No. 25-379

In the Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION,
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 WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF HONEST ELECTIONS PROJECT AS AMICUS CURIAE IN SUPPORT OF PETITIONER

Jason Torchinsky
Counsel of Record
Andrew Wilson
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
2300 N Street NW, Ste. 643
Washington, DC 20037
jtorchinsky@holtzmanvogel.com

Mark I. Pinkert
Elizabeth Price Foley
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
119 S. Monroe St., Ste. 500
Tallahassee, FL 32301

Andrew W. Gould
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
2555 E. Camelback Rd.
Ste. 700
Phoenix, AZ 85016

Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae, the Honest Elections Project, is a nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, the Honest Elections Project defends fair, reasonable, common-sense measures to protect the integrity of the voting process. It therefore has a significant interest in this important case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Since the 1960s, Congress has enacted several statutes that require public disclosure of information held by government entities. Some were enacted as part of legislation solely concerned with public records disclosures, like the Freedom of Information Act ("FOIA"), while others were housed within broader regulatory schemes that Congress believed required transparency to be effective. One example of the latter type of statute is the National Voter Registration Act ("NVRA"), which Congress enacted to enhance and modernize state voter registration processes. To protect the integrity of elections and ensure public oversight through transparency, Congress included a public records provision within the NVRA framework.

For decades, there has been no question that the denial of information under either of those two types

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[1] Counsel for amicus curiae state that no counsel for a party authored this brief and that no person other than amicus curiae or their counsel made a monetary contribution to the preparation or submission of this brief.

of statutes, including both FOIA and the NVRA, conferred Article III standing on the requester. This Court held as much in *Public Citizen v. United States Department of Justice*, 491 U.S. 440 (1989), and *Federal Election Commission v. Akins*, 524 U.S. 11 (1998). Those decisions also aligned with the longstanding, common-law right that citizens have to public records. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 & n.7 (1978) ("[T]he courts of this country recognize a general right to inspect and copy public records and documents, including judicial documents").

Nonetheless, in the decision below, the Third Circuit held that the Public Interest Legal Foundation, a nonprofit dedicated to promoting election integrity, lacked Article III standing to challenge Pennsylvania's refusal to produce voting records as required by the NVRA's public disclosure provision. *See Pub. Int. Legal Found. v. Schmidt*, 136 F.4th 456, 469 (3d Cir. 2025). Relying on this Court's decision in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), the court below held that the Foundation was required to show not only the denial of public records to establish standing but also "downstream consequences" from the denial and a "nexus" between that downstream harm and the primary harm that the NVRA was intended to address. *See Schmidt*, 136 F.4th at 464–65.

The ruling below directly contradicts this Court's decisions in *Public Citizen*, 491 U.S. at 440, and *Akins*, 524 U.S. at 11, which govern cases involving the denial of public records from government entities. Indeed, this Court explicitly reaffirmed *Public* and *Akins* in more recent decisions like *Spokeo* and *TransUnion*, which dealt with an entirely different Article III standing issue—the concreteness of harm

from *private* credit agencies providing inaccurate or incorrectly formatted information under the Fair Credit Reporting Act ("FCRA").

The Third Circuit's misinterpretation and over-extension of *TransUnion* to deny Article III standing to seek records under the NVRA will have sweeping consequences. It warrants this Court's immediate review.

First, the decision below substantially confuses Article III standing law regarding informational injury. Not only did the Third Circuit misunderstand *TransUnion* as being applicable to government records requests, but the court also created a new and highly subjective framework for determining informational injury. In the Third Circuit's view, a requester of information need not show "downstream consequences" and a connection to the statutory scheme, only if the statutory scheme is solely meant to ensure government transparency, as in the case of FOIA. *See Schmidt*, 136 F.4th at 464–65. By contrast, if records disclosure is "merely one aspect of the statutory scheme in service of a greater purpose," the claimant must make additional showings. *Id.* at 464, 465. This unworkable standard has no grounding in Article III, which focuses on the *injury itself* and not statutory interpretation. If a citizen is entitled to public records that are withheld, he or she has Article III standing, regardless of whether the transparency provision is a "major" or "minor" part of the statute.

