No. 22-0065

ORIGINAL

In The Supreme Court of the United States

MICHAEL VAN CLEVE,

Petitioner,

v.

OFFICE OF MANAGEMENT AND BUDGET, ET AL.,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Michael Van Cleve, Law
Michael Van Cleve, Esq.
99 NW 183rd Street
Room 242B
North Miami Beach, FL 33169
Phone: (786) 309-9043
Email: michael@michaelvanclevelaw.com
Pro se Litigant

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTIONS PRESENTED

In August 2020, I brought a challenge to the government's application of the 1997 Office of Management and Budget race categories to the 2020 U.S. Census and 2020 American Community Survey. I also asked the district court to assemble a three-judge panel under Pub. L. No. 105-119, Title II, § 209(e). Less than a week after I filed a petition for mandamus with the circuit court to assemble a three-judge panel, the district court dismissed my case for a lack of Article III standing. The circuit court affirmed, finding that I did not plausibly allege an Article III injury in-fact. The circuit court did not decide if I was entitled to a three-judge panel. The questions presented are:

1. Is the *current* standing doctrine in conflict with the historical method of interpreting the Constitution?

2. Does 44 U.S.C. § 3563 or the Office of Management and Budget's Statistical Policy Directive No. 1 give the public the legal right to accurate, relevant, and objective statistical information?

3. Did the diversion of my resources, expended before the operative complaint was filed, suffice as an Article III injury?

4. Can the circuit court create an alternative remedy outside the facts of the complaint and court record, to avoid finding that an Article III injury was plausibly pled?

5. Was the district court required to assemble a three-judge panel under Pub. L. No. 105-119, Title II, § 209(e)?

PARTIES TO THE PROCEEDING

I, Michael Van Cleve, Esq., am the petitioner in this proceeding. I was the plaintiff in the Southern District of Florida, and I was both an appellant and a petitioner in the Eleventh Circuit United States Court of Appeals. I operate a law practice in Miami-Dade County, Florida.

Three federal agencies are the respondents in this case (along with their agency directors): The Office of Management and Budget, the Department of Commerce, and the Census Bureau. Those agencies and their directors were defendants in the district court and respondents/appellees in the circuit court.

RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

Van Cleve v. Ross, et al.,

Case No. 20-23611 (October 13, 2021).

United States Court of Appeals (11th Cir.):

In Re: Michael Van Cleve,

Case No. 21-13425 (December 13, 2021)

United States Court of Appeals (11th Cir.):

Van Cleve v. OMB, et al.,

Case No. 21-13699 (May 24, 2022).

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

U.S. Supreme Court

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

U.S. Circuit Court

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

No. _____

MICHAEL VAN CLEVE,

Petitioner,

v.

OFFICE OF MANAGEMENT AND BUDGET, ET AL.

Respondents.

On a Petition for of Writ of Certiorari
from
the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Petition for Writ of Certiorari

I, Michael Van Cleve, respectfully petition for a writ of certiorari to review the judgment of the Eleventh Circuit United States Court of Appeals. Conjunctively, this Court should review the decision of the Southern District of Florida when it declined to assemble a panel of three judges over this case.

Opinions Below

None of the opinions for review are published in an official case law reporter. The Eleventh Circuit's opinion affirming the district court's dismissal of the operative complaint is reprinted at App. 1-11.[1] The Eleventh Circuit's opinion denying the petition for writ of mandamus is reprinted at App. 12-14. The district court's order and opinion dismissing the operative complaint is reprinted at App. 15-33.[2] The district court's second denial of a three-judge panel is reprinted at App. 34-40. The district court's opinion and order granting the amendment of the second amended complaint is reprinted at App. 41-44. The district court's first denial of a three-judge panel is reprinted at App. 45-50.[3]

---

[1] The May 24, 2022 opinion is also available electronically here: https://media.ca11.uscourts.gov/opinions/unpub/files/202113699.pdf

[2] The October 13, 2021 opinion is also available electronically here: https://www.govinfo.gov/content/pkg/USCOURTS-flsd-1_20-cv-23611/pdf/USCOURTS-flsd-1_20-cv-23611-1.pdf

[3] The December 21, 2020 opinion is also available electronically here: https://www.govinfo.gov/content/pkg/USCOURTS-flsd-1_20-cv-23611/pdf/USCOURTS-flsd-1_20-cv-23611-0.pdf

Jurisdiction

The Eleventh Circuit judgment was entered on May 24, 2022. Therefore, this Court has jurisdiction to accept a petition for writ of certiorari under 28 U.S.C. § 1254(1).[4] This Court also has probable jurisdiction under Public Law No. 105-119, Title II, § 209(e).[5]

Statutory and Regulatory Provisions Involved

The relevant statutory provisions are as follows: 44 U.S.C. § 3563;[6] Public Law No. 105-119, Title II, § 209; 28 U.S.C. § 2284; the OMB policy, Statistical

---

[4] This Court has recently accepted petitions for certiorari on two decennial census cases. *See*, Department of Commerce v. New York, 139 S. Ct. 2551, 2565 (2019) (considering the inclusion of a citizenship question on the census questionnaire after granting a writ of certiorari before judgment), *See Also*, Trump v. New York, 141 S. Ct. 530 (2020). This Court also reviewed a stay on a third decennial census case, Ross v. National Urban League, 141 S. Ct. 18 (2020).

[5] Generally speaking, a final order for any claim under Public Law 105-119, Title II, § 209 is directly reviewable only by this Court. Nonetheless, after Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 716 (1962), this Court decided that when a district court denies the assembly of a three-judge panel, the party requesting a three-judge panel should first seek review in a circuit court. *See, e.g.*, Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 716 (1962), *and*, Gonzalez v. Automatic Emp. Credit Union, 419 U.S. 90, 100 (1974). *See Also*, Dep't. of Commerce, v. U.S. House of Representatives, 525 U.S. 316, 326-327 (1999) and Utah v. Evans, 536 U.S. 452, 462-463 (2002).

[6] 44 U.S.C. § 3563 codifies the four fundamental responsibilities found in Policy Directive No. 1.

Policy Directive No. 1,[7] and, the agency policy in question, the 1997 OMB race and ethnicity standards.[8]

Statement of the Case

On August 30, 2020, I initiated this Administrative Procedure Act case challenging the agency's decision to re-apply the 1997 OMB race categories to the 2020 U.S. Census. The decision was announced in a January 26, 2018 memorandum.[9] The complaint was amended a few times. Though the government argued that the second amended complaint would be futile, the district court disagreed.[10] Because the second amended complaint explained that the inclusion of a MENA race category would increase the accuracy of the decennial census race and ethnicity

---

[7] *Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units*, 79 Fed. Reg. 71609 (December 2, 2014), available here: https://www.federalregister.gov/documents/2014/12/02/2014-28326/statistical-policy-directive-no-1-fundamental-responsibilities-of-federal-statistical-agencies-and

[8] *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, 62 Fed. Reg. 58782 (October 30, 1997).

