IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VOTE.ORG, *et al.*,

Plaintiffs,

v.

GEORGIA STATE ELECTION BOARD, *et al.*,

Defendants,

GEORGIA REPUBLICAN PARTY INC., *et al.*,

Intervenor-Defendants.

Civil Action No.:
1:22-cv-01734-JPB

STATE DEFENDANTS' NOTICE
OF SUPPLEMENTAL AUTHORITY

In further support of their Motion for Summary Judgment [Doc. 156], State Defendants respectfully submit supplemental authority from the U.S. Supreme Court in *Food & Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024) (attached as Exhibit A), as well as persuasive authority from the U.S. Court of Appeals for the Ninth Circuit in *Arizona Alliance for Retired Americans v. Mayes*, __ F.4th __, 2024 WL 4246721 (9th Cir. Sept. 20, 2024) (attached as Exhibit B), *petition for reh'g en banc docketed*, No. 22-16490 (9th Cir. Oct. 4, 2024), ECF No. 89, which confirms that the Supreme Court has rejected diversion of resources in general as sufficient to

establish Article III standing. Applied here, this holding is fatal to the standing claims of Plaintiffs Vote.org and Priorities USA through their voluntary diversion of resources.

In a unanimous opinion, Justice Kavanaugh explained that "Article III standing screens out plaintiffs" who are merely "concerned bystanders" and "who might have only a general legal, moral, ideological, or policy objection to a particular government action," *All. for Hippocratic Med.*, 602 U.S. at 381–82 (citations omitted), or "who might 'roam the country in search of governmental wrongdoing,'" *id.* at 379 (citation omitted). Likewise, "the causation requirement screens out plaintiffs who were not injured by the defendant's action." *Id.* at 383. "[T]o establish causation, the plaintiff must show a predictable chain of events leading from the government action to the asserted injury—in other words, that the government action has caused or likely will cause injury in fact to the plaintiff." *Id.* at 385.

Based on these principles, the Supreme Court rejected arguments that medical associations were injured by an impairment of their organizational mission because they diverted resources to oppose the FDA's actions. *Id.* at 393–97. Their spending included advocacy and public education "to the detriment of other spending priorities." *Id.* at 394. But, according to the Court, "an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending

money to gather information and advocate against the defendant's action." *Id.* "[T]hat theory would mean that all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies." *Id.* at 395.

Confirming that diversion of resources without sufficient causation is insufficient for standing, the Ninth Circuit applied *Alliance for Hippocratic Medicine* to reject diversion-of-resources claims from voting rights groups. *Ariz. All. for Retired Ams.*, 2024 WL 4246721, at *4–11. Echoing the Supreme Court, the Ninth Circuit clarified that a diversion of resources suffices for injury only when a plaintiff's "core business activities" are impaired, "much like a 'retailer who sues a manufacturer for selling defective goods to the retailer.'" *Id.* at *10 (quoting *All. for Hippocratic Med.*, 602 U.S. at 395). For example, the plaintiff in its prior case *Havens Realty* was "not only an issue-advocacy organization, but also operated a housing counseling service," *id.* at *8 (quoting *All. for Hippocratic Med.*, 602 U.S. at 395) (cleaned up), which was "perceptibly impaired" when the defendant provided "false information about apartment availability." *Id.* at *10 (quoting *All. for Hippocratic Med.*, 602 U.S. at 395).

Thus, in that case the voting rights groups' "conjecture-laden theory [was] insufficient under Article III" because the challenged laws did not "directly affect their pre-existing core activities" of "register[ing] and

educat[ing] voters." *Id.* at *9. Even diverting resources "to develop training materials or ask constituents additional questions" was an "attempt to spend their way into Article III standing by taking new actions in response to what they view as a disfavored policy." *Id.* "But as *Hippocratic Medicine* explains, spending money voluntarily in response to a government policy cannot be an injury in fact." *Id.*

Even when the voting rights groups claimed their spending related to core business activities, the Ninth Circuit held that the causation was too attenuated. *Id.* at *10 ("direct organizational harm by 'impact[ing] their ability to engage in their core voter registration activities'" was "a diversion-of-resources theory by another name.") (alteration in original) (citation omitted). The court likened "plaintiffs' extravagant theory" to "a law school professor who teaches election law [having] standing to challenge the [law] because she would have to expend resources to change her curriculum and further educate her students about the state of the law." *Id.* at *11. Therefore, the court explained, the voting rights groups could not establish standing by "decid[ing] to shift some resources from one set of pre-existing activities in support of their overall mission"—like, here, providing digital signature applications or spending on advertising in one state—"to another, new set of such activities"—such as a print-and-mail program or advertising for more days in another state. *Id.* at *10.

But here, that kind of fanciful and speculative injury is the only harm on which Vote.org and Priorities USA rely. These decisions thus underscore that organizations like Plaintiffs cannot create standing by contriving the need to divert resources in response to government action even though they can continue in or shift resources to their core and ongoing business activities without perceptible impairment. For example, Vote.org's core business activities were not impaired because they simply shifted their process of helping Georgia voters obtain an absentee by mail ballot from one absentee-ballot application model to another. Similarly, Priorities USA's claim of spending extra money on advertising in Georgia during the December 2022 runoff was not an actual injury caused by the wet signature requirement. In short, both Vote.org's and Priorities USA's claimed injuries are "a diversion-of-resources theory by another name" and are accordingly insufficient to establish Article III standing. *Id.* Neither Vote.org's nor Priorities USA's purported harms are the result of a predictable chain of events starting with the wet signature requirement—which they would need to show to establish standing.

These decisions from the Supreme Court and the Ninth Circuit reaffirm that this Court should grant Defendants' Motion for Summary Judgment on Vote.org's and Priorities USA's claims because of those organizations' lack of standing.

Respectfully submitted this 9th day of October, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing State Defendants' Notice of Supplemental Authority has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Gene C. Schaerr
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EXHIBIT A

144 S.Ct. 1540
Supreme Court of the United States.

FOOD AND DRUG ADMINISTRATION, et al., Petitioners
v.
ALLIANCE FOR HIPPOCRATIC MEDICINE, et al.
Danco Laboratories, L.L.C., Petitioner
v.
Alliance for Hippocratic Medicine, et al.

Nos. 23–235 and 23–236
|
Argued March 26, 2024
|
Decided June 13, 2024

Synopsis

Background: Physicians providing pregnancy-related health care, including emergency care after unsuccessful medication abortions, and national associations of such physicians brought judicial-review action under Administrative Procedure Act (APA), challenging Food and Drug Administration's (FDA) accelerated new drug application (NDA) approval of brand-name mifepristone, an abortion-inducing drug, its amendments to NDA approval modifying mifepristone's conditions of use, its approval of generic version, and its decision that it would not enforce an agency regulation requiring drug to be prescribed and dispensed in person. NDA holder intervened. The United States District Court for the Northern District of Texas, Matthew J. Kacsmaryk, J., 668 F.Supp.3d 507, granted in part plaintiffs' motion for preliminary injunction and ordered administrative stays of effective date of challenged approval and post-approval actions. FDA and intervenor appealed and moved to stay the District Court's order pending appeal. The United States Court of Appeals for the Fifth Circuit, 2023 WL 2913725, granted motion as to accelerated approval and denied motion as to post-approval actions. FDA and intervenor applied to the Supreme Court for a stay of the District Court's order. A single justice of the Supreme Court, 2023 WL 2942264 and 2023 WL 2942266, granted administrative stays, and continued the stays, 2023 WL 2996931 and 2023 WL 2996932, and the Supreme Court, 143 S.Ct. 1075, granted full stays. In the appeal, the United States Court of Appeals for the Fifth Circuit, Elrod, Circuit Judge, 78 F.4th 210, affirmed in part and vacated in part the stay order. Certiorari petitions filed by FDA and intervenor were granted.

Holdings: In a unanimous opinion, the Supreme Court, Justice Kavanaugh, held that:

physicians' mere desire to make mifepristone less available to others did not satisfy injury-in-fact and causation requirements for Article III standing;

alleged downstream conscience injuries to physicians did not satisfy causation element for Article III standing;

alleged downstream economic injuries to physicians did not satisfy causation element for Article III standing;

associations' objections to FDA's actions did not support Article III standing for suit on associations' own behalf; and

expenses incurred by associations did not support Article III standing for suit on associations' own behalf.

Reversed and remanded.

Justice Thomas filed a concurring opinion.

Procedural Posture(s): Petition for Writ of Certiorari; On Appeal; Motion for Preliminary Injunction.

****1548** *Syllabus* [*]

[*] The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

***367** In 2000, the Food and Drug Administration approved a new drug application for mifepristone tablets marketed under the brand name Mifeprex for use in terminating pregnancies up to seven weeks. To help ensure that Mifeprex would be used safely and effectively, FDA placed additional restrictions on the drug's use and distribution, for example requiring doctors to prescribe or to supervise prescription of Mifeprex, and requiring patients to have three in-person visits with the doctor to receive the drug. In 2016, FDA relaxed some of these restrictions: deeming Mifeprex safe to terminate pregnancies up to 10 weeks; allowing healthcare providers, such as nurse practitioners, to prescribe Mifeprex; and approving a dosing regimen that required just one in-person visit to receive the drug. In 2019, FDA approved an application for generic mifepristone. In 2021, FDA announced that it would no longer enforce the initial in-person visit requirement. Four pro-life medical associations and several individual doctors moved for a preliminary injunction that would require FDA either to rescind approval of mifepristone or to rescind FDA's 2016 and 2021 regulatory actions. Danco Laboratories, which sponsors Mifeprex, intervened to defend FDA's actions.

The District Court agreed with the plaintiffs and in effect enjoined FDA's approval of mifepristone, thereby ordering mifepristone off the market. FDA and Danco appealed and moved to stay the District Court's order pending appeal. As relevant here, this Court ultimately stayed the District Court's order pending the disposition of proceedings in the Fifth Circuit and this Court. On the merits, the Fifth Circuit held that plaintiffs had standing. It concluded that plaintiffs were unlikely to succeed on their challenge to FDA's 2000 and 2019 drug approvals, but were likely to succeed in showing that FDA's 2016 and 2021 actions were unlawful. This Court granted certiorari with respect to the 2016 and 2021 FDA actions.

***368** *Held*: Plaintiffs lack Article III standing to challenge FDA's actions regarding the regulation of mifepristone. Pp. 1553 – 1565.

(a) Article III standing is a "bedrock constitutional requirement that this Court has applied to all manner of important disputes." *United States v. Texas*, 599 U.S. 670, 675, 143 S.Ct. 1964, 216 L.Ed.2d 624. Standing is "built on a single basic idea—the idea of separation of powers." *Ibid.* Article III confines the jurisdiction of federal courts to "Cases" and "Controversies." Federal courts do not operate as an open forum for citizens "to press general complaints about the way in which government goes about its business." *Allen v. Wright*, 468 U.S. 737, 760, 104 S.Ct. 3315, 82 L.Ed.2d 556. To obtain a judicial determination of what the governing law is, a plaintiff must have a "personal stake" in the dispute. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S.Ct. 2190, 210 L.Ed.2d 568.

To establish standing, a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief. See *Summers v. Earth Island Institute*, 555 U.S. 488, 493, 129 S.Ct. 1142, 173 L.Ed.2d 1. The two key questions in most standing disputes are injury in fact and causation. By requiring the plaintiff to show an injury in fact, Article III standing screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action. Causation requires the plaintiff to establish that the plaintiff 's injury likely was caused or likely will be caused by the defendant's conduct. Causation is "ordinarily substantially more difficult to establish" when (as here) a plaintiff challenges the government's "unlawful regulation (or lack of regulation) of someone else." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–

561, 112 S.Ct. 2130, 119 L.Ed.2d 351. That is because unregulated parties often may have more difficulty linking their asserted injuries to the government's regulation (or lack of regulation) of someone else. Pp. 1553 – 1558.

(b) Plaintiffs are pro-life, oppose elective abortion, and have sincere legal, moral, ideological, and policy objections to mifepristone being prescribed and used *by others*. Because plaintiffs do not prescribe or use mifepristone, plaintiffs are unregulated parties who seek to challenge FDA's regulation *of others*. Plaintiffs advance several complicated causation theories to connect FDA's actions to the plaintiffs' alleged injuries in fact. None of these theories suffices to establish Article III standing. Pp. 1558 – 1565.

(1) Plaintiffs first contend that FDA's relaxed regulation of mifepristone may cause downstream conscience injuries to the individual doctors. Even assuming that FDA's 2016 and 2021 changes to mifepristone's conditions of use cause more pregnant women to require emergency abortions and that some women would likely seek treatment from these plaintiff doctors, the plaintiff doctors have not shown that ***369** they could be forced to participate in an abortion or provide abortion-related medical treatment over their conscience objections. Federal conscience laws definitively protect doctors from being required to perform abortions or to provide other treatment that violates their consciences. Federal law protects doctors from repercussions when they have "refused" to participate in an abortion. § 300a–7(c)(1). The plaintiffs have not identified any instances where a doctor was required, notwithstanding conscience objections, to perform an abortion or to provide other abortion-related treatment that violated the doctor's conscience since mifepristone's 2000 approval. Further, the Emergency Medical Treatment and Labor Act (or EMTALA) neither overrides federal conscience laws nor requires individual emergency room doctors to participate in emergency abortions. Thus, there is a break in any chain of causation between FDA's relaxed regulation of mifepristone and any asserted conscience injuries to the doctors. Pp. 1559 – 1561.

(2) Plaintiffs next assert they have standing because FDA's relaxed regulation of mifepristone may cause downstream economic injuries to the doctors. The doctors cite various monetary and related injuries that they will allegedly suffer as a result of FDA's actions—in particular, diverting resources and time from other patients to treat patients with mifepristone complications; increasing risk of liability suits from treating those patients; and potentially increasing insurance costs. But the causal link between FDA's regulatory actions in 2016 and 2021 and those alleged injuries is too speculative, lacks support in the record, and is otherwise too attenuated to establish standing. Moreover, the law has never permitted doctors to challenge the government's loosening of general public safety requirements simply because more individuals might then show up at emergency rooms or in doctors' offices with follow-on injuries. Citizens and doctors who object to what the law allows others to do may always take their concerns to the Executive and Legislative Branches and seek greater regulatory or legislative restrictions. Pp. 1561 – 1563.

(3) Plaintiff medical associations assert their own organizational standing. Under the Court's precedents, organizations may have standing "to sue on their own behalf for injuries they have sustained," *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379, n. 19, 102 S.Ct. 1114, 71 L.Ed.2d 214, but organizations must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals, *id.*, at 378–379, 102 S.Ct. 1114. According to the medical associations, FDA has "impaired" their "ability to provide services and achieve their organizational missions." Brief for Respondents 43. That argument does not work to demonstrate standing. Like an individual, an organization may not establish standing simply based on the "intensity of the litigant's interest" or because of strong opposition ***370** to the government's conduct, *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 486, 102 S.Ct. 752, 70 L.Ed.2d 700. The plaintiff associations therefore cannot establish standing simply because they object to FDA's actions. The medical associations claim to have standing based on their incurring costs to oppose FDA's actions. They say that FDA has "caused" the associations to conduct their own studies on mifepristone so that the associations can better inform their members and the public about mifepristone's risks. Brief for Respondents 43. They contend that FDA has "forced" the associations to "expend considerable time, energy, and resources" drafting citizen petitions to FDA, as well as engaging in public advocacy and public education, all to the detriment of other spending priorities. *Id.*, at 44. But an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. Contrary to what the medical associations contend, the Court's decision in *Havens Realty Corp.* v. *Coleman* does not stand for the expansive theory that standing exists when an organization diverts its resources in response

to a defendant's actions. *Havens* was an unusual case, and this Court has been careful not to extend the *Havens* holding beyond its context. So too here.

Finally, it was suggested that plaintiffs must have standing because otherwise it may be that no one would have standing to challenge FDA's 2016 and 2021 actions. That suggestion fails because the Court has long rejected that kind of argument as a basis for standing. The "assumption" that if these plaintiffs lack "standing to sue, no one would have standing, is not a reason to find standing." *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227, 94 S.Ct. 2925, 41 L.Ed.2d 706. Rather, some issues may be left to the political and democratic processes. Pp. 1563 – 1565.

78 F.4th 210, reversed and remanded.

KAVANAUGH, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion.

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Opinion

Justice KAVANAUGH delivered the opinion of the Court.

***372** ****1552** In 2016 and 2021, the Food and Drug Administration relaxed its regulatory requirements for mifepristone, an abortion ***373** drug. Those changes made it easier for doctors to prescribe and pregnant women to obtain mifepristone. Several pro-life doctors and associations sued FDA, arguing that FDA's actions violated the Administrative Procedure Act. ***374** But the plaintiffs do not prescribe or use mifepristone. And FDA is not requiring them to do or refrain from doing anything. Rather, the plaintiffs want FDA to make mifepristone more difficult for other doctors to prescribe and for pregnant women to obtain. Under Article III of the Constitution, a plaintiff 's desire to make a drug less available *for others* does not establish standing to sue. Nor do the plaintiffs' other standing theories suffice. Therefore, the plaintiffs lack standing to challenge FDA's actions.

I

A

Under federal law, the U. S. Food and Drug Administration, an agency within the Executive Branch, ensures that ***375** drugs on the market are safe and effective. For FDA to approve a new drug, the drug sponsor (usually the drug's manufacturer or potential marketer) must submit an application demonstrating that the drug is safe and effective when used as directed. 21 U.S.C. § 355(d). The sponsor's application must generally include proposed labeling that specifies the drug's dosage, how to take the drug, and the specific conditions that the drug may treat. 21 C.F.R. §§ 201.5, 314.50 (2022).

If FDA determines that additional safety requirements are necessary, FDA may impose extra requirements on prescription and use of the drug. 21 U.S.C. § 355–1(f)(3). For example, FDA may require that prescribers undergo specialized training; mandate that the drug be dispensed only in certain settings like hospitals; or direct that doctors monitor patients taking the drug. *Ibid.*

In 2000, FDA approved a new drug application for mifepristone tablets marketed under the brand name Mifeprex. FDA approved Mifeprex for use to terminate pregnancies, but only up to seven weeks of pregnancy. To help ensure that Mifeprex would be used safely and effectively, FDA placed further restrictions on the drug's use and distribution. For example, only doctors could prescribe or supervise prescription of Mifeprex. Doctors and patients also had to follow a strict regimen requiring the patient to appear for three in-person visits with the doctor. And FDA directed prescribing doctors to report incidents of hospitalizations, blood transfusions, or other serious adverse events to the drug sponsor (who, in turn, was required to report the events to FDA).

In 2015, Mifeprex's distributor Danco Laboratories submitted a supplemental new drug application seeking to amend Mifeprex's labeling and to relax some of the restrictions that FDA had imposed. In 2016, FDA approved the proposed changes. FDA deemed Mifeprex safe to terminate pregnancies up to 10 weeks rather than 7 weeks. FDA allowed healthcare providers such as nurse practitioners to ***376** prescribe Mifeprex. And FDA approved a dosing regimen that reduced the number of required in-person visits from three to one—a single visit to receive Mifeprex. In addition, FDA changed prescribers' adverse event reporting obligations to require prescribers to report only fatalities—a reporting requirement that was still more stringent than the requirements for most other drugs.

****1553** In 2019, FDA approved an application for generic mifepristone. FDA established the same conditions of use for generic mifepristone as for Mifeprex.

In 2021, FDA again relaxed the requirements for Mifeprex and generic mifepristone. Relying on experience gained during the COVID–19 pandemic about pregnant women using mifepristone without an in-person visit to a healthcare provider, FDA announced that it would no longer enforce the initial in-person visit requirement.

B

Because mifepristone is used to terminate pregnancies, FDA's approval and regulation of mifepristone have generated substantial controversy from the start. In 2002, three pro-life associations submitted a joint citizen petition asking FDA to rescind its approval of Mifeprex. FDA denied their petition.

In 2019, two pro-life medical associations filed another petition, this time asking FDA to withdraw its 2016 modifications to mifepristone's conditions of use. FDA denied that petition as well.

This case began in 2022. Four pro-life medical associations, as well as several individual doctors, sued FDA in the U. S. District Court for the Northern District of Texas. Plaintiffs brought claims under the Administrative Procedure Act. They challenged the lawfulness of FDA's 2000 approval of Mifeprex; FDA's 2019 approval of generic mifepristone; and FDA's 2016 and 2021 actions modifying mifepristone's conditions of use. Danco Laboratories, which ***377** sponsors Mifeprex, intervened to defend

FDA's actions. The plaintiffs moved for a preliminary injunction that would require FDA to rescind approval of mifepristone or, at the very least, to rescind FDA's 2016 and 2021 actions.

