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2 Plaintiff Walter Carver appeals from an April 1, 2009
3 judgment of the United States District Court for the Eastern
4 District of New York (Sifton, J.), dismissing his complaint
5 for lack of standing. As a recipient of public assistance
6 from the City of New York, Carver was required to work for
7 the City, and was paid minimum wage, under a program funded
8 in whole or part by the State of New York. Pursuant to
9 state law, the State intercepted part of a lottery prize won
10 by Carver as reimbursement for public assistance, and paid
11 the funds over to the City. Carver sued the City, asserting
12 various constitutional violations and violations of the
13 minimum wage laws. The district court dismissed Carver's
14 suit on the ground that no action of the City defendants
15 caused Carver's injury. **AFFIRMED IN PART, VACATED IN PART,**
16 and **REMANDED.**

17 Judge Winter dissents in a separate opinion.

18 RICHARD D. LAMBORN, Bronx, NY,
19 for Plaintiff-Appellant.

20
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25 Michael A. Cardozo, Corporation

1 Counsel of the City of New York,
2 New York, NY, for Defendants-
3 Appellees.
4

5 DENNIS JACOBS, Chief Judge:

6 Plaintiff Walter Carver appeals from an April 1, 2009
7 judgment of the United States District Court for the Eastern
8 District of New York (Sifton, J.), dismissing his complaint
9 for lack of standing. As a recipient of public assistance
10 from the City of New York, Carver was required to work for
11 the City, and was paid minimum wage, under a program funded
12 in whole or part by the State of New York. State law
13 requires all state public-assistance recipients to reimburse
14 the state for the assistance they receive, if they win the
15 lottery. Carver won the lottery. It is alleged that the
16 State intercepted part of the prize, and paid it over to the
17 City. Carver sued the City (and various officials and
18 agencies), seeking to recoup the prize money as well as
19 prospective injunctive and declaratory relief. On behalf of
20 himself and others similarly situated, he alleged (inter
21 alia) violation of state and federal constitutional rights
22 and of state and federal minimum wage laws. The United

1 States District Court for the Eastern District of New York
2 (Sifton, J.) dismissed for lack of standing on the ground
3 that no action of the City defendants caused Carver's
4 injury.

5 Insofar as the district court dismissed Carver's
6 minimum-wage claims for retrospective relief, we hold that
7 dismissal was in error, and accordingly vacate the court's
8 judgment. In so holding, we express no opinion on the
9 merits of these claims, or any defenses that defendants may
10 raise. Otherwise, we affirm.

11
12 **I**

13 New York City's Work Experience Program ("the WEP")
14 employs public-assistance recipients in the public sector as
15 a condition of receiving public funds. N.Y. Social Services
16 Law § 336. Walter Carver worked for the City under the WEP
17 from 1993 to March of 2000. For his work, Carver alleges
18 that he was paid the equivalent of federal minimum wage in
19 cash and public-assistance funds.

20 On or about August 10, 2007, Carver won \$10,000 in the

1 New York State lottery.

2 Section 131-r of the New York Social Services Law
3 provides that any recipient of state public-assistance funds
4 who wins a lottery prize of \$600 or more must "reimburse the
5 [state department of social services] from the winnings," up
6 to half of the prize amount:

7 Any person who is receiving or has received,
8 within the previous ten years, public assistance
9 pursuant to the provisions of this article, and
10 who wins a lottery prize of six hundred dollars or
11 more shall reimburse the [state department of
12 social services] from the winnings, for all such
13 public assistance benefits paid to such person
14 during the previous ten years; provided, however,
15 that such crediting to the department shall in no
16 event exceed fifty percent of the amount of the
17 lottery prize.

18 N.Y. Soc. Serv. L. § 131-r. To enforce this obligation,
19 § 131-r directs the state commissioner of social services to
20 "enter into an agreement with the director of the lottery,
21 pursuant to [N.Y. Tax L. § 1613-b], for the crediting of
22 lottery prizes against public assistance benefits." Id.;
23 see also N.Y. Tax L. § 1613-b (directing the state Office of
24 Temporary and Disability Assistance to coordinate the
25 crediting of lottery prizes pursuant to N.Y. Soc. Serv. L.

