No. 23-

IN THE

# Supreme Court of the United States

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

*Petitioners,*

*v.*

GINA M. RAIMONDO, IN HER OFFICIAL CAPACITY AS SECRETARY OF COMMERCE, *et al.*,

*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DC CIRCUIT**

## PETITION FOR A WRIT OF CERTIORARI


MICK G. HARRISON,
ATTORNEY AT LAW
520 S. Walnut Street,
Suite 1147
Bloomington, IN 47402

*Of Counsel*

JOHN M. CLIFFORD
*Counsel of Record*
CLIFFORD & GARDE, LLP
815 Black Lives Matter Plaza, NW,
Suite 4082
Washington, D.C. 20006
(202) 280-6115
jclifford@cliffordgarde.com

*Counsel for Petitioners*



327894

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

## QUESTIONS PRESENTED

A. Did the United States Court of Appeals for the District of Columbia Circuit Erroneously Nullify the Doctrine of Organizational Standing, by Conflating It with Informational Standing, Contrary to the Supreme Court's Decision in *Havens Realty Corp. v. Coleman*?

B. Did the United States Court of Appeals for the District of Columbia Circuit Substantially Undercut the Doctrine of Informational Standing in Erroneously Deciding, in a Manner that Conflicts with or at Minimum Circumvents Decisions of the Supreme Court, that None of the Plaintiffs, including 9/11 Victim Family Members, Demonstrated Article III Informational Standing Because, in the Court of Appeals' View, Plaintiffs' Reading of the National Construction Safety Team Act as Requiring Agency Reports on Major Building Failures to Be Done Honestly and in Good Faith Is "Not Plausible?"

C. Did the United States Court of Appeals for the District of Columbia Circuit Substantially Undercut the Doctrine of Informational Standing in Erroneously Deciding that None of the Plaintiffs Demonstrated Article III Informational Standing, to Challenge a Scientifically Baseless and False Agency Report, on the Ground that Plaintiff's Own Investigation Provided Them the Truthful Information About the Collapse of World Trade Center Building 7 on 9/11 that the Agency, Via Its False Report, Had Denied Them?

D. Did the United States Court of Appeals for the District of Columbia Circuit Erroneously Interpret Article III Standing Law, Thereby Unconstitutionally Limiting Citizens' Constitutional Right of Access to the Courts and Severely Hindering the Ability of the Judicial Branch to Perform Its Constitutional and Critical Role of Oversight of Agency Abuses of Power?

## LIST OF PARTIES

Petitioners, who were Plaintiffs-Appellants below, are: Architects & Engineers for 9/11 Truth (AE), 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.

The Respondents, who were Defendants-Appellees below, are: Gina M. Raimondo, in her official capacity as Secretary of Commerce, Dr. James Olthoff, in his official capacity as Director of the National Institute for Standards and Technology (NIST), and NIST. Dr. Olthoff, an originally named defendant, has been replaced as Director of NIST by Dr. Laurie E. Locascio.

## CORPORATE DISCLOSURE STATEMENT

Architects & Engineers for 9/11 Truth is a not-for-profit corporation which does not have stockholders. All other Petitioners are individuals.

## LIST OF PRIOR DIRECTLY RELATED PROCEEDINGS

The United States Court of Appeals for the District of Columbia Circuit, in *Architects & Engineers for 9/11 Truth, et al. v. Gina Raimondo, in Her Official Capacity as Secretary of Commerce,* Case No. 22-5267, issued its Opinion and its Judgment, affirming the District Court's decision dismissing Plaintiffs-Appellants claims, on October 3, 2023. *See* App. 1a - 9a.

The United States District Court for the District of Columbia, in *Architects & Engineers for 9/11 Truth, et al. v. Gina Raimondo, in Her Official Capacity as Secretary of Commerce*, Case No. 1:21-cv-02365 (TNM), issued its Order dismissing Petitioners-Plaintiffs-Appellants' claims for lack of standing, on August 2, 2022. *See* App. 10a - 27a.

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## CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS

The United States Court of Appeals for the District of Columbia Circuit, in *Architects & Engineers for 9/11 Truth, et al. v. Gina Raimondo, in Her Official Capacity as Secretary of Commerce,* Case No. 22-5267, issued its Opinion and its Judgment, affirming the District Court's decision dismissing Plaintiffs-Appellants claims, on October 3, 2023. *See* App. 1a - 9a. This opinion was not officially reported. This opinion is unofficially reported by Casetext at: https://casetext.com/case/architects-engrs-for-911-truth-v-raimondo-1?ssr=false&resultsNav=false&tab=keyword&jxs=dccir

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## STATEMENT OF JURISDICTION

The United States Court of Appeals for the District of Columbia Circuit issued its opinion, affirming the District Court's decision, on October 3, 2023. The Court of Appeals denied Appellants Petition for Rehearing *En Banc* on December 6, 2023. *See* App. 28a - 29a. Petitioners filed the instant Petition on March 5, 2024, within 90 days of the rehearing denial decision of the Court of Appeals.

28 U.S.C. § 1254(1) is the statutory provision which confers on this Court jurisdiction to review on a W*rit of Certiorari* the judgment and orders of the United States Court of Appeals for the District of Columbia Circuit in question in this case.

No special notifications pursuant to Rule 29.4(b) or (c) are required.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. III, § 2, cl. 1. *See* App. 30a.

National Construction Safety Team Act, 15 U.S.C. § 7307. *See* App. 30a - 31a.

Informational Quality Act (aka Data Quality Act), 44 U.S.C. § 3516. *See* App. 31a.

Informational Quality Act (aka Data Quality Act), 44 U.S.C. § 3516, note. *See* App. 31a - 32a.

## STATEMENT OF THE CASE

### A. Jurisdiction of the District Court

The District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. §1346(a)(2) (United States as defendant). Plaintiffs brought this action under the Administrative Procedures Act (APA), 5 U.S.C. §§ 702, 706, and the Information Quality Act (IQA), Section 515 of Public Law 106-554 (aka Data Quality Act), against the government defendants

including NIST for arbitrary and capricious agency action and action contrary to the requirements of the IQA, Office of Management and Budget (OMB) regulations and NIST Guidelines promulgated and issued to implement the IQA. Plaintiffs alleged that NIST issued a scientifically baseless and false report that failed to comply with the IQA, OMB requirements, and the Agency's own informational quality standards.

### B. Jurisdiction of the Court of Appeals

The Court of Appeals had appellate jurisdiction pursuant to 28 U.S.C. § 1291. Petitioners appealed to the United States Court of Appeals for the District of Columbia Circuit from the United States District Court for the District of Columbia's final Memorandum Opinion and Order, both entered on August 2, 2022, which dismissed all of Petitioners' claims in the action. *See* App. 10a - 27a. Plaintiffs timely filed their Notice of Appeal within 60 days, on October 3, 2022. Court of Appeals Joint Appendix (CA JA) at A12.

### C. Relevant Procedural History

Plaintiffs submitted their Request for Correction (RFC) of NIST's Final Report on the Collapse of World Trade Center Building 7 (WTC 7 Report) under the IQA to NIST on April 15, 2020, asserting *inter alia* that NIST violated NIST's Information Quality Standards (IQS) requirements of objectivity, utility, transparency, and reproducibility. CA JA A29, FAC at ¶ 111.

The Initial Decision by NIST denying Plaintiffs' RFC was issued on August 28, 2020. CA JA A29, FAC

at ¶ 114. Plaintiffs' administrative Appeal of the Initial Decision regarding the RFC to NIST's WTC 7 Report was submitted to NIST on September 28, 2020. CA JA A29, FAC at ¶ 115.

Plaintiffs submitted to NIST on June 1, 2021, a Request for Issuance of Final Decision, and Alternative Notice of Intent to Sue due to NIST's eight-month delay in deciding Plaintiffs' Appeal. CA JA 116. On June 30, 2021, NIST issued its decision denying Plaintiffs' administrative Appeal of NIST's denial of Plaintiffs' RFC. CA JA A29, FAC at ¶ 117.

All the Plaintiffs were Requestors in the RFC submitted to NIST under the IQA and were parties to the subsequent administrative appeal of NIST's denial of that RFC. CA JA A29, FAC at ¶ 8.

