No. 25-379

In the Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION,
Petitioner

v.

AL SCHMIDT, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, *et al.*,
Respondents

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

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Third Circuit correctly ruled that Petitioner failed to demonstrate a concrete and particularized injury sufficient for standing under Article III

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INTRODUCTION

The petition seeks review of the Third Circuit's application of settled law to the facts of this case. As the Constitution and this Court's precedents require, the court below evaluated whether Petitioner had suffered any concrete injury from the legal wrong it alleged had occurred—in this instance its inability to access certain protected documents. Because Petitioner had provided "no evidence" of a concrete injury, App. 24a, 25a, the Third Circuit properly directed that the case be dismissed for lack of standing. No circuit court evaluates standing any differently. The petition therefore does not raise any question meriting this Court's review and certiorari should be denied.

STATEMENT

I. Factual history

In 2017, Pennsylvania's current Secretary of the Commonwealth, Al Schmidt—then a Philadelphia County Commissioner—discovered that a software error in the Pennsylvania Department of Transportation's computer system provided ineligible individuals the opportunity to register to vote. The error was fixed shortly after it was discovered.

Once the error was discovered, the Pennsylvania Department of State (Department) began investigating to understand the scope of its impact. The Department also retained a law firm for legal advice, which in turn retained an expert. App'x Vol. II at 94, *Public Interest Legal Found. v. Secretary*, No. 23-1590 (3d Cir. Sept. 6, 2023), Dkt. 26 ("CA3 App'x").

Petitioner, an organization with no ties to Pennsylvania voters, App. 23a, 26a, requested documents related to the Department's response to the error, App.

5a-6a. It asked for records and personal information of registered individuals identified as potential non-citizens; correspondence about those removed from the voting rolls for non-citizenship; documents from jury selection officers; and correspondence with law enforcement officers about the first three requests. App. 36a.

The Department has provided several thousand pages of responsive material. That includes form letters about the software error as well as the names and voting histories of people who were identified as non-citizens and removed from Pennsylvania's voter rolls. CA3 App'x at 143 (summarizing production prior to summary judgment ruling); *see also* CA3 App'x at 97-100. The Department also confirmed where it has no responsive records. CA3 App'x at 97-100, 143.

Petitioner, however, has not received federally protected personal information derived from the driving records of people who either did not respond to the Department's letters or who cancelled their registration without supplying a reason. Nor has Petitioner received work product from the expert that retained counsel hired.

II. Procedural history

Petitioner first sued the Department in 2018, alleging it was entitled under the National Voter Registration Act (NVRA) to the records it requested. That suit was dismissed in 2019 because Petitioner had not provided the pre-suit notice the NVRA requires. App. 6a. Before dismissing the case, the district court ruled that Petitioner had standing purely because it had not received information it alleged that Congress had authorized access to under the NVRA. App. 7a.

Petitioner then provided the pre-suit notice and refiled. App. 7a. The district court denied the Department's motion to dismiss the second case for lack of standing following the same rationale. Before the parties cross moved for summary judgment, this Court decided *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021). Despite that intervening decision, the discussion of standing in the district court's summary judgment opinion merely noted the earlier rulings. App. 8a; *see also* App. 37a.

The district court granted each summary judgment motion in part and ordered the Department to produce certain records not yet produced. App. 58a-59a. The Department complied, producing responsive records except the federally protected driver information and the privileged work product. Both parties appealed. App. 8a.

On appeal, the Third Circuit performed the standing analysis that the district court had failed to conduct and determined that Petitioner lacked standing for its NVRA claim because it had not established any concrete injury from not receiving certain records. App. 9a-27a. The circuit court remanded with instructions that the case be dismissed. App. 27a.

REASONS FOR DENYING THE PETITION

I. The petition seeks review of an application of settled precedent.

Every plaintiff that invokes the jurisdiction of a federal court must establish it has suffered a concrete and particularized injury. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). This is a constitutional imperative under Article III. *Id.* at 423-24.

