No.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Congress enacted the National Voter Registration Act ("NVRA") to increase and enhance registration and voting by "eligible citizens," "protect the integrity of the electoral process," and "ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(1)-(4). The NVRA makes all list maintenance records subject to public inspection precisely so that the public can enjoy a transparent election process and assess compliance with state and federal laws that grant and remove voting rights. 52 U.S.C. § 20507(i)(1).

The Public Interest Legal Foundation sought list maintenance records from Pennsylvania after the Commonwealth publicly acknowledged errors on its voter roll. The Commonwealth denied the NVRA request and this lawsuit followed. The district court granted the Foundation's summary judgment motion in part and required the disclosure of certain records. The appellate court reversed, solely because it found the Foundation lacked Article III standing.

The questions presented are:

1. Did the appellate court err in using *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), to evaluate standing in this case, which involves the denial of public records?
2. Did *TransUnion* overrule this Court's cases establishing the standing inquiry for public records cases?
3. Did the appellate court err by finding that the Foundation does not have standing to redress the denial of public records under the NVRA?

CORPORATE DISCLOSURE STATEMENT

The Public Interest Legal Foundation, Inc. has no parent corporation and no publicly held company owns 10 percent or more of its stock.

STATEMENT OF RELATED CASES

Public Interest Legal Foundation v. Secretary of the Commonwealth of Pennsylvania, Nos. 23-1590, 23-1591, and 23-3045 (3rd Cir.)

Public Interest Legal Foundation v. Secretary of the Commonwealth of Pennsylvania, Case No. 1:19-cv-00622 (M.D. Pa.)

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PETITION FOR A WRIT OF CERTIORARI

The Public Interest Legal Foundation, Inc. ("Foundation") petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The court of appeals issued an order denying the Foundation's *en banc* petition (Pet.App. 28a-29a). The opinion of the panel of the court of appeals (Pet.App. 1a-27a) is reported at *Pub. Int. Legal Found. v. Sec'y of Pa.*, 136 F.4th 456 (3d Cir. 2025). The opinion of the district court (Pet.App. 30a-57a) is reported at *Pub. Int. Legal Found. v. Chapman*, 595 F. Supp. 3d 296 (M.D. Pa. 2022).

JURISDICTION

The court of appeals denied the petition for rehearing *en banc* on June 30, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The National Voter Registration Act provides in pertinent part:

> 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.

52 U.S.C. § 20507(i)(1).

STATEMENT OF THE CASE

Congress decided that all voter list maintenance records should be made available to the public. The appellate court wrongfully applied *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), to the denial of public records, instead of *Pub. Citizen v. United States Dep't of Just.*, 491 U.S. 440 (1989) and *FEC v. Akins*, 524 U.S. 11 (1998). In so doing, the appellate court determined that a litigant who was denied public records "must establish a nexus among a downstream consequence, his alleged harm, and the interest Congress sought to protect." (Pet.App. at 17a.)

Despite the NVRA's explicit public disclosure requirement and provision of a private right of action to make voter list maintenance transparent, the panel decision allows the government to hide voter registration mistakes, malfeasance, and even discrimination. Pennsylvania government actors questioned the citizenship and voting rights of thousands of voters, yet the public cannot learn why. (*See* Pet.App. at 33a) (noting that the Commonwealth's "initial analysis identified approximately 100,000 registered voters 'who may potentially be non-citizens or may have been non-citizens at some point in time.'"). Congress made "all" voter list maintenance records public to prevent the concealment that the panel decision allowed by misapplying standing rules for public records cases. If a voting rights organization like the Foundation does not have standing here, then virtually no one does, and the transparency Congress intended does not exist.

As a result of this decision, other courts are now limiting access to public documents across the country. *See Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 632 (6th Cir. 2025). The case at bar is the right vehicle to clarify the appropriate standard that applies to plaintiffs seeking redress from denial of public records requests.

With the NVRA, Congress intended to increase and enhance registration and voting by "eligible citizens," "protect the integrity of the electoral process," and "ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(1)-(4). To accomplish these goals, Congress created the NVRA's Public Disclosure Provision ("Public Disclosure Provision"), 52 U.S.C. § 20507(i)(1), a broad and powerful federal open records law, enforced by a private right of action, 52 U.S.C. 20510(b). These two components serve 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.

The Foundation is a non-partisan, public interest organization. The Foundation promotes the integrity of elections nationwide as part of its mission. The Foundation does this, in part, by using state and federal open records laws to study and analyze the voter list maintenance activities of state and local governments. Where necessary, the Foundation also takes legal action to compel compliance with state and federal voter list maintenance laws. The Foundation dedicates significant time and resources ensuring that voter rolls in Pennsylvania, and other

jurisdictions throughout the United States, are maintained to exclude ineligible registrants, including deceased individuals, foreign nationals, individuals who are no longer residents, and individuals who are simultaneously registered in more than one jurisdiction.

The specific controversy here began in 2017 when the Commonwealth publicly admitted that it had permitted non-United States citizens to register to vote at Pennsylvania Department of Motor Vehicle offices ("PennDOT") for the preceding several decades (hereafter, the "PennDOT Error"). (*See* Pet.App. at 32a.) The Commonwealth engaged in a three-stage remedial program in response to the PennDOT Error. (Pet.App. 32a-35a.)

The first stage—referred to by the district court as the "Initial Analysis"—began in September 2017. (Pet.App. 32a.) During the Initial Analysis, the Commonwealth collaborated with PennDOT to compare voter registration records with PennDOT records containing United States Immigration and Naturalization Service indicators, which signify "that the license holder was, at some point in their life, something other than a United States citizen." (Pet.App. 33a.) "The initial analysis identified approximately 100,000 registered voters 'who may potentially be non-citizens or may have been non-citizens at some point in time.'" (Pet.App. 33a.)

During the second stage—referred to by the district court as the "Statewide Analysis"—the Commonwealth searched the statewide voter registration database "for records related to any voter registrations cancelled by a county simply because the registrant was not a citizen[.]" (Pet.App. 33a-34a.)

This analysis "produced voting registration records for 1,160 individuals." (Pet.App. 34a.) "However, the 1,160 records reflected only those registrants who self-reported their status as noncitizens and voluntarily requested their voter registration be cancelled." (Pet.App. 34a.)

In the third stage—referred to by the district court as the "Noncitizen Matching Analysis"—the Commonwealth hired an individual to "identify registrants whose eligibility to vote required additional scrutiny in terms of citizenship." (Pet.App. 34a.)

In contrast to the public nature of the problem, the Commonwealth kept much of its remedial actions a secret. Significant questions remain unanswered about the list maintenance efforts to fix the problem. Who made the eligibility determinations? How were registrants and potential noncitizens identified as needing additional scrutiny? Did the Commonwealth scrutinize each registrant with cause or without cause? In other words, was the Commonwealth properly maintaining its list of eligible voters?

In pursuit of answers to these questions, the Foundation sent a request to inspect records pursuant to NVRA's Public Disclosure Provision. (Pet.App. 35a.) The Commonwealth denied the Foundation's request. (Pet.App. 37a.) On February 26, 2018, the Foundation filed an action alleging that the Secretary violated the NVRA by denying the Foundation access to the requested records. ECF 1, *Pub. Int. Legal Found. v. Torres*, No. 1:18-cv-00463 (M.D. Pa., filed Feb. 2, 2018). That action was filed pursuant to the NVRA's private right of action. 52 U.S.C. § 20510(b). The district court determined that the Foundation fell

"within NVRA's 'zone of interests' and had standing, but that it failed to comply with the statute's notice requirements." (Pet.App. at 37a.)

The Foundation cured the statutory notice deficiency and filed the present action on April 10, 2019. On March 31, 2022, the district court granted in part and denied in part both parties' motions for summary judgment and required the Commonwealth to comply with the Foundation's NVRA request as to certain records. (Pet.App. 30a-57a.) In an order dated February 27, 2023, upon Motion of the Commonwealth, the district court clarified its judgment but denied the Secretary's motion to amend or alter the judgment. (Pet.App. 63a-69a.)

Both sides appealed and raised issues related to the scope of the Public Disclosure Provision. The appellate court vacated the lower court's orders and remanded for dismissal based entirely upon lack of Article III standing. In so doing, the appellate court grafted this Court's analysis in *TransUnion* regarding litigants who received requested information from a private party in the *wrong format* onto this case involving the *denial* of public records. To add insult to injury, the appellate court discounted the adverse consequences the Foundation experienced. Despite the undisputed public knowledge of the Commonwealth's errors, the severe consequences on voting rights, and over seven years of litigation (including a finding of summary judgment in favor of the Foundation), the Foundation, and, by extension, other members of the public, cannot redress the Commonwealth's violation of the NVRA.

REASONS FOR GRANTING THE PETITION

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

The panel's decision is contrary to decisions of this Court establishing the standing framework for the Freedom of Information Act and other public records laws, *e.g.*, *Pub. Citizen v. United States Dep't of Just.*, 491 U.S. 440 (1989) and *FEC v. Akins*, 524 U.S. 11 (1998).

A. Standing in a Public Records Case Requires Nothing More Than a Request and a Denial.

i. The Freedom of Information Act Framework Controls the Standing Inquiry, not *TransUnion*.

The controlling standing framework originates with the federal Freedom of Information Act ("FOIA"). Over thirty-six years ago, this Court confirmed that its "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." *Pub. Citizen*, 491 U.S. at 449 (collecting cases). "Anyone whose request for specific information has been denied has standing to bring an action; the requester's circumstances—why he wants the information, what he plans to do with it, what harm he suffered from the failure to disclose—are irrelevant to his standing." *Zivotofsky v. Sec'y of State*, 444 F.3d 614, 617 (D.C. Cir. 2006) (citing *Public Citizen*, 491 U.S. at 449).

ii. FOIA's Simple Standing Framework Applies to Other Public Records Laws.

In *Public Citizen*, this Court held that FOIA's standing framework applies to the Federal Advisory Committee Act ("FACA"), a law that, like the NVRA, contains a public disclosure requirement. 491 U.S. at 446-47. Reciting the standing requirements in FOIA cases, this Court explained, "There is no reason for a different rule here." *Id*. at 449. "As when an agency denies requests for information under the Freedom of Information Act, 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*.

In *FEC v. Akins*, this Court held that FOIA's standing framework applies to the Federal Election Campaign Act of 1971 ("FECA"), a law that, like the NVRA, contains a public disclosure requirement, 524 U.S. 11, 14-16 (1998). Citing *Public Citizen*, this Court explained that it "previously held that a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Akins*, 524 U.S. at 21 (citing *Public Citizen*, 491 U.S. at 449). Applying that standard to the case before it, the Court continued, "[t]he 'injury in fact' that respondents have suffered consists of their inability to obtain information … that, on respondents' view of the law, the statute requires that [the subject of the FECA complaint] make public." *Id*. at 21. The *Akins* Court also cited *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), a Fair Housing Act case, in which the Court applied the same standard, concluding that the "deprivation of information about housing availability constitutes

'specific injury' permitting standing," *Akins*, 524 U.S. at 21.

iii. Lower Courts Understand that FOIA's Simple Standing Framework Applies to the NVRA.

Relying upon these decisions, lower courts, including the district court in this case, have applied FOIA's simple standing framework to the NVRA's Public Disclosure Provision, 52 U.S.C. § 20507(i)(1).

For example, the Eastern District of Virginia explained that "[f]or a plaintiff to sufficiently allege an informational injury, it must first allege that the statute confers upon it an individual right to information, and then that the defendant caused a concrete injury to the plaintiff in violation of that right." *Project Vote/Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697, 702 (E.D. Va. 2010). The court first recognized that "the NVRA provides a public right to information." *Id.* at 703. Where there is "no dispute that the plaintiff has been unable to obtain the [r]equested [r]ecords, … the plaintiff's alleged informational injury is sufficient to survive a motion to dismiss for lack of standing." *Id.* at 703-04.

For similar reasons, the Southern District of Texas ruled that the Foundation had standing to compel record production under the NVRA. *Pub. Int. Legal Found. v. Bennett*, No. H-18-0981, 2019 U.S. Dist. LEXIS 39723, at *8-10 (S.D. Tex. Feb. 6, 2019) (denying motion to dismiss), *adopted by Pub. Int. Legal Found., Inc. v. Bennett*, No. 4:18-CV-00981, 2019 U.S. Dist. LEXIS 38686 (S.D. Tex. Mar. 11, 2019).

The Southern District of Indiana even declared that a standing challenge under the Public Disclosure

Provision would be facially invalid, explaining, "With regard to the [NVRA] Records Claim, the Defendants do not—and cannot—assert that the Plaintiffs lack standing." *Judicial Watch, Inc. v. King*, 993 F. Supp. 2d 919, 923 (S.D. Ind. 2012) (citing *Akins*, 524 U.S. at 24-25).

In this case, the district court similarly held that the Foundation has standing, citing *Public Citizen* and *Akins*, and this Court's more recent decision, *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).

The district court got it right because under *Public Citizen* and *Akins*, "a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Akins*, 524 U.S. at 21 (citing *Public Citizen*, 491 U.S. at 449). There is no dispute that the Foundation has failed to obtain information requested under the NVRA's Public Disclosure Provision. Thus, that predicate "injury in fact" confers standing upon the Foundation.

B. *Akins* Rejects the Nexus, or Use, Requirement.

The appellate court decision also conflicts with this Court's precedent that rejects the need for a nexus or use requirement. (*See* Pet.App. 16a) (requiring the Foundation to show that the denial of records "led to adverse effects or other downstream consequences, *and such consequences have a nexus to the interest Congress sought to protect*" (emphasis in original)).

In *Akins*, the dissenting Justices argued that the plaintiffs must show a logical nexus between their

status and the claim asserted. *See Akins*, 524 U.S. at 21-22. The majority flatly rejected that framework, explaining "the 'logical nexus' inquiry is not relevant" where the statute protects plaintiffs from "failing to receive particular information[.]" *Id*. at 22. The same is true with the NVRA, and therefore no "nexus" must be shown.

What about this Court's statements concerning the plaintiffs' intended uses for the requested records? The Fourth Circuit provides the answer: "although the plaintiffs in *Public Citizen* and *Akins* thereafter asserted uses for the information they sought, those asserted uses were not a factor in the *Public Citizen* and *Akins* Article III standing analyses." *Laufer v. Naranda Hotels, LLC*, 60 F.4th 156, 172 (4th Cir. 2023). This makes sense because any "use" requirement cannot coexist with this Court's standard: "a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Akins*, 524 U.S. at 21 (citing *Public Citizen*, 491 U.S. at 449).

