IN THE

Supreme Court of the United States

CITY OF RUBLOFF,  

Petitioner and Cross-Respondent,

v.  

JULIE ROSS,  

Respondent and Cross-Petitioner,

and  

SOCIETY FOR THE PRESERVATION OF NON-FOREIGN INLETS AND (LAKE)FRONTS (SPFIF),  

Respondent-Intervenor.

On Writ of Certiorari to  
the United States Court of Appeals  
for the Thirteenth Circuit

BRIEF FOR THE PETITIONER

TEAM 5  

2017 Julius H. Miner Moot Court Competition
QUESTIONS PRESENTED

1. Whether parties seeking to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) must independently satisfy Article III’s standing requirements where the intervenor, who lacks a relationship to the original party, alleges future harm on behalf of one of its members.

2. Whether a government entity holding lakefront property in trust for the public may enter into a lease lasting between 10 and 100 years with a private entity that intends to develop the land into a museum.
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The opinion of the United States Court of Appeals for the Thirteenth Circuit is reported at Ross v. Rubloff, No. 16-3902 (13th Cir. 2016).
STATEMENT OF THE CASE

The Rodriguez Corporation ("Rodriguez")—a “rising star in the realm of high technology” based in Rubloff, Wigmore—focuses its business on providing consumers with immersive virtual reality experiences. Ross v. Rubloff, No. 16-3902 at 2 (13th Cir. 2016). To that end, in March 2014 it publicly announced that it would seek authorization from Petitioner Rubloff to develop an attraction on Rubloff’s lakefront that would provide consumers with virtual educational tours touching on architecture and scenery. Id. Shortly after, Rodriguez announced its plans to build the Rodriguez Museum for Lakefront Enjoyment ("Museum"). Id. In May 2016, Rubloff authorized the construction of the Museum by entering into a preliminary Lease and Operating Agreement ("Agreement") with Rodriguez. Id. at 2, 3. Among other provisions, the Agreement stipulated that control of the property would revert to Rubloff at the conclusion of a ten-year lease, which Rodriguez would have the option to renew a maximum of nine times, with each renewal requiring Rubloff’s approval. Id. at 3.

After the announcement, proponents widely lauded the Museum as a way to guide the Rubloff economy out of a recession by creating jobs and generating tourism, among other benefits. Id. at 2. The announcement was not without its detractors, however. See id. at 2. One such critic was Respondent Julie Ross, who rents out a condominium across the street from the proposed Museum site. Id. at 3. In June 2016, Ross filed suit in the Federal District Court of Wigmore to obtain an injunction against Rubloff to prevent Rodriguez from building the Museum, suing under the theory that its construction would violate the public trust doctrine. Id.

During the discovery phase of the dispute between Ross and Rubloff, the Society for the Preservation of non-Foreign Inlets and (lake)Fronts ("SPFIF") filed a Rule 24(a)(2) motion to intervene as of right. Id. SPFIF, a non-profit organization dedicated to preserving certain areas of
water throughout the United States, is based out of Kellogg. *Id.* at 3–4. None of its members live in or are from Wigmore. *Id.* at 4. SPFIF learned about the case from a television report on Matthew Fisher, a controversial inventor whose virtual reality technology Rodriguez plans to implement in the Museum. *Id.* After viewing the report, SPFIF began to raise funds for a legal team in an apparent attempt to “capitalize on the public outcry against Fisher,” a strategy it has successfully used in the past to raise approximately $20 million from its environmentally-conscious investors. *Id.* at 4.

To establish that it had standing to bring the suit on its own, SPFIF stated in its motion that it had a specialized interest in preventing the Museum’s construction. *Id.* In addition, to establish associational standing, SPFIF provided the district court with an affidavit alleging an injury to one of its members, Evangelo Bianchi. *Id.* at 8. Bianchi’s affidavit states that he, as an Italian citizen who has never been to the United States, intends to use a travel voucher to travel to Rubloff for a vacation in the summer of 2019. Resp’t App., at 2. The affidavit further states that Bianchi intends to walk on the Museum’s proposed construction site during his vacation, that he has never attended SPFIF’s annual meetings or in-person events, and that he has never donated to SPFIF. *Id.*

