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

BRIEF OF *AMICI CURIAE* JUDICIAL WATCH, INC. AND ALLIED EDUCATIONAL FOUNDATION IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICI CURIAE*[1]

Judicial Watch, Inc. ("Judicial Watch") is a not-for-profit educational foundation dedicated to fostering accountability, transparency, integrity in government, and fidelity to the rule of law. In pursuit of its public interest objectives, Judicial Watch routinely requests access to public records from federal, state, and local agencies, which it subsequently disseminates to its members and the public at large.

Since its founding in 1994, Judicial Watch has submitted thousands of public records requests under the nation's public-disclosure laws. When such requests are denied—a frequent occurrence—Judicial Watch has initiated litigation. In addition to individual state public-disclosure laws, the principal statutes relied on by Judicial Watch are the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq*., and the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507(i) – the statute at issue here. The records obtained through Judicial Watch's efforts are vital to enhancing public understanding of government operations.

In 2012, Judicial Watch created an election-law practice group to promote election integrity, focusing especially on enforcing the NVRA's list-maintenance and public-disclosure provisions contained in § 8 of

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[1] *Amici* state that no counsel for a party to this case authored this brief in whole or in part; and no person or entity, other than *Amici* and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief. Pursuant to Rule 37.2(a), counsel of record for each party received timely notice of *Amici*'s intent to file this *amicus* brief.

that act. 52 U.S.C. § 20507. In recent years, Judicial Watch's efforts have led to the removal of five million names from voter rolls across nearly a dozen states, primarily through settlement agreements and consent decrees with various jurisdictions.[2] *See, e.g., Judicial Watch v. Grimes*, No. 17-94 (E.D. Ky. 2017) (ECF No. 39) (consent decree entered with the Commonwealth of Kentucky to settle NVRA claims); *Judicial Watch v. Logan*, No. 17-8948 (C.D. Cal. 2017) (NVRA settlement agreement with Los Angeles County and the State of California); *Judicial Watch v. Griswold*, No. 20-2992 (NVRA settlement agreement with the State of Colorado); *Judicial Watch v. Pennsylvania Sec. of State*, No. 20-708 (M.D. Pa. 2020) (NVRA settlement agreement the Commonwealth of Pennsylvania).

As part of its election-integrity program, Judicial Watch frequently requests state records under § 20507(i) and has litigated both independently and on behalf of others to ensure compliance with the NVRA. *Judicial Watch v. Lamone*, 399 F. Supp. 3d 425 (D. Md. 2019); *Illinois Conservative Union v. Illinois*, 2021 U.S. Dist. LEXIS 102543 (N.D. Ill. June 1, 2021). Judicial Watch's public records requests under Section 20507(i) are critical in evaluating NVRA compliance. *See Lamone*, 399 F. Supp. 3d at 445 ("Organizations such as Judicial Watch … have the resources and expertise [concerning the NVRA] that few individuals can marshal.").

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[2] Judicial Watch, *Judicial Watch Update: New Numbers Show Over Five Million Names Cleaned from Voter Rolls Nationwide*, (Apr. 3, 2025), https://bit.ly/4hoFNjP.

The Allied Educational Foundation ("AEF") is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study. AEF regularly files *amicus curiae* briefs to advance its purpose.

Judicial Watch and AEF have filed numerous *amicus curiae* briefs addressing the proper interpretation of the NVRA. *See, e.g.*, *Husted v. A. Philip Randolph Inst.*, No. 16-980 (Brief of *Amici* Judicial Watch and AEF); *A. Philip Randolph Inst. v. Husted*, No. 16-3746 (6th Cir. 2016) (Dkt. No. 37) (Brief of *Amicus Curiae* Judicial Watch); *Public Interest Legal Found. v. Schmidt*, No. 23-1590 (3d Cir. 2023) (Dkt. No. 48).

Amici—particularly Judicial Watch's election-law team—have a strong interest in how courts define cognizable injuries from violations of federal law enacted pursuant to Congress's Elections Clause powers. U.S. Const. art. I, § 4, cl. 1. Judicial Watch most recently appeared before the Court as counsel for petitioners in *Bost, et al., v. Ill. State Bd. of Elections, et al.*, No. 24-568, addressing candidate standing to challenge state time, place, and manner regulations. The Court heard arguments in *Bost* on October 8, 2025.

