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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, SOUTHERN DIVISION

PHIL LYMAN,
Plaintiff,

v.

DEIDRE HENDERSON, in her official
capacity as Lt. Governor of the State of Utah,
Defendant.

**DEFENDANT'S REPLY IN SUPPORT
OF MOTION TO DISMISS**

Case No. 4:25-CV-00069-DN-PK

Judge David Nuffer
Magistrate Judge Paul Kohler

Defendant Deidre Henderson, Lieutenant Governor of the State of Utah (“Lt. Governor Henderson”), respectfully submits this Reply in support of her Motion to Dismiss.

INTRODUCTION

The Court must dismiss this case because Plaintiff has not met his burden to establish an injury-in-fact. Plaintiff’s Opposition raises two main arguments in an attempt to demonstrate standing, but neither are persuasive. Plaintiff first contends he automatically satisfies the injury-in-fact requirement by the mere allegation that he was denied information he requested under the National Voting Registration Act (“NVRA”). Several federal circuit courts have uniformly rejected this exact argument, holding that a plaintiff must show more than a mere denial of information to establish injury in a claim brought under the NVRA. To establish standing, Plaintiff must also identify concrete downstream consequences from failing to receive the information.

Second, Plaintiff’s allegations fail to articulate specific downstream consequences sufficient to show an injury-in-fact. Plaintiff does not allege an injury with a nexus to the harms Congress sought to rectify with the NVRA. Instead, Plaintiff alleges generalized concerns regarding election integrity. Such allegations do not constitute concrete, particularized injuries. Rather, they fall squarely within the category of generalized grievances courts repeatedly reject. Plaintiff does not have standing, and the Court should dismiss this case.

ARGUMENT

1. Plaintiff cannot establish Article III standing by only asserting an informational injury that causes no adverse effects

Plaintiff first attempts to establish an injury by alleging that he failed to receive information he believes he is entitled to under the NVRA.¹ This allegation does not satisfy Article III's injury-in-fact requirement because "violation of a legal entitlement is not the same as an injury in fact." *Laufer v. Looper*, 22 F.4th 871, 881 n.6 (10th Cir. 2022). While Plaintiff contends he has standing merely by alleging he was denied information that he believes must be disclosed under the NVRA, three federal courts of appeals have rejected that exact argument in NVRA cases. *Public Interest Legal Foundation v. Secretary Commonwealth of Pennsylvania*, 136 F.4th 456 (3rd Cir. 2025); *Campaign Legal Center v. Scott*, 49 F.4th 931 (5th Cir. 2022); *Public Interest Legal Foundation v. Benson*, 136 F.4th 613 (6th Cir. 2025). Those circuit courts held that plaintiffs asserting mere "informational injury" under the NVRA do not satisfy Article III standing. And, those courts properly applied the Supreme Court's analysis in *TransUnion, LLC v. Ramirez*, 594 U.S. 413 (2021), in holding that plaintiffs asserting claims for violations of the disclosure provision of the NVRA must allege some injury that is more than simply "informational injury." *PILF*, 136 F.4th at 459; *Scott*, 49 F.4th at 936-39; *Benson*, 136 F.4th at 629-32.

Take the Fifth Circuit's decision in *Scott*, for example. There, the Texas Secretary of State refused, on privacy grounds, to release documents relating to voter registrants. The plaintiffs sued under the NVRA public disclosure provision, alleging that Texas failed to produce

¹ Pl.'s Opp., ECF No. 27, at 5.

records as required by federal law. On appeal, the Fifth Circuit reviewed whether the plaintiffs had standing to bring the case. The plaintiffs attempted to establish standing by asserting “informational injury standing,” arguing they have standing to request records under the NVRA and have a right to the requested records. *Id.* at 936.

