No. 14–253

In the Supreme Court of the United States

COMMON CAUSE, ET AL.,
Petitioners,

v.

JOSEPH R. BIDEN, JR., ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Do Members of the House of Representatives, private citizens, or a non-profit organization have standing to sue four Senate officers (the Vice President, the Secretary of the Senate, the Senate Sergeant at Arms, and the Senate Parliamentarian) to challenge the constitutionality of Senate Rule XXII, the Cloture Rule, because of the Senate's failure to close debate on two bills during the 111th Congress?

PARTIES TO THE PROCEEDING

The eight petitioners are the plaintiffs in this suit and were the appellants in the court of appeals: Common Cause, Representative John Lewis, Representative Michael Michaud, Representative Henry Johnson, Representative Keith Ellison, Erika Andiola, Celso Mireles, and Caesar Vargas.

The four respondents are the defendants in this suit and were the appellees in the court of appeals: Vice President Joseph R. Biden, Jr., in his official capacity as President of the Senate; Nancy Erickson, in her official capacity as Secretary of the Senate; Andrew B. Willison[1], in his official capacity as Senate Sergeant at Arms and Doorkeeper; and Elizabeth MacDonough, in her official capacity as Parliamentarian of the Senate.

[1] Mr. Willison succeeded Terrance Gainer as Senate Sergeant at Arms and Doorkeeper, and he is substituted as a defendant in his official capacity in place of Mr. Gainer.

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Respondents Vice President Joseph R. Biden, Jr., Secretary of the Senate Nancy Erickson, Senate Sergeant at Arms Andrew B. Willison, and Senate Parliamentarian Elizabeth MacDonough (collectively "respondents" or "defendants"), submit this brief in opposition to the petition for a writ of certiorari filed by petitioners Common Cause, Representative John Lewis, Representative Michael Michaud, Representative Henry Johnson, Representative Keith Ellison, Erika Andiola, Celso Mireles, and Caesar Vargas (collectively "petitioners" or "plaintiffs").

Petitioners brought this suit against four Senate officials alleging that Senate Rule XXII[2]—the Cloture Rule—prevented passage of two pieces of legislation in the 111th Congress that would have benefitted them: the DREAM Act of 2010, H.R. 5281 and S. 3992 (providing relief from removal to certain aliens who entered the United States as children), and the DISCLOSE Act, H.R. 5175 and S. 3628 (requiring disclosure of certain independent expenditures and campaign-related activity in elections). Petitioners' complaint asserts that the Senate's Cloture Rule is unconstitutional because it requires 60 votes to close debate on a matter before the Senate.

This suit is one of a handful of cases over the past two decades brought by persons or entities outside the Senate to challenge the Senate's Cloture Rule. These lawsuits have sought to have the courts intrude into the Senate's legislative procedures, rewrite the Senate's rules, and oversee its floor proceedings. Not surprisingly, courts (including the lower courts in this suit) uniformly have declined on jurisdictional grounds to entertain these suits, finding that they do not present a case or controversy under Article III of the Constitution. *Common Cause v. Biden*, 909 F. Supp. 2d 9 (D.D.C. 2012), *aff'd*, 748 F.3d 1280 (D.C. Cir. 2014); *Patterson v. United States Senate*, No. C 13-2311 SBA, 2014 WL 1349720 (N.D. Cal. Mar. 31, 2014), *appeal docketed*, No. 14-15899 (9th Cir. May 6, 2014); *Judicial Watch, Inc. v. United States Senate*, 340 F.

[2] Senate Rule XXII is provided in the appendix hereto. Senate rules cited herein are located in Senate Comm. on Rules and Admin., 113th Cong., *Standing Rules of the Senate*, S. Doc. No. 113-18 (2013), *available at* http://www.gpo.gov/fdsys/pkg/CDOC-113sdoc18/pdf/CDOC-113sdoc18.pdf.

Supp. 2d 26 (D.D.C. 2004), *aff'd*, 432 F.3d 359 (D.C. Cir. 2005); *Page v. Shelby*, 995 F. Supp. 23 (D.D.C.), *aff'd*, 172 F.3d 920 (D.C. Cir. 1998) (table); *Page v. Dole*, No. 93-1546 JHG (D.D.C. Aug. 18, 1994), *vacated as moot*, No. 94-5292, 1996 WL 310132 (D.C. Cir. May 13, 1996). As in the prior challenges to the Cloture Rule, the district court here concluded that petitioners lack standing, and the court of appeals affirmed. Petitioners offer no grounds that merit this Court's certiorari review of the decision below as the court of appeals' decision is well-grounded in this Court's precedents and accords with the rulings of all other courts to have addressed Article III standing in cases challenging the Senate's Cloture Rule.