Petitioner suggests that this Court's precedents contemplate an exception to Article III's demands where "Congress already made [a] decision" and created a statutory right to access certain information. PILF Br. at 18. Yet this Court has emphatically rejected that a violation of a statutory right is sufficient to meet Article III's injury requirement—and so already has resolved the question Petitioner hopes to present.

Congress may create statutory rights and causes of action for violating them, but an alleged infringement of a statutory right does not suffice for Article III standing. *TransUnion*, 594 U.S at 425-26; *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) ("Article III standing requires a concrete injury even in the context of a statutory violation").

Even where, as here, a plaintiff claims a right to access certain information, that plaintiff must identify "'downstream consequences' from failing to receive the required information." *TransUnion*, 594 U.S. at 441 (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020)). An "information deficit" without "adverse effects cannot satisfy Article III." *Id.* at 442 (quoting *Trichell*, 964 F.3d at 1004).

"Congress's say-so" has never been enough for a plaintiff to satisfy the concrete injury requirement the Constitution demands for federal jurisdiction. *Id.* at 426 (quoting *Trichell*, 964 F.3d at 999 n.2). Attaching Article III standing to any alleged violation of a statutory right "would flout constitutional text, history, and precedent." *Id.* at 428. It also would at once empower private plaintiffs to oversee general compliance with the law and unmoor courts from the limitation that ensures "only 'the rights of individuals'" are adjudicated. *Id.* at 423 (quoting *Marbury v. Madison*, 5 U.S. 137 (1803)); *see also id.* at 429.

Simply, "under Article III, an injury in law is not an injury in fact." *Id.* at 427

No decision of this Court embraces Petitioner's contrary view of standing, which would grant a "free-wheeling power to hold defendants accountable for legal infractions" without a showing that the plaintiff has been concretely harmed. *Id.* (quoting *Casillas v. Madison Avenue Assocs., Inc.*, 926 F.3d 329, 332 (7th Cir. 2019) (Barrett, J.)).

That is true of both *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989) and *Federal Election Commission v. Akins*, 524 U.S. 11 (1998).

In *Public Citizen*, organizations alleged that the Federal Advisory Committee Act entitled them to the American Bar Association's committee meetings and records. 491 U.S. at 449. The ABA insisted that the organizations lacked standing because they suffered no concrete, particularized injury from not having access. *Id.* at 448-49. But this Court rejected that argu-

ment because the organizations had alleged a particularized need for the records to "participate more effectively in the judicial selection process." *Id.* at 449.

In *Akins*, voters challenged the FEC's determination that a certain organization was not a political committee under the Federal Election Campaign Act. 524 U.S. at 15-16. If the organization was, more imposing disclosure requirements applied. *Id.* at 14. This Court resolved two distinct standing questions. First, it rejected the FEC's contention that the voters lacked "prudential standing." *Id.* at 19-20. That determination relied on what Congress had authorized under the FECA. Second, and separately, this Court ruled that the voters suffered injury in fact for purposes of Article III because information made available under the more robust disclosure requirements "would help them (and others to whom they would communicate it) to evaluate candidates for public office." *Id.* at 21.

Judge Katsas has since helpfully distilled *Public Citizen* and *Akins* as cases in which the plaintiff "identified consequential harms from the failure to disclose the contested information." *Trichell*, 964 F.3d at 1004. This Court cited Judge Katsas's *Trichell* opinion to explain that even a plaintiff alleging so-called informational injuries must identify concrete harm. *TransUnion*, 594 U.S. at 441-42; *see also Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 938 (5th Cir. 2022) (explaining that *TransUnion* "fortifies [Judge Katsas's] analysis").

