

No. _____

In the
Supreme Court of the United States

WISCONSIN VOTER ALLIANCE, *et al.*,
Petitioners,

v.

DON M. MILLS, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Help America Vote Act (HAVA), 52 U.S.C. §§ 20901–21145, creates federal rights enforceable by private litigants through 42 U.S.C. § 1983, or otherwise, a question that has deeply divided the federal courts of appeals and resulted in a state-by-state checkerboard of HAVA election law enforcement.

2. Whether a state’s total deprivation of HAVA-mandated administrative procedures, hearings, and remedies constitutes a concrete Article III injury-in-fact, or whether such a deprivation is merely a bare procedural violation that precludes federal judicial review of state election administration.

PARTIES TO THE PROCEEDINGS

The Petitioners are the Wisconsin Voter Alliance, a non-stock corporation; Ron Heuer, an individual and President of the Wisconsin Voter Alliance; and, Kenneth Brown, an individual and member of the Wisconsin Voter Alliance. Heuer and Brown are also Wisconsin voters.

The Respondents are members of the Wisconsin Elections Commission (WEC) and the Administrator, in their official capacities:

Don M. Millis, Commissioner;
Robert F. Spindell, Jr., Commissioner;
Marge Bostelmann, Commissioner;
Ann S. Jacobs, Commissioner;
Mark L. Thomsen, Commissioner; and
Megan Wolfe, Administrator.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Wisconsin Voter Alliance states that it is a non-stock, nonprofit corporation. It has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

RELATED PROCEEDINGS

Wisconsin Voter Alliance, et al. v. Don M. Millis, et al.,
No. 25-1279 (7th Cir. Feb. 10, 2026), affirming
judgment.

Wisconsin Voter Alliance, et al. v. Don M. Millis, et al.,
No. 1:23-cv-01416-WCG (E.D. Wis. Jan. 31, 2025),
dismissing case for lack of standing.

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OPINIONS BELOW

The U.S. Court of Appeals for the Seventh Circuit opinion is reported at 166 F.4th 627 and is included in the Appendix at App.A.

The U.S. District Court for the Eastern District of Wisconsin decision and order is available at 764 F.Supp.3d 793 and is included in the Appendix at App.D.

JURISDICTION

The U.S. Court of Appeals for the Seventh Circuit judgment was entered on February 10, 2026. This Petition for a Writ of Certiorari is filed within 90 days of that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution provides, in relevant part: “Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.”

The Help America Vote Act (HAVA), at 52 U.S.C. § 21112, requires states to establish administrative complaint procedures to remedy grievances of HAVA violations, stating in relevant part:

(a) Establishment of State-based administrative complaint procedures to remedy grievances

(1) Establishment of procedures as condition of receiving funds

Each State that receives payment under this chapter shall be required to establish and maintain State-based administrative complaint procedures....

(2) Requirements for procedures...

(A) The procedures shall be uniform and nondiscriminatory.

(B) Under the procedures, any person who believes that there is a violation of any provision of subchapter III (including a violation which has occurred, is occurring, or is about to occur) may file a complaint...

(E) At the request of the complainant, there shall be a hearing on the record.

(F) If... the State determines that there is a violation... the State shall provide the appropriate remedy...

(G) If... the State determines that there is no violation, the State shall dismiss the complaint....

(H) The State shall make a final determination... prior to the expiration of the 90-day period....

HAVA, at 52 U.S.C. § 21111, authorizes the Attorney General to bring HAVA enforcement lawsuits against state and local election officials:

The Attorney General may bring a civil action against any State or jurisdiction in an appropriate

United States District Court for such declaratory and injunctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and nondiscriminatory election technology and administration requirements under sections 21081, 21082, 21083, and 21083a of this title.

Wisconsin Statutes § 5.061 titled “Compliance with federal Help America Vote Act” provides for HAVA administrative complaints in relevant part:

(1) Whenever any person believes that a violation of Title III of P.L. 107-252 has occurred, is occurring, or is proposed to occur with respect to an election for national office in this state, that person may file a written, verified complaint with the commission.

(3) A complainant under sub. (1) or any of the complainants in a consolidated complaint under sub. (2) may request a hearing and the matter shall then be treated as a contested case under ch. 227, except that the commission shall make a final determination with respect to the merits of the complaint and issue a decision within 89 days of the time that the complaint or the earliest of any complaints was filed, unless the complainant, or each of any complainants whose complaints are

consolidated, consents to a specified longer period.

(4) If the commission finds the complaint to be without merit, it shall issue a decision dismissing the complaint. If the commission finds that the violation alleged in the complaint has occurred, is occurring, or is proposed to occur, the commission shall order appropriate relief, except that the commission shall not issue any order under this subsection affecting the right of any person to hold an elective office or affecting the canvass of an election on or after the date of that election.

STATEMENT OF THE CASE

HAVA laid a uniform floor for state administrative redress, but as this case's procedural history demonstrates, that floor has collapsed in the Seventh Circuit and in Wisconsin. HAVA requires state administrative complaint procedures to redress grievances of HAVA violations. 52 U.S.C. § 21112. Yet, Wisconsin has no procedure for complaints brought by Petitioners Wisconsin Voter Alliance (WVA), Ron Heuer, and Kenneth Brown, which allege that WEC—the body charged to adjudicate HAVA administrative complaints in Wisconsin—is itself violating HAVA. *Infra*.

The Seventh Circuit decision, affirming the Eastern District of Wisconsin's dismissal based on lack of standing for want of a concrete injury, has confirmed a circuit split regarding HAVA litigation and state

administrative complaint enforcement procedures. The circuit split creates a state-by-state checkerboard pattern of HAVA enforcement against HAVA-violating state and local election officials.

I. Congress enacted HAVA to set minimum standards for federal elections within states with a required administrative complaint process for citizen HAVA-enforcement.

In the wake of the year 2000 presidential election, Congress enacted the Help America Vote Act (HAVA) in 2002, 52 U.S.C. § 20901, *et seq.*, Pub. L. No. 107-252, 116 Stat. 1666, to establish minimum election administration standards and provide for the uniform and nondiscriminatory administration of federal elections. *See, e.g.*, 52 U.S.C. § 21801–21805.

Recognizing federal oversight must be balanced with state-level implementation in federal elections, Congress designed two complimentary enforcement mechanisms. First, Congress authorized the Attorney General to bring civil actions in federal district court for declaratory and injunctive relief to ensure state compliance with HAVA's mandates. 52 U.S.C. § 21111. Second, Congress mandated that any State receiving federal funds under the Act "shall be required to establish and maintain State-based administrative complaint procedures." 52 U.S.C. § 21112. This secondary enforcement pillar was designed to empower individual citizens and organizations to seek a remedy for grievances for any person who believes that there is a HAVA violation. *Id.* at (a)(2)(B).