STATEMENT OF THE CASE

A. The History of the Senate Cloture Rule

From the first Senate in 1789 until 1806, the Senate's procedures provided for a motion for the "previous question," which permitted a majority to determine whether matters on the Senate's calendar should be postponed or considered. *See* 1 Annals of Cong. 21 (1789) (Joseph Gales ed., 1834). Then, for more than 100 years, from 1806 to 1917, there was no mechanism for closing debate over the objection of a Member who wished to speak. The Senate followed the practice that a question remains open until every Member who desires has spoken.

By the early 20th century, the increased intensity, frequency, and success of what had come to be termed "filibusters"—an attempt by one or more Senators to prevent or forestall the Senate from voting on a pending matter by continuing to debate

it—led to demands for reform of the Senate's rules for floor debate. In 1917, the Senate adopted a rule to provide for closing debate over the objection of a Senator—a "Cloture Rule." That rule provided that whenever 16 Senators moved to close debate on any pending measure, the presiding officer would, after a two-day hiatus, submit to the Senate, without debate, the question, "Is it the sense of the Senate that the debate shall be brought to a close?" If two-thirds of Senators voted in the affirmative, the measure would become the pending business to the exclusion of all other business until the Senate disposed of it, and debate would be limited to one hour for each Member. The rule restricted amendments after cloture was invoked and also prohibited dilatory motions and non-germane amendments.[3]

The Senate has considered and made various modifications to the Cloture Rule since its adoption. In 1949, the Senate extended the Cloture Rule to apply to debate on motions and other pending matters and increased the number of votes required to invoke cloture from two-thirds of those voting to two-thirds of total Senate membership, while continuing to exclude from the Cloture Rule motions to proceed to resolutions to amend Senate rules. *See* 95 Cong. Rec. 2509-10, 2724 (1949); Rules Committee, *Cloture Rule* at 20-21, 191-92. In 1959, the Senate reduced the number of votes required to in-

[3] *See* 55 Cong. Rec. 19 (1917); Senate Comm. on Rules and Admin., 112th Cong., *Senate Cloture Rule: Limitation of Debate in the Senate of the United States and Legislative History of Paragraph 2 of Rule XXII of the Standing Rules of the United States Senate (Cloture Rule)*, S. Prt. No. 112-31, at 185-86 (Comm. Print 2011) [hereinafter "Rules Committee, *Cloture Rule*"], *available at* http://www.gpo.gov/fdsys/pkg/CPRT-112SPRT66046/pdf/CPRT-112SPRT66046.pdf.

voke cloture from two-thirds of Senate membership back to the original requirement of two-thirds of Members present and voting, *see* Rules Committee, *Cloture Rule* at 24, 197, made motions to proceed to resolutions to amend the Senate rules subject to cloture for the first time, *see id.*, and codified the existing understanding, from the First Congress onward, that the Senate's rules continue from one Congress to the next. *See id.* at 24-25, 196-97; 105 Cong. Rec. 8, 494 (1959); *see also* Senate Rule V ("The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.").

The Cloture Rule was amended again in 1975, when the number of votes to invoke cloture was reduced to three-fifths of total Senate membership, *see* 121 Cong. Rec. 5650-52 (1975), though the vote required to invoke cloture on resolutions to change Senate rules remained two-thirds of those present and voting. In 1979 and 1986, the Senate changed the number of amendments permitted and the time allotted for debate after cloture is invoked. *See* 125 Cong. Rec. 3037-38, 3194 (1979); 132 Cong. Rec. 3156-57 (1986).

In the current Congress (the 113th), the Senate has again made modifications to the Cloture Rule, providing alternative mechanisms for limiting debate on motions to proceed and on motions authorizing conference committees with the House. *See* S. Res. 15, 113th Cong., 159 Cong. Rec. S272 (daily ed. Jan. 24, 2013) (providing for standing order applicable to 113th Congress); S. Res. 16, 113th Cong., 159 Cong. Rec. S274 (daily ed. Jan. 24, 2013) (amending Senate Rule XXII). In addition, in November 2013, through rulings on a series of points of order during

debate on a judicial nomination, the Senate by a 52-48 vote set the precedent that "the threshold for cloture on nominations, not including those to the Supreme Court of the United States, is now a majority." 159 Cong. Rec. S8418 (daily ed. Nov. 21, 2013).

