GOVERNING FOR IMPACT

Article III Standing for Unregulated Parties

November 2025
Issue Brief

TABLE OF CONTENTS

I. INTRODUCTION

The Trump administration has an ambitious deregulatory agenda—one that aims to roll back regulations protecting workers, patients, consumers, and the environment, to name just a few.[1] It is also exploring tactics to increase the scope and speed of those efforts. Among other things, it has sought to limit public participation in the rulemaking process, including by acting through interim and direct final rules[2] and, in some cases, by dispensing with the notice-and-comment process entirely.[3] Reporting has also revealed a proposal by the U.S. DOGE Service to use artificial intelligence to rescind half of all federal regulations by January 2026.[4] Those who depend on robust federal protections should be prepared to respond.

One challenge that advocates might face in litigating against deregulation is the doctrine of Article III standing. To bring cases in federal court, plaintiffs must demonstrate a "personal stake" in the litigation.[5] But the entities most directly affected by deregulation—say, the operators of a coal-fired power plant—often stand to benefit from it, and they may rarely if ever be inclined to sue. How can individuals, groups, and entities who are not directly regulated but are nevertheless harmed by deregulation—say, those living near the coal-fired power plant—get into court?

The Supreme Court has said that "when the plaintiff is not himself the object of the government action or inaction he challenges, . . . it is ordinarily substantially more

---

[1] *See, e.g.*, Unleashing Prosperity Through Deregulation, Exec. Order 14192, 90 Fed. Reg. 9065 (Jan. 31, 2025).

[2] *See* Darya Minovi, *Access Denied: How the Trump Administration is Eliminating Public Input*, Union of Concerned Scientists (Sept. 9, 2025).

[3] *See, e.g.*, Repeal of the Definition of Showerhead, 90 Fed. Reg. 15647 (Apr. 15, 2025); Off. of Mgmt. & Budget, Streamlining the Review of Deregulatory Action, M-25-36 (Oct. 21, 2025); *see generally* Governing for Impact, *Rapid Response: Presidential Memorandum on "Directing the Repeal of Unlawful Regulations"* (Apr. 2025); Sam Berger, *Undermining Accountability in Rulemaking: The Trump Administration's Attack on Public Engagement in the Regulatory Process*, Coal. for Sensible Safeguards (July 17, 2025).

[4] Hannah Natanson et al., *DOGE Builds AI Tool to Cut 50 Percent of Federal Regulations*, Wash. Post. (July 26, 2025).

[5] *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (internal quotation marks omitted).

difficult to establish" standing.[6] But there is more to the story—an established doctrinal framework by which such plaintiffs may demonstrate that their injuries are traceable to the government's regulation or deregulation of another.[7] And in recent years, the Supreme Court has gone so far as to identify several "familiar circumstances" in which plaintiffs not directly subject to regulation may demonstrate standing.[8] There may well be numerous opportunities for such plaintiffs to satisfy Article III's requirements.[9]

This Issue Brief describes the rules governing standing for unregulated plaintiffs, lists the types of third parties the Supreme Court has recognized as likely to possess standing in particular categories of cases, offers examples of cases in which such plaintiffs have demonstrated standing to challenge actions taken by both Trump administrations, and lays out certain strategic considerations that litigators might keep in mind.

II. STANDING DOCTRINE

Standing in general. The Constitution limits federal courts' jurisdiction to "[c]ases" and "[c]ontroversies."[10] "[T]he doctrine of standing . . . is an essential and unchanging part of the case-or-controversy requirement of Article III."[11] Standing has three familiar and well-established elements:

[6] *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992) (internal quotation marks omitted).

[7] *See generally* Rachael Klarman & Will Dobbs-Allsopp, *Solving Standing's Corporate Bias: How Agencies Can Empower Advocates to Challenge Deregulation*, Roosevelt Inst. (July 8, 2021).

[8] *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 384 (2024).

[9] This Issue Brief deals with the question of Article III standing for plaintiffs who are challenging the government's regulation of other individuals or entities, and it sometimes refers to these plaintiffs as "third parties." The question of Article III standing for such third parties is not to be confused with the prudential doctrine of "third party standing," which is discussed briefly below. Nor is the terminology meant to elide that, sometimes, it is an open question whether a plaintiff is a third party or, instead, an object of the challenged government action. That issue is also discussed below.

[10] U.S. Const. art. III, § 2.

[11] *Lujan*, 504 U.S. at 560.

> First, the plaintiff must have suffered an injury in fact — an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of — the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.[12]

Numerous forms of injury can support standing, including both "traditional tangible harms, such as physical harms and monetary harms," as well as "[v]arious intangible harms," such as "injuries with a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts."[13]

"Government regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements. So in those cases" — cases in which the plaintiff is the "object" of the challenged government action — "standing is usually easy to establish."[14] "By contrast, when . . . a plaintiff challenges the government's 'unlawful regulation (or lack of regulation) of *someone else*,'" the Supreme Court has cautioned that "'standing is not precluded, but it is ordinarily substantially more difficult to establish."[15]

Proving causation. Whether such a plaintiff can demonstrate standing frequently turns on the requirement that its injury in fact be fairly traceable to the challenged government action. "[U]nregulated parties may have more difficulty establishing causation — that is, linking their asserted injuries to the government's regulation (or lack of regulation) of someone else."[16] That is because "[w]hen the plaintiff is an unregulated party, causation 'ordinarily hinge[s] on the response of the regulated (or

[12] *Id.* at 560–61 (internal quotation marks, citations, and alterations omitted).