When SPFIF moved to intervene, Rubloff moved for summary judgment on the grounds that, contrary to Ross’s position, state law governed the public trust doctrine. *Ross,* No. 16-3902 at 3, 4. Ross countered by filing a cross-motion for summary judgment, asserting that federal law governed the public trust doctrine. *Id.* at 4. The district court addressed each motion in turn, first denying SPFIF’s motion to intervene on the grounds that SPFIF did not have standing. *Id.* at 4–5. The district court then granted Rubloff’s motion for summary judgment and denied Ross’s. *Id.* at
5. Entering summary judgment in favor of Rubloff, the district court held that Rubloff’s transfer of control of the lakefront land to Rodriguez was permissible. *Id.*

The Thirteenth Circuit affirmed in part and reversed in part. *Id.* at 15. It agreed with the district court’s conclusion that SPFIF did not have standing, holding first that intervenors must independently satisfy Article III’s standing requirements, and second that SPFIF failed to do so. *Id.* The Thirteenth Circuit disagreed, however, with the district court’s conclusion that Rubloff’s transfer of control of the lakefront parcel was permissible. *Id.* It did so on the grounds that the leasing agreement between Rubloff and Rodriguez violated Rubloff’s obligations under the public trust doctrine because that doctrine has a “federal core.” *Id.* at 10–12, 14.

On Friday, January 13, 2017, this Court granted a writ of certiorari and stayed the Thirteenth Circuit’s mandate pending the outcome of this appeal.
SUMMARY OF THE ARGUMENT

The Thirteenth Circuit properly affirmed the denial of SPFIF’s motion to intervene because, SPFIF, as a Rule 24(a) intervenor, is required to demonstrate that it independently has standing, which it has failed to do. However, the Thirteenth Circuit erred in holding that the leasing agreement between Rubloff and Rodriguez violated Rubloff’s obligations under the public trust doctrine. In so holding, the Thirteenth Circuit erroneously concluded that the public trust doctrine has a federal, rather than state, core, such that Rubloff was obligated to hold the land subject to the leasing agreement in trust.

As an intervenor, SPFIF must independently satisfy Article III’s standing requirements for three reasons. First, Article III standing applies to every party that invokes the federal judicial power, including intervenors. Second, because original and intervening parties stand on equal footing for litigation purposes, intervenors must satisfy the same standing requirements that the original parties to a suit are obligated to meet. Third, requiring intervenors to independently satisfy Article III’s standing requirements protects against further straining judicial resources and increasing litigation costs.

SPFIF has failed to demonstrate that it had standing to bring this suit on its own. Neither it nor Evangelo Bianchi have met Article III’s injury-in-fact requirement. SPFIF’s generalized interest in preserving lakefronts is a speculative, and thus constitutionally insufficient, injury. Moreover, Bianchi’s planned vacation to Rubloff in 2019 is neither concrete nor particular, but is instead conjectural and hypothetical. Indeed, the speculative injuries that SPFIF and Bianchi alleged in the proceedings below are the very type this Court has repeatedly rejected.

Even assuming that SPFIF had standing to bring this suit, however, the Thirteenth Circuit incorrectly held that Rubloff could not enter into the Agreement under the public trust doctrine.
The doctrine has a state, rather than federal, core, and thus Rubloff may determine the scope of its obligation. In holding otherwise, the Thirteenth Circuit erroneously concluded that this Court’s opinion in *Illinois Central R.R. Co. v. State of Illinois*, 146 U.S. 387 (1892) established a federal public trust doctrine under the Constitution. Yet this Court has repeatedly rejected this idea and clarified that the doctrine is rooted in state common law. In addition, the public has effective alternatives to the public trust doctrine that preserve the environment while avoiding problematic sovereignty issues.

Finally, even if the public trust is a creature of federal law, the Thirteenth Circuit erred in holding that Rubloff violated its obligations under the doctrine. Rubloff did not impermissibly abdicate control of the land, because the Agreement does not transfer title from Rubloff to Rodriguez. And even if Rubloff did abdicate control of the land, the agreement is permissible under *Illinois Central* because it directly benefits the public.
ARGUMENT

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT SPFIF DID NOT HAVE STANDING UNDER ARTICLE III BECAUSE, AS A RULE 24(A)(2) INTERVENOR, IT MUST INDEPENDENTLY SATISFY ARTICLE III’S STANDING REQUIREMENTS, WHICH IT HAS FAILED TO DO.