Plaintiffs, who include several family members of victims of the September 11, 2001 (9/11) terrorist attacks at the World Trade Center (WTC), several architects and engineers, and the nonprofit organization AE, filed this action for declaratory and injunctive relief on September 7, 2021, and filed their First Amended Complaint (FAC) on January 31, 2022. District Court Docket, CA JA A3. In Plaintiffs FAC, Plaintiffs presented ten claims for declaratory and injunctive relief under the APA, 5 U.S.C. §§ 702, 706, the IQA, Section 515 of Public Law 106-554, and the National Construction Safety Team Act (NCSTA). CA JA A29.

The FAC was filed by eight family members of people killed on September 11, 2001, by ten architects and structural engineers, and by the nonprofit organization

AE. CA JA A29, FAC ¶¶ 4, 8-67. The FAC alleged that NIST, a federal agency, took actions that were arbitrary and not in accordance with law, including failures to comply with the IQA, OMB's IQA regulations, and NIST's own IQA information quality standards. CA JA, A29 (FAC).

After Plaintiffs filed their FAC, Defendants filed a Motion to Dismiss on March 11, 2022, ECF Doc. 17, CA JA at A3 (Docket Entries, p. 9). On April 11, 2022, Plaintiffs filed their Memorandum in Opposition to Defendants' Motion to Dismiss. ECF Doc 19. CA JA at A3 (Docket Entries, p. 9). On May 2, 2022, Defendants filed their reply on motion to dismiss. ECF Doc. 21. CA JA at A3 (Docket Entries, p. 9).

The United States District Court for the District of Columbia, in *Architects & Engineers for 9/11 Truth, et al. v. Gina Raimondo, in Her Official Capacity as Secretary of Commerce*, Case No. 1:21-cv-02365 (TNM), issued its Order dismissing Petitioners-Plaintiffs-Appellants' claims for lack of standing, on August 2, 2022. *See* App. 10a - 27a.

The United States Court of Appeals for the District of Columbia Circuit, in *Architects & Engineers for 9/11 Truth, et al. v. Gina Raimondo, in Her Official Capacity as Secretary of Commerce,* Case No. 22-5267, issued its Opinion and its Judgment, affirming the District Court's decision dismissing Plaintiffs-Appellants claims, on October 3, 2023. *See* App. 1a - 9a.

The Court of Appeals denied Appellants Petition for Rehearing *En Banc* on December 6, 2023. *See* App. 28a - 29a.

Petitioners filed the instant Petition on March 5, 2024, within 90 days of the rehearing denial decision of the Court of Appeals.

**D. Material Facts**

The horrendous attacks of 9/11 were the worst attacks on American soil since Pearl Harbor, and perhaps the worst such attacks in the history of the United States. It is well known that on 9/11, on the morning of the terrorist attacks in New York City, the two WTC towers (WTC 1 and WTC 2) completely and rapidly collapsed after being struck by airplanes, resulting in the tragic deaths of over two thousand people, including first responders and citizens working in and visiting the WTC. This rapid collapse of WTC 1 and WTC 2 exacerbated the already tragic loss of the passengers and crews on the hijacked aircraft. 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. CA JA at A29, FAC ¶¶ 112-113, 191, 218-233, 269, 271-273, 279, 300. NIST was charged with investigating and reporting the cause of WTC 7's collapse. NIST was required by law to generate the NIST WTC 7 Report under the NCSTA (Pub. Law 107-231, 15 U.S.C. § 7301 et seq.). The NCSTA, 15 U.S.C. § 7307, mandates the issuance of a final public report following a NIST investigation of a building collapse subject to the Act.

NIST in November 2008 issued its findings and conclusions regarding the collapse of WTC 7 in its WTC 7 Report. CA JA at A29, FAC ¶ 89. NIST, through the NIST WTC 7 Report 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. CA JA at A29, FAC ¶ 99. NIST's WTC 7 Report was based on purported computer modelling of WTC 7's collapse but NIST refused to release its computer modelling to the public or independent scientists for attempts at verification and replication. CA JA at A29, FAC ¶¶ 24, 275, 283.

NIST's conclusion -- that fires initiated by debris damage from the collapse of one of the WTC towers, the North Tower, WTC 1, caused the collapse of WTC 7 -- was simply incompatible with the then-available, and now-available, scientific and witness evidence. Plaintiffs submitted to NIST, via their RFC under the IQA, a scientifically and logically irrefutable case based on careful documentation of dispositive evidence clearly showing that the NIST WTC 7 Report's conclusion and rationale -- that the collapse of WTC 7 on 9/11 was due to fires and not the use of explosives and incendiaries -- was more than just wrong, it was factually inaccurate, methodologically unreliable, scientifically unsound, illogical, and biased. CA JA at A29, FAC ¶ 113.

Some of the Plaintiffs are family members of those who died in the 9/11 attacks at the WTC, CA JA at A29, FAC ¶¶ 27-50, 52, and some are professional architects and engineers, CA JA at A29, FAC ¶¶ 54-67. Plaintiff AE is a

non-profit organization, incorporated in California. Since its founding in 2006, AE has conducted an independent, multi-year scientific investigation into the causes of the destruction of WTC 7 as well as the destruction of the WTC 1 and WTC 2. CA JA at A29, FAC ¶¶ 9-26; CA JA at A116, FAC Exhibit 1, Declaration of Roland Angle, current Chairman of the Board of AE.

NIST's violations of the IQA, the OMB Guidelines, and NIST's IQS significantly and adversely affect Plaintiffs. CA JA at A116, FAC Exhibit 1, Declaration of Roland Angle; CA JA at A121, FAC Exhibit 2, Declaration of Robert McILvaine; and CA JA at A123, FAC Exhibit 3, Declaration of Ronald Brookman. *And see, e.g.*, CA JA at A29, FAC ¶¶ 9-26; FAC ¶¶ 41-49; FAC ¶¶ 55-67.

## ARGUMENT ON REASONS FOR ALLOWANCE OF THE WRIT

### A. The United States Court of Appeals for the District of Columbia Circuit Erroneously Nullified the Doctrine of Organizational Standing, by Conflating It with Informational Standing, Contrary to the Supreme Court's Decision in *Havens Realty Corp. v. Coleman*

The D.C. Circuit's decision below conflates the requirements for informational standing with the requirements for organizational standing, in a manner that effectively makes the well-established doctrine of organizational standing a nullity. To have organizational standing, a non-profit organization plaintiff need only show that a defendant's actions substantially interfered with its performance of its non-profit mission. *Havens*

*Realty Corp. v. Coleman*, 455 U.S. 363, 378-379 (1982). In *Havens*, a nonprofit organization was suing, as here, based on a defendant's distribution of false information harmful to its nonprofit mission.

> In determining whether HOME has standing under the Fair Housing Act, we conduct the same inquiry as in the case of an individual: Has the plaintiff "'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation *379 of federal-court jurisdiction"? *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S., at 261 (emphasis omitted), quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962). In the instant case, HOME's complaint contained the following claims of injury to the organization:[19]
>
> [19] We have previously recognized that organizations are entitled to sue on their own behalf for injuries they have sustained. *E. g., Warth v. Seldin*, 422 U.S. 490, 511 (1975).
>
> > "Plaintiff HOME has been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services. Plaintiff HOME has had to devote significant resources to identify and counteract the defendant's [sic] racially discriminatory steering practices." App. 17, ¶ 16.

> If, as broadly alleged, petitioners' steering practices have perceptibly impaired HOME's ability to provide counseling and referral services for low- and moderate-income home seekers, there can be no question that the organization has suffered injury in fact. Such concrete and demonstrable injury to the organization's activities — with the consequent drain on the organization's resources — constitutes far more than simply a setback to the organization's abstract social interests, see *Sierra Club v. Morton*, 405 U.S., at 739. We therefore conclude, as did the Court of Appeals, that in view of HOME's allegations of injury it was improper for the District Court to dismiss for lack of standing the claims of the organization in its own right.

*Id.* The D.C. Circuit decision below decides the organizational standing question contrary to the Supreme Court's decision in *Havens* by imposing an additional requirement to demonstrate organizational standing that the Supreme Court in *Havens* did not require.