C. The *TransUnion* Court Explicitly Distinguished Public Records Cases.

TransUnion did not involve a statutory right to receive information from a government agency. *TransUnion* involved claims against a private credit reporting agency, not government officials. The plaintiffs sued TransUnion LLC for violations of the Fair Credit Reporting Act ("FCRA"). *TransUnion*, 594 U.S. at 417-18. Among other differentiating features, the plaintiffs there "complained about formatting defects in certain mailings sent to them by TransUnion." *Id.* at 418. What were the formatting

defects? The plaintiffs received all the information required by the FCRA, but received it in two separate mailings, when it should have been sent in one mailing. *See id.* at 440-441. "In support of standing, the plaintiffs thus contend[ed] that the TransUnion mailings were formatted incorrectly and deprived them of their right to receive information in the format required by statute." *Id.* at 440.

The United States, as *amicus curiae*, argued that the plaintiffs had standing under *Public Citizen* and *Akins*. *Id.* at 441. This Court, in *TransUnion,* held that those cases "do not control" because they "involved denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information." *Id.* "This case does not involve such a public-disclosure law." *Id.* *TransUnion* involved the FCRA, a law that regulates private parties, not the government. The injury in *TransUnion* was fundamentally different than with public disclosure and sunshine laws. "The plaintiffs did not allege that they failed to receive any required information. They argued only that they received it *in the wrong format*." *Id.* (emphasis in original). Only after distinguishing *Public Citizen* and *Akins* as cases that "involved denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information," did this Court add, "[m]oreover, the plaintiffs have identified no 'downstream consequences' from failing to receive the required information." *Id.* at 441-42.

The conclusion is this: where plaintiffs allege that they "failed to receive information" under a public disclosure or sunshine law, the standing inquiry is controlled by *Public Citizen* and *Akins*. Where

plaintiffs allege that they received information but received it in the *wrong format*—as in *TransUnion*—plaintiffs must allege some additional harm caused by the formatting error. Only the latter is a "bare procedural violation," which requires plaintiffs to allege "downstream consequences." *Id*. at 440.

Even though the Foundation was *denied* public records outright, the panel held that the Foundation must also plead "downstream consequences" because "the NVRA targets an objective much broader and more expansive than access to records." (Pet.App. 15a). Yet the same was true in *Public Citizen* and *Akins*, and still this Court held in both cases that the plaintiffs had standing simply because they sought and were denied records.

Public Citizen involved FACA, a statute with a much broader purpose than transparency.

> [FACA's] purpose was to ensure that new advisory committees be established only when essential and that their number be minimized; that they be terminated when they have outlived their usefulness; that their creation, operation, and duration be subject to uniform standards and procedures; that Congress and the public remain apprised of their existence, activities, and cost; and that their work be exclusively advisory in nature.

491 U.S. at 446. The broader purpose did not matter for standing purposes.

Akins involved FECA, a statute that "seeks to remedy any actual or perceived corruption of the political process" by, among other things, imposing "limits upon the amounts that individuals, corporations, 'political committees' (including

political action committees), and political parties can contribute to a candidate for federal political office." 524 U.S. at 14. That broader purpose also did not matter for standing purposes.

Therefore, the NVRA similarly cannot be distinguished because it requires disclosure as part of a broader statutory scheme. (Pet.App. 17a n.4.) Such a finding misunderstands and misapplies the purpose of the NVRA's transparency provision, which furthers each of Congress's purposes by allowing the public to monitor, analyze, assess, and critique the work of election officials.

This case presents the type of informational injury at issue in *Public Citizen* and *Akins*—the failure to receive *any* required information rather than information received in the wrong format. Further, the injury is even more apparent given that the Foundation is seeking, and Congress required to be made public, information from the *government*, not from a private party. Because the Foundation was denied the opportunity to inspect the Commonwealth's list maintenance records, as mandated by the NVRA's Public Disclosure Provision, the Foundation has suffered an actionable injury which the court can redress.

II. The Appellate Court's Decision Deepens the Circuit Split on Article III Standing Related to Denial of Information.

This case drives yet another wedge in the deepening conflict between the circuits on whether a litigant must plead additional harm beyond the denial of public information. Because of this conflict, someone's rights under a federal voting law now

depend on the area of the country in which the person resides. A stark circuit split involving an exceptionally important issue requires this Court's attention.

Unlike the Third Circuit, the First Circuit did not evaluate standing under *TransUnion*. *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 49 (1st Cir. 2024) (holding "Maine's Voter File is a 'record[] concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters' and is thus subject to disclosure under Section 8(i)(1).").

District courts across the nation have proceeded similarly. For example, in November 2024, more than three years after this Court's decision in *TransUnion*, the United States District Court for the Western District of Wisconsin found that "[a] failure to obtain information required to be disclosed under law is a concrete and particularized injury." *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). *See also Pub. Int. Legal Found. v. Matthews,* 589 F. Supp. 3d 932 (C.D. Ill. 2022); *Pub. Int. Legal Found., Inc. v. Simon*, 774 F. Supp. 3d 1037, 1042 (D. Minn. 2025) (citing *Pub. Citizen* and *Akins*); *Pub. Int. Legal Found., Inc. v. Knapp*, 749 F. Supp. 3d 563, 572 (D.S.C. 2024); *Pub. Int. Legal Found., Inc. v. Griswold*, Civil Action No. 21-cv-03384-PAB-MEH, 2023 U.S. Dist. LEXIS 176231, at *19 (D. Colo. Sep. 29, 2023) (denying motion to dismiss); *Pub. Int. Legal Found., Inc. v. Dahlstrom,* 673 F. Supp. 3d 1004, 1016 (D. Alaska 2023) (same).

Another articulation of the standing analysis divide is seen in the divergent disposition of an

assortment of cases involving the same plaintiff, Ms. Laufer, filed in different circuits. Ms. Laufer, who uses a wheelchair, set out to test hotels' compliance with the American with Disabilities Act ("ADA") by pursing legal action against those that do not adequately describe their ADA compliance on their website.

The Second Circuit determined that the plaintiff, Laufer, did not have standing, requiring that the plaintiff demonstrate "downstream effects." *Laufer v. Ganesha Hosp. LLC*, No. 21-995, 2022 U.S. App. LEXIS 18437, at *5 (2d Cir. July 5, 2022).

The Fifth Circuit rejected Laufer's standing, finding that she needed "'to allege at least that the information had 'some relevance' to *her*.'" *Laufer v. Mann Hosp., LLC*, 996 F.3d 269, 273 (5th Cir. 2021).

The Tenth Circuit found Laufer lacked standing under *Public Citizen* and *Akins*. *Laufer v. Looper*, 22 F.4th 871, 881 (10th Cir. 2022) ("She has no plans to visit Craig, Colorado. She did not attempt to book a room at the Elk Run Inn and has no intent to do so. She therefore has not suffered an injury of the type recognized in *Public Citizen* or *Akins*.").

In contrast, the Fourth Circuit determined that Laufer did have standing and rejected the argument that Article III requires plaintiffs to demonstrate downstream consequences when they are *denied* public information. *Laufer v. Naranda Hotels, LLC*, 60 F.4th at 172. "*Havens Realty*, *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 in satisfaction of the first *Lujan* element." *Id.* Why not? Because "the informational injuries in *Public Citizen* and *Akins* (the 'fail[ure] to

receive *any* required information')" are distinguishable "from the purported informational injury [in *TransUnion*] (receipt of the required information '*in the wrong format*')." *Id.* at 170 (quoting *TransUnion*, 594 U.S. at 441 (first emphasis added)). Therefore, "any use requirement is limited to the type of informational injury at issue in *TransUnion* and does not extend to the type of informational injury presented in *Public Citizen* and *Akins*." *Id.* at 170.

This confusion among the circuits led to this Court agreeing to review one of Laufer's cases. The Court recognized the growing split among the circuits. "Laufer has singlehandedly generated a circuit split. The Second, Fifth, and Tenth Circuits have held that she lacks standing; the First, Fourth, and Eleventh Circuits have held that she has it. We took this case from the First Circuit to resolve the split." *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 3 (2023). Due to what this Court referred to as an "unusual turn," related to sanctions against the litigant's lawyer, the Court ultimately determined that the case was moot and it was unable to provide the much-needed clarity. The opportunity to provide that clarity is here.

III. The Questions Presented Are Important.

This case poses a question of exceptional importance, *i.e.*, does this Court's decision in *TransUnion* apply to litigants redressing the denial of public records?

The Foundation requested records in this case to scrutinize a decades-long debacle that jeopardized voting rights and the integrity of elections. Along the way, Pennsylvania questioned the voting rights of

thousands of registered voters. Congress designed the NVRA to shine a light on circumstances just like these. Indeed, the NVRA gives everyone the right to physically inspect "all records" concerning the maintenance of voter registration records. 52 U.S.C. § 20507(i)(1). The First Circuit recently interpreted this provision as having "sweeping language" that reflects a "broadly inclusive intent." *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th at 48 (citation omitted). As the Fourth Circuit said, "[t]his language embodies Congress's conviction that Americans who are eligible under law to vote have every right to exercise their franchise, a right that must not be sacrificed to administrative chicanery, oversights, or inefficiencies." *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 334-35 (4th Cir. 2012).

But not anymore. The appellate court's decision sets an almost impossibly subjective standard. It allows election officials to demand to know "why" transparency is needed, and then to evaluate whether someone asking for public information has a good reason to see it. Congress already made that decision. Congress did not delegate that inquiry to election officials whose work is subject to disclosure and scrutiny. If the Foundation does not have standing to compel disclosure of records in this case, then the transparency Congress intended is unattainable. *See Public Citizen*, 491 U.S. at 449 (finding plaintiffs have standing where plaintiffs sought "access to the ABA Committee's meetings and records in order to monitor its workings"). Put another way, if the Foundation does not have standing, then who does?

Worse still, the appellate court's error is being replicated across the country. In May, the Sixth

Circuit cited to the appellate court's finding that the Foundation "'failed to identify some *specific* adverse downstream consequence for its mission or future plans' and, therefore, lacked standing…. PILF faces the same deficiencies here as well." *Benson*, 136 F.4th at 632 (citations omitted) (emphasis in original). There, the Foundation conducted research and determined that tens of thousands of deceased registrants were lingering on the state of Michigan's voter roll. *Id*. at 620-21. The Foundation sought documents pursuant to the NVRA to identify why this was happening and aid in finding a solution. The Sixth Circuit found that "it is not enough for a plaintiff to simply allege that it was unlawfully denied records requests; instead, a plaintiff must also show that some concrete downstream injury resulted." *Id*. at 630. The Sixth Circuit discounted the Foundation's adverse impacts, finding "the allegation in PILF's complaint that Secretary Benson's actions prevent PILF 'from engaging in its research, educational, and remedial activities' is, at most, a vague and unspecific injury." *Id*. at 631.

The need for clarity can also be seen in one of the Foundation's cases in the Ninth Circuit. Months after briefing was closed and shortly before oral argument was to be held, the Ninth Circuit issued an order seeking supplemental briefing on the question of whether the "outright denial" of the Foundation's NVRA Public Disclosure Provision request "create[s] an informational injury sufficient to support Article III standing?" Order, *Pub. Int. Legal Found. v. Nago*, No. 24-06629 (9th Cir., Aug. 22, 2025) (citing *TransUnion* and the appellate court decision in this case along with two Ninth Circuit cases.)

The many different interpretations of the *TransUnion* ruling have extensive ramifications. Consider a recent Fifth Circuit case where plaintiffs sought, through the NVRA's Public Disclosure Provision, "information including the names and voter identification numbers of persons suspected of being noncitizens though registered to vote." *Campaign Legal Ctr v. Scott*, 49 F.4th 931, 932-933 (5th Cir. 2022). The plaintiffs were successful in the district court but, on appeal, the Fifth Circuit reversed, holding that the plaintiffs did not adequately allege a sufficient injury to establish standing. *Id*. at 939. The Fifth Circuit interpreted this Court's decision in *TransUnion* to mean that "even in public disclosure-based cases, plaintiffs must and can assert 'downstream consequences,' which is another way of identifying concrete harm from governmental failures to disclose." *Scott*, 49 F.4th at 938. The concurrence said plainly: "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." *Id*. at 940 (Ho, J., concurring in the judgment.) *See also, id*. (citing Erwin Chemerinsky, *What's Standing After TransUnion LLC v. Ramirez*, 96 N.Y.U. L. Rev. Online 269, 271, 283 (2021) (noting that he could not find any cases questioning the standing of a litigant denied records under FOIA. "But after *TransUnion*, it is unclear whether suits to enforce [FOIA] still will be allowed. . . . It is hard to overstate how dramatic this could be in limiting the ability to sue under federal laws if the Supreme Court follows this in the future.")).

While FOIA rights in the Fifth Circuit are seemingly controlled by *TransUnion*, the Third Circuit carved out an exemption for FOIA from

TransUnion's "downstream consequences" requirement. (Pet.App. 17a n.4.) Courts across the country therefore need this Court's guidance on the application of *TransUnion* to clear up the confusion.

IV. This Case Is the Right Vehicle.

This case squarely presents the question of who can demonstrate an informational injury. The district court decided the matter on cross motions for summary judgment, but the appellate court reversed, basing its decision entirely on the analysis of *TransUnion*, a case with inapplicable facts to this one. Now, this Court has the perfect opportunity to definitively state the proper standard for public record informational injury claims.

The straightforward record in this case provides this Court the vehicle to provide clarity. The statute at issue expressly provides a right to information—precisely like FOIA does. *See Acheson Hotels, LLC v. Laufer*, 601 U.S. at 11 (J. Thomas, concurring) ("In other words, the ADA prohibits only discrimination based on disability—it does not create a right to information."). The Foundation's right to information, and by extension, any member of the public's right to information, is directly at issue, rather than "a defendant's compliance with the law in the abstract." *Id*. at 14.

Congress told us exactly what interests it designed the NVRA to protect. 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*., 138 S. Ct. 1833, 1838 (2018). As the district court recognized, "Congress identified several purposes of the NVRA within the statute itself. These include, *inter alia*, 'to

protect the integrity of the electoral process' and 'to ensure that accurate and current voter registration rolls are maintained.'" *Boockvar*, 370 F. Supp. 3d at 455 (quoting 52 U.S.C. § 20501(b)(3)-(4)). The NVRA's Public Disclosure Provision furthers Congress's purposes by allowing the public to monitor, analyze, assess, and critique the work of election officials. Removing this transparency eliminates the accountability Congress intended.

