No. 25-2937

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ILLINOIS POLICY INSTITUTE *and*
THE TECHNOLOGY & MANUFACTURING ASSOCIATION,

Plaintiffs-Appellants,

v.

JANE R. FLANAGAN, *in her official capacity as Director of the Illinois Department of Labor*,

Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Illinois
No. 1:24-cv-06976
Honorable Franklin U. Valderrama

Appellants' Reply Brief

Jeffrey M. Schwab
James McQuaid
LIBERTY JUSTICE CENTER
7500 Rialto Blvd., Suite 1-250
Austin, Texas 78735
512-481-4400
jschwab@ljc.org
jmcquaid@ljc.org

Attorneys for Plaintiffs-Appellants

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Argument

The district court dismissed Plaintiffs' complaint under Fed. R. Civ. P. 12(b)(1), for lack of subject-matter jurisdiction, holding that the Director lacked enforcement authority under the Act and was not "about to commence" enforcement against Plaintiffs. S.A. 8–25. Defendant defends that ruling and argues that even if sovereign immunity does not bar this suit, Plaintiffs lack standing.

Both conclusions are wrong. This Court should reverse.

I. The *Ex parte Young* exception to sovereign immunity applies to Plaintiffs' claims against the Director.

The Director is not entitled to sovereign immunity. She has a direct enforcement connection to the Act, and she is presently administering an ongoing enforcement regime that conflicts with the First Amendment. *See Doe v. Holcomb*, 883 F.3d 971, 975–76 (7th Cir. 2018) (the exception in *Ex parte Young*, 209 U.S. 123 (1908), applies where the defendant is a "state official who has 'some connection with the enforcement' of an allegedly unconstitutional state statute," and "where the injury is causally connected to that enforcement and that enjoining the enforcement is likely to redress [plaintiff's] injury").

A. The Director has a sufficient enforcement connection to the Act under *Ex parte Young*.

The "ultimate inquiry" under *Ex parte Young* is whether Defendant's "connection to the enforcement of the [Act] is sufficiently intimate to meet the requirements of *Ex parte Young*." *Holcomb*, 883 F.3d at 977 (internal quotations omitted). Defendant contends that it is not, categorizing her role as merely "ministerial," Appellee's Br. 14–15, and asserting that the Act gives her only "two specific tasks: issuing notice of

a complaint" and "issuing a right-to-sue letter," Appellee's Br. 16. According to Defendant, "even after receiving a complaint, the Director plays no enforcement role." Appellee's Br. 17. But Defendant's characterization directly contradicts the Act's plain text.

1. The Act's text grants the Director concrete enforcement authority.

The Act provides:

> The Department *shall inquire* into any alleged violations of this Act, brought to its attention by an interested party, to *institute the actions* for the penalties provided in this Section and to *enforce the provisions* of this Act. In addition to the relief set forth in Section 20, an employer shall be assessed a civil penalty of $1,000 for each violation of Section 15, *payable to the Department*.

820 ILCS 57/25(a) (emphasis added). These are active statutory commands—"shall inquire," "institute the actions," "enforce the provisions"—not passive ministerial functions. The Act also empowers the Department to demand that an employer "cure" any violation of the Act. 820 ILCS 57/25(b)(2), (b)(3), (c). The Act further provides that the Director may issue a "notice of right to sue" only after she has, among other things, determined that an allegation is "justified" or has made no determination and "either has decided not to exercise jurisdiction over the matter or has concluded administrative enforcement of the matter." 820 ILCS 57/25(b)(4)(C).

Defendant claims that this language "gets plaintiffs nowhere" because the Act does not grant the Director subpoena power or other investigative tools. Appellee's Br. 17–18. But the absence of subpoena power does not transform an express statutory mandate to inquire, institute the actions for the penalties, and enforce the provisions of this Act into a ministerial function. The Act's title for Section 25—

"Powers of the Department and civil penalties"—confirms that the legislature understood it to be conferring powers, not merely administrative tasks. And the Director need not be the primary enforcement authority to satisfy *Ex parte Young*; she need only play "some role in enforcing the statute." *Holcomb*, 883 F.3d at 975–76.

Defendant's comparison to other Illinois statutes with more explicit investigative authority, Appellee's Br. 18–20, proves too much. The question is not whether the Director has the same powers as the EEOC or the IDHR, but whether she has some enforcement connection to the Act. She plainly does. The Act expressly commands her to "inquire," "exercise jurisdiction," conduct "administrative enforcement," and "institute the actions for the penalties"—all before a private suit may proceed. 820 ILCS 57/25(a), (b)(4)(C). That is not the role of a neutral clerk.