> **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]

D.C. Circuit Decision, App. 8a (emphasis added).

The Supreme Court's decision in *Havens Realty Corp. v. Coleman,* 455 U.S. 363 (1982) dealt not with a government agency, as here, but with a private owner of an apartment complex accused of discriminatory "racial steering" practices effected via dissemination to the public of false information. In finding that the nonprofit plaintiff there had standing, the Supreme Court did not require that the defendant have a duty under law to give out information of the type it was disseminating. The Court in *Havens* only required a showing that the false information being disseminated by the defendant there harmed or interfered with the nonprofit's ability to perform its mission. Here, organizational plaintiff nonprofit AE clearly has organizational standing under the rule in *Havens* because it had to expend more than a quarter of a million dollars of its limited nonprofit resources to rebut the scientifically baseless and false report issued by NIST regarding the cause of the collapse of WTC7 on 9/11, a matter that is central to AE's mission.

The D.C. Circuit's decision below is not only contrary to the Supreme Court's decision in *Havens*, it also reflects an inexplicable dramatic departure from the D.C. Circuit's own precedent, 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 a defendant's actions that harm the organization's mission necessitating expenditures by the nonprofit to counter such harm.

It is not required, in order to have organizational standing, that a plaintiff also meet the requirement for informational standing that the plaintiff was entitled by law to receive information or a report from an agency (or other defendant). The D.C. Circuit clearly erred in holding that Plaintiff AE lacked organizational standing simply because NIST was not required by law to issue a report that comported with AE's view of the facts.

AE did not seek a report that comports with its view of the facts. Rather, AE has insisted that the law requires a report based upon accurate, reliable, and unbiased information, a report that accounts for and does not ignore the abundant evidence of the use of explosives (in a controlled demolition), a report that does not misrepresent to the public that WTC 7's collapse was due entirely to fires in the building. CA JA at A29, FAC ¶ 99.

NIST's WTC 7 Report was purportedly based on computer modelling of WTC 7's collapse, but NIST refused to release its computer modelling to the public or independent scientists for attempts at verification and replication. NIST's report was so shoddy scientifically, as detailed in AE's RFC and administrative appeal (and as alleged in the FAC), that it would not have satisfied the standards under federal law, established in Fed. R. Evid.

702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), for admissibility of expert testimony.

AE had to spend hundreds of thousands of dollars to publicly rebut NIST's scientifically baseless and false WTC 7 report, via AE's own commissioned academic scientific analysis. This substantial expenditure of AE's limited resources was not required simply because NIST "did not agree" with Plaintiff's view of the facts, but because the NIST report was false, apparently knowingly so, had no good faith basis in science or fact, and addressed a matter of grave public importance at the heart of AE's mission.

Plaintiffs standing argument is not anchored on the fact that NIST distributed a report with the wrong conclusions but rather that NIST issued a legally nonconforming report, i.e. a report that violated the standards established by the IQA, OMB, and NIST's own regulations promulgated thereunder in such extreme fashion, by being scientifically baseless and false, that NIST's report cannot be deemed to constitute the analysis of the likely cause of WTC 7's collapse that the NCSTA requires.

The Court of Appeals' determination that NIST's only statutory obligation is to issue "a report" without regard to the nature of the report's contents or informational quality conflicts with the decisions of the Supreme Court holding that statutes addressing the same subject must be read in *pari materia*. *See, e.g., United States v. Stewart*, 311 U.S. 60, 64 (1940) ("all acts in *pari materia* are to be taken together, as if they were one law").

When the requirement of the NCSTA that NIST conduct an investigation and publish a public report providing analysis of the likely cause of the building collapse is read in *pari materia* with the IQA (and NIST's IQS issued thereunder), the purpose of which is to ensure and promote objectivity, integrity, utility and transparency of information disseminated by a government agency, NIST has a legal obligation not only to disseminate a report analyzing the likely cause of the collapse of WTC 7, but also to ensure that the information contained within the report is objective, truthful, useful, and transparent.

The Court of Appeals concluded Plaintiff was not entitled by law to a report that agreed with AE's view, but under the APA and IQA and the federal law of organizational standing, including *Havens*, that is simply not the issue. If the D.C. Circuit's new interpretation of organizational standing is allowed to stand, there will be no functional difference between informational standing and organizational standing. Organizational standing will become a nullity because any plaintiff who does not already have informational standing, which requires showing a right under law to be given certain information from an agency, will also lack organizational standing under the D.C. Circuit's (new) doctrine. This new D.C. Circuit rule is directly at odds with the Supreme Court's decision in *Havens* that held that an organization that has been forced to divert resources to combat a defendant's unlawful action (apart from the suit challenging that action) has suffered "a concrete and demonstrable injury" for which the organization has standing to sue.

The D.C. Circuit has (previously) recognized this organizational standing rule from *Havens*.

> 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) (emphasis added). *Also see, e.g.*, *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). But the Court of Appeals' decision in the instant case is fundamentally in error in asserting that Petitioner AE lacked standing based on its substantial expenditure for the University of Alaska study. The D.C Circuit's decision (adopting the District Court's and defendant NIST's rationale) clearly is at odds with the Supreme Court's holding in *Havens* because it holds that AE does not have standing based on its expenditures to rebut a report that harmed its mission, even a fraudulent report.

Under the rule for organizational standing explicated in *Havens* by the Supreme Court, whether NIST issued its WTC 7 report per statutory requirement or on its own initiative has no relevance to whether AE's mission was harmed by NIST's issuance of a false report that misled the public. The D.C. Circuit's decision below is not only contrary to the Supreme Court's decision in *Havens*, and contrary to the D.C. Circuit's own prior decisions on organizational standing, it is also contrary to decisions of other Circuits. *See, e.g., Fair Hous. Council of San*

*Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012) (finding organizational standing where the plaintiff responded to allegations of discrimination by starting new education and outreach campaigns targeted at discriminatory roommate advertising); *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 766 (9th Cir. 2018). *Also see, e.g.*, *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 904-05 (2d Cir. 1993).

The Second Circuit in *Ragin* held, on facts analogous to the present case, that, an organization can establish organizational standing by showing a defendant's action that harmed the organization's mission, such as issuance of false information that must be rebutted to further the nonprofit's mission.

> Here, the injury sustained by the OHC as a result of the defendants' advertisements was documented by the trial testimony of Ms. Phyllis Spiro, the deputy director of the OHC. Ms. Spiro testified that the services offered by the OHC included providing information at community seminars about how to fight housing discrimination. Spiro testified that she and her small staff devoted substantial blocks of time to investigating and attempting to remedy the defendants' advertisements. For example, Spiro detailed the steps she took to file the administrative complaint with the SDHR, including identifying the buildings' developers, the marketing agent and the advertising agent, as well as attending a conciliation conference. Spiro also testified that the time she and her co-workers spent on matters related to this case

> prevented them from devoting their time and energies to other OHC matters.

*Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 905 (2d Cir. 1993).

> In *Havens Realty*, the Court also discussed the criteria for an organization to have standing to bring an FHA claim on its own behalf. The Court held that a perceptible impairment of a housing organization's ability to provide counseling and referral services constituted an actionable injury in fact. *See Havens Realty,* 455 U.S. at 379, 102 S.Ct. at 1124 ("[s]uch concrete and demonstrable injury to the organization's activities — with the consequent drain on the organization's resources — constitutes far more than simply a setback to the organization's abstract social interests").

*Id.*

> The district court concluded that the OHC established that its "activities relating to `identify[ing] and counteract[ing]' the Defendants' advertising practices detracted [sic] the attention of OHC staff members from their regular tasks at the OHC." 801 F. Supp. at 1233 (quoting *Havens Realty*, 455 U.S. at 379, 102 S.Ct. at 1124). We agree. Spiro's testimony demonstrated that the OHC was forced to "devote significant resources to identify and counteract" the defendants' advertising practices and did so to the detriment of their

> "efforts to [obtain] equal access to housing through counseling and other referral services." *Havens Realty*, 455 U.S. at 379, 102 S.Ct. at 1124; see also *Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1526 (7th Cir. 1990) ("the only injury which need be shown to confer standing on a fair-housing agency is deflection of the agency's time and money from counseling to legal efforts directed against discrimination"). That some of the OHC staff's time was spent exclusively on litigating this action does not deprive the organization of standing to sue in federal court. *See Saunders*, 659 F. Supp. at 1052. Having decided that the plaintiffs had standing to bring this action, we now proceed to address the merits of this appeal.

