No. 25-1022

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*

## REPLY BRIEF FOR THE PETITIONERS


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## REPLY BRIEF FOR THE PETITIONERS

This Court held in *Summers v. Earth Island Institute* that an organization suing on behalf of members must identify at least one member with an injury; it cannot rely on a "statistical probability" of injury among its members. 555 U.S. 488, 497–99 (2009). But the Ninth Circuit has for years decided that this rule does not apply to it, allowing representational standing when a court deems it "relatively clear" that there is an injured member, even if the organization identifies no such member. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015).

Thus, the Ninth Circuit—out of step with other circuits—has adopted the probabilistic standing rule that this Court expressly rejected in *Summers*. That alone would merit certiorari.

But in this case, the Ninth Circuit strayed even further, holding that an organization has standing when, even after a trial, the organization has merely shown that an unknown number of unidentified members "may be" injured. That holding is uniquely egregious among the Circuits and subjects States and other governmental entities in the Ninth Circuit to suit when jurisdiction is entirely speculative.

The only party to oppose this petition for certiorari, the United States, acknowledges that this approach to standing is "obviously inadequate." U.S. Br. 33. The United States does not dispute that the Ninth Circuit's approach flies in the face of *Summers* and is out of step with other Circuits.

Yet the United States argues—in a single, conclusory paragraph—that the issue is not certworthy because "the more fundamental problem with Promise Arizona's standing is the utter lack of an imminent harm to *any* of its members." U.S. Br. 33. In other words, according to the United States, the Ninth Circuit's decision is so egregious that it is not worth reviewing.

That makes no sense. A case does not become less worthy of review by being *even more wrong*. And the extra wrong that the United States identifies is not some separate issue that will prevent this Court from righting the Ninth Circuit's course on representational standing. Rather, it is a consequence of the Ninth Circuit's decision to ignore *Summers* and not require organizational plaintiffs to identify members whose claim to injury can be tested.

The United States also suggests that this Court could consider standing "post-remand." U.S. Br. 33. But there should be no remand when there is no jurisdiction. And denying review would allow the Ninth Circuit to continue ignoring *Summers*, as it has for a decade.

The Ninth Circuit also relied on its inadequate standing theory to vacate the district court's finding of a lack of discriminatory purpose. This decision was also "plainly wrong." U.S. Br. 32. Yet the United States argues that certiorari on this issue is "premature" because the district court on remand might reach the same result as it did before. *Id.* But the Ninth Circuit's sweeping opinion declared: "We conclude that the totality of the circumstances suggests the Voting Laws *were* the product of

intentional discrimination." Legis. App. 81 (emphasis added). The district court might interpret this language as a not-so-subtle directive. And even if the district court on remand reaffirms its initial decision, the plaintiffs may then choose to forgo an appeal, ensuring that a Ninth Circuit decision that contradicts this Court's binding precedents remains precedential in the Circuit. The time for certiorari is now.

## I. This is an appropriate case to correct the Ninth Circuit's probabilistic and speculative approach to representational standing.

### A. The Ninth Circuit has strayed far from *Summers*.

In *Summers*, this Court held that organizations suing on behalf of members may not rely on a "statistical probability" of injury among members, but must make "specific allegations establishing that at least one identified member had suffered or would suffer harm." 555 U.S. at 497–98. Accordingly, in most circuits, organizations suing on behalf of members must identify at least one member who is or will be injured. *See* Pet. at 25–26 (collecting cases).

But the Ninth Circuit unilaterally decided to create an exception to this identification rule when it is "relatively clear" that at least one member of the organization is or will be injured and the defendant need not know members' identities. *La Raza*, 800 F.3d at 1041. This exception is "in tension with *Summers*" and the subject of "a circuit split." *California Rest. Ass'n v. City of Berkeley*, 89 F.4th 1094, 1115–16 (9th Cir. 2024) (Baker, J., concurring).

Below, the Ninth Circuit panel invoked its own *La Raza* exception to excuse Promise from the obligation to identify injured members. *See* Pet. at 18–20. In so doing, the panel expanded the *La Raza* exception to a situation where (1) the organization did not identify injured members even at trial, and (2) the panel merely decided that an unknown number of the organization's unidentified members "may be" injured. *See* Pet. at 27–28. Thus, the panel deepened the circuit split and strayed further from *Summers*.

The United States does not dispute any of this. *See* U.S. Br. 33–34. And this different rule for representational standing in the Ninth Circuit leads to injunctions without jurisdiction and forum-shopping. This Court should grant review and bring the Ninth Circuit back into the fold.

### B. The "utter lack of an imminent harm" is a reason to grant review on standing, not deny it.

The United States briefly argues that reviewing the Ninth Circuit's decision here "likely would not" resolve the circuit split regarding the *Summers* identification rule. U.S. Br. 33. This is because, according to the United States, the panel's decision that Promise had standing suffers from a "more fundamental problem," namely "the utter lack of an imminent harm to *any* of [Promise's] members." *Id.*

But this fundamental problem—lack of imminent harm—is exactly what the *Summers* identification rule is designed to prevent. When an organization sues on behalf of members, it must identify affected members to confirm that the requisite injury exists—

i.e., that injury is "actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (citation modified).