Compare Defendant's role with that of the officials in cases she relies on. In *Holcomb*, the attorney general was named as a defendant under the theory that "his duty to support the constitutionality of a challenged state statute" made him a proper defendant. 883 F.3d at 976. This Court noted that "in order for a plaintiff to overcome the Eleventh Amendment, the [defendant] must play some role in enforcing (not just defending) the complained-of statute." *Id.* at 976–77. That role exists here—and it is expressly stated in the Act's text, not merely inferred from general executive authority.

Defendant's additional reliance on *Holcomb* for the proposition that the Director's inability to act without an interested-party complaint "attenuates" her

enforcement connection, Appellee's Br. 25–26, also fails. The Act does not merely permit the Director to join an enforcement action initiated by others—it commands her to inquire, exercise jurisdiction, and institute penalty actions. 820 ILCS 57/25(a), (b)(4)(C). That is a direct statutory mandate, not an attenuated connection. *Balogh v. Lombardi* is equally inapposite: there, as in *Holcomb*, the attorney general's only role was to defend the act's constitutionality—not to enforce it against anyone. 816 F.3d 536, 546 (8th Cir. 2016).

Defendant also tries to turn Plaintiffs' use of *Sherman v. Community Consolidated School District 21* against them because there the attorney general "had never threatened the plaintiffs with prosecution and as far as the court could tell had no authority to do so." Appellee's Br. 31, quoting 980 F.2d 437, 441 (7th Cir. 1992) (cleaned up). The attorney general there could do no such thing anyway, because the challenged statute "does not prescribe a penalty, so [states' attorneys] have nothing to do with the subject." 980 F.2d at 441. *Sherman* is just another case in the line of *Holcomb* and *Balogh,* holding that an attorney general with no enforcement role beyond defending the statute's constitutionality is immune under the Eleventh Amendment.

Defendant's reliance on *Minnesota Chapter of Associated Builders & Contractors v. Ellison*, 153 F.4th 695 (8th Cir. 2025) is likewise distinguishable. In that case, the Eighth Circuit held that the Minnesota Commissioner lacked a sufficient enforcement connection even though she had general investigatory authority, because that authority did not "rise to the level of compulsion or constraint needed"

for enforcement. 153 F.4th at 701 (quoting *Mi Familia Vota v. Ogg*, 105 F.4th 313, 332 (5th Cir. 2024)). But the Commissioner there had only investigatory powers—she could not assess civil penalties, demand that an employer cure a violation, or conduct administrative enforcement of a complaint. Here, the Act expressly grants Defendant all three. 820 ILCS 57/25(a), (b)(2), (b)(3), (c). Defendant therefore cannot claim an equal level of "compulsion or constraint" between the two cases. Appellee's Br. 27.

2. Defendant's interpretation treats statutory text as surplusage.

Defendant concedes that her interpretation "treats some statutory text as surplusage." Appellee's Br. 22. That concession is telling. Under Illinois law, "[e]ach word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *Chi. Teachers Union, Local No. 1 v. Bd. of Educ.*, 2012 IL 112566, ¶ 15. Defendant's reading renders the phrases "exercise jurisdiction," "administrative enforcement," "institute the actions for the penalties," and "enforce the provisions of this Act" entirely meaningless. Plaintiffs' reading gives each phrase its plain meaning. The canon against surplusage strongly favors Plaintiffs. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'"); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("courts must presume that a legislature says in a statute what it means and means in a statute what it says there"); Antonin Scalia & Bryan A.

Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012) ("every word and every provision is to be given effect," and a court must avoid an interpretation that causes a provision "to have no consequence").

Defendant also relies on a declaration "attesting to her view that 'the Act does not authorize [her] to perform any action beyond' sending the required notices of complaints and right-to-sue letters." Appellee's Br. 21. But a self-serving litigation declaration cannot override the statute's plain text. *See Kucharek v. Hanaway*, 902 F.2d 513, 519 (7th Cir. 1990).

Defendant asserts that the "administrative enforcement" language was inadvertently imported from the Day and Temporary Labor Services Act when the General Assembly replaced the original bill's robust enforcement provisions. Appellee's Br. 21–22. That theory is implausible. The General Assembly is presumed to know the meaning of the words it enacts. *Mueller v. City of Joliet*, 943 F.3d 834, 836 (7th Cir. 2019). The original bill gave the Director both the duty to enforce and the most coercive tools to do so; the amendment narrowed those tools but retained the duty—a deliberate structural choice, not a drafting accident. Concluding otherwise would require the Court to find that the legislature made the same mistake six times, inadvertently retaining "inquire," "institute the actions for the penalties," "enforce the provisions," "exercise jurisdiction," "administrative enforcement," and "concluded administrative enforcement" in Section 25. *See Mueller*, 943 F.3d at 836.