[13] *Transunion LLC v. Ramirez*, 594 U.S. 413, 425 (2021).

[14] *Hippocratic Med.*, 602 U.S. at 382.

[15] *Id.* (quoting *Lujan*, 504 U.S. at 562).

[16] *Id.*

regulable) third party to the government action or inaction—and perhaps on the response of others as well."[17]

Can those living near the coal-fired power plant show that their injury (say, degraded air quality associated with the plant's operation) was caused by a particular deregulatory act? To prove causation, an unregulated plaintiff "generally cannot 'rely on speculation about the unfettered choices made by independent actors not before the courts'"—in this case, the power plant—but must instead "show that the 'third parties will likely react in predictable ways' that in turn will likely injure the plaintiffs."[18] Importantly, "Article III 'requires no more than *de facto* causality.'"[19] That is, a plaintiff must show that a particular government action was a but-for cause of its injury; the action need not be the injury's proximate cause.[20] Similarly, "[a] causation chain does not fail simply because it has several links, provided those links are not hypothetical or tenuous and remain plausible."[21]

Recent Supreme Court decisions illustrate how plaintiffs might causally tie their injuries to government action that directly affects regulated entities. In *Department of Commerce v. New York*, in which the Supreme Court blocked the addition of a question on citizenship to the 2020 Census, the Court concluded that plaintiff states showed "that if noncitizen households are undercounted by as little as 2% . . . they will lose out on federal funds that are distributed on the basis of state population. That is a sufficiently concrete and imminent injury to satisfy Article III, and there is no dispute that a ruling in favor of respondents would redress that harm."[22] "The Government contend[ed], however, that any harm to respondents is not fairly traceable to the Secretary's decision" to add a citizenship question "because such harm depends on the independent action of third parties"—noncitizens receiving

[17] *Id.* at 383 (quoting *Lujan*, 504 U.S. at 562).

[18] *Id.* (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 415 n.5 (2013) and *California v. Texas*, 593 U.S. 659, 675 (2021)).

[19] *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019) (quoting *Block v. Meese*, 793 F.2d 1303, 1309 (D.C. Cir. 1986) (Scalia, J.)).

[20] For a general discussion of the difference between the concepts of factual and proximate cause, see Dan B. Dobbs et al., Dobbs' Law of Torts § 185 (2d ed. Apr. 2025 update).

[21] *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011) (internal quotation marks and alteration omitted).

[22] *Dep't of Com.*, 588 U.S. at 767.

census questionnaires—"choosing to violate their legal duty to respond to the census."[23]

The Court rejected the government's assertion that the states' standing theory "rest[ed] on speculation about the decisions of independent actors."[24] Instead, the Court held that the states had

> met their burden of showing that third parties will likely react in predictable ways to the citizenship question . . . . The evidence at trial established that noncitizen households have historically responded to the census at lower rates than other groups, and the District Court did not clearly err in crediting the Census Bureau's theory that the discrepancy is likely attributable at least in part to noncitizens' reluctance to answer a citizenship question. Respondents' theory of standing thus does not rest on mere speculation about the decisions of third parties; it relies instead on the predictable effect of Government action on the decisions of third parties.[25]

Thus, when a "predictable" chain of events causally links a plaintiff's harm to the challenged government action, standing may be found.

The Court has also offered a more specific corollary to this "predictable effect" principle: "[w]hile . . . it does not suffice if the injury complained of is the result of the *independent* action of some third party not before the court, that does not exclude injury produced by determinative or coercive effect upon the action of someone else."[26] Thus, "'[w]here the plaintiff suffers an injury that is produced by the determinative or coercive effect of the defendant's conduct upon the action of someone else,' the traceability requirement is satisfied."[27]

---

[23] *Id.*

[24] *Id.* at 768 (quoting *Clapper*, 568 U.S. at 414).

[25] *Id.*

[26] *Bennett v. Spear*, 520 U.S. 154, 169 (1997) (internal quotation marks, citations, and alterations omitted).

[27] *Mayor & City Council of Baltimore v. Trump*, 416 F. Supp. 3d 452, 486 (D. Md. 2019) (some internal quotation marks omitted) (quoting *Lansdowne on the Potomac Homeowners Ass'n, Inc. v. OpenBand & Lansdowne, LLC*, 713 F.3d 187, 197 (4th Cir. 2013)).

