No. 25-379

IN THE
Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION, INC.,
Petitioner,

v.

AL SCHMIDT, in his official capacity as Secretary of the Commonwealth of Pennsylvania, and JONATHAN M. MARKS, in his official capacity as Deputy Secretary for Elections and Commissions,
Respondents.

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

REPLY BRIEF FOR PETITIONER

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This Petition is the opportunity to set straight the standing requirements for those seeking redress from the denial of public records. Clarification on who has the right to make such legal claims is essential not just for those denied public records but also for courts navigating the fog brought on by divergent interpretations of *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021).

The Secretary claims the issues presented in the Petition are settled. (*See* Response at 4.) The cases across the nation where courts are wrestling with the correct application of *TransUnion* belie the Secretary's claim. Confusion reigns.

The Secretary also understates the Foundation's injury, touting the documents that have been produced. (Response at 2.) The Secretary does not mention that no documents were produced prior to the filing of the Foundation's complaint, none. Any public records that have since been provided were only done so because of the very lawsuit that the Secretary and the appellate court claim the Foundation does not have standing to bring. Many public records from the Foundation's 2017 request remain unproduced. This public records request, and requests to come, require the Court's clarification.

I. The Decision Below Is Incorrect and Contrary to this Court's Precedent.

In 2019, the district court held that the Foundation had standing. In so doing, it relied upon this Court's decisions in *Pub. Citizen v. U.S. Dep't of Just.*, 491 U.S. 440 (1989), *FEC v. Akins*, 524 U.S. 11 (1998), and *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016). *Pub. Int. Legal Found. v. Boockvar*, 370 F. Supp. 3d 449, 454-56 (M.D. Pa. 2019).

In 2022, the district court granted in part and denied in part both parties' motions for summary judgment, leaving undisturbed its previous ruling on the Foundation's standing. (Pet.App. 30a-57a.)

In 2025, the appellate court determined that the Foundation did not have standing. In so doing, the appellate court wrongfully applied this Court's 2021 *TransUnion* decision to the denial of public records, instead of *Public Citizen* and *Akins*.

The Secretary yet frames *TransUnion* as "settled precedent," (Response at 4), and as an "intervening decision" with an attendant "standing analysis that the district court failed to conduct," (Response at 3). The Secretary cannot have it both ways.

As this Court explained in *TransUnion*, "[t]he plaintiffs did not allege that they failed to receive any required information. They argued only that they received it *in the wrong format*. Therefore, *Akins* and *Public Citizen* do not control here." *TransUnion*, 594 U.S. at 441. The Petition involves the *denial* of public records, precisely the circumstance where *Akins* and *Public Citizen* do control. Yet the appellate court applied *TransUnion*.

The appellate court's interpretation of *TransUnion* directly conflicts with the district court's earlier application of Supreme Court precedent. One closes the courthouse doors to a public interest organization denied public records while the other does not.

II. The Appellate Court's Decision Is Likely to Impact any Public Record Law, including the Freedom of Information Act.

The Secretary seeks to distinguish this case from Freedom of Information Act ("FOIA") cases by characterizing the National Voter Registration Act ("NVRA") as "not principally a public disclosure statute." (Response at 12.) Likewise, the appellate court drew a line between cases involving so-called "sunshine laws" and other laws involving disclosure requirements. (*See* Pet.App. at 17a) ("[W]e do not read *TransUnion* to impose this requirement in cases involving 'sunshine laws' statutes aimed solely at disclosure of information.").

The NVRA's Public Disclosure Provision, 52 U.S.C. § 20507(i)(1), *is* a sunshine law. Congress designed it to shed light on the activities of the government relating to matters of utmost public importance: voting rights. The First Circuit has recognized that "FOIA is the legislative embodiment of Justice Brandeis's famous adage, '[s]unlight is … the best of disinfectants[.]'" *N.H. Right to Life v. United States HHS*, 778 F.3d 43, 48-49 (1st Cir. 2015) (quoting Louis D. Brandeis, Other People's Money 92 (Frederick A. Stokes Co. 1914)). The NVRA's Public Disclosure Provision embodies a similar maxim, but with just two exemptions for discrete data points. *See* 52 U.S.C. 20507(i)(1). The NVRA's Public Disclosure Provision is a much stronger "disinfectant."

