

No. 26-2280

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

VOTER REFERENCE FOUNDATION LLC,

Appellant,

v.

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

Appellee

On Appeal from an Order of the United States District Court for the
Middle District of Pennsylvania, Case No. 1:24-CV-00294

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	3
INTRODUCTION	1
JURISDICTIONAL STATEMENT	4
STATEMENT OF THE ISSUES	4
STATEMENT OF RELATED CASES	6
STATEMENT OF THE CASE	6
I. The National Voter Registration Act	6
II. Pennsylvania’s Election Laws	9
III. Pennsylvania’s Voter Lists	11
IV. VRF’s Efforts To Publish Personal Voter Information on the Internet	13
V. Procedural History	16
SUMMARY OF THE ARGUMENT	21
ARGUMENT	24
I. VRF LACKS STANDING FOR ITS NVRA CLAIMS	24
A. At Summary Judgment, VRF Must Offer Concrete Evidence to Support Its Standing	26
B. VRF Cannot Establish Informational Injury	27
C. VRF’s Purported Fear of Enforcement Is Insufficient to Establish Standing for Its NVRA Claim	34

II. THE INTERNET SHARING BAN IS NOT PREEMPTED BY THE NVRA.....	37
A. Pennsylvania’s Reasonable Privacy Protections Do Not Conflict With the NVRA’s Disclosure Provision.....	38
B. The Voter Lists Do Not Fall Within the Scope of the NVRA’s Disclosure Provision.....	50
III. THE DISTRICT COURT CORRECTLY REJECTED VRF’S FIRST AMENDMENT CLAIMS.....	55
IV. THE DISTRICT COURT CORRECTLY REJECTED VRF’S REQUEST FOR DECLARATORY RELIEF	63
CONCLUSION	64

TABLE OF AUTHORITIES

Cases

<i>Arizona v. Inter Tribal Council of Ariz., Inc.</i> , 571 U.S. 1 (2013)	45, 46, 49, 50
<i>AstraZeneca Pharmaceuticals LP v. Secretary U.S. Dep’t of Health and Human Services</i> , 137 F. 4th 116 (3d Cir. 2025)	30
<i>Buckley v. American Constitutional Law Foundation, Inc.</i> , 525 U.S. 182 (1999).....	67, 68
<i>Burdick v. Takushi</i> , 504 U.S. 428 (1992)	69
<i>Campaign Legal Center v. Scott</i> , 49 F.4th 931 (5th Cir. 2022)	34
<i>Cap. Cities Media, Inc. v. Chester</i> , 797 F.2d 1164 (3d Cir. 1986).....	64
<i>City Council of L.A. v. Taxpayers for Vincent</i> , 466 U.S. 789 (1984)	73
<i>City of Chi. v. Morales</i> , 527 U.S. 41 (1999)	72
<i>Dakotans for Health v. Noem</i> , 52 F.4th 381 (8th Cir. 2022).....	69
<i>Democratic Nat. Comm. v. Republican Nat. Comm.</i> , 673 F.3d 192 (3d Cir. 2012)	6
<i>Fish v. Kobach</i> , 840 F.3d 710 (10th Cir. 2016)	45
<i>Free Speech Coal., Inc. v. Att’y Gen. of U.S.</i> , 677 F.3d 519 (3d Cir. 2012)	72
<i>Fusaro v. Howard</i> , 19 F.4th 357 (4th Cir. 2021)	71
<i>Greater Birmingham Ministries</i> , 105 F.4th 1324 (11th Cir. 2024)	57
<i>Hewlette-Bullard on behalf of J.H-B. v. Pocono Mtn. Sch. Dist.</i> , 522 F. Supp. 3d 78 (M.D. Pa. 2021)	72
<i>Houchins v. KQED, Inc.</i> , 438 U.S. 1 (1978)	64
<i>L.A. Police Dep’t v. United Reporting Pub. Corp.</i> , 528 U.S. 32 (1999) ...	64

<i>League of Women Voters of Ind., Inc. v. Sullivan</i> , 5 F.4th 714 (7th Cir. 2021).....	45
<i>Lebanon Farms Disposal, Inc. v. Cnty. of Lebanon</i> , No. 1:CV-03-0682, 2004 WL 7338460 (M.D. Pa. July 9, 2004).....	59
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992).....	30, 31
<i>Mazo v. New Jersey Sec’y of State</i> , 54 F.4th 124 (3d Cir. 2022) .	67, 68, 69
<i>Muthana v. Pompeo</i> , 985 F.3d 893 (D.C. Cir. 2021).....	42, 43
<i>Nat’l Shooting Sports Found. v. Att’y Gen. of New Jersey</i> , 80 F.4th 215 (3d Cir. 2023).....	40, 41, 42, 43
<i>Oklahoma Pub. Co. v. Dist. Ct. In & For Oklahoma Cnty.</i> , 430 U.S. 308 (1977).....	66
<i>Pa. State Educ. Ass’n v. Commw. Dep’t of Cmty. & Econ. Dev.</i> , 148 A.3d 142 (Pa. 2016).....	71
<i>Project Vote, Inc. v. Kemp</i> , 208 F. Supp. 3d 1320 (N.D. Ga. 2016).....	56
<i>Pub. Int. Legal Found. v Bellows</i> , 92 F.4th 36 (1st Cir. 2024).....	55
<i>Pub. Int. Legal Found. v Bellows</i> , 92 F.4th 36 (1st Cir. 2024).....	52, 55
<i>Pub. Int. Legal Found. v. Benson</i> , 136 F.4th 613 (6th Cir. 2025)	34
<i>Pub. Int. Legal Found. v. Schmidt</i> , 146 S. Ct. 1785 (2026).....	21, 24, 28
<i>Pub. Int. Legal Found., Inc. v. Nago</i> , 174 F.4th 664 (9th Cir. 2026).....	60, 63
<i>Public Interest Legal Foundation v. Secretary of the Commonwealth of Pennsylvania</i> , 136 F.4th 456 (3d Cir. 2025).....	passim
<i>Roth v. Norfalco LLC</i> , 651 F.3d 367 (3d Cir. 2011).....	49, 50
<i>Smith v. Daily Mail Pub. Co.</i> , 443 U.S. 97 (1979).....	66
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016).....	31, 32

<i>Swoboda v. Pa. Dep’t of State</i> , 304 A.3d 105 (Pa. Commw. Ct. 2023)....	20
<i>Swoboda v. Pa. Dep’t of State</i> , No. AP 2022-1069R (Pa. Open Records July 15, 2022).....	19
<i>TD Bank N.A. v. Hill</i> , 928 F.3d 259 (3d Cir. 2019)	58
<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413 (2021).....	passim
<i>Trichell v. Midland Credit Mgmt., Inc.</i> , 964 F.3d 990 (11th Cir. 2020).	33
<i>True the Vote v. Hosemann</i> , 43 F. Supp. 3d 693 (S.D. Miss. 2014)	56
<i>United States v. Benson</i> , 179 F.4th 470 (6th Cir. 2026).....	59, 63
<i>United States v. Benson</i> , 819 F. Supp. 3d 753 (W.D. Mich. 2026)	59, 63, 64
<i>United States v. Williams</i> , 553 U.S. 285 (2008).....	73
<i>Voter Reference Found., LLC v. Torrez</i> , 160 F.4th 1068 (10th Cir. 2025).....	23, 52
<i>Williamson v. Mazda Motor of Am., Inc.</i> , 562 U.S. 323 (2011)	49

Statutes

25 Pa.C.S. § 1201.....	10, 61
25 Pa.C.S. § 1222.....	10
25 Pa.C.S. § 1222(c)(1).....	10
25 Pa.C.S. § 1222(c)(4).....	11
25 Pa.C.S. § 1322.....	61
25 Pa.C.S. § 1328.....	10
25 Pa.C.S. § 1403.....	12

25 Pa.C.S. § 1404.....	12
25 Pa.C.S. § 1404(b)(3)	13
25 Pa.C.S. § 1901(b)(1)(i).....	12
25 Pa.C.S. 1222(a)	11, 61
25 Pa.C.S. 1901.....	11, 52, 61
25 Pa.C.S. Part IV	61
52 U.S.C. § 20501(a)	7
52 U.S.C. § 20501(a)(1).....	53
52 U.S.C. § 20501(a)(2).....	53
52 U.S.C. § 20501(b)(1).....	7, 53
52 U.S.C. § 20501(b)(2).....	7, 53
52 U.S.C. § 20501(b)(3).....	7
52 U.S.C. § 20501(b)(4).....	7, 51
52 U.S.C. § 20504	7
52 U.S.C. § 20505(a)(1).....	8
52 U.S.C. § 20506	8
52 U.S.C. § 20507(a)(4).....	8
52 U.S.C. § 20507(b)	9
52 U.S.C. § 20507(b)(2).....	9

52 U.S.C. § 20507(d)	9
52 U.S.C. § 20507(i)	10
52 U.S.C. § 20507(i)(1)	passim
52 U.S.C. § 20508(a)(2)	8
65 P.S. § 67.101	19

Regulations

4 Pa. Code § 183.13	14, 63
4 Pa. Code § 183.13(a)(1);	12
4 Pa. Code § 183.14(k)	14

Constitutional Provisions

U.S. Const. art. I, § 4	46
U.S. Const. art. I, § 4, cl. 1	49, 50

INTRODUCTION

Participating in the electoral process should not come at the cost of a voter's personal privacy. Pennsylvania citizens who choose to register to vote entrust the Department of State and county election officials with their personal information. In turn, election officials work diligently to safeguard that information. While state law requires the Department to make certain information about voters publicly available, the Department makes every effort to ensure that it is not misused. For instance, it does not disclose certain confidential data—like driver's license numbers or Social Security numbers—and it allows some voters, like those in sensitive occupations, to remove home addresses and other information that could be used for improper purposes. And, relevant here, it prohibits the publication of personal voter information on the internet.