3. The penalty structure confirms the Director is an enforcement official.

Beyond the Act's express enforcement commands, its penalty structure confirms the Director's enforcement role. The Act provides that "an employer shall be assessed a civil penalty of $1,000 for each violation of Section 15, payable to the Department." 820 ILCS 57/25(a). Every enforcement action under Section 25 is prosecuted on behalf of the State, and 90% of the penalty flows to the Department. When a statute channels financial penalties to a state agency and authorizes it to institute penalty actions after inquiring into alleged violations and exercising jurisdiction, that agency is not a neutral clerk—it is the State's enforcement arm.

Defendant responds that the "passive receipt of funds" from private lawsuits is not enforcement. Appellee's Br. 28. But the penalties are not passively received; they are assessed against employers and payable to the Department as a result of an enforcement process the Director administers. The Director's financial stake in the outcome of every Section 25 proceeding is further evidence that she is an enforcement official, not a neutral processor.

Defendant further asserts that Section 25 "does not assign the Director any active role in obtaining these penalties or create any mechanism to police compliance." Appellee's Br. 28. But Section 25 is entitled "Powers of the Department and civil penalties." Section 20, in contrast, sets out the relief that a court may award. If the Section 25 penalties were to be assessed by the court, they would be set forth in Section 20, not in Section 25.

4. *Whole Woman's Health* supports treating the Director as an enforcement official.

Defendant argues that her role is analogous to the court clerks and judges in *Whole Woman's Health v. Jackson,* 595 U.S. 30 (2021), who were not subject to suit under *Ex parte Young* because they merely "file cases as they arrive" and "work to resolve disputes between parties." Appellee's Br. 24 (quoting 595 U.S. at 39–40). The analysis, she says, was "functional, not formalistic," turning on the nature of Defendant's activities—and functionally she is not different from the clerks and judges.

But judicial officers adjudicate disputes—they do not enforce state law. 595 U.S. at 39. And Defendant concedes that she is not a judicial officer. Appellee's Br. 24 ("unlike Texas state-court judges, the Director does not even have the authority to 'decide' disputes"). *Whole Woman's Health* is instructive for a reason Defendant ignores: the Court permitted suit to proceed against the executive licensing officials—the executive directors of the Texas Medical Board, Board of Nursing, and Board of Pharmacy, and the executive commissioner of the Texas Health and Human Services Commission—because state law imposed on them enforcement duties triggered by private suits. 595 U.S. at 37, 45. The Director is like those officials, not the clerks and judges. The Act expressly grants her enforcement power and channels civil penalties "payable to the Department." 820 ILCS 57/25(a). Her enforcement connection is in fact more direct—the Texas licensing officials' duties were inferred from a savings clause; the Director's are expressly conferred.

Defendant contends that the valid defendants in *Whole Woman's Health* had enforcement duties "not conditional on any private suit." Appellee's Br. 25. But that characterization is hard to square with the Court's own description of S.B. 8: "the law generally does not allow state officials to bring criminal prosecutions or civil enforcement actions. Instead, S.B. 8 directs enforcement 'through . . . private civil actions' culminating in injunctions and statutory damages awards." 595 U.S. at 35–36 (citation omitted). The licensing officials in *Whole Woman's Health* operated within a statute that, like the Act here, relied primarily on private civil actions for enforcement—yet the Court still held them subject to suit under *Ex parte Young* because state law imposed on them independent enforcement duties triggered by those private actions. The same is true of the Director. Her duties under the Act—receiving complaints, demanding cures, exercising jurisdiction, and collecting penalties—are triggered by private complaints, but they are the Director's own statutory obligations, not the private parties'. That is precisely the enforcement connection *Whole Woman's Health* recognized as sufficient.

In sum, the Act's text, its penalty structure, and its legislative history all confirm the same conclusion: the Director is not a passive clerk—she is the State's enforcement arm. That is enough. *Holcomb*, 883 F.3d at 975–76.

B. *Ex parte Young* requires an ongoing enforcement regime and prospective relief, not a personal threat to Plaintiffs.

Defendant asserts that even if she had some enforcement authority under the Act, sovereign immunity would still bar this suit because she has not threatened

enforcement proceedings. Appellee's Br. 29–36. But this misreads *Ex parte Young's* "ongoing violation" requirement.

