No. 24-568

In the Supreme Court of the United States

MICHAEL J. BOST, et al.,
Petitioners,

v.

ILLINOIS STATE BOARD OF ELECTIONS, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE REPUBLICAN NATIONAL COMMITTEE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST[1]

The Republican National Committee is the national committee of the Republican Party as defined by 52 U.S.C. §30101(14). The RNC manages the business of the Republican Party at the national level, coordinating fundraising and election strategy; developing and promoting the Party's national platform; and organizing and operating the Republican National Convention, which nominates a candidate for President and Vice President of the United States. The RNC represents over 30 million registered Republicans and has 168 voting members who hail from all 50 states, the District of Columbia, and U.S. territories.

The RNC works to elect Republican candidates to state and federal office. The RNC's candidate members include the Petitioner in this case, U.S. Representative Michael Bost. In November 2026, the RNC's candidates will appear on the ballot in every State for election to the U.S. House of Representatives, and in each State holding an election for the U.S. Senate. In preparing for the upcoming election, the RNC has vital interests in protecting the ability of Republican voters to cast, and Republican candidates to receive, effective votes in federal and state elections. To this end, the RNC supports numerous election integrity efforts, deploying thousands of election observers, both paid and volunteer, to ensure that only qualified voters vote and that unqualified voters

[1] No counsel for any party authored this brief in whole or in part, and no other entity or person, other than the RNC or its counsel, made any monetary contribution toward the preparation and submission of this brief.

do not dilute the votes cast by lawful voters with illegal ballots.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

"Elections must end sometime, a single deadline supplies clear notice, and requiring ballots be in by election day puts all voters on the same footing." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 28 (2020) (Gorsuch, J., concurral). Congress established a single deadline for the election of members of Congress. 2 U.S.C. §§1, 7. It is the "Tuesday next after the 1st Monday in November." *Id.* at §7. "Text, precedent, and historical practice confirm this 'day for the election' is the day by which ballots must be both *cast* by voters and *received* by state officials." *RNC v. Wetzel*, 120 F.4th 200, 203-04 (5th Cir. 2024), *cert. petition filed*, No. 24-1260. But under Illinois law, elections do not end on the federal election day. Instead, Illinois permits receipt of mail ballots up to fourteen days after election day. 10 Ill. Comp. Stat. §§5/19-8(c), 5/18A-15(a). Illinois' practice of receiving ballots "after the federal election day" is "preempted by federal law." *Wetzel*, 120 F.4th at 204.

Illinois' extended election concretely harms Petitioner Michael Bost, the Republican candidate for Congress in Illinois' Twelfth District. It increases competition between Bost and his political rivals by prolonging the ballot-receipt period for the type of voting that Bost's Democratic opponents favor. It forces Bost to change his campaign strategy to anticipate and respond to a longer mail-ballot receipt period than federal law would otherwise allow. It requires Bost to run poll-watching and mail-ballot chase programs for up to two weeks after election day. And it distorts the

competitive environment in which Bost must run for re-election by depriving him of the legal structure for a congressional election guaranteed by federal law. Each of these is a concrete injury to Bost, redressable by an order enjoining enforcement of Illinois' post-election receipt rules.

The Seventh Circuit's opinion recognizes that the competitor-standing doctrine applies to political candidates. Pet. App. 13a. But it rejects Bost's standing as a candidate by misapplying precedents on *voter standing*, without accounting for the unique ways in which candidates are harmed by unlawful election rules. A candidate's injury as one of the competitors in an electoral contest is far more specific than a voter's injury.

The Seventh Circuit also faulted Bost for not alleging that the outcome of his race would have been different but for Illinois' post-election deadline. According to the panel, Bost must credibly allege that "the counting of ballots received after Election Day would cause" him "to lose the election." Pet. App. 11a. But this Court has never applied an "outcome" test to determine injury under the competitor standing doctrine. Instead, it has consistently held that competitor plaintiffs need only allege that they're "able and ready" to compete and that the allegedly unlawful policy "makes it more difficult" for them to do so. *Ne. Fla. Chapter of Assoc'd Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993). That's why a college applicant doesn't need to demonstrate that the school would otherwise admit him before he can challenge an affirmative action policy. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 280 n.14 (1978). Federal contractors don't need to show that they'd win the

contract but for a discriminatory policy. *Assoc'd Gen. Contractors*, 508 U.S. at 666. And public officeholders don't need to show that they "would actually have been elected" in an upcoming election to challenge an automatic resignation requirement from their current position. *Id.* (citing *Clements v. Fashing*, 457 U.S. 957, 962 (1982)).

