No. 24-____

In the Supreme Court of the United States

LINDSEY GREMONT, ET AL.,

Petitioners,

v.

JANE NELSON, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Lindsey Gremont
Contact for Petitioners Pro Se
P.O. Box 161261
Austin, TX 78716
(512) 879-7069

September 2 , 2024
SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

Petitioners are a group of qualified Texas voters. They sued their respective counties seeking remedy for allegedly conducting their elections on electronic voting systems that fail to comply with the minimum standards prerequisite for their legal use under federal and state law, thereby increasing the risk that their votes will not be fairly counted. The Fifth Circuit held that this asserted injury was an incognizable generalized grievance.

Additionally, Petitioners allege that the county Respondents allowed the State's entire election infrastructure to be unconstitutionally federalized by the U.S. Department of Homeland Security. As a result, Petitioners claim that private information within their state voter registration record, including insight on their voting behavior, is being disclosed to the federal government. The Fifth Circuit held that this harm fell short of concrete injury and, in any event, was not sufficiently particularized because it affected all registered Texas voters.

The questions presented are:

1. Whether voters' private rights are infringed when state actors fail to conduct elections according to law.

2. Whether the disclosure of a voter's private information gives rise to injury-in-fact.

PARTIES TO THE PROCEEDINGS

Petitioners Pro Se
and Plaintiffs-Appellants below

Lindsey Gremont, Amber Cloy, Tommie Dickinson, Jason Scott Buster, Alexandra Campo, James L. Clark, Juan Carlos Arias, Jose Christine Silvester, Robert James Brooks, Jr., Alana S. Phillips, Lester Rand, Allyson Raskin.

Respondents and Defendants-Appellees below

All in their official and individual capacities

State of Texas

Jane Nelson, 115th Texas Secretary of State; John B. Scott, 114th Texas Secretary of State; Jose "Joe" A. Esparza, Deputy Secretary of State; Ruth R. Hughs, 113th Texas Secretary of State; Keith Ingram, Director of the Elections Division;

Bexar County

Jacquelyn Callanen, Bexar County Elections Administrator; Nelson Wolff, Bexar County Judge and head of the Bexar County Elections Commission; Rebeca Clay-Flores, Bexar County Commissioner; Justin Rodriguez, Bexar County Commissioner; Marialyn Barnard, Bexar County Commissioner;

Collin County

Susan Fletcher, Collin County Commissioner; Darrell Hale, Collin County Commissioner; Chris Hill, Collin County Judge; Cheryl Williams, Collin County Commissioner; Duncan Webb, Collin County Commissioner; Bruce Sherbet, Collin County Elections Administrator;

Comal County

Tommy Calvert, Bexar County Commissioner; Bobbie Koepp, Comal County clerk; Cynthia Jaqua, Comal County Elections Coordinator;

Denton County

Frank Phillips, Denton County Elections Administrator; Andy Eads, Denton County Judge; Ryan Williams, Denton County Commissioner; Ron Marchant, Denton County Commissioner; Bobbie J. Mitchell, Denton County Commissioner; Dianne Edmondson, Denton County Commissioner;

Harris County

Lina Hidalgo, Harris County Judge; Rodney Ellis, Harris County Commissioner; Adrian Garcia, Harris County Commissioner; Tom S. Ramsey, Harris County Commissioner; Isabel Longoria, Harris County Elections Administrator; R. Jack Cagle, Harris County Commissioner; Clifford Tatum, County Elections Administrator;

Hays County

Jennifer Doinoff, Hays County Elections Administrator; Ruben Becerra, Hays County Commissioner's Court Judge; Debbie Ingalsbe, Hays County Commissioner Court; Mark Jones, Hays County Commissioner Court; Lon Shell, Hays County Commissioner Court; Walt Smith, Hays County Commissioner Court;

Hood County

Ron Massingill, Hood County Judge and head of the Hood County Elections Commission; Michele Carew, Elections Administrator of Hood County;

Montgomery County

Suzie Harvey, Montgomery County Elections Administrator; Robert C. Walker, Montgomery County Commissioner; Charlie Riley, Montgomery County Commissioner; James Noack, Montgomery County Commissioner; James Metts, Montgomery County Commissioner; Mark Keough, Montgomery County Judge;

Parker County

Pat Deen, Parker County Judge and head of Parker County Elections Commission; Crickett Miller, Elections Administrator of Parker County; George Conley, Parker County Commissioner; Craig Peacock, Parker County Commissioner; Larry Walden, Parker County Commissioner; Steve Dugan, Parker County Commissioner;

Tarrant County

Heider Garcia, Tarrant County Elections Administrator; Roy Charles Brooks, Tarrant County Commissioner; Devan Allen, Tarrant County Commissioner; Gary Fickes, Tarrant County Commissioner; J. D. Johnson, Tarrant County Commissioner; B. Glen Whitley, Tarrant County Judge;

Travis County

Andrew Steven Brown, Travis County Judge; Dana Debeauvoir, Former Travis County Clerk; Rebecca Guerrero, Travis County Clerk; Sarah Eckhardt, Former Travis County Judge, Current State Senator D-14;

Williamson County

Bill Gravell, Williamson County Judge; Christopher Davis, Williamson County Elections Administrator; Terry Cook, Williamson County Commissioner; Cynthia

Long, Williamson County Commissioner; Valerie Covey, Williamson County Commissioner; Ross Boles, Williamson County Commissioner;

RULE 29.6 STATEMENT

Petitioners are natural persons with no parent companies and no outstanding stock.

LIST OF PROCEEDINGS

Direct Proceedings Below

U.S. Court of Appeals for the Fifth Circuit

No. 23-10936

Travis Wayne Eubanks, et. al, *Plaintiffs-Appellants,* Anne Stone; Allyson Raskin *Appellants,* v. Jane Nelson, et. al, *Defendants-Appellees.*

Date of Final Opinion and Judgment: April 3, 2024

U.S. District Court for the Northern District of Texas, Fort Worth Division

No. 4:22-cv-0576-P

KYLE STRONG IN, ET AL., *Plaintiffs,* v. JOHN B. SCOTT, ET AL., *Defendants.*

Date of Final Order: August 14, 2023

Other Case Where Petitioners are Appellants (are not directly related as they have different appellee parties)

Petitioners are also parties to *Raskin, et.al. v. Jenkins, et.al.*, No. 3:22-cv-02012-E-BH dismissed on September 11, 2023 (Dis. Ct. Doc. 48, 49), of the United States District for the Northern District of Texas accepting the Findings and Recommendations of the U.S. Magistrate Judge (Dis. Ct. Doc. 46) in which Petitioners are Appellants. *Raskin, et.al. v. Jenkins, et.al.* was remanded to state court 3:22-CV-02012-E-BH.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

CONSTITUTIONAL AND STATUTORY PROVISIONS

TABLE OF CONTENTS – Continued

Page

OTHER DOCUMENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

TABLE OF AUTHORITIES – Continued

Page

STATUTES

JUDICIAL RULES

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioners Lindsey Gremont, Amber Cloy, Tommie Dickinson, Jason Scott Buster, Alexandra Campo, James L. Clark, Juan Carlos Arias, Jose Christine Silvester, Robert James Brooks, Jr., Alana S. Phillips, Lester Rand, Allyson Raskin, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The U.S. District Court for the Northern District of Texas opinion adopting the magistrate's FCR dismissing the case on August 14, 2023. *Strongin, et al. v. Scott, et al.*, No. 4:22-cv-00576. App.16a.

