No.

IN THE

Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION, INC.,
Petitioner,

v.

JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and ELECTRONIC REGISTRATION INFORMATION CENTER,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth 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). States must "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters" in relevant part, due to "the death of the registrant," 52 U.S.C. § 20507(a)(4), and make public "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency" of the voter roll. 52 U.S.C. § 20507(i)(1).

The Public Interest Legal Foundation marshalled credible and weighty facts supporting its challenge to the reasonableness of Michigan's efforts to remove deceased registrants from the voter roll. Yet, the district court found "Michigan's program fell squarely within the NVRA's reasonable effort language." (Pet.App. 24a-25a.) The appellate court affirmed and found the Foundation lacked standing to redress the denial of public records.

The questions presented are:

1. Do genuine disputes of material fact exist as to whether Michigan failed to make a "reasonable effort" to remove deceased registrants under the NVRA when there is evidence that Michigan's chief election official kept tens of thousands of deceased registrants on the voter roll, was subject to state audits documenting the same problem, and ignored credible

evidence of deceased registrants on the voter roll?

2. Did the appellate court err by using *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), to determine Article III standing in a case involving the denial of public records?

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.

PARTIES TO THE PROCEEDINGS

Petitioner Public Interest Legal Foundation, Inc., was plaintiff-appellant below.

Respondent Jocelyn Benson, in her official capacity as Michigan Secretary of State, was defendant-appellee below.

Respondent Electronic Registration Information Center was movant-appellee below. This petition does not concern the discovery disputes involving the Electronic Registration Information Center.

STATEMENT OF RELATED CASES

Public Interest Legal Foundation v. Jocelyn Benson, No. 24-1255 (6th Cir.)

Public Interest Legal Foundation v. Jocelyn Benson, No. 1:21-cv-929 (W.D. Mich.)

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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 Sixth Circuit in this case.

OPINIONS BELOW

The court of appeals' order denying the Foundation's *en banc* petition (Pet.App. 37a) is not reported but is available at *Pub. Int. Legal Found. v. Benson*, No. 24-1255, 2025 U.S. App. LEXIS 16947 (6th Cir. July 9, 2025). The opinion of the panel of the court of appeals (Pet.App. 1a-35a) is reported at *Pub. Int. Legal Found. v. Benson*, 136 F.4th 613 (6th Cir. 2025). The opinion of the district court (Pet.App. 38a-77a) is reported at *Pub. Int. Legal Found. v. Benson,* 721 F. Supp. 3d 580 (W.D. Mich. 2024).

JURISDICTION

The court of appeals denied the petition for rehearing *en banc* on July 9, 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:

> (a) In general
>
> In the administration of voter registration for elections for Federal office, each State shall—
>
> …
>
> (4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—
>
> (A) the death of the registrant; or

> (B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

52 U.S.C. § 20507(a)(4); and

> (i) Public disclosure of voter registration activities
>
> 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

This case involves a challenge under Section 8 of the National Voter Registration Act ("NVRA"), 52 U.S.C. 20507(a), to the reasonableness of Michigan's maintenance of the voter roll as to deceased registrants. Michigan Secretary of State ("Secretary") sought summary judgment in her favor, which the Foundation opposed with concrete evidence. (*See* Pet.App. 63a-64a.) The district court granted the Secretary's motion and the appellate court affirmed, determining that a "reasonable effort" under Section 8 of the NVRA means "a program that makes a rational and sensible attempt to remove dead registrants; a state need not, however, go to 'extravagant or excessive' lengths in creating and

maintaining such a program." (Pet.App. 21a.) The appellate court's standard is at odds with the NVRA's text and provides no objective guidance on how to evaluate the reasonableness of a state's program going forward.

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 Michigan, and other jurisdictions throughout the United States, are maintained to exclude ineligible registrants, including deceased individuals.

The Foundation raised credible and weighty concerns about the Secretary's voter list maintenance of deceased registrants, not hypotheticals or statistical ratios. The Foundation evaluated just a portion of Michigan's voter roll and found at least 27,000 likely deceased registrants with an active registration. (Pet.App. 9a.) In a series of communications, the Foundation shared its findings with the Secretary. (Pet. App. 49a-52a.) Instead of investigating the Foundation's research, the Secretary largely ignored it. (*See* Pet.App. 9a, 11a.)

In pursuit of answers to the problems it identified, the Foundation sent a request to inspect records pursuant to NVRA's Public Disclosure Provision. (Pet.App. 51a-52a.) The Secretary did not allow

inspection of the requested records. (Pet.App. 10-11a.) In November 2021, the Foundation filed an action alleging that the Secretary violated the NVRA by failing to conduct reasonable voter list maintenance and by denying the Foundation access to the requested records. (*See* Pet.App. 11a.)

The Foundation sought summary judgment as to the denial of records. (*See* Pet.App. 59a.) The Secretary sought summary judgment as to the denial of records and the reasonableness of her program. (*See id*.) In response, the Foundation raised myriad and specific concerns with the Secretary's program, including its findings as to deceased registrants lingering on the rolls for years, Michigan's failure to compare death records directly against the voter roll, and Michigan's reliance on third party organizations like the Electronic Registration Information Center. (Pet.App. 63a-64a.)

On March 1, 2024, the district court granted the Secretary's motion for summary judgment on both counts. (Pet.App. 38a-77a.) The Foundation appealed and on May 6, 2025, the appellate court affirmed. (Pet.App. 1a-35a.)

As to the requirement of a "reasonable effort" to maintain the voter roll, the appellate court incorrectly focused on the ratio of deceased registrants identified by the Foundation to the overall total number of registrants. The appellate court ruled these ratios were "indicative that Michigan has taken rational, sensible steps to maintain accurate voter rolls." (Pet.App. 26a-27a.) The appellate court found that "[i]t is unclear what counts as 'a quantifiable, objective standard,' how a state could meet that standard, or how such a requirement could be derived

from the plain language of the statute." (Pet.App. 22a.) In other words, the appellate court declined the opportunity to set forth the much-needed guidance that this inquiry requires. For example, is a program "reasonable" if its very design ensures that some deceased registrants will never be removed? Is it reasonable to have thousands of deceased registrants lingering on the voter roll for years?

As to the denial of records, the appellate court echoed the Third[1] and Fifth Circuits in grafting this Court's analysis in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), regarding litigants who received requested information from a private party in the *wrong format*, onto this case involving the *denial* of public records. In so doing, the appellate court determined 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." (Pet.App. 30a-31a.) To add insult to injury, the appellate court discounted the adverse consequences the Foundation experienced. (Pet.App. 33a-35a.) As a result, the Foundation, and, by extension, other members of the public, cannot redress violations of the NVRA's Public Disclosure Provision.

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

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[1] A petition for writ of certiorari to the United States Court of Appeals for the Third Circuit was docketed on September 30, 2025. *See Pub. Int. Legal Found. v. Sec'y of Pa.*, 136 F.4th 456 (3d Cir. 2025), *petition for cert. filed* (U.S. Sept. 26, 2025) (No. 25-379).

registration rolls are maintained." 52 U.S.C. § 20501(b)(1)-(4). To accomplish these goals, Congress created the NVRA's Public Disclosure Provision, a broad and powerful federal open records law, enforced by a private right of action, 52 U.S.C. § 20510(b). In short, Congress intended maintenance of state voter rolls to be transparent because oversight and accountability safeguard the right to vote.

Absent this Court's review, the NVRA's textual requirement that Michigan "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of … the death of the registrant…" 52 U.S.C. § 20507(a)(4), remains unclear and undefined. There must be a standard by which one can gauge whether or not an activity is truly reasonable and achieves the objectives set forth in the NVRA. Otherwise, like the tens of thousands of deceased registrants still on Michigan's voter rolls, the Secretary can ignore this requirement.

Further, absent this Court's review, transparency will be thwarted. In cases of public record disclosure, the plaintiff need only show that the information was denied. *See Pub. Citizen v. United States Dep't of Just.*, 491 U.S. 440 (1989) and *FEC v. Akins*, 524 U.S. 11 (1998).

REASONS FOR GRANTING THE PETITION

I. The Question of What Constitutes Reasonable List Maintenance under the NVRA Is Important.

A. The Appellate Court's Definition of a "Reasonable" List Maintenance Effort Ignored Essential Context and the Need for Factual Finding.

Scant authority exists as to what a violation of Section 8 of the NVRA looks like.

The plain text of NVRA Section 8 requires a fact-intensive inquiry. The Foundation sought a remand with instructions regarding the relevancy and weight of the factual disputes in this case. The evidence the Foundation collected in response to the Secretary's request for summary judgment on its voter list maintenance claim was not hypothetical or based on statistical anomalies but is specific and concrete. It is precisely the sort of evidence that would be relevant and weighty under the textual standard passed by Congress. At worst for the Foundation, it created a genuine issue of fact.

The appellate court turned the text of the NVRA upside down. Instead of focusing on the more than 27,000 likely deceased registrants the Foundation identified on the active rolls—numbers that could flip the outcome of an election—the appellate court incorrectly focused on the ***ratio*** of deceased registrants identified by the Foundation to the overall total number of registrants, determining that because .03% was a small number, it was insignificant. (Pet.App. 23a.) The appellate court ruled that these ratios were "indicative that Michigan has taken

rational, sensible steps to maintain accurate voter rolls." (Pet.App. 26a-27a.)

The appellate court erred in interpreting the NVRA's text. What matters is whether the Secretary's actions are reasonable, not the percentage of voters the Foundation identified in its sampling. The appellate court accepted that "[f]rom 2019 to March 2023, Michigan cancelled between 400,000 and 450,000 registrations because the voters were deceased." (Pet.App. 8a.) The Foundation presented credible facts that the Secretary missed at least 27,000 deceased registrants, including active registrants that had been dead for ***decades***. If the Secretary removes approximately 100,000 registrations per year, she could have increased her removals by 27% simply by looking at the data freely provided by the Foundation. In other words, assuming, *arguendo*, that 127,000 registrants died in one year and the Secretary removed 100,000 but missed 27,000, that could not be considered "reasonable."

An articulation of how "reasonable" voter list maintenance is evaluated is necessary not just for this case but for the evaluation of various election officials' "reasonable efforts." If the Foundation's concrete and empirical evidence is not enough to create a genuine issue of fact, then what is? 50,000 deceased registrants? 100,000? Line drawing can be difficult, which is why a factfinder must be permitted to sort it out. And yet, the appellate court stamped 27,000 deceased registrants remaining on the voter roll as "reasonable" as a matter of law. Those 27,000 deceased individuals could remain registered to vote for another hundred years, and in the appellate

court's view, Michigan's program would still be "reasonable." Such an absurd result cannot be the standard Congress intended.

The Foundation stressed that "reasonable effort" must amount to a quantifiable, objective standard that may be applied to all entities subject to the NVRA. The Foundation provided examples of what the guidance would entail, including that courts could consider (1) the cumulative number of deceased registrants on the voter rolls; (2) the time elapsed since each registrant died; (3) audits conducted by state officials; (4) evidence of bad voter roll hygiene; (5) responsiveness of election officials to information about problems; (6) lack of understanding regarding outsourced list maintenance; (7) the industry standard; (8) failure to follow state statutes and procedures; and (9) the totality of the circumstances.

For example, is a program "reasonable" if its very design ensures that some deceased registrants will never be removed? Michigan's procedures depend almost exclusively on drivers' license data rather than the voter registration list. (*See* Pet.App. 24a, 27a.) As a result, entire classes of deceased registrants can remain immune from detection. A reasonable effort must at least be capable of eventually identifying every deceased registrant.

The appellate court declined to set forth the much needed and requested guidance that this inquiry requires. According to the court, "[a] state that actively makes efforts to remove dead registrants based on state and federal death records is engaging in an inherently rational, sensible attempt at maintaining accurate voter registration lists." (Pet.App. 26a.) Absent from the inquiry is whether

the state is, in fact, following state statutes and procedures, industry standards, and whether the state's efforts are maintaining the rolls accurately. If Congress wanted states to simply make an "effort," it would have said so. Instead, it required those efforts to be "reasonable." Effort alone is not automatically a "reasonable effort," especially when those efforts leave deceased registrants on the active voter list for decades. Indeed, a program that misses and ignores 27,000 inaccurate records will only worsen over time. *See United States v. Indiana*, 2006 U.S. Dist. LEXIS 45640 at *3-4 (S.D. Ind. July 5, 2006) (consent decree and order stating that "Indiana has failed to conduct an adequate general program of list maintenance that makes a reasonable effort to identify and remove the names of ineligible voters from the voter registration list" and requiring the state to "distribute notices regarding the more than 29,000 registrants who may be deceased…").

B. The NVRA's Legislative History Demonstrates the Importance of "Reasonable Effort."

The NVRA would not exist without Section 8's voter list maintenance obligations. The legislative history provides essential context about the importance of the NVRA's voter list maintenance obligations. Early versions of the NVRA determined that merely having a program that transmits information was enough. *See* H.R. 2190, 101st Cong. § 106(b) (1989). Subsequent versions, and the resulting version that became law, required that states do much more.

Section 20507(a)(4) departs from the previous version of the bill in two ways that support this

Court's review. First, instead of the mere existence of a "program" that collects and transmits information, Congress required a "program that makes a reasonable effort." Congress added an efficacy goal and requirement, replacing the obligation for the mere existence of a plan with the obligation for a plan that works to achieve an end: accurate and current voter records. *See* 52 U.S.C. § 20501(b)(4).

The second way that Congress expanded the requirement beyond mere information sharing (the 1989 bill) is that Congress did not delineate the minimum steps required as it did with programs to "identify registrants whose addresses may have changed." 52 U.S.C. § 20507(c). There, Congress defined a specific safe harbor, where if those statutory procedures were used, states could properly cancel the eligibility of those who moved to a new residence. It did not do so for deceased registrants.

C. "Reasonable Effort" Is a Fact-Intensive Inquiry.

Reasonableness is a fact-intensive inquiry ill-suited for summary judgment in a NVRA Section 8 case. Yet, that is what the appellate court affirmed here.

Courts routinely interpret and apply a "reasonable" care or effort mandate in other contexts. *See*, *e.g.*, *Virginian R. Co. v. Sys. Fed'n*, 300 U.S. 515, 540 (1937) (involving language in a law that requires "every reasonable effort to make and maintain agreements"); *Wyatt v. Nissan N. Am., Inc.*, 999 F.3d 400, 415 (6th Cir. 2021) (finding "Nissan's three-week delay in investigating explicit allegations of unwanted physical invasions creates a question of reasonableness that should be resolved by a jury.").

Below, the Foundation opposed the Secretary's motion for summary judgment with evidence, including that the Michigan Auditor General also identified approximately "twenty to thirty thousand" likely deceased registrants on the voter roll, (*see* Pet.App. 64a) and concrete errors in the Secretary's processing of deceased information, including that her efforts were directed at cleaning the drivers' license database when the NVRA mandates maintenance of the list of ***registered voters***, not the list of registered *drivers*.[2] In every sense of the word, it is unreasonable to target maintenance efforts at a different database, especially when the other option is the industry standard.

The Foundation relied upon testimony from its experts, including from the former chief election official for the State of Colorado, Scott Gessler. Former Secretary of State Gessler detailed numerous examples of actions and inactions he believed to be unreasonable. His opinions created a genuine issue of material fact as to prevailing professional norms of reasonable list maintenance regarding deceased registrants. The Secretary offered no testimony by election officials elsewhere. Yet summary judgment was affirmed.