The Seventh Circuit's "predict the results" test would undermine the orderly resolution of election-law disputes. It threatens to bar the courthouse doors to political candidates of every stripe who seek to clarify the rules of their elections before election day. If political competitors must plausibly allege an "election defeat" to establish standing, then their suits will be justiciable only after the "voting process" has already "started." Pet. App. 14a-15a. But obtaining relief at that point is at least in tension—if not irreconcilable—with the *Purcell* principle, which prohibits "[l]ate judicial tinkering with election laws." *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurral). As a result, election litigation will be channeled into high-stakes post-election lawsuits with truncated timelines, heated convictions, and greater public scrutiny.

ARGUMENT

I. A political competitor suffers a concrete and particularized injury from an illegally structured election.

A plaintiff has standing when the government illegally structures a "competition" between the plaintiff and his rivals. *See Inv. Co. v. Camp*, 401 U.S. 617, 620 (1971); *Ass'n of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 152 (1970) (finding standing in a

"competitor's suit"). This Court "routinely" recognizes "injury resulting from governmental actions that alter competitive conditions as sufficient to satisfy the Article III 'injury-in-fact' requirement." *Clinton v. City of New York*, 524 U.S. 417, 433 (1998) (cleaned up); *see also Nat'l Credit Union Admin. v. First Nat'l Bank & Tr.*, 522 U.S. 479, 488 & n.4 (1998) ("competitors" have "standing to challenge" government action "relaxing statutory restrictions on the activities" of their rivals).

Competitor standing applies "to politics as well as business." *Shays v. FEC*, 414 F.3d 76, 87 (D.C. Cir. 2005). "[P]olitical competitor standing … derives its logic from" this Court's "doctrine of economic competitor standing." *Castro v. Scanlan*, 86 F.4th 947, 954 (1st Cir. 2023). It recognizes that "one direct competitor's gain of market share is another's loss." *Id.* That principle holds true in any zero-sum competition—from economic competition, *Clinton*, 524 U.S. at 432-33, to college-admission competition, *see Bakke*, 438 U.S. at 280 n.14, to electoral competition, *Shays*, 414 F.3d at 87. In each case, "[a] benefit provided to [one] but not to others necessarily advantages the former … at the expense of the latter." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 218-19 (2023). Competitor standing is thus "neither novel nor unique to the realm of the electoral." *Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022).

For this reason, nearly every circuit has recognized that political competitors have standing to challenge the rules governing their competition. *See LaRoque v. Holder*, 650 F.3d 777, 786-87 (D.C. Cir. 2011); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 37 (1st Cir. 1993); *Schulz v. Williams*, 44 F.3d 48, 53 (2d Cir. 1994);

Fulani v. League of Women Voters Educ. Fund, 882 F.2d 621, 625-26 (2d Cir. 1989); *Belitskus v. Pizzingrilli*, 343 F.3d 632, 640-41 (3d Cir. 2003); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 582-87 (5th Cir. 2006); *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 544 (6th Cir. 2014); *Fulani v. Hogsett*, 917 F.2d 1028, 1030 (7th Cir. 1990); *Owen v. Mulligan*, 640 F.2d 1130, 1132-33 (9th Cir. 1981).

The "concept of [political] competitors' standing" has been "well-established" in the lower courts for decades. *Schulz*, 44 F.3d at 53. It recognizes that "[c]ompetitors suffer an injury in fact" when the government "lift[s] regulatory restrictions on their competitors or otherwise allow[s] increased competition against them." *State Nat'l Bank of Big Spring v. Lew*, 795 F.3d 48, 55 (D.C. Cir. 2015) (Kavanaugh, J.) (cleaned up). In such situations, competitors "must anticipate and respond to a broader range of competitive tactics than federal law would otherwise allow." *Shays*, 414 F.3d at 86. They must change their competitive "strategy and conduct." *Vote Choice*, 4 F.3d at 37. Forced to alter how they "will run their campaigns" due to the "intensified competition" created by the government's illegal structuring of the competitive environment, competitors have suffered an Article III harm. *Shays*, 414 F.3d at 87.