[9] The memorandum is a final agency action under the APA. See, *Memorandum 2018.02: Using Two Separate Questions for Race and Ethnicity in 2018 End-to-End Census Test and 2020 Census*, available online here: https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/plan/memo-series/2020-memo-2018_02.html

[10] App. 43.

data, the district court determined the second amended complaint was not futile.[11]

I also argued that I was entitled to a three-judge court under Public Law 105-119, Title II, § 209(e). The district court disagreed, ruling that a three-judge court was required only if a party was bringing a constitutional challenge to the apportionment of a Congressional district.[12]

I filed the final complaint on February 22, 2021. The operative complaint was supported by agency notices, agency reports, agency studies, declarations and affidavits from myself, declarations from former clients, and declarations from other attorneys. The agencies moved to dismiss the complaint. According to the agencies, the complaint did not plausibly allege an Article III injury-in-fact because my injury was undifferentiated from other members of the public.[13] I responded, arguing that I did plead an Article III injury because I am entitled to accurate, relevant, and objective statistical information by federal law (44 U.S.C. § 3506(e)/3563)[14] and by policy (Policy Directive No. 1),[15] which the government was not providing to me.

By declaration, I explained that I diverted my resources to counteract the illegal agency conduct,[16]

---

[11] App. 43, ¶1.

[12] App. 45-46.

[13] App. 19, ¶4.

[14] App. 6, ¶3.

[15] App. 19, ¶1.

[16] App. 25, ¶2.

and that I needed better race and ethnicity data to improve my practice.[17] Finally, I explained (through the operative complaint and the evidence within the court record) that the census was degraded because the agencies haphazardly applied the outdated 1997 OMB race and ethnicity categories to the 2020 U.S. Census and 2020 American Community Survey.[18] I stated that the degradation of census data[19] makes it harder for me to identify legal issues related to race, and harder for me to advise and represent certain social groups.[20]

I renewed my motion for a three-judge panel based on new authority, after a district court ruled that a three-judge panel is appropriate under Public Law 105-119, Title II, § 209(b), when a Plaintiff brings a challenge to a statistical method being used in a decennial census.[21] These issues remained pending for some time despite the Congressional mandate that such matters be handled expedientely.[22]

---

[17] App. 25-26.

[18] The American Community Survey or ACS is an annual survey on a smaller sample size of the U.S. population. Evenwel v. Abbott, 136 S. Ct. 1120, 1126 (2016). *See Also,* Dept. of Commerce v. New York, 139 S. Ct. 2551, 2562 (2019).

[19] The degradation of census data is an Article III harm. Dept. of Commerce v. New York, 139 S. Ct. 2551, 2558 (2019).

[20] App. 38, ¶2.

[21] Alabama v. Dep't of Commerce, Case 3:21-cv-00211, Docket Entry 27, Page 4, ¶2 (M.D. Ala. March 26, 2021).

[22] Public Law 105-119, Title II, § 209(e)(2).

On October 7, 2021, I moved for the Eleventh Circuit to order the district court to assemble a three-judge panel.[23] Before the Eleventh Circuit could utter a word, on October 10, 2021 (filed on October 12, 2021), the district court denied my second request for a three-judge panel.[24] Then, on October 13, 2021, the district court quickly dismissed my case for lack of standing.[25] On October 21, 2021, I appealed the dismissal of the action to the Eleventh Circuit.

The Eleventh Circuit entered two rulings: On December 13, 2021, the Eleventh Circuit found that because the district court dismissed the case for lack of standing and I had a separate direct appeal, mandamus relief was no longer appropriate.[26] And on May 24, 2022, on the direct appeal, the Eleventh Circuit affirmed the district court's ruling, finding

---

[23] App. 12, ¶1.

[24] App. 40.

[25] App. 35. Other errors on standing were made by both lower courts. The district court ruled that the expenditure of resources in anticipation of litigation are invalid Article III injuries. This decision conflicts with FEC v. Ted Cruz for Senate, Case No. 21-12, Pages 4, ¶3, 596 U.S. ____ (May 16, 2022). "[A]n injury resulting from the application or threatened application of an unlawful enactment remains fairly traceable to such application, even if the injury could be described in some sense as willingly incurred." Id. The Eleventh Circuit made a correlative error by finding that my future aspirations to use the data for legal assistance is not an Article III injury. However, the Eleventh Circuit did not consider the resources I had already expended before the operative complaint was filed.

[26] App. 14, ¶2.

that I did not plausibly allege an Article III injury-in-fact under any theory of standing.[27]

This appeal follows.

Reasons for Granting the Petition for Certiorari

I. Problems Regarding Race Construction and Questions on Whether the Standing Doctrine Is Truly Jurisdictional Rather Than Prudential

A. Problems with Race Construction

America doesn't understand race. The entire race construct started out wrong from the outset. Our federal racial categories *are not* biological. The district court, enamored with this fact, mentioned it thrice, but science has proven this true decades ago.[28] And although in the past, race was associated with immutable characteristics (i.e., skin color), those immutable characteristics are not uniform and germane to every person within any particular OMB race group.

It is only sometimes that race correlates with skin color. Not all Black Americans have the same shade of skin color. The same goes for White Americans, particularly for the OMB race groups, since some White persons can be dark skinned under the OMB race categories.[29] And neither Asians nor Hawaiian and Pacific Islanders are defined by skin color. For

---

[27] App. 10-11.

[28] App. 15, 35, 41.

[29] *Standards for the Classification of Federal Data on Race and Ethnicity*, 60 Fed. Reg. 44674, 44681 (August 28, 1995).

example, it is common knowledge that Indians (from India) can have dark skin – but we don't normally call those persons Black. Worse still is the plight of Indigenous Native Americans, who were arbitrarily divided by skin color regardless of their cultural ancestry with blood quantum rules.[30]

These misconceptions have been carried forward through our common law, almost unchecked. For example, consider Dow v. United States, 226 F. 145 (4th Cir. 1915), where the circuit court utilized the now scientifically panned Johann Friedrich Blumenbach race categories, which are still permeating in our society today.[31] Although some of our courts have

---

[30] 1930 Census Instructions to Enumerators, Census.Gov, https://www.census.gov/programssurveys/decennial-census/technical-documentation/questionnaires/1930/1930-instructions.html. Consider also that Native Americans and African Americans were largely commingled during early America, and for the first few censuses no distinction was made between Native Americans and African Americans based on color. *Measuring Race and Ethnicity Across the Decades: 1790–2010 Mapped to 1997 U.S. Office of Management and Budget Classification Standards*, United States Census Bureau (Census.gov), Last Revised September 4, 2015, https://www.census.gov/datatools/demo/race/MREAD_1790_2010.html; *See Also*, https://www.census.gov/history/www/through_the_decades/overview/1790.html. This is important because the color line cut through Native American families in a very harmful way that also had legal ramifications. The culmination of dividing Native Americans by skin color without regard to their cultural ancestry has led to cases such as Cherokee Nation v. Nash, 267 F. Supp. 3d 86 (D.D.C. August 30, 2017).