Second, in manufacturing this new distinction, the Third Circuit effectively amends the NVRA's public records provision by imposing a standard that is impossible to establish for those seeking to show unlawful voter roll maintenance. If the Petitioner here does not have Article III standing to investigate improper voter roll maintenance, then it is unlikely that anyone

else does. Citizens cannot oversee state voter registration processes if they do not have access to public records and, in turn, they cannot effectively enforce the NVRA, as Congress intended. Beyond the NVRA, the Third Circuit's holding logically extends to many other public records provisions that Congress has enacted over the decades and would undermine various statutory schemes that were meant to ensure transparency.

BACKGROUND

1. Voting is "a fundamental political right" because it is "preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Accordingly, the mechanics of voting, including voter registration, have "become foundational to our elections." Michael Morse, *Democracy's Bureaucracy: The Complicated Case of Voter Registration Lists*, 103 B.U. L. REV. 2123, 2126 (2023). To protect the democratic process, and improve registration procedures, Congress passed the NVRA in 1993.

According to the NVRA's statutory findings and purpose, Congress sought to accomplish several goals: "(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office; (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office; (3) to protect the integrity of the electoral process; and (4) to ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b).

The legislative history confirms that in enacting the NVRA, Congress was concerned with not just expanding voter registration but also maintaining "accurate and up-to-date voter registration lists," which

it described as "the hallmark of a national system seeking to prevent voter fraud." S. REP. No. 103-6, 18; *see also* H.R. REP. No. 103-9, 5, 14 (1993) (stating that "[e]nsuring that expanding the opportunities to register would in no way weaken the validity of the registration rolls was a priority" and that the NVRA "[r]ecogniz[es] the essential need to maintain the integrity of the voter registration lists").

Reflecting its twin goals of expanding voter registration and maintaining the integrity of the voting process, the NVRA contains some provisions that reduce barriers to registering to vote and others that guard against the dilution of lawful votes by voter fraud. Section 8 of the NVRA, at issue here, is the latter type. It 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 [death or change in residence]." 52 U.S.C. § 20507(a). The NVRA applies to 44 states and the District of Columbia.[2]

Crucially, the NVRA not only requires states to maintain and make available for public inspection the records of its implementation of that program, 52 U.S.C. § 20507(i), but it also provides a private right of action for their failure to do so. *Id.* § 20510(b). By creating a transparency right enforceable by private lawsuits, the public disclosure provision helps ensure

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[2] Six states—Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming—are exempt from the NVRA under Section 4(b) of the Act because, as of August 1, 1994, they had no voter registration requirements or allowed election-day registration. *About the Nat'l Voter Registration Act, Provisions of the NVRA*, U.S. DEP'T OF JUST., CIV. RTS. DIV., https://tinyurl.com/yx7f6njc.

that states comply with the NVRA's voter list maintenance requirement. Congress believed that public oversight was the most effective way to carry out its statutory goals.

2. More than thirty years after the passage of the NVRA, Census Bureau data[3] indicates that the Act has modestly increased the percentage of the voting age population registered to vote.

Year	Percentage of total citizen population registered to vote
1994	62.5%
1998	62.1%
2002	60.9%
2006	67.6%
2010	65.1%
2014	64.6%
2018	66.9%
2022	69.1%

But it is less clear the extent to which the NVRA has spurred states to improve their voter list maintenance practices. In fact, some evidence suggests that the NVRA has led to inflated lists of registered voters. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 192 (2008) (noting that "as of 2004 Indiana's voter rolls were inflated by as much as 41.4%"). The Court has previously cited a landmark 2012 report by the Pew Center on the States that found:

- Approximately 24 million—one of every eight—voter registrations in the United States are no longer valid or are significantly inaccurate.

[3] Data from United States Census Bureau's Reported Voting and Registration, by Sex and Single Years of Age for election years 2022, 2018, 2014, 2010, 2006, 2002, 1998, and 1994.

- More than 1.8 million deceased individuals are listed as voters.
- Approximately 2.75 million people have registrations in more than one state.

Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade, Pew Center on the States (Feb. 14, 2012); *see Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 760 (2018) (citing report).