Mandatory state procedures for administrative HAVA complaints under 52 U.S.C. § 21112 must include:

- A "hearing on the record" at the request of the complainant.
- A "final determination" regarding the merits of the complaint within 90 days.
- A requirement that the State "shall provide the appropriate remedy" if a violation is found, or "shall dismiss the complaint" if no violation exists.

52 U.S.C. § 21112(a)(2).

II. Wisconsin statutes direct WEC to adjudicate HAVA complaints, but without a process for complaints against WEC itself.

Wisconsin enacted HAVA-related provisions into its election code at Wisconsin Statutes § 5.061, which makes WEC the adjudicatory body to hear and redress HAVA-complaints. Wisc. Stat. § 5.061(1)

However, § 5.061, does not provide alternate means for adjudicating complainants that allege WEC *itself* is violating HAVA. Instead, WEC returns those complaints to the complainants—as unadjudicated and unadjudicable. *See* App.H & I at 79a-84a, WEC Letters of Oct. 4, 2023 and Oct. 19, 2022 (returning Petitioners' HAVA complaints grieving of WEC HAVA violations without adjudication or decision). This has happened twice to Petitioners, depriving them of the

HAVA-required complaint mechanism to seek redress of grievances for HAVA violations. *Id.*

III. Petitioners twice complained that WEC was violating HAVA, but WEC returned their complaints without decision.

The Petitioner has a record of election integrity successes. WVA is a non-stock, nonprofit corporation that serves as a sophisticated private attorney general entity. *E.g.*, App.55a. Unlike groups that engage in abstract advocacy, WVA's core mission is the technical enforcement of election laws through administrative and judicial channels. App.55a-60a.

WVA's accomplishments include pioneering investigation and litigation into de-registering ineligible voters. In *Wisconsin Voter Alliance v. Secord*, the WVA seeks government records in order to correct the Wisconsin judicial branch's and WEC's failure to de-register voters who have been specifically adjudicated ineligible to register to vote by circuit court order. *Wisconsin Voter Alliance v. Secord*, 2025 WI App 28, ¶ 1, 2025 WL 868546, at *1 (Wis. Ct. App. 2025), *rev. granted*, 2024 WI 22 (2024). Wisconsin Watch reported that the Dane County Clerk's investigation confirmed WVA's investigation that Wisconsin has a problem.¹

WVA also has waged a multi-year investigation, litigation, and advocacy effort against private funding of swing state urban public election administration—

¹ Matthew Defour, *Dane County Election Review Finds Dozens of Ineligible Voters Who Cast Ballots*, Wisconsin Watch (March 25, 2023), <https://wisconsinwatch.org/2023/03/dane-county-election-review-finds-dozens-of-ineligible-voters-who-cast-ballots/>.

as billionaire Mark Zuckerberg and Center for Tech and Civic Life did in the 2020 presidential election. *Wisconsin Voter Alliance v. City of Racine*, 2020 WL 6591209 (E.D. Wis. 2020), injunction pending appeal denied by, 2020 WL 13853961, at *1 (7th Cir. 2020), injunction pending appeal denied by, *Wisconsin Voters Alliance v. City of Racine, Wisconsin*, 2020 WL 13853327, at *1 (U.S. 2020).

Yet, the courthouse is a tool of last resort for the WVA. App.57a. The WVA's core organizational activities include investigation, reporting, education, and advocacy, and election law enforcement. App.56a–57a. Low-cost governmental tools, including Freedom of Information Act inquiries and HAVA administrative complaints are efficient routes to accomplish the WVA's core purposes. App.57a–58a (Heuer Decl.); App.77a (Brown Decl). Petitioners WVA, President Ron Heuer, and member Kenneth Brown have filed numerous HAVA complaints in Wisconsin to ensure election integrity. App.54a–61a.

The Petitioners intend to file more HAVA administrative complaints in the future if they believe there is a violation of HAVA, even if that violation is perpetuated by WEC. App.59a; App.78a.

**A. WEC returned HAVA complaints to
Petitioners without decision and without
a viable path for redress.**

The Petitioners have filed two HAVA complaints with WEC—in accord with Wis. Stat. § 5.061—alleging grievances that WEC was violating HAVA. *E.g.*, App.63a–66a. The first complaint was in September

2022, second in October 2024. App.63a ¶¶29–37; App.65a ¶¶38–43.

WEC returned both HAVA complaints with non-decisions. App.64a ¶32; App.65a ¶39; App.79a–84a. WEC asserts that it returned both 2022 and 2023 HAVA complaints without consideration or dismissal ostensibly to avoid conflicts of interest in deciding an administrative complaint against WEC. App.64a ¶¶33–34; App.79a–84a.

Instead, WEC thought, but did not know, that WVA, Heuer, and Brown should take their respective complaints and follow one of two suggested paths. App.79a–84a; App.64a ¶36; App.75a ¶7.

WEC’s first recommended path involved filing a complaint with the district attorney for possible criminal prosecution under Wis. Stat. § 5.05(2m)(c)11. App.80a & App.83a. But, WVA, Heuer, and Brown believe this provision relates only to criminal prosecutions of state election law violations, not federal law violations under HAVA—which requires WEC to initially find probable cause. App.67a ¶46; App.76a ¶8.

The first line of Wisc. Stat. § 5.05 (2m)(c)11 reads: “If the commission [WEC] finds that there is probable cause to believe that a violation under subd. 2. has occurred or is occurring....” And, WVA, Heuer, and Brown believe Wis. Stat. § 5.05 is only for violations of Wisconsin law, not federal law. Wis. Stat. § 5.05(2m)(c)2.a (“Any person may file a complaint with the commission alleging a violation of chs. 5 to 10 or 12”). App.67a ¶46; App.76a ¶7. Therefore, WVA, Heuer, and Brown concluded that this provision

seeking criminal prosecution is not a path available to them for a civil HAVA complaint adjudication. App.67a ¶46; App.76a ¶8.

The second path WEC suggested was an appeal under Wis. Stat. § 5.06(8). This language gave Petitioners further pause because of the section's statutory language about appealing a commission (WEC) decision when WEC had explicitly not decided their HAVA complaints. App.66a ¶¶43–44; App.76a ¶¶8, 10. WVA, Heuer, and Brown believed that under Wis. Stat. § 5.06(9), the state's circuit court's authority is strictly limited to decisions and therefore unavailing:

The court may not conduct a de novo proceeding with respect to any findings of fact or factual matters upon which the commission has made a determination... The court shall summarily hear and determine all contested issues of law and shall affirm, reverse or modify the determination of the commission... pursuant to the applicable standards for review of agency decisions under s. 227.57.