The Thirteenth Circuit correctly held that SPFIF does not have standing for two reasons: (1) both original and intervening parties must satisfy Article III’s standing requirements; and (2) SPFIF, as an intervening party who has failed to demonstrate injury in fact, cannot meet those requirements.

Article III’s standing requirements apply equally to original and intervening parties because those requirements apply to every party that comes before a federal court. Moreover, because original and intervening parties stand on equal footing, both must have Article III standing to bring a suit. Finally, requiring intervenors to have Article III standing eases pressure on the judiciary and defrays litigation costs.

As an intervenor, SPFIF has failed to satisfy Article III’s standing requirements. Neither it nor Evangelo Bianchi have shown that they will suffer an injury in fact. The injuries that SPFIF and Bianchi allege will result from the Museum’s construction are of the same kind this Court has repeatedly found constitutionally insufficient.

A. Intervenors must independently satisfy Article III’s standing requirements.

1. Article III standing is an essential and constitutionally mandated prerequisite for every party that invokes the federal judicial power, as confirmed by this Court’s standing precedent.

As the Thirteenth Circuit correctly reasoned, every party seeking relief must satisfy Article III’s standing requirements. See Mausolf v. Babbit, 85 F.3d 1295, 1300 (8th Cir. 1996) ("In our view, an Article III case or controversy, once joined by intervenors who lack standing, is—put bluntly—no longer an Article III case or controversy."); see also Flying J, Inc. v. J.B.
Van Hollen, 578 F.3d 569, 571 (7th Cir. 2009) (Posner, J.) (“No one can maintain an action in a federal court, including an appeal, unless he has standing to sue, in the sense required by Article III of the Constitution.”). These requirements do not diminish simply because a third party chooses to intervene. See Sokaogon Chippewa Cnty. v. Babbitt, 214 F.3d 941, 946 (7th Cir. 2000) (Wood, C.J) (explaining that “at some fundamental level the proposed intervenor must have a stake in the litigation” to satisfy Article III).

This Court’s standing precedent confirms that every party must satisfy Article III’s standing requirements. This Court has made clear that “any person invoking the power of a federal court must demonstrate standing to do so.” Hollingsworth v. Perry, 133 S. Ct. 2652, 2661 (2013) (emphasis added). Moreover, “the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11 (2004). Consequently, “[t]hose who do not possess Art. III standing”—here Bianchi, and thus SPFIF—“may not litigate as suitors in the courts of the United States.” Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 475–76 (1982). Because intervenors seek to become “suitors” by invoking federal jurisdiction, they “must not only satisfy the requirements of Rule 24, [but] must also have Article III standing.” Mausolf, 85 F.3d at 1300 (citation omitted).

The approach to intervenor standing the dissent below outlined is at odds with this Court’s holding that “Article III obligates a federal court to act only when it is assured of the power to do so.” Valley Forge Christian Coll., 454 U.S. at 476 n.13. After all, “Article III standing impinges the . . . judiciary’s power to adjudicate disputes; it can be neither waived nor assumed.” Rohm & Hass Texas, Inc. v. Ortiz Bros. Insulation, Inc., 32 F.3d 205, 207 (5th Cir.
1994). The Thirteenth Circuit thus correctly held that SPFIF must independently satisfy Article III’s standing requirements.

2. Because intervenors stand on an equal footing with the original parties to a suit, Article III’s standing requirements apply to every party before a federal court.

The Thirteenth Circuit was also correct in couching its holding in the fact that intervenors affect judicial decisions and alter the outcome of cases to the same degree as original parties, see id. at 6, and thus “‘participate[] on an equal footing with the original parties to a suit,’” Mausolf, 85 F.3d at 1300–01 (quoting Building and Constr. Trades Dept., AFL-CIO v. Reich, 40 F.3d 1275, 1282 (D.C. Cir. 1994) (Sentelle, J.)). As such, they “must satisfy the same Article III standing requirements as the original parties.” Id.