The Fifth Circuit rejected this argument and held that the plaintiffs “have not established an injury in fact.” *Id.* In concluding that the plaintiffs did not establish an injury, the Fifth Circuit looked to *TransUnion*. And “*TransUnion* held that ‘under Article III, an injury in law is not an injury in fact.’” *Id.* (quoting 141 S. Ct. at 2205). Moreover, “*TransUnion* 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.’” *Id.* (quoting 141 S. Ct. at 2205). The Fifth Circuit Court of Appeals thus held that the plaintiffs’ “initial claim of informational injury based solely on the Secretary’s alleged NVRA violation” was insufficient to establish an injury-in-fact. *Id.*

Scott makes it clear that in the context of the NVRA, Plaintiff here cannot establish an injury merely by alleging he was unlawfully denied records he requested. Plaintiff must also show that some concrete downstream injury resulted from the denial of his request. Plaintiff’s allegation that he “failed to receive information” thus does not meet Plaintiff’s burden to demonstrate standing.

Unable to refute these circuit court opinions directly addressing standing to assert claims under the NVRA, Plaintiff points to cases interpreting a different federal statute, FOIA. Plaintiff contends that FOIA’s standing framework applies to this Court’s determination of whether

Plaintiff has standing to bring a claim under the NVRA.² But the Third Circuit also rejected this exact argument in *PILF*. There, the Public Interest Legal Foundation sued under Section 8 of the NVRA, contending that it suffered an “informational injury” resulting from being denied access to records. 136 F.4th at 459. The plaintiff argued “that the denial of the right to the information, without more, is enough for standing.” *Id.* at 461-62.

Rather than blindly applying FOIA’s framework to the NVRA, the Third Circuit analyzed and compared the purposes of FOIA and the NVRA. This is because in determining whether a plaintiff has established standing, “statutory context is important.” *Id.* at 463. The Court of Appeals found that “disclosure of information is the essence of . . . FOIA.” *Id.* at 464. Accordingly, for claims alleging a FOIA violation, “standing would easily be met because public availability of information is itself the interest that Congress seeks to protect under such statutes.” *Id.*

On the other hand, the purpose of the NVRA (and therefore its requisite standing requirement) is much different from FOIA. The Third Circuit acknowledged that, because the claim before it arose under the NVRA, the court was “presented with a statute with a purpose that goes farther than government transparency such as FOIA.” *Id.* at 463. Regarding the NVRA, “[t]he required disclosure of certain records is merely one aspect of the statutory scheme in service of a greater purpose—that is, . . . the expansion of voter participation in federal elections.” *Id.* And the Public Interest Legal Foundation – Plaintiff’s counsel in this case – “agree[d] that Congress’s purpose in enacting the NVRA targets an objective much broader and more expansive than access to records.” *Id.* at 464.

² Pl.’s Opp. at 2-3.

Because the NVRA's purpose and statutory scheme was distinct from FOIA, the Third Circuit looked to *TransUnion* to determine the required injury-in-fact. *Id.* at 464-65. In interpreting *TransUnion*, the Third Circuit held that, for Article III standing purposes in a case alleging a violation of the NVRA, it is insufficient for a plaintiff "to allege only that he has been denied information." *Id.* at 465. "Rather, he must establish a nexus among a downstream consequence, his alleged harm, and the interest Congress sought to protect. Without such a nexus, a plaintiff can claim no informational injury standing." *Id.*

FOIA's framework for standing does not apply to claims brought under the NVRA because the statutes have different purposes and structures. This Court should therefore reject Plaintiff's suggestion to apply FOIA's standing requirement to the NVRA. The NVRA requires that Plaintiff go beyond alleging a mere statutory violation, and must identify downstream consequences that have a nexus to the interest Congress sought to protect by enacting the NVRA.