1. The ongoing violation is the Director's administration of the Act's enforcement regime.

Ex parte Young's "ongoing violation of federal law" inquiry focuses on whether a state official is presently implementing or maintaining a legal regime that allegedly conflicts with federal law and whether the requested relief is forward-looking. *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002). What must be "ongoing" is the State's enforcement regime—the continuing operation of an allegedly unconstitutional law by a state official—not a particular defendant's expressed intention to prosecute these plaintiffs. *See Green v. Mansour*, 474 U.S. 64, 68 (1985) (exception applies where suit "challeng[es] the constitutionality of a state official's action in enforcing state law"). The Director remains the official charged with receiving complaints, demanding cures, exercising jurisdiction, conducting administrative enforcement, and collecting civil penalties payable to the Department. That enforcement apparatus constitutes an ongoing violation regardless of whether the Director has issued a personalized threat to these Plaintiffs.

2. *Ex parte Young* does not require a "personal threat."

Defendant asserts that the case law requires a factual threat of enforcement to satisfy *Ex parte Young's* "ongoing violation" requirement. Appellee's Br. 29–35. It does not.

Defendant asserts that reference to the Attorney General having "never threatened the [plaintiffs] with prosecution" in *Sherman*, 980 F.2d at 441, creates an independent requirement under *Ex parte Young's* "ongoing violation" inquiry. Appellee's Br. 31–32. She makes the same argument about *Holcomb*, where this Court noted that the Indiana Attorney General "ha[d] not threatened to do anything." Appellee's Br. 30 (quoting 883 F.3d at 977). That reading is untenable in both cases. The *Sherman* court stated that the Attorney General "ha[d] never threatened the [plaintiffs] with prosecution and as far as [the court could] tell ha[d] no authority to do so." 980 F.2d at 441. The two clauses are conjunctive and mutually reinforcing: the Attorney General had never threatened prosecution because he had no authority to prosecute—the challenged statute prescribed no penalty and states' attorneys, not the Attorney General, handled enforcement. *Id.* The same is true of *Holcomb*: the Indiana Attorney General "ha[d] not threatened to do anything" because he could not initiate prosecutions and had no statutory enforcement role. 883 F.3d at 977. The Director here has both. The court did not hold that an official with enforcement authority must also have personally threatened the plaintiff. If Defendant's reading were correct, *Ex parte Young* would be unavailable in virtually every pre-enforcement challenge—because by definition, no enforcement action has yet occurred.

This Court has also held that standing for a pre-enforcement First Amendment challenge to a "hunter harassment law" was supported by the fact that "government authorities are not the only ones who may seek to enforce [it]." *Brown v. Kemp*, 86

F.4th 745, 768 (7th Cir. 2023). Even Defendant acknowledges this: "some decisions have treated the threat of enforcement as more likely to be credible where a large group of actors have enforcement authority." Appellee's Br. 39. The Act's broad "interested party" definition—encompassing any organization "attentive to compliance with . . . other statutory requirements," 820 ILCS 57/10—combined with the Director's express enforcement mandate, creates precisely that kind of credible, multi-actor enforcement threat.

Defendant reads *Whole Woman's Health* as requiring proof that a defendant will "target" plaintiffs with an enforcement action. Appellee's Br. 30. That reading strips the word "target" of its context. The Court in *Whole Woman's Health* allowed claims to proceed against the Texas licensing officials precisely because state law "appear[ed] to impose a duty on [those] defendants to bring disciplinary actions against" medical professionals who performed abortions in violation of S.B. 8. 595 U.S. at 47 (opinion of Gorsuch, J.). The Court did not require those officials to have personally threatened the plaintiffs. It required only that they have enforcement duties under the challenged law. The Director has such a duty here: the Act commands her to inquire, exercise jurisdiction, and institute penalty actions against employers who violate the Act. 820 ILCS 57/25(a), (b)(4)(C). That is a statutory duty to act against persons in Plaintiffs' position—which is all *Whole Woman's Health* requires.

Defendant also relies on *Ellison* for the proposition that the Director is not "about to commence" enforcement proceedings. Appellee's Br. 32–33. But *Ellison's*

dismissal of the Minnesota Attorney General rested on two features absent here. First, Minnesota's captive-audience statute itself contained no specific enforcement mandate directed at the Attorney General—his only relevant authority came from general state law. 153 F.4th at 701–02. Second, against that backdrop of no statute-specific mandate, the Attorney General submitted a declaration "sufficient[ly] disclaim[ing] any intent" to enforce the statute, which was sufficient to satisfy *Ex parte Young's* "about to commence proceedings" requirement. *Id.* at 702. Here, by contrast, the Director's enforcement authority is textually preserved in the challenged statute itself—not borrowed from general state law. Her disavowal cannot override that express statutory command. *Ellison* does not hold otherwise.

