No. 25-379

In the

Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION, INC.,
Petitioner,

v.

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

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

BRIEF OF CENTER FOR ELECTION CONFIDENCE AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Center for Election Confidence, Inc. (CEC), is a nonprofit organization that promotes ethics, integrity, and professionalism in the electoral process. CEC works to ensure that all eligible citizens can vote freely within an election system of reasonable procedures that promote election integrity, prevent vote dilution and disenfranchisement, and instill public confidence in election systems and outcomes. To accomplish these objectives, CEC conducts, funds, and publishes research and analysis regarding the effectiveness of current and proposed election methods. CEC is a resource for lawyers, journalists, policymakers, courts, and others interested in the electoral process. CEC also periodically engages in public-interest litigation to uphold the rule of law and election integrity and files amicus briefs in cases where its background, expertise, and national perspective may illuminate the issues under consideration.

SUMMARY OF ARGUMENT

The National Voter Registration Act ("NVRA") expressly requires that state elections officials disclose the voter list maintenance records that Petitioner requested here. The panel deepened a circuit split by deciding that the informational injury Petitioner suffered when Penn-

[1] All parties were timely informed of Amicus' intent to file this brief, which is filed earlier than 10 days before the due date. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from Amicus curiae, its members, and its counsel, made any monetary contribution toward its preparation or submission. *See* Sup. Ct. R. 37.6.

sylvania refused to make the required disclosure was insufficiently "concrete" to confer standing. The panel wrongly concluded that *TransUnion v. Ramirez*, 594 U.S. 413, 441–42 (2021), applied to this case and therefore something more—additional "downstream" injury—was required to support standing. The petition correctly argues that this approach to standing would not just nullify the NVRA's transparency requirements; it would also nullify the Freedom of Information Act ("FOIA"), a centerpiece of congressional efforts to promote public disclosure and accountability within the federal government.

To the extent the Court agrees that something more must be shown beyond simply a denial of public records under the NVRA or FOIA, Amicus offers this brief to suggest that the "something more" is the denial of opportunities for speech and petitioning based on the wrongly withheld information. Inherent in sunshine statutes like FOIA and NVRA is the assumption that persons obtaining information from the government will thereafter communicate about it; that is typically the entire point of asking for government information. And when the information is denied, the speech and petitioning about it becomes impossible. That is a concrete injury.

Section I below describes how the NVRA's information-sharing requirements, like FOIA, are designed to hold government actors accountable for a variety of purposes. One such express objective is "ensur[ing] that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b). That purpose cannot be achieved by mere disclosure of information, however. To accomplish anything, the information must be communicated through speech and petitioning activities. Election advocacy groups from across the political spectrum seek

this data, publicize it, and petition State governments to take corrective action in light of what the mandatory disclosures reveal.

In the event the Court decides "informational injuries" from violating NVRA or FOIA are insufficiently concrete themselves to confer standing, Section II describes how injuries to speech and petitioning rights inherent in those violations fill the void. The seminal authorities on which the panel relied—*Public Citizen v. U.S. Department of Justice*, 491 U.S. 440 (1989), and *Federal Election Commission v. Akins*, 524 U.S. 11 (1998)—both confirm that citizens seek information under sunshine laws to further their speech goals, and they are injured when they cannot achieve those goals. The Petitioner asserted precisely that injury, and that was more than enough to confer standing.

Even more troubling than requiring yet more for standing, the panel appeared to conclude that only speech about one of the NVRA's goals (expanding access to voting) might confer standing, but speech about other NVRA goals (such as promoting electoral integrity) cannot confer standing. The First Amendment does not permit this sort of viewpoint discrimination, and standing doctrine is not the place to sneak it in.

The Court should grant the petition and reaffirm that the denial of information under a public-disclosure statute like the NVRA is a sufficiently concrete harm to constitute injury in fact. At a minimum, the Court should affirm that a plaintiff need not allege anything more than that the statutory violation has impaired its speech to establish standing.

ARGUMENT

I. The NVRA's Public Disclosure Provision Promotes Electoral Integrity By Ensuring Public Oversight Over State Election Officials' Voter-Roll Maintenance.

