UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

PUBLIC INTEREST LEGAL FOUNDATION, INC.

VERSUS

ROBERT KYLE ARDOIN, in his official capacity as Secretary of State for the State of Louisiana

CIVIL ACTION

NO. 22-81-JWD-RLB

RULING AND ORDER

This matter comes before the Court on the *Motion to Dismiss First Amended Complaint Pursuant to Rule 12(b)(1) and 12(b)(6)* ("*Motion to Dismiss*"), (Doc. 54), filed by Defendant, Secretary of State of Louisiana Nancy Landry ("Defendant," "Secretary of State," or "Landry").[1] Plaintiff Public Interest Legal Foundation, Inc. ("Plaintiff" or "PILF") opposes the motion. (Doc. 58.) Defendant has filed a reply, (Doc. 60), and Plaintiff has filed a notice of supplemental authority, (Doc. 63). The Court has carefully considered the law, the facts in the record, and the arguments and submissions of the parties and is prepared to rule. For the following reasons, Defendant's *Motion to Dismiss* is granted, and Plaintiff's claims are dismissed with prejudice.

I. RELEVANT BACKGROUND

A. The NVRA

"The [National Voter Registration Act of 1993 ('NVRA')] is designed to 'increase the number of eligible citizens who register to vote' and 'enhance[ ] the participation of eligible citizens as voters' in federal elections." *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 933 (5th Cir.

[1] Plaintiffs originally named former Secretary of State of Louisiana Robert Kyle Ardoin as a defendant in this matter. Louisiana has elected a new Secretary of State since the filing of Plaintiffs' *Motion to Dismiss*. Pursuant to Federal Rule of Civil Procedure 25(d), Louisiana's new Secretary of State, Nancy Landry, has automatically taken former Secretary of State R. Kyle Ardoin's place as Defendant in this matter.

2022) (quoting 52 U.S.C. § 20501(b)(1)–(2)). "Equally important, the NVRA is intended to 'protect the integrity of the electoral process' and 'ensure that accurate and current voter registration rolls are maintained.' " *Id*. (quoting 52 U.S.C. § 20501(b)(3)–(4)).

With respect to the latter goals, the "Public Disclosure Provision" of the NVRA provides:

> Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

Id. (quoting 52 U.S.C. § 20507(i)(1)). " 'A person who is aggrieved by a violation of [the NVRA] may provide written notice of the violation to the chief election official of the State involved' and may file suit for injunctive relief if the violation goes uncorrected." *Id*. (quoting 52 U.S.C. § 20510(b)(1)–(2)).

B. Procedural History

This case arises from a dispute between PILF and the Secretary of State regarding the disclosure of certain voting records. On February 4, 2022, PILF filed suit against the Secretary of State, alleging that the Secretary of State's denying it access to records showing who she removed from the voter rolls and why violates the NVRA's public disclosure provision, 52 U.S.C. § 20507(i)(1). (*Am. Compl.*, Doc. 49 at 1; 17–18.) PILF "is a non-partisan, 501(c)(3) public interest organization incorporated and based in Indianapolis, Indiana." (*Id.* at ¶ 3.) It does not represent specific voters but "promotes the integrity of elections nationwide through research, education, remedial programs, and litigation." (*Id.*)

On December 16, 2022, Defendant filed a motion to dismiss pursuant to Rule 12(b)(1) and 12(b)(6) asserting that Plaintiff lacked standing and failed to state a claim under the NVRA. (Doc.

22 at 1–2.) On September 11, 2023, the Court ordered the parties to file five-page pocket briefs to address the applicability of the Fifth Circuit's decision in *Scott*, with respect to the issue of whether Plaintiff has adequately alleged standing in its *Complaint*. (Doc. 40.) The parties did so on September 13, 2023. (Docs. 41, 42.)

That next day on September 14, 2023, the Court denied the Defendant's motion to dismiss. (Doc. 43 at 4.) The Court found that *Scott* was highly relevant to the issue of standing in this case and that the questions raised by *Scott* were too complex to be resolved by single five-page pocket briefs without any substantive motion addressing the arguments and responses thereto. (*Id.* at 3.) Accordingly, the Court granted the Plaintiff leave to file an amended complaint to cure any pleading defects as to jurisdiction or the sufficiency of the allegations. (*Id.* at 4.) Likewise, the Court denied Defendant's motion to dismiss without prejudice, allowing her to re-urge any arguments in response to an amended complaint, if appropriate. (*Id.*) The Defendant did so by filing the present *Motion to Dismiss*, (Doc. 54), following Plaintiff filing its *Amended Complaint*, (*Am. Compl.*, Doc. 49).