Circuits understand that *TransUnion*'s affirmation of the concrete harm requirement "applies to all cases" including "public-disclosure cases" because that requirement enforces a constitutional principle. *Grae v. Corrections Corp. of America*, 57 F.4th 567, 571 (6th Cir. 2023); *see also, e.g.*, *Guthrie v. Rainbow Fencing*

Inc., 113 F.4th 300, 307 (2d Cir. 2024) (noting that an "informational injury that causes no adverse effects cannot satisfy Article III"); *Maryland v. U.S. Dep't of Agriculture*, 151 F.4th 197, 208 (4th Cir. 2025) (ruling that informational injuries require "a real harm with an adverse effect resulting from the failure to receive the information"); *Casillas*, 926 F.3d at 338 (rejecting plaintiff's standing because she "did not allege that she would have used the information at all"); *Hekel v. Hunter Warfield*, 118 F.4th 938, 942 (8th Cir. 2024) (ruling plaintiff must identify some "downstream consequence[] from failing to receive" information); *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 679 (9th Cir. 2021) (ruling that a "procedural violation of an informational entitlement" is insufficient for standing without an allegation that the information "had some relevance to [*the plaintiff*]" (emphasis in original)); *Trichell*, 964 F.3d at 1004 ("[A]n asserted informational injury that causes no adverse effects cannot satisfy Article III.").

The Third Circuit merely applied this well-established precedent to the specific facts of this case. It correctly concluded that Petitioner's inability to review and analyze Pennsylvania's voter list maintenance activities was not concrete or particularized harm. App. 22a-23a. Its "general desire to audit" compliance with the law was inadequate. App. 25a. And Petitioner provided "no explanation" how, for example, its participation in the electoral system was limited in any way. App.22a-23a.

Likewise, Petitioner's desire to publish educational materials did not create standing because "there is no evidence in the record that, despite the Secretary's purported noncompliance with the NVRA, PILF was

unable to publish educational materials." App. 24a. Petitioner had "submitted no evidence" of what it would do with any of the records it did not receive. App. 25a.

Additionally, the Third Circuit correctly observed that a party cannot manufacture standing by incurring expenses trying to vindicate a supposed right to records. App. 25a-26a.

TransUnion sets a "low evidentiary hurdle." App. 27a. Petitioner simply failed to clear the hurdle because it provided no proof of a specific downstream consequence from not receiving certain records. App. 22a-27a (repeatedly emphasizing the lack of evidence and proof to support Petitioner's theories of injury).

That application of settled principles to the specific facts of this case does not warrant granting the petition. S. Ct. R. 10 ("A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

II. There is no circuit split.

Each circuit to specifically address standing to obtain records allegedly subject to disclosure under the NVRA evaluated standing as the Third Circuit did.

The Fifth Circuit's recent opinion in *Campaign Legal Center v. Scott*, 49 F.4th 931 (5th Cir. 2022), mirrors the opinion below. Plaintiffs in *Campaign Legal Center* were civic organizations that alleged Texas's denial of their request for voter-roll records violated the NVRA. *Id.* at 934. The Fifth Circuit, however, directed that the suit be dismissed for lack of standing because the organizations "offered no meaningful evidence regarding any downstream consequences from

an alleged injury in law under the NVRA." *Id.* at 937. The alleged denial of a statutory right to information was insufficient for standing, that court ruled, because "*TransUnion* generally rejected … an unlimited 'informational injury' approach to standing." *Id.* at 936. Standing requires more than the denial of an alleged right to information under the NVRA—particularly where "not a single Plaintiff is a Texas voter, much less a voter wrongfully identified as ineligible, and the Plaintiffs have not claimed organizational standing on behalf of any Texas voter members." *Id.* at 936-37.

Similarly, in *Public Interest Law Foundation v. Benson*, 136 F.4th 613 (6th Cir. 2025), the Sixth Circuit ruled that PILF did not have standing to challenge Michigan's denial of a records request under the NVRA. PILF, that court explained, had failed "to articulate specific downstream consequences." *Id.* at 632. A claimed right under the NVRA to withheld records did not relieve PILF of the need to establish concrete harm. *Id.* at 631.

As the Fifth Circuit had, the Sixth Circuit underscored the importance of strictly enforcing Article III's minimums against an NVRA plaintiff that "is not a registered voter" nor one that has "claimed organizational standing on behalf of registered voters." *Id.* General interests in research, education and "remedial" activities were neither sufficiently specific nor concrete. *Id.*

The Third Circuit's decision aligns with each of these, including its underscoring of the importance of upholding constitutional standing requirements for an NVRA plaintiff with "no ties to Pennsylvania or any of its voters." App. 23a.