*Id.*

NIST's issuance of the scientifically baseless and false 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, as the D.C. Circuit decision erroneously stated, but was to *publicly rebut* the false information published by NIST. The Court of Appeals concluded erroneously that the purpose of this AE expenditure was to "obtain information," when the record clearly reflected that AE's purpose was to rebut false information published by defendant NIST.

Even had AE not incurred this substantial financial cost to rebut NIST's false WTC 7 report, AE would

still have standing because NIST's issuance of the false report substantially interfered with AE's public interest educational mission. That the alleged injury results from the organization's noneconomic interest in promoting its public interest mission does not affect the nature of the injury suffered, *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 263 (1977), and accordingly does not deprive the organization of standing. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 n.20 (1982).

### B. Did the United States Court of Appeals for the District of Columbia Circuit Substantially Undercut the Doctrine of Informational Standing in Erroneously Deciding, in a Manner that Conflicts with or at Minimum Circumvents Decisions of the Supreme Court, that None of the Plaintiffs, including 9/11 Victim Family Members, Demonstrated Article III Informational Standing Because, in the Court of Appeals' View, Plaintiffs' Reading of the National Construction Safety Team Act as Requiring Agency Reports on Major Building Failures to Be Done Honestly and in Good Faith Is Not Plausible

This case involves questions of great public importance. One of those exceptionally important questions is whether the D.C. Circuit's troublesome holding will become the law of the land -- the holding that if an agency simply issues a report mandated by Congress, regardless of its content or integrity, then the public gets all it is entitled to, even if the agency report is fraudulent and misleads Congress and the public. In addition to the public policy significance of avoiding that slippery and dangerous slope,

the D.C. Circuit's decision below works a troublesome circumvention of Supreme Court precedent that in deciding informational standing, the *plaintiff's* reading of the statute at issue controls.

Petitioners here read the NCSTA as requiring the agency, NIST, to publicly issue an honest good faith agency report as to the likely technical cause of a building's collapse. Agency issuance of a scientifically baseless and knowingly false report does not satisfy the requirements of the NCSTA. Plaintiffs submit that their reading of the Act is, at minimum, plausible. It is the Agency's contrary reading, adopted below by the Court of Appeals and the District Court, that is not plausible.

The rule adopted below by the D.C. Circuit is that citizens get all the information they are entitled to when an agency simply issues a report, even if that report, required by statute, is scientifically baseless and knowingly false. The D.C. Circuit in its decision below affirming the District Court's dismissal of Plaintiff's claims on a motion to dismiss, without an evidentiary hearing, trial, or even summary judgment motions, erroneously, and contrary to well-established law, fails to accept Plaintiffs' clear, detailed, and specific FAC allegations that NIST's WTC 7 report is scientifically baseless, false, and fraudulent. Both courts below inexplicably misconstrued Plaintiffs as having conceded that NIST issued a report including an analysis of the likely cause of WTC7's collapse when Plaintiffs were painfully explicit and detailed in asserting that NIST failed to do so because NIST's report was scientifically baseless and knowingly false.

This D.C. Circuit decision amounts to circumvention of well-established precedent including that, in deciding informational standing, it is the *plaintiff's* reading of the statute providing a right to information that controls and, for purposes of a motion to dismiss, either the complaint allegations are taken as true, or the facts alleged in declarations submitted by plaintiffs are taken as true, or the plaintiffs are provided an appropriate means of proving up their fact allegations prior to dismissal of their claims for lack of standing.

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).

The Supreme Court has also made clear that the determination of a plaintiff's informational standing must be based on the *plaintiff's* reading of the statute.

> Article III, of course, limits Congress' grant of judicial power to "cases" or" controversies." That limitation means that respondents must show, among other things, an "injury in fact" … . In our view, respondents here have suffered a genuine "injury in fact."
>
> The "injury in fact" that respondents have suffered consists of their inability to obtain information … **that, on respondents' view of the law, the statute requires that AIPAC make public**. There is no reason to doubt their

> claim that the information would help them (and others to whom they would communicate it) … Respondents' injury consequently seems concrete and particular. Indeed, this Court has previously held that a plaintiff suffers an "injury in fact" when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute. *Public Citizen v. Department of Justice*, 491 U.S. 440, 449 (1989) … . *See also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-374 (1982) (deprivation of information about housing availability constitutes "specific injury" permitting standing).

*FEC v. Akins*, 524 U.S. 11, 20-21 (1998). The D.C. Circuit also acknowledges this principle. "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. … ." App. 6a.

The Court of Appeals here, however, 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." D.C. Circuit Decision, App. 6a. But in order to draw such a conclusion, the Court of Appeals here had to refuse to credit Plaintiffs' clear, detailed, and specific allegations that NIST's WTC 7 Report was scientifically baseless and knowingly false, and ignore Plaintiff's clear request for relief in the form of a new report that was not false and had scientific integrity, and then adopt the pretense that what Plaintiffs sought as

a remedy was that NIST issue a report that agreed with Plaintiffs' views.

The D.C. Circuit's decision is therefore erroneous in several ways. First, 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. NIST's issuance of a scientifically baseless and false report not prepared in good faith does not provide an analysis of the likely technical cause or causes of the collapse of WTC 7. NIST's report is knowingly misleading as to that cause.

The D.C. Circuit is also in error because Petitioners' reading of the NCSTA as requiring an honest good faith report and not a knowingly false report is not only plausible, it is manifestly correct. 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 D.C. Circuit's reading, which effectively deems a fraudulent report by an agency to satisfy a mandate from Congress, that is implausible.

### C. The United States Court of Appeals for the District of Columbia Circuit Substantially Undercut the Doctrine of Informational Standing in Erroneously Deciding that None of the Plaintiffs Demonstrated Article III Informational Standing, to Challenge a Scientifically Baseless and False Agency Report, on the Ground that Plaintiff's Own Investigation Provided Them the Truthful Information About the Collapse of World Trade Center Building 7 on 9/11 that the Agency, Via Its False Report, Had Denied Them

The D.C. Circuit decision misapprehended the law and conflicts with decisions of the Supreme Court, including *FEC v. Akins*, 524 U.S. 11, 21, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998) and *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989) regarding informational standing.

The D.C. Circuit 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." Decision at 3, *See* App. 6a. This statement by the Court of Appeals reflects a basic misunderstanding of the law regarding informational standing.

Decisions of the Supreme Court 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). These

decisions do not impose any condition or qualification relating to whether the plaintiff has been able to obtain relevant information from other sources. The D.C. Circuit in prior decisions has acknowledged this Supreme Court precedent.

> 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); s*ee 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 a congressionally mandated report that actually provided an analysis of the real likely technical cause of WTC 7's collapse.

AE's mission to educate the 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 informational standing 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 NCSTA or the IQA, just because Petitioner AE and its co-petitioners have been industrious enough to do their own investigation.

### D. The United States Court of Appeals for the District of Columbia Circuit's Erroneous Interpretation of Article III Standing Law Unconstitutionally Limits Citizens' Constitutional Right of Access to the Courts and Severely Hinders the Ability of the Judicial Branch to Perform Its Constitutional and Critical Role of Oversight of Agency Abuses of Power

The Court of Appeal's decision below that effectively holds 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 if 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.

The D.C. Circuit's decision and rationale would insulate blatantly lawless action from judicial review via an erroneous and dangerously misguided view of standing law. But in order to be able to perform their check and balance judicial oversight role in our separation of powers constitutional scheme, the courts always have jurisdiction to review and strike down blatantly lawless agency action. Even in circumstances where jurisdiction is otherwise deemed to be lacking, the courts retain jurisdiction to review and strike down agency action contrary to a statutory mandate. *See Bowen v. Michigan Academy of*

*Family Physicians*, 476 U.S. 667 (1986); *Leedom v. Kyne*, 358 U.S. 184 (1958).