Flawed voter records cause real harm. As a recent academic report noted, "[i]naccurate voter registration lists increase barriers to participation, burden election officials, and fuel concerns about election integrity." Seo-young Silvia Kim et al., *The State of Voter Registration Research*, J. ELECTION ADMIN. RSCH. & PRAC. SPECIAL ISSUE 48 (2025). The Congressional Research Service agrees, observing that "accuracy of voter registration lists is important both for administrative purposes and for maintaining election integrity," including "identify[ing] certain instances of potential voter fraud, such as voter impersonation or double voting." SARAH J. ECKMAN, CONG. RSCH. SERV., VOTER REGISTRATION RECORDS AND LIST MAINTENANCE FOR FED. ELECTIONS 16 (CRS Report No. R46943) (2025); *see also Crawford*, 553 U.S. at 196 ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process.").

While the NVRA seems to have contributed to this inflation of voter rolls and inaccuracies, the statute

also provides the means for fixing it—through transparency and private enforcement. Accordingly, voters and organizations frequently bring private lawsuits to enforce the NVRA, including Section 8's disclosure requirements. *See, e.g.*, *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 337 (4th Cir. 2012); *Jud. Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425, 439–442 (D. Md. 2019); *Pub. Int. Legal Found., Inc. v. Dahlstrom*, 673 F. Supp. 3d 1004, 1017 (D. Alaska 2023).

These lawsuits are often directed at jurisdictions whose voter rolls show anomalies, such as more registered voters than residents of voting age, or, as in the case of Pennsylvania, that contain substantial numbers of non-citizens. *See, e.g.*, *Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of Elections*, 301 F. Supp. 3d 612, 618–20 (E.D.N.C. 2017); *Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 805 (W.D. Tex. 2015). The lawsuits have frequently resulted in states agreeing (or being ordered) to disclose or improve their voter list maintenance practices. *See, e.g.*, *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1351–52 (N.D. Ga. 2016) (preliminary injunction for state to turn over requested information); *Jud. Watch, Inc. v. Adams*, 485 F. Supp. 3d 831, 833–34 (E.D. Ky. 2020) (extending consent judgment regarding practices to improve accuracy of voter registration records). Private lawsuits thus play a critical role in achieving the election integrity goals of the NVRA.

Increasingly, however, lower courts are misapplying the Court's standing precedent to close the courthouse doors to private litigants denied information the NVRA entitles them to. *See Schmidt*, 136 F.4th at 463–65; *Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 933, 938–39 (5th Cir. 2022); *Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 617, 629–32 (6th Cir. 2025).

These decisions effectively nullify a critical component of a statute designed to protect Americans' fundamental right to vote in a fair election. If left unchecked, they also threaten to eliminate the right to sue under many other federal statutes designed to promote government transparency and accountability.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Misunderstands Informational Injuries and Distorts Article III Standing Law

A. The Court has squarely held that the denial of access to public records creates Article III standing

This Court has long held that Article III standing is satisfied when private plaintiffs sue to enforce statutory "right to know" provisions seeking documents from government entities.

First, in *Public Citizen*, the Court considered whether plaintiff advocacy organizations had standing to demand that the American Bar Association's judicial nomination committee provide access to its meetings and records as an advisory committee subject to the Federal Advisory Committee Act. The Court held that the plaintiffs had standing because its "decisions interpreting" FOIA, an analogous statute, "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 449–50 (listing several FOIA cases). The fact that the plaintiffs before it had requested and been denied information satisfied the particularized injury element of standing, regardless of whether "other citizens or groups . . . might make the same complaint after unsuccessfully demanding disclosure . . . ." *Id.*

A decade later, in *Akins*, the Court considered whether a group of voters had Article III standing in an action challenging the Federal Election Commission's decision not to require a political organization to disclose information on its activities and donors pursuant to the Federal Election Campaign Act ("FECA"). *Akins*, 524 U.S. at 15–18. The Court noted that the widely shared nature of a harm often weighed against considering it an "injury in fact" for purposes of standing but held that that a widely shared injury was sufficiently concrete when, for instance, "large numbers of voters suffer interference with voting rights conferred by law." *Akins*, 524 U.S. at 24. It held that the plaintiff's "informational injury" was "sufficiently concrete and specific such that the fact that it is widely shared does not deprive Congress of constitutional power to authorize its vindication in the federal courts" because it "directly related to voting, the most basic of political rights." *Id.* at 24–25.