Intervenors are on “equal standing with the original parties,” given that they are, for litigation purposes, “treated as . . . original parties.” 7C Charles Alan Wright et al., Federal Practice and Procedure § 1920 (3d ed. 2016). This equal-party status entitles intervenors “to litigate fully on the merits,” which includes such privileges as challenging the court’s subject-matter jurisdiction and moving to dismiss, among others. See Wright, supra, §§ 1920–21; see also South Carolina v. North Carolina, 558 U.S. 256, 287–88 (2010) (Roberts, C.J., concurring in part and dissenting in part) (explaining that “[i]ntervenors do not come alone—they bring along more issues to decide, more discovery requests . . . [and] make[ ] settling a case more difficult”); Bethune Plaza, Inc. v. Lumpkin, 863 F.2d 525, 531 (7th Cir. 1988) (Easterbrook, J.) (“When the extra litigant may block settlement or receive an award of attorneys’ fees, it is not simply along for the ride. An intervenor is not an amicus curiae, even a ‘litigating’ amicus curiae. . . .”)
These privileges are not distributed at will when a suit begins. Rather, parties seeking to obtain them at the outset of a suit must satisfy Article III’s standing requirements. See, e.g., Northeast Ohio Coalition for the Homeless v. Husted, 837 F.3d 612, 624 (6th Cir. 2016) (“Standing must exist as to each [plaintiffs’] claim . . . and cannot be ‘dispensed in gross.’”) (quoting Lewis v. Casey, 518 U.S. 343, 358 n.4 (1996)). It would defy logic to waive this requirement for intervenors, who can take advantage of these privileges merely by waiting until after a suit begins.

Allowing parties to intervene without satisfying Article III’s standing requirements can result in troubling situations in which the intervenor seeks “relief different from that sought by any of the original parties.” City of Chicago v. Fed. Emergency Mgmt. Agency, 660 F.3d 980, 985 (7th Cir. 2011) (Posner, J.). This is problematic, because the intervenor’s “presence may turn the case in a new direction—may make it really a new case, and no case can be maintained in a federal court by a party who lacks Article III standing.” Id.

This situation is not merely an academic exercise, but evident in the proceedings below. While Ross and SPFIF seek similar relief, see Ross, No. 16-3902 at 3–4, the two parties have entirely different motivations in seeking it. Ross, for example, brought suit against Rubloff to prevent her property value from decreasing. Id. at 3. SPFIF, on the other hand, seeks relief to “apparently . . . capitalize”—as it already has done, see id. at 4 & n.6—“on the public outcry against” Matthew Fisher, id. at 4. SPFIF’s presence in this case, then, has turned it in an entirely new direction. See Fed. Emergency Mgmt. Agency, 660 F.3d at 985.

Because intervenors have the same privileges as, and thus stand on an equal footing with, “original parties to the suit,” it follows that intervenors “must satisfy the standing requirements
imposed on [the original] parties.” *City of Cleveland v. NRC*, 17 F.3d 1515, 1517 (D.C. Cir. 1994) (per curiam).

3. Allowing parties to intervene as of right without Article III standing further strains judicial resources and increases litigation costs.

The troubling rule the dissent below outlined would have the potential to “open[] the floodgates to an infinite number of intervenors,” given that any party asserting any number of speculative injuries could invoke the federal judicial power. See *Ross*, No. 16-3902 at 7. The Thirteenth Circuit properly recognized this danger, which would both strain federal courts and increase litigation costs. See id.; see also, *e.g.*, Helen Hershkoff, *State Courts and the “Passive Virtues”: Rethinking the Judicial Function*, 114 Harv. L. Rev. 1833, 1931 (2001) (“Justiciability doctrine serves a signaling function that deters or encourages the filing of claims; a change in the signal could increase the quantity of lawsuits without ensuring their merit.”). Allowing for more parties to intervene with frivolous claims will, as here, necessarily further strain the judiciary.

