

No. 25-437

IN THE
Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION,

Petitioner,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY
AS MICHIGAN SECRETARY OF STATE, *et al.*,

Respondents.

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

**BRIEF OF CENTER FOR ELECTION
CONFIDENCE, INC. AS AMICUS CURIAE
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE

The Center for Election Confidence, Inc. (“CEC”) is a non-partisan, non-profit organization that promotes ethics, integrity, and professionalism in the electoral process.¹ CEC works to ensure that all citizens can vote freely within an election system that maintains reasonable procedures, prevents vote dilution and disenfranchisement, and instills public confidence in election outcomes.

To advance these goals, CEC conducts, funds, and publishes research analyzing the effectiveness of current and proposed election methods. CEC serves as a resource for lawyers, journalists, policymakers, courts, and others interested in the electoral process. CEC also engages in public-interest litigation to uphold the rule of law and election integrity and files amicus briefs in cases where its expertise and national perspective can illuminate the issues under consideration.

SUMMARY OF THE ARGUMENT

The Sixth Circuit’s opinion eviscerates the purpose of the National Voter Registration Act (“NVRA”) and ignores a time-honored tenet of statutory construction articulated by Justice Scalia: “a textually permissible interpretation that furthers rather than obstructs [a]

1. No counsel for a party authored this brief in whole or in part, and no person other than the amicus and its counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel for amicus provided notice and sought the position of the parties and all parties have consented to the filing of this brief.

document’s purpose should be favored.”² Congress clearly articulated the broader purposes of the NVRA as establishing procedures to increase voter participation, protect election integrity, and ensure the accuracy of voter rolls. 52 U.S.C. § 20501(b). Rather than interpreting the “reasonable effort” requirement to further the NVRA’s express purposes, the Sixth Circuit concentrates myopically upon the protection it provides for states, at the expense of the NVRA’s objectives.

The “reasonable effort” requirement is meant as part shield for states, obviating extreme measures, and part sword for its citizens to be secure in the knowledge that the risk of their votes being diluted is minimized. This Court’s interpretation of various federal civil rights statutes provides precedent for anchoring “reasonable effort” in detectable success. Therefore, to achieve Congress’s express purposes, the NVRA must be interpreted to require that states’ voter roll maintenance programs be effective.

As to standing, informational standing remains untouched by *TransUnion* and any decision that otherwise thwarts Congress’ intent that registration information be made available. To ensure electoral integrity through citizen oversight, the NVRA, much like the Freedom of Information Act (“FOIA”), clearly requires states to make available for public inspection any information relating to their voter roll maintenance programs. 52 U.S.C. § 20507(i)(1). The NVRA also provides a public right of action allowing any citizen to challenge a state’s failure to comply with this disclosure requirement. *Id.*; 52 U.S.C. § 20510(b). The twin pillars of oversight and effectiveness

2. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012).

ensure state accountability and foster much-needed faith in the electoral system.

ARGUMENT

I. THE CONTINUED EROSION OF VOTER CONFIDENCE IN ELECTIONS NECESSITATES THIS COURT’S REVIEW.

It has long been recognized that election integrity is essential to the public’s confidence in elections. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). (“Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.”); 52 U.S.C. § 20501(a)(3), & (b)(3). “[E]lections enable self-governance only when they include processes that giv[e] citizens (including the losing candidates and their supporters) confidence in the fairness of the election.” *See Republican Party v. Degraffenreid*, 141 S. Ct. 732, 734 (2021) (Thomas, J., dissenting from denial of certiorari) (citing *Democratic National Committee v. Wisconsin State Legislature*, 141 S. Ct. 28, 31 (Kavanaugh, J., concurring in denial of application to vacate stay)). As part of that effort, voters must trust that their registrations are accurately recorded so they can cast their ballots without difficulty. Equally critical, they must trust that registration systems are properly maintained—that deceased and ineligible registrants are promptly removed to prevent misuse of their names, particularly as remote voting through mail and drop boxes expands.