In a similar vein, the Supreme Court recently reiterated that third parties can demonstrate standing by relying upon "commonsense economic principles."[28] In *Diamond Alternative Energy, LLC v. EPA*, a group of fuel producers challenged the EPA's approval of California regulations requiring automakers to produce "more electric vehicles and fewer gasoline-powered vehicles."[29] The Court—after assuming without deciding that the fuel producers were not directly regulated by the EPA's action[30]—had little trouble concluding that the case presented "the 'familiar' circumstance where government regulation of a business 'may be likely' to cause injuries to other linked businesses."[31] "The California regulations force automakers to manufacture more electric vehicles and fewer gasoline-powered vehicles,"[32] which would "likely 'cause downstream or upstream economic injuries to others in the chain,' such as producers of gasoline and other liquid fuels."[33] That string of "predictable, commonsense inferences" was sufficient to prove causation.[34]

The court went on to analyze the third standing requirement, redressability, likewise finding that "commonsense economic inferences about the operation of the automobile market—combined with the statements of the fuel producers, California, EPA, and the vehicle manufacturers—make it sufficiently 'predictable' that invalidating California's regulations would likely redress the fuel producers' injury."[35] To be clear, "[t]he second and third standing requirements, causation and redressability, are usually 'flip sides of the same coin.'"[36] *Diamond Alternative Energy* likely paid special attention to redressability because, although the federal action caused a market shift, it was an open question whether invalidating the action would shift the market back in such a way as to remedy the fuel producers' injury.

---

[28] *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 116 (2025).

[29] *Id.* at 104.

[30] This aspect of *Diamond Alternative Energy* is discussed below. *See infra* Part IV.

[31] *Diamond Alternative Energy*, 606 U.S. at 116 (quoting *Hippocratic Med.*, 602 U.S. at 384).

[32] *Id.* at 116–17.

[33] *Id.* at 117 (quoting *Hippocratic Med.*, 602 U.S. at 384).

[34] *Id.* at 116.

[35] *Id.* at 120.

[36] *Id.* at 111 (quoting *Hippocratic Med.*, 602 U.S. at 380).

"Familiar circumstances" for standing. Ultimately, the "'line of causation between the illegal conduct and injury' . . . must not be too speculative or too attenuated."[37] As with other standing questions,[38] this line-drawing exercise has been characterized by its "sheer slipperiness" and its "complexity and malleability."[39] Even the Supreme Court has acknowledged that "[d]etermining causation in cases involving suits by unregulated parties against the government is . . . not a mechanical exercise . . . because the causation inquiry can be heavily fact-dependent and a question of degree."[40]

Consequently, litigants might take the Supreme Court's admonition that "it is ordinarily substantially more difficult" for third parties to demonstrate standing with a grain or two of salt. There is ample opportunity for unregulated plaintiffs to articulate theories and adduce evidence supporting their standing to challenge deregulatory federal action. Indeed, the Court recently "identified a variety of familiar circumstances where government regulation of a third-party individual or business may be likely to cause injury in fact to an unregulated plaintiff"[41]:

- "[W]hen the government regulates (or under-regulates) a business, the regulation (or lack thereof) may cause downstream or upstream economic injuries to others in the chain, such as certain manufacturers, retailers, suppliers, competitors, or customers."[42]

---

[37] *Hippocratic Med.*, 602 U.S. at 383 (quoting *Allen v. Wright*, 468 U.S. 737, 752 (1984)).

[38] *See Arpaio v. Obama*, 797 F.3d 11, 26 (D.C. Cir. 2015) ("The relevant judicial guideposts do not exactly define standing with complete consistency." (internal quotation marks and alterations omitted)).

[39] 13A Fed. Prac. & Proc. Juris. § 3531.5 (3d ed. Sept. 2025 update). That is to say, sometimes a seemingly attenuated causation argument will be found to support standing, *see Duke Power Co. v. Carolina Env't Study Grp.*, 438 U.S. 59, 76–78 (1978) (anticipated environmental and aesthetic injury caused by construction of nuclear power plants fairly traceable to federal statute limiting liability for nuclear incidents, without which plants likely would not be constructed or operated), while a seemingly strong causal connection might be found insufficient, *see Warth v. Seldin*, 422 U.S. 490, 505–07 (1975) (insufficient allegations that unavailability of housing for low-income plaintiffs was traceable to restrictive zoning ordinance alleged to be unconstitutionally exclusionary).

[40] *Hippocratic Med.*, 602 U.S. at 384 (internal quotation marks omitted).

[41] *Id.*

[42] *Id.*

- "When the government regulates parks, national forests, or bodies of water, for example, the regulation may cause harm to individual users."[43]
- "When the government regulates one property, it may reduce the value of adjacent property."[44]

And "[t]he list goes on."[45]

Allegations, evidence, and arguments. The lack of clear lines in the causation analysis means that it is particularly important to substantiate standing arguments with strong allegations or evidence depending on the stage of the case.[46] That is both because those with well-supported arguments can take advantage of flexibility in the doctrine and because plaintiffs without strong factual arguments risk a conclusion that their standing claims are "speculative" and therefore deficient.[47] The Supreme Court has recently nodded at the important role factual averments play in analyzing standing: "in 'many cases the standing question can be answered chiefly by comparing the allegations of the particular complaint to those made in prior standing cases.'"[48] Whether an unregulated plaintiff can "fairly trac[e]" its harm to government action in a particular case frequently "turn[s] on its particular facts."[49]

Litigants might prove causation with scientific or economic studies, expert or fact-witness testimony, or statements made by the agency in the course of justifying or

---

[43] *Id.* at 385.