These two decisions establish that the denial of a party's right to information a federal transparency statute entitles him to itself constitutes an injury in fact sufficient for standing. *See Schmidt*, 136 F.4th at 464 (acknowledging that standing is met when "public availability of information is itself the interest that Congress seeks to protect under such statutes"). The Court's more recent decisions Pennsylvania relies on are not to the contrary.

B. The court below misunderstood and misapplied *TransUnion*, which does not deal with access to public records

The Court has never overruled or called into question to continuing validity of *Public Citizen* and *Akins*. To the contrary, the Court reaffirmed the decision in *Spokeo* and *TransUnion*, citing them as examples of a

"violation of a procedural right granted by statute . . . constitut[ing] injury in fact." *Spokeo*, 578 U.S. at 342.

In *Spokeo*, this Court explained that "Congress is well positioned to identify intangible harms that meet minimum Article III requirements" and "elevat[e] to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law." *Id.* at 341. In such cases, exemplified by the statutory rights to information at issue in *Public Citizen* and *Akins*, the plaintiff "need not allege any *additional* harm beyond the one Congress has identified." *Id.* at 342 (citing *Public Citizen* and *Akins*) (emphasis in original). It is enough for an injury in fact that the plaintiff is blocked from "'obtain[ing] information' that Congress had decided to make public." *Id.* (quoting *Pub. Citizen*, 491 U.S. at 449)).

TransUnion also did not overrule or even narrow *Public Citizen* or *Akins*. To the contrary, the Court clearly distinguished them as inapplicable. In *TransUnion*, the plaintiffs sued a private credit reporting agency for disclosing information in the wrong format. Because there was no denial of information, the Court held, "*Akins* and *Public Citizen* do not control here." *TransUnion*, 594 U.S. at 441. Moreover, as this Court explained, *Public Citizen* and *Akins* "involved denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information," whereas "[t]his case does not involve such a public-disclosure law." *Id.*; *see also Laufer v. Naranda Hotels, LLC*, 60 F.4th 156, 170 (4th Cir. 2023) (noting that "the *TransUnion* Court distinguished *Public Citizen* and *Akins* without questioning their validity" and "in other recent decisions, both before and after *TransUnion* . . . treated [them] as good law").

Accordingly, the Third Circuit failed to grasp a key distinction between *Public Citizen* and *Akins*, on the one hand, and *Spokeo* and *TransUnion* on the other. *Public Citizen*, *Akins*, and their ilk address the injury derived from the *government's failure to disclose* information Congress has declared must be disclosed to protect the proper functioning of government by informed voters—*i.e.*, sunshine laws. *Spokeo* and *TransUnion*, by contrast, address the injury derived from *private entities' disclosure* of information Congress required to be "fair and accurate" under the FCRA.

These two types of injuries are, broadly defined, "informational" injuries. But beyond that broad label, they are apples and oranges. A statute that requires disclosure of public information (*e.g.*, FOIA, NVRA) serves the public good because it ensures public accountability via an informed citizenry. In such instances, as *Public Citizen* and *Akins* make clear, the injury in fact is the failure to disclose information itself.

A statute commanding private parties to maintain "fair and accurate" information (and disclose it when requested by the person it relates to) is qualitatively different, including for purposes of Article III standing. *See* 15 U.S.C. § 1681(a)(1). In *TransUnion* and *Spokeo*, the question was whether the private credit agency-defendants had abided by their obligation under the FCRA to report "fair and accurate" information about the plaintiffs' creditworthiness. *Spokeo*, 578 U.S. at 334. As this Court observed, the FCRA "sought to curb the dissemination of false information by adopting procedures designed to decrease that risk." *Id.* at 342.