Defendant also argues that Plaintiffs' reliance on *Verizon* and *Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508 (7th Cir. 2021), is distinguishable because those cases involved "obvious enforcement threats" and do not support the proposition that the Director's administration of the Act constitutes an ongoing violation. Appellee's Br. 33–34. That mischaracterizes both cases. In *Verizon*, the Court applied *Ex parte Young* not because the agency had personally threatened the plaintiff, but because the agency was actively administering a regulatory regime the plaintiff claimed violated federal law. 535 U.S. at 645. In *Driftless*, this Court applied *Ex parte Young* to a state agency's ongoing permitting process—again, with no personal threat to plaintiffs. 16 F.4th at 514–15. Neither case required the plaintiff to show that the defendant had personally threatened to prosecute them.

Both required only that the defendant be actively administering a regime that allegedly violated federal law. The Director is doing exactly that.

Defendant's reliance on *McDonough Associates v. Grunloh*, 722 F.3d 1043 (7th Cir. 2013), for the proposition that *Ex parte Young's* "legal fiction" requires a personal constitutional violation by the defendant, Appellee's Br. 33, also fails. *McDonough* held that *Ex parte Young* did not apply where the defendant had no enforcement role whatsoever—not that it requires a personal threat to the plaintiff. The Director here has an express enforcement role. *McDonough* is inapposite.

3. The Director's declaration cannot nullify the Act's enforcement machinery.

Defendant argues that the Director's sworn declaration "attesting to her view that 'the Act does not authorize [her] to perform any action beyond' sending the required notices of complaints and right-to-sue letters," Appellee's Br. 21, is dispositive. It is not.

The Act commands that the Department "shall inquire into any alleged violations," "institute the actions for the penalties," and "enforce the provisions of this Act." 820 ILCS 57/25(a). A state official's personal interpretation of her own statutory authority cannot override the Act's plain text. Nor is it binding: she "may change [her] mind, and [she] may be replaced in office." *Kucharek*, 902 F.2d at 519. The Director's declaration says nothing about the enforcement intentions of employees, interested parties, or future Directors—all of whom hold enforcement power under the Act. Allowing an executive official to defeat *Ex parte Young* simply by promising, for now, not to enforce a facially applicable speech restriction would

create an easy blueprint for immunizing unconstitutional statutes from federal review. That is not, and cannot be, the law. *See Majors v. Abell*, 317 F.3d 719, 721 (7th Cir. 2003) (plaintiff bringing a First Amendment pre-enforcement challenge need not show that the authorities threatened to prosecute him).

II. Plaintiffs have standing because they have demonstrated that their First Amendment protected speech is chilled by the Act.

Plaintiffs have standing because they face a credible threat of enforcement of an Act that chills their First Amendment speech. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158–59 (2014). Defendant argues that standing and *Ex parte Young* are "analytically distinct" inquiries. Appellee's Br. 34. They are—but the Director's enforcement role is relevant to both: it establishes the *Ex parte Young* connection (Section I) and demonstrates that Plaintiffs' injury is traceable to her conduct and redressable by enjoining it (Section II.B).

To establish standing, Plaintiffs must show a real or imminent injury in fact, attributable to Defendant, and redressable by the requested relief. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). In pre-enforcement challenges, "an actual arrest, prosecution or other enforcement action is not a prerequisite to challenging the law." *Driehaus*, 573 U.S. at 158. Plaintiffs satisfy all three elements.

A. Plaintiffs' chilled speech alone is sufficient to confer standing.

To satisfy the injury-in-fact requirement in a pre-enforcement challenge, a plaintiff must allege "an intention to engage in a course of conduct arguably affected within a constitutional interest, but proscribed by a statute, and there exists a

credible threat of prosecution thereunder." *Babbitt v. UFW Nat'l Union*, 442 U.S. 289, 298 (1979). Plaintiffs satisfy that standard.