See App.66a ¶¶43–44; App.76a ¶¶8, 10. With no determination from WEC to review under Wis. Stat. § 5.06(9), appeal was impossible.

Moreover, WEC appeared unsure whether appellate rights may be applied to HAVA complaints, writing to the complainants that (as accurately quoted): “It is also the Commission's belief that Wisc. Stat. § 5.06(8) appellate rights may also apply to Wis. Stat. § 5.061 ‘HAVA Complaints.’” App.81a & 84a;

App.67a (Heuer Decl. ¶48 (finding the lack of “belief” as “astounding”)).

Even as WEC made non-decisions as to the WVA-Heuer the WVA-Heuer-Brown complaints, WEC also did not refer the matters to administrative law judges through Wisconsin’s Division of Hearings and Appeals. App.79a–84a; App.67a–69a ¶¶49–53. Notably, WEC has referred other matters to administrative law judges—which allows established contested case processes to resolve matters brought before WEC. App.67a–69a.

Heuer explained in his declaration that when it came to a HAVA complaint against another state agency, WEC referred the matter to an administrative law judge. *Id.* On January 2, 2024, WVA and Heuer filed a complaint with WEC asserting a HAVA violation against the University of Wisconsin-Parkside, which is a state agency. *Id.* On February 29, 2024, WEC referred the WVA-Heuer HAVA complaint against University of Wisconsin-Parkside to Wisconsin’s Division of Hearings and Appeals. *Id.* Once referred to the Division of Hearings and Appeals, the administrative process would allow for an administrative judge, discovery and a contested case hearing under applicable Wisconsin administrative law, if necessary (allowing for motion practice to alleviate the need for a formal hearing), and ultimately a decision. *Id.* But, WEC would not refer HAVA complaints against itself for administrative adjudication.

Finally, WVA’s amended complaint in this case contended, and as the accompanying declarations of WVA and Heuer affirm, that because of WEC’s non–

decisions—“without consideration or dismissal”—the evidence supporting the WVA complaints were not heard within 89 days, a requirement under 52 U.S.C. § 21112(a)(2)(H). App.69a-70a ¶59. In addition, no dispute resolution occurred within 60 days when the requirements of § 21112(a)(2)(H) were not met. App.70a ¶60.

B. The U.S. Department of Justice warned WEC its HAVA administrative process is deficient for its failure to provide an administrative complaint process for complaints against WEC.

The U.S. Department of Justice recently confirmed the systemic impermissible nature of WEC’s failure to adjudicate HAVA complaints against itself. On June 4, 2025, the DOJ sent a formal warning letter to WEC stating that the Commission has failed to properly resolve administrative complaints as required by federal law since at least 2022.² Assistant U.S. Attorney General Harmeet Dhillon noted WEC’s practice of summarily dismissing or returning complaints against itself leaves Wisconsin voters without any recourse, justifying a potential bar on federal election grants to the state. *Id.* This executive-level finding mirrors the exact grievance brought by Petitioners in this litigation.

² Letter, *State of Wisconsin elections violation under Help America Vote Act*, to Wisconsin Elections Commission from U.S. Department of Justice (June 4, 2025), <https://www.justice.gov/opa/media/1402606/dl?inline>

IV. The Seventh Circuit affirmed the District Court dismissal for lack of standing based on want of a concrete injury.

The Petitioners brought the underlying action under 42 U.S.C. § 1983, seeking to compel WEC to provide the administrative procedures and merit-based decisions mandated by federal and state law. *E.g.*, App.37a. The U.S. District Court for the Eastern District of Wisconsin dismissed the case, concluding that it lacked subject matter jurisdiction because Petitioners failed to establish an Article III injury in fact. *See generally*, App.D; App.38a.

While the court acknowledged the injury was particularized because Petitioners were privy to a proceeding that resulted in non-decisions, it held the injury was not concrete. App.45a. Applying the framework from *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016), the court characterized WEC's refusal to act as a "bare procedural violation, divorced from any concrete harm." *E.g.*, App.45a–46a. Specifically, the court rejected the individual Petitioners (Ron Heuer and Kenneth Brown) claims that they were harmed by the lack of a mandated decision, stating that a citizen may not sue based only on an "asserted right to have the Government act in accordance with law." *Id.* Regarding the WVA, the court held it could not "manufacture its own standing" by expending money to litigate or gather information against government action. App.48a.

The Seventh Circuit affirmed the district court, introducing a new legal framework for intangible injuries and organizational standing. *See generally*

App.A. The Seventh Circuit described this framework as "two distinct, evolving strands of the Supreme Court's standing jurisprudence: intangible injuries and organizational standing." App.5a.

As to intangible and constitutional injury, the court held that violations of HAVA's procedural requirements are not injuries *per se* and lacked a historical or common-law analog required by *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424–30 (2021). App.6a–9 a. It further rejected the First Amendment Petition Clause theory, concluding that the Clause "does not provide a right to a response or official consideration." App.13a–15a. Relying on *Smith v. Arkansas State Highway Employees*, 441 U.S. 465 (1979) and *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 285 (1984) the court determined that because WEC did not owe a response, its non-decisions could not create a constitutional injury. App.14a–15a.

As to organizational standing, the court used the appeal to clarify the law of Article III standing for the circuit in light of *FDA v. Alliance for Hippocratic Medicine* 602 U.S. 367 (2024). App.20a. It announced that its prior, more expansive precedent in *Common Cause Indiana v. Lawson*, 937 F.3d 944 (7th Cir. 2019) was now obsolete. App.20a. Under this new, restrictive standard, the court held that an organization must show a defendant "directly affected and interfered with [its] core business activities." App.21a. The court found WVA's declarations insufficient, ruling that a government entity's non-decision does not become an injury just because an advocacy group deems HAVA complaints important to its mission. App.27a–28a.

The Seventh Circuit panel concluded that permitting standing would allow procedural injuries masquerading as direct harm, a result it claimed was foreclosed by this Court's recent guidance. App.19a.

REASONS FOR GRANTING THE PETITION

Certiorari is warranted because the Seventh Circuit's decision exacerbates a growing state-by-state checkerboard pattern of HAVA enforcement. As detailed in recent scholarship, the Administrative Election Dispute Resolution (AEDR) landscape has become a lottery of geography. *See* Rebecca Green, *Administering Election Disputes*, 80 U. Mia. L. Rev. 689 (2026). A HAVA complainant in Minnesota or Pennsylvania receives a robust, administrative-law-judge-led hearing with a merit-based record; meanwhile, a complainant in the Seventh Circuit and Wisconsin faces a jurisdictional vacuum where the state agency acts as both the defendant and the final, but silent arbiter. This lack of a federal baseline for concrete injury allows the disparate checkerboard to persist. Without this Court's intervention, the Seventh Circuit's decision undermines not only a Congressionally-enacted requirement for uniform enforcement of HAVA, but threatens spending-clause benefits by erecting a model for agencies to strategically avoid statutory duties through evasive non-decisions.

