CLASS ACTION LAW — ARTICLE III STANDING — NINTH CIRCUIT HOLDS THAT ABSENT CLASS MEMBERS MUST SATISFY ARTICLE III STANDING AT THE DAMAGES PHASE OF A CLASS ACTION. — *Ramirez v. TransUnion LLC*, 951 F.3d 1008 (9th Cir.), *cert. granted in part*, No. 20-297, 2020 WL 7366280 (U.S. Dec. 16, 2020) (mem.).

There is a growing schism in the federal courts about whether and when Article III standing is required for absent class members.[1] For suits commenced in federal court, the plaintiff must prove the elements of Article III standing.[2] In class actions, courts usually assess whether the class representative, not absent class members, has standing.[3] But some courts in recent years have ruled that if a class definition includes members who lack Article III standing individually, a class action cannot be maintained.[4] Recently, in *Ramirez v. TransUnion LLC*,[5] the Ninth Circuit held that standing for absent class members is required at the damages phase of a class action.[6] But while the Ninth Circuit thought this outcome "clearly follow[ed]" from Supreme Court precedent and the Rules Enabling Act,[7] none of the authorities it relied on mandates its holding. Moreover, the court's ruling threatens the core representative function of the class action.

In February 2011, while trying to buy a car with his wife, Sergio Ramirez was told that the dealership would not sell him a car because he was on a "terrorist list."[8] A credit report prepared by TransUnion

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[1] *See* Theane Evangelis & Bradley J. Hamburger, *Article III Standing and Absent Class Members*, 64 EMORY L.J. 383, 385 (2014).

[2] *See* 1 WILLIAM B. RUBENSTEIN, NEWBERG ON CLASS ACTIONS § 2.1 (5th ed. 2020) ("The burden of proving the elements of standing falls upon the party seeking federal jurisdiction.").

[3] *See, e.g.*, Mielo v. Steak 'n Shake Operations, Inc., 897 F.3d 467, 478 (3d Cir. 2018); Curtis v. Propel Prop. Tax Funding, LLC, 915 F.3d 234, 240 (4th Cir. 2019); Fallick v. Nationwide Mut. Ins. Co., 162 F.3d 410, 423 (6th Cir. 1998); Kohen v. Pac. Inv. Mgmt. Co., 571 F.3d 672, 676–77 (7th Cir. 2009); DG *ex rel.* Stricklin v. Devaughn, 594 F.3d 1188, 1197 (10th Cir. 2010); Prado-Steiman *ex rel.* Prado v. Bush, 221 F.3d 1266, 1279 (11th Cir. 2000). The timing of the standing inquiry in class actions is an interesting and important question but beyond the scope of this Comment. *Compare, e.g.*, Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 612 (1997) (holding in the settlement class context that "because [the] resolution [of class certification issues] here is logically antecedent to the existence of any Article III issues, it is appropriate to reach them first"), *with* Rivera v. Wyeth-Ayerst Lab'ys, 283 F.3d 315, 319 (5th Cir. 2002) (noting that "[e]ven though the certification inquiry is more straightforward, we must decide standing first, because it determines the court's fundamental power even to hear the suit").

[4] *See, e.g.*, Halvorson v. Auto-Owners Ins. Co., 718 F.3d 773, 778 (8th Cir. 2013); *In re* Rail Freight Fuel Surcharge Antitrust Litig., 934 F.3d 619, 623–26 (D.C. Cir. 2019); Tomassini v. FCA US LLC, 326 F.R.D. 375, 384 (N.D.N.Y. 2018) ("[T]he majority of district courts in the Second Circuit have analyzed the standing of absent class members as an Article III question . . . .").

[5] 951 F.3d 1008 (9th Cir.), *cert. granted in part*, No. 20-297, 2020 WL 7366280 (U.S. Dec. 16, 2020) (mem.).

[6] *Id.* at 1023.

[7] 28 U.S.C. § 2072; *accord Ramirez*, 951 F.3d at 1023.