In the words of another federal court, the NVRA's Public Disclosure Provision is "available to any member of the public … and [it] convey[s] Congress's intention that the public should be monitoring the state of the voter rolls and the adequacy of election officials' list maintenance programs." *Bellitto*, 2018 U.S. Dist. LEXIS 103617, at *12-13. Indeed, Congress made all list maintenance records subject to public inspection precisely so that the public can enjoy a transparent election process and assess compliance with state and federal laws. "Public disclosure promotes transparency in the voting process, and courts should be loath to reject a legislative effort so germane to the integrity of federal elections." *Project Vote*, 682 F.3d at 339-40.

The Foundation's intended activities—namely, analysis, education, and remedial action such as testimony to Congress concerning voter list maintenance—are precisely the activities Congress envisioned when it included the Public Disclosure Provision. Yet the appellate court found the Foundation does not have standing to compel production of voter list maintenance records under a federal law designed to make voter list maintenance transparent.

CONCLUSION

The underlying decision changed the established standard for standing and created an insurmountable hurdle for those seeking redress for the denial of public records, not just for the Foundation but for requesters across the nation. This case is the ideal vehicle for this Court to clarify its Article III jurisprudence.

Respectfully submitted,

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Dated: September 26, 2025

APPENDIX

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Appendix A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1590, No. 23-1591, 23-3045

PUBLIC INTEREST LEGAL FOUNDATION
Appellant in 23-1591

v.

SECRETARY COMMONWEALTH OF PENNSYLVANIA;
JONATHAN M. MARKS, in his official capacity as Deputy Secretary for Elections and Commissions;
BUREAU OF COMMISSIONS ELECTIONS & LEGISLATION

Secretary Commonwealth of Pennsylvania;
Jonathan M. Marks,
Appellants in 23-1590 & 23-3045

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(District Court No.: 1-19-cv-00622)
District Judge: Hon. Christopher C. Conner

Argued
September 11, 2024

(Filed: April 25, 2025)

Before: CHAGARES, *Chief Judge*, ROTH, and RENDELL, *Circuit Judges*.

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OPINION OF THE COURT

RENDELL, *Circuit Judge*.

The Public Interest Legal Foundation ("PILF") is a self-described "public interest organization that seeks to promote the integrity of elections nationwide." Appx001. It requested records from the Secretary of the Commonwealth of Pennsylvania to which it contended that it was entitled under the public inspection provision of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507. The Secretary rejected PILF's requests, so PILF sued the Secretary, the Deputy Secretary for Elections and Commissions, and the Bureau of Commissions, Elections and Legislation (collectively the "Secretary") under Section 8 of the NVRA. PILF alleged that it had "suffer[ed] a clear *informational injury* as a direct result of the [Secretary's] violations of the NVRA because the [Secretary] denied [it] access to the records to which it [wa]s entitled under the law." D.C. CM/ECF No. 1 at 34 (emphasis added). Based on this allegation, the District Court concluded that PILF had suffered an "informational injury . . . sufficient to confer Article III standing." *Pub. Int. Legal Found. v. Boockvar*, 370 F. Supp. 3d 449, 456 (M.D. Pa. 2019). We disagree and, therefore, we will vacate and remand.

I.

In September 2017, the Secretary disclosed that a "glitch" in a Pennsylvania Department of Transportation ("PennDOT") computer system allowed ineligible persons, including legal permanent residents, also known as green card holders, to register to vote as part of the process of applying for or renewing a driver's license or vehicle registration. D.C. CM/ECF No. 66 at 4. Various media outlets reported about the glitch and the Pennsylvania legislature conducted multiple public investigatory hearings.

On October 23, 2017, the Indiana-based PILF,[1] having learned about this glitch, sent a letter to the Secretary requesting documents under the NVRA, including "all voter records that were referenced in recent news media reports regarding . . . a 'glitch' in PennDOT's Motor Vehicle compliance system." D.C. CM/ECF No. 66 at 6. PILF believed the records would show that "non-U.S. citizens have been registering and voting in Pennsylvania for decades." D.C. CM/ECF No. 1 at 1. To support its request, PILF invoked the "public disclosure" provision of the NVRA, which states:

> (i) Public disclosure of voter registration activities
>
> (1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a

[1] PILF's Br. 7. Since then, PILF has moved from Indiana to Virginia. Id. at 7 n.2.

> 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.

52 U.S.C. § 20507. PILF followed up on its initial request by letter in December 2017. On December 20, 2017, the Secretary rejected PILF's request explaining that the Secretary "d[id] not agree that the NVRA entitle[d] [PILF] to access the records." D.C. CM/ECF No. 1-11.

PILF sued the Secretary under 52 U.S.C. § 20510(b), which provides that a "person who is aggrieved" by a violation of Chapter 205 of the NVRA, "may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation." In response, the Secretary filed a motion to dismiss on the grounds, among others, that PILF did not have Article III standing to pursue a claim under the NVRA as it had not suffered an injury in fact, and separately because PILF failed to provide the Secretary with a notice of violation, which is a prerequisite to filing suit.

In February 2019, the District Court dismissed the suit, agreeing that PILF had not provided the Secretary with the required statutory notice, but otherwise concluding that PILF had standing. In

reaching its decision regarding PILF's standing, the District Court wrote:

> When Congress "elevates intangible harms into concrete injuries," a plaintiff need not allege "any *additional* harm beyond the one Congress has identified." However, "mere technical violation of a procedural requirement of a statute" that results in no concrete harm is insufficient to establish Article III injury in fact. The Supreme Court has held that "a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute."

Boockvar, 370 F. Supp. 3d at 455 (citations omitted). As PILF alleged that it was denied records that were purportedly subject to public disclosure under the NVRA, the District Court reasoned that "this denial constitutes an *informational injury*" and PILF had standing. *Id.* at 455-56 (emphasis added).

Following dismissal of its first suit, PILF served the Secretary with the appropriate notice, and then filed this suit after the Secretary again denied PILF's records requests. Over the course of the proceedings before the District Court, the Secretary turned over some records to PILF, but not all. Ultimately, the parties filed cross motions for summary judgment. By this time, the Supreme Court had decided *TransUnion v. Ramirez*, 594 U.S. 413 (2021), which "provid[ed] additional guidance regarding the concreteness requirement" to establish Article III standing. *Kelly v. RealPage Inc.*, 47 F.4th 202, 211 (3d Cir. 2022).

To resolve the parties' cross motions, the District Court conducted an exacting and rigorous analysis of every category of records at issue and issued a mixed opinion granting and denying both motions in part. In resolving the motions, however, it did not expressly address PILF's standing other than by citing its earlier pre-*TransUnion* opinion in which it concluded that "PILF falls within [the] NVRA's 'zone of interests' and had standing." Appx030. By citing its earlier opinion, the District Court appeared to reaffirm its view that PILF had informational injury standing simply because it failed to receive the information that it requested from the Secretary. *Boockvar*, 370 F. Supp. 3d at 455-56. The District Court otherwise made no mention of *TransUnion* nor its effect, if any, on its standing analysis. As for the merits, it held that PILF was entitled to some records it had requested, other records were not subject to disclosure, still others were protected by privacy concerns or otherwise protected under other statutes, and another category of documents was disclosable but only if redacted. Later, the District Court entered an order awarding fees and costs to PILF as the substantially prevailing party in the litigation.

Both parties appealed the District Court's order granting and denying summary judgment in part. The Secretary appealed the District Court's order awarding fees and costs. Because we conclude that PILF lacks standing, we need not reach the merits of the District Court's ruling.

II.

The District Court had putative jurisdiction under 28 U.S.C. § 1331. We generally have jurisdiction to

review final orders under 28 U.S.C. § 1291, and "we 'always [have] jurisdiction to determine [our] own jurisdiction.'" *George v. Rushmore Serv. Ctr.*, 114 F.4th 226, 234 (3d Cir. 2024) (alterations in original) (quoting *United States v. Ruiz*, 536 U.S. 622, 628 (2002)).

III.

A.

Questions of law underlying a standing determination are reviewed *de novo*, while factual determinations are reviewed for clear error. *Edmonson v. Lincoln Nat'l Life Ins. Co.*, 725 F.3d 406, 414 (3d Cir. 2013). A plaintiff bears the burden of proving the facts establishing standing. *See GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 35 (3d Cir. 2018) (discussing standard of proof for factual disputes regarding subject matter jurisdiction); *see also Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 278 (3d Cir. 2014) (the "plaintiffs bear the burden of demonstrating that they have standing in the action that they have brought"); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (explaining that "[t]he party invoking federal jurisdiction bears the burden of establishing" his standing). This case presents only questions of law and, therefore, we review the District Court's standing determination *de novo*.[2]

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[2] While the District Court rendered its decision regarding standing at the pleadings stage and, thus, based its conclusion solely on the allegations contained in PILF's complaint, we will consider the record in its entirety as this case comes to us on appeal from the District Court's order granting in part and denying in part the parties' cross-motions for summary judgment. *See Const. Party of Penn. v. Aichele*, 757 F.3d 347, 358

Standing is a threshold jurisdictional issue. *See Huber v. Simon's Agency, Inc.*, 84 F.4th 132, 144 (3d Cir. 2023). To have standing, "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo v. Robins*, 578 U.S. 330, 338 (2016). An injury in fact exists if a plaintiff has suffered "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (cleaned up). Plaintiff urges that the District Court was correct that the denial of the right to the information, without more, is enough for standing. It relies on the "decades old" precedent in *Public Citizen v. United States Department of Justice*, 491 U.S. 440 (1989) and *FEC v. Akins*, 524 U.S. 11 (1998), which it urges stands for the proposition that it "need [not] show more than that [it] sought and w[as] denied specific agency records." PILF's Br. 20 (quoting *Public Citizen*, 491 U.S. at 449).

In *Public Citizen*, the plaintiffs, the Washington Legal Foundation and Public Citizen, sued the Department of Justice under the Freedom of Information Act ("FOIA") seeking information and documents produced by the American Bar Association's Standing Committee on the Federal Judiciary relating to the nominations of federal judges under the Federal Advisory Committee Act ("FACA").

(3d Cir. 2014) (noting that courts consider matters outside the pleadings in evaluating factual attacks to standing).

491 U.S. at 447-48. While the Department of Justice contested the plaintiffs' standing to sue, the Supreme Court disagreed. *Id.* at 448-49.

Faced with a dearth of precedent interpreting FACA, the Supreme Court began its analysis by looking for guidance in its "decisions interpreting the Freedom of Information Act[, which] never suggested that those requesting information under [FOIA] need show more than that they sought and were denied specific agency records." *Id.* at 449-50. It continued explaining that "[t]he fact that other citizens or groups . . . might make the same complaint after unsuccessfully demanding disclosure under FACA does not lessen appellants' asserted injury, any more than the fact that numerous citizens might request the same information under [FOIA] entails that those who have been denied access do not possess a sufficient basis to sue." *Id.* at 449-50. Instead, the Supreme Court noted that the plaintiffs "might gain significant relief if they prevail in their suit," *id.* at 451, as the information and documents they requested were *necessary to their direct and effective participation* in the "judicial selection process," *id.* at 449.

Likewise, in *Akins*, the Supreme Court concluded that the plaintiffs, a group of voters, had standing to sue under the Federal Election Campaign Act of 1971 against the Federal Election Commission seeking documents related to the activity of a purported political committee. 524 U.S. at 13-14. In so concluding, the Supreme Court noted that "the informational injury at issue . . . directly related *to*

[*the plaintiffs'*] *voting*, the most basic of political rights." *Id.* (emphasis added).

But much has happened in standing jurisprudence since *Public Citizen* and *Akins* were decided, including attempts by various courts to read these cases as requiring more than just the denial of information to have standing. *See, e.g.*, *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020) ("[T]he plaintiffs in *Public Citizen* and *Akins* identified consequential harms from the failure to disclose the contested information."); *Laufer v. Looper*, 22 F.4th 871, 880-81, 881 n.6 (10th Cir. 2022) ("In *Public Citizen* and *Akins*, the plaintiffs identified . . . adverse effects."); *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 938 (5th Cir. 2022) (same and citing *Looper* with approval); *Grae v. Corrs. Corp. of Am.*, 57 F.4th 567, 570 (6th Cir. 2023) ("The plaintiffs in *Akins* and *Public Citizen* had suffered adverse effects."); *but see Laufer v. Naranda Hotels, LLC*, 60 F.4th 156, 169-70 (4th Cir. 2023) (concluding that *TransUnion* "does not extend to the type of informational injury presented in *Public Citizen* and *Akins*"). But whether or not we accept these courts' views of the nature of harm suffered by the plaintiffs in *Akins* and *Public Citizen* as accurate, the real issue here is whether the plaintiff's injury is sufficiently concrete under the Supreme Court's opinion in *TransUnion* and this Court's cases decided since. As noted above, the District Court did not consider *TransUnion* in ruling that Plaintiff had standing.

One can dispute whether *TransUnion* raised the bar in terms of the adverse consequences that must be alleged to satisfy the standing requirements in

different statutory settings. *See generally Huber*, 84 F.4th at 158-66 (Rendell, J., concurring in part, dissenting in part). But it set the standard we must follow. And under the Supreme Court's standard, statutory context is important. Here, as in *TransUnion*, we are presented with a statute with a purpose that goes farther than government transparency such as FOIA. The required disclosure of certain records is merely one aspect of the statutory scheme in service of a greater purpose—that is, as we explain below, *the expansion of voter participation in federal elections*.

In *TransUnion*, a purported class of consumers alleged that TransUnion violated the Fair Credit Reporting Act ("FCRA") by improperly flagging the consumers as possible terrorists. 594 U.S. at 432. Some of the consumers' allegedly improper credit reports had been disseminated to third parties, while other consumers' reports had not. *Id.* at 417. After a jury trial, which resulted in a verdict in favor of the plaintiffs and an award of more than $60 million in damages, TransUnion appealed to the Ninth Circuit. *Id*. at 421-22. On appeal, TransUnion argued that the verdict should be set aside because not all the plaintiffs in the class had Article III standing. *Id.*; *Ramirez v. TransUnion LLC*, 951 F.3d 1008, 1022 (9th Cir. 2020). The Ninth Circuit broadly rejected this argument, but the Supreme Court disagreed because at least some of the plaintiffs' claimed injuries were not sufficiently concrete to establish standing. *See TransUnion*, 594 U.S. at 418.

In reaching its conclusion, the Supreme Court clarified that "[c]entral to assessing concreteness is

whether the asserted harm has a 'close relationship' to a harm traditionally recognized as providing a basis for a lawsuit in American courts—such as physical harm, monetary harm, or various intangible harms . . . ." *Id.* at 414 (quoting *Spokeo*, 578 U.S. at 341). Thus, the Supreme Court concluded that those plaintiffs whose credit records were disseminated to third parties and contained inaccurate information had standing because their harms bore a close relationship to "the reputational harm associated with the tort of defamation." *Id.* at 432. By contrast, those plaintiffs whose credit records were not disseminated to third parties had no standing despite containing inaccurate information. *Id.* at 438.

