No. 22-809

In the Supreme Court of the United States

TEXAS STATE LULAC, ET AL., PETITIONERS

v.

LUPE C. TORRES, IN HIS OFFICIAL CAPACITY AS THE MEDINA COUNTY ELECTIONS ADMINISTRATOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Texas, like most (if not all) States, requires people to vote where they live. After the 2020 election, which brought with it both logistical and legal challenges never before seen, the Texas Legislature passed Texas Senate Bill 1111 to clarify what it means to register where one lives. Two advocacy groups—petitioners here—chose to immediately sue. But petitioners could not identify any individual who was unable to register or vote due to S.B. 1111, could not identify what resources they spent counteracting S.B. 1111 rather than other laws in Texas and elsewhere, and could not introduce evidence supporting their subjective fear of prosecution.

The questions presented are:

1. Whether the Fifth Circuit correctly held that petitioners cannot establish standing based on a diversion of resources if they cannot identify what resources they diverted to counteract S.B. 1111—as opposed to every other law with which they disagree, some of them in other States.

2. Whether the Fifth Circuit correctly held that petitioners cannot establish standing based on chilled speech if the challenged law does not facially restrict their expressive activities and they cannot introduce evidence that district attorneys (who they did not sue) are likely to prosecute petitioners' potentially negligent advice about S.B. 1111.

PARTIES TO THE PROCEEDING

John Scott is currently serving as the provisional Attorney General of Texas. Fed. R. App. P. 43(c)(2); S. Ct. R. 35.3.

RELATED PROCEEDINGS

Texas State LULAC v. Elfant, No. 1:21-cv-00546-LY, U.S. District Court for the Western District of Texas. Judgment entered August 2, 2022.

Texas State LULAC v. Elfant, No. 22-50690, U.S. Court of Appeals for the Fifth Circuit. Judgment entered October 26, 2022.

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INTRODUCTION

The 2020 election was unprecedented in multiple dimensions: in the logistical challenges it posed, in the volume of litigation it spawned,[1] and in the number of election-law changes it inspired across "[a]ll 50 states."[2] Texas Senate Bill 1111 was one such bill, and it does not concern *whether* or *how* a person can register to vote but *where*. Specifically, it gives effect to the unremarkable proposition that people should vote where they live in an increasingly mobile society.

Without waiting to see if anyone would be unable to register or vote as a result of S.B. 1111, petitioners reflexively sued. In an effort to establish standing, they asserted an organizational injury based on (1) their alleged need to divert resources to counteract S.B. 1111's effects, and (2) their subjective fear that they might be prosecuted for accidentally misadvising a voter about S.B. 1111. But even at the time of judgment, petitioners could offer nothing more than conclusory statements that they diverted resources to combat an undifferentiated group of election laws, inside and outside Texas. And, as respondents explained, accidentally misadvising a voter is not a crime in Texas.

The Fifth Circuit correctly concluded that petitioners' evidence did not demonstrate Article III standing. And even if the court was not correct, any error was a fact-bound dispute about the application of well-

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[1] *See* Sam Gringlas, et al., *Step Aside Election 2000: This Year's Election May be the Most Litigated Yet*, NPR (Sept. 22, 2020), https://tinyurl.com/yb5dk4fe.

[2] *2021 Election Enactments*, Nat'l Conf. of State Legislatures, https://www.ncsl.org/research/elections-and-campaigns/2021-election-enactments.aspx.

established principles: contrary to petitioners' insistence, the court did not employ a "sole cause" standard—a phrase that appears nowhere in the opinion—but rather found fault with petitioners' inability to provide evidence (as was required by the procedural posture) to link S.B. 1111 to any specific diverted resource. The court further found that petitioners' decision to self-censor was unreasonable because S.B. 1111 did not facially restrict their expressive activities and petitioners' alleged speech was unlikely to be prosecuted as a knowing or intentional violation of the criminal statute they identified. The Fifth Circuit could have held petitioners lacked standing for other reasons too. But its chosen reasons for dismissing petitioners' claims are more than adequate under this Court's caselaw, consistent with the law of other circuits, and unworthy of this Court's review.

STATEMENT

I. Statutory Background

An individual desiring to vote in Texas must register to vote in the county in which he resides. Tex. Elec. Code §§ 13.001(a)(5), .002(a)(4), (7). As under federal law, Texas law defines "residence" or "domicile" largely as a matter of intent: "that is, [as] one's home and fixed place of habitation to which one intends to return after any temporary absence." *Compare id.* § 1.015(a), *with, e.g.*, *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989) (summarizing common-law domicile rules). Texas law has also long provided that (1) a person does not lose his residence by leaving home "for temporary purposes only," Tex. Elec. Code § 1.015(c); and (2) a person does not acquire a residence in a place he has come "for temporary purposes only and without the

intention of making that place the person's home," *id.* § 1.015(d).

In 2021, when the Texas Legislature adopted S.B. 1111, Act of May 27, 2021, 87th Leg., R.S., ch. 869, 2021 Tex. Gen. Laws 2142, it did not "change[] where Texans may lawfully claim to live when they register to vote." *Contra* Pet. 4. Rather, it clarified residency in three ways.

P.O. box provision: Because voters must register where they reside, S.B. 1111 requires voter registrars to request confirmation of a voter's residence when the voter uses an address that does not correspond to a physical residence, such as a commercial P.O. box. Tex. Elec. Code § 15.051(a). When confirming his residence, the voter must submit documentation such as a copy of his driver's license, concealed-carry permit, utility bill, or an affidavit that his residence has no address. *Id.* §§ 15.053(a)(3), .054. College students living on campus and members of the military (among others) need not supply documentation. *Id.* § 15.054(d). A voter who fails to respond is placed on the "suspense list" but may still vote by regular ballot if he submits a statement of residence in accordance with Texas law. *Id.* §§ 15.081(a)(1), .112.

Residence provision: Because elections in some areas of Texas can turn on a single vote,[3] the State has seen several instances in which voters sought to influence an election by registering to vote at a highly transient or entirely false residence (*e.g.*, at a hotel). R.825-26.[4] To

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[3] *E.g.*, *Willet v. Cole*, 249 S.W.3d 585, 588 (Tex. App.—Waco 2008, no pet.); *see also, e.g.*, *Medrano v. Gleinser*, 769 S.W.2d 687, 687-88 (Tex. App.—Corpus Christi–Edinburg 1989, no writ).

