No.

IN THE

Supreme Court of the United States

PUBLIC INTEREST LEGAL FOUNDATION, INC.,
Petitioner,

v.

SCOTT T. NAGO, in his official capacity as Chief Election Officer for the State of Hawaii,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress enacted the National Voter Registration Act of 1993 ("NVRA") in part 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)(3)-(4). To promote transparency and accountability in voter list maintenance, Congress required states make available to the public "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 52 U.S.C. § 20507(i)(1).

The Ninth Circuit departed from the NVRA's text and knowingly created a conflict with the First and the Tenth Circuits. Before the decision below, almost every court held that a statewide list of registered voters is a record within the NVRA's scope. After the Ninth Circuit's decision, the statewide list of registered voters is public in some places and private in others. Rights under the NVRA now depend on where someone lives.

The question presented is:

Whether a statewide list of registered voters is a "record[] concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" under 52 U.S.C. § 20507(i)(1).

LIST OF PARTIES

Pursuant to Rule 14.1(b) of the Rules of this Court, Petitioner states that the parties to the proceedings in the court whose judgment is sought to be reviewed are:

Petitioner:

Public Interest Legal Foundation, Inc.

Respondent:

Scott T. Nago, in his official capacity as Chief Election Officer for the State of Hawaii.

CORPORATE DISCLOSURE STATEMENT

The Public Interest Legal Foundation, Inc., has no parent corporation and no publicly held company owns 10 percent or more of its stock.

STATEMENT OF RELATED CASES

Public Interest Legal Foundation, Inc. v. Nago, No. 24-6629 (9th Cir. Apr. 28, 2026)

Public Interest Legal Foundation, Inc. v. Nago, No. 23-00389 LEK-WRP (D. Haw. June 28, 2024)

Public Interest Legal Foundation, Inc. v. Nago, No. 23-00389 LEK-WRP (D. Haw. Oct. 29, 2024)

TABLE OF CONTENTS

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutions and Statutes

Other Authorities

PETITION FOR WRIT OF CERTIORARI

The Public Interest Legal Foundation, Inc. ("Foundation") petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the panel of the court of appeals (Pet.App.1a) is reported at *Pub. Int. Legal Found., Inc. v. Nago*, 174 F.4th 664 (9th Cir. 2026). The opinions of the district court (Pet.App.40a; Pet.App.64a) are reported at *Pub. Int. Legal Found., Inc. v. Nago*, No. 23-00389 LEK WRP, 2024 U.S. Dist. LEXIS 114250 (D. Haw. June 28, 2024) and *Pub. Int. Legal Found., Inc. v. Nago*, No. 23-00389 LEK-WRP, 2024 U.S. Dist. LEXIS 196619 (D. Haw. Oct. 29, 2024).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The National Voter Registration Act provides in pertinent part:

> Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of

> eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

52 U.S.C. § 20507(i)(1).

STATEMENT OF THE CASE

Congress decided that the public should have access to "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 52 U.S.C. 20507(i)(1) (hereinafter, "public disclosure provision"). The Ninth Circuit ignored the statute's text and thwarted Congress's objectives by deciding that "all records" does not include the record reflecting the result and efficacy of a state's list maintenance activities.

Congress recognized that the right to vote is "fundamental" and that "discriminatory and unfair registration laws" damage voter participation, particularly participation by "racial minorities." 52 U.S.C. § 20501(a)(1), (3). The NVRA's "purposes" reflect these findings. With the NVRA, Congress intended to "increase the number of eligible citizens who register to vote," "enhance[] the participation of eligible citizens as voters," "protect the integrity of the electoral process," and "ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(1)-(4). To accomplish those objectives, Congress commanded that states ensure all eligible applicants are registered to vote, imposed voter list maintenance obligations on states, and required broad public disclosure of records concerning the implementation of those activities.

Congress later enacted the Help America Vote Act ("HAVA"), which requires every state to maintain a centralized statewide list of registered voters that serves as the official statewide repository of voter registration information. 52 U.S.C. § 21083(a)(1)(A).

The public disclosure provision serves critical transparency, oversight, and accountability functions. Congress knew that voter list maintenance programs could be abused or discriminatorily implemented. Congress knew mistakes could be made. Public oversight ensures lawful election administration and safeguards the right to vote. The Ninth Circuit's decision allows the government to hide mistakes, malfeasance, and even discrimination.

Petitioner Public Interest Legal Foundation ("the Foundation") requested Hawaii's statewide list of registered voters from Respondent Nago, the HAVA-mandated custodian of the list. He refused and instructed the Foundation to go to every county in Hawaii and collect county-level portions. Congress mandated a statewide list of registered voters and made it a public record to prevent this kind of concealment, deflection, and fool's errand.

The Foundation sued Hawaii under the NVRA's private right of action. 52 U.S.C. § 20510(b). The district court dismissed the action on ripeness grounds. (Pet.App.29a).

The Ninth Circuit reversed on standing and ripeness, correctly holding that denial of records requested under the NVRA constitutes a cognizable injury under *Pub. Citizen v. U.S. Dep't of Just.*, 491

U.S. 440 (1989) and *FEC v. Akins*, 524 U.S. 11 (1998). (Pet.App.1a).

Nevertheless, the Ninth Circuit affirmed dismissal on the merits, an issue the District Court never reached, holding that statewide lists of registered voters are not "records concerning the implementation" of list maintenance activities under Section 20507(i)(1). (Pet.App.35a).

The Ninth Circuit intentionally broke with other Circuit Court precedent regarding the scope of records covered by Section 20507(i)(1). It reasoned that voter lists are merely the "object" of list maintenance activities rather than records concerning those activities and, as such, are not subject to public disclosure. (Pet.App.36a-37a).

This case is important because it concerns unequal nationwide access to a law designed to protect voting rights. It is also an ideal vehicle for resolving the question presented because it squarely presents a purely legal issue: whether the NVRA's public disclosure provision encompasses statewide lists of registered voters. The issue was fully litigated below, the relevant facts are undisputed, and resolution of this question will provide much-needed guidance to states and lower courts concerning the scope of the NVRA's disclosure requirements.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit's Decision Conflicts with the NVRA's Text, Purpose, and Structure.

The Ninth Circuit's decision cannot be reconciled with the NVRA's text or structure, or Congress's intent.

A. The Ninth Circuit's Decision Conflicts with the NVRA's Text.

The Ninth Circuit's interpretation disregards the NVRA's plain text.

By enacting the NVRA, Congress required states to disclose "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 52 U.S.C. § 20507(i)(1).

This Court has repeatedly emphasized that the proper starting point for statutory interpretation is the text Congress enacted. Indeed, the Court has explained that its role is to "apply faithfully the law Congress has written." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017). Thus, the inquiry "begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). As the Court has further recognized, courts must "presume that [the] legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Those settled principles point to the same conclusion here: the operative terms of the NVRA's public disclosure provision are intentionally broad.

First, Congress required disclosure of "*all* records." 52 U.S.C. § 20507(i)(1) (emphasis added). The Fourth Circuit explained, "[T]he use of the word 'all' [as a modifier] suggests an expansive meaning because 'all' is a term of great breadth." *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 336 (4th Cir. 2012) (internal citations omitted).

All means all.

The statute does not limit disclosure to selected categories of records or records documenting only isolated procedural steps. And for good reason. Prior to the NVRA's enactment, there were virtually no federally mandated voter list maintenance requirements. Congress was tasked with drafting a public records tool to capture the activities and records of forty-four different states and the District of Columbia.[1] It would have been an absurd exercise for Congress to enumerate all relevant records, or even relevant categories of records. Instead, Congress followed the most prudent path by drafting broad language that covers "all" records related to voter list maintenance programs and activities.

There is nothing inherently suspect about a broadly written statute. And "the fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) (citations and quotations omitted).

When Congress said "all," it meant "all."

Second, Congress qualified "all records" with broad language. Records are subject to disclosure if they simply "concern" the implementation of voter list maintenance activities. 52 U.S.C. § 20507(i)(1).

"Concern" is a broad relational term meaning "to relate to" or "be about." *See* Concern, Merriam-Webster Online Dictionary, https://www.merriam-

[1] Six States (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming) are exempt from the NVRA. *Civil Rights Division*, THE NATIONAL VOTER REGISTRATION ACT OF 1993 (NVRA), https://www.justice.gov/crt/national-voter-registration-act-1993-nvra (last visited July 15, 2026).

webster.com/dictionary/concern (last visited July 15, 2026). Accordingly, the First Circuit explained that "the term 'concerning' used 'in a legal context generally has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject.'" *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 47 (1st Cir. 2024) (internal citations omitted). Conversely, the Ninth Circuit applied a narrowing construction, placing limits on Congress's words contrary to their plain meaning.

By its creation and function, the statewide list of registered voters plainly "concerns" the implementation of voter list maintenance activities. The Ninth Circuit acknowledged the statewide list of registered voters is the "object[]" of implemented programs. (Pet.App.36a). But the Ninth Circuit did not take the next logical step to find that as the "object" of list maintenance programs, it is the reflection and end product of all list maintenance programs and activities. The "object" of activities "concerns" those activities in every sense of the word.

States conduct voter list maintenance programs precisely to determine who belongs and who does not belong on the voter rolls. The statewide list of registered voters exists only because election officials implement registration, removal, verification, confirmation, and maintenance procedures. It necessarily follows that the resulting statewide list of registered voters relates to, or concerns, every implementation decision made during those processes. Like a finished car "concerns" the implementation of production activities, the registration list "concerns" the implementation of list maintenance activities. *See Bellows*, 92 F.4th at 47; *see also Pub. Interest Legal Found. v. Matthews*, 589 F. Supp. 3d 932, 942 (C.D. Ill. 2022).

The Ninth Circuit improperly divorces the statewide list of registered voters from the very activities that produce and maintain the list.

The Ninth Circuit interpreted "implementation" to be a limiting word that excludes the registration list from the statute's plain text. Under that interpretation, the NVRA reaches only records that "describe measures to maintain the accuracy and currency of voter lists." (Pet.App.31a). But that distinction appears nowhere in the statutory text, and it is again contrary to the plain meaning of the statute's words. "Implement" means "carry out"[2] and, as addressed earlier, "concerning" means "related to." Accordingly, "all records" that merely relate to carrying out voter list maintenance activities are covered. The registration list, as the end product of all voter list maintenance activities, "relates to" the "carrying out" of programs and activities and is therefore within the NVRA's scope.

Although the statewide list of registered voters is the product of completed list maintenance activities, it also plays a central role in the implementation of all future voter lists. Each successive round of list maintenance begins with the existing voter roll, which election officials use to identify records for verification, correction, or removal. The voter roll therefore concerns not only the outcome of list

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[2] *See* Implement, https://www.merriam-webster.com/dictionary/implement (last visited July 15, 2026); *see also Project Vote/Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697, 707 (E.D. Va. 2010) (discussing "implementation").

maintenance but also the ongoing implementation of the programs governed by the NVRA.

Why did Congress include "implementation" in the statute's text? Because without it, the statute may have a drastically different meaning. Records that "concern programs and activities" could be read to capture records related only to the programs and activities themselves. Responsive records might include copies of statutes and regulations. Those things go through lawmakers and other elected officials. Those things are inherently visible. Those are not the records that Congress was concerned about. Congress was concerned with the "implementation" of the law. The things the public often cannot see. The mistakes, errors, and discrimination. The activities that decide whether someone gets to vote or is disenfranchised. The registration list is what ultimately determines voting rights. It concerns "implementation" of the very activities Congress was concerned with.

This Court has repeatedly instructed that when a statute is clear and unambiguous, like here, the Court's analysis starts and ends with the words of the statute. *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461–62 (2002) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.") (internal citations omitted).

By placing limitations where Congress was intentionally broad, the Ninth Circuit defied Congress's plain language and clear directives.

B. The Ninth Circuit's Decision Conflicts with the NVRA's Statutory Purpose.

The Ninth Circuit's interpretation also conflicts with the statutory structure and Congress's purpose in enacting the NVRA.

Congress enacted the NVRA to accomplish several complementary purposes: increasing voter registration, protecting the integrity of elections, and ensuring accurate and current voter rolls. 52 U.S.C. § 20501(b)(1)-(4).

The public disclosure provision serves all of these purposes.

"Congress was well aware of the 'long history of … list cleaning mechanisms which have been used to violate the basic rights of citizens' when it enacted the NVRA." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 807 (2018) (Sotomayor, J., dissenting) (internal citation omitted). The NVRA's legislative history indicates that Congress intended to "reduce … obstacles to voting to the absolute minimum while maintaining the integrity of the electoral process." H.R. Rep. No. 103-9 at 3 (1993). Congress thus intended to address problems through the NVRA, and the NVRA's findings and purposes reflect this goal.

Lower courts have complied with Congress's text. The First Circuit recognized that the role of the court is to determine whether the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Bellows*, 92 F.4th at 55 (internal citation omitted) (emphasis in original). The First Circuit explained that even if a state statute furthers one of the NVRA's stated objectives, it can nonetheless "create[] an obstacle to the accomplishment and execution of the full purposes and objectives of Congress as stated in 52 U.S.C. § 20501(b)(1)-(4).” *Id.* (emphasis in original).

The First Circuit correctly interpreted the NVRA, and so did the Fourth Circuit.

In *Project Vote/Voting for America, Inc. v. Long*, the Fourth Circuit recognized that the NVRA's disclosure mandate “embodies Congress's conviction that Americans who are eligible under law to vote have every right to exercise their franchise, a right that must not be sacrificed to administrative chicanery, oversights, or inefficiencies.” 682 F.3d at 334–35. The Fourth Circuit went on to find, “[i]t is self-evident [sic] that disclosure will assist the identification of both error and fraud in the preparation and maintenance of voter rolls.” *Id.* at 339. Upon these principles, the Fourth Circuit held that copies of completed voter registration forms are subject to public inspection under the NVRA.

The Tenth Circuit also correctly interpreted the NVRA in *Voter Reference Found., LLC v. Torrez.* It found that limitations on disclosing the statewide list of registered voters conflict with Congress’s purpose. The *Torrez* Court said that “making voter data unavailable for close public scrutiny disrupts the purpose and intended effects of the NVRA.” 160 F.4th 1068, 1082 (10th Cir. 2025).

Congress’s intent is clear. Congress made “all records” subject to public inspection because transparency leads to accountability. It allows the public to check election officials’ work. It roots out mistakes, errors, and discrimination. It increases registration and keeps voter lists accurate. Public confidence in our elections increases.

Congress used sweeping language "convey[ing] Congress's intention that the public should be monitoring the state of the voter rolls and the adequacy of election officials' list maintenance programs." *Bellitto v. Snipes*, No. 16-cv-61474, 2018 U.S. Dist. LEXIS 103617, at **12–13 (S.D. Fla. Mar. 30, 2018), *aff'd*, 935 F.3d 1192 (11th Cir. 2019).

The NVRA is not a "take our word for it" statute. Secrecy frustrates Congress's intent.

The Senate Report accompanying the NVRA confirms the importance of public oversight. Congress warned that voter list maintenance programs "can be abused" and that "[a]buses may be found in the design of a program as well as in its implementation." S. Rep. No. 103-6, at 32 (1993). "In other words, critical scrutiny and public audits of voter data were envisioned by Congress in passing the NVRA." *Torrez*, 160 F.4th at 1082.

Public access to statewide lists of registered voters is indispensable for detecting such errors. There is no way to know if a state is fulfilling Congress's statutory purpose in "ensur[ing] that accurate and current voter registration rolls are maintained," 52 U.S.C. § 20501(b)(4), if the voter registration roll itself is not subject to disclosure. Even knowing who is registered and who is denied registration relies on the list. *Project Vote*, 682 F.3d at 335.

Under the Ninth Circuit's interpretation of the NVRA, the public could see the statewide voter registration list inputs but never see the outputs. The public could never see whether the final statewide list of registered voters was accurate or infested with error. *See Matthews*, 589 F. Supp. 3d at 941 (describing a math equation exemplar).

In other words, under the Ninth Circuit's decision, the public could never confirm that the state's programs were functioning properly, effectively, or lawfully. The public is prohibited from learning whether the statewide list of registered voters incorporates all the qualified applicants and none of the unqualified applicants.

Accordingly, the Ninth Circuit's decision defeats Congress's statutory purpose of ensuring transparency and accountability in election administration. Congress intended maintenance of statewide lists of registered voters to be transparent because oversight and accountability safeguard the right to vote.

The statewide list of registered voters is the record most necessary for meaningful oversight. The Ninth Circuit's decision shields that record from public review.

C. The Ninth Circuit's Decision Conflicts with the NVRA's Structure.

The structure of the NVRA demonstrates and reinforces the broadness of the public disclosure provision. Congress expressly considered exceptions to the broad public disclosure mandate and chose to only include two: records that relate to (1) "a declination to register to vote" and (2) "the identity of a voter registration agency through which any particular voter is registered." 52 U.S.C. § 20507(i)(1).

II. The Ninth Circuit's Decision is Incorrect and Conflicts with Other Courts.

The Ninth Circuit's decision is contrary to decisions in both the First Circuit and Tenth Circuit along with many District Courts across the country.

A. The Ninth Circuit Knowingly Created a Circuit Split with the First Circuit.

By imposing limitations in public disclosure where Congress intended broad application, the Ninth Circuit recognized that it was breaking with the First Circuit. (Pet.App.35a-37a). This circuit split has wide-reaching implications. A state in the Ninth Circuit can conceal sloppy and discriminatory voter list maintenance practices while a state in the First Circuit is subject to transparency. Voters now have different federal rights depending on where they live.

Analyzing the same text, the Ninth Circuit reached the opposite conclusion from the First Circuit in *Bellows*.

The First Circuit correctly concluded that Maine's statewide list of registered voters was subject to disclosure under the NVRA's public disclosure provision. *Bellows*, 92 F.4th at 45–49. The First Circuit correctly found that the term "concerning," "has a broadening effect," and "for Section 8(i)(1) to encompass the Voter File, the Voter File must relate to the carrying out of Maine's voter list registration and maintenance activities." *Id.* at 47.

Under that reasoning, the First Circuit held that because Maine's statewide list of registered voters was the "output and end product" of Maine's voter list registration and maintenance activities, it "plainly relates to the carrying out" of those activities. *Id.* The First Circuit correctly observed that reaching the opposite conclusion "adds limitations to Section 8(i)(1) where Congress did not" and that a "narrow construction of Section 8(i)(1) overlooks the sweeping language that Congress adopted." *Id.* at 48.

With little explanation, the Ninth Circuit concluded that the First Circuit's reading of the statute was "inconsistent with the statutory text and structure." Pet.App.36a. It then erroneously distinguished between records concerning the implementation of list-maintenance programs and the statewide list of registered voters itself, characterizing the latter as merely an "object[]" of those programs. Pet.App.36a.

The Ninth Circuit's wild divergence from the First Circuit's reasoning demonstrates a need for this Court to resolve the split in statutory interpretation.

B. The Ninth Circuit's Decision Conflicts with Many Other Courts.

The Ninth Circuit's decision conflicts with the reasoning and holdings of many other courts that recognized lists of registered voters fall within the NVRA's broad public disclosure mandate.

In a footnote, the Ninth Circuit acknowledged that a Tenth Circuit decision, *Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068 (10th Cir. 2025), aligned itself with *Bellows* and found that the statewide list of registered voters was included in the public disclosure provision. (Pet.App.37a, n.12). The Tenth Circuit explained, "making voter data unavailable for close public scrutiny disrupts the purpose and intended effects of the NVRA." *Torrez*, 160 F.4th at 1082.

The Fourth Circuit's opinion in *Project Vote* is also irreconcilable with the Ninth Circuit's decision.

Project Vote involved a dispute over completed voter registration applications, not the voter registration list itself. But because the statewide list of registered voters is a compilation of individual applications, it makes little sense to conclude one is subject to disclosure, but not the other.

That's why the United States District Court in Maryland relied on *Project Vote* when it ruled that a county registration list is subject to the disclosure under the NVRA. The court even acknowledged the absurdity of a contrary ruling. Accepting the Ninth Circuit's interpretation of the NVRA and finding that completed applications are subject to disclosure but not the list would "be tantamount to requiring [someone] to make thousands of separate requests. Neither the NVRA, the Court, nor common sense can abide such a purposeless obstruction." *Judicial Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425, 441 (D. Md. 2019).

The Fourth Circuit also emphasized the expansive nature of the NVRA's public disclosure provision and recognized Congress's strong interest in public oversight of voter list maintenance activities. As the Court explained, "State officials labor under a duty of accountability to the public in ensuring that voter lists include eligible voters and exclude ineligible ones in the most accurate manner possible. Without such transparency, public confidence in the essential workings of democracy will suffer." *Project Vote*, 682 F.3d at 339. The Fourth Circuit again emphasized that, "Public disclosure promotes transparency in the voting process, and courts should be loath to reject a legislative effort so germane to the integrity of federal elections." *Project Vote*, 682 F.3d at 339–40. The Ninth Circuit ruling, on the other hand, rejects that "legislative effort."

District courts applying *Project Vote* have repeatedly supported Petitioner and recognized that voter registration lists are covered records because they directly concern implementation of voter list maintenance activities.

For example, the U.S. District Court for the Southern District of Florida explained that "election officials must provide full public access to all records related to their list maintenance activities, including their voter rolls." *Bellitto*, 2018 U.S. Dist. LEXIS 103617, at *13.

Likewise, the U.S. District Court for the District of Maryland recognized that the statewide list of registered voters fell within the NVRA because the list is merely a "pared down compilation of voter registrations." *Lamone*, 399 F. Supp. 3d at 440.

Similarly, the U.S. District Court for the Southern District of Mississippi recognized that the statewide list of registered voters is a "record" subject to public disclosure under the NVRA because "[t]he process of compiling, maintaining, and reviewing the voter roll is a program or activity performed by Mississippi election officials that ensures the official roll is properly maintained to be accurate and current." *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 723 (S.D. Miss. 2014).

The District of Massachusetts also found that, "'all records' necessarily includes the full statewide voter list." *Voter Reference Found., LLC v. Galvin*, No. 24-

cv-12592-DJC, 2026 U.S. Dist. LEXIS 64416, at *30 (D. Mass. Mar. 26, 2026) (internal citation omitted).

Likewise, the Central District of Illinois found that the phrases used in the public disclosure provision, "make clear that any record, be it data regarding maintenance activities, the processes involved in the maintenance activities, or the output of those maintenance activities, including the statewide voter registration list, must be made available to the public." *Matthews*, 589 F. Supp. 3d at 941.

The only court the Ninth Circuit cited that found the statewide list of registered voters was *not* subject to public disclosure under the NVRA was the Western District of Michigan. (Pet.App.31a). The Ninth Circuit's opinion mirrored the Western District of Michigan's erroneous finding that "a natural reading of § 20507(i) suggests that it requires states to disclose information regarding the process by which they maintain their voter registration list but not the list itself." *United States v. Benson*, 819 F. Supp. 3d 753, 764 (W.D. Mich. 2026), *aff'd*, No. 26-1225, 2026 U.S. App. LEXIS 18362 (6th Cir. June 24, 2026).

The Ninth Circuit's reliance on *United States v. Benson* is misguided, not only because of the outcome, but also because that case involved the United States' attempt to obtain information about registrants that was not publicly available under Michigan's state law (driver's license number, last four digits of social security number, and date of birth). The fact that the United States specifically sought what was deemed "sensitive information" colored the court's interpretation of the public disclosure provision. Petitioner has not sought any information that is limited or sensitive under state law.

But courts have found that protecting sensitive information and enforcing Congress's directives under the NVRA are not mutually exclusive. The *Bellows* court held that the statewide list of registered voters was a record under the NVRA, but that nothing in the statute prevented Maine from redacting highly sensitive information. *Bellows*, 92 F.4th at 56.

Regardless, the *Benson* decision injects more conflict and inequality because most other District Courts to address the issue have found that a statewide list of registered voters is a "record" under the public disclosure provision.

The conflict created by the Ninth Circuit's decision has created uncertainty with respect to a federal election statute governing all states.

This Court's intervention is necessary to restore uniformity and to prevent inequality in government accountability.

III. The Question Presented Is Important.

The question presented concerns nationwide transparency, or lack thereof, in election administration and voting rights. After the Ninth Circuit's decision, the statewide list of registered voters is a public document in the First and Tenth Circuits, but not the Ninth. States in the First and Tenth Circuits are subject to public oversight, while states in the Ninth Circuit may perform voter registration list maintenance in the shadows or disregard maintenance altogether.

The NVRA's public disclosure provision is one of Congress's principal enforcement mechanisms for ensuring lawful voter list maintenance.

Congress deliberately empowered private parties to monitor voter roll maintenance because transparency promotes both election integrity and protection against improper voter removals. The Tenth Circuit explained, "making voter data unavailable for close public scrutiny disrupts the purpose and intended effects of the NVRA" and that "critical scrutiny and public audits of voter data were envisioned by Congress in passing the NVRA." *Torrez*, 160 F.4th at 1082.

The Ninth Circuit's decision below has recurring national significance.

Every State maintains a statewide list of registered voters and must implement voter list maintenance programs governed by HAVA. 52 U.S.C. § 21083(a).

Researchers, journalists, public-interest organizations, political parties, and government officials routinely use statewide lists of registered voters to evaluate compliance with election laws, detect duplicate registrations, identify deceased or relocated registrants, evaluate removal practices, and assess overall list accuracy. Campaigns regularly use statewide lists of registered voters to identify unregistered voters and get out the vote. Petitioner can quickly ascertain duplicate registrations when it obtains and processes the list.

There are numerous additional, legitimate public uses for statewide lists of registered voters, including monitoring, studying, analyzing, and evaluating the list maintenance activities of other jurisdictions and states, enforcing voter list maintenance laws, educating the general public, and sharing voter list maintenance leads and potentially irregular registration and voting data with state and local governments.[3]

The Ninth Circuit's rule impairs those oversight functions.

After the decision below, states in the Ninth Circuit may shield centralized statewide voter registration systems from disclosure despite Congress's broad transparency mandate.

That outcome undermines public confidence in election administration and frustrates Congress's stated objectives. 52 U.S.C. § 20501(b)(1)-(4).

The question presented is also important because the NVRA not only protects election integrity, but also voting rights.

Public access to voter registration records enables detection not only of inaccurate registrations, but also unlawful removal programs, discriminatory maintenance practices, and administrative errors. *See e.g., Project Vote*, 682 F.3d 331 (plaintiff sued to enforce public disclosure of voter registration applications under the NVRA based on plaintiff's belief that defendant was erroneously denying black students' applications to register to vote).

[3] Petitioner and others have also testified to Congress and state legislatures about how the NVRA is implemented nationwide. *See e.g.,* J. Christian Adams, President & Gen. Couns., Pub. Int. Legal Found., *Written Testimony Before the H. Comm. on House Administration,* 118th Cong. (May 16, 2024); T. Russell Nobile, Senior Att'y, Judicial Watch, Inc., *Written Testimony Before the H. Comm. on House Administration,* 119th Cong. (Feb. 10, 2026); Sophia Lakin, Dir., Voting Rts. Project, Am. C.L. Union*, Written Testimony Before the Subcomm. on Elections of the H. Comm. on House Administration,* 119th Cong. (Dec. 10, 2025).

Congress recognized that transparency protects eligible voters by exposing improper maintenance practices before they disenfranchise citizens.

The Ninth Circuit's restrictive interpretation undermines those protections.

The question presented has become increasingly important as many States have centralized and, in part, outsourced voter list maintenance activities to the Electronic Registration Information Center ("ERIC"), a private nonprofit organization that assists member States in identifying potentially outdated or inaccurate voter registrations. Twenty-six States and the District of Columbia currently participate in ERIC. Because ERIC's recommendations may influence state list maintenance decisions affecting voter registration, public access to the underlying statewide registration lists is essential to permit independent verification of the accuracy and effectiveness of those third-party efforts. Congress enacted the NVRA's public disclosure provision precisely because transparency enables the public to evaluate whether voter list maintenance is being conducted lawfully and accurately.

The importance of the question presented has likewise grown as public interest in voter registration data has expanded nationwide. Researchers, journalists, public-interest organizations, political parties, and government officials increasingly rely on statewide lists of registered voters to evaluate compliance with federal election laws, identify potential inaccuracies, assess list maintenance practices, and study election administration. The Department of Justice has likewise demonstrated the continuing importance of voter registration records by pursuing enforcement actions concerning voter list maintenance under federal law. Yet the Ninth Circuit's decision denies the public access to the very records Congress made available to facilitate independent oversight. Congress granted the Department concurrent authority to enforce the NVRA, and also separately chose to empower the public through the Act's broad disclosure provision. The decision below frustrates that congressional design.

IV. This Case Is the Ideal Vehicle.

This case presents a clear and purely legal question of statutory interpretation.

There are no disputed factual issues.

The Ninth Circuit correctly resolved the threshold questions of standing and ripeness in Petitioner's favor but erred in affirming dismissal on the merits, holding that statewide lists of registered voters are not subject to disclosure under Section 20507(i)(1).

The decision below squarely and directly addresses the precise question presented.

The Ninth Circuit's decision created a split among Circuit Courts and lower courts, and significant uncertainty regarding the scope of the NVRA's disclosure requirements.

Only this Court can provide definitive guidance regarding whether statewide lists of registered voters are records subject to disclosure under the NVRA.

CONCLUSION

Transparency in the voting process is "so germane to the integrity of federal elections." *Project Vote*, 682 F.3d at 340. This case is the ideal vehicle for this

Court to clarify the reach of Congress's directive and reconcile the discrepancies in public oversight between the states.

Respectfully submitted,

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Dated: July 17, 2026

APPENDIX

APPENDIX TABLE OF CONTENTS

Appendix A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PUBLIC INTEREST LEGAL FOUNDATION, INC., *Plaintiff - Appellant,* v. SCOTT T. NAGO, in his official capacity as the Chief Election Officer for the State of Hawaii, *Defendant - Appellee.*	No. 24-6629 D.C. No. 1:23-cv-00389-LEK-WRP OPINION

Appeal from the United States District Court for the District of Hawaii
Leslie E. Kobayashi, District Judge, Presiding

Argued and Submitted October 6, 2025
Honolulu, Hawaii

Filed April 28, 2026

Before: M. Margaret McKeown, Michelle T. Friedland, and Jennifer Sung, Circuit Judges.

Opinion by Judge Friedland

SUMMARY[1]

The National Voter Registration Act

The panel affirmed on different grounds the district court's dismissal of an action bought by Public Interest Legal Foundation, Inc. ("PILF"), a non-profit organization focused on election integrity, alleging that Hawaii's State Elections Office's refusal to provide statewide voter registration data violated the public inspection provision of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507(i)(1).

Section 20507(i)(1) of the NVRA requires each state to, upon request, disclose records relating to the implementation of certain voter list maintenance activities.

In response to PILF's request for a statewide list of registered voters, Hawaii's State Elections Office declined to provide a list and recommended that PILF request separate county-level lists from each of Hawaii's four County Clerks. PILF then filed suit in district court seeking injunctive and declaratory relief requiring Hawaii to provide a statewide voter list. The district court dismissed PILF's suit for lack of Article III jurisdiction.

*This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel held that PILF had standing because the bare denial of a request for information under the NVRA causes an injury in fact sufficient to support Article III standing. PILF was not required to show that the denial of information interfered with its core business activities.

The panel next held that PILF's claim became constitutionally ripe when Hawaii's State Elections Office made it clear that it would not provide the information PILF requested. PILF's claim was prudentially ripe because it was fit for judicial review and there was no judicial interest in delaying review of PILF's challenge.

Turning to the merits of PILF's claim, the panel held that the NVRA does not give PILF a right to the information it seeks from the State because a statewide voter list is not a "record[] concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" within the meaning of § 20507(i)(1) of the NVRA. Covered "records" are those about the implementation of efforts to ensure the accuracy of voter lists, not voter lists themselves.

Because the panel concluded that there was jurisdiction but that PILF's claim failed on the merits, the panel remanded to the district court with instructions to dismiss PILF's claim with prejudice.

COUNSEL

Joseph M. Nixon (argued), Maureen Riordan, and Noel H. Johnson, Public Interest Legal Foundation Inc., Alexandria, Virginia; William A. Harrison, Harrison Law Center A Law Corporation, Honolulu, Hawaii; for Plaintiff-Appellant.

Aaron Schulaner (argued), General Counsel, Office of Elections, Pearl City, Hawaii; Jennifer H. Crum, Reese R. Nakamura, and Randall Nishiyama, Deputy Attorneys General; Anne E. Lopez, Hawai‘i Attorney General; Office of the Hawaii Attorney General, Honolulu, Hawaii; for Defendant-Appellee.

OPINION

FRIEDLAND, Circuit Judge:

Public Interest Legal Foundation, Inc. ("PILF"), a non-profit organization focused on election integrity, asked Hawaii for a statewide list of registered voters, citing the public inspection provision of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507(i)(1). Hawaii's State Elections Office declined to provide a list and recommended that PILF request separate county-level lists from each of Hawaii's four County Clerks. PILF filed suit in the United States District Court for the District of Hawaii seeking injunctive and declaratory relief requiring Hawaii to provide a statewide voter list. The district court dismissed the suit for lack of Article III jurisdiction.

We hold that PILF has standing and that PILF's claim is ripe, so there is jurisdiction under Article III. But we affirm dismissal because PILF's claim fails on the merits.

I.

A.

Congress enacted the NVRA in 1993.[1] Pub. L. No. 103-31, 107 Stat. 77 (codified as amended at 52 U.S.C. § § 20501-20511). The NVRA imposes on states programmatic requirements that balance maintaining the integrity of voter rolls with protecting the fundamental right to vote. 52 U.S.C. §20507; *compare id.* § 20501(b)(1) (expressing in the NVRA's Preamble a purpose to "increase the number of eligible citizens who register to vote in elections for Federal office"), *with id.* § 20501(b)(4) (expressing in the NVRA's Preamble a purpose to "ensure that accurate and current voter registration rolls are maintained"). For example, 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" a death or change in residence of the registrant. *Id.* § 20507(a)(4). But it prevents a state from removing names from voter rolls "on the ground that the registrant has changed residence," unless certain confirmation procedures are followed. *Id.* § 20507(d)(1). The NVRA also specifies, more generally, that any state "program or activity to protect the

[1] Because the NVRA requires each state to allow individuals to register to vote when applying for or renewing a driver's license, the statute is often called the "Motor Voter" bill. Helen Dewar, *Senate Approves 'Motor Voter' Bill: GOP Forces Deletion of Key Provision*, Wash. Post, Mar. 18, 1993, at A1.

integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll" shall be "uniform [and] nondiscriminatory." *Id.* § 20507(b), (b)(1).

The NVRA further requires each state to, upon request, disclose records relating to the implementation of certain voter list maintenance activities. *Id.* § 20507(i)(1). Specifically, the NVRA's public disclosure provision states:

> (1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.
>
> (2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices [of removal from voting rolls] are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

Id. § 20507(i).

The public disclosure provision serves a transparency function, ensuring that the public may verify that list-maintenance activities are implemented lawfully and not in a manner that causes "poor and illiterate voter [to be] caught in a purge system which will require them to needlessly re-register." S. Rep. No. 103-6, at 18 (1993); *see also id.* at 32 ("The [Senate Committee on Rules and Administration] is mindful of the need to keep accurate and current voter rolls. The Committee is concerned that . . . programs [to ensure their accuracy] can be abused and may result in the elimination of names of voters from the rolls solely due to their failure to respond to a mailing. Abuses may be found in the design of a program as well as in its implementation.").

Although the Department of Justice may enforce the NVRA, 52 U.S.C. § 205010(a), the statute also creates a private right of action allowing any person "aggrieved by a violation" of the NVRA to seek declaratory or injunctive relief, *id.* § 20510(b).

The Help America Vote Act, enacted in 2002, also regulates states' maintenance of voter registration records. Pub. L. No. 107-252, 116 Stat, 1666 (codified as amended at 52 U.S.C. § § 20901-21145). That law specifies that each state "shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level." 52 U.S.C. § 21083(a)(1)(A). The voter registration list "shall serve as the single system for storing and managing the official list of registered voters throughout the State," and it must contain "the name and registration information of every legally registered voter." *Id.* § 21083(a)(1)(A), (A)(i)

B.

Hawaii law divides responsibility for election administration between the State Elections Office and the County Clerks. The State Elections Office, which is led by Chief Election Officer Scott T. Nago, promulgates voter registration regulations. *See* Haw. Rev. Stat. §§ 11-1.5, 11-4; Haw. Code R. §3-177-50.[2] But Hawaii's four County Clerks are responsible for carrying out voter registration.[3] Haw. Rev. Stat. § 11-1. The Clerks maintain each county's general register—a list that includes the identity and address of each registered voter. *Id.* § 11-14(a). They update the general register regularly by processing new voter registration requests and determining who is eligible to vote. *Id.* § 11-11; Haw. Code R. § 3-177-155. In addition, the Clerks are tasked with conducting a general program to remove ineligible voters, as required by the NVRA. Haw. Code R. § 3-177-157.

Under Hawaii law, the County Clerks also handle public requests for voter lists. Basic voter information—a registered voter's name, district or precinct, and whether a voter is active or inactive—is

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[2] Throughout this opinion, we reference the current versions of Hawaii statutes and regulations. The statutes and regulations relevant here have been substantively the same since this dispute began.

[3] Hawaii functionally has four counties (the City and County of Honolulu, the County of Maui, that County of Hawai'i, and the County of Kaua'i). Hawaii law recognizes a fifth quasi-county, Kalawao, which consists of a small portion of the island of Molokai. *See* Haw. Rev. Stat. § 326-34. But for purposes of election administration, "the county of Kalawao shall be deemed to be included in the county of Maui." Haw. Rev. Stat. § 11-1.

publicly available for any reason. Haw. Rev. Stat. § 11-97(a). But personal details like driver's license numbers, birth dates, addresses, and social security numbers are not available, except for official "election or government" purposes. *Id.*; Haw. Code R. § 3-177-160(c).

Although Nago generally supervises state elections, his office does not directly oversee the County Clerks. *See* Haw. Rev. Stat. § 11-2(a) ("The chief election officer shall supervise all state elections."). Instead, the County Clerks are appointed by and removable only by their respective elected county councils. *See, e.g.,* Charter of the County of Hawaii art. III, § 3-6(b) ("The council shall appoint the county clerk . . . The council, by a two-thirds vote of its membership, may remove the county clerk from office at any time."); Charter of the County of Maui at. V, § 5-2 ("The county clerk is appointed by the council . . . The council may remove the county clerk from the office at any time for misfeasance, malfeasance, or nonfeasance.").

C.

Plaintiff-Appellant PILF is a non-profit organization that "seeks to promote the integrity of elections nationwide through research, education, remedial programs, and litigation."[4] PILF's advocacy focuses on ensuring that election officials act lawfully.

In 2023, PILF requested from the Hawaii Office of Elections an opportunity to inspect or receive a copy

[4] Because this is an appeal from a motion to dismiss, we draw the facts from the allegations in the Complaint and construe the allegations in favor of PILF. *Southcentral Found. V. Alaska Native Tribal Health Consortium*, 983 F.3d 411, 416-17 (9th Cir. 2020).

of the State's full list of registered voters. The office did not provide a list, instead responding: "For a list of registered voters, please contact the County Elections Divisions. Any further related questions may be directed to the County Elections Divisions." After PILF requested clarification as to whether the Office of Elections maintains a master file combining all county voter lists, the Office of Elections repeated the same instruction that PILF should contact the County Elections Divisions.

D.

PILF filed suit in the United States District Court for the District of Hawaii against Nago in his official capacity as Hawaii's Chief Election Officer. As relevant here, PILF alleged that Nago's office's refusal to provide statewide voter registration data violated the NVRA's public disclosure requirement. PILF requested declaratory and injunctive relief requiring Nago's office to disclose a statewide voter list.

Nago moved to dismiss. He argued that PILF lacked Article III standing or that its claim failed for lack of ripeness because it had not properly requested the records from the County Clerks so had not suffered any final denial. He further argued that the Complaint failed to state a claim because his office's responses complied with federal law.

The district court granted the motion to dismiss for lack of jurisdiction, holding that PILF's NVRA claim was unripe. The court reasoned that PILF could still request the records from the counties, and, if denied, then bring a ripe challenge to that denial. The district court gave PILF four months to amend its Complaint, if its claims became ripe. Believing that the NVRA mandated disclosure from the State itself, PILF declined to amend, so the district court proceeded to enter final judgment. PILF timely appealed.

II.

We evaluate issues of Article III jurisdiction de novo. *Vasquez Perdomo v. Noem*, 148 F.4th 656, 673 (9th Cir. 2025) ("Standing is jurisdictional; we consider it de novo and sua sponte."). We also review questions of statutory interpretation de novo. *Saloojas, Inc. v. Aetna Health of Cal., Inc.*, 80 F.4th 1011, 1014 (9th Cir. 2023). We "can affirm . . . dismissal on any ground supported by the record, even if the district court did not rely on the ground." *Arakaki v. Lingle*, 477 F.3d 1048, 1057 n.1 (9th Cir. 2007).

III.

"Whether the question is viewed as one of standing or ripeness, the Constitution mandates that prior to our exercise of jurisdiction there may exist a constitutional 'case or controversy.'" *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc) (quoting *Ry. Mail Ass'n v. Corsi*, 326 U.S. 88, 93 (1945)). The issues presented must be "definite and concrete, not hypothetical or abstract." *Ry. Mail Ass'n*, 326 U.S. at 93. The parties and the district court focused their jurisdictional analysis on whether PILF's claims were ripe for adjudication. But we must also decide whether PILF has standing. We conclude that PILF has standing because the bare denial of a request for information under the NVRA causes an injury in fact sufficient to support Article III standing. Further, PILF is not required to show injury to a core business activity just because it is an organizational plaintiff—interference with an organization's core business activity is a cognizable injury in fact, but it is not the *only* type of injury and organization can suffer.[5] We also conclude that PILF's claim is ripe.

A.

To establish Article III standing, a litigant must show that it "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). We focus only on the first prong, because if PILF suffered an injury in fact, it is clear that Nago's office caused the injury and that a favorable ruling would provide redress.

1.

The Supreme Court has long recognized that if a statute creates a broad public right to obtain information about the government, the denial of a request for information made pursuant to that statute causes an injury in fact.

In *Public Citizen v. United States Department of Justice*, 491 U.S. 440 (1989), advocacy organizations requested access to the records of an American Bar Association ("ABA") Committee related to its evaluations of potential judicial nominees that the Committee had provided to the President. *Id.* at 443-47. After the ABA Committee denied the request, the organizations brought suit under the Federal Advisory Committee Act ("FACA"), seeking a declaration that the ABA committee was an "advisory committee"—a group used to give advice to the

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[5] We ordered supplemental briefing from the parties on whether PILF suffered a cognizable injury in fact and whether it had organizational standing.

President, agencies, or officers of the United States that is subject to FACA's disclosure requirements. *Id.* at 446-47; 5 U.S.C. § 1001(2) (defining "advisory committee"). FACA requires that "records, reports, transcripts, minutes, . . . or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying." 5 U.S.C §1009(b). Under FACA, the plaintiffs argued, the AMA Committee had an obligation to "make its minutes, records, and reports available for public inspection and copying." *Pub. Citizen*, 491 U.S. at 447.

The Supreme Court held that the plaintiff organizations had standing to challenge the denial of access to the records, writing that the "refusal to permit [them] to scrutinize the ABA Committee's activities to the extent FACA allows constitutes a sufficiently distinct injury to provide standing to sue." *Id.* at 449. That the plaintiff organizations had "sought and were denied specific agency records" was enough to satisfy Article III's injury in fact requirement. *Id.*

Federal Election Commission v. Akins, 524 U.S. 11 (1998), reaffirmed that principle. *Id.* at 21. There, plaintiff voters had invoked the Federal Election Campaign Act of 1971 to request information about, among other things, the lobbying of federal elected officials by the American Israel Public Affairs Committee ("AIPAC"). *Id.* at 16. The Federal Election Commission determined that AIPAC was not subject to the statute's disclosure requirement. *Id.* at 13. The plaintiffs challenged that determination, and the Supreme Court ultimately held that they had standing because they had been denied the requested information. The Supreme Court explained that the "'injury in fact' that [the plaintiffs] have suffered consists of their inability to obtain information . . . that on [the plaintiffs'] view of the law, the statute requires that AIPAC make public." *Id.* at 21; *see also id.* ("[A] plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." (quoting *Pub. Citizen,* 491 U.S. at 449)).

Such "[i]nformational injuries remain firmly embedded in both Supreme Court and circuit cases." *Animal Legal Def. Fund v. U.S. Dep't of Agric.*, 935 F.3d 858, 867 (9th Cir. 2019). For example, our court has cited *Public Citizen* for the proposition that the "inability to obtain information subject to disclosure laws is sufficient" to establish an injury in fact. *Inland Empire Waterkeeper v. Corona Clay Co.*, 17 F.4th 825, 833 (9th Cir. 2021) (citing *Public Citizen*, 491 U.S. at 449).[6]

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[6] Our decision in *Wilderness Society, Inc. v. Rey*, 622 F.3d 1251 (9th Cir. 2010), does not deviate from that understanding of informational injury. In *Rey*, the plaintiffs had sued to compel the U.S. Forest Service to follow a set of notice and comment (and appeal) procedures. *Id.* at 1253. They alleged that they were deprived of notice of certain proposed actions by the U.S. Forest Service due to its failure to follow those procedures. *Id.* at 1257-58. Although we recognized that "notice, of course, is a form of information," *id.* at 1259, we also understood the plaintiffs' injury as merely procedural in nature and held that the plaintiffs had not suffered a cognizable information injury, *id* at 1259-60, as required by a then-recent Supreme Court decision interpreting the same statute. *Id.* at 1260 (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 496-97 (2009)). Importantly, we distinguished that procedural injury from the substantive informational injuries at issue in *Public Citizen* and *Akins*. *Id.* at 1258.

Nago asserts that under *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), PILF must do more than allege the denial of information to satisfy Article III's injury in fact requirement. But his reliance is misplaced because *TransUnion* does not govern here. In *TransUnion*, a class of plaintiffs sued a credit reporting company after receiving notifications under the Fair Credit Reporting Act in two letters instead of all at once as the statute required. *Id.* at 420-21. In response to arguments that those "formatting defects" amounted to an informational injury sufficient for Article III standing under *Akins* and *Public Citizen*, the Supreme Court held that the plaintiffs had not suffered injury in fact. *Id.* at 418; *see also id.* at 441-42.

In doing so, the Supreme Court expressly explained why the plaintiffs in *TransUnion* had not demonstrated standing under the doctrine established by *Akins* and *Public Citizen*. First, unlike the plaintiffs in *Akins* and *Public Citizen*, the plaintiffs in *TransUnion* "did not allege that they failed to receive any required information." *Id.* at 441. The Court emphasized that the plaintiffs had received the information, just not in the format the statute required. *Id*; *see also Laufer v. Naranda Hotels*, 60 F.4th 156, 170 (4th Cir. 2023) (explaining that "the information injuries in *Public Citizen* and *Akins* (the 'fail[ure] to receive *any* required information')" are distinguishable "from the purported informational injury [in *TransUnion*] (receipt of the required information '*in the wrong format*')"(quoting *TransUnion*, 594 U.S. at 441)).[7]

[7] PILF alleges an outright denial by Nago's office of its request for information. As a result, the standing analysis here is

Second, *TransUnion* did not involve a sunshine law—a statute that entitles all members of the public to information about government activities, like the Freedom of Information Act ("FOIA") and the public disclosure statutes at issue in *Akins* and *Public Citizen*. *TransUnion*, 594 U.S. at 441 (distinguishing *Akins* and *Public Citizen* by explaining that "[t]his case does not involved such a public disclosure law"). Rather, *TransUnion* involved a right of action against private entities under the Fair Credit Reporting Act. That statute mandates certain disclosures by credit reporting companies about private consumer information, not about the government, and it gives a right to that information only to the relevant consumers, not to the general public. *TransUnion*, 594 U.S. at 418-19; 15 U.S.C. § 1681g(a) (outlining the private consumer information that credit reporting companies must "disclose *to the consumer"* (emphasis added)).

Nago points to subsequent language in *TransUnion* to argue that PILF lacks standing here. After the Supreme Court explained in *TransUnion* that *Akins* and *Public Citizen* did not control the standing analysis there, it went on to write:

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controlled by *Akins* and *Public Citizen*, not by *Animal Legal Defense Fund v. Department of Agriculture*, 935 F.3d 858 (9th Cir. 2019). In *Animal Legal Defense Fund*, there was no indication that the plaintiffs were not receiving the requested information; they just did not receive the information precisely *how* or *when* they wanted it. *Id.* at 867. That Nago's office suggested that PILF file its request with the counties does not change that conclusion, because the County Clerks are not under Nago's control. *Cf.* Haw. Rev. Stat. § 11-14.5(c) (describing that County Clerks have the final decision-making power over making certain voter records confidential).

> Moreover, the plaintiffs have identified downstream consequences from failing to receive the required information. They did not demonstrate, for example, that the alleged information deficit hindered their ability to correct erroneous information before it was later sent to third parties. An asserted information injury that causes no adverse effects cannot satisfy Article III.

TransUnion, 594 U.S. at 442 (citation modified). In the view of Nago and some of our sister circuits, that "moreover" passage shows that *TransUnion* established an "adverse effects" or "downstream consequences" requirement for all informational injuries. *See, e.g.*, *Campaign Legal Ctr. v. Scott*, 49 F.4th 941, 935-37 (5th Cir. 2022); *id.* at 938 ("[E]ven in public disclosure-based cases, plaintiffs must and can assert 'downstream consequences' which is another way of identifying concrete harm from governmental failures to disclose."); *Grae v. Corr. Corp. of Am.*, 57 F. 4th 567, 570-71 (6th Cir. 2023) (opining that "in *TransUnion*, the Supreme Court adopted [the] principle" that "a plaintiff claiming an informational injury must have suffered adverse effects," a requirement that "applies across all cases").

We are not persuaded, however, because the "moreover" passage in *TransUnion* discussed why the plaintiffs did not have standing under an alternate theory, apart from the informational injury doctrine established by *Akins* and *Public Citizen*. Although the plaintiffs in *TransUnion* had obtained all of the information required by the statute, they still would have had standing if the "formatting violations" had caused real "adverse effects." *TransUnion*, 594 U.S. at

440-41. The Supreme Court emphasized that there were no such adverse effects, explaining that the plaintiffs had presented "no evidence" that they "so much as *opened* the dual mailings, nor that they were confused, distressed, or relied on the information in any way." *Id.* at 440 (citation modified). The plaintiffs also failed to show that they "would have tried to correct their credit files—and thereby prevented dissemination of a misleading report—had they been sent the information in the proper format." *Id.* The Supreme Court accordingly concluded that, "[w]ithout any evidence of harm caused by the format of the mailings, these [we]re 'bare procedural violation[s],'" insufficient for Article III standing. *Id.* (third alteration in original) (quoting *Spokeo*, 578 U.S. at 341). And, again, the "moreover" passage came only *after* the Court had concluded that *Akins* and *Public Citizen* did not control. We agree with the Fourth Circuit that this conveyed that the adverse effects requirement "does not extend to the type of informational injury presented in *Public Citizen* and *Akins*." *Naranda Hotels*, 60 F.4th at 170.

Adverse effects are needed to turn many forms of legal injury into an injury in fact sufficient for Article III standing. But total denial of information under a sunshine statute, as in *Akins* and *Public Citizen*, is itself already a concrete injury in fact. Neither *Akins* nor *Public Citizen* required a showing of adverse effects. Although the Supreme Court in *Public Citizen* mentioned that the plaintiffs had identified intended uses for the requested information, it emphasized that its "decisions interpreting 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. There is no reason for a different rule here." 491 U.S. at 449 (citations omitted); *see also Hajro v. U.S. Citizenship & Immig. Srvs.*, 811 F.3d 1086, 1105 (9th Cir. 2016) ("To be injured under FOIA, [a plaintiff] does need to have a personal connection to the information he is requesting."). Likewise, in *Akins*, the Court mentioned the plaintiff's intended uses for the information but articulated a broad rule that "a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." 24 U.S. at 21; *see also Carello v. Aurora Policemen Credit Union*, 930 F.3d 830, 835 (7th Cir. 2019) (Barrett, J.) (citing *Akins* and *Public Citizen* to explain that "an informational injury occurs when the defendant refuses to provide the plaintiff with information that a law—typically, a sunshine law—entitles him to obtain an review for some substantive purpose" and that "[i]n such cases, a plaintiff need not allege any *additional* harm beyond his failure to receive information" (citation modified)).

The Supreme Court's indication that adverse effects are required for standing premised on "formatting defects" in the conveyance of information does not disrupt its prior holding that no such showing is required for standing based on the denial of requests for information under public disclosure statutes. For us to conclude otherwise would be to treat *TransUnion* as having abrogated *Akins* and *Public Citizen* sub silentio, which we are not permitted to do. *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."); *Grae*, 57 F.4th at 574 (Gibbons, J., dissenting) ("Rather than assume that the Supreme Court silently overruled *Public Citizen* . . . , I would adopt the reading of *TransUnion* that avoids conflict with the Supreme Court's longstanding precedent: *Public Citizen* and *Akins* govern when plaintiffs seek information pursuant to a public right of access, while *TransUnion* governs certain other theories of informational injury.").

Indeed, the Supreme Court has elsewhere emphasized that *Akins* and *Public Citizen* remain good law. In *Spokeo*, the Court stated that *Akins* and *Public Citizen* reflected that the denial of a request for information under a public disclosure statute was "sufficient . . . to constitute injury in fact" and that "a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified." 578 U.S. at 342. Even more recently, in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), the Supreme Court again acknowledged that *Akins* continues to govern the standing analysis when a plaintiff alleges informational injury under a "federal law [that] requires [an agency] to disseminate . . . information upon request by members of the public." *Id.* at 396.

Because *Akins* and *Public Citizen* remain binding, a denial of access to information that a plaintiff alleges must be disclosed pursuant to a public disclosure or sunshine provision causes a concrete injury sufficient for standing. No additional adverse effects need to be shown.

2.

Section 20507(i)(1) of the NVRA is such a sunshine provision. The NVRA creates a broad public right to information about government activities, similar in many ways to the archetypical public disclosure statute, FOIA, as well as to the disclosure provisions in the statutes at issue in *Akins* and *Public Citizen*. The NVRA requires states to "make available for public inspection" all records concerning the implementation of certain voter list maintenance programs. 52 U.S.C. § 20507(i)(1). That text parallels FOIA's requirement that, subject to certain exceptions, agencies "shall make [records] available for public inspection" or, upon request, "make the [requested] records promptly available to any person." 5 U.S.C § 552(a)(2)-(3). It is also similar to the wording of the Federal Election Campaign Act at issue in *Akins*, and of the Federal Advisory Committee Act at issue in *Public Citizen*. *See* Federal Election Campaign Act, 52 U.S.C. § 30104(a)(11)(B) ("The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public."); FACA, 5 U.S.C § 1009(b) ("[T]he records . . . which were made available to or prepared for or by each advisory committee shall be available for public inspection."). These statutes all share common characteristics—they make disclosure mandatory through the use of imperatives such as the word "shall"; they describe specific kinds of information that must be disclosed (records, statements, reports, and the like); they confer the right of access to the general public at large; and they provide information about the workings of the government. The NVRA shares each of those traits and is thus a "public-disclosure sunshine law[] that entitle[s] all members of the public to certain information." *TransUnion*, 594 U.S. at 441.

The Third Circuit recently concluded otherwise, reasoning that public disclosure is not the "essence" of the NVRA, so a denial of a request for information under the NVRA is not the type of sunshine statute denial that supports standing under *Akins* or *Public Citizen*. *See Pub. Int. Legal Found. v. Sec'y of the Commonwealth of Pa.*, 136 F.4th 456, 464 (3d Cir. 2025), *cert. denied*, – U.S. –, 2026 WL 568366 (Mar. 2, 2026). Specifically, the Third Circuit held that "it is insufficient for Article III standing purposes for a plaintiff asserting an informational injury from a violation of a statute that contains *a public disclosure aspect as part of [a larger] overall scheme* to allege only that he has been denied information." *Id.* at 465 (emphasis added). We respectfully disagree. Regardless of whether a disclosure provision appears within a larger statutory scheme or as a stand-alone law, the provision reflects that Congress chose to create a right to information. Indeed, *Akins* and *Public Citizen* both involved statutes with provisions and purposes that went beyond pure disclosure of information. *See, e.g.*, FACA, 5 U.S.C. § 1002(a)-(b) (describing an overarching purpose of increasing the standardization and efficacy of advisory committee); Federal Election Campaign Act, 52 U.S.C § 30116 (establishing substantive limitations on campaign contributions and expenditures, unrelated to public disclosure of campaign finances).

B.

PILF argues that Hawaii's denial of access to the requested information is an informational injury under *Akins* and *Public* Citizen, and therefore that PILF need not allege any additional harm of diversion of organizational resources to establish Article III standing. Nago counters that something more is required because PILF is an organization rather than an individual. Specifically, Nago argues that under *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), and *FDA v. Alliance for Hippocratic* Medicine, 602 U.S. 367 (2024), an organization must also allege harm to its "core business activities," and that PILF has failed to do so. *All. for Hippocratic Med.*, 602 U.S. at 395. We disagree that PILF is required to make such an additional showing here.

Havens addressed one path for an organization to establish standing based on interference with one of its core business activities, but it did not foreclose other paths for organizations to establish standing. In *Havens*, the plaintiff, a housing advocacy and direct services organization, alleged that it had been impeded by the "defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services," and that the organization "had to devote significant resources to identify and counteract the . . . racially discriminatory steering practices." *Id.* at 379. In concluding that the organization had standing, the Supreme Court held that the "demonstrable injury to the organization's activities—with the consequent drain on the organization's resources" was sufficient to satisfy Article III. *Id.*

Here, by contrast, PILF does not seek to establish standing based on interference with a core business activity. Rather, PILF seeks to vindicate its own right to receive information under a sunshine provision in the NVRA. Organizations may "seek judicial relief from injuries to [themselves] and to vindicate whatever rights and immunities [they] may enjoy." *Warth v. Seldin*, 422 U.S. 490, 511 (1975). Just as organizations may directly vindicate their own First Amendment rights, *see ACLU of Nev. v. Heller*, 378 F.3d 979, 984-85 (9th Cir. 2004), so too may they directly invoke their statutory rights to information, *see Friends of Animals v. Jewell*, 828 F.3d 989, 991-92 (D.C. Cir. 2016) (discussing informational injury under *Akins* and *Public Citizen* as the type of injury an organization could use to establish standing to sue in its own right).

The Supreme Court's reasoning in *FDA v. Alliance for Hippocratic Medicine* makes clear that *Havens* and *Akins* establish different paths for organizations to demonstrate standing. 602 U.S. at 393-96. In *Alliance for Hippocratic Medicine*, several medical associations challenged the Food and Drug Administration's policies related to mifepristone, an abortion drug. *Id*. at 372-73. The medical associations argued that they "themselves ha[d] organizational standing" under *Havens* because the challenged FDA policies had "forced the associations to expend considerable time, energy, and resources drafting citizen petitions to FDA, as well as engaging in public advocacy and public education." *Id*. at 393-94 (citation modified). The Supreme Court rejected that argument, holding that *Havens* did not allow a plaintiff organization to "spend its way into standing simply by expending money to gather information and advocate against the defendant's action" but instead required a showing that the defendant's actions "directly affected and interfered" with the organization's "core business activities." *Id*. at 394-95. After doing so, the Court separately analyzed the possibility of standing under *Akins*. The Court distinguished injuries based on interference with core business activities from "informational injur[ies]." *Id*. at 395. To explain why the medical association plaintiffs had not established standing under *Akins*, the Court suggested that the government did not possess any of the information that the plaintiffs sought and stated that "in any event the associations ha[d] not suggested that federal law requires FDA to disseminate such information upon request by members of the public." *Id*. at 395-96; *see also Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 1003 (9th Cir. 2025) (Nelson, J., dissenting) ("*Hippocratic Medicine* also leaves open the possibility that an organization could establish standing without relying on *Havens*. . . . [T]he Court suggested that the medical associations may have had standing if they adequately alleged an informational injury *apart from Havens' 'core business activities' test*." (emphasis added)).

Because an organization that has established standing under *Akins* is not required to also establish standing under *Havens*, and because PILF has demonstrated standing under *Akins*, *see supra* Section III.A, PILF is not required to show that the denial of information interfered with its core business activities.

C.

We turn now to evaluating the ripeness of PILF's challenge to Hawaii's denial of its request for a voter list. "The ripeness doctrine precludes federal courts from exercising their jurisdiction over an action that is filed before a real dispute exists between the parties." *Haw. Newspaper Agency v. Bronster*, 103

F.3d 742, 746 (9th Cir. 1996). Ripeness has constitutional and prudential components. We conclude that both components are satisfied here.

1.

Constitutional ripeness requires that a case "present issues that are definite and concrete, not hypothetical or abstract." *Skyline Wesleyan Church v. Cal. Dep't of Managed Health Care*, 968 F.3d 738, 747 (9th Cir. 2020) (internal quotation marks omitted) (quoting *Bishop Paiute Tribe v. Inyo County*, 863 F.3d 1144, 1153 (9th Cir. 2017)).

PILF's alleged informational injury occurred when Nago's office made the final determination that it would not provide the requested information. Nago's office clearly communicated to PILF the State's position that it had no obligation to provide a voter list, leaving PILF with no way to obtain the information from the State.

The fact that Nago's office advised PILF to make a request of the counties instead does not make PILF's injury speculative, because PILF was still left without the information it claims the State itself is statutorily required to provide. As the parties agree, the State and the counties function as separate entities for the purpose of requests for voter information. State regulations instruct that the County Clerks—not the State Elections Office—are ultimately responsible for handling such requests. *See* Haw. Code R. § 3-177-160(c); Haw. Rev. Stat. § 11-14(b). And Nago's office never ordered the counties to produce any information, nor would the counties have had the obligation to obey such an order. The County Clerks are not accountable to Nago's office, given that they are removable only by their elected county councils.

Indeed, at oral argument, Nago represented that his office had no control over the counties' decisions regarding the production of voter lists.

The alleged invasion of a legally protected interest occurred, and the alleged informational injury therefore became "definite and concrete, not hypothetical or abstract," when Nago's office made it clear that it would not provide the requested information. *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc) (quoting *Ry. Mail Ass'n v. Corsi*, 326 U.S. 88, 93 (1945)). Nothing more is required for PILF's claim to be constitutionally ripe. *Id*. (holding that an injury is ripe when it is no longer "imaginary" or "speculative" (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)).

2.

Prudential ripeness is a two-part inquiry that considers "the fitness of the issues for judicial review and the hardship to the parties of withholding court consideration." *Pizzuto v. Tewalt*, 997 F.3d 893, 899 (9th Cir. 2021) (quoting *Alaska Right to Life Pol. Action Comm. v. Feldman*, 504 F.3d 840, 849 (9th Cir. 2007)).[8]

[8] Although the Supreme Court has stated that prudential ripeness is in "some tension" with federal courts' obligation to exercise jurisdiction where that jurisdiction exists, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014)), the Supreme Court has not overruled the prudential ripeness doctrine, and our court has continued to apply that doctrine, *see, e.g., Skyline Wesleyan Church v. Cal. Dep't of Managed Health Care*, 968 F.3d 738, 751-52 & n.9 (9th Cir. 2020).

As to the first prong, fitness for judicial review, "[a] claim is fit for decision if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." *Skyline*, 968 F.3d at 752 (alteration in original) (quoting *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1126 (9th Cir. 2009)). PILF's challenge to the State's denial is primarily legal and can be decided by interpreting federal law. Further factual development about whether PILF could successfully request voter data from the County Clerks would not help resolve PILF's claim that Nago's office must itself grant PILF's request. And the State's denial was definitive and final.

The second prong, hardship to the parties, "serves as a counterbalance to any interest the judiciary has in delaying consideration of a case." *Oklevueha Native Am. Church of Haw., Inc. v. Holder*, 676 F.3d 829, 838 (9th Cir. 2012). Because there is no judicial interest in delaying review of PILF's challenge, the hardship analysis is "not relevant" here. *Id.* at 839.

Accordingly, PILF's claim is prudentially ripe.

IV.

Having assured ourselves that we have jurisdiction, we now turn to the merits of PILF's claim.[9]

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[9] We generally refrain from deciding issues that the district court did not resolve. *Planned Parenthood of Greater Wash. & N. Idaho v. U.S. Dep't of Health & Hum. Servs.*, 946 F.3d 1100, 1110 (9th Cir. 2020). But we may exercise our discretion to reach an issue in the first instance, *id.*, where, as here, the issue "is purely one of statutory interpretation that would not 'benefit from further factual development of the issues presented,'" *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 479 (2001) (quoting *Ohio Forestry*

PILF's request invoked the section of the NVRA that states:

> (1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

52 U.S.C. § 20507(i)(1). The specific question here is whether a statewide voter list is a "record[] concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters" within the meaning of the NVRA. *Id.* We hold based on the text and statutory structure of the NVRA that the answer is no, because covered "records" are those about efforts to ensure the accuracy of voter lists, not voter lists themselves. Therefore, the NVRA does not give PILF a right to the information it seeks from the State.[10]

Ass'n, Inc. v. Sierra Club, 523 U.S. 726, 733 (1998)); *see also Ariz. Cattle Growers' Ass'n v. U.S. Fish & Wildlife Serv.*, 273 F.3d 1229, 1241 (9th Cir. 2001).

[10] Our conclusion that PILF has standing is not undermined by our conclusion that the information PILF seeks is not covered by the NVRA's public disclosure provision, because "standing in no way depends on the merits of the plaintiff's [claim]." *Warth v. Seldin*, 422 U.S. 490, 500 (1975). Indeed, in *Public Citizen*, the Supreme Court determined that the plaintiffs had standing to

1.

"[T]he starting point for interpreting a statute is the language of the statute itself." *Olympic Forest Coal. v. Coast Seafoods Co.*, 884 F.3d 901, 905 (9th Cir. 2018) (quoting *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 56 (1987)). "[W]e should usually give words their plain, natural, ordinary and commonly understood meanings." *United States v. Romo-Romo*, 246 F.3d 1272, 1275 (9th Cir. 2001). Additionally, we are guided by the "superfluity canon," which instructs that "Congress did not intend to make any portion of a statute superfluous, and [that] therefore 'we must give effect to every word of a statute wherever possible.'" *In re Pangang Grp. Co.*, 901 F.3d 1046, 1056 (9th Cir. 2018) (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 12 (2004)).

In PILF's view, section 20507(i)(1) requires disclosure of "records concerning . . . official lists of eligible voters," which includes voter lists. But PILF's interpretation disregards the limiting phrase that comes between "concerning" and "official lists": section 20507(i)(1) requires disclosure only of records "concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists." 52 U.S.C. § 20507(i)(1). That intervening phrase narrows the scope of materials subject to public disclosure.

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assert an informational injury under FACA, but it ultimately held on the merits that FACA did not give the plaintiffs a right to the requested records. *Pub. Citizen v. U.S. Dep't of Just.*, 491 U.S. 440, 467 (1989); *see also Fed. Election Comm'n v. Akins*, 524 U.S. 11, 25-29 (1998) (holding that plaintiffs had standing to assert an informational injury under the Federal Election Campaign Act, but, on the merits, remanding for a determination of whether the Act created a right to the information in question).

We "must give effect, if possible, to every clause and word of a statute," *Williams v. Taylor*, 529 U.S. 362, 404 (2000) (citation modified), so we need to consider whether the statewide voting list is a record "concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists." The phrase "concerning the implementation of" provides an initial limitation. Contemporaneous dictionaries state that "implement" connotes execution or administration—"to give practical effect to." *See Implement*, Webster's Third New International Dictionary (1993); *see also Implement*, Webster's Dictionary of English Usage (1989) (stating that "implement" "typically describes the taking of concrete measures to carry out an official policy or program"). The inclusion of that word suggests that covered records are those that describe measures to maintain the accuracy and currency of voter lists, not the lists themselves. *See United States v. Benson*, – F. Supp. 3d –, 2026 WL 362789, at *6 (W.D. Mich. Feb. 10, 2026) ("[A] natural reading of § 20507(i) suggests that it requires states to disclose information regarding the process by which they maintain their voter registration list but not the list itself."). "Concerning" does have a "broadening effect," *see Patel v. Garland*, 596 U.S. 328, 339 (2022), but its sole object here is the word "implementation," not "all records." The category of "records concerning . . . implementation" therefore encompasses materials documenting each step a state undertakes when actively implementing relevant programs. Examples of records that would "concern[] implementation" might include duplicate-removal reports, procedural manuals about list maintenance tasks, or correspondence with voters, but not the very voter registration lists that the implemented efforts seek to update and maintain. *See* 52 U.S.C. § 20507(d)(1)-(2) (requiring states to send confirmation notices before removing voters for changing their residence); *id*. at § 20507(c)(2)(A).

The next clause—"programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters"—further cabins the disclosure requirement. A "program" is "a proposed project or scheme," *Program*, Webster's Third New International Dictionary, and an "activity" is a "natural or normal function or operation," *Activity*, Webster's Third New International Dictionary. Both terms relate to active processes or the plan for carrying them out, not the outcome of those processes.

Moreover, the phrase requiring that each state maintain covered records "for at least 2 years," makes even clearer that statewide voter lists are not themselves "records" that must be disclosed. That requirement reinforces that Congress was focused on historical documentation of how states conduct list maintenance, not on the voter lists themselves, which constantly evolve as voters are added or removed, or as their data are updated. Were any "official list[] of eligible voters" itself a "record" subject to section 20507(i)(1), states would be obliged to preserve every interim version of the ever-changing lists for two years—a plainly unworkable and implausible result that we must avoid. *See Ma v. Ashcroft*, 361 F.3d 553, 558 (9th Cir. 2004) ("[S]tatutory interpretations which would produce absurd results are to be avoided."). Section 20507(i)(1) of the NVRA is not a sprawling voter-data-preservation mandate; it is a transparency provision targeted at list-maintenance activities.

PILF places much weight on the provision's use of the phrase "all records." It is true that the modifier "all" broadens the scope of records subject disclosure. *See Nat'l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 290 (4th Cir. 1998) ("[T]he use of the word 'all' . . . suggests an expansive meaning because 'all' is a term of great breadth."). But we construe statutory language in context and "limit otherwise capacious terms when that context 'tug[s] . . . in favor of a narrower reading.'" *Arconic, Inc. v. APC Inv. Co.*, 969 F.3d 945, 953 (9th Cir. 2020) (alteration in original) (quoting *Mellouli v. Lynch*, 575 U.S. 798, 812 (2015)). Here, Congress drafted a nuanced disclosure provision that includes qualifying language. If Congress had wanted to require that states make a statewide voter list public, it could have just said so. See *Biden v. Texas*, 597 U.S. 785, 798 (2022) ("If Congress had wanted the provision to have that effect, it could have said so in words far simpler than those that it wrote.").

The final clause of section 20507(i)(1) does not cast doubt on that interpretation. It exempts from disclosure any information "relate[d] to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered." 52 U.S.C. § 20507(i)(1). One might initially think that clause, which exempts certain voter registration information, suggests that registration details in general—and thus voter lists—are otherwise covered records. As we read it, however, that clause merely reinforces a separate programmatic restriction on the use of registration-related data. The NVRA requires that government agencies and offices that provide public assistance or services to people with disabilities be designated as Voter Registration Agencies ("VRAs"). *Id.* § 20506(a). When an agency is designated as a VRA, it must provide its clients a form that includes the question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?" *Id.* § 20506(a)(6)(B)(i). That form must have "boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote." *Id.* § 20506(a)(6)(B)(iii). Importantly, NVRA section 20506(a)(7) instructs that "[n]o information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration." *Id.* § 20506(a)(7). The final clause of section 20507(i)(1) merely reinforces that limitation. As the House Report on the Act discussed, Congress wanted to ensure that "information not be made public as to [which] voters" were interacting with which "agency, such as a welfare or unemployment office." H.R. Rep. No. 103-9, at 19 (1993).

Section 20507(i)(2), the final paragraph of the NVRA's public disclosure provision, also reinforces our textual analysis. Section 20507(i)(2) states that covered records "shall include lists of the names and addresses of all persons to whom notices [of removal from voting rolls] are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made." 52 U.S.C. § 20507(i)(2). Those are administrative records relating to a discrete program for "ensuring the accuracy and currency" of the voter lists, *id.* § 20507(i)(1), which suggests that other covered records would also concern the active implementation of such programs.

Another reason not to read voter lists as records subject to disclosure under the NVRA is that voter lists are governed by a later-enacted, separate statute—the Help America Vote Act. The Help America Vote Act mandates that each State maintain a single, uniform, computerized statewide voter registration list for use by election officials. *Id.* § 21083(a)(1). The Help America Vote Act does not have a public disclosure provision, nor does it create a private right of action for enforcement. We decline to read the NVRA to provide a right for the public to access statewide voter lists when Congress chose not to establish that right in the statute specifically addressing the creation of statewide voter lists.

2.

We are not persuaded by PILF's remaining arguments that the NVRA's disclosure provision covers a statewide voter list.

PILF invokes the First Circuit's decision in *Public Interest Legal Foundation, Inc. v. Bellows*, 92 F.4th 36 (1st Cir. 2024), where the court concluded that a statewide voter registration list was subject to disclosure under section 20507(i)(1).[11] There, the First

[11] The Tenth Circuit recently expressed its agreement with Bellows but did not address the argument we address here: whether a voter file concerns the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists. *See Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068, 1084 (10th Cir. 2025) ("[T]he parties focus their arguments not on whether the requested voter data in fact concerns the implementation of relevant program and

Circuit reasoned that because such lists record the "end result of [list maintenance] activities," which are conducted to ensure accuracy of the lists, the lists necessarily "concern[]" the "implementation" of those activities. *Id.* at 47. Respectfully, that reading seems inconsistent with the statutory text and structure to such an extent that we must reach a different outcome, though we do not do so lightly. *See United States v. Anderson*, 46 F.4th 1000, 1005 (9th Cir. 2022) (explaining that in "cases requiring statutory interpretation, . . . [o]ur analysis is informed by decisions from other circuit courts that have interpreted the statute, and we will not create a circuit split unnecessarily").

The First Circuit's approach treats a statewide voter list as inherently a record concerning list-maintenance programs. To the contrary, as we explain above, the best reading of the statute is that such lists are not records concerning the implementation of those programs, which are covered by section 20507(i)(1), but rather the *objects* of the implemented programs, which are not. The First Circuit's interpretation collapses the textual distinction between administrative records reflecting implementation of list maintenance activities and the lists those programs maintain. Its interpretation gives too much weight to the words "all" and "concerning," failing to take account of the

activities but on whether 'record' includes dynamic, electronic documents and whether they encompass data that is allegedly 'newly created.'" (footnote omitted)).

surrounding limiting context. *Bellows*, 92 F.4th at 47-49.[12]

PILF also relies on *Project Vote/Voting for America, Inc. v. Long*, 682 F.3d 331 (4th Cir. 2012), but that decision is not inconsistent with ours. There, the Fourth Circuit held that voters' registration applications were covered by the public disclosure provision because they were direct evidence of the implementation of registration procedures. *Id.* at 336-37. Importantly, though, the court did not hold that entire statewide voter lists fall within section 20507(i). That distinction is crucial: an application and its processing relate to the implementation of a program to ensure currency and accuracy of voter lists, whereas a statewide list of registered voters is a continuously updated product of those activities.[13]

We are also not persuaded that our interpretation will frustrate public oversight. Section 20507(i) ensures access to the records necessary to verify whether

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[12] PILF also points to several district court decisions reaching its preferred outcome, none of which persuade us. *See, e.g., Voter Reference Found., LLC v. Torrez*, 727 F. Supp. 3d 1014, 1212 (D.N.M. 2024), *aff'd*, 160 F.4th 1068 (10th Cir. 2025); *Pub. Int. Legal Found., Inc. v. Knapp*, 749 F. Supp. 3d. 563, 568-69 (D.S.C. 2024); *Pub. Int. Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932, 941 (C.D. Ill. 2022). Similar to *Bellows*, the cases fail to address the key textual distinction Congress drew between records documenting *how* a state implements its programs for ensuring accuracy and the lists ultimately modified or updated by those programs.

[13] The Fourth Circuit has since recognized that "the [NVRA's] disclosure provision does not encompass any relevant record from any source whatsoever, but must be read in conjunction with the various statutes enacted by Congress to protect the privacy of individuals and confidential information held by certain governmental agencies." *Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections*, 996 F.3d 257, 264 (4th Cir. 2021).

states conduct confirmation mailings, removals, and list updates lawfully. Effective oversight does not require disclosure of every registrant's personal information; it requires transparency about how list-maintenance programs are implemented.[14]

Indeed, other policy concerns underlying the balance struck by the NVRA caution against an expansive reading. As described above, section 20507(i)(1) explicitly prohibits disclosure of "the identity of a voter registration agency through which any particular voter is registered." Congress thereby recognized the need to protect the privacy of personal information even while mandating oversight of maintenance procedures. Especially given that Congress wrote a provision making private where certain voters registered, it is unlikely that Congress would have required states to publicly disclose information that could include every voter's name, address, partial social security numbers, and voting history—information that could be used for harassment, intimidation, or commercial exploitation— without so much as a word about redaction, security, or permitted use. The better inference is that section 20507(i)(1) was aimed at transparency regarding processes, not at disclosure of the personal data of millions of voters.

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[14] For PILF's purposes, Hawaii state law appears to provide an avenue for requesting the voter information that PILF states it needs to ensure Hawaii complies with the NVRA's requirements. Haw. Rev. Stat. § 11-97(a); *see also United States v. Benson*, – F. Supp. 3d –, 2026 WL 362789, at *6 (W.D. Mich. Feb. 10, 2026) (recognizing that "state voter registration lists were often already subject to public disclosure under state law when the NVRA was enacted" so there was "no need for the NVRA to require disclosure of voter registration lists").

V.

For the foregoing reasons, we affirm dismissal of PILF's claim. But the district court dismissed without prejudice for lack of jurisdiction. *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017) (dismissal for lack of jurisdiction is generally without prejudice). Because we conclude that there is jurisdiction but that PILF's claim fails on the merits, we remand with instructions to dismiss the claim with prejudice. *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005) ("Final judgment on the merits is synonymous with dismissal with prejudice." (citation modified)).[15]

AFFIRMED and REMANDED for judgment to be entered with prejudice.

[15] Because we hold that the scope of section 20507(i)(1) presents lawful grounds for Nago's office to decline PILF's request, we do not address PILF's other arguments about the NVRA's effects.

Appendix B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

PUBLIC INTEREST LEGAL FOUNDATION, INC., **Plaintiff,** **v.** **SCOTT T. NAGO, IN HIS OFFICIAL CAPACTIY AS THE CHIEF ELECTION OFFICER FOR THE STATE OF HAWAII,** **Defendant.**	**Civil Action No.** **23-cv-00389-LEK-WRP**

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS AND DENYING PLAINTIFF'S MOTION FOR DISCOVERY UNDER FEDERAL RULE OF CIVIL PROCEDURE 56(D)

Before the Court are Defendant Scott T. Nago's, in his official capacity as the Chief Election Officer for the State of Hawai`i ("Defendant"), Motion to Dismiss Plaintiff's First Amended Complaint Filed

September 22, 2023, ECF NO. 20, or in the Alternative, Motion for Summary Judgment, filed November 28, 2023 ("Motion to Dismiss"), [dkt. no. 35,] and Plaintiff Public Interest Legal Foundation Inc.'s ("Plaintiff") Motion for Discovery Under Federal Rule of Civil Procedure 56(d), filed January 26, 2024 ("Motion for Discovery"), [dkt. no. 41]. Plaintiff filed its memorandum in opposition to the Motion to Dismiss on January 26, 2024, and Defendant filed its reply on February 2, 2024. [Dkt. nos. 42, 44.] On February 2, 2024, Defendant filed its memorandum in opposition to the Motion for Discovery, and Plaintiff filed its reply to the Motion for Discovery on March 15, 2024. [Dkt. nos. 45, 49.] These matters came on for hearing on April 12, 2024 ("4/12 Hearing"). For the reasons set forth below, Defendant's Motion to Dismiss is hereby granted in part and denied in part insofar as Counts I, II, and III are dismissed without prejudice. Further, Plaintiff's Motion for Discovery is denied.

BACKGROUND

The operative pleading is Plaintiff's First Amended Complaint, filed on September 22, 2023 ("Amended Complaint"). [Dkt. no. 20.] The case concerns Plaintiff's request for voter data from Defendant – the Chief Election Officer of the State of Hawai`i ("CEO") – pursuant to the public disclosure provision of the National Voter Registration Act ("NVRA").

On April 6, 2023, Plaintiff's research director Logan Churchwell ("Churchwell") emailed Defendant a letter requesting an opportunity to inspect or receive a copy of the complete voter registration system data in Hawai`i ("voter data") containing all voter fields, citing 52 U.S.C. § 20507(i). [Amended Complaint, Exh. A (letter from Churchwell to Defendant, dated 4/6/23) ("April 6 Letter").] On May 8, 2023, Defendant's office responded and directed Churchwell to contact the County Elections Division. Churchwell replied the same day, asking if the County Elections Division is the only office that maintains the records, or if Defendant's office also maintains a master copy. Defendant's office replied again on May 10, 2023, directing Churchwell to contact the County Election Division. [Id., Exh. B (emails between Churchwell and Defendant's office, dated from 4/6/23 to 5/10/23).]

On May 17, 2023, Churchwell wrote Defendant a letter stating Defendant's office's actions violated the NVRA. [Id., Exh. C (letter from Plaintiff to Defendant, dated 5/17/23) ("May 17 Letter").] On June 28, 2023, Defendant's General Counsel, Aaron H. Schulaner ("Schulaner") wrote Churchwell a letter disagreeing with Churchwell's legal interpretation of Defendant's obligations under the NVRA, and again referring Churchwell to the county clerks. [Id., Exh. D (letter from Schulaner to Plaintiff, dated 6/28/23).]

During the week of August 14, 2023, Plaintiff sent representatives to the County of Hawai`i, the County of Kaua`i, and the City and County of Honolulu to personally request a copy of each county's voter data.[1] The counties allegedly denied the requests. [Amended Complaint at ¶ 26.] It is unclear what form these requests took. However, Schulaner states Plaintiff did not submit an "Affidavit on Application for Voter Registration Data" to any of the counties in conjunction with its requests for the voter file in relation to the visits to the counties during the week of August 14, 2023. [Motion to Dismiss, Declaration of Aaron H. Schulaner ("Schulaner Decl.") at ¶ 8.] Plaintiff admits it did not submit any of these applications to the counties in its briefing and at the 4/12 Hearing. <u>See</u> Motion to Dismiss, Mem. in Opp. at 15 (stating Plaintiff cannot complete the request forms).

On August 22, 2023, Churchwell again responded to Defendant, stating Defendant cannot delegate its duties to county clerks, and that the Hawai`i Administrative Rules do not allow for Plaintiff's intended uses of the voter file data, and inquiring whether their intended uses fall within the "election or government purposes" under Hawai`i law. [Amended Complaint, Exh. E (letter from Churchwell to Defendant, dated 8/22/23) ("August 22 Letter").] On September 1, 2023,

[1] Plaintiff did not send a representative to the County of Maui due to the fire disaster. [Amended Complaint at ¶ 26.]

Schulaner again referred Churchwell to the county clerks. [Id., Exh. F (letter from Schulaner to Churchwell, dated 9/1/23).] On September 7, 2023, Plaintiff delivered letters to Defendant and each of the county clerks alleging violations of the NVRA. [Schulaner Decl., Exh. 5 (letter dated 9/7/23 from Churchwell to Defendant and the Hawai`i County Clerk regarding NVRA violation); id., Exh. 6 (letter dated 9/7/23 from Churchwell to Defendant and the City and County of Honolulu Clerk regarding NVRA violation); id., Exh. 7 (letter dated 9/7/23 from Churchwell to Defendant and the Kaua`i County Clerk regarding NVRA violation) (collectively "September 7 Letters").]

Plaintiff alleges: Hawaii's policy of delegating production of voter data to county clerks is preempted and constitutes a denial of access in violation of Section 8(i) of the NVRA, Title 52 United States Code Section 20507(i) ("Count I"); [id. at ¶¶ 27-35;] Hawai`i law requiring that a person requesting voter data have an election purpose is a functional denial of access in violation of Section 20507(i), and the purpose requirement in Hawai`i Administrative Rules Section 3-177-160(g) and related policies are preempted ("Count II"); [id. at ¶¶ 36-43;] Hawai`i law requiring that a person requesting voter data have an election purpose is an unlawful use restrictions in violation of Section 20507(i), making Hawai`i Revised Statutes Sections 11-11, 11-14, 11-17, 11-97 and Hawai`i

Administrative Rules Section 3-177-160 preempted ("Count III"); [id. at ¶¶ 44-63]. Plaintiff requests: a declaration that Defendant violated Section 8(i) of the NVRA; [id. at pg. 17;] a declaration that Section 8(i) of the NVRA preempts "HRS sections 11-11, 11-14, 11-17, 11-97 and HAR section 3-177-160, and any other Hawaii statute, regulation, practice or policy that prevents [Plaintiff] from inspecting and copying the requested records or that places restrictions on the use of Hawaii's VRS [voter registration system] data or other data"; [id.;] an order directing Defendant to produce the voter data described in "HRS sections 11-11, 11-14, 11-17, 11-97 and HAR section 3-177-160"; [id.;] a permanent injunction enjoining Defendant from denying requests to inspect similar voter data in the future; attorney's fees; and any other appropriate relief, [id. at pg. 18].

Defendant's Motion to Dismiss asks the Court to dismiss the Amended Complaint with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(b)(7) because: (1) Plaintiff lacks standing; (2) the Amended Complaint fails to state a claim for relief under the NVRA or the Help American Vote Act of 2002 ("HAVA"), Title 52 United States Code Sections 20901-21145; and (3) Plaintiff failed to join the county clerks, who are indispensable parties. [Motion to Dismiss, Mem. in Supp. at 2, 11-21.] Alternatively, Defendant asks the Court to treat the Motion to Dismiss as a motion for summary judgment. [Id. at 2.]

STANDARD

I. Federal Rule of Civil Procedure 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) authorizes a defendant to move for dismissal of an action for "lack of subject-matter jurisdiction[.]" "Once challenged, the party asserting subject matter jurisdiction has the burden of proving its existence." Robinson v. United States, 586 F.3d 683, 685 (9th Cir. 2009) (citation and quotation marks omitted). This district court has stated:

> FRCP 12(b)(1) also requires a district court to dismiss a complaint for lack of subject matter jurisdiction where a plaintiff lacks standing to sue. See Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011) (citations omitted) ("[L]ack of Article III standing requires dismissal for lack of subject matter jurisdiction under [FRCP] 12(b)(1)."). When a plaintiff lacks constitutional standing, a suit "is not a 'case or controversy,' and an Article III federal court therefore lacks subject matter jurisdiction over the suit." City of Oakland v. Lynch, 798 F.3d 1159, 1163 (9th Cir. 2015) (quoting Cetacean Cmty. v. Bush, 386 F.3d 1169, 1174 (9th Cir. 2004) (quotations omitted)); City of Los Angeles v. County of Kern, 581 F.3d 841, 845 (9th Cir. 2009).

> In determining constitutional standing, the trial court has the authority "to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing." Maya, 658 F.3d at 1067 (citation and quotations omitted). "For purposes of ruling on a motion to dismiss for want of standing, both trial and reviewing courts must accept as true all material allegations of the complaint and must construe the complaint in favor of the complaining party." Namisnak v. Uber Techs., Inc., 971 F.3d 1088, 1092 (9th Cir. 2020) (internal quotations omitted) (citations omitted).

Ye Jiang v. Zhong Fang, CIVIL NO. 20-00100 JAO-KJM, 2020 WL 6889169, at *1 (D. Hawai`i Nov. 23, 2020) (alterations in Ye Jiang).

"A Rule 12(b)(1) jurisdictional attack may be facial or factual." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004) (citation omitted). "A 'facial' attack accepts the truth of the plaintiff's allegations but asserts that they are insufficient on their face to invoke federal jurisdiction." Leite v. Crane, 749 F.3d 1117, 1121 (9th Cir. 2014) (citation and some internal quotation marks omitted). "A 'factual' attack . . . contests the truth of the plaintiff's factual allegations, usually by introducing evidence outside the pleadings." Id. (citations omitted).

> "In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." Safe Air, 373 F.3d at 1039. The court "need not presume the truthfulness of the plaintiff['s] allegations," White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000), and may "resolve factual disputes concerning the existence of jurisdiction," McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988). "Once the moving party has converted the motion to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction." Savage v. Glendale Union High Sch. Dist. No. 205, 343 F.3d 1036, 1040 (9th Cir. 2003).

Shahim v. United States, Case No. 2:21-cv-02401-ODW(AGR), 2022 WL 1644440, at *2 (C.D. Cal. May 24, 2022) (alteration in Shahim) (footnote omitted).

Here, Defendant attached a declaration and exhibits to the Motion to Dismiss, thereby "convert[ing] the motion to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court[.]" See Safe Air for Everyone, 373 F.3d at 1039 (quotation marks and citation omitted). Therefore, the Motion may be properly brought as a Rule 12(b)(1) motion and need not be treated as a summary judgment motion.

II. Federal Rule of Civil Procedure 12(b)(7)

Rule 12(b)(7) provides for the dismissal of a case due to a "failure to join a party under Rule 19." "Rule 19 governs compulsory party joinder in federal district courts." E.E.O.C. v. Peabody W. Coal Co., 400 F.3d 774, 778 (9th Cir. 2005). More specifically, Rule 19 "requires joinder of persons whose absence would preclude the grant of complete relief, or whose absence would impede their ability to protect their interests or would subject any of the parties to the danger of inconsistent obligations." Ritchey v. Rando, CIV. NO. 21-00259 LEK-KJM, 2021 WL 4301481, at *3 (D. Hawai`i Sept. 21, 2021) (quotation marks and citation omitted).

DISCUSSION

I. Standing

A. Statutory Standing[2]

To bring suit pursuant to the NVRA, Plaintiff must possess statutory standing. "To bring a civil action pursuant to the NVRA, '[a] person who is aggrieved by a violation . . . may provide written notice of the violation to the chief election official of the State involved.'" Pub. Int. Legal Found., Inc. v. Dahlstrom, 673 F. Supp. 3d 1004, 1009 & n.40 (D. Alaska 2023) (alterations in Dahlstrom) (citing 52 U.S.C. § 20510(b)(1)). "Although the use of the term 'may' suggests that notice is permissive rather than mandatory, courts have consistently held that pre-litigation notice is mandatory." Id. at 1009-10 & n.41 (some citations omitted) (citing Nat'l Council of La Raza v. Cegavske, 800 F.3d 1032, 1042–45 (9th Cir. 2015) (analyzing whether plaintiffs provided proper notice to determine if the plaintiffs had statutory standing). "If the violation is not corrected within 90 days after receipt of a notice . . . the aggrieved person may bring a civil action in an appropriate district court for declaratory and injunctive relief with

[2] The Court may address statutory standing before addressing Article III standing. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 97 n.2 (1998) (noting addressing statutory standing may take priority before Article III standing); ORNC Action v. Bureau of Land Mgmt., 150 F.3d 1132, 1140 (9th Cir. 1998) (citing Steel for the proposition that decision on statutory standing may take priority over Article III standing).

respect to the violation." Id. at 1010 & n.42 (citing 52 U.S.C. § 20510(b)(2)).

Plaintiff sent the April 6 Letter, the May 17 Letter, the August 22 Letter to Defendant, and the September 7 Letters to Defendant and each respective county. In the April 6 Letter, Plaintiff simply requested the voter files, and did not provide a pre-litigation notice. See Amended Complaint, Exh. A (April 6 Letter) at PageID.88. In the May 17 Letter, Plaintiff gave its pre-litigation notice of NVRA violations, including (1) the failure to maintain and provide access to the voter file at the state level, and (2) the failure to provide access to all voter file data, even at the county level. See id., Exh. C (May 17 Letter) at 2-3. The May 17 Letter provides pre-litigation notice of the claims brought by Plaintiff. Compare id. with Amended Complaint at ¶¶ 27-63. Defendant provides no legal support for its assertion that the September 7 Letters "reset the clock," making it improper to file the lawsuit until December 7, 2023. See Motion to Dismiss, Mem. in Supp. at 12. The Court is not aware of any authority supporting Defendant's assertion.

Additionally, Defendant's contention would contravene the purpose of the NVRA's notice requirement – giving the Defendant an opportunity to cure before facing litigation. See Scott v. Schedler, 771 F.3d 831, 836 (5th Cir. 2014) ("[T]he purpose of the notice requirement was to provide states . . . an opportunity to attempt compliance before facing litigation." (citation and internal quotation marks omitted)). Defendant was given notice on May 17, 2023, and the May 17 Letter sufficiently informed Defendant of the allegations against it. Defendant had an opportunity to cure since that time. More than ninety days elapsed between May 17, 2023 and the filing of the complaint. See Plaintiff's Complaint for Declaratory and Injunctive Relief, filed 9/21/23 (dkt. no. 1). Therefore, Plaintiff possesses statutory standing.

B. Ripeness

In order for the Court to have subject matter jurisdiction over each of the claims, they must be ripe. See Allen v. Wright, 468 U.S. 737, 750 (1984); TransUnion LLC v. Ramirez, 594 U.S. 413, 431 (2021) ("[S]tanding is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek[.]" (citations omitted)). The ripeness doctrine is designed to "prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." Abbott Lab'ys v. Gardner, 387 U.S. 136, 148 (1967). Federal courts may not issue advisory opinions, but must adjudicate live cases and controversies pursuant to Article III of the United States Constitution. See U.S. Const. art. III; see also Thomas v. Anchorage Equal Rts. Comm'n, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc).

"An issue is constitutionally ripe only if it is definite and concrete, not hypothetical or abstract." Flower World, Inc. v. Sacks, 43 F.4th 1224, 1229 (9th Cir. 2022) (citation and internal quotation marks omitted). Courts consider whether a plaintiff faces "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement," or whether the threatened injury is "imaginary or speculative." Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 298 (1979) (citations omitted). Often the ripeness inquiry is similar to the inquiry of whether an injury-in-fact exists, as is the case here. See Thomas, 220 F.3d at 1139.

1. Count I

In Count I, Plaintiff alleges Hawaii's policy of delegating production of voter data to county clerks is preempted and constitutes a denial of access in violation of Section 8(i) of the NVRA, 52 U.S.C. § 20507(i). [Amended Complaint at ¶¶ 28-35.] Plaintiff argues it has suffered an informational injury from the CEO's failure to disclose the voter data. [Motion to Dismiss, Mem. in Opp. at 9-16.] Plaintiff cites to case law on the information injury doctrine, under which a party may possess standing when the party was denied access to information it had a right to receive. See Fed. Election Comm'n v. Akins, 524 U.S. 11, 21 (1998); Pub. Citizen v. Dep't of Just., 491 U.S. 440, 449 (1989); Inland Empire Waterkeeper v. Corona Clay Co., 17 F.4th 825, 833 (9th Cir. 2021). In order to possess standing pursuant to the informational injury doctrine, a party must also prove "'downstream consequences' from their alleged informational injury because an 'asserted informational injury that causes no adverse effects cannot satisfy Article III.'" Munoz v. PHH Corp., No. 22-15407, 2023 WL 2202228, at *1 (9th Cir. Feb. 24, 2023) (quoting TransUnion, 594 U.S. at 442, 141 S. Ct. at 2214).

Here, the informational injury doctrine is not directly applicable, because Plaintiff has yet to be denied information. Rather, Plaintiff is challenging the entity through which that information is made available to Plaintiff, specifically, the CEO's referral of the request to the respective counties. Regarding Count I, Plaintiff's prospective injury is not the denial of information, but rather the burden of requesting voter data from four county clerks, rather than submitting one request to the CEO.

However, Plaintiff's injury is just that – prospective. As noted, Plaintiff has not yet requested the data from the four counties pursuant to the county request forms, as is required in the State of Hawai`i. See Amended Complaint, Exh. D (June 28 Letter); Schulaner Decl., Exh. 1 (undated memorandum from the City and County of Honolulu, Office of the City Clerk to individuals and organizations interested in purchasing City and County of Honolulu voter registration data with a form Affidavit on Application for City & County of Honolulu Voter Registration Data (Honolulu

Application")); id., Exh. 2 (undated memorandum from the County of Hawai`i Office of the County Clerk to individuals and organizations interested in purchasing voter registration data with a form Affidavit on Application for Statewide Voter Registration Data ("Hawai`i Application") and relevant Hawai`i Administrative Rules provisions); id., Exh. 3 (County of Kaua`i Office of the County Clerk Application for Voter Registration Data ("Kaua`i Application")); id., Exh. 4 (undated memorandum from the County of Maui Office of the County Clerk to individuals and organizations interested in purchasing voter registration data with a form Affidavit on Application for Voter Registration Data ("Maui Application")); see also Haw. Rev. Stat. §§ 11-11, 11-14, 11-17 (detailing duties of the county clerks); Haw. Admin. R. § 3-177-160(g) (stating that a non-public request for voter information "shall be in a form prescribed and provided by the chief election officer containing[,]" among other things, "(1) A sworn certification by self-subscribing oath setting forth the election or government purpose for which the information is sought; [and] (2) A sworn certification by self-subscribing oath establishing that the information will only be used for election or government purposes").

Because Plaintiff has not submitted the application forms for voter data with any of the counties, Plaintiff has not suffered an injury in fact, and Plaintiff's harm is only speculative. Therefore, Count I is not ripe, and the Court lacks subject matter jurisdiction over Count I. See S. Pac. Transp. Co. v. City of Los Angeles, 922 F.2d 498, 502 (9th Cir. 1990) (stating "[r]ipeness is determinative of jurisdiction" and noting a claim that is unripe must be dismissed for lack of jurisdiction). Count I must be dismissed on this basis.

2. Counts II and III

In Counts II and III, Plaintiff challenges Hawai`i law relating to disclosure of voting records, and a corresponding Hawai`i regulation that only permits applicants for voter information to have an election or government purpose. [Amended Complaint at ¶¶ 36-63.] Plaintiff alleges it "intends to use the requested VRS data for reasons not related to the purposes described in [Hawai`i Administrative Rule] section 3-177-160 — namely, research, analysis, law enforcement, education, and commentary." [Id. at ¶ 39.] However, as explained above, Plaintiff has not submitted an application for voter data to any county clerk.

Plaintiff alleges that it "cannot obtain VRS data unless it swears on the relevant form that it will use VRS data for an approved purpose," [id. at ¶ 40,] and cites to Section 3-177-160(g). Plaintiff contends that it could not submit the county clerk applications because, if it submitted a non-election purpose on the application, the affiant could be subject to a Class C felony, entailing the possibility of five years in prison and a $10,000 fine. Motion to Dismiss, Mem. in Opp. at 15; see also Schulaner Decl., Exh. 1 (Honolulu Application), Exh. 2 (Hawai`i Application), Exh. 3 (Kaua`i Application), Exh. 4 (Maui Application).

The Court is not persuaded that filling out the application for voter data and submitting it to each respective county would subject Plaintiff to the risk of a felony and a fine. All of the county applications state: "Pursuant to Chapter 19 of the Hawaii Revised Statutes, any person knowingly providing false information may be guilty of a Class C felony, punishable by up to 5 years imprisonment and/or $10,000 fine." [Id., Exh. 1 (Honolulu Application) at PageID.167, Exh. 2 (Hawai`i Application) at PageID.171, Exh. 3 (Kaua`i Application) at PageID.182, Exh. 4 (Maui Application) at PageID.188.] In other words, Plaintiff would only face a penalty by submitting false information on the application. Plaintiff can truthfully detail the purpose it seeks the voter data, and each county can determine whether to grant or reject the request pursuant to applicable law. See id., Exh. 1 (Honolulu Application) at PageID.166 (providing space for the affiant to outline the election purpose for which it seeks the information), Exh. 2 (Hawai`i Application) at PageID.170 (same), Exh. 3 (Kaua`i Application) at PageID.181 (same), Exh. 4 (Maui Application) at PageID.187 (same).

The Maui Application and the Kaua`i Application require the applicant to swear or affirm that "[u]nder penalty of law, the requested voter registration information will only be used for election or government purposes stated in this affidavit." [Id., Exh. 3 (Kaua`i Application) at PageID.182, Exh. 4 (Maui Application) at PageID.188.] Plaintiff is not subject to a penalty for filling out the Maui and Kaua`i applications. The respective counties will determine whether Plaintiff's stated purposes qualify as either election or government purposes under applicable law. Even if the respective counties determine Plaintiff's purposes are not election or government purposes, Plaintiff is not subject to penalty for listing such purposes on the application.

Plaintiff similarly does not face any potential harm from submitting the Honolulu Application and the Hawai`i Application. The Honolulu and Hawai`i applications both state: "The undersigned fully understands and hereby affirms . . . Under penalty of law that the voter registration data shall be used only for election or governmental purposes and not for any other purposes **unless specifically authorized by law.**" [Id., Exh. 1 (Honolulu Application) at PageID.167, Exh. 2 (Hawai`i Application) at PageID.171 (emphasis added).] If an applicant's purposes do not qualify as an election or governmental purpose, any other purpose authorized by law is also authorized. Thus, if the

NVRA authorizes the purpose, then the application form allows it. Stated differently, even if Plaintiff's purposes are not election or governmental purposes, as Plaintiff contends, if Plaintiff's purposes are authorized by the NVRA as Plaintiff argues, Plaintiff's purposes fall squarely within the scope of the Honolulu Application and the Hawai`i Application.

Finally, Plaintiff has not argued any entity has ever faced a penalty for filling out the applications for voter data, nor directed the Court to any such circumstance.

Simply put, Plaintiff's alleged injury from submitting an application for voter data with any county in the State of Hawai`i is not "definite and concrete," but rather is "hypothetical or abstract." See Flower World, Inc., 43 F.4th at 1229. Plaintiff has not yet suffered an informational injury, because Plaintiff has not yet been denied the information by the counties. Further, Plaintiff's anticipated injury of facing a penalty for filling out the applications for voter data is, as explained above, neither reasonable nor imminent. The Court finds Plaintiff does not face a realistic danger of sustaining a direct injury from filling out the applications for voter data.

Therefore, because Plaintiff has not filled out an application for voter data with any of the counties, Plaintiff's claims in Counts II and III are not ripe. Accordingly, Plaintiff lacks standing to bring Counts

II and III. Counts II and III must be dismissed on this basis.

II. Rule 19

Finally, Defendant argues complete relief cannot be afforded without the counties as parties to the suit, making the counties indispensable parties, and requiring the Amended Complaint be dismissed with prejudice. [Motion to Dismiss, Mem. in Supp. at 20-21.] The Court does not reach this argument, because it finds that it does not have subject matter jurisdiction over any of the claims alleged. See Wilbur v. Locke, 423 F.3d 1101, 1106 (9th Cir. 2005) (determining that "jurisdictional issues should be decided before reaching that Rule 19 issue"), *abrogated on other grounds by* Levin v. Com. Energy, Inc., 560 U.S. 413 (2010); see also Caroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003) ("Rule 19 protects the interests of absent parties." (citing 7 Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d § 1602, 22 (West 2001))). If an action is no longer pendent due to plaintiff's deficient standing, the absent party's interest is not at stake."); Khalaj v. United States, 474 F. Supp. 3d 1029, 1033 (D. Ariz. 2020) ("When a motion to dismiss is based on more than one ground, the court should consider the Rule 12(b)(1) challenge first because the other grounds will become moot if the court lacks subject matter jurisdiction." (citation omitted)).

III. Discovery Motion

Because the Court has considered the Motion to Dismiss under Rule 12(b)(1), and not under the Rule 56 summary judgment standard of Rule 56, Plaintiff's Motion for Discovery is inapplicable, and is DENIED on this basis.

IV. Dismissal Without Prejudice

Because Counts I, II, and III are not yet ripe, the Court dismisses Counts I, II, and III without prejudice. See Ass'n of Am. Med. Colls. v. United States, 217 F.3d 770, 785 (9th Cir. 2000) (affirming the dismissal of an unripe claim but reversing the dismissal with prejudice because events may later progress "to a point where plaintiffs' claims are ripe"). The Amended Complaint is dismissed without prejudice, and Plaintiff is granted leave to amend by **October 28, 2024**, if any of the claims are ripe at that time.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss Plaintiff's First Amended Complaint Filed September 22, 2023, ECF No. 20, or in the Alternative, Motion for Summary Judgment, filed November 28, 2023, is HEREBY GRANTED IN PART AND DENIED IN PART. The Motion to Dismiss is GRANTED insofar as Counts I, II and III are DISMISSED. The Motion to Dismiss is GRANTED insofar as Counts I, II and III are DISMISSED. The Motion to Dismiss is DENIED insofar as the dismissal of Counts I, II and III is WITHOUT PREJUDICE. Plaintiff is GRANTED leave to file a second amended complaint by **October 28, 2024**, if any of the claims are ripe at that time. Plaintiff is CAUTIONED that, if it fails to file an amended complaint by **October 28, 2024**, the case will be closed.

Plaintiff's Motion for Discovery Under Federal Rule of Civil Procedure 56(d), filed January 26, 2024, is hereby DENIED.

IT IS SO ORDERED.

DATED HONOLULU, HAWAII, June 28, 2024.

/s/ Leslie E. Kobayashi

Leslie E. Kobayashi

United States District Judge

PUBLIC INTEREST LEGAL FOUNDATION, INC. VS. SCOTT T. NAGO, ETC; CV-23-00389 LEK-WRP; ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION

TO DISMISS AND DENYING PLAINTIFF'S MOTION FOR DISCOVERY UNDER FEDERAL RULE OF CIVIL PROCEDURE 56(D)

Appendix C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

PUBLIC INTEREST LEGAL FOUNDATION, INC., **Plaintiff,** **v.** **SCOTT T. NAGO, IN HIS OFFICIAL CAPACITY AS THE CHIEF ELECTION OFFICER FOR THE STATE OF HAWAII,** **Defendant.**	**Civil Action No.** **23-cv-00389-LEK-WRP**

ORDER DISMISSING CASE

On September 20, 2023, Plaintiff Public Interest Legal Foundation Inc. ("Plaintiff") filed its First Amended Complaint for Declaratory and Injunctive Relief. [Dkt. no. 20.] On June 28, 2024, the Court issued an order that dismissed Counts I, II, and III without prejudice because the claims were not ripe, and granted Plaintiff leave to file a second amended complaint by October 28, 2024, if the claims were ripe at that time ("6/28 Order"). [Dkt. no. 58.[1]]. As of the date of this Order, Plaintiff has not filed a second amended complaint and has filed a notice of intent not to amend the complaint. [Dkt. no. 60.]

Accordingly, this Court has the discretion to dismiss the Complaint without leave to amend. See Yourish v. Cal. Amplifier, 191 F.3d 983, 988 (9th Cir. 1999) (holding that the plaintiff's failure to comply with a minute order setting forth the deadline to file the amended complaint gave the district court the discretion to dismiss the case under Fed. R. Civ. P. 41(b)[2]), *superseded by statute on other grounds as recognized in* Russel v. United States, Case No.: 21cv1029-LL-MDD, 2023 WL 2919319, at *3 (S.D. Cal. Apr. 12, 2023).

After weighing the five dismissal factors set forth in Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011),[3] this Court finds that dismissal without

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[1] The 6/28 Order is also available at 2024 WL 323994.

[2] Fed. R. Civ. P. 41(b) states, in pertinent part: "If the plaintiff fails to prosecute or comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."

[3] The Ninth Circuit has identified five factors that a district court must

> consider before dismissing a case . . . : (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the other party; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions.

Dreith, 648 F.3d at 788 (citations and internal quotation marks omitted).

leave to amend is warranted. In light of Plaintiff's express notice of intent not to file an amended complaint, the Court finds that less drastic measures are not viable. The public interest in the expeditious resolution of this litigation and this Court's interest in managing the docket strongly favor dismissal. Further, the case cannot currently be disposed of on the merits because the Court previously concluded Plaintiff's claims were not yet ripe. See 6/28 Order, 2024 WL 3233994, at *6, *7.

Because the Court concluded Plaintiff's claims were not yet ripe in the 6/28 Order, and Plaintiff has not filed a second amended claim demonstrating the claims are now ripe, the claims in Plaintiff's First Amended Complaint, which the Court previously dismissed without prejudice, are HEREBY DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND. The Court DIRECTS the Clerk's Office to enter final judgment and close the case immediately.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, October 29, 2024.

/s/ Leslie E. Kobayashi

Leslie E. Kobayashi

Senior U.S. District Judge

Appendix D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

PUBLIC INTEREST LEGAL FOUNDATION, INC., **Plaintiff,** **v.** **SCOTT T. NAGO, in his Official Capacity as the Chief Election Officer for the State of Hawaii,** **Defendant.**	**JUDGMENT IN A CIVIL CASE** **Civil Action No.** **23-cv-00389-LEK-WRP**

[ ] **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[✓] **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS SO ORDERED AND ADJUDGED that judgment is entered pursuant to the "Order Granting in Part and Denying in Part Defendant's Motion to Dismiss and Denying Plaintiff's Motion for Discovery Under Federal Rule of Civil Procedure

56(D)", ECF No. 58, filed on June 28, 2024 and the "Order Dismissing Case", ECF No. 63, filed on October 29, 2024.

October 29, 2024	LUCY H. CARRILLO
Date	Clerk
	/s/ LUCY H. CARRILLO by EA
	(By) Deputy Clerk