The cases Petitioner cites as evidence that circuits are split do not support that contention.

The First Circuit, contrary to Petitioner's position (at 15), has not found standing to access records under the NVRA where the plaintiff has not endured a concrete and particularized injury. The only standing issue resolved in *Public Interest Legal Foundation v. Bellows*, 92 F.4th 36 (1st Cir. 2024), was whether PILF had standing to challenge Maine's statutory restriction on its use of a voter file despite state officials' commitment not to enforce the restriction. *Id.* at 50-51. Maine had not contested PILF's standing to challenge a denial of records; there is nothing to conclude about standing from an opinion that does not address it. *E.g.*, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998) (warning against affording weight to "drive-by jurisdictional rulings"); *Lewis v. Casey*, 518 U.S. 343, 353 n.2 (1996) ("[T]he existence of unaddressed jurisdictional defects has no precedential effect.").

Petitioner also cites (at 15) as evidence of a split four district court decisions that do not in fact discuss standing at all. *See generally Pub. Interest Legal Found., Inc. v. Knapp*, 749 F. Supp. 3d 563, 572 (D.S.C. 2024); *Pub. Interest Legal Found., Inc. v. Dahlstrom*, 673 F. Supp. 3d 1004, 1016 (D. Alaska 2023); *Pub. Interest Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932 (C.D. Ill. 2022); *Pub. Interest Legal Found., Inc. v. Griswold*, No. 21-3384, 2023 WL 6376706 (D. Colo. Sept. 29, 2023). Petitioner cites a fifth that did not meaningfully discuss Article III standing either. *Pub. Interest Legal Found., Inc. v. Wolfe*, No. 24-285, 2024 WL 4891940, at *4 (W.D. Wis. Nov. 26, 2024).

Petitioner (at 15) cites another district court decision that applied the same standard Petitioner faults the Third Circuit for following. *Pub. Interest Legal Found., Inc. v. Simon*, 774 F. Supp. 3d 1037, 1041-42 (D. Minn. 2025) (analyzing if PILF experienced "downstream consequences" from denied access to records).

Three more district court decisions Petitioner cites (at 9-10) predate *TransUnion*, and in some cases even *Spokeo*, and engaged in the precise analysis this Court has since resoundingly rejected. *See Judicial Watch, Inc. v. King*, 993 Supp. 2d 919, 923 (S.D. Ind. 2012); *Project Vote/Voting For Am., Inc. v. Long*, 752 F. Supp. 2d 697, 703-04 (E.D. Va. 2010); *Pub. Interest Legal Found., Inc. v. Bennett*, No. 18-981, 2019 WL 1116193, at *3 (S.D. Tex. Feb. 6, 2019), *report and recommendation adopted sub nom. Pub. Interest Legal Found., Inc. v. Bennett*, No. 18-981, 2019 WL 1112228 (S.D. Tex. Mar. 11, 2019).

Moreover, since the petition was filed, yet another district court has recognized that plaintiffs alleging a denial of information must identify "concrete and particularized harm from the governmental failure to disclose." *Pub. Interest Legal Found., Inc. v. Fontes*, No. 25-2722, 2024 WL 45037, at *3 (D. Az. Jan. 5, 2026).

Nor should this Court's willingness to resolve a circuit split over distinct standing questions about "tester" standing be reason to grant the petition here. *Contra* PILF Br. at 15-17 (citing *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 3 (2023). Tester standing depends on considerations absent from this case, such as the relationship a plaintiff must share with the private entity against whom he seeks to enforce civil rights laws. *E.g.*, *Acheson Hotels*, 601 U.S. at 11-13

(Thomas, J., concurring in the judgment) (raising questions about whose interests a tester intended to vindicate). Recent circuit decisions about tester standing such as *Laufer v. Naranda Hotels*, *LLC*, 60 F.4th 156 (4th Cir. 2023), support, at most, that *Havens Realty Corporation v. Coleman*, 455 U.S. 363 (1982), will provide an applicable standard for that distinct subset of cases until this Court says otherwise. Granting this petition will not settle outstanding issues related to tester standing.

