No. 23-6054

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE TENTH CIRCUIT**

SPEECH FIRST, INC.,

*Plaintiff–Appellant*,

v.

KAYSE SHRUM, in her official capacity as President of Oklahoma State University,

*Defendant–Appellee*.

On Appeal from the United States District Court
for the Western District of Oklahoma
5:23-CV-00029-J

Judge Bernard M. Jones

# BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF OKLAHOMA IN SUPPORT OF PLAINTIFF–APPELLANT AND REMAND

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae American Civil Liberties Union (ACLU) and ACLU of Oklahoma state that they do not have a parent corporation and that no publicly held corporation owns 10% or more of their stock.

Dated: May 30, 2023

*/s/ Vera Eidelman*
Vera Eidelman

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## STATEMENT OF INTEREST[1]

The American Civil Liberties Union ("ACLU") is a nationwide, non-partisan, non-profit organization dedicated to protecting the civil rights and civil liberties of all Americans. The ACLU of Oklahoma is a state affiliate of the ACLU. The ACLU, the ACLU of Oklahoma, and other ACLU state affiliates frequently sue on behalf of their members on an associational standing theory. *See, e.g.*, *Roe No. 2 v. Ogden*, 253 F.3d 1225, 1227 (10th Cir. 2001); *ACLU of Ohio Found., Inc. v. Ashbrook*, 375 F.3d 484, 490 (6th Cir. 2004); *ACLU of Nevada v. Heller*, 378 F.3d 979, 984–85 (9th Cir. 2004). They also represent other organizations suing on behalf of their members on an associational standing theory. *See, e.g.*, *Make the Rd. N.Y. v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019); Amended Complaint, *Black Emergency Response Team v. Drummond*, No. 5:21-cv-01022-G (W.D. Okla. Nov. 9, 2021), ECF No. 50. And they have done so without identifying members by name in their complaints. *See, e.g.*, *Roe No. 2*, 253 F.3d at 1230; Amended Complaint ¶ 16, *Black Emergency Response Team* (No. 5:21-cv-01022-G); *Make the Rd. N.Y.*, 405 F. Supp. 3d at 32–33, 33 n.17. As organizations that frequently engage in litigation on behalf of unpopular or vulnerable individuals petitioning courts to

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Amici certify that no person or entity, other than Amici, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part. This brief is accompanied by a motion for leave to file.

protect their interests, Amici and their members have a strong interest in the proper resolution of this case.

## INTRODUCTION

People build and join associations to express shared interests and to vindicate them—including through litigation that would be difficult to pursue on one's own. Associational standing exists in part to enable that. One of its special features is the ability to protect privacy through group association, which "may in many circumstances be indispensable to preservation of freedom of association," even in litigation. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

This feature is particularly important for individuals who hold unpopular or dissident views or are otherwise vulnerable to adverse government action, such as deportation or arrest. Understandably, they may feel more able to exercise their right to petition as members of organizational plaintiffs, particularly when they are suing to challenge government action.

By holding that "associational standing requires that a plaintiff identify—by name—at least one member with standing," the court below closed the door to such lawsuits. Order 3, ECF No. 35. That holding is wrong as a matter of law: it misreads and ignores Supreme Court caselaw and this Court's on-point precedent. And it is

wrong in a way that matters for associations, their members, and the greater public that benefits from their litigation. This Court should reverse and remand.[2]

## I. A PLAINTIFF NEED NOT NAME NAMES OF MEMBERS TO PROPERLY ALLEGE ASSOCIATIONAL STANDING.

"It is common ground that . . . organizations can assert the standing of their members." *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009). To do so at the pleading stage, an association must allege, as relevant here, that "its members would otherwise have standing to sue in their own right." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).[3] Contrary to the holding of the court below, this does not require an association to "identify—by name—at least one member with

[2] On remand, the district court may need to consider whether Appellant's members meet the standard for proceeding pseudonymously. Because "[l]awsuits are public events[, a] plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity." *M.M. v. Zavaras*, 139 F.3d 798, 803 (10th Cir. 1998) (quoting *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992)). At the same time, those standards may be relaxed when applied to members of an organizational plaintiff who are not themselves parties to the litigation. *See League of United Latin Am. Citizens v. Abbott*, No. EP-21-CV-00259-DCG-JES-JVB, 2022 WL 2806850, at *5 (W.D. Tex. July 18, 2022) (holding that "the presumption of identification applies with less force [to members of an association] because that presumption focuses on parties to a lawsuit"). Amici do not address that issue fully because it was not before the court below.