The Supreme Court proceeded to reject an alternative argument in favor of plaintiffs' standing—the same argument advance by PILF in this case—"that the plaintiffs suffered a concrete 'informational injury' [that was sufficient] under several of th[e] Court's precedents," namely *Public Citizen* and *Akins*. *Id.* at 441. The Supreme Court disagreed, reasoning that "[t]he plaintiffs did not allege that they failed to receive any required information," and therefore, had not suffered an informational injury. *Id.* The Court further observed that *Public Citizen* and *Akins* were distinguishable because those cases involved "information subject to public-disclosure or sunshine laws," *id.*, whereas the FCRA was not such a public-disclosure or sunshine law. Moreover, it noted that "the plaintiffs [in *TransUnion*] . . . identified no 'downstream consequences' from failing to receive [any] required information." *Id.* at 442 (citing *Trichell*, 964 F.3d at 1004). "An asserted informational injury

that causes no adverse effects cannot satisfy Article III." *Id.* (internal quotation marks omitted). We take this to mean that if disclosure of information is the essence of a statute, as it is in FOIA,[3] standing would easily be met because public availability of information is itself the interest that Congress seeks to protect under such statutes. *See Kelly*, 47 F.4th at 213 (discussing the relationship or nexus requirement between a purported adverse effect and the interest protected by the statute). Here, all parties agree that Congress's purpose in enacting the NVRA targets an objective much broader and more expansive than access to records. Thus, we will proceed to consider *TransUnion*'s impact on PILF's alleged injury in fact.

The year after the Supreme Court's decision in *TransUnion*, we had occasion in *Kelly* to consider its effect on the "informational injury doctrine." 47 F.4th at 211. We observed that "the Court did not amend the . . . doctrine . . . ; rather, it simply applied its prior precedent [to the case before it] and determined that two critical requirements for establishing an informational injury were lacking: (1) the denial of information and (2) *some consequence caused by that omission*." *Id.* at 213 (emphasis added). "In the wake of *TransUnion*, other Courts of Appeals have . . . concluded that 'depriv[ation] of information to which [one] is legally entitled' constitutes a sufficiently

---

[3] *See generally McDonnell v. United States*, 4 F.3d 1227, 1238 (3d Cir. 1993) ("FOIA 'is *fundamentally* designed to inform the public about [federal] agency action . . . .") (quoting *Nat'l Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 144 n.10 (1975)) (emphasis added); *Nat'l Sec. Archive v. Cent. Intel. Agency*, 104 F.4th 267, 273 (D.C. Cir. 2024) (discussing the objective of the FOIA as providing access to government records).

concrete informational injury *when that omission causes 'adverse effects'* and the information has 'some relevance' to an interest of the litigant that *the statute was intended to protect*." *Id*. (alterations in original) (emphasis added) (quoting *Looper*, 22 F.4th at 880-81 n.6); *see also Guthrie v. Rainbow Fencing Inc.*, 113 F.4th 300, 308 (2d Cir. 2024) (requiring a "causal connection" between a purported violation of a statute and a "downstream harm"); *Trichell*, 964 F.3d at 1004 (collecting cases and agreeing that "an asserted informational injury that causes no adverse effects cannot satisfy Article III"). Thus, we said that "the Supreme Court in *TransUnion* simply reiterated the lessons of its prior cases: namely, to state a cognizable informational injury a plaintiff must allege that they failed to receive . . . required information, and that the omission led to adverse effects or other downstream consequences, *and such consequences have a nexus to the interest Congress sought to protect*." *Kelly*, 47 F.4th at 214 (emphasis added) (internal quotation marks and citations omitted); *George*, 114 F.4th at 235, 236 (same); *Huber*, 84 F.4th at 145 n.2 (same).

We explained that "[w]hether framed as 'adverse effects' or a 'downstream consequence[],' the upshot is the same: a plaintiff seeking to assert an informational injury must establish *a nexus* among the omitted information to which she has entitlement, the purported harm *actually caused* by the specific violation, and *the 'concrete interest'* that Congress identified as 'deserving of protection' when it created the disclosure requirement." *Kelly*, 47 F.4th at 213 (alteration in original) (emphasis added) (citation omitted) (citing *Tailford v. Experian Info. Sols., Inc.*,

26 F.4th 1092, 1100 (9th Cir. 2022)). That is, it is insufficient for Article III standing purposes for a plaintiff asserting an informational injury from a violation of a statute that contains a public disclosure aspect as part of its overall scheme to allege only that he has been denied information.[4] Rather, he must establish a nexus among a downstream consequence, his alleged harm, and the interest Congress sought to protect. Without such a nexus, a plaintiff can claim no informational injury standing.

The Secretary urges that the Fifth Circuit's opinion in *Scott* should be our guide because, in that case, the denial of disclosure of documents to which the plaintiffs—a group of civic engagement organizations—were arguably entitled under the NVRA was squarely presented. While we take no position regarding the merits of that case and the result reached by the Fifth Circuit, we acknowledge the framework that the *Scott* court employed is like our own under *Kelly*.

In *Scott*, the district court held that the plaintiffs had suffered a concrete and particularized harm given "the NVRA's public disclosure requirement[, which is] backed by a citizen suit provision and . . . *downstream consequences*, including the lack of an opportunity for [the plaintiffs] to identify eligible voters improperly flagged," by the state's program. 49 F.4th at 935 (internal quotation marks omitted) (emphasis added).

On appeal, the plaintiffs urged the Fifth Circuit to uphold the district court's standing analysis and

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[4] As noted above, we do not read *TransUnion* to impose this requirement in cases involving "sunshine laws" statutes aimed solely at disclosure of information. *See TransUnion*, 141 S. Ct. at 2215.

decision. *Id.* They contended that as "civic engagement organizations" they had standing to access the records they requested under the NVRA and the Secretary's refusals resulted in "downstream injury" because without such access, they could not "identify eligible voters improperly flagged" by the state's voter roll maintenance program, *id.* at 935-36, thereby thwarting their ability to scrutinize "how Texas is keeping its voter lists," *id.* at 936. Moreover, the organizations argued, "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." *Id.* (alteration in original). The Fifth Circuit disagreed.

It concluded that the organizations "offered no meaningful evidence regarding any downstream consequences from an alleged injury in law under the NVRA." *Id.* at 937. In particular, the Fifth Circuit explained that while the NVRA creates "a statutory right of the public to the 'visibility' of the Secretary's process," nothing suggested any "concrete and particularized harm to these Plaintiffs from not obtaining the requested personal voter information." *Id.* And while the plaintiffs complained of a "lack of 'opportunity' to identify voters incorrectly described by the Secretary's data base," the Court concluded that this purported downstream consequence was too speculative to constitute a "concrete grievance." *Id.* That "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," the Court further reasoned, belied the plaintiffs' claim to standing. *Id.*

In reaching this conclusion, the Fifth Circuit rejected the plaintiffs' reliance on *Public Citizen* and *Akins* "for the proposition that 'the violation of a procedural right granted by statute can be sufficient . . . to constitute injury in fact . . .[without] alleg[ing] any *additional* harm beyond the one Congress has identified." *Id.* at 938. The Fifth Circuit observed, as we did in *Kelly*, that while the Supreme Court in *TransUnion* cited to *Public Citizen* and *Akins* "involv[ing] [the] denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information," it nevertheless required the plaintiff in *TransUnion* to "identif[y] . . . 'downstream consequences' from failing to receive the required information" to establish standing. *Id.* (quoting *TransUnion*, 594 U.S. at 442). Indeed, the Fifth Circuit continued, the plaintiffs "in both *Akins* and in *Public Citizen* . . . had *actually asserted 'downstream consequences'* since they needed the information in order *to participate directly and actively in . . . the electoral . . . process*[]." *Id.* (emphasis added) (citing *Trichell*, 964 F.3d at 1004). That is, as we said in *Kelly*, the harms suffered by the plaintiffs in those cases bore a nexus to the harms that the statutes were designed to prevent. The Fifth Circuit concluded "even in public disclosure-based cases, plaintiffs must and can assert 'downstream consequences,' which is another way of identifying concrete harm from governmental failures to disclose." *Id.* The Fifth Circuit believed that on the facts before it, the "civic engagement organizations" did "not allege that identification of voter names and identification numbers w[ould] directly lead to action relevant to the NVRA . . . nor that their direct participation in the

electoral process w[ould] be hindered." *Id*. at 936, 938. Thus, the plaintiffs could not establish a nexus among any harm they purportedly suffered to a harm that Congress sought to prevent in passing the NVRA.

While one might question the Fifth Circuit's characterization of the alleged harm suffered by the plaintiffs in *Scott* and its relevance to their participation in the electoral process under the NVRA, the Fifth Circuit's standing analysis, like our own under *Kelly*, rightly focuses on whether the plaintiff has alleged that it has suffered sufficient "adverse effects" or other "downstream consequence" having *a nexus* to an interest Congress sought to protect in passing the NVRA. Thus, to address PILF's standing, we must understand the purpose of the NVRA as well as the interest PILF urges has been harmed by the Secretary's actions.

B.

We have observed that Congress enacted the NVRA principally because it "was wary of the devastating impact [voter roll] purging efforts previously had on the electorate." *Am. C.R. Union v. Phila. City Comm'rs*, 872 F.3d 175, 178 (3d Cir. 2017); *see also Welker v. Clarke*, 239 F.3d 596, 598-99 (3d Cir. 2001) (noting that "[o]ne of the NVRA's central purposes was to dramatically expand opportunities for voter registration"); *Ortiz v. Phila. Off. of City Comm'rs Voter Regis. Div.*, 28 F.3d 306, 318 (3d Cir. 1994) (Scirica, J., concurring) ("For some time now, Congress and the state legislatures, concerned by low voting rates, have commendably *sought to increase voter participation*. . . . [C]iting a steady decline of citizen participation in federal elections . . . Congress decided to promote voter registration by passing the

[NVRA]." (emphasis added)). Indeed, "Congress noted that . . . 'there is a long history of such cleaning mechanisms [being] used to violate the basic rights of citizens" to vote. *Am. C.R. Union*, 872 F.3d at 178 (alteration in original) (quoting S. Rep. No. 103-6, at 18 (1993)). By its own terms, the NVRA seeks:

> (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
>
> (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
>
> (3) to protect the integrity of the electoral process; and
>
> (4) to ensure that accurate and current voter registration rolls are maintained.

52 U.S.C. § 20501(b). Thus, the statute aims at increasing citizen participation in federal elections. While the statute provides for public inspection of "records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters," *id.* § 20507(i), and contains a remedial provision with a right to sue, after *TransUnion* and *Kelly*, more in the way of concrete harm and, in particular, proof of a nexus is required for PILF to have standing to sue under a theory of informational injury.

To support its position that it has standing, PILF urges that it "has suffered three primary 'adverse

effects' or 'downstream consequences' resulting from the Secretary's refusal to provide the required information," which bear a nexus with concrete interests that Congress intended to protect under the NVRA. PILF's Br. 26. First, it urges that it "cannot 'study and analyze the [Secretary's] voter list maintenance activities." PILF's Br. 26 (alteration in the original) (quoting D.C. CM/ECF No. 66 ¶ 3). This hampers its "activity . . . to promote election integrity and compliance with federal and state statutes." PILF's Br. 27 (quoting D.C. CM/ECF No. 1 ¶ 135) (quotation marks omitted). Second, "the Commonwealth's actions frustrate . . . [t]he Foundation's . . . produc[tion] and disseminat[ion] [of] educational materials." PILF's Br. 27. Third, in seeking records from the Secretary, PILF "expended considerable time and financial resources." *Id.*

With respect to "study and analysis," PILF contemplates general activity "to promote the integrity of elections nationwide," through the production and dissemination of "educational materials." Neither of these activities is essential to a concrete interest protected by the statute as was the case in *Public Citizen* and *Akins*." Appx001. That is, there is an insufficient nexus among the downstream consequences identified by PILF and the interest that Congress sought to protect. To "study and analyze" and "scrutinize" records, PILF's Br. 26, is not an enumerated purpose of the NVRA nor do these aims advance the expansion of voter registration and participation in federal elections. Further, PILF offers no explanation of how its inability to study and analyze and scrutinize the requested records has hindered its own participation in the electoral system

or the expansion of voter participation in federal elections in Pennsylvania generally. Indeed, that PILF has no ties to Pennsylvania or any of its voters undercuts its position that the Secretary's actions as to PILF resulted in any harm to those who Congress sought to protect in enacting the NVRA.

Although PILF contends that 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, PILF's Br. 32, nor can it "compel compliance with state and federal voter list maintenance laws," PILF's Br. 26 (quotation omitted), its desire to have such records for these purposes does not entitle it to sue.

Separate and apart from whether PILF has informational injury standing, it bears repeating that, as a general principle of constitutional standing, as we explained in *Huber*, while a statute may authorize private suits to compel compliance with the law, private citizens are not deputized as private attorneys general empowered to enforce any and all violations of a statute without regard to their personal stake in the matter. *Huber*, 84 F.4th at 147. ("[I]n contrast to federal agencies empowered to enforce statutory rights, '[p]rivate plaintiffs are not accountable to the people and are not charged with pursuing the public interest in enforcing a defendant's general compliance with regulatory law.'" (second alteration in original) (quoting *TransUnion*, 594 U.S. at 429)). As admirable as PILF's mission may be, PILF is not an attorney general with general standing to enforce the provisions of the NVRA in the absence of proof that it

maintains a personal and constitutionally significant stake in the matter.

Returning to PILF's claim of informational injury standing, we further reject its argument that the "frustrat[ion] [of] the *educational aspect* of its mission," and its inability to publish "educational materials," PILF's Br. 27, constitute downstream consequences envisioned by the statute sufficient to establish Article III standing because the publication of educational materials bears no nexus to an interest protected by the statute. And even if it did, PILF offered no proof that its ability to produce and disseminate such educational materials was actually hampered by the Commonwealth's alleged violation of the NVRA.

First, as we explained above, the facilitation and creation of educational materials is not a purpose of the NVRA. Thus, even if we assumed that the Secretary's actions actually hampered PILF's ability to publish such materials, such harm has no "'nexus to the concrete interest Congress intended to protect' by requiring disclosure of the information." *George*, 114 F.4th at 236 (quoting *Kelly*, 47 F.4th at 214). Second, there is no evidence in the record that, despite the Secretary's purported noncompliance with the NVRA, PILF was unable to publish educational materials. Indeed, PILF touted its ability to publish, among other things, "a report focused on noncitizen registration and voting in Allegheny County," which was made possible based on records it obtained from county-level and municipal sources. PILF's Br. 27. On this record, the Secretary's actions did not appear to affect PILF's ability to access any resources that it had

previously and successfully used to generate its educational materials.

