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.

Appeal from the United States District Court for the Western District of Oklahoma
(Civ. No. 5:23-cv-00029-J) The Honorable Bernard M. Jones

BRIEF OF THE CHAMBER OF COMMERICE OF THE UNITED STATES OF AMERICA AND THE AMERICAN BANKERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

Jennifer B. Dickey
Jordan L. Von Bokern
U.S. CHAMBER LITIGATION CENTER
1615 H Street, N.W.
Washington D.C. 20062
(202) 463-5337

Counsel for Amicus Curiae Chamber of Commerce of the United States of America

Robert E. Dunn
EIMER STAHL LLP
99 South Almaden Boulevard
Suite 600
San Jose, CA 95113
Telephone: 408-889-1690
Facsimile: 312-692-1718
rdunn@eimerstahl.com

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Amici make the following disclosure under Tenth Circuit Rule 26.1: The Chamber of Commerce ("the Chamber") of the United States of America is a nonprofit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber. The American Bankers Association ("ABA") is a nonprofit, tax-exempt organization incorporated in the District of Columbia. The ABA has no parent corporation, and no publicly held company has 10% or greater ownership in the ABA.

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INTEREST OF AMICI CURIAE[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every economic sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the Nation's business community.

The American Bankers Association is the voice of the nation's $23.6 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $19.2 trillion in deposits, and extend $12.2 trillion in loans. ABA members—located in each of the fifty states and the District of Columbia—include financial institutions of all sizes and types. ABA advocates for banks before Congress, regulatory agencies, and the courts to drive pro-growth policies that help customers, clients, and communities thrive.

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Amici regularly file challenges to overreaching government laws, regulations, and policies on behalf of their members. *Amici* engage in this type of litigation in part *because* their members are concerned about the potential for retaliation if they identify themselves to the government. *Amici* and their members thus have a strong interest in clarifying that Article III does not require an association representing the interests of its members to disclose *the identities* of those members to the government to establish associational standing.

INTRODUCTION AND SUMMARY OF ARGUMENT

The standing requirement derived from Article III ensures that federal courts do not issue advisory opinions but address live "cases or controversies" between adverse parties with concrete interests in the litigation. To invoke the court's judicial power, a plaintiff must demonstrate an injury traceable to the defendant that a court can remedy. A plaintiff can satisfy each of those elements without providing his legal name, and courts routinely allow plaintiffs to litigate pseudonymously where the plaintiff's interest in privacy or the risk of retaliation outweighs the public's interest in the details of the case. If an individual plaintiff can proceed anonymously without depriving the Court of subject matter jurisdiction, an association can surely demonstrate standing without providing the names of its members. After all, the key requirement for associational standing is that at least one member would have standing to bring the case in its own name. If a member could file the case under a

pseudonym consistent with Article III, it would make no sense to require an association to unmask that member where the association sues on the member's behalf.

The district court in this case nevertheless held that Appellant lacked standing because the association declined to provide the names of the members allegedly harmed by the Appellee's policies. That holding is not only at odds with decades of precedent authorizing plaintiffs to proceed anonymously, but it also threatens to chill core First Amendment speech by exposing associations' members—such as the businesses the Chamber represents—to government harassment or retaliation. Associations often sue on behalf of their members because those individuals or entities fear being targeted by the government if they raise their heads above the barricade. This fear may be especially pronounced when an association sues an agency with regulatory authority over its members.

These concerns are not illusory, as there are many recent examples of government agencies targeting businesses deemed hostile to the agency's (or the administration's) agenda—from the IRS's targeting of nonprofit organizations with "tea party" or "patriot" in their name, to local government crackdowns during COVID on businesses that publicly objected to shutdown orders. Given the all-too-present risk of government retaliation, associations should not have to unmask their members as a precondition for suing the government—or anyone else for that matter.

To protect the First Amendment rights of associations and their members, this Court should reverse the decision below and hold that associational standing does not require the association to provide the government with the names of its affected members.