The Seventh Circuit failed to faithfully apply these well-established principles. According to the Seventh Circuit, a candidate must prove that "allowing votes to be received and counted after Election Day could decrease their margin of victory." Pet. App. 13a. But that misunderstands the doctrine. While margin of victory can establish Article III injury, competitor standing often isn't about the margin at all. It's also

about campaign strategy. It's not only about what happens on election day—it's also about what a candidate must do before and after election day. The "need to adjust" one's "campaign strategy" in response to the illegal structuring of a competitive environment is an independent injury. *Shays*, 414 F.3d at 87. It is "being put to the choice" of either changing campaign plans or "suffering disadvantage." *Id.* at 89. That injury has less to do with the election's outcome and everything to do with the "impact" on "the candidate's campaign strategy and allocation of resources" from the State's illegal structuring of the competitive environment. *Belitskus*, 343 F.3d at 641.

With the injury properly identified as the "need to adjust" campaign strategy due to Illinois' extended mail-ballot receipt deadline, *Shays*, 414 F.3d at 87, Bost's standing as a competitor is obvious. Bost has been "a candidate for elected office both under Illinois' previous ballot receipt deadline (on or before Election Day)" and after Illinois amended its deadline to allow mail-ballot receipt up to fourteen days after election day. Pet. App. 65a. When Illinois had an election-day deadline for mail-ballot receipt, Bost generally "only needed volunteers for early voting and Election Day" and his "campaign ended on Election Day evening." Pet. App. 66a. But since Illinois allowed for post-election-day mail-ballot receipt, Bost has been put "to the 'coerced choice' of either" changing his campaign strategies "or suffering a competitive disadvantage by not participating." *Castro*, 86 F.4th at 956 (quoting *Becker v. FEC*, 230 F.3d 381, 387 (1st Cir. 2000)).

For example, Bost must now "organize, fundraise, and run" his "campaign for fourteen additional days in order to monitor and respond as needed to ballots

received after the national Election Day." Pet. App. 66a. He must pay poll watchers to monitor mail-ballot receipt for fourteen additional days. Pet. App. 67a. He must continue running his "ballot chase program" to support "get-out-the-vote efforts and other concerns" for fourteen days longer than he previously did under Illinois' prior election-day deadline. Pet. App. 68a. The "impact" of Illinois' post-election deadline on Bost's "campaign strategy and allocation of resources is sufficient to satisfy the requirements of Article III." *Cf. Belitskus*, 343 F.3d at 641 (paying $5 filing fee is enough for candidate to have standing).

The Seventh Circuit reasoned that these campaign adjustments are merely a personal "choice," and that Bost didn't need to change his strategy to avoid "election defeat" because he "won the last election with seventy-five percent of the vote." Pet. App. 11a. But that reasoning improperly "second-guess[es] a candidate's reasonable assessment of his own campaign," which should be "given credence." *Becker*, 230 F.3d at 387. "To probe any further into these situations would require the clairvoyance of campaign consultants or political pundits—guises that members of the apolitical branch should be especially hesitant to assume." *Id.*

In other words, the injury is "being put to the choice" of either changing campaign plans or "suffering disadvantage." *Shays*, 414 F.3d at 89. Bost need not prove that a "majority" of votes received after election day will actually break against him. *Contra* Pet. App. 13a. For competitor standing, "when adverse use of illegally granted opportunities appears inevitable, affected parties may challenge the government's authorization of those opportunities without waiting for

specific competitors to seize them." *Shays*, 414 F.3d at 90. Courts thus "have not required litigants to wait until increased competition actually occurs." *La. Energy & Power Auth. v. FERC*, 141 F.3d 364, 367 (D.C. Cir. 1998). Instead, "standing" is established "by showing that the challenged action authorizes allegedly illegal transactions that have the clear and immediate potential to compete with petitioners' own sales." *Assoc'd Gas Distribs. v. FERC*, 899 F.2d 1250, 1259 (D.C. Cir. 1990). Given that the federal election-day deadline would apply if Bost prevailed on the merits, Bost's "asserted injury—having to defend [his] office in illegally constituted reelection fights—is not a matter" of his "personal choice" but rather "it stems from the 'operation,' of regulations permitting what [federal law] bans." *Shays*, 414 F.3d at 89 (cleaned up).