The bipartisan Carter-Baker Commission identified this fundamental reality: “registration lists lie at the

root of most problems encountered in U.S. elections.”³ Voter rolls containing “ineligible, duplicate, fictional, or deceased voters” are “an invitation to fraud.” *Id.* While election fraud remains “difficult to measure”—many cases go undetected, uninvestigated, or unprosecuted—“it occurs.” *Id.* at 45. And the stakes are high: “In close or disputed elections, and there are many, a small amount of fraud could make the margin of difference.” *Id.* at 18. Beyond actual fraud, “the perception of possible fraud contributes to low confidence in the system.” *Id.*; *see also Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 672 (2021). (“Fraud can also undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome.”). The imperative for accurate voter registration rolls cannot be overstated.

Congress fully understood this reality when it passed the National Voter Registration Act (“NVRA”) for the purposes of (1) establishing procedures to increase voter participation; (2) protect the integrity of elections; and (3) ensure that the voter rolls are accurate. 52 U.S.C. § 20501(b). Yet many states have failed to devote adequate resources and effort toward maintaining accurate, current voter-registration lists. The evidence is stark. California recently discovered 5 million inactive registrants who had moved away or died.⁴ The District of Columbia’s rolls have deteriorated so severely that 11 percent of ballots mailed

3. Comm’n Fed. Election Reform, *Building Confidence in U.S. Elections* 10 (Sept. 2005), <https://tinyurl.com/mdcef5h3>.

4. Susan Crabtree, *Calif. Begins Removing 5 Million Inactive Voters on Its Rolls*, Real Clear Politics (June 20, 2019), <https://tinyurl.com/ysb3tuwu>

to registrants in 2020 were returned as undeliverable.⁵ Virginia uncovered nearly 19,000 deceased registrants still on its rolls.⁶ Nationwide, a 2012 Pew Center on the States study revealed that 24 million voter registrations—one in eight—were invalid or contained significant inaccuracies, including 1.8 million registrations of deceased persons.⁷ Too many states, like Michigan, simply have not devoted the proper resources—or, indeed, implemented any semblance of a reasonable voter list maintenance system—to make their roll-accuracy programs effective.

This is not simply theoretical. The 25,000 ineligible voters identified by Petitioner were more than enough to swing a statewide election. For example, the margin of victory for Senator Elissa Slotkin over her challenger Mike Rogers in 2024 was only 20,000 votes, well within the 25,000-voter margin identified by Petitioner.⁸ The Sixth Circuit’s standard, if left untouched, will only serve to further erode voters’ faith in the electoral system, which is *exactly* the sort of negative outcome the NVRA was designed to prevent.

5. Martin Austerhuhle, *Data Errors Imperil D.C.’s Participation In Group That Cleans Up States’ Voter Rolls*, DCist (Feb. 9, 2022), <https://tinyurl.com/2ktr496m>.

6. Nick Iannelli, *Virginia discovers nearly 19,000 dead people on voter rolls*, WTOP News (Apr. 19, 2023), <https://tinyurl.com/ms6y7w6c>.

7. *Inaccurate, Costly, and Inefficient: Evidence That America’s Voter Registration System Needs an Upgrade*, Pew Ctr. on the States 1 (Feb. 2012), <https://tinyurl.com/38favmjr>.

8. See *Elissa Slotkin wins Michigan Senate Seat*, Politico, <https://www.politico.com/2024-election/results/michigan/senate/> (Nov. 6, 2024).

II. BEYOND RATIONALITY: WHY “REASONABLE EFFORT” DEMANDS EFFECTIVENESS.

a. The Statutory Standard of a Reasonable Effort Is Not Met by a “Rational” and “Sensible” “Attempt” at List Maintenance.

The NVRA “has two main objectives: 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); *see also* 52 U.S.C. § 20501(b). Likewise, the Help America Vote Act (“HAVA”), requires states to create an election system that “ensure[s]” that voter rolls are “accurate” and “updated regularly.” 52 U.S.C. § 21083(a)(4). Congress, for its part, stated that the purpose of the NVRA is, among other goals, “to protect the integrity of the electoral process” and “to ensure that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b).