[31] The Fourth Circuit did at least explain that the definition of White during 1790 was vague and poorly understood – mainly because the social category is arbitrary to begin with. Dow v. United States, 226 F. 145, 146 (4th Cir. 1915).

attempted to clear the air about these arbitrary categories, the decisions are far and few to be named. Village of Freeport v. Barrella, 814 F. 3d 594 (2d Cir. 2016)[32] and GMM ex rel. Hernandez-Adams v. Kimpson, 116 F. Supp. 3d 126 (E.D.N.Y. July 29, 2015)[33] are two notable exceptions.

The OMB has known about these issues for decades, yet has failed to act, even though our country grows more socially and culturally diverse by the day.

The Eleventh Circuit and the district court may not foresee the long-term consequences of disseminating misinformation to the public, but I do. Bad information is an existential threat to our democracy. Democracy lives and falls on an honest and freely informed society – not a *misinformed* society.

It would be different if we as a Nation had completely discarded race – but we haven't.[34] We're still using race to determine our Congressional district lines, federal funding for various programs, and much much more.[35]

---

[32] Village of Freeport v. Barrella, 814 F. 3d 594, 602 (2d Cir. 2016).

[33] GMM ex rel. Hernandez-Adams v. Kimpson, 116 F. Supp. 3d 126, 136-137 (E.D.N.Y. July 29, 2015).

[34] Some Justices sitting on this Court have argued that we should discard the categories. Grutter v. Bollinger, 539 U.S. 306, 353-354 (2003) (Thomas, J., concurring in part and dissenting in part).

[35] *Why We Conduct the Decennial Census,* To Benefit Your Community, U.S. Census Bureau, last revised November 23, 2021, https://www.census.gov/programssurveys/decennial-census/about/why.html (emphasis added).

And although the sum substance of most of my use of the race data revolves around the discovery of issues related to anti-discrimination, those efforts are thwarted by inaccurate data produced on arbitrary categories that have outlived their life cycle.

B. The *Historical Method* Does Not Support the Current Standing Doctrine

In Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1962), this Court openly questioned whether the standing doctrine is compelled by the language of the Constitution or not.[36] The historical method of interpreting the Constitution[37] finds that the modern injury-in-fact requirement is likely a prudential doctrine, rather than a Constitutional requirement.[38] Under this lens, I would have a case.

Thus, '[t]he language of the Constitution cannot be interpreted safely except by reference to the

---

36 "[I]t has not always been clear in the opinions of this Court whether particular features of the 'standing' requirement have been required by Art. III ex proprio vigore, or whether they are requirements that the Court itself has erected and which were not compelled by the language of the Constitution." Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1962).

37 New York State Rifle & Pistol Assn., Inc. v. Bruen, Case No. 20-843, 597 U. S. ____ Page 16, ¶3 (June 23, 2022).

38 This petition mainly addresses the injury in-fact requirement, rather than any other element of standing. I do not argue that federal courts can issue advisory opinions.

common law and to British institutions as they were when the instrument was framed and adopted'[.]"[39]

> "[T]he English, colonial, and post-constitutional practices suggest that the contemporaneous understanding of the 'case or controversy' clause considered as justiciable actions concerning general governmental unlawfulness, even in the absence of injury to any specific person, and even when prosecuted by any common citizen with information about the alleged illegality."[40]

How was a controversy defined when the Constitution was ratified? In 1788, a *controversy* was used synonymously with the words *dispute*,[41] *debate*,[42] and *quarrel*.[43] A *controversy* was also associated with

---

39 New York State Rifle & Pistol Assn., Inc. v. Bruen, Case No. 20-843, 597 U. S. ____ Page 31, ¶1 (June 23, 2022).

40 Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 Stan. L. Rev. 1371, 1516 (1988).

41 *Samuel Johnson's Dictionary of the English Language,* Volume I, Sixth Edition, Samuel Johnson (1785) (Definition 4 of the word, *difference*) (using the words *dispute*, *debate*, *quarrel*, and *controversy* as synonyms).

42 *Samuel Johnson's Dictionary of the English Language,* Volume I, Sixth Edition, Samuel Johnson (1785) (Definition 1 of the word, *debate*). See Also, Definition 2 of the same word, defining *debate* as a *quarrel*.

43 *Samuel Johnson's Dictionary of the English Language,* Volume I, Sixth Edition, Samuel Johnson (1785) (Definition 3 of the word, *quarrel*). See Also, Definition 4 of the same word, explaining a *quarrel* as a cause of debate).

an *argument*.[44] "This day, in *argument* upon a ca[s]e, Some words there grew 'twixt Somerfct and me."[45] Thus, the word *controversy* (and the associated word case) was *widely defined* as a dispute between persons.[46]

The federal judiciary **IS** the "Umpire" designed to resolve a controversy involving the interpretation of the Constitution or federal laws, less we turn to the sword.[47]

> Something must be done, or we shall disappoint not only America, but the whole world . . . We should be without an *Umpire* to decide *controversies* and must be at the mercy of events. What too is to become of our treaties-- what of

---

[44] *Samuel Johnson's Dictionary of the English Language,* Volume I, Sixth Edition, Samuel Johnson (1785) (Definition 4 of the word, *argument*).

[45] *Samuel Johnson's Dictionary of the English Language,* Volume I, Sixth Edition, Samuel Johnson (1785) (Definition 4 of the word, *Argument*) (quoting the character Plantagenet from Shakespeare, Henry VI, Part 1 Act 2, Scene 5).

[46] Consider the way the word was used by the Framers in their speech and debates during the relevant period. "The *controversy* must be endless whilst Gentlemen differ in the grounds of their arguments[.]" *The Records of the Federal Convention Volume I (1911)*, Edited by Max Farrand, New Haven: Yale University Press, Monday, June 29, 1787, Page 461 (emphasis added).

[47] "Is it come to this, then, that the sword must decide this *controversy*, and that the horrors of war must be added to the rest of our misfortunes?" *The Records of the Federal Convention Volume I (1911)*, Edited by Max Farrand, New Haven: Yale University Press, Monday, June 30, 1787, Page 501 (emphasis added).

