No.

In the Supreme Court of the United States

TEXAS STATE LULAC; VOTO LATINO,

Petitioners,

v.

BRUCE ELFANT, *et al.*,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. To have standing to challenge an unlawful government act, must a plaintiff show that the act is the sole cause of its injury, as the Fifth Circuit held, or only that the act contributes to its injury, as the Second, Fourth, Sixth, Ninth, and Eleventh Circuits have held?

2. When a plaintiff asserts standing based on self-censorship in response to a law with a *mens rea* element, must the plaintiff show that it would otherwise possess the prohibited *mens rea*, as the Fifth Circuit held, or only that the plaintiff wishes to engage in conduct that might reasonably be interpreted to violate the law, as the Eighth Circuit has held?

PARTIES TO THE PROCEEDING

Petitioners Texas State LULAC and Voto Latino were plaintiffs in the district court and appellees in the court of appeals. Respondents Bruce Elfant, in his official capacity as the Travis County Tax Assessor-Collector; Jacquelyn Callanen, in her official capacity as the Bexar County Elections Administrator; Clifford Tatum, in his official capacity as the Harris County Elections Administrator; Hilda A. Salinas, in her official capacity as interim Hidalgo County Elections Administrator; Michael Scarpello, in his official capacity as the Dallas County Elections Administrator; and Lisa Wise, in her official capacity as the El Paso County Elections Administrator were defendants in district court.[1] Respondents Lupe Torres, in his official capacity as the Medina County Elections Administrator; Terrie Pendley, in her official capacity as the Real County Tax Assessor-Collector; and Ken Paxton, Texas Attorney General, intervened as defendants in the district court and were appellants in the Fifth Circuit.

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[1] Clifford Tatum and Hilda Salinas are automatically substituted as successors in their respective offices pursuant to Fed. R. App. P. 43(c) and Supreme Court Rule 35(3).

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, petitioners Texas State LULAC and Voto Latino state that they have no parent company, and no publicly held corporation owns more than 10% of their stock.

STATEMENT OF RELATED PROCEEDINGS

None.

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PETITION FOR WRIT OF CERTIORARI

Plaintiffs often challenge state action that is but one of several factors contributing to their injuries. An airport wishes to extend its runway, but a state law unlawfully prohibits it, and the airport also lacks permits and other required approvals. *Tweed-New Haven Airport Auth. v. Tong*, 930 F.3d 65, 71 (2d Cir. 2019). A canvasser wishes to collect signatures for a minor political party, but both a restrictive state law and a recent leg injury prevent him from doing so. *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 316 (4th Cir. 2013). Fans of a musical group challenge the Justice Department's determination that they are a gang, which—along with independent decisions by others—caused harassment by law enforcement. *Parsons v. U.S. Dep't of Justice*, 801 F.3d 701, 706, 713 (6th Cir. 2015). A timber company challenges a regulatory decision that reduced the market value of its land—a value that was also affected by innumerable other factors. *Barnum Timber Co. v. EPA*, 633 F.3d 894, 901 (9th Cir. 2011). In each of those cases, the Second, Fourth, Sixth, and Ninth Circuits held that plaintiffs had standing to challenge state action that contributed to their injuries, even though other acts contributed, too.

The Fifth Circuit split from those circuits in this case, applying a different rule to reach an irreconcilably different result. This is a challenge to Senate Bill 1111 ("S.B. 1111"), one of several laws recently enacted by Texas that made it harder both to register to vote and to cast a ballot. Petitioners are two organizations whose missions include encouraging Latinos to register to vote. Petitioners offered undisputed

evidence that S.B. 1111 and other recently enacted laws had forced them to divert resources from other programs toward voter registration efforts in Texas. But without questioning that showing, the Fifth Circuit held that Petitioners lack standing because their diversionary injury was due not only to S.B. 1111 but to "other laws as well." Pet. App. 7–12. The Fifth Circuit therefore reversed the district court's partial grant of summary judgment to Petitioners and ordered the dismissal of their case.

The Fifth Circuit's demand that Petitioners trace their injury to the challenged law alone is directly contrary to the rule in the Second, Fourth, Sixth, and Ninth Circuits, where a "plaintiff is not required to show that a [challenged] statute is the sole or the but-for cause of an injury." *Tweed-New Haven Airport Authority*, 930 F.3d at 71. And those circuits have the right of it because the Court's traceability and redressability cases have *never* required plaintiffs—organizational or otherwise—to show that an injury is due solely to a specifically challenged state action. The Court should grant certiorari to resolve the split between the circuits on this threshold question of standing and to correct the Fifth Circuit's errant approach.