Foundationally, the NVRA—much like other civil rights statutes—is about *results*. To put it another way, pretend NVRA compliance is a marathon. Congress mandated that every runner (state) must at least finish the race (an effective voter list maintenance program) to get a medal (be compliant with the law). Instead, the Sixth Circuit decided that all Michigan (and by extension, every other state) needs to do to get a finisher’s medal is to put on its shoes. It is a preposterous result that leaves the NVRA an effective nullity.

i. The Common English Meanings of the Words “Reasonable” and “Effort” are Incompatible with the Sixth Circuit’s “Rational” “Attempt” Holding.

Nothing in law should be read in a vacuum. The clause in question here, analyzed by the Circuit Court, is found at 52 U.S.C. § 20507(a)(4), which states that “[i]n the administration of voter registration for elections for Federal office, each State shall—conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters. . . .” There are two words of import in this clause that deserve a non-superficial look: reasonable and effort. Initially, terms should be given their plain and ordinary meaning. *FCC v. AT&T Inc.*, 562 U.S. 397, 403 (2011). The word “reasonable”⁹ can be defined as “not extreme or excessive.”¹⁰ Interestingly, the definition of “effort” varies significantly between dictionaries. According to the Sixth Circuit’s chosen definition “effort” means “a serious attempt.” *Public Interest Legal Foundation v. Benson*, 136 F.4th 613, 625-626 (6th Cir. 2025). However, there are other just as valid definitions that are less permissive than “a serious attempt.” See, e.g., *Effort, Dictionary.com* (“an earnest or strenuous attempt; something done by exertion or hard work”); *Effort, Oxford Languages Dictionary* (“a vigorous or determined attempt.”).

9. The word “reasonable” is also given its ordinary meaning. *U.S. Airways v. Barnett*, 535 U.S. 391, 400 (2002).

10. *Reasonable*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/reasonable> (last visited November 5, 2025).

With a slight change in dictionaries, the statute seemingly requires much more of Michigan than the Sixth Circuit’s “rational” “attempt” finding. *See Public Interest Legal Foundation v. Benson*, 136 F.4th at 625. Therefore, even when looking at the clause found in § 20507(a)(4) in isolation, Sixth Circuit’s rationality test does not properly interpret the statutes requirements.

Putting aside the dictionary definition, the Circuit Court did not finish the job of interpreting the statute. *See Public Interest Legal Foundation v. Benson*, 136 F.4th at 625-26 (noting that since the court “applies the statute as written” its “analysis ends.”). What of the rest of the statute? The Court has repeatedly said that provisions of a statute like the NVRA do not exist in isolation. “In determining the meaning of [a] statute, [the Court] look[s] not only to the particular statutory language, *but to the design of the statute as a whole and to its object and policy.*” *Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991) (emphasis added). The “object and policy” of the statute when read “as a whole” is an effective list maintenance program.

One need not divine what Congress had in mind because Congress told us. The “policy” of the NVRA is encouraging voter registration and proper list maintenance to “protect the integrity of the election process” and “to ensure that accurate and current voter registration rolls are maintained.” *Id.* at § 20501(a)-(b). The use of the word “ensure” carries significant weight here. “Ensure” means “to make sure, certain, safe” or to “make certain that (something) shall occur or be the case.” *See Ensure, Merriam-Webster Online*¹¹ and *Ensure, Oxford*

11. *Ensure*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/ensure> (last visited on November 5, 2025).

Languages Dictionary; see also *Ensure*, *Merriam-Webster Dictionary* at 243 (8th ed. 2022) (“Guarantee”). The Fourth Circuit understood this. See *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 339 (4th Cir. 2012) (“State officials labor under a duty of accountability to the public in *ensuring* that voter lists include eligible voters and exclude ineligible ones *in the most accurate manner possible.*”) (emphasis added). The plain meaning of the actual words used in the statute and of the policy the statute is meant to promote both point toward the Sixth Circuit’s decision being an a-textual outlier.