ARGUMENT

I. The Names of an Association's Members Are Irrelevant to Article III Standing Because They Do Not Pertain to Injury, Traceability, or Redressability

Article III vests the federal judiciary with "the 'Power' to resolve not questions and issues but 'Cases' or 'Controversies.'" *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 132 (2011); *see also TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) ("Under Article III, federal courts do not adjudicate hypothetical or abstract disputes" or "possess a roving commission to publicly opine on every legal question" or "issue advisory opinions."). The "cases and controversies that Article III assigns to federal courts refer to real disputes among real persons, involving actual or threatened injuries that can be redressed in a judicial proceeding." *B.R. v. F.C.S.B.*, 17 F.4th 485, 493 (4th Cir. 2021). The purpose of standing doctrine is thus to determine "whether the plaintiff is the proper party to bring the suit." *Raines v. Byrd,* 521 U.S. 811, 818 (1997). Courts have long recognized that the relevant facts required for standing can usually be established without reference to the plaintiff's legal name. The same logic applies when

associations represent their members' interests: the names of the association's members are not necessary to invoke the judicial power of the court.

A. The Plaintiff's Legal Name Is Irrelevant to the Traditional Standing Factors

It is axiomatic that standing requires three basic elements: (1) a concrete injury (2) traceable to the defendant's conduct and (3) redressable by the court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). All three of those elements can be established without providing the Plaintiff's legal name. For example, if a plaintiff sought to challenge a local government's condemnation of a housing development to build a post office, a court would have jurisdiction over a challenge to that order brought by any of the residents regardless of the resident's name. To establish standing, the plaintiff would need to establish only that he owns a home in the condemned development. A challenge to the condemnation order would present a live case or controversy whether the challenge is asserted by the "Resident at 101 Maple Street" or by John Smith. That is because the facts necessary to determine whether the plaintiff is the proper party—e.g., whether the plaintiff lives in the development and rejected an offer to purchase the property, etc.—have nothing to do with the plaintiff's *name*.

To be sure, legal names have traditionally been required to initiate suits in federal court, but that requirement—reflected in Federal Rule of Civil Procedure 10(a)—is designed to "protect[] the public's legitimate interest in knowing all of the

facts involved, including the identities of the parties." *Plaintiff B v. Francis*, 631 F.3d 1310, 1315 (11th Cir. 2011). It has nothing to do with satisfying Article III. Indeed, the public has a broad interest in judicial proceedings and judicial records, *see Nixon v. Warner Commnc'ns, Inc.*, 435 U.S. 589, 597 (1978), yet that interest does not dictate the requirements of Article III.

And even Rule 10(a)'s direction to name the plaintiff yields to concerns of privacy and retaliation. Courts have long recognized that a plaintiff can proceed pseudonymously when she "has a substantial privacy right which outweighs" the "presumption of openness in judicial proceedings." *Doe 167 v. Sisters of Saint Francis of Colo. Springs*, 2021 WL 664006, at *3 (D.N.M. Feb. 19, 2021) (*citing Plaintiff B*, 631 F.3d at 1315–16); *see also Nat'l Commodity & Barter Ass'n, Nat'l Commodity Exch. v. Gibbs*, 886 F.2d 1240, 1245 (10th Cir. 1989) (allowing pseudonyms where "significant privacy interests" are implicated).

Along with potential invasions of privacy, the "danger of retaliation is often a compelling ground for allowing a party to litigate anonymously." *Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004); *see e.g., Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068–69 (9th Cir. 2000); *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981); *Doe v. Stegall,* 653 F.2d 180, 186 (5th Cir. 1981); *Gomez v. Buckeye Sugars*, 60 F.R.D. 106 (N.D. Ohio 1973); *cf. McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341–42 (1995) ("The decision in favor of

anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible.").

Yet if Article III *required* the plaintiff's identity to be made available to the defendant (and the public), Rule 10(a) would be jurisdictional and pseudonymous pleadings would be categorically barred. The fact that neither the Supreme Court nor this Court has ever raised such a concern in the context of anonymous litigation confirms that the use of proper names in pleadings is not jurisdictional. In short, because the plaintiff's legal name has no necessary connection to injury, traceability, or redressability, "a plaintiff's failure to disclose her name to the court at the time she files a complaint is immaterial to whether that civil action qualifies as a case or controversy." *B.R.,* 17 F.4th at 494.