I. This Court's certiorari grant will resolve a deepening circuit split regarding private enforcement of HAVA under 42 U.S.C. § 1983.

There is now a Circuit split regarding HAVA rights that is unlikely to resolve itself through further

percolation. This Court's guidance is necessary. The circuits are divided on three distinct levels of legal theory:

1. The Statutory Level: Whether "shall be permitted" (Sixth Circuit) or "the State shall" (Seventh Circuit) governs the *Gonzaga* analysis.
2. The Remedial Level: Whether Attorney General enforcement is a statutory "exclusive" (Third Circuit) or "complimentary" (First Circuit).
3. The Constitutional Level: Whether the total denial of a mandated administrative process is a concrete injury (Sixth Circuit) or a "bare procedural violation" (Seventh Circuit).

As lower courts continue to splinter, the checkerboard enforcement described in Argument II will only become more jagged. A voter in Detroit (Sixth Circuit) has a federal right; a voter in Milwaukee (Seventh Circuit) does not. This Court's intervention is the only means to restore the national uniformity of HAVA enforcement that HAVA intended to provide.

A. The Minority View: The First and Sixth Circuits recognize HAVA creates rights.

The intractable division among the circuits begins with the fundamental question of whether Congress, in enacting the Help America Vote Act, intended to create individual rights enforceable through 42 U.S.C. § 1983. The Sixth Circuit's decision in *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 572-573 (6th Cir. 2004), remains the seminal authority for the minority position. In *Sandusky*, the court confronted whether HAVA

§ 302—which governs the issuance of provisional ballots—created a federal right.

The Sixth Circuit applied the three-part test from *Blessing v. Freestone* (abrogation recognized by *Medina v. Planned Parenthood South Atlantic*, 606 U.S. 357, 359 (2025)), concluding that the language of § 302(a)(2) was unmistakably rights-creating. 520 U.S. 329, 340-41 (1997). The court noted that the statute does not merely direct state officials in the abstract; rather, it dictates that an individual “shall be permitted to cast a provisional ballot.” *Id.* This focus on the individual voter’s experience satisfies the requirement that the provision be intended to benefit the plaintiff. *Id.* Furthermore, the court found the right to be sufficiently concrete for judicial enforcement and the mandate to be unambiguously binding on the states. *Id.* Crucially, the Sixth Circuit held that HAVA’s administrative complaint procedures were not intended to be the *exclusive* remedy, but rather a complimentary path that does not rebut the presumption that a § 1983 remedy is available.

The First Circuit echoed and expanded this logic in *Colon-Marrero v. Velez*, 813 F.3d 1, 20 (1st Cir. 2016). Analyzing HAVA § 303’s voter registration requirements, the First Circuit held that Congress’s use of mandatory, person-centric language created a federally protected interest. *Id.* The court emphasized that HAVA was a response to a national crisis in election administration, and that denying a judicial remedy would leave the unambiguously binding mandates of the Act as mere precatory suggestions. *Id.* By allowing § 1983 suits, the First and Sixth Circuits ensure that when a state fails to meet federal

standards, the individual voter has a governmental tool to compel compliance.

B. The Majority View: The Third, Ninth, and Eleventh Circuits adopt statutory exclusivity and reject private enforcement rights.

In stark opposition, the majority of circuits that have addressed the issue, the Third, Ninth, and Eleventh, have adopted a statutory exclusivity theory that effectively nullifies the presumption for federal court oversight of HAVA. The Third Circuit's decision in *American Civil Rights Union v. Philadelphia City Commissioners*, 872 F.3d 175, 184-85 (3d Cir. 2017), typifies this approach. The court reasoned that because HAVA in 52 U.S.C. § 21111 authorizes the U.S. Attorney General to bring civil actions, Congress must have intended to *exclude* other judicial remedies. *Id.* at 185. Under this *expression unius* logic, the administrative complaint procedure in §21112 is seen as the *only* avenue for private parties—an avenue for an agency determination rather than federal court judgment.

The Ninth Circuit in *Crowley v. Nevada*, 678 F.3d 730, 734-35 (9th Cir. 2012), and the Eleventh Circuit in *Bellitto v. Snipes*, 935 F.3d 1192, 1202-3 (11th Cir. 2019), reinforced this barrier. These courts hold that HAVA lacks the unambiguous rights-creating language required by *Gonzaga University v. Doe*, 536 U.S. 273, 279-80 (2002). They interpret HAVA's mandates not as individual rights, but as systemic institutional directives aimed at state governments. In these circuits, a voter's grievance is not a right, but a report of non-compliance that the state may resolve—

or, as the present case demonstrates, refuse to resolve—without federal judicial oversight.

C. The Seventh Circuit’s divergence widened the split by using Article III standing as a backdoor dismissal.

The decision below, *Wisconsin Voter Alliance v. Millis*, 166 F.4th 627 (7th Cir. 2026), represents a radical and dangerous circuit split escalation. While the Third, Ninth, and Eleventh Circuits primarily rely on a *statutory* rejection of § 1983, the Seventh Circuit used Article III *constitutional* standing doctrine to insulate WEC from HAVA review. Even if one assumes HAVA creates a procedural right under § 1983, the Seventh Circuit held that the total deprivation of that right—the refusal to provide the mandated hearing and final determination—does not constitute an injury.

This holding creates a standing gap that does not exist in the other circuits. By categorizing a state's failure to perform a mandatory, quasi-judicial function as a "bare procedural violation" under *TransUnion*, the Seventh Circuit has effectively held that state election officials can simply opt out of HAVA's state administrative enforcement procedures by doing nothing. This contradicts the Sixth Circuit's holding that the deprivation of a mandated election procedure is, itself, a concrete harm. It further conflicts with this Court's guidance in *FEC v. Akins*, 524 U.S. 11, 19–22 (1998), which recognized that denial of a statutory process is a concrete informational or procedural injury when that process is intended to facilitate a broader democratic right.