What of the remainder of the statute? On that score, the NVRA has several provisions dedicated to procedures the State must follow when conducting list maintenance—both to ensure the lists are properly maintained and to protect properly registered voters from overly aggressive actions. See, e.g., 52 U.S.C. § 20507(a)(2), (3), (4), and (5) (containing protections such as the terms by which a registrant may be removed, providing information about registration requirements, and notification provision); *id.* at § 20507(b), (c), (d), and (e) (timing requirements for removal, a 90-day pre-election black-out period for removals, and procedures for curing an improper removal). There would simply be no reason to include the detailed guidance and protections contained within the NVRA if “reasonable effort” only meant a rational attempt. The entirety of the statute points toward rigorous enforcement, not merely trying.

In sum, the law requires that Michigan *must* conduct a *vigorous* program to eliminate non-eligible voters from their voter rolls. “Reasonable” simply adds the sensible modification that the effort needs to be neither extreme nor perfect. To put it another way, “reasonable” simply

means that a State need not boil the ocean to eliminate *every* possible improper registration. Acting “reasonably” does not in any way diminish the requirement that Michigan’s program be effective, quite the opposite.¹²

ii. Civil Rights Statutes with Reasonableness Language Are Uniformly Held to Require an *Effective* Implementation, Not Merely a “Rational” or “Sensible” One.

A useful analogue to the proper standard with which to view the NVRA is the Americans with Disabilities Act (“ADA”). The ADA “prohibits an employer from discriminating against an ‘individual with a disability’ who, with ‘reasonable accommodation,’ can perform the essential functions of the job.” *US Airways, Inc. v. Barnett*, 535 U.S. 391, 393 (2002) (quoting 42 U.S.C. §§ 12112(a) and (b)).

Importantly, “in ordinary English the word ‘reasonable’ does not mean ‘effective.’ It is the word ‘accommodation,’ not the word ‘reasonable,’ that conveys the need for effectiveness.” *Barnett*, 535 U.S. at 400. This highlights yet another error by the court below as that court focused almost entirely on the meaning and implications of “reasonable,” giving only passing mention to “effort.”

12. As recently noted by the Department of Justice, “the statutory language and history make clear that the duty to . . . make[] a reasonable effort [under the NVRA] includes an obligation to take affirmative steps to effectuate the list maintenance requirements.” Therefore, “the list maintenance program also should be effective to achieve the goals set out by Congress.” See Statement of Interest, *Judicial Watch, et al., v. The Illinois State Board of Elections, et al.*, No. 1:24-cv-01867 at 7 (N.D. Ill. July 8, 2025 (ECF No. 107)).

See Public Interest Legal Foundation v. Benson, 136 F.4th at 625-626 (6th Cir. 2025). As in the ADA, it is in the word “effort,” as properly read in harmony with goals and policies of the statute, where the effectiveness requirement of the NVRA arises.

The ADA is not alone in showing that civil rights laws with a reasonableness standard mandate something more than mere “rational” or “sensible” actions. Take Title VII of the Civil Rights Act of 1964. In *Groff v. DeJoy*, 600 U.S. 447, 473 (2023), a unanimous Court stated, while rejecting an earlier “*de minimis*” standard, that “Title VII requires that an employer reasonably accommodate an employee’s practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations.” In other words, “an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.” *Groff*, 600 U.S. at 470. A showing of something barely more than mere *de minimis* cost is not enough. *Id.* at 468.

Another example can be found in the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”). The USERRA prohibits discrimination on account of an employee’s military service. 38 U.S.C. § 4313. The statute requires employers to take “reasonable efforts” to rehire, train, and requalify former employees after military service. *Id.* Pursuant to the USERRA, “reasonable efforts” are “actions, including training provided by an employer, that do not place an undue hardship¹³ on the employer.” *Id.* § 4303(10). This

13. The lack of a “undue burden” or “undue hardship” exception or defense in the NVRA militates in favor of it being a

reasonable-efforts standard does not permit the employer to fail to adequately requalify service members for any reason other than significant difficulty or expense. This is akin to the NVRA's requirement that a state put forth a serious effort to obtain results. Other statutes with a reasonableness standard similarly require results rather than mere rational or sensible attempts. *See, e.g., Reichert v. National Credit Systems, Inc.*, 531 F.3d 1002 (9th Cir. 2008) (holding that, in the context of the Fair Debt Collection Practices Act, "a showing of procedures reasonably adapted to avoid any such error must require more than a mere assertion to that effect." (internal quotes omitted)).

b. If Permitted to Stand, the Sixth Circuit's Standard Leads to Absurd Results.

