

No. 25-_____

In the
Supreme Court of the United States

STATE OF ARIZONA AND
ARIZONA ATTORNEY GENERAL KRISTIN K. MAYES,
Petitioners,

v.

PROMISE ARIZONA, ET AL.,
Respondents.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 2022, Arizona enacted two laws to ensure that voters are United States citizens. Two nonprofit organizations sued, claiming that one of the laws was enacted with a discriminatory purpose. The district court held a trial, considered the factors outlined in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266–68 (1977), and found no discriminatory purpose.

A Ninth Circuit panel vacated this finding. First, the panel majority held that one of the organizations had standing to challenge the law on behalf of its members because an unknown number of unidentified members “may be” injured by the law. Next, the panel majority held that the district court misapplied *Arlington Heights* by failing to consider the “totality of circumstances” surrounding the laws. The panel majority stated: “We conclude that the totality of the circumstances suggests the Voting Laws were the product of intentional discrimination.”

Judge Bumatay dissented. Eleven judges dissented from the denial of rehearing en banc.

The Questions Presented are:

1) Does Article III allow an organization to sue when an unknown number of its unidentified members “may be” injured, as the Ninth Circuit held below in conflict with at least seven other circuits?

2) Did the Ninth Circuit improperly reweigh evidence of discriminatory purpose while purporting to review the district court’s finding for clear error?

PARTIES TO THE PROCEEDING

Petitioners are the State of Arizona and Arizona Attorney General Kristin K. Mayes.

The Ninth Circuit proceeding below consisted of three consolidated appeals: No. 24-3188, No. 24-3559, and No. 24-4029.

The present petition focuses on No. 24-4029, in which the plaintiff-appellants were Promise Arizona and Southwest Voter Registration Education Project.

In addition, No. 24-4029 listed parties who were plaintiffs in the district court but not appellants:

- the United States;
- Mi Familia Vota and Voto Latino;
- Living United for Change in Arizona, League of United Latin American Citizens Arizona, Arizona Students' Association, ADRC Action, Inter Tribal Council of Arizona Inc., the San Carlos Apache Tribe, and Arizona Coalition for Change;
- Poder Latinx, Chicanos Por La Causa Inc., and Chicanos Por La Causa Action Fund;
- the Democratic National Committee and the Arizona Democratic Party;
- Arizona Asian American Native Hawaiian and Pacific Islander for Equity Coalition; and
- the Tohono O'odham Nation, the Gila River Indian Community, Keanu Stevens, Alanna Siquieros, and LaDonna Jacket.

The defendant-appellees in No. 24-4029 were the State of Arizona and Arizona Attorney General Kristin K. Mayes. They are the Petitioners here.

In addition, the intervenor-defendant-appellees in No. 24-4029 were Arizona Senate President Warren Petersen, Arizona House Speaker Steve Montenegro, and the Republican National Committee. These parties are separately seeking a writ of certiorari, presenting questions beyond those presented here.

In addition, No. 24-4029 listed additional parties who were defendants in the district court:

- Arizona Secretary of State Adrian Fontes;
- Arizona Department of Transportation Director Jennifer Toth;
- Apache County Recorder Larry Noble;
- Cochise County Recorder David W. Stevens (who has been succeeded by Billy Cloud);
- Coconino County Recorder Patty Hansen (who has been succeeded by Aubrey Sonderegger);
- Gila County Recorder Sadie Jo Bingham (who has been succeeded by Wendy Mannigel-Smith);
- Graham County Recorder Polly Merriman;
- Greenlee County Recorder Sharie Milheiro (who has been succeeded by Erin Miller);
- La Paz County Recorder Richard Garcia;
- Maricopa County Recorder Stephen Richer (who has been succeeded by Justin Heap);

- Mohave County Recorder Kristi Blair (who has been succeeded by Lydia Henry);
- Navajo County Recorder Michael Sample (who has been succeeded by Timothy Jordan);
- Pima County Recorder Gabriella Cazares-Kelly;
- Pinal County Recorder Dana Lewis;
- Santa Cruz County Recorder Anita Moreno;
- Yavapai County Recorder Michelle Burchill;
and
- Yuma County Recorder Richard Colwell.

STATEMENT OF RELATED PROCEEDINGS

Republican National Committee et al. v. Mi Familia Vota et al., No. 24A164 (U.S. Supreme Court):

- Order granting partial stay of district court’s judgment, filed August 22, 2024.

Mi Familia Vota et al. v. Fontes et al., No. 24-3188, consolidated with Nos. 24-3559 and 24-4029 (U.S. Court of Appeals for the Ninth Circuit):

- Order denying petitions for rehearing en banc, filed September 22, 2025.
- Merits panel opinion partially affirming and partially vacating district court’s judgment, filed February 25, 2025.
- Merits panel order vacating motions panel’s partial stay of district court’s judgment, filed August 1, 2024.
- Motions panel order granting partial stay of district court’s judgment, filed July 18, 2024.

Mi Familia Vota et al. v. Fontes et al., No. 22-cv-509, consolidated with 22-cv-519, 22-cv-1003, 22-cv-1124, 22-cv-1369, 22-cv-1381, 22-cv-1602, and 22-cv-1901 (U.S. District Court for the District of Arizona):

- Judgment, filed May 2, 2024.
- Amended post-trial ruling, filed February 29, 2024.
- Ruling on motions for summary judgment, filed September 14, 2023.
- Ruling on motions to dismiss, filed February 16, 2023.

TABLE OF CONTENTS

QUESTIONS PRESENTED i
PARTIES TO THE PROCEEDING ii
STATEMENT OF RELATED PROCEEDINGS..... v
TABLE OF AUTHORITIES..... viii
PETITION FOR WRIT OF CERTIORARI 1
OPINIONS BELOW 1
JURISDICTION 1
CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED..... 2
INTRODUCTION..... 3
STATEMENT OF THE CASE 6
 A. Arizona has long required proof of
 citizenship to vote..... 6
 B. Arizona enacted House Bills 2492 and
 2243 to address the possibility of non-
 citizen voting. 8
 C. Two organizations challenged House Bill
 2243 before it was implemented,
 claiming a discriminatory purpose. 10
 D. After a trial, the district court found no
 discriminatory purpose. 10
 1. Standing 10
 2. Legislative purpose 12
 E. Over a dissent, the Ninth Circuit held
 that an organization had standing on
 behalf of unidentified members who may
 be injured..... 17

F. Over a dissent, the Ninth Circuit reweighed evidence of discriminatory purpose.....	21
G. Eleven judges dissented from the denial of rehearing en banc.....	24
REASONS FOR GRANTING THE PETITION.....	25
I. The panel’s decision on representational standing deepens a circuit split on how to apply <i>Summers</i> and violates Article III’s imminence requirement.	25
A. Lower courts are split on how to apply <i>Summers</i> , and the panel’s decision here is an extreme outlier.	25
B. The panel’s decision also violates the related imminence requirement of Article III.	28
C. This case presents an appropriate vehicle for this Court’s review.....	29
II. The panel’s decision on discriminatory purpose usurps the factfinder’s role and discards the presumption of good faith.	31
A. Appellate courts must review factual findings for clear error, but the panel’s decision reweighed evidence instead.....	31
B. Federal courts must presume legislative good faith, but the panel’s decision drew adverse inferences instead.....	37
CONCLUSION	40