B. The Legal Names of an Association's Members Are Similarly Irrelevant in Determining Associational Standing

The jurisdictional calculus does not change when an association files suit on behalf of its members. Under well-established Supreme Court precedent, an association has standing to sue to vindicate its members' interests where three conditions are satisfied: (1) the plaintiff has at least one member who "would otherwise have standing to sue in [her] own right," (2) "the interests" the association "seeks to protect are germane to [its] purpose," and (3) "neither the claim asserted

nor the relief requested require[] the participation of [the] individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

"The first prong of the associational standing test" does not impose a heightened standing requirement—it requires only "that at least one member of the association satisfy the Article III elements and have standing to sue in his or her own right." *Hancock Cnty. Bd. of Sup'rs v. Ruhr*, 487 F. App'x 189, 195 (5th Cir. 2012). As with individual plaintiffs, the *names* of affected members will rarely be necessary to establish injury, traceability, or redressability. That is especially so where an association mounts a *facial* attack on a statute or seeks to set aside an unlawful regulation. *See United States v. Stevens*, 559 U.S. 460, 472, 130 S. Ct. 1577, 1587 (2010) ("To succeed in a typical facial attack, [the challenger] would have to establish that no set of circumstances exists under which [the statute] would be valid.") (citation omitted). For example, if the SEC issued a rule requiring public companies to make certain disclosures in their annual statements, an association challenging that rule as arbitrary and capricious would need to show only that one of its members is a public company subject to the rule and that compliance with the rule imposes a burden on that member. Standing "depends on the facts of" a member's supervision by the relevant government agency, not the member's name. *New York v. U.S. Dep't of Com.*, 351 F. Supp. 3d 502, 606 n.48 (S.D.N.Y. 2019), *aff'd in part, rev'd in part and remanded sub nom. Dep't of Com. v. New York*, 139

S. Ct. 2551, 204 L. Ed. 2d 978 (2019) (*Census Case*). The "specific" name(s) of those companies would be "unnecessary to determine whether [they] would have Article III standing" to sue the agency in their individual capacity. *Id*.; *see also Am. Ass'n of Cosmetology Sch. v. Devos*, 258 F. Supp. 3d 50, 68 (D.D.C. 2017) ("To conclude that an individual member must be named to ensure that it is identified is unwarranted.").[2]

Applying these principles, numerous courts have recognized that merely *identifying* one or more affected members is sufficient and that an association need not specifically *name* the affected member(s). For example, in *American College of Emergency Physicians v. Blue Cross*, the Eleventh Circuit reversed the district court's dismissal for lack of standing, holding that although the association had not

[2] At the pleading stage, an association can typically satisfy the first prong of the associational standing requirement simply by alleging that it has specific members affected by the challenged government conduct and identifying those members by reference to their activities. This is because, "[a]t the pleading stage, the court presumes that general allegations encompass the specific facts necessary to support the claim, [] so the plaintiff need not identify an affected member by name." *Ass'n of Am. Physicians & Surgeons, Inc. v. Sebelius*, 901 F. Supp. 2d 19, 31 (D.D.C. 2012), *aff'd sub nom. Ass'n of Am. Physicians & Surgeons v. Sebelius*, 746 F.3d 468 (D.C. Cir. 2014); *cf. Bennett v. Spear*, 520 U.S. 154, 167–68 (1997) ("[E]ach element of Article III standing 'must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation.'"). At summary judgment, the association could provide declarations or other evidence describing its members and explaining their injury. The affected members could also provide anonymous declarations attesting both to their membership and to their claimed injury, thereby assuring the court that it has been presented with a live case or controversy.

named a specific member affected by the challenged conduct, it had "identified a whole category of its members who [were] harmed and will be harmed." 833 F. App'x 235, 240–41 (11th Cir. 2020) (*citing Ga. Republican Party v. S.E.C.*, 888 F.3d 1198, 1204 (11th Cir. 2018)). As the court explained, "organizational plaintiffs need not name names to establish standing" when they are seeking "prospective equitable relief," and "requiring specific names at the motion to dismiss stage is inappropriate." *Id.*

The Second Circuit similarly reversed a dismissal for lack of standing in *Bldg. & Constr. Trades Council of Buffalo, N.Y. & Vicinity v. Downtown Dev., Inc*, stating that the court was not "aware of any" authority "that supports the proposition that an association must 'name names' in a complaint in order properly to allege injury in fact to its members." 448 F.3d 138, 145 (2d Cir. 2006); *see also Hancock*, 487 F. App'x at 198 ("We are aware of no precedent holding that an association must set forth the name of a particular member in its complaint in order to survive a Rule 12(b)(1) motion to dismiss based on a lack of associational standing.").