[8] *Ramirez*, 951 F.3d at 1017.

had "matched" Ramirez to two Specially Designated Nationals on a list maintained by the Department of the Treasury's Office of Foreign Assets Controls (OFAC).[9] Ramirez was identified as a potential match even though these individuals had different middle initials and birth years than Ramirez.[10] Although the dealer eventually sold a car to Ramirez's wife, the ordeal frightened and embarrassed him.[11] Ramirez requested a copy of his credit report from TransUnion, but his report did not mention OFAC at all.[12] The day after TransUnion sent the first report, it sent Ramirez a separate letter that included the OFAC alert.[13] Unlike the first credit report, this new letter lacked a summary-of-rights form; as a result, Ramirez was unsure how to challenge the inclusion of the alert.[14] Concerned, Ramirez canceled a family vacation, spoke with a lawyer, and successfully petitioned TransUnion to remove the OFAC alert from his report.[15]

In February 2012, Ramirez filed a putative class action against TransUnion alleging that TransUnion willfully[16] violated the Fair Credit Reporting Act[17] (FCRA).[18] He brought three claims, arguing that TransUnion (1) did not "follow reasonable procedures to assure maximum possible accuracy of [consumers' information],"[19] (2) failed to disclose to consumers in their first reports that they were OFAC matches,[20] and (3) did not include summary-of-rights forms in subsequent letters.[21] Over TransUnion's objections, the district court certified a class that included 8,185 people who had been mistakenly labeled as potential OFAC matches, requested their credit reports, and received the same

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[9] *Id.* at 1016–17.

[10] *Id.* at 1017.

[11] *Id.* at 1017–18.

[12] *Id.* at 1018.

[13] *Id.* at 1018–19.

[14] *See id.* at 1019. The Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681–1681(x), requires that consumer reporting agencies include with written disclosures a summary of rights, which includes a brief description of all consumer rights under the FCRA, an explanation of how consumers may exercise their rights, a list of federal agencies responsible for enforcing the FCRA and their contact information, and other provisions, *see id.* § 1681g(c)(2).

[15] *Ramirez*, 951 F.3d at 1019.

[16] In *Cortez v. Trans Union, LLC*, 617 F.3d 688 (3d Cir. 2010), TransUnion was sued over a software it developed that erroneously put an OFAC alert on consumers' credit reports, *id.* at 696, and was found liable for not taking "steps to minimize the possibility that it would erroneously place an OFAC alert on a credit report, such as checking the birth date of the consumer against the birth date of the person on the [Specially Designated National] List," *id.* at 709, and failing to disclose OFAC information to the plaintiff when she requested it, *id.* at 711. Despite being hit with an $800,000 jury verdict (remitted to $150,000), TransUnion "made surprisingly few changes to its practices regarding OFAC alerts." *Ramirez*, 951 F.3d at 1021.

[17] 15 U.S.C. §§ 1681–1681(x).

[18] *See Ramirez*, 951 F.3d at 1022.

[19] *Id.* at 1024 (quoting 15 U.S.C. § 1681e(b)).

[20] *Id.* at 1029; *accord* 15 U.S.C. § 1681g(a).

[21] *Ramirez*, 951 F.3d at 1029; *accord* 15 U.S.C. § 1681g(c)(2).

two-part correspondence as Ramirez.[22] Of these individuals, only 1,853 had their credit reports furnished to third parties.[23] The jury found for the class on all three claims, awarding each class member $984.22 in statutory damages and $6,353.08 in punitive damages.[24] The district court then denied TransUnion's motions challenging the verdict.[25]

The Ninth Circuit affirmed in part, reversed and vacated in part, and remanded.[26] Writing for the panel, Judge Murguia[27] first considered TransUnion's argument that the verdict had to be overturned because none of the class members, apart from Ramirez, had Article III standing.[28] The court concluded — as a matter of first impression — that at the final judgment stage of a class action, Article III standing for each class member is required, but that the class members had standing in this case.[29] The Ninth Circuit had previously concluded that plaintiffs need not demonstrate the standing of absent class members at the class certification and motion to dismiss stages,[30] nor at the final stage of class actions seeking injunctive relief.[31] However, the panel held that based on the Supreme Court precedents *Town of Chester v. Laroe Estates, Inc.*[32] and *Tyson Foods, Inc. v. Bouaphakeo*[33] and the Rules Enabling Act,[34] parties must show Article III standing to recover a monetary award in their own names.[35]

After establishing that standing for each class member was required, the panel then assessed whether standing — particularly the "injury in

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[22] *Ramirez*, 951 F.3d at 1022.