[44] *Id.*

[45] *Id.*; *see also Block v. Meese*, 793 F.2d 1303, 1309 (D.C. Cir. 1986) (Scalia, J.) ("It is impossible to maintain, of course, that there is no standing to sue regarding action of a defendant which harms the plaintiff only through the reaction of third persons. If that principle were true, it is difficult to see how libel actions or suits for inducing breach of contract could be brought in federal court.").

[46] *See Lujan*, 504 U.S. at 561 ("[E]ach element [of standing] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation. At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice . . . . In response to a summary judgment motion, however, the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts . . . . And at the final stage, those facts (if controverted) must be supported adequately by the evidence adduced at trial." (internal quotation marks and citations omitted)).

[47] *Clapper*, 568 U.S. at 410.

[48] *Hippocratic Med.*, 602 U.S. at 384 (quoting *Allen*, 468 U.S. at 751–52).

[49] *Whitman-Walker Clinic, Inc. v. HHS*, 485 F. Supp. 3d 1, 25 (D.D.C. 2020).

explaining the regulatory or deregulatory action itself.[50] Agencies are required to consider all "important aspect[s] of the problem," including the record evidence before them and other "relevant factors."[51] That means that agencies are frequently obligated to identify and reckon with the adverse effects of their actions, including any reliance interests those actions implicate.[52] Executive Branch policy also requires agencies to assess a regulation's benefits and costs, sometimes in the form of a comprehensive analysis referred to as a "Regulatory Impact Analysis."[53] These agency analyses may provide litigants with evidence of the harm a deregulatory action is expected to inflict on third parties.

* * *

All this is to say that while an unregulated party's standing to challenge deregulatory agency action may not always be self-evident, there are many circumstances in which courts are amenable to cogent and well-supported arguments that a plaintiff's injuries are attributable to the government's imposition or relaxation of regulations on another.

III. CHALLENGES TO TRUMP ADMINISTRATION ACTIONS

Plaintiffs affected—but not directly regulated—by the Trump administration's actions have often demonstrated standing. Those cases illustrate a few key

[50] *See, e.g.*, *City of Columbus v. Kennedy*, — F. Supp. 3d —, 2025 WL 2426382, at *8 (D. Md. Aug. 22, 2025) (drawing on views of insurers and experts and the agency's own analysis); *New York v. Dep't of Com.*, 351 F. Supp. 3d 502, 578–82 (S.D.N.Y.) (drawing on the agency's own analysis and expert testimony), *rev'd in part on other grounds*, *Dep't of Com. v. New York*, 588 U.S. 752 (2019).

[51] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[52] *See id.*; *FDA v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 568 (2025); *see also Michigan v. EPA*, 576 U.S. 743, 752–53 (2015) ("Agencies have long treated cost as a centrally relevant factor when deciding whether to regulate. Consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions.").

[53] *See* Off. of Mgmt. & Budget, Regulatory Impact Analysis: A Primer.

principles relevant to the indirect standing issue. First, those with a close connection to a regulated entity, like those downstream from federal funding recipients, may be able to demonstrate standing. Second, plaintiffs might demonstrate standing by showing that the government's action coerces or pressures others in a way that causes injury. And third, as *Diamond Alternative Energy* explained, economic principles can be deployed to show the "predictable" chain of events necessary to prove causation.

Those with a close relationship to regulated entities might demonstrate standing. In the spring of 2025, the federal government terminated "nearly $2.2 billion in federal grants" to Harvard University.[54] Harvard, the entity directly injured by that action, sued. But so did a group of organizational plaintiffs: the American Association of University Professors, its Harvard chapter, and multiple unions representing Harvard workers.[55] The district court held that those plaintiffs' "members are at least as connected to the grants and funding at issue here as is Harvard and, by virtue of this relationship, their standing, more so than in the typical indirect third-party standing case, hinges on a '"predictable chain of events leading from the government action to the asserted injury.'"[56] "It was entirely predictable" that withholding federal grants from a university would cause harm to "professors and graduate students."[57]

Government pressure or coercion can underpin indirect standing. A district court found the indirect standing issue to be clear cut in a challenge to Trump administration orders withholding federal funds from medical institutions that provide gender-affirming care to minors and directing agencies to take steps to stop recipients of federal funds from providing such care.[58] A group of plaintiffs "all under nineteen years old" who have "received gender dysphoria diagnoses" and who "reported the discontinuation of gender-affirming medical care after the [latter] Order was issued" sued.[59] The district court found that the plaintiffs had established causation: "the issuance of the Executive Orders led almost immediately to

[54] *President & Fellows of Harvard Coll. v. HHS*, — F. Supp. 3d —, 2025 WL 2528380, at *1 (D. Mass. Sept. 3, 2025).

[55] *Id.*

[56] *Id.* at *17 (quoting *Hippocratic Med.*, 602 U.S. at 385).

[57] *Id.* at *16–17.

[58] *PFLAG, Inc. v. Trump*, 769 F. Supp. 3d 405, 417–18 (D. Md. 2025).