And in *Advocates for Highway & Auto Safety v. Federal Motor Carrier Safety Administration*, 41 F.4th 586, 594 (D.C. Cir. 2022), the D.C. Circuit upheld associational standing where the plaintiff provided "survey responses evidencing the concrete injuries that individual members expected the [challenged] rule would cause them to suffer." The court held that although it did "not know the names of

individuals in the survey," "anonymity is no barrier to standing on this record." *Id.*; *see also Hotel & Rest. Emps. Union, Local 25 v. Smith,* 846 F.2d 1499, 1506 (D.C. Cir. 1988) (Mikva, J., separate opinion) ("Naming [union] members adds no essential information bearing on the injury component of standing."); *League of United Latin Am. Citizens v. Abbott*, 2022 WL 2806850, at *3 (W.D. Tex. July 18, 2022) (noting that courts have allowed plaintiffs to "seek leave to pseudonymously identify members of their organizations that they allege have suffered the requisite harm"); *Ranchers-Cattlemen Action Legal Fund v. U.S. Dep't of Agric.*, 573 F. Supp. 3d 324, 336 (D.D.C. 2021) (holding that plaintiff could "survive a facial challenge to its standing without identifying specific, injured members by name in its complaint").

As these decisions illustrate, it would make no sense to interpret Article III as allowing individual plaintiffs to proceed pseudonymously but requiring associations to provide their members' *names* to defendants and the public. Indeed, associational standing is appropriate only when the individual members' participation in the litigation is not essential. *Hunt*, 432 U.S. at 343. This confirms that when an association brings an action on behalf of its members, the defendant needs even *less* information about any individual member than it would need if that member were the named plaintiff.

In short, although an association must demonstrate that one of its members would have standing to bring the claim in its own name, Article III does not require associations to specifically *name* their affected members.

II. The District Court's Erroneous Application of Associational Standing Creates Significant First Amendment Problems

In the decision below, the district court ignored the overwhelming weight of judicial authority holding that Article III does not require an association to disclose the names of its members *by name* to establish standing. Instead, the district court cited *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009), for the proposition that an association must name its members. But *Summers* does not compel that result.

In *Summers*, the Court held that the plaintiff had failed to adequately plead associational standing in its challenge to certain regulatory projects. *Id.* at 498–99. But the standing problem identified in *Summers* was not the association's failure to identify its members *names*—it was that the association attempted to establish standing "based only on *speculation* that unidentified members would be injured by a proposed action of the National Forest Service." *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015) (emphasis added). *Summers* should thus be read only for the narrow proposition that an association challenging government action cannot establish standing by "offer[ing] only unsubstantiated generalizations about" the challenged government action's "effect on its membership." *Advocates for Highway & Auto Safety*, 41 F.4th at 594. Accordingly,

"[w]here it is relatively clear, rather than merely speculative, that one or more members have been or will be adversely affected by a defendant's action, and where the defendant need not know the identity of a particular member to understand and respond to an organization's claim of injury," there is "no purpose to be served by requiring an organization to identify by name the member or members injured." *Nat'l Council of La Raza*, 800 F.3d at 1041.

The district court's interpretation of *Summers* is not just incorrect on its own terms, it also runs headlong into the First Amendment and would threaten to chill protected speech. The Supreme Court has long recognized that associations have a First Amendment right to keep their membership anonymous from the government. *See AFPF v. Bonta*, 141 S. Ct. 2373, 2382 (2021) (*citing NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958)). As the Court explained in *NAACP*, the "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association," yet there is a "vital relationship between freedom to associate and privacy in one's associations." 357 U.S. at 460, 462. If the government were to learn the identity of an organization's members, those individuals could "face[] a risk of reprisals" by the government. *Bonta*, 141 S. Ct. at 2382. Indeed, "[t]he First Amendment protects anonymous speech in order to prevent the government from suppressing expression through compelled public identification." *Peterson v. Nat'l Telecomm. & Info. Admin.*, 478 F.3d 626, 632 (4th

Cir. 2007) (citing *Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 197–201 (1999)). "Forced public revelation discourages proponents of controversial viewpoints from speaking by exposing them to harassment or retaliation for the content of their speech." *Id.* (citing *Buckley*, 525 U.S. at 197–201). "Speech is chilled when an individual whose speech relies on anonymity is forced to reveal his identity as a pre-condition to expression." *Id.* (citing *Buckley*, 525 U.S. at 199). "In other words, the First Amendment protects anonymity where it serves as a catalyst for speech." *Id.*