The District Court agreed with the plaintiffs and in effect enjoined FDA's approval of mifepristone, thereby ordering mifepristone off the market. 668 F.Supp.3d 507 (ND Tex. 2023). The court first held that the plaintiffs possessed Article III standing. It then determined that the plaintiffs were likely to succeed on the merits of each of their claims. Finally, the court concluded that the plaintiffs would suffer irreparable harm from FDA's continued approval of mifepristone and that an injunction would serve the public interest.

FDA and Danco promptly appealed and moved to stay the District Court's order pending appeal. The U. S. Court of Appeals for the Fifth Circuit granted the stay motion in part and temporarily reinstated FDA's approval of Mifeprex. 2023 WL 2913725, *21 (Apr. 12, 2023). But the Court of Appeals declined to stay the rest of the District Court's order. The Court of Appeals' partial stay would have left Mifeprex (though not generic mifepristone) on the market, but only under the more stringent requirements imposed when FDA first approved Mifeprex in 2000—available only up to seven weeks of pregnancy, only when prescribed by doctors, and only with three in-person visits, among other requirements.

FDA and Danco then sought a full stay in this Court. This Court stayed the District Court's order in its entirety pending the disposition of FDA's and Danco's appeals in the Court of Appeals and ultimate resolution by this Court. 598 U. S. ——, —— S.Ct. ——, 215 L.Ed.2d 646 (2023). As a result of this Court's stay, Mifeprex and generic mifepristone have remained available as allowed by FDA's relaxed 2016 and 2021 requirements.

A few months later, the Court of Appeals issued its decision on the merits of the District Court's order, affirming in **1554 part and vacating in part. 78 F.4th 210, 222–223 (CA5 2023). The Court of Appeals first concluded that the individual *378 doctors and the pro-life medical associations had standing. The Court of Appeals next concluded that plaintiffs were not likely to succeed on their challenge to FDA's 2000 approval of Mifeprex and 2019 approval of generic mifepristone. So the Court of Appeals vacated the District Court's order as to those agency actions. But the Court of Appeals agreed with the District Court that plaintiffs were likely to succeed in showing that FDA's 2016 and 2021 actions were unlawful.

The Court of Appeals' merits decision did not alter this Court's stay of the District Court's order pending this Court's review. This Court then granted certiorari with respect to the 2016 and 2021 FDA actions held unlawful by the Court of Appeals. 601 U. S. ——, 144 S.Ct. 537, 217 L.Ed.2d 285 (2023).

II

The threshold question is whether the plaintiffs have standing to sue under Article III of the Constitution. Article III standing is a "bedrock constitutional requirement that this Court has applied to all manner of important disputes." *United States v. Texas*, 599 U.S. 670, 675, 143 S.Ct. 1964, 216 L.Ed.2d 624 (2023). Standing is "built on a single basic idea—the idea of separation of powers." *Ibid.* (quotation marks omitted). Importantly, separation of powers "was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 422–423, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021) (quotation marks omitted). Therefore, we begin as always with the precise text of the Constitution.

Article III of the Constitution confines the jurisdiction of federal courts to "Cases" and "Controversies." The case or controversy requirement limits the role of the Federal Judiciary in our system of separated powers. As this Court explained to President George Washington in 1793 in response to his request for a legal opinion, federal courts do not issue advisory opinions about the law—even when requested by *379 the President. 13 Papers of George Washington: Presidential Series 392 (C. Patrick ed. 2007). Nor do federal courts operate as an open forum for citizens "to press general complaints about the way in which government goes about its business." *Allen v. Wright*, 468 U.S. 737, 760, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984) (quotation

marks omitted); see *California v. Texas*, 593 U.S. 659, 673, 141 S.Ct. 2104, 210 L.Ed.2d 230 (2021); *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 487, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982); *United States v. Richardson*, 418 U.S. 166, 175, 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974); *Ex parte Levitt*, 302 U.S. 633, 634, 58 S.Ct. 1, 82 L.Ed. 493 (1937) (*per curiam*); *Massachusetts v. Mellon*, 262 U.S. 447, 487–488, 43 S.Ct. 597, 67 L.Ed. 1078 (1923); *Fairchild v. Hughes*, 258 U.S. 126, 129–130, 42 S.Ct. 274, 66 L.Ed. 499 (1922).

As Justice Scalia memorably said, Article III requires a plaintiff to first answer a basic question: " 'What's it to you?' " A. Scalia, The Doctrine of Standing as an Essential Element of the Separation of Powers, 17 Suffolk U. L. Rev. 881, 882 (1983). For a plaintiff to get in the federal courthouse door and obtain a judicial determination of what the governing law is, the plaintiff cannot be a mere bystander, but instead must have a "personal stake" in the dispute. *TransUnion*, 594 U.S. at 423, 141 S.Ct. 2190. The requirement that ****1555** the plaintiff possess a personal stake helps ensure that courts decide litigants' legal rights in specific cases, as Article III requires, and that courts do not opine on legal issues in response to citizens who might "roam the country in search of governmental wrongdoing." *Valley Forge*, 454 U.S. at 487, 102 S.Ct. 752; see, *e.g.*, *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974); *Richardson*, 418 U.S. at 175, 94 S.Ct. 2940; *Tyler v. Judges of Court of Registration*, 179 U.S. 405, 406, 21 S.Ct. 206, 45 L.Ed. 252 (1900). Standing also "tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge*, 454 U.S. at 472, 102 S.Ct. 752. Moreover, the standing doctrine serves to protect the "autonomy" of those who are most directly affected so that they can decide ***380** whether and how to challenge the defendant's action. *Id.*, at 473, 102 S.Ct. 752.

By limiting who can sue, the standing requirement implements "the Framers' concept of the proper—and properly limited—role of the courts in a democratic society." J. Roberts, Article III Limits on Statutory Standing, 42 Duke L. J. 1219, 1220 (1993) (quotation marks omitted). In particular, the standing requirement means that the federal courts decide some contested legal questions later rather than sooner, thereby allowing issues to percolate and potentially be resolved by the political branches in the democratic process. See *Raines v. Byrd*, 521 U.S. 811, 829–830, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997); cf. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 420–422, 133 S.Ct. 1138, 185 L.Ed.2d 264 (2013). And the standing requirement means that the federal courts may never need to decide some contested legal questions: "Our system of government leaves many crucial decisions to the political processes," where democratic debate can occur and a wide variety of interests and views can be weighed. *Schlesinger*, 418 U.S. at 227, 94 S.Ct. 2925; see *Campbell v. Clinton*, 203 F.3d 19, 23 (CADC 2000).

A

The fundamentals of standing are well-known and firmly rooted in American constitutional law. To establish standing, as this Court has often stated, a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief. See *Summers v. Earth Island Institute*, 555 U.S. 488, 493, 129 S.Ct. 1142, 173 L.Ed.2d 1 (2009); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Those specific standing requirements constitute "an essential and unchanging part of the case-or-controversy requirement of Article III." *Id.*, at 560, 112 S.Ct. 2130.

The second and third standing requirements—causation and redressability—are often "flip sides of the same coin." ***381** *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269, 288, 128 S.Ct. 2531, 171 L.Ed.2d 424 (2008). If a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury. So the two key questions in most standing disputes are injury in fact and causation. [1]

1 Redressability can still pose an independent bar in some cases. For example, a plaintiff who suffers injuries caused by the government still may not be able to sue because the case may not be of the kind "traditionally redressable in federal

court." *United States v. Texas*, 599 U.S. 670, 676, 143 S.Ct. 1964, 216 L.Ed.2d 624 (2023); cf. *California v. Texas*, 593 U.S. 659, 671–672, 141 S.Ct. 2104, 210 L.Ed.2d 230 (2021).

**1556 *First* is injury in fact. An injury in fact must be "concrete," meaning that it must be real and not abstract. See *TransUnion*, 594 U.S. at 424, 141 S.Ct. 2190. The injury also must be particularized; the injury must affect "the plaintiff in a personal and individual way" and not be a generalized grievance. *Lujan*, 504 U.S. at 560, n. 1, 112 S.Ct. 2130. An injury in fact can be a physical injury, a monetary injury, an injury to one's property, or an injury to one's constitutional rights, to take just a few common examples. Moreover, the injury must be actual or imminent, not speculative—meaning that the injury must have already occurred or be likely to occur soon. *Clapper*, 568 U.S. at 409, 133 S.Ct. 1138. And when a plaintiff seeks prospective relief such as an injunction, the plaintiff must establish a sufficient likelihood of future injury. *Id.*, at 401, 133 S.Ct. 1138.

By requiring the plaintiff to show an injury in fact, Article III standing screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action. For example, a citizen does not have standing to challenge a government regulation simply because the plaintiff believes that the government is acting illegally. See *Valley Forge*, 454 U.S. at 473, 487, 102 S.Ct. 752. A citizen may not sue based only on an "asserted right to have the Government act in accordance with law." *Allen*, 468 U.S. at 754, 104 S.Ct. 3315; *Schlesinger*, 418 U.S. at 225–227, 94 S.Ct. 2925. Nor may citizens sue merely because their legal objection is accompanied by a strong moral, ideological, or policy objection to a government action. See *Valley Forge*, 454 U.S. at 473, 102 S.Ct. 752.

*382 The injury in fact requirement prevents the federal courts from becoming a "vehicle for the vindication of the value interests of concerned bystanders." *Allen*, 468 U.S. at 756, 104 S.Ct. 3315 (quotation marks omitted). An Article III court is not a legislative assembly, a town square, or a faculty lounge. Article III does not contemplate a system where 330 million citizens can come to federal court whenever they believe that the government is acting contrary to the Constitution or other federal law. See *id.*, at 754, 104 S.Ct. 3315. Vindicating "the *public* interest (including the public interest in Government observance of the Constitution and laws) is the function of Congress and the Chief Executive." *Lujan*, 504 U.S. at 576, 112 S.Ct. 2130.

In sum, to sue in federal court, a plaintiff must show that he or she has suffered or likely will suffer an injury in fact.

Second is causation. The plaintiff must also establish that the plaintiff 's injury likely was caused or likely will be caused by the defendant's conduct.

Government regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements. So in those cases, standing is usually easy to establish. See *Lujan*, 504 U.S. at 561–562, 112 S.Ct. 2130; see, *e.g.*, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 162–163, 134 S.Ct. 2334, 189 L.Ed.2d 246 (2014).

By contrast, when (as here) a plaintiff challenges the government's "unlawful regulation (or lack of regulation) of *someone else*," "standing is not precluded, but it is ordinarily substantially more difficult to establish." *Lujan*, 504 U.S. at 562, 112 S.Ct. 2130 (quotation marks omitted); see **1557 *Summers*, 555 U.S. at 493, 129 S.Ct. 1142. That is often because unregulated parties may have more difficulty establishing causation—that is, linking their asserted injuries to the government's regulation (or lack of regulation) of someone else. See *Clapper*, 568 U.S. at 413–414, 133 S.Ct. 1138; *Lujan*, 504 U.S. at 562, 112 S.Ct. 2130; *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978); *383 *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41–46, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976); *Warth v. Seldin*, 422 U.S. 490, 504–508, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975).

When the plaintiff is an unregulated party, causation "ordinarily hinge[s] on the response of the regulated (or regulable) third party to the government action or inaction—and perhaps on the response of others as well." *Lujan*, 504 U.S. at 562, 112 S.Ct. 2130. Yet the Court has said that plaintiffs attempting to show causation generally cannot "rely on speculation about the unfettered choices made by independent actors not before the courts." *Clapper*, 568 U.S. at 415, n. 5, 133 S.Ct. 1138 (quotation marks omitted); see also *Bennett v. Spear*, 520 U.S. 154, 168–169, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997). Therefore, to thread the causation needle in those circumstances, the plaintiff must show that the " 'third parties will likely react in predictable ways'

" that in turn will likely injure the plaintiffs. *California*, 593 U.S. at 675, 141 S.Ct. 2104 (quoting *Department of Commerce v. New York*, 588 U.S. 752, 768, 139 S.Ct. 2551, 204 L.Ed.2d 978 (2019)).

As this Court has explained, the "line of causation between the illegal conduct and injury"—the "links in the chain of causation," *Allen*, 468 U.S. at 752, 759, 104 S.Ct. 3315—must not be too speculative or too attenuated, *Clapper*, 568 U.S. at 410–411, 133 S.Ct. 1138. The causation requirement precludes speculative links—that is, where it is not sufficiently predictable how third parties would react to government action or cause downstream injury to plaintiffs. See *Allen*, 468 U.S. at 757–759, 104 S.Ct. 3315; *Simon*, 426 U.S. at 41–46, 96 S.Ct. 1917. The causation requirement also rules out attenuated links—that is, where the government action is so far removed from its distant (even if predictable) ripple effects that the plaintiffs cannot establish Article III standing. See *Allen*, 468 U.S. at 757–759, 104 S.Ct. 3315; cf. *Department of Commerce*, 588 U.S. at 768, 139 S.Ct. 2551.

The causation requirement is central to Article III standing. Like the injury in fact requirement, the causation requirement screens out plaintiffs who were not injured by the defendant's action. Without the causation requirement, ***384** courts would be "virtually continuing monitors of the wisdom and soundness" of government action. *Allen*, 468 U.S. at 760, 104 S.Ct. 3315 (quotation marks omitted).

Determining causation in cases involving suits by unregulated parties against the government is admittedly not a "mechanical exercise." *Id.*, at 751, 104 S.Ct. 3315. That is because the causation inquiry can be heavily fact-dependent and a "question of degree," as private petitioner's counsel aptly described it here. Tr. of Oral Arg. 50. Unfortunately, applying the law of standing cannot be made easy, and that is particularly true for causation. Just as causation in tort law can pose line-drawing difficulties, so too can causation in standing law when determining whether an unregulated party has standing.

That said, the "absence of precise definitions" has not left courts entirely "at sea in applying the law of standing." *Allen*, 468 U.S. at 751, 104 S.Ct. 3315. Like "most legal notions, the standing concepts have ****1558** gained considerable definition from developing case law." *Ibid.* As the Court has explained, in "many cases the standing question can be answered chiefly by comparing the allegations of the particular complaint to those made in prior standing cases." *Id.*, at 751–752, 104 S.Ct. 3315. Stated otherwise, assessing standing "in a particular case may be facilitated by clarifying principles or even clear rules developed in prior cases." *Id.*, at 752, 104 S.Ct. 3315.

Consistent with that understanding of how standing principles can develop and solidify, the Court has identified a variety of familiar circumstances where government regulation of a third-party individual or business may be likely to cause injury in fact to an unregulated plaintiff. For example, when the government regulates (or under-regulates) a business, the regulation (or lack thereof) may cause downstream or upstream economic injuries to others in the chain, such as certain manufacturers, retailers, suppliers, competitors, or customers. *E.g.*, *National Credit Union Admin. v. First Nat. Bank & Trust Co.*, 522 U.S. 479, 488, n. 4, 118 S.Ct. 927, 140 L.Ed.2d 1 (1998); ***385** *General Motors Corp. v. Tracy*, 519 U.S. 278, 286–287, 117 S.Ct. 811, 136 L.Ed.2d 761 (1997); *Barlow v. Collins*, 397 U.S. 159, 162–164, 90 S.Ct. 832, 25 L.Ed.2d 192 (1970); *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 152, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970). When the government regulates parks, national forests, or bodies of water, for example, the regulation may cause harm to individual users. *E.g.*, *Summers*, 555 U.S. at 494, 129 S.Ct. 1142. When the government regulates one property, it may reduce the value of adjacent property. The list goes on. See, *e.g.*, *Department of Commerce*, 588 U.S. at 766–768, 139 S.Ct. 2551.

As those cases illustrate, to establish causation, the plaintiff must show a predictable chain of events leading from the government action to the asserted injury—in other words, that the government action has caused or likely will cause injury in fact to the plaintiff. [2]

2 In cases of alleged future injuries to unregulated parties from government regulation, the causation requirement and the imminence element of the injury in fact requirement can overlap. Both target the same issue: Is it likely that the

government's regulation or lack of regulation of someone else will cause a concrete and particularized injury in fact to the unregulated plaintiff?

B

Here, the plaintiff doctors and medical associations are unregulated parties who seek to challenge FDA's regulation *of others*. Specifically, FDA's regulations apply to doctors prescribing mifepristone and to pregnant women taking mifepristone. But the plaintiff doctors and medical associations do not prescribe or use mifepristone. And FDA has not required the plaintiffs to do anything or to refrain from doing anything.

The plaintiffs do not allege the kinds of injuries described above that unregulated parties sometimes can assert to demonstrate causation. Because the plaintiffs do not prescribe, manufacture, sell, or advertise mifepristone or sponsor a competing drug, the plaintiffs suffer no direct monetary injuries ***386** from FDA's actions relaxing regulation of mifepristone. Nor do they suffer injuries to their property, or to the value of their property, from FDA's actions. Because the plaintiffs do not use mifepristone, they obviously can suffer no physical injuries from FDA's actions relaxing regulation of mifepristone.

****1559** Rather, the plaintiffs say that they are pro-life, oppose elective abortion, and have sincere legal, moral, ideological, and policy objections to mifepristone being prescribed and used *by others*. The plaintiffs appear to recognize that those general legal, moral, ideological, and policy concerns do not suffice on their own to confer Article III standing to sue in federal court. So to try to establish standing, the plaintiffs advance several complicated causation theories to connect FDA's actions to the plaintiffs' alleged injuries in fact.

The first set of causation theories contends that FDA's relaxed regulation of mifepristone may cause downstream conscience injuries to the individual doctor plaintiffs and the specified members of the plaintiff medical associations, who are also doctors. (We will refer to them collectively as "the doctors.") The second set of causation theories asserts that FDA's relaxed regulation of mifepristone may cause downstream economic injuries to the doctors. The third set of causation theories maintains that FDA's relaxed regulation of mifepristone causes injuries to the medical associations themselves, who assert their own organizational standing. As we will explain, none of the theories suffices to establish Article III standing.

1

We first address the plaintiffs' claim that FDA's relaxed regulation of mifepristone causes conscience injuries to the doctors.

The doctors contend that FDA's 2016 and 2021 actions will cause more pregnant women to suffer complications from mifepristone, and those women in turn will need more emergency ***387** abortions by doctors. The plaintiff doctors say that they therefore may be required—against their consciences—to render emergency treatment completing the abortions or providing other abortion-related treatment.

The Government correctly acknowledges that a conscience injury of that kind constitutes a concrete injury in fact for purposes of Article III. See Tr. of Oral Arg. 11–12; *TransUnion*, 594 U.S. at 425, 141 S.Ct. 2190; see, *e.g.*, *Holt v. Hobbs*, 574 U.S. 352, 135 S.Ct. 853, 190 L.Ed.2d 747 (2015). So doctors would have standing to challenge a government action that likely would cause them to provide medical treatment against their consciences.

But in this case—even assuming for the sake of argument that FDA's 2016 and 2021 changes to mifepristone's conditions of use cause more pregnant women to require emergency abortions and that some women would likely seek treatment from these plaintiff doctors—the plaintiff doctors have not shown that they could be forced to participate in an abortion or provide abortion-related medical treatment over their conscience objections.

That is because, as the Government explains, federal conscience laws definitively protect doctors from being required to perform abortions or to provide other treatment that violates their consciences. See 42 U.S.C. § 300a–7(c)(1); see also H. R. 4366, 118th Cong., 2d Sess., Div. C, Title II, § 203 (2024). The Church Amendments, for instance, speak clearly. They allow doctors and other healthcare personnel to "refus[e] to perform or assist" an abortion without punishment or discrimination from their employers. 42 U.S.C. § 300a–7(c)(1). And the Church Amendments more broadly provide that doctors shall not be required to provide treatment or assistance that would violate the doctors' religious beliefs or moral convictions. § 300a–7(d). Most if not all States have conscience laws to the same effect. See N. Sawicki, Protections From Civil Liability in State Abortion Conscience Laws, 322 ****1560** JAMA 1918 (2019); see, *e.g.*, Tex. Occ. Code Ann. § 103.001 (West 2022).

***388** Moreover, as the Government notes, federal conscience protections encompass "the doctor's beliefs rather than particular procedures," meaning that doctors cannot be required to treat mifepristone complications in any way that would violate the doctors' consciences. Tr. of Oral Arg. 37; see § 300a–7(c)(1). As the Government points out, that strong protection for conscience remains true even in a so-called healthcare desert, where other doctors are not readily available. Tr. of Oral Arg. 18.

Not only as a matter of law but also as a matter of fact, the federal conscience laws have protected pro-life doctors ever since FDA approved mifepristone in 2000. The plaintiffs have not identified any instances where a doctor was required, notwithstanding conscience objections, to perform an abortion or to provide other abortion-related treatment that violated the doctor's conscience. Nor is there any evidence in the record here of hospitals overriding or failing to accommodate doctors' conscience objections.