D. Unresolved, the circuit split perpetuates a nationwide conflict significant for federal elections.

This split is no longer academic; it is a direct conflict on a matter of national importance relating to Presidential and Congressional Elections. In the First and Sixth Circuits, a voter deprived of a HAVA-mandated procedure can walk into a federal court and seek an injunction. In the Third, Seventh, Ninth, and Eleventh Circuits, that same voter's injury becomes intangible and that their only recourse is to file a complaint with the state agency that is the source of the violation—an agency that, as here, can simply refuse to issue a decision. Only this Court can resolve this profound disparity and ensure that federal election law is applied uniformly nationwide.

The necessity of federal judicial oversight is underscored by the DOJ's recent threat to withhold federal funding from Wisconsin. As written in their letter to WEC on June 4, 2025, the DOJ determined that WEC's ethical recusal practice—which it claims is rooted in a misinterpretation of state law—is a violation of HAVA that supersedes state-level conflicts. When the DOJ and private citizens both identify the same structural collapse of a mandatory federal remedial scheme, the injury is not abstract or conjectural. Rather, it is a concrete deprivation.

II. The Circuit split creates a state-by-state checkerboard pattern of HAVA administrative enforcement.

The circuit split directly enables the checkerboard of Administrative Election Dispute Resolution (AEDR) identified by Professor Green in her article *Administering Election Disputes*, 80 U. Mia. L. Rev. 689 (2026). For example, In states with robust administrative frameworks, such as Minnesota and Pennsylvania, HAVA complainants receive trial-like hearings before independent administrative law judges (ALJs). Minnesota, under Minn. Stat. § 200.04, utilizes the Office of Administrative Hearings to ensure independent adjudication. *E.g.*, *McGrath v. Minnesota Secretary of State*, 2011 WL 5829345 (Minn. Ct. App. 2011). Pennsylvania similarly provides substantive ALJ adjudication to determine HAVA violations, as seen in *PA Fair Elections v. Pennsylvania Department of State*, 337 A.3d 598 (Pa. Cmmw. 2025) and *PA Fair Elections v. Department of State*, 339 A.3d 1038 (Pa. Cmmw. 2025) (reviewing administratively adjudicated HAVA complaint *decisions* in state court).

Additional states have also enacted detailed statutory schemes to meet HAVA requirements for adjudication of HAVA administrative complaints. For example, Indiana code includes specific provisions for filing requirements, hearing procedures, complaint consolidation, final determinations within time limits, and remedies. Ind. Code § 3-6-4.5-3. The statute directly implements the federal requirements under 52 U.S.C. § 21112 with comprehensive procedural safeguards. North Carolina, under N.C.G.S. § 163-91, created a formal complaint procedure within its

election code. Similarly, North Dakota has N.D. Cent. Code § 16.1-01-16, ensuring voters have access to independent, merit-based adjudications with mandatory ADR safeguards.

Several states have implemented HAVA complaint procedures through administrative regulations rather than statutes.³

And, even in states like Michigan, without statutory and regulatory frameworks, the Bureau of Elections has established regulatory guidelines providing for a hearing on the record and a 90-day resolution period. In these jurisdictions, the administrative pillar of HAVA functions as a meaningful forum for dispute resolution.⁴

In Missouri, a HAVA complainant whose grievance concerning voter list maintenance was dismissed by the adjudicatory body due to a state-imposed deadline, received an injunction compelling adjudication from a

³ Texas operates under 1 Tex. Admin. Code § 81.171. Maine has detailed regulations at 29-250 Me. Code R. ch. 510, covering scope, processing of complaints, and remedies. New Mexico has established procedures with specific definitions and complaint initiation processes. 1.10.18 N.M.A.C. Missouri uses Mo. Code Regs. tit. 15, § 30-12.010 for its statewide HAVA grievance procedure. Oregon implemented procedures through Or. Admin. R. 165-001-0090. Illinois has comprehensive regulations at Ill. Admin. Code tit. 26, Part 150 covering definitions and party designations. Wyoming has established procedures through Wyo. Admin. Code 002.0005.1 with administrative resolution provisions. Rhode Island operates under 410 R.I. Code R. 20-00-3.1 410 RI ADC 20-00-3.1. Guam has territorial regulations at 6 Guam Admin. R. & Regs. § 1501.

⁴<https://www.michigan.gov/-/media/Project/Websites/sos/01vanderroest/HAVAComplaintProc.pdf?rev=98a0dc8f9f1a421dba9a0c282869f58e>

federal district court. *Kramer v. Hoskins*, No. 2:25-CV-04257-MDH, 2026 WL 624158, at *5 (W.D. Mo. Mar. 5, 2026). This was without discussion that the plaintiff lacked a concrete injury.

However, in a state like Wisconsin, the lack of a federal judicial baseline allows for a total collapse of the mandated remedial scheme. Wisconsin Statutes § 5.061 establishes a procedure, yet the *Wisconsin Voter Alliance* litigation reveals a practice where WEC issues non-decisions to avoid adjudicating complaints against itself.

The DOJ's recent HAVA compliance scrutiny of both Arizona and Wisconsin further illustrates the checkerboard crisis. Alexander Shur & Jen Fiefield, *U.S. Warns Arizona and Wisconsin Over Compliance with Federal Election Law*, AZ Mirror (June 6, 2025 11:37 AM).⁵ While the DOJ is targeting Arizona for identity verification failures, it has warned Wisconsin specifically for its procedural failure to adjudicate HAVA complaints.

These DOJ warnings highlight that Wisconsin is an outlier not just in its administrative choices, but in its refusal to provide the forum for those choices to be tested. Without a private right of action under § 1983, voters are left hoping the DOJ might use its limited resources to intervene, a result that suspends federal rights unless and until the Attorney General decides to act.

The nationwide concern is that other states may, like Wisconsin, route complainants through state

⁵<https://azmirror.com/2025/06/06/u-s-warns-arizona-and-wisconsin-over-compliance-with-federal-election-law/>

agencies that lack independent ALJ review, leaving voters without a record and without a path to judicial review. When federal courts in the majority-view circuits refuse to oversee these HAVA state administrative procedures, the federal courts permit this checkerboard to persist. A voter in the Sixth Circuit enjoys federal protection to ensure their HAVA rights are respected, while a voter in the neighboring Seventh Circuit is subject to the whims of an agency that can ethically recuse itself out of its mandatory duties. This lack of uniformity is intolerable for a federal statute governing Presidential and Congressional elections; only this Court can ensure that HAVA provides the same floor of protection to every voter in the next Presidential and Congressional elections.

III. The Seventh Circuit’s decision conflicts with this court’s standing jurisprudence regarding congressional power to legislate concrete injuries.

A. HAVA’s dual pillars of enforcement mandate the private complainant pillar.

Congress designed the Help America Vote Act (HAVA) with two complimentary enforcement pillars. The first pillar, under 52 U.S.C. § 21111, authorizes the Attorney General to bring civil actions in federal court. This pillar confirms that HAVA violations are inherently cases or controversies traditionally fit for judicial resolution.

