

SECOND CIRCUIT REVIEW

Expert Analysis

Exploring Standing Issues For Third-Party Intervenors

The strictures of standing under Article III serve as one of many gatekeepers to the federal forum. Earlier this month, the U.S. Court of Appeals for the Second Circuit in *Laroe Estates v. Town of Chester* considered the question of whether to permit intervenors to participate in lawsuits without requiring that they independently possess standing. The court adopted a more expansive construction of the federal judicial power and narrower construction of the case or controversy requirement.

In the decision, written by Judge Raymond Lohier and joined by Judge Guido Calabresi and Judge Gerard E. Lynch, the panel ruled that an intervenor need not independently satisfy Article III's standing requirement when the parties to the underlying litigation have themselves satisfied the Article III standing requirement.

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In *Diamond v. Charles*, decided in 1986, the Supreme Court was confronted with the situation in which a defendant refused to appeal a lower court decision, and an intervenor sought to appeal the decision on its behalf. In determining whether the intervenor had standing to

appeal, the court refused to reach the broader question of whether a third party must satisfy Article III's standing requirements before it could intervene as of right before the a district court. While noting the existence of different approaches in the circuits, the court refused to resolve the split, stating that it "need not decide today whether a party seeking to intervene before a District Court must satisfy not only the requirements of Rule 24(a) (2), but also the requirements of Art. III."¹

Since *Diamond* was decided, six circuits have held that third parties seeking to intervene under Rule 24 need not demonstrate that they possess standing.² However, three circuits have treated standing as an additional requirement for Rule 24 intervenors.³

Prior Proceedings

Laroe Estates involved a land-use dispute. In 2000, Steven M. Sherman applied for subdivision approval from the Town of Chester on a vast plot of land he was in the process of purchasing. After a

decade-long attempt to secure this approval in the face of constantly shifting zoning regulations and red tape erected by the Town of Chester (which prompted the Second Circuit to compare the plight of Sherman to that of Captain John Yossarian, the protagonist of Joseph Heller's "Catch-22"), Sherman filed suit in the Southern District of New York, alleging numerous claims, including a regulatory taking on the part of the Town of Chester.

The Southern District held that the regulatory taking claim was not ripe, and Sherman appealed; the Second Circuit sided with Sherman and remanded with the instruction that the lower court consider Sherman's regulatory taking claim.⁴

After the case was remanded to the Southern District, Laroe Estates, a third party to the dispute, filed a motion to intervene. According to Laroe, it was entitled to intervention as a matter of right under Rule 24(a)(2) because it had previously entered into a purchase agreement with Sherman through which it became the equitable owner of the property in question. Rather than permit the intervention, the Southern District held that Laroe lacked standing because, even under its rendition of the facts, it would merely have been a contract vendee of Sherman's land (which, under New York law, would not have entitled it to bring a takings claim).⁵

Second Circuit Decision

The Second Circuit rejected the lower court's conclusion that a

would-be intervenor must demonstrate Article III standing. First, it rejected the argument that prior Second Circuit precedent required a showing of standing on the part of the intervenor. Relying on an earlier case, *U.S. Postal Service v. Brennan*, the Second Circuit explained that the key question under existing circuit precedent was whether a case or controversy has been adequately established in the underlying litigation between the parties—if so, Article III's strictures are satisfied without any additional showing on behalf of the proposed intervenor.

Additionally, the court ruled that, while the Supreme Court has not expressly resolved the circuit split on the question, it has suggested that standing need not be shown before intervention is available. Here, the Second Circuit relied on the Supreme Court's language in *McConnell v. Federal Election Commission*, where the court refused to reach the question whether an intervenor had standing because it was clear to the court that the defendant, at least, had standing.

Guided by its reading of both Supreme Court and circuit precedent, the Second Circuit in *Laroe* squarely held that motions to intervene may not be denied for lack of standing when a case or controversy between the original parties exists such that they have standing.

The Second Circuit went on to consider whether Laroe satisfied the other requirements of Rule 24(a)(2). In doing so, it rejected the arguments raised by the defendant

that Laroe necessarily failed to meet the requirements; ultimately, it held that the record was insufficiently developed and remanded to the lower court to resolve the question of Laroe's ability to satisfy Rule 24(a)(2).⁶

Conclusion

Article III extends federal judicial power to particular cases and controversies. The Supreme Court has held that in doing so, Article III imposes a set of requirements on litigants—this includes injury in fact, causation, and redressability. The Second Circuit's ruling in *Laroe* means that, for intervenors, these requirements serve as no obstacle.

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1. *Diamond v. Charles*, 476 U.S. 54, 68-69 (1986).

2. *King v. Governor of the State of New Jersey*, 767 F.3d 216 (3d Cir. 2014); *Perry v. Schwarzenegger*, 630 F.3d 898 (9th Cir. 2011); *City of Herriman v. Bell*, 590 F.3d 1176 (10th Cir. 2010); *Dillard v. Chilton Cty. Comm'n*, 495 F.3d 1324 (11th Cir. 2007); *United States v. Tennessee*, 260 F.3d 587 (6th Cir. 2001); *Ruiz v. Estelle*, 161 F.3d 814 (5th Cir. 1998).

3. *City of Chicago v. Fed. Emergency Mgmt. Agency*, 660 F.3d 980 (7th Cir. 2011); *United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829 (8th Cir. 2009); *United States v. Philip Morris USA Inc.*, 566 F.3d 1095 (D.C. Cir. 2009).

4. *Sherman v. Town of Chester*, 752 F.3d 554, 568-69 (2d Cir. 2014).

5. *Sherman v. Town of Chester*, 2015 WL 1473430, at *15-16 (SDNY March 31, 2015).

6. *Laroe Estates v. Town of Chester*, 2016 WL 3615777 (2d Cir. July 6, 2016).