

THE NATIONAL VOTER REGISTRATION ACT MANDATES PUBLIC ACCESS TO VOTER REGISTRATION RECORDS AND PREEMPTS ALL STATE LAWS TO THE CONTRARY

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HIGHLIGHTS:

- Public confidence in the integrity of the election process is essential to maintaining a democratic republic.
- Voter registration lists across the country are full of errors and omissions and are poorly maintained, which can lead to fraud.
- There is a circuit split in the federal courts of appeals over who has standing to assert claims under the public disclosure provision of the National Voter Registration Act, as well as the voter registration information to which the public is entitled.
- The U.S. Supreme Court should resolve this split by holding that members of the public have informational standing to enforce this provision and are entitled to all information required to verify the accuracy of registration lists of eligible voters.

INTRODUCTION:

Recent polling shows that 43 percent of Americans are either “not at all confident” or “not too confident” in the accuracy and security of the casting and counting of votes in U.S. elections.¹ One of the reasons for that is no doubt the recognized problems with voter registration rolls across the country. A 2012 study found that one of every eight (24 million) voter registrations in the U.S. is “significantly inaccurate.”² Other studies found that between 2013 and 2023, more than 35 million

¹ Lydia Saad, *Partisan Split on Election Integrity Gets Even Wider*, Gallup (Sept. 25, 2024), <https://news.gallup.com/poll/651185/partisan-split-election-integrity-gets-even-wider.aspx>?

² Pew Research Ctr. on the States, *Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade* 1 (2012), <https://www.pew.org/en/research-and-analysis/reports/2012/02/14/inaccurate-costly-and-inefficient-evidence-that-americas-voter-registration-system-needs-an-upgrade>.

voter registrations were out of date because people had either moved, died, or were registered more than once,³ a serious indictment of the lack of proper maintenance of state voter registration rolls by state election officials who are obviously not taking the steps necessary to ensure those rolls are accurate and up-to-date.

Inaccurate voter rolls can lead to fraud that endangers the integrity of the election process. A 2020 study that compared voter registration lists and voter histories from 42 states found over 144,000 instances of potentially fraudulent voting during the 2016 and 2018 elections. That included 14,608 deceased voters who were credited by state officials with having cast ballots; over 81,000 voters registered twice at the same address who cast two votes; almost 8,400 individuals who voted twice because they were registered in two different states; 5,500 voters who cast two ballots because they were registered twice in the same state but at different addresses; and 34,000 individuals who cast ballots despite being registered at nonresidential addresses ranging from commercial establishments to vacant lots and parks.⁴

Unfortunately, there is currently a circuit split in the federal courts of appeal over whether members of the public and organizations concerned with election integrity and inaccurate registration lists have standing under the National Voter Registration Act of 1993 (NVRA)⁵ to pursue claims against states that refuse to provide access to voter registration information, limit what use can be made of such information, and impose criminal penalties for “misuse” of that information. The disagreement among the appellate courts means that the federal rights of voters and advocacy groups depend on where they live. It also increases the likelihood that the U.S. Supreme Court will step in to resolve this conflict.

The NVRA not only provides standing to the public to litigate over violations of that Act, but it also mandates that states maintain and make available for public inspection – without limitation – all records involved in ensuring the accuracy of “official lists of eligible voters.” Further, the NVRA created a *right* to know and courts holding that members of the public have to show a *need* to know before they can assert a claim for a state’s failure to provide access to voter registration information are misinterpreting the law and Supreme Court precedent. The Court should rule that all state laws to the contrary are preempted, and therefore null and void, under the Elections Clause of the U.S. Constitution.⁶

³ Amy Sherman, *One Successful Program Finds Voters who Moved or Died. Why are States Leaving it Before the 2024 Elections?* Poyntner (May 4, 2023), <https://www.poyntner.org/fact-checking/2023/eric-voting-program-remove-registrations-misinformation-soros/>.