However, recognizing that individual voters are the primary stakeholders, Congress established the second pillar: mandatory state-based administrative complaint procedures under 52 U.S.C. § 21112. This

second pillar is not an optional suggestion; it is a statutory mandate requiring that any State receiving federal funds shall be required to establish and maintain procedures that shall provide the appropriate remedy. By dismissing a total deprivation of this process as a bare procedural violation, the Seventh Circuit has effectively abolished this second pillar. This creates a lopsided regime where only the DOJ has standing to ensure state compliance, directly contradicting Congress's intent to provide a ground-up, individual remedy for grievances too.

B. Analogous statutory injury precedents assume standing.

HAVA explicitly mandates that if a state fails to make a final determination within 90 days, the complaint shall be resolved through alternative dispute resolution (ADR) procedures. Under 52 U.S.C. § 21112(a)(2)(I), the state must establish these procedures to ensure that no complaint is left in a legal vacuum.

In this case, WEC did not merely miss a deadline; it issued a non-decision and returned the complaints without consideration. By doing so, it actively dismantled the final safeguard built into HAVA. The Seventh Circuit's dismissal of this failure as procedural ignores the substantive impact: Petitioners were left with no legal forum. While WEC suggested relief in state circuit court, it failed to provide the determination, much less any record and other materials for subsequent resolution. This created a permanent jurisdictional gap where a federally mandated right to a resolution was transformed into a total remedy deprivation.

The Seventh Circuit's decision creates a direct conflict with how federal courts treat other statutory injury frameworks where Article III standing is assumed.

1. The Freedom of Information Act (FOIA).

In *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989), this Court held a plaintiff suffers a concrete injury when they are denied access to agency records, even if that harm is intangible. Under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, a plaintiff suffers a concrete informational injury the moment they are denied access to information they are legally entitled to receive. The HAVA parallel is, just as FOIA mandates delivery of information, HAVA mandates delivery of a “final determination” and an “appropriate remedy.” Petitioners are in the exact position of a FOIA requester; they are not seeking generalized compliance, but the specific adjudication and record promised to them as complainants.

2. The Driver's Privacy Protection Act (DPPA).

The Driver's Privacy Protection Act (DPPA) is a 1994 federal law, codified at 18 U.S.C. § 2721, that prohibits state Departments of Motor Vehicles (DMVs) from disclosing personal information—such as names, addresses, phone numbers, and Social Security numbers—contained in driver records. The DPPA identifies a discrete class of individuals and protects them from specific government actions. To this point, at least the Eighth and Fourth Circuits have recognized DPPA violations are concrete harms because Congress identified the interest. *Garey v.*

James S. Farrin, P.C., 35 F.4th 917, 921–22 (4th Cir. 2022); *Shambour v. Carver County*, 709 Fed.Appx. 837, 840 (8th Cir. 2017). The HAVA parallel is, similar to the DPPA identifying complainants for an adjudicative (federal court) process and remedies, HAVA identifies complainants for an adjudicative (state administrative quasi-judicial) process and remedies. When WEC issued non-decisions, it stripped Petitioners of their status as complainants in the federal-state scheme—a substantive deprivation of a legal status created by Congress.

3. The Tucker Act, Indian Tucker Act and Fiduciary Mismanagement

In the context of the Tucker Act, 28 U.S.C. § 1491, and the Indian Tucker Act, 28 U.S.C. § 1505, standing is recognized in an Article I court, the U.S. Court of Federal Claims, when the government breaches a mandatory duty to manage a statutory process for a beneficiary. The HAVA parallel is, just as the Tucker and Indian Tucker Act requires an Article I court process after the government breaches its fiduciary duties, HAVA creates a state administrative quasi-judicial process after the state and local election officials violate HAVA. Wisconsin’s total failure to perform that duty—by refusing a hearing, to issue a decision, and provide a remedy—is a breach of a statutory trust Congress established to protect election integrity and causes damages to HAVA complainants. This Court would not permit the U.S. Court of Federal Claims to categorically refuse Tucker Act and Indian Tucker Act claims. Similarly, this Court should not permit WEC to categorically refuse HAVA administrative complaints.

IV. This case presents a critical question regarding the First Amendment petition clause: Whether a state quasi-judicial non-decision that precludes judicial review constitutes a First Amendment injury.

A. The right to petition is historical and remedial in nature.

The Seventh Circuit's conclusion that the Petition Clause imposes no affirmative obligation on the government to respond (citing *Smith* and *Knight*) fundamentally narrows a most precious liberty. As scholars have noted (*e.g.*, *The First Amendment Right to a Remedy*, 50 UC Davis L. Rev. 1741), the Petition Clause is best understood as the constitutional merger of the English right to petition and the English right to a remedy. Historically, the Clause was not that the government would listen, but a guarantee of remedial access.

When a petition is legal in nature—such as a HAVA complaint to remedy a statutory violation—there is an historical expectation that a merit-based determination will follow. By expanding the Clause's recipient from "the Legislature" to "the Government," the Framers intended to ensure that all branches, would be responsive to legal grievances. The Seventh Circuit's reliance on *Smith v. Arkansas State Highway Employees*—which involved a political/collective bargaining grievance—is inapt here. This is a legal petition in a quasi-judicial forum. When WEC issues a non-decision, it is not merely ignoring a policy plea; it is withholding a mandated legal remedy.

B. The right to a remedy is founded in historical common law: *Ubi jus, ibi remedium*.⁶

1. The *Marbury* connection and the essence of civil liberty

The Seventh Circuit's dismissal of a non-decision as a bare procedural violation strikes at the very heart of the American constitutional order. In the foundational case of *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice John Marshall articulated a principle that remains the essence of civil liberty: "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Id.* at 163. Marshall's analysis was not merely a rhetorical flourish; it was a jurisdictional mandate. He asserted a government of laws, as opposed to a government of men, must provide a "remedy for the violation of a vested legal right." *Id.* at 162.

In the present case, Petitioners possess a vested statutory right to a final determination under HAVA. When WEC issues a non-decision, it does not merely delay justice; it actively withdraws the protection of the laws. The Seventh Circuit's "non-decision loop" effectively creates a class of executive actions that are above the law—actions that violate a federal mandate but are shielded from review because the agency refuses to open the gate to the courthouse. This is the exact jurisdictional vacuum that Marshall warned would transform a government of laws into a government of whim.

⁶ Where there is a right, there is a remedy.

