

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

VOTER REFERENCE  
FOUNDATION, LLC,

Plaintiff,

v.

ALBERT SCHMIDT, in his official  
capacity as Secretary of the  
Commonwealth,

Defendant.

No. 1:24-cv-294

Judge Joseph F. Saporito, Jr.

**MOTION TO DISMISS PURSUANT TO RULE 12(h)(3)**

Defendant Secretary of the Commonwealth Al Schmidt respectfully moves to dismiss Counts I, II, and III of this action, and to dismiss Count VI in part, pursuant to Rule 12(h)(3), and in support thereof states as follows:

1. In this matter, Plaintiff has brought claims under the National Voter Registration Act (NVRA), 52 U.S.C. § 20501 *et seq.* (Counts I–III), based on the refusal of the Secretary to produce certain materials to it. Count VI of the complaint also seeks a declaratory judgment, based in part on the alleged violations of the NVRA.

2. Under the Third Circuit’s decision in *Public Interest Legal Foundation v. Secretary of the Commonwealth of Pennsylvania*, 136 F.4th 456 (3d Cir. 2025), *cert. denied sub nom. Pub. Int. Legal Found v. Schmidt*, No. 25-379, 2026 WL 568366 (U.S. Mar. 2, 2026) (“*PILF*”), a plaintiff asserting standing under the NVRA must “establish a nexus among a downstream consequence, [plaintiff’s] alleged harm, and the interest Congress sought to protect.” *Id.* at 465. And “the interest Congress sought to protect in enacting the NVRA” is “the expansion of voter participation in federal elections.” *Id.* at 469.

3. Plaintiff seeks access to Pennsylvania’s voter rolls in order to publish voter information on the internet. It alleges that the Secretary’s refusal to produce the voter rolls for this purpose violates the NVRA.

4. Plaintiff’s purported injury based on the Secretary’s refusal is insufficient to establish Article III standing under *PILF*. Plaintiff cannot show that an adequate nexus exists among the “downstream consequence” of the Secretary’s refusal, its purported harm, and the interest Congress sought to protect in the NVRA.

5. Because this case has proceeded to summary judgment, plaintiff may not rely on mere allegations to establish standing. Rather, it

must point to specific evidence in the record to support its purported harm. But the record is devoid of evidence showing that the harm plaintiff claims to have suffered possesses an adequate nexus to the interest Congress sought to protect in the NVRA.

6. A plaintiff must establish standing as to each count of its complaint. As a result, those counts alleging violations of the NVRA should be dismissed.

WHEREFORE, for the reasons set forth above, Defendant respectfully requests that his motion be granted, and that Counts I, II, and III be dismissed, and Count VI be dismissed to the extent it relies on alleged violations of the NVRA, pursuant to Rule 12(h)(3).

March 23, 2026

/s/ Mary Katherine Yarish  
Mary Katherine Yarish (PA 328843)  
Deputy Attorney General  
Office of Attorney General  
15th Floor, Strawberry Square  
Harrisburg, PA 17120

Respectfully submitted,

/s/ Michael J. Fischer  
Michael J. Fischer (PA 322311)  
Executive Deputy General Counsel  
333 Market Street, 17th Floor  
Harrisburg, PA 17101  
(717) 831-2847  
mjfischer@pa.gov

Kathleen A. Mullen (PA 84604)  
Ian B. Everhart (PA 318947)  
Pennsylvania Department of State  
306 North Office Bldg.  
401 North Street  
Harrisburg, PA 17120

## CERTIFICATE OF NON-CONCURRENCE

Pursuant to Local Rule 7.1, I certify that I sought concurrence from counsel for plaintiff in the above motion. Plaintiff does not concur in this motion.

Dated: March 23, 2026

/s/ Michael J. Fischer

Michael J. Fischer

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## CERTIFICATE OF SERVICE

I hereby certify that I filed the above document using the Court's CM/ECF system. Service will be accomplished on all counsel of record through the CM/ECF system.

Dated: March 23, 2026

/s/ Michael J. Fischer

Michael J. Fischer

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