The Public Disclosure Provision serves vital oversight and enforcement functions, which ultimately promote all the NVRA's purposes. In short, Congress intended maintenance of state voter rolls to

be transparent, because oversight and accountability safeguard the right to vote. *See Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 54 (1st Cir. 2024); *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 334-35 (4th Cir. 2012); *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 721 (S.D. Miss. 2014) ("The NVRA Public Disclosure Provision is one means of ensuring compliance with the NVRA's stated goals. By opening up voter registration records for inspection, the Public Disclosure Provision shines a light on States' voter registration activities and practices.").

The NVRA's Public Disclosure Provision parallels the laws at issue in *Public Citizen* (the Federal Advisory Committee Act) and *Akins* (the Federal Election Campaign Act) in that it is an important public records requirement within a law that concerns more than just public records. As the Court said in *Public Citizen*, "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," 491 U.S. at 449, and even though the case did not involve FOIA, "[t]here is no reason for a different rule here," *Id*. "As when an agency denies requests for information under [FOIA], refusal to permit appellants to scrutinize the ABA Committee's activities to the extent FACA allows constitutes a sufficiently distinct injury to provide standing to sue." *Id*. The same applies to the denial of public records subject to the NVRA's Public Disclosure Provision.

Judge Ho at the Fifth Circuit Court of Appeals recognized the potential concern that has now manifested in the appellate court's decision. "After

TransUnion, it may no longer be entirely accurate to say that laws like FOIA are premised on the right to know, rather than the need to know." *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 940 (5th Cir. 2022) (Ho, J., concurring in the judgment.) Ultimately, Judge Ho "wonder[ed] if there is any real cause for alarm." From his point of view,

> *TransUnion* may not ultimately prove all that difficult for plaintiffs who wish to assert their statutory rights to public information. After all, it's hard to imagine a plaintiff who is willing to go through the trouble to file a lawsuit to obtain public information—yet is unable to attach a simple affidavit noting why the plaintiff needs that information.

Scott, 49 F.4th at 940. Yet that is exactly what has happened here, not with the plaintiff being unwilling to explain why it needs the information—the Foundation did so—but with the court rejecting the plaintiff's explanation.

The Foundation explained the myriad ways that the Secretary's denial of public records caused harm. (*See* Pet.App. at 21a-22a.) The appellate court rejected every reason. The Secretary claims "*TransUnion* sets a 'low evidentiary hurdle,'" (Response at 8) yet a national nonprofit foundation dedicated to election integrity seeking records related to its mission and purpose did not clear it.

For example, the Foundation explained "without the records it 'cannot effectively evaluate the accuracy of the Commonwealth's voter rolls nor the effectiveness of investigation and remedies undertaken by the Commonwealth in response to the PennDOT' glitch…nor can it 'compel compliance with

state and federal voter list maintenance laws,'" (Pet.App. at 23a.) According to the appellate court, "its desire to have such records for these purposes does not entitle it to sue." (Pet.App. at 23a.)

The appellate court found that "[w]ithout evidence that PILF had 'concrete plans to imminently pursue a desired course of action' bearing a nexus to an interest Congress sought to protect that was hindered only by the Secretary's refusal to turnover the records, PILF has no standing." (Pet.App. at 25a.) "A general desire to audit a state's NVRA records without concrete plans to act upon information contained in the records in a manner consistent with the purpose of the statute does not establish standing under *TransUnion* and *Kelly*." (Pet.App. at 25a.) In other words, the Foundation must divine the content of public records it does not possess and devise an action plan before it can redress the denial of public records.

The impact here cannot be understated: election officials can now demand to know "why" transparency is needed for records Congress made public, and then subjectively evaluate whether someone asking for public information has a good reason to see it. That is not what NVRA Section 8(i) says or what Congress said, and under such a standard, voting rights will suffer.