⁴ *Critical Condition: American Voter Rolls Filled With Errors, Dead Voters, and Duplicate Registrations*, Public Interest Legal Foundation (Sept. 16, 2020), <https://publicinterestlegal.org/research/critical-condition-american-voter-rolls-filled-with-errors-dead-voters-and-duplicate-registrations/>. All states require individuals to register to vote where they reside.

⁵ 52 U.S.C. §§ 20501-20511.

⁶ Art. 1, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”).

NATIONAL VOTER REGISTRATION ACT OF 1993

Among the “Findings and purposes” of the NVRA outlined by Congress are protecting “the integrity of the electoral process” and ensuring “that accurate and current voter registration rolls are maintained.”⁷ To that end, the NVRA provides that states must “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) the death of the registrant; or (B) a change in the residence of the registrant ...”

The Help America Vote Act of 2002 (HAVA)⁸ imposed additional requirements on states to maintain an accurate voter registration list in “a single, uniform, official, centralized, interactive computerized statewide voter registration list, defined, maintained, and administered at the State level.”⁹ Those requirements include coordinating a state’s voter registration database “with other agency databases within the State” and mandating that the state election system ensures “that voter registration records in the State are accurate and are updated regularly,” including removing duplicate registrations.¹⁰ Yet, HAVA provides no private right of action allowing groups and individuals to file a lawsuit in order to enforce these obligations.

The NVRA provides the public with access to voter registration information and the record of state actions taken to maintain the accuracy of that information. Specifically, it 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...shall include lists of the names and addresses of all persons to whom notices [were sent asking if they have changed their residence], 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.¹¹

⁷ 52 U.S.C. § 20501(b)(3) and (4).

⁸ 52 U.S.C. § 20901 et seq.

⁹ 52 U.S.C. § 21083(a)(1)(A).

¹⁰ See generally 52 U.S.C. § 21083.

¹¹ 52 U.S.C. § 20507(i).

To ensure proper enforcement, the NVRA provides for a private right of action in addition to the civil and criminal enforcement authority given to the attorney general. The NVRA states:

- (1) A person who is **aggrieved by a violation**...may provide written notice of the violation to the chief election official of the State involved.
- (2) If the violation is not corrected within 90 days after receipt of a notice...or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the **aggrieved person** may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.
- (3) If the violation occurred within 30 days before the date of an election for Federal office, the **aggrieved person** need not provide notice to the chief election official of the State...before bringing a civil action....¹²

Since the word "person" is not defined in the NVRA,¹³ the general provision on definitions in the U.S. Code (1 U.S.C. § 1) applies, which states that "in determining the meaning of any Act of Congress, unless the context indicates otherwise," the word "person" includes "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."¹⁴ While some have argued that the inclusion of the word "person" indicates that this provision of the NVRA is limited to lawsuits filed by individuals, not organizations, there is no indication in the statute that the private right of action is limited only to individuals who are "aggrieved" by a violation of the NVRA.

The Fifth Circuit specifically addressed this issue and rejected that argument in 1999. The court, referencing 1 U.S.C. § 1, said that it was "unconvinced by the appellees' argument that the word 'person' before 'aggrieved' in the NVRA evidences an intent by Congress to limit standing to individuals, as opposed to corporations." The court also pointed out that the legislative history of the NVRA made it "clear that Congress intended that organizations be able to sue under the Act. An earlier version of the Act allowed a private cause of action for an aggrieved 'individual,' but the later version that was passed into law used the term 'person.' In explaining the change, Senator Ford, a sponsor of the bill, noted that 'the modification will permit organizations as well as individuals, and the Attorney General to bring suits under the act.'"¹⁵

One final note on the NVRA: there is a provision in the section on criminal penalties that could potentially apply to state election officials who refuse to comply with the public disclosure requirement of the law. This provision has, however, never

¹² 52 U.S.C. § 20510 (emphasis added).

¹³ 52 U.S.C. § 20502.

¹⁴ 1 U.S.C. § 1.

¹⁵ *Association of Community Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 364 (5th Cir. 1999) (citing 138 Cong. Rec. S6329 (daily ed. May 7, 1992) (statement of Sen. Ford)).

been used by the U.S. Justice Department for that purpose. 52 U.S.C. § 20511 provides fines and imprisonment for up to five years for a person, “including an election official, who in any election for Federal office—(1) Knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for...(C) exercising any right under this chapter...”