Separately, the Fifth Circuit also concluded that Petitioners lacked standing under their alternative, self-censorship theory, Pet. App. 13–16, despite undisputed evidence that the organizations had censored themselves from speaking with groups of voters on certain topics due to S.B. 1111. The Fifth Circuit did not disagree that Petitioners had self-censored. But the Fifth Circuit believed Petitioners were unlikely to face criminal prosecution because convicting them

would require proof that they knowingly or intentionally encouraged registration by an ineligible voter. The Eighth Circuit, in contrast, has squarely held that First Amendment plaintiffs do not need to intend to violate a statute's *mens rea* requirement to have self-censorship injury, so long as "they wish to engage in conduct that could reasonably be interpreted as" violating that requirement. *281 Care Comm. v. Arneson*, 638 F.3d 621, 629 (8th Cir. 2011). As a result, the "likelihood of inadvertently or negligently making false statements is sufficient to establish a reasonable fear of prosecution" even under a challenged statute that requires proof of knowing falsity or reckless disregard. *Id.*

The Fifth Circuit's twin conclusions each split sharply from the law of other circuits and grievously misapply this Court's Article III precedent. And because each holding concerns standing—a cornerstone constitutional issue implicating when and how plaintiffs may invoke federal jurisdiction—the questions presented by this Petition are of paramount importance. The Court should therefore grant the Petition and provide the lower courts with much needed guidance on the key standing questions at issue.

OPINIONS BELOW

The Fifth Circuit's opinion is reported at 52 F.4th 248 and reproduced at Pet. App. 1–16. The district court's opinion granting Petitioners' motion for summary judgment is available at 2022 WL 14803780 and reproduced at Pet. App. 18–50.

JURISDICTION

The Fifth Circuit entered judgment on October 26, 2022. Pet. App. 1. On January 13, 2023, Justice Alito granted Petitioners' timely application to extend the time to file this Petition to February 23, 2023. *See* No. 22A632. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced at Pet. App. 53–65.

STATEMENT

Petitioners Texas State LULAC and Voto Latino are nonprofit organizations that register Latinos to vote. In 2021, they brought this constitutional challenge to S.B. 1111, a new law that changed where Texans may lawfully claim to live when they register to vote. Petitioners challenge three provisions of S.B. 1111: Tex. Election Code § 1.015(b), which bars a person from "establish[ing] residence for the purpose of influencing the outcome of a certain election"; Election Code § 1.015(d), which allows registration only at the residence a voter "inhabit[s] . . . at the time of designation" and "intend[s] to remain [at]"; and Election Code §§ 15.051(a), .053(a), and .054, which require voters registered at non-residential addresses to provide documentary proof of residence when updating their voter registrations with a valid address. Petitioners contend that these provisions are unconstitutional, including because they unconstitutionally

burden the fundamental right to vote under the *Anderson-Burdick* standard. *See generally Burdick v. Takushi*, 504 U.S. 428 (1992); *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

The United States District Court for the Western District of Texas (Yeakel, J.) granted summary judgment for Petitioners in part and enjoined Texas from enforcing several of challenged provisions. Pet. App. 49–50. The district court held that Petitioners had established Article III standing in two, independently sufficient ways: by showing that S.B. 1111 causes them to divert resources from other specific programs, and by showing that S.B. 1111 chills them from engaging with potential registrants. Pet. App. 25–31. This holding was based on unrebutted testimony showing that in response to S.B. 1111 and other election laws enacted at about the same time, Petitioners had diverted resources from other programming to educate candidates, voters, and volunteers in Texas about the new restrictions, and that S.B. 1111 had chilled Petitioners from speaking with certain types of potential voters about voter registration.

In particular, Voto Latino has diverted funding away from its efforts in other states to focus on Texas due to the need to educate voters about S.B. 1111 and other recently enacted laws. Pet. App. 7–8. As a result, Voto Latino shut down its voter registration program in Colorado—the first time it was not able to run a voter registration drive there in over a decade. *Id.* It also had to retool its strategy and communications in Texas and will have to retrain volunteers. Pet. App. 8. Even with this diversion of resources towards its Texas program, Voto Latino still dropped the number

of low propensity voters it plans to reach in Texas by 25 percent. *Id.* Undisputed testimony from Voto Latino's President made clear these diversionary harms were, at minimum, partially due to S.B. 1111.

LULAC presented similar evidence of diversionary harm. For example, it declined to fund immigration reform and criminal justice reform programs to focus on educating voters about S.B. 1111's requirements. Pet. App. 8–9, 26. LULAC's president testified that, due to "both" S.B. 1111 and another recently enacted law that LULAC is challenging in parallel litigation, the group was redirecting funds usually spent on scholarships or educational programs to its voter registration efforts in Texas. Pet. App. 9.