TABLE OF AUTHORITIES

Cases

<i>Abbott v. League of United Latin Am. Citizens</i> , 146 S. Ct. 418 (2025).....	38
<i>Abbott v. Perez</i> , 585 U.S. 579 (2018).....	5, 17, 37, 38
<i>Arcia v. Fla. Sec’y of State</i> , 772 F.3d 1335 (11th Cir. 2014).....	12
<i>Arizona v. Inter Tribal Council of Arizona, Inc.</i> , 570 U.S. 1 (2013).....	6
<i>Brnovich v. Democratic Nat’l Comm.</i> , 594 U.S. 647 (2021).....	4, 15, 31, 33, 37, 38, 39
<i>California Rest. Ass’n v. City of Berkeley</i> , 89 F.4th 1094 (9th Cir. 2024)	27
<i>Clapper v. Amnesty Int’l USA</i> , 568 U.S. 398 (2013).....	29
<i>Common Cause Indiana v. Lawson</i> , 937 F.3d 944 (7th Cir. 2019).....	12
<i>Davis v. Fed. Election Comm’n</i> , 554 U.S. 724 (2008).....	19
<i>Do No Harm v. Pfizer Inc.</i> , 126 F.4th 109 (2d Cir. 2025).....	27

<i>Draper v. Healey</i> , 827 F.3d 1 (1st Cir. 2016)	25
<i>Food & Drug Admin. v. All. for Hippocratic Med.</i> , 602 U.S. 367 (2024)	21, 30
<i>Ga. Republican Party v. SEC</i> , 888 F.3d 1198 (11th Cir. 2018)	25
<i>Hollingsworth v. Perry</i> , 570 U.S. 693 (2013)	18
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992)	27, 29
<i>McCleskey v. Kemp</i> , 481 U.S. 279 (1987)	13, 32
<i>N.J. Physicians, Inc. v. President of U.S.</i> , 653 F.3d 234 (3d Cir. 2011)	25
<i>Nat’l Council of La Raza v. Cegavske</i> , 800 F.3d 1032 (9th Cir. 2015)	12, 19, 20, 26, 27, 29, 30
<i>Nat’l Infusion Ctr. Ass’n v. Becerra</i> , 116 F.4th 488 (5th Cir. 2024)	27
<i>Pers. Adm’r of Mass. v. Feeney</i> , 442 U.S. 256 (1979)	35, 36
<i>Prairie Rivers Network v. Dynegy Midwest Generation, LLC</i> , 2 F.4th 1002 (7th Cir. 2021)	25

<i>Protectmarriage.com-Yes on 8 v. Bowen</i> , 752 F.3d 827 (9th Cir. 2014).....	12
<i>S. Walk at Broadlands Homeowner’s Ass’n, Inc. v. OpenBand at Broadlands, LLC</i> , 713 F.3d 175 (4th Cir. 2013).....	25
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.</i> , 600 U.S. 181 (2023).....	18
<i>Summers v. Earth Island Inst.</i> , 555 U.S. 488 (2009).....	4, 5, 19, 20, 25, 29
<i>Tenn. Republican Party v. SEC</i> , 863 F.3d 507 (6th Cir. 2017).....	25
<i>Twin Rivers Paper Co. LLC v. SEC</i> , 934 F.3d 607 (D.C. Cir. 2019).....	25
<i>United States v. O’Brien</i> , 391 U.S. 367 (1968).....	15
<i>Village of Arlington Heights v. Metropolitan Housing Development Corp.</i> , 429 U.S. 252 (1977).....	i, 13
<i>Young v. Fordice</i> , 520 U.S. 273 (1997).....	6
Constitutional Provisions and Statutes	
U.S. Const. amend. XIV, § 1.....	2

U.S. Const. amend. XV, § 1 2

A.R.S. § 16-166(F)..... 6

Ariz. House Bill 2492 (2022) 2, 3, 8, 12, 13, 14, 16

Ariz. House Bill 2243 (2022) 2, 3, 4, 8, 9, 10, 11, 12,
13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 28, 29, 30, 32,
33, 34, 35, 36

Other Authorities

Ariz. Op. Att’y Gen. No. I13-011 6

PETITION FOR WRIT OF CERTIORARI

The State of Arizona and its Attorney General respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.¹

OPINIONS BELOW

The Ninth Circuit panel opinion is reported at 129 F.4th 691. Legis. App. 1–181. The Ninth Circuit order denying rehearing en banc is reported at 152 F.4th 1153. Legis. App. 546–582.

The district court’s amended post-trial ruling is reported at 719 F.Supp.3d 929. Legis. App. 182–354. The district court’s judgment is not reported but is available at 2024 WL 2244338. Legis. App. 355–361.

JURISDICTION

The Ninth Circuit panel opinion was filed on February 25, 2025. The Ninth Circuit denied rehearing en banc on September 22, 2025. On December 5, 2025, Justice Kagan extended the time to file this petition until February 19, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

¹ Arizona’s legislative leaders (Senate President Warren Petersen and House Speaker Steve Montenegro) and the Republican National Committee are filing separate petitions to review the same judgment. To reduce duplication, this petition cites the appendix to the legislative leaders’ petition (“Legis. App.”).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

The Fourteenth Amendment to the United States Constitution provides in relevant part:

No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

The Fifteenth Amendment to the United States Constitution provides in relevant part:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

U.S. Const. amend. XV, § 1.

Arizona's House Bill 2492 (enacted in 2022) is included as Legis. App. 663–683.

Arizona's House Bill 2243 (enacted in 2022) is included as Legis. App. 646–662.

INTRODUCTION

In 2022, Arizona enacted two laws to ensure that voters are United States citizens. The first law, House Bill 2492, changed how people register to vote. The second law, House Bill 2243, changed how election officials review lists of registered voters to ensure eligibility—a process known as list maintenance.

Eight lawsuits challenging these laws were consolidated in the District of Arizona. Some challengers claimed that the laws were enacted with a discriminatory purpose. But the district court held a trial and found no discriminatory purpose.

Two challengers appealed this finding: nonprofit organizations Promise Arizona and Southwest Voter Registration Education Project. They argued that Arizona enacted House Bill 2243 with an intent to discriminate against Latino voters and that the district court clearly erred by not so finding.

On standing, the Ninth Circuit panel held that Promise Arizona had standing to challenge House Bill 2243 on behalf of its members. Specifically, the panel majority interpreted Article III as allowing an organization to challenge a law in federal court when an unknown number of the organization's unidentified members “may be” injured by the law. *Legis. App.* 36. Judge Bumatay condemned this holding as “the kind of speculation that stretches the concept of imminence of harm beyond recognition.” *Id.* at 170.

The panel majority's permissive view of Article III violates the rule that an organization suing on behalf of members must show that “at least one identified member had suffered or would suffer harm.”

Summers v. Earth Island Inst., 555 U.S. 488, 498 (2009). The Courts of Appeals are split on how to apply *Summers*, and the panel’s holding here is an extreme outlier that deepens the circuit split.

On the merits, the panel majority accused the district court of failing to consider the “totality of circumstances” surrounding House Bill 2243. Legis. App. 73–74. But the district court made no such error. As Judge Bumatay explained, “the district court properly considered all relevant evidence” and simply “concluded that the record only presented a weak array of circumstantial evidence” of discriminatory purpose. *Id.* at 178. The majority’s assertion that the district court ignored surrounding circumstances was “sleight of hand,” because the district court “*did* view the evidence in context—and concluded that it was unpersuasive.” *Id.* at 179.