[23] *Id.*

[24] *Id.* The total damages amounted to about $8 million in statutory damages and $52 million in punitive damages. *Id.*

[25] Order re: Trans Union's Renewed Motion for Judgment as a Matter of Law at 1, Ramirez v. Trans Union, LLC, No. 12-cv-00632 (N.D. Cal. Nov. 7, 2017).

[26] *Ramirez*, 951 F.3d at 1038.

[27] Judge Murguia was joined by Judge Fletcher.

[28] *Ramirez*, 951 F.3d at 1022.

[29] *Id.* at 1023, 1030.

[30] *Id.* at 1023. This is because later, "the district court is well situated to winnow out those non-injured members at the damages phase of the litigation, or to refine the class definition." *Id.* at 1023 n.6 (quoting Torres v. Mercer Canyons Inc., 835 F.3d 1125, 1137 (9th Cir. 2016)).

[31] *Id.* at 1023.

[32] 137 S. Ct. 1645 (2017).

[33] 136 S. Ct. 1036 (2016).

[34] 28 U.S.C. § 2072(b) ("[Rules of procedure] shall not abridge, enlarge or modify any substantive right."). The Ninth Circuit cautioned against "transform[ing] the class action — a mere procedural device — into a vehicle for individuals to obtain money judgments . . . even though they could not show sufficient injury to recover those judgments individually." *Ramirez*, 951 F.3d at 1023–24.

[35] *See Ramirez*, 951 F.3d at 1023–24.

fact" element[36] — had been satisfied for each of the class's claims, concluding that it had been.[37] The panel laid out the Ninth Circuit's two-step inquiry for "determining whether the violation of a statutory right constitutes [the type of] concrete injury" necessary for standing,[38] asking (1) "whether the statutory provisions at issue were established to protect [the plaintiff's] concrete interests" (rather than purely procedural rights), and if so, (2) "whether the specific procedural violations alleged . . . actually harm[ed], or present[ed] a material risk of harm to, such interests."[39]

The court assessed each claim under this framework.[40] Each satisfied Step 1 because "Congress enacted the FCRA, including [the 'reasonable procedures' requirement] 'to protect consumers' concrete interests.'"[41] Similarly, the disclosure and summary-of-rights requirements of the FCRA "work together to protect consumers' interests in having access to the information in their credit reports upon request and understanding how to correct inaccurate information in their credit reports upon receipt."[42] Step 2 was also satisfied: for the reasonable procedures claim, TransUnion's violation was "severe"[43] and risked harm by making credit reports readily available to third parties, sometimes without the consumers even knowing.[44] Thus, all 8,185 class members had been harmed.[45] For similar reasons, the Ninth Circuit ruled that the class members were harmed under the disclosure and summary-of-rights claims.[46]

The panel then turned to TransUnion's other arguments. It rejected TransUnion's contentions that Ramirez had failed to prove that

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[36] The "irreducible constitutional minimum" of standing has three elements: (1) the plaintiff must have suffered an "injury in fact," Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992); (2) the injury must be fairly traceable to the actions of the defendant, *id.*; and (3) it must be "likely" that the injury will be "redressed by a favorable decision," *id.* at 561 (quoting Simon v. E. Ky. Welfare Rts. Org., 426 U.S. 26, 38, 43 (1976)). TransUnion contested only the "injury in fact" element of standing in this case. *Ramirez*, 951 F.3d at 1024.

[37] *Ramirez*, 951 F.3d at 1030.

[38] *Id.* at 1025.

[39] *Id.* (first alteration in original) (quoting Robins v. Spokeo, Inc. (*Spokeo III*), 867 F.3d 1108, 1113 (9th Cir. 2017)).

[40] *See id.* at 1025–26, 1029.

[41] *Id.* at 1025 (quoting *Spokeo III*, 867 F.3d at 1113).

[42] *Id.* at 1029.

[43] *Id.* at 1026.

[44] *Id.* at 1027. The panel noted that, per *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), class members' injuries "may still be concrete even if intangible." *Ramirez*, 951 F.3d at 1024 (citing *Spokeo*, 136 S. Ct. at 1549). In fact, even the "'risk of real harm' to a plaintiff's concrete interest" is sufficient. *Id.* (quoting *Spokeo*, 136 S. Ct. at 1549).