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[2] The appellate court states that "[n]either party disputes the factual record with respect to certain core elements of Michigan's registrant removal program." (Pet.App. 25a.) This is incorrect. *Compare id*. ("the QVF is updated based on information from the Social Security Administration's death records") *with* Pet.App. 27a ("PILF states that the Social Security Administration's death files are not compared directly with the QVF.") Indeed, there are factual disagreements. For purposes of this Petition, the specifics of those disagreements are not discussed.

The district and appellate courts erred in relying on the Eleventh Circuit's decision in *Bellitto v. Snipes*, 935 F.3d 1192 (11th Cir. 2019), in finding that Michigan's list maintenance program is reasonable. First, *Bellitto* was decided following a bench trial. *Bellitto v. Snipes*, No. 16-cv-61474, 2018 U.S. Dist. LEXIS 103617, at *2-3 (S.D. Fla. Mar. 30, 2018). The defendant sought summary judgment and was denied. There, the defendant argued that summary judgment is appropriate given that "the undisputed facts definitively establish that [defendant's] removal program is 'reasonable under the statutory standard.'" *Bellitto v. Snipes*, 302 F. Supp. 3d 1335, 1357 (S.D. Fla. 2017) (citation omitted). The plaintiff had provided evidence of a very high registration rate in the county as compared to the rest of the country. The court stated that it "must accept the evidence provided by … the non-movant, and draw all reasonable inferences in its favor." *Id*. Here, the Foundation does not rely on the sort of evidence in *Bellitto* and instead provides the actual names of deceased registrants lingering on Michigan's active voter rolls, as well as other bundles of evidence, yet the Secretary's motion for summary judgment was granted.

Second, because of the procedural posture, the Eleventh Circuit utilized a different standard of review than the one required in this case. There, the court "review[ed] for clear error factual findings made by a district court after a bench trial … a highly deferential standard of review." *Bellitto v. Snipes*, 935 F.3d at 1197 (internal quotations and citations omitted). The court stated that "we can discern no clear error in the district court's finding that Supervisor Snipes made reasonable efforts to remove

registrants from the voter rolls on account of death or relocation." *Id*. at 1205.

In contrast, the Foundation presented multiple genuine issues of material fact concerning whether the Secretary has a reasonable list maintenance program to remove deceased registrants, including whether:

1. The presence of tens of thousands of deceased individuals, found by both the Foundation and the Michigan Auditor General, is reasonable.
2. The Secretary follows Michigan election statutes and procedures.
3. Michigan's comparison of death information against the Driver's File rather than the Voter Roll is reasonable.
4. Michigan's lack of responsiveness is reasonable.
5. The totality of the circumstances creates a factual dispute.

Nevertheless, the appellate court affirmed the summary judgment order. Review is necessary to establish the proper standard by which the factfinder should adjudicate the question of reasonableness under the NVRA.

II. The Decision Below on Standing Is Incorrect and Contrary to this Court's Precedent.

The appellate court'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.

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 v. Snipes*, 2018 U.S. Dist. LEXIS 103617, at *12-13 (S.D. Fla. Mar. 30, 2018). 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/Voting for Am., Inc. v. Long*, 682 F.3d 331, 339-40 (4th Cir. 2012).

The Foundation uncovered a problem with Michigan's voter list maintenance as to deceased registrants and sought records pursuant to the NVRA to identify why Michigan's program was failing and aid in finding a solution. (*See* Pet.App. 72a-73a.) 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 36, 48 (1st Cir. 2024) (internal 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*, 682 F.3d at 334-35.

Yet the appellate court 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." (Pet.App. 30a-31a.) This Court's binding precedent say otherwise.

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, "[t]here 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. at 14-16. 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). The Court explained, "[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 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 explained, "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).

B. 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," *id*. at 440, which requires plaintiffs to allege "downstream consequences," *id*. at 442.

This case presents the type of informational injury at issue in *Public Citizen* and *Akins*—the failure to receive 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 requested list maintenance records, as mandated by the NVRA's Public Disclosure Provision, the Foundation has suffered an actionable injury which the Court can redress.

III. 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 appellate court here, the First Circuit did not evaluate standing under *TransUnion*. *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th at 49 (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).").

As another 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., Inc. v. Simon*, 774 F. Supp. 3d 1037, 1042 (D. Minn. 2025) (citing *Pub. Citizen* and *Akins*).

In contrast, the appellate court looked to 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 have standing. *Id.* at 939. The Fifth Circuit interpreted this Court's decision in *TransUnion* to mean that "even in public disclosure-based cases," *e.g.*, FOIA and the NVRA, "plaintiffs must and can assert 'downstream consequences,' which is another way of identifying concrete harm from governmental failures to disclose." *Id.* 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.")).

Article III standing for denial of public records does not require the showing required by *Scott* and by the appellate court here. Even if it did, the Foundation alleged adverse impacts, which the appellate court discounted, 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." (Pet.App. 33a-34a.) 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.

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 Americans 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 156, 172 (4th Cir. 2023). "*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," *id*, related to sanctions against the litigant's lawyer, the

Court ultimately determined that the case was moot, *id.* at 5, and it was unable to provide the much-needed clarity. The opportunity to provide that clarity is here.

IV. The Questions Presented Are Important and this Case Is the Right Vehicle.

The NVRA "has two main objectives: increasing voter registration and removing ineligible persons from the States' voter registration rolls." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018). This case poses questions of exceptional importance: how do courts evaluate whether voter list maintenance is reasonable and who has standing in a public records disclosure case?

The Foundation raised genuine issues of material fact as to the reasonableness of the Secretary's efforts to remove deceased registrants from the voter roll. The plain text of NVRA Section 8 includes a fact-intensive inquiry. Yet the district court granted the Secretary's motion for summary judgment and the appellate court affirmed. An articulation of how "reasonable" voter list maintenance is evaluated is necessary not just for this case but for the evaluation of various election officials' "reasonable efforts."

As to Article III standing, the many different interpretations of the *TransUnion* ruling have extensive and compounding ramifications. The appellate court's decision allows election officials to demand to know "why" transparency is needed, and then to evaluate whether the requester of public information has a good reason to see it. Congress already made that decision. If the Foundation does not have standing to compel disclosure of records in

this case, then the transparency Congress intended is unattainable.

CONCLUSION

The underlying decision discounted the weighty responsibility Congress gave states to maintain accurate voter rolls while also raising an insurmountable hurdle for those seeking redress for the denial of public records relating to the maintenance of the voter rolls. This case is the ideal vehicle for this Court to provide much needed guidance and clarification.

Respectfully submitted,

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Dated: October 7, 2025

APPENDIX

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PUBLIC INTEREST LEGAL FOUNDATION, *Plaintiff-Appellant*, *v.* JOCELYN BENSON, in her official capacity as Secretary of State of Michigan, *Defendant-Appellee*, ELECTRONIC REGISTRATION INFORMATION CENTER, INC., *Movant-Appellee*.	No. 24-1255

Appeal from the United States District Court for the Western District of Michigan at Grand Rapids.

No. 1:21-cv-00929—Jane M. Beckering, District Judge.

Decided and Filed: May 6, 2025

Before: CLAY, WHITE, and DAVIS, Circuit Judges.

COUNSEL

ON BRIEF: J. Christian Adams, Kaylan Phillips, Joseph M. Nixon, Noel H. Johnson, PUBLIC INTEREST LEGAL FOUNDATION, Alexandria, Virginia, for Appellant. Erik A. Grill, Heather S. Meingast, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee Jocelyn Benson. Robert A. Wiygul, Peter V. Keays, HANGLEY ARONCHICK SEGAL PUDLIN & SCHILLER, Philadelphia, Pennsylvania, for Appellee Electronic Registration Information Center. Benjamin M. Flowers, ASHBROOK BYRNE KRESGE LLC, Cincinnati, Ohio, Thomas R. McCarthy, CONSOVOY MCCARTHY PLLC, Arlington, Virginia, David Eric Lycan, EMBRY MERRITT WOMACK NANCE, PLLC, Lexington, Kentucky, T. Russell Nobile, JUDICIAL WATCH, INC., Gulfport, Mississippi, for Amici Curiae.

OPINION

CLAY, Circuit Judge.

This case concerns the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507. Plaintiff Public Interest Legal Foundation ("PILF") filed a two-count complaint alleging that Defendant Jocelyn Benson ("Secretary Benson"), in her official capacity as Michigan Secretary of State, has not complied with the NVRA by (1) failing to conduct maintenance of voter registration lists, and (2) failing

to allow inspection of public records and data. PILF specifically alleges that the State of Michigan has failed to make adequate efforts to remove dead registrants from voter rolls and has refused to grant PILF access to public records relating to those voter rolls. Secretary Benson subsequently moved for summary judgment, which the district court granted. For the reasons that follow, we **AFFIRM** the district court's judgment.

I. BACKGROUND

A. Federal and State Election Laws at Issue

This case centers on the obligations the NVRA imposes on states to remove deceased registrants from voter rolls. The NVRA was passed by Congress to protect the integrity of the nation's elections. Congress specifically outlined that the law's central goal was to establish "procedures that will increase the number of eligible citizens who register to vote in elections for Federal office," making "it possible for Federal, State, and local governments to implement this [Act] in a manner that enhances the participation of eligible citizens as voters in elections for Federal office," protecting "the integrity of the electoral process," and ensuring "that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b).

In keeping with this goal, § 8 of the NVRA—the section at issue in this case—focuses on the removal of ineligible registrants from voting rolls. Among the classes of voters contemplated by § 8 is the class of deceased registrants. Section 8 prescribes that states must, inter alia, "conduct a general program that makes a reasonable effort to remove the names of

ineligible voters from the official lists of eligible voters by reason of . . . the death of the registrant." 52 U.S.C. § 20507(a)(4)(A). The section also requires that states allow public inspection of "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." *Id.* § 20507(i)(1). The NVRA provides a private right of action for "declaratory or injunctive relief" by a "person who is aggrieved by a violation" of the NVRA. *Id.* § 20510(b).

Congress continued its attempt to secure voting integrity in 2002 when it passed the Help America Vote Act of 2002 ("HAVA"), Pub. L. No. 107-252, 116 Stat. 1666 (codified as amended at 52 U.S.C. §§ 20901–21145 (2012)). HAVA's provisions include a requirement that states "shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, . . . computerized statewide voter registration list . . . that contains the name and registration information of every legally registered voter in the State. . . ." 52 U.S.C. § 21083(a)(1)(A). The statute further requires that this "computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State." *Id.* § 21083(a)(1)(A)(viii).

The State of Michigan has enacted a statutory scheme to come into compliance with both the NVRA and HAVA. The relevant portions of that scheme include language stating that the Michigan Secretary of State serves as the state's top election official and is responsible for ensuring Michigan's compliance with the NVRA and HAVA. Mich. Comp. Laws § 168.509n. The scheme also created the "qualified voter file" ("QVF"), which is the state's computerized

statewide voter registration list as required by HAVA. *Id.* §§ 168.509m(1)(a), 168.509o, 168.509p, 168.509q, 168.509r. Michigan law requires that, to keep the QVF current, the Secretary of State must establish

> a process by which information obtained through the United States Social Security Administration's death master file that is used to cancel an operator's or chauffeur's license . . . or an official state personal identification card . . . of a deceased resident of this state is also used at least once a month to update the qualified voter file to cancel the voter registration of any elector determined to be deceased.

Id. § 168.509o(4). The law also requires that the Secretary "make the canceled voter registration information . . . available to the clerk of each county, city, or township to assist with the clerk's obligations under section 510." *Id.*

Michigan law prescribes a variety of avenues to keep the QVF current and ensure that deceased voters are removed from the roll. For example, one statute prescribes that "[a]t least once a month, the county clerk shall forward a list of the last known address and birth date of all individuals over 17- ½ years of age who have died in the county to the clerk of each city or township in the county." Mich. Comp. Laws § 168.510(1). Additionally, local clerks are empowered to operate programs "to remove names of registered voters who are no longer qualified to vote in the city or township from the registration records of that city or township." Mich. Comp. Laws § 168.509dd(1). Local clerks may also engage in house-to-house canvassing, send "general mailing to voters

for address verifications," participate "in the national change of address program established by the postal service," or "[o]ther means the clerk considers appropriate." Mich. Comp. Laws § 168.509dd(3).

Outside of statutory prescriptions, the Secretary of State's office oversees a number of operations to keep the QVF current. According to Secretary Benson, her office uses four separate steps to remove deceased voters from the QVF. First, the state maintains a software system known as "CARS," which supports the "driver file," a database that includes the personal information of all vehicle drivers and individuals with state identification in Michigan. CARS receives weekly updates from federal agencies regarding deaths of Michigan residents. If there is an exact match between the information from the federal agency (name, date of birth, and social security number) and the information stored in CARS, and if that individual is listed on the QVF, the QVF is automatically updated to reflect the voter registrant's death. If the information provided from the federal government partially matches the information in CARS, the potential match is manually reviewed by a state unit to determine whether there is a match.[1]

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[1] According to Secretary Benson, "[i]f there are at least 3 data points that match, the individual will be marked as deceased in CARS. Once the customer record is updated in CARS, QVF is automatically updated." R. 149-3, Page ID #3086. Partial matches are typically reviewed within 7 to 10 days, though Secretary Benson acknowledges that backlogs of up to four weeks sometimes occur. R. 149-4, Page ID #3101–02.

Second, state officials utilize CARS in conjunction with the federal Social Security Administration. State officials produce a weekly report from CARS that lists individuals whose license or state identification are expiring within 90 days so that the state can mail the individuals renewal notices. Before mailing these notices, the file is shared with the Social Security Administration, and the Social Security Administration will provide a death indicator on the report if an individual is reported deceased. CARS will then update the individual's record as deceased and transmit that information to the QVF.

Third, members of the public can send information relating to the death of a registrant. For example, an individual may send in a death certificate of an immediate family member. This information from the public would then be updated in CARS and sent to the QVF.

Fourth, the Bureau of Elections ("BOE") works in conjunction with Movant-Appellee Electronic Registration Information Center, Inc. ("ERIC"), a non-profit, non-partisan membership organization that is incorporated in Delaware.[2] ERIC transmits records of potentially deceased individuals to BOE. ERIC creates these reports by comparing the QVF against the Social Security Administration's death index and identifying potential matches. BOE then reviews the records manually to determine whether there is a match between ERIC's records and a voter's records. ERIC's bimonthly reports help address a

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[2] ERIC is involved in this appeal because certain of the discovery orders challenged by PILF pertained to third-party subpoenas directed at ERIC.

subset of voters that may otherwise be overlooked by relying solely on the CARS database: voters who lack a driver's license or state ID card.