[3] The association must also allege that "the interests it seeks to protect are germane to the organization's purpose" and that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt*, 432 U.S. at 343.

standing." Order 3. To engraft such a member disclosure requirement, particularly at the pleading stage, would misread Supreme Court precedent—including the many cases in which the Court has entertained claims brought by associations on behalf of pseudonymous members. And, contrary to the view of the court below, it would ignore this Court's on-point precedent. *See id.* at 4 (incorrectly stating that "the Tenth Circuit" has been "silen[t] on the issue").

### A. Imposing a member disclosure requirement at the pleading stage would misread Supreme Court caselaw.

The Supreme Court made clear long ago that an association may sue to vindicate the rights of its members because it provides "the medium through which its individual members seek to make more effective the expression of their own views." *NAACP v. Alabama*, 357 U.S. at 459. Indeed, "the primary reason people join an organization is often to create an effective vehicle for vindicating interests that they share with others," including through litigation. *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Brock*, 477 U.S. 274, 290 (1986). And they can do so while maintaining their anonymity. *NAACP*, 357 U.S. at 459 (holding that association can sue on behalf of its members without disclosing their identities).[4]

[4] Though it predates "[t]he modern doctrine of associational standing," "[t]he notion that an organization might have standing to assert its members' injury has roots in

To hold otherwise, the court below misread *Summers v. Earth Island*, 555 U.S. 488. But *Summers* is not a case about anonymous members.[5] In *Summers*, the Court addressed whether affidavits submitted by two *named* members, Ara Marderosian and Jim Bensman, detailed harm that was sufficiently "imminent and concrete" to establish standing—not whether anonymous or pseudonymous members could ever do so. *Id.* at 494–95.

Considering the two named members' affidavits, the Court first held that Ara Marderosian's was insufficient because the injury he described was tied to a claim that "the parties [had already] settled." *Id.* at 494. It then concluded that Jim Bensman's was also insufficient because he failed to tie any concrete, imminent injury to the regulations at issue. *Id.* at 496. Those regulations allowed the Forest Service to make certain specified land management decisions without first undergoing notice and comment.

In his affidavit, Mr. Bensman stated that those regulations injured him because "he has visited many national forests and plans to visit several unnamed national

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*NAACP v. Alabama*[.]" *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 552 (1996).

[5] Nor is it a case about the pleading stage. *Summers* considered the evidence necessary when a court "adjudicate[s] the merits" of an association's claims. 555 U.S. at 492. Indeed, in the earlier stages of the case, "[t]he Government [had] concede[d]" that the plaintiff organizations had standing on the basis of an affidavit submitted by a named member. *Id.* at 494.

forests in the future." *Id.* at 495. The Court refused to accept this as evidence "of concrete, particularized injury in fact," for it would have had to read that statement to mean not only that, in a "national forest[] [that] occup[ies] more than 190 million acres," "Bensman will stumble across a project tract unlawfully subject to the regulations," but also "that the tract is about to be developed by the Forest Service in a way that harms his recreational interests, and that he would have commented on the project but for the regulation." *Id.* at 495–96. It was equally unwilling to find injury-in-fact on the basis of Mr. Bensman's statement that he "want[s] to" go to specific areas in the Allegheny National Forest because those were only "'some day' intentions," not "concrete plans." *Id.* at 496.

Though the Court's holding that the affidavits could not "support a finding of the actual or imminent injury that our cases require" resolved the case, *id.* at 496 (internal quotation marks and citation omitted), it devoted a final section of its opinion to rebutting the dissent, which it read as advocating for a novel associational standing test: whether, "accepting the organization's self-description of the activities of its members, there is a statistical probability that some of those members are threatened with concrete injury." *Id.* at 497. In rejecting that test, the Court focused not on whether the test would identify the *names* of an organization's members, but on whether it would lead to sufficient evidence of the risk of concrete, imminent injury—proof to show, for example, "that some of the[ ] members plan to make use

of the specific sites upon which projects may take place," or "that these same individuals will find their recreation burdened by the Forest Service[.]" *Id.* at 499.