Apart from these diversionary harms, Petitioners also explained how S.B. 1111 impairs their ability to advise and communicate with prospective voters, undercutting voter registration activities at the core of their missions. Texas makes it a crime to "request[], command[], coerce[], or attempt[] to induce another person to make a false statement on a registration application." Tex. Elec. Code § 13.007(a)(2). Petitioners' representatives testified that S.B. 1111's vague and self-contradicting provisions make it difficult to speak with prospective registrants without risk of misadvising them as to where they should lawfully register. Pet. App. 13, 28–29. Their fear of prosecution for making a mistake is no idle concern—as the district court found, "the State [of Texas] has publicly declared that one of its key priorities is 'to investigate and prosecute the increasing allegations of voter fraud to ensure election integrity within Texas.'" Pet. App. 30.

Turning to the merits, the district court then held two of the challenged provisions unconstitutional in full and the third unconstitutional in part. The district court held that Election Code § 1.015(b) "fails any degree of constitutional scrutiny" because it "bars prospective voters from establishing a [residence] for obviously permitted purposes such as voting, volunteering with a political campaign, or running for an elected office." Pet. App. 45, 47. Election Code § 1.015(d) was similarly unconstitutional under "any degree of constitutional scrutiny" because it "creates a 'man without a country'" by prohibiting registration *anywhere* when a new voter—such as a college student—does not intend to remain indefinitely in their current residence. Pet. App. 48, 49. And the court held that Election Code §§ 15.051(a), .053(a), and .054 were unconstitutional as applied to voters who sought to update their registration to a valid address, because there was no reason for treating such voters differently from other voters changing their addresses. Pet. App. 42–43. The district court permanently enjoined Respondents from enforcing the unconstitutional provisions. Pet. App. 49–50.

The Fifth Circuit reversed without reaching the merits, holding that Petitioners lack Article III standing under either a diversion of resources or self-censorship analysis. Pet. App. 6, 16.

With respect to diversion of resources, the Fifth Circuit assumed Petitioners had adequately shown an injury in fact. Pet. App. 12. But it concluded that this injury was only *partially* attributable to S.B. 1111, along with other recently enacted election laws the Petitioners had also reallocated resources to address.

Id.[2] The court reasoned that because Petitioners' diversion of resources was not due to S.B. 1111 alone, Petitioners had failed to establish traceability required for standing. *Id.* On the same basis, the court also found that "Plaintiffs [] failed to show redressability" because "if Plaintiffs' injury arose from various election laws in Texas and elsewhere . . ., enjoining S.B. 1111 would not likely redress the drain on their resources." *Id.*

With respect to Petitioners' self-censorship injury, the Fifth Circuit held that Petitioners' self-censorship was unreasonable because they could be criminally prosecuted only for knowingly or intentionally misadvising registrants under the new law, and Petitioners did not allege that they would knowingly or intentionally engage in such conduct. Pet. App. 14–16.

The Fifth Circuit therefore reversed the district court's grant of summary judgment and directed entry of judgment for Respondents. Pet. App 16.

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[2] The Court identified Texas Senate Bill 1 ("S.B. 1"), which passed in the same legislative session as S.B. 1111, as one of these laws, and further noted that Petitioner LULAC challenged that law in separate litigation. Pet. App. 9.

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit's holding that a challenged statute must be the sole cause of a plaintiff's injuries creates a circuit split and is contrary to Article III principles.

The Fifth Circuit's ruling that Petitioners lack Article III standing because the challenged law is not the exclusive cause of their injuries created a circuit split and contradicts settled Article III principles. This Court should grant certiorari and reverse.

A. The Fifth Circuit has split with at least the Second, Fourth, Sixth, and Ninth Circuits over whether a challenged law or policy must be the sole cause of a plaintiff's injury.

The Fifth Circuit's requirement that Petitioners show that the challenged statute is the sole cause of their injuries opened a split with at least the Second, Fourth, Sixth, and Ninth Circuits. Unlike the Fifth Circuit, those courts have held that plaintiffs have Article III standing to challenge government acts as unlawful even when the challenged acts are only one of several causes of their injuries. "A plaintiff is not required to show that a [challenged] statute is the sole or the but-for cause of an injury." *Tweed-New Haven Airport Auth*. 930 F.3d at 71. Rather, so long as the challenged law "is at least in part responsible" for the plaintiff's injury, "the causation element . . . is satisfied, . . . notwithstanding the presence of another proximate cause." *Libertarian Party of Va.*, 718 F.3d at 316; *see also Sierra Club v. U.S. Dep't of Interior*,

899 F.3d 260, 284 (4th Cir. 2018) ("[T]he causation element of standing does not require the challenged action to be the sole or even immediate cause of the injury."). Plaintiffs "need not eliminate any other contributing causes to establish [their] standing." *Barnum Timber Co. v. EPA*, 633 F.3d 894, 901 (9th Cir. 2011) (explaining plaintiff need not "allege that" a specific government act "is the sole source" of injury). The same is true with respect to redressability. *See, e.g.*, *Sierra Club*, 899 F.3d at 285 ("The removal of even one obstacle to the exercise of one's rights, even if other barriers remain, is sufficient to show redressability.").