[4] "R." refers to the record on appeal at the Fifth Circuit.

combat this phenomenon, S.B. 1111 also amended Texas Election Code section 1.015(b) to provide that "[a] person may not establish residence for the purpose of influencing the outcome of a certain election." The Texas Secretary of State (the Secretary), whose roles include interpreting and maintaining uniformity in Texas election law, *id.* §§ 31.003, .004, has stated this provision prohibits a voter from registering using a false residence to influence an election—not establishing a bona fide *new* residence to participate in an election. R.825-27.

Temporary-relocation provision: Finally, S.B. 1111 provides that a person may not (1) "establish a residence at any place the person has not inhabited," or (2) "designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain." Tex. Elec. Code § 1.015(f). Contrary to petitioners' description of this subsection (at 4), the requirement that the voter currently inhabit his residence applies only when a voter is registering using a "previous residence." Thus, for example, if an individual temporarily leaves his parents' home to attend college but does not intend to make that his new residence, his parents' residence remains his current residence for purposes of registering to vote. Tex. Elec. Code § 1.015(c)-(d). He may therefore register to vote using his parents' residence, even if he does not inhabit it while at college, because it is his current, not his "previous," residence. *Id.* § 1.015(c)-(d), (f).

S.B. 1111 took effect on September 1, 2021. Act of May 27, 2021, 87th Leg., R.S., ch. 869, § 6, 2021 Tex. Gen. Laws at 2143.

II. Procedural History

A. Petitioners' allegations

Six days after S.B. 1111 was signed by Governor Abbott—but well before it took effect—petitioners Texas State LULAC (LULAC) and Voto Latino brought suit. R.28-47. As relevant here, they alleged that (1) the residence provision violated voters', volunteers', and candidates' right to free speech and expression, and (2) all provisions unduly burdened the right to vote—particularly that of young people attending college. R.39-44. Petitioners asserted that they had to divert resources to assist members and constituents in overcoming the barriers allegedly imposed by S.B. 1111. R.32-33. And although not in their complaint, petitioners subsequently claimed that their speech was chilled because they feared criminal prosecution for accidentally misadvising voters on how to comply with S.B. 1111. R.1152-53, 1754-55.

Petitioners, however, chose not to name as a defendant anyone who could prosecute them (organizations that cannot register to vote) or, more likely, their members. Instead, they named the election administrators in the six largest counties that voted for Joe Biden in the 2020 presidential election, R.33-34, 415-16, none of whom chose to defend the constitutionality of S.B. 1111, R.1570-1607.

Respondent the Texas Attorney General therefore intervened to defend the constitutionality of S.B. 1111 on behalf of the State. R.258-68. The election administrators of Real and Medina Counties (also respondents here) intervened to defend the law and protect their interests as

election administrators of rural counties in Texas.[5] R.204-16.

B. Petitioners' (lack of) evidence

1. By the time of the depositions in this case, two elections had taken place in Texas under S.B. 1111—November 2021 and March 2022.[6] Yet neither petitioner's representative was aware of any individual who had been prevented from voting by S.B. 1111.

The LULAC representative could not identify anyone who had used a commercial P.O. box and received a confirmation request pursuant to S.B. 1111, R.949-50, was unaware of any young person who declined to register because of the residence provision, R.939, and was unaware of any member who had moved to Texas and been unable to vote because of S.B. 1111, R.959.

The Voto Latino representative confirmed that it has no members—let alone members who were injured—but considers its "constituency" to include volunteers, those it has helped register to vote, future voters, and email subscribers. R.1020-21. The Voto Latino representative could not identify any "constituent" who had decided not to vote because of S.B. 1111, R.1047, nor was she aware of any individual who had been threatened with prosecution for accidentally violating S.B. 1111, R.1048. Indeed, she admitted that Voto Latino had not yet spoken to its constituents about any concerns they had regarding S.B.

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[5] Throughout this litigation, the intervening county officials have taken no position on the constitutionality of the residence provision.

[6] Texas Secretary of State, Turnout and Voter Registration Figures (1970-current), https://www.sos.state.tx.us/elections/historical/70-92.shtml.

1111, although she asserted an intention to do so in the future. R.1030, 1047.

2. The defendant election administrators confirmed that they had not rejected any voter-registration applications for violations of S.B. 1111. R.908-09, 1668, 1709, 1719. Rather, they continued to accept the residence on the application at face value and did not question the intent of the voter. R.908-09, 1657, 1705. The local administrators also testified that they do not assist with prosecutions for violations of election laws other than by providing information at the request of the prosecutor or law enforcement. R.885, 1651, 1704.

At most, the Harris County election administrator relayed an anecdote regarding a photographer she met who was confused about whether his residence was a "commercial residence" and did not intend to register to vote in Harris County as a result. R.910. The election administrator did not suggest that this photographer was a member of either petitioner organization, explain what a "commercial residence" had to do with S.B. 1111, or even know where that individual resided and whether he ultimately registered to vote. R.910-11.

3. Although petitioners were unaware of any member or constituent who had difficulty voting or registering to vote because of the minimal changes brought by S.B. 1111, they nevertheless asserted that they were compelled to divert resources to counteract S.B. 1111's alleged unconstitutional impact. R.32-33. But neither petitioner was able to say which of those resources went to counteracting S.B. 1111—as opposed to other election laws, some of which are not even in Texas. R.943, 1028.

The LULAC representative referred to "the impact of the voter suppression bills of SB 1111 and SB 1

together because they're really combined." R.939.[7] He also asserted that LULAC was spending $1-2 million in Texas to "deal with the issues and the residency requirements and advising students," R.940, rather than funding immigration and criminal-justice reform, R.950-51. The witness also suggested LULAC was using scholarship money to educate voters and voter registrars on the law. R.940. The witness later confirmed, however, that those spending priorities were changed due to a combination of S.B. 1111 and S.B. 1 and that he was unable to separate any amount of spending between the two. R.943, 950-51.