In 1993, Congress enacted the National Voter Registration Act ("NVRA") "to protect the integrity of the electoral process," "increase the number of eligible citizens who register to vote in elections for Federal office," and to "ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b). In doing so, Congress recognized that liberalizing voter registration procedures carried with it the risk of voting fraud:

> [T]he Committee and other participants are well aware of the need for the States to maintain accurate voting rolls. An important goal of this bill, to open the registration process, must be balanced with the need to maintain the integrity of the election process by updating the voting rolls on a continual basis. The maintenance of accurate and up-to-date voter registration lists is the hallmark of a national system seeking to prevent voter fraud.

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

To further these goals, Congress prioritized transparency. The NVRA requires that state election officials maintain records of their voter-roll-maintenance programs and activities for "at least 2 years" and make these records available to the public: officials "shall make available for public inspection and, where available, photocop-

ying 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." 52 U.S.C. § 20507(i)(1).[2] The legislative history confirms that this use of "shall" was not by accident: "The records *must* be made available for public inspection and, where available, photocopying at reasonable costs." S. Rep. No. 103-6, p. 35 (emphasis added); *see also* H.R. Rep. 103-9, p. 19 (1993) (same).

The natural conclusion from this broad, mandatory public inspection provision—state voting officials "*shall* make available" "*all* records"—is that Congress decided that its objectives of promoting electoral integrity and ensuring voter rolls are "accurate and current" were served by public oversight of state election officials' efforts to maintain their voter rolls. *See Pub. Interest Legal Found. v. Bellows*, 92 F.4th 36, 54 (1st Cir. 2024) (The public access provision of Section 8(i) "evinces Congress's belief that public inspection … is necessary to accomplish the objectives behind the NVRA."). Notably absent is any requirement that records be sought for a particular purpose or any limitation as to whom may request records. Under the NVRA, all records must be made available to the public at large.

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[2] The NVRA's public disclosure provision exempts "records [that] 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); *see also id.*, subd. (a)(6) (providing that States shall "ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public").

The NVRA's mandatory public disclosure scheme is in that respect analogous to that of the Freedom of Information Act ("FOIA"). *See* 5 U.S.C. § 552 (providing repeatedly that agencies "shall make" specified information available "to the public" or "for public inspection"). The "basic purpose" of FOIA is to "open agency action to the light of public scrutiny," regardless of the "particular purpose for which the document is being requested." *U.S. Dep't of Just. v. Reps. Comm. For Freedom of Press*, 489 U.S. 749, 772 (1989) (internal quotation marks omitted). In FOIA, "Congress did not differentiate between the purposes for which information was requested," *F.B.I. v. Abramson*, 456 U.S. 615, 631 (1982), and "clearly intended to give any member of the public as much right to disclosure as one with a special interest therein," *N. L. R. B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). As Judge Silberman memorably emphasized, "Congress granted the scholar and the scoundrel equal rights of access to agency records." *Durns v. Bureau of Prisons*, 804 F.2d 701, 706 (D.C. Cir. 1986). So too here.

To be sure, reported decisions confirm that many organizations from across the political spectrum have relied on the NVRA's public inspection mandate to seek records for a variety of purposes. Political and advocacy organizations need access to NVRA list information for a wide range of speech activities. These include activities such as voter registration and get-out-the-vote projects, confirming the accuracy of voter lists purchased from states, holding state offices accountable for electoral integrity, and informing the public about their elections. *See, e.g.*, *Bellitto v. Snipes*, 302 F. Supp. 3d 1335 (S.D. Fla. 2017) (American Civil Rights Union); *Campaign Legal Ctr. v. Scott*, 49

F.4th 931 (5th Cir. 2022); *Greater Birmingham Ministries v. Sec'y of State for Alabama*, 105 F.4th 1324 (11th Cir. 2024); *Judicial Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425 (D. Md. 2019); *Project Vote/Voting for America, Inc. v. Long*, 682 F.3d 331 (4th Cir. 2012); *Republican Nat'l Comm. v. Benson*, No. 24-1985, 2025 WL 2731704 (6th Cir. Sept. 25, 2025); *Virginia Coalition for Immigrant Rights v. Beals*, No. 1:24-cv-1778, 2025 WL 2345822 (E.D. Va. Aug. 12, 2025); *Voter Reference Found., LLC v. Balderas*, 616 F. Supp. 3d 1132 (D.N.M. 2022). When necessary, organizations also use this information in litigation to achieve their goals. *Cf. NAACP v. Button*, 371 U.S. 415, 439 (1963) ("[L]itigation … is a means for achieving the lawful objectives of equality of treatment and is thus a form of political expression.").

