No. 01-1429

In the Supreme Court of the United States

MICHAEL AMALFITANO, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner has standing to bring an action alleging that the National Voter Registration Act of 1993, 42 U.S.C. 1973gg *et seq.*, is unconstitutional.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. A1-A2) is unreported. The opinion and order of the district court (Pet. App. A3-A7, A8) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 16, 2001. The petition for a writ of certiorari was filed on January 14, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. 1973gg *et seq.*, "to establish procedures that will increase the number of

eligible citizens who register to vote in elections for Federal office." 42 U.S.C. 1973gg(b)(1). *Inter alia*, the NVRA requires States to provide a system for registering to vote in federal elections by mail, at various state offices, and on driver's license applications; the Act also limits the means by which States may remove persons from federal voter rolls. 42 U.S.C. 1973gg-3 to 1973gg-6; see *Young* v. *Fordice*, 520 U.S. 273, 275-276 (1997). In 1994, the State of New York adopted legislation to carry out its obligations under the NVRA. Act of Aug. 2, 1994, ch. 659, 1994 N.Y. Laws, 1609; see Pet. App. A4.

2. Petitioner filed suit against the United States, the Federal Election Commission, and the Attorney General of the United States. Those federal parties are respondents in this Court. Petitioner's complaint alleged that the NVRA unconstitutionally compels the States to act as agents of the federal government, violates Article II of the Constitution, and is not authorized by any of Congress's enumerated powers. Compl. paras. 3-4, 30-33. Petitioner claimed that he

> is a citizen of New York who had wished to petition, and communicate with, the New York legislature in the hope that the legislature would repeal that legislation which had been enacted in the State's efforts to comply with the [NVRA], * * * as well as enact legislation which would prohibit those State agencies which currently participate in federal voter registration activities, as required by the [NVRA], from continuing to do so; however, [petitioner] did not engage in such actions solely because his ability to petition, and communicate with, the New York legislature in a meaningful manner with respect to

> these issues has been rendered futile by the [NVRA].

Id. para. 5.

3. The district court granted respondents' motion to dismiss the complaint on the ground that petitioner lacked standing to sue. Pet. App. A3-A8. The court first stated that the State of New York "is not bound by the federal statute" and "could, if it chose, follow the lead of other[] states and either repeal the state statute or bring suit against the federal statute." *Id.* at A6. The court further explained that the injury asserted by petitioner was

> not particularized. [Petitioner] does not establish that he personally has suffered the alleged injury. The Supreme Court has clearly held that generalized and abstract grievances that affect large numbers of Americans alike are best addressed in the political process, not the judicial system. *See Federal Election Comm'n v. Akins*, 524 U.S. 11, 23 (1998) (citing, inter alia, *Warth v. Seldin*, 422 U.S. 490, 500 (1975); *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 222 (1974)).

Ibid.

3. The court of appeals affirmed "substantially for the reasons stated in [the district court's] order." Pet. App. A2.

ARGUMENT

The court of appeals' unpublished decision is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. Whether a plaintiff has standing to sue is "the threshold question in every federal case, determining

the power of the court to entertain the suit." *Warth* v. *Seldin*, 422 U.S. 490, 498 (1975). "As an aspect of justiciability, the standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant *his* invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Ibid.* (quoting *Baker* v. *Carr*, 369 U.S. 186, 204 (1962)).

The "core component" of the standing doctrine derives from the Article III requirement that federal courts adjudicate only actual cases and controversies. *Allen* v. *Wright*, 468 U.S. 737, 750 (1984). As this Court recently observed:

> [T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. *Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-181 (2000). The requirement of a "particularized" injury "mean[s] that the injury must affect the plaintiff in a personal and individual way." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992).

2. Petitioner does not claim to have suffered monetary or similar tangible injury resulting from the enactment of the NVRA or from New York's implementation of the federal law. Nor does petitioner allege that the federal government has directly interfered with his efforts to communicate his views to the New York legislature. Rather, the gravamen of petitioner's claim

is that communication with the New York legislature would be fruitless because the policy measures that he advocates are contrary to the NVRA and therefore could not lawfully be adopted by the State. On that basis, petitioner alleges that "his ability to petition, and communicate with, the New York legislature in a meaningful manner with respect to these issues has been rendered futile by the [NVRA]." Compl. para. 5; see Pet. 5.