In other words, none of the doctors' declarations says anything like the following: "Here is the treatment I provided, here is how it violated my conscience, and here is why the conscience protections were unavailable to me." Cf. App. 153–154 (Dr. Francis saw a patient suffering complications from an abortion drug obtained from India; no allegation that Dr. Francis helped perform an abortion); *id.*, at 154 (Dr. Francis witnessed another doctor perform an abortion; no allegation that the other doctor raised conscience objections or tried not to participate); *id.,* at 163–164 (doctor's hospital treated women suffering complications from abortion drugs; no allegation that the doctors treating the patients had or raised conscience objections to the treatment they provided); *id*., at 173–174 (doctor treated a patient suffering from mifepristone complications; no description of what that treatment involved and no statement that the doctor raised a conscience objection to providing that treatment).

In response to all of that, the doctors still express fear that another federal law, the Emergency Medical Treatment ***389** and Labor Act or EMTALA, might be interpreted to override those federal conscience laws and to require individual emergency room doctors to participate in emergency abortions in some circumstances. See 42 U.S.C. § 1395dd. But the Government has disclaimed that reading of EMTALA. And we agree with the Government's view of EMTALA on that point. EMTALA does not require doctors to perform abortions or provide abortion-related medical treatment over their conscience objections because EMTALA does not impose obligations on individual doctors. See Brief for United States 23, n. 3. As the Solicitor General succinctly and correctly stated, EMTALA does not "override an individual doctor's conscience objections." Tr. of Oral Arg. 18; see also Tr. of Oral Arg. in *Moyle* v. *United States*, O. T. 2023, No. 23–726 etc., pp. 88–91 (*Moyle* Tr.). We agree with the Solicitor General's representation that federal conscience protections provide "broad coverage" and will "shield a doctor who doesn't want to provide care in violation of those protections." Tr. of Oral Arg. 18, 36.

The doctors say, however, that emergency room doctors summoned to provide emergency treatment may not have time to invoke federal conscience protections. But as the Government correctly explained, doctors need not follow a time-intensive procedure to invoke federal conscience protections. Reply Brief for United States 5. A doctor may simply refuse; federal law protects doctors from repercussions ****1561** when they have "refused" to participate in an abortion. § 300a–7(c)(1); Reply Brief for United States 5. And as the Government states, "[h]ospitals must accommodate doctors in emergency rooms no less than in other contexts." *Ibid*. For that reason, hospitals and doctors typically try to plan ahead for how to deal with a doctor's absence due to conscience objections. Tr. of Oral Arg. 18; *Moyle* Tr. 89–90. And again, nothing in the record since 2000 supports plaintiffs' speculation that doctors will be unable to successfully invoke federal conscience protections in emergency circumstances.

***390** In short, given the broad and comprehensive conscience protections guaranteed by federal law, the plaintiffs have not shown—and cannot show—that FDA's actions will cause them to suffer any conscience injury. Federal law fully protects doctors against being required to provide abortions or other medical treatment against their consciences—and therefore breaks any chain of causation between FDA's relaxed regulation of mifepristone and any asserted conscience injuries to the doctors. [3]

[3] The doctors also suggest that they are distressed by others' use of mifepristone and by emergency abortions. It is not clear that this alleged injury is distinct from the alleged conscience injury. But even if it is, this Court has long made clear that distress at or disagreement with the activities of others is not a basis under Article III for a plaintiff to bring a federal lawsuit challenging the legality of a government regulation allowing those activities. See, *e.g.*, *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 473, 485–486, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982); *United States v. Richardson*, 418 U.S. 166, 175, 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974); *Sierra Club v. Morton*, 405 U.S. 727, 739, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972).

2

In addition to alleging conscience injuries, the doctors cite various monetary and related injuries that they allegedly will suffer as a result of FDA's actions—in particular, diverting resources and time from other patients to treat patients with mifepristone complications; increasing risk of liability suits from treating those patients; and potentially increasing insurance costs.

Those standing allegations suffer from the same problem—a lack of causation. The causal link between FDA's regulatory actions and those alleged injuries is too speculative or otherwise too attenuated to establish standing.

To begin with, the claim that the doctors will incur those injuries as a result of FDA's 2016 and 2021 relaxed regulations lacks record support and is highly speculative. The doctors have not offered evidence tending to suggest that FDA's deregulatory actions have both caused an increase in ***391** the number of pregnant women seeking treatment from the plaintiff doctors *and* caused a resulting diversion of the doctors' time and resources from other patients. Moreover, the doctors have not identified any instances in the past where they have been sued or required to pay higher insurance costs because they have treated pregnant women suffering mifepristone complications. Nor have the plaintiffs offered any persuasive evidence or reason to believe that the future will be different.

In any event, and perhaps more to the point, the law has never permitted doctors to challenge the government's loosening of general public safety requirements simply because more individuals might then show up at emergency rooms or in doctors' offices with follow-on injuries. Stated otherwise, there is no Article III doctrine of "doctor standing" that allows doctors to challenge general government ****1562** safety regulations. Nor will this Court now create such a novel standing doctrine out of whole cloth.

Consider some examples. EPA rolls back emissions standards for power plants—does a doctor have standing to sue because she may need to spend more time treating asthma patients? A local school district starts a middle school football league—does a pediatrician have standing to challenge its constitutionality because she might need to spend more time treating concussions? A federal agency increases a speed limit from 65 to 80 miles per hour—does an emergency room doctor have standing to sue because he may have to treat more car accident victims? The government repeals certain restrictions on guns—does a surgeon have standing to sue because he might have to operate on more gunshot victims?

The answer is no: The chain of causation is simply too attenuated. Allowing doctors or other healthcare providers to challenge general safety regulations as unlawfully lax would be an unprecedented and limitless approach and would ***392** allow doctors to sue in federal court to challenge almost any policy affecting public health. [4]

4 A safety law regulating hospitals or the doctors' medical practices obviously would present a different issue—either such a law would directly regulate doctors, or the causal link at least would be substantially less attenuated.

And in the FDA drug-approval context, virtually all drugs come with complications, risks, and side effects. Some drugs increase the risk of heart attack, some may cause cancer, some may cause birth defects, and some heighten the possibility of stroke. Approval of a new drug may therefore yield more visits to doctors to treat complications or side effects. So the plaintiffs' loose approach to causation would also essentially allow any doctor or healthcare provider to challenge any FDA decision approving a new drug. But doctors have never had standing to challenge FDA's drug approvals simply on the theory that use of the drugs by others may cause more visits to doctors.

And if we were now to invent a new doctrine of doctor standing, there would be no principled way to cabin such a sweeping doctrinal change to doctors or other healthcare providers. Firefighters could sue to object to relaxed building codes that increase fire risks. Police officers could sue to challenge a government decision to legalize certain activities that are associated with increased crime. Teachers in border states could sue to challenge allegedly lax immigration policies that lead to overcrowded classrooms.

We decline to start the Federal Judiciary down that uncharted path. That path would seemingly not end until virtually every citizen had standing to challenge virtually every government action that they do not like—an approach to standing that this Court has consistently rejected as flatly inconsistent with Article III.

We recognize that many citizens, including the plaintiff doctors here, have sincere concerns about and objections to others using mifepristone and obtaining abortions. But citizens ***393** and doctors do not have standing to sue simply because *others* are allowed to engage in certain activities—at least without the plaintiffs demonstrating how they would be injured by the government's alleged under-regulation of others. See *Coalition for Mercury-Free Drugs v. Sebelius*, 671 F.3d 1275, 1277 (CADC 2012). Citizens and doctors who object to what the law allows others to do may always take their concerns to the Executive and Legislative Branches and seek greater regulatory or legislative restrictions on certain activities.

****1563** In sum, the doctors in this case have failed to establish Article III standing. The doctors have not shown that FDA's actions likely will cause them any injury in fact. The asserted causal link is simply too speculative or too attenuated to support Article III standing. [5]

5 The doctors also suggest that they can sue in a representative capacity to vindicate their patients' injuries or potential future injuries, even if the doctors have not suffered and would not suffer an injury themselves. This Court has repeatedly rejected such arguments. Under this Court's precedents, third-party standing, as some have called it, allows a narrow class of litigants to assert the legal rights of others. See *Hollingsworth v. Perry*, 570 U.S. 693, 708, 133 S.Ct. 2652, 186 L.Ed.2d 768 (2013). But "even when we have allowed litigants to assert the interests of others, the litigants themselves still must have suffered an injury in fact, thus giving them a sufficiently concrete interest in the outcome of the issue in dispute." *Ibid.* (quotation marks and alterations omitted). The third-party standing doctrine does not allow doctors to shoehorn themselves into Article III standing simply by showing that their patients have suffered injuries or may suffer future injuries.

3

That leaves the medical associations' argument that the associations themselves have organizational standing. Under this Court's precedents, organizations may have standing "to sue on their own behalf for injuries they have sustained." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379, n. 19, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982). In doing so, however, organizations must ***394** satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals. *Id.*, at 378–379, 102 S.Ct. 1114.

According to the medical associations, FDA has "impaired" their "ability to provide services and achieve their organizational missions." Brief for Respondents 43. That argument does not work to demonstrate standing.

Like an individual, an organization may not establish standing simply based on the "intensity of the litigant's interest" or because of strong opposition to the government's conduct, *Valley Forge*, 454 U.S. at 486, 102 S.Ct. 752, "no matter how longstanding the interest and no matter how qualified the organization," *Sierra Club v. Morton*, 405 U.S. 727, 739, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972). A plaintiff must show "far more than simply a setback to the organization's abstract social interests." *Havens*, 455 U.S. at 379, 102 S.Ct. 1114. The plaintiff associations therefore cannot assert standing simply because they object to FDA's actions.

The medical associations say that they have demonstrated something more here. They claim to have standing not based on their mere disagreement with FDA's policies, but based on their incurring costs to oppose FDA's actions. They say that FDA has "caused" the associations to conduct their own studies on mifepristone so that the associations can better inform their members and the public about mifepristone's risks. Brief for Respondents 43. They contend that FDA has "forced" the associations to "expend considerable time, energy, and resources" drafting citizen petitions to FDA, as well as engaging in public advocacy and public education. *Id.*, at 44 (quotation marks omitted). And all of that has caused the associations to spend "considerable resources" to the detriment of other spending priorities. *Ibid.*

But an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against **1564 the defendant's action. An organization cannot manufacture its own standing in that way.

*395 The medical associations respond that under *Havens Realty Corp.* v. *Coleman*, standing exists when an organization diverts its resources in response to a defendant's actions. 455 U.S. 363, 102 S.Ct. 1114, 71 L.Ed.2d 214. That is incorrect. Indeed, that theory would mean that all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies. *Havens* does not support such an expansive theory of standing.

The relevant question in *Havens* was whether a housing counseling organization, HOME, had standing to bring a claim under the Fair Housing Act against Havens Realty, which owned and operated apartment complexes. *Id.*, at 368, 378, 102 S.Ct. 1114. Havens had provided HOME's black employees false information about apartment availability—a practice known as racial steering. *Id.*, at 366 and n. 1, 368, 102 S.Ct. 1114. Critically, HOME not only was an issue-advocacy organization, but also operated a housing counseling service. *Id.*, at 368, 102 S.Ct. 1114. And when Havens gave HOME's employees false information about apartment availability, HOME sued Havens because Havens "perceptibly impaired HOME's ability to provide counseling and referral services for low- and moderate-income homeseekers." *Id.*, at 379, 102 S.Ct. 1114. In other words, Havens's actions directly affected and interfered with HOME's core business activities—not dissimilar to a retailer who sues a manufacturer for selling defective goods to the retailer.

That is not the kind of injury that the medical associations have alleged here. FDA's actions relaxing regulation of mifepristone have not imposed any similar impediment to the medical associations' advocacy businesses.

At most, the medical associations suggest that FDA is not properly collecting and disseminating information about mifepristone, which the associations say in turn makes it more difficult for them to inform the public about safety risks. But the associations have not claimed an informational injury, and in any event the associations have not suggested *396 that federal law requires FDA to disseminate such information upon request by members of the public. Cf. *Federal Election Comm'n v. Akins*, 524 U.S. 11, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998).

Havens was an unusual case, and this Court has been careful not to extend the *Havens* holding beyond its context. So too here.

Finally, it has been suggested that the plaintiffs here must have standing because if these plaintiffs do not have standing, then it may be that no one would have standing to challenge FDA's 2016 and 2021 actions. For starters, it is not clear that no one else would have standing to challenge FDA's relaxed regulation of mifepristone. But even if no one would have standing, this Court has long rejected that kind of "if not us, who?" argument as a basis for standing. See *Clapper*, 568 U.S. at 420–421, 133 S.Ct. 1138; *Valley Forge*, 454 U.S. at 489, 102 S.Ct. 752; *Richardson*, 418 U.S. at 179–180, 94 S.Ct. 2940. The "assumption" that if these plaintiffs lack "standing to sue, no one would have standing, is not a reason to find standing." *Schlesinger*, 418 U.S. at 227, 94 S.Ct. 2925. Rather, some issues may be left to the political and democratic processes: The Framers of the Constitution did not "set up something in the nature of an Athenian democracy or a New England town meeting to oversee the conduct of the National Government by **1565 means of lawsuits in federal courts." *Richardson*, 418 U.S. at 179, 94 S.Ct. 2940; see *Texas*, 599 U.S. at 685, 143 S.Ct. 1964.

* * *

The plaintiffs have sincere legal, moral, ideological, and policy objections to elective abortion and to FDA's relaxed regulation of mifepristone. But under Article III of the Constitution, those kinds of objections alone do not establish a justiciable case or controversy in federal court. Here, the plaintiffs have failed to demonstrate that FDA's relaxed regulatory requirements likely would cause them to suffer an injury in fact. For that reason, the federal courts are the wrong forum for addressing the plaintiffs' concerns about *397 FDA's actions. The plaintiffs may present their concerns and objections to the President and FDA in the regulatory process, or to Congress and the President in the legislative process. And they may also express their views about abortion and mifepristone to fellow citizens, including in the political and electoral processes.

"No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Simon*, 426 U.S. at 37, 96 S.Ct. 1917. We reverse the judgment of the U. S. Court of Appeals for the Fifth Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Justice THOMAS, concurring.

I join the Court's opinion in full because it correctly applies our precedents to conclude that the Alliance for Hippocratic Medicine and other plaintiffs lack standing. Our precedents require a plaintiff to demonstrate that the defendant's challenged actions caused his asserted injuries. And, the Court aptly explains why plaintiffs have failed to establish that the Food and Drug Administration's changes to the regulation of mifepristone injured them. *Ante,* at 1558 – 1565.

The Court also rejects the plaintiff doctors' theory that they have third-party standing to assert the rights of their patients. *Ante,* at 1563, n. 5. Our third-party standing precedents allow a plaintiff to assert the rights of another person when the plaintiff has a "close relationship with the person who possesses the right" and "there is a hindrance to the possessor's ability to protect his own interests." *Kowalski v. Tesmer*, 543 U.S. 125, 130, 125 S.Ct. 564, 160 L.Ed.2d 519 (2004) (internal quotation marks omitted). Applying these precedents, the Court explains that the doctors cannot establish third-party standing to sue for violations of their patients' rights without showing an injury of their own. *Ante,* at 1563, n. 5. But, there is a far *398 simpler reason to reject this theory: Our third-party standing doctrine is mistaken. As I have previously explained, a plaintiff cannot establish an Article III case or controversy by asserting another person's rights. [1] See *June Medical Services L. L. C. v. Russo*, 591 U.S. 299, 366, 140 S.Ct. 2103, 207 L.Ed.2d 566 (2020) (THOMAS, J., dissenting); *Kowalski*, 543 U.S. at 135, 125 S.Ct. 564 (THOMAS, J., concurring). So, just as abortionists lack standing to assert the rights of their clients, doctors who oppose abortion cannot vicariously assert the rights of their patients.

1 Certain forms of standing that may be representational in a general sense, such as next friend standing, are "not inconsistent with this point." *June Medical Services, L. L. C. v. Russo*, 591 U.S. 299, 365, n. 2, 140 S.Ct. 2103, 207 L.Ed.2d 566 (2020) (THOMAS, J., dissenting).

****1566** I write separately to highlight what appear to be similar problems with another theory of standing asserted in this suit. The Alliance and other plaintiff associations claim that they have associational standing to sue for their members' injuries. [2] Under the Court's precedents, "an association has standing to bring suit on behalf of its members when: (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." *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977). If an association can satisfy these requirements, we allow the association to pursue its members' claims, without joining those members as parties to the suit.

2 By "associational standing," I do not refer to standing premised upon an association's own alleged injuries. Instead, I refer to the doctrine that permits a plaintiff association to assert the rights of its members. See *Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975).

Associational standing, however, is simply another form of third-party standing. And, the Court has never explained or justified either doctrine's expansion of Article III standing. ***399** In an appropriate case, we should explain just how the Constitution permits associational standing.

I

Associational standing raises constitutional concerns by relaxing both the injury and redressability requirements for Article III standing. It also upsets other legal doctrines.

First, associational standing conflicts with Article III by permitting an association to assert its members' injuries instead of its own. The "judicial power" conferred by Article III "is limited to cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process." See *June Medical*, 591 U.S. at 364, 140 S.Ct. 2103 (opinion of THOMAS, J.) (internal quotation marks omitted). "[T]o ascertain the scope of Article III's case-or-controversy requirement," courts therefore "refer directly to the traditional, fundamental limitations upon the powers of common-law courts." *Ibid.* (internal quotation marks omitted). Traditionally, a plaintiff had to show a violation of his own rights to have his claim considered by a common-law court. See *id.*, at 364–366, 140 S.Ct. 2103. So, "private parties could not bring suit to vindicate the constitutional [or other legal] rights of individuals who are not before the Court." *Id.*, at 359, 140 S.Ct. 2103. "After all, '[t]he province of the court is, solely, to decide on the rights of individuals,' " not to answer legal debates in the abstract. *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 10, 144 S.Ct. 18, 217 L.Ed.2d 155 (2023) (THOMAS, J., concurring in judgment) (quoting *Marbury v. Madison*, 1 Cranch 137, 170, 2 L.Ed. 60 (1803)); see also *ante,* at 1553 – 1555.

Associational standing seems to run roughshod over this traditional understanding of the judicial power. Our doctrine permits an association to have standing based purely upon a member's injury, not its own. If a single member of an association has suffered an injury, our doctrine permits that association to seek relief for its entire membership—even if the association has tens of millions of other, non-injured members. See Brief for Professor F. Andrew ***400** Hessick as *Amicus Curiae* 28 (explaining that, among other associations, the American Association of Retired People's "potential standing is staggering" because our doctrine permits it to "sue to ****1567** redress" the injury of a single member out of its "almost thirty-eight million members"). As I have already explained in the context of third-party standing, Article III does not allow a plaintiff to seek to vindicate someone else's injuries. See *June Medical*, 591 U.S. at 364–366, 140 S.Ct. 2103 (opinion of THOMAS, J.); *Kowalski*, 543 U.S. at 135, 125 S.Ct. 564 (opinion of THOMAS, J.). It is difficult to see why that logic should not apply with equal force to an association as to any other plaintiff. I thus have serious doubts that an association can have standing to vicariously assert a member's injury.

The Alliance's attempted use of our associational-standing doctrine illustrates how far we have strayed from the traditional rule that plaintiffs must assert only their own injuries. The Alliance is an association whose members are other associations. See 1 App. 9–10. None of its members are doctors. Instead, the Alliance seeks to have associational standing based on injuries to

the doctors who are members of its member associations. Thus, the allegedly injured parties—the doctors—are two degrees removed from the party before us pursuing those injuries.

Second, our associational-standing doctrine does not appear to comport with the requirement that the plaintiff present an injury that the court can redress. For a plaintiff to have standing, a court must be able to "provid[e] a remedy that can redress *the plaintiff's* injury." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291, 141 S.Ct. 792, 209 L.Ed.2d 94 (2021) (emphasis added). But, as explained, associational standing creates a mismatch: Although the association is the plaintiff in the suit, it has no injury to redress. The party who needs the remedy—the injured member—is not before the court. Without such members as parties to the suit, it is questionable whether "relief to these nonparties ... exceed[s] constitutional bounds." ***401** *Association of American Physicians & Surgeons v. FDA*, 13 F.4th 531, 540 (CA6 2021); see also *Department of Homeland Security v. New York*, 589 U. S. ——, ——, 140 S.Ct. 599, 600, 206 L.Ed.2d 115 (2020) (GORSUCH, J., concurring in grant of stay) (explaining that remedies "are meant to redress the injuries sustained by a particular plaintiff in a particular lawsuit"); Brief for Professor F. Andrew Hessick as *Amicus Curiae* 18 ("A bedrock principle of the Anglo-American legal system was that the right to a remedy for an injury was personal").