This is particularly troubling in light of the fact that “[w]hen the party seeking to intervene has the same ultimate objective as a party to the suit, the existing party is presumed to adequately represent the party seeking to intervene. . . .” *United States v. Franklin Par. Sch. Bd.*, 47 F.3d 755, 757 (5th Cir. 1995). It would make little sense to allow a party with a similar objective, and thus no additional perspective, to expend judicial resources and increase litigation costs, the brunt of which fall on the original parties. See *New Jersey v. EPA*, 663 F.3d 1279, 1288 (D.C. Cir. 2011) (Brown, J., dissenting) (explaining that “intervenors bear far fewer costs … than petitioners. …”). Quite simply, “a federal case is a limited affair, and not everyone with an opinion is invited to attend.” *Mausolf*, 85 F.3d at 1301.
B. SPFIF has failed to independently satisfy Article III’s standing requirements because Evangelo Bianchi’s affidavit fails to establish the necessary individualized injury to confer Article III standing on SPFIF as a whole.

The Thirteenth Circuit correctly followed well-settled standing principles in holding that Bianchi, and thus SPFIF, lack standing. Those principles outline “the ‘Cases’ and ‘Controversies’ that are of the justiciable sort referred to in Article III.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To meet Article III’s standing requirements, a plaintiff must demonstrate that it has “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

A decision overturning the Thirteenth Circuit’s holding on the standing issue would eviscerate Article III’s standing principles by reducing the injury-in-fact requirement to a mere formality. The “irreducible constitutional minimum” for satisfying Article III’s standing requirements is that a “plaintiff must have suffered an ‘injury in fact’” by sustaining a “concrete and particularized” harm that is “actual or imminent,” a minimum SPFIF has failed to satisfy. *Lujan*, 504 U.S. at 560. Bianchi’s some day intention to visit Rubloff, fails to meet each of these criteria.

1. Bianchi’s asserted future injury falls far short of Article III’s requirements of concreteness and particularity.

Decision after decision from this Court make abundantly clear that Bianchi’s alleged future injury—that he will miss the aesthetic beauty of the current Museum site— is neither a concrete nor particularized harm sufficient to constitute injury in fact.1

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1 As a preliminary matter, the Thirteenth Circuit correctly held *sub silentio* that SPFIF’s generalized interest in preserving lakefronts is not an injury in fact sufficient for SPFIF to have
For an injury to be concrete, it “must be de facto; that is, it must actually exist.” *Spokeo*, 136 S. Ct. at 1548 (internal quotation marks omitted). The injury that Bianchi alleges would result from his planned vacation to Rubloff falls short of this threshold. Indeed, as the Thirteenth Circuit noted, Bianchi’s affidavit fails to even prove that he will actually travel to Wigmore. *See Ross*, No. 16-3902 at 9. As this Court found in *Lujan*, affidavits that contain allegations “without any description of concrete plans” are insufficient for standing purposes. 504 U.S. at 565.

Bianchi’s asserted future injury also lacks particularity. This Court has long held that, “[f]or an injury to be particularized, it must affect the plaintiff in a personal and individual way.” *Spokeo*, 136 S. Ct. at 1548 (internal quotation marks omitted). Bianchi’s alleged injury is neither personal nor individual. Rather, his generalized aesthetic grievance is one that the millions of Rubloff citizens—and, according to the logic SPFIF has deployed, billions of non-US citizens, given Bianchi’s Italian citizenship—could suffer. That is particularly the case given that Bianchi has never been to Rubloff and has no connection whatsoever to the Museum site. *See Ross*, No. 16-3902 at 8.

2. Bianchi’s asserted future injury is neither actual nor imminent, but is instead conjectural and hypothetical.

This Court’s precedent also makes clear that Bianchi’s asserted future injury is neither actual nor imminent. By rejecting SPFIF’s claims to the contrary, the Thirteenth Circuit properly applied this concept, which “cannot be stretched beyond its purpose[:] to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is certainly impending.” *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1148 (2013).

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standing. *See Ross*, No. 16-3902 at 8. That is because this Court “has repeatedly rejected speculation as the basis for Article III standing.” *Id.*
A holding that Bianchi’s asserted future injury confers standing on SPFIF would ignore the fact that this Court has “repeatedly reiterated that threatened injury must be certainly impending to constitute injury in fact, and that allegations of possible future injury are not sufficient.” *Id.* To meet Article III’s standing requirements, then, the injury that Bianchi alleged must be imminent and not based on future speculations. *See id.*

Bianchi’s asserted future injury, however, fails both of these requirements. Bianchi’s affidavit fails to prove that he intends to visit the Museum site, which is necessary for a showing that he will incur the asserted future injury. *See Resp’t App., at 2.* The insufficiency of Bianchi’s claim is underscored by the fact that he signed his affidavit in July of 2015, at least forty-two months before he ever intended on vacationing in Rubloff. *Id.* Bianchi’s speculative plan to vacation in Rubloff is thus the very type of alleged injury this Court has found insufficient to confer standing. *See Whitmore v. Ark., 495 U.S. 149, 155 (1990)* ("[W]e have said many times before and reiterate today: Allegations of possible future injury do not satisfy the requirements of Art. III.").