It is true that the Court noted that its past cases had imposed a "requirement of naming the affected members" and of "identify[ing] members who have suffered the requisite harm." *Id.* at 498–99. But in placing the emphasis on "naming" and "identifying," the district court missed the Supreme Court's point: the problem in *Summers* was that the plaintiff organizations had failed to present "*affected* members" who "*have suffered the requisite harm*" or were sufficiently likely to. *Id.* The Court was not asking for names; it was asking for proof of the risk of concrete, imminent injury.[6]

[6] Though the district court rested its holding on *Summers*, it also cited *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990) for support. That, too, is misplaced. In the relevant section of *FW/PBS, Inc.*, the Supreme Court considered whether any petitioner before it—individual or organization—had standing to challenge regulations that foreclosed anyone "who [had been] convicted of [certain] enumerated crimes," or was married to anyone who had been, from obtaining a license to run an adult business for several years. *Id.* at 234. The Court held that no one before it had standing because there was no evidence showing that any petitioner had had a license revoked pursuant to those regulations. *Id.* at 235. Interestingly, the government respondents attempted to establish petitioners' standing by submitting an affidavit to the Supreme Court "stating that two licenses were revoked on the grounds of a prior conviction." *Id.* (emphasis omitted). Because it "fail[ed] to identify the licensees," however, the affidavit still "f[ell] short of establishing that any petitioner before th[e] Court" had standing. *Id*. Thus, as in *Summers*, the deficiency was not pseudonymity, but a failure to establish the relevant injury-in-fact.

### B. Requiring an organization to identify members by name would ignore the many Supreme Court cases that reached the claims of organizations with pseudonymous members.

The Supreme Court has often considered claims brought by associations on behalf of anonymous or pseudonymous members, notwithstanding the government's attempts to argue at earlier stages that the unnamed members could not suffice to establish the organization's associational standing.

For example, in *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, the Supreme Court considered a First Amendment challenge brought by Forum for Academic and Institutional Rights, Inc. (FAIR), "an association of law schools and law faculties," to a statute that denied federal funding to colleges and universities if they banned military recruiting on campus. 547 U.S. 47, 52 (2006). "With few exceptions, FAIR membership [wa]s kept secret." *FAIR, Inc. v. Rumsfeld,* 291 F. Supp. 2d 269, 275 (D.N.J. 2003).

At the district court level, the government argued that the law schools' "involvement as *unidentified* members of FAIR" could not establish FAIR's associational standing. *Id.* at 285 (emphasis added). The district court disagreed, holding that "FAIR need not reveal its membership list at the pleading stage in order to bring suit on its members' behalf." *Id.* at 287.[7] The government's argument

[7] "To assist the Court in evaluating FAIR's standing, Plaintiffs submitted the FAIR membership list for in camera review," but no member was identified in the complaint. 291 F. Supp. 2d at 286 n.6.

"place[d] undue emphasis on language requiring plaintiff associations to 'identify' or 'name' members." *Id.* at 289. As in *Summers*, "[s]uch language . . . goes not to a blanket rule that associations seeking to bring suit on behalf of their members must identify their membership, but rather to whether the factual allegations . . . sufficiently demonstrate that an association indeed has members that have suffered an injury-in-fact." *Id.* When the case reached the Supreme Court, the Court "agree[d] that FAIR has standing [to bring this suit on behalf of its members]" before reaching the merits of the case. 547 U.S. at 52 n.2.