Consider the remedial problem when an association seeks an injunction, as the Alliance did here. See 1 App. 113. "We have long held" that our equity jurisdiction is limited to "the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution." *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318, 119 S.Ct. 1961, 144 L.Ed.2d 319 (1999). And, "as a general rule, American courts of equity did not provide relief beyond the parties to the case." *Trump v. Hawaii*, 585 U.S. 667, 717, 138 S.Ct. 2392, 201 L.Ed.2d 775 (2018) (THOMAS, J., concurring). For associations, that principle would mean that the relief could not extend beyond the association. But, if a court entered "[a]n injunction that bars a defendant from enforcing a law or regulation against the specific party before the court—the *associational plaintiff*—[it would] not satisfy Article III because it w[ould] not redress an injury." *Association of American Physicians & Surgeons*, 13 F.4th at 540 (internal quotation marks omitted). [3]

3 This also raises the question of who should pick the remedy. Associations "may have very different interests from the individuals whose rights they are raising." *Kowalski v. Tesmer*, 543 U.S. 125, 135, 125 S.Ct. 564, 160 L.Ed.2d 519 (2004) (THOMAS, J., concurring). For example, an association might prefer an injunction preventing the enforcement of a law that harms its members, while an injured member may instead want damages to compensate him for his injuries. Or perhaps a member would wish to settle the litigation, whereas an association might want to continue the fight. Our associational-standing doctrine ignores these obvious concerns.

****1568** Our precedents have provided a workaround for this obvious remedial problem through the invention of the so-called ***402** "universal injunction." Universal injunctions typically "prohibit the Government from enforcing a policy with respect to anyone." *Trump*, 585 U.S. at 713, n. 1, 138 S.Ct. 2392 (THOMAS, J., concurring). By providing relief beyond the parties to the case, this remedy is "legally and historically dubious." *Id.*, at 721, 138 S.Ct. 2392; see also *Labrador v. Poe*, 601 U. S. ——, —— – ——, 144 S.Ct. 921, 923–926, —— L.Ed.2d —— (2024) (GORSUCH, J., concurring in grant of stay). It seems no coincidence that associational standing's "emergence in the 1960s overlaps with the emergence of [this] remedial phenomenon" of a similarly questionable nature. *Association of American Physicians & Surgeons*, 13 F.4th at 541. Because no party should be permitted to obtain an injunction in favor of nonparties, I have difficulty seeing why an association should be permitted to do so for its members. Associational standing thus seems to distort our traditional understanding of the judicial power.

In addition to these Article III concerns, there is tension between associational standing and other areas of law. First, the availability of associational standing subverts the class-action mechanism. A class action allows a named plaintiff to represent others with similar injuries, but it is subject to the many requirements of Federal Rule of Civil Procedure 23. Associational standing achieves that same end goal: One lawsuit can provide relief to a large group of people. "As compared to a class action," however, associational standing seems to require "show[ing] an injury to only a single member," and the association "need not show that litigation by representation is superior to individual litigation." 13A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3531.9.5, pp. 879–880 (3d ed., Supp. 2023); see also Fed. Rule Civ. Proc. 23(a). Associational standing

thus allows a party to effectively bring a class action without satisfying any of the ordinary requirements. Second, associational standing creates the possibility of asymmetrical preclusion. The basic idea behind preclusion is that a party gets only one bite at the apple. If a party ***403** litigates and loses an issue or claim, it can be barred from reasserting that same issue or claim in another suit. In general, preclusion prevents the relitigation of claims or issues only by a party to a previous action, and we have been careful to limit the exceptions to that rule. See *Taylor v. Sturgell*, 553 U.S. 880, 892–893, 128 S.Ct. 2161, 171 L.Ed.2d 155 (2008). In the context of associational standing, the general rule would mean that preclusion applies only to the association, even though the purpose of the association's suit is to assert the injuries of its members. See *id*., at 893–896, 128 S.Ct. 2161. But, if the association loses, it is not clear whether the adverse judgment would bind the members. See *Automobile Workers v. Brock*, 477 U.S. 274, 290, 106 S.Ct. 2523, 91 L.Ed.2d 228 (1986) (suggesting that, if an association fails to adequately represent its members, "a judgment won against it might not preclude subsequent claims by the association's members without ****1569** offending due process principles"). Associational standing might allow a member two bites at the apple—after an association's claims are rejected, the underlying members might be able to assert the exact same issues or claims in a suit in their own names.

In short, our associational-standing doctrine appears to create serious problems, both constitutional and otherwise.

II

I am particularly doubtful of associational-standing doctrine because the Court has never attempted to reconcile it with the traditional understanding of the judicial power. Instead, the Court departed from that traditional understanding without explanation, seemingly by accident. To date, the Court has provided only practical reasons for its doctrine.

For over a century and a half, the Court did not have a separate standing doctrine for associations. As far as I can tell, the Court did not expressly contemplate such a doctrine until the late 1950s. In *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958), the Court permitted an association ***404** to assert the constitutional rights of its members to prevent the disclosure of its membership lists. While the Court allowed the NAACP to raise a challenge on behalf of its members, it also acknowledged that the NAACP had arguably faced an injury of its own. *Id*., at 459–460, 78 S.Ct. 1163. The Court, however, soon discarded any notion that an association needed to have its own injury, creating our modern associational-standing doctrine. In *National Motor Freight Traffic Assn., Inc. v. United States*, 372 U.S. 246, 83 S.Ct. 688, 9 L.Ed.2d 709 (1963) (*per curiam*), the Court suggested that an uninjured industry group had standing to challenge a tariff schedule on behalf of its members. *Id*., at 247, 83 S.Ct. 688. The Court offered no explanation for how that theory of standing comported with the traditional understanding of the judicial power. In fact, the Court's entire analysis consisted of a one-paragraph order denying rehearing. Since then, however, the Court has parroted that "*[e]ven in the absence of injury to itself*, an association may have standing solely as the representative of its members." *Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) (emphasis added; citing *National Motor Freight Traffic Assn.*, 372 U.S. 246, 83 S.Ct. 688, 9 L.Ed.2d 709); see also, *e.g.*, *Automobile Workers*, 477 U.S. at 281, 106 S.Ct. 2523. The Court has gone so far as to hold that a state agency—not a membership organization at all—had associational standing to "asser[t] the claims of the Washington apple growers and dealers who form its constituency." *Hunt*, 432 U.S. at 344, 97 S.Ct. 2434.

Despite its continued reliance on associational standing, the Court has yet to explain how the doctrine comports with Article III. When once asked to "reconsider and reject the principles of associational standing" in favor of the class-action mechanism, the Court justified the doctrine solely by reference to its "special features, advantageous both to the individuals represented and to the judicial system as a whole." *Automobile Workers*, 477 U.S. at 288–289, 106 S.Ct. 2523. Those "special features" included an association's "pre-existing reservoir of expertise and capital," and the fact that people ***405** often join an association "to create an effective vehicle for vindicating interests that they share with others." *Id*., at 289–290, 106 S.Ct. 2523. But, considerations of practical judicial policy cannot overcome the Constitution's mandates. The lack of any identifiable justification further suggests that the ****1570** Court should reconsider its associational-standing doctrine.

* * *

No party challenges our associational-standing doctrine today. That is understandable; the Court consistently applies the doctrine, discussing only the finer points of its operation. See, *e.g.*, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 199–201, 143 S.Ct. 2141, 216 L.Ed.2d 857 (2023). In this suit, rejecting our associational-standing doctrine is not necessary to conclude that the plaintiffs lack standing. In an appropriate case, however, the Court should address whether associational standing can be squared with Article III's requirement that courts respect the bounds of their judicial power.

All Citations

602 U.S. 367, 144 S.Ct. 1540, 219 L.Ed.2d 121, 2024 Daily Journal D.A.R. 5077, 30 Fla. L. Weekly Fed. S 247

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EXHIBIT B

2024 WL 4246721
Only the Westlaw citation is currently available.
United States Court of Appeals, Ninth Circuit.

ARIZONA ALLIANCE FOR RETIRED AMERICANS; Voto Latino; Priorities USA, Plaintiffs-Appellees,
v.
Kristin K. MAYES, in his official capacity as Attorney General for the State of Arizona, Defendant-Appellant,
Yuma County Republican Committee, Intervenor-Defendant-Appellant,
and
Katie Hobbs, in her official capacity as Secretary of State for the State of Arizona; Larry Noble, Nominal Defendant, in his official capacity as Apache County Recorder; David Stevens, Nominal Defendant, in his official capacity as Cochise County Recorder, previously named as David Stephens; Patty Hansen, Nominal Defendant, in her official capacity as Coconino County Recorder; Sadie Jo Bingham, Nominal Defendant, in her official capacity as Gila County Recorder; Wendy John, Nominal Defendant, in her official capacity as Graham County Recorder; Sharie Milheiro, Nominal Defendant, in her official capacity as Greenlee County Recorder; Richard Garcia, Nominal Defendant, in his official capacity as La Paz County Recorder; Stephen Richer, Nominal Defendant, in his official capacity as Maricopa County Recorder; Kristi Blair, Nominal Defendant, in her official capacity as Mohave County Recorder; Michael Sample, Nominal Defendant, in his official capacity as Navajo County Recorder; Gabriella Cazares-Kelly, Nominal Defendant, in her official capacity as Pima County Recorder; Dana Lewis, Nominal Defendant, in her official capacity as Pinal County Recorder; Suzanne Sainz, Nominal Defendant, in her official capacity as Santa Cruz County Recorder; Michelle Burchill, Nominal Defendant, in her official capacity as Yavapai County Recorder; Richard Colwell, Nominal Defendant, in his official capacity as Yuma County Recorder, Defendants.

No. 22-16490
|
Argued and Submitted May 16, 2023 Phoenix, Arizona
|
Filed September 20, 2024

Synopsis

Background: Voter advocacy organizations brought action against Arizona Secretary of State, the Attorney General, and county recorders, challenging several provisions of Arizona's recently-enacted election legislation, which modified criteria for voter-registration cancellations, active early-voting list regulations and violations associated with illegal voting. County-level Republican committee permissively intervened. The United States District Court for the District of Arizona, G. Murray Snow, Chief Judge, 630 F.Supp.3d 1180, granted organizations' motion for preliminary injunction, and defendants appealed.

Holdings: The Court of Appeals, Lee, Circuit Judge, held that:

organizations lacked organizational standing to challenge validity of cancellation provision;

organizations had standing to challenge statute prohibiting provision of mechanism for voting to another person who was registered in another state; and

organizations were not likely to succeed on merits of their void-for-vagueness challenge.

Vacated and remanded.

Lee, Circuit Judge, concurred and filed opinion.

Nguyen, Circuit Judge, dissented in part and filed opinion.

Procedural Posture(s): On Appeal; Motion for Preliminary Injunction.

West Codenotes

Negative Treatment Reconsidered
Ariz. Rev. Stat. Ann. § 16-1016(12)

Negative Treatment Vacated
Ariz. Rev. Stat. Ann. § 16-165(A)(10), (B)

Appeal from the United States District Court for the District of Arizona, G. Murray Snow, Chief District Judge, Presiding, D.C. No. 2:22-cv-01374-GMS

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Before: Jacqueline H. Nguyen, Daniel P. Collins, and Kenneth K. Lee, Circuit Judges.

Opinion by Judge Lee;

Concurrence by Judge Lee;

Partial Dissent by Judge Nguyen

OPINION

LEE, Circuit Judge:

***2** Arizona enacted two election law amendments aimed at curtailing the risk of unlawful voting: (1) a provision that allows the cancellation of a voter's registration if a county receives "confirmation from another county" that the voter has moved and is registered in that new county ("Cancellation Provision"); and (2) a provision that makes it a felony to knowingly provide a "mechanism for voting" to another person registered in another state ("Felony Provision").

Three nonprofit groups sued, asserting that these two laws would jeopardize Arizonans' right to vote if they went into effect. The district court agreed and preliminarily enjoined them. We vacate the preliminary injunction and remand.

We first hold that the plaintiff organizations lack standing to challenge the Cancellation Provision. The plaintiffs rely on our circuit's confusing line of organizational standing cases that have broadly construed *Havens Realty v. Coleman*, 455 U.S. 363, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982), as allowing an organization to assert standing if it diverts resources in response to a governmental policy that frustrates its mission. But the Supreme Court in *FDA v. Alliance for Hippocratic Medicine* has now put a halt to those line of cases. 602 U.S. 367, 144 S.Ct. 1540, 219 L.Ed.2d 121 (2024). The Court held that neither the frustration of a mission nor the diversion of resources confers standing under Article III, making our precedents clearly irreconcilable with *Hippocratic Medicine.* Organizations can no longer spend their way to standing based on vague claims that a policy hampers their mission.

Now, organizations must fully satisfy the traditional requirements of Article III standing. *Hippocratic Medicine* clarified that the distinctive theory of organizational standing reflected in *Havens Realty* extends *only* to cases in which an organization can show that a challenged governmental action directly injures the organization's pre-existing core activities and does so *apart* from the plaintiffs' response to that governmental action. 602 U.S. at 395–36, 144 S.Ct. 1540. Emphasizing that *Havens Realty* "was an unusual case" that the Court "has been careful not to extend ... beyond its context," the Supreme Court in *Hippocratic Medicine* squarely rejected the sort of "expansive theory" of *Havens Realty* standing that has long been a hallmark of our jurisprudence. *Id.* Applying the Supreme Court's now-clarified understanding of *Havens Realty*—which has overruled our prior contrary caselaw—we conclude that the plaintiffs have failed to plead Article III standing to challenge the Cancellation Provision.

We also reject the plaintiffs' constitutional challenge to the Felony Provision. We disagree with the district court's conclusion that the phrase "mechanism for voting" in the Felony Provision is so vague that it would likely sweep in constitutionally protected activity such as voter outreach and registration. Although the statute does not define the phrase "mechanism for voting," the definition of the word "mechanism," along with structure of the statute, strongly suggests that "mechanism for voting" includes only (unlawful) acts of voting, not voter outreach or registration. And under the constitutional avoidance doctrine, we read the Felony Provision narrowly to steer clear of potential constitutional problems.

BACKGROUND

I. Arizona enacts Senate Bill 1260 to combat unlawful voting.

In June 2022, Arizona enacted Senate Bill (SB) 1260 to tackle (what the state perceived as) the problem of unlawful voting. SB 1260 "[m]odifies the criteria for voter registration cancellations, active early voting list regulations and violations associated with illegal voting." Ariz. H.B. Summary, 2022 Reg. Sess. S.B. 1260. In particular, it adds three provisions to Arizona's Elections and Electors Code: (1) the "Felony Provision," A.R.S. § 16-1016(12), (2) the "Cancellation Provision," A.R.S. § 16-165(A)(10), (B), and (3) the "Removal Provision," A.R.S. § 16-544(Q)–(R). This appeal concerns only the Felony Provision and the Cancellation Provision.

***3** The Cancellation Provision allows county recorders to cancel a voter's registration if the county recorder either (1) "receives confirmation from another county recorder that the person registered has registered to vote in that other county," A.R.S. § 16-165(A)(10), or (2) receives "information that a person has registered to vote in a different county," at which point she "shall confirm the person's voter registration with that other county and, on confirmation, shall cancel the person's registration," A.R.S. § 16-165(B).

The Felony Provision makes it a "class 5 felony" for anyone to "[k]nowingly provide[ ] a mechanism for voting to another person who is registered in another state." A.R.S. § 16-1016(12). The statute, however, does not define "mechanism for voting."

II. Arizona laws must conform with the National Voter Registration Act.

Arizona's election laws must comply with federal voting laws, including the NVRA. The NVRA, among other things, imposes certain procedural requirements before a state (or, by extension, a county) can remove a registered voter from its voting rolls. *See, e.g.*, 52 U.S.C. § 20507(a)(3)(A), (d)(1). For example, the NVRA permits a state to remove a voter from the voting rolls if she makes that request. 52 U.S.C. § 20507(a)(3)(A). Relevant here, the NVRA also allows a state to remove a voter if she has moved to a different jurisdiction. *Id.* § 20507(d)(1). And there are two ways to confirm that the voter has moved. First, the voter can "confirm[ ] in writing that [she] has changed residence to a place outside the registrar's jurisdiction." *Id.* § 20507(d)(1)(A). Second, the state may remove a voter who has not recently voted and does not respond after receiving notice from the state. *Id.* § 20507(d)(1)(B).

III. The district court preliminarily enjoins enforcement of the Felony Provision and Cancellation Provision.

After Arizona enacted SB 1260, three political nonprofit organizations—the Arizona Alliance for Retired Americans, Voto Latino, and Priorities USA—sued the Arizona Attorney General, the Secretary of State, and fifteen county recorders, challenging SB 1260 on constitutional grounds. The Yuma County Republican Committee (YCRC) intervened to defend the law.

The plaintiffs sought to preliminarily enjoin the Felony Provision and the Cancellation Provision. [1] The plaintiffs claimed that the Cancellation Provision violates the NVRA because it does not comply with the NVRA's requirements for canceling a voter's registration. They also claimed that the Felony Provision violates the First and Fourteenth Amendments because it is vague and overbroad. According to the plaintiffs, by failing to define "mechanism for voting," the law might criminalize various voter-outreach activities protected by the First Amendment, including voter registration.

1 The plaintiffs also sought to enjoin SB 1260's Removal Provision, arguing that it violates the Due Process Clause by placing an unjustifiable burden on citizens' exercise of their fundamental right to vote. The district court, however, declined to enjoin the Removal Provision and the plaintiffs do not appeal that decision.

On the first business day after SB 1260 went into effect, the district court preliminarily enjoined the enforcement of the Felony and Cancellation Provisions. On appeal, the Attorney General and YCRC challenge the plaintiffs' standing and the district court's preliminary injunction.

STANDARD OF REVIEW

"Standing is a legal issue subject to *de novo* review." *Arakaki v. Lingle*, 477 F.3d 1048, 1056 (9th Cir. 2007). To establish Article III standing to sue, a plaintiff must show that she "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S.Ct. 1540, 194 L.Ed.2d 635 (2016). At the preliminary injunction stage, a plaintiff must make a "clear showing" for each of these three requirements. *See Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010).

***4** This court "review[s] the grant or denial of a preliminary injunction for abuse of discretion." *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). To obtain a preliminary injunction, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008).

"A district court necessarily abuses its discretion when it bases its decision on an erroneous legal standard or on clearly erroneous findings of fact." *Johnson v. Couturier*, 572 F.3d 1067, 1078–79 (9th Cir. 2009) (cleaned up). This court's review typically "does not extend to the underlying merits of the case," meaning that "[a]s long as the district court got the law right, it will not be reversed simply because the appellate court would have arrived at a different result if it had applied the law to the facts of

the case." *Id.* (citation omitted). But where, as here, the district court's analysis of the likelihood of success on the merits "rests solely on conclusions of law and the facts are either established or undisputed, de novo review is appropriate" for that factor. *Warsoldier v. Woodford*, 418 F.3d 989, 993 (9th Cir. 2005); *see also Credit Suisse First Boston Corp. v. Grunwald*, 400 F.3d 1119, 1126 n.7 (9th Cir. 2005) ("[W]e review *de novo* any underlying issues of law, including the district court's interpretation of [Arizona] state law." (citation omitted)).

ANALYSIS

I. The plaintiffs lack standing to challenge the Cancellation Provision.

An organization asserting that it has standing based on its own alleged injuries must meet the traditional Article III standing requirements—meaning, it must show (1) that it has been injured or will imminently be injured, (2) that the injury was caused or will be caused by the defendant's conduct, and (3) that the injury is redressable. *See Hippocratic Medicine*, 602 U.S. at 395-96, 144 S.Ct. 1540; *Havens Realty*, 455 U.S. at 378–79, 102 S.Ct. 1114. But our circuit's organizational standing case law has been conflicting and confusing, and some of our cases construing *Havens Realty* have lost sight of these requirements. Rather than require organizations to show actual injury, we have sometimes allowed organizations to sue when they have alleged little more than that they have diverted resources in response to the defendant's actions to avoid frustrating the organization's loosely defined mission.

These organizational standing precedents are irreconcilable with the Supreme Court's recent decision in *Hippocratic Medicine.* Under *Hippocratic Medicine*, the plaintiffs must allege more than that their mission or goal has been frustrated—they must plead facts showing that their core activities are directly affected by the defendant's conduct. 602 U.S. at 370, 395, 144 S.Ct. 1540. That is, the plaintiffs here must do more than merely claim that Arizona's law caused them to spend money in response to it—they must show that Arizona's actions directly harmed already-existing activities. The plaintiffs have not pleaded facts to establish these requirements.

To understand why the plaintiffs lack standing under *Hippocratic Medicine*'s proper reading of Article III, we must walk through how our circuit mistakenly took a detour in construing *Havens Realty.*

A. Article III standing bars parties from using the courts merely to vindicate abstract political and societal goals.

***5** Article III of the Constitution only allows federal courts to decide cases and controversies. So a federal court may not decide an issue unless the plaintiff has, as Justice Scalia memorably put it, answered a threshold question: "What's it to you?" A. Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983). But not just any answer to that question will do. Courts may not allow plaintiffs with only ideological interests in the outcome of a case to pursue that case in court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 653, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Nor may courts allow plaintiffs to seek out and challenge laws that they disagree with based on disagreement alone. *Allen v. Wright*, 468 U.S. 737, 760, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984).