This Court explained its rationale in *Summers*. Federal courts have "an independent obligation to assure that standing exists." *Summers*, 555 U.S. at 499. So, when an organization sues on behalf of members, the "requirement of naming the affected members" may not be discarded "in light of statistical probabilities." *Id.* at 498–99. Speculation about member injuries "does not suffice." *Id.* at 499. And identifying affected members helps resolve "the difficulty of verifying the facts upon which such probabilistic standing depends." *Id.*

This case illustrates the point. Had Promise identified members who it believed would be injured by list maintenance provisions in House Bill 2243, there would be a context in which to evaluate whether injury is imminent. For each identified member, the district court (and the Ninth Circuit) could have asked:

- Is this person likely to be incorrectly flagged as a non-citizen due to House Bill 2243? If so, why?
- Even if this person were incorrectly flagged as a non-citizen, would election officials catch the error and thus avoid asking the person to prove citizenship? If not, why not?
- Even if this person were incorrectly flagged as a non-citizen and asked to prove citizenship, could the person avoid harm by simply providing such proof? If not, why not?

But Promise never identified members, so the district court (and the Ninth Circuit) never asked these questions.

Thus, the United States correctly diagnoses a fundamental Article III problem, but ignores that the *Summers* identification rule is the cure. Similar problems will continue arising in the Ninth Circuit because organizations can sue and obtain injunctions on behalf of members without identifying injured members. This Court's intervention is warranted.

### C. The panel's decision on representational standing is final, not interlocutory.

The United States also suggests that this Court could address the standing issue "post-remand," because the Ninth Circuit panel used its flawed standing theory to remand Promise's discriminatory purpose claim to the district court. *See* U.S. Br. 33.

But the panel's decision on standing was final, not interlocutory. The district court had invoked the Ninth Circuit's *La Raza* exception to excuse Promise from its obligation to identify injured members, and the panel did too. *See* Pet. at 11–12, 18–20. That is why the panel's remand to the district court was limited to whether, based on the record already developed, House Bill 2243 was "enacted with intent to discriminate." Legis. App. 90–91. The panel's standing conclusion will not change on remand.

Because the panel was wrong about standing, it lacked jurisdiction to remand. Thus, the time to address the standing issue is now—not after a remand premised on a standing theory that is "obviously inadequate." U.S. Br. 33.

### D. Denying review would allow the Ninth Circuit to continue ignoring *Summers*.

The root of the Article III problem here can be traced to eleven years ago, when the Ninth Circuit made an exception to the *Summers* identification rule where it is "relatively clear" that at least one member of the suing organization is or will be injured. *La Raza*, 800 F.3d at 1041. By creating this exception, the Ninth Circuit invited the sort of standing theory that this Court rejected: an organization suing based on "a statistical probability" of injury among its unidentified members. *Summers*, 555 U.S. at 1151.

The Ninth Circuit expanded its exception in this case. Denying review would allow the Ninth Circuit to continue ignoring *Summers*, even more than it has for the past decade, and out of step with the other Circuits.

## II. The Ninth Circuit's decision on discriminatory purpose is certworthy because it violated basic principles of federalism and appellate review.

### A. The presumptions of correctness in trial court factfinding and good faith in state lawmaking are exceptionally important.

The district court held a ten-day trial and rejected the claim that Arizona enacted House Bill 2243 with a discriminatory purpose. *See* Pet. at 10–17. In vacating this finding, the Ninth Circuit panel violated two exceptionally important principles: that appellate courts review factual findings for clear error only, and that federal courts presume good faith on the part of

state lawmakers. *See* Pet. at 31–39. Certiorari is warranted to vindicate both principles.

Limiting appellate courts to clear-error review is essential because the trial judge is better positioned to "make determinations of credibility" and has "expertise" in making fact determinations. *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985). Duplicating fact-finding efforts on appeal would come at "a huge cost in diversion of judicial resources," where the parties "have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one." *Id.* at 575.

Just as essential is the presumption of legislative good faith. This presumption reflects "the Federal Judiciary's due respect for the judgment of state legislators," ensures that courts are not "quick to hurl" demeaning accusations "at the political branches," and guards against "plaintiffs who seek to transform federal courts into weapons of political warfare." *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024) (citation modified).

The United States does not dispute that the Ninth Circuit's decision to vacate the district court's finding of a lack of discriminatory purpose defies these essential principles. *See* U.S. Br. 30–33. Indeed, the United States acknowledges that the Ninth Circuit's decision was "plainly wrong." *Id.* at 32.

### B. The Ninth Circuit's decision on discriminatory purpose conflicts with this Court's precedents and is already causing confusion.