Plaintiff-appellant Voter Reference Foundation (VRF) seeks to obtain Pennsylvania's publicly available voter list, but refuses to agree not to publish personal voter information on the internet. To the contrary, it intends to post information about Pennsylvania voters on its website, where it could be accessed by virtually anyone and used for any

purpose whatsoever. According to VRF, posting voters' personal information allows concerned citizens to review voter records, identify mistakes, and contact election officials to correct those mistakes. But there is no evidence that this process actually occurs, and VRF makes no effort to determine whether users of its website ever take steps to correct errors on state voter rolls—much less whether those voter rolls are corrected as a result. What there is evidence of is widespread anger among those voters who discover that their personal information is available for all to see, leading to frustration and disillusionment with the political process.

VRF alleges that Pennsylvania's common-sense prohibition on publishing voter information on the internet violates both the National Voter Registration Act (NVRA) and the First Amendment. It filed this suit against Secretary of the Commonwealth Al Schmidt so it could obtain Pennsylvania's voter rolls without being subject to this limitation, in order to make them publicly available to all users of its website.

Following full discovery, the District Court rejected all of VRF's claims. It concluded that VRF lacked standing to assert some of its counts under the NVRA, based on a recent decision of this Court addressing a

materially identical set of circumstances. It found that the NVRA—a statute enacted in 1993 for the primary purpose of increasing participation in elections—in no way prohibited Pennsylvania from taking the reasonable step of protecting voters’ personal information by prohibiting posting the Commonwealth’s voter rolls on the internet. And it found that conditioning access to certain information in the Commonwealth’s possession on agreeing to reasonable privacy protections did not implicate the First Amendment at all. As a result, it entered final judgment in favor of the Secretary.

On appeal, VRF repeats many of the same arguments the District Court properly rejected. It takes issue with this Court’s precedent addressing the showing required to establish standing under the NVRA, but it offers no meaningful basis for distinguishing it. It continues to argue that the NVRA prohibits Pennsylvania’s reasonable privacy protections, but it cannot identify any actual conflict between the text of that statute and Pennsylvania’s internet sharing ban, and its claim that Pennsylvania’s privacy protections impede the goals of the NVRA has things precisely backwards. Finally, it tries to recast Pennsylvania’s privacy protections as a threat to core political speech, despite the fact

that all they require is that individuals agree not to misuse personal information about Pennsylvania voters before receiving it.

The District Court addressed all of these arguments and properly concluded that VRF had not shown that Pennsylvania's efforts to protect voter privacy were inconsistent with either the NVRA or the First Amendment. That decision should be affirmed.

JURISDICTIONAL STATEMENT

The District Court had subject-matter jurisdiction over Counts Four, Five and Six of VRF's complaint pursuant to 28 U.S.C. § 1331. As the District Court found, it lacked jurisdiction over Counts Two and Three, because VRF did not have standing to pursue those counts. Although the District Court exercised jurisdiction over Count One, the same logic applies to that count, as VRF has not established the necessary injury-in-fact and therefore lacks standing. *See infra*.

This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Did the District Court correctly find that VRF has not established "informational injury" under the National Voter Registration

Act and therefore lacks standing to bring Counts Two and Three of its complaint?

2. Because VRF cannot establish “informational injury” under the National Voter Registration Act, does it also lack standing for Count One of its complaint?

3. Did the District Court correctly find that Pennsylvania’s efforts to protect voter privacy by prohibiting the publication of voters’ personal information on the internet are not preempted by the National Voter Registration Act?

4. Did the District Court correctly find that Pennsylvania’s efforts to protect voter privacy by prohibiting the publication of voters’ personal information on the internet do not violate the First Amendment?

5. Did the District Court properly reject VRF’s request for declaratory relief, based on its failure to establish a constitutional or statutory violation?

STATEMENT OF RELATED CASES

This case has not been before this Court previously. Secretary Schmidt is not aware of any related cases.

STATEMENT OF THE CASE

I. The National Voter Registration Act

Congress enacted the National Voter Registration Act—known as the NVRA or the Motor Voter Law—in 1993, for the primary purpose of reducing barriers to voter registration.¹ In the NVRA, Congress found that “it is the duty of the Federal, State and local governments to promote the exercise of” the fundamental right to vote, but that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation ... and disproportionately harm voter participation by various groups, including racial minorities.” 52 U.S.C. § 20501(a).

¹ National Voter Registration Act of 1993, P.L. No. 103–31, 107 Stat. 77 (1993) (codified at 52 U.S.C. §§ 20501-20511); *see also* *Democratic Nat. Comm. v. Republican Nat. Comm.*, 673 F.3d 192, 199 (3d Cir. 2012).

To address these barriers to registration and voting, the NVRA sought to achieve several aims. Among these were “establish[ing] procedures that will increase the number of eligible citizens who register to vote” as well as enabling governments at all levels to “enhance[] the participation of eligible citizens as voters in elections.” *Id.* § 20501(b)(1) & (2). The statute also sought to “protect the integrity of the electoral process” and to “ensure that accurate and current voter registration rolls are maintained.” *Id.* § 20501(b)(3) & (4).

In order to achieve these broad goals, the NVRA mandated certain procedures to facilitate voter registration. Most notably, it required states to implement processes so that applications for driver’s licenses also served as voter registration applications, unless the applicant chose not to register. *Id.* § 20504. In addition, it designated certain state agencies as “voter registration agencies,” required to take certain steps to facilitate voter registration. *Id.* § 20506. Finally, it mandated the creation of a standard federal voter registration application, which all states were required to accept. *Id.* §§ 20505(a)(1), 20508(a)(2).

In addition, the law required each state to “conduct a general program that makes a reasonable effort to remove the names of ineligible

voters from the official lists of eligible voters” due to “the death of the registrant” or “a change in the residence of the registrant.” *Id.* § 20507(a)(4). But such a “general program”—as well as any other program conducted to ensure that the state’s rolls were accurate and up-to-date—must be conducted in a manner that is “uniform, nondiscriminatory, and in compliance with the Voting Rights Act,” and that “shall not result in the removal of the name of any person ... by reason of the person’s failure to vote” unless the state followed certain procedures set forth in the Act. *Id.* § 20507(b). More specifically, states are prohibited from removing a voter based on an apparent change in residence unless the voter either confirmed the move or failed to vote during a period encompassing two consecutive federal elections and also failed to respond to a notification mailed by the state. *Id.* § 20507(b)(2), (d).

Finally, the NVRA required states to “maintain for at least two years” and “make available for public inspection and ... photocopying ... all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i). These materials must

include information identifying registered voters who had received the notifications mailed by states to determine whether the voter had moved under § 20507(d), as well as materials showing whether each recipient had responded to the notification. Specifically excluded from the obligation were records “to the extent [they] relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.” *Id.* § 20507(i).

II. Pennsylvania’s Election Laws

County officials have primary responsibility for running elections in Pennsylvania. Among their election-related responsibilities, counties are required to receive and process voter registration applications. 25 Pa.C.S. § 1328. Every voter in Pennsylvania must be registered to vote in any election.

The Department of State also performs certain tasks relating to elections and supports the counties in their efforts. For instance, the Department is required to implement and administer a statewide uniform registry of electors (the SURE system). 25 Pa.C.S. §§ 1201, 1222. By law, the SURE system must be “a single, uniform integrated computer system” that “[c]ontain[s] a database of all registered electors.” *Id.*

§ 1222(c)(1). Counties must be able to access the SURE system so that they can “add, modify and delete information in the system as is necessary and appropriate.” *Id.* § 1222(c)(4).

Counties, with the assistance of the Department, are also required to perform certain “list maintenance” activities in order to ensure that their voter rolls are accurate and up to date, and to comply with the mandates of the NVRA and other applicable laws. *See* 25 Pa.C.S. §§ 1201, 1222(a), 1901; Appx.228, 234–239, 246–271. Among such efforts, counties are required to take steps to identify voters who have moved or have died. 25 Pa.C.S. § 1901; Appx.235, 246–271. Likewise, counties seek to identify duplicate registrations. *Id.* In conducting these activities, counties must comply with the requirements of the NVRA—such as the restriction on when a voter can be removed from the rolls for having moved, *see supra*—as well as applicable state law requirements.

The Department assists the counties in their list-maintenance efforts in several ways. It provides them with instructional materials, referred to as “job aids,” that give the counties guidance as to how they should conduct list maintenance. Appx.258–263, 502-505. The Department also uploads information into the SURE system that helps

counties identify records that may require updating. 25 Pa.C.S. § 1901(b)(1)(i); Appx.261–268. The uploaded materials identify voters who may have moved (either in-state or out-of-state) as well as potential duplicate registrations. *Id.* And the Department also serves as a conduit for other information, such as information provided by the Department of Health on deceased voters. *Id.*

III. Pennsylvania’s Voter Lists

Pennsylvania, like most states, makes copies of its voter rolls available to individuals and organizations who request them. Consistent with state law, the Pennsylvania Department of State allows requestors to obtain a dataset known as the “full voter export” for a payment of \$20. *See* 25 Pa.C.S. §§ 1403, 1404; 4 Pa. Code § 183.13(a)(1); Appx.5–6. The full voter export, or FVE, consists of records of all voters by county and contains the following fields: voter ID number, name, sex, date of birth, date registered, status (i.e., active or inactive), date status last changed, party, residential address, mailing address, polling place, date last voted, all districts in which the voter votes (i.e., congressional, legislative, school district, etc.), voter history, and the date the voter’s record was last changed. *See* 4 Pa. Code § □□; Appx.273–274, 281–282, 507–508.