> This Court cannot lightly infer that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers. Cf. *Harmon* v. *Brucker*, 355 U.S. 579; *Stark* v. *Wickard*, 321 U.S. 288; *School of Magnetic Healing* v. *McAnnulty*, 187 U.S. 94.
>
> Where, as here, Congress has given a "right" to the professional employees it must be held that it intended that right to be enforced, and "the courts . . . encounter no difficulty in fulfilling its purpose." *Texas New Orleans R. Co.* v. *Railway Clerks, supra*, at 568.

*Leedom v. Kyne*, 358 U.S. 184, 190-91 (1958).

> In undertaking the comprehensive rethinking of the place of administrative agencies in a regime of separate and divided powers that culminated in the passage of the Administrative Procedure Act (APA), 5 U.S.C. § 551-559, 701-706, the Senate Committee on the Judiciary remarked:
>
> "Very rarely do statutes withhold judicial review. It has never been the policy of Congress to prevent the administration of its own statutes from being judicially confined to the scope of authority granted or to the objectives specified. Its policy could not be otherwise, for in such a case statutes would in effect be blank checks

> drawn to the credit of some administrative officer or board." S. Rep. No. 752, 79th Cong., 1st Sess., 26 (1945).
>
> Accord, H.R. Rep. No. 1980, 79th Cong., 2d Sess., 41 (1946). The Committee on the Judiciary of the House of Representatives agreed that Congress ordinarily intends that there be judicial review, and emphasized the clarity with which a contrary intent must be expressed:
>
> "The statutes of Congress are not merely advisory when they relate to administrative agencies, any more than in other cases. To preclude judicial review under this bill a statute, if not specific in withholding such review, must upon its face give clear and convincing evidence of an intent to withhold it. The mere failure to provide specially by statute for judicial review is certainly no evidence of intent to withhold review." *Ibid.*
>
> Taking up the language in the House Committee Report, Justice Harlan reaffirmed the Court's holding in *Rusk* v. *Cort*, 369 U.S. 367, 379-380 (1962), that "only upon a showing of `clear and convincing evidence' of a contrary legislative intent should the courts restrict access to judicial review." *Abbott Laboratories* v. *Gardner*, 387 U.S., at 141 (citations omitted).

*Bowen v. Mich. Academy of Family Physicians*, 476 U.S. 667, 670-71 (1986). But in order for the courts to exercise

their oversight authority as a check on agency lawlessness or abuse of power, via judicial review, some citizen must have standing to bring that abuse or lawless agency action to the courts' attention.

The constitutional right of access to the courts has long been recognized.

> Decisions of this Court have grounded the right of access to courts in the Article IV Privileges and Immunities Clause, *Chambers v. Baltimore & Ohio R. Co.,* 207 U.S. 142, 148, 28 S.Ct. 34, 52 L.Ed. 143 (1907); *Blake v. McClung,* 172 U.S. 239, 249, 19 S.Ct. 165, 43 L.Ed. 432 (1898); *Slaughter–House Cases,* 16 Wall. 36, 79, 21 L.Ed. 394 (1873), the First Amendment Petition Clause, *Bill Johnson's Restaurants, Inc. v. NLRB,* 461 U.S. 731, 741, 103 S.Ct. 2161, 76 L.Ed.2d 277 (1983); *California Motor Transport Co. v. Trucking Unlimited,* 404 U.S. 508, 513, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972), the Fifth Amendment Due Process Clause, *Murray v. Giarratano,* 492 U.S. 1, 11, n. 6, 109 S.Ct. 2765, 106 L.Ed.2d 1 (1989) (plurality opinion); *Walters v. National Assn. of Radiation Survivors,* 473 U.S. 305, 335, 105 S.Ct. 3180, 87 L.Ed.2d 220 (1985), and the Fourteenth Amendment Equal Protection, *Pennsylvania v. Finley,* 481 U.S. 551, 557, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987), and Due Process Clauses, *Wolff v. McDonnell,* 418 U.S. 539, 576, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); *Boddie v. Connecticut,* 401 U.S. 371, 380–381, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971).

*Christopher v. Harbury*, 536 U.S. 403, 415, nt. 12 (2002).

The right to sue and defend in the courts "is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship." *Chambers v. Baltimore & Ohio R.R.*, 207 U.S. 142, 148 (1907). The right protects the ability to get into court. *See, e.g.*, *Ex parte Hull*, 312 U.S. 546 (1941). The right also ensures that such access be "adequate, effective, and meaningful." *Bounds v. Smith*, 430 U.S. 817, 822 (1977).

Without the ability to access the courts, "all of us-prisoners and free citizens alike would be deprived of the first-and often the only-'line of defense' against constitutional violations." *Lewis v. Casey*, 518 U.S. 343, 406 (1996), Justice Stevens dissenting, *citing Bounds v. Smith*, 430 U. S. 817, 828 (1977); *Wolff v. McDonnell*, 418 U. S. 539, 579 (1974); *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971). The D.C. Circuit's adoption in its decision below of a draconian view of organizational and informational standing requirements effectively obstructs and frustrates the exercise of citizens' constitutional right of access to the courts.

## CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Supreme Court of the United States grant this Petition for Writ of Certiorari and clarify the applicable law for the nation's courts on these important questions regarding citizens' Article III standing to seek judicial remedies when an agency of the Executive Branch abuses its authority and engages in blatantly lawless action.

Respectfully submitted,

MICK G. HARRISON,
ATTORNEY AT LAW
520 S. Walnut Street,
Suite 1147
Bloomington, IN 47402

*Of Counsel*

JOHN M. CLIFFORD
*Counsel of Record*
CLIFFORD & GARDE, LLP
815 Black Lives Matter Plaza, NW,
Suite 4082
Washington, D.C. 20006
(202) 280-6115
jclifford@cliffordgarde.com

*Counsel for Petitioners*

# APPENDIX

## TABLE OF APPENDICES

**APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, FILED OCTOBER 3, 2023**

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.*

*Appendix A*

**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.

*Appendix A*

**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.

*Appendix A*

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

**APPENDIX B — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FILED AUGUST 2, 2022**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:21-cv-02365 (TNM)

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

*Plaintiffs,*

v.

GINA M. RAIMONDO, IN HER OFFICIAL
CAPACITY AS SECRETARY OF COMMERCE, *et al.*,

*Defendants.*

August 2, 2022, Decided;
August 2, 2022, Filed

**MEMORANDUM OPINION**

Eighteen individuals and one organization claim that a government agency has incorrectly reported why a World Trade Center (WTC) building collapsed on 9/11. These claims echo their similar allegations that this Court dismissed two years ago for lack of standing. And one year ago, the Southern District of New York likewise dismissed similar claims from some of these Plaintiffs for lack of standing.

Not much changes here. Although Plaintiffs' claims look different, they suffer from the same infirmities as before. The Court will dismiss their claims for lack of standing.

**I.**

Everyone knows that the Twin Towers collapsed on September 11, 2001. Less known is that a nearby 47-story building, known as WTC 7, collapsed later that day "without having been struck by an aircraft." Am. Compl. (Compl.) ¶ 93, ECF No. 14. In November 2008, an agency in the Department of Commerce (the Department) called the National Institutes of Standards and Technology (NIST) released three reports about the collapse of WTC 7 (collectively, the WTC 7 Report or the Report).[1] NIST concluded that debris from the collapse of one Tower ignited fires in WTC 7, generating so much heat that a structural support inside the building collapsed. *See* Compl. ¶ 126. Plaintiffs disagree. They believe that WTC 7 collapsed not from fire but from a "controlled demolition[,]" *id.* ¶ 94, involving "pre-placed explosives and/or incendiaries" in the building, *id.* ¶ 12.