Should the everyone-gets-a-medal, "rational" and "sensible," give-it-the-old-college-try standard be adopted, it would gut the NVRA and could lead to all sorts of absurd mischief.¹⁴ This can be shown by (1) the impact it would have on the NVRA itself; and (2) what impact the "rational" and "sensible" "attempt" would have if it were applied to other similarly situated statutes.

more stringent standard than the ADA, Title VII, or USERRA. If it wanted, Congress could have placed an "undue burden" standard in the NVRA to give states a relief valve for compliance; it instead chose not to do so.

14. Couple this with the Sixth Circuit's standing holding, and the very real and practical consequence is to render the NVRA dead as there would be (1) no way to enforce its provisions as no one would have standing; and (2) a standard so deferential to the state as to make any attempted enforcement a waste of time.

Starting with the NVRA, Michigan would be permitted to maintain hundreds of thousands of deceased voters on rolls for decades, so long as they did so after making a “rational” “attempt” to identify deceased voters; there would be no recourse.

If the Sixth Circuit’s “rational” “attempt” standard were applied to the ADA, employers could deny workplace modifications for disabled employees—such as modified schedules or assistive technology—merely by showing they attempted some accommodation, even if that accommodation were wholly ineffective and the employee remained unable to perform essential job functions. Courts would be required to accept as compliant any employer effort that was “within the bounds of rationality,” regardless of whether disabled employees actually received meaningful access to employment.

Applying the Sixth Circuit’s “rational” and “sensible” standard to Title VII, employers could deny religious accommodations—such as schedule modifications for Sabbath observance—merely by showing they considered the request and made some reasoned decision, even if the actual burden were minimal and the employee were forced to choose between their job and their faith.

A similar cascade of problems would result if this were applied to the Fair Debt Collection Practices Act (“FDCPA”) context. The FDCPA contains a “bone fide error” defense if an unintentional error resulting in a violation occurred “notwithstanding the maintenance of procedures *reasonably adapted* to avoid such error.” 15 U.S.C. § 1692k(c) (emphasis added). Grafting the Sixth Circuit’s standard on to this language would mean a debt

collector need only have a rational procedure, irrespective of whether it successfully prevents such violations.

One last example to drive the point home. The Age Discrimination in Employment Act (“ADEA”) provides that it is not unlawful for an employer to act “where the differentiation is based on reasonable factors other than age.” 29 U.S.C. § 623(f)(1). Now, imagine this were a mere rationality standard, allowing differentiation through the use of *any* reasoned factor. It would gut the very existence of the statute and the policy Congress was attempting to implement. So, too, with the NVRA. This Court should grant certiorari to ensure that the NVRA is not a dead letter and to prevent the spread of the Circuit Court’s wayward reasoning.

III. INFORMATIONAL STANDING IS ALIVE AND WELL, TRANSUNION NOT WITHSTANDING.

a. Central to Purpose of the NVRA is Transparency and Integrity Within the Act of Voter Roll Maintenance, a Role Most Analogous to FOIA.

The plain text of the NVRA creates a private right of action giving any person standing to challenge a state’s failure to comply. Congress mandated disclosure provisions to serve two complementary goals: protecting electoral integrity and ensuring accurate voter rolls. 52 U.S.C. § 20501(b). The famous maxim that “sunlight is the best disinfectant” is inherent in the statutory structure of the NVRA. The statute itself requires that state election officials maintain records of their voter-roll maintenance programs for “at least 2 years” and those officials “shall make available for public inspection . . . all records

concerning the implementation of programs and activities conducted. . . .” 52 U.S.C. § 20507(i)(1) (emphasis added). Congress itself highlighted the foundational importance of the principles of transparency and integrity to the NVRA’s overall effectiveness during its debates on the bill.

An important goal of this bill, to open the registration process, must be balanced with the need to maintain the integrity of the election process by updating the voting rolls on a continual basis. The maintenance of accurate and up-to-date voter registration lists is the hallmark of a national system seeking to prevent voter fraud.