Congress enacted the NVRA pursuant its Elections Clause authority. *Harkless v. Brunner*, 545 F.3d 445, 455 (6th Cir. 2008). Section 8(i) of the NVRA, codified as 52 U.S.C. § 20507(i), is an important public-disclosure law that allows the public to evaluate the accuracy and currency of a state's

voter list maintenance and registration practices. Judicial Watch and AEF respectfully submit this brief in support of Petitioner PILF. The Court should grant certiorari—particularly on whether *TransUnion v. Ramirez*, 594 U.S. 413 (2021), affects informational-injury standing following a denial of records requested under public-records laws. As shown below, denial of access to public records is a harm traditionally recognized as providing a basis for a lawsuit in American courts, and is distinct from the injuries resulting from the denial of private records at issue in *TransUnion*. *Id.* at 417 and 441.

SUMMARY OF ARGUMENT

The denial of access to public records requested under the NVRA's public-disclosure provision, 52 U.S.C. § 20507(i), inflicts a concrete informational injury deeply rooted in centuries of common-law tradition. The right of access to public records predates the development of the states. American courts have long recognized that a general right to inspect public documents is essential to democratic governance the denial of which is redressable at law. Indeed, that right is of the "highest public interest" in the context of inspecting voter registration materials. *Higgins v. Lockwood*, 74 N.J.L. 158, 160 (N.J. 1906). More recently, this Court has affirmed that denials of that right is a concrete harm. *See FEC v. Akins*, 524 U.S. 11 (1998); *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989); *see also TransUnion*, 594 U.S. at 441.

The Third Circuit's decision below departs from this precedent by imposing a novel "nexus" requirement, demanding plaintiffs prove downstream harms beyond the denial itself. This ruling exacerbates a sharp and growing circuit split. Circuits like the Fourth adhere to this Court's framework, finding standing upon denial alone. *See Project Vote v. Long*, 682 F.3d 331, 340 (4th Cir. 2012). In contrast, the Third, Fifth, and Sixth Circuits now require additional showings—whether "downstream consequences" or a multi-part nexus—misapplying *TransUnion* to public records cases it explicitly distinguished. *See Campaign Legal Ctr. v. Scott*, 49 F.4th 931, 938 (5th Cir. 2022); *Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 629 (6th Cir. 2025).

Practically, the Third Circuit's ruling threatens electoral transparency nationwide. By shielding voter list maintenance records from scrutiny, it enables dormant errors, inefficiencies, or worse, undermining the NVRA's core purposes of accuracy and public confidence. The resulting confusion is radically reducing the public's access to public records and will have a profound impact on public debate, chilling oversight by watchdogs like *Amici* and eroding trust in democratic processes. Americans have always sought public records from city, county, and state governments to ensure that the people's representatives are properly and positively maintaining democracies and adhering to good government principles. *See NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460, (1958) ("It is beyond debate that freedom to engage in association for the advancement of beliefs

and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."). Denying requested public records inhibits this type of protected expressive activity.

This Court should grant certiorari to reaffirm that the denial of public records inflicts a traditional, cognizable injury; resolve the entrenched split; and prevent the Third Circuit's error from further obstructing the transparency Congress mandated under the NVRA.

ARGUMENT

I. AMERICAN COURTS HAVE LONG REGARDED INFORMATIONAL INJURIES AS A BASIS FOR ENFORCING PUBLIC-DISCLOSURE LAWS

1. Central to determining whether an alleged injury is sufficiently concrete to trigger Article III standing is "whether the asserted harm has a 'close relationship' to a harm traditionally recognized as providing a basis for a lawsuit in American courts—such as physical harm, monetary harm, or various intangible harms[.]" *TransUnion*, 594 U.S. at 417 (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340-341 (2016)). The denial of records under public records laws such as 52 U.S.C. § 20507(i) is an intangible harm long recognized as providing a basis for lawsuit in American courts. *See id.*; *Akins*, 524 U.S. at 13; *Public Citizen*, 491 U.S. at 443.