II. RULE 12(B)(1) STANDARD

A party may raise the defense of lack of subject matter jurisdiction in a motion brought under Federal Rule of Civil Procedure 12(b)(1). *See* Fed. R. Civ. P. 12(b)(1). "Under Rule 12(b)(1), a claim is 'properly dismissed for lack of subject-matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate' the claim." *In re FEMA Trailer*, 668 F.3d 281, 286 (5th Cir. 2012) (quoting *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (internal citation omitted)).

"The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (citing *McDaniel v.*

United States, 899 F. Supp. 305, 307 (E.D. Tex. 1995)). "Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist." *Id.* (citing *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980)). But, "[a] motion under 12(b)(1) should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief." *Home Builders*, 143 F.3d at 1010; *see also Ramming*, 281 F.3d at 161 (citing *Home Builders* with approval).

There are two forms of Rule 12(b)(1) challenges to subject matter jurisdiction: "facial attacks" and "factual attacks." *See Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981). "A facial attack consists of a Rule 12(b)(1) motion unaccompanied by supporting evidence that challenges the court's jurisdiction based solely on the pleadings." *Harmouche v. Consulate Gen. of the State of Qatar*, 313 F. Supp. 3d 815, 819 (S.D. Tex. 2018) (citing *Paterson*, 644 F.2d at 523). In considering a "facial attack," a court "is required merely to look to the sufficiency of the allegations in the complaint because they are presumed to be true. If those jurisdictional allegations are sufficient the complaint stands." *Paterson*, 644 F.2d at 523.

Conversely, "[a] factual attack challenges the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings—such as testimony and affidavits—may be considered." *Harmouche*, 313 F. Supp. 3d at 819 (citing *Paterson*, 644 F.2d at 523). The "court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981) (citation omitted). "[N]o presumptive truthfulness attaches to the plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Id.* (citation omitted). When a factual attack is made, the plaintiff, as the party seeking to invoke jurisdiction, must "submit facts through some evidentiary method and . . . prov[e] by a

preponderance of the evidence that the trial court does have subject matter jurisdiction." *Paterson*, 644 F.2d at 523.

III. ANALYSIS

A. Parties' Arguments

Defendant argues Plaintiff lacks standing because "[i]t does not claim standing on behalf of any Louisiana voter(s), nor does it claim any connection with Louisiana." (Doc. 54-1 at 13 (emphasis omitted).) Under *Scott*, in this NVRA public disclosure case, Plaintiff must assert downstream consequences to demonstrate how the Secretary of State's failure to disclose constitutes a concrete harm sufficient to satisfy Article III's injury-in-fact requirement. (*Id.* at 11.) The plaintiffs in *Scott* lacked standing because: (1) none were Texas voters and/or a voter wrongfully identified as ineligible; (2) they did not claim standing on behalf of voters whose data was likely mishandled; (3) they did not allege that the requested information would lead to action directly relevant to the NVRA or some other statute; and (4) their direct participation in the electoral process would not be hindered. (*Id.* at 13.) Defendant argues that like the plaintiffs in *Scott*, PILF has not sufficiently alleged a concrete harm because PILF: (1) is not a Louisiana voter and/or a voter wrongfully identified as ineligible; (2) does not claim organizational standing on Louisiana voters' behalf; and (3) does not claim standing on behalf of any voter whose information likely has been mishandled. (*Id.* at 17.)

Plaintiff argues that *Scott* has not changed the fact that the informational injury doctrine applies in this case. (Doc. 58 at 6.) Moreover, it has alleged three downstream consequences to satisfy injury in fact under *Scott*: (1) PILF cannot scrutinize the Secretary of State's voter list maintenance activities pursuant to the NVRA; (2) the Secretary of State's nondisclosure impairs PILF's non-profit education programming; and (3) PILF must now re-prioritize its resources in

response to the Secretary of State's nondisclosure. (*Id.* at 9–12.) Therefore, Plaintiff has standing, as it "alleges injuries to itself that are directly traceable to the Secretary's refusal to disclose information under the NVRA." (*Id.* at 13 (emphasis omitted).)