2. Blackstone's Influence: The Absolute Rights of Individuals

The Framers' understanding of the Right to Petition was deeply informed by William Blackstone's *Commentaries on the Laws of England*. Blackstone identified the "right of petitioning the king, or either house of parliament, for the redress of grievances" as a primary protective right—a "subsidiary right" designed to protect the "absolute rights of individuals." *Id.*, vol. 1, ch. 1, s. III (4). Blackstone famously posited the maxim *ubi jus, ibi remedium*: "it is a settled and invariable principle in the laws of England, that every right when with-held must have a remedy, and every injury its proper redress." *Id.*, vol. 3, ch. 7, s. IV.

HAVA's mandate of a final determination is a modern statutory embodiment of this ancient right. When Congress enacted Section 402, it was not suggesting an internal agency guideline; it was defining proper redress for election-related injuries. Blackstone argued that a right without a remedy is a legal fiction. By holding the total deprivation of this mandated remedy is a bare procedural violation, the Seventh Circuit revived the very pre-Revolutionary legal fictions that the Petition Clause was intended to bury. The deprivation of a mandated legal process is, in Blackstonian terms, a substantive injury to the absolute right of the citizen to live under certain protection of known laws.

3. The Legal Petition vs. Political Petition Distinction: A Category Error

The Seventh Circuit's reliance on *Smith v. Arkansas State Highway Employees*, 441 U.S. 463,

464-65 (1979), and *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 285-87 (1984), constitutes a category error. Those cases involved political petitions—requests for the government to change its policy, listen to a viewpoint, or engage in collective bargaining. *Id.* In such contexts, the First Amendment guarantees the right to speak, but it does not compel the government to agree or respond to the speaker’s policy preferences. *Id.*

But, this case involves a legal petition under HAVA—a formal request for an adjudication in a quasi-judicial forum mandated by statute. Historically, petitions of right were used by subjects to demand the resolution of legal claims against the sovereign. Unlike a political plea, a legal petition in a mandatory adjudicative scheme *demand*s a response because the response is the mechanism of the law.

By treating a HAVA complaint like a political flyer, the Seventh Circuit ignored the quasi-judicial nature of WEC’s duties. When the government assumes a role that mirrors the judiciary—adjudicating disputes, taking evidence, and issuing final determinations—silence is not an option. In the Anglo-American tradition, a court or quasi-judicial agency that simply returns a properly filed legal petition without consideration has not merely declined to speak; it has committed a denial of justice. The Petition Clause was intended to ensure the remedial pillar of government remains open; the Seventh Circuit’s ruling allows state agencies to recuse the First Amendment petition right out of existence.

C. The Seventh Circuit Created a Futility Loop Restricting the Constitutional Right of Access to the Courts.

The Seventh Circuit's decision creates what can only be described as a futility loop that terminates the right of access to the judiciary. Under Wisconsin law (Wis. Stat. § 227.52), judicial review of an administrative action is generally predicated on a final decision or determination. By issuing non-decisions and returning the complaint without consideration, WEC effectively padlocks the courthouse door.

This Court has held in the context of administrative exhaustion (e.g., *Carr v. Saul*, 593 U.S. 83, 93 (2021)) that litigants are excused from requirements that are futile. However, here the futility is used as a jurisdictional bar to keep the case out of federal court. Certiorari is necessary to clarify that, while the government may not have to answer every political plea, it cannot use administrative silence to systematically strip citizens of their constitutional right to a remedy.

V. This Court can secure structural integrity of Spending Clause legislation and rights of intended third-party beneficiaries that is undermined by the Seventh Circuit's ruling.

A. HAVA is a binding federal-state spending clause compact.

The Help America Vote Act is an exercise of Congress's power under the Spending Clause. When a State, such as Wisconsin, accepts federal funds—specifically the requirement payments and election security grants—it enters a binding compact with the federal government. This Court has long recognized that Spending Clause legislation is "much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 2 (1981).

One of the express, non-negotiable conditions of this HAVA contract is the establishment and maintenance of the administrative complaint procedures in 52 U.S.C. § 21112. By accepting the funds while refusing to provide the mandated final determinations, Wisconsin has accepted the consideration of the contract while unilaterally repudiating its obligation to the public. The Seventh Circuit's ruling effectively grants States a license to breach these federal-state compacts with impunity, as it denies the very people for whom the contract was written the standing to enforce its terms.

B. Petitioners are intended beneficiaries of the HAVA compact.

The intended beneficiary doctrine is central to the enforcement of Spending Clause contracts. In *Health and Hospital Corp. of Marion County v. Talevski*, 599 U.S. 166, 172 (2023), this Court reaffirmed that Section 1983 can be used to vindicate rights established in Spending Clause statutes when those statutes use rights-creating language that identifies a specific class of beneficiaries. *Id.* at 171.

HAVA Section 402 does not merely benefit the general public; it identifies a specific class: "any person who believes that there is a violation." 52 U.S.C. § 21112(a)(2)(B). This language creates a discrete legal status for the complainant. When a citizen files a notarized complaint, they are no longer a generalized member of the public; they are a contractual participant in a federally mandated dispute resolution process. *See* U.S.C. § 21112.

The injury in this case is not an abstract failure to follow the law. It is the deprivation of a specific, bargained-for benefit—the merit-based adjudication. When WEC issues a non-decision, it commits a contractual breach of the HAVA compact. For the Seventh Circuit to hold that this breach causes no concrete injury is to hold that the federal government can spend billions of dollars to buy rights for its citizens that those citizens have no power to protect.

C. The Seventh Circuit’s decision draws a roadmap to procedural loop opt-outs that erode national uniformity.

If the Seventh Circuit’s decision stands, it creates a dangerous precedent for all Spending Clause programs, from Medicaid to Title IX. It suggests that a State can opt out of the burdens of a federal program—such as provide HAVA final determinations—simply by creating a procedural loop that defies federal judicial review.

This non-decision loop represents a dangerous shift in the balance of power between the executive and the judiciary. The power to determine jurisdiction belongs to the courts, not the agencies they oversee. Yet, by refusing to adjudicate HAVA complaints, WEC is effectively exercising a veto power over judicial review. Because Wisconsin law requires a final decision as a prerequisite for an appeal, WEC’s silence acts as a physical bar to the courthouse.

WEC’s silence approach contorts the idea of attempting to exhaust administrative remedies before seeking court intervention. Even so, for over a century, federal and state courts have recognized that a litigant is excused from administrative exhaustion requirements when the process is plainly inadequate or frivolous. *Honig v. Doe*, 484 U.S. 305, 326-27 (1988). The doctrine of futility exists to prevent agencies from using procedural hurdles as a shield against judicial scrutiny. However, WEC has inverted this doctrine. By issuing non-decisions, WEC creates a state of permanent futility that, under the Seventh Circuit’s ruling, results in a lack of standing rather than an excuse for exhaustion.