As an appellate court reviewing for clear error, the panel was required to affirm because the “District Court’s finding on the question of discriminatory intent had ample support in the record.” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 687 (2021). But instead the panel majority reweighed evidence, selectively focusing on facts that the majority deemed indicative of discriminatory purpose. *See* Legis. App. 74–85. The majority even declared: “We conclude that the totality of the circumstances suggests the Voting Laws were the product of intentional discrimination.” *Id.* at 81.

In reweighing evidence, the panel majority breached the duty of appellate judges to review “for clear error.” *Brnovich*, 594 U.S. at 687. And, in viewing evidence selectively, the majority breached

the duty of federal judges to afford a “presumption of legislative good faith.” *Abbott v. Perez*, 585 U.S. 579, 603 (2018). As Judge Bumatay put it, “the majority essentially flips the strong presumption of good faith we grant to legislative action.” Legis. App. 179.

Eleven judges dissented from the denial of rehearing en banc. Legis. App. 555–582.

This Court should grant review to:

- (1) Confirm that Article III does not allow an organization to challenge a law in federal court just because an unknown number of the organization’s unidentified members “may be” injured by the law;
- (2) Resolve a circuit split on how to apply the rule that an organization suing on behalf of members must show that “at least one identified member had suffered or would suffer harm,” *Summers*, 555 U.S. at 498;
- (3) Enforce limits of appellate clear-error review of district court factual findings; and
- (4) Protect the presumption of good faith that federal courts owe state lawmakers.

STATEMENT OF THE CASE

A. Arizona has long required proof of citizenship to vote.

1. In 2004, Arizona enacted Proposition 200, which required people who register to vote in Arizona to provide “satisfactory evidence of United States citizenship.” A.R.S. § 16-166(F).

In 2013, this Court held that the National Voter Registration Act partially preempted Arizona’s proof-of-citizenship requirement. Because of the Act, people who register to vote in Arizona using the federal mail registration form (the “Federal Form”) need not satisfy Arizona’s proof-of-citizenship requirement to vote in federal elections. *See Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 9–20 (2013).

But the Court’s ruling did not preclude Arizona from requiring proof of citizenship to vote in *state* elections. *See id.* at 5 (stating that the National Voter Registration Act governs registration “in *federal* elections”) (quoting *Young v. Fordice*, 520 U.S. 273, 275 (1997)).

Nor did the Court’s ruling preclude Arizona from requiring proof of citizenship as part of *Arizona’s* voter registration form (the “State Form”). *See id.* at 12 (stating that “state-developed forms may require information the Federal Form does not”).

2. Later in 2013, Arizona’s Attorney General issued guidance on how to apply Arizona’s proof-of-citizenship requirement. *See* Ariz. Op. Att’y Gen. No. I13-011, available at 2013 WL 5676943. Accordingly, election officials adopted the following practice:

- People who used the *Federal* Form to register without proof of citizenship could vote only in federal elections, not state elections. (Such voters are “Federal-Only Voters.”)
- People who used the *State* Form to register without proof of citizenship could not vote in any elections.

See Legis. App. 187–188.

But that practice changed in 2018, when Arizona’s Secretary of State agreed to a federal consent decree. Legis. App. 188, 522–545. After the consent decree, election officials began treating Federal Form users and State Form users the same:

- People who used *either* the Federal Form or the State Form to register without proof of citizenship were compared with motor vehicle data, and the results determined next steps:
 - If proof of citizenship was found, the person could vote in federal and state elections.
 - If evidence of *non*-citizenship was found, the person could not vote in any election without proving citizenship.
 - If nothing was found, the person could vote only in federal elections, not state elections. (Thus, the person became a Federal-Only Voter.)

See Legis. App. 188, 533–543.

This change allowed more people to become Federal-Only Voters without proving citizenship. Before the consent decree, only *Federal* Form users

could become Federal-Only Voters. But after the consent decree, *State* Form users could become Federal-Only Voters too.

3. Election officials in Arizona also have a history of requiring already-registered voters to prove citizenship, if evidence shows that the voter is *not* a United States citizen. For example, election officials in Arizona have historically followed certain procedures when a voter states in a juror questionnaire that he or she is not a United States citizen. Legis. App. 196, 220. Those procedures have included (1) notifying the voter and (2) canceling the voter's registration unless the voter provides proof of citizenship in 35 days. *Id.* at 220.

B. Arizona enacted House Bills 2492 and 2243 to address the possibility of non-citizen voting.

1. Arizona enacted House Bill 2492 in 2022. Legis. App. 236–237. In relevant part, the law:

- Prevents people who register without proof of citizenship from voting in presidential elections or by mail.
- For people who use the *Federal* Form to register without proof of citizenship, directs county recorders to try to verify citizenship and, depending on results, allow the person to vote in:
 - federal and state elections,
 - no elections, or
 - only federal non-presidential elections.

- For people who use the *State* Form to register without proof of citizenship, directs county recorders to prevent them from voting in any election. (Thus, the law reverts to the practice before the 2018 consent decree.)

Legis. App. 189–192, 664, 667, 669–676.

The bill’s sponsor, Representative Hoffman, explained that the bill was in response to thousands of people who had registered to vote in federal elections without proving citizenship (i.e. Federal-Only Voters) since the 2018 consent decree—contrary to the proof-of-citizenship requirement that Arizona had passed in 2004. Legis. App. 236.

2. Arizona also enacted House Bill 2243 in 2022. Legis. App. 237–240. In relevant part, the law establishes the following list maintenance procedures:

- The Secretary of State and county recorders must use certain databases to verify citizenship of registered voters (especially Federal-Only Voters); and
- County recorders who confirm that a registered voter is not a United States citizen must (1) notify the voter and then (2) cancel the voter’s registration unless the voter provides proof of citizenship in 35 days.

Legis. App. 193–194, 653–654, 656–661.

C. Two organizations challenged House Bill 2243 before it was implemented, claiming a discriminatory purpose.

1. One of the lawsuits below was from nonprofit organizations Promise Arizona (“Promise”) and Southwest Voter Registration Education Project (“Southwest”). *Promise Arizona et al. v. Fontes et al.*, D. Ariz. No. 22-cv-1602. They claimed that the list maintenance procedures in House Bill 2243 were “intentional race, national origin, and alienage discrimination” and that Arizona’s “actual purpose” behind the law was to “disenfranchise registered Latino voters.” D. Ariz. No. 22-cv-1602, Dkt. # 1 (Complaint filed Sept. 20, 2022), ¶¶ 6, 62.

2. Promise and Southwest sued before House Bill 2243 had been implemented. Even by the time of trial, House Bill 2243 had not been implemented. *See* Legis. App. 268 (stating that “the Voting Laws have not yet been implemented”).

D. After a trial, the district court found no discriminatory purpose.

The district court held a ten-day bench trial. Legis. App. 182. The court then issued findings and conclusions, including the following.