> our foreign debts, what of our domestic?[48]

Through the eyes of the Founders, our Nation must have the power to resolve its own internal disputes. "A political system which does not contain an effective provision for a peaceable decision of *all controversies arising within itself*, would be a government in name only."[49]

The Founders of the Constitution contemplated that the judiciary would ensure **national peace and harmony,** not just oversee controversies or disputes between the States, immigration, etc. "Resd. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature . . . *and questions which may involve the national peace and harmony.*"[50] The words *peace and harmony* do not appear in the final version of Article III of the Constitution; however, those terms should be considered to understand the state of mind of the

---

48 *The Records of the Federal Convention Volume I (1911),* Edited by Max Farrand, New Haven: Yale University Press, Monday, July 2, 1787, Page 515 (emphasis added).

49 *The Records of the Federal Convention Volume III (1911),* Edited by Max Farrand, New Haven: Yale University Press, James Madison on Nullification, Page 537 (emphasis added).

50 *The Records of the Federal Convention Volume I (1911),* Edited by Max Farrand, New Haven: Yale University Press, Tuesday, May 29, 1787, Page 22 (emphasis added). "It is impossible that the articles of confederation can be amended--they are too tottering to be invigorated--*nothing but the present system, or something like it, can restore the peace and harmony of the country.*" Id. at Page 171 (emphasis added). See Also, Pages 171, 224, 231, 258, 259, 264, and 279.

Framers, when the Framers wrote Article III of the Constitution.[51]

Alexander Hamilton explained that the federal judiciary was in place **to guard the rights of Americans**, rather than levy cases based on the highly particularized injury test we use now.[52] In the landmark case of Marbury v. Madison, 5 U.S. 137, 163 (1803), it was explained that where there is *a vested legal right*, there is a legal remedy.[53] And in Osborn v. Bank of United States, 22 U.S. 738, 819 (1824), this Court corroborated the rights-based method of determining a case under the Constitution:

> This clause enables the judicial department to receive jurisdiction to the

---

[51] The final version of Article III does find that the federal courts have *inherent powers of equity*, which could cover troubled disputes that jeopardize peace and harmony when there is no action at law. *See*, Georgia v. Brailsford, 2 U.S. 402 (1792) and Georgia v. Brailsford, 2 U.S. 415 (1793) and Grayson v. Virginia, 3 U.S. 320 (1796), acknowledging this Court's inherent powers of equity.

[52] "This independence of the judges is equally requisite to guard the Constitution *and the rights of individuals* from the effects of those ill humors[.]" Alexander Hamilton, Federalist Paper 78. (emphasis added). "*That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice*, can certainly not be expected from judges who hold their offices by a temporary commission." Id. (emphasis added).

[53] "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." Marbury v. Madison, 5 U.S. 137, 163 (1803).

> full extent of the constitution, laws, and treaties of the United States . . . when the subject is submitted to it by a party who asserts his *rights* in the form prescribed by law. *It then becomes a case*, and the constitution declares, that the judicial power shall extend to all cases arising under the constitution, laws, and treaties of the United States.[54]

Neither the literal definition of the words *case* and *controversy* nor the debates surrounding the crafting and ratification of the Constitution suggest that a plaintiff must allege a highly particularized injury before a federal court can resolve the plaintiff's case.[55] I now turn to our common law shortly after the Constitution was embraced and adopted.

* * *

Early American jurisprudence contains a multitude of cases involving parties that had no personalized and particularized stake in the outcome of the controversy or parties whose interests were undifferentiated from the rest of the public. [56] These could be

---

[54] Osborn v. Bank of United States, 22 U.S. 738, 819 (1824) (emphasis added).

[55] "When questions of jurisdiction arise, they must be settled by a reference to the constitution and acts of congress. All cases embraced within the judicial power of the government, are capable of being acted upon by the courts of the Union." Jackson Ex Dem. Astor v. Crane, 30 U.S. 190, 202 (1831).

[56] It would be incorrect to say that our modern standing law has no roots in early American cases. The Maryland court in Harrison v. Sterett, 4 H. & McH. 540, 548 (Prov.Ct. Md. April 1774) had problems with a plaintiff (suing for public nuisance) whose injuries were too similar with everyone else. But it

summarized as *relator* cases or *informer* (qui tam)[57] actions, which existed even during the British common law.[58] And there are several of them, especially during the late 1700s and throughout the 1800s. I won't list all of them, but I can list enough cases to make my point.

Now, we refer to qui tam cases as relator cases.[59] However, in our early jurisprudence, qui tam cases were associated with informers;[60] whereas a broad range of litigants were called relators.[61] Older rela-

---

would also be incorrect to find that this theory or methodology applied equally to all cases in our early common law.

57 Marvin v. Trout, 199 U.S. 212, 225 (1905). *See Also*, Fairbanks v. Town of Antrium, 2 N.H. 105, 106 (N.H. Superior Court, 1819), (interpreting a February 9, 1791 state statute that allowed for qui lam/tam action). *And See*, Pike v. Jenkins, 12 N.H. 255 (N.H. Superior Court 1841), and Commonwealth v. Loring, 25 Mass. 370, 8 Pick. 370 (Mass. 1829), and other qui tam actions in the state of New Hampshire. Informers do not suffer personal injuries – the injury is strictly attributed to the government. US ex rel. Roby v. Boeing Co., 995 F. Supp. 790, 793-794 (S.D. Ohio 1998).

58 Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 776-777 (2000).

59 Under Seal v. Under Seal, 326 F. 3d. 479 (4th Cir. 2003). Hopper v. Solvay Pharmaceuticals, Inc., 588 F. 3d 1318 (11th Cir. 2009).

60 United States v. Simms, 5 U.S. 252 (1803); *See Also*, Adams v. Woods, 6 U.S. 337 (1805).

61 Ex Parte Milburn, 34 U.S. 704 (1835) (referring to a petitioner seeking habeas corpus relief as a relator); Kendall v. United States Ex Rel. Stokes, 37 U.S. 524 (1838) (referring to various petitioners seeking mandamus as relators); Ex Parte Duncan N. Hennen, 38 U.S. 230 (1839) (former office clerk seeking readmission as district court clerk by mandamus called a relator); Brashear v. Mason, 47 U.S. 92 (1977) (Navy veteran

tor cases were usually associated with a litigant's attempt to obtain a writ of mandamus.[62] Sometimes relators would litigate a personal legal right, and sometimes they would assert a right on behalf of the community as a whole.[63]