While allowing access to its voter lists, Pennsylvania has also taken steps to protect the privacy of its voters. Under state law, “[n]o individual who inspects the list may use information contained in the list for purposes unrelated to elections, political activities or law enforcement.” 25 Pa.C.S. § 1404(b)(3). To ensure compliance, anyone requesting the list must provide identification and “must state in writing that any information obtained from the list will not be used for purposes unrelated to elections, political activities or law enforcement.” *Id.*

In addition, the Secretary of the Commonwealth has exercised his regulatory authority, *see* 25 Pa.C.S. §§ 1403(b), 1404(b)(1), to provide certain privacy protections. By regulation, the lists may not contain a voter’s driver’s license number or social security number, the identity of the agency through which the voter registered, or a copy of the voter’s signature. 4 Pa. Code § 183.14(c). Further, under regulations issued by the Secretary, certain categories of voters—including law enforcement officers as well as individuals with protection from abuse orders—can request that their home addresses not be listed on the publicly-available voter rolls. *Id.* § 183.14(c)(4).

Finally, in order to ensure that voter data is not misused, the regulations prohibit publishing voter lists on the internet. *See* 4 Pa. Code §§ 183.13, 183.14(k); Appx.289. Anyone requesting a copy of the FVE must agree that they will comply with this regulation. Appx.298.

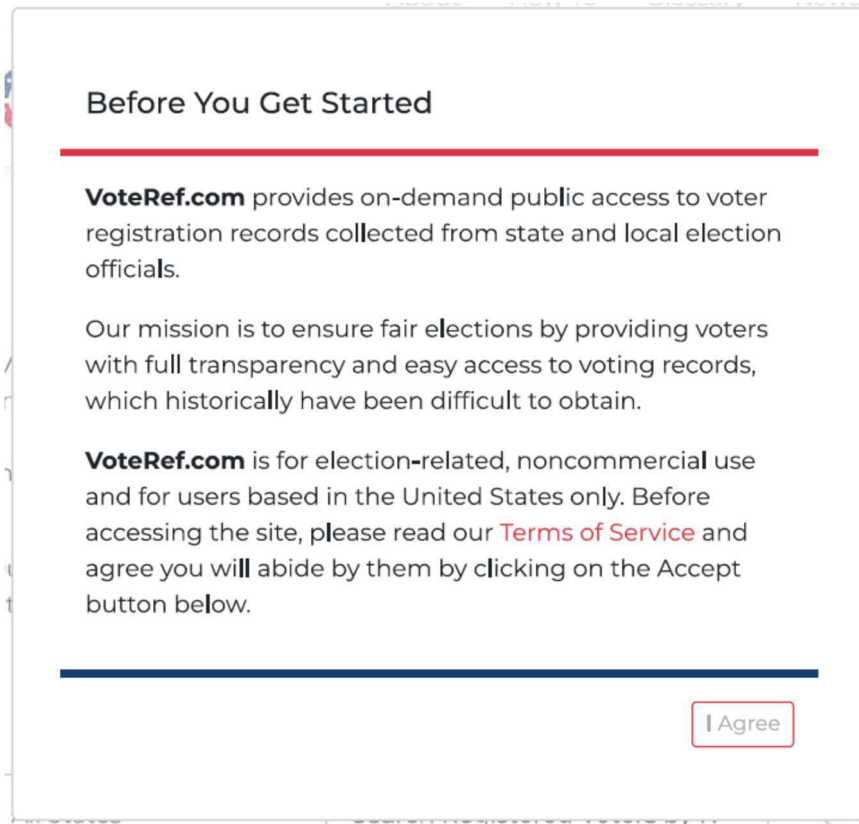
IV. VRF's Efforts To Publish Personal Voter Information on the Internet

VRF operates a website, VoteRef.com, which publishes personal information of voters contained in state voter registration databases. Appx.399, 464. That information can include names, addresses, birth years, party affiliations, and voting history information. Appx.468–469; According to the testimony of its Executive Director, it does so “[s]o the public has oversight to ensure that proper list maintenance is being conducted.” Appx.430–431. Specifically, VRF envisions that users of its website will contact election officials to inform them of errors in the voter rolls. Appx.434.

Despite its goals, VRF itself does not take any steps to inform election officials of errors in voter registration information. Appx.434–435. Nor does it make any effort to monitor whether users of its website are actually contacting election officials regarding errors they have identified. Appx.435. And it likewise does not communicate with state or

county election officials to determine whether users of the website have contacted them about errors. *Id.*

Upon first accessing the voteref.com website, a user is presented with the following pop-up box:



Appx.510–511. After clicking “I Agree,” the user has access to all of the data posted on the website. Appx.421–421. However, the website does not require a user to actually read the terms of service before clicking “I Agree.” *Id.* Likewise, it does not track whether users of the site click on the link to those terms. *Id.*

VRF also takes no steps to monitor whether users of its website comply with its terms of service. Appx.424. It has never taken legal action in response to a violation of its terms of service, and has actually never been made aware of a violation of the terms of service. Appx.423–424. According to its Executive Director, if VRF became aware of a violation of its terms of service, it would simply report it to the relevant state election agency and would not take any action on its own to enforce its terms of service. *Id.*

Voters who discover that their data has been made available on the internet frequently reach out to VRF or election officials to express their concern and frustration. Such voters often express fear for their safety. *See, e.g.,* Appx.527–528. For instance, one voter informed VRF that she “was the victim of online harassment from a man who found my information online and doxxed me using this website.” Appx.513–514. Yet, VRF’s Executive Director testified that VRF did not take any action to investigate or otherwise respond to this email, beyond providing its generic response to voter complaints. Appx.481–483. In fact, with the exception of those voters who are protected under state law, VRF does not honor requests to remove a voter’s data. Appx.408.

Similarly, voters inform VRF of the risks their website creates, to no avail. One voter wrote, “[h]aving been part of identity fraud before, it is very disheartening to find out that a simple google search for my name can now give anyone my name, address, date of birth, and party affiliation.” Appx.516–517. This individual continued, “[y]our website however, makes it extremely easy for someone with technical expertise to scrub all of the data from your website anonymously and use it for whatever purpose they wish.” *Id.* VRF does not remove voter data in response to such concerns, however. Appx.408.

The net result is foreseeable: voters are less inclined to participate in the political process out of concerns for their privacy and safety. As one voter wrote: “This is why people do not register to vote. Because you take our names and addresses which are private and you broadcast them across the entire world. Opening us up to all kinds of threats.” Appx.527–528.

V. Procedural History

In late 2021 or early 2022, the Department became aware that VRF had posted personal information about Pennsylvania voters on its website, in violation of the internet sharing ban. Appx.463, 614. The

Department therefore wrote to VRF and demanded it remove the information about Pennsylvania voters, which VRF did in January 2022. Appx.463–465, 614.

After removing the Pennsylvania voter information from its website, VRF filed a request pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.* (“RTKL”), on March 7, 2022, seeking a copy of the Full Voter Export list. Appx.133–140. That request was made solely pursuant to the RTKL and did not mention the NVRA. *Id.* While VRF included an attestation that it would only use the FVE for statutorily permissible purposes, it made clear it would not agree to refrain from publishing Pennsylvania voter data on the internet. *Id.*

The Department denied the request on April 13, 2022, because of VRF’s refusal to adhere to the internet sharing ban. Appx.157–158. The Department also noted in its denial that VRF had previously published Pennsylvania voter information on the internet, in violation of the internet sharing ban. *Id.*

VRF appealed the Department’s denial to the Pennsylvania Office of Open Records and then to Pennsylvania Commonwealth Court, which affirmed the Department’s decision on October 20, 2023. *Swoboda v. Pa.*

Dep't of State, No. AP 2022-1069R (Pa. Open Records July 15, 2022); *aff'd*, 304 A.3d 105, 116 (Pa. Cmwlth. 2023).

Shortly thereafter, on November 2, 2023, VRF sent the Secretary and the Department a document entitled “Notice of Violation of the NVRA,” claiming that the Department’s denial of its March RTK Request was a violation of the NVRA—notwithstanding the fact that the March 2022 Request was solely made pursuant to the RTKL. Appx. 163–165. Also on November 2, 2023, VRF sent a separate letter containing a new request for the FVE, this time pursuant to the NVRA. Appx. 160–161. The Secretary responded to both the Notice and the request on November 16, 2023, granting the request on the condition that VRF sign the affirmation required pursuant to Pennsylvania law. Appx.119. VRF refused to do so and again wrote to the Secretary and Department on November 17, 2023, contending that the Department continued to violate the NVRA. Appx.167–169.

On February 19, 2024, VRF filed suit against Secretary Schmidt, raising six claims: three alleging violations of the NVRA relating to the Department’s privacy policies and its requirement that VRF agree to those policies before receiving the voter list; two alleging that the

Department's privacy policies violate the First Amendment; and one seeking declaratory relief.