1. Standing

1. Promise is a “nonprofit organization that seeks to increase the participation of Latino communities” in “the electoral process.” Legis. App. 252. Promise is also “a membership organization with 1,043 dues-paying members,” including an unspecified number of “voters who are naturalized citizens.” *Id.*

Promise testified that, “if one of its members is removed from the voter rolls pursuant to H.B. 2243,” then its members “would not have trust in the system.” *Id.* at 253 (quoting testimony). Promise also testified that it “expects to prepare” its workers “for the implementation of H.B. 2243.” *Id.*

Southwest is a “nonprofit organization committed to empowering Latino communities through their vote.” *Id.* at 251.

Southwest testified that, if House Bill 2243 were implemented, it would “reallotat[e] funding and staff time from its voter registration, voter education, and voter turnout efforts,” to “assist voters who are removed from the voter rolls” due to the law. *Id.* at 252.

Neither Promise nor Southwest identified:

- (1) any voter likely to be incorrectly flagged as a non-citizen as a result of House Bill 2243;
- (2) any voter who, even if incorrectly flagged as a non-citizen, would be sent a request for proof of citizenship because of House Bill 2243; or
- (3) any voter who, even if sent a request for proof of citizenship, would be unable to respond in the 35-day period guaranteed by House Bill 2243.

See id. at 251–254.

2. The district court held that Promise had “representational standing” to challenge House Bill 2243 on behalf of its members. Legis. App. 277. The court reasoned that Promise “seeks to protect voting rights of its members” and that “H.B. 2243’s database

checks would apply to all registered voters in Arizona.” *Id.* The court concluded that, under Ninth Circuit precedent, Promise’s members face a “realistic danger of sustaining a direct injury” due to the law. *Id.* (quoting *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 839 (9th Cir. 2014)).

The district court acknowledged that Promise had “not identified any specific member who has been or is likely to be injured by” House Bill 2243. *Id.* at 277. But the court disregarded this point because, under Ninth Circuit precedent, organizations need not identify members who will be injured when it is “relatively clear” that one or more members will be injured and the defense does not need “the identity of a particular member” to respond to the claim of injury. *Id.* at 277–278 (quoting *Nat’l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015)).

3. The district court also held that Promise and Southwest had “direct standing” to challenge House Bill 2243. Legis. App. 276, 278. Citing two decisions from other circuits, the court stated that the list maintenance procedures in House Bill 2243 “frustrate[] the organizations’ missions” and “will require the diversion of resources to respond to its effects.” *Id.* at 276, 278 (citing *Common Cause Indiana v. Lawson*, 937 F.3d 944, 950 (7th Cir. 2019) and *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014)).

2. Legislative purpose

1. The district court considered House Bills 2492 and 2243 together when evaluating claims of discriminatory purpose. Legis. App. 339. The court

began by summarizing the trial evidence. *Id.* at 183–213, 219–247.

2. Because House Bills 2492 and 2243 are facially neutral, the district court considered the factors outlined in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266–68 (1977). These factors are (1) the historical background of the laws, (2) the sequence of events leading to the laws, (3) legislative history, (4) departures from normal procedures or substantive conclusions, and (5) the impact of the laws. *See* Legis. App. 340–341.

Historical background: The district court acknowledged Arizona’s “history of discriminating against people of color.” Legis. App. 342; *see id.* at 231–235 (summarizing evidence). But the court recognized that historical evidence that is not “reasonably contemporaneous with” House Bill 2243 “has little probative value.” *Id.* at 342 (quoting *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987)).

Accordingly, while the district court noted “examples of past discrimination” in Arizona such as literacy tests in the 1970s, the court deemed this evidence weak because there was no “persuasive nexus” between such examples and Arizona’s recent enactment of House Bill 2243. *Id.* at 342–343.

Sequence of events and legislative history: Combining two *Arlington Heights* factors, the district court acknowledged that House Bill 2243 was enacted “on the heels of unsubstantiated voter fraud claims” after Arizona voted for President Biden in 2020.

Legis. App. 343; *see id.* at 235–236 (summarizing evidence).

But, after reviewing legislative history, the district court found that “[n]othing in the legislative hearings evince a motive to discriminate against voters based on race or national origin.” *Id.* at 343; *see id.* at 236–241 (summarizing evidence). Rather, evidence showed that House Bills 2492 and 2243 were “the progeny of Arizona’s prior effort” to require proof of citizenship for all voters in 2004. *Id.* at 344.

The district court also acknowledged the “public’s concerns” in Arizona that non-citizens might vote. *Id.* at 344–345; *see id.* at 230 (summarizing evidence), 241 (finding no evidence challenging “sincerity” of these concerns). The court declined to equate these sincere concerns, even if unsubstantiated, to evidence of a legislative discriminatory motive. *Id.* at 345.

The district court also found that a conservative organization, the Arizona Free Enterprise Club, “helped draft” House Bill 2492 and an early version of House Bill 2243. *Id.* at 236, 238. The court observed that the Club told legislators that the laws would prevent “illegals” from voting—which the court viewed as “some evidence of community animus” because the term “illegals” could suggest racial animus. *Id.* at 345. But the court assigned these facts little weight because there was “no persuasive evidence” that the Legislature intended to “prevent anyone other than non-citizens from voting.” *Id.* at 345–346.

The district court also noted one legislator’s accusation that another legislator made “derogatory comments about Latino voters.” *Id.* at 346. But, even

“assuming” such comments had been made, the court declined to “impute” them to the Legislature. *Id.* at 346–347 (citing *United States v. O’Brien*, 391 U.S. 367, 383–84 (1968)).

Impact of House Bill 2243: The district court found that the challengers failed to show that House Bill 2243 would have “any significant discriminatory impact based on naturalization status, race, or ethnicity.” Legis. App. 347–348; *see id.* at 241–247, 317–319 (summarizing evidence). Indeed, House Bill 2243 generally “requires no action on the part of voters” unless an election official first “confirms” that a specific voter is not a United States citizen and then asks that voter to prove citizenship. *Id.* at 241.

The district court explained that the estimated difference in registration rates by race and ethnicity among Federal-Only Voters is “small in absolute terms.” *Id.* at 348 (quoting *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 680 (2021)). And, while it is “possible” for certain databases to incorrectly flag “a small number of naturalized citizens” as non-citizens due to “outdated citizenship information,” any such effect would be limited for several reasons:

- First, if an incorrectly flagged voter has “already” proved citizenship, election officials can ignore the database.
- Second, even for incorrectly flagged voters who have not yet proved citizenship, motor vehicle data suggested that the number of naturalized citizens likely to be flagged was 65—“just 0.001% of all voters.”

- Third, even for incorrectly flagged voters who are sent a request for proof of citizenship, there was “no quantifiable evidence” that voters of certain races, ethnicities, or national origins would be less able to prove citizenship than others.

Id.

In addition, the district court deemed it “common sense” that a database is more likely to incorrectly flag as a non-citizen someone who was *not* a U.S. citizen at the time the database gathered information. *Id.* at 349. And naturalized citizens are more likely than U.S.-born citizens to have been non-citizens in their lives. This biographical difference may make some databases more likely to incorrectly flag as non-citizens people who became citizens by naturalization rather than by birth, but the district court found no evidence that Arizona enacted House Bill 2243 “because of” this possibility. *Id.*

Departures from norms: For House Bill 2492, the district court found “no persuasive evidence” that the Legislature departed from procedural norms. Legis. App. 350; *see id.* at 236–237 (summarizing evidence).