B. Proceedings Below

Petitioners, four House Members, Common Cause, and three alleged beneficiaries of the proposed DREAM Act, filed this suit on May 14, 2012, alleging that they were injured by the failure of the Senate to close debate on the DREAM and DISCLOSE Acts in the prior Congress and challenging the constitutionality of the Senate's Cloture Rule. Defendants moved to dismiss the complaint for lack of jurisdiction. The district court granted that motion on the grounds that petitioners lack standing and their claims present a non-justiciable political question. Dist. Ct.'s Mem. Op. in Appendix to Pet. for Writ of Cert. ("Pet. App.") 12, 57. As to standing, the district court held that none of the plaintiffs demonstrated the necessary injury-in-fact, causation, and redressability for Article III standing, including finding that the House Member plaintiffs lacked standing under this Court's decision in *Raines v. Byrd*, 521 U.S. 811 (1997). Pet. App. 24-46.

The district court also found that the complaint presented a non-justiciable political question under three of the *Baker v. Carr*, 369 U.S. 186, 217 (1962), factors, concluding that plaintiffs' claims involve a matter textually committed by the Constitution to the Senate in the Rulemaking Clause, art. I, § 5, cl. 2; Pet. App. 48-53 (citing *Nixon v. United States*, 506 U.S. 224 (1993)), that courts lack judi-

cially manageable standards for reviewing the Senate's rules governing debate, *id.* at 53-54, and that resolution of plaintiffs' claims would "require an invasion into internal Senate processes at the heart of the Senate's constitutional prerogatives as a House of Congress, and . . . thus express a lack of respect for the Senate as a coordinate branch of government." *Id.* at 55.

On appeal, the Court of Appeals for the D.C. Circuit affirmed the dismissal for lack of standing. Ct. of Appeals' Opinion in Pet. App. 1-10. The court held that plaintiffs lacked standing because none of the defendants—the Vice President, Secretary of the Senate, Sergeant at Arms, or Parliamentarian—caused plaintiffs' alleged injuries from the failure of the Senate to close debate on the DREAM and DISCLOSE Acts. Pet. App. 8-10. The court explained that "[t]he *Senate* established the cloture rule and the *Senators* voting against cloture doomed the DREAM and DISCLOSE bills," *id.* at 9 (emphasis added), not any of the defendants. Accordingly, as plaintiffs' alleged injuries were not caused by any of the defendants, the court of appeals held that plaintiffs lacked Article III standing. *Id.*[4]

[4] The court of appeals found it "apparent" why plaintiffs chose not to sue the Senate or any Senators, namely, because debate and voting on proposed bills constitutes "legislative action" for which Senators are absolutely protected from suit under the Speech or Debate Clause of the Constitution, art. I, § 6, cl. 1. Pet. App. 6-7.

REASONS FOR DENYING THE PETITION

I. THE DECISION BELOW DOES NOT CONFLICT WITH ANY DECISION OF OTHER COURTS OF APPEALS NOR OF THIS COURT.

Petitioners do not identify any decision of other courts of appeals that conflicts with the decision below. And there is none. Indeed, as noted above, *supra* at 2-3, every case challenging the Senate's Cloture Rule has been dismissed on jurisdictional grounds for lack of standing.[5]

Lacking any conflict in the circuits, petitioners argue that the decision below conflicts with this Court's precedents in three ways. First, petitioners assert that the decision below "nullifies" the Court's decisions in *United States v. Ballin*, 144 U.S. 1 (1892), *United States v. Smith*, 286 U.S. 6 (1932), and *Yellin v. United States*, 374 U.S. 109 (1963). Pet. for Writ of Cert. ("Pet.") 22-23. Second, petitioners claim that the ruling below conflicts with the decisions of this Court that permit challenges to the constitutionality of statutes, congressional resolutions, and executive orders to be brought against subordinate government officials. *Id.* at 24-27. Third, petitioners assert that the court of appeals' decision conflicts with the Court's precedents that require alleged injuries-in-fact merely be "fairly traceable" to the actions of defendants to establish Article III standing. *Id.* at 27-32. None of these ar-

[5] One recent case that was dismissed for lack of standing by the district court is currently on appeal to the Ninth Circuit. *Patterson v. United States Senate*, No. C 13-2311 SBA, 2014 WL 1349720 (N.D. Cal. Mar. 31, 2014), *appeal docketed*, No. 14-15899 (9th Cir. May 6, 2014).

guments demonstrates any conflict between the decision below and any of this Court's precedents.