[59] *Id.* at 420.

government agencies directing medical institutions to cease providing gender-affirming care for those nineteen years of age and younger or risk the loss of federal funds."[60] The court concluded that although the healthcare providers, and not the government, made the ultimate "decision to stop providing the forbidden services, it was only because they saw 'the writing on the wall,' felt the government's 'pressure,' and 'immediately fell in line.'"[61] "That is enough to establish causation."[62]

Similarly, in February 2025, the Department of Education released a "Dear Colleague Letter" broadly demanding that recipients of federal education funding cease programs to foster diversity, equity, and inclusion within fourteen days.[63] A district court found that the third-party organizational plaintiffs — a large teachers union and a nonprofit organization that works with school districts to increase the diversity of the teaching force — had standing.[64] "Given the 2025 Letter's threatening demand that schools immediately comply with the Department's interpretation of federal law, as well as the extent to which school districts rely upon federal funding, it is predictable that schools would cease all DEI programming, including by partnering with plaintiffs, in order to avoid running afoul of the stiff and swift penalties promised in the 2025 Letter."[65] That was enough to show that the "plaintiffs' organizational injuries are the predictable result of the obligations imposed by the defendants upon school districts receiving federal funding."[66]

Economic principles can support causation. A group of plaintiffs — three city governments and two nonprofit organizations — challenged the Department of Health and Human Services's 2025 Marketplace Integrity and Affordability Rule, and all but one were found to have standing.[67] The rule implemented numerous changes that the plaintiffs alleged, "in their individual and collective effect, [would] raise

---

[60] *Id.* at 428–29.

[61] *Id.* at 430 (quoting *United States v. King Cnty.*, 122 F.4th 740, 752 (9th Cir. 2024)).

[62] *Id.*

[63] *Nat'l Educ. Ass'n v. Dep't of Educ.*, 779 F. Supp. 3d 149, 166–69 (D.N.H. 2024).

[64] *Id.* at 170–71.

[65] *Id.* at 178.

[66] *Id.*

[67] *City of Columbus v. Kennedy*, — F. Supp. 3d —, 2025 WL 2426382, at *1, *4–6 (D. Md. Aug. 22, 2025). "[B]ecause only one Plaintiff must have standing for the case to proceed," the court deferred judgment on the remaining plaintiff's standing. *Id.* at *6.

consumers' premiums for plans on the [Affordable Care Act] Exchanges, limit coverage under those plans, and deter millions of individuals from enrolling in coverage, leading to higher uncompensated care costs for providers of last resort."[68]

As to one of the nonprofits, the Main Street Alliance, the court found that a member of the group who owned a small business and was enrolled in an ACA marketplace plan had standing.[69] She sufficiently alleged that her premiums would increase as a result of the rule: the agency "itself has acknowledged in various sections of the challenged provisions that there will be increased premiums and costs for consumers as a result of the implementation of the [r]ule" and "insurers have already begun to increase their rates in response to the rule."[70] The court did not need to "guess how the market [would] respond to the rule"; their reaction was sufficiently "predictable" to support causation.[71]

The court reached a similar conclusion as to the city plaintiffs. Emphasizing that "a causal chain does not fail simply because it has several links, provided those links are not hypothetical or tenuous," the court found that the cities had "adequately outlined the predictable results of the challenged provisions of the [r]ule."[72] "First, Plaintiffs have pointed to sufficient record evidence to establish that the rate of uninsured people will go up as a direct result of the implementation of the [r]ule, a fact confirmed in the [r]ule itself."[73] The court then surveyed a range of testimony explaining how such individuals often require uncompensated care that burdens municipal budgets.[74] These causal links made the cities' imminent financial harm "fairly traceable" to the rule.[75]

Similarly, in 2018 the State Department issued a document (foreshadowing its much-litigated "public charge" rule) which "set[] forth the criteria that consular officers

---

[68] *Id.* at *4.

[69] *Id.* at *7–9.

[70] *Id.* at *8 (internal quotation marks omitted).

[71] *Id.* (internal quotation marks omitted).

[72] *Id.* at *10 (internal quotation marks and alterations omitted).

[73] *Id.* (internal quotation marks omitted).

[74] *Id.* at *10–11.

[75] *Id.* at *11. For a similar analysis in the context of a challenge to a prior HHS rule governing the ACA marketplaces, see *City of Columbus v. Trump*, 453 F. Supp. 3d 770 (D. Md. 2020).

must consider to determine whether a visa applicant is likely to be a 'public charge'—a person dependent upon the government for subsistence"—and therefore inadmissible to the United States.[76] Among other things, the document required consular officers to consider the past and potential use of non-cash public assistance by an applicant or his or her family.[77] The City of Baltimore sued, alleging standing on the grounds that this would discourage immigrants from using city social services.[78] The court found *Department of Commerce*'s causation analysis "on all fours."[79] The city had sufficiently alleged "that immigrants and their families will react in 'predictable ways'" to the agency's action, pointing to "reports of immigrants avoiding health care for concern of being considered a public charge."[80] Indeed, the city alleged the action "w[as] intentionally designed to discourage immigrants from using public benefit programs."[81]

* * *

These cases reflect different approaches to arguing and proving indirect standing, appropriate to the circumstances. They all follow the same basic pattern, though: a litigant not directly subject to federal regulation provides allegations, arguments, and evidence sufficient to demonstrate that a particular government action has caused its injury in fact.