For House Bill 2243, the procedural history was more complex. A similar bill (House Bill 2617) had been vetoed, and legislators reintroduced much of its content as House Bill 2243 near the end of a legislative session. *Id.* at 351; *see id.* at 237–240 (summarizing evidence). But the district court found that “amendments to existing bills are common at the close of a legislative session.” *Id.* at 351. The court also

declined to infer improper motive from the “speed” with which the Legislature passed House Bill 2243, since the bill’s precursor (House Bill 2617) had passed “the ordinary legislative process.” *Id.* (citing *Abbott v. Perez*, 585 U.S. 579, 610 & n.23 (2018)).

The district court also observed substantive similarities between House Bill 2243 and Arizona’s prior laws and practices. Arizona had been requiring proof of citizenship since 2005, so House Bill 2243 “supplement[ed] this requirement” by ensuring that non-citizens do not “remain on the voter rolls.” *Id.* at 352. In addition, before House Bill 2243 was enacted, election officials in Arizona were already using databases to verify citizenship during voter registration, so the law “expand[ed]” the use of databases for list maintenance. *Id.* Similarly, election officials in Arizona already had a practice of notifying voters when evidence showed non-citizenship and giving such voters 35 days to respond, so House Bill 2243 “adopt[ed]” this pre-existing practice. *Id.*

Considering the “totality”: Overall, the district court considered the “totality” of *Arlington Heights* factors and concluded that the challengers “failed to show that the Voting Laws were enacted with a discriminatory purpose.” Legis. App. 352.

E. Over a dissent, the Ninth Circuit held that an organization had standing on behalf of unidentified members who may be injured.

1. The only parties that appealed the district court’s finding of no discriminatory purpose were Promise and Southwest. Legis. App. 18–19. The

Ninth Circuit panel considered their standing because standing “must be met by persons seeking appellate review.” *Id.* at 31 (quoting *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013)).

2. The Ninth Circuit panel held that Promise had “representational standing” to challenge House Bill 2243 on behalf of its members. *Legis. App.* 34–37. The panel majority recited the test for representational standing (or associational standing): Promise must show that “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Id.* at 34 (quoting *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023)).

As for whether Promise’s members would have standing to sue in their own right, the panel majority reasoned that Promise has “1,043 dues-paying members” including an unspecified number of “voters who are naturalized citizens.” *Id.* at 34–35. The majority stated that, under House Bill 2243, “citizenship checks would proceed and apply to any registered voter in Arizona” who an election official has “reason to believe” is not a United States citizen. *Id.* at 35.² The majority then cited a “danger” that

² The majority’s use of the phrase “reason to believe” referred to a specific clause in House Bill 2243 that the district court had deemed to violate federal statutes. *See Legis. App.* 296–298, 306–307. It is unclear why the majority referred to this clause when evaluating Promise’s standing to appeal the district court’s

eligible voters “*may have* their voter registrations cancelled” based merely on election officials’ suspicions. *Id.* at 35 (emphasis added). In addition, the majority stated that “it appears that” Promise’s members include naturalized citizens, and one of the databases mentioned in House Bill 2243 (an immigration database known as SAVE) “*may not* immediately return updated naturalization records” in some situations. *Id.* at 36 (emphasis added).

The panel majority then reasoned that, because “one or more” of Promise’s members “*may be* adversely affected” by House Bill 2243 and “the State does not need to know the identity of a particular member” to respond to Promise’s claims, Promise “need not identify by name its members who would be injured by H.B. 2243.” *Id.* (emphasis added).

As support for this conclusion, the panel majority cited a prior Ninth Circuit case: *National Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015). In that case, the Ninth Circuit had created an exception to this Court’s rule in *Summers v. Earth Island Institute*, 555 U.S. 488, 498–99 (2009).

The *Summers* rule is that an organization suing on behalf of members must “make specific allegations establishing that at least one identified member had

finding on discriminatory purpose. Promise was not appealing the district court’s conclusion that the “reason to believe” clause violated federal statutes. And regardless, whether Promise had standing to challenge the “reason to believe” clause would not answer whether Promise had standing to challenge the broader list maintenance procedures in House Bill 2243, because “standing is not dispensed in gross.” *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 734 (2008) (citation modified).

suffered or would suffer harm.” 555 U.S. at 498. The *La Raza* exception is that, when it is “relatively clear” that one or more members “have been or will be adversely affected” and the defense does not need “the identity of a particular member” to respond to a claim of injury, the organization need not “identify by name the member or members injured.” 800 F.3d at 1041.

3. Judge Bumatay dissented because Promise failed to show that its members would have standing to sue in their own right. Legis. App. 166–170. In his view, the panel majority’s standing theory—that an unknown number of Promise’s members “may” have voter registrations cancelled due to House Bill 2243—rested on a chain of speculation. For example, Promise did not specify:

- (1) how many of its members are naturalized citizens,
- (2) the likelihood that any such member will be incorrectly flagged as a non-citizen by a database,
- (3) the likelihood that, even if such a member were incorrectly flagged as a non-citizen, an election official would not catch the error, or
- (4) the likelihood that, even if such a member were incorrectly flagged as a non-citizen and received a request for proof of citizenship, the member could not simply respond by proving citizenship.

Id. at 168–170.

Judge Bumatay concluded: “This is the kind of speculation that stretches the concept of imminence of harm beyond recognition.” *Id.* at 170.

4. The panel majority did not address whether Promise had direct standing to sue as an organization, nor whether Southwest had standing. *See* Legis. App. 37.

Judge Bumatay concluded that neither Promise nor Southwest had direct standing to sue as an organization. *Id.* at 162–166. In his view, their theories of direct standing were “nothing more than the diversion-of-resources theory” that this Court has rejected. *Id.* at 165 (citing *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394–95 (2024)).

F. Over a dissent, the Ninth Circuit reweighed evidence of discriminatory purpose.

1. On the merits, the Ninth Circuit panel majority accused the district court of failing to consider the “totality of circumstances” surrounding House Bill 2243. Legis. App. 74. The majority asserted that the district court applied a “heightened version” of *Arlington Heights* by “insisting” that the challengers “directly link the motive of the Legislature to every piece of evidence.” *Id.* at 73–74. Specifically, the majority criticized the district court as follows.

Historical background: The panel majority criticized the district court for finding no “persuasive nexus” between decades-old acts of discrimination in Arizona and House Bill 2243. *Compare* Legis. App. 342 *with* Legis. App. 74–76. According to the majority, the district court’s search for a “nexus” between old

events and the law at issue created an “onerous” requirement that challengers could not satisfy without “direct evidence” of animus—even though the district court never said that. *Id.* at 75.

Legislative history: The panel majority criticized the district court’s findings that (1) “[n]othing in the legislative hearings evince a motive to discriminate” and (2) the Legislature was extending “Arizona’s prior effort” to require proof of citizenship in 2004. *Compare* Legis. App. 343–344 *with* Legis. App. 76–77. In the majority’s view, the district court gave too little weight to the fact that a legislative audit of the 2020 election did not reveal voter fraud—a fact that, in the majority’s eyes, suggested “discriminatory intent.” *Id.* at 76–77.

In addition, the majority criticized the district court for considering the “sincerity” of Arizonans’ concerns about non-citizens voting, stating that a “sincerity” inquiry “exists nowhere in the *Arlington Heights* framework.” *Compare* Legis. App. 230, 241, 344–345 *with* Legis. App. 77–78.