1 § 131-r).

2 Pursuant to N.Y. Social Services Law § 131-r and N.Y.
3 Tax Law § 1613-b, the New York State Office of Temporary and
4 Disability Assistance ("OTDA") intercepted \$5000, to be
5 credited against the public assistance Carver had been paid.
6 Carver alleges that the intercepted funds were then paid
7 over to New York City. To recover his intercepted winnings,
8 Carver initiated a series of lawsuits in state and federal
9 court.

10 Carver initiated this lawsuit on September 10, 2008,
11 styling his complaint as a putative class action on behalf
12 of himself and all others similarly situated. Named as
13 defendants were the City of New York, and various subsidiary
14 agencies and city officials; Carver did not join the State
15 of New York or any State agency or employee. Carver
16 asserted [1] a taking violative of his rights under the
17 federal and New York state constitutions; [2] a violation of
18 his equal protection rights under the federal and New York
19 state constitutions; [3] a violation of substantive due
20 process under the federal and New York state constitutions;

1 [4] a violation of § 206 of the Fair Labor Standards Act, 29
2 U.S.C. § 206;¹ [5] a violation of New York state minimum
3 wage law, N.Y. Labor Law § 652;² and [6] inadequate notice
4 of his rights as a lottery winner, in violation of N.Y. Tax
5 Law § 1613-b(6).³ He sought, inter alia, damages and

¹ 29 U.S.C. § 206 provides, in relevant part:

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates.

29 U.S.C. § 206(a). The rates referred to are thereafter specified. See id.

² Section 652 of the New York Labor Law provides, in relevant part, that "[e]very employer shall pay to each of its employees for each hour worked a wage of not less than" a specified rate. N.Y. Labor L. § 652(1).

³ Section 1613-b(6) of the New York Tax Law provides, in its entirety:

The office of temporary and disability assistance shall notify the prize winner in writing, of the amount of such prize winning to be credited against public assistance benefits and the procedure and time frame by which the prize winner may contest such crediting. Such procedure shall include the address and telephone number of the office of temporary and disability assistance and who the prize winner may contact with respect to correction of any error in such crediting concerning such individual's liability for public assistance benefits or with respect to payment of

1 prospective injunctive and declaratory relief. Before
2 serving an answer, the defendants moved to dismiss under
3 Federal Rule of Civil Procedure 12(b)(1), for lack of
4 standing, and under Rule 12(b)(6), for failure to state a
5 claim.

6 On April 1, 2009, the district court granted the
7 defendants' motion, dismissing Carver's complaint under Rule
8 12(b)(1) for lack of standing. The court explicitly
9 declined to reach the merits of Carver's claims, premising
10 its decision to dismiss entirely on standing grounds. This
11 appeal timely followed.

12 13 II

14 Standing is a federal jurisdictional question
15 "determining the power of the court to entertain the suit."
16 Warth v. Seldin, 422 U.S. 490, 498 (1975). "[A] plaintiff
17 must demonstrate standing for each claim and form of relief
18 sought." Baur v. Veneman, 352 F.3d 625, 642 n.15 (2d Cir.
19 2003). At issue in this case is Article III standing, for

such liability.

1 which a plaintiff must show [1] that he "suffered an injury-
2 in-fact--an invasion of a legally protected interest which
3 is (a) concrete and particularized . . . and (b) actual or
4 imminent, not conjectural or hypothetical"; [2] that there
5 was a "causal connection between the injury and the conduct
6 complained of"; and [3] that it is "likely, as opposed to
7 merely speculative, that the injury will be redressed by a
8 favorable decision." Lujan v. Defenders of Wildlife, 504
9 U.S. 555, 560 (1992) (citations and internal quotation marks
10 omitted). "[E]ach element [of standing] must be supported
11 in the same way as any other matter on which the plaintiff
12 bears the burden of proof, i.e., with the manner and degree
13 of evidence required at the successive stages of the
14 litigation." Id. at 561. "Because standing is challenged
15 [here] on the basis of the pleadings, we [therefore] accept
16 as true all material allegations of the complaint, and must
17 construe the complaint in favor of the complaining party."
18 W.R. Huff Asset Mgmt. Co. v. Deloitte & Touche LLP, 549 F.3d
19 100, 106 (2d Cir. 2008) (internal quotation marks omitted).
20 We review questions of standing de novo. Id.