Plaintiff offers no argument on how the Third Circuit's analysis of the NVRA was incorrect. Instead, Plaintiff again sidesteps the NVRA and points to cases interpreting other federal statutes. Plaintiff cites *Public Citizen v. Dep't of Justice*, 491 U.S. 440 (1989), a case interpreting the Federal Advisory Committee Act, and *FEC v. Akins*, 524 U.S. 11 (1998), a case interpreting the Federal Election Campaign Act. Plaintiff contends that *Public Citizen* and *Akins* stand for the proposition that mere denial of requested information is sufficient to confer standing.³

The Tenth Circuit has rejected Plaintiff's reading of *Public Citizen* and *Akins*. In *Laufer v. Looper*, the plaintiff argued that she suffered an "informational injury" because "she has been

³ Pl.'s Opp. at 5-8.

deprived of information to which she is legally entitled.” 22 F.4th at 880. The plaintiff pointed to *Public Citizen* and *Akins* “to support her informational harm theory of injury in fact.” *Id.* The Tenth Circuit rejected the plaintiff’s reading of *Public Citizen* and *Akins*, finding that “*TransUnion* shows why this argument fails.” *Id.* The Tenth Circuit noted that in *Public Citizen* and *Akins*, the plaintiffs identified downstream consequences from failing to receive the required information. *Id.* at 881. “They alleged an intent to use the information to participate in the judicial selection and the political process, respectively. Thus, in both cases, the information the plaintiffs sought had some relevance to them.” *Id.* (cleaned up).

Tenth Circuit precedent is clear: Under *Public Citizen* and *Akins*, Plaintiff cannot establish an injury-in-fact by the mere allegation that Lt. Governor Henderson failed to provide Plaintiff “the information []he sought.” *Id.* Rather, Plaintiff must identify “downstream consequences from failing to receive the required information.” *Id.* (quoting *TransUnion*, 141 S. Ct. at 2214).

The Fifth Circuit agrees, specifically in the context of the NVRA. In *Scott*, the Fifth Circuit addressed the plaintiff’s proffered reading of *Public Citizen* and *Akins* that a “nondisclosure violation alone creates concrete injury.” 49 F.4th at 938. The Fifth Circuit instead concluded that the correct reading is that “in both *Akins* and in *Public Citizen*, the plaintiffs had actually asserted downstream consequences since they needed the information in order to participate directly and actively in, respectively, the electoral and judicial selection processes.” *Id.* (cleaned up). “Thus, even 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.” *Id.*

Plaintiff's reading of *Public Citizen* and *Akins* is incorrect. The Tenth Circuit has not dispensed with the requirement that Plaintiff must demonstrate adverse downstream consequences from failing to receive the information. Therefore, Plaintiff's allegation that he "was denied records,"⁴ without more, is insufficient to confer standing under the NVRA.

2. Plaintiff fails to allege downstream consequences that have a nexus to the purposes of the NVRA

Plaintiff lacks standing because his alleged purposes for the voter list do not fit within the type of harm Congress sought to prevent by requiring disclosure under the NVRA. To demonstrate injury-in-fact, Plaintiff must identify downstream consequences that have a nexus to the interest Congress sought to protect with the NVRA. *PILF*, 136 F.4th at 464-65.

"Congress enacted the NVRA principally because it was wary of the devastating impact voter roll purging efforts previously had on the electorate." *Id.* at 466 (cleaned up). In other words, Congress enacted the NVRA to protect voters against being wrongfully removed from voter rolls, or "a voter wrongfully identified as ineligible." *Scott*, 49 F.4th at 937. "Indeed, Congress noted that there is a long history of such cleaning mechanisms being used to violate the basic rights of citizens to vote." *PILF*, 136 F.4th at 466 (cleaned up).

In *Scott*, the Fifth Circuit rejected standing where civic organizations, much like Plaintiff here, sought voter registration data and eligibility records to monitor the state's list maintenance practices. The plaintiffs alleged downstream consequences based on an inability to monitor list maintenance and advocate for voters, including a lack of visibility to the public "into how Texas

⁴ Pl.'s Opp. at 8.

is keeping its voter lists” and into “properly registered Texans being discriminated against and burdened in their right to vote.” 49 F.4th at 936.