Finally, in the majority’s view, the district court gave too little weight to the fact that the Arizona Free Enterprise Club, which helped draft the laws, sought to prevent “illegals” from voting. *Compare* Legis. App. 345–346 *with* Legis. App. 78–81. According to the majority, that word “can evidence racial animus,” which suggests that the Club “was motivated by a discriminatory purpose,” which in turn suggests that the laws themselves “were the product of intentional discrimination.” *Id.* at 79–80. The majority stated: “We conclude that the totality of the circumstances

suggests the Voting Laws were the product of intentional discrimination.” *Id.* at 81.

Impact of House Bill 2243: The Ninth Circuit panel majority criticized the district court’s finding that, while some databases might incorrectly flag a tiny number of naturalized U.S. citizens as non-citizens, there was no evidence that Arizona enacted House Bill 2243 “*because of*” that possibility. *Compare* Legis. App. 349 *with* Legis. App. 83–84. According to the panel majority, the district court was “requiring direct evidence of legislators’ motive”—even though the district court never said that. *Id.* at 83–84.

Departures from norms: The Ninth Circuit panel majority criticized the district court’s finding that the procedural history of House Bill 2243 did not suggest discriminatory intent. *Compare* Legis. App. 351 *with* Legis. App. 82–83. In the majority’s view, the district court should have assigned more weight to the fact that (1) House Bill 2243 included “substantive changes” from an earlier bill, and (2) legislators had “little time” to review House Bill 2243. *Id.* at 82–83. According to the majority, the district court should have viewed these facts in “the context of the totality of the circumstances”—even though the district court never purported to do otherwise. *Id.* at 83.

Considering the “totality”: Although the district court had expressly considered the “totality” of *Arlington Heights* factors, the Ninth Circuit panel majority asserted that the district court “did not show that it was viewing the evidence in context.” *Compare* Legis. App. 352 *with* Legis. App. 84–85.

2. Judge Bumatay dissented. In his view, the majority “substitutes the district court’s factfinding for its own” and “lowers the evidentiary burden to the floor—flipping the strong presumption of good faith we give to legislative action.” Legis. App. 162.

Judge Bumatay concluded that the “district court’s finding on discriminatory intent had ample support in the record.” *Id.* at 172. In his view, the majority accused the district court of giving too little weight to “circumstantial’ evidence,” but in reality the district court “examined circumstantial evidence—it just found it *unconvincing*.” *Id.* at 174.

Judge Bumatay explained why the majority’s criticisms of the district court (1) attempted to reweigh evidence and (2) abandoned the presumption of legislative good faith. *See id.* at 175–178.

Judge Bumatay concluded: “In sum, the district court properly considered all relevant evidence, piece by piece, but ultimately concluded that the record only presented a weak array of circumstantial evidence.” *Id.* at 178. Thus, the majority’s assertion that the district court failed to consider the totality of circumstances was “sleight of hand,” and the majority’s reweighing of evidence was “inconsistent with the law and the facts.” *Id.* at 179.

G. Eleven judges dissented from the denial of rehearing en banc.

Of the eleven judges who dissented from the denial of rehearing en banc, six called the panel majority’s decision on standing and discriminatory purpose “troubling.” Legis. App. 561. A seventh judge called the decision “egregiously flawed.” *Id.* at 582.

REASONS FOR GRANTING THE PETITION**I. The panel’s decision on representational standing deepens a circuit split on how to apply *Summers* and violates Article III’s imminence requirement.****A. Lower courts are split on how to apply *Summers*, and the panel’s decision here is an extreme outlier.**

1. In *Summers v. Earth Island Institute*, this Court rejected the idea that an organization may sue on behalf of members based on “a statistical probability that some of [its] members are threatened with concrete injury.” 555 U.S. 488, 497–98 (2009). The Court instead reaffirmed that organizations seeking to sue on behalf of members must “make specific allegations establishing that at least one identified member had suffered or would suffer harm.” *Id.* at 498.

Most lower courts have followed this Court’s instruction: When an organization seeks to sue on behalf of members, it must identify at least one member who has been or will be injured. *See Draper v. Healey*, 827 F.3d 1, 3 (1st Cir. 2016) (Souter, J., sitting by designation); *N.J. Physicians, Inc. v. President of U.S.*, 653 F.3d 234, 241 (3d Cir. 2011); *S. Walk at Broadlands Homeowner’s Ass’n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 183–85 (4th Cir. 2013); *Tenn. Republican Party v. SEC*, 863 F.3d 507, 520–21 (6th Cir. 2017); *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002, 1008–11 (7th Cir. 2021); *Ga. Republican Party v. SEC*, 888 F.3d 1198, 1203–05 (11th Cir. 2018); *Twin*

Rivers Paper Co. LLC v. SEC, 934 F.3d 607, 612–16 (D.C. Cir. 2019).

But the Ninth Circuit has created an exception. In *National Council of La Raza v. Cegavske*, the Ninth Circuit decided that this Court did not mean what it said in *Summers*:

We are not convinced that *Summers*, an environmental case brought under the National Environmental Policy Act, stands for the proposition that an injured member of an organization must always be specifically identified in order to establish Article III standing for the organization.

800 F.3d 1032, 1041 (9th Cir. 2015). Thus, the Ninth Circuit declared that the *Summers* rule does not apply when it is “relatively clear” that one or more members of an organization have been or will be injured:

Where it is *relatively clear*, rather than merely speculative, that one or more members have been or will be adversely affected by a defendant's action, and where the defendant need not know the identity of a particular member to understand and respond to an organization's claim of injury, we see no purpose to be served by requiring an organization to identify by name the member or members injured.

Id. (emphasis added).

The Second and Fifth Circuits also have left open the possibility that an organization can sue on behalf of members without identifying a member who has

been or will be injured—at least at the pleading stage. See *Do No Harm v. Pfizer Inc.*, 126 F.4th 109, 122 n.7 (2d Cir. 2025); *Nat’l Infusion Ctr. Ass’n v. Becerra*, 116 F.4th 488, 497 n.5 (5th Cir. 2024).

Thus, whether an organization seeking to sue on behalf of members “need specifically identify an injured member at the pleading stage” is “unsettled and at the center of a circuit split.” *California Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094, 1116 (9th Cir. 2024) (Baker, J., concurring). And the Ninth Circuit’s position is “in tension with *Summers*.” *Id.* at 1115.

2. Below, the panel majority drastically expanded the Ninth Circuit’s exception to the *Summers* rule in two ways.

First, the case below went to trial, not just the pleading stage. And an organization’s standing “must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, 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).

Thus, even if the Ninth Circuit’s exception to *Summers* is sensible at the pleading stage, “at summary judgment or trial an organizational plaintiff is undoubtedly obligated to identify one or more of its injured members.” *California Rest Ass’n*, 89 F.4th at 1116 (Baker, J., concurring).

Second, the Ninth Circuit’s exception to *Summers*, as originally phrased, applies only when it is “relatively clear” that one or more members of the organization “have been or will be adversely affected.” *La Raza*, 800 F.3d at 1041.

But here, the panel majority did not conclude that it was “relatively clear” that one or more of Promise’s members “have been or will be adversely affected” by House Bill 2243. Nor could it.