From 2019 to March 2023, Michigan cancelled between 400,000 and 450,000 registrations because the voters were deceased. R. 149-2, Page ID #3077. Michigan is consistently among the most active states in cancelling the registrations of deceased individuals; despite the fact that Michigan ranks 10th in voting-age population, the U.S. Election Assistance Commission reported that Michigan removed the sixth largest total number of registrations based on death in the 2016 election cycle; the fourth most in the 2018 cycle; the fifth most in the 2020 cycle; and the fifth most in the 2022 cycle.[3]

B. PILF's Correspondence with Secretary Benson's Office

PILF is a "is a non-partisan, non-profit, public interest organization" that "seeks to promote the integrity of elections in Michigan and other jurisdictions nationwide." Compl., R. 1, Page ID #2. In

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[3] U.S. Election Assistance Comm'n, *The Election Administration and Voting Survey 2016 Comprehensive*; U.S. Election Assistance Comm'n, *The Election Administration and Voting Survey 2018 Comprehensive Rep*. 82 (NVRA Table 3b) (2018), https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf; U.S. Election Assistance Comm'n, *The Election Administration and Voting Survey 2020 Comprehensive Rep*. 165 U.S. Election Assistance Comm'n, *The Election Administration and Voting Survey 2022 Comprehensive Rep*. 188 (Voter Registration Table 5) (2022), https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf (last visited Oct. 22, 2024).

the lead-up to, and in the months following, the 2020 election, PILF contacted Secretary Benson and BOE multiple times regarding deceased registrants on the active voter rolls. PILF's first contact with Secretary Benson occurred on September 18, 2020, in which the organization alleged that Secretary Benson's office had failed to adequately monitor deceased voters and that the organization had conducted its own study showing "34,000 deceased individuals" were actively registered in the State of Michigan. R. 1-4, Page ID #48–50. The letter further requested "an immediate meeting . . . to discuss what action will be taken to bring Michigan into compliance with state and federal law." *Id.* at Page ID #48. BOE responded to this letter 12 days later, requesting that PILF "provide a written description of the matching criteria used . . . to substantiate these allegations" and a list of the voters that PILF identified as potentially deceased. R. 11-2, Page ID #126. On October 5, 2020, PILF provided a spreadsheet and a letter ("October 5, 2020 Letter") describing the findings, stating that the organization produced "more than 27,000 records of concern" by comparing Michigan's QVR with the Social Security Death Index and "matching full names, full dates of birth, Social Security numbers, and credit address history information." R. 1-6, Page ID #52–53. PILF noted that the remainder matched "other verifiable death record sources." *Id.* Neither BOE nor the Michigan Department of State ("MDOS") responded to this letter.[4]

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[4] Michigan Director of Elections Jonathan Brater stated in a deposition that BOE did not respond to the letter because of time constraints on the BOE. Specifically, Director Brater outlined that the BOE was consumed with mailing and later counting

On November 25, 2020, PILF sent another letter to Secretary Benson and Jonathan Brater, BOE Director. This letter was a "follow-up" to the previous correspondence, reflected PILF's findings as to a new copy of the QVF, and requested a meeting. R. 1-8, Page ID #61–62. After failing to receive a response, PILF sent "another follow-up" letter on December 11, 2020 ("December 11, 2020 Letter"), requesting that Secretary Benson "permit inspection or provide copies" of records relating to deceased voters. Dec. 11, 2020 Letter, R. 1-9, Page ID #63–64. Specifically, PILF sought four categories of records: (1) data files received from the federal Social Security Administration listing deceased individuals; (2) records relating to the cancellation of deceased registrants from the QVF, including but not limited to reports that have or can be generated from Michigan's QVF; (3) records relating to the investigation of potentially deceased registrants who are listed on the QVF, including but not limited to correspondence with local election officials; and (4) records and correspondence regarding use of ERIC to conduct voter roll list maintenance. PILF also stated that it planned "to send a representative to [Secretary Benson's and/or the BOE's] office to inspect these documents on December 18, 2020." *Id*. at Page ID #64. The BOE responded on December 17, 2020, again requesting PILF's matching criteria. A week later,

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larger-than-normal absentee ballots due to the COVID-19 pandemic, staff shortages due to the pandemic, post-election canvasses that faced turbulence due to attempts to prevent certification of the election, and countering "a high volume of false information being made about the election." R. 149-2, Page ID #3083.

PILF sent a letter to Secretary Benson stating "that the Michigan Secretary of State is in violation of the [NVRA] for failure to permit inspection and duplication of public records . . . ." R. 1-11, Page ID #67. The letter further requested that because Secretary Benson's office was "closed to the public," that the office "provide the requested records electronically immediately." *Id.* at Page ID #68. PILF sent one final letter requesting inspection on January 13, 2021; MDOS did not respond to the letter.

C. Procedural History

On November 2, 2021, PILF filed a two-count complaint against Secretary Benson in the district court, alleging two violations of the NVRA: (1) failure to conduct list maintenance and (2) failure to allow inspection of records and data. The parties then proceeded to discovery.

A number of PILF's discovery requests are relevant to the instant appeal. First, in February 2023, PILF sought to depose Secretary Benson. Secretary Benson moved for a protective order against the deposition unless PILF could establish that the information sought could not come from other witnesses or means. The magistrate judge granted Secretary Benson's protective order without prejudice, noting that she was "unpersuaded" that the deposition was necessary for PILF's action. Protective Order Hr'g Tr., R. 75, Page ID #813. However, the magistrate judge did note that PILF could seek to depose Secretary Benson if "depositions or something else reveals that there is some information or some issue about which only Secretary Benson would testify or if Defendant were to insert Secretary Benson's testimony in the litigation in some way." *Id.*

at Page ID #810. PILF did not appeal the magistrate judge's order or renew its effort to depose Secretary Benson.

Second, PILF served subpoenas on non-party ERIC in March 2023, requesting production of documents and a deposition of the organization. ERIC moved to quash the subpoena. In a June 2023 hearing on the matter, the magistrate judge stated that PILF's subpoena "appear[s] to be a fishing expedition, and not only that but also because [the subpoena requests are] so far outside the core of this case to be potentially an abuse of the process before this Court." Mot. Quash Hr'g Tr., R. 108, Page ID #1956–57. The magistrate judge also found that PILF's requested discovery into ERIC was irrelevant to the litigation, and thus quashed the subpoena. PILF appealed the magistrate judge's determination, which the district court denied.

Finally, after discovery had closed in July 2023, PILF filed a motion to depose Stuart Talsma, an MDOS analyst, for a second time. This motion was filed in response to a supplemental document production that Secretary Benson filed in September 2023, also after the close of discovery. That supplement included a document produced by Talsma ("Talsma Supplement") regarding the status of the 27,000 "potentially deceased" voters PILF had identified in the October 5, 2020 Letter. PILF filed a motion to "depose Mr. Talsma regarding this document because it is relevant to the claims and defenses in this case." R. 144, Page ID #2971. The magistrate judge denied this request. Specifically, the magistrate judge noted that PILF had failed to explain "what additional discovery is required at this

point of Mr. Talsma and why you're entitled to it." Talsma Mot. Hr'g Tr., R. 163, Page ID #3304. Furthermore, the magistrate judge noted that the information sought could be obtained through other means, including either requesting Secretary Benson to produce the underlying spreadsheet used to produce the Talsma Supplement, or requesting Secretary Benson update her response to PILF's interrogatory request relating to "categories of voter status and status reasons that are included in the report and what those mean." *Id.* at Page ID #3320. Secretary Benson subsequently agreed to both provide the underlying spreadsheet to PILF and to update her interrogatory response. *Id.* at Page ID #3321. Secretary Benson provided these materials on October 19, 2023, and PILF did not appeal the magistrate judge's order.

Following discovery, both PILF and Secretary Benson moved for summary judgment. PILF also filed a motion pursuant to Federal Rule of Civil Procedure 56(d), arguing that Secretary Benson's motion for summary judgment should be denied or deferred because PILF "ha[d] not been permitted to conduct all relevant discovery." Mot. for Disc., R. 170, Page ID #3517–18. Specifically, PILF argued that it had not been permitted to (1) depose Secretary Benson, (2) obtain documents from ERIC, and (3) depose Talsma. The district court ultimately denied PILF's summary judgment motion and granted Secretary Benson's summary judgment motion, finding that PILF had failed to show sufficient evidence for its list-maintenance count and that its disclosure-obligations count was moot. The district court also denied PILF's Rule 56(d) motion, stating that each of the evidentiary

issues were already litigated in previously filed motions and that PILF did not "articulate any specific facts that it believes it will obtain from Secretary Benson, ERIC, or Talsma that would demonstrate the existence of a question of fact." Summ. J. Order, R. 180, Page ID #3660.

II. DISCUSSION

A. Standard of Review

"We review the district court's grant of summary judgment de novo." *Kirilenko-Ison v. Bd. of Educ. of Danville Indep. Schs.*, 974 F.3d 652, 660 (6th Cir. 2020) (citation omitted). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A dispute of a material fact is genuine so long as 'the evidence is such that a reasonable jury could return a verdict for the non-moving party.'" *Kirilenko-Ison*, 974 F.3d at 660 (quoting *Jackson v. VHS Detroit Receiving Hosp., Inc.*, 814 F.3d 769, 775 (6th Cir. 2016)). This Court reviews decisions on summary judgment by "view[ing] the factual evidence and draw[ing] all reasonable inferences in favor of the non-moving party." *See v. City of Elyria*, 502 F.3d 484, 491 (6th Cir. 2007).

In reviewing a district court's decisions to deny or limit the scope of discovery, this Court reviews for an abuse of discretion. *Siggers v. Campbell*, 652 F.3d 681, 695–96 (6th Cir. 2011). A court abuses its discretion "when the reviewing court is left with a definite and firm conviction that the court below committed a clear error of judgment." *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 642 (6th Cir. 2018) (citation and quotation marks omitted).

B. Analysis

1. Discovery Dispute

PILF argues that during the course of litigation, it was unfairly deprived of its opportunity to conduct the following discovery: (1) deposing Secretary Benson regarding "list maintenance procedures and directives," (2) obtaining documents from ERIC regarding the comparison between the QVF and the Social Security Administration's death records, and deposing Stuart Talsma regarding the Talsma Supplement. Appellant Br., ECF No. 21, 39–41. According to PILF, these denials by both the district court and the magistrate judge touched "the heart of the ultimate factual questions" in this case, and it was therefore improper for the district court to grant summary judgment without this evidence.[5] *Id.* at 39. This argument misses the mark.

To begin, the only discovery-related appeal PILF filed in the district court was its appeal of the magistrate judge's decision to quash PILF's subpoena to ERIC. PILF did not appeal the magistrate judge's discovery orders regarding the requested depositions of Secretary Benson and Talsma. Because of this

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[5] Secretary Benson notes that PILF's brief "does not specify whether it seeks to appeal the district court's denial of its Rule 56(d) motion, or if it is appealing the underlying discovery motions." Def.-Appellee Br., ECF No. 35, 68–69. However, PILF's brief does not mention the Rule 56(d) motion, and instead focuses on the denial of the discovery requests themselves. PILF's Reply Brief also focuses on the denial of the discovery requests and not the Rule 56(d) motion. It therefore appears that PILF is appealing the district court and magistrate judge's denial of the three relevant discovery requests.

failure, we lack jurisdiction to review any more than the quashed ERIC subpoena. *Hoven v. Walgreen Co.*, 751 F.3d 778, 782 (6th Cir. 2014) (finding that where a magistrate judge considers pretrial matters on a "limited grant of authority . . . pursuant to 28 U.S.C. § 636(b)(1)(A)," not a grant of "plenary jurisdiction pursuant to 28 U.S.C. § 636(c)(1)," then "we are 'without jurisdiction to review the magistrate's order unless the parties have sought review in the district court'" (quoting *McQueen v. Beecher Cmty. Schs.*, 433 F.3d 460, 472 (6th Cir. 2006))). In a series of unnumbered docket entries, the district court referred the issues of the Secretary Benson and Talsma depositions to the magistrate judge on a limited grant of authority pursuant to § 636(b)(1)(A). PILF's failure to appeal the magistrate judge's subsequent decisions is therefore fatal to its present appeal.

We therefore limit our review to the ERIC subpoena, which PILF did appeal. Lower courts are afforded broad leeway in managing discovery. *See Pittman*, 901 F.3d at 642. As this Court has recognized, "[i]t is well established that the scope of discovery is within the sound discretion of the trial court." *Lavado v. Keohane*, 992 F.2d 601, 604 (6th Cir. 1993) (citation omitted). To demonstrate that reversal of the court's exercise of discretion is warranted, a litigant must make "a clear showing that the denial of discovery resulted in actual and substantial prejudice to the complaining litigant." *Pittman*, 901 F.3d at 642 (cleaned up). At the summary judgment phase, the complaining litigant must "demonstrate that the discovery sought would have precluded summary

judgment." *Stiltner v. Donini*, No. 20-4136, 2021 WL 5232339, at *3 (6th Cir. Aug. 9, 2021).

Regarding the discovery requests pertaining to ERIC, PILF has failed to demonstrate prejudice. PILF's Reply Brief speaks at length on the magistrate judge's abuse of discretion with respect to the ERIC discovery request, but does not reference PILF's burden in showing prejudice. PILF's conclusory statement that "[p]rejudice is inherent on an unequal playing field" does not meet its burden. Appellant Reply Br., ECF No. 38, 24. PILF has not demonstrated how the requested discovery would have altered the district court's summary judgment determination. For example, PILF has not concretely articulated what facts it believes it could have obtained from ERIC that would have impacted the district court's order.

Considering PILF has not demonstrated prejudice, this Court cannot find that either the magistrate judge or the district court abused their discretion in resolving PILF's discovery motion relating to the ERIC subpoena. As such, PILF cannot maintain its argument that the district court erred in determining summary judgment without reviewing the requested evidence.

2. Summary Judgment as to Count I

Count I of PILF's complaint alleged a violation of the NVRA for failure to conduct list maintenance. The district court granted Secretary Benson summary judgment on this count, finding that undisputed facts in the record demonstrated that Michigan's dead-registrant-removal program constituted a reasonable effort under the NVRA.

a. *Interpretation of the NVRA's Reasonableness Standard*

The core of this case centers on a question of statutory interpretation: what efforts must a state make in order to meet the NVRA's "reasonable effort" requirement? The language of the statute requires, in relevant part, that states "conduct a general program that makes a *reasonable effort* to remove the names of ineligible voters from the official lists of eligible voters by reason of . . . the death of the registrant." 52 U.S.C. § 20507(a)(4)(A) (emphasis added). Beyond this, Congress did not give any further guidance on what a "reasonable effort" must look like. Congress did not, for example, enumerate what steps a state should take to come into compliance with this standard.[6] In interpreting this language, the district court found that PILF had failed to identify any "genuine issue for trial regarding its claim that" Michigan's program for removal of dead registrants "is not reasonable." Summ. J. Order, R. 180, Page ID #3660–61. The district court specifically noted that "the NVRA requires only a 'reasonable effort,' not a perfect effort, to remove registrants who have died," and that Michigan's program meets the requisite level of effort. *Id.* at Page ID #3659.

PILF argues that the district court erred in its interpretation of what a reasonable effort requires. According to PILF, a reasonable effort "to remove deceased registrants must amount to a quantifiable, objective standard that may be applied to all entities subject to the NVRA, including [Secretary Benson]."

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[6] This Circuit has also not opined on what measures constitute a reasonable effort under the NVRA.

Appellant Br., ECF No. 21, 17. To support its articulation of what it believes should constitute the reasonable effort standard, PILF looks to a number of supporting guides. PILF draws on the NVRA's legislative history by, for example, indicating that the negotiations during the NVRA's passage process produced multiple drafts of the bill, in which later versions included much stronger language related to removal of dead registrants.[7] Outside of legislative history, PILF highlights the U.S. Department of Justice's efforts in enforcing the NVRA. It notes that the Justice Department has issued statements highlighting that voter list maintenance requires a vigorous effort and that the Justice Department has also filed suit against a number of states for failing to maintain proper list maintenance.