[45] *Ramirez*, 951 F.3d at 1025.

[46] *See id.* at 1029–30.

TransUnion's FCRA violations were willful[47] and that Ramirez's claims were not typical of the class's claims.[48] Finally, the panel addressed TransUnion's claim that the jury's damages awards were unconstitutionally excessive.[49] It rejected TransUnion's arguments relating to statutory damages but ultimately reduced the punitive damages award.[50]

Judge McKeown concurred in part and dissented in part. She agreed both that Article III requires all members of a damages class to have standing at trial and that the punitive damages award was excessive.[51] But she asserted that only the 1,853 class members whose information was disclosed to a third party had standing to bring a reasonable procedures claim, and that only Ramirez had standing to bring the other two claims.[52] Judge McKeown also argued that Ramirez was an atypical class representative.[53]

In creating a new rule requiring Article III standing for absent class members at the damages phase of a class action, the Ninth Circuit joined the minority side in the circuit split over absent class member standing.[54] But the reasoning the Ninth Circuit supplied was flawed. While the panel claimed its holding "clearly follow[ed]"[55] from *Town of Chester* and *Tyson Foods*, neither case, nor the Rules Enabling Act, mandates that Article III standing be shown for absent class members at the damages stage of a class action. The court's contrary ruling risks undermining the core function of the class action.

First, *Town of Chester*'s holding is not clearly applicable to class actions, where the named plaintiff has already requested relief on behalf of the class. *Town of Chester* dealt with an intervenor-of-right that

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[47] TransUnion received "much of the guidance it needed to interpret its obligations under the FCRA with respect to OFAC alerts" as a result of the *Cortez* litigation. *Id.* at 1032; *see also supra* note 16.

[48] *Ramirez*, 951 F.3d at 1033. It was enough that Ramirez's injuries arose from the same actions as the other class members' injuries and their claims rested on the same legal theory. *See id.*

[49] *Id.* at 1034.

[50] *Id.* The court rejected TransUnion's arguments that the punitive damages were duplicative and designed to punish the company for harm to nonparties, *see id.* at 1035–36, but nonetheless concluded TransUnion's conduct was not sufficiently egregious to justify punitive damages so far out of proportion to statutory damages, *see id.* at 1037.

[51] *Id.* at 1038 (McKeown, J., concurring in part and dissenting in part).

[52] *Id.* She stated that the possibility that the credit report containing the OFAC alert would be sent to third parties was not the "discernable, non-conjectural likelihood of harm" required by Article III. *Id.* at 1040. For the disclosure and summary-of-rights claims, Judge McKeown asserted there was no evidence anyone other than Ramirez suffered the same emotional harm he did. *See id.* at 1041.

[53] *See id.* at 1038.

[54] *See* cases cited *supra* note 4; *see also* cases cited *supra* note 3; RUBENSTEIN, *supra* note 2, § 2.3 (noting that "the vast majority of courts . . . heed the basic rule that the standing inquiry focuses on the class representatives, not the absent class members").

[55] *Ramirez*, 951 F.3d at 1023.

asserted the original plaintiff "could not adequately represent [the intervenor's] interest."[56] In summarizing its holding, the Supreme Court declared, "an intervenor must meet the requirements of Article III if the intervenor wishes to pursue relief not requested by a plaintiff."[57] The Court then provided further clarification: "if [the intervenor] *is* 'seeking additional damages in [its] own name,' 'at that point, an Article III inquiry would be required.'"[58] Thus, crucial to the Court's requirement of an Article III assessment was a party whose interests were allegedly inadequately represented by the plaintiff and who affirmatively sought relief different from that sought by the party with Article III standing.

These factors are inapplicable to *Ramirez*. To be sure, damages in *Ramirez* were awarded on a per-class-member basis: thus, adding or subtracting class members would change the defendant's liability, seemingly implicating different relief.[59] But unlike the plaintiff and intervenor in *Town of Chester*, who each focused only on attaining relief for themselves and did not seek damages for the other party,[60] Ramirez's original suit sought relief on behalf of *everyone* in the class.[61] Moreover, the claims alleged by Ramirez were the same across the class.[62] Even the damages awarded were the same for every member of the class,[63] and absent class members neither objected to the damages awarded nor alleged that Ramirez could not adequately represent their interests.[64] The Ninth Circuit should have considered these differences when applying *Town of Chester* to absent class members.