Defendant argues that to establish standing, Plaintiffs must provide "direct evidence that any party planned to invoke the Act against" Plaintiffs. Appellee's Br. 38. Since Defendant further argues that she cannot enforce the statute, she asserts that the threat of third-party actions is insufficient for standing as too speculative. *Id.*

But the threshold for standing is not as high as Defendant would like. "A plaintiff who mounts a pre-enforcement challenge to a statute that he claims violates his freedom of speech need not show that the authorities have threatened to prosecute him; the threat is latent in the existence of the statute." *Majors*, 317 F.3d at 721 (citations omitted). If a statute "arguably covers" protected expression, standing exists because most people are afraid of violating the law, "especially when the gains are slight, as they would be for people seeking only to make a political point and [are] not themselves political operatives . . . ." *Id.*

Defendant attempts to limit *Majors* to statutes carrying criminal penalties where a plaintiff has personally been threatened with prosecution. Appellee's Br. 42. But this Court has not applied this principle so narrowly. The rule for standing in a pre-enforcement challenge does not require a plaintiff to show actual imminent prosecution nor does it require a threat of criminal penalties. "[T]he existence of a statute implies a threat to prosecute, so pre-enforcement challenges are proper, because a probability of future injury counts as 'injury' for the purposes of

standing." *Bauer v. Shepard*, 620 F.3d 704, 708 (7th Cir. 2010). "Plaintiffs may also establish standing based on a *current* injury if they have resorted to self-censorship out of 'an actual and well-founded fear' that the law will be enforced against them." *Kemp*, 86 F.4th at 761 (quoting *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 393 (1988)) (emphasis in original). This Court's decision in *Bauer* applied the rule in a pre-enforcement challenge to a civil/administrative disciplinary scheme with no criminal penalties and no personal threat of prosecution against plaintiffs. Defendant's reliance on *Lawson v. Hill*, 368 F.3d 955, 957–58 (7th Cir. 2004), is misplaced. *Lawson* addressed a plaintiff who offered nothing beyond the statute's existence and abstract plans to speak, whereas Plaintiffs here have demonstrated self-censorship, a financial bounty incentivizing enforcement, and a broad class of potential enforcers—precisely the additional indicia of credible threat that *Lawson* itself contemplated.

The Act creates an enforcement mechanism that allows any interested party to sue, win fines *payable to the Department that Defendant heads*, and collect a ten percent bounty for their efforts. *See* 820 ILCS 57/25(a)–(b), (e). Defendant acknowledges "that some decisions have treated the threat of enforcement as more likely to be credible where a large group of actors have enforcement authority." Appellee's Br. 39. The motivation for the Act's enforcement is self-evident: a financial bounty to enforce a law restricting disfavored speech makes enforcement a credible threat. *Cf. Patrick v. Comm'r*, 799 F.3d 885, 888 (7th Cir. 2015) ("Courts have consistently described a relator's share [under the False Claims Act] as a

'bounty' or 'reward' for the efforts a relator puts forth to gather evidence and file a *qui tam* suit."); *see also Driehaus,* 573 U.S. at 164 (the threat of enforcement is "bolstered by the fact that authority to file a complaint with the Commission is not limited to a prosecutor or an agency," and because the statute allows any person with knowledge of the purported violation to file a complaint, the threat of enforcement is increased); *303 Creative LLC v. Elenis,* 600 U.S. 570, 583 (2023) (credible threat of enforcement where "anyone in the State [could] file a complaint against [plaintiff] and initiate 'a potentially burdensome administrative hearing' process").

Defendant also argues that her disavowal of enforcement defeats standing. Appellee's Br. 41–42. But the Director cannot disclaim her role in collecting penalties and distributing bounties to private enforcers under the statute's plain text. And a state official's disavowal of enforcement intent does not extinguish a credible threat of prosecution. *See Kucharek*, 902 F.2d at 519. The Director cannot disclaim the Act's private enforcement mechanism, the financial bounty it creates, or the broad class of interested parties empowered to sue.

The Act's private enforcement mechanism and its requirement that Defendant shares the bounty chills Plaintiffs' speech and is an injury sufficient to confer standing. *Bauer*, 620 F.3d at 708. Combined with the current injury of Plaintiffs' self-censorship since the Act went into effect, *Kemp*, 86 F.4th at 761, Plaintiffs have more than satisfied the injury requirement of a standing analysis.

B. Plaintiffs' injuries are traceable to Defendant's enforcement role and redressable by enjoining it.

Plaintiffs' injuries are traceable to Defendant because she administers the enforcement machinery that creates the credible threat of penalty—receiving complaints, demanding cures, collecting civil penalties, and distributing bounties to private enforcers. *See* Section I, *supra*. Causation and redressability "are often flip sides of the same coin." *All. for Hippocratic Med.*, 602 U.S. at 380 (internal quotation omitted). The same reasoning confirms redressability. Defendant argues that her enforcement role is too attenuated to redress Plaintiffs' injuries because she does not cause the threat of third-party enforcement and an injunction would not stop enforcement suits. Appellee's Br. 40. While enjoining Defendant would not necessarily stop aggrieved employees or interested parties from filing enforcement suits, Defendant is mistaken for two reasons.