Similarly, one of the cases consolidated in *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019), a challenge to the inclusion of a citizenship question in the census, was brought by "several non-governmental organizations that work with immigrant and minority communities." *Id.* at 2563. In that case, too, the government "seem[ed] to argue" at the district court level "that an organization must identify particular members by name in order to have associational standing." *New York v. U.S. Dep't of Com.*, 351 F. Supp. 3d 502, 606 n.48 (S.D.N.Y. 2019). As in *FAIR*, the district court rejected that argument, explaining that "it would overread the word 'identified' in th[e *Summers* opinion] to require an organization to *name* the member who might have standing in his or her own right." *Id.* The court refused to require "such specific identifying information" where an individual's standing "depends on the facts of his or her existence and residence . . . but not on his or her

name." *Id.* When the case reached the Supreme Court, it "agree[d] that at least some respondents have Article III standing," though it did not specify which. 139 S. Ct. at 2565.

Largely the same pattern played out in *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020), a challenge to the federal government's 2017 rescission of the Deferred Action for Childhood Arrivals (DACA) program. One of the cases consolidated into it was a challenge brought by the NAACP on behalf of its members. *Id.* at 1903. Again, the government argued to the district court "that the NAACP plaintiffs fail the first prong [of associational standing] because their complaint does not 'name a specific member with standing.'" *NAACP v. Trump*, 298 F. Supp. 3d 209, 225 (D.D.C. 2018) (quoting government's motion to dismiss). And again, the district court rejected that argument, holding that "an anonymous affidavit from at least one of [each organization's] members stating that the member was a DACA beneficiary" sufficed. *Id.* Though the Supreme Court did not specifically address associational standing when the case reached it, the Court's "independent obligation to examine [its] own jurisdiction," including by "address[ing standing]" even when the courts below do not consider it, not to

mention when they do, *FW/PBS, Inc.*, 493 U.S. at 230–31, suggests that the presence of the pseudonymous members sufficed.[8]

### C. Tenth Circuit precedent does not require an organization to name names to sufficiently allege associational standing.

This Court has twice held that an association can rely on a pseudonymous member to allege standing. First, in *Roe No. 2 v. Ogden*, this Court held that a student chapter of the ACLU had standing to challenge the Colorado Bar's inquiries and investigation into applicants' substance abuse disorders and related medical treatment because its pseudonymous member, John Roe #2, alleged a sufficient injury-in-fact by "disclos[ing] his past treatment for alcohol, drug, or narcotic use in his application." 253 F.3d 1225, 1229 (10th Cir. 2001). This Court wrote, "John Roe # 2 has standing. Because John Roe # 2 is a member of the Potter Chapter, the fact that he has standing is sufficient to satisfy the first requirement [of associational standing]." *Id.* at 1230.

[8] *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, a challenge to affirmative action in college admissions currently pending before the Supreme Court also appears to be an associational standing case brought by an organization that did not identify any member by name in its complaint. *See Fac., Alumni, & Students Opposed to Racial Preferences v. Harvard L. Rev. Ass'n*, No. CV 18-12105-LTS, 2019 WL 3754023, at *6 (D. Mass. Aug. 8, 2019) (explaining that, in *Students for Fair Admissions*, an "organization suing Harvard on behalf of its members omitted the name of the member it cited as the basis for associational standing, but included several paragraphs of specific factual allegations establishing—at the pleading stage, in the complaint—that the unnamed member would have had standing to sue on his or her own behalf.").

More recently—notably, nearly a decade after *Summers* was decided—this Court again reached the same conclusion. In *American Humanist Association, Inc. v. Douglas County School District RE-1*, the Court reversed a district court's holding that an organization "lacks associational standing because none of its individual members have standing," after "conclud[ing] that [Jane] Zoe [a pseudonymous member] possesses standing[.]" 859 F.3d 1243, 1254 n.4 (10th Cir. 2017). Thus, as in *Roe No. 2*, the Court held that an unnamed or pseudonymous member can establish an organization's associational standing.[9] The court below was wrong to conclude this Court has been silent on this question.

[9] *Producers of Renewables United for Integrity Truth & Transparency v. EPA*, No. 19-9532, 2022 WL 538185 (10th Cir. Feb. 23, 2022) is not to the contrary. The unpublished opinion largely "set[ ] aside the first requirement of [associational] standing" and rested its holding on the plaintiff organization's failure to "ma[k]e the requisite demonstration of either the causation or redressability element of standing." *Id.* at *5. It discussed the organization's members in two footnotes, which are confusing when taken together. In the first, the Court stated that the organization "failed to identify a comprehensive list of its members," *id.* at *3 n.2, but in the second, it explained that "[a]t the request of Producers of Renewables, we keep the association's membership list confidential," *id.* at *5 n.3. In addition, unlike *Roe No. 2*, *American Humanist Association*, and this case, *Producers* considered a "direct appeal from an administrative decision," which is treated "as if it were [on a] mo[tion] for summary judgment." *Id.* at *4.