B. Applicable Law

1. Standing in General

"The standing doctrine is a threshold inquiry to adjudication, which defines and limits the role of the judiciary." *In re FEMA Trailer Formaldehyde Prod. Liab. Litig.*, 570 F. Supp. 2d 851, 853 (E.D. La. 2008) (citing *McClure v. Ashcroft*, 335 F.3d 404, 408 (5th Cir. 2003) (citation omitted)). "It is well settled that unless a plaintiff has standing, a federal district court lacks subject matter jurisdiction to address the merits of the case." *Id.* "In the absence of standing, there is no 'case or controversy' between the plaintiff and defendant which serves as the basis for the exercise of judicial power under Article III of the constitution." *Id.* (citing *Warth v. Seldin*, 422 U.S. 490, 498–99 (1975)). "The key question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant federal court jurisdiction." *Id.* (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

"[T]he irreducible constitutional minimum of standing contains three elements." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). "First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) actual or imminent, not conjectural or hypothetical." *Id.* (cleaned up) (citation omitted). "Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly . . . traceable to the challenged action of the defendant, and not . . . the result of the independent action of some third party not before the court." *Id.* at 560–61 (cleaned up) (citation omitted). "Third, it must be likely, as opposed to merely speculative, that the injury

will be redressed by a favorable decision." *Id.* at 561 (citations and quotations omitted). "The party invoking federal jurisdiction bears the burden of establishing these elements." *Id.* (citation omitted).

"As the Supreme Court explained in *Lujan* . . ., the elements of Article III standing are constant throughout litigation: injury in fact, the injury's traceability to the defendant's conduct, and the potential for the injury to be redressed by the relief requested." *In re Deepwater Horizon*, 739 F.3d 790, 799 (5th Cir. 2014). "As *Lujan* emphasized, however, the standard used to establish these three elements is not constant but becomes gradually stricter as the parties proceed through 'the successive stages of the litigation.' " *Id.* The Supreme Court has reaffirmed this principle as follows:

> Since they are not mere pleading requirements, but rather an indispensable part of the plaintiff[']s case, each element of standing must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation. At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim. In response to a summary judgment motion, however, the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true. And at the final stage, those facts (if controverted) must be supported adequately by the evidence adduced at trial.

Id. at 799–800 (quoting *Lewis v. Casey*, 518 U.S. 343, 358, 116 S. Ct. 2174, 135 L.Ed.2d 606 (1996)).

Accordingly, this Court will, at the current pleading stage of this litigation, base its decision on the allegations of the *Amended Complaint* only, as it is "presume[d] that [the] general allegations embrace those specific facts that are necessary to support the [Plaintiff's] claim." *Id.* at 799 (quoting *Lewis*, 518 U.S. at 358, 116 S. Ct. 2174); *see also Miccosukee Tribe of Indians of Fla. v. S. Everglades Restoration All.*, 304 F.3d 1076, 1081 (11th Cir. 2002) ("If this case were at

the summary judgment stage, and discovery had been conducted instead of stayed, we might agree with the defendants' arguments. . . . But that is not where this case is. It is only at the motion to dismiss stage, and at this stage the Tribe is only required to generally allege a redressable injury caused by the actions of SERA about which it complains. It has done that. Without discovery, the Tribe is not expected to allege more particular information ..."); *Gobert v. Allstate Ins. Co.*, No. 15-222, 2019 WL 2064414, at *7–8 (W.D. La. Mar. 7, 2019) (deGravelles, J.) (reaching same result and relying on these authorities); *cf. Fair Hous. in Huntington Comm. Inc. v. Town of Huntington, N.Y.*, 316 F.3d 357, 361–62 (2d Cir. 2003) (evaluating standing by "assum[ing] the truth of the facts alleged in plaintiffs' complaint, as well as those supplemented in plaintiffs' affidavit," when it was "not clear from the record how far discovery had proceeded, if at all" and when "the parties certainly had not had an opportunity to fully develop or fully contest evidence relevant to the merits of the case").

2. Injury in Fact and the NVRA's Public Disclosure Provision

"The [Supreme] Court has rejected the proposition that 'a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.' " *TransUnion LLC v. Ramirez*, 594 U.S. 413, 414 (2021) (citing *Spokeo, Inc., v. Robins*, 578 U.S. 330, 341 (2016)). "An injury in law is not an injury in fact." *Id.* "[R]egardless of whether a statutory right is procedural or substantive, *Spokeo* emphasized that 'Article III standing requires a concrete injury even in the context of a statutory violation.' " *Perez v. McCreary, Veselka, Bragg & Allen, P.C.*, 45 F.4th 816, 823 (5th Cir. 2022) (quoting *Spokeo*, 578 U.S. at 341). To satisfy injury in fact "in public disclosure-based cases, plaintiffs must . . . assert 'downstream consequences' . . . ." *Scott*, 49 F.4th at 938.