Secretary Schmidt moved to dismiss the case and, while that motion was pending, the parties completed discovery and filed cross-motions for summary judgment. As a result, the District Court denied the pending motion to dismiss as moot, because it raised similar arguments to those presented in the Secretary's summary judgment motion. Appx.60.

While summary judgment motions were pending, this Court decided *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*, 146 S. Ct. 1785, (2026) ("*PILF*"), a case involving very similar claims brought under the disclosure provision of the NVRA. In *PILF*, this Court held that the plaintiff lacked standing to pursue claims under the NVRA because it had not demonstrated that it suffered an adequate "informational injury." With leave of court, the Secretary then filed a motion to dismiss VRF's NVRA counts due to lack of standing, consistent with *PILF*. Appx.62.

On April 23, 2026, the District Court granted summary judgment to Secretary Schmidt. It first held, with respect to Counts Two and Three—both asserting violations of the NVRA based on the Secretary’s refusal to provide VRF with the voter lists unless it agreed to Pennsylvania’s privacy protections—that VRF lacked standing because, as in *PILF*, it had not shown an adequate injury that was sufficiently related to the purpose of the NVRA. Appx.22–27. However, with respect to Count One—a challenge to the internet sharing ban under the NVRA—the court held that VRF had shown an adequate injury based upon its fear of prosecution for posting voter information on the internet. Appx.27–29.

Turning to the merits, the Court held that VRF had not established a violation of either the NVRA or the First Amendment. It first held that, while Pennsylvania’s voter rolls were records covered by the NVRA’s disclosure provision, the Commonwealth’s prohibition on publishing voter information on the internet was not preempted by the NVRA. Appx.30–45. It similarly rejected VRF’s First Amendment claims, finding that the privacy rules that VRF challenged “were best conceptualized as restrictions on access to information within government control and not

as restrictions on speech.” Appx.45–50 (quoting *Voter Reference Found., LLC v. Torrez*, 727 F. Supp. 3d 1014, 1225 (D.N.M. 2024), *aff’d*, 160 F.4th 1068 (10th Cir. 2025)).

VRF timely filed this appeal.

SUMMARY OF THE ARGUMENT

I.A. The District Court correctly found that VRF could not demonstrate “informational injury” for purposes of establishing standing under the NVRA. *PILF* controls this case, and under that decision it is not sufficient for standing under the NVRA’s disclosure provision for a plaintiff to show that it was denied information it requested. *See Pub. Int. Legal Found. v. Sec’y Commonwealth of Pennsylvania*, 136 F.4th 456, 464 (3d Cir. 2025), *cert. denied sub nom. Pub. Int. Legal Found. v. Schmidt*, 146 S. Ct. 1785 (2026). Rather, a plaintiff asserting an NVRA disclosure claim must show that the denial “led to adverse effects or other downstream consequences, *and such consequences have a nexus to the interest Congress sought to protect.*” *Id.* (cleaned up) (emphasis original).

The “interest Congress sought to protect” through the NVRA was “the expansion of voter participation in federal elections.” *Id.* at 469. Like the plaintiff in *PILF*, VRF has not offered specific evidence establishing

that the “adverse effects” it complains of are sufficiently related to this interest. Neither its desire to study Pennsylvania’s voter rolls—something it is not prohibited from doing currently—nor its interest in publishing voter information on the internet has been shown, through concrete evidence, to have an adequate nexus to the “expansion of voter participation.” As the District Court correctly found, “however VRF chooses to characterize its harm, it is clear that its allegations fall into those types of harm deemed by the Third Circuit to have an insufficient nexus to the purposes of the NVRA.” Appx.24. As a result, it properly dismissed Counts Two and Three, which allege that the Secretary violated the NVRA by not providing VRF with Pennsylvania’s voter rolls based on its refusal to agree not to publish them on the internet.

I.B. The same logic also applies to Count One, which alleges that the Internet sharing ban violates the NVRA. The District Court found that VRF had not demonstrated an adequate “informational injury” for purposes of standing under the NVRA, but allowed this Count to proceed based on VRF’s claimed fear of civil and criminal enforcement for violating the internet sharing ban. Appx.27. But such pre-enforcement actions are the exception rather than the rule, and require an allegation

of a constitutional violation. Here, VRF has brought a separate count alleging that the internet sharing ban violates the First Amendment—and the Secretary has not challenged its standing to bring that count—but standing must be shown for each separate claim. VRF has shown no basis for finding that it has standing to bring a pre-enforcement challenge based simply on an alleged statutory violation.

II. If the Court addresses the merits, it should reject VRF's NVRA claims. The District Court correctly found that Pennsylvania's reasonable prohibition on publishing voter information on the internet was not preempted by the NVRA's directive that it "make available for public inspection and, where available, photocopying at a reasonable cost" certain records relating to its list-maintenance efforts. VRF cannot point to any actual conflict between the text of the NVRA and the internet sharing ban, and protecting voter privacy as Pennsylvania does serves to further, rather than frustrate, the purposes of the NVRA. Additionally, the voter rolls that VRF demands are not a record of Pennsylvania's list-maintenance efforts, but are instead the product of those efforts. Thus, VRF's NVRA claims can be rejected for the additional reason that the disclosure provision does not apply to the records it has demanded.

III. The District Court correctly rejected VRF's First Amendment claims. The First Amendment does not guarantee unfettered access to information in the government's possession, nor does it prevent the government from imposing reasonable limitations on the use of information it chooses to make available. Requiring requestors of Pennsylvania's voter rolls to agree not to post personal information on the internet is not a ban on protected political speech, but a reasonable policy decision entitled to deference.

IV. Finally, because VRF cannot show a statutory or constitutional violation, the District Court correctly rejected its request for declaratory relief.

ARGUMENT

I. VRF LACKS STANDING FOR ITS NVRA CLAIMS

Last year, this Court held that a “self-described ‘public interest organization that seeks to promote the integrity of elections nationwide’” lacked standing to pursue claims alleging that the Secretary had violated the disclosure provision of the National Voter Registration Act by refusing to provide it with certain requested records. *Pub. Int. Legal*

Found. v. Sec’y Commonwealth of Pennsylvania, 136 F.4th 456, 459 (3d Cir. 2025), *cert. denied sub nom. Pub. Int. Legal Found. v. Schmidt*, 146 S. Ct. 1785 (2026) (“*PILF*”). As VRF does here, the plaintiff in that case claimed that the Secretary’s refusal to produce the relevant documents thwarted “the *educational* aspect of its mission,’ and its []ability to publish ‘educational materials.’” *Id.* at 468 (emphasis original). This Court concluded that these assertions were insufficient to demonstrate “informational injury” under the framework established by the Supreme Court in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), and that the plaintiff therefore lacked standing.

PILF controls this case. Like *PILF*, VRF claims that the Secretary’s refusal to provide it with the documents it has demanded has thwarted its educational and advocacy efforts. But VRF, like *PILF*, has failed to offer tangible evidence demonstrating what this Court held is required: a “*specific* adverse downstream consequence for its mission or future plans that has a nexus to the interest Congress sought to protect in enacting the NVRA, namely the expansion of voter participation in federal elections.” *PILF*, 136 F.4th at 469 (emphasis original). The

District Court concluded that that decision controlled here, and therefore dismissed Counts Two and Three.

Recognizing the challenge *PILF* poses to its theory of standing, VRF now argues that that decision was wrongly decided and points to a variety of out-of-circuit precedent. *See* VRF Br. at 29–30. Its attempts to distinguish *PILF* fall flat: indeed, as the District Court noted, the arguments VRF has made to demonstrate harm are in many ways indistinguishable from those offered in *PILF*. As a result, the District Court’s conclusion that VRF cannot demonstrate informational injury should be affirmed. Moreover, that conclusion requires dismissal of Count One, in addition to Counts Two and Three, because it rests on the same theory of standing.

A. At Summary Judgment, VRF Must Offer Concrete Evidence to Support Its Standing

Because this case has proceeded to summary judgment, VRF faces a higher burden in establishing standing. At various stages of the litigation, “each element [of standing] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)

(cleaned up). Thus, “[a]t summary judgment, a plaintiff cannot rely on mere allegations to demonstrate standing.” *AstraZeneca Pharmaceuticals LP v. Secretary U.S. Dep’t of Health and Human Services*, 137 F. 4th 116, 123 (3d Cir. 2025). Rather, “[i]t must set forth by affidavit or other evidence specific facts demonstrating that standing requirements have been met.” *Id.* (cleaned up).

B. VRF Cannot Establish Informational Injury

The familiar three-part standing test requires that a plaintiff “have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). An “injury in fact” is “an invasion of a legally protected interest,” which must be both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 (cleaned up).

However, “an injury in law is not an injury in fact.” *TransUnion*, 594 U.S. at 427. A plaintiff does not “automatically satisfy 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.*

at 426 (cleaned up). The mere existence of a statutory right does not establish that the plaintiff was “*concretely harmed* by a defendant’s statutory violation.” *Id.* at 426–27. And in assessing whether a harm is concrete, “courts should assess whether the alleged injury to the plaintiff has a ‘close relationship’ to a harm ‘traditionally’ recognized as providing a basis for a lawsuit in American courts.” *Id.* at 424 (quoting *Spokeo*, 578 U.S. at 341).