A. The Decision Below Does Not Conflict With *Ballin*, *Smith*, or *Yellin*.

The decision below does not conflict with *Ballin*, *Smith*, or *Yellin*—indeed, those cases did not even raise any question of standing under Article III. *Ballin* was a suit against the United States challenging the duties assessed on imported goods, and the plaintiff there alleged that the statute classifying the goods had not passed the House of Representatives for lack of a quorum and that the House rule for determining a quorum was unconstitutional. 144 U.S. at 4-5. The Court had no need to address—and did not address—the plaintiff's standing. Contrary to the instant case, in *Ballin* there was no question that the defendant (the United States) had caused the plaintiff's injury by imposing a higher duty on the plaintiff's imported goods than what plaintiff claimed was due.

There is also no conflict with *Smith* or *Yellin*. *Smith* involved a challenge to the validity of a Presidential appointment when the Senate, after having sent notice of its confirmation of the appointment, reconsidered that confirmation and voted not to consent to the nomination. 286 U.S. at 27-30. *Smith* did not involve in any way the question of Article III standing of the plaintiff to bring that action; indeed, the suit was brought by the United States seeking a writ of quo warranto to resolve whether the appointee lawfully held office. *Id.* at 26.

Yellin was an appeal by a criminal defendant who had been convicted of contempt of Congress for refusing to answer questions from a congressional committee that had subpoenaed his testimony. 374

U.S. at 111. This Court overturned the conviction because the committee had not complied with its own rules in considering the defendant's request to testify in executive session. *Id.* at 121-23. There was no issue of standing nor of Article III jurisdiction before the court in this criminal action brought by the United States against Yellin.

B. The Ruling Does Not Affect the Court's Precedents Permitting the Constitutionality of Statutes, Resolutions, and Executive Orders To Be Challenged by Suing Subordinate Officials.

Petitioners suggest that the court of appeals' decision "nullifies" Supreme Court precedent that allows the constitutionality of statutes, congressional resolutions, and executive orders to be challenged by suing subordinate officials. Pet. 24. They make the extraordinary claim that "if the ruling of the court of appeals is correct," past cases as varied as *Marbury v. Madison*, 5 U.S. (1 Cranch) 37 (1803), *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012), *Powell v. McCormack*, 395 U.S. 486 (1969), and *Kilbourn v. Thompson*, 103 U.S. 168 (1881), "were wrongly decided." Pet. 27.

Such a claim is baseless. The court of appeals in this case held that petitioners lacked standing to bring their claims as the defendants they sued did not cause their alleged injuries. Pet. App. 8-10. Nothing in the opinion calls into question the ability of injured plaintiffs to sue government officers charged with carrying out government actions that are alleged to have injured plaintiffs, whether those actions are required by statute (*National Federation*

of Independent Business) or Presidential directives (*Marbury*, *Youngstown*) or House resolution (*Powell*, *Kilbourn*), so long as the officers sued have actually taken, or are reposed with the authority of taking, the action causing the alleged injury. The court of appeals in this case held that the named defendants were not the proper defendants for plaintiffs' suit not because they were "subordinate," but because they had neither taken any action, nor had the authority to take any action, that caused plaintiffs' alleged injury.

C. The Decision Below Does Not Contradict This Court's Precedent on the Causation Requirement for Article III Standing.

Petitioners also assert that the court of appeals improperly applied a more rigorous test for the causation element of standing than required by this Court's precedents. Pet. 27-31. Specifically, petitioners maintain that the court below required defendants' actions to be the "primary" or "proximate" cause of their alleged injuries, rather than merely that those injuries be "fairly traceable" to the defendants. *Id.* at 28. And, petitioners argue, the "fairly traceable" standard is satisfied when the defendants have "participated in the challenged conduct," which, they assert, the Senate defendants had in this case. *Id.* at 28-29 (emphasis in original) (citing *Powell*, 395 U.S. at 504).