The Voto Latino representative likewise could not identify any portion of its alleged diversionary injury that was caused by S.B. 1111, as opposed to S.B. 1. R.1028. She explained that while Voto Latino's budget in Texas remained the same, Voto Latino had lowered its goals regarding how many people it sought to register to vote due to S.B. 1111 and "other voter restriction laws." R.1024, 1032. Voto Latino's volunteers also had to take time to learn the new laws. R.1026. The representative further explained that Voto Latino was no longer spending money in Colorado because Colorado "basically backed off on voter restrictions," which were now in "places like Arizona, Texas, and Georgia." R.1028. Thus, Voto Latino reallocated funding due to S.B. 1111 "and all

[7] Texas Senate Bill 1 was an omnibus election-integrity bill that concerned (among other things) voter registration, citizenship and residence verification, conduct and security of elections, in-person early voting, poll watchers, voting by mail, assistance of voters, election-related offenses, and certain ineligible voters. Election Integrity Protection Act of 2021, 87th Leg., 2d C.S., ch.1, 2021 Tex. Gen. Laws 3873. LULAC is a plaintiff in a lawsuit to enjoin S.B. 1. *La Union del Pueblo Entero v. Abbott*, No. 5:21-cv-844 (W.D. Tex.).

the other laws that came into effect post-January." R.1025, 1028, 1034.

4. With respect to chilling speech, petitioners are wrong to claim (at 21) that there is "undisputed evidence that [petitioners] curtailed their expression for fear of prosecution." The LULAC representative speculated only that S.B. 1111 might chill young voters and college students from registering, R.940, as well as farm workers, truck drivers, and individuals in the military, R.949. The Voto Latino representative claimed that, although S.B. 1111 did not subject it to criminal liability for speaking with college students, R.1025, Voto Latino's ability to speak freely with voters was chilled because it did not know where to advise voters to register so that the voter would not be on the "wrong side of the law." R.1024-25; *see also* R.1029 (agreeing they were concerned about the impact on the voter). And neither representative spoke of a fear that defendant election administrators would report them to district attorneys for possible prosecution.

C. District court ruling

1. Petitioners, the Attorney General, and the intervening counties filed cross-motions for summary judgment, and the district court granted petitioners' motion in large part. Pet. App. 17-50. Addressing the jurisdictional obstacles raised by the Attorney General and intervening counties first, the court concluded that petitioners did not have associational standing because they had not shown a single member who had been injured by S.B. 1111. Pet. App. 23-25. Similar evidentiary deficiencies, the court explained, deprived petitioners of statutory standing to bring a claim on behalf of others under section 1983. Pet. App. 33.

But the court then determined that petitioners had organizational standing—both Article III and

statutory—under two theories: diversion of resources and chilled speech. Pet. App. 25-31, 33-34.

First, relying on *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), and its Fifth Circuit progeny, the court identified petitioners' injury as having to forgo "specific projects" because of S.B. 1111, such as reform measures, a scholarship program, and voter-registration activities in Colorado. Pet. App. 25-26. The court also pointed to LULAC's testimony that it would spend $1-2 million in Texas to counteract "election laws *like* S.B. 1111." Pet. App. 26 (emphasis added). The court then concluded the injury was traceable to the defendant election administrators, as they were the officials who implemented S.B. 1111, and that enjoining them from implementing it would redress petitioners' injury. Pet. App. 27-28.

Second, the court held that petitioners established a First Amendment injury because petitioners' members and volunteers self-censored their speech for fear of criminal penalties if they accidentally misadvised someone about S.B. 1111. Pet. App. 28. Although S.B. 1111 does not contain a criminal-penalty provision, the court pointed to Texas Election Code sections 64.012 and 276.012, which make it a criminal offense to vote when the voter knows he is not eligible or to intentionally or knowingly make a false statement on a voter-registration application. Pet. App. 29. Despite petitioners' inability to vote or register to vote, the court nonetheless determined that their speech was reasonably chilled because "helping someone commit a crime is a crime." Pet. App. 29. The court traced the injury to the defendant election administrators because Texas Election Code section 15.028 requires them to notify the Attorney General and

local district attorney if they discover someone registered to vote or voted who was ineligible. Pet. App. 31.

2. Although the merits are not at issue in this petition, the district court also largely agreed with petitioners on that score. *First*, although it concluded that the P.O. box provision was generally constitutional, the court found it unconstitutional to require documentation of residence if a voter responded to a confirmation request by changing his address to a residence, as address changes did not otherwise require documentation. Pet. App. 42-43. *Second*, the court found the residence provision unconstitutional, disagreeing with the Secretary's interpretation that it applied only to establishing a false residence and reading it much more broadly to prohibit moving to a new location to participate in an election. Pet. App. 45. *Third*, the court held the temporary-relocation provision unconstitutional because the court concluded it largely prohibited college students from registering to vote while away from home. Pet. App. 47-49. The court believed subsection (f) prohibited college students from registering at their parents' home (because they did not currently inhabit it), but that subsection (d) prohibited them from registering at school (where they did not intend to permanently remain). Pet. App. 48.

The court therefore enjoined defendants from enforcing the residence and temporary-relocation provisions in their entirety and from enforcing the P.O. box provision against voters who provide a residential address upon request. Pet. App. 50.

D. Court of appeals opinion

A unanimous panel of the Fifth Circuit reversed and rendered judgment dismissing petitioners' claims, concluding that petitioners lacked standing. Pet. App. 1-16.

1. Regarding diversion of resources, the court assumed that petitioners' evidence adequately demonstrated an injury in fact. Pet. App. 12. But because petitioners' evidence did not *show* that any diversion "was a direct response to S.B. 1111 specifically, as opposed to an undifferentiated group of recent election laws in Texas and elsewhere," it concluded that traceability and redressability were lacking. Pet. App. 12. Consistent with the procedural posture, the court examined the evidence proffered by both sides, but concluded that petitioners' evidence "fails to link [petitioners'] claimed diversion of resources to S.B. 1111," noting that testimony from both petitioners' representatives "consistently attributed their diversion of resources, not to S.B. 1111 specifically, but to a broader group of election-related laws enacted in Texas and other states." Pet. App. 7.

In reaching this conclusion, the Fifth Circuit applied its own well-established case law. Specifically, the court contrasted petitioners' "meager showing" here with the "concrete showing" in *Association of Community Organizations for Reform Now v. Fowler*, in which the plaintiffs expended resources on voter-registration drives because Louisiana failed to offer voter registration at certain agency offices as required by law. 178 F.3d 350, 361 (5th Cir. 1999) (*ACORN*). Pet. App. 10-11. The court highlighted the "concrete evidence" showing that the plaintiffs' actions in *ACORN* were a direct response to the defendant's conduct, whereas here, petitioners offered only "vague assertions that they diverted resources in response to 'S.B. 1111 and all the other laws,' both inside and outside Texas." Pet. App. 10 (quoting Voto Latino representative).