One Plaintiff is Architects & Engineers for 9/11 Truth (Architects), a California nonprofit whose mission is "to establish the full truth surrounding the events of [9/11]." *Id.* ¶ 10. Architects seeks to educate the public about the causes of the collapse and "has made hundreds of public

1. Links to these reports are available at https://www.nist.gov/world-trade-center-investigation/study-faqs/wtc-7-investigation.

presentations" to show that "pre-placed explosives and/or incendiaries" destroyed the WTC buildings. *Id.* ¶ 12. Eight Plaintiffs are relatives of those who died on 9/11, *see id.* ¶ 27-52, though the collapse of WTC 7 "is not known to have directly caused the death of any" Plaintiff's family member, *id.* ¶ 123. The other ten Plaintiffs are engineers and architects who have studied the 9/11 collapses. *See id.* ¶¶ 54-67.

The legal background for this dispute begins with the Information Quality Act (IQA), *see* 44 U.S.C. § 3516 note, and then trickles downward into several agency regulations. Passed in 2001, the IQA directed the Office of Management and Budget (OMB) to issue guidelines to federal agencies "for ensuring and maximizing the quality, objectivity, utility, and integrity of information" published by each agency. *Id.* Congress imposed some requirements for these guidelines. As relevant here, OMB must require each agency to issue its own guidelines about information it publishes. *See id.* Each agency must also "establish administrative mechanisms allowing affected persons to seek and obtain correction" of any agency-published information that did not comply with the agency's own guidelines. *Id.*

OMB dutifully promulgated its guidelines in 2002. *See* Guidelines, 67 Fed. Reg. 8452 (Feb. 22, 2002). The Department followed suit later that year and delegated to its agencies the establishment of administrative mechanisms for IQA corrections. *See* Guidelines, 67 Fed. Reg. 62,685, 62,687 (Oct. 8, 2002).

NIST complied and issued guidelines of its own. *See* Mot. to Dismiss (MTD), Ex. A, ECF No. 17-2. These guidelines set forth an internal procedure for the review of NIST-published information, including peer reviews and stricter quality controls for information considered "influential." *Id.* at 13.[2] The guidelines also included a process for corrections to published information. An affected person "may request, where appropriate, timely correction of disseminated information that does not comply" with NIST's guidelines. *Id.* at 15. The requester bears the burden to show "the necessity and type of correction sought," *id.*, and to overcome a presumption that "influential" information is correct, *see id.* Properly submitted requests go to the Chief of the NIST unit responsible for the information. *See id.* at 16. The Chief will investigate and respond within 120 days. *See id.* at 18. A dissatisfied requester may appeal that ruling to NIST's Associate Director for Laboratory Programs, who decides whether to correct the information at issue. *See id.* at 19. His decision is final. *See id.*

Plaintiffs invoked this procedure. In April 2020, they filed a request for correction of NIST's WTC 7 Report and some FAQs about the investigation that NIST had published on its website. *See* Compl. ¶ 111. They challenged NIST's conclusion that fires caused the collapse and argued that "dispositive evidence" showed "the use of explosives and incendiaries" in the building. *Id.* ¶ 113. The relevant NIST Chief denied the request, *see id.* ¶ 114, as did the Associate Director on appeal, *see id.* ¶ 117.

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2. All page numbers refer to the pagination generated by the Court's CM/ECF filing system.

Plaintiffs then sued NIST, its Director, and the Secretary of Commerce (collectively, the Secretary), arguing that NIST violated the Administrative Procedure Act and other federal laws when it denied the request for correction. *See generally* Compl. Across ten claims, Plaintiffs mainly assert that NIST failed in the Report to consider certain evidence or to make correct scientific and methodological judgments. *See generally id.* Plaintiffs also allege that these deficiencies violated the "spirit and purpose" of another federal law, *id.* ¶ 355, and that NIST failed to conform to its own procedural regulations, *see id.* ¶¶ 362-70.

The Secretary moves to dismiss the Complaint on various grounds, including under Rule 12(b)(1) for lack of standing. *See* MTD, ECF No. 17-1. That motion is now ripe for decision.

**II.**

"[T]here is no justiciable case or controversy unless the plaintiff has standing." *West v. Lynch*, 845 F.3d 1228, 1230, 427 U.S. App. D.C. 260 (D.C. Cir. 2017). As the parties seeking federal jurisdiction, Plaintiffs bear the burden to show standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). They "must show (1) [they have] suffered a concrete and particularized injury (2) that is fairly traceable to the challenged action of the defendant[s] and (3) that is likely" redressable by a favorable decision from the Court. *EPIC v. Pres. Advisory Comm'n on Election Integrity*, 878 F.3d 371, 377, 433 U.S. App. D.C. 394 (D.C. Cir. 2017) (cleaned up).

When ruling on a motion to dismiss under Rule 12(b)(1), the Court "assume[s] the truth of all material factual allegations in the complaint and construe[s] the complaint liberally, granting [the] plaintiff the benefit of all inferences that can be derived from the facts alleged." *Am. Nat'l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139, 395 U.S. App. D.C. 316 (D.C. Cir. 2011) (cleaned up). The Court "may consider materials outside the pleadings in deciding whether to grant a motion to dismiss for lack of jurisdiction." *Cal. Cattlemen's Ass'n v. U.S. Fish and Wildlife Serv.*, 315 F. Supp. 3d 282, 285 (D.D.C. 2018) (cleaned up). And the Court treats any documents attached to the Complaint—like Plaintiffs' three declarations attached to this Complaint—"as if they are part of the complaint." *In re Cheney*, 406 F.3d 723, 729, 365 U.S. App. D.C. 387 (D.C. Cir. 2005).

## III.

Plaintiffs allege that they have informational standing. *See* Opp'n to MTD at 16, ECF No. 19 (Opp'n). To have informational standing, Plaintiffs must suffer an informational injury. For that, they must allege (1) that they "[have] been deprived of information" that a statute requires NIST to disclose; and (2) that they suffer, "by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure." *Friends of Animals v. Jewell*, 828 F.3d 989, 992, 424 U.S. App. D.C. 167 (D.C. Cir. 2016). Any informational injury still must meet the traceability and redressability prongs of the traditional standing analysis. *See FEC v. Akins*, 524 U.S. 11, 25, 118 S. Ct. 1777, 141 L. Ed. 2d 10 (1998).

Architects also alleges that it has organizational standing. Organizations must meet the same three requirements as individuals—injury, traceability, and redressability. *See ASPCA v. Feld Ent'mt*, 659 F.3d 13, 24, 398 U.S. App. D.C. 79 (D.C. Cir. 2011).

**A.**

Before applying those principles, however, consider the caselaw previewed above. Suffice it to say, Plaintiffs are familiar with dismissals for lack of standing.

In *Lawyers Committee for 9/11 Inquiry v. Wray*, a provision in an appropriations bill directed the FBI to review recommendations proposed by the 9/11 Commission. *See* 424 F. Supp. 3d 26, 28 (D.D.C. 2020) (*Lawyers' Comm. I*). Represented by the same attorneys as here, the plaintiffs there included Architects and one of this case's individual Plaintiffs. *See id.* They alleged that the Bureau broke the law when it failed to report to Congress about evidence that pre-placed explosives had collapsed the Twin Towers. *See id.* at 29. The plaintiffs alleged that they had informational standing from the FBI's failure to report and that Architects had organizational standing. *See id.* at 30.

This Court held that the plaintiffs lacked informational standing because the appropriations provision did not "mandate the disclosure of any information." *Id.* at 31 (cleaned up). They therefore failed the first requirement for an informational injury. *See id.* The Court also found no organizational standing. Architects suggested

multiple injuries, including a financial interest in a State Department award, expenses for studies and presentations to rebut the Bureau's report, and expenses to fight defamation of the group by agencies. *See id.* at 33. The Court found that these harms stemmed from the deprivation of information, meaning their viability "depend[ed] on the existence of an informational harm," which Architects had not shown. *Id.* at 34. And their resource expenditures were for litigation and advocacy not cognizable for organizational standing. *See id.* at 35. The Court thus dismissed the complaint. *See id.*

Plaintiffs appealed and the D.C. Circuit affirmed. *See Lawyers' Comm. for 9/11 Inquiry v. Wray*, 848 F. App'x 428, 431 (2021) (per curiam) (*Lawyers' Comm. II*). The Circuit held that the appropriations provision said "nothing about disclosure," and thus did not confer a right to information. *Id.* at 430. The Circuit also affirmed this Court's holding that the theories of organizational standing were "part and parcel of the alleged informational injury and thus fail with it." *Id.* at 431 (cleaned up). But in any event, those theories failed the standing analysis. *See id.*

Finally, Architects and two of this case's individual Plaintiffs sued in *Lawyers' Committee for 9/11 Inquiry v. Barr*, No. 19 Civ. 8312, 2021 U.S. Dist. LEXIS 55753, 2021 WL 1143618, at *1 (S.D.N.Y. Mar. 24, 2021), objecting to the U.S. Attorney's Office's inaction to a petition they filed about alleged federal crimes on 9/11. *See* 2021 U.S. Dist. LEXIS 55753, [WL] at *1. The plaintiffs asked the court to order the Office to present the evidence in the petition to a grand jury. *See* 2021 U.S. Dist. LEXIS 55753,

[WL] at *3. Of relevance here, the court dismissed three claims because the relevant statute did not grant a private right sufficient for standing nor did the other asserted injuries—including a reward from the State Department and efforts to combat alleged defamation—meet the requirements for standing. *See* 2021 U.S. Dist. LEXIS 55753, [WL] at *6-*8.