Thus, in *Tweed-New Haven Airport Authority*, the Second Circuit held that an airport authority had standing to seek declaratory relief that a state law limiting runway length was invalid. *See* 930 F.3d at 68. The trial court had found that the authority's injury—its inability to expand its runway—was attributable to various "uncertainties" that "stood in the way of the completion of an extended runway." *Id.* at 71. But the Second Circuit held that "injury can be 'fairly traceable' even when future contingencies" may impact the plaintiff's ability to obtain full relief. *Id.* The existence of other contributors to a plaintiff's injury did not defeat traceability—"[t]he point is simply to ensure that a plaintiff has a sufficient nexus to the challenged action in the form of a personal stake in the litigation so that the case or controversy requirements of Article III are met." *Id.* (citing *Chevron Corp. v. Donziger*, 833 F.3d 74, 121 (2d Cir. 2016)).

Similarly, in *Libertarian Party of Virginia*, the Fourth Circuit held that a petition circulator had

standing to challenge Virginia's law requiring that a resident witness any signature on a nominating petition. *See* 718 F.3d at 311. Defendants argued that the plaintiff's harm was not traceable to the law because he revealed in his deposition that he had suffered a knee injury that also limited his ability to circulate petitions in the near term. *Id.* at 315. The Fourth Circuit disagreed. It explained that "if the witness residency requirement is at least in part responsible for frustrating Bonner's attempt to fully assert his First Amendment rights in Virginia, the causation element of *Lujan* is satisfied, and he can attempt to hold the Board accountable notwithstanding the presence of another proximate cause." *Id.* at 316.

In *Barnum Timber Co.*, the Ninth Circuit held that a landowner had standing to challenge the EPA's decision to list a nearby creek as an impaired water body under the Clean Water Act because it reduced the market value of its land "by feeding the public's and the market's perception that Barnum's timber operations are restricted by the listing." 633 F.3d at 898. The court explained that whether other factors also affected the land's market value was "irrelevant to whether Barnum has standing to challenge EPA's action," because a plaintiff "need not eliminate any other contributing causes to establish its standing." *Id.* at 901.

Finally, in *Parsons v. U.S. Department of Justice*, the Sixth Circuit held that "Juggalos"—fans of the "horrorcore hip-hop" group the Insane Clown Posse—had standing to challenge the Justice Department's designation of them as a gang. 801 F.3d 701, 706, 713 (6th Cir. 2015). The government argued that plaintiffs

could not show that the gang designation had caused their injuries, such as harassment by state law enforcement, because they were the result of third parties' voluntary choices. *Id.* at 714. But the Sixth Circuit rejected that argument, explaining that "the fact that a defendant was one of multiple contributors to a plaintiff's injuries does not defeat causation." *Id.* at 714.

The Fifth Circuit's decision in this case is irreconcilable with the Second, Fourth, Sixth, and Ninth Circuits' decisions. The Fifth Circuit assumed that Petitioners had "adequately show[n] a diversionary injury under Article III" but held that they "fail to satisfy the traceability and redressability prongs of Article III standing" because their injury was due to "the challenged law *and others like it*," rather than due to the challenged law alone. Pet. App. 9 (emphasis added). According to the Fifth Circuit, Petitioners "failed to show that their claimed injury was traceable to S.B. 1111" because they "did not show that the diversion was a direct response to S.B. 1111 specifically, as opposed to an undifferentiated group of recent election laws in Texas and elsewhere." Pet. App. 12. And "[f]or similar reasons," Petitioners "failed to show redressability," because if their "injury arose from various election laws in Texas and elsewhere . . . enjoining S.B. 1111 would not likely redress the drain on their resources." *Id.*

Had the Second, Fourth, Sixth, and Ninth Circuits followed the Fifth Circuit's reasoning in this case, the cases in those circuits would have come out differently. In *Tweed-New Haven Airport*, the airport's injury—its inability to extend its runway—arose not

only from the challenged statute but also from their need "to obtain additional funding, secure approvals from various regulators, and obtain environmental and other permits, none of which was assured." 930 F.3d at 65. In the Fifth Circuit's terms, therefore, "enjoining [the challenged statute] would not likely redress" the airport's injury. Pet. App. 12. In *Libertarian Party of Virginia*, the canvasser's inability to canvass was caused not only by the challenged law but also by his knee injury, so that enjoining the challenged law would not likely redress his inability to circulate petitions. 930 F.3d at 68. In *Barnum Timber*, the land's value was affected by many different factors, so enjoining the EPA's action would not fully redress any reduction in value. 633 F.3d at 901. And in *Parsons*, information about Juggalos' criminal activity was "available from a variety of other sources," so enjoining the report would not prevent law enforcement and others from treating Juggalos as criminals. 801 F.3d at 716. Yet in each of those cases, the courts instead held that plaintiffs had standing to challenge one of several causes of their injuries.