We also note that PILF submitted no evidence of any specific plans for the records it sought relating to the purpose of the NVRA. *Cf. Scott*, 49 F.4th at 940 (Ho, J., concurring) (suggesting that proof that the defendant's hindrance of "Plaintiffs' mission to *protect the voting rights* of various communities" might suffice as a downstream consequence under the NVRA (emphasis added)). Without 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. *Ellison v. Am. Bd. of Orthopaedic Surgery*, 11 F.4th 200, 207 n.5 (3d Cir. 2021). This is because such "inchoate plans for future programs" of a general nature are insufficiently concrete for Article III purposes. *Fair Hous. Council of Suburban Phila. v. Montgomery Newspapers*, 141 F.3d 71, 77 (3d Cir. 1998). 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*.

Finally, we reject PILF's third argument, namely that it has suffered adverse effects or downstream consequences simply by having "expended considerable time and financial resources" to vindicate its rights and hold the Secretary accountable under the NVRA. PILF's Br. 27. "An organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather

information . . . . An organization cannot manufacture its own standing in that way." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024); *see also Blunt*, 767 F.3d at 285 ("[O]rganizations may not satisfy the injury in fact requirement by making expenditures solely for the purpose of litigation . . . nor by simply choosing to spend money fixing a problem that otherwise would not affect the organization at all." (citations omitted)). To hold otherwise would render Article III standing meaningless. *See FDA*, 602 U.S. at 394.

In short, as an out-of-state "public interest organization," that has adduced insufficient evidence of a nexus among any adverse effect or downstream consequence and a harm it has suffered because of the Secretary's refusal to provide access to the requested records under *TransUnion* and its progeny, PILF has no standing to sue. PILF does not represent any Pennsylvania citizens who have been affected by the Secretary's purported violation of the NVRA. It has no direct ties to Pennsylvania voters and has not alleged how access to the records it seeks would "directly lead to action" or that *its* "direct participation in the electoral process [has been] hindered." *Scott*, 49 F.4th at 938; *cf. Akins*, 524 U.S. at 27 (concluding that the plaintiffs "*as voters*, have satisfied both prudential and constitutional standing requirements" (emphasis added)). It has not suffered any concrete harm. And as the Supreme Court has proclaimed: "No concrete harm, no standing." *TransUnion*, 594 U.S. at 417.

To be clear, although plaintiffs at the summary judgment stage "must set forth 'specific facts' by affidavit or other evidence" supporting standing, *Pa. Prison Soc. v. Cortes*, 508 F.3d 156, 161 (3d Cir. 2007)

(quoting *Lujan*, 504 U.S. at 561)), the requirement of a downstream consequence required by *TransUnion* is "not . . . burdensome," *Scott*, 49 F.4th at 940 (Ho, J., concurring). Here, PILF does not clear even that low evidentiary hurdle because it failed to identify some *specific* adverse downstream consequence for its mission or future plans that has a nexus to the interest Congress sought to protect in enacting the NVRA, namely the expansion of voter participationin federal elections. *See* Section III.B., *supra*, at 18-19 (discussing Congress's interest). "[W]e cannot infer adverse effects" from this threadbare record because "doing so would vitiate the second prong of *Kelly*." *George*, 114 F.4th at 236 n.12.

C.

"Because we conclude that [PILF] lacked standing from the very outset, we must vacate the District Court's order[] and remand with instructions to dismiss [PILF's] case." *George*, 114 F.4th at 230. This is because "[a] lack of jurisdiction 'voids any decree entered in a federal court.'" *Id.* at 239; *see also TransUnion*, 594 U.S. at 442 (reversing and remanding in the face of a jury verdict and award of damages). Thus, the District Court's order awarding attorneys' fees, which was based upon the District Court's void order entering judgment in favor of PILF, is also void.

IV.

For these reasons, we will vacate the District Court's orders and remand with instructions to the District Court to dismiss the case.

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 23-1590, 23-1591, & No. 23-3045

PUBLIC INTEREST LEGAL FOUNDATION,
Appellant in 23-1591

v.

SECRETARY COMMONWEALTH OF PENNSYLVANIA;
JONATHAN M. MARKS, in his official capacity as Deputy Secretary for Elections and Commissions;
BUREAU OF COMMISSIONS ELECTIONS & LEGISLATION

Secretary Commonwealth of Pennsylvania;
Jonathan M. Marks,
Appellants in 23-1590 & 23-3045

(M.D. Pa. No. 1:19-cv-00622)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN,

MONTGOMERY-REEVES, CHUNG, ROTH, RENDELL,* Circuit Judges

The Petition for Rehearing filed by Appellee Public Interest Legal Foundation in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

By the Court,

s/ Marjorie O. Rendell
Circuit Judge

Dated: June 30, 2025

Gch/cc: All Counsel of Record

* Pursuant to Third Circuit I.O.P. 9.5.3., the votes of Judges Roth and Rendell are limited to panel rehearing only.

Appendix C

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THE PUBLIC INTEREST LEGAL FOUNDATION,	
Plaintiff	**CIVIL ACTION NO. 1:19-CV-622**
v.	**(Judge Conner)**
LEIGH M. CHAPMAN, Acting Secretary of the Commonwealth of Pennsylvania,[1] and JONATHAN M. MARKS, Deputy Secretary for Elections and Commissions,	
Defendants	

MEMORANDUM

Plaintiff, the Public Interest Legal Foundation ("PILF"), seeks production of voter registration records under the National Voter Registration Act

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Acting Secretary Chapman is automatically substituted as a defendant for former Secretary Kathy Boockvar. See FED. R. CIV. P. 25(d).

("NVRA"), 52 U.S.C. § 20507. PILF claims defendants Leigh M. Chapman, Acting Secretary of the Commonwealth of Pennsylvania, and Jonathan M. Marks, Deputy Secretary of Elections and Commissions, have failed to satisfy the Commonwealth's disclosure obligations under NVRA. Both parties move for summary judgment under Federal Rule of Civil Procedure 56. We will grant in part and deny in part the motions.

I. Factual Background & Procedural History[2]

PILF is a public interest organization concerned with, among other things, "the integrity of elections nationwide." (See Doc. 66 ¶ 3). Leigh M. Chapman, Acting Secretary of the Commonwealth of Pennsylvania, is tasked with administering voter registration in Pennsylvania. (See id. ¶ 4). Jonathan Marks is Deputy Secretary for Elections and Commissions at the Pennsylvania Department of State. (See id. ¶ 5). As Chapman and Marks, sued in their official capacities, are avatars for the

[2] Local Rule 56.1 requires that a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 be supported "by a separate, short, and concise statement of the material facts, in numbered paragraphs, as to which the moving party contends there is no genuine issue to be tried." M.D. PA. L.R. 56.1. A party opposing a motion for summary judgment must file a separate statement of material facts, responding to the numbered paragraphs set forth in the moving party's statement and identifying genuine issues to be tried. Id. Unless otherwise noted, the factual background herein derives from the parties' Rule 56.1 statements of material facts. (See Docs. 63, 66, 70, 72). To the extent the parties' statements are undisputed or supported by uncontroverted record evidence, the court cites directly to the statements of material facts.

government of the Commonwealth of Pennsylvania, we will refer to them as "the Commonwealth."

In late 2017, the Commonwealth publicly admitted the existence of a "glitch" in a computer system used by the Pennsylvania Department of Transportation ("PennDOT"). This glitch permitted non-United States citizens applying for or renewing a driver's license to register to vote in the Commonwealth. (See id. ¶¶ 6-7; see also Doc. 64-1 ¶ 7). PennDOT's glitch quickly became a public scandal generating extensive media coverage and investigatory hearings in the Pennsylvania legislature. (See Doc. 66 ¶¶ 6-7, 9 n.2; see also Docs. 66-2, 66-3). As the precursor to remedial action, the Commonwealth undertook a series of analyses to ascertain the extent to which the glitch allowed noncitizens onto the Commonwealth's voter registration lists. (See Doc. 66 ¶¶ 49-65).

A. Initial Analysis

The Commonwealth conducted the first analysis ("the initial analysis")[3] in September 2017 by comparing PennDOT's motor vehicle records with the Statewide Uniform Registry of Electors ("SURE"), a computerized compilation of each county's voter registration list. (See id. ¶23). The SURE database

[3] PILF refers to the Commonwealth's first attempt to determine the number of noncitizens as the "Al Schmidt Analysis" (in reference to Philadelphia City Commissioner Al Schmidt's involvement in publicizing the results of the analysis) and the second analysis as the "Initial Statewide Analysis." We find PILF's names for the analyses more confusing than helpful because the analysis PILF refers to as being "initial" was not, in fact, the initial analysis.

includes not only the registrant's voter registration status but also personal information about the voter and their voting history.[4] (See id. ¶¶ 24-26, 32). Through the SURE database, the Commonwealth's counties maintain their voter registration lists, adding, updating, and cancelling registrations. (See id. ¶ 24; see also Marks Dep. 52:12-19, 58:13-59:23). When county election officials cancel a voter registration, the SURE database records the cancellation as well as the reason for cancellation. (See Doc. 66 ¶ 28).

The initial analysis compared the SURE database of registered voters against PennDOT's database of driver's license holders flagged with "INS indicators." (See id. ¶¶ 49-51; Doc. 64-1 ¶¶ 12-13). How INS indicators work within PennDOT's record-keeping system is not entirely clear in the record before the court, but they appear to signify merely that the license holder was, at some point in their life, something other than a United States citizen. (See Doc. 64-1 ¶ 13; Marks Dep. 169:7-172:23). The initial analysis identified approximately 100,000 registered voters "who may potentially be non-citizens or may have been non-citizens at some point in time." (See Doc. 64-1 ¶ 13; Doc. 66 ¶ 51).

B. Statewide Analysis

In addition to the initial analysis, the Commonwealth searched the SURE database for records related to any voter registrations cancelled by

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[4] In this instance, "voting history" refers only to whether the registrant cast a ballot in a particular election and whether they cast the ballot in person or by mail; obviously, it does not include how the voter may have voted in an election. (See Doc. 66-1, Marks Dep. 105:3-106:24; see also Doc. 72 ¶ 26).

a county simply because the registrant was not a citizen ("the statewide analysis"). (See Doc. 66 ¶ 55). The statewide analysis produced voting registration records for 1,160 individuals. (See id. ¶¶ 55, 59). However, the 1,160 records reflected only those registrants who self-reported their status as noncitizens and voluntarily requested their voter registration be cancelled. (See id. ¶ 58). Of the 1,160 noncitizen registrants, 248 voted in at least one election prior to cancelling their registration.[5] (See id. ¶¶ 60-61).

C. Noncitizen Matching Analysis

Following the statewide analysis, the Commonwealth consulted with the Office of Chief Counsel regarding appropriate action in light of the results of the analysis. (See id. ¶ 15; Doc. 64-3 ¶ 6). The Office of Chief Counsel engaged outside counsel who, in turn, retained an expert to assist in addressing the problem. (See Doc. 64-1 ¶¶ 16-17; Marks Dep. 141:6-11). The expert analyzed the Commonwealth's voting records, including the SURE database, to identify registrants whose eligibility to vote required additional scrutiny in terms of citizenship ("the noncitizen matching analysis"). (See Doc. 66 ¶¶ 62-65). Based on the expert's analysis, the Commonwealth mailed 7,702 letters to registrants reminding them of the eligibility requirements for voting and 11,198 letters requesting registrants

[5] In conjunction with the statewide analysis, the Commonwealth asked counties to provide copies of any cancellation requests received by the county from noncitizens seeking to cancel their voter registration. (See Doc. 64-1 ¶ 11). Only Allegheny, Philadelphia, and Dauphin Counties provided records in response to the request. (See id.)

affirm their eligibility to vote. (See Doc. 66 ¶¶ 64-70; Doc. 64-1 ¶¶ 18-22). The Commonwealth retained all responses confirming citizenship, forwarded requests for cancellation from noncitizens to the appropriate county, and notified counties of the need to investigate eligibility of the nonrespondents. (See Doc. 66 ¶¶ 71-74; see also Doc. 64-1 ¶ 22).

D. PILF's Request

In response to publicity surrounding the glitch, PILF sent Marks a letter on October 23, 2017, requesting the Bureau of Commissions, Elections and Legislation ("the Bureau") provide PILF copies of or the ability to inspect four categories of records pursuant to NVRA. (See Doc. 66 ¶¶ 8-9; Doc. 63 ¶ 1). PILF sought:

> 1. Documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration from any official information source, including information obtained from the various agencies within the U.S. Department of Homeland Security and [PennDOT] since January 1, 2006. This request extends to all documents that provide the name of the registrant, the voting history of such registrant, the nature and content of any notice sent to the registrant, including the date of the notice, the response (if any) of the registrant, and actions taken regarding the registrant's registration (if any) and the date of the action. . . . This request includes all voter records that were referenced in recent news media reports regarding individuals improperly exposed to registration prompts due to a "glitch" in PennDOT's Motor

Voter compliance system. At least one news report claims that "a Pennsylvania Department of State review is underway." I seek all voter records contained in this review.

2. All documents and records of communication received or maintained by your office from registered voters, legal counsel, claimed relatives, or other agents since January 1, 2006 requesting a removal or cancellation from the voter roll for any reason related to non-U.S. citizenship/ineligibility. Please include any official records indicating maintenance actions undertaken thereafter.

3. All documents and records of communication received or maintained by your office from jury selection officials—state and federal—since January 1, 2006 referencing individuals who claimed to be non-U.S. citizens when attempting to avoid serving a duty call. This request seeks copies of the official referrals and documents indicating where your office or local registrars matched a claim of noncitizenship to an existing registered voter and extends to the communications and maintenance actions taken as a result that were memorialized in any written form.

4. All communications regarding list maintenance activities relating to #1 through 3 above to appropriate local prosecutors, Pennsylvania Attorney General, Pennsylvania State Police, any other state law enforcement agencies, the United States Attorney's office, or the Federal Bureau of Investigation.

(See Doc. 66 ¶ 9; Doc. 1- 9). The Commonwealth denied PILF's request claiming NVRA applied only to records relating to statutorily mandated removal programs, not the records sought by PILF. (See Doc. 66 ¶ 17; Doc. 72 ¶ 17; see also Doc. 1-11).