1 The district court found first that "[t]he only injury
2 alleged by plaintiff is the withholding of his lottery
3 winnings," and held that such withholding qualified as an
4 "injury-in-fact." The court went on, however, to hold that
5 causation was lacking: that the "OTDA, not the City
6 Defendants, effected the action that constitutes [Carver's]
7 claimed injury," and that Carver "ha[d] not alleged any
8 facts supporting an inference that the City Defendants
9 influenced [the] OTDA's decision to withhold [his] lottery
10 winnings." "In fact," stated the court, "according to
11 plaintiff's allegations, the City Defendants took no
12 relevant action in this matter (other than supervising
13 plaintiff's participation in the [WEP] years prior to the
14 events leading to this action) until after [the] OTDA
15 withheld plaintiff's lottery winnings, at which time they
16 allegedly accepted funds which were transferred to them
17 pursuant to a system of statutes, regulations, contracts[,]
18 and practices." (internal quotation marks omitted).

19 We disagree. Carver has standing to assert his
20 minimum-wage claims insofar as he alleges injury when the

1 City paid him minimum wage subject to a reimbursement
2 obligation. Carver pertinently claims that the City
3 defendants violated state and federal labor law by paying
4 him minimum wage while requiring that he return some portion
5 of those wages in the event he won the lottery. On this
6 theory, Carver was directly injured by the City's alleged
7 failure to abide by state and federal labor law when
8 compensating him for his work.

9 True, on this theory, the City seemingly could not have
10 complied with its minimum-wage obligations without, for
11 example, agreeing to return (or reject) any intercepted
12 lottery winnings as necessary to ensure that Carver's wages
13 did not fall below statutory minimums, or exempting his
14 wages from the reimbursement obligation, or paying him more
15 (in anticipation of his lottery win). But this is a merits
16 issue not necessary for us to consider here, and we decline
17 to do so. The standing question is distinct from whether
18 Carver has a cause of action. See, e.g., Whitmore v.
19 Arkansas, 495 U.S. 149, 155 (1990) ("Our threshold inquiry
20 into standing 'in no way depends on the merits of the

1 [petitioner's] contention that particular conduct is
2 illegal,'" (quoting Warth, 422 U.S. at 500) (alteration in
3 original)); Am. Civil Liberties Union of N.M. v.
4 Santillanes, 546 F.3d 1313, 1319 (10th Cir. 2008) ("Standing
5 is not a proxy for ruling on the merits and is determined at
6 the outset of the lawsuit."); Long Term Care Partners, LLC
7 v. United States, 516 F.3d 225, 241 (4th Cir. 2008) ("At its
8 core, 'the question of standing is whether the litigant is
9 entitled to have the court decide the merits of the dispute
10 or of particular issues,'" Warth, 422 U.S. at 498 . . . ,
11 which is always a distinct inquiry from the question of how
12 a litigant's claim should be decided."); Lerman v. Bd. of
13 Elections in City of N.Y., 232 F.3d 135, 143 n.9 (2d Cir.
14 2000) (same); 13A Charles Alan Wright et al., Federal
15 Practice and Procedure § 3531, at 23 & nn. 36, 38 (3d ed.
16 2008) (same).