Bost's victory in his last election does not mean his interests as a competitor are not concrete. The "past is not prologue for political candidates." Pet. App. 19a (Scudder, J., dissenting in part). Bost has an interest in ensuring that that the rules of the game of the election in which he is competing are as advantageous to him as possible because "[i]n no way is any outcome guaranteed in November." Pet. App. 19a.

It is inevitable that Illinois' extended mail-ballot receipt deadline will be exploited by Bost's political rivals. Bost's chief rival is the Democratic candidate. *See* Ill. State Bd. of Elections, *Election Results, 2022 General Election*, perma.cc/XEL3-WSC9; *see also* Pet. App. 11a at n.2 (taking "judicial notice" of Bost's election results). The Democratic National Committee has argued that when States allow post-election mail-ballot receipt, it "undoubtedly" affects "both the DNC's

voter-members' ability to vote and candidate members' ability to win." Mot. to Intervene, *RNC v. Burgess*, Doc. 20 at 12, No. 3:24-cv-198 (D. Nev. May 13, 2024). The DNC maintains that it suffers "competitive" injury from enforcement of the federal election day deadline, alleging that "Democratic voters use mail ballots at higher rates than their Republican counterparts in many States." Compl., *DNC v. Trump*, Doc. 1 at 35, No. 1:25-cv-952 (D.D.C. Mar. 31, 2025). According to the DNC, the federal election-day deadline hurts Democratic candidates because "[d]ata … consistently shows that the voters whose ballots are rejected due to receipt past the deadline are disproportionately those from groups of citizens who tend to be registered Democrats." *Id.* It isn't "speculative" that Bost suffers competitive injury from Illinois' post-election deadline. *Contra* Pet. App. 11a. At a minimum, the deadline "arguably promote[s]" his opponents' "electoral prospects." *Owen*, 640 F.2d at 1133. The two major political parties agree on that point.

The Seventh Circuit erred by concluding that Bost must allege the counting of votes after election day would "cause" him "to lose the election." Pet. App. 11a. Under that logic, Illinois could by law give Democratic candidates five thousand extra votes in an election, and Republican candidates would have no standing to sue if they could not show their election *would be decided* by five thousand or fewer votes. That Republican candidates must change their campaign strategy and work harder to overcome the illegal structuring of the election is the injury. "It is not necessary" to show that "the outcome" would have been different. *Ariz. Libertarian Party, Inc. v. Bayless*, 351 F.3d 1277, 1280 (9th Cir. 2003).

Competitor standing never requires allegations that "the actual outcome of a partisan election" would be different. *Mecinas*, 30 F.4th at 899; *see also Data Processing*, 397 U.S. at 152 (injury established by allegations that competition from national banks "might entail some future loss of profits"). Contractors have standing to challenge an ordinance awarding preferential contracts to minority-owned businesses without showing that they would have received a contract absent the ordinance. *Assoc'd Gen. Contractors*, 508 U.S. at 658. A college applicant has standing to challenge an affirmative action program even if he is "unable to prove that he would have been admitted in the absence of the special program." *Bakke*, 438 U.S. at 280 n.14. And political candidates have standing to challenge an automatic resignation requirement without "any allegation" that they "would actually have been elected but for" that requirement. *Assoc'd Gen. Contractors*, 508 U.S. at 666 (citing *Clements*, 457 U.S. at 962). In all these cases, it is the denial of "the *opportunity to compete*" in a competition structured according to law that is the injury. *Id.* (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989)). "To establish standing, therefore, a party" need "only demonstrate that it is able and ready" to compete and that the challenged "policy prevents it from doing so" in a way that violates federal law. *Id.*

Bost's injury from an illegally structured election is particularized. Misapplying *Lance v. Coffman*, the Seventh Circuit ruled that Bost's injuries are "undifferentiated, generalized grievance[s]." Pet. App. 14a. But *Lance* concerned the standing of "four Colorado voters"—not a candidate for political office. *Lance v. Coffman*, 549 U.S. 437, 441 (2007). This Court held that an injury is "only a generally available grievance"

when it claims "harm" to "every citizen's interest in proper application" of the "laws" and seeks "relief that no more directly and tangibly benefits" the plaintiff "than it does the public at large." *Id.* at 439 (cleaned up).

