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Hanging in the Balance: Supreme Court Declines to Decide the Uninjured Class Member Question in Labcorp v. Davis

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Labcorp v. Davis brought a pivotal question to the fore: Can a court certify a class under Federal Rule of Civil Procedure 23(b)(3) that includes uninjured members? The case had the potential to significantly affect forum selection for class actions and determine plaintiffs' burden in defining a certifiable class. Indeed, the Supreme Court explicitly left this question open in *TransUnion v. Ramirez*, declining to "address the distinct question whether every class member must demonstrate standing *before* a court certifies a class."[1] While *Labcorp* arose under the Americans with Disabilities Act, the Court's resolution, or lack thereof, carries major implications for antitrust class actions, where the inclusion of uninjured members is a recurring and hotly contested issue. But on June 5, 2025, the Court sidestepped the merits entirely, dismissing the writ of certiorari as improvidently granted.

Class Certification Exerts Undue Pressure on Defendants

Class certification is sometimes referred to as the "death knell" of a class action because it can exert extraordinary pressure on defendants to settle, regardless of the merits. The prospect of potentially massive class-wide liability—even when many class members suffered no injury—can compel defendants to settle weak or meritless claims simply to avoid the risk of an outsized judgment. Defining a class to include large numbers of uninjured members inflates that pressure and raises the stakes considerably. A ruling that limits classes to injured

members would be a meaningful win for class-action defendants, helping to curb overbroad class definitions.

This concern is particularly acute in antitrust litigation, where the presence of uninjured class members often becomes a central battleground. Defendants in antitrust class actions regularly argue that a class should not be certified because the putative class includes uninjured class members, such as those who did not transact in the affected market or who were not harmed by alleged anticompetitive conduct. Including such individuals in a class raises serious questions under Rule 23(b)(3)'s predominance requirement and Article III standing, and courts are divided on whether these defects are fatal to certification.

SCOTUS' Dismissal of the Case

The Court initially granted certiorari in *Labcorp* to resolve an entrenched circuit split over whether a court can certify a class that includes uninjured members. Two circuits—the Second[2] and Eighth[3]—have endorsed the strictest standard, effectively requiring district courts to deny class certification if a putative class contains uninjured class members. The First[4] and D.C. Circuits[5] have taken a more flexible approach, applying the predominance requirement to reject classes that contain more than a de minimis number of uninjured members. Meanwhile, the Ninth,[6] Seventh,[7] and Eleventh Circuits[8] take a permissive view: the presence of uninjured class members should not ordinarily prevent certification, unless there is a really large number of uninjured members. The circuit split has led to forum shopping and inconsistent outcomes, highlighting the need for a uniform standard.

This patchwork approach has major consequences for antitrust defendants. The permissive standards in some circuits will enable plaintiffs to pursue sweeping antitrust class actions despite the presence of numerous uninjured class members, while stricter circuits offer a path to defeat certification altogether. These disparities make the uninjured class member issue a key consideration in forum selection and litigation strategy.

Labcorp provided a vehicle for resolving this circuit split. The plaintiff alleged on behalf of a putative class of blind individuals that Labcorp's self-service kiosks were inaccessible in violation of the Americans with Disabilities Act. In May 2022, the district court certified a broad class that included all blind individuals who had been denied the full enjoyment of Labcorp's services because they could not use the self-service kiosks—regardless of whether they even wanted to use the kiosks.[9] Labcorp challenged the class definition as overly broad, noting that it included individuals who not only lacked injury but may have preferred *not to* use the kiosks. That, the company contended, made certification improper under Article III. Three months later, while Labcorp's appeal was pending, the district court certified a narrower class that excluded some individuals who were uninjured. Importantly, the court stated that the refined class definition does not "materially alter the composition of the class or materially change in any manner" the May 2022 order.[10]

A Procedural Misstep Derails the Case

The Ninth Circuit affirmed the district court's decision certifying the May 2022 class definition.[11] Labcorp sought review, and the Supreme Court granted cert in January 2025.