First, Defendant is not a passive bystander. When addressing redressability, courts "consider the relationship between the judicial relief requested and the injury suffered." *California v. Texas*, 593 U.S. 659, 671 (2021) (quotations omitted). That relationship is direct here: She collects civil penalties and distributes the financial bounties that motivate private enforcement. *See* 820 ILCS 57/25(a), (e). An injunction would cut off that revenue stream and eliminate the bounty incentive—directly reducing the probability of private enforcement suits. Defendant's reliance on *Murthy v. Missouri*, 603 U.S. 43, 57 (2024), and *LSP Transmission Holdings II, LLC v. Huston*, 131 F.4th 566, 576 (7th Cir. 2025), for the proposition that a mere "notice repository" cannot be enjoined, Appellee's Br. 40, is inapplicable.

Second, a plaintiff does not have to show that a favorable decision will relieve every injury. *See Massachusetts v. EPA*, 549 U.S. 497, 525 (2007). "[A]s long as there is some nonnegligible, nontheoretical, probability of harm that the plaintiff's suit if successful would redress," the redressability prong of standing is satisfied. *Mainstreet Org. of Realtors v. Calumet City*, 505 F.3d 742, 744 (7th Cir. 2007). Granting the relief Plaintiffs seek would give them such a probabilistic benefit: it would ensure that Defendant could not enforce the Act against them, nor collect fines levied against them and distribute bounties to interested parties. *See Kemp*, 86 F.4th at 770 (finding that the possibility of enforcement where a law was declared unconstitutional "does not undercut redressability or standing").

C. Plaintiff IPI has standing.

Defendant asserts that IPI lacks standing because its desired conduct "falls under at least one of the Act's exceptions." Appellee's Br. 43. Defendant first argues that because 820 ILCS 57/35(3) allows communication of "information that is necessary for the employees to perform their required job duties," IPI's political communications at mandatory meetings "are 'necessary' to the employees' work, and thus permissible under the Act." Appellee's Br. 44.

But IPI has not alleged that these communications are *necessary* for all employees to perform their job duties, as the statute requires to qualify for the exemption. *See* 820 ILCS 57/35(3) ("Nothing in this Act . . . limits the rights of an employer . . . from communicating to its employees any information that is necessary for the employees to perform their required job duties.") If all

communications an employer deems "important" for employees to know fell under that necessity exception, it would swallow the rule.

In any event, Defendant's exemption argument inappropriately goes to the merits of Plaintiffs' claims. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (at the motion to dismiss stage, courts "must accept petitioner's allegations as true" and construe well-pled allegations in the non-moving party's favor). In pre-enforcement challenges, standing only requires that Plaintiffs show that they are engaging in conduct "arguably proscribed" by the Act. *See Kemp*, 86 F.4th at 762; *Picard v. Magliano*, 42 F.4th 89, 98 (2d Cir. 2022) ("*Susan B. Anthony List* makes clear that courts are to consider whether the plaintiff's intended conduct is 'arguably proscribed' by the challenged statute, not whether the intended conduct is in fact proscribed."). "[W]hen an ambiguous statute arguably prohibits certain protected speech, a reasonable fear of prosecution can provide standing for a First Amendment challenge." *Goldhamer v. Nagode*, 621 F.3d 581, 586 (7th Cir. 2010); *see also Am. Encore v. Fontes*, 152 F.4th 1097, 1116 (9th Cir. 2025) ("for the purposes of standing, we accept Plaintiffs' interpretation of the statute so long as it is an arguable interpretation."). Here, it is at least arguable that IPI's speech is prohibited and not covered by the 820 ILCS 57/35(3) exception for necessary speech, because it is directed at employees who do not need that communication to perform their job functions. IPI has standing.

Defendant attempts to manufacture a factual issue by suggesting that the exemption for § 501(c)(4) entities under 820 ILCS 57/35(6) could apply to IPI

because it shares senior employees with such an entity—Illinois Policy Action. Appellee's Br. 44–45. But IPI, not Illinois Policy Action, is a plaintiff in this case. The Act's exception does not apply to IPI because it is *not* a § 501(c)(4) entity. Defendant wonders whether employees are on IPI or IPA time when they are required to attend mandatory meetings, Appellee's Br. 44, but the only evidence on this point in this case shows that IPI holds mandatory staff meetings and retreats for *its* employees. S.A. 6–7, 35–38. Defendant cites *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274 (7th Cir. 2020), for the proposition that when there is doubt about the factual basis of jurisdiction, additional factfinding is necessary. Appellee's Br. 45. *Bazile* is inapt. In that case the jurisdictional dispute focused on a lack of evidence of accruing interest, *Bazile*, 983 F.3d at 281, but there is evidence in the record here that IPI has mandatory meetings with its own employees where it engages in proscribed speech. Defendant's speculation that this evidence is false cannot defeat IPI's standing and does not warrant an order on remand directing additional jurisdictional discovery.