17 Alternatively, Carver has standing to assert his
18 minimum-wage claims because the City's actions indirectly
19 caused the interception of his lottery prize. As a rule,
20 causation is shown if the defendants' actions had a

1 "determinative or coercive effect" on the action that
2 produced the injury. Bennett v. Spear, 520 U.S. 154, 169
3 (1997). Though causation is lacking if the claimed injury
4 results from "the independent action of some third party not
5 before the court," a plaintiff need not allege that "the
6 defendant's actions [were] the very last step in the chain
7 of causation" to demonstrate that the defendant's actions
8 caused the claimed injury. Id. It suffices that the
9 defendant's actions had a "determinative or coercive effect
10 upon the action of someone else" who directly caused the
11 claimed injury. Id. Thus, causation turns on the degree to
12 which the defendant's actions constrained or influenced the
13 decision of the final actor in the chain of causation.
14 Compare id. at 169 (holding that an administrative advisory
15 opinion caused the advisee's action because it played a
16 "central role" in the advisee's decision: The advisee would
17 have had to articulate any reasons for disagreeing with the
18 advice, and would have "run[] a substantial risk" if the
19 advice had been ignored), with Simon v. E. Ky. Welfare
20 Rights Org., 426 U.S. 26, 28, 42-43 (1976) (holding that an

1 IRS Revenue Ruling "allowing favorable tax treatment to a
2 nonprofit hospital that offered only emergency-room services
3 to indigents" did not cause hospitals to deny other services
4 to indigents because "[i]t is purely speculative whether the
5 denials . . . fairly can be traced to [the Ruling] or
6 instead result[ed] from decisions made by the hospitals
7 without regard to the tax implications").

8 Although Carver's alleged injury was ultimately caused
9 by the actions of the State OTDA (a non-party), the State
10 OTDA's actions were a result of the City's prior conduct,
11 such that the City is a sufficient cause of Carver's injury
12 for the purpose of standing. New York law affords the State
13 OTDA no discretion in obtaining reimbursement of public-
14 assistance funds; if a public-assistance recipient wins the
15 lottery, the OTDA must intercept his winnings. And there is
16 no other relevant basis for State interception of a lottery
17 winner's prize. It was thus because the City paid Carver in
18 public-assistance funds that were conditioned on recoupment
19 that the OTDA intercepted his lottery winnings, and that he
20 suffered injury. Cf. Bennett, 520 U.S. at 169 (finding

1 sufficient causation where the purported indirect cause
2 played a "central role" in the decision that directly caused
3 the plaintiff's injury, but where the decision-maker
4 nevertheless enjoyed some discretion); G&G Fire Sprinklers
5 Inc. v. Bradshaw, 146 F.3d 893, 900 (9th Cir. 1998) (finding
6 that the State of California caused a sub-contractor's
7 injury, where the State withheld payment from a prime State
8 contractor who in turn withheld payment from the sub-
9 contractor, because, though the prime contractor had
10 discretion to pay the sub-contractor, "the money would not
11 have been withheld but for the [S]tate's actions"). This is
12 enough to support Carver's standing on his minimum-wage
13 claims, which allege that he was injured by the taking of
14 his lottery prize in retroactive derogation of his rights
15 under state and federal labor law.

16 Accordingly, the district court's judgment is vacated
17 insofar as it dismissed Carver's state and federal minimum-
18 wage claims.⁴ Our holding does not prejudice the merits of

⁴ As discussed in Part IV, this disposition applies only to Carver's claims for retrospective relief.

1 Carver's claims or of any defenses that defendants may
2 raise; any merits questions are more appropriately
3 considered in the first instance by the district court.
4

5 III

6 Carver alleges that the notice of interception given by
7 the ODTA did not conform to law. When a lottery winner's
8 prize is intercepted by the ODTA, N.Y. Tax Law § 1613-b(6)
9 requires, inter alia, that the ODTA "notify the prize winner
10 in writing" of "the address and telephone number of the
11 [OTDA] and who[m] the prize winner may contact" regarding
12 his intercepted prize.⁵ Carver alleges that the notice he

⁵ N.Y. Tax Law § 1613-b(6) provides, in its entirety:

The office of temporary and disability assistance shall notify the prize winner in writing, of the amount of such prize winning to be credited against public assistance benefits and the procedure and time frame by which the prize winner may contest such crediting. Such procedure shall include the address and telephone number of the office of temporary and disability assistance and who the prize winner may contact with respect to correction of any error in such crediting concerning such individual's liability for public assistance benefits or with respect to payment of such liability.