IV. STRATEGIC CONSIDERATIONS

We briefly note related issues litigants might keep in mind as they build indirect standing cases. First, the distinction between classic object-of-regulation standing and indirect standing is not always clear. Second, indirect standing might be particularly useful as a way for plaintiffs not subject to jurisdictional channeling

[76] *Mayor & City Council of Baltimore v. Trump*, 416 F. Supp. 3d 452, 470 (D. Md. 2019).

[77] *Id.* at 475–76.

[78] *Id.* at 487.

[79] *Id.* at 489.

[80] *Id.* at 488–89 (internal quotation marks omitted).

[81] *Id.* at 489.

doctrines to challenge Trump administration policies. Third, governmental plaintiffs in particular—like states and cities—might consider situations in which they can assert indirect standing. And finally, we briefly discuss and distinguish related threshold doctrines that might be relevant in these cases.

A. Third-Party Plaintiffs as First-Party Plaintiffs

This Issue Brief has focused on plaintiffs not directly subject to but nevertheless sufficiently affected by government action or inaction to sue in federal court. But it is not always clear whether a plaintiff is directly regulated or not in a particular case. At some point, a third-party might be so affected by federal regulation or deregulation of another that it counts as an object of the challenged government action. It might therefore be strategic for plaintiffs to consider whether they can argue around the "substantially more difficult" rules of unregulated-party standing and instead demonstrate that government actions regulated them directly, a showing that "almost invariably satisf[ies] both the injury in fact and causation requirements."[82]

The Supreme Court discussed this dynamic in the *Diamond Alternative Energy* case. There, recall that the EPA approved California regulations that would require automakers to "manufacture more electric vehicles and fewer gasoline-powered vehicles."[83] Ultimately, the Supreme Court held that fuel producers had standing as affected third parties to challenge the EPA's action because they would suffer "downstream or upstream economic injuries" from the government's regulation of automakers.[84] But before that, the Court allowed that "[t]he fuel producers here might be considered an object of the California regulations because the regulations explicitly seek to restrict the use of gasoline and other liquid fuels in automobiles."[85] The Court explained:

[82] *Hippocratic Med.*, 602 U.S. at 382.

[83] *Diamond Alternative Energy*, 606 U.S. at 104.

[84] *Id.* at 116 (quoting *Hippocratic Med.*, 602 U.S. at 384).

[85] *Id.* at 114–15.

> When the government prohibits or impedes Company A from using Company B's product, then both Company A and Company B might be deemed objects of the government action at issue. For example, if the government bans hot dog sales in stadiums, then hot dog manufacturers, not just stadiums, might be considered objects of the regulation.[86]

Indeed, in light of that discussion, the Court appeared open to accepting the relatively broad principle that "when a regulation targets the provider of a product or service by limiting another entity's use of that product or service, the targeted provider ordinarily has standing—without the need for much additional analysis."[87] The Court characterized this position as "not without force," but it "ultimately [did] not further consider that argument . . . because, regardless, the fuel producers have readily demonstrated their standing" under traditional Article III standing principles concerning unregulated parties.[88] If the Court adopts the rule it gestured toward in a future case, that would likely go some way to collapsing the distinction between "object" standing and indirect standing.

In the meantime, litigants outside of the commercial context might consider developing arguments that they are direct objects of federal action in addition to demonstrating, in the alternative, that they have standing under the third-party framework. The district court in *Thakur v. Trump*—in which a group of University of California-based researchers challenged the termination of their research funding—analyzed standing in both ways.[89] "Plaintiffs' research is the 'object' of the grant cancellations . . . . Likewise, Plaintiffs' research is the object of the unreasoned, arbitrary conclusion that their research no longer matches agency priorities."[90] But "even if the grant terminations were implausibly construed to be directed solely at the University to the exclusion of Plaintiffs, Plaintiffs would still have standing for the same reasons as the fuel producers did" in *Diamond Alternative Energy*.[91] The district court in the Harvard grants case also nodded toward this dynamic, finding

---

[86] *Id.* at 115.

[87] *Id.* at 115.

[88] *Id.* at 116.

[89] *Thakur v. Trump*, 787 F. Supp. 3d 955, 967, 995 (N.D. Cal. 2025).

[90] *Id.* at 995.

[91] *Id.*

that professors and graduate students—the ones whose work the relevant federal grants funded—were "at least as connected to the grants and funding at issue here as [was] Harvard" and, as a result, their standing was even more apparent "than in the typical third-party standing case."[92]

B. Avoiding Channeling

Third parties may prove especially useful litigants in cases where the direct objects of federal action are barred or hindered from suing in federal court by so-called "channeling" doctrines or other federal jurisdiction rules. For instance, federal civil servants are generally precluded from initially challenging adverse personnel actions in federal court.[93] Instead, they must first appeal to the Merit Systems Protection Board, an administrative body that the Trump administration has paralyzed by removing its quorum.[94] Third parties affected, but not necessarily directly governed, by the Trump administration's personnel policies—such as states and labor unions[95]—have had some success arguing that they may bring their own challenges to those policies, although it is unclear how these efforts will ultimately fare before the Supreme Court.