In *TransUnion*, the Supreme Court held that demonstrating standing based on an asserted “informational injury” typically requires more than a claimed lack of access to information the plaintiff seeks. Rather, where a plaintiff asserts an informational injury based on a violation of a statute that is not otherwise a “public-disclosure law” (such as the Freedom of Information Act) the plaintiff must identify a “downstream consequence” of the denial of information. *Id.* at 442. An “asserted informational injury that causes no adverse effects cannot satisfy Article III.” *Id.* (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020)).

In *PILF*, this Court applied these principles to a claim brought under the NVRA’s disclosure provision. PILF had alleged that the

Secretary had violated the NVRA by refusing to produce certain materials, thwarting its efforts “to study and analyze and scrutinize records” and to “evaluate the accuracy of the Commonwealth’s voter rolls.” 136 F.4th at 467 (cleaned up). Relying on *TransUnion*, this Court observed that “it is insufficient for Article III standing purposes for a plaintiff asserting an informational injury from a violation of a statute that contains a public disclosure aspect as part of its overall scheme to allege only that he has been denied information.” *PILF*, 136 F.4th at 465. Rather, determining whether the plaintiff has standing requires assessing the purpose of the statute as a whole and determining whether the plaintiff has “establish[ed] a nexus among a downstream consequence, [plaintiff’s] alleged harm, and the interest Congress sought to protect.” *Id.*² The Court concluded that PILF’s stated intent to “study and analyze and scrutinize” was “not an enumerated purpose of the

² See also *Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 632 (6th Cir. 2025) (“The combination of analogous case law from the Fifth and Third Circuits and PILF’s failure to articulate specific downstream consequences demonstrates that PILF has failed to show a sufficient injury to confer Article III standing”); *Campaign Legal Center v. Scott*, 49 F.4th 931, 938 (5th Cir. 2022) (“[E]ven in public disclosure-based cases, plaintiffs must . . . assert ‘downstream consequences, which is another way of identifying concrete harm from governmental failures to disclosure.’”).

NVRA *nor do these aims advance the expansion of voter registration and participation in federal elections.*” *PILF* at 467 (cleaned up) (emphasis added). So, because it had failed to demonstrate the requisite nexus among the alleged statutory violation, the downstream consequences of that violation, and the purpose of the statute, it lacked standing.

PILF controls this case. As the District Court found, VRF’s asserted injuries “fall into those types of harm deemed by the Third Circuit to have an insufficient nexus to the purposes of the NVRA.” Appx.24. For instance, *PILF* asserted that it was unable to engage in “activity to promote election integrity and compliance with federal and state statutes,” 136 F.4th at 467 (cleaned up); here, VRF claims it has been prevented “from fulfilling its mission of increasing voter participation and preserving election integrity,” VRF Br. at 20. Similarly, *PILF* argued it was unable to “study and analyze the Secretary’s voter list maintenance activities,” 136 F.4th at 467 (cleaned up); VRF likewise asserts that it is unable “to engage with and lobby the Secretary for better list maintenance,” VRF Br. at 20. And where *PILF* sought to “evaluate the accuracy of the Commonwealth’s voter rolls,” 136 F.4th at 467

(cleaned up), VRF wishes “to find errors in the voter rolls and enable Pennsylvanians to do the same,” VRF. Br. at 20.

On appeal, VRF relies heavily on a three-page affidavit from its Executive Director discussing VRF’s apparent plans to analyze Pennsylvania’s voter records. *See* VRF Br. at 20–23 (citing, *inter alia*, Appx.705–707). But any argument that such plans could establish standing runs headlong into this Court’s finding that “[t]o study and analyze and scrutinize records, is not an enumerated purpose of the NVRA nor do these aims advance the expansion of voter registration and participation in federal elections.” 136 F.4th at 467. And it also fails for the additional reason that VRF could, at any time, obtain the FVE and conduct any analysis it wishes—provided it simply agree not to post it on the internet. Any harm VRF is suffering as a result of its inability to analyze Pennsylvania’s voter rolls is entirely of its own making, and cannot be blamed on the voter privacy protections that are the subject of this suit.

Likewise, the fact that VRF seeks to post the full voter list on the internet in order to “crowdsource” the correction of alleged errors in Pennsylvania’s voter rolls does not change the standing analysis. *See*

Appx.78 ¶ 46. While VRF “hopes that thousands or even millions of concerned citizens who share its interest in election transparency, participation, and integrity will view, analyze, and discuss the data,” Appx.99 ¶ 133, it has not offered any evidence establishing a nexus between this desire to publish Pennsylvania voter information on the internet and “the expansion of voter participation in federal elections.” To the contrary, the evidence in the record shows that VRF’s publication of voter data on the internet *diminishes* voter participation. Voters who discover their personal information on the internet often complain to VRF, expressing concern for their privacy and safety and ambivalence about the electoral process. Appx.513–528.

As one voter put it, “This is why people do not register to vote. Because you take our names and addresses which are private and you broadcast them across the entire world. Opening us up to all kinds of threats.” Appx.527; *see also* Appx.514 (“I was the victim of online harassment from a man who found my information online and doxxed me using this website.”); Appx.524 (“I’m asking again to remove my information from your site. I really should not have to go through all of this hassle to get MY information removed.”); Appx.527 (“What you’re

doing is taking my name and address and broadcasting it across the Internet, without any respect for my privacy—essentially giving it to anyone and everyone....And yes the last time my ex-boyfriend found my address he sent someone over to slash my face.”); Appx.528 (“I have an ex boyfriend who tried to harm me, and you are literally handing him my address! Please REMOVE IT IMMEDIATELY!”). Similarly, during the period in which Pennsylvania voter information was available on VRF’s website, the Department of State received complaints from voters. *E.g.*, Appx.550 (“I would like my personal information such as my full name and address taken off VoteRef.com effective Immediately. I am infuriated that such information is so easily accessible for all to see publicly when my family has dealt with problems like stalkers in the past”).

The evidence in the record—as opposed to VRF’s unfounded assertions—provides no support for concluding that publishing voter information on the internet promotes effective voter list maintenance in any way. VRF, by its own admission, does not track whether users of its website contact state officials to seek correction of purported errors in state voter rolls. Appx.435. In fact, it cannot point to a single instance in which a user of its website contacted a state election official and obtained

a correction in that state’s voter rolls. The record is devoid of proof that publication of personal voter data on the internet actually leads to corrections in state voter rolls. Instead, VRF “hopes” that this process will occur—but it offers nothing to back up those hopes.

Thus, it is not enough for VRF to claim that it has standing simply because it has specific plans to post voter data on the internet. *Cf. PILF*, 136 F.4th at 468–69. The public disclosure of voter information is certainly not a purpose of the NVRA—just as “[t]o ‘study and analyze’ and ‘scrutinize’ records” was found by this Court not to be one. *PILF*, 136 F.4th at 467. As was the case in *PILF*, VRF’s planned activities are not “essential to a concrete interest protected by the statute.” *Id.* To the contrary, VRF’s activities actually undermine the interests Congress sought to protect in the NVRA. *See supra*.

For all these reasons, the District Court correctly held that VRF had not established an informational injury and therefore properly dismissed Counts Two and Three.

C. VRF’s Purported Fear of Enforcement Is Insufficient to Establish Standing for Its NVRA Claim

The logic that requires the dismissal of Counts Two and Three also applies to Count One. Count One, like Counts Two and Three, alleges

that the Secretary has violated the NVRA. The District Court found that, while VRF had not shown an adequate informational injury with respect to any of its NVRA claims, its purported fear of civil or criminal enforcement for violating Pennsylvania's privacy requirements was sufficient to establish standing for Count One. Appx.29.

Fear of criminal enforcement can, under certain circumstances, establish standing to bring a constitutional challenge. *See Nat'l Shooting Sports Found. v. Att'y Gen. of New Jersey*, 80 F.4th 215, 219 (3d Cir. 2023). The Secretary has not disputed VRF's standing with respect to its First Amendment claims for precisely that reason. But these challenges are "the exception rather than the rule," and "[e]ven in constitutional cases, there is no unqualified right to pre-enforcement review." *Id.*

The District Court erred in applying the analysis for constitutional pre-enforcement challenges to a statutory challenge. While it is true that "in a case involving a pre-enforcement facial challenge to a statute alleged to be in violation of the First Amendment, even the remotest threat of prosecution, such as the absence of a promise not to prosecute, can satisfy the injury-in-fact requirement," Appx.28 (cleaned up), that

fact has no bearing on whether the fear of prosecution establishes standing for a separate *statutory* claim.

There is no basis here for extending the doctrine of pre-enforcement challenges to claims alleging statutory violations. To the contrary, in *National Shooting Sports Foundation*, this Court declined to adopt a similar argument, finding that the plaintiff had not adequately “explained why this potential statutory (rather than constitutional) violation would justify pre-enforcement review.” 80 F.4th at 219. The Court concluded that the framework of *TransUnion* applied, and that the plaintiff had not shown that their alleged harm “ha[d] a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts.” *Id.* (quoting *TransUnion*, 141 S. Ct. at 2205).

The DC Circuit’s decision in *Muthana v. Pompeo*, 985 F.3d 893 (D.C. Cir. 2021), is instructive here. That decision addressed a pre-enforcement challenge to the potential application of the federal statute proscribing material support for terrorism. The DC Circuit rejected the challenge, finding that “[p]reenforcement review is not a vehicle to settle questions of statutory interpretation unconnected with matters of constitutional

right.” *Id.* at 911. Rather, pre-enforcement challenges are “limited and appropriate only to relieve a plaintiff from the necessity of first exposing himself to actual arrest or prosecution before he can challenge the statute that he claims deters the exercise of his constitutional rights.” *Id.* (cleaned up). It concluded that “absent a claim of constitutional right” the plaintiff lacked standing. *Id.*

To be clear, none of this discussion affects the analysis with respect to VRF’s First Amendment claims. But “standing is not dispensed in gross,” and therefore VRF must establish standing under the NVRA without regard to its First Amendment claims. *TransUnion*, 594 U.S. at 431. And “a statutory violation is not enough to show standing,” absent “a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts.” *National Shooting Sports Foundation*, 80 F.4th at 219 (quoting *TransUnion*, 594 U.S. at 424). Here, VRF cannot make such a showing, and therefore it lacks standing to pursue any of its NVRA counts, including Count One.

II. THE INTERNET SHARING BAN IS NOT PREEMPTED BY THE NVRA

If the Court addresses the merits, it should affirm the District Court’s finding that Pennsylvania’s voter-privacy protections are not

preempted by the NVRA.³ As the District Court concluded, the voter privacy protections neither conflict with the plain text of the NVRA nor frustrate the goals of the statute—indeed, these protections actually further, rather than frustrate, those goals. *See infra* Part II.A. Additionally, because the voter lists themselves do not “concern[] the implementation” of the Commonwealth’s list-maintenance programs, the NVRA’s disclosure provision does not apply in the first instance. *See infra* Part II.B. On either basis, the District Court’s conclusion should be affirmed.

A. Pennsylvania’s Reasonable Privacy Protections Do Not Conflict With the NVRA’s Disclosure Provision

As the District Court found, the internet sharing ban “does not restrict any party’s access to data to which they are entitled” nor does it “constrain a party’s ability to conduct a thorough inspection of the data.” Appx.40. As a result, it is not an “obstacle to the purposes and goals of the NVRA’s public disclosure provision.” Appx.41. Thus, assuming *arguendo* that the disclosure provision applies to Pennsylvania’s voter

³ This conclusion would also require rejecting Counts Two and Three, should the Court address those on the merits.

lists, *contra infra* Par II.B, there is no conflict between the NVRA and Pennsylvania’s privacy protections.

1. The Text of the NVRA Does Not Conflict with the Internet Sharing Ban

Congress enacted the NVRA pursuant to its power under the Elections Clause, which expressly gives Congress the authority to preempt state laws relating to the election of members of Congress. *See, e.g., Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 7–9 (2013) (analyzing the NVRA under the Elections Clause); *League of Women Voters of Ind., Inc. v. Sullivan*, 5 F.4th 714, 723 (7th Cir. 2021); *Fish v. Kobach*, 840 F.3d 710, 720 & n.9 (10th Cir. 2016); *United States v. Caldwell*, No. 26-2025, 2026 WL 2186515, *3 (D.N.J. July 29, 2026). That clause provides, “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.” U.S. Const. art. I, § 4.

Because “the power the Elections Clause confers is none other than the power to preempt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress’s pre-emptive

intent.” *Inter Tribal Council of Ariz.*, 570 U.S. at 14. Any analysis of whether the NVRA preempts a state requirement therefore must begin—and, arguably, end—with the statutory text.

VRF has not claimed that the internet sharing ban is inconsistent with the NVRA’s plain text. Nor could it. Nothing in the NVRA, which was written before internet access was common, speaks to whether a state can prohibit publication of personal voter information on the internet. As the District Court held, “the unambiguous text of the NVRA only requires the Commonwealth of Pennsylvania to make the voting data available so that the public may inspect it; it does not speak the requirements of its public release or public circulation.” Appx.44–45.

The NVRA’s disclosure provision requires states to “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.” 52 U.S.C. § 20507(i)(1). With respect to its voter lists, Pennsylvania complies with this requirement. The Commonwealth makes its voter rolls available “for public inspection”

to anyone who requests a copy and makes a payment of \$20. *See* Appx.5–6.

As a result, the Internet Sharing Ban “does not restrict any party’s access to data to which they are entitled.” Appx.40. Likewise, it “does not selectively limit parties’ access to voter data to which they are entitled,” not does it “redact voter data to which parties are entitled.” Appx.40. And “it does not constrain a party’s ability to conduct a thorough inspection of the data.” Appx.40. As the District Court summarized: “Indeed, the Internet Sharing Ban does not in any way prevent any party from accessing and publicly inspecting the full voter data to which they are entitled under the NVRA; it only prevents the full voter export list from being published on the Internet.” Appx.41.

2. The Internet Sharing Ban Furthers, Rather than Frustrates, the Purpose of the NVRA

Recognizing that the text is of little help, VRF instead argues that Pennsylvania’s privacy protections thwart the underlying *purposes* of the NVRA and are therefore invalid under the theory of “obstacle preemption.” VRF Br. at 36. The District Court correctly rejected this argument.

A. As an initial matter, the doctrine of obstacle preemption is of limited use in analyzing statutes enacted under the Elections Clause. Because the Elections Clause gives both the states and Congress authority to prescribe rules for federal elections, assessing whether a state law is preempted under the Elections Clause ordinarily requires little more than reading the two provisions together and determining whether they conflict. This is so because “the reasonable assumption is that the statutory text accurately communicates the scope of Congress’s pre-emptive intent.” *Inter Tribal Council of Ariz.*, 570 U.S. at 14.

Cases alleging Supremacy Clause preemption, by contrast, typically present asserted conflicts between different types of laws entirely—such as a federal requirement regulating interstate commerce and a state tort law. *See, e.g., Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 326 (2011). In such cases, the preemption inquiry requires assessing whether the “state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of a federal law.” *Id.* at 330 (cleaned up). Elections Clause cases require no

such probing analysis.⁴ Instead, Elections Clause preemption applies to the extent that Congress exercises it, “and no farther.” *Inter Tribal Council of Ariz.*, 570 U.S. at 9.

B. In any event, the internet sharing ban furthers the NVRA’s purposes by protecting voter privacy and ensuring that voters are not discouraged from participating in the electoral process. It is VRF’s efforts to post voter data on the internet that threaten the goals of the NVRA.

The District Court correctly held that the internet sharing ban “does not present an obstacle to the NVRA’s purposes and goals.” Appx.40. The NVRA requires only that records be “ma[d]e available for

⁴ Indeed, the Elections Clause preemption analysis does not fit comfortably under any of three Supremacy Clause preemption categories. Express preemption applies when a federal law is “explicit about its preemptive effects.” *Roth v. Norfalco LLC*, 651 F.3d 367, 374 (3d Cir. 2011). But there is no need for Elections Clause legislation to explicitly state that it is preempting state law, because that is the very power authorized by the Elections Clause. U.S. Const. art. I, § 4, cl. 1; *Inter Tribal Council of Arizona, Inc.*, 570 U.S. at 13–15. Field preemption “arises by implication when Congress regulates a domain so pervasively that it leaves no room for state regulation.” *Roth*, 651 F.3d at 374. That, too, is inapplicable, because the Elections Clause expressly leaves election legislation to the states, except to the extent that Congress specifies otherwise. U.S. Const. art. 1, § 4, cl. 1. The fact that Elections Clause legislation analysis does not fit comfortably into any of the three Supremacy Clause preemption categories is further evidence that the preemption analysis under the NVRA should focus on the statutory text.

public inspection and, where available, photocopying at a reasonable cost.” 52 U.S.C. § 20507(i)(1). As the District Court determined, “Pennsylvania allows any individual to request the full voter export list online for viewing provided that the individual purchases that data for twenty dollars.” Appx.39. The internet sharing ban does not prevent individuals or organizations from inspecting the list; anyone who might have accessed the list via VRF’s online posting has the right to gain access to the list via the Department of State. Thus, as the District Court correctly found, the internet sharing ban does not in any way prevent any party from accessing and publicly inspecting the full voter data to which they are entitled under the NVRA.” Appx.41. There is thus no conflict with Congress’ purposes of “protect[ing] the integrity of the electoral process” and “ensur[ing] that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b)(4).

Moreover, VRF has identified nothing in the record to suggest that its activities further these goals of “protect[ing] the integrity of the electoral process” and ensuring accurate and current voter rolls. VRF has pointed to no evidence in the record that users of its website actually identify and report errors, and that states act on those reports. Appx.435,

495. In fact, it is doubtful that states could do so consistent with the NVRA or state law, both of which set forth specific processes and strict requirements governing the removal of voters from the rolls. *See* 25 Pa.C.S. § 1901. Neither state nor federal law authorizes counties to remove voters based solely on claims made by individuals who reviewed the voter file on a website.⁵

Contrary opinions from the First and Tenth Circuits are of little help to VRF. The Tenth Circuit’s decision in *Voter Reference Foundation, LLC v. Torrez*, recast the NVRA as a statute whose “primary goal” is “providing broad transparency and circulation of such voter data”—a conclusion wildly at odds with this Court’s decision in *PILF*. *See* 160 F.4th 1068, 1082 (10th Cir. 2025). And in *Public Interest Legal Foundation, Inc. v. Bellows*, the First Circuit, relying heavily on cases addressing preemption under the Supremacy Clause, made the mistake of effectively rewriting the text of the statute under the guise of effectuating its purpose. *See* 92 F.4th 36, 55 (1st Cir. 2024).