---

seeking backpay by mandamus called a relator); Ex Parte Secombe, 60 U.S. 9 (1856) (attorney seeking readmission to a court by mandamus called a relator); United States v. Schurz, 102 U.S. 378 (1880) (man seeking patent by mandamus called a relator); Louisiana v. New Orleans, 102 U.S. 203 (1881) (judgment creditor seeking mandamus called a relator) ; Wolff v. New Orleans, 103 U.S. 358 (1881) (judgment creditor seeking to enforce a judgment through mandamus called a relator); United States ex rel. Dunlap v. Black, 128 U.S. 40 (1888) (man seeking mandamus relief for the payment of his pension called a relator); United States ex rel. Redfield v. Windom, 137 U.S. 636 (1891) (assignee seekng to compel the Secretary of Treasury to provide a treasury draft called a relator); United States ex rel. International Contracting Co. v. Lamont, 155 U.S. 303 (1894) (contractor seeking mandamus against the Secretar of War called a relator); Roberts v. United States, 176 U.S. 221 (1900) (assignee of a judgment seeking mandamus to pay a debt called a relator); United States ex rel. West v. Hitchcock, 205 U.S. 80 (1907) (man seeking membership to Wichita tribe through mandamus called a relator); Garfield v. United States ex rel. Goldsby, 211 U.S. 249 (1908) (another man seeking membership to Chickasaw Nation through mandamus called a relator); Louisiana ex rel. Hubert v. Mayor and Council of New Orleans, 215 U.S. 170 (1909) (receiver of a police department seeking mandamus to compel the city of New Orleans to assess a tax to satisfy a debt called a relator); United States ex rel. Creary v. Weeks, 259 U.S. 336 (1922) (Army veteran seeking reinstatement of rank through mandamus called a relator).

62 Supervisors v. United States, 85 U.S. 71, 77 (1873). "The relator had done all in his power to make his application effectual, and had a right to consider it properly before the commissioner." Commissioner of Patents v. Whiteley, 71 U.S. 522, 533 (1867).

63 People ex rel. Dixon v. Shaw, 13 Ill. 581, 584 (Ill. 1852).

Consider, The State v. Justices, etc., of Middlesex, 1 N.J.L. 244 (Sup.Ct. 1794) (overturned on grounds other than its statement of the common law), where a New Jersey court entered a writ of prohibition on behalf of various concerned citizens on a contested election.[64] In this challenge to an election, the New Jersey court stated it had the power, "to interfere in all cases, where either an individual, or a collection of persons have sustained any injury."[65]

> "Where the injury is extensive, and involves any considerable portion of the community, it is better to take up the business in gross . . . The reason is [that] the power is necessary for the preservation of the peace of the community."[66]

---

64 The State v. Justices, etc., of Middlesex, 1 N.J.L. 244 (Sup.Ct. 1794). "New Jersey was the first state to report an election contest, *The State v. Justices, etc., of Middlesex*, 1 N.J.L. 244 (Sup.Ct. 1794), which was ultimately overturned by the Governor and Privy Council." In Re General Election, 255 N.J.Super. 690, 697 (N.J. Law Div. 1992).

65 The State v. Justices, etc., of Middlesex, 1 N.J.L. 244, 247 (Sup.Ct. 1794).

66 The State v. Justices, etc., of Middlesex, 1 N.J.L. 244, 250 (Sup.Ct. 1794). *See Also*, Avant v. Clifford, 67 N.J. 496, 520-521 (1975), stating, "Our judicial system has historically been vested with the comprehensive prerogative writ jurisdiction which it inherited from the King's Bench; that jurisdiction has been frequently exercised in the supervision of inferior governmental tribunals including administrative agencies. See the very early cases of *State v. Justices, &c., of Middlesex,* 1 *N.J.L.* [*]244 (*Sup. Ct.* 1794), where Chief Justice Kinsey described the jurisdiction 'as unlimited and universal as injustice and wrong can be'." Id.

Public rights cases during that time usually turned on a disputed legal right involved, particularly in mandamus proceedings.

> [W]here the object is the enforcement of a public right, the People are regarded as the real party, and the relator need not show that he has any legal interest in the result. *It is enough that he is interested, as a citizen, in having the laws executed, and the right in question enforced.*[67]

That the government could intervene and prosecute the action did not necessarily prevent the action from prosecution by relators during this early era.[68]

---

67 Pike County Comm'rs v. People ex rel. Metz, 11 Ill. 202, 207-208 (Ill. 1849) (emphasis added). *See Also*, Couey v. Atkins, 355 P. 3d 866, 888 (Or. 2015) further explaining *Pike* and stating, "In the latter case, the authorities required no such showing; as with the English authorities, American courts recognized that strangers with no particular personal interest could bring such actions to vindicate public rights." Id. *And See*, People ex rel. Case v. Collins, 19 Wend. 56, 56 (N.Y. Sup. Ct. 1837), stating, "In the matter of a *public right*, any citizen of the state may be a *relator* in an application for a mandamus, (where that is the appropriate remedy,) to enforce the execution of the common law or of an act of the legislature; it is otherwise in cases of *private* or *corporate rights*." Id. (emphasis in original).

68 "There are many other cases in the books moved by private persons, which were yet founded on matters of as general and public a nature as those presented by the case at bar. No doubt the attorney-general might very properly have moved in this case, and had all private citizens refused to interfere and give information, it -might have been necessary; but I cannot collect from any of the books or the reason of the thing that he alone has power to move. It is not for the defendants to objéct.

And in Union Pacific R. Co. v. Hall, 91 U.S. 343 (1876), this Court openly found that the plaintiffs in that case, "had no interest other than such as belonged to others engaged in employments like theirs, and the duty they seek to enforce by the writ is a duty to the public generally."[69] The modern standing doctrine would find this case void for want of federal jurisdiction.

My conclusion is that the current injury in-fact requirement is entirely a doctrine of prudence and conservation of judicial resources, gaining force in the 1900s.[70] However, **at the time the Constitution was ratified**, what our Constitution refers *to as a case or controversy*, was simply understood to be a dispute regarding the correct parties named under Article III or a dispute involving the laws of the United States.[71]

---

that several responsible relators appear in the matter." People ex rel. Case v. Collins, 19 Wend. 56, 56 (N.Y. Sup. Ct. 1837).

[69] Union Pacific R. Co. v. Hall, 91 U.S. 343, 354 (1876). *See Also*, Marvin v. Trout, 199 U.S. 212, 225 (1905) stating, "Statutes providing for actions by a common informer, who himself had no interest whatever in the controversy other than that given by statute, have been in existence for hundreds of years in England, and in this country ever since the foundation of our Government." *And See*, Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 Stan. L. Rev. 1371, 1406 (1988).

[70] In Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992), this Court explained that some elements of standing are based on prudential limitations.

[71] "The judicial power of the United States, as defined in the constitution, is dependent, 1st. On the nature of the case; and, 2d. On the character of the parties." Bank of United States v. Deveaux, 9 U.S. 61, 85 (1809).