**B.**

Plaintiffs' arguments fare no better here and indeed repackage unsuccessful arguments from those earlier cases.

For starters, they again rely on assertions of informational injury. For instance, the relatives of 9/11 victims say that they might reach "closure" if they had "a more complete picture of what happened on 9/11." Compl. ¶ 46. This case will allow that closure, they say, "[i]f NIST is required to correct its WTC 7 Report." *Id.* ¶ 53. In other words, NIST's allegedly incorrect information keeps them from emotional closure. Likewise for the individual architects and engineers, who "have suffered a special information injury," Opp'n at 22, because NIST's alleged mistakes in the Report have "significantly eroded" their "trust in the research and publishing institutions involved," Compl. ¶ 67. That alleged injury stems, as for the 9/11 relatives, from the information published by NIST. Architects is clearest of all Plaintiffs on its informational injury—the Report "was more harmful to AE's mission than would have been the case if NIST [had] issued no report at all." Compl. ¶ 22; *see also* Opp'n

at 21 (asserting that the Report "denied [Architects] and the other plaintiffs critically important information affecting their individual and organizational interests"). So Plaintiffs come again to this Court with informational injuries.

And yet again, they identify no statute that requires the proposed disclosures. Consider first the IQA. By its terms, that statute required OMB to issue guidance and then other agencies to do likewise. *See* 44 U.S.C. § 3516 note. Nowhere does it require disclosure of information, so Plaintiffs fail the first prong for informational standing. Other courts agree. *See Salt Inst. v. Leavitt*, 440 F.3d 156, 159 (4th Cir. 2006); *Single Stick, Inc. v. Johanns*, 601 F. Supp. 2d 307, 316 (D.D.C. 2009), *aff'd in relevant part on other grounds sub nom. Prime Time Int'l Co. v. Vilsack*, 599 F.3d 678, 389 U.S. App. D.C. 416 (D.C. Cir. 2010).

To Plaintiffs' credit, they do not argue otherwise. They instead point to the National Construction Safety Act (NCST Act), 15 U.S.C. §§ 7301-7313, arguing that it "supplies the basis" for their standing "[w]hether or not" the IQA does. Opp'n at 21.

Passed in 2002, the NCST Act authorizes deployment of a NIST team after a building collapse "that has resulted in substantial loss of life." 15 U.S.C. § 7301(a). After an investigation, the team must issue a public report including "an analysis of the likely technical cause" of the collapse. *Id.* § 7307(1). The report also must contain the team's recommendations for (1) improvements to building standards, (2) changes to evacuation procedures; and

(3) areas of further research. *See id.* § 7307(2)-(4). Any information submitted or received by the team "shall be made available to the public on request," but with some restrictions. *Id.* § 7306(a). The Act shields from disclosure any information exempt under FOIA. *See id.* § 7306(b)(1). More, the agency may withhold information when the NIST Director finds that disclosure "might jeopardize public safety." *Id.* § 7306(d).

Plaintiffs' theory is that NIST violated the NCST Act not because it failed to release a report, but because the WTC 7 Report was "at best an unscientific sham[ ] and likely fraudulent." Opp'n at 21. That is not enough. To assert an informational injury, Plaintiffs must be "deprived of information" required to be disclosed under the Act. *Jewell*, 828 F.3d at 992. Under its plain terms, the NCST Act requires disclosure only of a report on the technical cause of the collapse, among other things. *See* 15 U.S.C. § 7307. Plaintiffs admit that NIST complied with that requirement when it released the WTC 7 Report. *See* Compl. ¶ 89. That admission means that regardless of the Report's accuracy, NIST has disclosed all information required by the statute. As to the Report itself, then, Plaintiffs fail the first requirement for an informational injury.

So too for any information examined by NIST but not included in the final Report. At various points, Plaintiffs allege that NIST should "make public all of its WTC 7 computer modeling(s)," *id.* ¶ 370(D), and other "withheld evidence" that the team apparently examined, Opp'n at 25. To be sure, the NCST Act requires this information

to be available to the public "on request." *See* 15 U.S.C. § 7306(a). Based on that requirement, Plaintiffs say that the NCST Act requires disclosure of the computer models and other evidence used by NIST.[3]

The problem is that under the Act NIST may disclose only information not otherwise exempt under FOIA. *See id.* § 7306(b)(1). Thus, Plaintiffs must use FOIA requests to obtain any investigation information not in the public Report, including the computer models. The NCST Act includes no other request procedure. *See Cole v. Copan*, No. 19-cv-1182, 2020 U.S. Dist. LEXIS 225330, 2020 WL 7042814 (D.D.C. Nov. 30, 2020); *see also Cole v. Copan*, 485 F. Supp. 3d 243, 253 (D.D.C. 2020) (upholding under FOIA the nondisclosure of WTC investigation information that the NIST Director determined would jeopardize public safety if disclosed). Indeed, at least one Plaintiff has filed such requests. *See* Compl. ¶¶ 58-60.

Plaintiffs fail the first prong as to this information if FOIA is their only recourse. FOIA "does not require the disclosure of any specific information to anyone," *Pub. Citizen Health Rsch. Grp. v. Pizzella*, 513 F. Supp. 3d 10, 20 (D.D.C. 2021), and therefore FOIA alone does not help Plaintiffs clear the first hurdle for informational standing, *see EPIC v. USPS*, No. 21-cv-2156, 2022 U.S. Dist. LEXIS 54568, 2022 WL 888183, at *3 (D.D.C. Mar. 25, 2022). The NCST Act neither references nor incorporates any other disclosure regime or requirement.

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3. Plaintiffs never explicitly make this argument, but the Court infers it from Plaintiffs' focus on the NCST Act as "the basis" for their standing, Opp'n at 21, and multiple statements in their brief objecting to the withholding of NIST's modelling data.

Plaintiffs counter that the Court must "adopt Plaintiffs' interpretation" of the relevant statutes. Opp'n at 17. True enough, the Circuit says that a plaintiff must merely allege that "it has been deprived of information that, *on its interpretation*, a statute requires the government" to disclose. *Jewell*, 828 F.3d at 992 (emphasis added). But Plaintiffs disregard their prior appeal where the Circuit clarified that a "plaintiff's reading of a statute for informational standing purposes must at least be plausible." *Lawyers Comm. II*, 848 F. App'x at 430. Plaintiffs cannot avoid the first step by merely "asserting that a statute creates a cognizable interest in information." *Id.* (cleaned up). And as the Court has described, the text of the NCST Act makes Plaintiffs' reading here implausible.

In sum, Plaintiffs have not shown an informational injury.[4] NIST issued the report required by the NCST Act, and any other disclosure requirement in that Act runs through FOIA, which does not meet the first step for an informational injury.

**C.**

Now for organizational standing. Architects puts forward similar theories of organizational standing as in

4. One claim might not be informational, but it still fails. Count X alleges that NIST's denial of the request for correction violated NIST guidelines for those corrections. *See* Compl. ¶¶ 362-69. Even so, that procedural error cannot confer standing absent some underlying concrete harm. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 496, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009). Plaintiffs identify no injury beyond the deficient informational one.