In short, recipients of the disclosure help achieve the NVRA's ultimate public oversight goal through speech and petitioning about the information in the disclosures. Advocacy groups like Petitioner evaluate the data, publicize it, inform their members or readers, and petition States to improve their procedures. For example, in 2025 alone Petitioner has used State election roll data to publicize findings and urge election officials to update their voter rolls in six States. Public Interest Legal Foundation, *Research*, https://publicinterestlegal.org/research/.

As discussed below, this Court has long recognized that parties denied access to information under mandatory public-disclosure regimes suffer speech injuries and have standing to enforce their inspection rights.

II. Lower Courts Have Improperly Ignored That Organizations Like Petitioner Suffer Significant First Amendment Harms When They Are Denied Records Under Public Disclosure "Sunshine" Laws Like NVRA And FOIA.

The Third Circuit panel held that Petitioner Public Interest Legal Foundation ("PILF") lacked standing to enforce the NVRA's public-disclosure provision despite the Commonwealth's denial of its inspection demand, reasoning that PILF had failed to establish "downstream consequences" or "adverse effects" flowing from that denial. *Pub. Interest Legal Found. v. Sec'y Commonwealth of Pennsylvania*, 136 F.4th 456, 461–66 (3d Cir. 2025) (relying on *TransUnion*, 594 U.S. at 441–42). Under this novel standard that is unfortunately spreading,[3] a plaintiff asserting an injury from denial of information "must establish a nexus among a downstream consequence, his alleged harm, and the interest Congress sought to protect" when providing for disclosure. *Id.* at 465.

The panel acknowledged the significant ways that, according to PILF, denial had impaired its First Amendment protected activities. In particular, PILF alleged in its complaint that the Commonwealth's refusal to provide information thwarted its ability to "'study and analyze the [Secretary's] voter list maintenance activities'" and "hamper[ed] its 'activity … to promote election integrity and compliance with federal and state statutes.'" *Id.* at 467. Set aside for the moment that these effects and consequences have a strong nexus to an interest Congress

[3] *E.g.*, *Scott*, 49 F.4th at 936–39; *Pub. Interest Legal Found. v. Benson*, 136 F.4th 613, 630–32 (6th Cir. 2025).

sought to promote in the NVRA—protecting electoral integrity. Both activities that PILF was denied as a result of Pennsylvania's statutory violation involve speech aimed at alerting the public about electoral integrity issues and exhorting further action to address the issues.

But the panel did not just rely on *TransUnion* as support for its conclusion that this Court has supposedly required something more than simply being denied information to establish standing. It also joined the Sixth and Fifth Circuits in deviating from the Court's "informational injury" precedents, which hold that that plaintiffs suffer concrete injuries when they are denied information that they are entitled to under a public-disclosure law. This principle is laid out in two seminal decisions: *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440 (1989), and *Federal Election Commission v. Akins*, 524 U.S. 11 (1998).

To be sure, Amicus urges the Court to reaffirm that informational injuries accompanying a refusal to provide information under NVRA and FOIA are themselves sufficient to confer standing. *See Public Citizen*, 491 U.S. at 449–50; *Akins*, 524 U.S. at 21; *see also Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 356 (D.C. Cir. 2020) ("The law is settled that a denial of access to information qualifies as an injury in fact where a statute (on the claimants' reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them."). But *Public Citizen* and *Akins* also illustrate that, to the extent *something more* than merely being denied the information is required to establish standing, being denied the opportunity to *speak* about the information is more than enough.

Indeed, the assumption that persons denied information under a sunshine law have suffered speech injuries is sufficiently strong that it could rise to the level of a presumption. In any event, simply alleging that the violation prevented a plaintiff from speaking about the information they were denied, as PILF did here, is more than enough to establish standing. "[T]he Constitution protects the right to receive information and ideas," *Stanley v. Georgia*, 394 U.S. 557, 564 (1969), which "is a necessary predicate to the *recipient's* meaningful exercise of his own rights of speech, press, and political freedom," *Bd. Of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982).