Conversely, under the Second, Fourth, Sixth, and Ninth Circuits' approaches, Petitioners would have standing. Petitioners presented clear evidence that "[a]s a result of SB 1111 and all the other laws that came into effect" in early 2021, they had been forced to divert resources to voter registration in Texas that would otherwise have been spent elsewhere, including in Colorado where Voto Latino terminated all programming on immigration or, in Texas State LULAC's case, on criminal justice issues in Texas. Pet. App. 7–8. True, the Fifth Circuit thought there were other causes contributing to this diversion as well, just as

there were other reasons that Tweed-New Haven Airport could not extend its runway and the canvasser in *Libertarian Party of Virginia* could not canvass, other causes of law enforcement harassment of Juggalos, and other factors that affected the value of Barnum Timber's property. But that did not matter in the Second, Fourth, Sixth, and Ninth Circuits, and it would not have mattered here were it not for the Fifth Circuit's divergent approach.

B. The split is not explained or alleviated by the fact that this case involves organizational standing based on a diversion of resources.

The Fifth Circuit framed its holding below specifically in terms of "organizational standing" based on a diversion of resources—the form of Article III injury that occurs where "an organization's ability to pursue its mission is 'perceptibly impaired' because it has 'diverted significant resources to counteract the defendant's conduct.'" Pet. App. 6 (quoting *Tenth St. Residential Ass'n v. City of Dallas*, 968 F.3d 492, 500 (5th Cir. 2020)). But for at least three reasons, that framing does not explain or justify the Fifth Circuit's departure from the Second, Fourth, Sixth, and Ninth Circuit's holdings that causation and redressability may be met even when a challenged state action is not the sole cause of a plaintiff's harm.

First, "organizational standing" based on a diversion of resources is nothing more than the ordinary Article III analysis applied to a particular factual circumstance. There is "no question that an association may have standing in its own right to seek judicial

relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy," just like any other plaintiff. *Warth v. Seldin*, 422 U.S. 490, 511 (1975). In assessing organizational standing, courts "conduct the same inquiry as in the case of an individual: Has the plaintiff 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction?" *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982) (quoting *Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 261 (1977)). If those requirements may be met despite the existence of other, contributing causes for a plaintiff's injury—as the Second, Fourth, Sixth, and Ninth Circuits have held—then nothing about the fact that the plaintiff is an organization should change that analysis. Indeed, in both *Tweed-New Haven Airport* and *Barnum Timber*, the plaintiff was an organization suing based on its own injury, just like Petitioners here.

Second, there is no reason to think that the Fifth Circuit would not apply the same rule it applied below to an individual plaintiff or to an organization suing based on an injury other than a diversion of resources. The Fifth Circuit, too, has held that "[a]n organization has standing to sue on its own behalf if it meets the same standing test that applies to individuals." *ACORN v. Fowler*, 178 F.3d 350, 356 (5th Cir. 1999). And while the Fifth Circuit found that Texas had standing to challenge a federal immigration policy in *Texas v. United States* where that policy was "not the sole cause of the State's injury, but . . . has exacerbated it," the court did so only after concluding that Texas was entitled to "special solicitude" in the standing analysis as a sovereign state, and only in reliance

on *Massachusetts v. EPA*, which was similarly a special-solicitude case. *Texas v. United States*, 50 F.4th 498, 517, 519 (5th Cir. 2022); *see also Massachusetts v. EPA*, 549 U.S. 497, 518 (2007) ("It is of considerable relevance that the party seeking review here is a sovereign State . . . .").

Third, even in the narrow context of standing based on a diversion of resources injury, the Fifth Circuit stands alone in requiring a challenged statute to be the sole cause of an organization's harm, and at least the Sixth Circuit has reached the opposite conclusion. *See Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016).

In *Northeast Ohio Coalition for the Homeless,* the Sixth Circuit upheld an organizational plaintiff's standing based on a showing that it had diverted resources in response to two separate voting laws: Senate Bill 205, which amended Ohio's absentee ballot law, and Senate Bill 216, which amended voting by provisional ballot. 837 F.3d at 612; *see also id.* at 620. The organization had offered evidence that it had "immediate plans to mobilize its limited resources to revise its voter-education and get-out-the-vote programs on account of SB 205 and SB 216," and that "[g]iven the changes ushered in by SB 205 and SB 216," the organization had "determined that its resources are better spent assisting the homeless in participating in early in-person voting." *Id.* at 624. Nowhere did the Sixth Circuit demand that the organization parcel its diversion of resources between those due "specifically" to SB 205 and those due "specifically" to SB 216, as the Fifth Circuit required below. *See* Pet. App. 9–12. The injuries caused by the

combination of the two laws sufficed. *Ne. Ohio Coal. for the Homeless*, 837 F.3d at 624.