2. The court next rejected petitioners' standing based an alleged First Amendment chill for two reasons.

First, petitioners had not shown that their conduct in advising voters on registration issues was proscribed by any law. Pet. App. 13-14. As the panel noted, "Texas law does not criminalize giving good faith but mistaken advice to prospective voters." Pet. App. 14. Instead, such conduct must be knowing or intentional, and petitioners offered no evidence that they planned to knowingly and intentionally encourage voters to lie on voter-registration applications. Pet. App. 14.

Second, the court determined that S.B. 1111 did not facially restrict petitioners' expressive conduct and that petitioners failed to demonstrate a credible threat that they would be prosecuted under a separate, unchallenged law. Pet. App. 14-16. The court laid out at least six "dominoes that would have to fall" before petitioners would be prosecuted, finding that scenario did not amount to a credible threat. Pet. App. 15.

Having concluded that petitioners failed to prove either theory of standing, the court reversed and rendered judgment dismissing petitioners' claims without reaching respondents' alternative jurisdictional arguments or addressing the district court's merits holding. Pet. App. 16.

REASONS FOR DENYING THE PETITION

I. The Fifth Circuit's Fact-Bound Application of *Havens* Does Not Merit Review.

Petitioners' first question presented attempts to disguise their fact-bound disagreement with the Fifth Circuit's view of the sufficiency of their evidence as a legal error by the court. Pet. i. But the Fifth Circuit did not employ a "sole cause" standard when analyzing petitioners' evidence of standing. Rather, petitioners' inability to show they diverted resources because of S.B. 1111 specifically—as opposed to all election laws with which they

disagree generally—prevented the conclusion that *S.B. 1111* "perceptibly impaired" petitioners' operations and "drain[ed]" their resources, as required by *Havens*. 455 U.S. at 379. The plaintiffs in the cases from other circuits that petitioners cite could and did identify what harm the challenged act caused them and what portion of their injury would be remedied by an injunction. Petitioners, by contrast, do not know themselves exactly what S.B. 1111 has caused them to do and have thus left the Court to guess the answer to those vital jurisdictional questions.

Regardless, this case is a poor vehicle for resolving any confusion about this application of *Havens* because the panel could just as easily have concluded that petitioners lacked an injury in fact. Absent evidence that certainly impending harm would be inflicted on voters, petitioners' diversion of funds was a self-inflicted injury. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 402 (2013). And petitioners' complaint that they educated members and constituents about the law is no injury at all: according to their own allegations, voter registration and education is what petitioners do. R.31-33. Finally, petitioners lack standing under section 1983 because, as organizations, they lack the right to vote.

A. The very decisions on which petitioners rely to create a split demonstrate why the Fifth Circuit's decision is correct.

Petitioners' primary theory of standing rests on this Court's decision in *Havens*, which allows an organization to sue for injury to the organization but only if the challenged act "perceptibly impaired" petitioners' goals and the injury is "concrete and demonstrable" with a "consequent drain on [petitioners'] resources." 455 U.S. at 379. Absent such a showing, the challenged action is merely a "setback to the organization's abstract social interests,"

which does not suffice to establish standing. *Id.* Because "standing is not dispensed in gross," *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996), S.B. 1111 itself must perceptibly impair petitioners' activities and drain their resources. Petitioners failed to show any such impairment below or a certworthy issue here.

1. Petitioners misconstrue the Fifth Circuit's ruling. Because the elements of standing "are not mere pleading requirements but rather an indispensable part of the plaintiff's case," this Court has held that each element "must be supported . . . with the manner and degree of evidence required at the successive stages of litigation." *Lujan v. Defs. of Wildlife,* 504 U.S. 555, 561 (1992). Because this case was resolved on cross-motions for summary judgment, petitioners "can no longer rest on . . . 'mere allegations,' but must 'set forth' by affidavit or other evidence'" a genuine dispute of material fact. *Id.* (quoting Fed. R. Civ. P. 56(e)); *accord California v. Texas*, 141 S. Ct. 2104, 2117 (2021).

In applying these rules, the Fifth Circuit did not, as petitioners claim (at 9-14), reach a legal conclusion that S.B. 1111 must be the "sole cause" of petitioners' injury. Indeed, that language that does not appear anywhere in the court's opinion. Rather, the court faulted petitioners for "fail[ing] to link any diversion of resources specifically to S.B. 1111." Pet. App. 9. Accordingly, the Fifth Circuit held, Pet. App. 11-12, that petitioners failed to establish a triable issue of fact regarding the second and third prongs of the standing inquiry: that any injury is fairly traceable to the challenged law; and that it is likely, as opposed to merely speculative, that such injury will be redressed by a favorable decision, *Lujan*, 504 U.S. at 560-61.

2. The Fifth Circuit's assessment was correct: notwithstanding months of discovery, petitioners were unable to explain how S.B. 1111 increased their diversion of resources or what would happen if it were enjoined. When asked to differentiate spending due to S.B. 1111 from that due to S.B. 1, the LULAC representative admitted more than once "I don't think I could be able to do that," R.943; R.951 (denying that it was possible). When asked the same question, the Voto Latino representative stated that "when legislation is passed, we just augment the work," "we have to divert resources," and "you can't really tease out one or the other." R.1028.

In short, petitioners ask the Court to believe that S.B. 1111 perceptibly impaired their operations and drained their resources, even though they cannot identify a single dollar used to counteract S.B. 1111 alone. To the contrary, the undisputed evidence is that the alleged diversions identified by petitioners were due to multiple laws. R.939 (the "difference has been the impact of ... S.B. 1111 and S.B. 1 together"), 943 ($1-2 million due to S.B. 1 and S.B. 1111), 950-51 (reducing immigration and criminal-justice reforms due to S.B. 1 and S.B. 1111), 1024 (reducing goals due to S.B. 1111 and other laws passed since January 2021), 1025 (shutting down Colorado program because of "laws that were passed in the state of Texas and others"), 1028 (doing national advocacy because of laws in Texas, Arizona, and Georgia). As a result of their own evidentiary and record-keeping choices, S.B. 1111's impact on petitioners' operations is somewhere between opaque and entirely speculative.