⁵ The Department of Justice has previously published guidelines on voter registration list maintenance making clear that “[t]he prohibitions of the NVRA extend to any list maintenance activity based on third-party submissions.” *See* Appx.618.

C. In enacting the NVRA, Congress specifically found that “the right of citizens of the United States to vote is a fundamental right” and that “it is the duty of the Federal, State, and local governments to promote the exercise of that right.” 52 U.S.C. § 20501(a)(1)–(2). And its first two stated purposes—of no less importance than the purposes VRF points to—both focus on increasing voter participation: Congress sought “to establish procedures that *will increase the number of eligible citizens who register to vote* in elections for Federal office” and to “make it possible for Federal, State, and local governments to implement [the statute] in a manner that *enhances the participation of eligible citizens as voters* in elections for Federal office.” *Id.* § 20501(b)(1)–(2) (emphasis added). Neither the District Court nor VRF have reckoned with these equally important purposes.

Under VRF’s reading of the NVRA, any citizen who chooses to register to vote must accept that her personal information, including her name, address, date of birth, sex, political party, and voting history, among other information, will be subject to posting on the internet for the entire world to access. Putting potential voters to such a choice

discourages voter participation, as the record shows. *See also* Appx.626–32. Notably, VRF has not even attempted to refute the evidence in the record showing that posting voters’ personal information on the internet discourages participation and leads some to cancel their voter registrations.

The internet sharing ban was adopted to prevent voters from having to sacrifice protection against the widespread disclosure of their personal information—and the increased risk of identify theft, harassment, and other harms that could result—in order to exercise their fundamental rights. By registering to vote, citizens do not consent to the widespread dissemination through the internet of their personal information. To suggest that a statute Congress enacted well before the internet became a household word, and for the express purpose of *increasing* voter registration, nevertheless *requires* all voters to face these risks, is absurd. Congress did not and could not have struck this “privacy balance,” *Bellows*, 92 F.4th at 55, because the risks that exist now did not exist then. VRF’s claim should be rejected on this basis alone.

Publication of the FVE on the internet would expose registered voters in Pennsylvania to an increased risk of these harms and cause have a chilling effect on voter registration, in direct contravention of the purposes and intent of the NVRA. The record proves as much, as Pennsylvania voters reached out to complain to VRF as well as the Department about having their personal information exposed during the brief time that it was previously available. *See Appx.512–613*. Again, VRF makes no effort to counter this evidence.

Indeed, courts interpreting the NVRA’s public inspection provision have recognized that it does not foreclose reasonable privacy protections. *See Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections*, 996 F.3d 264, 267 (4th Cir. 2021) (allowing for redaction of “uniquely sensitive information”); *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1345 (N.D. Ga. 2016); *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 729 (S.D. Miss. 2014) (rejecting suggestion that “personal, otherwise protected information would lose its protection once a citizen registered to vote.”).

Neither the Pennsylvania voter registration law nor the Department’s regulations prohibit VRF from obtaining the records it seeks. They simply set reasonable terms as to accessibility of such

records. VRF has refused to abide by these terms and, in fact, has previously violated them. Appx.322. But nothing in the NVRA gives VRF the right to disregard Pennsylvania’s reasonable voter privacy protections.

D. As the District Court concluded, “[c]ourts ‘cannot change the requirements of a statute just because doing so seems consistent with its goals.’” Appx.44 (quoting *Greater Birmingham Ministries*, 105 F.4th 1324, 1334 (11th Cir. 2024)). But this is precisely what VRF seeks to do: it rewrites the NVRA as a statute with the “primary goal of providing broad transparency and circulation of such voter data,” Appx.38 (cleaned up), and then argues that any state requirement that limits such “broad transparency and circulation” therefore conflicts with it.

VRF is wrong about the purpose of the NVRA: “The 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*.” *PILF*, 136 F.4th at 463 (emphasis original); *see also id.* at 469. And it is wrong in suggesting that the purpose of a statute, unmoored from its text, defines the statute’s outer

limits. Rather, “purpose cannot be used to contradict text or to supplement it.” Appx.44 (cleaned up).

Because the internet sharing ban is consistent with the text of the NVRA, and furthers that statute’s purpose, the District Court correctly found that it was not preempted.

B. The Voter Lists Do Not Fall Within the Scope of the NVRA’s Disclosure Provision.

The NVRA’s disclosure provision only applies to “records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1). This Court may affirm for the additional reason that Pennsylvania’s voter rolls do not fall within this definition. *See TD Bank N.A. v. Hill*, 928 F.3d 259, 270 (3d Cir. 2019) (“We may affirm on any basis supported by the record.”).

VRF barely addresses this issue, stating that “[t]he Secretary did not seriously contest this point on summary judgment.” VRF Br. 31–32. In fact, the Secretary argued throughout summary judgment briefing that its voter rolls were not covered by the disclosure provision. *See, e.g.*, Br. in Supp. of Sec. Schmidt’s Mot. for Summ. Judg. 20-23, Dkt. No. 39.

And the District Court addressed (and ultimately rejected) its argument. Appx.31.

Under widely accepted definitions of the terms, FVE is not a “record[] concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1). First, “in common usage of the word, something is ‘implemented’ only at the time it is initially given practical effect or commenced, such as when a plan first goes into effect.” *Lebanon Farms Disposal, Inc. v. Cnty. of Lebanon*, No. 1:CV-03-0682, 2004 WL 7338460, at *12 (M.D. Pa. July 9, 2004). And, second, the phrase “records concerning the implementation” means “records *describing* the implementation, not records *produced by* the implementation.” *United States v. Benson*, 819 F. Supp. 3d 753, 763 (W.D. Mich. 2026), *aff’d*, 179 F.4th 470 (6th Cir. 2026) (interpreting § 20701(i)(1)) (emphasis added). So to be covered under the NVRA’s disclosure provision, a document must in some manner describe the actual carrying out of the relevant list-maintenance efforts—which the FVE, the *product* of those efforts, does not.

The Ninth Circuit recently agreed with this analysis, concluding that “covered ‘records’ are those about efforts to ensure the accuracy of voter lists, not voter lists themselves.” *Pub. Int. Legal Found., Inc. v. Nago*, 174 F.4th 664, 679 (9th Cir. 2026). Analyzing the plain text of the disclosure provision, it concluded that it encompassed “materials documenting each step a state undertakes when actively implementing relevant programs.” *Id.* at 680. And it concluded the terms “program” and “activity” relate to “active processes or the plan for carrying them out, not the outcome of those processes.” *Id.*

Pursuant to federal and state law, counties in Pennsylvania, with assistance from the Department, carry out certain activities to ensure the accuracy of their voter rolls. *See generally* 25 Pa.C.S. Part IV; 25 Pa.C.S. §§ 1201, 1222(a), 1322, 1901; Appx.228, 234–239, 246–271. Such activities include efforts to identify voters who have moved, as well as voters who are deceased. 25 Pa.C.S. § 1901; Appx.235, 246–271. In Pennsylvania, only counties can conduct list-maintenance activities, because only counties can update registration information for their voters or remove their voters from the rolls. *See generally* 25 Pa.C.S. Part IV; 25 Pa.C.S. § 1322; Appx.234–239. Those efforts utilize information from

the Department to identify voters who may have moved, as well as other sources of information, like records of fatalities, but it is the counties who actually carry out these maintenance efforts. *See generally* 25 Pa.C.S. Part IV; 25 Pa.C.S. §§ 1322, 1901; Appx.234–239, 246–271.

The fact that some of the information that appears on the FVE is also in the SURE database, which is used by counties in their list maintenance efforts, does not make the entire FVE subject to disclosure under the NVRA. In arguing this issue below, VRF cited no evidence that the voter lists themselves play any role in the implementation of these programs. Rather, it argued that, because counties update voter records in SURE as part of their list maintenance activities, and because the FVE draws on records in SURE, the FVE therefore relates to the “implementation” of those programs. *See* Appx.183–185. But it could not explain how the FVE is used in the implementation of these programs, because it is not used at all.

Similarly, the District Court found that the Secretary “uses the SURE database to accomplish its goals in maintaining the accuracy and currency of lists through a variety of means,” including information that is “contained in” the FVE. Appx.31–32. Based on this fact, it concluded

that “the Commonwealth’s use of the voting data to ensure the accuracy and currency of its voter registration lists brings it within the universe of disclosable records under the NVRA.” Appx.32. But the question at issue is whether the FVE itself—a publicly available version of the official list of eligible voters—falls within the scope of the disclosure provision. It does not.

The Department produces the FVE because it is statutorily required to do so, not because it is necessary to counties’ list maintenance efforts. 4 Pa. Code §§ 183.13, 183.14; Appx.290. And, as *Benson* concluded, “a voter registration list is not a record concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” *United States v. Benson*, 819 F. Supp. 3d 753, 762 (W.D. Mich. 2026), *aff’d*, 179 F.4th 470 (6th Cir. 2026) (cleaned up); *accord PILF v. Nago*, 174 F.4th at 670. To the contrary, “a natural reading of [the NVRA’s disclosure provision] encompasses only records about the *process* that a state uses to maintain their voter list—not the underlying list itself.” *Id.* (emphasis added).

Had Congress wanted the list itself to be available under the NVRA, it would have said so: “Congress could easily have specified that § 20507(i) applies to voter registration lists. Instead, it referred only to records concerning the implementation of programs, which would be an extremely circuitous way to describe the underlying lists. It is more plausible that Congress intended to capture only records describing the list maintenance process.” *Benson*, 819 F. Supp. 3d at 763.