This Court's intervention is required to clarify that an agency's refusal to perform a mandatory, quasi-judicial function is itself a substantive injury.

As the Department of Justice's June 4, 2025, letter confirms, the federal government views Wisconsin's failure to adjudicate complaints as a legitimate violation of the funding conditions. This is a violation of the federal-state compact. However, the DOJ lacks the resources to audit every non-decision in every state. The complainant pillar of HAVA was designed precisely to act as a decentralized audit mechanism. By nullifying this pillar, the Seventh Circuit has not only harmed these Petitioners but has undermined the structural integrity of the federal-state cooperative model.

If an agency can define the boundaries of its own accountability through silence, the "State-based administrative complaint procedure" mandated by Congress is no longer a remedy under 52 U.S.C. § 21112—it's a trap.

In the typical administrative legal framework, if an agency refuses to act, a court issues a writ of mandamus or treats the inaction as a constructive denial to trigger judicial review. By categorizing this inaction as a bare procedural violation, the Seventh Circuit has created a jurisdictional safe harbor for state agencies. It allows WEC to remain in a state of perpetual non-compliance, knowing that as long as it never issues a final determination, the federal courts will never find a concrete injury.

If the Seventh Circuit's decision is allowed to stand, it provides a blueprint for any state agency wishing to avoid federal oversight of Spending Clause programs.

From election administration to environmental protections, an agency need only recuse itself from its adjudicative duties to insulate its actions from Article III review. This Wisconsin model of administrative evasion of HAVA undermines the rule of law and leaves the intended beneficiaries of federal statutes—the complainants, the voters, the taxpayers, and the citizens—without a forum. Certiorari is necessary to restore the principle that the doors to the HAVA complaint adjudicators cannot be locked from the inside by the very agencies that HAVA meant to restrain.

VI. The Seventh Circuit’s new “core business activities” test for organizational standing creates a conflict with *Havens Realty*.

A. The erosion and confusion of *Havens Realty* and *Hippocratic Medicine*.

The Seventh Circuit used this case to explicitly announce that *Common Cause Indiana v. Lawson*, 937 F.3d 944, 956 (7th Cir. 2019), is now obsolete, replacing it with a restrictive core business activities test. This move highlights a burgeoning conflict among the circuits regarding the continued viability of diversion of resources standing after this Court’s decision in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 396-97 (2024).

The Seventh Circuit—along with recent decisions in the Second Circuit—has interpreted *Hippocratic Medicine* as a mandate to narrow *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). See App.22a. These courts now hold that an organization can no longer spend its way into standing by diverting resources to counteract a policy. App.21a. They characterize

Havens Realty as an unusual case limited to direct interference with an organization's day-to-day business. However, other circuits continue to apply the *Havens* perceptible impairment test, creating a split that leaves national organizations in a state of jurisdictional uncertainty.⁷ This approach directly contradicts *Havens Realty*, which held that a concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitutes an injury in fact.

B. WEC's non-decision interferes with WVA's Mission-Critical Advocacy

The Seventh Circuit's dismissal of WVA's standing by characterizing WVA's injury as manufactured ignores the organization's core purposes and history of turning administrative and judicial petitions into concrete policy results. WVA is a sophisticated private attorney general whose core business necessarily involves systematically detecting and correcting election law violations by using governmental tools available to them, including HAVA complaints. WVA's successes—including pioneering successful election integrity challenges—were only possible because the organization invested resources to counteract administrative failures.

⁷Both the Fourth and Ninth Circuits have found organizational injuries based on both *Havens Realty* and *Hippocratic Medicine*. *Republican Nat'l Comm. v. N. Carolina State Bd. of Elections*, 120 F.4th 390, 395 (4th Cir. 2024); *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 987–88 (9th Cir. 2025); *but see Deep S. Ctr. for Env't Just. v. U.S. Env't Prot. Agency*, 138 F.4th 310, 318–20 (5th Cir. 2025) (discussing that *Hippocratic Medicine* limits *Havens Realty* to its own facts).

When WVA identifies a HAVA violation—such as WEC’s failure to properly maintain voter registration lists or its reliance on non-compliant data systems—it expends its limited resources with the specific goal of obtaining an adjudicative record. By issuing non-decisions, WEC has effectively confiscated WVA’s primary business asset: the right to a merit-based determination. Under *Havens Realty Corp. v. Coleman*, an organization is injured when a defendant’s conduct perceptibly impairs its ability to provide its services. 455 U.S. at 379. For WVA, the service is the rigorous, law-based auditing of election systems. WEC’s total refusal to adjudicate complaints does not merely frustrate WVA’s mission; it acts as a total blockade on the organization’s core business model, forcing it to divert resources toward significantly more expensive and less efficient investigative methods.

C. The "Lawbreaker’s Charter" enables undetectable stealth violations.

By holding that WVA’s costs are self-inflicted and manufactured, the Seventh Circuit has created a “Lawbreaker’s Charter.” Under this new test, if a state agency commits a stealth violation that the average voter is too unsophisticated to detect, the only private entities capable of identifying and challenging the violation (mission-driven organizations) are barred from court because their investigative work is deemed advocacy. This Court must clarify whether *Hippocratic Medicine* was intended to entirely dismantle the *Havens Realty* framework or if mission-critical investigative work still constitutes a concrete injury when it is the organization’s primary business.

The fact that the DOJ reached the same legal conclusion as the WVA, contradicts the Seventh Circuit's claim that WVA's injury and expenditure of resources was merely self-inflicted. The DOJ agrees that WEC's refusal to provide for adjudication of complaints against itself is a violation of HAVA that leaves citizens without federally-required recourse. If the DOJ recognizes the lack of recourse as a legitimate violation worth threatening Wisconsin's federal funds over, it cannot be that a private organization dedicated to that specific HAVA enforcement has not suffered a concrete injury.

CONCLUSION

The Seventh Circuit's decision transforms HAVA's mandatory administrative procedures from a remedy for grievances into a jurisdictional trap. By holding that total deprivation of a merit-based adjudication is a bare procedural violation and that HAVA creates no enforceable rights under § 1983, or otherwise, the court granted state election officials unilateral power to opt-out of federal oversight through strategic silence. As the DOJ warned, this practice leaves voters without any recourse and threatens the structural integrity of the federal-state election compact.

The resulting enforcement checkerboard—where the existence of a federal right depends on a complainant's geography—undermines the national uniformity Congress intended. This Court's intervention is required to clarify that the total denial of a mandated legal process is a concrete injury and to restore the principle that a government of laws must provide a remedy for the violation of a vested right.

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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