The U.S. Court of Appeals for the Fifth Circuit issued its Rule 36 Judgment on April 3, 2024. *Eubanks et. al, v. Nelson et. al*, No. 23-10936. App.1a.

JURISDICTION

The Fifth Circuit entered judgement on April 3, 2024. App.1a. On June 28, 2024, Justice Alito extended the time to file this petition for a writ of certiorari to Sept 2, 2024. Sup. Ct. No. 23A1150. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions are included in the appendix at App.43a.

Constitutional Provisions

U.S. Const., amend. I

U.S. Const., amend. IV

U.S. Const., amend. IX

U.S. Const., amend. X

U.S. Const., amend. XIV

Statutory Provisions

Tex. Elec. Stat. § 11.002. Qualified Voter

Tex. Elec. Stat. § 121.003. Definitions

Tex. Elec. Stat. § 122.031. Approval of System and Equipment Required

Tex. Elec. Stat. § 122.061. Approval of Modified Design Required

Tex. Elec. Stat. § 13.002. Application Required.

Tex. Elec. Stat. § 18.061. Statewide Computerized Voter Registration List

Tex. Elec. Stat. § 18.066. Availability of Statewide Computerized Voter Registration List Information

Tex. Elec. Stat. § 18.069. Voting History

Tex. Elec. Stat. § 273.081. Injunction

INTRODUCTION

The 2024 elections are fast approaching, yet Plaintiffs remain trapped in a cycle of disenfranchisement without remedy. Despite their exhaustive efforts, they will again have to vote using systems that do not comply with state and federal law, threatening their rights and potentially affecting the outcome of a pivotal presidential race. Amid economic instability and social unrest, safeguarding election integrity is more crucial than ever. The stakes are high, and this Court must address these challenges with the utmost seriousness.

Election cases often raise complex standing issues, with widespread harms that are difficult to pinpoint. Timing also complicates matters—early lawsuits may be dismissed as speculative, while late ones risk disrupting the electoral process. Courts have not sufficiently addressed standing in election cases, often confusing the merits of a case with the right to bring it, leading to serious consequences for our republic.

This case demands a clear resolution on standing in elections, which goes beyond voting to protect the foundation of our government. As individual rights shift to public interests during elections, Petitioners must have the right to seek redress, especially when state and federal courts block reasonable avenues. Inconsistent standing rulings across circuits have created a judicial crisis, where non-voter organizations gain standing while directly affected voters are denied it. Limiting judicial oversight would leave state actors as sole interpreters of constitutional relief, setting a

dangerous precedent. The urgency before this Court is profound—individual voters should not be left without recourse when their fundamental rights are at stake. The preservation of electoral integrity and consistency of legal standards across the nation depend on it.

STATEMENT OF THE CASE

Petitioners, registered voters in Texas, assert that the electronic voting infrastructure used for casting and counting their ballots violates both federal and state requirements. Lacking an adequate state remedy, they seek federal judicial intervention to uphold their constitutional voting rights, including the accurate casting and counting of their votes. Additionally, they challenge the involvement of the Center for Internet Security (CIS), under DHS, alleging it infringes on state sovereignty by overseeing election infrastructure, thereby violating privacy rights concerning voter data as protected by state statutes, as well as complicating efforts to address voting rights issues specific to Texas.

I. Factual Background

A. Allegations regarding electronic voting system equipment in Texas

In 2002, Congress passed the Help America Vote Act (HAVA) which created the U.S. Election Assistance Commission (EAC) authorized by statute to assist in the certification process of electronic voting systems (EVS) through the use of accredited Voting System Testing Labs (VSTLs) and Voluntary Voting System

Guidelines (VVSG). *See* 52 U.S.C. § 20971. Texas codified HAVA making the federal statutes mandatory in order to be utilized within its borders. *See* Tex. Elec. Stat. § 122.001(a)(3), Tex Admin. Stat. § 81.60(3). Pro V&V and SLI Compliance, the only two VSTLs that certify EVS nationwide, must be accredited by the EAC to conduct testing. However, their accreditation expired before the 2020 general election. Without valid accreditation, the certification of EVS in Texas is invalid. App.65a-93a. Petitioners also identified instances where voting jurisdictions used equipment that had not been officially approved by the Texas Secretary of State and made modifications that compromised the equipment's validity. App.232a-234a, App.117a-123a.

Petitioners argue that Texas law mandates a "voter verifiable paper audit trail" (VVPAT) when a voter uses an electronic voting system (EVS) to mark a blank paper ballot, as required by Tex Elec. Stat. § 129.002. They claim that ballots generated on uncertified EVS violate this code, undermining the legal integrity of the election process and resulting in illegal and fraudulent ballots. Compounding the issue, the Election Assistance Commission (EAC) lacked the necessary quorum to legally accredit Voting System Testing Laboratories (VSTLs) for over a year before the 2020 elections, which prevented the commission from fulfilling its statutory obligations. App.65a-95a. Despite efforts to address these concerns, Petitioners' questions remain unanswered, while the EAC has retroactively validated certifications and lowered the previously rigorous standards.

The whistleblower affidavit by Ms. Terpsehore Maras highlights that the vulnerabilities in Texas' election systems extend beyond the lack of lawful

certification and testing. App.348a-400a. The use of Commercial Off-The-Shelf (COTS) components, often manufactured abroad for cost efficiency, compromises the integrity of these systems. These COTS components introduce vulnerabilities due to insufficient testing, especially when produced in countries with strained relations with the U.S. The issue is exacerbated by the EAC and VSTLs failing to adequately report or address these foreign-produced COTS products. Furthermore, Respondents have approved and certified these components within county election infrastructure contracts, such as Relay Kits (App.117a-123a) and iDRAC COTS (App.169a-172a, 229a-232a).

B. Unconstitutional federalization of Texas election infrastructure

In January 2017, the Department of Homeland Security (DHS) designated election systems as critical infrastructure, leading to the creation of the Election Infrastructure Subsector Government Coordinating Council (EIS-GCC). This council, established in 2017, included representatives from DHS, the EAC, the National Association of Secretaries of State (NASS), and the National Association of State Election Directors (NASED). Texas joined the EIS-GCC pilot program in March 2018. According to CISA, election infrastructure encompasses a wide array of systems, networks, and processes. Each jurisdiction's election ecosystem is unique, consisting of both electronically interconnected and standalone components. Typical U.S. election systems include voter registration databases, electronic and paper pollbooks, ballot preparation systems, voting machines, vote tabulation systems, official websites, storage facilities, polling places, and election offices. App.302a.