This concern is especially salient where an association is *suing the government* to vindicate its members' interests. As courts have recognized, an association's members may understandably "fear retaliatory efforts on behalf of the government" if they "participate as named plaintiffs in a [pre-enforcement] legal challenge." *FAIR v. Rumsfeld*, 291 F. Supp. 2d 269, 286 (D.N.J. 2003) (association of law schools could keep members secret without losing standing), *aff'd in relevant part*, 390 F.3d 219, 228 n.7 (3d Cir. 2004), *aff'd in relevant part*, 547 U.S. 47, 52 n.2 (2006), *aff'd*, 446 F.3d 1317 (3d Cir. 2006). Indeed, "one of the fundamental purposes of the associational standing doctrine" is "protecting individuals who might prefer to remain anonymous." *Census Case*, 351 F. Supp. 3d at 606 n.48.

Amici know firsthand the importance of these principles. The Chamber's membership is confidential, and both the Chamber and the ABA frequently file suit

to vindicate the rights of their members against government agencies with enormous authority and discretion over those members. For example, *amici* are currently suing the Consumer Finance Protection Bureau to challenge its new enforcement manual. *See Chamber of Commerce v. Consumer Fin. Protection Bureau*, No. 6:22-cv-00381-JCB, ECF No. 1 (E.D. Tex. Sept. 28, 2022) ("*CFPB*"). *Amici's* lawsuit in that case challenges the CFPB's recent updates to its Supervision and Examination Manual, which directs the agency's examiners on how to assess compliance with federal consumer financial laws, and especially with the prohibition on "unfair, deceptive, or abusive, acts or practices," known as UDAAP. This update has imposed substantial compliance costs on the thousands of businesses subject to UDAAP, many of which are members of the Chamber. *Id.*, ECF No. 17-1 ¶¶ 16–21. Not surprisingly, *amici's* members prefer to remain anonymous, to avoid inviting retaliation from an agency with "vast authority" to investigate and sanction American businesses. *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2210 (2020). *Amici* thus filed suit on their members' behalf, alleging that the CFPB exceeded its statutory authority, acted arbitrarily and capriciously, and failed to go through notice and comment rulemaking as required for such a sweeping rule. *Chamber of Commerce*, No. 6:22-cv-00381-JCB, ECF No. 1 ¶¶ 2–5. Yet the rule Defendant proposes here would force *amici* and other associations to abandon their

associational privacy and invite retaliation against their members, all to supply information irrelevant to standing.

There are, unfortunately, no shortage of examples of government agencies retaliating against individuals and entities that opposed government policy. Indeed, in 2013, the United States Internal Revenue Service admitted that it singled out for intensive scrutiny groups that simply had "tea party" or "patriots" in their names based on the perception that such groups were likely opposed to the Obama administration's policies.[3] If the mere *perception* of hostility to the sitting administration is enough to trigger this type of government chicanery, there can be little doubt that *actual resistance* to government policy in the form of a lawsuit could subject an individual or business to retaliation. Congress apparently shares this concern over executive-branch malfeasance, as the House of Representatives recently created the Select Subcommittee on the Weaponization of the Federal Government to investigate ways in which various arms of the government have been used to punish political opponents.[4]

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[3] DOJ Press Release, *Attorney General Jeff Sessions Announces Department of Justice has Settled with Plaintiff Groups Improperly Targeted by IRS*, Oct. 26, 2017, https://tinyurl.com/96y8fmyb.

[4] Luke Broadwater and Catie Edmondson, *Divided House Approves G.O.P. Inquiry Into 'Weaponization' of Government*, The New York Times, Jan. 10, 2023, https://tinyurl.com/3e6rhdnc.

Shielding an association's members from government scrutiny is not a partisan issue, as the specter of government retaliation spans the political divide. In 2020, for example, a nonprofit tech policy organization sued President Trump, alleging that he issued his "Executive Order on Preventing Online Censorship" in retaliation for his treatment on social media.[5] According to a news report, the former president also allegedly urged the Department of Justice to block a corporate merger because a news subsidiary of one of the companies covered the President unfavorably.[6] Again, if mere criticism is enough to generate government backlash, suing the government unquestionably increases the likelihood of being targeted.

And the specter of retaliation comes not just from the federal government but also from state and local governments as well. During the COVID-19 pandemic, for example, churches and businesses that attempted to remain open in the face of shutdown orders were often harassed and fined by government agents to send a message to others who might be tempted to challenge these unprecedented assertions

[5] Tony Romm, *Tech group files first lawsuit against Trump over executive order targeting social media*, The Washington Post, June 2, 2020, https://tinyurl.com/3pmuzm6p.