This is not to suggest that *any* mere denial of information under NVRA or FOIA transforms a statutory violation into a violation of the First Amendment. Rather, if the Court decides that the statutory violation alone is insufficient to confer standing, the lost opportunity to engage in speech and petitioning about the information wrongly withheld surely suffices as an injury in fact, and this injury is distinct from the merits of the statutory claim. *See*, *e.g.*, *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (standing is a "threshold" question that bears on jurisdiction, which "'in no way depends on the merits'" of a plaintiff's case) (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)). This harm strikes at the heart of "[t]he right of citizens to inquire, to hear, to speak, and to use information to reach consensus" that "is a precondition to enlightened self-government and a necessary means to protect it." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010).

A. *Public Citizen* And *Akins* Confirm That A Plaintiff Suffers A Concrete Injury-In-Fact When They Are Denied Information Under A Public-Disclosure Statute.

In *Public Citizen*, two public interest organizations sought records concerning the President's consultation with the American Bar Association over potential judicial nominees pursuant to the Federal Advisory Committee Act ("FACA"). 491 U.S. at 443, 447–48. The Court held that under FACA's public-disclosure provision—as with FOIA—the denial of a request for information "constitutes a sufficiently distinct injury to provide standing to sue." *Id.* at 449. It explained that the Court's "decisions interpreting [FOIA] have never suggested that those requesting information under it need show more than that they sought and were denied specific agency records," and "[t]here is no reason for a different rule here." *Id.*

The *Public Citizen* Court characterized the justification for the request in speech-based terms: the appellant public interest organizations sought records under FACA "in order to monitor its workings and participate more effectively in the judicial selection process." 491 U.S. at 449. And it said that plaintiffs have standing when the denial of information hampers those speech interests: "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.* The harm to the citizens groups was tied to the impact of the denial on their speech rights; indeed, it is hard to fathom how those organiza-

tions could have "participat[ed]" in the federal judicial selection process *in any way other than* through engaging in speech. Notably, the Court did not require a "nexus" between the organizations' harm and Congress' interest when enacting FACA—and the organizations doubtless could not have proven as much, since the statute had nothing to do with judicial nominations.

In *Akins*, the Court relied on *Public Citizen* in holding that a group of voters established a "concrete and particular" injury when they were unable to obtain campaign-finance information under the Federal Election Campaign Act of 1971. 524 U.S. at 21. The *Akins* plaintiffs sought access to information about AIPAC's spending on political activities; they argued that the FEC should have treated AIPAC as a "political committee" under FECA, and that it thus should have been disclosing its contributions and expenditures to the FEC, which would have made the information public. *Id.* at 14–18. In this sense, *Akins* did not involve the government directly denying plaintiffs access to public information; rather, plaintiffs argued that the government would have gathered the information if it had properly treated AIPAC as a political committee.[4] Nevertheless, the Court viewed the standing

[4] The *Akins* plaintiffs first filed an FEC complaint pursuant to a provision of FECA that allowed "[a]ny person who believe[d]" a violation of the Act had occurred—there, the FEC's failure to treat AIPAC as a regulated political committee—could file a complaint; it then sued based on FECA's statutory right of action permitting judicial review of the FEC's dismissal of a complaint. 524 U.S. at 19. All of which is to say, the injury in *Akins* is multiple abstract statutory steps removed from the direct informational injury suffered here.

issue as akin to *Public Citizen*, *i.e.*, being denied information that the law required to be public: "[A] plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Id.* at 21; *see also id.* at 22 (emphasizing that plaintiffs had standing because "there is a statute which … seek[s] to protect individuals such as [plaintiffs] from the kind of harm they say they have suffered, *i.e.*, failing to receive particular information about campaign-related activities").