## II. ASSOCIATIONAL STANDING EXISTS IN PART TO PROTECT ANONYMITY.

This is not merely a legal error. The district court's misguided and overly-formalistic rule could have significant practical effects. "[T]o hold that Article III requires an organization to name those of its members who would have standing would be in tension with one of the fundamental purposes of the associational standing doctrine — namely, protecting individuals who might prefer to remain anonymous." *New York v. United States Dep't of Com.*, 351 F. Supp. 3d at 606, n.48. That protection is one of associational standing's "special features"; it is "advantageous both to the individuals represented and to the judicial system as a whole." *Int'l Union*, 477 U.S. at 289. Without it, many lawsuits simply wouldn't happen—including, in particular, those challenging government action and those brought on behalf of individuals who hold unpopular views or associations, or who must allege that they intend to violate an unjust law in order to challenge it.

### A. Associational standing protects individuals with critical, dissenting, or unpopular views and associations.

"[P]rivacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP v. Alabama*, 357 U.S. at 462. *See also Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2388 (2021) (recognizing "gravity of the privacy concerns" in the association context); *League of United Latin Am. Citizens*, 2022

WL 2806850, at *5 (noting the "discrete privacy interest embedded in the[ ] right to freedom of association" of members seeking to support their organization's standing pseudonymously).

Indeed, in *NAACP v. Alabama*, the Supreme Court held that the NAACP "argue[d] more appropriately the rights of its members" than its own because such associational representation would best protect the members' privacy. 357 U.S. at 458. Challenging a lower court's order that it disclose its membership lists to the state, the NAACP "both [urge[d] that it is constitutionally entitled to resist official inquiry into its membership lists" and, separately, "that it may assert, on behalf of its members, a right personal to them to be protected from compelled disclosure[.]" *Id*. In accepting the latter argument, the Supreme Court highlighted the value of having the members' right not to disclose their affiliation be "properly assertable by the Association," for "[t]o require that it be claimed by the members themselves would result in nullification of the right at the very moment of its assertion." *Id*. at 459.

The Court took seriously the NAACP's "uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." *Id.* at 462. And it recognized that forcing the NAACP to identify members by name was therefore "likely to affect adversely

the ability of [the NAACP] and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate." *Id.* at 462–63. Allowing the case to proceed without forcing members to identify themselves therefore protected their First Amendment rights to associate—and to litigate.

Similarly, in *FAIR, Inc. v. Rumsfeld*, the members of the plaintiff organization feared that their policies prohibiting discrimination on the basis of sexual orientation and their related refusal to allow military recruiters on campus would hurt their earnings, reputations, and physical safety. "FAIR membership is kept secret to allay members' fears of retaliatory efforts on behalf of the government and private actors if the law schools were to participate as named plaintiffs," including "Congress . . . cancel[ing] appropriations to their sister institutions . . . as punishment for what they view as an affront to the military," "virulent and unfair attacks by politicians and in the press," and "expos[ure] . . . to the loss of students, the anger of alumni, and the loss of donations." 291 F. Supp. 2d at 286–87 (quoting amended complaint). Allowing the members to instead support the association's standing pseudonymously enabled them to avoid those harms while still seeking to vindicate their rights.

Lawsuits challenging the constitutionality of regulations that "pertain solely to registered sex offenders" offer another example of the importance of allowing members to retain some privacy through pseudonymity. *See, e.g., Nat'l Ass'n for*

*Rational Sexual Offense Ls. v. Stein*, No. 1:17CV53, 2019 WL 3429120, at *1, *7 nn.8–9 (M.D.N.C. July 30, 2019) (holding that two "voluntary membership organizations whose purpose is to advocate, both legislatively and legally, for the reform of . . . laws regarding sex offender registries and legal restrictions placed on registrants" had standing because they had "identified" pseudonymous members who did (cleaned up)). Indeed, it is not clear why individual plaintiffs would be allowed to proceed pseudonymously as parties in the litigation but could not, on the same basis, establish the standing of their association.

