No. 25-437

IN THE

Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION, INC.,
Petitioner,

v.

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

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

REPLY BRIEF FOR PETITIONER

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The Petition presents important questions about what Congress required of states when it passed the National Voter Registration Act (NVRA) in 1993. It is an open question what states must do to prevent dead registrants from staying on voter rolls and when states must provide information Congress designated as public.

The Secretary's response to the first question is that what Congress required is not important. The ambiguity of the status quo is naturally appealing to a state. As to the second question, the Secretary responds that her "one-time failure to timely provide voter list-maintenance records," (Response at 39 n.8) is not the right vehicle for the court to address standing for denial of public records. This would allow states to ignore the law once before complying with the law.

Forty-four states and the District of Columbia are subject to the NVRA's list maintenance obligations. The lower court's decision in this case may impact all of them. Likewise, the lower court's standing analysis is far-reaching, as is evidenced by various courts grappling with its impact. The Court's guidance is needed.

I. Reasonable List Maintenance Requires a Clear, Objective Standard.

Congress mandated that *Michigan* make a "reasonable effort to remove the names of ineligible voters" that are deceased. 52 U.S.C. § 20507(a)(4). The Secretary flips that mandate on its head, focusing on whether *the Foundation*, a nonprofit entity that identified tens of thousands of deceased registrants on Michigan's voter roll, provided sufficient substantiation to her liking. (Response at 4.)

A. The Question of Whether the Secretary's Efforts Are Reasonable Is Fact Intensive.

The Secretary presents the Foundation's work as unreliable. Her rendition of the facts not only demonstrates the live factual questions present in the case but also shows a transference of responsibility.

The Foundation expended significant resources to evaluate a portion of Michigan's voter roll and found at least 27,000 likely deceased registrants with an active registration. (*See* Pet.App. 9a.) The Foundation shared its findings with the Secretary and requested to meet to discuss further. (*See* Pet. App. 49a-52a.) The Secretary did not meet with the Foundation or engage in a meaningful discussion about its work. Instead, the Secretary decided on its own that the Foundation's claims were "dubious." (Response at 18.)

The Secretary's Response is replete with disputed factual questions that were not adjudicated by the lower court. For example, the Secretary claims that her experts were not able to "verify Petitioner's methods or replicate its results." (Response at 4.) There is no evidence that the Secretary's experts even tried to discern how many deceased registrants were on the voter roll.

The Secretary provided no evidence that a single person on the Foundation's list of likely deceased registrants is alive. The Secretary's own analysis as to the status of registrants identified by the Foundation confirms that many have now been removed or marked as "challenged," (Response at 21), which logically serves to validate—rather than contradict—the Foundation's assertion that the registrant is not alive.

Even as to the registrants on the Foundation's list that the Secretary *eventually* removed, the belated removal provides an additional reason why a genuine issue of material fact exists. The Foundation's expert determined the average number of days between when the registrant was marked as deceased on the voter roll and the listed date of death is 1,940, which is over 5 years. (Decl., R. 168-4, Page ID # 3464.) A five-year delay is not "reasonable" under any interpretation of the word.

Regardless, the numbers are the numbers, and at worst, a genuine issue of material fact exists regarding how many tens of thousands of dead registrants are on the voter rolls, how long they have been dead on the rolls, and the adequacy of the Secretary's response. These are factual disputes lying at the heart of the list maintenance provisions of the NVRA.

The Secretary's focus on the Foundation's efforts serves to highlight the problem the Petition raises: the lower court granted the Secretary summary judgment despite disputes of material fact.

B. The Lower Court's Standard Does Not Treat "Reasonable Effort" As a Fact-Intensive Inquiry.

That the question of reasonableness is fact intensive is demonstrated in the sheer length of the Secretary's factual recitations. (Response at 6-24.) Of course, aspirational procedures and statutes do not resolve the question of whether efforts are reasonable.

Further, the Secretary's recitation of procedures and statutes demonstrates another genuine issue of material fact: is the Secretary following Michigan

statutes? The lower courts do not materially address this question.

It is undisputed that Michigan law requires the Secretary to "'develop and utilize a process by which information obtained through the United States Social Security Administration's death master file that is used to cancel an operator's or chauffeur's license … of a deceased resident of this state is also used at least once a month to update the qualified voter file.'" (Response at 9) (quoting Mich. Comp. Laws § 168.509o(4)). The Secretary states that the Social Security Administration reports "are compared weekly to the list of active drivers in Michigan…." (Response at 13.) Changes to the list of active drivers are later reconciled with the voter roll. (Response at 13-14.) The list of drivers and the list of registrants are not the same. The Secretary concedes that "not every voter has a driver's license or state ID." (Response at 15.) Yet the Secretary compares the Social Security Administration reports to the list of drivers. The NVRA requires Michigan to maintain the *voter file* not the *driver's license* file. The lower court found Michigan's program was reasonable as a matter of law, despite what is required by Michigan law and evidence of the opposite being the industry standard.

Other disputed issues of material fact remain. The question of reasonableness is fact intensive and requires factual findings by the bench. That is exactly what happened in the other appellate court relied upon by the lower court and the Secretary: *Bellitto v. Snipes*, 935 F.3d 1192, 1197 (11th Cir. 2019) (the appellate court "review[ed] for clear error factual findings made by a district court after a bench trial … a highly deferential standard of review.").

The Petition squarely presents the important question of whether "reasonable effort" is a factual question.