Second, *Tyson Foods* provides little definitive guidance on whether standing is required for absent class members. The panel quoted Chief

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[56] Town of Chester v. Laroe Ests., Inc., 137 S. Ct. 1645, 1649 (2017).

[57] *Id.* at 1648.

[58] *Id.* at 1651 (second alteration in original) (quoting *id.* app. at 47).

[59] *See Ramirez*, 951 F.3d at 1022.

[60] *See Town of Chester*, 137 S. Ct. at 1651–52.

[61] *See Ramirez*, 951 F.3d at 1022; *cf.* Neale v. Volvo Cars of N. Am., LLC, 794 F.3d 353, 364 (3d Cir. 2015) (emphasizing that "a class action is a *representative* action brought by a named plaintiff or plaintiffs"); *id.* at 362–64 (reviewing the history of group litigation and concluding that it "reveals that the class action device treats individuals falling within a class definition as members of a group rather than as legally distinct persons," *id.* at 364).

[62] Ramirez alleged three claims that TransUnion had willfully violated the FCRA. *Ramirez*, 951 F.3d at 1022.

[63] *Id.* To be sure, the panel suggested that there could have been variation in the damages awards. *See id.* at 1033 n.14. But because "TransUnion did not object to the verdict form at the charging conference," "the [district] court . . . instruct[ed] the jury to award the same amount of damages to all class members — regardless of their degree of injury." *Id.*

[64] *See id.* If an objector were to challenge class certification or a damages award, then it might be said that a member of the class sought different relief. But that is not the case for absent class members who do not object and instead participate, albeit passively, in the representative action.

Justice Roberts's concurrence in *Tyson* to assert that federal courts cannot order relief to uninjured plaintiffs;[65] thus, it became necessary to examine Article III standing for absent class members seeking a monetary award.[66] But there are a few problems with using Chief Justice Roberts's concurrence as precedent. First, concurrences generally use reasoning different from that of corresponding majority opinions and lack binding precedential value.[67] Moreover, *Tyson* was a 6–3 decision, and even without Chief Justice Roberts, the opinion of the Court would still retain a majority.[68] But most importantly, the Court explicitly *did not address* the question of whether absent class members needed Article III standing in *Tyson*.[69] Since the Supreme Court did not rule on this question, the Ninth Circuit panel incorrectly characterized its rule as "clearly follow[ing]" from Supreme Court precedent.[70]

Third, Rule 23 does not "modify any substantive right" under the Rules Enabling Act: rather, it simply allows federal courts to hear representative actions involving rights that individually might not be justiciable in federal court. Standing to sue is a jurisdictional limit on federal

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[65] *Id.* at 1023 (citing Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036, 1053 (2016) (Roberts, C.J., concurring)).

[66] *Id.*

[67] Igor Kirman, Note, *Standing Apart to Be a Part: The Precedential Value of Supreme Court Concurring Opinions*, 95 COLUM. L. REV. 2083, 2087 (1995) ("[The majority opinion] was invested with the institutional authority of the Court and, to the exclusion of minority opinions, it came to bear the Court's decisional force in binding lower courts."). Although Chief Justice Roberts quotes the opinion of the Court in *Lewis v. Casey*, 518 U.S. 343 (1996), which does have precedential value, *Lewis* is nonetheless distinguishable from *Ramirez*, *see Tyson*, 136 S. Ct. at 1053 (Roberts, C.J., concurring) (quoting *Lewis*, 518 U.S. at 349). In *Lewis*, Arizona prisoners who alleged that they were denied their constitutional right of access to the courts and to counsel brought a civil rights class action. *Lewis*, 518 U.S. at 346. The district court issued a permanent injunction mandating sweeping changes to the prison system for three groups of prisoners: illiterate prisoners, non–English speaking prisoners, and lockdown prisoners. *See id.* at 347–48. The Supreme Court held that the plaintiffs' specific injuries — being denied access to adequate legal assistance because they were illiterate — could not mandate such widespread changes in the prison system as "special services or special facilities required by non–English speakers, by prisoners in lockdown, and by the inmate population at large." *Id.* at 358. The issue, then, was whether the plaintiffs had *individual standing* to bring the class's claims. And in *Lewis*, the concern animating the Court's standing analysis was that the courts would unconstitutionally usurp the roles of the political branches by granting *injunctive* relief. *See id.* at 349. In *Ramirez,* the putative class sought *damages* under a statute passed by Congress, so no such usurpation was at risk. *See Ramirez*, 951 F.3d at 1022. Moreover, some scholars have argued that the discussion of standing in *Lewis* should be treated as dicta, since the standing determination was not essential to the majority's holding and the petitioners never raised the issue. *See, e.g.*, Jonathan M. D'Andrea, *Does Article III Require Putative Unnamed Class Members to Demonstrate Standing?*, 5 LINCOLN MEM'L U. L. REV. 79, 100–01 (2017).