The right of access to public records is grounded in the public's right to know "what the government is up to." *U.S. Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989); *see also State v. King*, 154 Ind. 621, 625 (1900) (holding that a person's interest "to discover the condition of the public . . . to ascertain if the affairs of his county have been honestly and faithfully administered by the public officials charged with that duty" is completely appropriate).

Over a century ago, state courts recognized that this right is inherent in democratic government. That the common law rule is that "every person is entitled to the inspection of" public documents. *State v. Williams*, 41 N.J.L. 332, 334 (N.J. 1879); *see also Burton v. Tuite*, 78 Mich. 363, 374 (1889) ("I do not think that any common law ever obtained in this free government that would deny the people thereof the right of free access to, and public inspection of, public records."). Significantly, in 1891, the Virginia Supreme Court held, "[a]t common law, the right to inspect public documents is well defined and understood." *Clay v. Ballard*, 87 Va. 787, 791 (1891).

Later courts reaffirmed that right. For example, the Michigan Supreme Court again examined the common law right of access to public records and the origin of that right. "If there be any rule of the English common law that denies the public the right of access to public records, it is repugnant to the spirit of our democratic institutions. Ours is a government of the people." *Nowack v. Auditor General*, 243 Mich. 200, 203 (1928). The court further stated, "[t]here is no

question as to the common-law right of the people at large to inspect public documents and records." *Id*. at 204. It reinforced the notion that the common law right "to inspect public records" includes those circumstances when a person's interest is solely that "as a member of the general public." *Id*. When the right to inspect election administration records are at issue, the public's interest is even greater. *See Higgins*, 74 N.J.L. at 160 (The right to inspect the "registration of voters" is of the "highest public interest" for its purpose "to prevent fraudulent voting" and preserve "representative government" on behalf of all citizens).

Federal courts share this view. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents."); *Washington Legal Foundation v. U.S. Sentencing Commission*, 89 F.3d 897, 904 (D.C. Cir. 1996) (noting "the right of access" exists "in the common law of the states."). This right of access to public records applies not only to public records of the federal government but also public records of state governments.

Recognizing informational injuries from denial of records under 52 U.S.C. § 20507(i) aligns with this well-established legal tradition. Denying access to voter-registration records impedes expressive and educational activity protected by the First Amendment. Such denials harm groups like *Amici* and Petitioner PILF (as well as their ideological counterparts) by re-

stricting their ability to inform the public, hold officials accountable, and evaluate election integrity.[3] It denies the public the right to know "what their government is up to." *Reporters Committee for Freedom of the Press*, 489 U.S. at 773.

Withholding NVRA-related records like those "concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" erodes public confidence in the administration of elections. 52 U.S.C. § 20507(i). Public confidence, in turn, "has independent significance, because it encourages citizen participation in the democratic process." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008). In the absence of the underlying records, the public must rely on conflicting accounts, without direct evidence, making it difficult to accurately assess the competency of election administration. In short, denying access to records erodes public confidence in elections—precisely what Congress sought to prevent in enacting § 20507(i).

2. Section 20507(i) is indisputably a public-disclosure statute, and injuries from record denials under that provision are closely related to harms historically recognized as actionable. *See TransUnion*, 594 U.S. at 417. The NVRA "embodies Congress's conviction that Americans who are eligible under law to vote

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[3] For example, PILF identified three "downstream consequences" in addition to the traditional informational injury. Pet.App.22a. These additional downstream harms illustrate how the denial inhibits expressive activity protected by the First Amendment.

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. Transparency in voter-list maintenance is essential to democratic confidence. *See id*. at 339 ("Without such transparency, public confidence in the essential workings of democracy will suffer."); *see* H.R. REP. NO. 103-9, at 14, reprinted in 1993 U.S.C.C.A.N. 105, 118 ("accurate and current voter registration lists are essential to the integrity of the election process and for the protection of the individual").

Courts have long construed § 20507(i) broadly to serve that purpose. *See also Bellitto v. Snipes*, No. 16-cv-61474- BLOOM/Valle, 2018 U.S. Dist. LEXIS 103617, at *13 (S.D. Fla. Mar. 30, 2018) (NVRA public-disclosure provisions "convey Congress's intention that the public should be monitoring the state of the voter rolls and the adequacy of election officials' list maintenance programs"). Increased voter participation of eligible citizenry and protecting the integrity of electoral administration are central purposes of the NVRA. 52 U.S.C. § 20501(b). Denying access to records frustrates that goal. *See Lamone*, 399 F. Supp. 3d at 445 ("Organizations such as Judicial Watch and Project Vote have the resources and expertise that few individuals can marshal. By excluding these organizations from access to [voter registration records], the State law undermines Section 8(i)'s efficacy").