By October 2018, the EIS-GCC declared the need for an Information Sharing and Analysis Center (ISAC) dedicated to election infrastructure. DHS then initiated a pilot program to develop this ISAC framework, involving the CIS and the Multi-State Information Sharing & Analysis Center® (MS-ISAC). MS-ISAC was designated by DHS as the primary cybersecurity resource for State, Local, Tribal, and Territorial (SLTT) governments. App.303a.

On February 15, 2018, the EIS-GCC officially established the Elections Infrastructure ISAC. Thereafter, several Texas counties entered into Memorandum of Understanding (MOUs) with CIS. These MOUs were part of a broader initiative to bolster election cybersecurity. App.302-306a.

Under these agreements, CIS was designated as the sole provider of cybersecurity services for the counties. The MOUs included provisions for deploying CIS's Intrusion Detection System (IDS), known as "Albert," to monitor election networks and voter registration databases. The agreements granted CIS, and its federal partners, access to sensitive election data and required the counties to provide logistical support, such as rack space and internet connectivity, necessary for cybersecurity operations. App.305a.

As a result of these arrangements, Petitioners contend that the federal government has infiltrated all aspects of Texas's election infrastructure in a manner that runs afoul of state sovereignty and the constitutional prerogative that states, not the federal government, run elections, as provided for by the Electors Clause, Elections Clause, and Tenth Amendment. Critically, Petitioners assert that they suffer personal injuries from these agreements by allowing the federal

government and its third-party partners unfettered access to personally identifying information and voter data whose release is restricted by state law yet subverted by these agreements. App.469a.

Additionally, elements of Texas election infrastructure, including election night reporting, administration, tracking, and poll worker management, have been procured from companies with ties to foreign entities. In line with the Petitioners' claims, these foreign-linked firms, contracted by the counties, oversee these critical functions. Konnech's proprietary PollChief software, an election worker management system, released Petitioner Gremont's personally identifiable information (PII) to foreign entities. App.573a.

The CIS has established several key partnerships impacting U.S. election infrastructure security. Notably, CIS partnered with Akamai Technologies, Inc., a company linked to SCYTL and EVS Software, which maintains a strategic alliance with China Telecom Corporation Limited's cloud division (CT Cloud). This connection has integrated Akamai's services into various levels of Texas election infrastructure, as confirmed by CIS on August 1, 2022. App.318a.

Additionally, on November 5, 2021, CIS collaborated with cybersecurity firm CrowdStrike to enhance security for SLTT governments. This partnership introduced the CIS Endpoint Security Services (ESS) platform, leveraging CrowdStrike's Falcon system to provide advanced features like USB device monitoring and host-based firewall management. The Falcon system supports over 12,000 members of the MS-ISAC, managing more than 14 million endpoints nationwide. App.319a-320a.

The 2022 Election Security update from the Texas Secretary of State further highlights that most Texas counties participate in the EI-ISAC and employ these associated security practices. App.300a-342a.

II. Procedural Background

A. District court proceedings

On July 6, 2022, Petitioners, acting pro se, commenced their original action in the United States District Court for the Northern District of Texas. As relevant here, on October 3, 2022, Petitioners sought leave to file a Second Amended Complaint and a Supplemental Pleading under Fed. R. Civ. P. 15. On November 15, 2022, the District Court granted leave to file the Second Amended Complaint without explicit comment on the supplemental pleading. App.41a-42a. ECF No. 231. On December 22, 2022, Respondents moved for dismissal under Fed. R. Civ. P. 12(b) for lack of subject-matter jurisdiction and other grounds not relevant here.

On June 12, 2023, the Magistrate Judge recommended dismissal for lack of subject-matter jurisdiction on the sole ground that Petitioners lacked Article III injury-in-fact to maintain standing to sue because, in its opinion, "Plaintiffs complain generally of speculative voting system vulnerabilities on a national scale and do not allege sufficient, non-conclusory allegations to establish that Defendants' voting machines have or will be infiltrated." App.35a-38a. Without performing any rigorous analysis of Petitioners' specific factual allegations of its own, the Magistrate Report expressly adopted the standing analysis by a different Magistrate Judge in a separate federal court proceeding involving substantially-overlapping factual allegations. *See*

Raskin v. Jenkins, Case No. 3:22-cv-02012-E-BH, ECF No. 15 (N.D. Tex. Nov. 2, 2022). App.1a-15a. While acknowledging that Petitioners alleged specific violations of federal and state law, including the lack of lawful machine certification of the very electronic voting system equipment on which their votes are cast and counted, the Magistrate Report nevertheless held that their stated interests were nonjusticiable generalized grievances "held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share." *Lance v. Coffman*, 549 U.S. 437, 441 (2007) (per curiam) (quotation omitted).

On August 14, 2023, against Petitioners' timely objections, the District Judge accepted the Magistrate Report recommending dismissal for lack of Article III standing. App.16a-27a. The Court held that Petitioners' allegations regarding the illegal use of uncertified and vulnerable electronic voting systems were "either too speculative or entirely generalized." App.24a. In addition, it held that Petitioners' privacy injuries stemming from the alleged release of their voter data to the federal government were also too generalized because such an injury would be shared by every registered Texas voter. App.27a.

B. Court of Appeals Proceedings

In an unpublished per curiam opinion dated April 3, 2024, the Fifth Circuit affirmed the District Court's operative holding that Petitioners lacked Article III injury-in-fact. Like the District Court, it concluded that Petitioners' allegations that their votes are cast and counted on illegally commissioned and vulnerable voting system equipment are judicially incognizable generalized grievances under *Lance*, 549 U.S., at 442.

App.1a-15a. This holding largely rested upon the analysis from the Fifth Circuit's published opinion in *Lutostanski v. Brown*, 88 F.4th 582 (5th Cir. 2023).[1] Moreover, it affirmed that Petitioners' alleged privacy injuries from the release of their voter data to DHS was too generalized and speculative.[2] App.9a.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit's decision effectively allows states to bypass and weaken state-law remedies for illegally conducted elections, undermining the ability of voters to hold officials accountable. The ruling suggests that voters are not harmed by officials' failure to comply with

---

[1] Although the Fifth Circuit deemed *Lutostanski* "substantially similar" for purposes of its standing analysis, its factual allegations concerned only a small subset of the allegations in the case at bar—namely the Travis County VSTL accreditation and hash validation failures.

[2] The Fifth Circuit's opinion states that Petitioners "do not further identify" the entity of CIS, the Center for Internet Security. *See* App.7a, n. 3. The portion of their complaint quoted by the Fifth Circuit comes from their Second Amended Complaint. The bulk of the specific factual allegations and exhibits supporting Petitioners' claims pertaining to the federal government's monitoring of Texas's election infrastructure via CIS is contained within the Supplemental Pleading. *See* App.300a. Petitioners' briefs on the motion to dismiss in the lower courts thoroughly addressed the claims from both pleadings, the District Court's order accepting the Magistrate Report and Recommendation expressly quotes from a portion of Petitioners' objection to the Magistrate's report that cites the supplemental pleading's docket entry (ECF No. 196-2), and the Supplemental Pleading was part of the Record on Appeal in the Fifth Circuit. App.23a.

election laws, such as using certified voting systems, which permits illegal election practices to go unchecked. This lack of accountability restricts voters' access to state courts for redress, raising concerns about the protection of voting rights.