These limitations are critical to the separation of powers and our adversarial system of justice. Courts do not resolve disputes in some abstract, generalized sense—we resolve justiciable disputes between the parties before us. By confirming that the plaintiff who brings a lawsuit has a genuine interest in the outcome, we reach better-reasoned decisions than we would if we issued opinions every time a plaintiff who "roam[ed] the country in search of governmental wrongdoing" found what it was looking for. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 487, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982). And this ensures that the scope of the judicial role remains—as the Founders intended it to be—limited. *Hippocratic Medicine*, 602 U.S. at 379–80, 144 S.Ct. 1540; *see also* Federalist No. 47 (James Madison) (explaining that the judicial branch "can exercise no executive prerogative" or perform "any legislative function").

To satisfy Article III's standing requirement, plaintiffs must make three showings. First, they must show injury. The injury must be "concrete," meaning "not abstract." *Id.* at 381, 144 S.Ct. 1540. It must be particularized, meaning that it affects the plaintiff individually, not in a generalized manner. *Id.* And it must be either real or imminent, meaning that it has occurred or will likely occur soon. *Id.*

Second, plaintiffs must show that their injury "likely was caused or likely will be caused by the defendant's conduct." *Id.* at 382, 144 S.Ct. 1540. When a plaintiff challenges a government regulation that directly applies to or regulates them, this is easy to do. *Id.* But when a plaintiff challenges a government action that does not directly apply to it, or that does not necessarily affect its behavior, this requirement may be harder to meet. *Id.* Plaintiffs may not "rely on speculation about the unfettered choices made by independent actors not before the courts," *Clapper v. Amnesty Int'l*, 568 U.S. 398, 414 n.5, 133 S.Ct. 1138, 185 L.Ed.2d 264 (2013) (quotation omitted), or assume that third parties will act in unpredictable or irrational ways, *California v. Texas*, 593 U.S. 659, 669, 675, 141 S.Ct. 2104, 210 L.Ed.2d 230 (2021). Nor may plaintiffs rely on "distant (even if predictable) ripple effects." *Hippocratic Medicine*, 602 U.S. at 383, 144 S.Ct. 1540. Instead, plaintiffs must show a sufficiently close and predictable link between the challenged action and their injury-in-fact. *Id.* [2]

2 The dissent claims that we are conflating third-party standing principles (*Hunt* representational standing) with first-party standing (*Havens Realty* organizational standing). Dissent at —— – ——. Not so. The causation requirement under traditional Article III standing must always be satisfied, either as to the organization itself (in a first-party standing case) or as to one or more members of the organization (in a third-party standing case). And it is incorrect to say that *Hippocratic Medicine*'s emphasis on causation was referring to third-party standing only. The Court held that when a "plaintiff challenges the government's 'unlawful regulation (or lack of regulation) of someone else,' " then standing may be "substantially more difficult to establish" because causation "ordinarily hinge[s] on the response of the regulated (or regulable) third party to the government action or inaction—and perhaps the response of others as well." 602 U.S. at 382, 144 S.Ct. 1540 (citing *Lujan*, 504 U.S. at 562, 112 S.Ct. 2130). That is exactly the situation here: the plaintiff organizations are asserting their own injuries—*i.e.*, diversion of resources and frustration of mission—based on the government's regulation of third parties (their clients whom they register to vote). This is still first-party standing—and *Hippocratic Medicine*'s emphasis on causation applies here. Finally, the dissent points out that the first-party standing analysis is the same for organizations as it is for individuals. Dissent at ——. That is true. The problem has been that we have not rigorously applied the traditional Article III standing analysis to organizations as we typically have for individuals.

***6** Finally, plaintiffs must show that their injury is redressable. *Id.* at 380, 144 S.Ct. 1540. To do so, they must show that a favorable ruling will cure their injury. *California*, 593 U.S. at 671, 141 S.Ct. 2104. When evaluating redressability, courts must "consider the relationship between 'the judicial relief requested' and the 'injury' suffered." *Id.* (quoting *Allen*, 468 U.S. at 753 n.19, 104 S.Ct. 3315). If there is no injury or if the requested remedy would not cure the plaintiff's injury, then the injury is not redressable. *Id.* at 672, 141 S.Ct. 2104.

B. *Havens Realty*—and the Ninth Circuit's expansion of it.

In *Havens Realty*, the defendant company managed two apartment complexes, one of which was occupied predominantly by whites, and the other of which was integrated. 455 U.S. at 368 & n.1, 102 S.Ct. 1114. In leasing its apartments, the defendant allegedly engaged in "racial steering" by steering non-whites only to the integrated complex and away from the largely white complex. *Id.* at 366–68 & nn. 1 & 4, 102 S.Ct. 1114. These steering activities included falsely informing Black prospective renters, including a HOME employee, that there were no apartments available in the largely white complex. *Id.* at 368, 102 S.Ct. 1114. The Supreme Court held that HOME had standing to challenge the landlord's racial steering practices because the practices "frustrated" HOME's "efforts to assist equal access to housing through counseling and other referral services" and required HOME to "devote significant resources to identify and counteract" the practices. *Id.* at 379, 102 S.Ct. 1114.

From *Havens Realty*, we have derived a two-part test that conferred standing on organizations if they merely alleged that a challenged policy (1) frustrated the organization's mission or goal, and (2) required the organization to spend money or divert resources in response. *See, e.g.*, *Fellowship of the Christian Athletes v. San Jose Unified School Dist.*, 82 F.4th 664, 682 (9th Cir. 2023) (en banc); *Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012).

We have often said that *Havens Realty* does not allow organizations to vindicate abstract interests or spend their way into Article III standing, but our cases have been less clear, and often conflicting, on what then a plaintiff must do to show injury. *See Nielsen v. Thornell*, 101 F.4th 1164, 1181–82 (9th Cir. 2024) (Collins, J., dissenting) (arguing for a narrow reading of our confusing precedents, many of which "applied *Havens Realty* in summary fashion" and with "no detailed analysis"). So in practice, we often paid lip service to a more stringent standing requirement, but many of our cases seemed effectively to allow plaintiffs to assert standing merely by expending resources in furtherance of "strong moral, ideological, or policy objection[s] to a government action." *Hippocratic Medicine*, 602 U.S. at 381, 144 S.Ct. 1540.

But as the Supreme Court has now clarified, *Havens Realty* never discussed frustrating an abstract organizational mission—it discussed the direct impact of racial steering on HOME's "core business activities." *See Hippocratic Medicine*, 602 U.S. at 395, 144 S.Ct. 1540. In loosely characterizing *Havens Realty* as a case about missions and goals, our cases lost sight of that crucial limitation. Organizations can—and do—define their missions "with hydra-like or extremely broad aspirational goals." *See Nielsen*, 101 F.4th at 1170. Looking at indirect impacts on those missions and goals—instead of direct interference with the organization's core *activities*—could allow an organization to challenge virtually anything, including policies that only affect the organization's intangible social interests. For example, an organization can define its mission as, say, ensuring equal protection or safeguarding property rights—and easily assert that a governmental policy in the abstract frustrates that mission, even if the challenged policy has no direct impact on the organization's carrying out of its existing core activities. In doing so, our cases have effectively allowed organizations to assert standing based on the sort of "general legal, moral, ideological, and policy concerns" that the Supreme Court has confirmed "do not suffice on their own to confer Article III standing to sue in federal court." *Hippocratic Medicine*, 602 U.S. at 386, 144 S.Ct. 1540.

***7** We equally erred to the extent that our cases have suggested that the mere diversion of resources in response to a policy can provide standing. In *Havens Realty*, HOME spent resources offsetting policies that harmed its then-existing activities—specifically, its ongoing activities in counseling its constituents on available housing. 455 U.S. at 376, 102 S.Ct. 1114; *see also Hippocratic Medicine*, 602 U.S. at 395, 144 S.Ct. 1540. Some of our cases appear to have loosened this requirement, finding standing wherever an organization alleged that it spent (or would spend) resources on new activities *in response* to a challenged policy—even if those new activities consist only of educational and advocacy efforts in ideological opposition to the challenged policy. And, most troublingly, we have sometimes accepted that such new activities confer standing even if they are no more than a new opportunity for the organization to advance its loosely defined "mission." *Roommate.com*, 666 F.3d at 1226 (Ikuta, J., concurring in part) (noting that an organization's mission has not been frustrated if it spends money to further that goal). Thus, we have at times gone so far as to endorse a self-help theory of standing under which an organization's mission is supposedly hampered if, in response to a defendant's conduct, the organization decides to further its mission in a *different* way, by shifting resources from one "activity that advances [its] goals" to new activities that *also* further its goals by opposing the new policy. *See Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040–41 (9th Cir. 2015) (concluding that voter advocacy organization suffered injury by engaging in additional voter advocacy). In other words, our case law has suggested that an organization suffers cognizable harm because it voluntarily spends money to further its goals.

Many judges on this circuit have highlighted how this circuit's expansion of *Havens Realty* went astray. *See, e.g.*, *Roommate.com*, 666 F.3d at 1226 (Ikuta, J., concurring in part) ("This case brings the strain between our case law and Supreme Court precedent close to a rupture."); *Rodriguez v. City of San Jose*, 930 F. 3d 1123, 1135 n. 10 (9th Cir. 2019) (Friedland, J.) ("We share many of these concerns" about the circuit's organizational standing precedents "but are bound to apply" them); *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 693 (9th Cir. 2021) (Bumatay, J., dissenting from the denial of rehearing en banc) ("We have moved well beyond requiring particularized and concrete injury and have embraced a 'general grievance' theory of jurisdiction by construing organizational standing so broadly."); *Sabra v. Maricopa Cnty. Comm. Coll.*, 44 F.4th 867, 896 (9th Cir. 2022)

(VanDyke, J., concurring) ("[A]s in other areas of our court's jurisprudence, we have paid lip service to [Article III's] rules while faltering in our application."); *Nielsen*, 101 F.4th at 1180 (Collins, J., dissenting) (If "mere advocacy" is enough, then "any person who is opposed to any government policy would have standing to challenge that policy."). After the Supreme Court's decision in *Hippocratic Medicine*, we can no longer follow our overbroad reading of *Havens Realty.*

The dissent maintains that *Hippocratic Medicine* did not alter our (mis)reading of *Havens Realty.* Dissent at ——— – ———. But it did. The telltale sign is that the Supreme Court in *Hippocratic Medicine* noted that it "has been careful not to extend the *Havens* holding beyond its context." 602 U.S. at 396, 144 S.Ct. 1540. But our court has been anything but careful in its broad reading of *Havens Realty*, and we must comply with the Supreme Court's admonition that *Havens Realty* is an "unusual case" that should not be expanded beyond its unique context. *Id.* We thus now apply the traditional Article III inquiry for organizational standing (as clarified by *Hippocratic Medicine*) and cannot rely on our two-part test of simply looking at diversion of resources and frustration of mission.

The dissent tries to put a favorable gloss on our *Havens Realty* case law, arguing that "[n]o Ninth Circuit precedent describes *Havens Realty* as a two-part test." Dissent at ———. But we have done just that. For example, in *Sabra*, we held that "we have 'read *Havens* to hold that an organization has direct standing to sue where it establishes that the defendant's behavior has frustrated its mission and caused it to divert resources in response to that frustration of purpose.' " 44 F. 4th at 876 (quoting *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2020) (in turn quoting *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002))). Indeed, we did not even bother mentioning the traditional three-part Article III standing inquiry (injury-in-fact, causation/traceability, redressability) in *Sabra* because we were relying solely on the two-part frustration of mission and diversion of resources framework that our circuit adopted for organizational standing. And even when we give lip service to Article III standing requirements, we often ultimately applied the more forgiving two-part test that we mistakenly derived from *Havens Realty. See, e.g., E. Bay Sanctuary*, 993 F. 3d at 691 (Bumatay, J., dissenting from the denial of rehearing en banc) (noting that the panel opinion's "broad and malleable standard" of standing is "an end-run around Article III"). We no longer can do so.

C. Our organizational standing precedent is clearly irreconcilable with *Hippocratic Medicine.*

***8** Supreme Court authorities—rather than Ninth Circuit precedent—are binding on three-judge panels "where intervening Supreme Court authority is clearly irreconcilable with our prior circuit authority." *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). In *Hippocratic Medicine*, the Supreme Court applied traditional standing principles to an organizational plaintiff, and in doing so, rejected both prongs of our organizational standing test. 602 U.S. at 395–96, 144 S.Ct. 1540. In particular, the Supreme Court clarified that organizational standing may not be premised on a broadly stated mission or goal. *Id.* at 394, 144 S.Ct. 1540. Nor may it hinge on the claim that the organization has diverted resources in response to government action that does not directly affect that organization's existing core activities. *Id.*

To start, *Hippocratic Medicine* clarified that a policy does not cause an injury in fact unless the policy "directly affect[s] and interfere[s]" with the organization's "core business activities"—much like a manufacturer's sale of a defective good harms the consumer who buys it. *Id.* at 395, 144 S.Ct. 1540. So just as a consumer must suffer an actual and concrete harm, the organization must suffer an actual and concrete harm. *Id.* And that harm must directly and actually affect the organization's "core" activities, not merely its "abstract social interests." *Id.* (quoting *Havens Realty*, 455 U.S. at 379, 102 S.Ct. 1114). No matter how much a defendant's conduct can be said to frustrate an organization's abstract mission, alleged injuries to an organization's "general legal, moral, ideological, and policy concerns do not suffice on their own to confer Article III standing to sue in federal court." *Hippocratic Medicine*, 602 U.S. at 386, 144 S.Ct. 1540; *see also id.* at 394, 144 S.Ct. 1540 (holding that the plaintiffs organizations' argument that the FDA's challenged policy "has 'impaired' their 'ability to provide services and achieve their organizational missions' " "does not work to demonstrate standing").

In *Havens Realty*, it was "[c]ritical[ ]" that HOME was "not only [an] issue-advocacy organization, but also operated a housing counseling service." *Id.* at 395, 144 S.Ct. 1540. In other words, HOME had standing because receiving false information about available housing directly harmed HOME's core activity—counseling its clients on housing availability. *Id.* HOME would not have had standing, however, if the racial steering practice only affected its "public advocacy" and "public education" functions—the injury depended on HOME's counseling services. *Id.* at 394, 144 S.Ct. 1540; *cf. Sabra*, 44 F.4th at 879 (permitting standing based on mere harm to abstract advocacy interests and on a government action's effects in shifting public opinion on matters of public interest).

Next, *Hippocratic Medicine* clarified that it is tougher for a plaintiff to establish causation than some of our precedents suggested. 602 U.S. at 382–83, 144 S.Ct. 1540. This is obvious: If the party before the court seeks to challenge a law that does not directly affect it, the chain of causation will be longer and inferences will be necessary. *Id.* So we must scrutinize the harm an organization asserts to ensure that the organization has not tried to "spend its way into standing simply by expending money to gather information and advocate against the defendant's actions." *Id.* at 394, 144 S.Ct. 1540. If we do not, we risk permitting "all the organizations in America" to challenge everything they dislike, "provided they spend even a single dollar opposing those policies." *Id.* at 395, 144 S.Ct. 1540. To avoid that, we must not allow the diversion of resources *in response* to a policy to confer standing—instead, the organization must show that the new policy directly harms its *already-existing* core activities. *Id.*

Even the narrowest reading of our organizational standing precedents allowed plaintiffs to satisfy Article III using the sort of frustration-of-mission and diversion-of-resource theories the Supreme Court rejected in *Hippocratic Medicine*. *See Nielsen*, 101 F.4th at 1180–81 (Collins, J., dissenting); *see also Sabra*, 44 F.4th at 879; *Roommate.com*, 666 F.3d at 1219; *Nat'l Council of La Raza*, 800 F.3d at 1040–41. These precedents are thus irreconcilable with *Hippocratic Medicine*—and thus overruled. In sum, rather than applying our two-pronged inquiry of whether a challenged policy frustrates an organization's mission and requires it to spend money resources, we now must apply, following the strictures of *Hippocratic Medicine*, the traditional three-part Article III standing analysis: (1) injury-in-fact, (2) causation, and (3) redressability.

D. The plaintiffs here lack standing to challenge the Cancellation Provision because they have alleged only a frustrated mission and diverted resources.

***9** The plaintiffs have not shown they have standing to challenge the Cancellation Provision. The plaintiffs speculate that they might in the future need to divert resources because the Cancellation Provision could cause voters' current registrations—rather than old, outdated registrations—to be cancelled. And the plaintiffs allege that this interferes with their mission to encourage minority voter registration. This conjecture-laden theory is insufficient under Article III.

First, the plaintiffs cannot show injury-in-fact because the Cancellation Provision does not directly affect their pre-existing core activities. With or without the Cancellation Provision, the plaintiffs can still register and educate voters—in other words, continue their core activities that they have always engaged in. *See Hippocratic Medicine*, 602 U.S. at 396, 144 S.Ct. 1540. Rather, the plaintiffs are complaining that they must now take it upon themselves to develop training materials or ask constituents additional questions in response to the Cancellation Provision. The plaintiffs thus attempt to spend their way into Article III standing by taking new actions in response to what they view as a disfavored policy. But as *Hippocratic Medicine* explains, spending money voluntarily in response to a governmental policy cannot be an injury in fact. *See* 602 U.S. at 394, 144 S.Ct. 1540.

Second, the plaintiffs' speculative harm is too attenuated to satisfy Article III's causation requirement. According to the plaintiffs, if they fail to confirm whether voters have existing registrations, the Cancellation Provision may cause a county recorder to cancel the voter's new registration instead of the old one. It is unclear whether the plaintiffs view this as a direct organizational harm based on the resources they will divert to avoid cancelled voter registrations, or if they instead intend to assert claims on behalf of the members whose registrations may be cancelled. *See Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977) (discussing organization's associational standing based on representing its members). But regardless of whether they are alleging a *Havens Realty* direct organizational standing or a *Hunt* associational

standing based on their members' alleged injuries, their theory rests on either an implausible reading of the Cancellation Provision or pure speculation—neither of which creates enough of a causal chain to satisfy Article III.

Take the plaintiffs' misreading of the Cancellation Provision. The plaintiffs insist that the Cancellation Provision could be read to allow county recorders to cancel a new voter registration when that registration is submitted. Arizona law, as well as basic common sense, makes clear that the Cancellation Provision does no such thing. The statute says that the "county recorder shall cancel a registration ... [w]hen the county recorder receives confirmation from another county recorder that the person registered has registered to vote in that other county." *See* A.R.S. § 16-165(A)(11). As the statutory text explains, the county recorder will cancel the old registration in its county if it confirms that the voter "has registered" in a new county.[3] As the Arizona Secretary of State Katie Hobbs has explained, the state maintains a statewide voter registration system, Arizona Voter Information Database (AVID), that all the counties rely on for maintaining and verifying voter registration. That AVID database reveals which registration is more recent for a particular voter. And in case there was any doubt remaining about what the law requires, the Arizona Attorney General confirmed in its supplemental brief that only the old registration would be cancelled under the statute.[4]

3 Other statutory provisions in Arizona law echo this same point. *See* A.R.S. § 16-164(A) ("On receipt of a *new* registration form that effects a change of ... address ... the county recorder shall indicate electronically in the county voter registration that the registration has been canceled ...") (emphasis added); A.R.S. § 16-166(B) ("If the elector provides the county recorder with a *new* registration form or otherwise revises the elector's information, the county recorder shall change the register to reflect the changes indicated on the new registration.") (emphasis added).

4 The dissent states that the Arizona Attorney General "agree[s] with plaintiffs' statutory interpretation." Dissent at ——. But the Attorney General was only referring to what constitutes "credible information" under the statute, not whether the statute requires a new voting registration to be cancelled in favor of the old one. Further, the dissent's suggestion that third parties may try to maliciously purge voting registrations (Dissent at ——, n.2) is off-base. Under the statute, a county recorder has to confirm voting registration records with the other county recorder before removing the old registration.