Nothing in this Court's decisions suggests that the impairment alleged by petitioner is a sufficiently concrete and particularized injury to satisfy the "irreducible constitutional minimum of standing." *Defenders of Wildlife*, 504 U.S. at 560. Because "state law is preempted to the extent that it actually conflicts with federal law," *English* v. *General Elec. Co.*, 496 U.S. 72, 79 (1990), virtually every federal statute restricts to some degree the sphere of lawful discretion that state legislatures would otherwise possess. On petitioner's theory, a plaintiff's allegation that he wished to petition the state legislature to adopt legislation conflicting with federal law would always suffice to confer standing to challenge the federal enactment. That theory cannot be reconciled with this Court's consistent recognition that

> a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.

Defenders of Wildlife, 504 U.S. at 573-574. The fact that the New York legislature has enacted laws with which petitioner disagrees does not, in and of itself,

subject petitioner to any judicially cognizable harm. Recasting the alleged injury as an impairment of petitioner's ability to persuade the legislature to enact different laws does not render the harm any more concrete or particularized.*

3. Petitioner's reliance (Pet. 6-7, 8-9) on *FEC* v. *Akins*, 524 U.S. 11 (1998), is misplaced. The "injury in fact" alleged by the plaintiffs in that case "consist[ed] of their inability to obtain information" that on the plaintiffs' view of the law was required to be made public. *Id.* at 21. The Court in *Akins* did observe that a plaintiff is not automatically foreclosed from establishing standing simply because his alleged injury is widely shared. *Id.* at 23-25; see Pet. 6-7. Petitioner's claimed injury, however, "is not only widely shared, but is also of an abstract and indefinite nature." *Akins*, 524 U.S. at 23. Petitioner does not allege that he would benefit in any tangible way if the NVRA were declared invalid and the New York legislature enacted the laws that he advocates. His ultimate objective is simply that the State adopt what he regards as more prudent legislation—an objective that is not meaningfully different from the "interest in proper application of the Constitution and laws" that has repeatedly been held to

* The district court stated that the New York legislature "is not bound by the [NVRA]" and "could, if it chose, * * * repeal the state statute." Pet. App. A6. The meaning of those statements is unclear. Those statements may refer to the fact that the NVRA is inapplicable to state elections, see *Young*, 520 U.S. at 290, or to the fact that States retain meaningful discretion in deciding how to comply with the Act's directives. Petitioner correctly observes (Pet. 6) that the mere possibility of state non-compliance with federal law does not by itself defeat his claim to standing. But the determination that petitioner lacks standing is in no way dependent on that possibility.

be insufficient to establish Article III standing. *Defenders of Wildlife*, 504 U.S. at 573; see *Akins*, 524 U.S. at 24 (plaintiff's "interest in seeing that the law is obeyed" is an inadequate basis for invoking the jurisdiction of a federal court); pp. 5-6, *supra*.

Petitioner also relies (see Pet. 8-9) on the *Akins* Court's holding (524 U.S. at 25) that a plaintiff may have standing to sue even though a favorable decision is not certain to redress his injuries. The defect in petitioner's allegations as to standing, however, is not simply that the New York legislature might decline to amend its voter registration laws even if the NVRA were held to be unconstitutional. Rather, petitioner's suit is barred because the legislation that he advocates, even if it were ultimately enacted by the State of New York, would "no more directly and tangibly benefit[] him than it [would] the public at large." *Defenders of Wildlife*, 504 U.S. at 574.

Petitioner's reliance (Pet. 8) on *Clinton* v. *City of New York*, 524 U.S. 417 (1998), is misplaced for essentially the same reason. In *Clinton*, two sets of plaintiffs challenged the constitutionality of the Line Item Veto Act, 2 U.S.C. 691 *et seq.* See 524 U.S. at 425-427. Both groups of plaintiffs were found to have established that the President's implementation of the law directly and substantially affected their financial interests. See *id.* at 431 (President's cancellation of limited tax benefit constituted "revival of a substantial contingent liability [that] immediately and directly affect[ed] the borrowing power, financial strength, and fiscal planning of [the City of New York]"); *id.* at 432 (farmers' cooperative "suffered an immediate injury when the President canceled the limited tax benefit that Congress had enacted" for the specific purpose of benefitting the cooperative and similar entities; "the cancellation in-

flicted a sufficient likelihood of economic injury to establish standing"). Petitioner does not contend that either the enactment of the NVRA, or the subsequent adoption of state legislation in conformance with the Act's requirements, subjected him to any similar concrete harm.

In addition to the fact that the decisions below are entirely consistent with this Court's and other appellate decisions, it bears emphasis that both the district court's opinion and the brief opinion of the court of appeals affirming substantially for the reasons stated by the district court are unpublished. The decisions, therefore, lack precedential value and necessarily do not create any conflict among the published authorities.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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