Instead the panel majority asserted that one or more of Promise’s members “*may be* adversely affected” by House Bill 2243. Legis. App. 36 (emphasis added). And even this assertion oversimplifies. The majority cited a “danger” that eligible voters “may have their voter registrations cancelled” due to House Bill 2243. *Id.* at 35. But that danger would not materialize unless the law (which had not been implemented by trial) were applied such that:

- (1) a voter is incorrectly flagged as a non-citizen,
- (2) an election official does not catch the error and asks the voter for proof of citizenship, and
- (3) the voter, despite being a U.S. citizen, fails to provide proof of citizenship in response.

See id. at 168–170 (Bumatay, J., dissenting). And even this extremely unlucky hypothetical voter would not give Promise standing unless the voter is one of Promise’s 1,043 members. *See id.* at 168.

Thus, the panel’s decision that Promise had standing cannot be reconciled with *Summers*.

B. The panel’s decision also violates the related imminence requirement of Article III.

1. This Court’s decision in *Summers* rested on basic Article III standing principles. A plaintiff must show, among other things, a threat of injury that is

“actual and imminent, not conjectural or hypothetical.” *Summers*, 555 U.S. at 493.

The purpose of the imminence requirement is “to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly* impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (quoting *Lujan*, 504 U.S. at 565 n.2). Thus, a theory of standing that “relies on a highly attenuated chain of possibilities” does not suffice. *Id.* at 410.

2. The panel majority’s decision that Promise had standing relied on a highly attenuated chain of possibilities about how House Bill 2243 “may” affect voters, as previously explained. *See* Legis. App. 168–170 (Bumatay, J., dissenting). This theory of standing “is the kind of speculation that stretches the concept of imminence of harm beyond recognition.” *Id.* at 170.

For this reason, the panel’s decision violates not only this Court’s decision in *Summers*, but also the more basic (and related) Article III imminent-harm requirement.

C. This case presents an appropriate vehicle for this Court’s review.

1. The question of representational standing is well presented here. The district court acknowledged that Promise had not identified a member likely to be affected by House Bill 2243, but deemed itself bound by Ninth Circuit precedent. *Legis. App.* 277–278 (citing *La Raza*, 800 F.3d at 1041). On appeal, the State and its Attorney General argued that the district court “was wrong in excusing Promise Arizona from needing to identify members.” 9th Cir. No. 24-4029,

Dkt. #142 (Third Brief on Cross-Appeal filed Aug. 26, 2024) at 67. The Ninth Circuit panel majority rejected this argument. Legis. App. 36 (citing *La Raza*, 800 F.3d at 1041). Thus, the question was well developed.

2. If this Court grants review and holds that Promise lacked *representational* standing to challenge House Bill 2243, the next question would be whether Promise and Southwest had *direct* standing to sue as organizations. This Court could either consider this question for itself or remand for the Ninth Circuit's consideration.

The district court held that Promise and Southwest had direct standing. Legis. App. 276, 278. On appeal, the State and its Attorney General argued that the district court's broad view of direct standing has been foreclosed by this Court's holding in *Food & Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 394–96 (2024). 9th Cir. No. 24-4029, Dkt. #142 (Third Brief on Cross-Appeal filed Aug. 26, 2024) at 66.

The Ninth Circuit panel majority did not reach this question, having held instead that Promise had representational standing. See Legis. App. 37. But Judge Bumatay reached the question, concluding that Promise and Southwest did not have direct standing because their standing theories have been foreclosed by *Alliance for Hippocratic Medicine*, 602 U.S. at 394–96. *Id.* at 164–166.

At a minimum, this Court should grant review on the issue of representational standing to (1) clarify how lower courts should apply *Summers* and (2) hold that the Ninth Circuit overstepped here.

II. The panel’s decision on discriminatory purpose usurps the factfinder’s role and discards the presumption of good faith.

A. Appellate courts must review factual findings for clear error, but the panel’s decision reweighed evidence instead.

1. Five years ago, this Court reviewed a Ninth Circuit panel conclusion that an Arizona voting law was “enacted with a discriminatory purpose,” contrary to a district court’s finding. *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 687 (2021). This Court reminded the Ninth Circuit of the limited nature of clear-error review: “If the district court’s view of the evidence is plausible in light of the entire record, an appellate court may not reverse even if it is convinced that it would have weighed the evidence differently in the first instance.” *Id.*

This Court then held that the district court’s finding “had ample support in the record” and was a faithful application of the “familiar approach outlined in *Arlington Heights*.” *Id.* As a result, this Court vindicated the district court’s finding that Arizona’s voting law “was not enacted with a racially discriminatory purpose.” *Id.* at 690.

2. This Court should do the same here. Below, the district court held a trial, carefully analyzed the evidence, considered the *Arlington Heights* factors (including in “totality”), and found that the challengers “failed to show that the Voting Laws were enacted with a discriminatory purpose.” Legis. App. 339–352.

The Ninth Circuit panel vacated the district court's finding because, according to the panel majority, the district court failed to consider the "totality of circumstances" surrounding House Bill 2243. Legis. App. 74. But this accusation was "sleight of hand," as Judge Bumatay explained. *Id.* at 179. The majority's specific criticisms of the district court show that the majority reweighed evidence instead of reviewing for clear error.

Historical background: The Ninth Circuit panel majority criticized the district court for finding no "persuasive nexus" between decades-old acts of discrimination in Arizona and House Bill 2243. *Compare* Legis. App. 342 *with* Legis. App. 74–76.

But the district court was following this Court's guidance: "unless historical evidence is reasonably contemporaneous with the challenged decision, it has little probative value." *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987). The district court was not requiring direct evidence of discrimination, but was assigning *little weight* to old facts of dubious relevance. Thus, the panel majority's criticism was a reweighing of evidence, not clear-error review.

Legislative history: The district court made several findings about the legislative history of House Bill 2243, including:

- (1) "Nothing in the legislative hearings evince a motive to discriminate," and instead the Legislature was extending "Arizona's prior effort" to require proof of citizenship in 2004.

- (2) The “public’s concerns” about non-citizens voting, even if unsubstantiated, did not suggest legislative animus.
- (3) Although the Arizona Free Enterprise Club sought to prevent “illegals” from voting, there was “no persuasive evidence” that the Legislature intended to “prevent anyone other than non-citizens from voting.”

Legis. App. 343–346.

The Ninth Circuit panel majority reweighed evidence for each finding. *First*, according to the majority, the fact that a legislative audit of the 2020 election did not reveal voter fraud was evidence that Arizona enacted House Bill 2243 with “discriminatory intent.” Legis. App. 76–77. But the district court considered such evidence—it just found it *too weak* to prove discriminatory intent. Legis. App. 343–345. The district court’s view made sense because States “may take action to prevent election fraud without waiting for it to occur and be detected.” *Brnovich*, 594 U.S. at 686. The panel majority sought to draw a different inference, not review for clear error.

Second, the panel majority criticized the district court for considering the “sincerity” of Arizonans’ concerns about non-citizens voting. Legis. App. 77–78 (referring to Legis. App. 230, 241, 344–45). But the district court was *right* to consider sincerity, because claims of discriminatory purpose may involve an “assessment of the sincerity of [the law’s] proponents.” *Brnovich*, 594 U.S. at 689. Again, the panel majority sought to draw a different inference, not review for clear error.