### B. Associational standing protects individuals who must violate, or intend to violate, an unjust law in order to have standing to challenge it.

The anonymity inherent in associational standing can also prove essential for individuals who, in order to challenge a law they believe to be unjust and unconstitutional, must represent that they intend to violate it. This point is perhaps most obviously demonstrated by lawsuits challenging government regulations of undocumented immigrants.

In *NAACP v. Trump*, for example, organizational plaintiffs challenged the 2017 rescission of DACA—a program that allows certain undocumented immigrants who came to the country as children to obtain two-year grants of "deferred action" on their removal from the United States, as well as other benefits like work authorization and social security numbers. Had members been forced to identify

themselves by name to establish the organizations' standing, they would, in effect, have been raising their hands in front of government actors who could—and, as the lawsuit showed, wanted to—deport them. The district court did not allow that result. Though the "government contend[ed] that the NAACP plaintiffs fail the first prong [of associational standing] because their complaint does not 'name a specific member with standing,'" the court held that, even at summary judgment, an organization may rest on 'an anonymous affidavit from at least one of its members' stating that the member was a DACA beneficiary." 298 F. Supp. 3d at 225 (quoting the government's motion to dismiss).

Similarly, to challenge DHS' policy of "designating undocumented non-citizens who have been in this country for up to two years, and who are located far beyond the border, as eligible for 'expedited removal,'" members of the plaintiff organization in *Make the Road New York v. McAleenan* had to show that they fell within the relevant class of immigrants in order to establish the organization's standing. 405 F. Supp. 3d 1, 9 (D.D.C. 2019). Had that required "identify[ing] themselves to the government" by "nam[e]," doing so could, "of course, [have been] the first step in a chain of events that may lead to their deportation." *Id.* at 9, 70. The court rejected the government's argument that any injunctive relief should be "strictly limited" to the plaintiffs' members for this reason and separately concluded that the organization's submission of pseudonymous affidavits from three members

"who aver that they are" impacted by the policy sufficed for standing. *Id.* at 32–33, 33 n.17. On appeal, the D.C. Circuit affirmed the district court's holding regarding associational standing, *Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 627 (D.C. Cir. 2020), and emphasized that "[a]ssociational standing is particularly common in situations like this where proceeding as individuals would identify the plaintiffs to the government as targets of the very enforcement actions they challenge as unlawful," *id.* at 628 n.9.

In *Puente Arizona v. Arpaio*, too, the court did not require the organizational plaintiff to identify members by name in order to challenge criminal laws prohibiting identity theft to obtain or continue employment. Instead, it found that "anonymous affidavits from three members" stating that they "use[] the social security number and green card of another to obtain a job"—or, in other words, "are currently violating [the criminal law in question]"—sufficed. 76 F. Supp. 3d 833, 848 (D. Ariz. 2015), *rev'd and vacated in part on other grounds*, 821 F.3d 1098 (9th Cir. 2016). It is not hard to imagine why.

Nor is it hard to imagine the cases that would no longer be pursued if associational standing required organizations to identify their members by name. Imposing such a requirement would misread associational standing law, and it would also rob members of the privacy provided by group association.

## CONCLUSION

For these reasons, this Court should reverse the court below and hold that an organization does not need to identify members by name in order to allege or establish associational standing.

Dated: May 30, 2023

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a), (g), I certify that this Brief of Amici Curiae in Support of Plaintiff–Appellant and Remand complies with the type-volume limitation, typeface requirements, and type style requirements, because it contains 4,618 words and has been prepared in a proportionally spaced typeface, 14-point Times New Roman, using the word-processing system Microsoft Word 2016.

Dated: May 30, 2023

*/s/ Vera Eidelman*
Vera Eidelman

*Counsel for Amici Curiae*

## CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

Dated: May 30, 2023

*/s/ Vera Eidelman*
Vera Eidelman

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