RECORD NO. 22-5267

In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ARCHITECTS & ENGINEERS FOR 9/11 TRUTH, *et al.*,

Plaintiffs-Appellants

v.

GINA M. RAIMONDO, in her official capacity as Secretary of Commerce, *et al.*

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETITION FOR REHEARING *EN BANC*

Mick G. Harrison, Attorney at Law, #55038
520 S. Walnut Street, #1147
Bloomington, IN 47402
Tel.: 812-361-6220; Fax: 812-233-3135
Eml. mickharrisonesq@gmail.com
Counsel for Plaintiffs-Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Rules

GLOSSARY

9/11	September 11, 2001
AE or AE911Truth	Architects & Engineers for 9/11 Truth
APA	Administrative Procedures Act
ASCE	American Society of Civil Engineers
FAC	First Amended Complaint
FAQ	Frequently Asked Question
IQA	Informational Quality Act
IQS	Information Quality Standards
NCST Act	National Construction Safety Team Act
NCSTAR	National Construction Safety Team Act Report
NIST	National Institute of Standards and Technology
OMB	Office of Management and Budget
PETA	People for the Ethical Treatment of Animals
RFC	Request for Correction
UAF	University of Alaska Fairbanks
WTC	World Trade Center
WTC 1	World Trade Center North Tower
WTC 2	World Trade Center South Tower
WTC 7	World Trade Center 7

PETITION FOR REHEARING EN BANC

Petitioners (see Addendum, Certificate of Parties) hereby, pursuant to Fed. R. App. P. 35, respectfully request that this Court review *en banc* the Panel Decision and the District Court's decisions below.

PRELIMINARY STATEMENT

Pursuant to Fed. R. App. P. 35, Petitioners state that this proceeding involves a question of exceptional importance: Whether an agency complies with a mandate from Congress to issue a report when the agency knowingly issues a false or fraudulent report.

Pursuant to Fed. R. App. P. 35, Petitioners state that the panel decision conflicts with decisions of this Circuit, including *Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity*, 878 F.3d 371, 378 (D.C. Cir. 2017), *American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 22-23 (D.C. Cir. 2011), and *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016), relating to the Circuit rule that in determining a plaintiff's informational standing the court must base its decision on *Plaintiff's* reading of the relevant statute, and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions.

Pursuant to Fed. R. App. P. 35, Petitioners state that the panel decision conflicts with decisions of the Supreme Court and of this Circuit, including *FEC v.*

Akins, 524 U.S. 11, 21, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998), *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989), and *American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 22 (D.C.Cir. 2011), relating to informational standing being determined on whether an agency is obligated by law to provide certain information to the public (and not on what information a plaintiff may have obtained privately), and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions.

Pursuant to Fed. R. App. P. 35, Petitioners state that the panel decision conflicts with decisions of this Circuit, including *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 920–21 (D.C. Cir. 2015); *People for the Ethical Treatment of Animals v. U.S. Dept. of Agriculture*, 797 F.3d 1087 (2015); *American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011); *Fair Emp't Council of Greater Washington, Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994), relating to organizational standing based on harm caused by agency action to the organization’s mission necessitating expenditures for countering such harm, and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions.

INTRODUCTION

The attacks of September 11, 2001 (9/11) were the worst attacks on American soil since Pearl Harbor. It is well known that on 9/11 the two World Trade Center (WTC) towers completely collapsed, resulting in the tragic deaths of over two thousand people, including first responders. What is less well known is that also on 9/11 a third WTC high-rise building, WTC 7, 47 stories high, completely collapsed, much later in the day, without having been struck by an aircraft.

WTC 7's collapse was rapid, symmetrical, and in every respect appeared to be a controlled demolition. Appendix at A29, FAC ¶¶ 112-113, 191, 218-233, 269, 271-273, 279, 300. The National Institute of Standards and Technology (NIST) was charged with investigating and reporting the cause of WTC 7's collapse.

NIST in November 2008 issued its findings and conclusions regarding the collapse of WTC 7 in its WTC 7 Report. Appendix at A29, FAC ¶ 89. NIST, through the NIST WTC 7 Report and the NIST WTC 7 FAQs, disseminated inaccurate, unreliable, and biased information about the collapse of the WTC 7, ignoring the abundant evidence of the use of explosives (in a controlled demolition), and misrepresenting to the public that WTC 7's collapse was due entirely to fires in the building. Appendix at A29, FAC ¶ 99.