Third, the panel majority assigned heavy weight to the fact that the Arizona Free Enterprise Club, which helped draft the law, sought to prevent “illegals” from voting. Legis. App. 78–81. In the majority’s view, this fact suggested that the Club was “motivated by a discriminatory purpose,” which in turn suggested that the law was “the product of intentional discrimination.” *Id.* at 79–80. But the district court considered this fact—even deeming it “some evidence of community animus”—but found “no persuasive evidence that the *Legislature*” intended to “prevent anyone other than non-citizens from voting.” Legis. App. 345–346 (emphasis added).

Here too, the district court’s view made sense. Even the panel majority admitted that “some members of the Legislature may have been sincerely motivated by a desire to control the increase in federal-only voters for a non-discriminatory purpose.” Legis. App. 80. But the majority nevertheless concluded that “the totality of circumstances suggests the Voting Laws were the product of intentional discrimination.” *Id.* at 81. In reaching this conclusion, the majority reweighed evidence instead of reviewing for clear error.

Impact of House Bill 2243: The district court made several findings about the anticipated impact of House Bill 2243, including:

- (1) There was no evidence of “any significant discriminatory impact based on naturalization status, race, or ethnicity”; and
- (2) Although some databases may incorrectly flag a tiny number of naturalized citizens as non-

citizens, there was no evidence that Arizona enacted the law “*because of*” that possibility.

See Legis. App. 347–349.

The Ninth Circuit panel majority did not dispute the first finding. But the majority criticized the second finding, stating that the district court was “requiring direct evidence of legislators’ motive.” Legis. App. 83–84. But the district court was *not* requiring direct evidence. Indeed, the district court recognized that “legislators rarely publicize their discriminatory motives.” Legis. App. 343.

Rather, the district court was following this Court’s guidance: Discriminatory purpose means that the Legislature chose a policy “at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Here, the district court simply found this key element lacking.

As the district court explained, it is “common sense” that a database may be more likely to incorrectly flag as a non-citizen someone who was *not* a U.S. citizen at the time the database gathered information. Legis. App. 349. And naturalized citizens are more likely than U.S.-born citizens to have been non-citizens in their lives. But importantly, House Bill 2243 does not require election officials to request proof of citizenship whenever a database flags someone as a non-citizen, but only after the election official “confirms” non-citizenship. *Id.* at 223. And regardless, even when a degree of disparate impact is “an unavoidable consequence” of a law, if “statutory history and all of the available evidence” show that the

legislature was seeking a “policy that has in itself always been deemed to be legitimate” (such as ensuring that only U.S. citizens vote), then an inference of discriminatory purpose “fails to ripen into proof.” *Feeney*, 442 U.S. at 279 n.25.

Thus, the panel majority’s criticism here reweighed evidence instead of reviewing for clear error.

Departures from norms: The district court made additional findings about House Bill 2243:

- (1) Procedurally, the enactment of House Bill 2243 was unusual because the bill was a modified version of a prior bill that had been vetoed and it was passed quickly, but this history did not show discriminatory purpose.
- (2) Substantively, House Bill 2243 “expand[ed]” and “adopt[ed]” prior practices in Arizona.

Legis. App. 351–352.

The Ninth Circuit panel majority did not dispute the second finding. But the majority criticized the first finding, stating that the district court should have given more weight to the fact that (1) House Bill 2243 included “substantive changes” from the earlier bill, and (2) legislators had “little time” to review House Bill 2243. Legis. App. 82–83.

But the district court considered these facts—it just found them *unpersuasive*. The district court explained that “amendments to existing bills are common at the close of a legislative session,” and the “speed” with which the Legislature passed House Bill 2243 did not suggest improper motive given that a

prior version had undergone the “ordinary legislative process.” Legis. App. at 351. In reaching these conclusions, the district court was following this Court’s guidance: “we do not see how the brevity of the legislative process can give rise to an inference of bad faith.” *Abbott v. Perez*, 585 U.S. 579, 610 (2018).

Here too, the panel majority’s criticism reweighed evidence instead of reviewing for clear error.

Considering the “totality”: Although the district court had expressly considered the “totality” of *Arlington Heights* factors, the Ninth Circuit panel majority asserted that the district court “did not *show* that it was viewing the evidence in context.” *Compare* Legis. App. 352 *with* Legis. App. 84–85 (emphasis added). But the district court’s thorough decision clearly *showed* that it viewed evidence in context. *See id.* at 183–213, 219–247, 339–353.

In short, the panel majority disagreed with the district court’s inferences. But “an appellate court may not reverse even if it is convinced that it would have weighed the evidence differently in the first instance.” *Brnovich*, 594 U.S. at 687. This Court should grant review to remind the Ninth Circuit of the limited nature of clear-error review.

B. Federal courts must presume legislative good faith, but the panel’s decision drew adverse inferences instead.

1. Appellate review of factual findings must be deferential, and appellate review of factual findings of *absence* of discriminatory purpose must be doubly deferential. This is because “the good faith of the state

legislature must be presumed.” *Abbott v. Perez*, 585 U.S. 579, 603 (2018) (citation modified).

To illustrate: In the past, the Ninth Circuit applied a “cat’s paw” theory to analyze legislative purpose, on the ground that legislators might be used as pawns to accomplish someone else’s discriminatory purpose. *See Brnovich*, 594 U.S. at 689. But this Court rejected that view because it conflicted with a presumption of good faith. As this Court explained, “legislators who vote to adopt a bill are not the agents of the bill’s sponsor or proponents” but instead “have a duty to exercise their judgment and to represent their constituents.” *Id.* at 689–90.

Similarly, this Court recently held that a district court, despite making factual findings, “failed to honor the presumption of legislative good faith by construing ambiguous direct and circumstantial evidence against the legislature.” *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025).

2. This Court should take a similar approach here. The Ninth Circuit panel below not only assumed a factfinding role, but did so in a way that construed ambiguous evidence against Arizona’s Legislature.

For example, the panel majority assigned heavy weight to the Arizona Free Enterprise Club’s use of the word “illegals” in communications to legislators—a word that the majority said “*can* evidence racial animus.” Legis. App. 79. (emphasis added). While it is true that this word *can* evidence animus, the majority inferred that there *was* animus—i.e., that the Club “was motivated by a discriminatory purpose.” *Id.*

Then the panel majority went farther. Although the Club is not part of Arizona’s Legislature, the majority imputed the *Club’s* supposed animus to the *Legislature*, inferring that the laws themselves were “the product of intentional discrimination” and that “discriminatory animus permeated each and every step of the legislative process.” *Id.* at 80. This imputation of the Club’s intent to the Legislature is a variation of the cat’s paw theory that this Court rejected. *Brnovich*, 594 U.S. at 689–90.

Then the panel majority went even farther. The majority recognized that legislators “may have been sincerely motivated by a desire to control the increase in federal-only voters for a non-discriminatory purpose.” *Legis. App.* 80. But the majority *still* concluded that “the totality of the circumstances suggests the Voting Laws were the product of intentional discrimination.” *Id.* at 81. Thus, even when considering a plausible non-discriminatory explanation of legislative behavior, the majority chose to infer bad faith, not good faith.

Given the panel majority’s reasoning, it is hard to see how Arizona could pass a law to ensure that registered voters are United States citizens without being accused of unconstitutional discrimination by a Ninth Circuit panel. As Judge Bumatay explained, the majority “flipp[ed] the strong presumption of good faith we grant to legislative action.” *Legis. App.* 162.

This Court should grant review to remind the Ninth Circuit of the presumption of good faith to which States are entitled.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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