Not every citizen shares Bost's personal interests as "a *political competitor*." *Shays*, 414 F.3d at 87 (cleaned up). His unique interests include "retention of elected office," *id.*; "prevent[ing]" an "opponent from gaining an unfair advantage in the election process," *Owen*, 640 F.2d at 1133; and amassing political "power" to "better direct the machinery of government," *Benkiser*, 459 F.3d at 587.

Nor is Bost seeking relief that benefits the public at large. Instead, he seeks to improve his own "electoral prospects." *Id.* So his injury is not generalized. Indeed, it is hard to think of anyone "who suffers more directly" than a political candidate when an election is illegally structured. *Shays*, 414 F.3d at 83. 441. Even if individual voters might not have a "particularized stake" in how elections are run, candidates competing in that election do. *Cf. Bush v. Gore*, 531 U.S. 1046, 1047 (2000) (Scalia, J., concurring) ("The counting of votes that are of questionable legality" does "threaten irreparable harm" to a candidate.).

The Seventh Circuit "question[ed]" whether Bost had any particularized interest as a candidate. Pet. App.14a. But a candidate's unique interests as a political competitor are why, prior to the Seventh Circuit's decision here, "circuit authorities" uniformly held that "candidates *do* have standing to contest violations of election law." *Hotze v. Hudspeth*, 16 F.4th 1121, 1126 (5th Cir. 2021) (Oldham, J., dissenting) (collecting cases). Even the Seventh Circuit has

acknowledged in other cases that the candidate who expends time, energy, and resources into his campaign has a particularized interest in "the allegedly unlawful manner" in which an election is run. *Trump v. WEC*, 983 F.3d 919, 924 (7th Cir. 2020).

"As a candidate for elected office," the "unlawful manner" in which Illinois' election is structured "affect[s]" Bost "'in a personal and individual way.'" *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). "[A] political candidate harmed" by the counting of illegal votes can thus "assert a personal, distinct injury." *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020). Bost isn't a "mere bystander" when he is competing for votes in Illinois' Twelfth Congressional District. Pet. App. 23a (quoting *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024)). Bost is competing on a "playing field[]" against "genuine rival[s]" for political office. *Shays*, 414 F.3d at 87. The voters in *Lance* were not.

II. The Seventh Circuit confused pre-election lawsuits with post-election contests.

By requiring Bost to show that he would "lose the election," the Seventh Circuit grafted a prudential post-election rule into Article III. Pet. App. 11a. Courts apply a "change the outcome" test in contests challenging election *results*. That longstanding rule instructs courts to refrain from invalidating ballots or requiring recounts if doing so would "not affect the outcome of any of the races at stake in the election." *United States v. Wisconsin*, 771 F.2d 244, 245 (7th Cir. 1985). The circuits have developed slight variations, but they agree that the "'outcome' test provides a sensible guideline for determining when federal judicial invalidation of an election might be warranted."

Griffin v. Burns, 570 F.2d 1065, 1080 (1st Cir. 1978) (collecting cases).