PILF's interpretation of the NVRA's "reasonable effort" language is misplaced. To determine the meaning of a statute, this Court has emphasized that "[t]he starting point . . . is the language of the statute itself." *United States v. Plavcak*, 411 F.3d 655, 660 (6th Cir. 2005) (quoting *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 210 (1979)). "This inquiry begins—and sometimes ends—with the plain language of the statute. If the language of the statute is clear, the court applies the statute as written." *Donovan v. FirstCredit, Inc.*, 983 F.3d 246, 253 (6th

[7] Amici curiae Republican National Committee and Restoring Integrity and Trust in Elections turn the Court's attention to the statements of legislators during the bill's negotiations. Those statements, according to amici, demonstrate that ensuring a rigorous attention to voter list maintenance was crucial to the NVRA's passage.

Cir. 2020) (cleaned up). In looking at the language of a statute, "words will be interpreted as taking their ordinary, contemporary, common meaning," as "it is appropriate to assume that the ordinary meaning of the language that Congress employed 'accurately expresses its legislative purpose.'" *Plavcak*, 411 F.3d at 660–61 (first citing *Perrin v. United States*, 444 U.S. 37, 42 (1979); and then quoting *Mills Music, Inc. v. Snyder*, 469 U.S. 153, 164 (1985)). A review of the plain, ordinary meaning of § 8's language demonstrates that PILF's reading of the reasonable effort requirement is flawed.

The NVRA does not include a definition of "reasonable effort." Thus, to determine the common meaning of the phrase "reasonable effort," a turn to dictionary definitions is instructive. *See Vander Boegh v. EnergySolutions, Inc.*, 772 F.3d 1056, 1060 (6th Cir. 2014) ("Where no statutory definition exists, a court may consult a dictionary definition for guidance in discerning the plain meaning of a statute's language.") (citation omitted). Webster's Third New International Dictionary—published in 1993, the year of the NVRA's passage—defines "reasonable" as "being in agreement with right thinking or right judgment : not conflicting with reason : not absurd : not ridiculous." Reasonable, Webster's Third New International Dictionary (1993). Contemporary dictionaries provide similar definitions of reasonable, as the Oxford English Dictionary's online dictionary defines reasonable as "[w]ithin the limits of what it would be rational or sensible to expect; not extravagant or excessive; moderate." *Reasonable*, Oxford English Dictionary, https://www.oed.com/dictionary/reasonable_adj?tab=

meaning_and_use#26885710. Relatedly, contemporary dictionaries define "effort" as "a serious attempt: try." *Effort*, Merriam-Webster, https://www.merriam-webster.com/dictionary/effort.

In looking at these dictionary definitions, a fairly straightforward definition of "reasonable effort" can be constructed: a serious attempt that is rational and sensible; the attempt need not be perfect, or even optimal, so long as it remains within the bounds of rationality. This definition can then be placed in the broader context of § 8's dead registrant language. The statute states that a state must "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of . . . the death of the registrant. " 52 U.S.C. § 20507(a)(4)(A). Thus, a state must establish a program that makes a rational and sensible attempt to remove dead registrants; a state need not, however, go to "extravagant or excessive" lengths in creating and maintaining such a program. This definition of the NVRA's language is drawn from the plain, ordinary meaning of the statute; accordingly, the Court's analysis ends there and "applies the statute as written." *Donovan*, 983 F.3d at 253. PILF is thus mistaken in relying on extratextual sources to guide its interpretation of § 8. The plain language of the statute, not legislative history or the Justice Department's actions, determine the law's meaning.

In addition, PILF's definition of "reasonable effort" is incongruent with the NVRA's common meaning. PILF states that a reasonable effort "to remove deceased registrants must amount to a quantifiable, objective standard that may be applied

to all entities subject to the NVRA." Appellant Br., ECF No. 21, 17. To interpret the language of the NVRA as imposing a "quantifiable" target finds no support in § 8 and is not anchored to the common meaning of the statute. It is unclear what counts as "a quantifiable, objective standard," how a state could meet that standard, or how such a requirement could be derived from the plain language of the statute.

b. *Application of the Reasonable Effort Standard to Summary Judgment*

In its order, the district court found that undisputed evidence established that Michigan's program of removing deceased registrants fell squarely within the NVRA's reasonable-effort requirement. The district court's order outlined several reasons to explain this conclusion.

First, the court turned to Eleventh Circuit case law. In *Bellitto v. Snipes*, a nonprofit corporation filed suit against a county elections official in Florida who allegedly "failed to satisfy her list-maintenance obligations" under the NVRA.[8] 935 F.3d 1192, 1194 (11th Cir. 2019). While the issues discussed in *Bellitto*

[8] PILF argues that the district court's reliance on *Bellitto* was inapposite as that case had a different procedural posture and factual record. Specifically, PILF states that *Bellitto* "was decided following a bench trial" and PILF relies on evidence that is qualitatively different from the evidence at issue in *Bellitto*. Appellant's Br., ECF No. 21, 25. Yet the portions of *Bellitto* that the district court cites to are either not particular to the procedural history, or constitute irrelevant evidence. Instead, those portions cited by the district court consider broad interpretations of the NVRA's reasonable-effort standard—interpretations that are readily applicable to this case.

are largely unconnected to the issues of this case, the Eleventh Circuit briefly touched on § 8's reasonable efforts standard. Specifically, the court noted:

> As for voters who become ineligible because of death, we agree with the district court that a jurisdiction's reliance on reliable death records, such as state health department records and the Social Security Death Index, to identify and remove deceased voters constitutes a reasonable effort. The state is not required to exhaust all available methods for identifying deceased voters; it need only use reasonably reliable information to identify and remove such voters.

Id. at 1205. The district court highlighted that Michigan employs a similarly "reasonable" program. Like Florida, Michigan "relies on [the Social Security Death Index] and state health records in order to identify and remove deceased registrants, in addition to other tools to capture both in-state and out-of-state deaths." Summ. J. Order, R. 180, Page ID #3659.

Second, the district court turned to state-specific statistics demonstrating the reasonableness of Michigan's program. In its October 5, 2020 Letter, PILF identified 27,000 "potentially deceased" voters on Michigan's registration rolls. Oct. 2020 Letter, R. 1-6, Page ID #52–53. The district court calculated that this figure "would comprise approximately 0.3 percent of the total number of [8.2 million] registered voters in Michigan." Summ. J. Order, R. 180, Page ID #3657. This relatively small percentage, according to the district court, "would simply not be unreasonable in a state the size of Michigan"—especially

considering that "federally collected data shows that Michigan is consistently among the most active states in the United States in cancelling the registrations of deceased individuals." *Id.*

Third, the district court analyzed the mechanics of Michigan's program. The court noted that Michigan undertakes a number of steps to ensure a well-functioning program, including: (1) comparing Social Security Administration death reports on a weekly basis to the CARS list; (2) reconciling the QVF with the CARS driver file on a quarterly basis; and (3) manually reviewing the bimonthly ERIC reports, which are created by comparing the QVF to the Social Security Death Index. Under this program, the district court noted, "nearly 8,000 of the 'potentially deceased' voters identified by PILF in its October 5, 2020 list had already been removed" by September 2023, and 5,766 had been removed before PILF filed its action in November 2021. *Id.* at Page ID #3658. While PILF argued that it is not enough to merely schedule registrant removal under these procedures, and that the entire list of 27,000 deceased registrants "should be fixed now," Pl.'s Resp. Summ. J., R. 168, Page ID #3413, the district court disagreed. The court found that the NVRA "does not require states to immediately remove every voter who may have become ineligible," and it was instead sufficient that the "record demonstrate[d] that deceased voters are removed from Michigan's voter rolls on a regular and ongoing basis." Summ. J. Order, R. 180, Page ID #3658.

These factors ultimately led the district court to the conclusion that Michigan's program fell squarely

within the NVRA's reasonable effort language. That determination was correct.

Neither party disputes the factual record with respect to certain core elements of Michigan's registrant removal program. Both parties agree that (1) the QVF is updated automatically when an exact death is reported on CARS and manually when a "close match" is reported on CARS, (2) the QVF is updated based on information from the Social Security Administration's death records, and (3) the MDOS updates voter registrations manually based on "potentially deceased" records from ERIC. While PILF disputes whether these components of Michigan's program are enough to be considered a reasonable effort, it does not contest whether Michigan does in fact utilize these tools. With these elements of the program established as a factual matter, we must determine whether this program constitutes a reasonable effort under the NVRA.

While this Circuit has yet to opine on what efforts are enough to be considered reasonable, *Bellitto* is instructive.[9] There, the Eleventh Circuit found that Florida's "reliance on reliable death records, such as state health department records and the Social Security Death Index, to identify and remove

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[9] Given that the parties do not dispute key facts, PILF's attempt to distinguish *Bellitto* on the basis that it involved a bench trial falls flat. And although the *Bellitto* panel applied clear error review to the district court's factual findings, not the de novo review we apply here, the *Bellitto* panel also applied de novo review to issues of statutory interpretation—such as the meaning of the NVRA's "reasonable effort" requirement. 935 F.3d at 1197–98.

deceased voters constitutes a reasonable effort." *Bellitto*, 935 F.3d at 1205. This reading of the reasonable effort requirement falls squarely in line with the ordinary, common meaning of the statute's language. A state that actively makes efforts to remove dead registrants based on state and federal death records is engaging in an inherently rational, sensible attempt at maintaining accurate voter registration lists. Michigan not only undertakes the kind of effort described in *Bellitto*, but it also adopts additional standards as well. The defendant in *Bellitto* "utilized reliable death records from the Florida Department of Health and the Social Security administration to identify and regularly remove deceased voters," *id.* at 1195, which parallels Michigan's regular QVF updates based on information from state records and the Social Security Administration. Yet Michigan goes further by also actively employing a third party, ERIC, to assist in identifying deceased registrants. This additional effort only further enhances the reasonableness of Michigan's efforts to maintain accurate voter rolls.

That Michigan makes a reasonable effort can also be demonstrated through basic statistical evidence that, again, PILF does not dispute. As the district court notes, there are 8.2 million registered voters in Michigan. Assuming, arguendo, that PILF's calculation of 27,000 deceased voters on the state's voter rolls is correct, this would only constitute "0.3 percent of the total number of registered voters in Michigan." Summ. J. Order, R. 180, Page ID #3657. That vanishingly small percentage is in-and-of-itself

indicative that Michigan has taken rational, sensible steps to maintain accurate voter rolls.

PILF argues that these efforts are not, in fact, sufficiently reasonable, and takes issue with a number of features within Michigan's processes. For example, PILF states that the Social Security Administration's death files are not compared directly with the QVF, but rather the files contained in CARS. PILF argues that a better—i.e., more reasonable—process would compare the Social Security Administration's death records directly with the QVF. PILF also posits that Michigan could improve its program by (1) utilizing the entire Social Security Administration death index, not just updates to it; (2) looking specifically for individuals registered *after* their death; and (3) changing a state policy that stops processing deceased notices two weeks prior to elections. Appellee's Br., ECF No. 35, 30–32. In fact, much of PILF's brief is filled with examples of ways in which Michigan's program is suboptimal and in which the program could be improved. Yet the language of the NVRA does not require a perfect effort, nor does it require the most optimal effort, nor does it even require a very good effort. Instead, the NVRA only requires a *reasonable* effort. As the Eleventh Circuit noted: "The state is not required to exhaust all available methods for identifying deceased voters." *Bellitto*, 935 F.3d at 1205. And Michigan's multi-layered efforts are more than reasonable.

PILF also argues that the district court improperly granted summary judgment because a finding of reasonableness is "indivisible from a factual inquiry" and should be left to a jury. Appellant's Reply

Br., ECF No. 38, 1–2. Neither this Circuit nor its sister circuits have explored whether determining if a state's registrant removal program "makes a reasonable effort" is an inquiry of fact, law, or both. Yet the undisputed material facts of this case demonstrate that the district court was drawing a legal conclusion at summary judgment. The district court was presented with broad set of undisputed evidence outlining the operations and results of Michigan's registrant removal program. With these uncontested facts, the district court looked to determine the precise contours and requirements of the NVRA's reasonable efforts wording. This is a task of deciphering legislative language, which is inherently a legal inquiry. *See CFE Racing Prod., Inc. v. BMF Wheels, Inc.*, 793 F.3d 571, 597 (6th Cir. 2015). Where, as here, a district court has wide-ranging, undisputed facts concerning a state's registrant removal program, the court is well within its discretion to make a legal finding and grant summary judgment.

3. Summary Judgment as to Count II

Count II of PILF's complaint alleges that Secretary Benson violated the NVRA's inspection of records and data provision by failing to produce records in response to the December 18, 2020 Letter. Both parties moved for summary judgment on this count; the district court granted it in favor of Secretary Benson, finding that the claim was moot. Whether the district court erred in finding that the count was moot is a determination we need not reach.

Instead, Count II must be dismissed because PILF does not have standing to assert this claim.[10]

"For a dispute to qualify as an Article III case or controversy that a federal court may resolve, the plaintiff who brings the dispute to the court must have standing." *Barber v. Charter Twp. of Springfield*, 31 F.4th 382, 389 (6th Cir. 2022) (cleaned up). To demonstrate standing under Article III, "a plaintiff must have suffered some actual or threatened injury due to the alleged illegal conduct of the defendant; the injury must be 'fairly traceable' to the challenged action; and there must be a substantial likelihood that the relief requested will redress or prevent the plaintiff's injury." *Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 494 (6th Cir. 1999) (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982)). Courts "look only to 'the facts existing when the complaint is filed'" to determine standing. *Barber*, 31 F.4th at 390 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 569 n.4 (1992)). To show injury, a plaintiff must allege that it "suffered an injury in fact, which is 'concrete, particularized, and actual or imminent.'" *Shearson v. Holder*, 725 F.3d 588, 592 (6th Cir. 2013) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)). A plaintiff may allege an "informational injury," but it must identify concrete "'downstream consequences' from failing to receive the required information." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021) (citation omitted).

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[10] Secretary Benson raised the issue of standing at summary judgment; however, the district court declined to rule on the issue because the court dismissed the case on mootness grounds.

The Fifth Circuit's recent holding in *Campaign Legal Center v. Scott*, which presented very similar facts as this case, is instructive. 49 F.4th 931 (5th Cir. 2022). There, the plaintiffs filed a request to the Texas Secretary State for documents relating to voter registrants identified by the state "as potential non-U.S. citizens." *Id.* at 934. The Texas Secretary of State refused to release the documents on privacy grounds. In response, the plaintiffs filed suit under the same NVRA public disclosure provision at issue in this case, alleging that Texas had unlawfully failed to produce records as required by federal law. On appeal, the Fifth Circuit reviewed whether the plaintiffs had standing to bring the case; specifically, whether the plaintiffs had sufficiently alleged an informational injury. The plaintiffs provided three arguments as to why they had established injury: first, as "civic engagement organizations," they had "standing to request records under the NVRA;" second, "there is a downstream injury with respect to the public not having visibility into how Texas is keeping its voter lists;" and third, "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.* at 936 (cleaned up).