S. Rep. No. 103-6, at 18 (1993).

Congress similarly denoted that its use of the term “shall” was intentional: “The records must be made available for public inspection, and, where available, photocopying at reasonable costs.” *Id.* at p. 35; *see also* H.R. Rep. 103-9, at 19 (1993). Congress designed enforcement around public access. By requiring states to maintain comprehensive records and make them publicly available without restriction, Congress indicated that compliance would be monitored through citizen oversight rather than solely through government enforcement. In short, Congress did not mince words. The very text of the statute “evinces Congress’s belief that public inspection . . . is necessary to accomplish the objectives behind the NVRA.” *See Pub. Int. Legal Found. v. Bellows*, 92 F.4th 36, 54 (1st Cir. 2024).

Further, Congress did not intend to restrict who had a right to pursue enforcement of these foundational

principles. *See* 52 U.S.C. § 20507(i)(1) (use of the word public); 52 U.S.C. § 20510(b) (creating a private right of action for violations); S. Rep. No. 101-140, at 13 (1989) (“[A]n effective national voter registration program must also include a private civil enforcement . . . [which] can encourage action to assure that reasonable effort is undertaken to achieve its objectives in all States and, indeed, it may be essential to the success of such a program in some areas.”) (cited in *Bellows*, 92 F.4th at 54).

Most analogous to this arena is perhaps the most well-known, so-called “sunshine” law, the Freedom of Information Act (“FOIA”). *See* 5 U.S.C. § 552. FOIA, like the NVRA, provides a right for the public to access information. *Compare* 5 U.S.C. § 552. (“Each agency shall make available to the public information . . . ”); *with* 52 U.S.C. § 20507(i)(1). (“Each State shall . . . make available for public inspection . . . all records concerning the implementation of programs and activities . . . ”). Both the NVRA and FOIA are designed to promote transparency in government. *See* 5 U.S.C. § 552; 52 U.S.C. § 20507(i)(1); S. Rep. No. 103-6, at 18 (1993); *Project Vote/Voting for Am., Inc.*, 682 F.3d at 339 (“Without . . . transparency, public confidence in the essential workings of democracy will suffer.”). Both FOIA and the NVRA allow public access to relevant information. *Compare* 5 U.S.C. § 552(a)(3)(A) (“Each agency, upon request for records . . . shall make the records promptly available to any person”) *with* 52 U.S.C. § 20507(i)(1) (“Each State shall . . . make available for public inspection . . . all records concerning the implementation of programs and activities . . . ”). Both FOIA and the NVRA require the Government to maintain and disclose records. Just as FOIA requires records be made available upon request, the NVRA requires that the States maintain “all records” available

for public inspection. *Compare* 5 U.S.C. § 552(a)(1)-(2) *with* 52 U.S.C. § 20507(i)(1). Both FOIA and the NVRA created a method of enforcement through a private right of action. *Compare* 5 U.S.C. § 552(a)(4)(B) *with* 52 U.S.C. § 20510(b).

In attempting to differentiate FOIA and the NVRA, the Third Circuit, in *Public Interest Legal Foundation v. Secretary Commonwealth of Pennsylvania*, alleges that the NVRA is “broader” than FOIA as it has a purpose beyond mere transparency. *See Pub. Int. Legal Found. v. Sec’y of Pa.*, 136 F.4th 456, 463 (3d Cir. 2025). For the purposes here, this would be a distinction without a difference—if it is even true. The NVRA has, arguably, the “narrower,” purpose of encouraging voting while maintaining election integrity, while FOIA encompasses “each agency” of the federal government. 5 U.S.C. § 552. Yet, within the NVRA, Congress also deliberately created a method by which the public may seek information, like the foundational rights contained within FOIA. *See* 52 U.S.C. § 20507(i)(1). Further, it must not be forgotten that the NVRA is of abnormal import as it deals with the fundamental right to vote, making effective state compliance with the NVRA’s public disclosure requirements all the more vital. As this Court has repeatedly held, “the right to vote, as the citizen’s link to his laws and government, is protective of all fundamental rights and privileges.” *Evans v. Cornman*, 398 U.S. 419, 422 (1970).¹⁵

15. It should not be forgotten that the people harmed by a lack of proper enforcement are the voters themselves. “[F]raudulent votes dilute the right of citizens to cast ballots that carry appropriate weight” and “can affect the outcome of a close election.” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 672 (2021).