Although this Court has not explored the outer limits of organizational injury under *Havens*, Fifth Circuit precedent demonstrates that such evidence is not difficult to maintain or produce. The plaintiffs in *ACORN*, for

example, explained how Louisiana's failure to provide voter registration at certain agency offices forced them to spend more money on voter-registration drives. 178 F.3d at 361. Similarly, in *OCA-Greater Houston v. Texas*, the plaintiffs explained how the challenged law reduced the number of voters with whom they could engage because each engagement required additional time. 867 F.3d 604, 612 (5th Cir. 2017). Petitioners here could have done the same, for example, by identifying what portion (if any) of the $1-2 million allegedly diverted was spent helping individuals copy the required documentation for compliance with the P.O. box provision. Or perhaps they could have shown that volunteers had to commute further because they believed they could not move due to an erroneous interpretation of the residence provision. But instead, petitioners insisted that the resources spent on S.B. 1111 could not be isolated and identified.

3. The Fifth Circuit's rule is consistent with how its sister circuits have addressed standing in similar factual circumstances. For example, the Sixth and Eleventh Circuits have held that "an organization can no more spend its way into standing based on speculative fears of future harm than an individual can." *City of S. Miami v. Governor*, 65 F.4th 631, 639 (11th Cir. 2023). "Any such approach would eviscerate the Article III standing imperative, as it would permit the plaintiff who is willing to pay for unreasonable mitigation measures to prevent an unlikely future harm to manufacture standing." *Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 983 (6th Cir. 2020) (per curiam). Thus, the Sixth Circuit did not permit an organization to claim a diversionary injury when the feared election-law violations were not certainly impending. *Id.* And the Eleventh Circuit found that an organization's injury was self-imposed when "the

record fail[ed] to establish that local officers profiled anyone based on" the challenged immigration law. *City of S. Miami*, 65 F.4th at 640.

The Third Circuit similarly held that standing was lacking when a fair-housing organization claimed it was going to spend $400,000 to counter discriminatory housing advertisements. *Fair Hous. Council of Suburban Phila. v. Montgomery Newspapers* 141 F.3d 71, 76-77 (3d Cir. 1998). But the organization failed to establish that any member of the public had been denied housing, complained about the advertisements, or even read the advertisements. *Id.* at 77. Given the uncertainty of its future plans and the lack of any actual harm, the court determined there was no need for the organization to divert its resources. *Id.* at 77-78.

4. The complete opacity about what S.B. 1111 caused petitioners to do—and, thus, what an injunction would accomplish—stands in stark contrast to the evidence in the five cases from which petitioners insist the Fifth Circuit split.

First, in *Tweed-New Haven Airport Authority v. Tong*, decided after a bench trial, the alleged injury was the inability to extend an airport runway, which had both legal and practical barriers: a law limited the length of the runway, and the airport would have to obtain funding, regulatory approval, and various permits in the future. 930 F.3d 65, 71 (2d Cir. 2019). The plaintiffs' legal injury could be traced directly to the challenged limit on the runway's length. *Id.* Granting the plaintiffs relief would not have resolved the practical questions regarding whether the runway could be built, but it would eliminate the legal obstacle to the plaintiffs' expansion plans. *Id.* That is sufficient to satisfy Article III under well-established case law. *E.g.*, *Larson v. Valente*, 456 U.S. 228,

243 (1982) (requiring only a "discrete injury of which appellees now complain" to "be completely redressed by a favorable decision" to establish standing); *accord Sierra Club v. U.S. Dep't of the Interior*, 899 F.3d 260, 284 (4th Cir. 2018) ("Petitioners need only show that they 'personally would benefit in a tangible way from the court's intervention.'").

Second, in *Libertarian Party v. Judd*, decided at the summary-judgment stage, the plaintiff was limited in his ability to collect signatures on a nominating petition by both (1) a Virginia law that required a resident of Virginia to witness the signatures, and (2) his knee injury. 718 F.3d 308, 314, 316 (4th Cir. 2013). The court noted that the knee injury was temporary and not an absolute bar to collecting signatures, meaning that the plaintiff would still be hampered by the resident-witness requirement. *Id.* Because an injunction would eliminate that piece of the plaintiff's injury, that was again sufficient to satisfy Article III. *See Larson*, 456 U.S. at 242-43.

Third, in *Parsons v. U.S. Department of Justice*, the challenged act was listing the Juggalos as a "hybrid gang" by the National Gang Intelligence Center. 801 F.3d 701, 705-06 (6th Cir. 2015). The plaintiffs alleged facts describing how that designation was part of the causal chain that led to their detention, search, or denial of employment. *Id.* at 712-14. In agreeing that these allegations traced the injury to the challenged conduct, the court emphasized that because the case was at the motion-to-dismiss stage, it must accept the plaintiffs' allegations as true. *Id.* at 715. Thus, while this Court has recognized that standing can depend on a chain of contingencies, *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2566 (2019), the plaintiffs would still have to show those

contingencies were more than likely to occur, *Clapper*, 568 U.S. at 410.

Fourth, the plaintiff in *Barnum Timber v. EPA* was allegedly injured when the EPA's decision to retain a creek as an "impaired water body" under the Clean Water Act reduced the value of his property. 633 F.3d 894, 896 (9th Cir. 2011). A divided court concluded that, for purposes of surviving a motion to dismiss, the plaintiff's allegations that EPA's decision caused a decrease in his property value, accompanied by two declarations attesting to the same, were sufficient to establish the requisite connection, even if other factors also influenced the value of the property. *Id.* at 898-99. The majority noted, however, that whether the plaintiff would ultimately be able to demonstrate standing at the summary-judgment stage was not before it. *Id.* at 900 n.4.

Fifth, the court in *Northeast Ohio Coalition for the Homeless v. Husted*, held that the plaintiffs established traceability when they explained how the change in law caused them to alter their strategy from helping the homeless with mail-in ballots to helping the homeless with in-person early voting—which cost the organization and its volunteers more time and money. 837 F.3d 612, 624 (6th Cir. 2016).

In each case, the plaintiffs could explain how the challenged action caused or enhanced their injury and how an injunction would eliminate that harm. Because petitioners did not even attempt to do the same here, these cases reflect not a circuit split but a fact-bound dispute about how to apply established rules to a specific factual record. Such a dispute does not merit this Court's review.