Plaintiffs submitted to NIST a Request for Correction (RFC) under the Information Quality Act (IQA). NIST denied the request and Plaintiffs' subsequent administrative appeal.

Some of the Plaintiffs are family members of those who died in the 9/11 attacks at the WTC, Appendix at A29, FAC ¶¶ 27-50, 52, and some are professional architects and engineers, Appendix at A29, FAC ¶¶ 54-67. Plaintiff Architects & Engineers for 9/11 Truth (AE) is a non-profit organization with a mission to educate the public regarding the WTC building collapses on 9/11. Appendix at A29, FAC ¶¶ 9-26; Appendix at A116, FAC Exhibit 1, Declaration of Roland Angle, AE CEO.

Plaintiffs filed their First Amended Complaint (FAC) on January 31, 2022 presenting ten claims for declaratory and injunctive relief under the Administrative Procedures Act (APA), 5 U.S.C. §§ 702, 706, the Informational Quality Act (IQA) (aka Data Quality Act), Section 515 of Public Law 106-554, and the National Construction Safety Team Act (NCST Act). The District Court dismissed all of Plaintiffs' claims for lack of standing. A panel of judges from this Court of Appeals affirmed the District Court's decision in an October 3, 2023 unpublished *per curiam* decision (Panel Decision). *See* Addendum hereto. For the reasons stated herein, Petitioners, who include most of the original plaintiffs and appellants, respectfully request rehearing *en banc*.

I. POINTS OF LAW OVERLOOKED OR MISAPPREHENDED IN THE PANEL DECISION

A. The Panel Decision Misapprehended the Law in Holding that an Agency Fully Complies with a Mandate from Congress to Issue a Report on a Matter of Public Importance When the Agency Knowingly Issues a False or Fraudulent Report, which Raises a Question of Exceptional Importance

This proceeding does involve a question of exceptional importance. That exceptionally important question relates to the appeal panel's holding, made in the context of deciding the informational standing issue, that if an agency simply issues a statutorily required report that, regardless of the content or integrity of the report, that the public gets all it is entitled to even if the agency knowingly issued a false or fraudulent report.

Petitioners read the NCST Act as requiring the agency to publicly issue not just a knowingly false or sham report as to the cause of a building's collapse but as requiring an honest good faith agency report as to the likely technical cause of the building's collapse. Plaintiffs considered this reading of the Act, at minimum, to be *plausible*.

The Supreme Court has explained that a plaintiff "suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *FEC v. Akins*, 524 U.S. 11, 21 (1998); see also *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449 (1989) (finding that failure to obtain information subject to disclosure under Federal Advisory Committee Act

"constitutes a sufficiently distinct injury to provide standing to sue").

> To establish standing, Plaintiffs "must state a **plausible** claim that [they have] suffered an injury in fact fairly traceable to the actions of the defendant that is likely to be redressed by a favorable decision on the merits." *Humane Soc'y of the U.S. v. Vilsack*, 797 F.3d 4, 8 (D.C.Cir.2015).

Food & Water Watch, Inc. v. Vilsack, 808 F.3d 905, 913 (D.C. Cir. 2015) (emphasis added).

The appeal panel erred in holding that Petitioner's reading of the statute was not plausible.

> Here, no plausible reading of Section 7307 requires more of NIST than what plaintiffs concede NIST has already provided—a report that includes an analysis of the likely technical cause or causes of the collapse.

Panel Decision at 3. This holding by the appeal panel is erroneous first because it misconstrues Petitioners' "concession" as being much broader than what it was. Petitioners conceded only that a report was issued by NIST, not that NIST's report actually provided what Congress had mandated.

This holding by the appeal panel is also error because Petitioners' reading of the NCST Act as requiring an honest report and not a knowingly false report is not only plausible, Petitioners' reading of this statute is a correct reading. The intentional issuance by an agency of a false report on a matter of public importance would *per se* constitute arbitrary and capricious action under the APA and would also constitute agency action contrary to law where the report was mandated by

statute. It is the appeal panel's reading, which deems a fraudulent report by an agency to satisfy a mandate from Congress, that is implausible.

The appeal panel's decision that fraudulent agency reports satisfy statutory mandates, and thus do not give rise to informational standing, if allowed to stand, would severely undercut our system of separation of powers and checks and balances where the judicial branch serves as a meaningful check on abuse of power by executive branch agencies. The judicial branch can only exercise its jurisdiction and power for oversight of agency misconduct of someone has standing to sue to bring the matter before the judiciary. If no one has standing to challenge agency abuses, the judiciary will be powerless to perform its check and balance oversight constitutional role.