PILF filed a lawsuit against the Commonwealth in this court, asserting the Commonwealth's denial of PILF's records request violated NVRA. We held PILF falls within NVRA's "zone of interests" and had standing, but that it failed to comply with the statute's notice requirements. See Pub. Int. Legal Found. v. Boockvar, 370 F. Supp. 3d 449, 454-58 (M.D. Pa. 2019). Accordingly, we dismissed the lawsuit. See id.

After fulfilling the notice requirement, (see Doc. 66 ¶¶ 18-19), PILF refiled its NVRA claims in the instant lawsuit. The Commonwealth subsequently moved to dismiss, reiterating its claim that the records sought by PILF did not fall within the ambit of NVRA's disclosure requirement and, in the alternative, the records sought by PILF are protected by the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721. Our decision disposing of the Commonwealth's motion held that the Commonwealth's investigation of the glitch falls within the ambit of NVRA's disclosure requirement but that records and derivative lists created during the investigation are protected by DPPA to the extent they include personal information obtained by PennDOT in connection with a motor vehicle record. (See Doc. 23 at 17; Doc. 24 ¶ (1)(a)).

Following our Rule 12(b)(6) decision, the Commonwealth endeavored to comply with PILF's requests. We detail the particulars of the Commonwealth's efforts in the discussion section

below. Both PILF and the Commonwealth now move for summary judgment contesting whether, as a matter of law, those efforts were sufficient. The motions are fully briefed and ripe for disposition.

II. Legal Standard

Through summary adjudication, the court may dispose of those claims that do not present a "genuine dispute as to any material fact" and for which a jury trial would be an empty and unnecessary formality. FED. R. CIV. P. 56(a). The burden of proof tasks the nonmoving party to come forth with "affirmative evidence, beyond the allegations of the pleadings," in support of its right to relief. See Pappas v. City of Lebanon, 331 F. Supp. 2d 311, 315 (M.D. Pa. 2004); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The court is to view the evidence "in the light most favorable to the non[]moving party and draw all reasonable inferences in that party's favor." Thomas v. Cumberland County, 749 F.3d 217, 222 (3d Cir. 2014). This evidence must be adequate, as a matter of law, to sustain a judgment in favor of the nonmoving party on the claims. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-57 (1986); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-89 (1986). Only if this threshold is met may the cause of action proceed. See Pappas, 331 F. Supp. 2d at 315.

Courts may resolve cross-motions for summary judgment concurrently. See Lawrence v. City of Philadelphia, 527 F.3d 299, 310 (3d Cir. 2008); see also Johnson v. FedEx, 996 F. Supp. 2d 302, 312 (M.D. Pa. 2014); 10A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2720 (3d ed. 2015). When doing so, the court is bound to view the evidence in the light most favorable to the nonmoving

party with respect to each motion. FED. R. CIV. P. 56; Lawrence, 527 F.3d at 310 (quoting Rains v. Cascade Indus., Inc., 402 F.2d 241, 245 (3d Cir. 1968)).

III. Discussion

NVRA requires states to "make available for public inspection . . . and photocopying . . . 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." 52 U.S.C. § 20507(i)(1). PILF brings the present action against the Commonwealth under Section 20510 of NVRA, which grants private parties aggrieved by a state's violation of NVRA, including its disclosure provision, the right to seek declaratory and injunctive relief. See id. § 20510. The gravamen of both parties' instant motions is whether the Commonwealth has fully complied with PILF's four record requests made pursuant to Section 20507. We will address each request *seriatim*.

A. Request 1: Potential Noncitizens

PILF's first request seeks documents related to registrants who the Commonwealth identified as potentially not satisfying the citizenship requirements for registration since January 1, 2006. (See Doc. 66 ¶ 9; Doc. 1-9). The Commonwealth provided PILF with copies of the form letters sent to registrants asking them to affirm their eligibility to vote, statements to the press, summary data concerning the responses to the letters, and communications with county election officials. (See Doc. 63 ¶ 4; see also Doc. 64-1 ¶ 29). The Commonwealth claims to have provided PILF with all

documents related to the Commonwealth's analysis of the glitch not derived from or including personal information obtained from PennDOT motor vehicle records. (See Doc. 64 at 12).

PILF mounts several attacks on the accuracy of the Commonwealth's assertion, averring the Commonwealth (1) adopted an impermissibly narrow construction of the scope of PILF's request, (2) failed to disclose records contained in the SURE database that fall within the scope of the request, and (3) adopted an overly broad construction of our previous ruling on the scope of protections afforded personal information by DPPA in order to justify withholding records from PILF. (See Doc. 67 at 10-18; Doc. 71 at 2-3). PILF also assails the Commonwealth's insinuations that records related to the noncitizen matching analysis are protected by attorney-client privilege and that the Commonwealth has the right to refuse certain disclosure requests on privacy grounds. (See Doc. 67 at 18-23; Doc. 71 at 5-12, 15-17).

1. *Scope of the Request*

The Commonwealth denies narrowing the scope of PILF's request and insists the documents disclosed to PILF represent the only nonprotected documents within the universe of documents covered by PILF's request. (See Doc. 64 at 12.) To support this contention, the Commonwealth points to Marks' assertion the Commonwealth "received no documents within the relevant period from the Department of Homeland Security or any other official government source identifying potential non-citizens on the voting rolls." (See Doc. 64-1 ¶ 30). The implication of Marks' statement is that the only efforts undertaken in the relevant period to identify potential noncitizens are

the initial analysis and noncitizen matching analysis, the records of which the Commonwealth believes are protected by DPPA.[6]

PILF argues that the Commonwealth's disclosure is incomplete, but PILF is unable to provide any proof that additional records exist and are in the possession of the Commonwealth. Although PILF suggests that the Commonwealth has not shown it conducted a search for the requested documents, we interpret Marks' statement to imply that the Commonwealth did, in fact, conduct the requisite search but the search produced nothing. (See Doc. 64-1 ¶ 30). PILF's mere speculation is not evidence and cannot satisfy its Rule 56 burdens. See Berckeley Inv. Grp., Ltd. v. Colkitt, 455 F.3d 195, 201 (3d Cir. 2006) (citing Jersey Cent. Power & Light Co. v. Lacey Township, 772 F.2d 1103, 1109–10 (3d Cir. 1985)). PILF casts a wide net in its first request, but a wide net does not guarantee a large catch.

2. *SURE Records*

PILF claims the Commonwealth falls short of fulfilling PILF's request by not disclosing the records contained in the SURE database related to every registrant whose registration was cancelled because of their noncitizen status. (See Doc. 67 at 12). The Commonwealth asserts the records contained in the SURE database are not subject to disclosure, citing a district court holding there is no obligation under NVRA to disclose voting records or other related documents when those documents are not used to

[6] In contrast, the statewide analysis was clearly a cataloguing of registrants who had already been identified as noncitizens. (See Doc. 64-1 ¶ 33).

update or maintain the voter rolls. (See Doc. 73 at 7-8 (citing True the Vote v. Hosemann, 43 F. Supp. 3d 693 725-29 (S.D. Miss. 2014))).

The principle evoked in True the Vote strikes us as sound but inapplicable to the SURE database because the Commonwealth, by its own admission, uses the SURE database to maintain the accuracy and currency of official lists of eligible voters. (See Doc. 66 ¶ 24; Doc. 72 ¶ 24). For example, the Commonwealth used the SURE database in conjunction with PennDOT records to conduct the noncitizen matching analysis. (See Doc. 66 ¶¶ 49-51, 55, 59, 62, 65). The Commonwealth then used the results of the noncitizen matching analysis to send letters to registrants asking them to affirm their eligibility to vote. (See id. ¶¶ 62-74). Even if ultimate responsibility for removing voters from the rolls lays in the hands of individual counties, see 25 PA. CONS. STAT. § 1203(a); (Doc. 64-1 ¶¶ 5-6; see also Doc. 66 ¶ 74), the database was nonetheless used to augment the reliability of voter rolls by identifying registrants in need of further "scrutiny" by the counties, (see Marks Dep. 140:21-141:11; see also Doc. 66 ¶ 63).

NVRA requires states to disclose "all records" related to any effort by the state to ensure "the accuracy and currency" of voter registration lists. See 52 U.S.C. § 20507(i)(1). As we explained in our decision on the Commonwealth's motion to dismiss, "[t]he word 'all' is expansive." (See Doc. 23 at 11 (citing Project Vote/Voting for Am., Inc. v. Long, 682 F.3d 331, 336 (4th Cir. 2012))). Congress intended NVRA's disclosure obligations to reach a broad array of "programs and activities." See 52 U.S.C. § 20507(i)(1); (see also Doc. 23 at 12). The Commonwealth's use of

the SURE database to maintain the accuracy and currency of county voting registration lists brings the records held in that database within the universe of disclosable records under NVRA. See 52 U.S.C. § 20507(i)(1). Unless disclosure is blocked by some other law or legal principle, the Commonwealth must disclose the requested SURE records.

3. *DPPA Protections*

PILF's third attack is on the Commonwealth's invocation of DPPA protections. (See Doc. 71 at 12-15). Our order granting in part and denying in part the Commonwealth's motion to dismiss held the Commonwealth was exempt from disclosing "records containing protected personal information obtained by the Department of Motor Vehicles in connection with a motor vehicle record as defined in the Driver's Privacy Protection Act." (See Doc. 24 ¶ 1(a)). In the accompanying memorandum, we explained that "glitch-related records and derivative lists created during the Commonwealth's investigation" were exempted from disclosure by DPPA "to the to the extent they include personal information obtained by the [Department of Motor Vehicles ("DMV")] in connection with a motor vehicle record." (See Doc. 23 at 17). The Commonwealth interpreted our decision to apply DPPA's protections to any record derived from or including personal information. (See Doc. 64 at 12). Accordingly, the Commonwealth withheld documents, at least in response to PILF's first request, that contained any personal information obtained or derived from DMV records. (See id. at 12; see also Doc. 64-1 ¶ 29).

The Commonwealth's interpretation of our ruling is overbroad. As indicated by our use of the phrase "to the extent they include," our holding applies only to the personal information obtained from DMV motor vehicle records and information derived from that personal information. (See Doc. 23 at 17). Our holding does not protect information derived from non-DMV sources even when that information is included in a record containing personal information obtained from DMV records.

When the entirety of the information in a document or other record is derived from personal information obtained from DMV records, the whole of the record may be withheld. Nevertheless, when only some of the information is or derives from personal information obtained from DMV records, the record or document must be disclosed with only personal information or derived information redacted. (See Doc. 23 at 14 n.3); see also Project Vote, Inc. v. Kemp, 208 F. Supp. 3d 1320, 1344-46 (N.D. Ga. 2016) (employing redaction to protect sensitive information, such as Social Security numbers and birth dates, from disclosure under NVRA); True the Vote, 43 F. Supp. 3d at 732-39 (holding NVRA does not require disclosure of all information in records related to maintenance of voter registration lists).

4. *Right to Privacy*

PILF seeks the name and voting history of any registrant identified as a potential noncitizen. (See Doc. 66 ¶ 9). To the extent not covered by DPPA protections, the Commonwealth argues in the alternative that it has no obligation to disclose personal information under NVRA when disclosure would violate the individual's right to privacy and

expose them to harassment, abuse, and accusations of criminal voting activity or immigration violations. (See Doc. 64 at 13-15).

The expansive obligation under NVRA to disclose voting registration records gives rise to legitimate privacy concerns. Nonetheless, we agree with the Fourth Circuit Court of Appeals' observation that the balance between privacy and transparency must be struck by the legislature, not the courts. See Long, 682 F.3d at 339. Congress struck such a balance when it enacted NVRA, deciding transparency in how states determine voter eligibility—the vital bedrock of our electoral system—is generally paramount. See id. Redaction—not withholding—is the appropriate tool for assuaging privacy risks.[7]

5. *Privilege*

Lastly, the Commonwealth posits records related to the noncitizen matching analysis are protected by attorney-client privilege and the work-product

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[7] PILF proposes redaction as a solution, citing a recent Fourth Circuit Court of Appeals decision on a similar request by PILF. (See Doc. 75 at 10 (citing Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections, 996 F.3d 257, 267 (4th Cir. 2021)); see also Doc. 71 at 17). In this case, the Fourth Circuit delineates information subject to redaction as follows: (1) Social Security numbers, (2) "identities and personal information of those subject to criminal investigations," and (3) personal information of citizens initially identified as potentially failing to meet the citizenship requirement for voter registration but ultimately exonerated. See id. We view PILF's reliance on N.C. State Bd. of Elections to indicate PILF is amenable to these privacy-related limitations on disclosure. Moreover, we agree with the Fourth Circuit's *ratio decidendi* which appropriately balances privacy and transparency interests at issue. The Commonwealth may redact the private personal information outlined in N.C. State Bd. of Elections from records disclosed under the NVRA.

doctrine. (See Doc. 64 at 12 n.6). Shortly after the emergence of the glitch scandal, the Commonwealth "engaged the Office of Chief Counsel to provide legal advice concerning [the glitch], including potential voting by non-citizens." (See Doc. 64-1 ¶ 15). The Office of Chief Counsel retained outside counsel, who, in turn, retained an expert to review the data resulting from comparison of the SURE database with PennDOT records. (See id. ¶ 16). Most importantly for the litigation at hand, the Commonwealth used the noncitizen matching analysis produced by the expert as the basis for sending thousands of letters asking registrants to affirm their eligibility to vote. (See Doc. 66 ¶¶ 62-64, 66-68; see also Doc. 64-1 ¶¶ 16-21). The parties agree PILF's first request encompasses the noncitizen matching analysis. (See Doc. 64 at 11-12; Doc. 71 at 5).

PILF disclaims seeking any records involving communications between the Commonwealth and its attorneys, (see Doc. 71 at 7), i.e., documents or records that would fall within the ambit of attorney-client privilege, see *In re* Teleglobe Commc'ns Corp., 493 F.3d 345, 359 (3d Cir. 2007) (quoting RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 68 (AM. L. INST. 2000)). PILF only seeks the records produced as part of the noncitizen matching analysis, (see Doc. 71 at 7), an activity that involved only the expert and no attorneys, (see Doc. 66 ¶¶ 62-64; see also Doc. 64-1 ¶¶ 15-18). We agree the noncitizen matching analysis is not protected by attorney client-privilege.