In Texas, changes in how election crimes are prosecuted have further complicated the ability of voters to ensure their rights are upheld. The shift in prosecutorial authority from the state Attorney General to local district attorneys has left voters with fewer avenues to address election violations. The Fifth Circuit's ruling exacerbates this issue by setting a precedent that could prevent voters from seeking judicial relief, highlighting broader concerns about inconsistencies in the legal standards applied to election cases and the potential erosion of public confidence in the electoral process.

I. THE EXTENT OF PETITIONERS 'INJURIES-IN-FACT RELATED TO THEIR VOTING RIGHTS JUSTIFIES THIS COURT'S REVIEW

A. The Decision Below Incentivizes and Has Actually Allowed States to Deny and Neutralize State-Law Remedies for Illegally Conducted Elections

This case raises concerns similar to those in *Devillier v. Texas*, 601 U.S. 285 (2024), where the Court was asked to determine if the Takings Clause provides an independent cause of action for recovering just compensation when a state-law remedy is absent. During oral arguments, several Justices questioned Texas's counsel about a hypothetical "rogue state" scenario, where a negative ruling might encourage states to remove state-law actions that enforce

constitutional rights, thus depriving individuals of a legal avenue to seek the constitutionally required compensation for property taken. Although this case involves subject-matter jurisdiction rather than a cause of action, a similar principle applies. States may have comprehensive election laws, but state and local officials are tasked to enforce them. If they refuse to do so, individuals turn to state courts for a remedy, which requires an available and willing judicial forum. The Fifth Circuit's ruling suggests that Petitioners, as voters, are not considered harmed by officials' refusal to use voting systems compliant with state law. This ruling effectively allows state institutions to illegally conduct elections absent genuine accountability.

The Civil Rights Amendments, along with the incorporation doctrine, extended certain Bill of Rights guarantees, originally applicable only to the federal government, to the states. This extension allows Americans, when their federally-protected rights are violated by states, to seek remedies in federal court under an appropriate cause of action. For example, in *McDonald v. Chicago,* 561 U.S. 742 (2010), the Court applied the Second Amendment to the States. Although the Civil Rights Amendments initially focused on curbing racial discrimination by the States,[3] they were "cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for [their] enactment." *Rice v. Cayetano*, 528 U.S. 495, 512 (2000) (regarding the Fifteenth Amendment). One enduring principle of these amendments is the federal protection that they provide against states' failure to employ "minimal procedural safeguards" to

---

[3] *See, e.g., Brown v. Board of Education*, 347 U.S. 483 (1954).

ensure nonarbitrary treatment of voters during the election process. *See Bush v. Gore*, 531 U.S. 98, 109 (2000) (per curiam). While the Bush court enforced the Equal Protection Clause, Petitioners now seek a judicial venue to address the Respondents' failure to follow the safeguards for the use of electronic voting systems established by the Texas legislature. This situation is analogous to voters who faced an unconstitutional poll tax imposed by their State and sought judicial relief from federal courts.[4] Petitioners believe they have a strong case that the Respondents' unlawful actions violate their federally protected voting rights.[5]

Texas exemplifies the kind of institutional breakdown, which will persist if Petitioners are not allowed to present their case. A year after the Texas Attorney General filed a high-profile original action in this Court, seeking remedy for alleged Electors Clause violations by four states in the 2020 presidential election, the Texas Court of Criminal Appeals, the state's highest court for criminal matters, struck down the Attorney General's long standing statutory authority to prosecute criminal election code offenses This authority had been

---

[4] *See Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

[5] Numerous decisions of this Court in Elections and Electors Clause disputes strongly suggest that this kind of claim is not only justiciable but also apt for remedy in federal courts under certain circumstances. *See, e.g.*, *Bush*, 531 U.S., at 120 (Rehnquist, C. J., concurring); *Republican Party of Pa. v. Degraffenraid*, 141 S.Ct. 732, 738 (2021) (Alito, J., dissenting from denial of certiorari); *Moore v. Harper*, 143 S.Ct. 2065, 2090-91 (2023) (Kavanaugh, J., concurring). Unlike this line of cases, which concerns the interpretation of state election laws by state courts, Petitioners seek even less: a judicial forum able and willing to adjudicate the state election laws allegedly being violated.

in place for over 150 years, but the court ruled that it violated the Texas Constitution (*State v. Stephens*, 663 S.W.3d 45 (Tex. 2021)). As a result, local district attorneys have the sole authority to prosecute election crimes, whereas the Attorney General had previously enjoyed concurrent authority. The Attorney General, exercising his concurrent authority, was in the midst of over 800 investigations and disagreed with the manner in which many district attorneys exercised discretion in investigating and prosecuting election matters. Local district attorneys represent County Respondents listed in this case, who failed to address the election code violations reported by Petitioners.

Texas' standing doctrine generally mirrors the federal test for Article III standing, with limited exceptions granted by statute (*Heckman v. Williamson County*, 369 S.W.3d 137, 154 (Tex. 2012)). While Texas provides a statutory cause of action for individuals "harmed" by election code violations to seek injunctive relief, this statute does not independently establish a basis for standing to sue (*Andrade v. NAACP of Austin*, 345 S.W.3d 1, 17 (Tex. 2015)).

Even the Fifth Circuit seemed troubled by the dilatory effects of the litigation conduct of Texas state actors in election cases. While it considered *Lutostanski* as "substantially similar" for purposes of its standing analysis in this case[6], it reached the circuit only because the defendants had removed it from the state court in which the Travis County voters originally

---

[6] *Lutostanski* concerned only a small subset of the factual allegations in this case—namely the VSTL accreditation failures and hash validation issues documented in Travis County's voting systems. *See* 88 F.4th 582, at 585.

filed. Once the defendants had removed the case to federal court, they convinced the District Court to dismiss it for lack of standing. As the Fifth Circuit noted, this maneuver reflected the defendants' "misunderstanding about federal jurisdiction and our federal system" because they had essentially invoked federal subject-matter jurisdiction only to claim that it did not exist. *Lutostanski v. Brown*, 88 F.4th 582 (5th Cir. 2023). By the time the case was remanded back to state court[7], where it should have always remained, nearly a year and a half had passed before this "game of whack-a-mole"[8] finally ended, just so the defendants could make the exact same standing arguments in state court given Texas's express adoption of Article III standards.

Over the past three years, changes in statewide executive power, inadequate state-law remedies, and the conduct of state officers have systematically blocked every avenue for Petitioners. These issues have hindered Petitioners from exercising their voting rights through lawful, legislatively sanctioned means. Regardless of whether these institutional failures stem from self-interest, incompetence, or corruption, the Constitution allows Petitioners to use Federal courts as a check against unwilling state actors. Federalism concerns are important when involving federal courts in state electoral matters but standing is not the place to address them. Federal courts have a duty to intervene when they are the only means left for Petitioners to

---

[7] *See id.*, at 587; 28 U.S.C. § 1447(c) (requiring a removed case to be remanded to state court in the absence of federal subject-matter jurisdiction).

[8] *Id.*, at 588.

uphold the integrity of the electoral process. A favorable ruling would likely encourage states to provide meaningful remedies, reducing the need for federal court involvement.

B. The Decision Below Highlights the Inconsistencies in Standing Doctrine in Election Cases, Leading to Nonuniform Legal Standards and Allowing Judges to Conceal Merits Determinations as Standing Inquiries

The law is unclear on when to apply the generalized grievance doctrine in election cases, especially when injuries are widespread. This ambiguity allows judges' biases to influence standing decisions, often based on preconceived notions of a case's merits or a reluctance to engage in controversial electoral issues. This trend has undermined public confidence in the judiciary's impartiality, particularly since the 2020 presidential election. Two decisions from this Court highlight the source of this confusion. In its per curiam summary of *Lance*, the Court unanimously dismissed a case where Colorado voters sought to invalidate judicially drawn Congressional districts, alleging they violated the Elections Clause. Although the *Lance* plaintiffs argued in the lower courts that they possessed an individual right to vote in a constitutionally created Congressional district, this Court held that they alleged nothing more than an incognizable bare right to compel the government to follow the law and analogized their injuries to those claimed in a trio of generalized grievance cases that had nothing to do with the election process. In contrast, in *FEC v. Akins*, 524 U.S. 11 (1998), this Court found that voters could establish injury-in-fact from the FEC's refusal to

compel a third party to make legally required financial disclosures on the basis that it deprived them of information necessary to make informed voting choices. *Id.*, at 24-25. The late Justice Scalia argued in a dissenting opinion that such an injury was eerily similar to the one found incognizable in *United States v. Richardson*, 418 U.S. 166 (1974), one of the three cases this Court found analogous to the injury complained of by the *Lance* plaintiffs. *See Akins*, at 31-32; *Richardson*, at 174. One infamous line from *Akins* has proven particularly notorious: the "hypothetical example" in which "large numbers of voters suffer interference with voting rights conferred by law" that appeared to this Court as a "particularly obvious" scenario in which "a harm is concrete, though widely shared," even where "a political forum may be more readily available" for redress. *Akins*, at 24.

This confusion became front and center throughout all the various court cases challenging the 2020 election. One law review article has laid out in painstaking detail the numerous logically dubious premises pronounced by federal courts in an apparently rushed effort to declare the challenges meritless, concluding that they made "unjustified sweeping rulings that voters were not injured even if their legal votes were diluted by states accepting illegal votes" that "threaten[] to create dangerous precedent which would improperly prevent full consideration of the merits of future meritorious voting rights and election suits." [9]

The same underlying problem has been rearing its ugly head in federal lawsuits pertaining to election

---

[9] *See* Steven J. Mulroy, *Baby & Bathwater: Standing in Election Cases After 2020*, 126 DICK. L. REV. 9 (2021).

infrastructure itself. Most notably, the Eleventh Circuit allowed for standing in the case *Curling v. Kemp*, 334 F.Supp.3d 1303 (N.D. Ga. 2018), in which voter-plaintiffs in a constitutional challenge to Georgia's use of electronic ballot-marking devices were found to have alleged cognizable injuries "to their fundamental right to participate in an election process that accurately and reliably records their votes and protects the privacy of their votes and personal information." *Id.*, at 1314. To assure itself of the particularized nature of the voters' injuries, the District Court initially noted specific instances in which certain voter-plaintiffs encountered issues casting their ballots on the state's equipment and confirming that their votes were counted. However, after the state switched to a different voting system, the same case was allowed to proceed without equally rigorous standing analysis through a combination of the organizational standing of a non-profit and the one-plaintiff rule.[10] In sharp contrast, the Ninth Circuit held that two political candidates failed to allege sufficiently "particularized" injuries as voters under similar reasoning that the Fifth Circuit used against Petitioners. *See Lake v. Fontes*, 83 F.4th 1199, 1203 (9th Cir. 2023) (plaintiffs "do not allege that the State has in any way burdened their individual exercise of the franchise . . . [n]or do they claim that the Arizona system discriminates against them").

---

[10] *See id.*, at 1314-16; *Curling v. Raffensperger*, 50 F.4th 1114, 1221-22 (11th Cir. 2022) (holding the Coalition for Good Governance incurred injury-in-fact to maintain the Curling litigation); *Curling v. Raffensperger*, Civil Action 1:17-cv-2989-AT, *74-96 (N.D. Ga. Nov. 10, 2023) (applying Eleventh Circuit reasoning at summary judgment stage).

The same problem with the application of nonuniform standing principles is apparent within the Fifth Circuit itself. The opinion below in this case chided the Petitioners' purported failure to show particularized injuries because they had not alleged that their individual votes were not counted in the certified election results. App.1a accord *Lutostanski*, 88 F.4th 582, at 586-87. Similarly, in *Hotzy v. Hudspeth*, 16 F.4th 1121 (5th Cir. 2021), the Fifth Circuit held that a voter's claim that Harris County's illegal allowance of drive-through voting in the 2020 election threatened the "integrity of the election process," the process employed in the exact county in which the voter-plaintiff cast his ballot, was "far too generalized to warrant standing." *Id.*, at 1124. By contrast, in *Vote.org v. Callanen*, 89 F.4th 459 (5th Cir. 2023), a nonprofit organization was allowed to assert injury to challenge a Texas law requiring residents submitting voter registration forms via fax to also mail the original application so clerks could ensure they contained an original wet-ink signature. Vote.org was able to claim a particularized injury from the law because it could no longer utilize its smartphone app as a means of registering voters and increasing electoral turnout, causing it to divert its organizational resources to more costly alternatives of accomplishing that mission. *Id.*, at 470. Additionally, Vote.org was granted third-party standing to assert the interests of voters whose rights were allegedly burdened by the law. *Id.*, at 471-72. It seems odd that voters themselves face a higher threshold to defend their rights than special interest groups claiming to represent those same interests.

Remarkably, just over two years ago, a three-judge panel in the Sixth Circuit addressed an election case where voters sued the state of Ohio for the state's failure to hold a mandatory primary election due to impasses in the redistricting process. The panel practically scoffed at the state's argument that the voters lacked standing under the reasoning of *Lance*. *See Gonidakis v. LaRose*, 599 F.Supp.3d 642, 657-58 (S.D. Ohio 2022). The panel went as far as remarking that such a contention "appear[ed] to be entirely novel," "would up end much of federal election law," and was contrary to "[c]ommon sense." *Id.* Even though the suit admittedly "benefit[ed] all Ohioans interested in voting in the primaries," the Court reasoned that the voter-plaintiffs' interest in "ensur[ing] that they [could] cast their own ballots" was "a textbook individualized harm." *Id.*, at 658. Yet, according to the Fifth Circuit, Petitioners who assert the exact same interest in ensuring they can cast their ballots and have them counted in the proper process somehow plead nothing more than incognizable generalized grievances because they "seek[] relief that no more directly and tangibly benefits [them] than it does the public at large." *Lance v. Coffman*, 549 U.S.437 (2007), at 434.

A fundamental principle of the rule of law is the consistent application of legal standards across different cases. However, as the cases cited supra show, this consistency is lacking in the election context. Judges can choose from a wide range of precedents to support any standing outcome they prefer, and the abundance of authority allows for distinguishing cases on superficial differences. This inconsistency is unacceptable. A significant factor contributing to public distrust in our elections is the extensive involvement of non-

governmental organizations (NGOs) and other private entities that use federal courts to influence election law. These NGOs have an easier time accessing the courts than ordinary citizens like the Petitioners, who are simply trying to exercise their right to hold the government accountable; a government meant to be of the people, by the people, and for the people.

C. The Decision Below Ignores the Private Constitutional Duties Owed to Citizens Implicated by State Actors' Extralegal Handling of Voters' Ballots

A crucial concept often overlooked in election cases is the distinction between public and private rights, which is central to this Court's standing doctrine. In a concurring opinion in *Spokeo, Inc. v. Robbins*, Justice Thomas elaborated on the common law history that justifies this dividing line: Private rights belong to individuals, who can sue to vindicate them; public rights belong to the community as a whole. *See* 578 U.S. 330, 1550-51 (2016). At its core, a vote is a special form of constitutionally protected individual expression. *See Burdick v. Takushi*, 504 U.S. 428, 430-32 (1992) (recognizing that a prohibition on write-in voting burdens a voter's free expression). When states conduct elections, they owe the duty of upholding the sanctity of the ballot to the voters as individuals, not in their social aggregate capacity. Best described by Justise Scalia in *Akins,* "[o]ne voter suffers the deprivation of his franchise, another the deprivation of hers." *FEC v. Akins*, 524 U.S. 11 (1998), at 35 (SCALIA, J., dissenting).

This fundamental truth underlies this Court's recognition of the right to vote as inherently personal.

See Reynolds v. Sims, 377 U.S. 533, 561 (1964); *Gill v. Whitford*, 585 U.S. 48, 1929 (2018). It explains why, when this Court invalidated the Florida Supreme Court's recount procedures in the 2000 presidential election under the Equal Protection Clause, that it stated that the procedures violated "the equal dignity owed to each voter." *Bush*, 531 U.S., at 104. It likewise explains why this Court has found that the presentation of false election returns and the injection of fraudulent ballots into vote totals injure the voters as individuals, not as a community. *See United States v. Mosley*, 238 U.S. 383, 385 (1915) (false returns); *United States v. Saylor*, 322 U.S. 385, 386 (1944) (introduction of fraudulent ballots).

As these precedents show, many aspects of the voting process—from registering to vote, casting ballots, counting ballots, and even certifying returns—implicate private, rather than public, rights. While there is not an explicit guarantee in the U.S. Constitution to such broad protection throughout the election process, the Ninth Amendment lends strong support to the proposition that this protection is individually retained and enjoys constitutional status. Indeed, "the right to vote as the legislature has prescribed is fundamental," and that right extends far beyond "the initial allocation of the franchise." *Bush*, 531 U.S., at 104. This right is also part of the broader free expression protected by the First Amendment. *See* U.S. Const, art. I, § 2, cl. 1; amend. I, XIV, XV, XVII, XIX, XXIV, XXVI.

The voters' interests in their ballots arguably remain private until they are properly aggregated into a final vote tally whose effect is informed by state law. *See Hollingsworth v. Perry*, 570 U.S. 693 (2013) (holding

that ballot initiative proponents' private interests during the election process cease after their proposal becomes a duly-enacted state law pursuant to a successful initiative campaign). The electoral violations alleged by the Petitioners clearly fall within the realm of private rights. By failing to properly certify the equipment used for voting, the Respondents are effectively providing Petitioners with illegal ballots. Additionally, by counting these ballots on uncertified equipment, the Respondents are processing Petitioners' individual votes in a way that violates state law.

The private nature of the rights invaded by these actions is most evident in a series of federal appellate court decisions that granted standing and relief to qualified voters in jurisdictions that failed to hold legally required elections. *See Duncan v. Poythress*, 657 F.2d 691, 693 (5th Cir. Unit B 1981) (refusal to hold special election required by state law); *Bonas v. Town of North Smithfield*, 265 F.3d 69, 74-75 (1st Cir. 2001) (cancellation of election required by municipal charter); accord *Gonidakis*, 599 F. Supp. 3d, at 657-58. And in line with this Court's precedents in *Mosley* and *Saylor*, the Third Circuit found that voters' private rights to "a fair and free election" were invaded by election officials' intentional procurement of illegal absentee ballots designed to rig an election in favor of their preferred candidate. *See Marks v. Stinson*, 19 F.3d 873, 878 (3rd Cir. 1994), *United States v. Mosley,* 238 U.S. 383 (1915), *United States v. Saylor*, 322 U.S. 385 (1944)

Petitioners contend that the mere creation of illegal ballots and their illegal counting should be all they need to muster injury-in-fact, because such actions cause a form of damage to their individual ballots. But

even if such violations could be regarded as "bare procedural violation[s], divorced from any concrete harm,"[11] and absent allegations that they actually resulted in the exclusion or dilution of their votes, the Petitioners have pled more. Critically, the certification requirements alleged to have been violated directly relate to the voting systems' integrity and reliability. As the Petitioners allege, the failure to properly certify and inspect election equipment increases the risk of compromise. This includes the risk posed by foreign made (COTS) components that could provide backdoor access, allowing malicious actors to manipulate election results. App.155a. Thus, if viewed through the lens of procedural violations, Petitioners' allegations resemble violations of the kinds of procedures designed to protect concrete interests. Primarily, the integrity of Petitioners' votes, for which the imminence requirement of injury is relaxed. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572, n. 7 (1992).

In these situations, a "risk of real harm," especially harm that "may be difficult to prove or measure," is all that is needed to satisfy concreteness. *Spokeo*, 578 U.S., at 341 (citing *Akins*, 524 U.S., at 20-25). If a rather elastic conception of this principle carries the day in environmental-law cases,[12] then surely it

---

[11] *TransUnion, LLC v. Ramirez*, 594 U.S. 413, 2213 (2021) (quoting *Spokeo*, 578 U.S., at 341).

[12] *See, e.g., Lujan*, 504 U.S., at 572, n. 7 (an individual living next to a dam construction site incurs injury-in-fact from a licensing agency's failure to prepare a mandatory environmental impact statement without establishing any likelihood that such a statement would change its licensing decision); *Massachusetts v. EPA*, 549 U.S. 497, 1455 (2007) (deeming "[t]he harms associated with climate change" as sufficing for injury from the EPA's

applies in the election context. The idea that Petitioners must affirmatively prove that their election systems "have or will be"[13] compromised in order to establish concrete injury gets it completely backwards: Petitioners depend on their government, whose legitimacy depends on the just consent of the governed, to conduct their elections according to law. To hold that the refusal by election officials to honor the minimum safeguards that the law requires does not injure Petitioners would transform the government's duty to afford them a free and fair election into Petitioners' burden to prove that a wanton failure to effectuate these safeguards will result in the very harm they are designed to detect and prevent.

D. This Question Needs Immediate Attention

"Confidence in the integrity of our electoral process is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). In the colorful words of one District Court, meritless claims about election improprieties, "if accepted as true by large numbers of people, are the stuff of which violent insurrections are made."[14] If that kind of emotive rhetoric has even the smallest degree of underlying validity, then the perception that courts are dodging the merits of election lawsuits on improper procedural grounds, as a significant number

---

procedural denial of a rulemaking petition asking it to regulate greenhouse gas emissions from).

[13] App.20a.

[14] *O'Rourke v. Dominion Voting Systems, Inc.*, 552 F.Supp.3d 1168, 1176 (D. Colo. 2021), aff'd, WL 1699425 (10th Cir. 2022), cert. denied, 143 S.Ct. 489 (2023).

of Americans believe was done with legal challenges to the 2020 election, is even more troubling. *See Mulroy*, at 9-10. In an environment where political parties and NGOs regularly use the federal courts to tilt election rules in furtherance of their agendas, the unbridled propagation of this notion is a recipe for destabilization of our Constitutional Republic. Petitioners wish to avoid the perils that come with "violent insurrections" and seek only to wield their pens to seize the redress that they seek.

The denial of standing to voters who are simply trying to assure themselves of the integrity of their votes, and that their voices actually matter, only furthers this perception. Whether that perception is accurate is a question that only this Court can answer. But it is not one that it can wait much longer to confront, as we head into yet another presidential election with many Americans still waiting for closure on the legitimacy of the previous one. This Petition comes against the backdrop of the "65 Project," a coordinated and well-funded effort to sanction and disbar attorneys who participated in 2020 election challenges. A fate that seldom belies lawyers who defend murderers and cartel members but has nevertheless operated to chill attorneys who must now think twice about whether to contest the actions of election officials in the courts (or even daring to think their clients have standing to do so).[15] This has relegated ordinary Americans like Petitioners to

---

[15] *See O'Rourke*

commencing their suits pro se.[16] With our Nation barely hanging on by a thread, and with increasing rhetoric about "civil war" entering the public discourse, the pronouncement of authoritative standing rules sought in suits like Petitioners' would be the optimal first step that this Court could take in "turn[ing] the national temperature down, not up." *Trump v. Anderson*, 601 U.S. 100, 671 (2024) (BARRETT, J., concurring in part and concurring in the judgment).

The Petitioners in this case did not file a complaint in federal court in some remiss attempt to manufacture Article III standing or to unduly extend the judicial power. They asserted their rights at the time of the founding and sought to enforce their solely retained individual right to a legal ballot as a private right. The "[r]ight to vote is a personal right that is vested in qualified individuals by virtue of their citizenship and it is not a privilege to be granted or denied at the whim or caprice of state officers or state governments." *United States v. Penton*, 212 F.Supp. 193, 202 (M.D. Ala. 1962). But if Petitioners' claims are meritorious, that is exactly what the Fifth Circuit's ruling allows to happen in the absence of adequate state-law remedies. As such, Petitioners turn to this Court as their last resort in their quest to seek a venue in which to adjudicate their claims. The narrow question presented in this Petition gives this Court the opportunity to carefully examine whether the particular rationale for dismissal on jurisdictional grounds (insufficiency of

---

[16] Alison Durkee, Campaign Targets 111 Trump-Linked Election Lawyers. Here's Some Already Facing A Backlash, Forbes (Mar. 7, 2022), https://www.forbes.com/sites/alisondurkee/2022/03/07/campaign-targets-111-trump-linked-election-lawyers-heres-some-already-facing-a-backlash/

Article III injury-in-fact) was a proper impediment to their attempts to do so.

E. This Case is the Ideal Vehicle to Resolve the Narrow Injury-in-Fact Inquiry

As an initial matter, the only question before this Court is the sufficiency of Petitioners' injuries-in-fact, leaving the other prongs of standing, traceability and redressability, for the lower courts to decide on remand. Furthermore, unlike the District Court, the Fifth Circuit's opinion affirming the purported insufficiency of Petitioners' asserted injuries to their voting rights can be construed as resting solely upon a lack of particularity without expressing a view on the concreteness prong, possibly narrowing the operative holding even further. *See* App.8a ("Plaintiffs . . . allege . . . that all voters . . . are at risk of having their votes not counted as intended. . . . Such an injury does not confer standing because a plaintiff who raises only a generally available grievance about government . . . does not state an Article III case or controversy.") (internal citations and quotation marks omitted). Under this reading, if this Court were to hold that the Fifth Circuit erred in concluding that Petitioners' asserted voting rights injuries were not sufficiently particularized, then it could simply remand the case back to the Fifth Circuit on the concreteness question. *See Spokeo*, 578 U.S., at 1550 (remanding the case back to the Ninth Circuit to finish its "incomplete" standing analysis on the concreteness prong of injury-in-fact after reviewing its holding on particularity). To the extent that the Fifth Circuit's statement that "Plaintiffs here do not allege that their votes have or will be treated differently from other votes" can be construed as dispositive of the concreteness prong, such a

determination still fits squarely within the important question presented for which certiorari should be granted for all the reasons discussed infra. Finally, this Court can reach the injury-in-fact question without deciding any further complex questions, such as whether particular conduct violates any particular statutory or constitutional provisions. *See Lujan*, 504 U.S., at 576 ("[T]here is absolutely no basis for making the Article III inquiry turn on the source of the asserted right.").

II. THE SUFFICIENCY OF PETITIONERS' PRIVACY INTERESTS BY ALLEGEDLY ILLEGAL RELEASE OF THEIR VOTER DATA TO THE FEDERAL GOVERNMENT ALSO MERITS THIS COURT'S REVIEW

A. The Fifth Circuit's Holding Flouts Numerous Decisions of This Court and Conflicts with Applications Thereof by the Seventh, and Eleventh Circuits

The Fifth Circuit criticized Petitioners for purportedly failing to explain why the intrusion into their private voter data alone causes them concrete injuries, yet their description of these injuries does exactly that and demonstrates how they fit squarely within the criteria prescribed by this Court for intangible harms, bearing "a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *TransUnion*, 594 U.S., at 2205. It is clear that the asserted injuries are closely related to the analogous torts of "disclosure of private information" and/or "intrusion upon seclusion," especially given that the requisite nexus turns on "kind, not degree." *Id.* (internal citation omitted); *Spokeo*, 578 U.S., at 1549. In accordance with these principles, Petitioners explained that

the dissemination of PII relating to their voting behavior creates a very real risk that the federal government and its third-party partners would use that information in harmful ways—namely, intimidating or harassing them in an attempt to chill First Amendment-protected activity and influence the way they vote. App.447a.