B. The Panel Decision Misapprehended the Law and Conflicts with Decisions of This Circuit, including *Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity*, 878 F.3d 371, 378 (D.C. Cir. 2017), *American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 22-23 (D.C. Cir. 2011), and *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016), Regarding Informational Standing

This Circuit's precedent makes clear that the determination of Petitioners' informational standing must be based on Petitioners' (plaintiffs below) reading of the statute.

> To carry its burden of demonstrating a "sufficiently concrete and particularized informational injury," **the plaintiff must show that "(1) it has been deprived of information that, *on its interpretation*, a statute requires the government or a third party to disclose to it**,

> and (2) it suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure." [citations omitted]

Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity, 878 F.3d 371, 378 (D.C. Cir. 2017) (emphasis added). *Also See, Fed. Election Comm'n v. Akins*, 524 U.S. 11 (1998); *Public Citizen v. Dep't of Justice*, 491 U.S. 440 (1989); *Friends of Animals v. Jewell*, 828 F.3d 989 (D.C. Cir. 2016); *American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 22-23 (D.C. Cir. 2011).

The Panel Decision concluded, as noted *supra*, that Plaintiffs' reading of the NCST Act required issuance by NIST of a *nonfraudulent* report was not only incorrect but not even plausible. Panel Decision at 3. The Panel Decision misconstrued this Circuit's precedent when it held that Plaintiffs had no right to a non-fraudulent report from NIST, which holding was based on the Panel's, not Plaintiff's, reading of the Act. The appeal panel read the NCST Act as allowing the agency to issue a sham or fraudulent report and still be in compliance. But not only is Plaintiff's contrary reading of the statute plausible, it is considerably more plausible that the appeal panel's reading. The Panel Decision thus did not honor this Circuit's rule that it is the plaintiff's (plausible) reading of a statutory requirement for an agency to provide information to the public that controls the determination of informational standing.

C. The Panel Decision Misapprehended the Law and Conflicts with Decisions of the Supreme Court and this Circuit, including *FEC v. Akins*, 524 U.S. 11, 21, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998), *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989), and *American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 22 (D.C.Cir. 2011), Regarding Informational Standing

The Panel Decision states:

> But **plaintiffs have not been deprived of information. Rather**, **plaintiffs allege that they have the correct information**, and they want a court to order NIST to re-issue a report that endorses that information.

Panel Decision at 3 (emphasis added). This statement by the appeals panel reflects a misunderstanding of the law regarding informational standing.

Decisions of the Supreme Court and this Circuit make clear that informational standing may be established where a plaintiff is deprived of information *from the government* which a statute entitles the public to receive *See, e.g.*, *FEC v. Akins*, 524 U.S. 11, 21, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998), *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989), and *American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 22 (D.C.Cir. 2011). These decisions do not impose any condition or qualification relating to whether the plaintiff has been able to obtain relevant information from other sources, just that the information the agency is required to disclose would be helpful to the plaintiff.

> In *FEC v. Akins*, the Supreme Court explained that a plaintiff "suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *FEC v. Akins*, 524 U.S. 11, 21, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998); see also *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989) … Following *Akins*, we have recognized that "a denial of access to information can work an 'injury in fact' for standing purposes, at least where a statute (**on the claimants' reading**) requires that the information 'be publicly disclosed' **and there 'is no reason to doubt their claim that the information would help them**.' " [citations omitted].

American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc., 659 F.3d 13, 22 (D.C. Cir. 2011) (emphasis added). Here, there is no reason to doubt that an honest government report would be helpful to Petitioners. Plaintiffs, absent Defendants' arbitrary and illegal actions would have had access to the congressionally mandated report that actually provided an analysis of the real likely technical cause of WTC 7's collapse.

AE's mission to educate to public regarding the true cause of the collapse of three WTC high rise steel-framed buildings on 9/11, for example, would be furthered by public issuance of a legitimate government report addressing that question, whereas its mission is substantially hindered by NIST having issued its false report.

The law of this Circuit is focused on whether a plaintiff has been deprived of information the *government* is obligated to provide. The determination of informational standing does not turn on what information the plaintiff has been

able to acquire using its own resources, especially in the face of issuance of a fraudulent government report.