B. This case is a poor vehicle to address any uncertainty regarding the application of *Havens*.

Even if petitioners' first question identified a dispute of law rather than evidence and the Fifth Circuit were wrong about traceability and redressability, this case presents a poor vehicle for addressing that question because petitioners failed to establish a cognizable injury within the meaning of *Havens*. Indeed, the record reflects that if there is an injury, it is self-inflicted. More likely, petitioners have no injury at all because petitioners claim that they spent money doing the very tasks they were created to do: educate voters and help them register to vote in accordance with state law.

1. As this Court has held, plaintiffs "cannot manufacture standing by choosing to make expenditures based on hypothetical future harm that is not certainly impending." *Clapper* 568 U.S. at 402. That is, however, precisely what petitioners seek to do: despite S.B. 1111 being in effect for eight months and two elections at the time of summary judgment, petitioners could not identify any past or certainly impending future injury to voters. When asked about members who had been burdened by S.B. 1111, the LULAC representative replied "[t]he bills just passed this last session so it's too early," R.949, and the Voto Latino representative stated, "I think that's part of the challenge that we don't know who we turned away as a result of S.B. 1111," R.1047. Petitioners should have heeded the advice of the Eleventh Circuit: "[i]nstead of suing immediately to enjoin enforcement of S.B. [1111], the organizations would have been better off waiting for concrete evidence that the enforcement of S.B. [1111] would lead to" a burden on voting. *City of S.*

Miami, 65 F.4th at 638. Because that evidence is absent here, petitioners' injury is self-inflicted.

2. Further, spending resources to educate and register voters is part of petitioners' mission, R.31-33—not a perceptible impairment of it. *See Havens*, 455 U.S. at 379. As the Sixth Circuit held regarding a plaintiff voting organization, "spending its resources 'to address the voting inequities and irregularities' throughout the county . . . do[es] not divert resources from its mission. That is its mission." *Shelby Advocs.*, 947 F.3d at 982.

Because petitioners are unable to determine what specific impact S.B. 1111 has had on their budgets, they cannot prove that S.B. 1111 subjected them to "operational costs beyond those normally expended to review, challenge, and educate the public" about voting legislation. *Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995). Thus, under the reasoning of the D.C. Circuit, petitioners' "self-serving observation that [they have] expended resources to educate [their] members and others regarding [S.B. 1111] does not present an injury in fact." *Id.* Where, as here, the government's conduct "does not directly conflict with [an] organization's mission," it is unlikely to be sufficient to establish an injury in fact. *Nat'l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1430 (D.C. Cir. 1996).

Although respondents are unaware of a case from this Court directly considering the issue, this view of organizational standing does not need to be addressed by this Court.[8] Article III does not permit standing for the

[8] Given the lack of clarity about the scope of *Havens*, which petitioners, other plaintiffs, and a number of lower courts have exploited, the Court likely should revisit *Havens* to reinforce the limits on organizational standing. *E.g.*, Ryan Baasch, *Reorganizing*

vindication of value interests. *Diamond v. Charles*, 476 U.S. 54, 66 (1986). Holding that an organization that "decides to spend its money on educating members . . . in response to legislation suffers a cognizable injury would be to imply standing for organizations with merely 'abstract concern[s] with a subject that could be affected by an adjudication.'" *Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 (1976)). Petitioners' conclusory assertions that they have to educate people about the minimal changes brought by S.B. 1111 does not establish a cognizable injury merely because petitioners do not like the policy it represents.

3. Finally, petitioners also lack standing to vindicate any alleged imposition on the right to vote under section 1983, which creates liability only "to the party injured." 42 U.S.C. § 1983. Consequently, only those whose rights to vote have allegedly been infringed may pursue litigation under this section. *E.g.*, *Conn v. Gabbert*, 526 U.S. 286, 292-93 (1999); *see also* David P. Currie, *Misunderstanding Standing*, 1981 Sup. Ct. Rev. 41, 45 (1982). "[A] person's right to vote is 'individual and personal in nature.'" *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964)). As organizations, petitioners' undue-burden challenge to S.B. 1111 does not seek to vindicate their own rights, but those of voters. Under Fifth Circuit precedent, the plain language of section 1983 would not permit this claim. *Vote.Org v. Callanen*, 39 F.4th 297, 305 & n.4 (5th Cir. 2022). Because petitioners have not challenged that precedent here, they would not be entitled to relief even if the

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Organizational Standing, 103 Va. L. Rev. Online 18 (2017). But it should wait to do so until an appropriate case is presented.

Court were to vacate the Fifth Circuit's standing ruling. This case is thus a poor vehicle to address any open questions about the scope of organizational standing and the diversion-of-resources theory of *Havens*.

II. The Fifth Circuit's Chilled-Speech Ruling Does Not Merit Review.

Notwithstanding that their primary theory of standing is that they spent millions in educating voters about S.B. 1111 (and other laws), petitioners also insist they have standing because they are afraid to speak to voters about S.B. 1111 lest they be prosecuted for misadvising them. Pet. i, 21-27. Leaving aside the paradox in these positions, which is more appropriate at the pleading stage than summary judgment, "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972). Instead, to establish standing based on the chilling effect of S.B. 1111, petitioners had to show that (1) they "intend[] to engage in a course of conduct arguably affected with a constitutional interest;" (2) their course of conduct "is arguably proscribed by the challenged policy;" and (3) the "threat of future enforcement" by the named defendants "is substantial." Pet. App. 13; *see also Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979).

The Fifth Circuit was entirely correct to conclude petitioners failed both prongs two and three of this test because there was no evidence that petitioners' potentially negligent advice was proscribed by any law or that petitioners faced a credible threat of prosecution. Pet. App. 13. Indeed, the very case on which petitioners rely rejects their theory that a prosecutor might treat a mistake as knowing misconduct, which is what is required under

Texas law. *281 Care Comm. v. Arneson*, 638 F.3d 621, 629-30 (8th Cir. 2011). Just as important for present purposes, however, the petitioners challenge (at 21-27) only the first ground identified by the Fifth Circuit (whether their conduct was proscribed by law), leaving the second completely undisturbed—namely, that there is no substantial threat of prosecution. Pet. App. 14-16. Because this and other obstacles prevent a finding of standing, this case is an inappropriate vehicle to resolve any putative split between the decision below and *Arneson*.

