No. 22-65

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 REHEARING

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

On May 24, 2022, the Eleventh Circuit affirmed the district court's decision to dismiss my case for lack of Article III standing. The circuit court cited TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2214 (2021), explaining that the informational injuries expressed in Public Citizen v. U.S. Department of Justice, 491 U.S. 440 (1989) and Federal Election Commission v. Akins, 524 U.S. 11 (1998), do not apply without public disclosure laws. On July 21, 2022, I appealed that decision in a petition for writ of certiorari. After my petition was filed, the Eleventh Circuit issued Hunstein v. Preferred Coll. & Mgmt. Serv., Case No. 19-14434 (11th Cir. September 8, 2022) (en banc), creating a 7-1 circuit court split on the proper interpretation of *TransUnion LLC*. The questions presented are:

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

2. Should Congress enact a statute that targets the same kind of harm that a common-law claim addressed, but permit protected parties to deviate even one degree from a single element of that common-law forebear, will Congress overstep its constitutional authority?

3. Does *TransUnion LLC* undermine or violate the separation of powers doctrine by removing the constitutional authority of Congress to create and define rights?

4. Is *TransUnion LLC* in conflict with *Public Citizen* and *Akins and* Federal Open Market Committee v. Merrill, 443 U.S. 340 (1979)?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

U.S. Supreme Court

U.S. Circuit Court

TABLE OF AUTHORITIES—Continued

Introduction

I, Michael Van Cleve, respectfully petition for a rehearing of an order denying a petition for writ of certiorari to review the judgment of the Eleventh Circuit United States Court of Appeals. This petition is filed pursuant to Sup. Ct. R. 44(2). Neither the parties nor the orders on review have changed since the original petition of writ of certiorari was filed. However, the Eleventh Circuit's decision in Hunstein v. Preferred Coll. & Mgmt. Serv., Case No. 19-14434 (11th Cir. September 8, 2022) (en banc) presents intervening circumstances not previously presented.

Grounds for Rehearing - Standard

Rehearing of a denied petition for certiorari is controlled by Sup. Ct. R. 44(2). A petitioner should present, "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented."[1] A new circuit court conflict is considered an intervening circumstance.[2]

---

[1] Sup. Ct. R. 44(2). *See Generally*, White v. Texas, 310 U.S. 530, 533 (1940), on questions not previously presented.

[2] "Certiorari was granted in No. 11, on petition of the Custodian, to resolve a conflict between the judgment below and that in *Clark v. Lavino & Co.*, 175 F. 2d 897 (C. A. 3d Cir.)." McGrath v. Manufacturers Trust Co., 338 U.S. 241, 242-243 (1949). *See Also*, Stone v. White, 301 U.S. 532, 533 (1937), stating, "We granted certiorari because of the conflict of the decision below with that of the Court of Appeals for the Third Circuit, *United States v. Arnold*, 89 F. (2d) 246." Id. *And See*, Sanitary Refrigerator Co. v. Winters, 280 U.S. 30, 43, footnote 1 (1929), stating, "In the Sanitary case the petition for the writ of certiorari was filed before the decree of the Circuit Court of Appeals for the Third Circuit in the Dent case had been handed

However, this Court has also granted rehearing upon the clarification of serious constitutional questions of public importance.[3]

Reasons for Granting Rehearing in This Case

I. The Eleventh Circuit Created a Circuit Court Split on the Proper Application of TransUnion LLC

In *TransUnion LLC*, this Court stated, "To be sure, the concrete-harm requirement can be difficult to apply in some cases."[4] Those words have become a prophecy. Although this Court laid out a test stating that a litigant need only explain why a statutory cause of action bears a resemblance to a historically recognized common-law claim, in *Hunstein*,[5] the majority of the Eleventh Circuit determined that a litigant must lay out a statutory claim that is virtually identical to a common-law claim, in opposition to the rulings of several other circuits.[6] The result is a

---

down; and was then denied. 278 U.S. 599. But after the handing down of that opinion, showing the conflict as to the question of infringement, was brought to our attention by a petition for rehearing, the certiorari was granted." Id.