C. What Constitutes "Reasonable Effort" Is an Important Question with Wide-Reaching Effects.

The Secretary downplays the importance of the questions presented in the Petition and the effects of the lower court's decision. (Response at 30-32.) This case and *Bellitto* are hardly the only cases where the NVRA's "reasonable effort" requirement has been raised. For example, the reasonableness of list maintenance efforts was raised in the following cases:

1. *United States v. Missouri*, No. 2:05-cv-04391 (W.D. Mo., filed Nov. 22, 2005);
2. *Am. Civ. Rights Union v. Jefferson Davis Cnty.*, No. 2:13-cv-00087 (S.D. Miss., filed Apr. 26, 2013);
3. *Am. Civ. Rights Union v. Martinez-Rivera*, No. 2:14-cv-00026-AM (W.D. Tex., filed Mar. 27, 2014);
4. *Am. Civ. Rights Union v. Clarke Cnty.*, No. 2:15-cv-00101 (S.D. Miss., filed July 27, 2015);
5. *Am. Civ. Rights Union v. Rodriguez*, No. 7:16-cv-00103 (S.D. Tex., filed Mar. 4, 2016);
6. *Voter Integrity Project NC v. Wake Cnty. Bd. of Elections*, No. 5:16-cv-00683 (E.D. N.C., filed July 18, 2016);
7. *Pub. Int. Legal Found. v. Winfrey*, No. 2:19-cv-13638 (E.D. Mich., filed Dec. 10, 2019);
8. *Pub. Int. Legal Found. v. Voye*, No. 2:20-cv-00279 (W.D. Pa., filed Feb. 24, 2020);

9. *Pub. Int. Legal Found.n v. Boockvar*, No. 1:20-cv-01905 (M.D. Pa., filed Oct. 15, 2020); and,
10. *Republican Nat'l Comm. v. Benson*, No. 1:24-cv-00262 (W.D. Mich., filed Mar. 13, 2024).

More cases are likely to come. This Court's guidance is needed, and this case is the right vehicle for it.

II. The Lower Court Applied the Wrong Standard for Denial of Public Records.

As this Court explained in *TransUnion*, "[t]he plaintiffs did not allege that they failed to receive any required information. They argued only that they received it *in the wrong format*. Therefore, *Akins* and *Public Citizen* do not control here." *TransUnion v. Ramirez*, 594 U.S. 413, 441 (2021). The Petition involves the *denial* of public records, precisely the circumstance where *FEC v. Akins*, 524 U.S. 11 (1998), and *Pub. Citizen v. United States Dep't of Just.*, 491 U.S. 440 (1989), do control.

The Secretary contends that it is unclear if *TransUnion*'s "passing reference to public disclosure laws could override the Court's more forceful statements regarding informational injuries and standing." (Response at 37.) In so doing, the Secretary tacitly confirms the need for the Court's guidance here.

The Secretary seeks to distance this case from *Public Citizen* and *Akins* by noting that neither case involved the NVRA. (Response at 35.) *Public Citizen* involved the Federal Advisory Committee Act (FACA), 491 U.S. at 443, and *Akins* involved the Federal Election Campaign Act, 524 U.S at 13. The NVRA's Public Disclosure Provision parallels both of those laws in that it is an important public records

requirement within a law that concerns more than just public records. As the Court said in *Public Citizen*, "Our decisions interpreting the Freedom of Information Act [FOIA] have never suggested that those requesting information under it need show more than that they sought and were denied specific agency records," *Pub. Citizen*, 491 U.S. at 449, and even though the case did not involve FOIA, "[t]here is no reason for a different rule here," *id.* "As when an agency denies requests for information under [FOIA], refusal to permit appellants to scrutinize the ABA Committee's activities to the extent FACA allows constitutes a sufficiently distinct injury to provide standing to sue." *Id.* The same applies to the denial of public records subject to the NVRA's Public Disclosure Provision.

The Secretary contends that *TransUnion* was a "landmark decision" that has been cited by courts often. (Response at 35.) Yet as to the Foundation's point that some courts continue to evaluate the Foundation's injury under *Public Citizen* and *Akins*, the Secretary's response is merely that those cases have not "yet been reviewed by the circuit courts of appeals." (Response at 38.)[1]

Following the filing of the Petition, additional courts have grappled with the impact of the lower court's opinion. *See Pub. Int. Legal Found., Inc. v.*

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[1] The Secretary notes that one case is pending before the United States Court of Appeals for the Seventh Circuit and that "no appeal appears to have been taken in the Minnesota case." (Response at 38.) The Minnesota case is on appeal before the United States Court of Appeals for the Eighth Circuit. *See Pub. Int. Legal Found., Inc. v. Simon*, 774 F. Supp. 3d 1037 (D. Minn. 2025), *appeal docketed*, No.25-1703 (8th Cir. Apr. 10, 2025).

Fontes, No. CV-25-02722-PHX-MTL, 2026 U.S. Dist. LEXIS 3422 at *11-12 (D. Ariz. Jan. 5, 2026) (finding that "the Foundation here pleads downstream consequences with more particularity than it did in *Secretary of Pennsylvania* and *Benson*"); *Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068 (10th Cir. 2025); *Lyman v. Henderson*, No. 4:25-cv-00069-DN-PK, 2026 U.S. Dist. LEXIS 8626 (D. Utah Jan. 14, 2026); *Pub. Int. Legal Found., Inc. v. Wooten*, No. 25-1128, 2026 U.S. App. LEXIS 1210 at *5 (4th Cir. Jan. 16, 2026).

CONCLUSION

This case is the right vehicle for this Court to provide much needed guidance on what constitutes reasonable list maintenance and who has standing to redress the denial of public records.

Respectfully submitted,

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