A. The Fifth Circuit's decision is consistent with precedent from this Court and the Eighth Circuit.

This Court has stated that to establish standing to bring a pre-enforcement challenge based on a potential First Amendment chill, a plaintiff must show a threat of enforcement that is "not chimerical." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quotation marks omitted). Because S.B. 1111 does not create criminal penalties, the only threat petitioners identify (at 6) is a criminal statute that they do not challenge and that prohibits intentionally or knowingly requesting, commanding, coercing, or attempting to induce a voter to make a false statement on a voter-registration application. Tex. Elec. Code § 13.007(a)(2). Petitioners do not contest the Fifth Circuit's statement that "Texas law does not criminalize giving good faith but mistaken advice to prospective voters." Pet. App. 14. Accordingly, and because S.B. 1111 does not regulate petitioners' expressive conduct, petitioners must show (among other things) that they intend to knowingly or intentionally urge voters to lie about their residence on voter-registration applications. The Fifth Circuit's conclusion that they have not done so, Pet. App. 14, and thus have not

identified "an intention to engage in a course of conduct . . . proscribed by a statute" is entirely consistent with the caselaw of both this Court and its sister circuit. *Babbitt*, 442 U.S. at 298.

1. The Fifth Circuit's decision is consistent with this Court's precedent.

Petitioners assert (at 25) that the Fifth Circuit's decision that they lack standing to challenge a law that does not regulate their expressive activities and that they do not intend to violate is in "tension" with this Court's precedent. This ignores that "[o]ther cases presenting different allegations and different records may lead to different conclusions." *Twitter, Inc. v. Taamneh*, 143 S. Ct. 1206, 1231 (2023) (Jackson, J., concurring). The cases cited by petitioners present such differences.

In *Babbitt*, unlike here, accidental misstatements *were* proscribed by law: the statute had no *mens rea* requirement at all but instead punished "dishonest, untruthful, and deceptive publicity" used to induce consumers not to purchase agricultural products. 442 U.S. at 301. And, as the plaintiffs there pointed out, "erroneous statement is inevitable in free debate," including the boycotts about agricultural products at issue. *Id.* (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271 (1964)). The lack of any *mens rea* requirement combined with the ease with which a misstatement could be made sets *Babbitt* apart from the criminal law here, which requires knowing or intentional attempts to induce falsehoods about a person's residence. Tex. Elec. Code § 13.007(a)(2). Further, unlike *Babbitt*, the law actually challenged law by petitioners here—S.B. 1111—does not contain criminal penalties that could chill speech.

By contrast, the statute at issue in *Driehaus* did have a *mens rea* requirement: it penalized statements about a

candidate that were knowingly false or made with reckless disregard for the truth. 573 U.S. at 152. But unlike here, the plaintiffs had previously made statements that the Ohio Elections Commission had deemed to violate the law, *id.* at 154, and they alleged that they intended to make similar statements in the future, *id.* at 155. The defendants argued that the plaintiffs believed their statements were true, making the possibility of prosecution "exceedingly slim." *Id.* at 163. The Court held that "misse[d] the point": the Elections Commission had already found that the statements violated the law, and there was "every reason to think" it would do the same in the future. *Id.* Those circumstances are not present here, as petitioners filed suit before S.B. 1111 became effective—let alone before it was enforced against anyone or used as the basis for prosecution under a separate criminal law.

Petitioners claim (at 25) that the Court maintains a "special solicitude" that allows plaintiffs to bring pre-enforcement First Amendment challenges. Any such solicitude, however, does not extend to suits challenging laws that do not facially restrict a person's speech or persons, like petitioners, "having no fears of state prosecution except those that are imaginary or speculative." *Babbitt*, 442 U.S. at 298 (quoting *Younger v. Harris*, 401 U.S. 37, 42 (1971)). The Fifth Circuit properly concluded petitioners lacked standing under a chilled-speech theory.

2. The Fifth Circuit's decision does not conflict with the Eighth Circuit.

a. Petitioners are also wrong to rely on the Eighth Circuit's decision that found standing when the plaintiffs "alleged that they wish[ed] to engage in conduct that could *reasonably be interpreted*" as violating the challenged statute. Pet. 23 (quoting *Arneson*, 638 F.3d at 628

(emphasis added)). Petitioners' theory appears to be that inadvertently misadvising voters could reasonably be interpreted as knowingly and intentionally asking them to lie. Thus, they argue (at 22-24), the Eighth Circuit would have concluded that they have standing. But the statute in *Arneson* is significantly different from Texas Election Code section 13.007(a) which, again, has not been challenged by petitioners.

Similar to the statute in *Driehaus*, the statute at issue in *Arneson* made it a crime to knowingly or with reckless disregard for the truth make a false statement about a proposed ballot initiative. Minn. Stat. § 211B.06, subd. 1. Minnesota law also permitted any person or organization to file a civil complaint concerning violations of the statute with an administrative agency. *Arneson*, 638 F.3d at 625. The facts showed that the plaintiffs, who spoke on school-funding initiatives, had already been subjected to an agency hearing following a civil complaint and that a school superintendent stated he was exploring ways to deal with the "false" information the plaintiffs allegedly spread. *Id.* at 626.

Arneson predates *Driehaus*, but applying the standard from *Babbitt*, the Eighth Circuit correctly concluded that, although plaintiffs did not intend to speak with reckless disregard for the truth, it was objectively reasonable for them to limit their speech based on the "scope, context, and enforcement structure" of the statute at issue. *Id.* at 629. The court identified several factors influencing its decision: the *mens rea* of "reckless disregard," the context of political speech about ballot initiatives, and the fact that the plaintiffs had already been subjected to an agency hearing. *Id.* at 629-30.