Congress could have restricted those entitled to information to a limited set of those who “need to know,” and yet it did not. Congress could have required that the information be restrained by the rules of discovery, and yet it did not. Congress could have limited requests only to those individuals seeking their own information, and yet it did not. In short, Congress created a mechanism by which any person could seek all records related to the voter rolls, and then gave those persons a private cause of action to enforce that right. To put it another way *ubi jus ibi remedium*—where there is a right, there is a remedy. For sections of the NVRA relevant to this case, and cases like it, Congress has determined that the NVRA should join other public-disclosure statutes (FOIA, NVRA, Federal Advisory Committee Act (“FACA”), Federal Election Campaign Act (“FECA”), etc.) in that the public is entitled to certain government information, the denial of which is a harm that the Court has the power to redress.

b. Reliance on *TransUnion* by the Sixth Circuit is Misplaced as *TransUnion* Does Not Apply to Public-Disclosure Cases.

The opinion of the Sixth Circuit in this case relies on *Campaign Legal Center v. Scott* out of the Fifth Circuit and *Public Interest Legal Foundation v. Secretary Commonwealth of Pennsylvania* out of the Third Circuit, which in turn cites to *Scott*, and each of which cite the source of their underlying error as *TransUnion*, the 2021 opinion of this Court. See *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021); *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 939 (5th Cir. 2022); *Pub. Int. Legal Found. v. Sec’y of Pa.*, 136 F.4th 456 (3d Cir. 2025). Indeed, the Fifth and Sixth Circuits’ reliance on *TransUnion* is

misplaced because this Court explicitly distinguished *TransUnion* from cases involving “informational injury” or the failure to receive required information. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 441 (2021) (“The 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. In addition, those cases involved denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information. ***This case does not involve such a public-disclosure law.***” (emphasis added)).

Furthermore, even if *TransUnion* were not explicitly distinguished from cases of this type, the “downstream effect” requirement touted by the lower courts in this case are not found in the relevant caselaw related to public-disclosure laws. The Court made brief references to such a requirement in *Casillas v. Madison Avenue Assocs., Inc.* and *Trichell v. Midland Credit Management, Inc.*, two cases where the information allegations mentioned are ancillary to the purpose of the statute and which similarly did not involve public-disclosure laws but instead related to statutory procedural requirements applicable only to private entities. See *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021). (“The plaintiffs did not allege that they failed to receive any required information . . . only that they received it in the wrong format. . . . This case does not involve such a public-disclosure law.”); *Trichell v. Midland Credit Mgmt.*, 964 F.3d 990, 1004 (11th Cir. 2020). (“[T]he FDCPA is not a public disclosure law at all. The provisions at issue here create no substantive entitlement to receive information from debt collectors.”); *Casillas v. Madison Ave. Assocs.*, 926 F.3d 329, 338 (7th Cir. 2019).

(“Casillas, of course, did not allege that she sought and was denied information pursuant to a sunshine law. Indeed, she did not seek information at all.”). The existence of a so-called “downstream effect” in that context makes sense as a company’s violation of a statute may or may not cause harm in the same way that a drunk driver may cause an accident or a spill on the floor may cause a shopper to slip.

The harm from the government’s failure to meet the requirements of a public-disclosure law like FOIA or the NVRA is inherent within the failure itself. The failure to disclose information is itself the harm where Congress has stated that the right to public disclosure has value and has subsequently given the public the right to seek judicial redress to remedy such a failure.