The Court of Appeals found no “downstream consequences from an alleged injury in law under the NVRA.” *Id.* at 937. Despite the plaintiffs’ alleged “statutory right of the public to the ‘visibility’ of the Secretary’s process,” there was no “concrete and particularized harm,” and hence no cognizable injury” to the plaintiffs “from not obtaining the requested personal voter information.” *Id.* The court determined that any alleged “lack of ‘opportunity’ to identify voters incorrectly described by the Secretary’s data base expresses a speculative rather than concrete grievance.” *Id.* Indeed, NVRA compliance possibly preventing “future injuries to others is irrelevant.” *Id.* (quoting *Stringer v. Whitley*, 942 F.3d 715, 721 (5th Cir. 2019)). Instead, plaintiffs under the NVRA “must show a continuing or threatened future injury to themselves.” *Id.*

The Fifth Circuit explicitly noted that the lack of concrete harm to the plaintiffs was “reinforced” by the plaintiffs’ inability to allege “a voter wrongfully identified [in the Texas voter records] as ineligible” or “whose data is likely to be [mishandled].” *Id.* (citing *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, 878 F.3d 371, 380 (D.C. Cir. 2017)). In other words, the Fifth Circuit rejected the plaintiffs’ claims because they only alleged generalized grievances. The court emphasized the lack of any concrete, personal, particularized downstream consequences deriving from denial of information.

Here, like in *Scott*, Plaintiff fails to allege an injury and any downstream consequences with a nexus to the harms Congress sought to rectify with the NVRA. Plaintiff does not allege that he (or any other Utahn) has been purged from the voter rolls. Plaintiff does not allege that

he has been wrongfully identified as an ineligible voter. And Plaintiff does not allege that his participation in the voting process will be hindered. *Scott*, 49 F.4th at 938.

Instead, like the plaintiffs in *Scott*, Plaintiff merely alleges a flair for advocacy efforts and abstract interests in oversight. Plaintiff doesn't seek evidence of his own omission from the records. Rather, Plaintiff seeks information on other individuals allegedly wrongly identified as eligible on those records. This constitutes the same generalized harm that *Scott* found insufficient. And, just as in *Scott*, this Court should find Plaintiff has not alleged downstream consequences. Because Plaintiff's purposes do not match those of the NVRA, he lacks standing.

An analysis of Plaintiff's specific allegations confirms that Plaintiff fails to allege a cognizable injury and any downstream consequences. Plaintiff first alleges that he wants to "study and analyze Utah's voter list maintenance programs and activities."⁵ This exact allegation was found insufficient by the Third Circuit in *PILF*. There, the Public Interest Legal Foundation alleged that without the requested information, "it cannot study and analyze the Secretary's voter list maintenance activities." 136 F.4th at 467 (cleaned up). The Court of Appeals found that this was not a "concrete interest protected by" the NVRA, nor was it an enumerated purpose of the NVRA. *Id.* And here, Plaintiff has not alleged how his inability to study and analyze Utah's voter list has hindered his voting participation in elections. *See id.*

Plaintiff next alleges that he wants to assess Utah's compliance and enforcement of state and federal voter eligibility requirements and voter list maintenance requirements.⁶ Again, this exact allegation was found insufficient to establish standing in *PILF*. In that case, the Public

⁵ Pl.'s Opp. at 8 (citing Compl. ¶¶ 49, 61).

⁶ Pl.'s Opp. at 8-9 (citing Compl. ¶¶ 3, 49, 51, 61).

Interest Legal Foundation argued that without the voter records, it could not evaluate the accuracy of the voter rolls nor monitor compliance with state and federal voter list maintenance laws. 136 F.4th at 467. The Third Circuit found that “its desire to have such records for these purposes does not entitle it to sue.” *Id.* at 468. The Court of Appeals stated that the NVRA does not deputize private citizens “as private attorneys general empowered to enforce any and all” statutory violations. *Id.* The same applies here. Plaintiff is not a private attorney general who has authority to enforce voter eligibility requirements or voter list maintenance obligations. Plaintiff’s desire to be a freewheeling enforcement officer of state and federal laws does not give him standing under the NVRA or demonstrate downstream consequences.

In sum, none of these alleged consequences rise to the level of a concrete, particularized injury. They are speculative, generalized, and indistinguishable from similar claims and allegations rejected in multiple other circuits.

CONCLUSION

For the reasons stated above, and in Defendant’s Motion, the Court should dismiss the Complaint.

DATED: September 12, 2025

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