In so holding, the court distinguished its prior decision in *Zanders v. Swanson*, in which allegations of

subjective chill were not enough to establish standing to challenge a law that made it a crime to report a peace officer for misconduct "knowing that the information is false." 573 F.3d 591, 592, 594 (8th Cir. 2009). Despite the *Zanders* plaintiffs' subjective and sincere belief that they could be prosecuted, even if they did not intend to make false reports, the court found that they did not face a credible threat of prosecution. *Id.* at 594. The possibility that the statute could be wrongly manipulated or that a peace officer might abuse the system was too speculative. *Id.*

Distinguishing *Zanders*, *Arneson* reasoned that "deciding whether a statement was made with 'reckless disregard for the truth' in the political-speech arena ... leaves substantially more room for mistake and genuine disagreement than does, as was relevant in *Zanders*, deciding whether a citizen knowingly made a false report about factual allegations of police misconduct." 638 F.3d at 629-30. Moreover, unlike the plaintiffs in *Zanders*, the *Arneson* plaintiffs had already been subject to the filing of one complaint and threats of more in the future. *Id.* at 630.

b. The same differences by which the Eighth Circuit distinguished its own *Zanders* decision are equally applicable here: petitioners' proposed speech is not political speech debating the merits of laws and policies in which rhetoric and exaggeration are frequently used. *Arneson*, 638 F.3d at 629 n.1. Rather, it is speech advising a voter about where he is legally eligible to register to vote. Petitioners introduced no evidence that they have been subjected to or threatened with prosecution by anyone with respect to S.B. 1111. R.1048. Perhaps most importantly, Texas law does not criminalize recklessly disregarding the truth when advising voters, but only intentional or

knowing misconduct. Tex. Elec. Code § 13.007(a)(2). Although petitioners attempt to obscure the distinction by treating all *mens rea* requirements as equal, *Arneson* explains that there are real differences between criminalizing reckless statements and knowing falsehoods. 638 F.3d at 629-30. Thus, even under the Eighth Circuit's reasoning, petitioners' speech would not be "reasonably interpreted" as violating the law, leaving them unable to demonstrate that their conduct was "proscribed" by law, as required by *Babbitt*, 442 U.S. at 298. Thus, they lack standing.

B. This is a poor vehicle to address any questions regarding when a First Amendment chill establishes standing.

Even if there were some tension between the Eighth and Fifth Circuits' interpretations of *Babbitt* (and *Driehaus*), this would again be a poor vehicle to address it because there are alternative grounds on which to dismiss petitioners' claims. The Fifth Circuit identified one—the absence of a credible threat of enforcement by these defendants against petitioners. But there are others: an injunction against these election administrators would not prevent prosecution by a district attorney. Moreover, petitioners again lack statutory standing to assert the rights of voters.

1. Petitioners fail to challenge the Fifth Circuit's conclusion that they face no credible threat of enforcement.

In addition to holding that petitioners' potentially erroneous advice is not proscribed by Texas law, the Fifth Circuit also concluded that standing was lacking because there was no evidence of a substantial threat of enforcement. Pet. App. 14-16. The petition does not challenge

the court's statement that petitioners' claim that they will be prosecuted "depends on a 'highly attenuated chain of possibilities.'" Pet. App. 15 (quoting *Clapper*, 568 U.S. at 410), or the six "dominoes that would have to fall" before any prosecution could occur. Pet. App. 15. For good reason: besides the lack of evidence that any domino is likely to fall, several dominoes involve the "independent action of some third party not before the court," *Simon*, 426 U.S. at 41-42, which defeats standing.

First, because any inadvertent misstatements about S.B. 1111 do not fall within the law's prohibition, petitioners must violate the law by knowingly or intentionally encouraging or inducing someone to make a false statement on a voter-registration application. Tex. Elec. Code § 13.007(a)(2). Petitioners deny any plans to do so.

Second, a voter must make a false statement on the application and register to vote or vote when he is not eligible. *Id.* § 15.028. But petitioners presented no evidence that any individual with whom they might speak would commit that infraction, and courts do not generally assume individuals will commit crimes. *E.g.*, *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974).[9]

Third, a defendant election administrator must discover the illegal vote or registration and report it to the district attorney pursuant to Texas Election Code section 15.028. But the defendant election administrators testified that they accept voter-registration applications at face value and do not question a voter's motivations or intentions. R.908-09, 1657, 1705. Moreover, the defendant election administrators testified that they do not

[9] The Court will sometimes allow that an individual will violate the law if doing so is in their economic interests. *Dep't of Com.*, 139 S. Ct. at 2565-66. But petitioners allege no facts from which such an inference can be drawn here.

participate in criminal investigations beyond providing information upon request. R.885, 1651, 1704. Petitioners offered nothing to rebut this testimony.

Fourth, a district attorney must decide to investigate and ultimately prosecute. Petitioners neither named a district attorney as a defendant nor introduced evidence from any district attorney about his intentions. The district court had to do its own research and take judicial notice of the Attorney General's website on this point. Pet App. 30. Because the Attorney General cannot independently bring criminal prosecutions, *State v. Stephens*, 663 S.W.3d 45, 47 (Tex. Crim. App. 2021), however, petitioners are left with nothing demonstrating a likelihood of prosecution.

In sum, petitioners failed to produce evidence that (among other things) (1) petitioners will intentionally and knowingly violate the law, (2) voters will make false statements on voter-registration applications as a result, (3) election administrators will discover and report such false statements, and (4) district attorneys will investigate and prosecute petitioners for their role. When plaintiffs "'do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible,' they do not allege a dispute susceptible to resolution by a federal court." *Babbitt*, 442 U.S. at 298-99 (quoting *Younger*, 401 U.S. at 42). The Fifth Circuit properly identified this second reason for holding that petitioners' asserted chill fails to rise to the level of a judicially cognizable injury.

2. Other grounds exist to conclude that standing is lacking.

The two grounds identified by the Fifth Circuit sufficiently demonstrate a lack of standing under petitioners' chilled-speech theory. But at least two additional

grounds also exist that require the same conclusion, making this a poor vehicle to answer petitioners' question presented.

First, petitioners' claim is unlikely to be redressed by an injunction against the defendant election administrators. *Lujan*, 504 U.S. at 561. Local district attorneys prosecute violations of election laws, not election administrators. TEX. CONST. art. V, § 21. And because federal courts may not "lawfully enjoin the world at large" or enjoin the "laws themselves," *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 535 (2021), they lack the power to enjoin district attorneys from prosecuting violations of S.B. 1111 because petitioners deliberately chose not to make those district attorneys parties. Thus, prohibiting a handful of election administrators from enforcing S.B. 1111 will not redress any claim regarding a fear of prosecution.

Second, to the extent petitioners' chilled-speech claims depend on injury to their members and constituents, they cannot be raised under section 1983 for the reasons explained earlier. *See supra* pp. 23-24.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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