***10** At its core, the plaintiffs' argument is that the county recorder—whose main job is to maintain accurate voting registration—will negligently remove the *new* voting registration and decide to keep the old one. But as the Arizona Secretary of State and the Arizona Attorney General have explained, that is not what the law requires or what any county recorder would reasonably be expected to do. The plaintiffs' causal chain of harm is as fanciful as a complaint alleging that the U.S. Department of State will process a passport renewal by destroying the new passport and sending the expired one back. This theory of causation is "simply too speculative" to satisfy Article III. *Hippocratic Medicine*, 602 U.S. at 393, 144 S.Ct. 1540. And for similar reasons, the plaintiffs are also wrong in contending that they have associational standing based, not on their own injuries, but on the alleged harms that the Cancellation Provision will inflict on their members. *See Hunt*, 432 U.S. at 343, 97 S.Ct. 2434. These associational-standing arguments rest on the same unduly speculative theory of causation—namely, that county recorders will supposedly cancel new voter registrations rather than old ones.[5]

5 The dissent argues that we are addressing the merits of the claim in our standing analysis. Dissent at ——. We are not. The plaintiffs' claim is based on the premise that the National Voter Registration Act preempts Arizona law. We do not address the merits of that preemption argument. Rather, we merely point out that the plaintiffs' chimerical and speculative theory of harm—that the law will compel the state to bizarrely cancel a *new* voting registration form and keep the *old* one—is belied by the statutory language, common sense, and statements from bipartisan state elected officials in charge of administering and enforcing Arizona's election laws. We are not bound to accept an incorrect premise in determining whether a party has standing. Indeed, in determining whether a chain-of-causation is too speculative under our Article III standing principles, we must look at whether a plaintiff is relying on a far-fetched speculation in assessing how a statute may be applied.
The dissent relies on our decision in *Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 488 (9th Cir. 2024), to argue that we are impermissibly determining the merits of the case in our standing analysis. But that case is plainly distinguishable.

> There, the state argued in its brief that its law regulating mobile home parks did not apply to the plaintiff's park and thus the plaintiff did not have standing. But at oral argument the state refused to say that it would not enforce that law against the plaintiff. The state's refusal to disclaim enforcement was especially notable because the record showed that the state legislature had specifically targeted that park (and that park only) in passing the law. *Id.* at 486. Given that record, we refused to credit the state's argument in its brief that the law did not apply to the plaintiff. Here, in contrast, the law is clear that the state will not cancel the new registration.

The plaintiffs attempt to cure these problems by claiming that they have alleged more than "mere issue advocacy"—and thus satisfied *Hippocratic Medicine*—because the Cancellation Provision creates a direct organizational harm by "impact[ing] their ability to engage in their core voter registration activities." But this is a diversion-of-resources theory by another name. The only way in which the Cancellation Provision arguably affects the plaintiffs' "core voter registration activities" is by causing the plaintiffs, in response to the provision, to decide to shift some resources from one set of pre-existing activities in support of their overall mission to another, new set of such activities. Indeed, the plaintiffs' purported harm—*e.g.*, they will have to "expend ... resources," "create[e] a training program," "divert additional time and resources" (Dissent at ——— – ———)—represent the same diversion-of-resources and frustration-of-mission injury that *Hippocratic Medicine* rejected.

Unlike *Havens Realty*, as clarified by *Hippocratic Medicine*, here there is no sense in which the Cancellation Provision can be said to directly injure the organizations' pre-existing core activities, apart from the plaintiffs' response to that provision. The dissent suggests that the plaintiff HOME in *Havens Realty* would not have standing under our reading of *Hippocratic Medicine.* We disagree. Havens Realty had "perceptibly impaired" HOME's "core" and ongoing ability to provide counseling and referral services because it lied and "provided HOME's black employees false information about apartment availability." *Hippocratic Medicine*, 602 U.S. at 395, 144 S.Ct. 1540. Put another way, Havens Realty had "directly affected and interfered" with HOME's pre-existing goal of helping its Black clients obtain housing because Havens Realty had wrongfully lied that nothing was available in predominantly white apartments. *Id.* As the Supreme Court explained, a plaintiff group has organizational standing if it can show harm to its "core business activities" much like a "retailer who sues a manufacturer for selling defective goods to the retailer." *Id.* So *Havens Realty* was not a case in which HOME claimed standing based on its voluntary decision to spend more resources to educate its clients in response to Havens Realty's actions; rather, its core and ongoing business activity was "perceptibly impaired" by Havens Realty's wrongful lies. *Id.*

***11** The plaintiffs here, in contrast, can continue its core and ongoing business of registering voters. The Cancellation Provision does not "directly affect[ ] and interfere[ ]" with that pre-existing activity. The only harm here is the potential diversion of resource to remind people of the far-fetched possibility that the registrar of voters may somehow mistakenly or maliciously cancel their new voting registration form if they had earlier registered elsewhere. In other words, the plaintiffs are claiming that they are harmed because they will spend resources on education in response to the new law. This alleged harm simply is not akin to a "retailer who sues a manufacturer for selling defective goods to the retailer" or a group's core business activity being "perceptibly impaired." *Id.* If we accepted the plaintiffs' extravagant theory of standing, a law school professor who teaches election law would have standing to challenge the Cancellation Provision because she would have to expend resources to change her curriculum and further educate her students about the state of the law. Article III standing cannot be based on such fanciful or speculative harm.

II. The plaintiffs have standing to challenge the Felony Provision but their argument likely fails on the merits.

To establish standing at the preliminary injunction stage, plaintiffs must make a clear showing that they have suffered an actual or imminent injury that a preliminary injunction would remedy. *See Lujan*, 504 U.S. at 564, 112 S.Ct. 2130; *Spokeo*, 578 U.S. at 339, 136 S.Ct. 1540 ("a plaintiff must show that he or she suffered" an "actual or imminent" injury (citation omitted)); *Lopez*, 630 F.3d at 785. Only if plaintiffs make that clear showing can we decide the merits of the claim.

A. The plaintiffs have standing because they have shown that they face a realistic possibility of prosecution.

To make a clear showing of standing, the plaintiffs must show that they face a reasonable risk of prosecution under the Felony Provision such that they are chilled from engaging in their constitutionally protected voter outreach and registration activities. [6]

6 Unlike the Cancellation Provision, *Hippocratic Medicine* does not undermine the plaintiffs' standing to challenge the Felony Provision because the plaintiff organizations allege that they will *themselves* be prosecuted for violating the Felony Provision, *i.e.*, that they are parties as to whom the Felony Provision "forbid[s] some action." *Hippocratic Medicine*, 602 U.S. at 382, 144 S.Ct. 1540. Thus, in asserting standing to challenge the Felony Provision, the plaintiffs do not rely on the frustration of their mission or diversion of resources.

This court has repeatedly held that when a "threatened enforcement effort implicates First Amendment rights, the inquiry tilts dramatically toward a finding of standing" to guard against chilling protected speech. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1155 (9th Cir. 2000). Of course, even under this "lowered threshold," the threat of injury to plaintiffs still must be "credible, not imaginary or speculative." *Lopez*, 630 F.3d at 781, 786 (cleaned up). Put another way, plaintiffs satisfy the injury-in-fact requirement in a pre-enforcement challenge if they allege "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 134 S.Ct. 2334, 189 L.Ed.2d 246 (2014).

Thus, a plaintiff bringing a pre-enforcement First Amendment challenge typically must show that her expressive activity is chilled because she faces a "realistic danger" of prosecution under the statute she challenges. *Libertarian Party of L.A. Cnty. v. Bowen*, 709 F.3d 867, 870 (9th Cir. 2013) (citation omitted). "In evaluating the genuineness of a claimed threat of prosecution, courts examine three factors: (1) whether plaintiffs have articulated a 'concrete plan' to violate the law in question, (2) whether the prosecuting authorities have communicated a specific warning or threat to initiate proceedings, and (3) the history of past prosecution or enforcement under the challenged statute." *Id.* (citation omitted). In assessing these three factors, we believe that the plaintiffs face a "realistic danger" of prosecution.

***12** First, the plaintiffs have concrete plans to engage in constitutionally protected voter outreach activities, including voter registration, that they believe may violate the Felony Provision. We have generally held that a plaintiff satisfies this first factor if the "plaintiff's intended speech *arguably* falls within the statute's reach." *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1095 (9th Cir. 2003) (emphasis added). The plaintiffs clear that low hurdle because the undefined phrase "mechanism for voting" arguably could be read to encompass First Amendment activity such as voter registration.

Second, while no Arizona official has threatened to prosecute the plaintiffs, that does not defeat their standing. In First Amendment challenges, "the plaintiff need only demonstrate that a threat of potential enforcement will cause him to self-censor, and not follow through with his concrete plan to engage in protected conduct." *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 839 (9th Cir. 2014); *see also Tingley v. Ferguson*, 47 F.4th 1055, 1068 (9th Cir. 2022) (suggesting that a plaintiff need not show a specific threat of prosecution to establish standing if the general specter of liability will cause her to self-censor).

In this litigation, the state's Attorney General has rejected any interpretation of SB 1260 that would criminalize ordinary voter outreach. But this court has held that officials cannot inoculate laws from review if the disavowal is a "mere litigation position." *Lopez*, 630 F.3d at 788. Outside of this case, the state has offered no official guidance limiting the Felony Provision's reach, even though the state has been on notice that the provision is vague and potentially chilling speech. The Attorney General's office also acknowledges that its interpretation will not bind its successor. Thus, the plaintiffs have established that they will self-censor because of SB 1260's nascent threat, satisfying the second factor too.

Finally, the plaintiffs' inability to show a history of prosecution under the Felony Provision does not undermine their standing. *See LSO, Ltd.*, 205 F.3d at 1155; *see also Libertarian Party*, 709 F.3d at 872. In pre-enforcement cases, "an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Driehaus*, 573 U.S. at 158, 134 S.Ct. 2334. SB 1260 was enjoined the day after it took effect, so Arizona never had a genuine opportunity to enforce it. *See id.*

Considering these three factors together, we hold that the plaintiffs have met their burden to make a clear showing of a concrete injury and thus they have Article III standing.

B. The plaintiffs are unlikely to prevail on the merits because the phrase "mechanism for voting" is not unconstitutionally vague.

In a vagueness challenge, our first task is to determine whether the challenged law curtails First Amendment freedoms. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982). Laws that restrict First Amendment rights are less likely to survive a vagueness challenge. *Compare Humanitarian L. Project v. U.S. Treasury Dep't*, 578 F.3d 1133, 1146 (9th Cir. 2009) *with Hotel & Motel Ass'n of Oakland v. City of Oakland*, 344 F.3d 959, 972 (9th Cir. 2003). That is because First Amendment rights are "delicate and vulnerable, as well as supremely precious in our society ... [and] the threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

A law is void for vagueness when it "fail[s] to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits" or when it "authorize[s] and even encourage[s] arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 527 U.S. 41, 56, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999). This court applies this test more strictly when the challenged law touches on forms of political speech. *Butcher v. Knudsen*, 38 F.4th 1163, 1169 (9th Cir. 2022). At the same time, we know that "[f]acial invalidation is, manifestly, strong medicine that has been employed by the Court sparingly and only as a last resort." *Cal. Tchrs. Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1155 (9th Cir. 2001) (citation omitted).

***13** When evaluating the vagueness of a statute, we "interpret statutory language in view of the entire text, considering the context." *Nicaise v. Sundaram*, 245 Ariz. 566, 432 P.3d 925, 927 (2019). We give words "their ordinary meaning unless it appears from the context or otherwise that a different meaning is intended." *Arizona ex rel. Brnovich v. Maricopa Cnty. Cmty. Coll. Dist. Bd.*, 243 Ariz. 539, 416 P.3d 803, 805 (2018) (citation omitted).

The Felony Provision prohibits "[k]nowingly provid[ing] a mechanism for voting to another person who is registered in another state, including by forwarding an early ballot addressed to the other person." A.R.S. § 16-1016(12). Because the statute does not define "mechanism for voting," we must begin by "apply[ing] the ordinary meaning of the term." *Arizona v. Dann*, 220 Ariz. 351, 207 P.3d 604, 621 (2009). As relevant here, a "mechanism" is "a process or technique for achieving a particular result," *Mechanism*, Webster's Third New International Dictionary (1981 ed.), or an "instrument or process ... by which something is done," *Mechanism*, American Heritage Dictionary (5th ed. 2018). The object of "mechanism" in the statute's prepositional phrase is "voting," which refers to the "act or process of casting a vote," *Voting*, Webster's Third New International Dictionary (1981 ed.). So construed under its ordinary meaning, the phrase "mechanism for voting" likely refers to a process, technique, or instrument for *casting a vote.* That plain-meaning construction of the phrase does not include activities such as voter registration because providing a mechanism for *registering* to vote is different from providing a "mechanism for *voting.*"

We also do not read words or phrases divorced from the statutory scheme. "[I]t is a 'fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.' " *Adams v. Comm'n on App. Ct. Appointments*, 227 Ariz. 128, 254 P.3d 367, 374 (2011) (quoting *Deal v. United States*, 508 U.S. 129, 132, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993)). When we look at the entire statute, including the surrounding provisions, that reinforces our conclusion that "mechanism for voting" does not include voting outreach or registration. *See Nicaise*, 432 P.3d at 927.

To begin, the title of the statutory section where the Felony Provision is housed suggests that it only criminalizes misconduct involving the actual act of casting a vote. *See Miller v. City of Tucson*, 153 Ariz. 380, 736 P.2d 1192, 1193 (Ariz. Ct. App. 1987) ("This court has also ruled that it is proper to consider the title of a statute in attempting to interpret the enacting body's intent." (citing *State v. Shepler*, 141 Ariz. 43, 684 P.2d 924, 925 (Ariz. Ct. App.1984))). The title lists "Illegal voting," "pollution

of ballot box," and "removal or destruction of ballot box, poll lists or ballots." A.R.S. § 16-1016. All these activities in the title involve the act of voting, confirming that "mechanism for voting" is confined to that as well.

And all the other specific criminal violations listed in this section are indeed related to acts of voting. *See id.* That underscores that this section regulates the act of voting itself, not voter registration. *See id.* The section criminalizes twelve specified acts related to voting:

***14** 1. Not being entitled to vote, knowingly votes.

2. Knowingly votes more than once at any election.

3. Knowingly votes in two or more jurisdictions in this state for which residency is required for lawful voting and the person is not a resident of all jurisdictions in which the person voted. For the purposes of this paragraph, a person has only one residence for the purpose of voting.

4. Knowingly votes in this state in an election in which a federal office appears on the ballot and votes in another state in an election in which a federal office appears on the ballot and the election day for both states is the same date.

5. Knowingly gives to an election official two or more ballots folded together.

6. Knowingly changes or destroys a ballot after it has been deposited in the ballot box.

7. Knowingly adds a ballot to those legally cast at any election, by fraudulently introducing the ballot into the ballot box either before or after the ballots in the ballot box have been counted.

8. Knowingly adds to or mixes with ballots lawfully cast, other ballots, while they are being canvassed or counted, with intent to affect the result of the election, or to exhibit the ballots as evidence on the trial of an election contest.

9. Knowingly and unlawfully carries away, conceals or removes a poll list, ballot or ballot box from the polling place, or from possession of the person authorized by law to have custody thereof.

10. Knowingly destroys a polling list, ballot or ballot box with the intent to interrupt or invalidate the election.

11. Knowingly detains, alters, mutilates or destroys ballots or election returns.

12. Knowingly provides a mechanism for voting to another person who is registered in another state, including by forwarding an early ballot addressed to the other person.

Id. The first eleven provisions all directly relate to misconduct in the act of voting; none of them relates to pre-voting activity, such as voting registration or outreach. The provision about "mechanism for voting" appears as the last and twelfth item on that list of misconduct. As a general matter, "words grouped in a list should be given related meanings." *See* Scalia and Garner, *Reading Law* at 195. Consistent with the other eleven neighboring provisions, the twelfth provision about "mechanism for voting" likely encompasses only misconduct related to the act of voting.

Another statutory clue that "mechanism for voting" does not include voting outreach and registration is that a different section penalizes voter registration-related misconduct. *See* A.R.S. § 16-181–84. Section 16-182(A) provides criminal penalties for any individual who "allows himself to be registered ... knowing that he is not entitled to such registration, or a person who knowingly causes or procures another person to be registered ... knowing that such other person is not entitled to such registration." This express provision for voting registration fraud implies that the "mechanism for voting" provision in the section devoted to illegal voting refers only to voting, not voting registration. Otherwise, the separate registration section would be superfluous. And a "cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous." *Nicaise*, 432 P.3d at 927.

***15** In sum, when we review "mechanism for voting" within the broader context of the statutory framework, its meaning is clear such that it "defin[es] a 'core' of proscribed conduct that allows people to understand whether their actions will result in adverse consequences." *Forbes v. Napolitano*, 236 F.3d 1009, 1011 (9th Cir. 2000) (citation omitted). A "mechanism for voting" thus concerns the process involved in casting a vote, not registering to vote. *See, e.g.*, *Stambaugh v. Killian*, 242 Ariz. 508, 398 P.3d 574, 575 (2017) ("Words in statutes should be read in context in determining their meaning."); Scalia and Garner, *Reading Law* at 167–68 ("Context is a primary determinant of meaning.").

Finally, we have another reason for rejecting the plaintiffs' expansive reading of the Felony Provision. We try to avoid constitutional problems if there is a reasonable way to read a statute to avoid them. *Cal. Tchrs. Ass'n*, 271 F.3d at 1147 (explaining that "before invalidating a state statute on its face, a federal court must determine whether the statute is 'readily susceptible' to a narrowing construction" (quoting *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 397, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988))); *see Arizona v. Gomez*, 212 Ariz. 55, 127 P.3d 873, 878 (2006) ("We also construe statutes, when possible, to avoid constitutional difficulties."). And in the realm of criminal law, the rule of lenity tilts the scale in favor of the criminal defendant and we construe ambiguous criminal statutes narrowly. *See Arizona v. Brown,* 217 Ariz. 617, 177 P.3d 878, 882 (Ariz. Ct. App. 2008) ("[W]e construe criminal statutes that are unclear or reasonably susceptible to different interpretations in favor of lenity."). Here, as explained earlier, the Felony Provision is readily susceptible to a narrowing construction and we will not construe its use of "mechanism for voting" broadly to include voter registration.

In sum, the district court abused its discretion in concluding that the plaintiffs would likely prevail in their challenge of the Felony Provision and granting their motion for preliminary injunction. Because we hold that the Felony Provision is not unconstitutionally vague, the plaintiffs have not met their burden of showing a likelihood of success on the merits.

CONCLUSION

We hold that the plaintiffs lack standing to challenge the Cancellation Provision, and that the district court erred in concluding that the plaintiffs showed a likelihood of success in their challenge of the Felony Provision. We thus vacate the district court's grant of a preliminary injunction and remand for further proceedings consistent with this opinion.

LEE, Circuit Judge, concurring.

As the majority opinion points out, the plaintiffs lack Article III standing to challenge Arizona's Cancellation Provision. But even if they had standing, they likely would not prevail on their claim that the National Voter Registration Act (NVRA) preempts the Cancellation Provision. The district court here relied on the reasoning in a pair of decisions from the Seventh Circuit, the only circuit to have addressed the reach of NVRA's section 20507(d)(1). Because I strongly but respectfully disagree with the Seventh Circuit's textual analysis and expect that this question will arise in similar challenges, I write separately to offer a countervailing reading of the statute.

* * * *

An Arizona voter can, of course, lawfully vote only once. And that is where the Cancellation Provision comes in: It tries to reduce the risk of someone voting twice in two jurisdictions by allowing a county recorder to cancel a voter's prior registration if she learns that the voter has moved to a new jurisdiction. The county recorder can do so only if she either (1) "receives confirmation from another county recorder that the person registered has registered to vote in that other county," A.R.S. § 16-165(A)(10), or (2) receives "credible information that a person has registered to vote in a different county," at which point she "shall confirm the person's voter registration with that other county and, on confirmation, shall cancel the person's registration," A.R.S. § 16-165(B).

***16** But in enacting the NVRA, Congress set baseline procedural requirements that all states must comply with in removing a registered voter from their voting rolls. Among other things, the NVRA allows a state to remove a voter if she has moved to a different jurisdiction. 52 U.S.C. § 20507(d)(1). There are two ways a county can confirm that the voter has moved under the NVRA: (1) the voter can "confirm[ ] in writing that [she] has changed residence to a place outside the registrar's jurisdiction," or (2) the county may remove a voter who has not recently voted and does not respond after receiving notice from the state. *Id.* § 20507(d)(1)(A), (B).

Relying heavily on two Seventh Circuit decisions relating to Indiana state law—*Common Cause Indiana v. Lawson*, 937 F.3d 944 (7th Cir. 2019) and *League of Women Voters of Indiana, Inc. v. Sullivan*, 5 F.4th 714 (7th Cir. 2021)—the district court held that Arizona's Cancellation Provision conflicts with the NVRA. It held that the NVRA's requirement that a voter must "confirm[ ] in writing that [she] has changed residence to a place outside the registrar's jurisdiction" creates a two-step process for confirming that someone has moved: first, when a state receives the initial information that a voter may have moved, it must reach out to the voter; then second, the voter must confirm that she has indeed moved. According to the district court, only then can the county recorder remove that voter from the voting roll of the prior county where she had lived.