As in *Public Citizen*, the *Akins* Court highlighted that plaintiffs' inability to obtain information impacted their First Amendment activities. The Court acknowledged up front that the plaintiffs were "a group of voters with views often opposed to those of AIPAC." 524 U.S. at 15. Plaintiffs suffered a concrete injury-in-fact because the denial of the information they sought impeded their ability to participate in and influence the political process:

> The "injury in fact" that respondents have suffered consists of their inability to obtain information—lists of AIPAC donors (who are, according to AIPAC, its members), and campaign-related contributions and expenditures—that, on respondents' view of the law, the statute requires that AIPAC make public. There is no reason to doubt their claim that the information would help them (**and others to whom they would communicate it**) to evaluate candidates for public office, especially candidates who received assistance from AIPAC, and to evaluate the role that AIPAC's financial assistance might play in a specific election.

Id. at 21 (emphasis added). In other words, the *Akins* plaintiffs' minds were already made up about how they would vote; they wanted information to use to educate others about those views. And *Akins* obviously accepted that being denied the opportunity to "evaluate" information and "communicate it" to "others" is an injury that gives rise to standing.

This case fits comfortably within the *Public Citizen* and *Akins* framework. PILF proposes to engage in exactly the same sort of evaluation and advocacy here after being denied information allegedly in violation of mandatory public disclosure statute.

Yet the panel rejected PILF's injury as lacking a sufficient "nexus" to the NVRA's purpose. Setting aside that this "nexus" requirement is inconsistent with this Court's precedents, *Public Citizen* and *Akins* teach that, once Congress declares that certain public records must be made publicly available, individuals suffer concrete harm when the government refuses to comply with the law without regard to the proximity of the harm to the statute's specific purpose. This is particularly true where, as the D.C. Circuit has stated, there is "no reason to doubt that the disclosures [the plaintiffs] seek would further their efforts to defend and implement" their policy and advocacy objectives. *Campaign Legal Ctr. v. FEC*, 952 F.3d at 356 (quotation of *Akins*, 524 U.S. at 21, omitted in original). Just as the *Public Citizen* plaintiffs sought public records to "monitor [the ABA's] workings and participate more effectively in the judicial selection process," 491 U.S. at 449, PILF sought records to "monitor" Pennsylvania's work maintaining its voter rolls and "participate more effectively" in broader efforts to protect the integrity of the

electoral process. That PILF has been denied access to these public records, which supply information essential to PILF's public advocacy objectives, is a distinct injury to those ends.

Indeed, the whole point of sunshine provisions like the NVRA's public disclosure requirement is to allow public scrutiny of potential government misfeasance through follow-on speech and petitioning activities. Nothing is served by a government disclosure of records that are simply put on the requestor's shelf. In other words, the "disinfecting" that is supposed to result from "sunlight" cannot be accomplished without speech about what has been kept in the dark.

What about *TransUnion*? For one thing, this Court carved out public-disclosure cases and expressly distinguished *Public Citizen* and *Akins*. 594 U.S. at 441. And for good reason: *TransUnion* involved a statutory right to control how private companies handled personal information—the private stakes in that case are far afield from the patently public interests presented here. (No government records were involved; the benefits to the requester were personal; and individuals seeking their credit information are far less likely to be seeking the information to add to the public discourse.) Yet the panel's mischief here was invited by the *TransUnion* Court's reference to "downstream consequences" and "adverse effects." *Id.* at 442 (citations omitted). But these matters are already built into the public-disclosure calculus: under such a statute—FOIA, FACA, FECA, NVRA, etc.—where Congress has decided that the public is entitled to certain gov-

ernment information, the denial of access to that information suffices to meet Article III's concreteness requirement.

In reaching a contrary conclusion, the panel faulted PILF for "submitt[ing] no evidence of any specific plans for the records it sought relating to the purpose of the NVRA." 136 F. 4th at 468. The Fifth Circuit followed a similar line of reasoning in *Scott*. 49 F.4th at 938 (asserting that plaintiffs lacked standing in part because "[t]hey do not allege that identification of voter names and identification numbers will directly lead to action relevant to the NVRA or any other statute, nor that their direct participation in the electoral process will be hindered"). As did the Sixth Circuit in *Benson*, 136 F.4th at 631 ("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 reasoning is circular and too clever by half: how can a requester be expected to know what is in the records being kept secret? No one knows exactly what the information will show until it gets it. PILF has articulated what it expects the information will show, and how it will use the information for its speech purposes if that pans out, and that is plenty under *Public Citizen* and *Akins*.[5]