When a plaintiff seeks to vindicate a statutory

right based on *inaccurate* information, the public interest served is the protection of the individual against harm caused by such inaccurate information. The dissemination of inaccurate information by itself, however, does not establish a *concrete harm*, concluded *Spokeo*: "[N]ot all inaccuracies cause harm or any material risk of harm." *Id*. As the Court noted, the publication of "an incorrect zip code" would not "without more . . . work any concrete harm." *Id*. A plaintiff in an "inaccurate information" case therefore cannot satisfy Article III by merely showing that inaccurate information about him was disseminated; he must show that the inaccurate information was harmful in a concrete way. The *Spokeo* Court thus remanded the case to the Ninth Circuit because the record was unclear as to whether the inaccurate information disseminated about the plaintiff—*e.g.*, that he "is married, has children, is in his 50's, has a job, is relatively affluent, and holds a graduate degree"—harmed him in a concrete way. *Id*. at 336, 342–43.[4]

Here, the NVRA is a sunshine law, not a law providing a private right of action for dissemination of inaccurate information by a private entity. Therefore, *Public Citizen* and *Akins* controlled the Third Circuit's

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[4] On remand, the Ninth Circuit concluded that the plaintiff alleged sufficiently concrete harm in that he was seeking a job, and Spokeo's inaccurate reports of information relevant to employment made it harder for him to land one: "[E]ven seemingly flattering inaccuracies can hurt an individual's employment prospects as they may cause a prospective employer to question the applicant's truthfulness or to determine that he is overqualified for the position sought." *Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1117 (9th Cir. 2017). This Court thereafter denied certiorari. 138 S. Ct. 931.

standing analysis, not *Spokeo* and *TransUnion*. Indeed, because both *Spokeo* and *TransUnion* reaffirmed the continuing validity of *Public Citizen* and *Akins* for sunshine laws, the lower courts must follow them in cases involving such laws "until [the Court] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality." *Laufer*, 60 F.4th at 170 (quoting *Hohn v. United States*, 524 U.S. 236, 252–53 (1998)) (alterations in original). Because Pennsylvania withheld information the Foundation requested and Section 8(i) of the NVRA, unlike the FCRA, is a "public-disclosure or sunshine law[] that entitle[s] all members of the public to certain information," *TransUnion*, 594 U.S. at 441, the Third Circuit committed legal error by applying *Spokeo* and *TransUnion* rather than *Public Citizen* and *Akins*.

C. The Third Circuit's subjective and unworkable standard for informational injury has no grounding in Article III

In addition to failing to adhere to *Public Citizen* and *Akin*, the Third Circuit manufactured a brand-new standing rule without basis in Article III or this Court's precedent. According to the Third Circuit, the *Public Citizen* and *Akins* line of cases apply only when "disclosure of information is the *essence* of a statute," or in other words, "public availability of information is itself the interest that Congress seeks to protect under such statutes." *Schmidt*, 136 F.4th at 464 (emphasis added). By contrast, if the public records provision is enacted as part of a larger statutory framework, the plaintiff must make the additional showings that he suffered downstream harm *and* that the harm goes to the essence of the statute. In this case, the "essence" of the NVRA, as the Third Circuit tells it, is not solely

informational disclosure, but to "increas[e] citizen participation in federal elections." *Id.* at 467. Therefore, it reasoned, the NVRA does not create the type of informational injury that is sufficient in itself to confer standing. *Id.* at 464–65.

This new standard has no grounding in Article III. The Third Circuit offered no authority or principled reason why it matters, for purposes of Article III standing, whether a particular statutory provision was enacted standing alone or as a package of similar provisions rather than as part of a larger bill with multiple objectives. Nor could it. That's because typically, the Article III injury focuses on the injury itself (*i.e.*, monetary damage, psychic harm, denial of information), and not the primacy of that injury within a statutory scheme. If anything, the authorities show the opposite.

In *Akins*, for example, the Court dealt with FECA, a broad, multifaceted act that sought "to remedy any actual or perceived corruption of the political process in several important ways," most notably by "impos[ing] limits upon the amounts" various entities could contribute to or spend in coordination with a candidate. *Akins*, 524 U.S. at 14. But the case "concern[ed] requirements in [FECA] that extend beyond these better-known contribution and expenditure limitations," namely, its "recordkeeping and disclosure requirements upon groups that fall within [FECA's] definition of a 'political committee.'" *Id.* The Court held that considering these requirements, the plaintiffs' alleged injury—"their failure to obtain relevant information—[was] injury of a kind that FECA seeks to address." *Id.* at 20. It later characterized *Akins* as "involv[ing] denial of information subject to [a] public-disclosure or sunshine law[]," *TransUnion*, 594 U.S.

at 441, despite FECA having purposes far broader than the disclosure requirements.