III. No other reason warrants granting the petition.

1. To the extent this Court's precedents may leave open that a plaintiff need not suffer downstream consequences to contest denials of information requested under FOIA or similar public disclosure statutes, *see* PILF Br. at 7-10, this is not a vehicle for that issue.

FOIA is a statutory "means for citizens to know what their government is up to." *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004) (cleaned up); *see also NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (explaining FOIA's "basic purpose … is to ensure an informed citizenry"). To achieve that purpose, Congress created standalone obligations to make certain information available to the public. 5 U.S.C. § 552(a)(1)-(3). These extensive disclosure obligations are the reason the statute exists.

The NVRA, however, is not principally a public disclosure statute. In fact, as the Third Circuit noted, Petitioner here has conceded that point. App. 15a ("[A]ll parties agree that Congress's purpose in enacting the

NVRA targets an objective much broader and more expansive than access to records."). That concession dooms the contrary position it now takes.

Congress defined the NVRA's specific purposes. They are to increase the number of eligible citizens who register for and then vote in federal elections, to protect the integrity of elections, and to ensure voting rolls are accurate. 52 U.S.C. § 20501(b). This Court, for its part, has summarized the NVRA's "two main objectives" as "increasing voter registration and removing ineligible persons from the States' voter registration rolls." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018) (citing § 20501(b)).

To achieve these plainly stated purposes, Congress created a robust framework that includes provisions governing how to register to vote while applying for a driver's license, 52 U.S.C. § 20504, how to register to vote by mail, *id.* § 20505, how to register to vote at other government offices, § 20506, and how states may review voter records and what they must do to remove anyone from the voter registration rolls, *id.* § 20507. Within that extensive structure, Congress included a single paragraph that directs states to maintain certain records for two years and make those same records available for inspection. *Id.* § 20507(i). The time-limited record retention and inspection duty does not stand on its own. Rather, it serves the substantive goals articulated and advanced when Congress enacted the NVRA.

Whatever rule may govern standing for FOIA and similar statutes would not be properly applied to a statute that, as Petitioner acknowledged below, was not created for the purpose of accessing records.

2. Petitioner resists (at 10-11) that had it shown it suffered a concrete injury, that injury also needed to have been of the kind that Congress meant to protect through the NVRA's document retention and inspection paragraph. *See* App. 15a-17a. But because Petitioner failed to demonstrate it had suffered a constitutionally recognized injury in fact in the first place, this case is not the right vehicle for the second-order question.

In any event, circuits agree that someone alleging the wrongful denial of information must also allege injuries of the kind that Congress meant to protect. *E.g.*, *Campaign for Accountability v. Dep't of Justice*, 155 F.4th 724, 733 (D.C. Cir. 2025) (explaining injury from denial of information must be of "the type of harm Congress sought to prevent by requiring disclosure"); *Casillas*, 926 F.3d at 334, 338 (Barrett, J.) (explaining denial of information permits standing when information would be used for "the concrete interest that the statute protected"); *Tailford v. Experian Info. Sols., Inc.*, 26 F.4th 1092, 1100 (9th Cir. 2022) (concluding standing requires showing information would be used to serve interest Congress meant to protect).

An organization with "no ties to Pennsylvania or any of its voters" having a general interest in studying, analyzing, or auditing Pennsylvania's registration records was insufficient. App. 22-23a.

3. Finally, the petition overstates its importance. Although the petition (at 18) casts the Third Circuit's decision as the end of standing for purposes of § 20507(i), that is not so. There is significant distance between concluding an organization with "no ties to Pennsylvania or any of its voters," developed a record insufficient to clear *TransUnion*'s "low evidentiary

bar," App. 23a, 27a, and concluding that no plaintiff could do so. The Third Circuit did the former. App. 22a-27 (repeatedly noting the absence of proof or evidence to support Petitioner's injuries). That does not warrant this Court's review.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

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