If a plaintiff has been denied information the agency is obligated by statute to provide, then the plaintiff has informational standing even if the plaintiff otherwise appears to be well informed based on their own private inquiries. NIST is not excused from violating the NCST Act or the IQA, just because Petitioner AE and its co-petitioners have been industrious enough to do their own investigation.

D. The Panel Decision Misapprehended the Law and Conflicts with Decisions of this Circuit, including *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 920–21 (D.C. Cir. 2015); *People for the Ethical Treatment of Animals v. U.S. Dept. of Agriculture*, 797 F.3d 1087 (2015); *American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011); *Fair Emp't Council of Greater Washington, Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994), Regarding Organizational Standing

The Panel Decision states:

> Second, Architects asserts that NIST's issuance of the allegedly fraudulent WTC 7 Report caused Architects to expend several hundred thousand dollars commissioning a study to rebut the report. **This injury, too, depends upon the alleged informational injury**. The alleged harm remains that NIST did not issue a report with the conclusion Architects argues the report should have contained. **Where an agency is not required to disclose the information plaintiffs seek, spending resources to obtain that information does not transmute the alleged informational injury into a cognizable organizational injury-in-fact.** [citations omitted]

Panel Decision at 4 (emphasis added). This holding is contrary to prior decisions of this Circuit on organizational standing.

Organizational standing can be shown based on agency conduct that interferes with a nonprofit's mission, including by issuance of false information that must be rebutted to further the nonprofit's mission. *American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011); *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 920–21 (D.C. Cir. 2015); *Fair Emp't Council of Greater Washington, Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994).

> As explained in *Equal Rights Center*, we begin an inquiry into *Havens* standing by asking whether the defendant's allegedly unlawful activities injured the plaintiff's interest in promoting its mission. *Id*. at 1140. If the answer is yes, we then ask whether the plaintiff used its resources to counteract that injury.

American Soc. for Prevention of Cruelty to Animals v. Feld Entertainment, Inc., 659 F.3d 13, 19–20 (D.C. Cir. 2011).

The Panel Decision is fundamentally in error in asserting that Petitioner AE lacked standing based on its substantial expenditure for the University of Alaska study because AE had no statutory right to an honest NIST report. Whether NIST issued its WTC 7 report per statute or on its own initiative has no relevance to whether AE's mission was harmed by NIST's issuance of a false report that mislead the public.

NIST's issuance of the sham WTC 7 Report caused Petitioner AE to expend approximately a quarter of a million dollars to rebut a false agency report going to

the heart of its mission. This substantial expenditure by AE was not "to obtain" information but was to *publicly rebut* the false information published by NIST. The Panel Decision concluded erroneously that the purpose of this expenditure was to "obtain information" rather than to rebut false information published by the government.

E. The Panel Decision Misapprehended the Law in Holding that Any Claim of Organizational Standing Fails for Lack of Redressability Because in the Panel's View the Court Had No Power to Order Any Further Action from the Agency

The Panel Decision states:

> Even if Architects could plead a cognizable injury, **any claim of organizational standing fails for lack of redressability**. Architects seeks a court order to correct what it alleges is a flawed NIST report. But **the court can only order that the agency comply with statutory requirements to the extent the agency has not already complied with them.** ... As explained, **NIST has issued the report required by Section 7307 of the NCSTA. A court therefore cannot redress Architects's claimed injury**.

Panel Decision at 4 (emphasis added).

The Appeal panel erred, as noted *supra*, in concluding that issuance of even a sham or fraudulent report satisfied a mandate from Congress. Because of this error, the appeal panel concluded it could not order any further action from NIST. This was clearly wrong because the Court could issue an order requiring that the agency issue a new report that was not fraudulent.

The appeal panel further erred where the panel focused solely on the NCST Act requirement of a report but fails to address the IQA requirements for compliance with information quality standards in the issuance of the report. The appeal panel ignored the IQA quality standards which the Court could, and should in this case, order NIST to comply with in issuing a new report.

NIST, pursuant to the IQA and OMB Guidelines, issued its own Information Quality Standards ("NIST IQS"). Under the OMB Guidelines and the NIST IQS, information quality comprises three elements: utility, integrity, and objectivity.

Regarding influential scientific information and analytic results related thereto, the OMB Guidelines dictate that agency guidelines shall generally require sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public. "Reproducibility" under the NIST IQS means that the information is capable of being substantially reproduced.

Even if the appeal panel were correct in concluding that NIST's issuance of a fraudulent report satisfied the NCST Act requirement of a report, there remains the IQA requirements which if enforced via the APA would require the agency to correct its report at least to not be fraudulent.

II. POINTS OF FACT OVERLOOKED OR MISAPPREHENDED IN THE PANEL DECISION

A. The Panel Decision Clearly Misapprehended a Critical Fact Regarding What Plaintiffs Had Conceded

Another clear and significant error in the appeal panel's decision is the mischaracterization of what Appellants conceded.

The Panel Decision states:

> First, Section 7307 of the NCSTA requires that, after investigating building collapses that have "resulted in substantial loss of life," 15 U.S.C. § 7301(a), **NIST must issue a public report with "an analysis of the likely technical cause or causes" of the collapse**, id. § 7307(1). Section 7307 thus requires disclosure of a report—**but plaintiffs concede that NIST has, in fact, issued such a report.**

Panel Decision at 3 (emphasis added). But all Appellants conceded was that a report was issued by NIST, not that the report issued satisfied the statutory mandate from Congress. Appellants never conceded, but rather explicitly contested, that the NIST report that was issued contained the statutorily required analysis of the likely technical cause of the collapse of WTC 7. Appellants asserted that the NIST WTC 7 report was fraudulent, not compliant.

B. The Panel Decision Misapprehended Another Key Material Fact

The appeal panel also misstated another significant aspect of Appellants' position. The appeal panel asserted that what Appellants sought in bringing this action was issuance of a report by NIST that included the analysis that Appellants "believe" to be correct.

The Panel Decision states:

> Plaintiffs **believe** the report NIST issued is scientifically inaccurate or even intentionally fraudulent. **They confuse, however, NIST's obligation to issue a report that includes an analysis of the likely technical cause or causes of the building collapse with an obligation to issue a report that adopts the particular analysis plaintiffs believe is correct.**

Panel Decision at 3. However, Appellants complaint filed in this case is focused on objective scientific evidence, not "beliefs." Appellants did not request a new study that comports with Appellants' "beliefs" but rather one that comports with the law and science and is not knowingly false. This is a distinction with a difference.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Petitioners respectfully request that this Court of Appeals review the Panel Decision and the District Court's decisions below *en banc*, vacate the Panel Decision, and issue a decision reversing the District Court's decision finding that all Petitioners have standing.

/s/ Mick G. Harrison
Mick G. Harrison, #55038
520 S. Walnut Street, #1147
Bloomington, IN 47402
Phone: 812-361-6220
E-mail: mickharrisonesq@gmail.com

Attorney of Record for all Petitioners

CERTIFICATE OF COMPLIANCE

I certify that this Petition complies with the type-volume limitation in Federal Rule of Appellate Procedure 35 because the brief contains less than 3,900 words, *excluding* exempted parts as counted by Microsoft Word 2010 software. This brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 point.

/s/ Mick G. Harrison
MICK G. HARRISON

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2022, I electronically filed the foregoing Petition for Rehearing *En Banc* with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system. I also emailed copies of this Petition to Defendants' counsel on this same date. Paper copies will be mailed to the Court and to Defendants' counsel as/if required in compliance with the Court's rules.

The Defendants-Appellees' counsel to whom the above described service was made and is being made are:

Catherine M. Padhi
U.S. Department of Justice
(DOJ) Civil Division, Appellate Staff
950 Pennsylvania Avenue, NW
Washington, DC 20530
Phone: 202-514-2000
Email: catherine.m.padhi@usdoj.gov

Mark B. Stern, Attorney
U.S. Department of Justice
(DOJ) Civil Division, Appellate Staff
950 Pennsylvania Avenue, NW
Washington, DC 20530
Phone: 202-514-2000
Email: mark.stern@usdoj.gov

/s/ Mick G. Harrison
Mick G. Harrison, Attorney at Law
Counsel for Appellants

ADDENDUM

1. Panel Opinion

2. Certificate of Parties

3. Disclosure Statement

PANEL OPINION

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-5267 **September Term, 2023**

FILED ON: OCTOBER 3, 2023

ARCHITECTS & ENGINEERS FOR 9/11 TRUTH, ET AL.,
APPELLANTS

v.

GINA RAIMONDO, IN HER OFFICIAL CAPACITY AS SECRETARY OF COMMERCE, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:21-cv-02365)

Before: WALKER and GARCIA, *Circuit Judges*, and RANDOLPH, *Senior Circuit Judge*.

JUDGMENT

This case was considered on the record from the United States District Court for the District of Columbia and on the briefs and oral arguments of the parties. The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

ORDERED and **ADJUDGED** that the district court's order be **AFFIRMED**.

I

On September 11, 2001, terrorists hijacked commercial airliners and flew them into the World Trade Center Twin Towers, causing them to collapse. Later that day, the nearby World Trade Center 7 building ("WTC 7") also collapsed, though it had not been struck. In 2002, pursuant to the National Construction Safety Team Act ("NCSTA"), the National Institute of Standards and Technology ("NIST") launched an investigation into the WTC 7 collapse. In November 2008, NIST released a report explaining that debris from the collapse of the North Tower ignited fires in WTC 7, generating so much heat that the structural support inside WTC 7 collapsed.

Plaintiffs—nonprofit organization Architects & Engineers for 9/11 Truth ("Architects")

and eighteen individuals—believe NIST's explanation is wrong. Based on available "scientific and witness evidence," plaintiffs instead maintain that "pre-placed explosives and/or incendiaries" caused the collapse of WTC 7. They allege that the NIST report "fails to provide a complete, coherent, and evidentially supported technical cause of the building's destruction." In 2020, plaintiffs submitted to NIST their "dispositive evidence" along with a Request for Correction of the agency's report pursuant to the Information Quality Act ("IQA") and its implementing guidelines.

NIST denied the Request for Correction in August 2020 and the administrative appeal of that denial in June 2021, prompting plaintiffs to file suit. Plaintiffs assert claims under the Administrative Procedure Act ("APA"), alleging that the denial of their Request for Correction was arbitrary and capricious, a violation of the IQA and its implementing guidelines, and otherwise not in accordance with law. They also claim that NIST violated the NCSTA by issuing a "sham report" with "irrational" analysis and conclusions.

The district court dismissed plaintiffs' suit for lack of standing, concluding that none of the plaintiffs had alleged a cognizable informational or organizational injury. Plaintiffs appealed.

II

We review the district court's standing determination *de novo*. *Am. Soc'y for Prevention of Cruelty to Animals v. Feld Ent., Inc.*, 659 F.3d 13, 19 (D.C. Cir. 2011). Because the district court correctly concluded that none of the plaintiffs have standing, we affirm.

A

Plaintiffs argue that they suffered an informational injury sufficient to confer standing. They believe that the IQA and NCSTA required NIST to issue a report with "a complete, coherent, and evidentially supported technical cause of the building's destruction," not the "sham report" plaintiffs allege NIST issued instead. A plaintiff suffers a "sufficiently concrete and particularized informational injury" only if "(1) it has been deprived of information that, on its interpretation, a statute requires the government or a third party to disclose to it, and (2) it suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure." *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 378 (D.C. Cir. 2017) (internal quotation marks omitted) (quoting *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016)). Because neither the IQA nor the NCSTA requires the disclosure plaintiffs allege they were denied, we need not proceed past the first prong.

The IQA does not entitle plaintiffs to the disclosure of any information—indeed, it makes no mention of required disclosure at all. Instead, it directs the Office of Management and Budget to establish guidelines for "ensuring and maximizing the quality, objectivity, utility, and integrity of information . . . disseminated by Federal agencies . . . ." 44 U.S.C. § 3516 note. We have previously held that the IQA "creates no legal rights in any third parties." *Miss. Comm'n on Env't Quality v. EPA*, 790 F.3d 138, 184 (D.C. Cir. 2015) (per curiam) (internal quotation marks omitted). Nor do the guidelines implementing the IQA create any legal entitlement to

information; instead, they establish internal standards for information quality. *See, e.g.*, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication, 67 Fed. Reg. 8452, 8458 (Feb. 22, 2002). Without statutorily required disclosure, the IQA cannot provide a basis for an asserted informational injury.

The NCSTA includes two disclosure requirements but nonetheless does not support plaintiffs' alleged informational injury.

First, Section 7307 of the NCSTA requires that, after investigating building collapses that have "resulted in substantial loss of life," 15 U.S.C. § 7301(a), NIST must issue a public report with "an analysis of the likely technical cause or causes" of the collapse, *id.* § 7307(1). Section 7307 thus requires disclosure of a report—but plaintiffs concede that NIST has, in fact, issued such a report. *See* Am. Compl. ¶ 89 ("NIST was required by law to generate the NIST WTC 7 Report . . . and did so generate the NIST WTC 7 Report in November 2008.").

Plaintiffs believe the report NIST issued is scientifically inaccurate or even intentionally fraudulent. They confuse, however, NIST's obligation to issue a report that includes an analysis of the likely technical cause or causes of the building collapse with an obligation to issue a report that adopts the particular analysis plaintiffs believe is correct. An informational injury generally arises when a plaintiff is deprived of information that a statute requires the agency to disclose. *See Elec. Priv. Info. Ctr.*, 878 F.3d at 378. But plaintiffs have not been deprived of information. Rather, plaintiffs allege that they *have* the correct information, and they want a court to order NIST to re-issue a report that endorses that information.

Plaintiffs are correct that we must consider whether the statute requires disclosure based on plaintiffs' interpretation of the statute. *See Friends of Animals*, 828 F.3d at 992. "But, as with any claimed basis for standing, the plaintiff's reading of a statute for informational standing purposes must at least be plausible." *Lawyers' Comm. for 9/11 Inquiry, Inc. v. Wray*, 848 F. App'x 428, 430 (D.C. Cir. 2021) (per curiam); *see also Zivotofsky ex rel. Ari Z. v. Sec'y of State*, 444 F.3d 614, 619 (D.C. Cir. 2006) (informational injury sufficiently alleged where plaintiff offered "at the least a colorable reading of the statute"); *Friends of Animals*, 828 F.3d at 992–93 (informational injury not sufficiently alleged where statutory provision could not be read to require disclosure plaintiffs sought). Here, no plausible reading of Section 7307 requires more of NIST than what plaintiffs concede NIST has already provided—a report that includes an analysis of the likely technical cause or causes of the collapse.

Second, Section 7306 of the NCSTA requires copies of the data or records underlying NIST's building collapse investigations to "be made available to the public on request," with some exceptions. 15 U.S.C. § 7306. But plaintiffs do not argue on appeal that Section 7306 provides a basis for standing and have therefore forfeited any such claim. *See Gov't of Manitoba v. Bernhardt*, 923 F.3d 173, 179 (D.C. Cir. 2019) ("[T]he ordinary rules of forfeiture apply to standing.").

B

Nonprofit Architects also argues that it has standing in its organizational capacity. Organizational standing requires Architects, "like an individual plaintiff, to show actual or threatened injury in fact that is fairly traceable to the alleged illegal action and likely to be redressed by a favorable court decision." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015) (citation omitted). Neither of Architects's theories of organizational injury is cognizable.

Architects first attempts to repackage its otherwise incognizable informational injury as an organizational one. Architects argues that NIST's refusal to correct its WTC 7 Report deprives Architects of information it would use to further its mission: If NIST issued an accurate report, Architects would be able to help the public know the truth and potentially provide additional legal relief or remedies for 9/11 families. But, as this Court explained in rejecting an analogous argument Architects made in a prior case, these claims "are part and parcel of the alleged informational injury and thus fail with it." *See Lawyers' Comm. for 9/11 Inquiry*, 848 F. App'x at 430–31 (internal quotation marks omitted). The fact that a plaintiff seeks standing in an organizational capacity, rather than an individual one, does not render an otherwise nonexistent informational injury cognizable.

Second, Architects asserts that NIST's issuance of the allegedly fraudulent WTC 7 Report caused Architects to expend several hundred thousand dollars commissioning a study to rebut the report. This injury, too, depends upon the alleged informational injury. The alleged harm remains that NIST did not issue a report with the conclusion Architects argues the report should have contained. Where an agency is not required to disclose the information plaintiffs seek, spending resources to obtain that information does not transmute the alleged informational injury into a cognizable organizational injury-in-fact. *See Elec. Priv. Info. Ctr. v. U.S. Dep't of Com.*, 928 F.3d 95, 101 (D.C. Cir. 2019).

Even if Architects could plead a cognizable injury, any claim of organizational standing fails for lack of redressability. Architects seeks a court order to correct what it alleges is a flawed NIST report. But the court can only order that the agency comply with statutory requirements to the extent the agency has not already complied with them. *See, e.g.*, *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63 (2004) ("[T]he only agency action that can be compelled under the APA is action legally *required*." (emphasis in original)). As explained, NIST has issued the report required by Section 7307 of the NCSTA. A court therefore cannot redress Architects's claimed injury.