The work product doctrine protects certain materials made or prepared by an attorney or their agent in anticipation of litigation. See FED. R. CIV. P. 26(b)(3); Hickman v. Taylor, 329 U.S. 495, 511 (1947);

In re Cendant Corp. Sec. Litig., 343 F.3d 658, 662 (3d Cir. 2003). Rule 26(b)(3)(A) states in pertinent part: "Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative" except upon a showing of substantial need and undue hardship. See FED. R. CIV. P. 26(b)(3)(A). The work-product doctrine extends to purely factual materials, as long as the materials are prepared in contemplation of litigation. See Martin v. Bally's Park Place Hotel & Casino, 983 F.2d 1252, 1261 (3d Cir. 1993). The party claiming protection of the work-product doctrine bears the burden of showing the materials were prepared for anticipated litigation. See Holmes v. Pension Plan of Bethlehem Steel Corp., 213 F.3d 124, 138 (3d Cir. 2000) (citing Haines v. Liggett Group, Inc., 975 F.2d 81, 94 (3d Cir. 1992)).

It is undisputed that the subject expert was an agent of the Commonwealth's outside counsel. (See Doc. 64-1 ¶¶ 15-16; Doc. 64-3 ¶ 6). PILF contends the expert did not undertake the noncitizen matching analysis in anticipation of litigation.[8] (See Doc. 71 at 8-12). To invoke the protection of the work-product doctrine, the party's anticipation of litigation must be

[8] In addition, PILF argues that the noncitizen matching analysis is ineligible for protection under the work-product doctrine because the Commonwealth carried out the noncitizen matching analysis in the ordinary course of business. (See Doc. 71 at 11-12). We find this argument unsupported by anything in the record. The relevant evidence in the record all points to the expert conducting the analysis at the impetus of outside legal counsel. (See Doc. 64-1 ¶ 16; Doc. 64-3 ¶ 6; Marks Dep. 141:6-11, 142:9-16, 146:10-14, 148:4-8, 189:7-9). No evidence suggests the analysis was a routine part of the Commonwealth's duties.

"objectively reasonable." See Martin, 983 F.2d at 1260. However, the threat does not have to be a specific threat from a specific party; the threat of litigation can be general, see *In re* Ford Motor Co., 110 F.3d 954, 967 (3d Cir. 1997), abrogated on other grounds by Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100 (2009), or prospective, see United States v. Rockwell Int'l, 897 F.2d 1255, 1266 (3d Cir. 1990).

As both parties acknowledge, the glitch created considerable public attention. (See Doc. 66 ¶¶ 6-7, 9 n.2; Doc. 72 ¶¶ 6-7; Docs. 66-2, 66-3, 66-5). The risk of litigation in the wake of a public scandal involving the possibility of illegal voting, coupled with an atmosphere of anxiety about election security, is obvious. In the instant matter, despite the absence of a specific notice of intent to file suit, the general threat of litigation in the wake of such a resonant scandal is sufficient to invoke the work-product doctrine. It is clear to the court that, in light of the hue and cry over the glitch, the Commonwealth developed the noncitizen matching analysis with the assistance of its expert as a means of responding to heightened scrutiny of the kind that would be imposed through the civil justice system. See Ford, 110 F.3d at 967; Rockwell, 897 F.2d at 1266. PILF offers a great deal of speculation but no evidence suggesting the expert conducted the noncitizen matching analysis for any purpose other than the anticipation of litigation.[9] (See

[9] PILF's only citations to the factual record supporting its allegation the nonmatching citizen analysis was conducted in order to solve the glitch problem— not in preparation for litigation—are a single statement by Marks in his deposition and a press statement describing efforts to rectify the problems created by the glitch. (See Doc. 71 at 10 (quoting Marks Dep. 115:12-21; Doc. 66-4 at 1)). As for the first argument, PILF leans

Doc. 71 at 8-12). The Commonwealth has met its burden of showing the records in question are protected by the work-product doctrine because all relevant evidence supports the Commonwealth's assertion that the expert conducted the noncitizen matching analysis in preparation of possible litigation. (See Doc. 64-1 ¶ 16; Doc. 64-3 ¶ 6; Marks Dep. 141:6-11, 142:9-16, 146:10-14, 148:4-8, 189:7-9). We also find Marks' declaration provides sufficient information about the noncitizen matching

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on Marks' statement that the Commonwealth "wanted to understand both the scope of the [glitch] issue and, and also the potential causes of it, so that any additional enhancements that [it] made would be effective." (See Doc. 71 at 10 (quoting Marks Dep. 115:12-21)). PILF misconstrues Marks' statement and divorces it from critical context. Marks is not referring to the noncitizen matching analysis conducted by the outside expert; he is referring to the initial statewide analysis undertaken using the SURE database. (See id. at 114:10-118:21, 146:10-14). When Marks describes the noncitizen matching analysis, he unequivocally describes litigation concerns as motivating the analysis. (See Doc. 64-1 ¶ 17; Marks Dep. 146:10-147:3).

PILF likewise takes the Commonwealth's press statement out of context. (See Doc. 71 at 10 (quoting Doc. 66-4 at 1)). The press statement describes the Commonwealth's overall effort to send letters to individuals who might be noncitizens and then attributes that effort to a desire to protect election integrity. (See id. at 1-2). Included in the letter are two references to the expert analysis. (See id.) We view this statement as merely reiterating what is already well known in this matter: that the expert analysis provided the basis for the Commonwealth's letters to potential noncitizen registrants. (See id.) An ex-post statement vaguely relating the noncitizen matching analysis to the overall effort to address the glitch problem says nothing about why the expert analysis was undertaken in the first place. (See id.) Nor does it contraindicate the assertion that the noncitizen matching analysis was undertaken at the behest of the Commonwealth's outside counsel. (See id.)

analysis and its origins to satisfy Rule 26(b)(5)(A).[10] See FED. R. CIV. P. 26(b)(5)(A); see also Doc. 64-1 ¶¶ 15-18). Hence, the work-product doctrine shields the records produced in conjunction with the noncitizen matching analysis from disclosure.[11]

B. Request 2: Cancellation Requests

PILF also seeks documents related to noncitizens who requested removal from voter registration lists since January 1, 2006. (See Doc. 66 ¶ 9; Doc. 1-9). The Commonwealth provided PILF with copies of county records supplied to the Commonwealth in which registrants requested cancellation of their voter registration due to noncitizenship. (See Doc. 63 ¶¶ 7-8; see also Doc. 64-1 ¶¶ 31-35). The Commonwealth also disclosed to PILF a redacted list of 1,160 purported noncitizens who requested to be removed from the voter registration lists. (See Doc. 63 ¶ 8; see also Doc. 64-1 ¶ 34; Doc. 66-10). PILF alleges these documents and records do not fully satisfy its request. (See Doc. 71 at 3-4).

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[10] PILF cursorily asserts the Commonwealth waived the work-product doctrine by disclosing the existence of the noncitizen matching analysis. We find this argument to be without merit. (See Doc. 67 at 22-23). The Commonwealth disclosed the existence of the analysis and the results of the analysis, but it did not publicly disclose the individual records and documents produced by the analysis, *i.e.*, the focus of PILF's requests.

[11] Our holding on this point should not be construed as stating that the work-product doctrine applies to: (1) the analysis done by the Commonwealth before retention of the expert, (2) records used by the expert to conduct their analysis, or (3) the thousands of letters sent to potential noncitizen registrants based upon the results of the noncitizen matching analysis. The work-product doctrine applies solely to the documents and records produced by the expert at the request of counsel in anticipation of litigation.

Cancellation of voter registrations is the sole domain of Pennsylvania counties. See 25 PA. CONS. STAT. § 1203(a); (see also Doc. 64-1 ¶¶ 11, 32-33). The Commonwealth only allows for voter registration list maintenance programs to target registrants who are deceased or have relocated. See 25 PA. CONS. STAT. § 1901(a). Consequently, the Commonwealth claims the limited number of records turned over to PILF represent the entire universe of records within the scope of Request 2—the universe is simply small. (See Doc. 73 at 9).

PILF insists the Commonwealth truncated the scope of its request but produces no evidence to support its contention. PILF points to Marks' assertion before the Pennsylvania House State Government Committee that "[t]he 1,160 records identified were from 46 counties" as implying the Commonwealth is withholding responses from additional counties. (See Doc. 71 at 4 (citing Doc. 66-2 at 1)). But PILF's contention relies on a misreading of Marks' statement: Marks is referring to the 1,160 registrants pulled from the SURE database who requested cancellation of their own registrations, not the Commonwealth's request for counties to submit copies of the actual cancellation request letters received by county officials. (See Doc. 64-1 ¶¶ 33-34). Marks attests to the Commonwealth receiving records related to cancellation requests from only three counties, (see Doc. 64-1 ¶¶ 11, 33), and the parties agree the Commonwealth disclosed those records to PILF, (see Doc. 63 ¶ 7). Moreover, the parties agree that the list of 1,160 noncitizens who requested cancellation is the result of searching the SURE database. (See Doc. 66 ¶¶ 55, 59; Doc. 72 ¶¶ 55, 59).

The Commonwealth disclosed that list to PILF, albeit in redacted form. (See Doc. 63 ¶ 8; Doc. 70 ¶ 8). There is no genuine dispute of fact as to whether the SURE database was searched and the results provided to PILF—it was, and they were.

PILF's objection to the Commonwealth's extensive redaction of the list has merit. The list provided to PILF is a veritable sea of black ink and contains no voting histories. (See Doc. 66-10). As discussed in relation to Request 1, the Commonwealth can only redact information in its records if that information is specifically protected by DPPA, see supra at 13-14, or necessary for protection of privacy, see supra at 14-15. The Commonwealth admits the SURE database contains the voting histories of registrants. (See Doc. 66 ¶ 60; Doc. 72 ¶ 60). Voting histories cannot derive from DMV records nor are they especially private since they only document when an individual voted in a particular election. (See Doc. 66-1, Marks Dep. 105:3-106:24; see also Doc. 72 ¶ 26). The Commonwealth must disclose the voting histories of the 1,160 noncitizens who requested cancellation.

C. Request 3: Jury-Selection Letters

PILF's third request seeks records provided by jury-selection officials to the Commonwealth referencing individuals who attempted to avoid jury duty by claiming to be noncitizens.[12] (See Doc. 66 ¶ 9; Doc. 1-9). PILF asserts this information is relevant to its interest in noncitizen voting because the Commonwealth draws its jury pools from voter registration lists; therefore, a noncitizen summoned

[12] Only United States citizens can serve on juries in Pennsylvania. See 42 PA. CONS. STAT. § 4501.

for jury duty must, by definition, be registered to vote. See 42 PA. CONS. STAT. § 4521. PILF seeks all such records from January 1, 2006 to the present. (See Doc. 66 ¶ 9; Doc. 1-9).

The Commonwealth acknowledges occasionally receiving letters from jury-selection officials related to individuals who purported to be noncitizens. (See Doc. 63 ¶ 10; Doc. 64-1 ¶ 37). As maintenance of voter registration lists is reserved to the counties, the Commonwealth generally forwards those letters to the relevant county. (See Doc. 63 ¶ 10; Doc. 64-1 ¶ 38). Nonetheless, the Commonwealth asserts it conducted a search for letters related to jury selection received between October 2015 to March 2019 but found none. (See Doc. 64-1 ¶ 40). The Commonwealth determined the timeframe for the search by counting back two years from PILF's original NVRA request in October 2017. (See id.)

The timeframe of the Commonwealth's search is insufficient. NVRA requires states to "maintain for at least 2 years" all records related to maintaining voter registration lists. See 52 U.S.C. § 20507(i)(1). The two-year limitation only applies to the maintenance of records; it does not apply to the duty to disclose those records. See id. If a state chooses to maintain records longer than the two-year minimum, the state is obliged to disclose those records should they be relevant to an inquiry. See Ill. Conservative Union v. Illinois, No. 20 C 5542, 2021 WL 2206159, at *7 n.3 (N.D. Ill. June 1, 2021); Judicial Watch, Inc. v. Lamone, 399 F. Supp. 3d 425, 441 (D. Md. 2019).

D. Request 4: Law Enforcement Correspondence

PILF's fourth request seeks all records relating to any communication between the Commonwealth and law enforcement concerning alleged noncitizen voting or voter registration. (See Doc. 66 ¶ 9; Doc. 1-9). The Commonwealth claims it never engaged in any such communications and therefore lacks any records to disclose. (See Doc. 64 at 17-18; Doc. 64-1 ¶¶ 42-43). PILF quibbles about the Commonwealth's framing of its request, alleging the Commonwealth limited its search to correspondence related to "voting activities" instead of the requested "list maintenance activities," but we find this to be a distinction without a difference. (See Doc. 70 ¶ 12 (quotation omitted); see also Doc. 75 at 6). Otherwise, PILF fails to identify any evidence suggesting the Commonwealth failed to comply with PILF's fourth request. (See Doc. 71 at 5; Doc. 67 at 14). There is no genuine dispute of fact as to whether the Commonwealth has fully satisfied its disclosure obligations with regard to PILF's fourth request.

E. Defendant Marks

The Commonwealth asserts in its motion for summary judgment that Marks is an improperly named defendant. (See Doc. 64 at 18). However, the Commonwealth provides no case law supporting its assertion that Acting Secretary Chapman is the only proper defendant in this suit. (See Doc. 64 at 18; Doc. 74 at 14-15). Consequently, the Commonwealth has not met its Rule 56 burden for showing Marks is an improperly named defendant.

G. Permanent Injunction

PILF asks the court to grant permanent injunctive relief compelling the Commonwealth to comply with future disclosure requests under NVRA. (See Doc. 71 at 19-22). Before the court may grant permanent injunctive relief, PILF must prove, first, that it will suffer irreparable injury absent the requested injunction; second, that legal remedies are inadequate to compensate that injury; third, that balancing of the respective hardships between the parties warrants a remedy in equity; and fourth, that the public interest is not disserved by an injunction's issuance. See eBay, Inc. v. MercExchange, LLC, 547 U.S. 388, 391 (2006) (citations omitted). The Commonwealth contests PILF's request for permanent injunctive relief on both procedural and substantive grounds.

As a preliminary matter, the Commonwealth asserts PILF failed to seek a permanent injunction in its complaint. (See Doc. 74 at 13-14). We construe the second paragraph of PILF's complaint, which avers "Plaintiff seeks injunctive relief to compel Defendants to comply with Section 8 of NVRA," to encompass a request for both current and prospective injunctive relief. (See Doc. 1 ¶ 2). Nevertheless, we find PILF has not proven a likelihood of irreparable injury. See MercExchange, 547 U.S. at 391. As we referenced in our decision on the Commonwealth's motion to dismiss, the precise scope of NVRA's disclosure provision is largely untested in the courts of the Third Circuit. (See Doc. 23 at 9). We view the Commonwealth's failure to fully comply with PILF's requests as an unfortunate consequence of the dearth of applicable case law, not intentional obstruction or

negligent effort. After our first opinion defined the scope of NVRA to include the Commonwealth's response to the glitch, the Commonwealth made a good-faith, if imperfect, effort to comply with PILF's requests. The Commonwealth indicates a similar good-faith effort will follow our present opinion now that we have more fully illuminated its obligations. (See Doc. 74 at 13-14 & n.10). Hence, PILF's fears of baseless future denials and withholding are purely speculative. Moreover, should the Commonwealth fail to satisfy its disclosure obligations in the future, NVRA already includes an adequate remedy at law. See 52 U.S.C. § 20510. We will deny PILF's motion for summary judgment on this issue.