The District Court’s decision rejecting VRF’s NVRA claims thus may be affirmed for the additional reason that the FVE is not covered by the NVRA’s disclosure provision.

III. THE DISTRICT COURT CORRECTLY REJECTED VRF’S FIRST AMENDMENT CLAIMS

The District Court correctly rejected VRF’s First Amendment claims, finding that the First Amendment does not guarantee a right of access to information in the possession of the government. *Houchins v. KQED, Inc.*, 438 U.S. 1, 14 (1978); *Cap. Cities Media, Inc. v. Chester*, 797 F.2d 1164 (3d Cir. 1986) . States may restrict access to public information—such as by establishing certain criteria for granting access—so long as the criteria applied are not “illegitimate.” *L.A. Police*

Dep't v. United Reporting Pub. Corp., 528 U.S. 32, 43–44 (1999) (Ginsburg, J., concurring).

VRF seeks access to information in the Department's possession, and refuses to agree not to publish the information on the Internet before receiving it. The First Amendment does not give it any right to such information, and therefore the internet sharing ban simply does not implicate the First Amendment at all. Applying these principles, the District Court found that the Commonwealth's reasonable privacy protections were entitled to "deference as a policy matter." Appx.47 (quoting *Torrez*, 727 F. Supp. 3d at 1225).

1. VRF vigorously disputes the District Court's conclusion that this case concerns access to information in the government's possession, but provides no basis for disturbing it. VRF Br. at While it did not press this argument below, *contra* VRF Br. at 51–52, it now suggests that the fact that it previously obtained a copy of Pennsylvania's voter rolls changes the First Amendment analysis. But it has never disputed that this list was obtained by a vendor for VRF who agreed to comply with the internet sharing ban when it obtained the list. *See* Appx.454–456; Appx.298–299. Pennsylvania has not imposed an after-the-fact limitation

on its use of voters' personal data; it simply expects VRF to comply with what it already agreed to.

VRF also advances the sweeping argument that the mere fact that Pennsylvania allows individuals to obtain the FVE prohibits it from imposing any limitations on its use. VRF Br. at 52 ("Once a state makes or is legally required to make certain information, data, or records available to the public, the First Amendment limits how the state may restrict the subsequent use and sharing of that information."). But the cases it cites do not support this broad principle.

Department regulations condition access to the FVE on understanding and agreeing that it may not be posted on the internet. The Department has not sought to impose an after-the-fact limitation on information it has previously made available, *contra Oklahoma Pub. Co. v. Dist. Ct. In & For Oklahoma Cnty.*, 430 U.S. 308, 311 (1977), nor has it sought to prohibit the publication of information obtained from sources other than the government, *contra Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 99 (1979). What VRF argues is that the government may not impose *any* limitations on the use of information it voluntarily provides—which would call into question the constitutionality of a whole host of

government regulations, such as those governing access to classified information.

2. Even if the internet sharing ban were somehow recast as a speech restriction, it does not implicate “core political speech.” Rather, the “speech” involved is strictly personal information—names, addresses, and other details—about individuals who have registered to vote in Pennsylvania. As this Court has recognized, the “lodestar” of core political speech is “interactive communication concerning political change.” *Mazo v. New Jersey Sec’y of State*, 54 F.4th 124, 142 (3d Cir. 2022) (quoting *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 186 (1999)). The “speech” VRF wishes to engage in is not “interactive,” nor does it “concern[] political change.” In *Mazo*, this Court held that a regulation governing the slogans used by candidates on the ballot did not implicate “core political speech,” despite the indisputably expressive nature of such slogans. *Id.* at 146. Here, the “speech” at issue, personal data, is not expressive at all, and is thus further removed from the concept of “core political speech” than was that at issue in *Mazo*.

In fact, the internet sharing ban serves to *protect* core political speech in an important way. It protects the speech of *voters*, by ensuring

that the act of registering to vote does not subject an individual to having their personal information published on the internet. This concern is very real and well-founded, as the correspondence from voters to VRF and to the Department demonstrates.

By way of example, the Supreme Court and other courts have held that the First Amendment can be implicated by requiring the disclosure of personal information of paid petition circulators. *See, e.g., Buckley*, 525 U.S. at 197–204. Relying on *Buckley*, the Eight Circuit recognized that “[b]eing forced to publicly disclose one’s phone number, email address, and residential address in order to exercise the right to circulate a petition—even as a paid circulator—is chilling in today’s world.” *Dakotans for Health v. Noem*, 52 F.4th 381, 392 (8th Cir. 2022). VRF’s position is even more extreme, as it would chill the right of every voter to participate in our democracy.

3. Even if the First Amendment applied, the internet sharing ban is plainly constitutional. The *Anderson-Burdick* balancing test governs the analysis of First Amendment claims challenging election-related rules, such as VRF’s here. Under this test, which grows out of two U.S. Supreme Court decisions, the court must consider the specific burdens

placed upon the rights of the plaintiff challenging a regulation and determine whether they are “severe” or not. *Mazo*, 54 F.4th at 145 (citing *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). “Severe” restrictions are to be tested according to the measure of strict scrutiny, but restrictions that are “reasonable [and] nondiscriminatory,” are permitted if they are justified by “the State’s important regulatory interests.” *Mazo*, 54 F.4th at 145 (cleaned up).

The internet sharing ban applies to all requesters and the Department applies it even-handedly, which VRF does not contest. Appx.280, 298. VRF cannot represent that it is uniquely or especially burdened by this rule. Any burden it faces is minimal. *Mazo*, 54 F.4th at 146 (holding that the burden is minimal when “(a) the requirement is nondiscriminatory and applies equally to all candidates . . . (b) the requirement leaves open ample and adequate alternatives . . . and (c) [there is no] evidence of any specific burden on either themselves or any other candidate.”).

By contrast, the Department has strong interests in protecting voter privacy and in ensuring that voters are not discouraged from

participating in the political process. The complaints that both VRF and the Department itself has received underscore the legitimacy of this interest. *See Fusaro v. Howard*, 19 F.4th 357, 369 (4th Cir. 2021); *see also Pa. State Educ. Ass’n v. Commw. Dep’t of Cmty. & Econ. Dev.*, 148 A.3d 142, 158 (Pa. 2016) (finding inherent right of privacy in residential addresses under state constitution). In *Fusaro*, the Fourth Circuit upheld a Maryland requirement that, like Pennsylvania’s voter registration law, limited the use of voter information to electoral purposes, finding that it was justified by the State’s “interest in protecting the health of Maryland’s electoral process by safeguarding Maryland registered voters from harassment and abuse, protecting the privacy of personal information, and encouraging both voter registration and participation” *Fusaro*, 19 F.4th at 369. The same logic applies with equal force here.

4. Finally, VRF’s claim that the internet sharing ban is overbroad rests on the premise that the internet sharing ban operates as a ban on speech. But it is not: rather, it simply requires requestors to agree to reasonable restrictions before accessing sensitive voter information. As a result, it does not implicate the First Amendment at all.

Moreover, a statute is overly broad under the First Amendment and therefore facially invalid only “if the impermissible applications of the law are substantial when judged in relation to the statute’s plainly legitimate sweep.” *Hewlette-Bullard on behalf of J.H-B. v. Pocono Mtn. Sch. Dist.*, 522 F. Supp. 3d 78, 96 (M.D. Pa. 2021) (quoting *City of Chicago v. Morales*, 527 U.S. 41, 52 (1999)). Accordingly, “it is not enough for a plaintiff to point to one impermissible application of the law.” *Id.* (citing *Free Speech Coal., Inc. v. Att’y Gen. of U.S.*, 677 F.3d 519, 537 (3d Cir. 2012)). Rather, a plaintiff must show the law is “*substantially* overbroad.” *United States v. Williams*, 553 U.S. 285, 303 (2008). That is, the provision must create a real risk that it “will significantly compromise recognized First Amendment protections of parties not before the Court.” *City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984).

VRF cannot identify any impermissible applications of the internet sharing ban, much less enough such applications to render the requirement “substantially overbroad.” The internet sharing ban applies to anyone who seeks copies of the voter lists, and the Department administers it evenhandedly. Appx.280, 298. It is likewise content and viewpoint neutral. Appx.280, 298. And it serves the Commonwealth’s

strong interest in protecting the privacy of its voters and in ensuring that its citizens are not chilled from exercising their right to vote.

IV. THE DISTRICT COURT CORRECTLY REJECTED VRF'S REQUEST FOR DECLARATORY RELIEF

Finally, the District Court denied VRF's request for declaratory relief because it had failed to prove a statutory or constitutional violation. Appx.50–52. That decision was likewise correct and should be affirmed.

CONCLUSION

The decision of the District Court should be affirmed.

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CERTIFICATES

I, Michael J. Fischer, certify that:

1. I am a member of the bar of this Court in good standing;
2. Virus detection software was run on this file and no virus was detected;
3. The text of this brief is identical to the text in paper copies that will be filed with the Court;
4. This response contains 12,216 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), and therefore complies with Federal Rule of Appellate Procedure 32(a)(7)(B)(i). In making this certificate, I have relied on the word count of the word-processing system used to prepare the brief; and
5. A copy of this brief has been served on all counsel of record using the Court's CM/ECF system.

September 16, 2026

/s/ Michael J. Fischer

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