*Lawyers' Committee I*. *First*, it claims to have a "financial interest at stake" because it applied for an award under the State Department's Rewards for Justice Program. Opp'n at 32. That program provides rewards to individuals who provide information that leads to the arrest or conviction of terrorists. *See* 22 U.S.C. § 2708(a)(3). Architects believes that its application "would likely be successful" if NIST publishes a corrected report. *Id. Second*, Architects asserts that, because of the inaccuracies in the Report, it spent its own resources on a study about the collapse of WTC 7. *See id.* at 30-31.

As before, these theories "are part and parcel of the alleged informational injury and thus fail with it." *Lawyers' Comm. II*, 848 F. App'x at 431 (cleaned up). Each alleged harm stems from NIST's failure to disclose the correct information. Indeed, Architects admits that "had NIST issued a report" with the right information, the engineering study "would have been unnecessary." Compl. ¶ 19. And any successful application to the State Department hinges on "a correction to [NIST's] WTC 7 Report." Opp'n at 32. So Architects yet again claims to have suffered harm "because [NIST] deprived [it] of information[.]" *Lawyers Comm. I*, 424 F. Supp. 3d at 34. "The viability of these other alleged harms thus depends on the existence of an informational harm[,]" which Architects has not shown. *Id.*

In any event, these theories fail even if they do not depend on the informational injury. The D.C. Circuit has already rejected the argument that the State Department program provides standing. Such a claim "rests on layers

of speculation—that [NIST's] disclosure of additional evidence would lead to the prosecution of terrorists, which in turn would cause the State Department to exercise its discretion to provide [Architects] an award." *Lawyers' Comm. II*, 848 F. App'x at 431. This theory of standing "fails at the redressability prong."[5] *Lawyers' Comm. I*, 424 F. Supp. 3d at 34.

The engineering study theory is likewise recycled. Architects made the same argument before this Court in *Lawyers' Comm. I*. *See id.* at 35. The response there holds here. Use of resources for "advocacy is not sufficient to give rise to an Article III injury." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919, 420 U.S. App. D.C. 366 (D.C. Cir. 2015). The point of the study here "seems to be advocacy—shedding light on what [Architects] believe[s] were the true causes of the September 11 attacks." *Lawyers' Comm. I*, 424 F. Supp. 3d at 35. Indeed, the CEO of Architects affirms that the study intended to "publicly critique" NIST's report, Decl. of Ronald Angle ¶ 11, ECF No. 14-1, and to "educate the public regarding the errors in NIST's findings," *id.* ¶ 12. Those are classic descriptions of advocacy activities.

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5. Architects cites dicta from *Sargeant v. Dixon*, 130 F.3d 1067, 1070, 327 U.S. App. D.C. 274 (D.C. Cir. 1997), to suggest that the possibility of reward gives them standing. *See* Opp'n at 32-33. The Court rejected this argument in the earlier case and does so again here for the same reasons. *See Lawyers' Comm. I*, 424 F. Supp. 3d at 34-35; *see also Barr*, 2021 U.S. Dist. LEXIS 55753, 2021 WL 1143618, at *8 (rejecting the same argument).

The Court need not rely, however, on its own reasoning. The D.C. Circuit also rejected this argument on appeal, saying the study expenses "cannot plausibly be said to flow from the claimed unlawful conduct; they were instead a self-inflicted budgetary choice that cannot qualify as an injury in fact." *Lawyers' Comm. II*, 848 F. App'x at 431 (cleaned up). So too here.

Architects responds by pointing to *PETA v. USDA*, 797 F.3d 1087, 418 U.S. App. D.C. 223 (D.C. Cir. 2015). There, the D.C. Circuit held that PETA, an animal-welfare organization, had standing to sue USDA over its failure to issue guidelines about treatment of birds. *See id.* at 1091. Under the applicable statute and regulations, the lack of guidelines meant (1) that PETA could not file complaints with USDA about bird mistreatment and (2) that USDA "was not creating bird-related inspection reports that PETA could use to raise public awareness." *Id.* The Circuit held that those two consequences were concrete enough to create an injury in fact. *See id.* at 1095.

Architects says that this case and *PETA* are "analogous." Opp'n at 24. The Court disagrees. As stated, Architects has not shown that the Secretary's actions caused a "denial of access" to information to which Plaintiffs were entitled. *PETA*, 797 F.3d at 1095. Indeed, NIST has released all information required by the statutes at issue. And Architects never alleges that NIST or the Department have closed off an avenue of redress the way that USDA did in *PETA*. The two cases are not analogous. *See Food & Water Watch*, 808 F.3d at 921 (distinguishing *PETA* on the same bases).

Architects fares no better when it says that this case, like *PETA*, involves "withholding information vital to a non-profit organization's mission." Opp'n at 23. Recall that the agency in *PETA* did withhold information, unlike the Secretary here. At bottom, then, Architects says only that it could not pursue its mission thanks to the Secretary's conduct. That is not enough for injury in fact. *See CREW v. U.S. Off. of Special Counsel*, 480 F. Supp. 3d 118, 129 (D.D.C. 2020).

More, the Court sees no conflict or impairment. The mission of Architects is "to establish the full truth surrounding the events of [9/11]," Compl. ¶ 10, by presenting evidence that "pre-placed explosives" destroyed the buildings on that day, *see id.* ¶ 12. Architects has pursued that mission since its founding in 2006, before the WTC 7 Report. *See id.* ¶ 9. Any attempt to re-examine or critique that report—which does not blame explosives—thus falls into what Architects must do to promote its self-proclaimed mission. Indeed, if education of the public about 9/11 includes technical evidence that explosives caused the collapses, Architects would flout that mission if it let the WTC 7 Report pass without critique. So, based on Architects' own admission, its challenge of the Report *advances* the organization's mission rather than hinders it.

**IV.**

Plaintiffs have shown no reason for this Court to contradict the three decisions that have come before. As in those cases, Plaintiffs lack standing for their claims.

The Court will therefore grant the Secretary's motion to dismiss. A separate order will issue.

/s/ Trevor N. McFadden
Dated: August 2, 2022 TREVOR N. McFADDEN, U.S.D.J.

**APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, FILED DECEMBER 6, 2023**

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-5267

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

*Appellants,*

BARBARA KRUKOWSKI-RASTELLI AND
WILLIAM PREVATEL, AIA,

*Appellees,*

v.

GINA RAIMONDO, IN HER OFFICIAL CAPACITY
AS SECRETARY OF COMMERCE, *et al.*,

*Appellees.*

September Term, 2023

1:21-cv-02365-TNM

Filed On: December 6, 2023

*Appendix C*

**BEFORE:** Srinivasan, Chief Judge; Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges; and Randolph, Senior Circuit Judge

**ORDER**

Upon consideration of appellants' petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

**ORDERED** that the petition be denied.

**Per Curiam**

**FOR THE COURT:**
Mark J. Langer, Clerk

BY: /s/_____
Daniel J. Reidy
Deputy Clerk

## APPENDIX D — RELEVANT STATUTORY PROVISIONS

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction; --to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. art. III, § 2, cl. 1.

> National Construction Safety Team Report
>
> Not later than 90 days after completing an investigation, a Team shall issue a public report which includes—
>
> (1) an analysis of the likely technical cause or causes of the building failure investigated; …

*Appendix D*

National Construction Safety Team Act, 15 U.S.C. § 7307.

"The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this subchapter." Informational Quality Act (aka Data Quality Act), 44 U.S.C. § 3516.

> POLICY AND PROCEDURAL GUIDELINES Pub. L. 106-554, §1(a)(3) [title V, §515], Dec. 21, 2000, 114 Stat. 2763, 2763A-153, provided that:"(a) IN GENERAL.-The Director of the Office of Management and Budget shall, by not later than September 30, 2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act."(b) CONTENT OF GUIDELINES.-The guidelines under subsection (a) shall-"(1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and"(2) require that each Federal agency to which the guidelines apply-"(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information

(including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);"(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and"(C) report periodically to the Director-"(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and"(ii) how such complaints were handled by the agency."

Informational Quality Act (aka Data Quality Act), 44 U.S.C. § 3516, note.