* * * * *

For the foregoing reasons, the district court's judgment is affirmed.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

CETIFICATE OF PARTIES

In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ARCHITECTS & ENGINEERS FOR 9/11 TRUTH, *et al.*,	)	
Plaintiffs-Appellants,	)	
v.	)	Case No.: 22-5267
GINA RAIMONDO, in her official capacity as Secretary of Commerce, *et al.*,	)	
Defendants-Appellees.	)	

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

(A) **Parties and Amici.**

The parties in the original appeal were:

(1)(a) The Appellants: Architects & Engineers for 9/11 Truth, Robert McILvaine, Helen McILvaine, Matt Campbell, Diana Hetzel, Kacee Papa, Drew DePalma, Francine Scocozzo, Justin Myers, Bill Brinnier, Ron Brookman, Seth McVey, Mike Henry, Dave Parker, Peter Kosmoski, Kamal Obeid, and Lynn Affleck.

(1)(b) The Petitioners for the instant Petition for Rehearing En Banc are: Architects & Engineers for 9/11 Truth, Lynn Affleck, Matt Campbell, Diana Hetzel, Kacee Papa, Justin Myers, Bill Brinnier, Ron Brookman, Seth McVey, Mike Henry, Dave Parker.

(2) The Appellees are: Gina M. Raimondo, in her official capacity as Secretary of Commerce, Dr. James Olthoff,[1] in his official capacity as Director of the National Institute for Standards and Technology, and The National Institute of Standards and Technology (NIST);

To date, there have been no intervenors or amici that have participated in this case.

(B) **Rulings Under Review.**

The rulings that were under review on appeal were the District Court's Memorandum Opinion and the District Court's accompanying Order (ECF Doc.. Nos. 22, 23) dismissing Plaintiffs-Appellants' claims for lack of standing, both of which the District Court (McFadden, J.) entered on August 2, 2022. See Appendix at A15 and A14 respectively. The ruling under review on Petition for Rehearing En Banc is the appeal panel's decision of October 3, 2023.

On October 17, 2022, the rulings of the District Court under review were filed electronically with this Court by Appellants.

(C) **Related Cases.**

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

[1] Dr. Olthoff, an originally named defendant, has been replaced as Director of NIST by Dr. Laurie E. Locascio.

Respectfully submitted,

s/ Mick G. Harrison
Mick G. Harrison, Attorney at Law (#55038)
520 S. Walnut Street, #1147
Bloomington, IN 47402
Tel. 812-361-6220
Fax 812-233-3135
Eml. mickharrisonesq@gmail.com

DISCLOSURE STATEMENT

In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ARCHITECTS & ENGINEERS FOR 9/11 TRUTH, *et al.*,	)	
Plaintiffs-Appellants,	)	
v.	)	Case No.: 22-5267
GINA RAIMONDO, in her official capacity as Secretary of Commerce, *et al.*,	)	
Defendants-Appellees.	)	

APPELLANTS'/PETITIONERS' CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Certificate required by Circuit Rule 26.1:

I, the undersigned, counsel of record for all Appellants, certify that to the best of my knowledge and belief, there are no Appellants which are companies that issue stock or that have parent companies, subsidiaries, affiliates, or companies which own at least 10% of any stock issued by any Appellant, and none of the Appellants have any outstanding securities in the hands of the public.

All of the Appellants except one are individuals. Appellant Architects & Engineers for 9/11 Truth is a nonprofit corporation that does not issue stock.

Architects & Engineers for 9/11 Truth, Inc. (AE911Truth) is a 501(c)(3) non-profit organization of architects, engineers, and affiliates dedicated to

establishing the truth about the events of September 11, 2001. It pursues its mission by conducting research and educating the public about the scientific evidence related to the destruction of three World Trade Center towers on 9/11 and by working with 9/11 victims' families and other concerned citizens and groups to advocate for a new investigation. AE911Truth represents more than 3,000 architects and engineers who have signed its petition calling upon the U.S. Congress to open a new investigation.

These representations are made in order that judges of this Court may determine the need for recusal.

Respectfully submitted,

s/ Mick G. Harrison
Mick G. Harrison, Attorney at Law (#55038)
520 S. Walnut Street, #1147
Bloomington, IN 47402
Tel. 812-361-6220
Fax 812-233-3135
Eml. mickharrisonesq@gmail.com