It would be far more logical to continue the long-standing holdings of *Public Citizen* and *Akins*. In *Public Citizen*, the Court held that denial of records under FACA constitutes “a sufficiently distinct injury to provide standing to sue.” 491 U.S. at 449. The Court rejected any requirement beyond showing that plaintiffs “sought and were denied specific agency records,” applying the same standard used under FOIA. *Id.* The plaintiffs sought records “to monitor [the ABA Committee’s] workings and participate more effectively in the judicial selection process”—objectives accomplished through speech. *Id.* Significantly, the Court imposed no requirement that plaintiffs demonstrate a nexus between their injury and Congress’s purpose in enacting FACA, which had nothing to do with judicial nominations.

Akins extended this principle to campaign-finance information under FECA. 524 U.S. at 21. Voters sought

disclosure of AIPAC’s spending to “evaluate candidates for public office” and “evaluate the role that AIPAC’s financial assistance might play in a specific election.” *Id.* The Court emphasized that plaintiffs wanted information to “communicate it” to “others”—using it for advocacy regardless of how it might affect their own voting decisions. *Id.* The injury consisted of being unable to obtain what plaintiffs alleged was statutorily mandated public information, which impaired their ability to engage in protected speech activities.

This Court has consistently held that plaintiffs have standing to enforce statutory rights even absent a common-law analogue. When the government has an obligation to provide information and refuses to do so, “the violation of a procedural right granted by statute [is] sufficient . . . to constitute injury in fact,” and “a plaintiff . . . need not allege any additional harm beyond the one Congress has identified.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 342 (2016) (citing *Public Citizen* and *Akins*). Both decisions establish that when Congress mandates public disclosure, denial of that information constitutes concrete harm without regard to whether the requester’s intended use aligns with the statute’s purpose.

The First and Fourth Circuits have applied these principles by assessing informational injuries under the generally applicable standing framework rather than through *TransUnion*’s narrower lens. See *Bellows v. Farrell*, 92 F.4th 50–51 (1st Cir. 2024) (not assessing plaintiff’s standing under *TransUnion*); *Laufer v. Naranda Hotels, LLC*, 60 F.4th 156, 170–72 (4th Cir. 2023) (“[W]e are satisfied that *TransUnion* most assuredly did not overrule . . . *Public Citizen* and *Akins*. As such, those

precedents must continue to be followed where they are applicable, unless and until the Supreme Court decides otherwise.”) and (“*Public Citizen* and *Akins* are clear that a plaintiff need not show a use for the information being sought in order to establish an injury in fact. . . .”); *Project Vote/Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697, 701 (E.D. Va. 2010) (“With regard to the injury prong, the actual or threatened injury required for standing may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing.” (cleaned up), *aff’d*, 682 F.3d 331 (4th Cir. 2012)). Further, the D.C. Circuit has recognized that plaintiffs suffer injury when denied disclosures that “would further their efforts to defend and implement” their policy objectives. *Campaign Legal Ctr. & Democracy 21 v. FEC*, 952 F.3d 352, 356 (2020). Standing is also conferred on an organization merely through the fact that the organization is “[compelled] to devote resources” to combatting the effects of that law that are harmful to the organization’s mission. *Common Cause Ind. v. Lawson*, 937 F.3d 944, 950 (7th Cir. 2019) (quoting *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007)).

This case parallels these precedents precisely. Like the *Public Citizen* plaintiffs seeking to monitor judicial selections, Petitioner seeks to monitor Michigan’s voter-roll maintenance and participate more effectively in protecting electoral integrity. The denial of statutorily required public records that supply information essential to Petitioner’s advocacy constitutes a distinct injury to those objectives. This outcome aligns with the fundamental purpose of sunshine statutes: enabling public scrutiny of potential government misfeasance through subsequent speech and petitioning. Reality and history tell us that disclosure serves no function if records remain unused.

Like in the parallel instance of FOIA, or any of the other myriad public-disclosure statutes, the purpose of the statute is facially obvious, as is the harm of the government flouting its obligations to inform its citizenry. In the NVRA, Congress outlined both the purpose of the statute, and then provided mechanisms by which individuals and organizations could enforce their rights and hold the States to task.

CONCLUSION

For the foregoing reasons, the Court should overturn the Sixth Circuit's decision below and permit Petitioner to exercise its right under the NVRA to enforce the public disclosure of the voter list maintenance records that law requires Michigan and other states to maintain.

Respectfully submitted,

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