Courts have consistently rejected cramped readings of "records" under § 20507(i). For example, in

Project Vote, Inc. v. Kemp, 208 F. Supp. 3d 1320, 1336 (N.D. Ga. 2016), the court rejected the argument that electronic records were not covered, noting that this would allow easy circumvention and "effectively render Section 8(i) a nullity." Such a "narrow interpretation of 'records'—which would reduce the scope of information available to the public" is "inconsistent with the statutory purposes of the NVRA." *Id.*; *see Lamone*, 399 F. Supp. 3d at 441 ("common sense" cannot abide "a purposeless obstruction" of Section 8(i) "based on semantics").

3. As discussed, *infra*, Part III.B.3, the Third Circuit should have followed this Court's precedent and applied its FOIA standing analysis to injuries arising from violation of § 20507(i). But courts sometimes make the standing inquiry "more complicated than it needs to be." *Thole v. U.S Bank N.A.*, 590 U.S. 538, 547 (2020). Had it followed that precedent, its analysis would have been straightforward.

In that scenario, a requester suffers a particularized injury because he or she has requested and been denied public records Congress gave him a right to receive. *See Zivotofsky v. Sec'y of State*, 444 F.3d 614, 617-19 (D.C. Cir. 2006) (analogizing FOIA standing requirements in non-FOIA case stating that "[a] requester is injured-in-fact for standing purposes because he did not get what the statute entitled him to receive"); *McDonnell v. United States*, 4 F.3d 1227, 1238 (3d Cir. 1993) ("The filing of a request, and its denial, is the factor that distinguishes the harm suffered by the plaintiff in an FOIA case from the harm

incurred by the general public arising from deprivation of the potential benefits accruing from the information sought."). "[T]he 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." *Prisology, Inc. v. Fed. Bureau of Prisons*, 852 F.3d 1114, 1117 (D.C. Cir. 2017) (quoting *Zivotofsky*, 444 F.3d at 617); *see also* Pet.7-8.

II. THE DECISION BELOW CONFLICTS WITH DECISIONS FROM OTHER CIRCUITS REGARDING AN IMPORTANT QUESTION.

The Court should grant certiorari because there is a clear and recurring circuit split on what constitutes a concrete injury under the public-disclosure provision 52 U.S.C. § 20507(i). Some circuits recognize the traditionally accepted injury that a requester suffers a concrete injury merely by being denied access to requested public records, while others require an additional showing of "downstream consequences." The split largely stems from lower courts misapplication of *TransUnion*. *See*, *infra*, Part III.A. That case involved harms from violations of private-disclosure statutes, not public-disclosure laws. This additional showing requirement constitutes a live split that involves an important matter of electoral law, which warrant review. It is certain to recur given the frequency of federal elections.

Amici will not repeat the detailed analysis of lower court rulings provided by Petitioner. Pet.14-17.

Instead, *Amici* emphasize their agreement and their first-hand experience with inconsistent rulings just over the last few months on whether *Amici* Judicial Watch has standing to enforce § 20507(i). Compare *Judicial Watch v. Ill. State Bd. of Elections*, No. 24 C 1867, 2025 U.S. Dist. LEXIS 186730, at *35 (N.D. Ill. Sep. 23, 2025) (finding concrete injury) with *Judicial Watch v. Weber*, No. 2:24-cv-03750-MCS-PVC, a *5 (C.D. Cal. July 29, 2025) (finding no concrete injury).

Prior to 2022, federal courts rejected restrictive readings of concrete injury under § 20507(i). *See Project Vote*, 682 F.3d at 340 (affirming lower court's standing finding); *Ill. Conservative Union*, 2021 U.S. Dist. LEXIS 102543, at *1 (finding advocacy group alleged concrete injury); and *Judicial Watch v. Griswold*, Civil Action No. 20-cv-02992-PAB-KMT, 2022 U.S. Dist. LEXIS 153290, at *11 (D. Colo. Aug. 25, 2022) (finding plaintiffs alleged a traditional concrete injury under *TransUnion* sufficient to enforce 52 U.S.C. § 20507). That uniformity changed with *Scott*, 49 F.4th at 938, which relied on *TransUnion* to deny standing.

Today, the First and Fourth Circuits recognize that a concrete injury exists when a requester is denied (or provided limited access to) records under § 20507(i). *See Project Vote*, 682 F.3d at 340 and *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 50 (1st Cir. 2024) (finding requester had standing to bring preemption challenge to state restrictions on records requested under 52 U.S.C. § 20507(i)). But the Third, Fifth, and Sixth Circuits do not. *See* Pet.App.1a-27a;

Scott, 49 F.4th at 938; and *Benson*, 136 F.4th at 629 (finding requester lacked concrete injury).

Amici agrees with Petitioner that a further, secondary split exists over what heightened or additional concrete showing—if any—is required Pet.17-21; compare *Scott*, 49 F.4th at 938 (requiring "downstream consequences") with Pet.App.16a (articulating three-part "nexus requirement").

This entrenched and widening conflict among the circuits, on a question that frequently recurs, calls for this Court's intervention.

III. THE DECISION BELOW IS INCORRECT AND CONFLICTS WITH APPLICABLE DECISIONS BY THIS COURT.

The Third Circuit's decision contains serious legal errors and directly conflicts with longstanding Supreme Court precedent. This Court has held that a person who is denied requested public records suffers a concrete injury. *See Akins*, 524 U.S. at 13-14. The panel below misapplied *TransUnion*. In doing so it adopted a heightened "nexus requirement" for determining concreteness in public-record cases. This new requirement conflicts with previous rulings by this Court on this issue.

A. *TransUnion E*xplicitly Disclaimed Consideration of Injuries from Violations of Public-Disclosure Laws.

1. The Third Circuit misapplied *TransUnion*. That decision concerned injuries from procedural violations of the Fair Credit Reporting Act's ("FCRA"), 15 U.S.C. § 1681 *et seq.*, as amended, *private*-disclosure provisions. The harms at issue there differ fundamentally from those historically recognized under public-disclosure laws such as 52 U.S.C. § 20507(i). Indeed, the Court considered—and rejected—the Solicitor General's argument that the injuries there were analogous to informational injuries recognized under *Akins* and *Public Citizen*. *See TransUnion*, 594 U.S. at 441 ("We disagree."). The Court emphasized that the case did not involve a public-disclosure law. *Id.* ("This case does not involve such public-disclosure law."). By contrast, informational injuries from denial of public records have long been treated as concrete harms. *See, supra*, Part I.

TransUnion arose from a class action alleging that the defendant credit-reporting agency misidentified consumers as potential terrorists, violating the FCRA. 594 U.S. at 418. Mr. Ramirez, serving as the lead plaintiff, brought forth three claims on behalf of himself and a class of individuals. *Id.* at 418-22. The Court noted that plaintiffs are required to establish standing for each claim, subsequently analyzing whether class members experienced a concrete harm. *Id.* at 430-41. Regarding the first claim—TransUnion's alleged failure to employ reasonable procedures

to prevent misclassifications—the Court differentiated the class into two groups, holding class members whose erroneous reports were shared with third parties suffered a concrete reputational injury, while those whose reports were never disclosed did not. *Id.* 432-34. The Court determined that the former group had adequately alleged a concrete intangible injury (defamation) that was a tort long recognized by American courts. *Id.* at 432 (citations omitted). Conversely, the Court denied standing for the much larger latter group who, although misclassified, failed to demonstrate any concrete harm—including reputational damage—as their information was confined to TransUnion's internal records and not disclosed. *Id.* at 433-34. The Court emphasized that "Article III requires a concrete injury even in the context of a statutory violation." *Id.* at 426. Lawsuits predicated solely on statutory violations, such as those brought by the larger group, cannot proceed when the plaintiff had not alleged any physical, monetary, or cognizable intangible harm traditionally recognized as grounds for litigation in American jurisprudence. *Id.* at 427-28.