The appellate court's interpretation of what the Secretary calls a "low evidentiary hurdle" has been adopted by other courts around the country. *See Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 632 (6th Cir. 2025) ("[T]he Third Circuit recently considered nearly *identical* injuries claimed by PILF…and faulted PILF for 'submit[ting] no evidence of any specific plans for the records it sought.'…PILF faces

the same deficiencies here….") (emphasis in original)[1]; *Lyman v. Henderson*, No. 4:25-cv-00069-DN-PK, 2026 U.S. Dist. LEXIS 8626 at **30-32 (D. Utah Jan. 14, 2026) (granting a motion to dismiss and rejecting a Utah citizen's alleged downstream consequences stemming from the denial of public records).

III. This Court's Guidance Is Needed.

The Secretary believes the questions presented in the Petition are settled. Petitioner disagrees but the Court need not only take Petitioner's word for it. Courts around the country have struggled with the fog of the standing jurisprudence after *TransUnion*.

Following the filing of the Petition, additional courts have grappled with the impact of the appellate court's opinion. *See Pub. Int. Legal Found., Inc. v. Fontes*, No. CV-25-02722-PHX-MTL, 2026 U.S. Dist. LEXIS 3422 at *11-12 (D. Ariz. Jan. 5, 2026) (differentiating the appellate court's decision from the case before it, including finding that "the Foundation here pleads downstream consequences with more particularity than it did in *Secretary of Pennsylvania* and *Benson*"); *Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068 (10th Cir. 2025); *Lyman v. Henderson*, No. 4:25-cv-00069-DN-PK, 2026 U.S. Dist. LEXIS 8626 (D. Utah Jan. 14, 2026); *Pub. Int. Legal Found., Inc. v. Wooten*, No. 25-1128, 2026 U.S. App. LEXIS 1210 at *5 (4th Cir. Jan. 16, 2026) (noting the State's standing challenge and that "[t]wo of our sister

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[1] A petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit was filed on October 7, 2025. *See Pub. Int. Legal Found. v. Benson*, 136 F.4th 613 (6th Cir. 2025), *petition for cert. filed* (U.S. Oct. 7, 2025) (No. 25-437).

circuits recently dismissed nearly identical lawsuits brought by PILF on this basis.").

The Secretary discounts the examples in the Petition involving the denial of public records under the NVRA where *TransUnion* was not raised or considered. (Response at 10.) The Secretary focuses on how many of the decisions "do not in fact discuss standing at all." (Response at 10.)

That is the point. Those decisions postdate this Court's decision in *TransUnion* yet *TransUnion* was not raised by the courts. One 2024 decision included in the Petition, *Pub. Int. Legal Found., Inc. v. Wolfe*, No. 24-cv-285-jdp, 2024 U.S. Dist. LEXIS 216250, at *10 (W.D. Wis. Nov. 26, 2024), specifically cites *Akins* as authority for the conclusion that "[a] failure to obtain information required to be disclosed under law is a concrete and particularized injury." According to the Secretary, that court did not "meaningfully discuss Article III standing." (Response at 10.) But there the Foundation had Article III standing and here it does not. These examples demonstrate that the relevant jurisprudence is not as "settled" as the Secretary contends, and the Petition should be granted to provide necessary clarification.

The Secretary also minimizes what is at stake, focusing on the public records produced because of this litigation. But he produced zero records prior to the filing of the Foundation's complaint and, were he to have his way, the Foundation will never have standing to bring another complaint in the future.

Relevant to the Foundation's 2017 request, the Secretary continues to withhold all records sent to, considered, or used by its "expert." The Secretary is using the attorney work product doctrine as a shield

to withhold documents related to its abdication of its voter list maintenance responsibilities to outside counsel. The Foundation raised its concerns in a cross-appeal below which the appellate court did not reach. Because the Secretary continues to withhold these documents, the public is unable to answer vital questions about how its government identified ineligible registrants in the Commonwealth. That is what is at stake.

CONCLUSION

This case is the right vehicle for this Court to clarify its Article III jurisprudence as to litigants seeking redress from the denial of public records.

Respectfully submitted,

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