One example is *New York v. Kennedy.* There, nineteen states and the District of Columbia challenged the Trump administration's effort to reorganize and substantially dismantle the Department of Health and Human Services, including through mass layoffs.[96] The district court allowed the states to proceed with their claims under the Constitution and the Administrative Procedure Act, notwithstanding the channeling rules that might apply to individual workers seeking to contest their dismissals[97]—a conclusion the U.S. Court of Appeals for the First Circuit preliminarily upheld in denying the government's request for a stay pending appeal.[98] Similarly, in

[92] *President & Fellows of Harvard Coll.*, 2025 WL 2528380, at *17.

[93] *See Elgin v. Dep't of Treasury*, 567 U.S. 1, 5–6 (2012).

[94] *See* Jordan Ascher, *Responding to a Quorumless Merit Systems Protection Board*, Yale J. on Reg. Notice & Comment (May 23, 2025).

[95] Unions bringing certain labor-relations claims are subject to channeling, *see, e.g.*, 5 U.S.C. § 7122, but we do not discuss cases involving that rule here.

[96] *New York v. Kennedy*, 789 F. Supp. 3d 174, 187 (D. Mass. 2025).

[97] *Id.* at 187–88.

[98] *New York v. Kennedy*, — F.4th —, 2025 WL 2658233, at *4 (1st Cir. Sept. 17, 2025).

American Federation of Government Employees v. Trump, the Ninth Circuit preliminarily held that certain claims brought by labor unions, nonprofit organizations, and local governments against the administration's plan to institute government-wide layoffs could proceed in federal court notwithstanding channeling.[99]

Nevertheless, key doctrinal questions remain open. For one thing, some courts have held that claims brought by third parties touching on federal personnel policies are channeled.[100] And the Supreme Court has repeatedly granted interim relief to the government in cases where lower courts rejected channeling defenses (including in *American Federation of Government Employees*), although it has not opined on the channeling issue specifically.[101] Moreover, in one of those orders, the Court ruled on the merits, suggesting a view that the civil service channeling regime had not stripped the district court of subject-matter jurisdiction.[102]

Third-party plaintiffs might enjoy analogous advantages in challenging the termination of federal grants. The Trump administration has impounded vast sums of federal dollars. Recently, through a series of interim rulings, the Supreme Court has indicated that the Tucker Act generally requires recipients of those funds to challenge terminations in the Court of Federal Claims, not district court.[103] But notwithstanding those rulings, some courts have allowed third parties—subcontractors and beneficiaries of particular federal funding streams—to maintain their suits in district court. "To maintain a cause of action pursuant to the Tucker Act that is based on a contract, the contract must be between the plaintiff and the government."[104] Thus, as the Ninth Circuit concluded in permitting an APA claim by subcontractors receiving federal funding to proceed in district court, "[s]ubcontractors, who have not entered into contracts with the Government,

[99] 139 F.4th 1020, 1030–33 (9th Cir. 2025).

[100] *See, e.g.*, *Nat'l Treasury Emps. Union v. Vought*, 149 F.4th 762, 774–76 (D.C. Cir. 2025).

[101] *See McMahon v. New York*, 145 S. Ct. 2643 (2025); *Trump v. Am. Fed'n of Gov't Emps.*, 145 S. Ct. 2635 (2025).

[102] *Am. Fed'n of Gov't Emps.*, 145 S. Ct. at 2635.

[103] *See Dep't of Educ. v. California*, 604 U.S. 650 (2025); *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658 (2025); *see generally* Governing for Impact, Seeking Recovery for Unlawful Grant Terminations in the Court of Federal Claims (Oct. 2025).

[104] *Cienega Gardens v. United States*, 194 F.3d 1231, 1239 (Fed. Cir. 1998) (internal quotation marks and alteration omitted).

generally have no right to sue under the Tucker Act, and the Court of Federal Claims has no jurisdiction to hear their suit."[105] Similarly, a district court preliminarily held that it had jurisdiction over grant-termination claims brought by university researchers who, as "non-parties to the [funding] contracts[,] cannot bring claims in the [Court of Federal Claims], and thus are not within the Tucker Act."[106]

Those looking to challenge Trump administration actions might thus consider whether certain plaintiffs are better suited to circumvent restrictive jurisdictional rules than others.

C. Governmental Plaintiffs

States and cities frequently challenge executive actions that affect but do not directly regulate them. During the Biden administration, for instance, certain states aggressively challenged federal immigration policies, including by advancing novel standing theories.[107] Because of the range of governmental and proprietary interests states and municipalities possess, they might be especially well-suited to demonstrate standing. As the *Columbus* and *Baltimore* cases discussed above illustrate, governmental plaintiffs might be more able than individuals to demonstrate how federal deregulation affects their economic interests—both because governments tend to operate numerous instrumentalities affected by federal action and because they can adduce evidence aggregating the economic impact of deregulation. Governing for Impact has written elsewhere on the doctrinal and practical reasons why governmental plaintiffs might be consequential and versatile litigators against the federal government.[108]

---

[105] *Cmty. Legal Servs. in E. Palo Alto v. HHS*, 137 F.4th 932, 938 (9th Cir. 2025). This was an alternative basis for the Ninth Circuit's decision. The court principally relied on the fact that "plaintiffs' APA claims are based on the Government's statutory and regulatory violations, not any government contract." *Id.* at 937.