It makes no difference that the plaintiff in *Northeast Ohio Coalition for the Homeless* challenged both laws. As the Sixth Circuit emphasized, "[s]tanding must exist as to each claim . . . and cannot be 'dispensed in gross.'" *Id.* (quoting *Lewis v. Casey*, 518 U.S. 343, 358 n.4 (1996)). That makes sense, because there is no guarantee that a plaintiff will succeed on all of its claims. Indeed, the Sixth Circuit went on to hold in the very same opinion that only one portion of one of the challenged laws—SB 205—was unconstitutional. *Id.* at 637. The Sixth Circuit never required the plaintiff to show that it suffered a discrete diversion of resources because of that portion of SB 205 alone. But by enjoining just one of the laws, the Court granted some measure of relief to the plaintiff organization, confirming it had a sufficient "personal stake in the outcome of the controversy as to warrant . . . invocation of federal-court jurisdiction." *Havens Realty Corp.*, 455 U.S. at 378–79 (internal quotation marks omitted).[3]

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[3] Moreover, as the Fifth Circuit acknowledged, Petitioner Texas State LULAC has sued in parallel to enjoin parts of S.B. 1, a law the panel repeatedly pointed to as one of the "other election laws" that also contributed to Petitioners' injury. *See* Pet. App. 9 (noting "LULAC has separately challenged parts of S.B. 1"). Indeed, LULAC's President testified that his organization's diversion of resources was due specifically to two laws—S.B. 1 and S.B. 1111—much as the plaintiff did in *Northeast Ohio Coalition for the Homeless*. The Fifth Circuit nowhere suggested that the outcome would have been different if LULAC had brought its challenges against these two laws in one lawsuit instead of two.

That decision is not reconcilable with the reasoning of the Fifth Circuit in this case. In *Northeast Ohio Coalition for the Homeless*, the plaintiffs were not required to "show that the[ir] diversion was a direct response to" one law or program "specifically," as opposed a challenged law in combination with several other "election laws." Pet. App. 12. Provided that some measure of the organization's diversionary harm was due to each challenged laws, then "a favorable decision" as to either would "redress the injury," at least in part. *Ne. Ohio Coal. for the Homeless*, 837 F.3d at 624.

Thus, even if the Fifth Circuit's sole-causation requirement were limited to organizational plaintiffs asserting standing specifically based on a diversion of resources—and there is no reason to assume as much in view of both *Havens Realty* and the Fifth Circuit's own decision in *Fowler*—it still would create a split with at least the Sixth Circuit.

* * *

The Court should grant certiorari on the first question presented to resolve a square conflict between the circuits on the governing traceability and redressability standards where there are multiple causes for a plaintiff's injury. Without guidance from this Court, the courts of appeals will remain divided on this question, harming the ability of plaintiffs to vindicate critical rights and seek redress for injuries.

C. The Fifth Circuit's approach is wrong and prevents plaintiffs from asserting their rights.

In addition to causing a split between the circuits, the decision below is wrong. This Court has never held that a plaintiff—organizational or otherwise—must directly tether its alleged injury to a single, unambiguous source of harm to show traceability and redressability. Instead, a plaintiff's "injury must be 'fairly' traceable to the challenged action, and relief from the injury must be 'likely' to follow from a favorable decision." *Allen v. Wright*, 468 U.S. 737, 751 (1984) (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41 (1976)); *see also California v. Texas*, 141 S. Ct. 2104, 2130 (2021) (Alito, J., dissenting) (explaining that "fairly traceable" means "that the plaintiff's 'injury' must be traceable to the defendant's conduct, and that conduct must be 'allegedly unlawful'"). The Court has admonished that lower courts should not "equate[] injury 'fairly traceable' to the defendant with injury as to which the defendant's actions are the very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154, 168–69 (1997). Similarly, Article III standing is not lacking simply because a plaintiff's requested remedy will only provide it partial relief. On the contrary, "the ability 'to effectuate a partial remedy' satisfies the redressability requirement." *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801 (2021) (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992)).

The Fifth Circuit's confusion on these points may stem from a lack of specific guidance from this Court on the application of Article III's demands in the

organizational-standing context. This Court last addressed the rules of organizational standing over forty years ago. *See Havens Realty Corp.*, 455 U.S. at 378. Since then the Court has clarified that Article III imposes an "irreducible constitutional minimum" to show standing, the core components of which are "essential and unchanging." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). But lower courts have nonetheless frequently struggled to define the precise metes and bounds of organizational standing. This case presents an opportunity for the Court to make clear that Article III imposes no greater case-or-controversy burden on organizations than other plaintiffs, and instead supplies a common "irreducible constitutional minimum" for standing that applies to all parties seeking to invoke federal jurisdiction. *Id.* at 560.