The D.C. Circuit's decision in *Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity*, 878 F.3d 371 (D.C. Cir. 2017), likewise confirms that the standing inquiry is conducted at the level, not of the overall act, but at the specific provision itself. There, the plaintiff had sued under the E-Government Act, enacted "to streamline government use of information technology 'in a manner consistent with laws regarding protection of personal privacy, national security, records retention, access for persons with disabilities, and other relevant laws.'" *Id.* at 375 (quoting E-Government Act § 2(b)(11)). The plaintiff sought to obtain information it believed the commission was required to disclose under Section 208 of the E-Government Act. Section 208's stated purpose is "to ensure sufficient protections for the privacy of personal information as agencies implement citizen-centered electronic Government." E-Government Act § 208(a). In evaluating the plaintiff's standing, the D.C. Circuit looked to the purpose of Section 208, rather than the E-Government Act as a whole, asking what that provision in particular was "directed at" and whom it was "intended to protect." *Elec. Priv. Info. Ctr.*, 878 F.3d at 378.

This new Article III standard therefore has no foundation in the Constitution or precedent, and it will obstruct access to the courtroom for plaintiffs suing under various statutory schemes. Courts following this decision will be forced to evaluate the "essence" of a statute to determine whether an injury is cognizable, and that process will ultimately yield subjective and inconsistent interpretations of statute. This case is the prime example.

Applying its new rule that requires an inquiry into the "essence" of the statute, the Third Circuit gave effect only to its own constrained reading of the NVRA's purpose rather than Congress's statutory statement of purpose. Immediately after reciting the four stated goals of the NVRA, including "(3) to protect the integrity of the electoral process; and (4) to ensure that accurate and current voter registration rolls are maintained," 52 U.S.C. § 20501(b), the Third Circuit inexplicably concluded: "[t]hus, the statute aims at increasing citizen participation in federal elections." *Schmidt*, 136 F.4th at 467. Of course, the NVRA does that, as evidenced by its first two stated goals. *See* 52 U.S.C. § 20501(b)(1)−(2). But the Third Circuit ignored Congress's other, equally important goals in enacting the NVRA—election integrity and accurate, current voter registration rolls. *See id.* § 20501(b)(3)−(4). Section 8 of the NVRA imposes obligations to advance those goals, and Section 8(i) provides a means for the public to monitor jurisdictions' compliance with those obligations. In light of NVRA's avowed statement of purpose, statutory text, and even legislative history, the public disclosure provision advances several of the NVRA's core purposes. *See id.* §§ 20501(b) & 20507(i); S. REP. No. 103-6, 18 (1993) & H.R. REP. No. 103-9, 5, 14 (1993).

This is exactly the type of analysis that Article III does not require when evaluating injury in fact. Courts that follow the Third Circuit's new rule will be diverted into imprecise, subjective analysis seeking to understand the "essence" of a given statute, when the Court's precedent in *Akins* and *Public Citizen* is already clear. The decision below warrants immediate review to ensure the proper Article III standing analysis for sunshine laws.

II. The Third Circuit's Ruling Undermines the NVRA and Other Statutes Designed for Government Transparency

The Third Circuit's error extends beyond the specific case before it, as it will undermine Congress's carefully crafted NVRA framework. Under the logic of the decision below, an organization concerned about voters being improperly removed from a voter roll could sue because its interests align with those the Third Circuit believes the NVRA primarily advances—"the expansion of voter registration and participation." *Schmidt*, 136 F.4th at 467. But organizations or individuals concerned about people being improperly added to or left on a voter roll—including the Foundation and the Honest Elections Project—are effectively barred from bringing suit under the NVRA.

This lopsided and politicized outcome makes unenforceable the NVRA's equally important goals of protecting election integrity and ensuring accurate, current voter registration rolls. And it flies in the face of the Court's precedent that a plaintiff's "informational injury" is "sufficiently concrete and specific" to establish standing when it "directly relate[s] to voting, the most basic of political rights." *Akins*, 524 U.S. at 24–25. In *Akins*, the plaintiffs merely sought to scrutinize the donors and spending activities of an advocacy group active in politics, *id.* at 21, while in this case the Foundation sought actual voter records that might show whether non-citizens were registered to and did vote. *Schmidt*, 136 F.4th at 459–60. Because the information sought in *Akins* "directly related to voting," *a fortiori*, so too does the information bearing on the integrity of Pennsylvania's elections that the Foundation sought below. The Third Circuit's discounting of this important interest demonstrates that

its analysis is erroneous.