The Seventh Circuit—and the district court here—hinged their argument on the word "confirm" in the NVRA: "A plain-meaning reading of the NVRA dictates that the *states* need to 'confirm' something—in this instance the *initial information* [about a change in residence] they received. It stretches the meaning of 'confirm' past its limits to ignore its key feature of corroborating or verifying a prior piece [of] knowledge." *Common Cause*, 937 F.3d at 962 (emphasis added). In other words, the Seventh Circuit believed that the word "confirm" creates a two-step process in which a *state* (or county) needs to confirm the "*initial information*" it receives about a change in residence.

The district court's (and the Seventh Circuit's) reading of the NVRA is highly questionable both textually and structurally. The NVRA says nothing about a "*state*" confirming any "*initial information*" it receives about a change in residence. Rather, it just says that "the *registrant* [*i.e.*, the voter] confirms in writing that *[she] has changed residence* to a place outside the registrar's jurisdiction." 52 U.S.C. § 20507(d)(1)(A) (emphasis added). So it is the *voter*—not the state—that is confirming the fact that she has moved. *Compare id.* ("the *registrant* confirms in writing" (emphasis added)) with *Common Cause*, 937 F.3d at 962 ("the NVRA then requires that the *state* ... 'confirm' with the registrant before removing the person from the rolls" (emphasis added)).

And how does a voter "confirm[ ] in writing that [she] has changed residence to a place outside the registrar's jurisdiction"? One way is by registering to vote in a new county and affirming under the penalty of perjury that she now lives in that new jurisdiction. Put another way, the very act of filling out a form to register in another county is by itself a written confirmation of the fact that a voter has changed residence—just as Arizona's Cancellation Provision provides. The dissent argues that this reading is "unmoored from the statutory text." Dissent at ——. But filling out a new voting registration form in a new county obviously can be a "confirm[ation] in writing that [the voter] has changed residence." 52 U.S.C. § 20507(d)(1)(A). Indeed, the reason why a voter would fill out a new voting registration form is to alert the county that she has moved and now lives in a new residence—i.e., to "confirm in writing that [she] has changed residence." This type of confirmation by citizens is common. For example, someone who buys a car from a dealer must submit a new car registration form to the DMV. And by filing out the DMV registration form, the person has confirmed in writing that she is the owner of a new car.

***17** Nothing in the text of the NVRA requires the county to send a separate notice to the voter—and then await a reply from that voter—to ensure that the voter really meant to say that she moved when she registered in a different county. The Seventh Circuit divined this two-step notice process solely from the word "confirm." That single word cannot bear the load of an intricate two-step statutory scheme that the district court and the Seventh Circuit impose on it. [1]

1 The Seventh Circuit later doubled down on its reading of the NVRA in *League of Women Voters*, and went even further by saying that under § 20507(d)(1)(A) a "state may not remove a voter from its voter rolls without ... receiving a direct communication from the voter that she wishes to be removed." 5 F. 4th at 723. But there is nothing in § 20507(d)(1)(A) that requires a voter to say that she "wishes to be removed." It only says that a voter must "confirm[ ] in writing"

that she has "changed residence" to a new jurisdiction. There is a separate provision in the NVRA in which a voter can request that she be removed from the voting rolls. 52 U.S.C. § 20507(a)(3)(A). In contrast, § 20507(d)(1)(A) allows the removal of a person if she has moved and registered in a new jurisdiction.

The district court also reasoned that Arizona's Cancellation Provision conflicts with the NVRA because a "county recorder's confirmation with *another county recorder* [that a voter has moved] is similarly insufficient to constitute confirmation *from the registrant* under the NVRA." But the "confirmation from the registrant" about a new residence has already occurred when the voter signed a voting registration form in a new jurisdiction. The logistics of one county recorder—whose job is to keep track of voting registration—contacting another county recorder does not change the fact that the voter already confirmed in writing that she moved to a new county.

We also know that the NVRA does not establish a two-step confirmation process under § 20507(d)(1)(A) because it says nothing about it—but the statute *does* lay out a two-step confirmation process for a different scenario under § 20507(d)(1)(B). As noted earlier, § 20507(d)(1)(B) establishes an alternative way for a state to remove a voter from the voting rolls: if a voter has not recently voted and does not respond to a notice from the state, that person can be removed. The statute outlines how the notice-and-confirmation process works for removing a voter under this method—the state must send a "postage prepaid and pre-addressed return card" "by forwardable mail" under a set timeline. § 20507(d)(2).

The dissent relies on this different statutory provision (for removing voters who have not voted recently) to argue that the state must also comply with this two-step notice process for the provision at issue involving voters who have moved and registered to vote in a new county. Dissent at ——— – ———. But the statutory provision for removing voters who have registered to vote elsewhere says nothing about a two-step process. If Congress wanted a two-step confirmation process for removing voters under § 20507(d)(1)(A) (for voters who have registered to vote in a new county), it could have laid out a process to do so, much like it did in § 20507(d)(1)(B) (for voters who have not voted recently). That § 20507(d)(1)(A) says nothing about a two-step process is telling, and we should not concoct a confirmation process when Congress has not uttered a word about it. *See Lamie v. United States Trustee*, 540 U.S. 526, 537, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004) (explaining that it is not the role of the courts to "rewrit[e] rules that Congress has affirmatively and specifically enacted") (citation omitted). [2]

2 YCRC points out that the Federal Election Commission's guidance states that registration in another state can serve as confirmation of a change of address. *See Implementing the National Voter Registration Act of 1993: Requirements, Issues, Approaches, and Examples* at 5-7 to 5-8 (Jan. 1, 1994). But there is no need to look at FEC guidance because the statutory text forecloses the plaintiffs' position.

***18** Indeed, it makes sense why Congress would want additional protections—through a two-step notice process—for voters who have not voted recently. Merely not voting recently does not signify that the voter will not vote in that county in the future. Perhaps that voter was too busy to vote or did not support any of the candidates in the last election but she may want to vote in the next election. In contrast, if a voter moves and registers to vote in a new county, that is confirmation that the voter will not—and cannot—vote in the old county where she no longer lives.

Another provision of the NVRA also weighs against reading into that statute a two-step confirmation process for removing a voter who has confirmed a change of residence through a new voting registration. That is because a separate provision of the NVRA mandates that, unless an individual explicitly states otherwise, "[a]ny change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of a change of address for voter registration." 52 U.S.C. § 20504(d). The NVRA then directs state officials to treat a driver's license application as "updating any previous voter registration by the applicant." § 20504(a)(2). So if a change of address form submitted for purposes of a driver's license can serve as notification of a change of address for voting purposes, then a new voting registration also can.

To be clear, § 20507(d)(1)(A) does not set up a toothless regime in which states or counties can remove willy-nilly any voter it suspects of having moved. A state cannot, for example, rely on a third-party database to remove a voter, like what Indiana did in *Common Cause* by using a "third-party database known as Crosscheck, which aggregates voter data from multiple states

to identify potential duplicate voter registrations." *Common Cause*, 937 F.3d at 948. In such a case, there has been no written confirmation by the voter that she has moved. But Arizona's law meets the NVRA's written confirmation requirement because the county recorder—whose job is to maintain voting registration records—will have received the new voting registration form by the voter confirming in writing that she has moved to the new jurisdiction. A.R.S. § 16-165(A), (B). So, contrary to the reasoning of the Seventh Circuit's NVRA decisions and the district court's reliance on them, there is no conflict between the NVRA and Arizona's Cancellation Provision. And the plaintiffs' challenge to the Cancellation Provision would fail even on the merits.

NGUYEN, Circuit Judge, dissenting in part:

I strongly dissent from the majority's holding that plaintiffs lack standing to challenge the Cancellation Provision.[1] The majority's deeply flawed analysis improperly conflates standing with the merits; usurps the district court's role as factfinder by raising and resolving a standing issue for the first time on appeal; ignores plaintiffs' actual evidence; and confuses a third-party standing injury with the direct organizational injury here. Worse still, the majority erroneously overrules several cases as irreconcilable with *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 395–96, 144 S.Ct. 1540, 219 L.Ed.2d 121 (2024), which breaks no new ground on the standing doctrine.

1 As for the Felony Provision, I concur in the result.

The district court correctly determined, in line with the Seventh Circuit's analysis of a similar law, that the Cancellation Provision likely violates the National Voter Registration Act ("NVRA"). I would therefore affirm the district court's injunction as to the Cancellation Provision.

I.

A.

***19** According to the majority, the standing analysis turns on *Hippocratic Medicine* overruling several of our cases applying *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982). But *Hippocratic Medicine*, which devoted little more than a page to discussing *Havens Realty*, merely "applied traditional standing principles to an organizational plaintiff," Maj. Op. at ——, as did *Havens Realty* itself, *see* 455 U.S. at 378, 102 S.Ct. 1114 (conducting "the same [standing] inquiry as in the case of an individual"). And it was *Havens Realty*—not *Hippocratic Medicine*—which established that a mere "setback to the organization's abstract social interests" is insufficient to confer standing. *Id.* at 379, 102 S.Ct. 1114. *Hippocratic Medicine* is hardly a sea change in the law of organizational standing.

The majority mischaracterizes our precedent interpreting *Havens Realty* as creating "a two-part test" that "merely" requires a showing that "a challenged policy (1) frustrated the organization's mission or goal, and (2) required the organization to spend money or divert resources in response." Maj. Op. at ——. No Ninth Circuit precedent describes *Havens Realty* as a two-part test. While we have acknowledged that standing can be *based on* an organization's expenditure of resources to address conduct that frustrates its purpose—as did *Havens Realty* itself, *see* 455 U.S. at 379, 102 S.Ct. 1114 (finding plaintiff sufficiently established standing by alleging that it "devote[d] significant resources to identify and counteract ... racially discriminatory steering practices" that "frustrated ... its efforts to assist equal access to housing through counseling and other referral services")—we have been careful to explain that these circumstances alone are not sufficient and that caveats apply.

As the majority acknowledges, "[w]e have often said that *Havens Realty* does not allow organizations to vindicate abstract interests or spend their way into Article III standing." Maj. Op. at ——. So then how is our case law incorrect? The majority doesn't say. Although an organization's "mission" may be nothing more than "broad aspirational goals," *id.* at —— (quoting

Nielsen v. Thornell, 101 F.4th 1164, 1170 (9th Cir. 2024) (opinion of Lee, J.)), there is usually substantial overlap between an organization's goals and its "core business activities," *Hippocratic Med.*, 602 U.S. at 395, 144 S.Ct. 1540. *See, e.g.*, *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 902–05 (9th Cir. 2002) (finding "frustration of mission" from injury to the plaintiff organization's ability to provide "activities" combatting housing discrimination).

Even if the majority is right that some of our decisions were "less clear" and provided "no detailed analysis" about the factual basis for standing, Maj. Op. at —— (quoting *Nielsen*, 101 F.4th at 1181 (Collins, J., dissenting)), that does not make those decisions "clearly irreconcilable with *Hippocratic Medicine*," *id.* at ——.

B.

By misreading our case law, the majority erects new barriers to the courthouse for organizations that are directly injured by legislation. These restrictions find no support in *Hippocratic Medicine* or any other case. Instead, the majority grafts third-party standing principles onto a case of first-party standing.

According to the majority, the causation element of standing "may be harder to meet" for organizational plaintiffs. *Id.* at 14. That is true only when organizations seek to vindicate the rights of *others*. "Claims premised on the government's treatment of a third-party must satisfy ... stringent constitutional standing requirements." *Kyung Park v. Holder*, 572 F.3d 619, 625 (9th Cir. 2009) (quoting *Shanks v. Dressel*, 540 F.3d 1082, 1090 n.9 (9th Cir. 2008)). In such cases, "much more is needed" to show causation and redressability because these elements' existence "depends on the unfettered choices made by independent actors not before the courts." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (quoting *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615, 109 S.Ct. 2037, 104 L.Ed.2d 696 (1989) (opinion of Kennedy, J.)).

***20** But this case involves *first*-party standing. *See Hippocratic Med.*, 602 U.S. at 393, 144 S.Ct. 1540 ("Under this Court's precedents, organizations may have standing 'to sue on their own behalf for injuries they have sustained.' " (quoting *Havens Realty*, 455 U.S. at 379 n.19, 102 S.Ct. 1114)). The majority is correct that causation normally is "easy" to show when an individual plaintiff is directly injured by the challenged law, because the plaintiff need not speculate about what actions it will take absent relief. Maj. Op. at ——. The analysis is the same for an organizational plaintiff. *See, e.g.*, *Havens Realty*, 455 U.S. at 379, 102 S.Ct. 1114 (finding "no question that the organization has suffered injury in fact" because the defendant's policy brought "concrete and demonstrable injury to the organization's activities"); *see also* 13A Charles Alan Wright et al., *Federal Practice and Procedure* § 3531.9.5, Westlaw (database updated June 2024) ("Injury to an organization itself may involve matters no different than injury to any person, real or abstract. Standing to protect against such injury is easily recognized.").

Similarly, the majority wrongly asserts that an organization's standing requires more scrutiny than that of individual plaintiffs. *See* Maj. Op. at —— (holding that "we must scrutinize the harm an organization asserts" because "*Hippocratic Medicine* clarified that it is tougher for a plaintiff to establish causation than some of our precedents suggested"). Tellingly, the majority relies on the portion of *Hippocratic Medicine* discussing third-party standing principles rather than the portion discussing *Havens Realty*. *See id.* (citing 602 U.S. at 382–83, 144 S.Ct. 1540). The Supreme Court has repeatedly explained, however, that the first-party standing analysis is the same for organizations as it is for individuals. *See Havens Realty*, 455 U.S. at 378, 102 S.Ct. 1114; *Hippocratic Med.*, 602 U.S. at 394, 144 S.Ct. 1540 ("Like an individual, an organization may not establish standing simply based on the 'intensity of the litigant's interest' or because of strong opposition to the government's conduct ...." (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 486, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982))).

Ultimately, the majority's focus on overruling our standing precedent is a distraction. There is no reason to consider the issue because plaintiffs' standing is consistent with *Hippocratic Medicine*. Plaintiffs do not seek to vindicate abstract social interests; the Cancellation Provision "directly affect[s] and interfere[s] with" their "core business activities." *Hippocratic Med.*, 602 U.S. at 395, 144 S.Ct. 1540.

II.

A.

The majority's standing conclusion rests on its disagreement with plaintiffs' statutory interpretation. *See* Maj. Op. at ——— – ——— (rejecting plaintiffs' "implausible reading of the Cancellation Provision"). Even if plaintiffs misread the Cancellation Provision—and they do not—that is a merits question. "[T]he Supreme Court has cautioned that standing 'in no way depends on the merits.' " *Arizona v. Yellen*, 34 F.4th 841, 849 (9th Cir. 2022) (quoting *Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)); *see Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 298, 142 S.Ct. 1638, 212 L.Ed.2d 654 (2022) ("For standing purposes, we accept as valid the merits of [the plaintiffs'] legal claims ...."); *E. Bay Sanctuary Covenant v. Biden* ("*E. Bay Sanctuary Covenant II*"), 993 F.3d 640, 665 (9th Cir. 2021) ("[A] plaintiff can have standing despite losing on the merits.").

"It is firmly established" that plaintiffs' statutory interpretation need only be "arguable" to serve as a basis for their standing. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998). Federal courts "[have] jurisdiction if 'the right of the [plaintiffs] to recover under their complaint will be sustained if the Constitution and laws ... are given one construction and will be defeated if they are given another.' " *Id.* (quoting *Bell v. Hood*, 327 U.S. 678, 685, 66 S.Ct. 773, 90 L.Ed. 939 (1946)). Only where a claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or ... is wholly insubstantial and frivolous" may we dismiss the suit on standing grounds. *Id.* (quoting *Bell*, 327 U.S. at 682–83, 66 S.Ct. 773).

***21** In *Peace Ranch, LLC v. Bonta*, for example, we discussed the "'Alice in Wonderland air' about the parties' arguments" where, as here, the plaintiffs and government defendant disputed a statute's applicability in the context of a standing challenge—the plaintiffs arguing it did apply and the government arguing it did not—despite these positions being antithetical to the parties' interests if the court upheld the statute. 93 F.4th 482, 489 (9th Cir. 2024) (quoting *Cruz*, 596 U.S. at 299, 142 S.Ct. 1638). There was "no need to go 'further down [the] rabbit hole' " of whether the statute applied, we explained, because the inquiry would "unavoidably tangle standing with the merits." *Id.* (quoting *Cruz*, 596 U.S. at 301, 142 S.Ct. 1638); *see also E. Bay Sanctuary Covenant II*, 993 F.3d at 665 (distinguishing the actual or imminent "legally protected interest" from "an interest protected by statute," thereby "prevent[ing] Article III standing requirements from collapsing into the merits of a plaintiff's claim").

Here, plaintiffs' statutory interpretation is neither insubstantial nor frivolous. Under the Cancellation Provision, "[i]f the county recorder receives credible information that a person has registered to vote in a different county, the county recorder shall confirm the person's voter registration with that other county and, on confirmation, shall cancel the person's registration." Ariz. Rev. Stat. Ann. § 16-165(B). Plaintiffs' NVRA claim turns on the permissible sources of "credible information." Plaintiffs' concern is that, contrary to the NVRA, the Cancellation Provision enables nongovernmental actors to improperly disenfranchise voters by notifying the county recorder in a voter's new residence that the voter has moved to a former residence.[2] On its face, the Cancellation Provision requires only that the county recorder confirm that the voter is registered in another county before canceling the voter's registration; there is no requirement to determine which registration was first in time or to contact the voter in question. Thus, if a voter forgets to affirmatively cancel registration at a former residence, the county recorder will confirm the outdated registration and duly cancel the voter's most recent and legitimate registration—not by mistake, as the majority suggests, *see* Maj. Op. at ——— – ———but through the normal operation of state law.[3]

2 While third parties may attempt to purge registrations maliciously with the intent of disenfranchising certain types of voters, that need not be the case. Indeed, the nongovernmental actors may not even be human. *See Common Cause Ind. v. Lawson*, 937 F.3d 944, 948 (7th Cir. 2019) (describing Indiana's use of "a third-party database" that "aggregates voter data from multiple states to identify potential duplicate voter registrations").

3 Even if the Cancellation Provision did not permit registrars to cancel the newer of two registrations, as the majority finds, plaintiffs maintain that it "would still violate the NVRA" because it permits cancellation without notice to the voter.

Arizona's attorney general—the only defendant opposing the district court's injunction—and intervenor Yuma County Republican Committee ("YCRC") both *agree* with plaintiffs' statutory interpretation. [4] They assert that "[i]f the county recorders were to ignore credible information ... from any source other than another county recorder (or other election official), they would be knowingly and willfully disregarding th[eir] duty to certify that the voter lists are accurate." Even Arizona's secretary of state, despite disagreeing with plaintiffs' statutory interpretation, [5] acknowledges that the Cancellation Provision "could be interpreted differently."

4 Plaintiffs sued Arizona's attorney general, secretary of state, and county recorders. The parties stipulated that the county recorders were nominal parties who would "take no position on the merits" or "oppose [the] motion for preliminary injunction." The secretary of state also requested status as a nominal party, and the district court treated her as such, leaving the attorney general as the only defendant opposing injunctive relief. In addition, YCRC intervened to defend the state laws.

5 The Secretary of State interprets the Cancellation Provision to "codify[ ] existing voter registration procedures" such that county recorders "*would not* initiate voter registration cancellations based solely on information from non-governmental third parties, because such third-party information ... does not constitute 'credible information.' "

***22** The majority purports to interpret a statute, but then fails to engage with the statutory text. The majority insists that the statute requires cancellation of "the old registration" if "the voter 'has registered' in a new county," Maj. Op. at —— (quoting Ariz. Rev. Stat. Ann. § 16-165(B)), but the majority does not divine this temporal relationship from the text, which says nothing about an "old" and "new" registration. Rather, the majority relies on other statutes that address different situations and contain materially different language. *See id.* at —— n.3 (discussing Arizona statutes that expressly apply to "new" registrations).

Ultimately, it doesn't matter that the majority's conclusory dismissal of the merits is wrong. It is enough, for standing purposes, that plaintiffs' statutory interpretation is at least arguable. The majority errs by requiring more.

B.

The majority also wrongly dismisses plaintiffs' imminent injury as "speculative," Maj. Op. at ——, and "fanciful," *id.* at ——. In doing so, the majority improperly assumes the role of factfinder and focuses on the wrong injury.

1.