The Fifth Circuit rejected these arguments on multiple grounds. First, the court pointed out that under the Supreme Court's *TransUnion* doctrine, a plaintiff does not "automatically satisf[y] the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." *Id.* (quoting *TransUnion*, 594 U.S. at 426). In other words, 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.[11] The court also emphasized the Supreme Court's warning that "Article III standing requires a concrete injury even in the context of a statutory violation." *Id.* at 937 (quoting *TransUnion*, 594 U.S. at 426). Second, the court found that the plaintiffs had not demonstrated "any downstream consequences from an alleged injury in law under the NVRA." *Id.* The plaintiffs' theories regarding "visibility" failed to establish a "cognizable injury in fact" as these were not examples

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[11] The Fifth Circuit noted that the plaintiffs relied on "superficially appealing" Supreme Court case law prior to *TransUnion*. *Id.* at 937. That case law found that "government refusals to compel disclosures of information arguably required by law constituted a concrete Article III injury." *Id.* at 938 (citing *FEC v. Akins*, 524 U.S. 11, 15–16 (1998); *Pub. Citizen v. U.S. Dep't of Just.*, 491 U.S. 440, 449 (1989)). Yet the Fifth Circuit noted that those cases—which are the same cases that PILF cites to in this case—cannot be read out of context. In reviewing the Supreme Court's *TransUnion* opinion in context with earlier cases, the Fifth Circuit correctly interpreted the Supreme Court's case law to hold 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." *Id.* at 937–38; *accord Grae v. Corr. Corp. of Am.*, 57 F.4th 567, 570–71 (6th Cir.) (reconciling *Akins* and *Public Citizen* with *TransUnion* by noting that the former two cases, although public disclosure cases, nonetheless involved downstream harms that "transformed what otherwise would have been a 'bare procedural violation' of a public-disclosure law into a concrete injury"), *cert. denied sub nom. Tardy v. Corr. Corp. of Am.*, 144 S. Ct. 285 (2023).

of a "concrete and particularized harm." *Id*. Third, the court emphasized that "[t]he lack of concrete harm . . . is reinforced because not a single Plaintiff is a Texas voter, much less a voter wrongfully identified as ineligible, and the Plaintiffs have not claimed organizational standing on behalf of any Texas voter members." *Id.* Finally, the court stated that the plaintiffs did "not allege that identification of voter names and identification numbers [would] directly lead to action relevant to the NVRA or any other statute, nor that their direct participation in the electoral process [would] be hindered." *Id*. at 938. Thus, the Fifth Circuit concluded that the plaintiffs had failed to establish an informational injury, as they had failed to demonstrate concrete downstream consequences from Texas' failure to produce the requested records.

Campaign Legal Center is directly analogous to this case. Like the *Campaign Legal Center* plaintiffs, PILF sought voter records pursuant to the NVRA; and like the *Campaign Legal Center* plaintiffs, PILF is not a registered voter, nor has it claimed organizational standing on behalf of registered voters, in the voting jurisdiction at issue.[12] PILF's legal argument also mirrors the *Campaign Legal Center* plaintiffs' argument in that PILF states that it suffered a cognizable injury under the informational injury doctrine. PILF attempts to draw a distinction between this case and *Campaign Legal Center* with respect to "downstream consequences." PILF argues that unlike the Fifth Circuit case, the complaint in

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[12] PILF is not located in Michigan. Instead, it is "incorporated and based in Indianapolis, Indiana." Compl., R. 1, Page ID #2.

this action directly references concrete downstream harms. Specifically, PILF alleges in its complaint that Secretary Benson's failure to produce relevant records "prevents [PILF] from engaging in its research, educational, and remedial activities." Compl., R. 1, Page ID #19. In its reply brief, PILF further argues that Secretary Benson "has impaired the accumulation of institutional knowledge to assist and inform" PILF's "core functions" because such knowledge is "informed by [the] state's compliance with the NVRA." Appellant Reply Br., ECF No. 38, 17.

PILF's downstream consequences argument is unavailing. This stance is similar to one of the unsuccessful arguments made by the plaintiffs in *Campaign Legal Center*. In its brief, the plaintiffs argued that Texas' failure to release records prevented the plaintiffs from achieving their organizational goal of "monitoring Texas's compliance with the NVRA" because the "refusal to produce records of the individuals identified under the list maintenance program" denied the plaintiffs "the opportunity to identify eligible voters improperly flagged by the program." Appellee Br. at 35, *Campaign Legal Ctr. v. Scott*, No. 22-50692 (5th Cir. Aug. 24, 2022), ECF No. 60-1. In effect, the plaintiffs argued that Texas' failure to produce documents broadly harmed the organizational goals of the plaintiffs—an argument very similar to the one made by PILF, and which the Fifth Circuit found unconvincing. *See Campaign Legal Ctr.*, 49 F.4th at 937–38.

Furthermore, 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. *See Campaign Legal Ctr.*, 49 F.4th at 937 ("[T]he district court's concern about Plaintiffs' lack of 'opportunity' to identify voters incorrectly described by the Secretary's data base expresses a speculative rather than concrete grievance. To support standing, however, Plaintiffs' injury must be more than speculative and must be 'certainly impending.'" (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013))). Neither the complaint nor PILF's briefs identify, for example, specific projects, research papers, or educational outreach efforts that were directly impacted by Secretary Benson's failure to produce relevant records. This Circuit has cautioned that "'mere allegations' are insufficient to establish jurisdiction; at summary judgment, plaintiffs must set forth 'specific facts.'" *Fair Elections Ohio v. Husted*, 770 F.3d 456, 460 (6th Cir. 2014) (quoting *Lujan*, 504 U.S. at 561) (finding that an election advocacy organization had failed to establish standing where it alleged only that a state's actions diverted the organization's "limited resources," and failed to identify "specific facts" to support this assertion); *see also Merck v. Walmart, Inc.*, 114 F.4th 762, 776 (6th Cir. 2024) (holding that a plaintiff "must point to *specific evidence* tending to prove that he has an interest in using the withheld information . . . for some purpose beyond his statutory right to receive it" (emphasis added)); *Ctr. for Biological Diversity v. Lueckel*, 417 F.3d 532, 537 (6th Cir. 2005) ("Because the plaintiffs' standing was challenged in a motion for summary judgment, the plaintiffs must[] . . . 'set forth specific facts,' in affidavits or through other evidence, demonstrating that each element of standing is satisfied." (quoting Fed. R. Civ. P. 56(e) (2005)

(amended 2007)). Indeed, the Third Circuit recently considered nearly *identical* injuries claimed by PILF—including the inability to "study and analyze" list maintenance "to promote the integrity of elections," as well as the "inability to publish 'educational materials'"—and faulted PILF for "submit[ting] no evidence of any specific plans for the records it sought." *Pub. Int. Legal Found. v. Sec'y Commonwealth of Pa.*, No. 23-1590, --- F.4th ----, 2025 WL 1242229, at *8–9 (3d Cir. Apr. 25, 2025). The court concluded that PILF "failed to identify some *specific* adverse downstream consequence for its mission or future plans" and, therefore, lacked standing. *Id.* at *10. PILF faces the same deficiencies here as well.

The combination of analogous case law from the Fifth and Third Circuits and PILF's failure to articulate specific downstream consequences demonstrates that PILF has failed to show a sufficient injury to confer Article III standing. Count II must therefore be dismissed.

III. CONCLUSION

Neither the district court nor the magistrate judge abused their discretion in the discovery determinations relevant to this appeal. Nor did the district court err in its summary judgment determination. Accordingly, we **AFFIRM** the district court in full.

Appendix B

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 24-1255

PUBLIC INTEREST LEGAL FOUNDATION,

Plaintiff - Appellant,

v.

JOCELYN BENSON, in her official capacity as Secretary of State of Michigan,

Defendant - Appellee,

ELECTRONIC REGISTRATION INFORMATION CENTER, INC.,

Movant - Appellee.

Before: CLAY, WHITE, and DAVIS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for the Western District of Michigan at Grand Rapids.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

Appendix C

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 24-1255

PUBLIC INTEREST LEGAL FOUNDATION,

Plaintiff - Appellant,

v.

JOCELYN BENSON, in her official capacity as Secretary of State of Michigan,

Defendant - Appellee,

ELECTRONIC REGISTRATION INFORMATION CENTER, INC.,

Movant - Appellee.

ORDER

Before: CLAY, WHITE, and DAVIS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

Appendix D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PUBLIC INTEREST
LEGAL FOUNDATION,

Plaintiff, Case No. 1:21-cv-929

v. HON. JANE M. BECKERING

JOCELYN BENSON,

Defendant.

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OPINION AND ORDER

This case presents important issues about election integrity in Michigan. On November 3, 2021, Plaintiff Public Interest Legal Foundation (PILF) initiated this case under the National Voter Registration Act (NVRA), 52 U.S.C. § 20501 *et seq*., against Defendant Jocelyn Benson in her official capacity as Michigan's Secretary of State, alleging violations of the NVRA's list-maintenance requirements (Count I) and disclosure requirements (Count II). Now pending before the Court are Secretary Benson's motion for summary judgment (ECF No. 148), PILF's motion for partial summary judgment (ECF No. 153), and PILF's motion for discovery (ECF No. 170). Having considered the parties' submissions, the Court concludes that oral argument is unnecessary to resolve the issues presented. *See* W.D. Mich. LCivR 7.2(d). For the

following reasons, the Court grants Secretary Benson's motion and denies PILF's motions. Because this Opinion and Order resolves both pending claims in this case, this Court also dismisses as moot Secretary Benson's motions in limine (ECF Nos. 120 & 135) and enters a Judgment to close this case.

I. BACKGROUND

A. Legal Context

1. The NVRA, the HAVA, & the EAC

In 1993, Congress enacted the NVRA, Pub. L. No. 103−31, 107 Stat. 77 (codified as amended at 52 U.S.C. §§ 20501−20511), to establish procedures that would "increase the number of eligible citizens who register to vote in elections for Federal office;" "enhance[ ] the participation of eligible citizens as voters in elections for Federal office;" "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 requires states to offer voter registration by mail, by application in person at all offices in the state providing public assistance or administering state-funded programs that primarily provide services to persons with disabilities, and by application in person while applying for a motor vehicle driver's license. *Ass'n of Cmty. Organizations for Reform Now v. Miller*, 129 F.3d 833, 835 (6th Cir. 1997). The NVRA also sets forth requirements for removing registrants from the voter registration roll because of the death of the registrant or a change in the residence of the registrant. *Id.* (citing the predecessor to 52 U.S.C. § 20507(a)(4)(A), (B)).

As other circuits have observed, the NVRA's objectives—easing barriers to registration and voting, while at the same time protecting electoral integrity and the maintenance of accurate voter rolls—can sometimes be in tension with one another. *See Bellitto v. Snipes*, 935 F.3d 1192, 1198 (11th Cir. 2019); *Am. C.R. Union v. Philadelphia City Comm'rs*, 872 F.3d 175, 178 (3d Cir. 2017). "On the one hand, maintaining clean voter rolls may help ensure election integrity, but on the other hand, purging voters from the rolls requires voters to re-register and hinders participation in elections." *Am. C.R. Union, supra.*

Section 8 of the NVRA, which is the section at issue in this case, requires states to conduct a "general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of," inter alia, "the death of the registrant." 52 U.S.C. § 20507(a)(4)(A). Although § 8 generally restricts states from removing ineligible registrants from the voter rolls within 90 days of an election, 52 U.S.C. § 20507(c)(2)(A), the 90-day deadline does not apply to removing registrants who have died, 52 U.S.C. § 20507. In other words, deceased registered voters may be removed from voter rolls at any time. The NVRA also requires that each state maintain and make available for public inspection certain records concerning the implementation of its voter registration activities under the Act. 52 U.S.C. § 20507(i). Last, the NVRA provides for a civil enforcement action by the Attorney General, 52 U.S.C. § 20510(a), and a civil action for

"declaratory or injunctive relief" by a "person who is aggrieved by a violation" of the NVRA, *id.* § 20510(b).

In 2002, building on the reforms in the NVRA, Congress enacted the Help America Vote Act (HAVA), Pub. L. No. 107–252, 116 Stat. 1668 (codified as amended at 52 U.S.C. §§ 20901–21145). The HAVA requires states to maintain, "in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State." 52 U.S.C. § 21083(a)(1)(A). Under the HAVA, "[t]he computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State," shall "contain[ ] the name and registration information of every legally registered voter in the State," and "shall serve as the official voter registration list for the conduct of all elections for Federal office in the State." 52 U.S.C. § 21083(a)(1)(A)(i), (ii), (viii). Additionally, § 21083(a)(4)(B) of HAVA provides that "the State election system shall include provisions to ensure that voter registration records are accurate and are updated regularly, including . . . safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters." 52 U.S.C. § 21083(a)(4)(B). The HAVA provides that "if an individual is to be removed from the computerized list, such individual shall be removed in accordance

with the provisions of the National Voter Registration Act of 1993." *Id.* § 21083(a)(2)(A)(i).

The HAVA also created the United States Election Assistance Commission (EAC), which is a bipartisan commission charged with developing guidance to meet HAVA requirements, adopting voluntary voting system guidelines, and serving as a national clearinghouse of information on election administration.[1] Federal regulations require states to provide various kinds of election data to the EAC for use in the EAC's biennial report to Congress. *See* 28 U.S.C. § 20508(a)(3); 11 C.F.R. § 9428.7. Among the data to be reported are: (1) the total number of "active" and "inactive" voters registered in the state for each of the two prior general federal elections, *see* 11 C.F.R. § 9428.7(b)(1)–(2); and (2) "[t]he total number of registrations statewide that were, for whatever reason, deleted from the registration list," *see id.* § 9428.7(b)(5). The EAC collects this data by conducting an Election Administration and Voting Survey (EAVS), asking all 50 states, the District of Columbia, and U.S. territories to provide data on various topics related to the administration of federal elections.[2]

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[1] *See generally* eav.gov/about (last visited Feb. 21, 2024).

[2] *See generally* https://www.eac.gov/research-and-data/studies-and-reports (last visited Feb. 21, 2024).

2. Michigan's Election Law

As of the July 2022 census, Michigan ranked tenth in the United States in voting-age population.[3] Secretary Benson is the chief election official of Michigan and is responsible for coordination of Michigan's responsibilities under the NVRA, the HAVA, and Michigan's Election Law. 52 U.S.C. § 20509; MICH. COMP. LAWS § 168.509n. *Cf. Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018) (describing the NVRA as "a complex superstructure of federal regulation atop state voter-registration systems") (citation omitted). Secretary Benson is responsible for the overall operation of the Michigan Department of State (MDOS), which is organized into five separate administrations and divisions, all of which are headed by a director, who reports to the Chief of Staff (ECF No. 63 at PageID.734). The Chief of Staff then reports to the Secretary (*id.*). Relevant here is the Bureau of Elections (BOE), which is headed by the Director of Elections, Jonathan Brater. By law, Director Brater is "vested with the powers and shall perform the duties of the secretary of state under . . . her supervision, with respect to the supervision and administration of the election laws." MICH. COMP. LAWS § 168.32(1).

In compliance with the HAVA, Michigan created the qualified voter file (QVF) as the State's

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[3] U.S. Census Bureau, Estimate of Population Age 18 Years and Older (July 1, 2022), available at https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-detail.html#v2023 (last visited Feb. 20, 2024).

computerized statewide voter registration list. *See generally* MICH. COMP. LAWS §§168.509m(1)(a), 168.509o, 168.509p, 168.509q, 168.509r. There are currently more than 8.2 million registered voters in the state of Michigan.[4] With respect to the deaths of registered voters, state law requires the Secretary of State to —

> develop and utilize a process by which information obtained through the United States Social Security Administration's death master file that is used to cancel an operator's or chauffeur's license . . . or an official state personal identification card . . . of a deceased resident of this state is also used at least once a month to update the qualified voter file to cancel the voter registration of any elector determined to be deceased. The secretary of state shall make the canceled voter registration information under this subsection available to the clerk of each city or township to assist with the clerk's obligations under section 510.