This argument is without any merit. The court of appeals properly applied this Court's standing test, as set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), and its progeny, requiring that the alleged injury be caused by the actions of defendants and not some absent third party not before the court. Pet. App. 8 (citing *Clapper v. Am-*

nesty Int'l U.S.A., 133 S. Ct. 1138, 1146-47 (2013)). Nowhere in its decision did the court of appeals use the terms "primary cause" or "proximate cause." The court of appeals concluded that, as the enactment and amendment of Senate rules, debate on matters before the Senate, and votes on motions to invoke cloture are all legislative actions by Members of the Senate and not the defendant Senate officers, *id.* at 9-10, plaintiffs' "alleged injury was caused not by any of the defendants, but by an absent third party—the Senate itself." *Id.* at 10 (internal quotation marks and citation omitted). Neither the court's causation analysis nor its conclusion that petitioners lack standing conflicts with any of this Court's precedents.

Petitioners' reliance on *Powell v. McCormack* to demonstrate a conflict with the Court's standing decisions is also unavailing. In that case, the House of Representatives had voted to exclude then re-elected Representative Adam Clayton Powell, and, given his exclusion, the House Sergeant at Arms withheld Powell's congressional salary. 395 U.S. at 493. When Powell brought suit challenging his exclusion, the Court allowed the suit to proceed against House officers (though not against Members) because of specific actions taken by the House officers, particularly their withholding of salary payments. *Id.* at 496-506. Here, unlike in *Powell*, petitioners have not identified any action by the defendant Senate officers that caused their alleged injuries from the failure of the Senate to close debate on the DREAM and DISCLOSE Acts.

Indeed, none of the named defendants are permitted to participate in debate, *see* Senate Rule XIX; Floyd M. Riddick and Alan S. Frumin,

Riddick's Senate Procedure: Precedents and Practices, S. Doc. No. 101-28, at 717 (Alan S. Frumin ed., rev. ed. 1992) ("Debate is the prerogative of Senators on the floor."), to vote on any bill, nomination, or motion, *see* Senate Rule XII, to close debate, *see* Senate Rule XXII (cloture motion must be signed by sixteen Senators); Senate Rule XIX (no Senator shall be interrupted in debate without his or her consent); *Riddick's Senate Procedure* at 750-52, to adopt or amend Senate rules, *Riddick's Senate Procedure* at 1026 (Vice President "has no rule-making power over the Senate"), or to compel the Senate to vote on any measure. Consequently, any injury purportedly caused by the Senate's failure to close debate and vote on legislation, as the court below recognized, Pet. App. 9-10, cannot be caused by, or be fairly traced to, the named Senate officers.

Petitioners' claim that the decision below conflicts with the reasoning in *Bennett v. Spear*, 520 U.S. 154 (1997), is also incorrect. That case involved water restrictions in the federally managed Klamath Project that were implemented by the Bureau of Reclamation based on an opinion provided by the Fish and Wildlife Service (FWS) under the Endangered Species Act. *Id.* at 158-59. Two irrigation districts that received water from the Klamath Project brought suit challenging the issuance of the FWS opinion. *Id.* at 159. The Court held that the plaintiffs had standing to challenge the FWS opinion, even though the Bureau of Reclamation and not FWS ultimately imposed the water restrictions, because the FWS opinion "alter[red] the legal regime to which the action agency [Bureau of Reclamation] is subject," *id.* at 169, making the FWS opinion "virtually determinative" of the water re-

strictions to be imposed. *Id.* at 170. Petitioners argue that the Parliamentarian's advice to the Senate is analogous to the FWS opinion to the Bureau of Reclamation, and, therefore, their injuries are "fairly traceable" to the Parliamentarian under *Bennett's* reasoning. However, unlike the FWS opinion, the Parliamentarian's role is wholly advisory and does not "alter the legal regime" under which the Senate ultimately decides points of order before the body. Consequently, the Parliamentarian's advice to the Senate does not constitute a "fairly traceable" cause of the petitioners' alleged injuries under the reasoning of *Bennett*.[6]

II. PETITIONERS' OTHER REASONS FOR GRANTING CERTIORARI DO NOT PRESENT ANY IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE SETTLED BY THIS COURT.