[68] *Tyson*, 136 S. Ct. at 1041.

[69] *Id.* at 1050 ("[T]he question whether uninjured class members may recover is one of great importance . . . . It is not, however, a question yet fairly presented by this case . . . ."). This conclusion was reached because the petitioner changed its arguments during the case. *See id.* at 1049.

[70] *Ramirez*, 951 F.3d at 1023.

courts.[71] As the Supreme Court explained in *Spokeo v. Robins*,[72] "[standing] doctrine developed . . . to ensure that *federal courts* do not exceed their authority."[73] The jurisdictional limit of standing is distinct from there being a substantive legal wrong: after all, even when plaintiffs might not have standing to bring federal law claims in federal court, state courts can hear those cases.[74] In *Ramirez*, TransUnion undisputedly violated every class member's statutory rights: what remained was whether federal courts have jurisdiction to vindicate those rights.[75] But providing a different way to vindicate a right does not "modify" or "enlarge" it within the meaning of the Rules Enabling Act.[76] Therefore, the Rules Enabling Act provides no independent support for absent class members needing standing in damages class actions.

Neither precedent nor the Rules Enabling Act required the *Ramirez* court's new rule. And ultimately, the rule threatens the core representative function of class actions. In class actions, named plaintiffs represent a passive group of class members. This saves resources by letting "an issue potentially affecting every [class member] be litigated in an economical fashion."[77] Requiring plaintiffs to provide evidence of absent class members' standing risks transforming a class action into many individual suits, creating "unnecessary prosecution of separate actions."[78] In *Ramirez*, the parties were lucky that they could stipulate the facts pertaining to absent class members' injuries.[79] But in a future case with smaller claims, requiring a plaintiff to obtain that information may prove to be an insurmountably costly barrier to the suit. Only time will tell if the Supreme Court maintains the typical approach to analyzing standing in class actions, or if the expansive new rule in *Ramirez* sways them into looking more closely at absent class members.

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[71] *See* United States *ex rel.* Chapman v. FPC, 345 U.S. 153, 156 (1953) (noting that standing is a "specialty of federal jurisdiction").

[72] 136 S. Ct. 1540 (2016).

[73] *Id.* at 1547 (emphasis added).

[74] ASARCO Inc. v. Kadish, 490 U.S. 605, 617 (1989) ("[T]he constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law, as when they are called upon to interpret the Constitution or, in this case, a federal statute.").

[75] *See Ramirez*, 951 F.3d at 1022.

[76] *See* Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 407 (2010) ("What matters is what the rule itself *regulates*: If it governs only 'the manner and the means' by which the litigants' rights are 'enforced,' it is valid; if it alters 'the rules of decision by which [the] court will adjudicate [those] rights,' it is not." (alterations in original) (quoting Miss. Publ'g Corp. v. Murphree, 326 U.S. 438, 446 (1946))); *see also* Joshua P. Davis, Eric L. Cramer & Caitlin V. May, *The Puzzle of Class Actions with Uninjured Members*, 82 GEO. WASH. L. REV. 858, 885 (2014) (arguing that individual and class-wide litigation can be understood as "*alternative* procedural options," neither one of which is "part of the substantive law").

[77] Califano v. Yamasaki, 442 U.S. 682, 701 (1979); *see also* RUBENSTEIN, *supra* note 2, § 1.9 (detailing ways in which "class actions promote administrative efficiency").

[78] D'Andrea, *supra* note 67, at 108–09.

[79] *See Ramirez*, 951 F.3d at 1022.