D. Plaintiff TMA has associational standing.

"Associational standing allows an organization to sue on behalf of its members even without a showing of injury to the association itself." *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002, 1008 (7th Cir. 2021) (quotations omitted). A plaintiff claiming associational standing must show that: (1) at least one of its members would have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim

asserted nor the relief requested requires the participation of individual members. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

Defendant asserts that TMA does not have associational standing under the first prong because TMA has not specifically identified a member by name or sought pseudonymity for its affected members. Appellee's Br. 45–46. Defendant relies on *Satanic Temple, Inc. v. Rokita*, 163 F.4th 1061, 1069 (7th Cir. 2026), but that decision expressly left open whether public naming is required at the pleading stage, holding only that an associational plaintiff must at minimum identify affected members to the court and seek pseudonymous treatment if needed. 163 F.4th at 1069 n.10. TMA has done so here through its declaration and pleadings. In any event, TMA is not required to identify its members by name; at the pleading stage, TMA need only "provide some way of showing that at least one individual member has standing to sue on their own." *Prairie Rivers Network*, 2 F.4th at 1010.

TMA has provided evidence that it is an association consisting of 815 member companies, mostly small and mid-sized manufacturers. R. 10-1, Decl. Dennis LaComb, ¶ 6, Ex. B, Mot. Prelim. Inj. TMA's members include businesses that hold mandatory meetings at which they communicate political or religious views to employees, R.10-1, ¶¶ 7–11—conduct arguably proscribed by the Act.

Defendant argues that TMA has not identified which members are located in Illinois and thus subject to the Act. Appellee's Br. 47–48. But there can be no question that TMA has Illinois based members subject to the Act, as it alleged in the Amended Complaint. R. 8, Am. Compl. ¶¶ 7–8. Further, TMA is an Illinois

association of member companies (its website is www.tmaillinois.org). It strains credulity to claim that of its 815 members, *none* of them are Illinois employers. That is sufficient at the pleading stage to establish that at least some members are Illinois employers subject to the Act.

Defendant argues that without more detail, TMA's standing is too speculative to know that its members do not fall under one of the Act's exemptions, or their alleged injuries are not sufficiently imminent. Appellee's Br. 48. While this Court denied associational standing to an environmental group in *Prairie Rivers Network* for not providing enough factual basis on which it could determine that at least one member has standing, this case is distinguishable. *Prairie Rivers Network*, 2 F.4th at 1005. The environmental group was suing a private company seeking to enforce the Clean Water Act against it. *Id.* at 1006. This Court held that the group lacked associational standing because it could not show how exactly the alleged discharges harmed members individually. *Id.* at 1010. Here, by contrast, the injury is clear. TMA's members—employers in the State of Illinois—are targeted by the Act and subject to penalty for their speech to their employees. This is not a case of "intangible injuries [that] are particularly prone to manufactured theories of Article III standing." *Wis. Voter All. v. Millis*, 166 F.4th 627, 638 (7th Cir. 2026) (quotation omitted). TMA's members' injury is clear—they can cease speaking or suffer civil penalties collectible by Defendant.

Because at least one TMA member engages in conduct arguably proscribed by the Act and faces a credible threat of enforcement, TMA has associational standing.

Conclusion

Plaintiffs respectfully request that this Court reverse the judgment of the district court and remand for further proceedings on the merits.

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Respectfully submitted,

/s/ Jeffrey M. Schwab

Jeffrey M. Schwab
James McQuaid
LIBERTY JUSTICE CENTER
7500 Rialto Blvd., Suite 1-250
Austin, Texas 78735
512-481-4400
jschwab@ljc.org
jmcquaid@ljc.org

Attorneys for Plaintiffs-Appellants

Certificate of Compliance

I certify that this brief conforms to the type-volume limitations imposed by Fed. R. App. P. 32 and Circuit Rule 32 for a brief produced using the following font: Proportional Century Schoolbook Font 12-point for body text, 12-point for footnotes. Microsoft Word for Mac was used. The length of this brief was 6,263 words.

/s/ Jeffrey M. Schwab
Jeffrey Schwab

Certificate of Service

I hereby certify that on April 29, 2026, I electronically filed the foregoing Appellants' Reply Brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Jeffrey M. Schwab
Jeffrey Schwab