Ultimately, the Supreme Court came to doubt that the case presented a live issue. The plaintiffs argued during briefing that the May order was no longer in effect because it had been superseded by the August order, from which Labcorp failed to appeal. At oral argument, the Justices focused on this procedural wrinkle and concluded that the Court could not reach the substantive question on which it originally granted review. On June 5, the Court issued a one-sentence order dismissing the writ as improvidently granted.[12] This outcome, common when the Court finds that the case does not cleanly present the legal question it hoped to resolve, effectively ends the matter without a decision on the merits.

Justice Kavanaugh dissented from the order dismissing the writ, stating that he would have reached the merits and rejected the broader class as inconsistent with Article III and class certification standards. He explained that Labcorp could not have appealed the August 2022 class certification order because only orders that materially change the original certification decision are appealable under Rule 23(f), and the district court explicitly stated that the August order did not materially change the May order.[13]

Hanging in the Balance—Still

The Supreme Court's dismissal leaves unresolved the issue of whether courts can certify a class with uninjured class members. Until the Court weighs in, antitrust defendants must pay close attention to the forum's stance on uninjured class members. Beyond the antitrust context too, businesses in highly regulated industries like healthcare, technology, and financial services, must continue to navigate a fragmented legal landscape. A strict standing requirement would make it easier to defeat overbroad classes and reduce litigation exposure. A more flexible rule would preserve plaintiffs' ability to certify broader classes, increasing the risk and cost of defending these actions. While *Labcorp* could have delivered long-awaited clarity, the underlying question remains open.

With the issue continuing to divide the circuits and complicate class-action litigation nationwide, it seems only a matter of time before the Court takes up another case to resolve this issue on the merits. In the meantime, class-action defendants should ensure that their litigation strategies preserve objections to certification based on standing at every available opportunity to position themselves for appeal when the next opportunity arises.

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[1] *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 n.4 (2021).

[2] *Denney v. Deutsche Bank AG,* 443 F.3d 253, 264 (2d Cir. 2006).

[3] *Johannessohn v. Polaris Indus. Inc.*, 9 F.4th 981, 988 & n.3 (8th Cir. 2021).

[4] *United Food & Commer. Workers Unions & Emplrs. Midwest Health Bens. Fund v. Warner Chilcott Ltd. (In re Asacol Antitrust Litig.)*, 907 F.3d 42, 53-54 (1st Cir. 2018).

[5] *In re Rail Freight Fuel Surcharge Antitrust Litig.,* 934 F.3d 619, 624 (D.C. Cir. 2019).

[6] *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1137 n.6 (9th Cir. 2016); *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651,669 (9th Cir. 2022).

[7] *Kohen v. Pac. Inv. Mgmt. Co.*, 571 F.3d 672, 677 (7th Cir. 2009).

[8] *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1267 (11th Cir. 2019).

[9] Order Re: Motion for Class Certification at 24, *Lab'y Corp. of Am. Holdings*, No. 2:20-cv-00893-FMO-KS (C.D. Cal. May 23, 2022).

[10] *Lab'y Corp. of Am. Holdings v. Davis,* 145 S. Ct. 1608, 1610 (2025) (quoting Order Re: Motion to Refine Class Definition at n.10, *Davis v. Lab'y Corp. of Am. Holdings*, No. 2:20-cv-00893-FMO-KS (C.D. Cal. Aug. 4, 2022)).

[11] *Davis v. Lab'y Corp. of Am. Holdings,* No. 22-55873, 2024 WL 489288, at *2 (9th Cir. Feb. 8, 2024), cert. granted in part, 145 S. Ct. 1133, 220 L. Ed. 2d 428 (2025), and cert. dismissed as improvidently granted, 145 S. Ct. 1608 (2025).

[12] 145 S. Ct. at 1608.

[13] *Id.* at 1611.

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