Threats of criminal prosecution and the imposition of civil penalties by state authorities against organizations and individuals attempting to exercise their rights under the public disclosure provisions of the NVRA have already occurred, as discussed below. That is another reason why it is vital that the U.S. Supreme Court resolve the circuit split over this issue in favor of the public being able to carry out the intent of Congress as evidenced by the unambiguous, straightforward text of the statute.

COURT OF APPEALS DECISIONS ON STANDING AND PUBLIC DISCLOSURE

The circuit split on standing include cases filed by the Public Interest Legal Foundation (PILF)¹⁶ and the Campaign Legal Center (CLC). The First and Ninth Circuit ruled that nonprofit organizations like PILF and CLC do have standing to assert an informational injury claim under the NVRA,¹⁷ while the Third, Fifth, and Sixth Circuits have held that such organizations do not have standing to sue.¹⁸

When it comes to access to voter registration information, the First and Tenth Circuits have held that organizations such as PILF and the Voter Reference Foundation have a right to such information.¹⁹ However, the Ninth Circuit, while recognizing that they have standing, then held that such organizations do not have a right under the public disclosure provision to have access to personal voter information on registration lists.²⁰

First Circuit: *Public Interest Legal Foundation v. Bellows*

In a case filed against Shenna Bellows, the Maine Secretary of State, the First Circuit concluded that PILF had standing under the NVRA to sue the state over its refusal to provide voter registration list information and under a state law imposing civil penalties for the disclosure of such information.²¹ Maine has a privacy law that limits access to voter information contained in the state's central voter registration

¹⁶ The author is chairman of the Board of Trustees of the Public Interest Legal Foundation.

¹⁷ *Pub. Int. Leg. Found., Inc. v. Nago*, 2026 WL 1144703 (9th Cir. 2026).

¹⁸ *Pub. Int. Legal Found. v. Pennsylvania*, 136 F.4th 456 (3rd Cir. 2025); *Campaign Legal Ctr. v. Scott*, 49 F.4th 931 (5th Cir. 2022); and *Pub. Int. Legal Found. v. Benson*, 136 F.4th 613 (6th Cir. 2025).

¹⁹ *Pub. Int. Legal Found. v. Bellows*, 92 F.4th 36 (1st Cir. 2024) and *Voter Reference Found., LLC v. Torrez*, 160 F.4th 1068 (10th Cir. 2025).

²⁰ *Nago*, 2026 WL 1144703 (9th Cir. 2026).

²¹ *Bellows*, 92 F.4th at 41.

database (the Voter File²²) to “municipal and state election officials” with only some exceptions.²³ One of those exceptions is for an “organization that is evaluating the State’s compliance with its voter list maintenance obligations,” although that same exception limits the use and publication of that information, including prohibiting making it “accessible by the general public on the Internet or through other means.” Violations can lead to civil penalties of \$1,000 to \$5,000 for each separate violation.

The court affirmed the district court’s finding that the Voter File clearly fell within the NVRA’s definition of a record “concerning the implementation of programs and activities conducted for the purposed of ensuring the accuracy and currency of official lists of eligible voters” and thus was subject to disclosure under federal law.²⁴ PILF intended, said the court, “to use the Voter File to conduct its regular programmatic activities, including to evaluate the list maintenance activities of states other than Maine and to enforce voter list maintenance laws in states other than Maine.”²⁵ The court held that PILF had standing based on the fact that it could be subject to civil penalties by Maine if it engaged in such activities that “would contravene the plain language of the [state’s] Use Ban,” and it was irrelevant that the attorney general “promised” not to penalize PILF.²⁶

The ban on the publication of the voter data on the Internet or elsewhere, concluded the court, was also preempted by the NVRA. The state’s restriction is inconsistent “with the structure and purpose” of the statute. In fact, the court said the public disclosure provision:

evinces Congress’s belief that public inspection, and thus public release, of Voter File data is necessary to accomplish the objectives behind the NVRA. Indeed, the analysis and subsequent dissemination of Voter File data to the public is necessary if members of the public, or organizations such as PILF, are ever to identify, address, and fix irregularities in states’ vote rolls by exercising their private right of action under the NVRA.²⁷

According to the First Circuit, PILF had standing under the NVRA to both bring a claim against the state and demand access to voter registration information. The NVRA seeks to protect the integrity of the electoral process and ensure the accuracy of voter registration rolls, and Maine’s limitation on the use and publication of such data “stands as an obstacle to the accomplishment and execution” of the NVRA’s purpose according to the court.²⁸

²² The Voter File contains a voter’s name, residence address, mailing address, year of birth, enrollment status, date of registration, voter participation history, etc. *Bellows*, 92 F.4th at 41.

²³ *Id.* at 43-44, citing Me. Rev. Stat. Ann. Tit. 21-A, § 196-A(1)(J)(1)-(2).

²⁴ *Id.* at 44.

²⁵ *Id.* at 50.

²⁶ *Id.*

²⁷ *Id.* at 54.

²⁸ *Id.* at 54 and 56.

Third Circuit: *Public Interest Legal Foundation v. Pennsylvania*

In contrast to the First Circuit, the Third Circuit came to the opposite conclusion regarding PILF's standing to file a lawsuit. PILF sued the Pennsylvania Secretary of State under the NVRA seeking information on a so-called "glitch" that the state admitted had allowed aliens obtaining driver's licenses from Pennsylvania's Department of Transportation to register to vote, apparently for decades.²⁹ The organization claimed it had informational standing under the public disclosure and private right of action provisions of the NVRA. The state refused to provide the information sought by PILF, which was for "all records" concerning the unlawful registration of aliens to vote.

The district court granted summary judgment to PILF concluding that PILF had standing because when Congress elevates intangible harms into concrete injuries, a plaintiff does not have to allege "any additional harm beyond the one Congress has identified." Moreover, the district court said that the Supreme Court "has held that 'a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute.'"³⁰

But the appeals court disagreed. What is odd about the court's reasoning is that it almost entirely discounted the language in the public disclosure provision. That provision emphasizes public 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," which makes it clear that the intent of this provision is to enlist the public's assistance in ensuring the accuracy of voter registration lists.

Instead, the appeals court placed all of its emphasis on one of the other purposes of Congress in passing the NVRA: to increase "citizen participation in federal elections."³¹ Therefore, the court reasoned, PILF and similar organizations would have to show a "concrete harm and, in particular, proof of a nexus is required for PILF to have standing to sue under a theory of informational injury."³² Such a "nexus" requirement was, however, rejected by the Supreme Court in 1998 in a case involving campaign finance records that are similarly subject to public disclosure under the Federal Election Campaign Act.³³

²⁹ *Pennsylvania*, 136 F.4th at 459.

³⁰ *Id.* at 460 (citations omitted).

³¹ *Id.* at 466-467.

³² *Id.* at 467.

³³ *FEC v. Akins*, 524 U.S. 11, 22 (1998) (the statute seeks "to protect individuals...from the kind of harm they say they have suffered, i.e., failing to receive particular information about campaign-related activities).

Under the Third Circuit's standard, PILF's stated purpose in seeking access to voter registration records, which was to "study and analyze" the state's "voter list maintenance activities" in order to determine whether the state is, as required by the law, maintaining the "accuracy and currency" of the list, is not sufficient to establish standing.³⁴ In bizarre reasoning that belies both the text and intent of the statute, the court said that PILF's claim that it "cannot effectively evaluate the accuracy" of Pennsylvania's "voter rolls nor the effectiveness of investigation and remedies undertaken" by the state to fix the "glitch" that allowed aliens to illegally register and vote without detection "does not entitle it to sue."³⁵

Fifth Circuit: *Campaign Legal Center v. Scott*

The Fifth Circuit reversed a district court opinion ordering Texas to provide CLC with the names and voter identification numbers of registered voters suspected of being aliens—and therefore ineligible to vote—by election officials, holding that CLC did not have standing to bring a claim under the NVRA.³⁶ The district court had found standing due to the NVRA's public disclosure requirement and the "downstream consequences" of Texas election officials refusing to comply with the requirement: the lack of opportunity for CLC to "identify eligible voters improperly flagged" as aliens in the state's voter registration system.³⁷

The Fifth Circuit ruled, however, that CLC had not suffered an injury-in-fact. Citing a 2021 Supreme Court opinion, *TransUnion LLC v. Ramirez*³⁸, the court rejected "the proposition that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right."³⁹ In order to establish standing, the court said, CLC must establish "concrete and particularized harm...from not obtaining the requested personal voter information."⁴⁰ CLC lacked standing, said the court, because the organization did not allege "that identification of voter names and identification numbers [would] directly lead to action relevant to the NVRA or any other statute, nor that their direct participation in the electoral process [would] be hindered."⁴¹

³⁴ *Pennsylvania*, at 467.

³⁵ *Id.* at 467-468. The Third Circuit also improperly noted with obvious disapproval that PILF was an "out-of-state" organization, did not "represent any Pennsylvania citizens," and has "no direct ties to Pennsylvania voters," all factors not required by the public disclosure provision of the NVRA. *Id.* at 469.

³⁶ *Scott*, 49 F.4th at 932-933.

³⁷ *Id.* at 935-936.

³⁸ 594 U.S. 413 (2021).

³⁹ *Id.* at 936.

⁴⁰ *Id.* at 937.

⁴¹ *Id.*

Sixth Circuit: *Public Interest Legal Foundation v. Benson*

In *Benson*, PILF filed a lawsuit against the Michigan Secretary of State, Jocelyn Benson, for failing to conduct reasonable maintenance of voter registration lists and failing to allow inspection of public registration records as required by the NVRA.⁴² PILF specifically alleged that there were 34,000 deceased individuals still registered to vote in Michigan that Benson had failed to remove.⁴³

Benson also refused to provide the list maintenance information that PILF demanded in order to determine if the state was in compliance with the “reasonable” maintenance requirement of the NVRA. This included the data files received by Michigan from the Social Security Administration on deceased registrants; records of deceased registrants removed from the state’s registration list; records of investigations conducted by election officials of deceased registrants; and communications between the state and the Electronic Registration Information Center (ERIC).⁴⁴ ERIC is a nonprofit information-sharing organization that provides member states like Michigan with information on registered voters, including whether they have moved or are deceased.⁴⁵

But the Sixth Circuit affirmed the district court’s grant of summary judgment to Benson, holding that despite the private right of action provided by the NVRA to anyone “aggrieved” by a violation of the law, PILF did not have standing to bring a claim. The court held that PILF’s informational injury was not sufficient to confer standing because it “is not a registered voter, nor has it claimed organizational standing on behalf of registered voters, in the voting jurisdiction at issue,”⁴⁶ despite the fact that the NVRA’s private right of action for any “person who is aggrieved by a violation” has no requirement that the aggrieved person must be a registered voter.

Moreover, the court held that PILF’s claims that it was harmed because Benson’s failure to comply with the public disclosure provision of the NVRA prevented PILF from “engaging in its research educational and remedial activities” that would reveal failures by state election officials to comply with federal law and maintain accurate voter registration rolls was insufficient to establish standing under Article III of the Constitution. The “downstream consequences argument is unavailing,” said the court.⁴⁷

⁴² *Benson*, 136 F.4th at 617.

⁴³ *Id.* at 619.

⁴⁴ *Id.* at 620-621.

⁴⁵ See <https://ericstates.org/>.

⁴⁶ *Benson*, 136 F.4th at 631.

⁴⁷ *Id.* at 631.

Ninth Circuit: *Public Interest Legal Foundation v. Nago*

In *Nago*, PILF filed a lawsuit under the public disclosure provision of the NVRA after the state of Hawaii refused to provide PILF with a statewide list of registered voters, telling PILF it should go to the counties for their county lists despite the federal requirement under HAVA for the state government to maintain one statewide list. The 9th Circuit held that PILF had standing because it had suffered an information injury.⁴⁸

As the appeals court pointed out, “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” problems.⁴⁹ The court cited the report on the NVRA by the Senate Committee on Rules and Administration that outlined that the committee was “mindful of the need to keep accurate and current voter rolls....Abuses may be found in the design of a program as well as in its implementation.”⁵⁰

The court stated:

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 organization plaintiff – interference with an organization's core business activity is a cognizable injury in fact, but it is not the *only* type of injury an organization can suffer.⁵¹

The appeals court cited two Supreme Court cases involving federal statutes similar to the NVRA that provide the public with access to public information, including the Federal Advisory Committee Act and the Federal Election Campaign Act: *Public Citizen v. U.S. Department of Justice* (1989)⁵² and *Federal Election Commission v. Akins* (1998).⁵³ In those cases, said the Ninth Circuit, the Supreme Court established that plaintiffs suffer an injury-in-fact sufficient to establish Article III standing when a plaintiff “fails to obtain information which must be publicly disclosed pursuant to a statute.”⁵⁴

The court rejected the argument advanced by Hawaii that *TransUnion LLC v. Ramirez* requires PILF to “do more than allege the denial of information to satisfy

⁴⁸ *Nago*, slip op. at 4.

⁴⁹ *Id.* at 6.

⁵⁰ *Id.*, citing S. Rep. No. 103-6, at 18, 32 (1993).

⁵¹ *Nago*, slip op. at 11 (emphasis in original).

⁵² *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440 (1989).

⁵³ *FEC v. Akins*, 524 U.S. 11 (1998).

⁵⁴ *Nago*, slip op. at 13, citing *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440 (1989) and *Federal Election Commission v. Akins*, 524 U.S. 11 (1998).

Article III's injury in fact requirement."⁵⁵ But *TransUnion* didn't apply, said the court, because:

[T]he 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.' The Court emphasized the plaintiffs had received the information, just not in the format the statute required.⁵⁶

Moreover, unlike the federal laws in *Akins* and *Public Citizen* – and the NVRA – the Fair Credit Reporting Act, the statute that was involved in the *TransUnion* case, is not a "sunshine law – a statute that entitles all members of the public to information about government activities." Instead, it only provides access to certain credit information to "relevant consumers."⁵⁷

In fact, the Ninth Circuit pointed out that the Supreme Court has emphasized even more recently that "*Akins* and *Public Citizen* remain good law."⁵⁸ In 2024, the Supreme Court acknowledged in *FDA v. Alliance for Hippocratic Medicine*⁵⁹ that *Akins* "continues to govern the standing analysis when a plaintiff alleges information injury under a 'federal law [that] requires [an agency] to disseminate...information upon request by members of the public.'"⁶⁰

As the appeals court concluded:

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 cause a concrete injury sufficient for standing. No additional adverse effects need be shown.⁶¹

Although the court ruled in favor of PILF on the standing issue, it ruled against the organization on the merits of its public disclosure request. It held, in an explanation that defies common sense, that the statewide voter registration list of Hawaii is not covered by the public disclosure requirement. In doing so, the Ninth Circuit largely disregarded the statutory term "all" in determining what election-related records are available under the NVRA. The court claimed that this provision is "aimed at

⁵⁵ *Nago*, slip op. at 6.

⁵⁶ *Nago*, slip op. at 14-15 (citations omitted).

⁵⁷ *Id.* at 15.

⁵⁸ *Id.* at 19.

⁵⁹ 602 U.S. 367 (2024).

⁶⁰ *Nago*, slip op. at 19.

⁶¹ *Nago*, slip op. at 19-20.

transparency regarding processes," and not the "disclosure of the personal data" of registered voters.⁶²

But it seems obvious that without the ability to verify, for example, that specific registered voters who are deceased or have moved out of state have been removed from the registration list, it is not possible to determine if the "processes" put in place by a state ensure "the accuracy and currency of official lists of eligible voters." The court's erroneous conclusion thwarts the entire purpose of the public disclosure provision.

Tenth Circuit: *Voter Reference Foundation, LLC v. Torrez*

In *Torrez*, the Tenth Circuit, like the First Circuit in *Bellows*, concluded that restrictions on the use and publication of voter registration information by New Mexico were preempted by the NVRA.⁶³

The Voter Reference Foundation (VRF) publishes voter data it obtains from state election officials to "enhance transparency and encourage voter participation."⁶⁴ After VRF obtained such voter registration and voter history information from the New Mexico secretary of state and published it on its website, the secretary of state sent a criminal referral to New Mexico's attorney general, claiming VRF had violated the state's statutes limiting the use and sharing of that data. The secretary of state refused further requests for voter information from VRF and would not respond to VRF's notification that there was a discrepancy in the state's data between "the number of voters who voted in 2020 and number of ballots reported in the State's voter history."⁶⁵

New Mexico's ban on the use of voter information and sharing of the data with third parties provides that the data can "be used for governmental or election and election campaign purposes only and shall not be made available or used for unlawful purposes" and cannot be shared, disseminated, or published "to a third party."⁶⁶

The appeals court concluded that VRF had standing not only because the threat of a criminal prosecution by the state established a "concrete injury," but also due to the private right of action authorized by the NVRA. Thus, the court concluded, VRF was "well within its statutory right to bring a civil action for declaratory and injunctive relief with respect to the alleged NVRA violation."⁶⁷

Moreover, the court held, the use and publication limitations of the state law were preempted by the public disclosure provision of the same federal law. Congress obviously intended "to support the transparency and circulation of voter data among

⁶² Id. at 37.

⁶³ *Torrez*, 160 F. 4th at 1073.

⁶⁴ Id. at 1072.

⁶⁵ Id. at 1074.

⁶⁶ Id. at 1075 (citations omitted).

⁶⁷ Id. at 1079.

the public to help detect and correct errors," an intention that "is further evidenced by the private right of action members of the public have under the NVRA to enforce violations of the statute, including the Public Disclosure Provision." "In other words," said the court, "critical scrutiny and public audits of voter data were envisioned by Congress in passing the NVRA."⁶⁸

Banning uses of voter data such as prohibiting Internet publication "obstruct[s] the NVRA's primary goal of providing broad transparency and circulation of such voter data. Put simply, making voter data unavailable for close public scrutiny disrupts the purposes and intended effects of the NVRA" concluded the court.⁶⁹

CONCLUSION:

As the First Circuit said in the *Bellows* decision, citing a Senate report, "an effective national voter registration program must also include a private civil enforcement...[which] can encourage action to assure that reasonable effort is undertaken to achieve its objectives in all States and, indeed, it may be essential to the success of such a program..."⁷⁰ The purpose and intent of the NVRA cannot be fulfilled when courts hold that organizations dedicated to ensuring election integrity such as the Public Interest Legal Foundation and the Voter Reference Foundation do not have standing and cannot enforce the public disclosure requirements of the law that are intended to ensure the accuracy and currency of voter registration.

While some courts have properly interpreted the NVRA, others have not, failing to follow the Supreme Court's precedents on the establishment of Article III standing for informational injuries under sunshine statutes that guarantee public access. These courts are frustrating Congress's intent in passing, and the clear text of, the National Voter Registration Act by holding that such organizations must show a special "need" for the information before they can assert a "right" to the information.

Moreover, having access to *all* information relevant to determining whether a state is complying with the federal requirement to maintain an accurate, up-to-date voter registration list should include access not only to the maintenance processes and procedures used by states, but to the actual voter registration and voter history information and documentation of every voter on the list itself.

It is vital that the Supreme Court step in and resolve this circuit split. As Congress recognized, fair, honest, and secure elections are a fundamental requirement for maintaining our democratic republic. The Supreme Court has its own obligation to ensure that the law passed by Congress to uphold and support that requirement is properly applied by the federal judiciary.

⁶⁸ Id. at 1081-1082.

⁶⁹ Id. at 1082.

⁷⁰ *Benson*, 92 F.4th at 54 (citing S. Rep. No. 101-140, at 13 (1989)).