The Fifth Circuit's errant ruling therefore implicates an issue of immense importance. Plaintiffs, including organizational plaintiffs, frequently raise challenges seeking to vindicate a diverse array of critical constitutional and statutory rights. And these challenges often arise—as here—in a context where the government imposes multiple restrictions close in time to one another. The Fifth Circuit's puzzling conclusion below incentivizes state actors to parcel out attacks on constitutional rights across multiple pieces of legislation or government action to frustrate a plaintiff's ability to establish injury from any one act. But a state's unconstitutional behavior should not be insulated from judicial review merely because it has chosen, for whatever reason, to enact multiple laws imposing similar or compounding burdens. The Court should therefore grant certiorari on the first question

presented and clarify that plaintiffs who challenge unconstitutional statutes need not show that the challenged statutes are the sole cause of their injuries.

II. The Fifth Circuit's holding also creates a circuit split over whether a plaintiff claiming standing based on self-censorship must show it would otherwise possess the prohibited *mens rea*.

The Fifth Circuit's rejection of Petitioners' alternative, self-censorship theory of standing also created a circuit split. Plaintiffs have standing to sue under a self-censorship theory when a statute reasonably causes them to limit their expression to avoid the risk of enforcement, even where the statute has not been enforced and the plaintiff has not faced actual prosecution or investigation. *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 392–93 (1988).

The Fifth Circuit held below, however, that Petitioners failed to demonstrate a self-censorship injury despite undisputed evidence that they curtailed their expression for fear of prosecution. The Fifth Circuit reasoned that Petitioners would face criminal liability only if they "knowingly or intentionally" encouraged registrants to register in violation of S.B. 1111, and that Petitioners did not contend that they would purposefully engage in such conduct. Pet. App. 14. That holding is directly contrary to the Eighth Circuit's conclusion under similar circumstances that a *mens rea* requirement did *not* obviate self-censorship standing, even where a plaintiff disclaimed any intent to purposefully violate the law. *281 Care Comm.*, 638

F.3d at 621. This circuit split supplies a second independent basis for granting the Petition.

A. The Fifth Circuit's decision created a split with the Eighth Circuit.

The Fifth Circuit's opinion conflicts with Eighth Circuit law, muddling a fundamental legal principle and making it harder for plaintiffs to protect their right to free speech. The Eighth Circuit in *281 Care Committee v. Arneson* addressed whether plaintiffs who self-censored for fear of prosecution under a statute successfully alleged Article III standing without pleading that they intended to violate the statute. 638 F.3d at 621. The case involved three advocacy organizations challenging a Minnesota law that made "it a crime to knowingly or with reckless disregard for the truth make a false statement about a proposed ballot initiative." *Id.* at 625. Plaintiffs—each of which "was founded to oppose school-funding ballot initiatives," *id.*—claimed that the provision inhibited their ability to speak out against proposed tax levies meant to raise school funds because they were afraid any statements they made would be interpreted as violating the statute and lead to investigation and prosecution. *Id.*

The district court dismissed plaintiffs' case for lack of standing. *Id.* at 626. Like the Fifth Circuit here, the district court found that "plaintiffs ha[d] not alleged that they wish[ed] to engage in any conduct that would actually violate the statute" and therefore had failed to establish standing. *Id.* at 627–28.

The Eighth Circuit reversed, rejecting the lower court's reasoning. At the outset, the court "acknowledge[d] that plaintiffs ha[d] not alleged that they wish[ed] to knowingly" violate the statute. *Id.* at 628. But it also found that plaintiffs *had* "alleged that they wish[ed] to engage in conduct that could reasonably be interpreted as" violating the statute and therefore had "reasonable cause to fear consequences." *Id.* The court explained that given the "nature of the standing analysis in First Amendment political speech cases," a "First Amendment plaintiff does not always need to allege a subjective intent to violate a law in order to establish a reasonable fear of prosecution." *Id.* at 629.

The Eighth Circuit also explained that "the likelihood of inadvertently or negligently making false statements is sufficient to establish a reasonable fear of prosecution under" a challenged statute—even where the statute included a higher *mens rea* requirement. *Id.* Under this framework, the Eighth Circuit held that plaintiffs' showing that they wished to engage in conduct that *could reasonably* be interpreted as violating a statute was enough to confer standing. *Id.* It further concluded that the record "indicate[d] that plaintiffs ha[d] modified their speech in light of" the challenged statute and that "if the statute survive[d], it may well be objectively reasonable for plaintiffs to continue to do so." *Id.* at 630–31. First Amendment standing principles are "intended to allow challenges based on this type of injury." *Id.*

The Eighth Circuit's reasoning stands in stark contrast to the Fifth Circuit's reasoning below. Like the Eighth Circuit, the Fifth Circuit found that

Petitioners did "not assert that they plan to 'knowingly or intentionally'" violate the statute. Pet. App. 14. Unlike the Eighth Circuit, however, the Fifth Circuit concluded that Petitioners' lack of intent was a fatal flaw warranting dismissal of the case. Pet. App. 14 ("Plaintiffs' argument turns on the 'confusion and uncertainty' S.B. 1111 supposedly injects into their voter outreach efforts. Uncertainty is not the same as intent, however. Accordingly, Plaintiffs have not shown a serious intention to engage in protected activity arguably proscribed by the challenged law.").