MICH. COMP. LAWS § 168.509o(4). For context, in 2020, 2021, and 2022, there were more than 110,000 deaths in Michigan each year.[5] The death master file compiled by the Social Security Administration

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[4] https://mvic.sos.state.mi.us/VoterCount/Index (last visited Feb. 20, 2024).

[5] https://www.mdch.state.mi.us/osr/deaths/USMIcrudedxrt.asp (last visited Feb. 21, 2024). See FED. R. EVID. 201 (permitting a court to take judicial notice on its own of a fact that can be accurately and readily determined from a source whose accuracy cannot reasonably be questioned).

(SSA) includes the names of individuals who have died outside the State of Michigan (MDOS Dep. [Def. Ex. D, ECF No. 149-5] (Joseph Szpond) at 64).

Michigan uses a multilateral process to identify and remove deceased voters from the QVF. At the department level, the MDOS has a four-step process for identifying deceased registrations, a process utilizing the statewide database for driver file records known as "CARS" (Def. Answer to Pl.'s Interrog. No. 1, ECF No. 149-3 at PageID.3085; Jt. Facts [ECF No. 157] ¶ 22). First,

> CARS receives information on a weekly basis, on average, from the Social Security Administration (SSA) and the Department of Health and Human Services (DHHS). The reports come through a secure file transfer site. If the individual record from SSA/DHHS is a 100% match to the name, date of birth and social security number contained in the customer's record in CARS, CARS automatically updates the customer record and sends a notification through QVF which automatically updates the voter's status to "Canceled–Deceased." If none of these data elements (name, date of birth, and SSN) match a CARS record, it will be considered a "no match" and CARS will disregard it. If the information from SSA or DHHS is a partial match, it is classified as a "close match" and then placed into a queue for the Driver Records Activity Unit staff, supervised by Barry Casciotti, to manually review and determine whether there is a match. If there are at least 3 data points that match, the

individual will be marked as deceased in CARS. Once the customer record is updated in CARS, QVF is automatically updated.

Second, on a weekly basis, the Core Technology Platform Division, supervised by Joe Szpond, produces a report from CARS containing individuals whose license or state ID are expiring within 90 days in order to process renewal notices that get mailed to customers. That file is shared with SSA to ensure that the customer's social security number, name or date of birth have not changed. As part of an agreement, the SSA will also provide a death indicator on that report, if applicable. CARS will automatically update customer record as deceased, if they have not already been marked as deceased, and the information will transfer into the QVF in the same manner as above.

Third, members of the public may send information into the Department which would lead to a cancelation. An immediate family member may send a death certificate in. Upon receipt, the Department will manually review and mark the individual as deceased in CARS, if applicable. The information will transfer into the QVF in the same manner as described above.

Finally, the Bureau of Elections (BOE) receives a file via a secure file transfer of potentially deceased records from the [Electronic Registration Information Center, Inc. (ERIC)] program. BOE staff supervised by Rachel Clone, Data and Programs Unit

> Manager, perform a manual review to determine whether a record matches and updates the voter's registration to "Canceled–Deceased" if not already done in the update above.

Def. Answer to Pl.'s Interrog. No. 1, ECF No. 149-3 at PageID.3085–3087.

At the county level, county clerks act as the local registrar for the purpose of maintaining vital records and statistics, such as deaths. MICH. COMP. LAWS §§ 333.2804(4), 333.2815, 333.2833. "[A]t least once a month," the county clerk is required to "forward a list of the last known address and birth date of all persons over 18 years of age who have died within the county to the clerk of each city or township within the county." MICH. COMP. LAWS § 168.510(1). The city or township clerk, in turn, is mandated to "compare this list with the registration records and cancel the registration of all deceased electors." *Id.* Secretary Benson indicates that Michigan has 83 county clerks (ECF No. 166 at PageID.3356).

A local "clerk may conduct a program . . . to remove names of registered voters who are no longer qualified to vote in the city or township from the registration records of that city or township." MICH. COMP. LAWS § 168.509dd(1). Such program must be uniformly administered and must comply with the NVRA, including the requirement that any program be concluded 90 days or more before a federal election, except for removals conducted at the request of a voter, upon the death of a voter, or upon notice that the voter has moved and applied for registration in a different jurisdiction. MICH. COMP. LAWS § 168.509dd(1), (2)(a)–(c). A local clerk may conduct a

house-to-house canvass, send a general mailing to voters for address verifications, participate "in the national change of address program established by the postal service," or use "[o]ther means the clerk considers appropriate" to conduct a removal program. MICH. COMP. LAWS § 168.509dd(3). Local clerks are instructed that they are authorized to cancel a voter's registration if the "clerk receives or obtains information that the voter has died" through "QVF inbox notification" from the "county clerk," from "death notices published in [a] newspaper," or from "personal firsthand knowledge" (Michigan Election Officials' Manual, Def. Ex. H, ECF No. 149-9 at PageID.3168). Secretary Benson indicates that Michigan has 280 city clerks and 1,240 township clerks (ECF No. 166 at PageID.3356). Secretary Benson further indicates that between twenty and thirty percent of cancellations of deceased voters between 2019 and 2022 were entered by local clerks (ECF No. 149 at PageID.3041–3042).

Last, if election mail is returned as undeliverable, the registration is made inactive, and the voter is sent a notice of cancellation (Brater Dep. [Def. Ex. A, ECF No. 149-2] at 99). If the voter does not respond, and the voter does not vote for two consecutive federal elections, then the registration is cancelled (*id.*).

From 2019 to March 2023, Michigan cancelled between 400,000 and 450,000 registrations because the voters were deceased (*id.* at 77). More than 500,000 voter registrations in Michigan are slated for

cancellation in 2025.[6] Federally collected data shows that Michigan is consistently among the most active states in cancelling the registrations of deceased individuals. Specifically, the EAC reported that Michigan removed the sixth largest total number of registrations based on death in the 2016 election cycle; the fourth most in the 2018 cycle; the fifth most in the 2020 cycle; and the fifth most in the 2022 cycle.[7]

B. Factual Background & Procedural Posture

1. Pre-Suit Correspondence

PILF, which is incorporated and based in Indianapolis, Indiana, describes itself as a "non-partisan, non-profit, public interest organization" that "seeks to promote the integrity of elections in Michigan and other jurisdictions nationwide through research, education, remedial programs, and

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[6] https://mvic.sos.state.mi.us/VoterCount/Index (last visited Feb. 26, 2024).

[7] U.S. Election Assistance Comm'n, Election Administration and Voting Survey 2016 at 97 (NVRA Table 4b), https://www.eac.gov/sites/default/files/eac_assets/1/6/2016_EAVS_Comprehensive_Report.pdf; U.S. Election Assistance Comm'n, Election Administration and Voting Survey 2018 at 82 (NVRA Table 3b), https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf; U.S. Election Assistance Comm'n, Election Administration and Voting Survey 2020 at 165 (Voter Registration Table 5), https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf; U.S. Election Assistance Comm'n, Election Administration and Voting Survey 2022 at 188 (Voter Registration Table 5), https://www.eac.gov/sites/ default/files/ 2023-06/2022_EAVS_Report_508c.pdf (last visited Feb. 20, 2024).

litigation" (Compl. [ECF No. 1] ¶ 3). On September 18, 2020, about six weeks before the November 2020 presidential election, PILF wrote a letter to Secretary Benson notifying her of "inadequate list maintenance," specifically, "potentially deceased registrants with an active registration," and requesting an "immediate meeting" (Ex. 4 to Compl., ECF No. 1-4 at PageID.48–50). PILF opined in the letter that "ultimately only your office can conclusively determine whether the registrants are indeed deceased and whether voting credits were accurately issued for some registrants in subsequent elections" (*id.*). On September 29, 2020, BOE staff responded to PILF's September 18 letter, requesting that, in order for the Secretary to determine "how to best proceed," PILF "provide a written description of the matching criteria used by [PILF] to substantiate" its claims "as well as electronic lists of voters PILF has identified as 'potentially deceased with an active registration'" (ECF No. 11-2, quoting PILF's 9/18/20 Letter).

On October 5, 2020, PILF responded to the BOE's letter by providing a "spreadsheet [ ] identifying the voter ID numbers of the registrants [PILF] identified" and indicating that PILF had compared registrants against the Social Security Death Index (SSDI) and matched full names, full dates of birth, Social Security Numbers, and credit address history information, which revealed "27,000 records of concern," with the remainder matching "other verifiable death record sources" (Ex. 6 to Compl., ECF No. 1-6 at PageID.52).

Beginning on the night of the November 3, 2020 presidential election, the BOE started receiving

hundreds—if not thousands—of telephone calls and e-mails (MDOS Dep. (Adam Fracassi) at 183–84). Phone lines were shut down due to the volume of calls, which included calls threatening violence (*id.*). The Bureau's offices were closed to the public due to bomb threats, and staff were not allowed in the building (*id.* at 184). A significant number of lawsuits were filed immediately following the election (*id.*). The Board of State Canvassers met on November 23, 2020 to certify the results of the election, and, due to the volume of threats, the Board was required to meet in an undisclosed location (*id.*). Additionally, the Michigan Legislature sent subpoenas to the MDOS requesting tens of thousands of pages of election-related documents (*id.* at 185). Last, Bureau staff were receiving threats against them personally and were under police protection (*id.* at 186). Bureau staff were not allowed back into their offices until February 2021 (*id.* at 190). Director Brater described the fall of 2020 as a time when the Bureau's resources were "the most depleted" (Brater Dep. at 201–03).

On November 25, 2020, PILF sent a "follow-up" letter, indicating that it had not received a response to its October 5 letter and that it had purchased another copy of the QVF in October and performed the same comparisons, which indicated that "over 27,500 voters" are on the QVF, despite SSDI indications that the voters were deceased (Ex. 8 to Compl., ECF No. 1-8 at PageID.61). PILF did not supply a spreadsheet of the voters it identified as deceased but again requested an "immediate meeting" (*id.*).

On December 11, 2020, PILF sent another "follow-up" letter, requesting Secretary Benson "permit inspection or provide copies" of certain records (Ex. 9

to Compl., ECF No. 1-9 at PageID.63–64). PILF indicated that unless copies of the records were provided, it planned to "send a representative to your office to inspect these documents on December 18, 2020" (*id.*).

On December 17, 2020, BOE staff advised PILF that it had not agreed to the inspection date and that BOE offices were closed to the public due to the COVID-19 pandemic and thus no inspection could take place (Ex. 10 to Compl., ECF No. 1-10 at PageID.65). Further, BOE staff noted that they were "still awaiting [PILF's] matching criteria . . . so [the BOE] may properly analyze [PILF's] request and determine appropriate next steps" (*id.*).

On December 18, 2020, PILF sent a letter titled as "Notice of NVRA Violation" and indicating that "a lawsuit under the NVRA may be filed within 90 days" (Ex. 11 to Compl., ECF No. 1-11 at PageID.67–68).

Last, on January 13, 2021, PILF sent another letter to Secretary Benson reminding the Secretary of its earlier letters and request for inspection and resending the October 5, 2020 spreadsheet (Ex. 12 to Compl., ECF No. 1-13 at PageID.72–73).

2. Complaint & Discovery

On November 3, 2021, PILF filed this suit, seeking declaratory and injunctive relief for two alleged violations of the NVRA: "Failure to Conduct List Maintenance" (Count I) and "Failure to Allow Inspection of Records and Data" (Count II). Secretary Benson subsequently filed a Motion to Dismiss (ECF No. 10) and an Answer (ECF No. 14). In August 2022, this Court denied Secretary Benson's motion to dismiss (Op. & Order, ECF No. 35). This Court held

that, taking the allegations in PILF's Complaint as true, which the Court was required to do, PILF met its burden at the pleading stage to demonstrate standing and state plausible claims against Secretary Benson. This Court conducted a Scheduling Conference on October 13, 2022 and issued a Case Management Order that same day (Minutes, ECF No. 42; CMO, ECF No. 43).

The parties conducted discovery through the end of July 2022. Secretary Benson represents, and PILF does not dispute, that over the course of the more than nine-month discovery period, PILF conducted nine depositions and issued five sets of requests for production of documents, three sets of interrogatories, and one set of requests to admit (ECF No. 159 at PageID.3287; ECF No. 174 at PageID.3540; ECF No. 176 at PageID.3580). Three of PILF's discovery requests are pertinent to the dispositive motions at bar.

Notice to Depose Secretary Benson. First, in February 2023, PILF served a notice of deposition for Secretary Benson, scheduling her deposition for April 20, 2023 (ECF No. 63-2). Secretary Benson moved for a protective order directing that her deposition not be taken unless PILF could demonstrate that the information sought could not be obtained from other witnesses or through other means (ECF No. 62). The Magistrate Judge held a hearing on the motion, indicating that she was "unpersuaded" that deposing Secretary Benson was necessary to PILF's case (4/13/2023 Mot. Hrg. Tr., ECF No. 75 at PageID.813). However, the Magistrate Judge granted the motion without prejudice to "reviving" the issue if "depositions or something else reveals that there is

some information or some issue about which only Secretary Benson would testify or if Defendant were to insert Secretary Benson's testimony in the litigation in some way" (4/13/2023 Order, ECF No. 74; 4/13/2023 Mot. Hrg. Tr., ECF No. 75 at PageID.811, 813–814). PILF did not subsequently appeal from the Magistrate Judge's decision, nor did PILF ever renew its motion.

Subpoenas on Non-Party ERIC. Second, in March 2023, PILF served a subpoena on ERIC, which is not a party to this case, requesting a deposition of the organization pursuant to Federal Rule of Civil Procedure 30(b)(6) and production of documents (Ex. 19 to Wiygul Decl., ECF No. 83-2 at PageID.1830). ERIC is a non-profit, non-partisan membership organization that uses proprietary software settings to provide its member jurisdictions, including Michigan, with various maintenance reports at their request, including a "Deceased Report" that lists the names of registered voters who appear to have died (Shane Hamlin Decl. [ECF No. 82 at PageID.882–885] ¶ ¶9, 11, 27–30, & 45–53). ERIC is certified by the National Technical Information Service (NTIS), a federal agency, to obtain and use Limited Access Death Master File (LADMF) data maintained by the federal government (*id.* ¶¶ 32 & 59). After ERIC objected to the subpoena on various grounds, PILF issued a second subpoena, expanding the matters for examination with the corporate designee and expanding the descriptions of its requested document production (Ex. 19 to Robert Wiygul Decl., ECF No. 83-2 at PageID.1860 & PageID.1864).

PILF did not dispute that except for reports created within the last three years, which Secretary

Benson asserted were protected from disclosure under federal law, Secretary Benson had produced to PILF all ERIC "Deceased Reports" in her possession (6/14/2023 Hrg. Tr., ECF No. 108 at PageID.1962). See Def. Resp. to Pl. Request to Produce No. 8, ECF No. 83-2 at PageID.1804, citing 42 U.S.C. § 1306c (Restriction on Access to the Death Master File) (prohibiting disclosure of Death Master File information for an individual during the three-calendar-year period following the individual's death, unless the person requesting the information has been certified).