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Bianchi cannot invoke the federal judicial power by alleging speculative harm resulting from “some day intentions,” a kind of injury this Court has repeatedly found constitutionally insufficient. *See, e.g., Clapper, 133 S. Ct. at 1148–49* (holding that the plaintiffs’ speculative affidavits were insufficient to establish injury in fact); *Summers, 555 U.S. at 496* (same); *FW/PBS, Inc. v. Dallas, 493 U.S. 215, 235 (1990)* (same); *Lujan, 504 U.S., at 565–67* (same). The injury-in-fact requirement is the “indispensable element of a dispute which serves in part to

II. **EVEN IF SPFIF HAD STANDING, RUBLOFF COULD PERMISSIBLY ENTER INTO THE AGREEMENT WITHOUT VIOLATING THE PUBLIC TRUST DOCTRINE.**

The Thirteenth Circuit incorrectly held that Rubloff could not enter into the Agreement under the public trust doctrine. First, the majority erred in finding that this Court’s opinion in *Illinois Central* established a federal core under the Constitution, thus restricting Rubloff’s use of property held in trust for the public. This Court has repeatedly rejected constitutional sources for the public trust doctrine, rooting it instead in state common law. Second, even if the doctrine did have a federal core, Rubloff did not abdicate control over the property within the meaning of *Illinois Central* because it retained title and thus some control over the property. Finally, even if the lease did represent a conveyance, it should be upheld because it primarily benefitted the public, not a private interest.

A. The public trust doctrine has a state, not federal, core, and thus Rubloff may determine how best to use its property.

The public trust doctrine derives from state common law, and thus Rubloff may shape the contours of its obligations under it. See *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 475 (1988) (citing *Shively v. Bowlby*, 152 U.S. 1, 26 (1894)) (“[I]t has been long established that the individual States have the authority to define the limits of the lands held in public trust and to recognize private rights in such lands as they see fit.”).

The Thirteenth Circuit erred in holding to the contrary for three reasons: (1) The doctrine lacks a source in the Constitution, as this Court has clarified; (2) it is properly rooted in state common law; and (3) less intrusive alternatives provide effective safeguards against environmental degradation.

The Thirteenth Circuit improperly rejected these statements as mere dicta. But these Court’s pronouncements were not isolated, conclusory statements in passing. Rather, they were “carefully considered language” that lower courts view as binding, especially where “expressed so unequivocally.” *Bahlul v. United States*, 840 F.3d 757, 763 n.6 (D.C. Cir. 2016); *see also Alec L. ex rel. Loorz v. McCarthy*, 561 Fed. Appx. 7, 8 (D.C. Cir. 2014) (explaining that this Court has “directly and categorically rejected any federal constitutional foundation for that doctrine, without qualification or reservation.”) (Garland, Ginsburg, & Srinivasan, JJ.) (per curiam).

The Thirteenth Circuit’s theory would require this Court to upend its constitutional jurisprudence, given that no case “stand[s] for the proposition that the public trust doctrine . . . arise[s] under the Constitution or laws of the United States.” *Id.* at 8; *see also Booth v. Lemont Mfg. Corp.*, 440 F.2d 385, 387 (7th Cir. 1971) (dismissing a challenge to a long-term lease under
the public trust doctrine because the doctrine does not have “its origin in . . . the Constitution”).

The dissent below correctly noted that the public trust doctrine is not an implied condition of Article IV’s Equal-Footing Doctrine. Ross, No. 16-3902 at 20 (West, J., dissenting). This Court, by treating them distinctly, has clearly explained that Equal-Footing Doctrine rights are not bound up with corresponding federal public trust obligations. See PPL Montana, 132 S. Ct. at 1235 (whereas the Equal-Footing Doctrine is “the constitutional foundation for the navigability rule,” in contrast, “the contours of . . . [the] public trust do not depend on the Constitution”).