1 received from the OTDA omitted "a telephone number or
2 address of a specific individual to contact." This failure
3 was directly caused by the OTDA alone, and not by any of the
4 named defendants; but the OTDA is not a defendant in this
5 case. Cf., e.g., Lujan, 504 U.S. at 560 (noting that
6 standing is lacking where the injury is "the result of the
7 independent action of some third party not before the court"
8 (quoting Simon, 426 U.S. at 41-42 (brackets omitted))).

9 Carver similarly lacks standing to assert his
10 constitutional claims. In asserting his takings and
11 substantive due process claims, he alleges that he was
12 injured by the taking of his lottery prize; and in asserting
13 his equal protection claims, he alleges that he was injured
14 by the discriminatory taking of his lottery prize on the
15 basis of his status as a public-assistance recipient. But
16 these injuries were caused solely by the State: No action of
17 the City caused the State to levy the challenged tax. Cf.,
18 e.g., id.

20 IV

1 Carver likewise lacks standing to obtain prospective
2 relief. To establish standing to obtain prospective relief,
3 a plaintiff "must show a likelihood that he will be injured
4 in the future." Shain v. Ellison, 356 F.3d 211, 215 (2d
5 Cir. 2004) (ellipsis and internal quotation marks omitted);
6 accord City of Los Angeles v. Lyons, 461 U.S. 95, 105
7 (1983). The odds of winning big in a lottery are often
8 analogized to being hit twice by lightning. And Carver does
9 not even allege any intention to buy more lottery tickets.
10 Moreover, Carver does not allege that he is currently
11 receiving public assistance, or that he is likely to require
12 it in the future. Cf. Shain, 356 F.3d at 215-16 (holding
13 that plaintiff who had been subjected to police strip-search
14 policy lacked standing to enjoin future strip searches
15 because he had not alleged any likelihood that he would
16 again be subject to the strip-search policy).⁶

⁶ Nor does Carver's class action allegation alter the prospective standing analysis. Even if Carver's putative class included current public-assistance recipients, the standing problem would persist: A "class action allegation adds nothing to the standing inquiry since the named plaintiffs 'must allege and show that they personally have been injured, not that injury has been suffered by other,

1

2 **CONCLUSION**

3 For the foregoing reasons, Carver has standing to
4 assert his minimum-wage claims (only), and to seek all
5 retrospective relief. He lacks standing on the remainder.
6 We express no opinion on the merits of Carver's claims or
7 any defenses that defendants may raise. The district court
8 explicitly declined to reach the merits below, and it would
9 be premature to reach them for the first time on appeal:
10 They are better left to the district court to consider in
11 the first instance. The district court's judgment is
12 accordingly AFFIRMED IN PART and VACATED IN PART, and the
13 case is REMANDED for further proceedings.

unidentified members of the class to which they belong and
which they purport to represent.'" Doe v. Blum, 729 F.2d
186, 190 n.4 (2d Cir. 1984) (quoting Warth, 422 U.S. at
502).

WINTER, Circuit Judge, dissenting:

I respectfully dissent.

1 The present appeal involves a New York state tax on lottery
2 winnings by persons who previously received direct welfare or
3 workfare benefits. N.Y. Tax Law § 1613-b (McKinney 2010). A
4 withholding ("interception" in appellant's lexicon) of this tax
5 occurs before the lottery winner receives his or her winnings,
6 presumably along with a similar withholding of federal, state,
7 and local income taxes. Id. at § 1613-b(3).