During the time our Constitution was ratified and throughout the 1800s, our state and federal common law contained disputes that involved public rights, private rights, and informer/qui tam actions. While there were undoubtedly plaintiffs in federal court vindicating their own personal injuries, there isn't enough historical support to find that the Framers of the Constitution sought to exclude parties who were asserting public rights or private rights with generalized injuries or no injury in-fact.

If we are bound by the historical record, then the standing doctrine must be adjusted or at least clarified. The historical method of interpreting the Constitution does not support the conclusion that a highly particularized injury is in fact an Article III case or controversy requirement. The injury in-fact requirement is actually prudential and should be determined by the abuse of discretion standard.

I now turn to specific errors made by the lower courts in this case, which are wrong even within the current standing doctrine.

II. Under the Plain Language of 44 U.S.C. § 3563 (and Policy Directive No. 1), the American Public Has a Legal Right to Relevant, Objective, and Accurate Statistical Information

I alleged that I had a legal right to accurate, relevant, and objective statistical information by 44 U.S.C. § 3563 and Policy Directive No. 1.[72] The

---

[72] Neither the district court nor the Eleventh Circuit reviewed Statistical Policy Directive No. 1 as a basis for a valid informational injury, though I raised the issue to both courts. Policy Directive No. 1 gives the American public the legal right to accurate, relevant, objective, and timely statistical information. See Generally, *Statistical Policy Directive No. 1:*

district court never decided on this issue, one way or the other. This Court should entertain the petition for certiorari to explain the agency obligations and the public rights under this fairly new law.[73] To my knowledge, the Eleventh Circuit's opinion is the first to review the law, but the Eleventh Circuit's opinion on the matter is incorrect.

Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 Fed. Reg. 71609, 71610-71615 (December 2, 2014). This Court has previously explained that an agency can impose restrictions upon itself which bind the agency. INS v. Yueh-Shaio Yang, 519 U.S. 26, 32 (1996). *See Also*, Vitarelli v. Seaton, 359 U.S. 535, 546-547 (1959) (Frankfurter, J., concurring in part and dissenting in part). The American public's right to uncompromised statistical information is within the zone of interests the policy is designed to protect. *See*, Bennett v. Spear, 520 U.S. 154, 163 (1997) (explaining the zone of interests as applied to the APA). In a January 2022 report published by the current administration, the Scientific Integrity Fast-Track Action Committee stated the following: The American public **has the right** to expect from its government **accurate** information, data, and evidence[.] *Protecting The Integrity Of Government Science*, A Report by the Scientific Integrity Fast-Track Action Committee of the National Science and Technology Council, published January 2022, available here: https://www.whitehouse.gov/wp-content/uploads/2022/01/01-22-Protecting_the_Integrity_of_Government_Science.pdf

[73] 44 U.S.C. § 3563 was a part of the *Foundations for Evidence-Based Policymaking Act of 2018* and signed into law by President Trump on January 14, 2019. Nonetheless, Section 3563 is a codification of an older agency policy, Policy Directive No. 1, which itself based on a federal statistical manual called, *Principles and Practices for a Federal Statistical Agency: Fifth Edition* (2013), available online here: https://nap.nationalacademies.org/read/18318/chapter/1

The Eleventh Circuit determined that I did not plausibly state an injury under 44 U.S.C. § 3563 for three reasons:

First, the Eleventh Circuit reasoned that § 3563 was only designed for "intragovernmental sharing of information rather than the sharing of information between the government and the public."[74]

Second, the Eleventh Circuit decided that § 3563 contains no specific disclosures narrowing the type of information the public is supposed to receive.[75]

Third, the Eleventh Circuit decided that, because § 3563 does not contain a private right of action to obtain the information, no right to information exists.

The Eleventh Circuit is incorrect on all accounts.

The idea that Congress passed § 3563 just for intragovernmental sharing of information is contradicted and unsupported by the plain language of the statute. As previously stated, § 3563 is a codification of Policy Directive No. 1.

The definition of "relevance" is nearly identical in both law and policy, except that § 3563(d)(4) includes the modifier, "likely," to further cement that the information is designed not just for the government but for *private sector data users*, in other words, the public.[76]

---

[74] App. 9.

[75] App. 9.

[76] Compare *relevant* as defined in *Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units*, 79 Fed. Reg. 71609, 71614 (December 2, 2014) with 44 U.S.C. § 3563(d)(4).

Second, the White House has admitted that the Evidence Act was designed to increase the quality of statistical information delivered to the public. "[T]he Evidence Act mandates a systematic rethinking of government data management to better facilitate access for evidence-building activities *and public consumption*."[77]

Third, the word *disseminate* typically means "to spread abroad"[78] or "to disperse."[79] Congress did not limit the term disseminate to only mean, *to disperse or spread to another federal agency*, indicating that this information is to be widely disseminated to the American public at large.

Fourth, the specific disclosures modifying the type of information the public is entitled to, are on the face of the text. The government cannot disseminate just any statistical information. The government must disseminate, *accurate*,[80] *relevant*,[81] and *objective* statistical information.[82]

---

[77] *Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Leaming Agendas, Personnel, and Planning Guidance*, OMB Memorandum M-19-23, dated July 10, 2019 (emphasis added), available here: https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf

[78] https://www.merriam-webster.com/dictionary/disseminate; First definition listed under the word, "disseminate."

[79] https://www.merriam-webster.com/dictionary/disseminate; Second definition listed under the word, "disseminate."

[80] 44 U.S.C. § 3563(d)(1).

[81] 44 U.S.C. § 3563(d)(4).

[82] 44 U.S.C. § 3563(d)(3).

Fifth, the government must disseminate accurate, objective, and relevant information to the public because Congress removed the agencies' discretion by including a word of command in the statute, "shall."[83] "[T]he word 'shall' is ordinarily 'the language of command'."[84]

Sixth, Article III standing is not equal to a private right of action. A federal law that grants a private right of action to enforce an injury is an indication of some legal entitlement, but it is not the *sine qua non* of an injury-in-fact under our Constitution.[85] There is some confusion about this in other courts also.[86] A litigant could have an Article III injury but not have a claim under our jurisprudence. The invasion or degradation of a federally protected right is a valid Article III injury.

---

83 44 U.S.C. § 3563(a)(1).

84 Alabama v. Bozeman, 533 U.S. 146, 153 (2001). When Congress chooses to denote discretion and not a mandatory obligation, Congress uses the term, *may*. "The use of the word 'may' in section 1225(b)(2)(C) thus makes clear that contiguous-territory return is a tool that the Secretary 'has the authority, but not the duty,' to use." Biden v. Texas, Case No. 21-954, 597 U.S. ___ (2022), Page 13, ¶1 (June 30, 2022) (referencing Lopez v. Davis, 531 U. S. 230, 241 (2001)).

85 *See*, Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 239 (1969), (finding that the plaintiffs/respondents in Bell v. Hood, 327 U.S. 678 (1946) alleged the violation of a statute that did not provide a remedy but nonetheless had standing).