While the Thirteenth Circuit is correct that Illinois Central lacks citation to state law, it is equally devoid of references to any constitutional source for public trust obligations. See Richard A. Epstein, Unconstitutional Conditions, State Power, and the Limits of Consent, 102 Harv. L. Rev. 4, 23 n.41 (1988) (“Illinois Central does not locate the public trust doctrine in any particular clause of the Constitution.”). Illinois Central’s holding remains valid insofar as it generally describes the doctrine’s principles, but the Court’s silence on its source suggests that it was not essential to the Court’s holding and thus not binding precedent. See Seminole Tribe of Florida v. Florida, 517 U.S. 44, 66–67 (1996) (“When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound.”).

Second, the clearest source of the public trust doctrine lies in state common law. See Dist. of Columbia v. Air Florida, Inc., 750 F.2d 1077, 1082 (D.C. Cir. 1984) (noting that “[t]he American version of the doctrine . . . was shaped by our colonial past” but that it has developed “as a matter of state law.”); see also Esplanade Properties, LLC v. City of Seattle, 307 F.3d 978, 986 (9th Cir. 2002) (finding that this Court “effectively recognized” that the public trust doctrine is among the “background principles” of state law) (emphasis added).

Third, a federal public trust doctrine is not the only effective “bulwark against shortsighted action by the political branches.” *Ross*, No. 16-3902 at 12. Alternative safeguards provide more effective means of protecting state resources without infringing on state sovereignty. *See, e.g.*, Richard J. Lazarus, *Changing Conceptions of Property and Sovereignty in Natural Resources: Questioning the Public Trust Doctrine*, 71 Iowa L. Rev. 631, 658 (1986) (discussing liberalized standing requirements, strengthened nuisance law, and environmental regulation). Conservation decisions are better left to the political branches, not by “plac[ing] [Rubloff’s] internal operations . . . under the supervision of federal courts.” *Booth*, 440 F.2d at 388.

**B.** Even if the doctrine has a federal core, the Agreement does not violate its principles because Rubloff retains title to the lakefront parcel and it benefits the public.

Rubloff did not impermissibly “abdicate its trust over property . . . so as to leave [it] entirely under the use and control of private parties.” *Illinois Central*, 146 U.S. at 453. Since Rubloff maintains title, the Agreement does not run afoul of *Illinois Central*. Moreover, even if
the lease did constitute a conveyance under *Illinois Central*, it nonetheless should be upheld because it benefits the public.

1. Rubloff did not convey title, and thus it did not abdicate control of the property under *Illinois Central*.
   
The Thirteenth Circuit incorrectly held that Rubloff’s lease abdicates control of the Museum site to Rodriguez. The Thirteenth Circuit’s disjunctive test prohibiting Rubloff from either “transferring title” or “transfer[ing] management” to private entities finds no support in *Illinois Central*. *Ross*, No. 16-3902 at 13. Rather, *Illinois Central* only prohibits abdication of all control over land that leaves the public without *any* rights to it. While a transfer of title necessarily abdicates all control of land held in trust, the same cannot be said when, as here, the government continues to hold title. So long as the government retains title, private parties may develop the land. *See Friends of Parks v. Chicago Park Dist.*, 786 N.E.2d 161, 170 (2003) (hereinafter “*Soldier Field*”) (finding that Chicago, because it retained title over the land and served as its “landlord,” did not abdicate control when it executed a long-term lease with the Chicago Bears over Soldier Field). As in *Soldier Field*, so long as Rubloff retains title, it is immaterial that Rodriguez can “exclude” and “functionally exclude” the public from a portion of the property through high ticket prices. *Ross*, No. 16-3902 at 14.