ERIC moved to quash the subpoena (ECF No. 80), and the Magistrate Judge held a hearing in June 2023, indicating that PILF appeared to be "fishing" inasmuch as "the information sought by PILF regarding ERIC's origin, funding, purposes, bylaws, membership agreement, board, research advisory board, privacy and technology board, vendors, contractors, partners … appears, at least for the purposes of this litigation, to be patently overbroad" and "far outside the core of this case" (6/14/2023 Mot. Hrg. Tr., ECF No. 108 at PageID.1956–1957).

Secretary Benson, who declined to take a position on ERIC's motion to quash (*id.* at PageID.1953), opined that PILF was "overstating" ERIC's role in the list maintenance process (*id.* at PageID.1976–1977). Secretary Benson indicated that "if we've missed it on the SSDI, if we haven't gotten it through DHHS records, [and] the local clerks haven't found it, then there would be a [sic] some small subset of individuals for whom we might catch their names through the

ERIC process" (*id.* at PageID.1977).[8] Secretary Benson indicated that she would not characterize ERIC's role as either "central" or "reliant" but as "cleanup" (*id.* at PageID.1976–1977).

The Magistrate Judge granted ERIC's motion to quash, finding that the requested discovery was not necessary to assessing the reasonableness of Michigan's program where PILF possessed the reports that Michigan received from ERIC, absent those that were protected from disclosure by federal law (*id.* at PageID.1978). An Order was entered that same day (6/14/2023 Order, ECF No. 102).

PILF appealed the Magistrate Judge's June 14, 2023 Order to this Court. *See* 28 U.S.C. 636(b)(1)(A); *see also* FED. R. CIV. P. 72(a); W.D. Mich. LCivR 72.3(a) (Appeal of nondispositive matters). This Court denied the appeal, determining that the Magistrate Judge's ruling was properly based on her determination that the requested discovery was neither "necessary" nor "proportional" (Memo. Op. & Order, ECF No. 165 at PageID.3333).

The original deadline for the close of discovery was May 26, 2023 (CMO, ECF No. 43); however, the Court agreed to effectuate the parties' stipulation to extend discovery to July 26, 2023 (Order, ECF No. 50). This Court's Order expressly indicated that additional requests to extend the deadlines would not be favored (*id.*).

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[8] Rachel Clone, BOE's Data and Programs Unit Manager, had previously testified at her December 2022 deposition that "[u]sually ten names or fewer" are listed on ERIC's bimonthly report (Clone Dep. at 76).

After the close of discovery, Secretary Benson filed motions in limine, seeking to exclude PILF's lists of "potentially deceased" voters, which were created by PILF's expert, Kenneth Block; (2) Block's expert opinion and reports; and (3) the expert opinion and report of former Colorado Secretary of State Scott Gessler (ECF Nos. 120 & 135). PILF opposes both motions in limine (ECF Nos. 133 & 141).

Second Deposition of Talsma. The third discovery request relevant to the dispositive motions at bar was made after discovery closed. On September 29, 2023, PILF filed a motion for a second deposition of Stuart Talsma, an MDOS analyst (ECF No. 143). PILF previously deposed Talsma in February 2023 and, at that time, Talsma described the methodology he could use to compare PILF's lists of "potentially deceased" voters to the QVF. *See* Talsma Dep. [ECF No. 159-1] at 86, 89. PILF did not thereafter submit a discovery request for Secretary Benson to perform the QVF query that Talsma described. However, defense counsel subsequently directed Talsma to perform the query, and, on September 12, 2023, Secretary Benson forwarded a PDF of the resulting spreadsheet to PILF's counsel. PILF argued that it "need[ed] to depose Mr. Talsma regarding this document because it is relevant to the claims and defenses in this case" (ECF No. 144 at PageID.2971). Secretary Benson opposed re-opening discovery (ECF No. 159), pointing out that the information had been available to PILF throughout the discovery period, the availability of the information was known to PILF, and PILF never requested that information (*id.* at PageID.3290).

The Magistrate Judge noticed PILF's motion for a hearing. After hearing PILF's argument, the

Magistrate Judge indicated that PILF had not explained "what additional discovery is required at this point of Mr. Talsma and why you're entitled to it" (10/10/2023 Mot. Hrg. Tr., ECF No. 163 at PageID.3304). The Magistrate Judge ultimately concluded that PILF had not demonstrated good cause for re-opening discovery to depose Talsma a second time where the QVF query was "something that could have been requested earlier in the litigation and during discovery" (*id.* at PageID.3319–3320). Additionally, the Magistrate Judge determined that the information that PILF sought did not require another deposition but could be obtained simply by requiring Secretary Benson to (a) provide PILF with the relevant spreadsheet, and (b) supplement her response to an interrogatory to include "the categories of voter status and status reasons that are included in the report and what those mean" (*id.*). The Magistrate Judge opined that the production of these two items would remedy any "asymmetry in information" that existed between the parties (*id.* at PageID.3320).

Secretary Benson agreed to provide PILF with the spreadsheet and to supplement its response, noting that PILF was also privy to two recent affidavits from Talsma wherein Talsma summarized the results of the search with respect to the status of voters on PILF's list and explained what the statuses meant (*id.* at PageID.3321). *See* 9/29/2023 Talsma Aff. [Def. Ex. I, ECF No. 149-10]; 10/2/2023 Talsma Aff. [Def. Ex. J, ECF No. 149-11]. The Magistrate Judge's ruling was effectuated by an Order entered that same day, denying PILF's motion to take Talsma's deposition a second time and ordering Secretary

Benson to supplement her discovery as discussed on the record (Order, ECF No. 162). Secretary Benson indicates that she provided the supplemental discovery on October 19, 2023 (ECF No. 174 at PageID.3547). PILF did not appeal from the Magistrate Judge's Order.

3. The Motions at Bar

On October 2, 2023, Secretary Benson filed her motion for summary judgment (ECF No. 148), to which PILF filed a response in opposition (ECF No. 168) and Secretary Benson filed a reply to the response (ECF No. 176). PILF also filed a motion for partial summary judgment on October 2, 2023, seeking judgment as a matter of law in its favor on Count II[9] (ECF No. 153). Secretary Benson filed a response in opposition to PILF's motion (ECF No. 166) and PILF filed a reply to the response (ECF No. 178). On October 30, 2023, PILF filed a motion for discovery (ECF No. 170), which Secretary Benson opposes (ECF No. 174).

II. ANALYSIS

A. Motion Standard

A party may move for summary judgment under Federal Rule of Civil Procedure 56, identifying each claim on which summary judgment is sought. FED. R. CIV. P. 56(a). Summary judgment is proper "if the movant shows that there is no genuine dispute as to

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[9] PILF also seeks summary judgment of Secretary Benson's affirmative defenses, *see* ECF No. 154 at PageID.3228–3230; however, given the Court's resolution of Counts I and II, the Court need not reach this issue.

any material fact and the movant is entitled to judgment as a matter of law." *Id.*

In resolving a motion for summary judgment, a court must consider the evidence and all reasonable inferences in favor of the nonmoving party. *Burgess v. Fischer*, 735 F.3d 462, 471 (6th Cir. 2013); *U.S. S.E.C. v. Sierra Brokerage Servs., Inc.*, 712 F.3d 321, 327 (6th Cir. 2013) (citation omitted). When evaluating cross-motions for summary judgment, the Court "must evaluate each motion on its own merits and view all facts and inferences in the light most favorable to the nonmoving party." *Westfield Ins. Co. v. Tech Dry, Inc.*, 336 F.3d 503, 506–07 (6th Cir. 2003); *see also Parks v. LaFace Records,* 329 F.3d 437, 444 (6th Cir. 2003) ("[t]he fact that the parties have filed cross-motions for summary judgment does not mean, of course, that summary judgment for one side or the other is necessarily appropriate").

The moving party has the initial burden of showing the absence of a genuine issue of material fact. *Jakubowski v. Christ Hosp., Inc.*, 627 F.3d 195, 200 (6th Cir. 2010). The burden then "shifts to the nonmoving party, who must present some 'specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "There is no genuine issue for trial where the record 'taken as a whole could not lead a rational trier of fact to find for the non-moving party.'" *Burgess*, 735 F.3d at 471 (quoting *Matsushita Elec. Indus., Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). The function of the court is not "'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'"

Moran v. Al Basit LLC, 788 F.3d 201, 204 (6th Cir. 2015) (quoting *Anderson*, 477 U.S. at 249).

Rule 56(d) allows a "nonmovant [to] show[ ] by affidavit ... that, for specified reasons, it cannot present facts essential to justify its opposition," and upon such showing, "the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." FED. R. CIV. P. 56(d). "A party invoking [the] protections [of Rule 56(d)] must do so in good faith by affirmatively demonstrating ... how postponement of a ruling on the motion will enable him ... to rebut the movant's showing of the absence of a genuine issue of fact." *Doe v. City of Memphis*, 928 F.3d 481, 490 (6th Cir. 2019) (citations omitted). The affidavit must "indicate to the district court [the party's] need for discovery, what material facts it hopes to uncover, and why it has not previously discovered the information." *Id.* (citation omitted).

The Sixth Circuit has held that "[t]he party opposing a motion for summary judgment ... possesses no absolute right to additional time for discovery under Rule 56." *Id.* (citation omitted). Even when a party properly presents a Rule 56(d) affidavit and a motion to extend discovery, the decision to extend the discovery deadline lies within the discretion of the trial court. *Scadden v. Werner*, 677 F. App'x 996, 999–1000 (6th Cir. 2017). The Sixth Circuit has held that a district court does not abuse its discretion in denying further discovery when "the discovery requested would be irrelevant to the underlying issue to be decided" or "the information sought is overly broad or would prove unduly burdensome to produce."

Doe, 928 F.3d at 490. Nor does a district court abuse its discretion by denying a Rule 56(d) motion that is supported by mere "general and conclusory statements" or that fails to include "any details or specificity." *First Floor Living LLC v. City of Cleveland, Ohio*, 83 F.4th 445, 453 (6th Cir. 2023) (citation omitted). Last, a district court may appropriately consider whether additional discovery would outweigh the "proportionality" concerns implicated by the delay and cost generated by continued discovery. *Helena Agri-Enterprises, LLC v. Great Lakes Grain, LLC*, 988 F.3d 260, 273–74 (6th Cir. 2021).

B. Count I: List-Maintenance Obligations

In Count I of PILF's Complaint, PILF alleges that Secretary Benson "failed to make reasonable efforts to conduct voter list maintenance programs that ensure that the deceased do not remain registered to vote, in violation of Section 8 of NVRA, 52 U.S.C. § 20507" (Compl. ¶ 63).

In support of summary judgment in her favor on Count I, Secretary Benson argues that Michigan's multilateral process for the removal of deceased registrants from the QVF meets and exceeds the threshold of a "reasonable effort" where the process includes (a) automated removal based on exact matches to federal and state death records provided nearly weekly, (b) manual review of "close matches" from the death records, (c) manual review of bi-monthly death reports received from ERIC, and (d) cancellations entered by local clerks based on information they receive (ECF No. 149 at PageID.3037–3042). Secretary Benson points out that PILF's argument to the contrary depends on a

determination that Michigan's program—which has resulted in the 6th, 4th, 5th, and 5th most deceased-cancellations in the last four recent election cycles in a state with the nation's 10th largest number of registered voters—must nonetheless be unreasonable based on PILF's own lists matching "potentially deceased" voters derived from comparing credit reports to the SSDI (*id.* at PageID.3059). Secretary Benson argues that PILF's claim lacks merit because the NVRA itself makes no mention of any specific method of identifying deceased voters, let alone PILF's poorly-defined process[10] (*id.*).

In response, PILF first argues that it is unable to "fully present facts essential to its opposition" to Secretary Benson's motion because PILF has "not been permitted to conduct all relevant discovery" (ECF No. 168 at PageID.3434–3435). Conversely, PILF argues that its "claims are supported by record evidence, including fact and expert witness testimony" (*id.* at PageID.3438). According to PILF, Michigan's QVF contains about 27,000 potentially

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[10] Consistent with the argument she makes in her motions in limine (ECF Nos. 120 & 135), Secretary Benson also argues that neither the reports of Block, who helped create the lists of "potentially deceased" registrants, nor the lists themselves are admissible evidence because they are based on impermissible hearsay, i.e., the statements of unknown persons working for "Red Violet" who actually performed the searches and compiled the lists (ECF No. 149 at PageID.3060– 3061). Similarly, Secretary Benson argues that even assuming Gessler's opinion is admissible evidence, it would only present the opinion of one former secretary of state as to what he believes a "reasonable" program ought to include, and his opinion would not add words to the NVRA or impose any legal obligation upon Michigan to adopt Gessler's ideas (*id.*).

deceased registrants, which constitutes "undisputable evidence of a problem" (*id.* at PageID.3411).[11] Additionally, PILF argues that Michigan's program is not reasonable because Michigan does not compare the SSDI or MDHHS information directly against the QVF, relies on "inadequate" information from ERIC, and makes inadequate efforts to follow up on information that the MDOS receives on deceased registrants (*id.* at PageID.3437–3438).

Secretary Benson's argument has merit.

Section 8 of the NVRA prohibits states from removing registered voters from official voter lists unless such removal is "at the request of the registrant," "provided by State law," or "provided under paragraph (4)." 52 U.S.C. § 20507(a)(3)(A)–(C). Paragraph (4), in turn, requires in relevant part that

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[11] As evidence of the 27,000 potentially deceased registrants, PILF relies on not only its research but also its analysis of the "working papers" of Michigan's Auditor General, who performed a "death match for active voters in the QVF" in 2021, matching "First Name, Last Name (OR Former Last Name), and Date of Birth to the Death Record File from Vital Records" (ECF No. 168 at PageID.3411; ECF No. 133 at PageID.2695, citing "Auditor General Working Papers" [ECF No. 133-2]). While PILF emphasizes that the audit manager testified that the "death match yield" was between "twenty to thirty thousand" (ECF No. 133 at PageID.2695–2696, citing Jordan Schafer Dep. [ECF No. 133-3] at 139), Secretary Benson points out that "there is no dispute that the final audit report included *no finding* concerning the number of deceased registered voters" (ECF No. 176 at PageID.3578) (emphasis added). For added measure, PILF also supplies copies of several obituaries and/or photographs of gravestones for active registrants it has identified as deceased (ECF No. 168 at PageID.3411, citing Pl. Ex. A [ECF No. 168-2]).

"each State shall … conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—(A) the death of the registrant[.]" 52 U.S.C. § 20507(a)(4).

Congress did not establish a specific program for states to follow for removing ineligible voters, and the Sixth Circuit has not yet addressed what "a reasonable effort" entails. The Eleventh Circuit has held that "reliance on reliable death records, such as state health department records and the Social Security Death Index, to identify and remove deceased voters constitutes a reasonable effort." *Bellitto*, 935 F.3d at 1205. According to the Eleventh Circuit, a "state is not required to exhaust all available methods for identifying deceased voters; it need only use reasonably reliable information to identify and remove such voters." *Id.*[12]

The state-specific nature of the list-maintenance task is especially evident in Michigan. As noted, Michigan ranks tenth in voting-age population in the United States, with over 8.2 million registered voters. Hence, as Secretary Benson points out (ECF No. 149 at PageID.3059), the 27,000 "potentially deceased" voters that PILF identifies would comprise approximately 0.3 percent of the total number of registered voters in Michigan. Even if all the voters on PILF's list were *actually* deceased, that number of

[12] The Eleventh Circuit was examining the lower court's decision following a bench trial, not a decision on a motion for summary judgment. As Secretary Benson points out (ECF No. 176 at PageID.3582), the utility of the Eleventh Circuit's opinion in this barren landscape is its legal analysis of what constitutes a "reasonable effort" under the statute.

deceased voters would simply not be unreasonable in a state the size of Michigan. As described above, federally collected data shows that Michigan is consistently among the most active states in the United States in cancelling the registrations of deceased individuals.