86 See, Ohio Stands Up! v. U.S. Dep't HHS, Case No. 3:20-cv-02814, Docket Entry 35, Page 11 (N.D. Ohio September 28, 2021) (incorrectly finding that a party bringing an APA claim to protect/enforce a statutory right must have a cause of action outside of the APA).

The Eleventh Circuit recently concluded this but disregarded their most recent precedent. "A person can suffer an injury from the unsightly nature of private property under well-settled tort law, even if he cannot always prevail on his underlying claim."[87] "M. L. Cross, Annotation, *Spite Fences and Other Spite Structures*, 133 A.L.R. 691 (1941) (explaining the general rule that a useful structure does not give rise to a cause of action even though 'it causes injury to another by interfering with the view'."[88] *This Court* has never ruled that a federal law *must* contain a private right of action in order for a person to have an Article III injury.

"Still, the question whether a plaintiff states a claim for relief *'goes to the merits'* in the typical case, not the justiciability of a dispute, id., at 92, and conflation of the two concepts can cause confusion."[89]

"What makes a harm concrete for purposes of Article III? As a general matter, the Court has explained that 'history and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider."[90] "And with respect to the concrete-harm requirement in particular, this Court's opinion in *Spokeo v. Robins* indicated that courts should assess whether the alleged

---

87 Fraser v. Sea Island Acquisition, 26 F. 4th 1235, 1243 (11th Cir. 2022).

88 Fraser v. Sea Island Acquisition, 26 F. 4th 1235, 1243 (11th Cir. 2022) (emphasis added).

89 Bond v. US, 131 S. Ct. 2355, 2262 (2011) (emphasis added).

90 Transunion LLC v. Ramirez, 141 S. Ct. 2190, 2204 (2021).

injury to the plaintiff has a 'close relationship' to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts."[91]

The Administrative Procedure Act, 5 U.S.C. §702, is my private right of action (along with Public Law 105-119, Title II, § 209, which I perceive to be a private right of action independent of the APA).[92] Congress is well-aware that where an agency violates the Constitution, federal law, or its own policies, a plaintiff can seek judicial relief through the APA. "Congress rarely intends to prevent courts from enforcing its directives to federal agencies. For that reason, this Court applies a 'strong presumption' favoring judicial review of administrative action." Mach Mining, LLC v. EEOC, 575 U.S. 480, 489 (2015).

"Thus the Administrative Procedure Act grants standing to a person 'aggrieved by agency action within the meaning of a relevant statute.' 5 U. S. C. § 702 (1964 ed., Supp. IV)."[93] "We have thus interpreted § 702 as requiring a litigant to show, at the outset of the case, that he is injured in fact by agency action and that the interest he seeks to vindicate is arguably within the 'zone of interests to be protected

---

91 Transunion LLC v. Ramirez, 141 S. Ct. 2190, 2204 (2021).

92 The law authorizes an "aggrieved person" the right to bring a cause of action in district court. Public Law 105-119, Title II, § 209(b/d/e).

93 Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153-154 (1970).

or regulated by the statute' in question."[94] The zone of interests tests governs whether I have an enforceable injury.[95]

In my brief to the Eleventh Circuit, I explained that an APA claim enforcing § 3563 is like the common law claim of negligent misrepresentation, because the public is relying on the statistical information disseminated by the agencies to be accurate, relevant, timely, and objective. Yet as it stands, the agencies are disseminating bad statistical information, and harming members of the public, like myself, who are relying on the information to be good, trustworthy, and true.

I am in the zone of interests § 3563 is attempting to protect because the statute is designed to protect the public from receiving compromised statistical information. This gives me a legal right that (once invaded) is enforceable in federal court.[96] "There is no other way of expressing the meaning of the legislature but by words; but if the law says one thing,

---

94 Director, Office of Workers Compensation Programs, Department of Labor v. Newport News Shipbuilding & Dry Dock Co., 514 U.S. 122, 127 (1995).

95 American courts have been using the zone of interests test for injuries conferred by statutes since the country's inception. "The true question then is, has the relator Waller brought himself within the act? or in other words, does it appear from the record, that he is a party injured within the words and meaning of the act." Braxton v. Winslow, 1 Va. 31, 1 Wash. 31 (Va. Court of Appeals 1791) (determining the party's injury based on a statute).

96 Osborn v. Bank of United States, 22 U.S. 738, 819 (1824).

and means another, it is rather a trap than any thing else."[97]

For these reasons, the Eleventh Circuit erred in finding no informational injury was plausibly alleged under 44 U.S.C. § 3563 (as enforced by the APA or Public Law 105-119, Title II, § 209).

III. The Eleventh Circuit Avoided Finding a Plausibly Stated Injury by Theorizing an Alternative Remedy for Attorneys That Will Not Receive Accurate Census Race Data, a Theory Which Was Outside the Facts of the Complaint and Purely Theoretical

Regardless if the current standing doctrine is jurisdictional or not, the doctrine is proving to be ever difficult to uniformly and fairly apply when combined with the plausibility requirements of *Twombly*[98] and *Iqbal.*[99] Indeed, some of our federal judges have openly argued that the standing doctrine has gone completely off the rails.[100]

---

97 Harrison v. Sterett, 4 H. & McH. 540, 546 (Prov.Ct. Md. April 1774) (cleaned up).

98 Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007).

99 Ashcroft v. Iqbal, 556 U.S. 662 (2009).

100 Sierra v. City of Hallandale Beach, Florida, 996 F. 3d 1110, 1117 (11th Cir. 2021) (Newsom, J., concurring). The Honorable Judge Newsom also argued that in most cases (excluding fraud or harm to government property), the federal government suffers no particularized, concrete injury when prosecuting crimes. Id. at 1126. He's not alone in this belief. "As Professor Hartnett notes, criminal prosecutions brought by the United States are universally acknowledged to be 'Cases' within the meaning of Article III. But federal crimes usually do not inflict any particularized injury upon the United States." *Does History Defeat Standing Doctrine?* Woolhandler, Ann;

After the Census Bureau released the results of the 2020 U.S. Census data, the agency disclosed that the data was inaccurate.[101] Because the merits of the case are foreclosed by agency admission, the Eleventh Circuit declined to find an injury by theorizing an alternative remedy for civil rights organizations or lawyers like myself receiving bad census data.[102]

The Eleventh Circuit's conclusion stands directly opposite this Court's decision in FEC v. Ted Cruz for Senate, Case No. 21-12, Pages 5-6, 596 U.S.____(May 16, 2022), where this Court explicitly found that federal courts cannot create alternative remedies to

---

Nelson, Caleb. Michigan Law Review; Ann Arbor Vol. 102, Iss. 4, Page 695, ¶2 (Feb 2004). There is also a split of opinion on how to deal with statutorily granted rights cases, and whether plaintiffs bringing statutory rights need to allege downstream consequences. For example, the plaintiffs in Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982) also had informational injuries but at least one circuit court judge found that the plaintiffs in *Havens* did not allege or plead any downstream consequences. Laufer v. Arpan LLC, 29 F. 4th 1268, 1282 (11th Cir. 2022) (Jordan, J., concurring). The Honorable Justice Jordan also found a split of authority within the circuits on this unclear requirement. Id. Likewise, the plaintiffs in FOIA cases do not usually plead personal particularized injuries with downstream consequences. For example, *See*, Federal Open Market Committee v. Merrill, 443 U.S. 340 (1979).

101 *What 2020 Census Results Tell Us About Persisting Problems with Separate Questions on Race and Ethnicity in the Decennial Census*, U.S. Census Bureau, published May 6, 2022, available here: https://www2.census.gov/about/partners/cac/nac/meetings/2022-05/presentation-what-2020-census-results-tell-us.pdf

102 App. 5, ¶2. The Eleventh Circuit did not explain where this more accurate data can be found, making their proposed remedy not only outside the facts of the complaint, but also purely theoretical.

an Article III injury outside the facts of the complaint, especially during the pleading stage on a motion to dismiss.[103]

There is no greater enemy to a well-informed society than pervasive misinformation.[104] I find the Eleventh Circuit's decision to inadvertently be a *poison pill* for our democracy. Federal courts should not incentivize the government into producing and disseminating misleading, inaccurate, compromised statistical information, especially when the law requires the exact opposite.

This Court should not be surprised and fully expect for our government to slowly go *off-the-rails* by giving the American people *compromised* statistical information. It is entirely foreseeable for bad actors, driven by self-motivated interests, to manipulate statistical data for their own purposes. Our democracy cannot make good decisions with bad data. Americans should not be victimized by being forced to receive compromised data (without a remedy) if the disclosure of that misinformation is based on an arbitrary agency decision. If federal law and

---

103 Warth v. Seldin, 422 U.S. 490, 502 (1975).

104 "Men who are at a distance from the source of information must rely almost altogether on the accounts they receive from others . . . Such being unquestionably the case, can it be tolerated in any civilized society that any should be permitted with impunity to tell falsehoods to the people, with an express intention to deceive them, and lead them into discontent, if not into insurrection, which is so apt to follow . . . in a republic more is dependent on the good opinion of the people for its support, as they are, directly or indirectly, the origin of all authority . . . Take away from a republic the confidence of the people, and the whole fabric crumbles into dust[.]" Case of Fries, 9 F. Cas. 826, 838-839 (C.C.D. Pa. 1799).

internal agency policies are designed to protect us from such injuries, the courts should honor that Congressional and agency intent.

IV. Claims Under Pub. L. No. 105-119, Title II, § 209(b) Are Not Limited to Purely Constitutional Challenges to the Apportionment of Congressional Districts

The Eleventh Circuit did not comment on whether the district court correctly denied my request for a three-judge panel under Public Law 105-119, Title II, § 209. The district court denied the request because it found that a three-judge panel shall only be assembled if a party is "challenging the constitutionality of the apportionment of congressional districts," as stated under 28 U.S.C. § 2284(a).[105]

The district court committed clear error for two reasons.

First, a claim under Public Law 105-119, Title II, § 209 is not limited to a pure constitutional challenge to Congressional reapportionment. A Section 209 claim is justiciable if a party is challenging a statistical method[106] used in a decennial census that also violates "any provision of law."[107] The *any provision of law* language means federal law or federal agency regulation, not just the Constitution.[108] In the district court, I explained that the

---

105 App. 38, § 2. *See Also*, App. 47, §2.

106 Utah v. Evans, 536 U.S. 452, 462-463 (2002).

107 Pub. L. 105-119, Title II, § 209 (b).

108 "Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise[.]" Reiter v. Sonotone Corp., 442

1997 OMB race and ethnicity categories corrupted the statistical race imputation process[109] so that the 2020 U.S. Census was degraded and inaccurate in violation of Policy Directive No. 1 and 44 U.S.C. § 3563(a). I also explained that this would necessarily change the lines of my Congressional district, since Congressional districts are drawn using the race and ethnicity census redistricting data.[110] Therefore, I had an adequate § 209 claim that should have been heard by a three-judge panel.

Second, the district court judge made a substantive ruling on the merits of a § 209 claim without a three-judge panel. This was improper under Public Law 105-119, Title II, § 209(e)(1).[111] "A judgment is on the merits if the underlying decision actually passes directly on the substance of a particular claim

---

U.S. 330, 338-339 (1979). *See Also*, Garcia v. United States, 469 U.S. 70, 73 (1984), US v. Woods, 134 S. Ct. 557, 567 (2013), Loughrin v. US, 134 S. Ct. 2384, 2390 (2014), and Encino Motorcars, LLC v. Navarro, 138 S. Ct. 1134, 1137 (2018). Agency regulations have the force of law. United States v. Mead Corp., 533 U.S. 218, 230 (2001).

109 This is an as-applied challenge to the process of statistical imputation, which infers information from a missing or blank census form. https://www.census.gov/newsroom/blogs/random-samplings/2021/04/imputation-when-households-or-group-quarters-dont-respond.html

110 *Decennial Census P.L. 94-171 Redistricting Data*, U.S. Census Bureau, last revised September 16, 2021, available here: https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html

111 Public Law 105-119, Title II, § 209(e)(1). *See Also*, 28 U.S.C. § 2284(b)(3), stating, "A single judge shall not . . . enter a judgment on the merits." Id.

before the court."[112] The district court interpreted Public Law 105-119, Title II, § 209(b) without the panel, and decided that I did not have a valid claim. That is impermissible under our three-judge panel law,[113] and Public Law 105-119, Title II, § 209(e).

This Court should require the district court to assemble a panel of three-judges in this case.

CONCLUSION

This Court should accept this petition for certiorari to review the decisions of the Eleventh Circuit and the Southern District of Florida, even if only by summary disposition.

Respectfully submitted,

Michael Van Cleve, Law

Michael Van Cleve, Esq.

99 NW 183rd Street

Room 242B

North Miami Beach, FL 33169

Phone: (786) 309-9043

Email: michael@michaelvanclevelaw.com

Pro se Litigant

---

[112] Brownback v. King, 141 S. Ct. 740, 748 (2021).

[113] Shapiro v. McManus, 136 S. Ct. 450, 455 (2015). 28 U.S.C. § 2284(a) is implicated because Public Law 105-119, Title II, § 209 is an independent Act of Congress where three judges are required, as stated in § 2284(a).