Petitioners offer two other grounds for granting review. First, they suggest that certiorari is warranted because the court of appeals' ruling "will make it impossible not only for these petitioners, but for any future plaintiffs to challenge the constitutionality of a Senate rule." Pet. 20. Yet, the court of appeals' ruling that plaintiffs lack standing depends on the particular circumstances of this

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[6] Similarly, rulings by the Vice President, or any Senator, when presiding over the Senate, are subject entirely to appeal and determination by the Senate. *See Riddick's Senate Procedure* at 146 ("Decisions of the Chair are subject to appeal and by a majority vote the Senate may reverse or overrule any decision by the Chair."). In any event, as the court of appeals noted in its decision, the Vice President was not presiding over the Senate during the cloture votes on either the DREAM Act or the DISCLOSE Act. *See* Pet. App. 10.

case, namely, the specific allegations of injury asserted by plaintiffs, the cause of that alleged injury and its redressability, the particular Senate rule involved, and the manner in which that rule is interpreted and applied. Speculation regarding the effect of the decision below, which relied faithfully on the well-established precedents of this Court, on possible future cases challenging the constitutionality of Senate rules is not a basis for granting certiorari.[7]

Equally unworthy of certiorari is the petitioners' argument that denying standing to petitioners is inconsistent with the objectives of Article III. Pet. 32. Contrary to petitioners' understanding, the "case or controversy" requirement of Article III does not serve merely to ensure the adverseness of the parties or a vigorous defense against the suit, or to protect against advisory opinions. *Id.* at 32-33. Rather, as this Court has made clear, Article III's case or controversy requirement, and its standing element, is "part of the basic charter promulgated by the Framers of the Constitution," *Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 476 (1982), and, thus, "the law of Art. III standing is built on a single basic idea—the idea of separation of powers." *Raines*, 521 U.S. at 820 (quoting *Allen v. Wright*, 468 U.S. 737, 752 (1984)). Article III's

[7] That one plaintiff may lack standing to challenge congressional action does not necessarily preclude other plaintiffs asserting different injuries from establishing standing to challenge the same action. *Compare Raines*, 521 U.S. at 829-30 (holding that Members of Congress lacked standing to challenge Line Item Veto Act), *with Clinton v. City of New York*, 524 U.S. 417, 429-36 (1998) (holding that private plaintiffs had standing to challenge Line Item Veto Act).

standing requirement ensures the proper relationship of the courts to the other branches of government under our constitutional system, and, for that reason, the standing inquiry is "especially rigorous" in cases such as this one, where "reaching the merits of the dispute would force [the Court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." *Id.* at 819-20. The decision below properly applied such a rigorous standing analysis, and its conclusion accords fully with the underlying separation-of-powers objective served by the standing doctrine.

III. THE DECISION BELOW IS ADDITIONALLY UNSUITED FOR REVIEWING THE STANDING QUESTION PRESENTED BY PETITIONERS BECAUSE ALTERNATIVE BASES FORECLOSE JURISDICTION IN THIS CASE.

This case is not suitable for certiorari review because the courts lack jurisdiction over petitioners' suit on three independent grounds in addition to lack of causation: (1) their allegations fail to satisfy the other two elements of standing—injury-in-fact and redressability; (2) their claims present a nonjusticiable political question; and (3) the Speech or Debate Clause of the Constitution bars their suit.

First, as the district court concluded, plaintiffs' allegations do not satisfy the other two elements of standing—injury-in-fact or redressability. None of the plaintiffs—Common Cause, the House Members, or the three individual plaintiffs—have alleged a concrete and particularized injury-in-fact sufficient for standing. Pet. App. 25-34, 38-45. In addition, none can demonstrate that a favorable de-

cision is likely to redress the alleged injuries, as courts lack the power to order the Senate to close debate and vote on any piece of legislation or change any Senate rules. Even if the Court could rewrite the Senate's rules to provide for majority cloture (as plaintiffs seek), redressability would remain elusive as the DREAM Act and DISCLOSE Act bills pending in the 111th Congress lapsed at the end of that Congress. Whether the Senate would take up and pass similar bills in the present or next Congress should the Cloture Rule be invalidated—not to mention whether such legislation would then pass the House and be signed into law—is entirely too speculative to render any relief "likely" to redress plaintiffs' injuries. *See id.* at 37. Hence, beyond their failure to demonstrate causation, plaintiffs' allegations do not establish standing as they cannot demonstrate injury-in-fact or redressability.

