No. 21-108

IN THE

Supreme Court of the United States

CLINT A. KRISLOV, *et al.*,

Petitioners,

v.

COOK COUNTY OFFICERS ELECTORAL BOARD, *et al.*,

Respondents.

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

REPLY BRIEF

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The Respondents ignore the two issues compelling this Court' review:

(i) Whether the public interest exception to mootness, while recognized by most State supreme courts, exists in federal court at all.[1] This Court's recent *Uzuegbunam v.*

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1. Fialka-Feldman v. Oakland University Board of Trustees, 639 F.3d 711, 716 (6th Cir. 2011):

> Most *state courts*, we recognize, have "public interest" exceptions to their mootness, standing and ripeness doctrines, and in most instances permit their appellate courts to entertain appeals about issues of "continuing public importance" after the cases otherwise become moot on appeal. *See, e.g., Mead v. Batchlor*, 435 Mich. 480, 460 N.W.2d 493, 496 (Mich. 1990); *Zoning Bd. of Adjustment v. DeVilbiss*, 729 P.2d 353, 356 n.4 (Colo. 1986); *Rush v. Ray*, 332 N.W.2d 325, 326 (Iowa 1983); *see also Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1141 (9th Cir. 2005) (en banc) (Fletcher, J., dissenting) ("[A]lmost every state in the union has an exception for cases on appeal that raise questions of 'continuing public importance.'") (collecting cases). *But see Collins v. Lombard Corp.*, 270 Ga. 120, 508 S.E.2d 653, 655 (Ga. 1998); *Loisel v. Rowe*, 233 Conn. 370, 660 A.2d 323, 332 (Conn. 1995). Yet this reality reflects an essential difference between the two court systems—that the federal courts are courts of limited jurisdiction and that the state courts are courts of general jurisdiction. Article III does not constrain the state courts. Many state courts thus not only have authority to relax their rules on mootness, but they also permit advisory opinions and indeed some State constitutions explicitly provide for them. *See, e.g.*, R.I. Const. art. 10, § 3; *In re Ops. of the Justices to the Senate*, 440 Mass. 1201, 802 N.E.2d 565 (Mass. 2004); *Op. of the Justices of the Supreme Judicial Court*, 2002 ME 169, 815 A.2d 791 (Me. 2002); *In re*

Preczewski, ___U.S.___, 141 S. Ct. 792 (2021) decision, finding a justiciable controversy for First Amendment restrictions that will only apply to future students, recognizing standing from even presumed nominal damages, should be read as either recognizing a federal "public interest" exception for repeatedly recurring issues, or as requiring a form "nominal damages" demand insert in all federal civil rights complaints.

(ii) In ballot petition battles, either "the capable of repetition yet evading review" or "public interest" exception should be applied satisfying Article III concerns. Instead in ballot access cases this Court has refrained from declaring the public interest exception cannot exist.[2] This is particularly apt here, in which the

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Mun. Suffrage to Women, 160 Mass. 586, 36 N.E. 488, 492 (Mass. 1894) (Holmes, J.).

See, Comment: Rebecca Sonne, Hearing The Case For The Constitutionality Of Election Laws On The Merits, 57 Hous. L. Rev. 753 (concluding that challenges to elections laws should be heard on their merits, not moot in federal courts who should accept "capable of repetition yet evading review" and "public interest" mootness exceptions in election cases) at FN 99, citing *Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 639 F.3d 711, 716 (6th Cir. 2011); *Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1141-42 (9th Cir. 2005) (Fletcher, J., dissenting) (citing cases applying the "public interest" exception in Idaho, Hawaii, Nevada, Alaska, Florida, Washington, California, New York, Arizona, and Montana).

2. *See*, Sonne, *Hearing The Case For The Constitutionality Of Election Laws On The Merits*, 57 Hous. L. Rev. at 761 see FN 47 and 48, *citing Fialka-Feldman*, 639 F.3d at 716 ("The Supreme Court has never recognized any such exception and in several instances has refused to adopt one.").

issue is *sufficient showing for ballot access, rather than who wins.*

Thus, this case is an unusually appropriate vehicle for this recurring legal issue; because in every election cycle around the nation, the ballot petition battles raise candidate rights, voters rights, and provides the bedrock of our electoral government and is proof of constitutional fairness and validity – the signature process here unfairly eliminates non-organization contenders by a process in which their supporters are stricken by the subjective decisions of nonexpert evaluators, without permitting even the showing that the statistical margins of error (showing a greater propensity to reject valid signatures, than to accept invalid ones) demonstrate that the candidate has, in fact presented the required modicum of support to be on the ballot.[3] Different from the final election voting count,

3. The Respondents' Opposition conflates election voting results (the number of votes cast and counted) (Resp. Opp. at 15-16) which is an objective number with a candidate's nominating petition (a collection of signatures of registered voters subject to challenge and review) and whether in the challenge process the signature defender is permitted to put into evidence well recognized statistical evidence of meeting a circulated petition signature requirement by being within the margin of error. This is so because the process is subjective. Here, the Respondent Opposition make no opposition to the Petition's demonstration of the admissibility statistical evidence in a variety of contexts, Pet. at 15-17, and then Respondent fails to consider the context here, that the counting of signatures for ballot access is *subjective,* contrary to vote counting for election that is objective - particularly true here, where the County's signature review is rough-shod at best and lacking qualified oversight and meaningful objection – a process where a petition challenge actually challenges nearly every single signature.

to determine a winner, here candidates must be given the opportunity to show that the statistical margins of error support the person's being on the ballot.

And indeed, this Court has addressed these issues prudentially protecting ballot access and voting rights. *See*, *Dunn v. Blumstein*, 405 U.S. 330, 333 n.2 (1972) (candidate residency requirement):

> At the time the opinion below was filed, the next election was to be held in November 1970, at which time Blumstein would have met the three-month part of Tennessee's durational residency requirements. The District Court properly rejected the State's position that the alleged invalidity of the three-month requirement had been rendered moot, and the State does not pursue any mootness argument here. Although appellee now can vote, the problem to voters posed by the Tennessee residence requirements is "'capable of repetition, yet evading review.'" *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911).

One commentator observed regarding *Dunn*, "[t]he Court, in short, simply substituted ongoing harm to Tennessee voters, coupled with likely recurrence as to other Tennessee voters, for the purported "requirement" that the moot claim be shown to be capable of repetition as to the plaintiff.[4]

4. Matthew I. Hall, *The Partially Prudential Doctrine of Mootness*, 77 Geo. Wash. L. Rev. 562, 593 and FN 137 noting ("The Supreme Court has applied a similar rationale in numerous other

Our nation's governing bedrock is the public confidence in elections and its fair processes for those seeking to participate.

This Court should grant this petition because it goes directly to the credibility of elections and the fairness of the process for citizens seeking to participate.

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Respectfully submitted,

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cases in the area of voting rights law and elsewhere. *See, e.g., Storer v. Brown*, 415 U.S. 724 (1974)[ballot access of independent candidates]; *Rosario v. Rockefeller*, 410 U.S. 752 (1973)[New York residents not eligible to vote in primary election for failing to enroll in a party before a cutoff date]).