As earlier noted, the NVRA is just as concerned with protecting election integrity and ensuring accurate, current voter registration rolls as it is with expanding voter registration. The Third Circuit was wrong to discount those expressly stated statutory goals, which this Court has long recognized the importance of. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) ("Confidence in the integrity of our electoral process is essential to the functioning of our participatory democracy."); *Crawford*, 553 U.S. at 197 ("[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process."); *Bush v. Gore*, 531 U.S. 1046, 1047 (2000) (Scalia, J., concurring) ("The counting of votes that are of questionable legality . . . threaten[s] irreparable harm . . . to the country.").

More generally, the Third Circuit's ruling denigrates the interest of the public in transparent, accountable government. The passage of FOIA in 1967 inaugurated "a general philosophy of full agency disclosure," which Congress believed "would help ensure an informed citizenry, vital to the functioning of a democratic society." *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 16 (2001) (internal citations and punctuation omitted); *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (observing that FOIA was designed "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny") (citation omitted).

Perhaps in recognition of the overwhelming authority that plaintiffs whose FOIA requests have been denied have Article III standing, the Third Circuit attempts to set FOIA beyond the reach of its analysis.

See Pub. Citizen, 491 U.S. at 449 (holding that plaintiffs have standing if they "sought and were denied" records under FOIA); *see also N. L. R. B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975) (stating that FOIA was "intended to give any member of the public as much right to disclosure as one with a special interest therein"). But as discussed above, there is no principled reason to restrict standing to enforce the NVRA's disclosure obligations but not FOIA's. In the long run, the Court's informational injury standing rule from *Public Citizen* and *Akins* must either be consistently applied or discarded. The strong societal interest in an "informed citizenry" weighs heavily in favor of consistently applying the Court's existing rule. *Klamath*, 532 U.S. at 16.

Finally, the Third Circuit's decision restricting standing for NVRA violations does not exist in a vacuum. The United States Code contains many laws with public disclosure mandates besides FOIA and the NVRA. These statutes' transparency and accountability functions will be gutted if more courts confine the test in *Public Citizen* and *Akins* to the specific statutes at issue in those cases and require would-be litigants to show the type of harm the overall statutory scheme—rather than the provision at issue—is concerned with addressing. These public disclosure provisions are often sector-specific and contained within larger statutory schemes. *See, e.g.*, 44 U.S.C. § 3506 (federal agency information management responsibilities); 15 U.S.C. § 330b (weather modification activities); 42 U.S.C. § 5916 (energy resources and technology); 33 U.S.C. § 1513 (deepwater ports); 15 U.S.C. § 773 (energy supply shortages); Federal Funding Accountability and Transparency Act of 2006 § 2(b), codified as note to 31 U.S.C. § 6101 (federal

awards information); E-Government Act § 208(a), codified as note to 44 U.S.C. § 3501 (federal agency digital privacy responsibilities) 20 U.S.C. § 1092 (federally-funded universities' on-campus crime statistics).

Many of these public disclosure provisions are less tightly connected to what a court might decide is the "essence" or overall purpose of the act containing them than the NVRA's Section 8(i). If the Third Circuit's decision gains broader traction, it would become nearly impossible to satisfy standing for a claim under those provisions. This would frustrate congressional intent and deal a serious blow to the public's interests in effective public scrutiny and full agency disclosure.

CONCLUSION

For these reasons, and those in the Petition, this Court should grant the Petition for Certiorari.

Respectfully submitted,

Jason Torchinsky
Counsel of Record
Andrew Wilson
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
2300 N St. NW Ste. 643
Washington, DC 20037
jtorchinsky@holtzmanvogel.com

Mark I. Pinkert
Elizabeth Price Foley
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
119 S. Monroe St.
Ste. 500
Tallahassee, FL 32301
(850) 270-5938

Andrew W. Gould
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
2555 E. Camelback Rd.
Ste. 700
Phoenix, AZ 85016

Counsel for Amicus Curiae

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