The district court's finding of a lack of discriminatory purpose was supported by a careful opinion that closely tracked this Court's precedents governing discriminatory purpose analysis. *See* Pet. at 13–17. The Ninth Circuit, however, criticized the very parts of the district court's opinion that tracked this Court's precedents. *See, e.g.*, Pet. at 32–33, 35, 37.

The United States acknowledges the conflict between the Ninth Circuit's decision and this Court's decisions, stating that "the bulk of the panel majority's criticisms" of the district court "run headlong into this Court's precedents" and that the Ninth Circuit "flouted this Court's legal direction." U.S. Br. 30–31. The United States nevertheless argues that certiorari on the issue is "premature" because the Ninth Circuit's decision to remand was "interlocutory." *Id.* at 32. But the United States ignores the practical consequences of the Ninth Circuit's decision. Even if the decision is interlocutory, it has created precedent in the Ninth Circuit that conflicts with this Court's precedents and is causing confusion.

For starters, on remand the district court must now attempt to rule in a way that satisfies the Ninth Circuit panel's criticisms of its earlier decision while remaining faithful to this Court's precedents. But this is an impossible task, because the district court cannot follow conflicting guidance.

Worse, the panel's decision is precedential in the Ninth Circuit, so the effects are not limited to this case. Recently, for example, in a case about an Arizona voting law enacted in 2021, Arizona's Attorney General moved to exclude evidence of events that happened more than a *century* ago (before Arizona even became a state) on the ground that it was irrelevant to whether the 2021 law was tainted by discriminatory purpose. *See Mi Familia Vota v. Fontes*, D. Ariz. No. 21-cv-1423, Dkt. # 336 (Motion filed Mar. 11, 2026) at 5–7. In response, the plaintiffs relied on the panel decision here, asserting that "the Ninth Circuit has rejected any categorical rule that evidence is 'too old' to be relevant." *See id.*, Dkt. # 339 (Response filed Mar. 25, 2026) at 5–6. This example illustrates how the panel's decision here, if left unchecked, will confuse district courts in the Ninth Circuit about how to apply this Court's precedents.

Moreover, although the panel here remanded for further proceedings, the panel majority's opinion included gratuitous language, putting a thumb on the scale on remand. For example, the majority declared: "We conclude that the totality of the circumstances suggests the Voting Laws *were* the product of intentional discrimination." Legis. App. 81 (emphasis added). The United States says that, despite such language, the district court on remand should "reaffirm its initial decision" and find no discriminatory purpose. U.S. Br. 32. The State agrees that this is what the district court *should* do. But the inconsistency between the panel's decision and this Court's precedents puts the district court between a rock and a hard place.

Regardless, even if the district court on remand reaffirms its initial decision and finds no discriminatory purpose, the plaintiffs may then strategically choose to forgo an appeal. That way, the "plainly wrong" panel decision, *see* U.S. Br. 32, will remain precedential in the Ninth Circuit without risk of reversal by this Court. This Court's intervention is warranted now.

### C. Granting review on standing would resolve any jurisdictional vehicle problem.

The United States also argues that there is a "threshold vehicle problem" with reviewing the Ninth Circuit panel's decision on discriminatory purpose: the panel premised its jurisdiction on a theory of representational standing that is "obviously inadequate." U.S. Br. 32–33.

But the standing issue is itself certworthy, as explained above. Contrary to the United States' characterization, the State's petition is not an attempt to "rebrand this patent standing defect as a benefit." U.S. Br. 33. Rather, the State's petition presents two questions, and one is the representational standing issue. The State seeks certiorari on the representational standing issue at "a minimum," so that the Court can "(1) clarify how lower courts should apply *Summers* and (2) hold that the Ninth Circuit overstepped here." Pet at 30.

If this Court grants review on the representational standing issue, it should also grant review on the merits of the discriminatory purpose analysis. That way, in the unlikely event the Court

*agrees* with the Ninth Circuit on representational standing, it can reach the important issue of whether the Ninth Circuit improperly reweighed evidence of discriminatory purpose. This would allow the Court to remind the Ninth Circuit of the "nature of clear-error review" and the "presumption of good faith." Pet. at 37, 39.

Of course, the State hopes that this Court will grant review and *disagree* with the Ninth Circuit on representational standing. In that event, the next question in the case would be whether Promise (and the other cross-appealing organization) have standing under a different theory: namely, direct standing as organizations. The panel majority did not reach that question, and the panel dissent answered it in the negative. *See* Pet. at 30. So, if this Court disagrees with the Ninth Circuit on representational standing, the Court could remand for the Ninth Circuit to consider direct standing in the first instance, without reaching the merits of the discriminatory purpose issue.

If this Court declines to grant review on standing, that would imply that it is sufficiently content with the Ninth Circuit's holding on standing—in which case standing does not present a jurisdictional defect to certiorari on the discriminatory purpose issue. In that event, the Court should grant certiorari on the discriminatory purpose issue, which could be resolved via a summary reversal.

## CONCLUSION

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

Respectfully submitted,

June 3, 2026

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