The Fifth Circuit has addressed what constitutes downstream consequence in the context of the NVRA's public disclosure provision, 52 U.S.C. § 20507(i)(1). *See generally id.* In *Scott*, the plaintiffs attempted to establish an informational injury in the following three ways:

> Plaintiffs contend that as "civic engagement organizations ... [they] have standing to request records under the NVRA[ ]" and therefore have a right to the requested registrant records. Second, they maintain that "there is [a] downstream injury with respect to the public not having visibility into how Texas is keeping its voter lists[.]" Third, Plaintiffs assert that "there is [a] downstream injury with respect to the public not having visibility into ... properly registered Texans being discriminated against and burdened in their right to vote." The first theory was rejected by this court only a few weeks ago, and the other two theories encompass no more than alleged injuries to *the public* and *affected Texas voters* writ large.

Id. at 936. The Fifth Circuit held that plaintiffs did not establish an injury in fact. *Id.* As the Fifth Circuit explained:

> They do not allege that identification of voter names and identification numbers will directly lead to action relevant to the NVRA or any other statute, nor that their direct participation in the electoral process will be hindered. At best, they might at some future date seek to vindicate the specific interests of third party voters whom they (and their counsel) do not represent—which is both speculative and a far cry from concrete injury to Plaintiffs themselves. Plaintiffs' claim lacks downstream consequences for purposes of Article III standing . . . .

Id. at 938–39.

3. Analysis

After careful consideration, the Court agrees with Defendant that under *Scott*, Plaintiff has failed to allege sufficient downstream consequences to satisfy Article III's injury-in-fact requirement. Though there are differences between PILF and the plaintiffs in *Scott*, both groups seek their requested information for the benefit of the public at large. As PILF alleged in its *Amended Complaint*, the Secretary of State's nondisclosure, "harms the Foundation's ability to accurately and comprehensively educate *the public* and election officials about numerous circumstances, including the state of their own voter rolls." (*Am. Compl.*, Doc. 49 at ¶ 64 (emphasis

added).) Further, "[t]his impairment harms the Foundation's ability to accurately and comprehensively educate members of Congress about numerous circumstances, including possible amendments to the National Voter Registration Act, compliance with federal law by state officials, and the effectiveness of the National Voter Registration Act's four articulated legislative purposes." (*Id.*) Likewise, "[b]y denying the Foundation the ability to obtain the requested voter list maintenance records, Defendant is also impairing the Foundation's ability to, *inter alia*, (1) assess compliance by Louisiana with state and federal voter list maintenance obligations and (2) aid Louisiana in carrying out its voter list maintenance programs and activities." (*Id.* at ¶ 66.)

Like in *Scott*, these "theories encompass no more than alleged injuries to the public and affected [Louisiana] voters writ large." *Scott*, 49 F.4th at 936 (emphasis omitted). By not representing the interests of specific Louisiana voters, or any specific voter for that matter, PILF has not alleged downstream consequences that "will *directly* lead to action relevant to the NVRA . . . nor that their direct participation in the electoral process will be hindered." *Id.* at 938 (emphasis added). "At best, they might at some future date seek to vindicate the specific interests of third party voters whom they (and their counsel) do not represent—which is both speculative and a far cry from concrete injury to Plaintiff[] [itself]." *Id.* at 938–39. Therefore, given that Plaintiff has not met its burden in proving downstream consequences that would lead to an injury in fact sufficient to satisfy Article III standing, the Court finds that it lacks jurisdiction over this matter, and Plaintiff's claims must be dismissed.

IV. CONCLUSION

Accordingly,

IT IS ORDERED that the *Motion to Dismiss First Amended Complaint Pursuant to Rule 12(b)(1) and 12(b)(6)*, (Doc. 54), filed by Defendant, Secretary of State of Louisiana Nancy Landry

is **GRANTED**, and Plaintiff Public Interest Legal Foundation, Inc.'s claims are **DISMISSED WITH PREJUDICE.**

Signed in Baton Rouge, Louisiana, on August 28, 2024.

JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA