No. 25-1703

IN THE

United States Court of Appeals

for the Eighth Circuit

PUBLIC INTEREST LEGAL FOUNDATION, INC.,

Plaintiff-Appellant,

v.

STEVE SIMON, in his official capacity as the Secretary of State for the State of Minnesota,

Defendant-Appellee,

v.

UNITED STATES OF AMERICA,

Intervenor Defendant-Appellee.

On Appeal from the United States District Court
for the District of Minnesota, Case No. 24-cv-01561
The Honorable Susan Richard Nelson Presiding

REPLY BRIEF OF PLAINTIFF-APPELLANT

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ARGUMENT

All States should be transparent when they grant and remove voting rights. Yet Minnesota gets a pass. Such inequality demands justification.

This Court should find that the Transparency Exemption—the provision of the National Voter Registration Act ("NVRA") that exempts Minnesota from the NVRA's Public Disclosure Provision—must satisfy the equal sovereignty principle applied again in *Shelby County v. Holder*. The historical and precedential record demonstrates that Congress's Elections Clause powers are qualified by the principle of equal state sovereignty.

The United States now agrees that *some* justification is needed, *see* USA Br. at 30 (explaining that all Elections Clause legislation must pass rational basis review), but elevates distinctions without differences between *Shelby County* and the present case. *Shelby County* did not invent or circumscribe the equal state sovereignty principle but, rather, enforced a much broader constitutional architecture, which "remains highly pertinent in assessing subsequent disparate treatment of

States." *Shelby Cnty. v. Holder*, 570 U.S. 529, 544 (2013) (citations omitted). With the NVRA, we have disparate treatment, and like in *Shelby County*, justification is lacking.

For his part, the Secretary raises procedural hurdles that the district court already knocked down. The Foundation has been injured and this case should be remanded to address that injury.

I. Election Transparency Is Paramount, as Demonstrated by the United States Seeking the Same Information It Blocks from the Foundation.

The weight of authority rejects the framing by the Secretary and the United States downplaying the role of transparency in the NVRA. *See* Secretary's Br. at 27 ("transparency is not a freestanding aim of the NVRA"); USA Br. at 48. For starters, the Supreme Court has described the NVRA's voter list maintenance requirements—the object of the transparency requirements— as a "main objective" of the NVRA. *Husted v. Philip Randolph Inst.,* 584 U.S. 756, 761 (2018).

The Fourth Circuit views the NVRA's transparency as paramount, admonishing other courts that might diminish its importance. *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 339-40 (4th Cir. 2012)

("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."). The First Circuit explains that 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." *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 54 (1st Cir. 2024). Public dissemination of Section 8(i) data is also "necessary," the court continued, in order to "identify, address, and fix irregularities in states' voter rolls[.]" *Id.* Similarly, the Eleventh Circuit recognizes that the Public Disclosure Provision "increase[s] both voter participation and election integrity … by granting voters transparency into a state's voter registration practices." *Greater Birmingham Ministries v. Sec'y of State*, 105 F.4th 1324, 1326 (11th Cir. 2024); *see also Bellitto v. Snipes*, No. 16-cv-61474, 2018 U.S. Dist. LEXIS 103617, at *13 (S.D. Fla. Mar. 30, 2018) (stating that the NVRA's "mandatory public inspection right is designed to preserve the right to vote and ensure that election officials are complying with the NVRA.").

On one hand, the United States seeks to prevent the Foundation from obtaining Minnesota's list of registered voters from the Secretary. On the other hand, the United States is asking the Secretary to provide it the same document. On June 25, 2025, just one week before filing its brief in this case, the Department of Justice requested various list maintenance documents from the Secretary, including Minnesota's voter registration list. *See* Nathaniel Minor, *DOJ asks to look at Minnesota's voter registration rolls, other election data*, Minn. Star Trib. (July 11, 2025), https://www.startribune.com/doj-asks-to-look-at-minnesotas-voter-registration-rolls-other-election-data/601419060. The Secretary has refused to give the information. *See* Nathaniel Minor, *Minnesota rejects DOJ demand for state's voter rolls*, Minn. Star Trib. (July 25, 2025), https://www.startribune.com/minnesota-rebuffs-doj-demand-for-voter-rolls-says-feds-dont-have-legal-right-to-it/601443871. According to reports on the issue, the United States seeks the information "to show proof of compliance with federal election law." *Id.* The Foundation shares that goal. Nevertheless, the United States

continues to defend Minnesota's exemption from the NVRA's transparency provisions.

II. The United States Concedes that Elections Clause Legislation Must be Justified.

The United States concedes that "all Elections Clause legislation" must satisfy "traditional rational-basis review." USA Br. at 30. Whether the Complaint specifically "assert[s] that Section 4(b)(2) would fail traditional rational-basis scrutiny" makes no difference. USA Br. at 44. For starters, the applicable level of scrutiny is not an element of any cause of action. *See C.M.B. v. Odessa R-Vii Sch. Dist. Bd. of Educ.*, No. 17-01075-CV-W-GAF, 2019 U.S. Dist. LEXIS 250833, at *11-12 (W.D. Mo. Mar. 21, 2019) ("[T]he Court believes it unnecessary to determine what level of scrutiny applies at this time. At the motion to dismiss stage, the Court need only evaluate the Complaint to determine if Plaintiff has stated an Equal Protection claim that is 'plausible on its face.'") (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)."). In fact, the United States Supreme Court, just a few years after *Iqbal*, held that "[f]ederal pleading rules . . . do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the

claim asserted." *Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014) (no need to mention Section 1983 to state a claim thereunder). A complaint is not deficient under Rule 12 simply because it does not mention the standard of review that the Court ultimately applies.

Rather, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Here, the Foundation's Complaint plausibly alleges that Minnesota has more sovereignty than other states. There is no dispute about that. Under Rule 12, the Foundation's Complaint is sufficient because it plausibly alleges that some form of scrutiny applies. *See Duronslet v. Cnty. of L.A.*, 266 F.Supp.3d 1213, 1223 (C.D. Cal. 2017) (citing *United States v. Virginia*, 518 U.S. 515, 533 (1996)) ("For now, it is enough for the Court to conclude that Plaintiff has plausibly established that some form of heightened scrutiny might apply to her Equal Protection claim, which shifts the burden to the County to justify its conduct."). And because the United States agrees that some form of scrutiny applies to the

Transparency Exemption, this action should be remanded so that such scrutiny can be applied.

Furthermore, the position of the United States can be read in concert with the Foundation's position that the *Shelby County* standard applies because the *Shelby County* standard is a form of rational basis review. VRA Section 4(b) was upheld in *South Carolina v. Katzenbach*, 383 U.S. 301, 330 (1966), because "the coverage formula [was] rational in both practice and theory." Section 4(b) was then struck down in *Shelby County* because it became "irrational." *See Shelby Cnty.*, 570 U.S. at 556 ("It would have been **irrational** for Congress to distinguish between States in such a fundamental way based on 40-year-old data, when today's statistics tell an entirely different story.") (emphasis added); *see also id.* at 554 ("Viewing the preclearance requirements as targeting such efforts simply highlights the **irrationality** of continued reliance on the §4 coverage formula, which is based on voting tests and access to the ballot, not vote dilution.") (emphasis added). When Congress treats the states differently, the rationality of that decision—and thus its constitutionality—is judged by

whether it "makes sense in light of current conditions," *id*. at 553, and is "sufficiently related to the problem that it targets," *id*. at 542. (quotation omitted).

III. The *Shelby County* Standard Controls and Applies.

The historical and precedential record demonstrate that the States did not give Congress *unchecked* power to set different rules in different states. *See* Opening Br. at 40-44. Congress may have believed the Transparency Exemption made sense in 1993. *Shelby County* instructs that when Congress treats the States differently, its reasoning must continue to hold up "in light of current conditions." *Shelby Cnty.*, 570 U.S. at 553. Congress "cannot rely simply on the past." *Id*.

History and precedent also foreclose the argument that Congress may deny equal treatment to the States with respect to any aspect of government created by the Constitution. *See* USA Br. at 34-35. The States were inherently sovereign *and* equal when they formed this Union. *See* Opening Br. at Section II.A. The historical record indicates that both proponents and opponents of the Elections Clause were concerned about giving government—state and federal—unchecked

power to set election rules. *See* Opening Br. at Section II.B. Furthermore, proponents—who ultimately got their way—intended the Elections Clause to establish *uniformity* and secure the peoples' *equal* rights of election. *See id*. It is therefore illogical to believe the States intended to give Congress *unconditional* enforcement power. And *Shelby County* confirms that.

The States, not the federal government, are the "default" policymakers under the Elections Clause. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8-9 (2013) ("*ITCA*"). In other words, the States retained for themselves mandatory ("shall") regulatory authority over *all* elections (local, state, and federal), giving Congress only the power to alter federal-election regulations "in the last resort," The Federalist No. 59, at 378 (A. Hamilton) (R. Scigliano, ed. 2000), when necessary to preserve the Federal Congress, *ITCA*, 570 U.S. at 8, or prevent "manipulation of electoral rules" by state officials intent on entrenching themselves by elevating their own interests above the people's interests. *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*,

576 U.S. 787, 815 (2015). The States did not give Congress a mandate to act without reason.

Furthermore, if the equal state sovereignty principle did not apply to the regulation of federal elections, as the United States and the Secretary believe, VRA Section 4(b) would still be valid as applied to federal elections. But it is not. The Supreme Court struck it down as applied to all elections because it denied equal sovereignty to covered states without justification. For that reason, the Transparency Exemption cannot be excused solely because the NVRA textually regulates federal elections, especially when it also reaches state and local elections in most states by default. *See* Opening Br. at 47-48 n.4.

IV. Appellees Must Justify the Transparency Exemption, Not Other, Unchallenged Applications of Section 4(b)(2).

The Foundation is not challenging Minnesota's exemption from other parts of the NVRA. Whether Congress was justified in relieving Minnesota from the NVRA's "motor voter" requirements or its voter list maintenance requirements is not just irrelevant, it is off limits in this

lawsuit. *Doe v. Regents of the Univ. of Minn.*, 999 F.3d 571, 584 (8th Cir. 2021) ("Article III does not empower us to offer advisory opinions.").

The Secretary, for his part, does not seem to understand the Foundation's argument. He expresses confusion over the term "Transparency Exemption" used in the Foundation's brief. Secretary's Br. at 17 n.4 (claiming that the Foundation is "falsely implying" that Minnesota's NVRA exemption "applies only to the Act's disclosure obligation."). Again, the Foundation is only challenging Minnesota's exemption from the transparency requirements of the NVRA. *See* App. 36, R.Doc 1 at 30 ("Minnesota's NVRA Exemption is invalid with respect to the NVRA's Public Disclosure Provision.").

V. The Transparency Exemption Fails Any Level of Scrutiny.

Election Day Registration ("EDR") is not a substitute for the transparency Congress intended.[1] The EDR process is not immune from

[1] The Secretary states that "Minnesota and four other states are exempt because they have allowed election-day polling-place registration continuously since 1974." Secretary's Br. at 3. *But see* DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1996, 141 Cong. Rec. S. 14645, 14654 ("New Hampshire and Idaho enacted legislation with

discriminatory application, inefficiency, error, or mistake. *See Project Vote*, 682 F.3d at 339. Like all mechanisms that grant and remove voting rights, the EDR process itself needs the NVRA's transparency. Why then is the Secretary fighting to preserve secrecy?

The United States claims that "[p]reventing application of the NVRA to States that adopted Polling-Place Registration before a statutory deadline was *at the time of passing* rationally related to increasing voter participation." USA Br. at 11 (emphasis added). But under "current conditions[,]" *Shelby Cnty.*, 570 U.S. at 553, over a dozen states and the District of Columbia now offer the same EDR opportunities that supposedly justified Minnesota's Transparency Exemption. App. 24, R.Doc. 1, at 18. Yet, only some of those states, like Minnesota, are exempt from the NVRA's Public Disclosure Provision. It is irrational that Minnesota is exempt, while Iowa and Illinois are not.

Furthermore, Minnesota is statutorily mandated to conduct voter list maintenance throughout the year, and is thus constantly granting,

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retroactive effective dates in an attempt to take advantage of the limited exemption in the act.").

preserving, and removing voting rights. App. 13-20, R.Doc. 1, at 7-14. The Public Disclosure Provision exists so that the public can *always* monitor these activities. *See, e.g.*, *Bellitto*, 2018 U.S. Dist. LEXIS 103617, at *12-13 (explaining that the Public Disclosure Provision "convey[s] Congress's intention that the public should be monitoring the state of the voter rolls and the adequacy of election officials' list maintenance programs"). Only a select group of people—Minnesota voters—can do so in Minnesota. In contrast, Congress envisioned constant transparency so that errors, mistakes, and discrimination can be discovered and corrected, whenever those things may occur. That kind of transparency does not exist in Minnesota.

VI. Federal Rights Do Not Exist by Proxy.

The Secretary frames the Foundation's request for voter list maintenance data as seeking to have him "turn over state government data on all voters," Secretary's Br. at i, while readily acknowledging that Minnesota law allows any registered Minnesota voter to obtain the very same information the Foundation requests, Secretary's Br. at 3. The Secretary also states that no state law "restricts a Minnesota

registered voter from obtaining the public information list on behalf of an organization or entity…" Secretary's Br. at 4 n.2. The United States echoes this position, suggesting that the Foundation "could recruit any registered Minnesota voter" to request the list for it. USA Br. at 50.[2]

Federal rights do not exist by proxy. With the NVRA, Congress gave inspection rights to the "public." 52 U.S.C. § 20507(i)(1). The "public" includes the Foundation. Similar arguments have been raised in —and rejected by—other district courts. *See Pub. Int. Legal Found., Inc. v. Knapp*, 749 F.Supp.3d 563, 572 (D.S.C. 2024) ("South Carolina's prohibition on distribution of the SVRL to only eligible South Carolina voters conflicts with the NVRA's mandate that all records concerning maintenance and accuracy activities be made available for 'public inspection.'"); *Jud. Watch, Inc. v. Lamone*, 399 F.Supp.3d 425, 445 (D. Md. 2019). The District of Maryland prudently recognized that the ability to circumvent disclosure restrictions via straw-purchaser

[2] Even if this were true, which is unclear from the text of Minn. Stat. §201.091, subd. 4(e), any organization coming into possession of the list is limited by Minnesota law in what it can do with the data, thus hampering transparency efforts further. *Id.*

actually "reveal[s] the emptiness of th[e] rationale" upon which the restriction is allegedly based. *Id*. The District of Maryland continued:

> Organizations such as Judicial Watch and Project Vote have the resources and expertise that few individuals can marshal. By excluding these organizations from access to voter registration lists, the State law undermines Section 8(i)'s efficacy. Accordingly, E.L. § 3-506(a) is an obstacle to the accomplishment of the NVRA's purposes. It follows that the State law is preempted in so far as it allows only Maryland registered voters to access voter registration lists.

Id. (citations omitted). Similarly, excluding the Foundation "undermines Section 8(i)'s efficacy" and "is an obstacle to the accomplishment of the NVRA's purposes." *Id*.

VII. The Foundation Has Standing.

a. The Foundation Has Prudential Standing.

There are no prudential standing concerns because the Foundation is asserting its own legal rights, not the rights of third parties. The district court determined it "need not address" prudential standing. App. 65-66, R.Doc 43 at 7-8, Add. at 7-8. Nevertheless, the United States opens its Response with a lengthy discussion of why the Foundation lacks it.

The Supreme Court held that a private party may raise constitutional principles, including principles embodied in the Tenth Amendment, in suits seeking relief from personal injuries. In other words, the sovereignty of America's states does not depend on the identity of the plaintiff, nor does the Foundation lose standing because its injury is caused more directly by something other than the constitutional principle invoked.

In *Bond v. United States*, 564 U.S. 211, 214 (2011), the Supreme Court considered "whether a person indicted for violating a federal statute has standing to challenge its validity on grounds that, by enacting it, Congress exceeded its powers under the Constitution, thus intruding upon the sovereignty and authority of the States." The Court answered that question "yes." *Id.*

An *amicus* appointed to defend the contrary decision of the court of appeals claimed, like United States here, that "to argue that the National Government has interfered with state sovereignty in violation of the Tenth Amendment is to assert the legal rights and interests of States and States alone," which is forbidden by the "prudential rule"

that a party "cannot rest his claim to relief on the legal rights or interests of third parties." *Id.* at 220 (citations omitted). "[N]ot so," ruled the Supreme Court. *Id.* "The individual, in a proper case, can assert injury from governmental action taken in excess of the authority that federalism defines. Her rights in this regard do not belong to a State." *Id.* The Supreme Court continued,

> The limitations that federalism entails are not therefore a matter of rights belonging only to the States. States are not the sole intended beneficiaries of federalism. […] An individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable. **Fidelity to principles of federalism is not for the States alone to vindicate.**

Id., 564 U.S. at 222 (emphasis added) (citation modified).

The Supreme Court is clear: "[W]here the litigant is a party to an otherwise justiciable case or controversy, she is not forbidden to object that her injury results from disregard of the federal structure of our Government." *Id.* at 225-26. That is precisely the case here. The Foundation's injury, or case, is premised on a violation of the NVRA. That injury "results from disregard of the federal structure of our

Government," *id.*, namely, the equal state sovereignty principle . Under *Bond*, the Foundation may invoke that principle to secure relief for its statutory injury, which is a personal injury.

Before *Bond*, the Seventh Circuit reached a similar conclusion in *Gillespie v. City of Indianapolis*, 185 F.3d 693 (7th Cir. 1999). *Gillespie* involved a private citizen's challenge to a federal gun statute that made him unable to possess a firearm, circumstances that caused him to lose his job as a police officer. *Id.* at 697.

Gillespie argued on appeal that the federal gun statute violated multiple constitutional principles, including "the Tenth Amendment's guarantee of state sovereignty." *Id.* at 700. There, the United States claimed "[i]t is particularly inappropriate to allow a private individual to raise such concerns … where … the state or local government whose Tenth Amendment interests are being advocated is a party to the case and takes a contrary position." *Id.* The Seventh Circuit disagreed.

The Seventh Circuit held that the Supreme Court's decision in *Duke Power Co. v. Carolina Env't Study Grp.*, 438 U.S. 59 (1978), "rejects any categorical requirement that there be a logical nexus

between the plaintiff's injury and the nature of the constitutional right he asserts[.]" *Gillespie*, 185 F.3d at 701-02. In other words, it made no difference for standing purposes that Gillespie's injuries—the loss of the ability to carry a gun and loss of employment—were not rights protected by the constitutional principles he invoked, namely, the Tenth Amendment. Applying *Gillespie* here means it makes no difference that the Foundation's injuries—information deprivation and related adverse effects—are not rights guaranteed by the equal state sovereignty principle.

Like *Bond*, *Gillespie* also forecloses the argument that a party raising state sovereignty principles is asserting rights of third parties not before the Court. *Gillespie*, 185 F.3d at 703. Indeed, the Seventh Circuit was clear: "Gillespie, in making Tenth Amendment claims, actually is asserting his own rights." *Id.* (citing *New York v. United States*, 505 U.S. 144 (1992)). The same is true of the Foundation.

b. The District Court and United States Agree that the Foundation Has Article III Standing.

The district court found that the Foundation has Article III standing to bring this action. App. 66, R.Doc. 43, at 8, Add. 8. The

United States agrees. USA Br. at 13 ("Even though PILF has suffered an Article III injury, it lacks prudential standing…"). Only the Secretary disagrees.

1. The Foundation Plausibly Alleges an Informational Injury.

The district court found that the Foundation has standing because the Secretary failed to provide information to which it is entitled. App. 63, R.Doc. 43, at 5, Add. 5. "When reviewing a standing question, a court must 'assume that on the merits the plaintiff[] would be successful in [its] claims.'" App. 62, R.Doc. 43, at 4, Add. 4 (citing *Miller v. Thurston*, 967 F.3d 727, 734 (8th Cir. 2020) (quoting *Am. Farm Bureau Fed'n v. EPA*, 836 F.3d 963, 968 (8th Cir. 2016))).

Further, as to the "downstream consequences" of the Foundation's injury, the district court determined that "[t]he Supreme Court has found similar allegations sufficient." App. 63, R.Doc. 43, at 5, Add. 5 (citing *Public Citizen v. DOJ*, 491 U.S. 440, 449 (1989) and *FEC v. Akins*, 524 U.S. 11, 21 (1998).)

The controlling standing framework originates with the federal Freedom of Information Act ("FOIA"). Nearly thirty-six years ago, the

Supreme Court confirmed 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." *Public Citizen*, 491 U.S. at 449 (collecting cases). "Anyone whose request for specific information has been denied has standing to bring an action; the requester's circumstances—why he wants the information, what he plans to do with it, what harm he suffered from the failure to disclose—are irrelevant to his standing." *Zivotofsky v. Sec'y of State*, 444 F.3d 614, 617 (D.C. Cir. 2006) (citing *Public Citizen*, 491 U.S. at 449).

In *Public Citizen*, 491 U.S. at 446-47, the Supreme Court held that FOIA's standing framework applies to the Federal Advisory Committee Act ("FACA"), a law that, like the NVRA, contains a public disclosure requirement. Reciting the standing requirements in FOIA cases, the Supreme Court explained, "There is no reason for a different rule here." *Id.* at 449. "As when an agency denies requests for information under [FOIA], refusal to permit appellants to scrutinize the ABA Committee's

activities to the extent FACA allows constitutes a sufficiently distinct injury to provide standing to sue." *Id.*

In *FEC v. Akins*, the Supreme Court held that FOIA's standing framework applies to the Federal Election Campaign Act of 1971 ("FECA"), a law that also contains a public disclosure requirement. 524 U.S. at 14-16. Citing *Public Citizen*, the Supreme Court explained, "[T]his Court has previously 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." *Id.* at 21 (citing *Public Citizen*, 491 U.S. at 449). Applying that standard to the case before it, the Court continued, "The 'injury in fact' that respondents have suffered consists of their inability to obtain information … that, on respondents' view of the law, the statute requires that [the subject of the FECA complaint] make public." *Id.* at 21. The *Akins* Court also cited *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), a Fair Housing Act case, in which the Supreme Court applied the same standard, concluding that the "deprivation of information about housing availability constitutes 'specific injury' permitting standing," *Akins*, 524 U.S. at 21.

Upon these Supreme Court decisions, lower courts have applied FOIA's simple standing framework to the NVRA's Public Disclosure Provision, 52 U.S.C. § 20507(i)(1). For example, the Eastern District of Virginia explained that "[f]or a plaintiff to sufficiently allege an informational injury, it must first allege that the statute confers upon it an individual right to information, and then that the defendant caused a concrete injury to the plaintiff in violation of that right." *Project Vote*, 752 F.Supp.2d at 702. Because "the NVRA provides a public right to information," *id.* at 703, and there is "no dispute that the plaintiff has been unable to obtain the [r]equested [r]ecords," "the plaintiff's alleged informational injury is sufficient to survive a motion to dismiss for lack of standing." *Id.* at 703-04. *See also, Pub. Int. Legal Found. v. Bennett*, No. H-18-0981, 2019 U.S. Dist. LEXIS 39723, at *8-*10 (S.D. Tex., Feb. 6, 2019) (denying motion to dismiss), *adopted by Pub. Int. Legal Found., Inc. v. Bennett*, No. 4:18-CV-00981, 2019 U.S. Dist. LEXIS 38686 (S.D. Tex., Mar. 11, 2019); *Jud. Watch, Inc. v. King*, 993 F.Supp.2d 919, 923 (S.D. Ind. 2012) (citing *Akins*, 524 U.S. at 24-25).

The Secretary's reliance on *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), to dispute the Foundation's standing is misplaced. The plaintiffs sued a private credit reporting agency, TransUnion LLC, for violations of the Fair Credit Reporting Act ("FCRA"). *TransUnion*, 594 U.S. at 417-18. Among other things, the plaintiffs "complained about formatting defects in certain mailings sent to them by TransUnion." *Id.* at 418. What were the formatting defects? The plaintiffs received all the information required by the FCRA, but received it in two separate mailings, when it should have been sent in one mailing. *See id.* at 440-441. "In support of standing, the plaintiffs thus contend[ed] that the TransUnion mailings were formatted incorrectly and deprived them of their right to receive information in the format required by statute." *Id.* at 440.

The United States, as *amicus curiae*, argued that the plaintiffs had standing under *Public Citizen* and *Akins*. *Id.* at 441. The Supreme Court held that those cases "do not control" because they "involved denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information." *Id.* "This case

does not involve such a public-disclosure law." *Id.* To be sure, *TransUnion* involved the FCRA, a law that regulates private parties, not the government. The injury in *TransUnion* was fundamentally different than with public disclosure and sunshine laws. "The plaintiffs did not allege that they failed to receive any required information. They argued only that they received it *in the wrong format*." *Id.* (emphasis in original). Only after distinguishing *Public Citizen* and *Akins* as cases that "involved denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information," did the Supreme Court add, "[m]oreover, the plaintiffs have identified no 'downstream consequences' from failing to receive the required information." *Id.* at 442 (quotation omitted).

The conclusion is this: where plaintiffs allege that they "failed to receive information" under a public disclosure or sunshine law, the standing inquiry is controlled by *Public Citizen* and *Akins*. Where plaintiffs allege that they received information but received it in the *wrong format*—as in *TransUnion*—plaintiffs must allege some additional harm caused by the formatting error. Only the latter is "bare

procedural violation," *id.* at 440, which requires plaintiffs to allege "downstream consequences," *id.* at 442.

For the same reasons, the Secretary's reliance upon a recent decision from the Third Circuit, *Pub. Int. Legal Found. v. Sec'y of Pa.*, 136 F.4th 456 (3rd Cir. 2025), is misplaced. That decision is wildly incorrect.

In *Akins*, the dissenting Justices argued that the plaintiffs must show a logical nexus between their status and the claim asserted. *See Akins*, 524 U.S. at 21-22. The majority disagreed, explaining that, "the 'logical nexus' inquiry is not relevant" where the statute protects plaintiffs from "failing to receive particular information[.]" *Id.* The same is true with the NVRA and therefore no "nexus" must be shown.

What about the Supreme Court's statements concerning the plaintiffs' intended uses for the requested records? The Fourth Circuit provides the answer: "[A]lthough the plaintiffs in *Public Citizen* and *Akins* thereafter asserted uses for the information they sought, those asserted uses were not a factor in the *Public Citizen* and *Akins* Article III standing analyses." *Laufer v. Naranda Hotels, LLC*, 60 F.4th 156, 172 (4th Cir. 2023). This makes sense because any "use" requirement cannot

coexist with the Supreme Court's standard: "[A] plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Akins*, 524 U.S. at 21 (citing *Public Citizen*, 491 U.S. at 449).

The Fourth Circuit in *Laufer v. Naranda Hotels* rejected the argument that Article III requires plaintiffs to demonstrate downstream consequences when they are denied public information. 60 F.4th at 172. To the contrary, "*Havens Realty*, *Public Citizen*, and *Akins* are clear that a plaintiff need not show a use for the information being sought in order to establish an injury in fact in satisfaction of the first *Lujan* element." *Id.* Why not? Because "the informational 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*')." *Id.* at 170 (quoting *TransUnion*, 594 U.S. at 441) (first emphasis added). Therefore, "any use requirement is limited to the type of informational injury at issue in *TransUnion* and does not extend to

the type of informational injury presented in *Public Citizen* and *Akins*." *Id.* at 170.

This case presents the type of informational injury at issue in *Public Citizen* and *Akins*—the failure to receive *any* required information. Because the Foundation failed to receive records under NVRA Section 8(i), the Foundation has suffered an actionable informational injury.

2. The Foundation Plausibly Alleges Additional Adverse Consequences Caused by the Informational Injury.

To the extent the Foundation must allege "downstream consequences" stemming from its informational injury, the Foundation has done so. The Secretary's arguments to the contrary simply ignore the Foundation's allegations and frame the Foundation's injury as "frustration in carrying out its self-appointed watchdog role." Secretary's Br. at 10. Not so.

First, the Foundation "cannot evaluate and scrutinize Minnesota's voter list maintenance activities" because the Secretary "refuses to produce the requested records." App. 34, R.Doc. 1, at 28. The

Secretary's denial of the Foundation's request is a "refusal to permit [the Foundation] to scrutinize the [Secretary's] activities to the extent [the NVRA] allows." *Public Citizen*, 491 U.S. at 449.

Second, the Secretary's actions "are impairing the Foundation's educational programming." App. 34, R.Doc. 1 at 28. The Foundation "uses public records and data to educate the public and election officials about numerous circumstances, including the state of their own voter rolls." App. 35, R.Doc. 1, at 29. The Foundation also "educate[s] members of Congress about numerous circumstances, including the effectiveness of federal laws such as the NVRA, HAVA, and the Voting Rights Act, possible amendments to these federal laws, and state officials' compliance with these federal laws." App. 35, R.Doc. 1, at 29. The Foundation plausibly alleges that its "ability to perform these educational functions is impaired because Secretary Simon is refusing to produce the requested records." App. 35, R.Doc. 1, at 29.

Third, the Secretary's "actions are impairing the Foundation's institutional knowledge upon which it depends for its programming." App. 35, R.Doc. 1, at 29. "The Foundation must continually keep its

institutional knowledge current and accurate so that it can operate efficiently, timely, and effectively, including for the purposes that Congress intended under the NVRA.…" App. 35, R.Doc. 1, at 29. Institutional knowledge helps dictate "where, when, and how [the Foundation] deploy[s] its resources." App. 35, R.Doc. 1, at 29. By impairing the Foundation's institutional knowledge, the Secretary is thus impairing the Foundation's programming. App. 36, R.Doc. 1, at 30.

Fourth, the Secretary's actions "are harming the Foundation by forcing it to re-prioritize its resources to the detriment of other programmatic priorities." App. 36, R.Doc. 1, at 30. Specifically, the Foundation "must expend additional resources and staff to counteract Secretary Simon's actions, which limits the Foundation's ability to fund some of its other programming, which includes research, analysis, remedial programming, and law enforcement." App. 36, R.Doc. 1, at 30.

The Foundation's allegations concerning its mission, intended activities, and inability to engage in those activities are presumed true at this stage. *Ingram v. Ark. Dep't of Corr.*, 91 F.4th 924, 927 (8th Cir. 2024). The Secretary's claim that there is no "real-world harm,"

Secretary's Br. at 6, is contradicted by the NVRA's text and various court decisions on this issue, including the district court here. App. 63, R.Doc. 43, at 5, Add. 5; *see also Pub. Int. Legal Found., Inc. v. Wolfe*, No. 24-cv-285-jdp, 2024 U.S. Dist. LEXIS 216250, at *11 (W.D. Wis. Nov. 26, 2024) ("If the foundation were successful in eliminating the exemption, the NVRA would require the administrator to disclose information to the foundation. So the court concludes that the foundation has standing under Article III.")

VIII. The Eleventh Amendment Does Not Bar This Action.

The Secretary raises the same Eleventh Amendment arguments now that he raised below, and that the district court ignored, to assert that the Foundation cannot maintain a federal claim against the Secretary under the NVRA unless Congress abrogated sovereign immunity, or the State waived it. *See* Secretary's Br. at 13-16.

The Secretary claims that the Supreme Court's *Ex parte Young* doctrine is foreclosed. *See id.* at 15 (claiming that the Foundation cannot invoke the judicially created *Ex parte Young* doctrine to bypass the Eleventh Amendment); *contrast Ex parte Young*, 209 U.S. 123

(1908) (enabling a private party to sue a State official in his official capacity to enjoin an ongoing violation of federal law). The Secretary supports this claim by citing *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 76 (1996), which held "the *Ex parte Young* doctrine cannot be used to enforce § 2710(d)(3) because Congress enacted a remedial scheme, § 2710(d)(7), specifically designed for the enforcement of that right." *See* Secretary's Br. at 15.

The Secretary thus argues two incongruent positions. First, he asserts that, because Minnesota is exempt from the NVRA, the Court has no authority to enjoin the Transparency Exemption without Minnesota's consent. *See* Secretary's Br. at 14; *contrast Voice of the Experienced v. Ardoin*, No. 23-331-JWD-SDJ, 2024 U.S. Dist. LEXIS 85812, at *45 (M.D. La. May 13, 2024) ("With respect to Plaintiffs' NVRA claims, the Court finds that sovereign immunity is not implicated, as the Act establishes a private right of action for aggrieved individuals."); *Stringer v. Hughs*, No. SA-20-CV-46-OG, 2020 U.S. Dist. LEXIS 221555, at *61 (W.D. Tex. Aug. 28, 2020) ("Congress's abrogation of immunity under the NVRA is clear and unequivocal."). Next, he

asserts that the NVRA provides the Foundation with a remedial scheme by authorizing enforcement through civil actions by private parties aggrieved by a violation. *See* Secretary's Br. at 15-16 (citing 52 U.S.C. §§ 20510-11).

The Secretary's argument rests on a distortion of the Eleventh Amendment. The Foundation is challenging the Secretary's ongoing violation of the NVRA and the principle of equal state sovereignty via Transparency Exemption. *See Smyth v. Ames*, 169 U.S. 466, 519 (1898); *see, e.g. Pennoyer v. McConnaughy*, 140 U.S. 1, 9 (1891). Further, the Secretary's advocacy of sovereign immunity for Minnesota (but not for the 44 other States, many of whom also have EDR) only serves to highlight the disparate sovereignty problem at issue in this case.

Finally, the Secretary's argument that *Ex parte Young* is inapplicable depends on his erroneous belief that the Transparency Exemption is constitutionally valid, therefore presuming the conclusion of the lawsuit in his favor. To do so would turn Rule 12 on its head and view the case in the light most favorable to the Secretary rather than in

"the light most favorable to the nonmoving party." *Thompson v. Harrie*, 59 F.4th 923, 926 (8th Cir. 2023).

The Secretary has no immunity in this Court from the Foundation's actions to remedy a violation of the NVRA.

CONCLUSION

If Congress treats the States differently, it must adequately justify its actions. The district court erred when it concluded otherwise and dismissed the complaint.

Dated: July 31, 2025.

Respectfully submitted,

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Dated: July 31, 2025.

CIRCUIT RULE 28A(h) CERTIFICATION

The undersigned hereby certifies that I have filed electronically, pursuant to Circuit Rule 28A(h), a version of the brief in searchable PDF format. I hereby certify that the file has been scanned for viruses and that it is virus-free.

/s/ Kaylan Phillips
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I hereby certify that on July 31, 2025, I electronically filed the foregoing using the Court's ECF system, which will serve notice on all parties.

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