In a similar challenge brought by a different advocacy organization against various Pennsylvania state and county election officials, the district court indicated that such public records, including data from the EAC, "effectively torpedo" a plaintiff's theory that officials are failing to fulfill their list-maintenance obligations under the NVRA. *Jud. Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399, 407 (M.D. Pa. 2021) (addressing removals under the NVRA based on a change of address). *See also Jud. Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091, 1108 (D. Colo. 2021) (indicating that an EAC report may help to provide "context" at summary judgment). The EAC data in this case is similarly fatal to PILF's claim that Michigan's program does not represent a reasonable effort to remove the names of deceased voters from the QVF.

Indeed, according to MDOS analyst Talsma in September 2023, nearly 8,000 of the "potentially deceased" voters identified by PILF in its October 5, 2020 list had already been removed (Ex. I, Talsma Aff., ¶ 4). Of those cancelled registrations, 5,766 were cancelled before PILF even filed its lawsuit on November 3, 2021 (*id.* ¶ 9).

Nonetheless, PILF opines that it is not "reasonable" to merely schedule removal of registrants when the problem "should be fixed now" (ECF No. 168 at PageID.3413). The NVRA does not

require states to immediately remove every voter who may have become ineligible. Under Michigan's system, the SSA death reports are compared on a weekly basis to the list contained in CARS (Harris Dep. [Def. Ex. C, ECF No. 149-4] at 25, 44). Once a person is marked as deceased in CARS, that information is updated in the QVF on a nightly basis (MDOS Dep. (Szpond) at 72). Additionally, the entire QVF is reconciled with the CARS driver file on a quarterly basis (Talsma Dep. at 97–98). Last, the bimonthly ERIC reports, which are created by comparing Michigan's QVF to the SSDI, are manually reviewed by Bureau staff within a week of receiving them (Brater Dep. at 93; Clone Dep. [Def. Ex. F, ECF No. 149-7] at 70). Director Brater explained that given the lag in time between when someone dies and when that information is received and can be used to cancel the registration, there will "always be some deceased registrants on the voter rolls" (Brater Dep. at 51). PILF's mere opinion on the topic does not serve to demonstrate that Michigan's timing for removing deceased registrants from the QVF does not meet the threshold of a "reasonable effort." Rather, the record demonstrates that deceased voters are removed from Michigan's voter rolls on a regular and ongoing basis.

PILF also identifies several areas where PILF believes that Michigan could improve its program for removing the names of deceased voters from the QVF. For example, PILF opines that "[a]mong the most significant failures are [sic] the Defendant's failure to compare Social Security Administration (SSA) death information against the actual QVF" (ECF No. 168 at PageID.3417). PILF emphasizes that "Defendant compares the information from the SSA against its

CARS database" (*id.*). However, as indicated, the bimonthly ERIC reports are created by comparing Michigan's QVF to the SSDI, and these reports are manually reviewed by Bureau staff (Brater Dep. at 93; Clone Dep. at 70).

Even assuming arguendo that PILF's suggestions have merit, the NVRA requires only a "reasonable effort," not a perfect effort, to remove registrants who have died. PILF's identification of areas for improvement does not serve to demonstrate that Michigan's multilateral process for the removal of deceased registrants from the QVF does not meet the threshold of a "reasonable effort." Like Florida's program, which the Eleventh Circuit agreed was "reasonable," *Bellitto*, 935 F.3d at 1207, Michigan similarly relies on SSDI and state health records in order to identify and remove deceased registrants, in addition to other tools to capture both in-state and out-of-state deaths, as previously described. The Eleventh Circuit properly opined that "[t]he failure to use duplicative tools or to exhaust every conceivable mechanism does not make [a state's] effort unreasonable." *Id.*

Last, PILF's request under Rule 56(d) for additional discovery does not compel a different conclusion. PILF requests three categories of discovery. First, PILF requests evidence regarding how ERIC processes deceased matches (ECF No. 172 at PageID.3528). Second, PILF asserts that it "needs to depose Secretary Benson to ascertain what policies and procedures she has put in place that resulted in the Defendant not comparing the Foundation's lists of deceased voters with the Qualified Voter File ("QVF")" (*id.* at PageID.3528–3529). Third, PILF

indicates that it needs to depose Talsma about the post-discovery data run he performed (*id.* at PageID.3529–3530).

As described in the Factual Background, *supra*, all three of these evidentiary issues were the subject of previous motions, and each requested subpoena or deposition was denied. Hence, PILF is not arguing in its Rule 56(d) motion that Secretary Benson's motion for summary judgment is premature because PILF was prevented from conducting discovery or that Secretary Benson wrongfully withheld discoverable material. Rather, PILF's motion merely reiterates its prior unsuccessful arguments. Furthermore, as Secretary Benson points out in her response (ECF No. 174 at PageID.3540), PILF's Rule 56(d) motion does not articulate any specific facts that it believes it will obtain from Secretary Benson, ERIC, or Talsma that would demonstrate the existence of a question of fact. In short, PILF wholly fails to satisfy the standard for additional discovery under Rule 56(d). A plaintiff's "general desire to 'confirm that there were no further intentional or wrongful actions taking place,' to 'ensure the veracity of [the defendants'] evidence,' and to determine 'whether or not additional related information exists,' is insufficient to support its Rule 56(d) motion." *First Floor Living*, 83 F.4th at 454 (citation omitted). The Court, in its discretion, concludes that PILF's Rule 56(d) motion for discovery is properly denied.

Importantly, as noted at the outset, Congress passed the NVRA to not only protect election integrity and ensure accurate and current voter rolls but also establish procedures that increase voter participation. 52 U.S.C. § 20501(b)(1)–(4). List-

maintenance programs must strike that same balance. *See* 52 U.S.C. § 21083(a)(4)(B) (requiring list-maintenance programs to include "safeguards that [] ensure that eligible voters are not removed in error from the official list of eligible voters"); *see also* 52 U.S.C. § 21083(a)(2)(B)(ii) (requiring that list maintenance be performed "in a manner that ensures that … (ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list"). After conducting more than nine months of discovery into the many facets of Michigan's program for the removal of deceased registrants, PILF has identified no genuine issue for trial regarding its claim that the program is not reasonable. Therefore, the Court concludes that Secretary Benson is entitled to judgment as a matter of law on Count I.

B. Count II: Disclosure Obligations

In Count II, Plaintiff alleges that Secretary Benson failed to allow PILF to "inspect records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of Michigan's official lists of eligible voters in violation of Section 8 of the NVRA, 52 U.S.C. § 20507(i)" (Compl. ¶ 69). At the conclusion to its Complaint, in its request for relief, PILF requests that this Court "[o]rder[ ] the Defendant to allow inspection of records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of Michigan's official lists of eligible voters" (ECF No. 1 at PageID.19).

In her motion for judgment as a matter of law as to Count II, Secretary Benson first argues that PILF

has failed to demonstrate any actual injury it incurred through not receiving the information it requested, and so has failed to demonstrate standing to bring its claim in Count II, even if there were a statutory violation (ECF No. 149 at PageID.3062–3064; ECF No. 166 at PageID.3349–3351). Secretary Benson argues that she is also entitled to judgment as a matter of law as to Count II on its merits. According to Secretary Benson, PILF's requests went beyond "records of programs" and sought documents not obtainable under the NVRA without a court order (ECF No. 149 at PageID.3064–3067; ECF No. 166 at PageID.3354–3357). Last, Secretary Benson points out that she has already provided PILF—through discovery—all responsive records of Michigan's list maintenance activities; therefore, an injunction is no longer required for PILF to obtain the requested documents, and PILF's claim is now moot (ECF No. 149 at PageID.3067– 3069; ECF No. 166 at PageID.3358).

In response, PILF argues that its standing "has only been strengthened through discovery" (ECF No. 178 at PageID.3622). According to PILF, it has standing to bring its claim in Count II because it has suffered not only an informational injury but also "downstream consequences," such as being prevented from "engaging in regular, identifiable, programmatic activities that have a nexus to the interests Congress sought to protect via the NVRA" (ECF No. 168 at PageID.3439– 3443; ECF No. 178 at PageID.3623–3624). Additionally, in its cross-motion for summary judgment, PILF argues that it is entitled to judgment as a matter of law on Count II because it is undisputed that before the filing of this litigation,

PILF requested from Secretary Benson four categories of voter list maintenance records that fall "squarely" within the broad scope of the NVRA's public disclosure provision and that Secretary Benson did not provide PILF with any of the requested records before the filing of this lawsuit (ECF No. 154 at PageID.3218–3225). According to PILF, Secretary Benson's denial of timely access to list maintenance records emphasizes PILF's need for a permanent injunction as PILF has no assurance that she will provide documents in the future (ECF No. 168 at PageID.3443–3445; ECF No. 154 at PageID.3225–3228). PILF asserts that even if all responsive documents have now been provided, Secretary Benson has "not shown that [her] impermissible conduct will not recur" (ECF No. 178 at PageID.3630).

Secretary Benson's argument has merit.

The NVRA provides that states will "make available for public inspection . . . 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). Here, in December 2020, PILF requested the following categories of records:

1) Data files your office has received from the federal Social Security Administration listing deceased individuals.

2) Any records relating to the cancellation of deceased registrants from the Qualified Voter File ("QVF"), including but not limited to reports that have or can be generated from Michigan's QVF.

3) Any records relating to the investigation of potentially deceased registrants who are listed on the QVF, including but not limited to correspondence between your office and local election officials.

4) All records and correspondence regarding your use of the Electronic Registration Information Center to conduct voter roll list maintenance.

(Ex. 9 to Compl., ECF No. 1-9 at PageID.63–64). The Sixth Circuit has not addressed the precise scope of the NVRA's disclosure provision. In a case PILF filed in North Carolina, the Fourth Circuit held that while the term "all records" in the provision is broad, the NVRA's disclosure provision "does not encompass any relevant record from any source whatsoever, but must be read in conjunction with the various statutes enacted by Congress to protect the privacy of individuals and confidential information held by certain governmental agencies." *Public Interest Legal Foundation, Inc. v N.C. State Bd. of Elections*, 996 F.3d 257, 264 (4th Cir. 2021).

Secretary Benson represents, and PILF does not dispute, that PILF is in possession of all responsive records of Michigan's list maintenance activities. Therefore, the Court's threshold inquiry is whether Count II is moot. "Mootness can be raised at any stage of litigation because it is a jurisdictional requirement." *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 473 (6th Cir. 2008). If PILF's claim is no longer redressable because it has obtained all available records through discovery, then this Court need not decide whether such records fell within the NVRA's disclosure provision, or whether

their disclosure was blocked by some other law or legal principle. "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006).

It is a fundamental principle under Article III that courts may adjudicate only live cases or controversies. *Ohio v. Yellen*, 53 F.4th 983, 989 (6th Cir. 2022) (citing *Hollingsworth v. Perry*, 570 U.S. 693, 700 (2013)). A plaintiff must plausibly show at the outset of the suit its standing to sue, to wit: that it has suffered an actual or imminent and concrete and particularized injury in fact traceable to the defendant and likely to be redressed by a favorable decision. *Id.* at 989–90 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). "And the plaintiff must continue to have a live interest in such a remedy throughout the proceeding." *Id.* (citation omitted). If that interest is lost after the complaint is filed, then the plaintiff's case may become moot. *Id.* (citing *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013)). "When that intervening circumstance is the defendant's voluntary abandonment of a contested behavior, however, the case remains live unless the defendant establishes that there is no 'reasonable possibility' it will resume such behavior." *Id.* (citing *Resurrection Sch. v. Hertel*, 35 F.4th 524, 529 (6th Cir. 2022) (en banc)).

The context in which PILF made its December 2020 request for documents was unique. Specifically, PILF's demand was made at an historically busy time for the Michigan BOE and at a time when BOE offices were closed to the public due to the COVID pandemic.

Additionally, PILF's request is unique to this case, as were Secretary Benson's objections. Last, Secretary Benson had at least a good-faith belief that PILF was not entitled to all the records it requested. Indeed, this Court confirmed as much with regard to the requested ERIC records. *See* Memorandum Opinion and Order (ECF No. 165). PILF opines that there is nonetheless a reasonable possibility that Secretary Benson will fail to timely produce unspecified records in response to a future request. PILF made the same argument in a case it pursued in Pennsylvania. That trial court denied PILF its request for permanent injunctive relief, finding that "PILF's fears of baseless future denials and withholding are purely speculative." *Pub. Int. Legal Found. v. Chapman*, 595 F. Supp. 3d 296, 306 (M.D. Pa. 2022), decision clarified on reconsideration sub nom. *Pub. Int. Legal Found. v. Schmidt*, No. 1:19-CV-622, 2023 WL 2778692 (M.D. Pa. Feb. 28, 2023). The same finding is appropriate on this record. The possibility for a continuing live interest in its record request must be reasonable, not merely theoretical.

Even if this Court were persuaded that PILF's claim is not moot and that a permanent injunction is warranted, the scope of any injunction this Court could fashion to remedy PILF's claim in Count II is unclear. Awarding permanent injunctive relief requires a movant to 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). Every order granting an injunction must "(A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." FED. R. CIV. P. 65(d)(1).

PILF has not demonstrated any irreparable injury that would support a permanent injunction. In its motion for summary judgment, PILF makes only a general request for "judgment as a matter of law" (ECF No. 153 at PageID.3204), without explicitly setting forth the terms of its proposed permanent injunction. Secretary Benson opines that PILF merely states a generalized demand that she "comply with the NVRA" (ECF No. 166 at PageID.3661). PILF does not identify authority in support of such a broad restraint. Additionally, should Secretary Benson fail to satisfy her disclosure obligations in the future, the NVRA provides an adequate remedy at law. *See* 52 U.S.C. § 20510(b). For the reasons stated, neither equity nor public interest would be served by the issuance of a permanent injunction on these facts.

In sum, PILF no longer has a live interest in its claim in Count II to inspect the requested records, and PILF identifies no meaningful relief that this Court could appropriately grant. Accordingly, Secretary Benson is also entitled to judgment as a matter of law on Count II.

III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Secretary Benson's Motion for Summary Judgment (ECF No. 148) is GRANTED.

IT IS FURTHER ORDERED that PILF's motion for discovery (ECF No. 170) is DENIED.

IT IS FURTHER ORDERED that PILF's Motion for Partial Summary Judgment (ECF No. 153) is DENIED.

IT IS FURTHER ORDERED that Secretary Benson's motions in limine (ECF Nos. 120 & 135) are DISMISSED as moot.

Because this Opinion and Order resolves both claims, the Court will also enter a Judgment to close this case. *See* FED. R. CIV. P. 58.

Dated: March 1, 2024

/s/ Jane M. Beckering

JANE M. BECKERING

United States District Judge

Appendix E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PUBLIC INTEREST LEGAL FOUNDATION,

Plaintiff,

v.

JOCELYN BENSON,

Defendant.

_____/

Case No. 1:21-cv-929

HON. JANE M. BECKERING

JUDGMENT

In accordance with the Opinion and Order entered this date:

IT IS HEREBY ORDERED that Judgment is entered in favor of Defendant and against Plaintiff.

Dated: March 1, 2024

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge