No. 25-437

In the Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION,
Petitioner,

v.

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

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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

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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

After this Court's decision in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), lower courts have struggled with Article III standing in the context of informational injuries, as evidenced by the decision below. This Court should grant certiorari to clarify that the denial of access to public records confers Article III standing.

In this case, the Petitioner Public Interest Legal Foundation, a nonprofit dedicated to promoting election integrity, sued Michigan after it refused to produce voting records under Section 8(i) of the National Voter Registration Act ("NVRA"), which requires states to make those records available for public inspection. *See* 52 U.S.C. § 20507(i). Relying on

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[1] Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief, in whole or in part, and no person or entity other than amici contributed monetarily to its preparation or submission. Counsel of record for all parties received timely notice of amici's intention to file this brief.

TransUnion, the Sixth Circuit held that the Petitioner lacked Article III standing because it had not shown "specific downstream consequences" from the denial. *Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 632 (6th Cir. 2025). That decision was not only erroneous, but it is also part of a growing and harmful trend in which lower courts are misapplying *TransUnion* to allow government officials to unlawfully withhold public records without judicial review. *See Pub. Int. Legal Found. v. Schmidt*, 136 F.4th 456, 469 (3d Cir. 2025)

First, under the *TransUnion* framework, a plaintiff does not need to establish downstream harm from an intangible injury if that intangible injury has a close historical or common law analogue. But the denial of access to public records constitutes an injury with a strong historical pedigree and close common law analogue. The Sixth Circuit failed to conduct the appropriate historical analysis, however, and erred in requiring Petitioner to make an additional showing beyond the denial of records itself.

Second, the Sixth Circuit could have reached the right outcome by following this Court's binding precedent that already addresses standing under public disclosure statutes, like Section 8(i) of the NVRA. In *Federal Election Commission v. Akins*, 524 U.S. 11 (1998), and *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440 (1989), the Court held that those denied access to records under such statutes have standing solely by virtue of that denial. In its subsequent intangible injury standing cases, *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016), and *TransUnion*, this Court neither overruled nor narrowed *Akins* or

Public Citizen. To the contrary, this Court *reaffirmed* those cases. It expressly distinguished them as a separate category of cases addressing standing in the context of a statutory right to access information about the *government* and the injury-in-fact that flows to individual citizens, and to democracy itself, when government information Congress has deemed subject to disclosure is not disclosed. *TransUnion* and *Spokeo*, by contrast, address standing in the context of an individual's statutory right to access information about *himself* and the possible injury in fact that could flow when private entities publish information that is inaccurate or incorrectly formatted.

The Sixth Circuit's misinterpretation of *TransUnion* to deny Article III standing to seek records under the NVRA will have sweeping consequences, not only for voting rights but also the panoply of public records statutes in the United States Code. Statutes that create transparency into government records—often called "sunshine" laws—lie at the core of our Republic: An electorate informed enough to hold its representatives accountable is essential to a healthy, functioning democracy. But the electorate cannot be adequately informed without accessible public disclosure laws. Because it threatens to make such laws inaccessible, the decision below warrants this Court's review.

REASONS FOR GRANTING THE PETITION

I. This Court Should Clarify That the Right to Access Public Records Has a Strong Historical Pedigree and That the Denial of Access Confers Article III Standing

As this Court explained in *Spokeo* and reiterated in *TransUnion*, "[i]n determining whether an intangible harm constitutes injury in fact . . . it is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts. *Spokeo*, 578 U.S. at 340–41 (citing *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 775–777 (2000)); *TransUnion*, 594 U.S. at 424. History and tradition are "important" to the analysis because "the doctrine of standing derives from the case-or-controversy requirement, and because that requirement in turn is grounded in historical practice." *Spokeo*, 578 U.S. at 340−41. Indeed, this Court has "often said that history and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider." *Sprint Commc'ns Co. v. AAPC Servs., Inc.*, 554 U.S. 269, 274 (2008) (citing numerous cases).

Although the Sixth Circuit purported to apply *TransUnion* to the denial of public records access under the NVRA, it failed to conduct this historical inquiry. Had it done so, it would have discovered that public disclosure provisions, like the one Congress expressly provided for in the NVRA, are rooted in and akin to a longstanding common-law right recognized

in American jurisprudence—the right to access public records. "The existence of this right, which antedates the Constitution," is "beyond dispute." *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161 (3d Cir. 1993). It is "fundamental to a democratic state." *United States v. Mitchell*, 551 F.2d 1252, 1258 (D.C. Cir. 1976), *rev'd on other grounds*, *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589 (1978).

Nearly fifty years ago, this Court held: "It is clear that the courts of this country recognize a general right to inspect and copy public records and documents." *Nixon*, 435 at 597. Moreover. "[i]n contrast to the English practice, American decisions generally do not condition enforcement of this right on a proprietary interest in the document or a need for it as evidence in a lawsuit." *Id.*; *see also Wash. Legal Found. v. U.S. Sent'g Comm'n*, 89 F.3d 897, 903 (D.C. Cir. 1996) ("[J]udicial records are but a subset of the universe of documents to which the common law right applies") (citing *Nixon*, 435 U.S. at 597)). As this Court made clear in *Nixon*, "[t]he interest necessary to support the issuance of a writ compelling access has been found . . . in the citizen's desire to keep a watchful eye on the workings of public agencies" and in journalistic entities' "intention to publish information concerning the operation of government[.]" *Nixon*, 435 U.S. at 597–98 (citing cases).

Nixon's recognition of the right to access public records is supported by the Founders' emphasis on government transparency. As James Madison acknowledged, "[a] popular Government without popular information, or the means of acquiring it, is

but a Prologue to a Farce or a Tragedy: or perhaps both . . . A people who mean to be their own Governors, must arm themselves with the power which knowledge gives." Letter from James Madison to W.T. Barry (Aug. 4, 1822), *in* 9 The Writings of James Madison, 103 (G. Hunt ed., 1910). Thomas Jefferson's 1793 letter to President Washington is equally ardent about the critical need for public record sunshine: "[N]o ground of support for the Executive will ever be so sure as a complete knowledge of their proceedings by the people; and it is only in cases where the public good would be injured, and *because* it would be injured, that proceedings should be secret. In such cases it is the duty of the Executive to sacrifice their personal interests (which would be promoted by publicity) to the public interest." Letter from Thomas Jefferson to President George Washington (Dec. 3, 1793), in 12 The Papers of George Washington, 453 (D. Hoth ed., 2008)[2] (emphasis in original). And John Adams likewise insisted that "liberty cannot be preserved without a general knowledge among the people . . . they have a right, an indisputable, unalienable, indefeasible divine right to that most dreaded, and envied kind of knowledge, I mean of the characters and conduct of their rulers. . . . And the preservation of the means of knowledge, among the lowest ranks, is of more importance to the public, than all the property of all the rich men in the country." John Adams, *A Dissertation on the Canon & the Feudal*

[2] https://tinyurl.com/csrrt6z2

Law, No. 3 (Sep. 30, 1765), *in* 1 Papers of John Adams (R. Taylor ed., 1977).[3]

The Founders not only talked about the importance of a public informed of its government's operations; they implemented this value in our nation's fledgling institutions. They placed a disclosure mandate in United States Constitution: "Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy." U.S. CONST. art. I, § 5, cl. 3. They commanded that the President inform the public of the "State of the Union." U.S. CONST. art. II, § 3. Their debate on Article I, Section 5, Clause 3 evinced awareness that "the people [would] call for" records of proceedings (Oliver Ellsworth); they believed "the people [had] a right to know what their Agents are doing or have done" (James Wilson), and they thought "it would give a just alarm to the people to make a conclave of their Legislature" (George Mason). 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, Doc. 7 (M. Farrand ed. 1911) (J. Madison's Notes, May 31, 1787). And within a few years of the Constitution's ratification, they threw open the doors of the Senate to the public. *See* Kate Mollan, *Opening the Doors to Debate*, NATIONAL ARCHIVES: PIECES OF HISTORY (Apr. 29, 2015).[4]

The Founders' sentiments about maximum transparency (and concomitant accountability) are echoed in a substantial body of early cases

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[3] https://tinyurl.com/22emunyy

[4] https://tinyurl.com/mr3dhv7j

acknowledging a deeply rooted, American common-law right to access public records without a showing of special need. *See* Joe Regalia, *The Common Law Right to Information*, 18 RICH. J.L. & PUB. INT. 89, 97-100 (2015) (collecting cases).[5] Indeed, early state legislatures often modified the English common law right by enacting statutes that expanded public record access to any person without a showing of special need. Early American courts enforced the state legislatures' intent, reflecting their conceptualization of government records as a form of public property to which the state legislature could grant broad public access.

For example, in *Silver v. People ex rel. Whitmore*, 45 Ill. 224 (Ill. 1867), the Illinois Supreme Court held that the "legislature has the undoubted power to authorize any person it may see proper to have free access to [public] records . . . for such purpose as it may deem the public's interest to require." *Id.* at 226. Likewise, in *Hanson v. Eichstaedt*, 35 N.W. 30 (Wis. 1887), the Wisconsin Supreme Court held that a state law commanding the register of property records to "permit any person" to examine and copy such records meant what it said. *Id.* at 33. The court refused to

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[5] Cases surveyed by Professor Regalia include: *Hawes v. White*, 66 Me. 305, 306 (Me. 1876); *New Jersey ex rel. Ferry v. Williams*, 41 N.J.L. 332, 334-35 (N.J. 1879); *Brewer v. Watson*, 71 Ala. 299, 303-305 (Ala. 1882). *Minnesota ex rel. Cole v. Rachac*, 35 N.W. 7, 8 (Minn. 1887); *Boylan v. Warren*, 18 P. 174, 176 (Kan. 1888); *In re Caswell*, 29 A. 259, 259 (R.I. 1893); *Ex parte Drawbaugh*, 2 App. D.C. 404, 407 (D.C. Cir. 1894); *Indiana ex rel. Colescott v. King*, 57 N.E. 535, 537 (Ind. 1900); *Tennessee v. Williams*, 75 S.W. 948, 958 (Tenn. 1903); and *King v. King*, 168 P. 730, 731 (Wyo. 1917).

limit access to those having a specific interest in the record, concluding that imposing such a limitation "is a question for the legislature, and not for [the court]." *Id*. at 34. Because the legislature had granted a broad right of access to public records, the court's job was to implement the legislature's will.

Similarly, in *Burton v. Tuite*, 44 N.W. 282 (Mich. 1889), the Michigan Supreme Court held that a state law granting access to "to all persons having occasion to make examination of" county, city or town records "for any lawful purpose" expressly forbade the court from superimposing a requirement that the requestor prove a special need, concluding:

> I do not think that any common law ever obtained in this free government that would deny to the people thereof the right of free access to and public inspection of public records. *They have an interest always in such records*, and I know of no law, written or unwritten, that provides that, before an inspection or examination of a public record is made, the citizen who wishes to make it must show some special interest in such record.

Id. at 285 (emphasis added). By virtue of the statute granting access "to all persons," the legislature deemed such records "public property, for public use" and the custodians consequently had "no lawful authority to exclude any of the public from access to and examination and inspection thereof." *Id.*

II. This Court Should Clarify That *Akins* and *Public Citizen* Govern Article III Standing in the Context of Public Records Access

Although the Petitioner has Article III standing based on the historical analogue framework set forth in *Spokeo* and *TransUnion*, this Court's earlier decisions in *Akins* and *Public Citizen* compel the same outcome.

The Sixth Circuit failed to apply *Akins* and *Public Citizen* even though they govern Article III standing in the context of public records access. Instead, the court below adopted the Fifth Circuit's misinterpretation of those cases in *Campaign Legal Ctr. v. Scott*, 49 F.4th 931 (5th Cir. 2022). *See Benson*, 136 F.4th at 629–31. Neither the Sixth Circuit below nor the Fifth Circuit in *Scott* convincingly explained why *Public Citizen* and *Akins* did not govern their analysis of the NVRA's public disclosure provision. But the Court has never overruled or called into question these cases' continuing validity.

To the contrary, the Court reaffirmed them in *Spokeo*, 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. Nor did *TransUnion* cast doubt on *Public Citizen* or *Akins*, instead clearly setting them outside the scope of its ruling. The Court held that in *TransUnion*, unlike in those cases, the plaintiffs had neither been denied information nor sued under "public-disclosure or sunshine laws that entitle all members of the public to certain information." *TransUnion*, 594 U.S. at 441; *see also Laufer v. Naranda Hotels, LLC*, 60 F.4th 156, 170 (4th Cir. 2023) (noting that the Court in

TransUnion "distinguished *Public Citizen* and *Akins* without questioning their validity" and "in other recent decisions, both before and after *TransUnion* . . . treated [them] as good law"). The Petitioner, by contrast, has both been denied the records it requested and sued to obtain them under Section 8(i) of the NVRA, a public disclosure law.

Moreover, although *Public Citizen* and *Akins* preceded *Spokeo* and *TransUnion*, the Court's continued, express citation to *Public Citizen* and *Akins* unequivocally shows that they have not been overruled. Indeed, *Public Citizen* and *Akins* are perfectly harmonious with *Spokeo* and *TransUnion*. Denial of access to government records—especially those that Congress has declared must be disclosed—is inherently and deeply harmful to individual citizens and to the Republic, as demonstrated by the deeply rooted common-law right to access public records. *Spokeo* and *TransUnion*, by contrast, address standing to vindicate a possible *reputational* harm flowing from the publication, by *private* defendants, of inaccurate information, or information published in the wrong format. These reputational harms are not self-evident, and *Spokeo* and *TransUnion* merely confirm that a plaintiff seeking to vindicate reputational harm must show that such harm was in fact suffered.

Akins and *Public Citizen* are thus binding authority that cannot be disregarded when governments deny access to public information that Congress has declared must be disclosed. These two decisions established that the denial of a party's right to government information, deemed by Congress to be

disclosable to him, constitutes an injury in fact sufficient for standing. *See Pub. Citizen*, 491 U.S. at 449; *Akins*, 524 U.S. at 24. Indeed, the Fifth Circuit acknowledged that *Akins* and *Public Citizen* stood for the proposition that "government refusals to compel disclosures of information arguably required by law constitute[] a concrete Article III injury." *Scott*, 49 F.4th at 938; *see also Pub. Int. Legal Found. v. Schmidt*, 136 F.4th 456, 464 (3d Cir. 2025) (acknowledging that standing is met when "public availability of information is itself the interest that Congress seeks to protect under such statutes"). The Fifth Circuit, whose analysis on this point the Sixth Circuit relied on, instead attempted to recharacterize and restrict *Akins* and *Public Citizen,* in light of *TransUnion,* to require downstream consequences

But in *Public Citizen*, this Court held that "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," noting that its FOIA decisions had "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. And in *Akins*, the Court held that the voters had standing to challenge the FEC's refusal to disclose information deemed disclosable by Congress under the FEC Act. The voters were not pursuing a "generalized grievance" but a "concrete, though widely shared" injury, analogous to a mass tort *Akins*, 524 U.S. at 23-24; *see also id.* at 22 ("a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute") (citing *Pub. Citizen*, 491 U.S.

at 449). *Akins* further observed that when the injury "relate[s] to voting, the most basic of political rights," the "fact that it is widely shared does not deprive Congress of constitutional power to authorize its vindication in the federal courts." *Id*. at 24-24.

The Fifth and Sixth Circuits got standing wrong because they failed to address, let alone apply, the Court's explicit holdings that denial of records requested under a public disclosure statute is itself a sufficiently concrete injury for standing.

III. The Decision Below Has Far-Reaching Implications for Election Integrity and Government Transparency

The Fifth and Sixth Circuits' erroneous interpretation of standing under public disclosure laws like Section 8(i) not only denigrates the interest of the public in transparent, accountable government but threatens the character of our democracy itself. The Court has long considered voting "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).

Congress passed the NVRA in 1993 to safeguard the democratic process and improve registration procedures. According to the NVRA's statutory findings and purpose, Congress sought to accomplish several goals, including "to protect the integrity of the electoral process" and "ensure that accurate and

current voter registration rolls are maintained." 52 U.S.C. § 20501(b). As the First Circuit recently explained, the inclusion of Section 8(i) "evinces Congress's belief that public inspection, and thus public release, of [voter list] data is necessary to accomplish the objectives behind the NVRA, including "protect[ing] the integrity of the electoral process" by" namely, "to identify[ing], address[ing], and fix[ing] irregularities in states' voter rolls." *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 54 (1st Cir. 2024). The Fourth Circuit likewise stated that "disclosure will assist the identification of both error and fraud in the preparation and maintenance of voter rolls" and warned against "reject[ing] a legislative effort so germane to the integrity of federal elections." *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 339–40 (4th Cir. 2012). "Without such transparency," it cautioned, "public confidence in the essential workings of democracy will suffer." *Id.* at 340.

The common-law right of access to public records is both birthright and safeguard of a free and self-governing people. By exposing governments to public scrutiny, it ensures that they remain competent and accountable to those they serve. Congress enacted Section 8(i) of the NVRA to ensure this right's application to the keystone of our democratic system—voting. *See Akins*, 524 U.S. at 24–25 (describing voting as "the most basic of political rights"). As Congress intended, robust private enforcement of Section 8(i) advances the critical interests of protecting election integrity and public trust in elections. *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 v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008) ("[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.").

Spokeo and Transunion addressed standing for private reputational harms caused by inaccurate or wrongly formatted information published by private parties. They did not address harm caused by denial of access to government records that Congress has declared must be disclosed. Applying *Spokeo* and *TransUnion* rather than *Akins* and *Public Citizen*, as the Sixth Circuit did, is a dangerous mistake. It turns on its head our nation's long tradition of empowering the people to ensure government transparency and accountability and, in so doing, threatens the health of our democracy.

CONCLUSION

For these reasons, this Court should grant the petition for the writ of certiorari.

Respectfully submitted,

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