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[5] By faulting Petitioner for not guaranteeing it would speak about the data once it arrives, the panel imports redressability concepts into what it claimed was an "injury in fact" analysis. Yet the Court has repeatedly confirmed that a plaintiff need not show that relief will certainly redress its injury. *Cf. Massachusetts v. EPA*, 549 U.S. 497,

In addition, the decisions of these circuits place their standing analyses in stark opposition to those of the First and Fourth Circuits. These Circuits have elected to assess alleged informational injuries not under the narrow standard articulated in *TransUnion* but rather under the generally applicable principles of standing this Court has long endorsed. *See Bellows*, 92 F.4th at 50–51 (not assessing the plaintiff's standing under *TransUnion*); *Laufer v. Naranda Hotels, LLC*, 60 F.4th 156, 170–71, 172 (4th Cir. 2023) ("[W]e are satisfied that *TransUnion* most assuredly did not overrule … *Public Citizen*[] and *Akins*. As such, those precedents must continue to be followed where they are applicable, unless and until the Supreme Court decides otherwise."; "*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").

And beyond *Public Citizen* and *Akins*, this Court has confirmed that, even in the absence of a common-law analogue, plaintiffs have standing to sue to enforce their rights that exist *solely* by virtue of a federal statute. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 342 (2016) (when the government has an obligation to provide information and

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518 (2007) (a litigant vested with a procedural right "has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision"); *Duke Power Co. v. Envtl. Study Grp.*, 438 U.S. 59, 75 n.20 (1978) (Article III standing "require[s] no more than a showing that there is a substantial likelihood" of redressability); *see also Nat'l Wildlife Fed'n v. Hodel*, 839 F.2d 694, 705–06 (D.C. Cir.1988) ("[A] party seeking judicial relief need not show to a certainty that a favorable decision will redress [its] injury. A mere likelihood will do.").

refuses to do so, "the violation of a procedural right granted by statute [is] sufficient … to constitute injury in fact," and "a plaintiff … need not allege any *additional* harm beyond the one Congress has identified.") (citing *Public Citizen* and *Akins*)); *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982) ("The actual or threatened injury required by Art. III may exist *solely by virtue of* statutes creating legal rights, the invasion of which creates standing." (cleaned up; emphasis added)).

In short, this case provides an important opportunity for the Court to clarify the appropriate method for conducting standing analyses under federal statutes that include public disclosure provisions and to halt the trend of lower courts using overly aggressive standing theories to frustrate congressional objectives and to circumvent this Court's holdings. Under *Public Citizen* and *Akins*, plaintiffs denied access to information under mandatory disclosure regimes suffer a concrete harm from the denial itself. To the extent the Court thinks something more is required, plaintiffs can readily plead that denial of the information harms their speech and petitioning interests to provide the "more."

B. The Panel's Approach Further Imperils Speech Rights By Engaging In Viewpoint Discrimination.

Even more troubling than requiring more than simply the denial of protected speech for standing, the panel appeared to conclude that only speech about one of the NVRA's goals (expanding access to voting) might confer standing, but speech about other NVRA goals (such as promoting electoral integrity) cannot confer standing.

The First Amendment does not permit this sort of viewpoint discrimination anywhere, and standing doctrine is not the place to sneak it in.

Rather than consider each of the NVRA's stated purposes on equal footing, the panel elevated one goal (what it termed "the expansion of voter participation in federal elections," 136 F.4th at 463, 467, 469) while ignoring Congress' explicit intent both to "protect the integrity of the electoral process" and to "ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(3), (4). PILF asserted that Pennsylvania's NVRA data would help it "produc[e] and disseminat[e]" educational materials "to promote the integrity of elections nationwide," which the panel tersely dismissed as not being "essential to a concrete interest protected by" the NVRA. *Id.* at 467. The panel was equally dismissive of PILF's claim that the records would help it "effectively evaluate the accuracy of [Pennsylvania's] voter rolls" or analyze Pennsylvania's "compliance with state and voter list maintenance laws"—to the court, this was a mere "desire to have such records" that "does not entitle [PILF] to sue." *Id.* at 467–68.[6]