8 The tax provision contains no language governing
9 disbursement of the revenue received. The complaint alleges that
10 New York State, by reason of New York law, regulation or custom,
11 disburses the revenue from this tax to the municipality that paid
12 the welfare benefits. This allegation is refined in appellant's
13 brief, which states that only one-half of the tax withheld from
14 lottery winnings (\$2500 in Carver's case) is disbursed to the
15 municipality while the other half is kept by the state. The
16 "reimbursement" to the municipality is an attempt to conform to
17 New York Social Services Law Section 153 requiring that New York
18 State bear one-half of the welfare disbursements made by
19 municipalities. N.Y. Soc. Serv. Law § 153(1)(d) (McKinney 2010).

20 There is no allegation that the City plays any role
21 whatsoever in the levying of the tax, its collection, or the

1 disbursement of the funds. At best, the City passively receives
2 the money from the State, along with other State subsidies.

3 The complaint alleges that the harm to Carver is the
4 withholding of the state tax on his lottery winnings. Notably,
5 there is no allegation in the complaint, or provision in any New
6 York law or regulation, that, if the State ceased to disburse
7 these funds to the City or if the City rejected them, the State
8 would return the \$2500 to Carver rather than keep it for itself.
9 The statute creating the tax and the provision regarding
10 disbursement are entirely separate and independent. Changing the
11 rules regarding disbursement would, therefore, have no effect on
12 the levying of the tax on Carver. Nor does he allege otherwise.

13 Given the allegations of the complaint, Carver has no
14 standing to bring a Fair Labor Standards Act ("FLSA") action
15 against the City. The State made all relevant decisions and took
16 all the administrative actions that resulted in the withholding
17 of Carver's winnings. The City has done absolutely nothing to
18 cause the loss to Carver of his lottery winnings.

19 My colleagues seek to address this problem by theorizing
20 that the City workfare payments to Carver were "conditioned,"
21 when made, on a possible "recoupment." Of course, no such
22 express condition can be found in the workfare payments Carver
23 received, because the so-called "recoupment" could occur, if at
24 all, only by operation of the provisions of whatever state laws

1 existed when and if Carver won the lottery. Either the tax or
2 the disbursement, or both, might well have been altered or
3 repealed by the State, and by the State alone, when and if Carver
4 won the lottery.

5 The theory that the workfare payments to Carver inflicted an
6 injury because they were "conditioned" on compliance with
7 whatever state tax laws might be in effect when and if he won the
8 lottery is surely a stretch. The workfare payments were also
9 conditioned on all taxes, federal, state, and local that might be
10 levied. Indeed, all wages paid by all employers to all employees
11 are conditioned on the levying and/or withholding of federal,
12 state, and local taxes.¹ In my view, an employer does not
13 inflict an injury on an employee by paying wages that may be
14 taxed.

15 Moreover, limiting the adjudication of Carver's claims to
16 the party that took his winnings (and will keep the part
17 disbursed to the City if the City were to reject or return it)
18 risks no miscarriage of justice. All Carver had to do was join
19 the State as a defendant. Indeed, he has sued the State in state

¹Federal regulation expressly allows employers to deduct taxes imposed by the law of any sovereign without regard to the fact that the deduction reduces the net wage below FLSA standards. 29 C.F.R. § 531.38 (2010). In short, the City itself could impose and deduct an income tax on Carver that reduced his workfare payments below FLSA standards and still not violate those standards. Id.

Moreover, the FLSA has a statute of limitations of two years. 29 U.S.C. § 255(a) (2010). If the violation occurred when the workfare payments were made, as my colleagues theorize, rather than when the State took the money, any claim would be time-barred.

1 court. The present case is thus one of two judicial proceedings
2 initiated over the withholding of Mr. Carver's lottery winnings,
3 of which \$2500 was disbursed to the City. The other state court
4 action asserts all the various claims made here, including the
5 FLSA claim, against the State for the full \$5000.

6 This is not, therefore, a case in which standing doctrine
7 should be stretched beyond recognizable parameters. The
8 judicial, municipal, and private resources poured into Carver's
9 attempt to recover \$5000 must be in excess of six figures. Now
10 we have to face a remand to the district court followed perhaps
11 by another appeal to this court.

12 I therefore respectfully dissent.

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