In the district court, no party challenged plaintiffs' standing to claim that the Cancellation Provision violates the NVRA for the reasons relied upon by the majority. [6] Although we must raise doubts about our subject matter jurisdiction even when the parties do not, *see LA All. for Human Rts. v. County of Los Angeles*, 14 F.4th 947, 956 (9th Cir. 2021), we should not resolve such jurisdictional concerns ourselves when they turn on factual findings appropriately made by the district court. *See Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 481, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990) ("[T]he evaluation of ... factual contentions bearing upon Article III jurisdiction should not be made by this Court in the first instance."); *see also California v. Texas*, 593 U.S. 659, 683, 141 S.Ct. 2104, 210 L.Ed.2d 230 (2021) (Thomas, J., concurring) (explaining that "a court of review, not of first view," should refrain from addressing a novel standing argument that "the lower courts did not address ... in any detail" (quoting *Brownback v. King*, 592 U.S. 209, 215 n.4, 141 S.Ct. 740, 209 L.Ed.2d 33 (2021))); *Cottonwood Env't L. Ctr. v. Edwards*, 86 F.4th 1255, 1265 (9th Cir. 2023) (citing our "standard practice" of "remand[ing] to the district court for a decision in the first

instance without requiring any special justification for so doing" (quoting *Detrich v. Ryan*, 740 F.3d 1237, 1248 (9th Cir. 2013) (en banc) (lead opinion))).

6 The Attorney General argued that plaintiffs lacked standing because the Cancellation Provision merely codified existing practices that plaintiffs did not challenge. The district court rejected the Attorney General's premise, finding that the statute "is not at all identical to the [Elections Procedure Manual]."
YCRC argued that plaintiffs lacked standing to assert their *due process* challenge to the Cancellation Provision, an argument the district court did not address because it granted relief on plaintiffs' NVRA claim. Standing is assessed on a claim-by-claim basis, *see TransUnion LLC v. Ramirez*, 594 U.S. 413, 431, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021), and the two claims involve different injuries. The alleged due process injury is to voters; YCRC argued that it was speculative "that the Cancellation Provision *might* result in a person's current voter registration being cancelled." The alleged NVRA violation injures plaintiffs directly by forcing them to change their existing voter outreach programs to address the Cancellation Provision, as I detail below. In the district court, YCRC did not dispute plaintiffs' assertion that they would expend resources for that purpose, so it is unsurprising that YCRC didn't challenge plaintiffs' standing to assert an NVRA claim until we invited them to do so.

***23** We routinely remand for development of jurisdictional facts when jurisdiction is unclear. *See, e.g.*, *Hajro v. USCIS*, 811 F.3d 1086, 1102 (9th Cir. 2016) (holding that where "the factual record [was] not sufficiently developed" for the district court "to determine whether [a litigant] has standing to bring a ... claim," the remedy is to "remand for further fact finding"); *Rivas v. Napolitano*, 714 F.3d 1108, 1112–13 (9th Cir. 2013) (remanding "for the district court to determine in the first instance whether the court has jurisdiction" because "[t]he record on appeal [was] insufficient for us to determine whether jurisdiction exists"); *Aloe Vera of Am., Inc. v. United States*, 580 F.3d 867, 873 (9th Cir. 2009) (ordering "remand ... to the district court so that it can determine in the first instance whether there is sufficient evidence to establish subject matter jurisdiction" where "[t]he pleadings alone [were] inadequate to make this determination").

In *Washington Local Lodge No. 104*, two district courts granted preliminary injunctions, and on appeal we had the parties brief a jurisdictional issue that we raised sua sponte. *See Wash. Loc. Lodge No. 104 of Int'l Bhd. of Boilermakers v. Int'l Bhd. of Boilermakers*, 621 F.2d 1032, 1033–34 (9th Cir. 1980). Because the district courts had not considered "[t]he crucial jurisdictional question," the plaintiffs' justiciability argument lacked "factual substantiation." *Id.* at 1034. The defendant argued that the plaintiffs' jurisdictional allegations were "speculative," but we had "no way to evaluate the substance of [the plaintiffs' jurisdictional] assertion." *Id.* Therefore, we held that "we must remand to the district courts" to "make findings of fact" and "determin[e] whether federal jurisdiction exists." *Id.* at 1033–34; *see also LA All. for Human Rts.*, 14 F.4th at 952 (vacating injunction and remanding for further proceedings where the plaintiffs "failed to put forth evidence to establish standing" and we first raised the jurisdictional issue on appeal).

The majority takes the opposite course. Rather than deferring to any factual findings that the district court might make, *see, e.g.*, *Partington v. Gedan*, 961 F.2d 852, 864 (9th Cir. 1992) ("We accept the district court's factual findings supporting the exercise of jurisdiction unless the findings are clearly erroneous."), the majority makes its own factual findings. To state the obvious, that is not an appellate court's role.

The unfairness of this approach is particularly acute here, where plaintiffs had neither reason nor opportunity to present evidence on the standing issue raised by the majority. Plaintiffs had no opportunity to make a record regarding, for example, their core activities, whether the Arizona Voter Information Database ("AVID") adequately prevents older Arizona registrations from cancelling newer ones, and whether there is any mechanism to prevent older, out-of-state registrations from cancelling newer, in-state ones. The majority makes improper factual findings on the first two issues and ignores the third altogether. [7]

7 AVID does not track out-of-state registrations. It focuses on voters "moving to a different county" within Arizona and attempts to ensure that they "only have one active voter registration record in Arizona at any given time."

2.

The majority finds that plaintiffs "can ... continue their core activities" unimpeded with the Cancellation Provision in effect. Maj. Op. at ——. That is directly contrary to plaintiffs' sworn declarations.

Arizona Alliance for Retired Americans ("AARA") will need to spend more time advising Arizonans about the process of casting their ballots because it "will not only need to ask citizens if they are registered to vote, but also whether they have any previous addresses, and whether they might still be registered to vote there." AARA "does not currently expend any resources toward identifying voters who have multiple registrations or helping voters cancel their other voter registrations." The Cancellation Provision will require it to divert scarce resources to these activities, such as by "creating a training program on how to cancel an out-of-state or out-of-county voter registration." These expenditures "would otherwise be directed toward traditional voter mobilization efforts" like helping voters register and vote.

***24** "Voto Latino will need to divert additional time and resources to monitor for attempted voter purges in Arizona" because of the Cancellation Provision, which will "make [it] easier for third parties to engage in coordinated efforts to target Voto Latino's core constituency ... for specious reasons." "[T]his tactic has taken place in other states," and Voto Latino "is currently engaged in efforts to prevent it." Voto Latino also "will be required to launch an educational campaign informing its constituents about [the Cancellation Provision] and emphasizing the need for them to check whether they have multiple voter registrations or active early voting list memberships." And like AARA, Voto Latino "will ... need to divert its resources, including staff and volunteer time, to check whether its constituents have voter registrations in multiple states or Arizona counties and help them to cancel their non-active registrations."

The Cancellation Provision "will require Priorities [USA] to provide more grant funds to in-state partner organizations so that [it] can provide education and training" about the potential for voters to be purged from voter registration rolls without notice. In addition, Priorities USA "will spend time and funds on making voters aware that they need to determine whether they have multiple voter registrations and that they should cancel any prior registrations." Priorities USA would spend these resources "on true voter mobilization activities" but for the Cancellation Provision.

The majority finds that plaintiffs' core activities are "register[ing] and educat[ing] voters," Maj. Op. at ——, and then dismisses these activities as "mere issue advocacy," *id.* at ——. How is registering voters and educating them about the voting process "issue advocacy"? For what issue are plaintiffs advocating? Would the majority describe a high school civics class as "political indoctrination"? The majority blatantly mischaracterizes the nature of plaintiffs' activities.

Even more disturbing, however, is the majority's extraordinarily narrow view of what it means for a law to "directly affect[ ] and interfere[ ] with" plaintiffs' core activities. *Hippocratic Med.*, 602 U.S. at 395, 144 S.Ct. 1540. The majority holds that plaintiffs lack standing because the Cancellation Provision does not prevent them from doing the exact same things in the exact same ways that they have always done. Virtually no organization could meet that test.

While plaintiffs *could* continue to register and educate voters without changing their practices in response to the Cancellation Provision, the registrations would be inadequate, and the education incomplete, under plaintiffs' view of the law. Registering to vote in Arizona does a person little good if the registration is subject to cancellation without notice because the person never knew to cancel a prior registration. When legislation renders an organization's core business activities inadequate or incomplete, and the organization must expend resources modifying the activities to remedy the deficiency, then the legislation plainly affects and interferes with the activities.

Under the majority's reasoning, *Havens Realty* would have come out the other way. HOME, a housing counseling organization, sued Havens Realty, which owned and operated apartment complexes, over Havens' racial steering practices. *See id.* The Supreme Court held that HOME had standing to sue Havens under the Fair Housing Act because "Havens had provided

HOME's black employees false information about apartment availability," which "perceptibly impaired HOME's ability to provide counseling and referral services for low-and moderate-income homeseekers." *Id.* (quoting *Havens Realty*, 455 U.S. at 379, 102 S.Ct. 1114).

The majority here, however, would have barred HOME from the courthouse. After all, Havens' Fair Housing Act violations did not prevent HOMES from continuing its core activities of counseling and referring homeseekers to available housing. To be sure, the housing information was incomplete because Havens lied about vacancies at its properties, but HOME could simply have made do with Havens' racism and provided its clients with whatever listings it had. By trying to provide its clients complete and accurate information, HOME was merely engaging in what the majority would characterize as "issue advocacy." Fortunately, that was not the law in 1982. Unfortunately, it is now the law of the Ninth Circuit.

3.

***25** We found organizational standing under materially identical circumstances in *East Bay Sanctuary Covenant v. Trump* ("*East Bay Sanctuary Covenant I*"), 932 F.3d 742 (9th Cir. 2018), a case cited by plaintiffs that the majority ignores. There, four legal services organizations representing asylum-seekers sued to prevent enforcement of a rule that categorically barred asylum for migrants who crossed the southern border between ports of entry. *See id.* at 761–62. The plaintiffs argued, among other things, that the rule conflicted with the Immigration and Naturalization Act. *See id.* The district court enjoined the government from enforcing the rule. *See id.*

We held that the plaintiffs had organizational standing because the challenged rule would require "a diversion of resources, independent of expenses for [the] litigation, from their other initiatives." *Id.* at 766. Through declarations, the plaintiffs established that if the rule took effect, they "would be forced at the client intake stage to 'conduct detailed screenings for alternative forms of relief to facilitate referrals or other forms of assistance' " and, because alternative forms of relief "do not allow a principal applicant to file a derivative application for family members," the plaintiffs would "have to submit a greater number of applications for family-unit clients." *Id.* The plaintiffs also planned "to undertake[ ] education and outreach initiatives regarding the new rule." *Id.* We found that the diversion of plaintiffs' resources to conduct these activities, made necessary by the rule, was sufficient to establish organizational standing. *See id.*

Thus, we held that organizational plaintiffs can show a diversion of resources—and thereby establish standing—when, in response to a challenged rule or law, they will spend more time assessing the needs of each person they serve and expend additional resources educating the population they serve. Just as the *East Bay* plaintiffs needed to spend more time screening clients for potential alternatives to asylum relief and filing a greater number of applications for such relief, plaintiffs here will need to spend more time verifying whether voters have cancelled registrations at their prior residences. And just as the *East Bay* plaintiffs needed to spend additional resources educating noncitizens about the new asylum rule, plaintiffs here must do the same to educate voters about the need to cancel prior registrations. By ignoring *East Bay Sanctuary Covenant I*, the majority creates an intra-circuit split. And it creates an inter-circuit split as well. *See Common Cause Ind.*, 937 F.3d at 954–55 (holding, under similar circumstances, that organizations had standing to challenge Indiana voting law as inconsistent with the NVRA based on a diversion-of-resources theory).

4.

The majority minimizes the likelihood of harm to plaintiffs by focusing on the wrong injury. Plaintiffs assert, definitively, that they will divert resources, and they explain how and why they will do so. The only assumption that plaintiffs make—an entirely reasonable one—is that voters do not always affirmatively cancel their former registrations.

Once again, the majority muddles the distinction between first-and third-party standing, identifying the injury as: "the Cancellation Provision may cause a county recorder to cancel the voter's new registration instead of the old one." Maj. Op. at ——. The majority fails to mention the lack of notice. But these are injuries to the *voter.* They are relevant only to plaintiffs' third-party standing. *See Common Cause Ind.*, 937 F.3d at 963 (Brennan, J., concurring) ("People vote, not organizations, so none of the [organizational] plaintiffs before us may cast a vote in any election."). The injury at issue—plaintiffs' diversion of resources to ensure that voters cancel prior registrations—is certain to occur if the Cancellation Provision takes effect.

***26** Because the Cancellation Provision can be interpreted as plaintiffs fear, it makes no difference whether the current Arizona election officials adopt that interpretation. Unless a court prohibits it, nothing stops them from doing so. Voters may leave their registration status in place through multiple political administrations, so plaintiffs cannot blithely assume that no future administration would cancel valid registrations without notice to the voter based on information from third parties that the administration deems "credible." Ariz. Rev. Stat. Ann. § 16-165(B). Plaintiffs would be remiss not to divert resources now to minimize the substantial impact that a less favorable interpretation of the Cancellation Provision could have and elsewhere has had.

* * *

Plaintiffs have established their organizational standing to challenge the Cancellation Provision, and the majority is clearly wrong in holding otherwise.

III.

The district court did not abuse its discretion in preliminarily enjoining the Cancellation Provision. Because the majority does not reach this issue,[8] I will only briefly summarize why I would affirm that aspect of the injunction.

8 Judge Lee's concurrence explains why he would reverse the district court if, hypothetically, the majority had jurisdiction to consider the merits. *But see Steel Co.*, 523 U.S. at 101, 118 S.Ct. 1003 (rejecting "a doctrine of 'hypothetical jurisdiction' that enables a court to resolve contested questions of law when its jurisdiction is in doubt").

To establish their entitlement to injunctive relief, plaintiffs must show that they are likely to succeed on the merits and to suffer irreparable harm in the absence of preliminary relief, and that the balance of equities tips in their favor. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008); *Porretti v. Dzurenda*, 11 F.4th 1037, 1050 (9th Cir. 2021) ("The third and fourth factors of the preliminary-injunction test—balance of equities and public interest—merge into one inquiry when the government opposes a preliminary injunction.").

A.

Turning to the merits, the NVRA provides that, in general, "the name of a registrant [*i.e.*, registered voter] may not be removed from the official list of eligible voters except ... at the request of the registrant." 52 U.S.C. § 20507(a)(3)(A). If the voter does not make such a request, election officials may remove her name only due to death, criminal conviction, mental incapacity, or, as relevant here, "a change in [her] residence." *Id.* § 20507(a)(4)(B); *see id.* § 20507(a)(3)–(4). "A State shall not remove the name of a registrant ... on the ground that the registrant has changed residence unless the registrant" either "confirms in writing" that she has moved outside the registrar's jurisdiction or "has failed to respond" to a notice.[9] *Id.* § 20507(d)(1)(A), (B)(i).

9 The notice must inform the registrant that her name will be removed from the list of eligible voters if she does not respond. 52 U.S.C. § 20507(d)(2)(A). In lieu of returning the notice card, she can vote in at least one of the next two federal elections to avoid having her name purged. *See id.* § 20507(d)(1)(B)(ii).

The Cancellation Provision plainly conflicts with the NVRA because it allows state election officials to cancel a voter's registration without input from or notice to the voter. The NVRA allows states to cancel a voter's registration due to a change in residence only pursuant to a state program that is uniform and nondiscriminatory. *Id.* § 20507(a)(4)(1), (b)(1). The Cancellation Provision allows an Arizona registrar to cancel a voter's registration pursuant to information provided by a third party, not pursuant to a state program, and there is no guarantee that the third party gathered the information in a uniform and nondiscriminatory way.

***27** YCRC argues that a voter's conduct—in particular, a voter's registration in another Arizona county—amounts to a "request of the registrant" to be removed from the list of eligible voters in her original county. *Id.* § 20507(a)(3)(A). Alternatively, YCRC contends that registering in another county amounts to "confirm[ing] in writing" that the registrant has moved outside her original jurisdiction. *Id.* § 20507(d)(1)(A).

But conduct is not a request or a confirmation; registering in another jurisdiction "is only an action that allows an inference that the voter is relinquishing her" right to vote in the original jurisdiction, and "the NVRA requires more than such an inference." *Common Cause Ind.*, 937 F.3d at 960. A voter may register to vote in another jurisdiction where she temporarily resides without intending to cancel her registration in the original jurisdiction, particularly if that jurisdiction is her domicile, to which she intends to return. "While double voting is surely illegal, having two open voter registrations is a different issue entirely. In the overwhelming majority of states, it is not illegal to be registered to vote in two places." *Id.* (cleaned up).

YCRC insists that the Cancellation Provision applies only to persons with registrations in two Arizona counties and that Arizona's voting system ensures that a new Arizona registration automatically cancels the old. But the Cancellation Provision is not limited to the intrastate context. It applies whenever an Arizona county recorder learns of a voter's registration "in a different county," Ariz. Rev. Stat. Ann. § 16-165(B), which could be a different county in another state. And even if YCRC were correct about the Cancellation Provision's geographic scope, there would be no need for it if Arizona's system worked as perfectly as YCRC supposes. To the extent the law was designed to correct errors, it violates the NVRA by allowing for such error correction without the voter's participation.

Judge Lee argues that "[t]he NVRA says nothing about a 'state' confirming any 'initial information' it receives about a change in residence." Lee Concurrence at —— (emphasis omitted). I agree. The "confirmation" at issue in the NVRA has nothing to do with states receiving information from third parties about a voter's registration in another jurisdiction; rather, it has to do with states *inferring* a voter's intent to be removed from the voter list due to the state's suspicion that the voter has moved and the voter's repeated failure to vote.

The NVRA provides that "the name of a registrant may not be removed from the official list of eligible voters" due to "a change in the residence of the registrant" unless the state "conduct[s] a general program" that is "in accordance with subsections (b), (c), and (d)" of § 20507. 52 U.S.C. § 20507(a)(3), (4), (4)(B). Under § 20507(b), entitled "[c]onfirmation of voter registration," the NVRA provides that the registrar may only remove the voter's name after "[two] or more consecutive general elections" have passed and, during that time, the voter has neither "notified the applicable registrar ... [n]or responded ... to the notice sent by the applicable registrar" nor "appeared to vote." *Id.* § 20507(b)(2)(A)–(B).

Subsection (c) allows states to update a voter's registration records without confirmation if the voter moves within the registrar's jurisdiction and submits a change-of-address form to the Postal Service. If the voter moves out of the registrar's jurisdiction and submits a change-of-address form, the registrar must "use[ ] the notice procedure described in subsection (d)(2) to confirm the change of address." 52 U.S.C. § 20507(c)(1)(B)(ii).

***28** Judge Lee's interpretation, that "the very act of filling out a form to register in another county is by itself a written confirmation of the fact that a voter has changed residence," Lee Concurrence at ——, is unmoored from the statutory text. The NVRA is extremely clear that a voter "confirms" a changed residence by contacting the registrar at the old residence or returning the notice. *See* 52 U.S.C. § 20507(b)(2)(A). Contacting the registrar at the new residence accomplishes neither.

Judge Lee's interpretation also ignores the legislative history. The purpose of requiring voter confirmation of a change of address is "to prohibit selective or discriminatory purge programs," including "lists provided by other parties." H.R. Rep. No. 103-9, at 15 (1993). Congress described § 20507(d)(1)(A) specifically as providing that "[n]o State may remove the name of a voter from the rolls *due to possible change of address* unless the registrant confirms in writing to have moved out of voting jurisdiction." H.R. Rep. No. 103-66, at 21 (1993) (Conf. Rep.) (emphasis added). Thus, Congress recognized that a registrar may suspect a voter has moved, perhaps because the voter registered to vote in another jurisdiction, and Congress prohibited a purge based solely on that suspicion. The NVRA prohibits the registrar from acting until the voter confirms the move in writing or fails to respond to a notice.

In my view, the district court correctly found that plaintiffs are likely to succeed on the merits of their challenge to the Cancellation Provision.

B.

The district court did not abuse its discretion in finding that plaintiffs are likely to suffer irreparable harm absent an injunction against the Cancellation Provision. As the district court observed, plaintiffs "must divert resources to combat the negative effects of the law," and plaintiffs cannot recover the lost use of limited resources.

Nor did the district court err in finding that the balance of equities favors plaintiffs. The district court properly "weigh[ed], in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures." *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006) (per curiam). "[T]he Supreme Court in *Purcell* did not set forth a per se prohibition against enjoining voting laws on the eve of an election." *Feldman v. Ariz. Sec'y of State's Off.*, 843 F.3d 366, 368 (9th Cir. 2016) (en banc) (emphasis omitted). Here, most importantly, the district court's injunction does not "disrupt long standing state procedures" because it merely "preserves the status quo prior to the recent legislative action." *Id.* at 368–69 (emphasis omitted).

* * *

Respectfully, I strongly dissent from the majority's conclusion that plaintiffs lack standing to challenge the Cancellation Provision, and I would affirm the district court's order enjoining it.

All Citations

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