[6] Although the Fifth Circuit was more circumspect, it appears to have followed a similar course in *Scott*. 49 F.4th at 938 (concluding that plaintiffs had failed to allege that the denial of information "will directly lead to action relevant to the NVRA or any other statute, [or] that their direct participation in the electoral process will be hindered"). Moreover, the court below, just like the Sixth Circuit, expressed modest outrage that an out-of-state public interest organization would deign to request public information under the NVRA. 136 F.4th 469 (characterizing PILF—scare quotes included—as "an out-

The panel's scrutiny of (and hostility toward) PILF's intentions constitutes improper and unconstitutional viewpoint discrimination. A straightforward hypothetical illustrates the point. Suppose that the theoretical Voter Expansion Advancement League ("VEAL") requests NVRA information from the Pennsylvania Secretary of State, asserting that the Commonwealth's voter-registration records are useful to its study and analysis of methods to increase the number of eligible citizens who register to vote. VEAL wants to monitor and analyze Pennsylvania's voter list maintenance activities to further the organization's efforts to expand voter participation in federal elections by communicating about voter registration (as by publishing educational materials). The Secretary refuses to comply with the request because VEAL is a California-based public interest organization with no direct ties to Pennsylvania or its voters. On the panel's reasoning, VEAL would have standing because its inability to obtain NVRA records has a "nexus" to "advanc[ing] the expansion of voter registration and participation in federal elections." 136 F.4th at 467. And yet PILF—which sought the same records but for a different statutory purpose (protecting the integrity of the electoral process)—is shut out of court.

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of-state 'public interest organization'" that "does not represent any Pennsylvania citizens" and "has no direct ties to Pennsylvania voters"); *Benson*, 136 F.4th at 631 & n.12 ("PILF is not a registered voter, nor has it claimed organizational standing on behalf of registered voters, in the voting jurisdiction at issue," and observing that "PILF is not located in Michigan," but is instead headquartered in Indianapolis).

That can't be right. Courts must not be allowed to prioritize certain viewpoints in any protected speech, let alone speech concerning only certain of NVRA's statutory purposes when deciding who has suffered a sufficient speech injury. Courts have no license to engage in viewpoint discrimination in any context, and certainly not when considering alleged violations of a statutory scheme that gives the public the unqualified right to inspect government records. (Recall that the NVRA provides that "*all* records" "*shall*" be made available for "*public* inspection." 52 U.S.C. § 20507(i)(1).) The practical (and inevitable) effect of the panel's approach is to favor speech on one subject concerning voting (expansion of access) while disfavoring speech on another related subject concerning voting (electoral integrity).

This incongruity is odd enough given the competing push-and-pull—between opening voter registration, on the one hand, and preventing voter fraud, on the other—that Congress recognized in the NVRA's legislative history. But the problems don't stop there. The panel's rationale crashes at startling speed into the First Amendment. "[T]he First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). "Government discrimination among viewpoints—or the regulation of speech based on 'the specific motivating ideology or the opinion or perspective of the speaker'—is a 'more blatant' and 'egregious form of content discrimination.'" *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 168–69 (2015) (citation omitted). Accordingly, "the First Amendment is plainly offended" when the government "attempt[s] to

give one side of a debatable public question an advantage in expressing its views to the people." *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 785–86 (1978). This means that the government is not permitted to advance its policy goals "through the indirect means of restraining certain speech by certain speakers," and "may not burden the speech of others in order to tilt public debate in a preferred direction." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 577, 578–79 (2011).

The viewpoint discrimination concerns here are heightened given the inherently political nature of the speech that organizations like PILF (and Amicus) engage in concerning electoral integrity. By restricting access to NVRA information to only certain groups who promise to use it for the government-approved reasons, the panel's approach invites—indeed ensures—that public debate is tilted entirely in one direction. This type of meddling is constitutionally intolerable. The Court's intervention is therefore necessary to head off the First Amendment harm countenanced by the approach endorsed below and by the Fifth and Sixth Circuits.

CONCLUSION

For the reasons set forth above and by petitioner, the Court should grant the petition for a writ of certiorari and reverse.

Respectfully submitted,

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