3 State of Florida v. Rodriguez, 469 U.S. 1, 2 (1984).

4 TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2214 (2021).

5 Hunstein v. Preferred Coll. & Mgmt. Serv., Case No. 19-14434 (11th Cir. September 8, 2022) (en banc).

6 "Although it dutifully recites the Supreme Court's reassurance that an intangible-injury plaintiff needn't exactly duplicate a common-law cause of action to demonstrate Article III standing, the majority nonetheless insists that all elements essential to liability under the comparator tort must be present." Hunstein v. Preferred Coll. & Mgmt. Serv., Case No. 19-

7-1 circuit court split on how *TransUnion LLC's* common-law analogue test should be properly applied. "In any event, today's majority effectively leaves this Court on the short side of (by my count) a 7-1 circuit split."[7]

This Court should use this case, rather than some future case, to resolve this circuit court conflict on how *TransUnion LLC* should be properly applied. It is also unlikely that some future litigant in the near future will also raise and demonstrate other problems with the standing doctrine (such as the lack of historical support or text for the particularization and concreteness elements of the standing doctrine). I also have unique facts[8] that make this case the

---

14434, Page 11, ¶3 (11th Cir. September 8, 2022) (Newsom, J., dissenting) (cleaned up, internal quotations removed).

[7] Hunstein v. Preferred Coll. & Mgmt. Serv., Case No. 19-14434, Page 26, ¶2 (11th Cir. September 8, 2022) (Newsom, J., dissenting).

[8] For example, I am a lawyer attempting to enforce (through the APA) Congressionally authorized rights given to all members of the public under 44 U.S.C. § 3563, to challenge information disseminated in the U.S. Census, one of the most important tools of our democracy. However, if the standing doctrine prohibits injuries that apply too broadly, why are only public disclosure laws, which can be utilized by *any member of the public*, the only informational claims enforceable under *Akins* and *Public Citizen*? "Article III has never required that an otherwise qualifying injury in fact be shared with others—let alone the general public—before it counts. There is no noscitur a sociis canon for Article III injuries; their existence does not depend on the company they keep." Maloney v. Carnahan, Case No. 18-5305, Page 4, ¶2 (D.C. Cir. August 8, 2022) (en banc) (Millet, J., concurring). Either I am on the wrong side of the standing doctrine (because I am attempting

ideal vehicle to demonstrate when a party has standing, and when they do not.

II. *TransUnion LLC*, New York State Rifle & Pistol Assn, Inc. v. Bruen, 142 S. Ct. 2111 (2022), and Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022) Present Conflicting Views on How to Interpret the Constitution

In *Bruen*,[9] this Court determined that Americans have a constitutional right to carry a handgun outside of their home based on a historical analysis of the second and fourteenth amendments to the Constitution, despite the active problem of gun violence in our country. And in *Dobbs*, this Court held that Americans do not have a constitutional right to abortion based on a historical analysis[10] of the Constitution, despite that right being held and relied on by Americans for decades.

In *TransUnion LLC*, this Court doubled-down on the injury-in-fact and concreteness elements of the standing doctrine. The Court challenged the ability of a litigant to bring a claim without a concrete harm, stating, "Such an expansive understanding of

---

to enforce a public-right rather than an individual right), or I'm exactly the type of case that should have standing under *Akins* and *Public Citizen*.

[9] New York State Rifle & Pistol Assn, Inc. v. Bruen, 142 S. Ct. 2111, 2156 (2022).

[10] "Roe either ignored or misstated this history, and Casey declined to reconsider Roe's faulty historical analysis. It is therefore important to set the record straight." Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228, 2249 (2022).

Article III would flout constitutional text, history, and precedent."[11] However, in my original petition, I explained that neither the constitutional text nor the constitutional history actually requires concreteness or particularization of injury. I'm not the only one who reached this conclusion.

Justice Thomas explained, "[I]t was not until 1970—'180 years after the ratification of Article III'—that this Court even introduced the 'injury in fact' (as opposed to injury in law) concept of standing."[12] Three other Justices from this Court mostly agreed with that opinion.[13] *Dobbs*, *Bruen*, and *TransUnion LLC* create internal conflict from this Court on how best to interpret the Constitution, and no one else other than this Court is going to be able to resolve it. As in State of Florida v. Rodriguez, 469 U.S. 1, 2 (1984), this Court should accept jurisdiction to answer a serious constitutional question. Nothing is more important than the jurisdiction of a court. So long as the standing doctrine is linked to Article III jurisdiction it remains a consistent question that must be resolved over and over again. Americans should know which method we should all be relying on to safely and consistently interpret the Constitution.

---

[11] TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2206 (2021).

[12] TransUnion v. Ramirez, 141 S. Ct. 2190, 2219 (2021) (Thomas, J., dissenting).

[13] TransUnion v. Ramirez, 141 S. Ct. 2190, 2225 (2021) (Kagan, J., dissenting) (joined by Justice Breyer and Justice Sotomayor).

III. *TransUnion LLC* May Unconstitutionally Limit the Authority of Congress to Create and Define Rights

Another criticism of the *TransUnion LLC* opinion is that Congress should constitutionally have the authority to create a define new legal rights.[14] Perhaps there is some limit to that authority, but should Congress truly be limited to only codifying pre-existing, ancient common law rights? "Today's opinion empties the Spokeo/TransUnion 'close relationship' standard of all subtlety, adopts what is, in effect, the very 'exact duplicate' standard that the Supreme Court has forbidden and that we had earlier forsworn, places this Court on the wrong side of a 7-1 circuit split, and, *in the doing, denies Congress any meaningful ability to innovate, leaving it only to replicate and codify existing common-law causes of action.*"[15] "The Court here transforms standing law from a doctrine of judicial modesty into a tool of judicial aggrandizement. It holds, for the first time, that a specific class of plaintiffs whom Congress allowed to bring a lawsuit *cannot do so* under Article III."[16]

Although the standing doctrine is, in theory, designed to protect the doctrine of the separation of

---

[14] TransUnion v. Ramirez, 141 S. Ct. 2190, 2225 (2021) (Kagan, J., dissenting).

[15] Hunstein v. Preferred Coll. & Mgmt. Serv., Case No. 19-14434, Page 38, ¶2 (11th Cir. September 8, 2022) (Newsom, J., dissenting) (emphasis added).

[16] TransUnion v. Ramirez, 141 S. Ct. 2190, 2225 (2021) (Kagan, J., dissenting) (emphasis added).

powers, it may actually undermine the doctrine. "Although the Court in TransUnion invokes separation of powers as the basis for its decision, in reality, the decision undermines separation of powers by greatly constraining congressional power to create judicially enforceable rights."[17]

What's more problematic is that, in actuality, there are quite a few statutorily created rights which have no true common law analog. "Title II of the Civil Rights Act of 1964 prohibits places of public accommodation, hotels and restaurants, from discriminating on the basis of race. There was no common-law prohibition against such racial discrimination nor, sadly, was there any such tradition before the law was adopted. The same could be said of Title VII, which prohibits employment discrimination based on race, sex, or religion."[18] Therefore, *TransUnion LLC*, "undermine[s] the enforcement of many federal civil rights laws because they all recognize harms that tragically were not protected under the common law or historically."[19]

Speaking specifically to informational injuries, most FOIA cases have no common law analog.[20] Federal courts have treated FOIA requests under a

---

17 Erwin Chemerinsky, *What's Standing After TransUnion LLC v. Ramirez*, 96 N.Y.U. L. Rev. Online 269, 272 (2021).

18 Erwin Chemerinsky, *What's Standing After TransUnion LLC v. Ramirez*, 96 N.Y.U. L. Rev. Online 269, 283-284 (2021).

19 Erwin Chemerinsky, *What's Standing After TransUnion LLC v. Ramirez*, 96 N.Y.U. L. Rev. Online 269, 284 (2021).

20 Erwin Chemerinsky, *What's Standing After TransUnion LLC v. Ramirez*, 96 N.Y.U. L. Rev. Online 269, 270 (2021).

different lens than other informational claims. "I cannot find a single case where a federal court has questioned the standing of a person to challenge the denial of a Freedom of Information Act request." But I fail to see the difference between FOIA cases and other informational injuries where no concrete harm occurred.[21] "Plaintiffs' injury is materially identical to an injury any member of the public *could* suffer: the denial of a FOIA request. Indeed, if these Plaintiffs had requested the same information under both FOIA and Section 2954, they would have standing to vindicate that informational injury."[22] But why, when there is no common-law analog or specific concrete injuries associated with these cases?

In Federal Open Market Committee v. Merrill, 443 U.S. 340 (1979), the plaintiff's injuries ***were not* concrete.**

> Respondent, when this action was instituted in May 1975, was a law student at Georgetown University Law Center, Washington, D. C. App. 8. The complaint alleged that he had 'developed a strong interest in administrative law and the operation of agencies of the federal government,' and had formed a desire to study the process by which the FOMC regulates the national money

---

21 Erwin Chemerinsky, *What's Standing After TransUnion LLC v. Ramirez*, 96 N.Y.U. L. Rev. Online 269, 271 (2021).

22 Maloney v. Carnahan, Case No. 18-5305, Page 5, ¶2 (D.C. Cir. August 8, 2022) (en banc) (Millet, J., concurring).

> supply through the frequent adoption of domestic policy directives.[23]

Maloney's complaint never specified what concrete injury he would suffer from if he never received the information that he requested. *TransUnion LLC* would bar this complaint, and many other FOIA cases in kind if applied uniformly. On September 29, 2022, a Fifth Circuit Judge issued a concurring opinion reaching a similar conclusion.[24]

The plaintiffs in Public Citizen v. U.S. Department of Justice, 491 U.S. 440 (1989) and Federal Election Commission v. Akins, 524 U.S. 11 (1998) fare no better. In fact, in *Public Citizen*, this Court stated, "Our decisions interpreting the Freedom of Information Act have never suggested that those requesting information under it need show more than that they sought and were denied specific agency records."[25] And in *Akins*, this Court explained that Article III standing is satisfied only because the statute said the plaintiffs are entitled to receive the information, not because the plaintiffs identified any true indispensable need for the information in the real world.[26]

---

[23] Federal Open Market Committee v. Merrill, 443 U.S. 340 (1979).

[24] Campaign Legal Center v. Scott, Case No. 22-50692, Pages 15-16, (5th Cir. September 29, 2022) (Ho, J., concurring).

[25] Public Citizen v. U.S. Department of Justice, 491 U.S. 440, 449 (1989).

[26] Federal Election Comm'n v. Akins, 524 U.S. 11, 21 (1998).

To clarify whether Congress does have the authority (or not) to create rights outside pre-existing common law rights, and to clarify whether *TransUnion LLC* runs afoul the separation of powers, this Court should accept jurisdiction to help answer these questions, for clarity and uniformity within our circuits. This is also "a constitutional question of great public importance."[27]

CONCLUSION

This Court should accept this petition for rehearing to review the decisions of the Eleventh Circuit and the Southern District of Florida in light of circuit conflict and because the questions presented are matters of great constitutional concern.

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

---

[27] McCulloch v. Maryland, 17 U.S. 316, 4 Wheat. 159, 213, footnote 1 (1819).

Rule 44.2 Certificate

I certify that my petition for the rehearing of an order denying a petition for a writ of certiorari contains is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. *See Generally*, Hunstein v. Preferred Coll. & Mgmt. Serv., Case No. 19-14434 (11th Cir. September 8, 2022) (creating a 7-1 circuit split on the application of TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2214 (2021)). This petition is restricted to the grounds specified in this paragraph and this petition is presented in good faith and not for delay.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/s/Michael Van Cleve (Dated November 3, 2022)

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

MICHAEL VAN CLEVE, LAW
Michael Van Cleve, Esq.
Miami Gardens Office
Room 242B
99 NW 183rd Street
North Miami Beach, Florida 33169

ADMITTED:
*State of Florida
*Southern District of Florida – Federal Court

Telephone: (786) 309-9043
www.michaelvanclevelaw.com
michael@michaelvanclevelaw.com

THE PROFESSIONS LISTED BELOW ARE MERELY TO STATE PREVIOUSLY HELD BRANCHES/JOBS BY MICHAEL VAN CLEVE, ESQ. NOTHING IN THE CONTENTS OF THIS LETTER REFLECT THE OPINION OR ENDORSEMENT OF THE UNITED STATES DEPARTMENT OF DEFENSE, THE UNITED STATES ARMY, THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL CORPS, THE UNITED STATES ARMY ADJUTANT GENERAL CORPS, OR ANY GOVERNMENT ENTITY.

* Former (Mobilized) Judge Advocate General, U.S. Army
* Former Adjutant General, U.S. Army

Tuesday, November 08, 2022

Scott C. Harris, Clerk of Court for the United States Supreme Court
United States Supreme Court
1 First Street, NE
Washington, DC 20543
Attention: Clerk Sara Simmons

Michael Van Cleve v. Gina Raimondo, Secretary of Commerce, et al.
Case Number: 22-65
On a Petition for Rehearing of an Order Denying a Petition for Writ of Certiorari

RE: Enclosed Filing Fee for Corrected Petition for Rehearing

To Whom It May Concern:

On July 21, 2022, I filed a timely petition for writ of certiorari with the Court, appealing an Eleventh Circuit Court order and opinion that was issued on

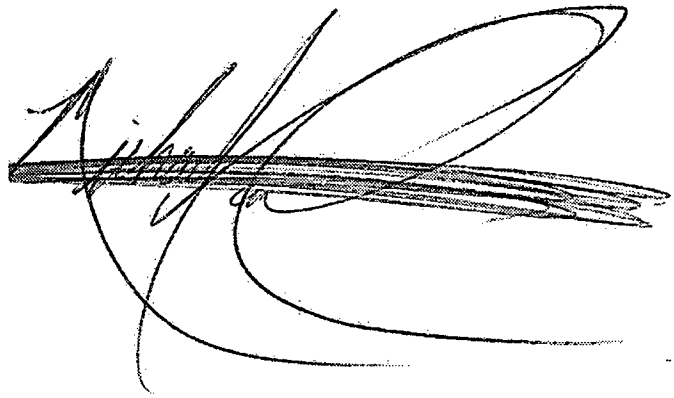
May 24, 2022. On October 3, 2022, the Supreme Court denied my petition. However, on October 28, 2022, I filed a timely petition for rehearing of that decision (the petition was postmarked by a third-party carrier on October 28, 2022).

On November 1, 2022, you acknowledged that the petition for rehearing was timely, but you requested that I correct my Rule 44 certificate to be in compliance with the Court's rules. You gave me 15 days from the date of your November 1, 2022 letter, November 16, 2022, to correct my petition.

Currently, you are in possession of my corrected petition for rehearing; however, the docketing of the petition is pending your receipt of the $200 filing fee. I was instructed by Sara Simmons to send you the $200 filing fee before November 16, 2022, so that you could docket the petition for rehearing.

Enclosed, please find the $200 filing fee. Please let me know if you need anything else from me and I will respond to you immediately and without delay. You may reach me at (786) 309-9043

Very Respectfully,



By_____
/s/Michael Van Cleve, Esq.
Florida Bar Number 89413
Pro Se Litigant