Further still, the Fifth Circuit ignored undisputed record evidence "that plaintiffs ha[d] modified their speech in light of" the challenged statute and that "if the statute survive[d], it may well be objectively reasonable for plaintiffs to continue to do so." *281 Care Comm.*, 638 F.3d at 630–31; *see also* Pet. App. 28 (citing deposition testimony from Petitioners that reveals that S.B. 1111 has chilled Petitioners' registration efforts for fear that they may be inadvertently exposing voters to criminal liability). It therefore disagreed with the Eighth Circuit that First Amendment standing principles "allow challenges based on this type of injury." *Id.* at 631.

This Court should grant certiorari to resolve this split over whether a plaintiff must show it would otherwise possess the prohibited *mens rea* to assert standing based on self-censorship when raising a First Amendment pre-enforcement challenge.

B. The Fifth Circuit's conclusion was wrong under this Court's case law.

The Fifth Circuit's decision is also directly in tension with this Court's precedent, which has maintained a special solicitude for plaintiffs' ability to bring pre-enforcement First Amendment challenges.

For example, in *Babbitt,* a farmworkers union and several individuals challenged an Arizona employment law which made it a crime to use "dishonest, untruthful and deceptive publicity" to encourage consumers to refrain from using agricultural products. *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 301 (1979) (quoting Ariz. Rev. Stat. § 23-1385). This Court found that the plaintiffs did "not plan to propagate untruths" in violation of the act, much like the Fifth Circuit below found that Petitioners did not plan to "knowingly or intentionally" encourage ineligible voters to register in violation of Texas law. Nevertheless, this Court concluded the plaintiffs established a reasonable fear of prosecution despite not having pled actual intent to violate the law and even though the "criminal penalty provision ha[d] not . . . and may never be applied to commissions of unfair labor practices." *Id.* at 302.

Indeed, this Court held that "when fear of criminal prosecution under an allegedly unconstitutional statute is not imaginary or wholly speculative a plaintiff need not first expose himself to actual arrest or prosecution to be entitled to challenge the statute." *Id.* (internal quotations omitted). Because the plaintiffs had alleged an intent to engage in conduct that, while not directly violative could nonetheless be reasonably

interpreted to violate the act, their challenge was proper. *Id.*

Similarly, in *Susan B. Anthony List v. Driehaus*, the petitioners challenged an Ohio statute that criminalized making false statements about candidates in political campaigns "knowing[ly] . . . or with reckless disregard of whether it was false or not." *Driehaus*, 573 U.S. 149, 151–52 (2014) (quoting Ohio Rev. Code Ann. § 3517.21(B)(10)). As here, one of the organizational plaintiffs alleged injury based on the threat that their planned political activities could be interpreted as them violating the law, leading to prosecution even though the group intended to comply with the law and make only truthful statements about candidates. *Id.* at 156–57. Much as the Fifth Circuit errantly did below in this case, the Sixth Circuit faulted the organizational plaintiff for failing to "allege[] that it intend[ed] to violate Ohio's false-statement law," finding its claim unripe as a result. *Susan B. Anthony List v. Driehaus*, 525 F. App'x 415, 422 (6th Cir. 2013); *see also Susan B. Anthony List v. Driehaus*, 805 F. Supp. 2d 412, 422 (S.D. Ohio 2011).

But the Sixth Circuit there—like the Fifth Circuit here—"misse[d] the point." *Driehaus*, 573 U.S. at 149, 163. In overturning the Sixth Circuit's decision, this Court stressed that "[n]othing in this Court's decisions requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate that law." *Id.* at 163; *see also Steffel v. Thompson,* 415 U.S. 452, 459, (1974) ("it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional

rights"); *MedImmune, Inc. v. Genentech, Inc.,* 549 U.S. 118, 128–29 (2007) (similar); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414, n.5 (2013) (similar).

The Fifth Circuit therefore misapplied this Court's case law in suggesting Petitioners were required to "plan to 'knowingly or intentionally' encourage people to register who are ineligible under S.B. 1111" to establish standing, Pet. App. 14, when a plaintiff need only show "direct injury as a result of the statute's operation or enforcement." *Babbitt*, 442 U.S. 289, 298.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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