This "outcome" test has no place when determining Article III standing for pre-election lawsuits. The Seventh Circuit cited no support for its conclusion that a candidate must predict an "election defeat" to establish standing. Pet. App. 11a. The panel may have arrived at that rule by following the Third Circuit's vacated decision in *Bognet v. Secretary Commonwealth of Pennsylvania*, 980 F.3d 336 (3d Cir. 2020), *vacated*, 141 S. Ct. 2508 (2021). Respondents implored the Seventh Circuit to "follow" *Bognet*. Br. of Defs., *Bost v. Ill. Bd. of Elections*, 2023 WL 8531525, at *12 & n.4. But even if it weren't vacated, *Bognet* doesn't support the Seventh Circuit's pre-election application of the "outcome" rule, since the Third Circuit didn't resolve the case until about two weeks after the election. 980 F.3d at 345. Since the plaintiffs filed their complaint before the election, there's good reason to think that the Third Circuit "confuse[d] standing and mootness." *Hotze*, 16 F.4th at 1128 (Oldham, J., dissenting). Until the Seventh Circuit's decision, "the only non-vacated circuit authorities to confront this question have held that candidates *do* have standing to contest violations of election law." *Id.* at 1128 (collecting cases).

There's a long history of federal courts refusing to involve themselves in "garden variety" post-election disputes affecting the validity of specific votes if the number of votes isn't enough to flip the election. *Griffin*, 570 F.2d at 1076, 1080 (collecting cases). It might be "sensible" to invalidate an election only when the allegedly illegal conduct is outcome determinative. *Id.* at 1080. But it makes no sense to hold a candidate to

the impossible task of proving what an election's outcome will be.

The Court should reject the Seventh Circuit's novel standing doctrine. Even if the "'outcome' test" itself is rooted in Article III, applying the test to pre-election lawsuits isn't justified under the Court's standing precedents. College applicants don't need to prove that they'd get in the school absent an illegal admissions process. *See Bakke*, 438 U.S. at 280 n.14. Federal contractors don't need to prove that they will win the contract if the challenged policy is enjoined. *See Assoc'd Gen. Contractors*, 508 U.S. at 658. And businesses don't need to show that they'd secure a real estate purchase but for an unlawful regulation. *See Clinton*, 524 U.S. at 432-33. The injury in these cases is the loss of a fair playing field. And that's no less an injury in elections. *Mecinas*, 30 F.4th at 899.

III. The Seventh Circuit's reasoning would force disputes over election rules into post-election litigation.

The Seventh Circuit suggested that Bost might be able to establish standing by suing close enough to an election to predict "a material effect" on the final tally. Pet. App. 14a. Once voters have "requested mail-in ballots" and the "the voting process" has "started," that should be close enough, the court said. Pet. App. 15a. That narrow exception to pre-election standing is just as made-up as the Seventh Circuit's "predict the results" test. And it directly contradicts this Court's precedents.

By requiring Bost to bring his case after the voting process has already "started," Pet. App. 15a, the Seventh Circuit encourages precisely the kind of lawsuit this Court condemned in *Purcell v. Gonzalez*, 549 U.S.

1, 5-6 (2006) (per curiam). The *Purcell* principle "reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled." *Merrill*, 142 S. Ct. at 880-81 (2022) (Kavanaugh, J., concurral). This principle "discourages last-minute litigation and instead encourages litigants to bring any substantial challenges to election rules ahead of time." *Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurral).

Yet the Seventh Circuit's ruling requires candidates to bring late-breaking challenges to election laws to establish standing. Under the Seventh Circuit's reasoning, unless voting has already "started," a candidate's allegations of competitive injury are too "speculative" and not "certainly impending." Pet. App. 15a. Worse still, the candidate must present evidence that judicial relief would have a "material effect" on the election as it's happening. Pet. App. 15a. Even setting the *Purcell* principle aside, as a practical matter there might be "simply not enough time at [that] late date to decide the question before the election." *Republican Party of Pa. v. Boockvar*, 141 S. Ct. 1, 2 (2020) (statement of Alito, J., respecting the denial of motion to expedite).

For good reason, *Purcell* prohibits that "[l]ate judicial tinkering with election laws." *Merrill*, 142 S. Ct. at 880-81 (Kavanaugh, J., concurral). This Court has "repeatedly emphasized" that federal courts "ordinarily should not alter state election laws." *RNC v. DNC*, 589 U.S. 423, 424 (2020). "Changes" to election laws that "require complex or disruptive implementation must be ordered earlier" than before the period in which voting starts. *Merrill*, 142 S. Ct. at 881 n.1 (Kavanaugh, J., concurral). The Seventh Circuit's ruling

categorically bars candidates from bringing election cases before voting starts. Pet. App. 15a. If candidates have standing to challenge the illegal structuring of their election contests only during the *Purcell* period, they have no standing at all.