Moreover, the majority is incorrect that the lease “*effectively* transfer[s]” the property “from Rubloff to Rodriguez.” *Ross*, No. 16-3902 at 14. While some exceptionally-long leases may represent de facto “convey[ances] [of] . . . interest in real property,” *see Friends of the Parks v. Chicago Park Dist.*, 160 F. Supp. 3d 1060, 1068 (N.D. Ill. 2016) (hereinafter “*Lucas Museum*”), this is not such a case. Rather, unlike the lease in *Lucas Museum*, which provided for a “99-year [term] with two renewal options, also for 99 years,” *id.* at 1067, the Agreement partitions leases in ten-year increments, and each potential renewal requires the affirmative
approval of the City of Rubloff. And unlike Lucas Museum, Rubloff voters may demand nonrenewal of the lease such that absolute control over the property would return to Rubloff after merely a decade. Here, the Agreement unambiguously provides that Rubloff retains title over all of the land in question, while permissibly delegating management of less than a majority of the lakefront parcel. When the lease is complete, Rubloff will retain all of these rights in full.

2. Even if the lease did represent an abdication of control, it is permissible because it directly benefits the public.

The Agreement is also permissible because it “promot[es] the interests of the public.” Illinois Central, 146 U.S at 453. Here, the Agreement’s “primary purpose” is to “benefit the public, rather than a private interest,” and it does not “impair the interest of the public in the lands and waters remaining.” Lake Michigan Fed’n v. U.S. Army Corps of Eng’rs, 742 F. Supp. 441, 445 (N.D. Ill. 1990) (hereinafter “Loyola University”) (citing People ex rel. Scott v. Chicago Park Dist., 360 N.E.2d 773, 779 (Ill. 1976)).

The Agreement benefits the public by permitting Rubloff to galvanize development of a tourist attraction that will provide future income streams that would not be feasible under public ownership alone. See Joseph D. Kearney & Thomas W. Merrill, The Origins of the American Public Trust Doctrine: What Really Happened in Illinois Central, 71 U. Chi. L. Rev. 799, 925 (2004) (citing Chicago’s “financial constraints” as a reason that “public ownership has probably meant less development than what would have occurred if privatization of these lands had been permitted”). Contrary to the Thirteenth Circuit’s view, the government need not convey the land “for the purpose of constructing structures that aid in maritime navigation and commerce,” Ross, No. 16-3902 at 14, because the government may “accommodate . . . another public use.” See Aircraft Owners & Pilots Ass’n v. Hinson, 102 F.3d 1421, 1427–28 (7th Cir.
1996). Indeed, courts have eschewed “inflexible standards” in favor of those that can “be molded and extended to meet changing conditions and needs of the public. . . .” Scott, 360 N.E.2d at 780.

In finding “no cognizable public benefit” in the Museum’s economic benefits, Ross, No. 16-3902 at 14, the majority incorrectly relied on an unduly broad conception of Scott, which described an increased labor force and other benefits as too “indirect, intangible, and elusive.” 360 N.E.2d at 781. While economic benefits standing alone may be insufficient to constitute a public benefit, the Illinois Supreme Court has not held that economic benefits are never insufficient when combined with other public benefits. In Soldier Field, for example, the court left open this possibility in holding that the long-term lease, which would benefit the public by improving parking for “athletic, artistic, and cultural events,” would also have “a positive effect[] on jobs and the local economy.” 786 N.E.2d at 170.

The agreement at issue here is distinguishable from those that courts have invalidated despite their economic benefits. See, e.g., Scott, 360 N.E.2d at 781 (invalidating a conveyance because the projected economic growth from a proposed steel mill was too “indirect, intangible and elusive”); Loyola, 742 F. Supp. at 446 (invalidating transfer of title of land to private university because the public “gain[ed] nothing” yet lost access rights to Lake Michigan). Unlike those transactions, the Rodriguez Museum will increase tourism and thus economic growth while not excluding the public. These benefits, along with “unprecedented opportunities for educational and cultural enrichment” and the public’s continued ownership over the Museum site, Ross, No. 16-3902 at 23, sufficiently ensure that the Agreement “promot[es] the interests of the public.” Illinois Central, 146 U.S. at 453.
CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court affirm the Thirteenth Circuit’s decision to uphold the district court’s denial of SPFIF’s motion to intervene, and reverse the Thirteenth Circuit’s holding that the leasing agreement between Rubloff and the Rodriguez Corporation violates Rubloff’s obligations under the public trust doctrine.

Respectfully submitted,

City of Rubloff, Petitioner

By: __Team Five_________

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