[6] Peter Kafka, *Trump reportedly tried to order a lawsuit to block the AT&T/Time Warner merger*, Vox, March 4, 2019, https://tinyurl.com/mr4y9f48.

of emergency powers.[7] As Justice Gorsuch recently observed, state and local government officials "threatened violators not just with civil penalties but with criminal sanctions too. They surveilled church parking lots, recorded license plates, and issued notices warning that attendance at even outdoor services satisfying all state social-distancing and hygiene requirements could amount to criminal conduct. They divided cities and neighborhoods into color-coded zones, forced individuals to fight for their freedoms in court on emergency timetables, and then changed their color-coded schemes when defeat in court seemed imminent." *Arizona v. Mayorkas*, 143 S. Ct. 1312, 1314 (2023) (Statement of Gorsuch. J). This heavy-handed response prompted some state legislatures to pass laws exonerating those subjected to government fines. For example, the Ohio legislature passed a bill to vacate COVID violations to address accusations that Ohio's service industry had been unfairly targeted by health authorities.[8] This ever-present threat of government retaliation

[7] *See* Taylor DesOrmeau, *Restaurants defying Michigan dine-in ban hit with fines from multiple state agencies*, MLive, Feb. 22, 2021, https://tinyurl.com/yat9mbcx; Amanda Viniky, *Pritzker Creates New Tier of Punishment for Businesses Ignoring COVID-19 Order*, WTTW, May 17, 2020, https://tinyurl.com/4k6jvd2z; Bradford Betz, *Church says Los Angeles County plans to take parking lot in retaliation for services amid Covid,* Fox News, Aug. 31, 2020, https://tinyurl.com/2yyezfrf.

[8] Tyler Buchanan, *Should Ohio businesses have their COVID-19 health violations expunged?,* Ohio Capital Journal, March 23, 2021, https://tinyurl.com/3dk2stjd.

convinces many affected individuals and businesses to remain silent and compliant, even in the face of government overreach.

Aware of the important role associations play in protecting their members' First Amendment rights, courts have consistently held that members of an association may remain anonymous without compromising the association's Article III standing. *See, e.g., Hancock*, 487 F. App'x at 197–98 (holding that various NAACP branches had standing to challenge certain county electoral maps because each branch alleged that "its members included voters in overpopulated and under-represented districts" who "were suffering a concrete, particularized, and redressable injury"); *Census Case*, 351 F. Supp.3d at 606, n.48 ("[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.").

CONCLUSION

For these reasons, the Court should reverse and hold that Article III does not require an association to name the member(s) affected by the challenged conduct to establish associational standing.

Dated: May 30, 2023

Respectfully submitted,

/s/ *Robert E. Dunn*

Robert E. Dunn
EIMER STAHL LLP
99 South Almaden Boulevard
San Jose, CA 95113
Telephone: 408-889-1690
Facsimile: 312-692-1718
rdunn@eimerstahl.com
Counsel for Amici Curiae

Jennifer B. Dickey
Jordan L. Von Bokern
U.S. Chamber Litigation Center
1615 H Street, N.W.
Washington D.C. 20062
Counsel for Amicus Curiae Chamber of Commerce of the United States of America

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Dated: May 30, 2023

Respectfully submitted,

/s/ *Robert E. Dunn*

Robert E. Dunn
EIMER STAHL LLP
99 South Almaden Boulevard
San Jose, CA 95113
Telephone: 408-889-1690
Facsimile: 312-692-1718
rdunn@eimerstahl.com

Counsel for Amici Curiae

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I hereby certify that with respect to the foregoing:

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Dated: May 30, 2023

Respectfully submitted,

/s/ *Robert E. Dunn*

Robert E. Dunn
EIMER STAHL LLP
99 South Almaden Boulevard
San Jose, CA 95113
Telephone: 408-889-1690
Facsimile: 312-692-1718
rdunn@eimerstahl.com

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May 2023, I electronically filed the foregoing using the court's CM/ECF system which will send notification of such filing to all counsel of record who have registered for ECF notification in this matter.

Dated: May 30, 2023

/s/ *Robert E. Dunn*

Robert E. Dunn
EIMER STAHL LLP
99 South Almaden Boulevard
San Jose, CA 95113
Telephone: 408-889-1690
Facsimile: 312-692-1718
rdunn@eimerstahl.com

Counsel for Amici Curiae