IV. Conclusion

The Commonwealth has met its Rule 56 burden regarding PILF's first request insofar as the noncitizen matching analysis is protected by the work-product doctrine and fourth request in its entirety. PILF has met its Rule 56 burden regarding its first request to the extent that the SURE database is subject to disclosure, records including DPPA-protected information must be redacted not withheld, and personal information about registrants must be disclosed to the extent that the information is not "uniquely personal information." PILF has also met its Rule 56 burden regarding its second request, insofar as the Commonwealth excessively redacted the records provided and withheld the voting histories of the registrants at issue, and its third request, insofar as the Commonwealth impermissibly truncated the timeframe covered by the request. Accordingly, we will grant in part and deny in part

both parties' motions for summary judgment. An appropriate order shall issue.

/S/ CHRISTOPHER C. CONNER
United States District Judge
Middle District of Pennsylvania

Dated: March 31, 2022

Appendix D

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THE PUBLIC INTEREST LEGAL FOUNDATION, **Plaintiff** **v.** **LEIGH M. CHAPMAN, Acting Secretary of the Commonwealth of Pennsylvania, and JONATHAN M. MARKS, Deputy Secretary for Elections and Commissions,** **Defendants**	**CIVIL ACTION NO. 1:19-CV-622** **(Judge Conner)**

ORDER

AND NOW, this 31st day of March, 2022, upon consideration of the parties' cross-motions (Docs. 62, 65) for summary judgment, and the parties' respective briefs in support of and opposition thereto, and for the reasons set forth in the accompanying memorandum of today's date, it is hereby ORDERED that:

1. Defendants' motion (Doc. 62) is GRANTED regarding plaintiff's first disclosure request insofar as the noncitizen matching analysis is

protected by the work-product doctrine and fourth disclosure request in its entirety. The motion (Doc. 62) is otherwise DENIED.

2. Plaintiff's motion (Doc. 65) is GRANTED regarding plaintiff's first request to the extent that the SURE database is subject to disclosure, records including DPPA-protected information must be redacted not withheld, and personal information about registrants must be disclosed to the extent that the information is not "uniquely personal information." The motion (Doc. 65) is also GRANTED regarding plaintiff's second disclosure request, insofar as defendants excessively redacted the records provided and withheld the voting histories of the registrants at issue, and third disclosure request insofar as defendants impermissibly truncated the timeframe covered by the request. The motion (Doc. 65) is otherwise DENIED.

3. Defendants are DIRECTED to comply with plaintiff's first, second, and third disclosure requests to the extent required by the National Voter Registration Act as set forth more fully in our accompanying memorandum and this order.

4. The Clerk of Court is DIRECTED to enter judgment in favor of defendants on Count I regarding plaintiff's first request insofar as the noncitizen matching analysis is protected by the work-product doctrine and plaintiff's fourth request in its entirety. The Clerk of Court is further DIRECTED to enter judgment in favor

of plaintiff on Count I regarding all other requests.

5. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER
United States District Judge
Middle District of Pennsylvania

Appendix E

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THE PUBLIC INTEREST LEGAL FOUNDATION, **Plaintiff** **v.** **BOOCKVAR et al,** **Defendant**	**CIVIL ACTION NO. 1:19-CV-622**

JUDGMENT IN A CIVIL ACTION

The court has ordered that:

Judgment is ENTERED in favor of defendants on Count I regarding plaintiff's first request insofar as the noncitizen matching analysis is protected by the work-product doctrine and plaintiff's fourth request in its entirety. Judgment is ENTERED in favor of plaintiff on Count I regarding all other requests.

Decided by Judge Christopher C. Conner

Order filed March 31, 2022 (Doc. 84)

Date: March 31, 2022

CLERK OF COURT

/s/ M. Walker, Deputy Clerk

Appendix F

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THE PUBLIC INTEREST LEGAL FOUNDATION, **Plaintiff** **v.** **ALBERT SCHMIDT, Acting Secretary of the Commonwealth of Pennsylvania,[1] and JONATHAN M. MARKS, Deputy Secretary for Elections and Commissions,** **Defendants**	**CIVIL ACTION NO. 1:19-CV-622** **(Judge Conner)**

ORDER

AND NOW, this 27th day of February, 2023, upon consideration of the motion (Doc. 88) for clarification and partial reconsideration filed by defendants Albert Schmidt, Acting Secretary of the Commonwealth of Pennsylvania, and Jonathan M. Marks, Deputy

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Acting Secretary Schmidt is automatically substituted as a defendant for former Secretary Leigh M. Chapman. See FED. R. CIV. P. 25(d).

Secretary for Elections and Commissions (collectively the "Commonwealth"), wherein the Commonwealth seeks clarification regarding its disclosure obligations under our memorandum and order dated March 31, 2022, as well as reconsideration of our conclusion as to applicability of the work-product doctrine, (see Doc. 89 at 1-2),[2] and the court noting preliminarily the matter *sub judice* concerns the Commonwealth's duty to disclose certain voting records under Section 20507(i)(1) of the National Voter Registration Act ("NVRA"), 52 U.S.C. 20507(i)(1), in response to requests from plaintiff Public Interest Legal Foundation ("PILF"), and further noting the purpose of a motion for clarification is "to explain or clarify something ambiguous or vague about a court's decision, not to alter or amend it," see Air & Liquid Sys. Corp. v. Allianz Underwriters Ins. Co., No. 11-247, 2014 WL 4060309, at *14 (W.D. Pa. Aug. 15, 2014) (citation omitted); see also Ebert v. Township of Hamilton, No. 15-7331, 2018 WL 4961467, at *2 (D.N.J. Oct. 15, 2018) (citation omitted), and motions to alter or amend judgment under Rule 59(e) must rely on at least one of the following three grounds: "(1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or prevent manifest injustice," Wiest v. Lynch, 710 F.3d 121, 128 (3d Cir. 2013) (quoting Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010)), and, taking the

[2] The Commonwealth protectively filed a second motion, styled as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), (see Doc. 91), in answer to plaintiff's challenge to the stylization of the first motion. The motions raise the same arguments, and we will consider them together.

Commonwealth's concerns *seriatim*,[3] *first*, the court observing the Commonwealth seeks clarification or reconsideration as to footnote eleven of our memorandum, (see Doc. 89 at 7-10; Doc. 92 at 4-8), which states, in relevant part, that our holding regarding applicability of the work-product doctrine to a particular class of records "should not be construed as stating the work-product doctrine applies to . . . records used by the expert to conduct their analysis," (see Doc. 83 at 19-20 & n.11), and the Commonwealth argues the court erred by "concluding that the compilation of records used by a consulting expert are required to be disclosed," (see Doc. 92 at 7), and the court finding the Commonwealth has not identified clear error of law or risk of manifest injustice as to footnote eleven but agreeing to offer clarification in light of the Commonwealth's expressed confusion;[4]

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[3] The parties have reached an agreement mooting the Commonwealth's request for clarification regarding "the SURE database." (See Doc. 92 at 11 n.6; Doc. 122 at 8). We therefore need not address that issue herein.

[4] The Commonwealth misreads footnote eleven to require it to disclose to PILF a compilation of all materials reviewed by its expert. (See Doc. 89 at 7-9; Doc. 92 at 4-8; Doc. 122 at 8-9). Our footnote includes no such requirement, and we do not understand PILF to seek disclosure of any such compilation. (See Doc. 83 at 20 n.11; Doc. 120 at 6-8). The intention of our footnote was to make clear that records otherwise subject to disclosure do not receive work-product protection merely because the expert viewed them. That is, records *created specifically* for the expert to review are protected by the work-product doctrine, (see Doc. 83 at 18-20), but the work-product doctrine does not protect records otherwise subject to disclosure created in the ordinary course of business or for purposes other than litigation, see United States v. Rockwell Int'l, 897 F.2d 1255, 1266 (3d Cir. 1990) (citations omitted); (see also Doc. 122 at 14 (disclaiming

second, the court observing the Commonwealth seeks clarification regarding whether it must disclose names and addresses of individuals to whom it sent letters regarding their possible status as noncitizen voters[5] and, if it must disclose such information, the scope of permissible redactions, (see Doc. 89 at 3-5 & n.2; Doc. 92 at 8-11), and further observing names and addresses of letter recipients fall within the scope of what must be disclosed under Section 20507(i)(1) as the information relates to "ensuring the accuracy and currency of official lists of eligible voters," see 52 U.S.C. § 20507(i)(1), and the Commonwealth correctly reads footnote seven to authorize redaction of said disclosures to protect certain personal information, (see Doc. 89 at 3 (citing Doc. 83 at 15 n. 7); Doc. 92 at 8-9 (same)), and the court finding the Commonwealth has not identified clear error of law or risk of manifest injustice concerning footnote seven, but clarification is necessary because the Commonwealth overreads the

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the Commonwealth has any desire to withhold "otherwise discoverable information . . . simply because it was provided to a consulting expert"). To be clear: footnote eleven does *not* require the Commonwealth to disclose "the compendium of records that outside counsel confidentially provided to the consulting expert," (see Doc. 122 at 8); it merely explains records *otherwise* subject to disclosure are not exempted from the order merely because the expert laid eyes on them.

[5] We note PILF originally sought the letters sent to said individuals, but the Commonwealth represents the letters exist only as templates sent using a mail-merge process; the Commonwealth therefore offers to disclose a "list of recipient names and addresses" in lieu of the individualized letters. (See Doc. 89 at 4 n.2).

breadth of permissible redactions;[6] and *lastly*, the court observing the Commonwealth seeks a declaration "that the completed cancelation forms are not proof of non-citizenship," (see Doc. 89 at 5; Doc. 92 at 11), and the court finding the request is not properly before the court, see Arizona v. City of

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[6] Footnote seven authorizes the Commonwealth to redact certain information from its disclosures to address privacy concerns. (See Doc. 83 at 15 n.7). Namely, we adopted the redaction scheme employed by the Court of Appeals for the Fourth Circuit in a similar case, (see id. (citing Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections, 996 F.3d 257, 267 (4th Cir. 2021))), in which the court authorized the North Carolina Board of Elections to redact from voting records disclosed under the NVRA "(1) Social Security numbers, (2) 'identities and personal information of those subject to criminal investigations,' and (3) personal information of citizens initially identified as potentially failing to meet the citizenship requirement for voter registration but ultimately exonerated." N.C. State Bd. of Elections, 996 F.3d at 267). The Commonwealth now suggests footnote seven authorizes redaction of "names, addresses, and other personal information of persons who received the letters and who either affirmed their eligibility to vote or were not confirmed to be noncitizens" from the list of recipients. (See Doc. 89 at 3-5; Doc. 92 at 8-10). This reading is overbroad. The Commonwealth may redact names and addresses of potential noncitizen registrants who affirmed their eligibility to vote. As the Fourth Circuit noted, these individuals could face "long-standing personal and professional repercussions" by being wrongly associated with noncitizen voting. See N.C. State Bd. of Elections, 996 F.3d at 267. However, names and addresses of individuals who responded to the letter by cancelling their voter registration, or who failed to reply to the letter or have not been confirmed to be citizens, must be disclosed. Neither category of individuals was "exonerated." See id. We recognize such disclosures affect the privacy of these individuals, but Congress prioritized transparency over privacy in crafting the NVRA's broad disclosure requirements. (See Doc. 83 at 14-15 (citing Project Vote/Voting for Am., Inc. v. Long, 682 F.3d 331, 339 (4th Cir. 2012))).

Tucson, 761 F.3d 1005, 1010 (9th Cir. 2014) ("[R]equests for declaratory judgment are not properly before the court if raised only in passing, or by motion." (citation omitted)); Hubay v. Mendez, 500 F. Supp. 3d 438, 443 n.2 (W.D. Pa. 2020) (citation omitted), and the court concluding the Commonwealth has not identified any clear error or risk of manifest injustice meriting reconsideration under Rule 59(e), but that the clarifications provided *supra* are appropriate under the circumstances,[7] it is hereby ORDERED that:

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[7] PILF files a show-cause motion (Doc. 121) averring that the Commonwealth failed to timely disclose certain "supplemental information" and requesting that the court sanction the Commonwealth under Federal Rule of Civil Procedure 11(c)(2). (See Doc. 121 at 1-3). The Commission, in turn, moves to strike PILF's motion, inter alia, for failing to comply with the notice requirement of Rule 11(c)(2). (See Doc. 124 at 1-2). Despite being styled as a "motion to show cause," the first sentence of PILF's motion announces PILF "moves the court to impose sanctions [on the Commonwealth]," (see Doc. 121 at 1), and, accordingly, we construe the motion as one for sanctions under Rule 11. PILF admits it did not comply with Rule 11's safe-harbor provision. See Hampton v. Wetzel, No. 1:14-CV-1367, 2017 WL 895568, at *2 (M.D. Pa. Mar. 7, 2017) (Conner, C.J.). It raises two arguments in defense of this failure, the first of which we have already rejected, *viz.*, its claim this is not a "sanctions" motion at all. PILF also broadly contends that giving notice to the Commonwealth would have been futile. (See Doc. 126 at 1-5). But there is nothing in the record to support this contention. To the contrary, PILF acknowledges that the Commonwealth turned over the supplemental information, at least in part, mere hours after PILF filed its motion. (See id. at 3). Assuming *arguendo* that PILF's motion satisfied Rule 11(c)(2), we would nevertheless exercise our discretion to deny the motion due to the lack of any indication the Commonwealth acted unreasonably. Hence, we will deny the motion for sanctions. See Schaefer Salt, 542 F.3d

1. The Commonwealth's motion (Doc. 88) for clarification and partial reconsideration is GRANTED to the extent that clarification has been provided herein. The motion is otherwise DENIED.
2. The Commonwealth's motion (Doc. 91) to amend or alter judgment is DENIED.
3. PILF's motion (Doc. 121) is CONSTRUED as a motion for sanctions under Federal Rule of Civil Procedure 11 and is DENIED as so construed.
4. The Commonwealth's motion (Doc. 123) to strike PILF's motion (Doc. 121) for sanctions is DENIED as moot.

/S/ CHRISTOPHER C. CONNER
United States District Judge
Middle District of Pennsylvania

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at 99 ("If the twenty-one day period is not provided, the motion must be denied.").