit, holding that the allegations in the plaintiffs' complaint were insufficient to establish their standing. On appeal, we hold that the allegations of the complaint are sufficient to establish standing as to one of the organizations . . . . We therefore reverse the trial court's dismissal as to that organization. We affirm dismissal of the remaining plaintiffs' claims for lack of standing.").

216. Heckman v. Williamson County, 369 S.W.3d 137, 152 n.64 (Tex. 2012).

217. *See, e.g.*, Nat'l Ass'n of Optometrists & Opticians LensCrafters, Inc. v. Brown, 567 F.3d 521, 523 (9th Cir. 2009) ("As a general rule, in an *injunctive case* this court need not address standing of each plaintiff if it concludes that one plaintiff has standing." (emphasis added)); Sch. Dist. of Kan. City v. State, 460 F. Supp. 421, 437 (W.D. Mo. 1978) ("In an action for monetary damages, each and every plaintiff must have standing to reap the benefits of judgment against the defendant. In an equity proceeding seeking declaratory and injunctive relief, such as the instant litigation, it is customary for courts to cease their inquiry once a proper plaintiff has been identified which satisfies the 'case or controversy' requirements.").

218. *See supra* Section III.A.

219. *See* Patel v. Tex. Dep't of Licensing & Regulation, 469 S.W.3d 69, 78 (Tex. 2015).

220. *See* Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1651–52 (2017) ("[A]t some points during argument in the Court of Appeals, Laroe made statements that arguably indicated that Laroe is not seeking damages different from those sought by Sherman. . . . At other points, however, the same counsel made statements pointing in the opposite direction. . . . Taken together, these representations at best leave it ambiguous whether Laroe is seeking damages for itself or is simply seeking the same damages sought by Sherman."); *id.* at 1652 n.4 ("Before this Court, Laroe's counsel represented that Laroe is not seeking damages of its own and is seeking only to maximize Sherman's recovery. But in light of the ambiguous record and the lack of a reasoned conclusion on this question from the Court of Appeals, we are not inclined to resolve it in the first instance." (citation omitted)); *see also* Rumsfeld v.

courts in Alaska, Massachusetts, and North Dakota—the states that have embraced a Rule coextensive with *Laroe*—have encountered an identical fact pattern and have balked due to their inability to delineate the same relief standard. A better bet is that state courts want nothing to do with sham plaintiffs that are looking for a financial windfall.

Given this unanimity of state treatment, should the federal Rule apply to damages suits at all? Probably not. In these cases, additional plaintiffs that have not suffered an injury in fact are most certainly attempting to share in a money judgment that properly belongs to an original plaintiff. This can only serve to disadvantage parties with actual injuries in fact.

At the least, the U.S. Supreme Court ought to clarify whether, under *Laroe*, additional plaintiffs without standing can seek to share in a damages award with an original plaintiff without changing the total award amount. *Laroe*'s emphasis on "judgments in [one's] own name[]"[221] cuts against this reading. But, as discussed in section III.A, the opinion's text leaves room for interpretation.[222]

Second, states that embrace a same relief standard for injunctions hardly struggle with definitional impracticability.[223] In fact, they appear entirely unconcerned with whether relief is narrowly drawn or particularized. This makes sense: statewide injunctions issued by state trial courts are geographically and topically circumscribed compared to nationwide injunctions issued by federal district courts. Further, interests within individual states are more homogenized than those throughout the country, and the risk of political opprobrium at the state level is comparatively muted. Thus, the proper scope of an injunction's *particularity* for purposes of the federal Rule seems best determined on normative grounds rather than through empirical observation of the state courts. From a purely theoretical perspective, the Constitution—not deductions from non-Article III courts—should guide the extent to which an order is tailored to individual litigants.

Still, the peripheral issue of how to define attorneys' fees and court costs when applying the Rule to injunctive relief presents a conundrum. Of the states that cabin their Rule to additional plaintiffs seeking the same relief, only Texas has ruled on the matter.[224] But the Texas Supreme Court's ruling was cursory: "whether the relief ultimately granted is the same for all parties is not determinative."[225]

Fortunately, the U.S. Supreme Court need only pick a side to resolve this issue. The *Laroe* Court, numerous state courts, and several other pre-*Laroe* federal courts have structured the Rule to emphasize the integrity of the original

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Forum for Acad. & Institutional Rights, Inc., 547 U.S. 47, 52 n.2 (2006) ("[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement.").

221. *Laroe*, 137 S. Ct. at 1651.

222. *See supra* notes 63–65 and accompanying text.

223. These include the three states with Rules coextensive with *Laroe* (Alaska, Massachusetts, and North Dakota) and the two states that adopt a same relief standard only in suits for injunctive or declaratory relief (Texas and Nebraska).

224. *Patel*, 469 S.W.3d at 78.

225. *Id.*

plaintiff's pleadings.[226] Because a plaintiff can obtain attorneys' fees and court costs without seeking them in a complaint, Texas's approach seems defensible.[227] But, if the *Laroe* Court's objective was to eliminate a defendant's liability to parties without proper standing, Texas's position cannot be sustained.

Finally, only one state court, the Maryland Court of Appeals, cited the Rule's wrongful distribution of legal rights in support of its position.[228] These distributive costs apparently accrue so atypically in practice that most states simply lack an incentive to revise their Rules to address them. Moreover, the Rule's res judicata, collateral estoppel, and judgment enforcement problems seem to be mere fascinations of legal scholarship rather than concrete and endemic litigation issues.[229] These externalities simply do not factor substantially into the calculus of state adoption.[230]

CONCLUSION

There are compelling normative arguments against the federal One Good Plaintiff Rule which alone may warrant its elimination. But practical criticisms of the Rule—well-founded in the federal judiciary's procedural design—appear to be overstated. They do not withstand scrutiny when tested using a control group largely insulated from constitutional influence: the state court systems.

Still, the federal One Good Plaintiff Rule is far from perfect. *Laroe*'s same relief standard is a riddle in the context of damages, and is hard to properly scope in suits for injunctive relief. Attorneys' fees and court costs are also difficult to categorize for purposes of the Rule, and courts can impose unjust liability if those fees and costs are awarded to an additional plaintiff that lacks proper standing.

Nonetheless, as the states show, the Rule's practical costs do not warrant its upending. The Rule affords narrow but substantial time-saving benefits to courts already constrained by limited resources.

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226. *See, e.g.*, *Laroe*, 137 S. Ct. at 1651 (recognizing that a plaintiff's complaint offers "the best evidence of the relief [a plaintiff] seeks"); Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania, 458 U.S. 375, 402 n.22 (1982) ("Petitioners have not challenged the standing of the other plaintiffs and, therefore, even if Pennsylvania lacks standing, the District Court possessed Art. III jurisdiction to entertain those common issues presented by all plaintiffs."); Mountain States Legal Found. v. Glickman, 92 F.3d 1228, 1232 (D.C. Cir. 1996) ("For each claim, if constitutional and prudential standing can be shown for at least one plaintiff, we need not consider the standing of the other plaintiffs to raise that claim."); Crawford v. McLaughlin, 473 P.2d 725, 728 (Colo. 1970) (en banc) ("It is the duty of courts to respect the integrity of the issues raised by the pleadings between the original parties and to prevent the injection of new issues by intervention." (quoting Moreno v. Commercial Sec. Bank, 240 P.2d 118, 119 (Colo. 1952))).

227. *See supra* notes 90–94 and accompanying text.

228. *See* Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC, 97 A.3d 135, 139–40 (Md. 2014).

229. *Compare supra* notes 125–26 and accompanying text, *with* Bruhl, *supra* note 9, at 506–15.

230. None of the forty states that embrace a rule that is coextensive or more lenient than the federal Rule address the practical costs detailed by scholars writing on the topic.

Because the U.S. Supreme Court shows no signs of reversing its existing constitutional treatment of the Rule, it should, at a minimum, clarify the Rule's scope to resolve definitional ambiguities that complicate its application in trial and lower appellate courts. The Rule should remain in effect on practical grounds, however. Although it presents risks, these risks have been tried and tested with approval by the state laboratories.