The plaintiffs' remaining two claims concerned the format of disclosures and alleged omissions of a summary-of-rights disclosure. *Id.* at 439-41. The Court found no standing because plaintiffs had not alleged any injury—they received all required information. *Id.* at 441. Moreover, plaintiffs could not establish that the format of TransUnion's mailings caused an injury closely related "to harm traditionally recognized as providing a basis for a lawsuit in American Courts." *Id.* at 440. Thus, the Court's analysis

turned on the *absence* of any denial of information. A distinction that is decisive here. The denial of access to voter-registration records under § 20507(i) is the exact opposite scenario: an outright refusal to provide information Congress made public.

Claims arising under the FCRA were categorically different from those arising under public-disclosure laws. *Id.* at 441. "This case does not involve such public-disclosure law." *Id.* (citations omitted). *TransUnion* made clear that both the nature of the injuries before it, and its analysis, were distinct from precedent recognizing harms from denials of public records.

2. The Third Circuit's contrary reading—that *TransUnion* rejected the very argument advanced by Petitioner PILF below—reverses the actual logic of that decision. Pet. App. 14a. The Supreme Court in *TransUnion* rejected the Solicitor General's analogy between the FCRA and public-disclosure statutes, not the argument advanced by the petitioner here. *See TransUnion*, 594 U.S. at 441–43. In this way, the Third Circuit clearly misread *TransUnion.* The confusion on this point is radically reducing the public's access to public records and will have profound impact on public debate far larger than the Court could have reasonably expected when it issued *TransUnion.*

This Court's rejection of the Solicitor General's argument that injuries arising from violation of the FCRA's private-disclosure laws are analogous to

those harms arising from violations of public-disclosure laws is intuitive. *TransUnion*, 594 U.S. at 441-43. Injuries resulting from violations of public-disclosure laws are categorically distinct from those arising from violations of private-disclosure laws. Injuries associated with the former have long been recognized as concrete injuries. *See*, *supra*, Part I; and *see also Akins*, 524 U.S. at 13 and *Public Citizen*, 491 U.S. at 449-50. In contrast, the FCRA represents a more recent statutory innovation. While the FCRA safeguards important consumer rights, harm that may arise from violations of this new statutory right does have a "close relationship" to a harm traditionally recognized as providing a basis for a lawsuit in American courts. *See TransUnion*, 594 U.S. at 417.

TransUnion confirmed that Congress cannot manufacture standing by labeling a procedural violation as an injury. *Id.* at 426. But Congress may authorize suit to remedy denials of information that the public has a traditional, preexisting right to receive—a principle reaffirmed in *Akins* and *Public Citizen*. The denial of requested public records constitutes a well-established concrete injury. Private actors failure to satisfy the FCRA private disclosure laws do not.

Other courts have acknowledged the need to first assess whether the statute at issue is a public or private disclosure before applying *TransUnion*'s concrete injury analysis. *See Trichell v. Midland Credit Mgmt.*, 964 F.3d 990, 1004 (11th Cir. 2020) (noting that the statutes at issue in *Public Citizen* and *Akins*

made certain information subject to public disclosure.) "The provisions at issue here create no substantive entitlement to receive information from [private parties]." *Id.*; *but see Scott*, 49 F.4th at 938-39.

Under *TransUnion*, a plaintiff bringing an FCRA enforcement action must allege both a statutory violation *and* a concrete injury—criteria satisfied only by Mr. Ramirez with respect to all three claims in *TransUnion*. Unlike injuries from the government's denial of requested public records, violation of private-disclosure laws do not inhibit expressive activity protected by the First Amendment. The failure of a credit reporting agency to provide information does not constitute an informational injury that has been traditionally recognized as actionable in American courts. Violations of § 20507(i) do.

B. The Decision Conflicts With Applicable Rulings from This Court.

1. The Third Circuit introduced a novel "nexus" requirement that diverges from the Supreme Court precedents. The panel concluded that a plaintiff asserting informational injuries following a denial of public records must demonstrate "a *nexus* among the omitted information to which she has entitlement, the purported harm *actually caused* by the specific violation, and *the 'concrete interest'* that Congress identified as 'deserving of protection' when it created the disclosure requirement." Pet.App.16a. (citing *Kelly v. Realpage Inc.*, 47 F.4th 202, 213 (3d Cir. 2022)).