The Seventh Circuit's ruling puts Bost in an untenable position. File before voting "start[s]," and his case will be dismissed as "speculative." Pet. App. 15a. File after voting starts, and relief will be barred by *Purcell*. That Catch-22 doesn't foster "confidence in the fairness of the election." *Wis. State Legislature*, 141 S. Ct. at 31 (Kavanaugh, J., concurral).

The end result will be more post-election litigation—precisely the kinds of election cases that federal courts are "ill equipped" to decide. *Republican Party of Pa. v. Degraffenreid*, 141 S. Ct. 732, 735 (2021) (Thomas, J., dissenting from the denial of certiorari). The best time for federal courts to take up cases to ensure that the rules of the road for an election are clear and settled is "*before* [each] federal election cycle." *Id.* at 737 (emphasis added). The Seventh Circuit's decision deprives candidates of that opportunity. By doing so, it would "severely damage the electoral system" and undermine the effective functioning of the federal courts. *Id.*

First, post-election judicial review of election rules invites "competing candidates" to "each declare victory under different sets of rules" on election night. *Id.* at 734. That kind of dispute "sow[s] confusion and ultimately dampen[s] confidence in the integrity and fairness of elections." *Id.* If candidates don't have standing to secure judicial resolution of the rules of their election before the "voting process" starts, Pet. App. 11a, then "one candidate" can claim "victory"

under one "rule" while a "second candidate" can claim victory "under the contrary rule," *Cf. Degraffenreid*, 141 S. Ct. at 735. Count the votes, then go to court to see which votes really do count is "not a prescription for confidence," *id.*, which is "essential to the functioning" of American democracy, *Purcell*, 549 U.S. at 4. It "leave[s] election law hidden beneath a shroud of doubt." *Degraffenreid*, 141 S. Ct. at 738.

Second, "postelection litigation is truncated by firm timelines." *Id.* at 735. In Illinois, election results must be certified within 31 days after the election, and sooner if all the returns are received. 10 Ill. Comp. Stat. §5/22-7. "Five to six weeks for judicial testing is difficult enough for straightforward cases. For factually complex cases, compressing discovery, testimony, and appeals into this timeline is virtually impossible." *Degraffenreid*, 141 S. Ct. at 735. It is thus "highly desirable to issue a ruling on the constitutionality of" election rules "before the election." *Boockvar*, 141 S. Ct. at 2 (statement of Alito, J., respecting the denial of motion to expedite).

Truncated postelection litigation "imposes especially daunting constraints when combined with the expanded use of mail-in ballots." *Degraffenreid*, 141 S. Ct. at 735. Illinois' post-election mail-ballot receipt deadline means that all the votes won't even be returned until 17 days before certification is required. 10 Ill. Comp. Stat. §§5/19-8(c), 5/18A-15(a) (allowing mail-ballot receipt up to 14 days after election day). If upheld, the Seventh Circuit's decision would impose a heavy burden on federal courts by effectively requiring them to decide all election-rule challenges after the election.

Third, "postelection litigation sometimes forces courts to make policy decisions that they have no business making." *Degraffenreid*, 141 S. Ct. at 736. For example, what is the proper post-election remedy if Bost prevails on the merits, and scores of Illinois' mail ballots were counted in violation of federal law? In that situation, Illinois would have "improperly changed the rules" for mail-ballot "receipt deadlines" but voters would have "already relied on that change," and the federal court would be required to "choose between potentially disenfranchising a subset of voters" or "enforcing the election provisions" of federal law. *Id.* "Settling rules well in advance of an election rather than relying on postelection litigation ensures that courts are not put in that untenable position." *Id.* at 737.

Adopting the Seventh Circuits' standing rule would be bad for the courts and bad for the country. It would prevent the federal judiciary from "us[ing] available cases outside" of postelection litigation to address the "admittedly important questions" raised by candidate challenges to the election rules under which they must compete. *Id.*

CONCLUSION

This Court should reverse the Seventh Circuit's judgment.

Respectfully submitted,

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