Second, as the district court below held, *id.* at 46-56, though not reached by the court of appeals, plaintiffs' complaint presents a non-justiciable political question under three of the factors recognized in *Baker v. Carr*, 369 U.S. at 217. First, the Constitution commits to the Senate the authority to "determine the Rules of its Proceedings," Art. I, § 5, including how much time to spend debating a matter and when to bring pending business to a vote. *Cf. Nixon v. United States*, 506 U.S. 224, 230-38 (1993) (non-justiciable textual commitment to Senate of "sole Power to try all Impeachments"). Second, courts lack manageable standards for judging how much debate to allow on any measure or the proper procedures for regulating debate and bringing a measure to a vote. Third, judicial consider-

ation of plaintiffs' claims would require this Court to intrude into and oversee the Senate's internal deliberations, thereby showing a lack of respect due a coequal branch.

Third, the Speech or Debate Clause, U.S. Const. art. I, § 6, cl. 1, precludes jurisdiction over this suit. Under that Clause, Senate officers are absolutely immune from suit for any legislative actions supporting the Senate in carrying out debate under its rules because such acts fall squarely within the sphere of legitimate legislative activity protected from questioning by the Clause. *See Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 501-02, 507 (1975); *Gravel v. United States*, 408 U.S. 606, 618 (1972) (Speech or Debate Clause "applies not only to a Member but also to his aides insofar as the conduct of the latter would be a protected legislative act if performed by the Member himself").

Accordingly, as alternative bases, beyond the lack of causation by defendants found by the court of appeals, foreclose jurisdiction over petitioners' suit, this case does not present a suitable vehicle for reviewing the standing question presented by petitioners.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

RULE XXII

PRECEDENCE OF MOTIONS

1. When a question is pending, no motion shall be received but—

To adjourn.

To adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain.

To take a recess.

To proceed to the consideration of executive business.

To lay on the table.

To postpone indefinitely.

To postpone to a day certain.

To commit.

To amend.

Which several motions shall have precedence as they stand arranged; and the motions relating to adjournment, to take a recess, to proceed to the consideration of executive business, to lay on the table, shall be decided without debate.

2. Notwithstanding the provisions of rule II or rule IV or any other rule of the Senate, at any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, motion, other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer, or clerk at the direction of the Presiding Officer, shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the clerk call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without de-

bate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?" And if that question shall be decided in the affirmative by three-fifths of the Senators duly chosen and sworn—except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting—then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close, unless it had been submitted in writing to the Journal Clerk by 1 o'clock p.m. on the day following the filing of the cloture motion if an amendment in the first degree, and unless it had been so submitted at least one hour prior to the beginning of the cloture vote if an amendment in the second degree. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

After no more than thirty hours of consideration of the measure, motion, or other matter on which

cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all amendments not then actually pending before the Senate at that time and to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins. The thirty hours may be increased by the adoption of a motion, decided without debate, by a three-fifths affirmative vote of the Senators duly chosen and sworn, and any such time thus agreed upon shall be equally divided between and controlled by the Majority and Minority Leaders or their designees. However, only one motion to extend time, specified above, may be made in any one calendar day.

If, for any reason, a measure or matter is reprinted after cloture has been invoked, amendments which were in order prior to the reprinting of the measure or matter will continue to be in order and may be conformed and reprinted at the request of the amendment's sponsor. The conforming changes must be limited to lineation and pagination.

No Senator shall call up more than two amendments until every other Senator shall have had the opportunity to do likewise.

Notwithstanding other provisions of this rule, a Senator may yield all or part of his one hour to the majority or minority floor managers of the measure, motion, or matter or to the Majority or Minority Leader, but each Senator specified shall not have more than two hours so yielded to him and may in turn yield such time to other Senators.

Notwithstanding any other provision of this rule, any Senator who has not used or yielded at least ten minutes, is, if he seeks recognition, guaranteed up to ten minutes, inclusive, to speak only.

After cloture is invoked, the reading of any amendment, including House amendments, shall be dispensed with when the proposed amendment has been identified and has been available in printed form at the desk of the Members for not less than twenty-four hours.

3. If a cloture motion on a motion to proceed to a measure or matter is presented in accordance with this rule and is signed by 16 Senators, including the Majority Leader, the Minority Leader, 7 additional Senators not affiliated with the majority, and 7 additional Senators not affiliated with the minority, one hour after the Senate meets on the following calendar day, the Presiding Officer, or the clerk at the direction of the Presiding Officer, shall lay the motion before the Senate. If cloture is then invoked on the motion to proceed, the question shall be on the motion to proceed, without further debate.