This requirement has no basis in Article III jurisprudence. Apart from narrow taxpayer-standing cases, this Court has rejected calls to add a special nexus requirement to its Article III analysis. *See Duke Power Co. v. Carolina Envtl. Study Grp.*, 438 U.S. 59 (1978) and *Flast v. Cohen*, 392 U.S. 83, 102 (1968) (establishing *Flast* nexus for taxpayer standing injuries). Likewise, neither *Akins* nor *Public Citizen* imposed any nexus test, and both recognized standing upon the simple denial of information Congress required to be disclosed.

2. *Duke Power* is instructive. There, the Court explicitly declined to extend *Flast*'s nexus concept beyond taxpayer suits. "The major difficulty with the argument is that it implicitly assumes that the nexus requirement formulated in the context of taxpayer suits has general applicability in suits of all other types brought in the federal courts." 438 U.S. at 78. "No cases have been cited outside the context of taxpayer suits where we have demanded this type of subject-matter nexus between the right asserted and the injury alleged, and we are aware of none." *Id.* at 78-79. "[W]e explicitly rejected such a broad compass for the *Flast* nexus requirement." *Id.* at 79; *see also Akins*, 524 U.S. at 22 (rejecting application of *Flast* nexus requirement to public-disclosure injuries).

Yet the Third Circuit adopted exactly that forbidden expansion. Under *TransUnion*, assessing concreteness depends on whether the asserted harm has a 'close relationship' to a harm traditionally recognized as providing a basis for a lawsuit in American courts—such as physical harm, monetary harm, or

various intangible harms[.]" *TransUnion*, 594 U.S. at 417. In the Third Circuit, assessing concreteness requires courts to apply the *TransUnion* standard *and* a separate "nexus" assessment. This additional requirement conflicts with applicable rulings from this Court.

To be precise, *Amici* note the Third Circuit's nexus requirement is not *identical* to the *Flast* nexus requirement rejected in *Duke Power*. However, both impose a supplemental "nexus" showing not required under Article III or this Court's precedent in non- taxpayer suits. *Id.* and *Akins*, 524 U.S. at 22. In this way, the Third Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court.

3. For decades, this Court has analyzed standing under public-disclosure laws by analogy to FOIA. In *Public Citizen*, the Court held that plaintiffs denied access to records under the Federal Advisory Committee Act ("FACA") suffered the same injury as FOIA plaintiffs—being denied information the law entitled them to receive. 491 U.S. at 449. FACA, like to the NVRA, includes a public-disclosure provision like 52 U.S.C. § 20507(i). *See id.* at 446–47. The Court noted "[t]here is no reason for a different rule here." *Id.* at 449. Further, it determined that, as with agency denials of information requests under FOIA, denying requesters the opportunity to review the ABA Committee's actions to the extent permitted by FACA constitutes a sufficiently distinct injury to establish standing to bring suit. *Id.* "[O]ur decisions interpret-

ing 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." *Id.*

Similarly, the Court applied in *Akins* the same FOIA-based framework to the public-disclosure provisions of the Federal Election Campaign Act of 1971 ("FECA"). 524 U.S. at 21–22. There, as here, plaintiffs alleged informational injury from being denied access to statutorily required records. The Court held that such denial constituted an "injury in fact." *Id.* at 21. FECA, like the NVRA, includes several provisions one of which mandates public-disclosure. *See id*. at 14-16. Citing to *Public Citizen*, the Court clarified that it had previously held a plaintiff incurs an 'injury in fact' when he is unable to obtain information required to be publicly disclosed by statute. *Id.* at 21 (citing *Public Citizen*, 491 U.S. at 449). Applying this principle, the Court stated the 'injury in fact' respondents experienced arose from their inability to access information that the public-disclosure provisions obligate to be made public. 524 U.S. at 21.

The Third Circuit departed from that consistent approach for public-disclosure laws by layering on its own unique "nexus" test and by looking beyond § 20507(i)'s text to other NVRA provisions irrelevant to disclosure. The Third Circuit erred by not applying the well-established informational injury framework applicable to FOIA and other public-disclosure laws.

CONCLUSION

For these reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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