The mere fashioning of such a possibility is precisely the kind of act that the common law recognized as injurious. "Both the common law and the literal understandings of privacy encompass the individual's control of information concerning his or her person." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989). And in the tort of intrusion upon seclusion, a person is considered injured by the mere invasion by another into his or her personal space, even without subsequent publication or use of any improperly obtained information. *Restatement (Second) of Torts* § 652B cmt. b (Am. Law Inst. 1977). Even without accepting the premise that Petitioners' voter data had actually been disclosed, they clearly plead that the federal government's monitoring of Texas's election infrastructure gives rise to that possibility, thereby invading a personal sphere (participating in the election process) in which they have an expectation of privacy—a textbook tortious injury. *See* Eli A. Meltz, *No Harm, No Foul? "Attempted" Invasion of Privacy and the Tort of Intrusion Upon Seclusion*, 83 FORDHAM L. REV. 3431, 3466 (2015). Furthermore, the privacy injuries are particularized because each Petitioner suffers intrusion into his or her own private voter information. In that sense, they "suffer the same common-law injury." *Akins*, 524 U.S., at 24; cf. id, at 35 (Scalia, J., dissent-

ing) ("[E]ven if both [tort victims] suffer burnt arms they are different arms.").

Several decisions from this Court and federal circuits confirm how these principles flush out in practice. In *Davis v. Federal Election Comm'n*, 554 U.S. 724 (2008), this Court unanimously held that a political candidate incurred sufficient injury-in-fact to challenge a campaign finance law on First Amendment grounds because it required him to disclose otherwise-private information—namely, the fact that he planned to spend more than $350,000 of his personal funds on his campaign—to his opponent. *Id.*, at 733. Under a straightforward application of *Davis*, Petitioners have asserted a judicially cognizable injury by alleging that their otherwise-private voter information is being shared with the federal government pursuant to its unconstitutional involvement in Texas's election infrastructure.

But even if Petitioners' privacy injuries could be considered as "inadequate in law" in and of themselves, they have been "elevate[d] to the status of legally cognizable injuries" by the Texas legislature. *Spokeo*, 578 U.S., at 1540. Texas law mandates that outside entities seeking information on Petitioners' party affiliation and voting behavior must agree not to use it for commercial purposes, and certain details, like Social Security numbers, are strictly prohibited. Indeed, a Texas state court has used these exact same laws in the past to enjoin the release of state voter data to the federal government. *See League of Women Voters of Texas v. Pablos*, No. D-1-GN-17-003451 (Travis Co. Dist. Tex. Oct. 3, 2017) (enjoining the dissemination of Texas voter file to President Trump's Presidential Advisory Commission on Election Integrity). Dissemin-

ation of such information in contravention of these statutory limits is precisely the kind of injury that the Eleventh Circuit found concrete in a case finding a plaintiff harmed by the release of PII in violation of the federal Video Privacy Protection Act. *See Perry v. Cable News Network, Inc.*, 854 F.3d 1336, 1341 (11th Cir. 2017). As relevant here, the statutory violation alone sufficed for injury because such an injury is analogous to intrusion upon seclusion, where no further showing of harm is necessary. *Id.*, at 1341. Similarly, the Seventh and Eleventh Circuits found plaintiffs injured by the receipt of a single unsolicited text message in violation of an anti-telemarketing law because Congress intended the statute to protect personal privacy, thus creating the necessary relationship between the violation (illegal telemarketing) and a tortious injury (violation of privacy). *See Gadelhak v. AT&T Services, Inc.*, 950 F.3d 458, 462 (7th Cir. 2020) (Barrett, J.); *Drazen v. Pinto*, 74 F.4th 1336, 1342 (11th Cir. 2023) (en banc).

B. The Question is of Paramount Importance and Deserves Immediate Attention

The allegedly prolific involvement of DHS and its third-party partners in Texas's election infrastructure would constitute an "extraordinary departure from the traditional course of relations between the States and the Federal Government" that "authorizes federal intrusion into sensitive areas of state and local policy-making." *Shelby County v. Holder*, 133 S.Ct. 2612, 2624 (2013) (internal citations and quotation marks omitted). When states allow the federal government to take an active role in their elections, they inadvertently grant the National Government excessive power, which can lead to significant overreach beyond its constitu-

tionally prescribed limits. This shift demands judicial intervention, especially in the context of elections, where the balance of power is critical. The federal system is designed to allow the people to govern themselves through state and local governments, with the National Government holding limited authority. However, when federal involvement in election administration goes beyond regulation, it encourages local officials to prioritize federal interests over those of their constituents, creating a centralized power structure that the founders sought to prevent.

Petitioners argue that the federal government's monitoring of Texas' election infrastructure, facilitated by agreements with state and county officials, grants the government access to voter information, including voting behavior. App.401a. This undermines the secret ballot and state sovereignty, allowing for potential profiling and discrimination based on how individuals vote. Such actions threaten individual livelihoods, suppress dissent, and erode the self-governance our system is meant to protect. These concerns are not theoretical but are rooted in real and ongoing issues, as evidenced by Mark Zuckerberg's admission of Big Tech's role in censoring information during elections, and CTCL's influence on local election processes.

The complicity of state and county officials in signing Memorandums of Understanding (MOUs) with DHS has effectively made them de facto federal agents, furthering federal intrusion into state and local governance. These agreements, ostensibly aimed at curbing disinformation and securing elections, have allowed DHS and its partners to interfere in local election processes. As noted in *Shelby County v. Holder*, this represents an extraordinary departure from

traditional state-federal relations. The involvement of Big Tech, coupled with local officials aligning with federal interests, compromises the responsibility these officials have to their constituents and threatens the integrity of the election process. This situation underscores the urgent need for judicial intervention to address the constitutional violations and restore the balance necessary for true self-governance.

C. There Are No Insurmountable Vehicle Obstacles to this Court Reaching the Question

The Fifth Circuit cited to a single paragraph of Petitioners' Second Amended Complaint in its analysis of their asserted privacy injuries from the alleged release of their voter data to DHS. That paragraph pled "information and belief" that Texas voter roll data was being shared with DHS, CIS, and other third-party partners. It also stated that this alleged release of PII to the federal government exposed Petitioners to intimidation and harassment for exercising their right to vote since the federal government gains visibility into their voting behavior via its monitoring of Texas's election infrastructure. Read in its proper context, the Fifth Circuit's depiction of Petitioners' privacy injuries as "speculative" refers only to the latter, because it goes on to reiterate that allegations of "possible future harm" are insufficient for injury-in-fact. Therefore, the bare privacy injuries stemming from the release of the private information itself was dismissed on the sole ground that such injuries lacked particularity under the rationale that the monitoring of Texas's voter roll data would affect all registered Texas voters. App.57a.

CONCLUSION

This petition should be granted because the Fifth Circuit's decision conflicts with fundamental principles of Article III standing analysis, particularly regarding the distinction between individual and private rights versus general and public interests. The inconsistent application of standing principles across different circuits creates significant disparities in how voters' rights are protected.

These disparities are outcome-determinative, fundamentally shaping the scope and nature of judicial review in election law disputes. Given the critical nature of these issues, it is essential for this Court to review these conflicts to ensure uniformity and fairness in the adjudication of election law claims.

For these reasons, it is respectfully requested that the petition for writ of certiorari be granted, and the decision of the U.S. Fifth Circuit Court of Appeals be summarily reversed. Ensuring Petitioners have access to judicial review is essential for upholding the integrity of the electoral process and protecting their constitutional rights.

Respectfully submitted,

Lindsey Gremont
Petitioner Pro Se
P.O. Box 161261
Austin, TX 78716
(512) 879-7069

September 2, 2024