[106] *Thakur v. Trump*, — F. Supp. 3d —, 2025 WL 2696424, at *9 (N.D. Cal. Sept. 22, 2025).

[107] *See* Jacob Hamburger, *State Standing After* United States v. Texas, 66 B.C. L. Rev. 1, 17–22 (2025) (surveying state standing issues posed by litigation against federal immigration policies over the past decade).

[108] *See* Governing for Impact, Biden v. Nebraska*'s Effect on State Standing in Regulatory Litigation* (Oct. 2024); Governing for Impact, *Municipal Standing in Regulatory Litigation* (Dec. 2024).

D. Other Threshold Doctrines

Plaintiffs who are not the direct objects of the policy that they challenge may encounter other threshold issues — prudential third-party standing and the "zone of interests" test — that merit brief discussion.

Prudential third-party standing. Courts sometimes used the term "third-party standing" to describe the circumstances in which unregulated plaintiffs might have Article III standing to challenge adverse executive action.[109] But there is another doctrine with the name third-party standing, under which courts sometimes "permit[] plaintiffs to assert third-party rights in cases where the enforcement of the challenged restrictions against the litigant would result indirectly in the violation of third parties' rights."[110] A plaintiff seeking to vindicate a third party's rights in this manner must show that it has "suffered an 'injury in fact,'" that it has "a close relation to the third party," and that "there . . . exist[s] some hindrance to the third party's ability to protect his or her own interests."[111] This doctrine does not principally relate to Article III standing; instead, it determines when a plaintiff, who has already demonstrated its own Article III standing, may assert a legal cause of action usually held by another.[112] The Supreme Court has "not looked favorably upon third-party standing"[113] and has left open "that doctrine's proper place in the standing firmament."[114]

Litigants might take care to distinguish their Article III standing arguments from this "prudential" doctrine, including so that courts might do the same.[115] The prudential doctrine should only be relevant in the rare case in which an indirect plaintiff (who has successfully demonstrated Article III standing) is seeking to assert a legal cause of action held by another. Importantly, the Supreme Court's skepticism of the prudential third-party standing doctrine should not generally infect any discussion

---

[109] *See President & Fellows of Harvard Coll.*, 2025 WL 2528380, at *17.

[110] *June Med. Servs. LLC v. Russo*, 591 U.S. 299, 318 (2020) (internal quotation marks and emphasis omitted), *overruled on other grounds*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

[111] *Powers v. Ohio*, 499 U.S. 400, 410–11 (1991).

[112] *Kowalski v. Tesmer*, 543 U.S. 125, 128–29 (2004).

[113] *Id.* at 130 (internal quotation marks omitted).

[114] *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 127 n.3 (2014).

[115] *See June Med. Servs.*, 591 U.S. at 317.

of Article III standing for third parties—a matter on which the Court has, as discussed, expressed considerable openness.

Zone of interests. To demonstrate the existence of a cause of action, a plaintiff may need to demonstrate that its "interests fall within the zone of interests protected by the law invoked."[116] This zone-of-interests test might be relevant for indirect plaintiffs because the government might argue that the sorts of downstream harms they raise are not among the interests Congress intended to protect in enacting a particular substantive statute. "[I]n the APA context," however, "the test is not 'especially demanding.'"[117] It "forecloses suit only when a plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress authorized that plaintiff to sue."[118]

An example of this "lenient" approach[119] in action is the public charge case discussed above, *Mayor and City Council of Baltimore v. Trump*. There, the court found that Baltimore fell within the Immigration and Nationality Act's zone of interests because, among other things, the statute "expressly regulates the use of public assistance by immigrants" and its "public charge provision accounts for the impact public charge determinations may have on municipal governments."[120] Litigators might carefully review the statutes under which they sue in order to prepare rebuttals to zone-of-interest defenses.[121]

---

[116] *Lexmark*, 572 U.S. at 129 (internal quotation marks omitted).

[117] *Id.* at 130 (quoting *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 225 (2012)).

[118] *Id.* (internal quotation marks omitted).

[119] *Id.*

[120] *Mayor & City Council of Baltimore*, 416 F. Supp. 3d at 498.

[121] Importantly, neither the zone-of-interests test nor the prudential doctrine of third-party standing implicates a court's subject matter jurisdiction. *See Lexmark*, 572 U.S. at 128 n.4; *June Med. Servs.*, 591 U.S. at 317. That means the government can waive its zone-of-interests or third-party standing arguments. That is in contrast to Article III standing. Article III standing arguments cannot be waived, courts have an independent obligation to assure themselves that standing exists, and a defect in standing deprives a court of the power to hear a case. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 493–94, 499 (2009).

V. CONCLUSION

Third parties can frequently sue to challenge federal actions that affect them but do not directly govern their conduct. Such plaintiffs might be an important part of a strategy to push back on the Trump administration's deregulatory agenda in court, given that the harms of deregulatory action are likely to be felt by a broad array of constituencies nationwide.