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 OF AMICI CURIAE RESTORING INTEGRITY AND TRUST IN ELECTIONS AND RITE PAC IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Restoring Integrity and Trust in Elections ("RITE") is a 501(c)(4) nonprofit organization with the mission of protecting the rule of law in elections in the United States. RITE is a nonpartisan, public-interest organization dedicated to protecting elections as the democratic voice of the people.

RITE PAC is a tax-exempt political organization organized and operated pursuant to section 527 of the Internal Revenue Code of 1986 with a mission similar to RITE's. RITE PAC routinely supports litigation challenging election laws with political organization participants.

As part of their missions, RITE and RITE PAC seek to defend the electoral process from practices that risk sowing distrust in outcomes, such as the challenged provisions of Illinois law here, 10 Ill. Comp. Stat. Ann. §§ 5/18A-15(a), 5/19-8(c), which mandate the counting of absentee ballots that arrive up to 14 days *after* election day so long as they are post-marked on or before election day.

RITE and RITE PAC further believe that the validity of the Illinois post-election receipt deadline should be reviewable in federal court and therefore support the right of Petitioners to challenge this provision.

RITE and RITE PAC respectfully submit this brief as Amici Curiae in support of the Petitioners' challenge to those provisions.

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[1] No counsel for any party authored this brief in any part. No person or entity other than *amici* funded its preparation or submission.

SUMMARY OF ARGUMENT

When a rule change compels one team in a competition to spend resources to maintain a competitive advantage, that constitutes harm. Elections are competitions. In the United States, these competitions are primarily between the Democratic Party, its candidates and allied political organizations, and the Republican Party, its candidates and allied political organizations. Here, Petitioners (Republican candidates) perceived that Illinois' expansion of the election calendar to 14 days after Election Day eroded their competitive advantage in seeking election, so they sued well in advance of the elections they were contesting. The district court and Seventh Circuit majority second-guessed these candidates' appraisal of their competitive situation and wrongly held that any harm to them was self-imposed or speculative.

In so doing, the Seventh Circuit forces candidates and political organizations to wait until the eleventh hour or until a post-election contest to litigate challenges to election rules governing their competition. This Court should reverse and provide clear guidance for when political competitors' forced resource-diversion constitutes an injury. It should do so because candidates and political organizations should ordinarily be encouraged to bring legal challenges to election rules early. Early challenges allow the judicial system to resolve problems that it will inevitably face outside the context of a contentious political result. The Court should also give clear guidance because the application of resource diversion standing to date has been so uneven as to invite partisan cynicism.

ARGUMENT

I. Candidates and Political Organizations Routinely Involved in Elections Must Have Standing to Challenge Election Rules that Will Force Them to Spend Money or Divert Resources they Otherwise Would Not Have.

Candidates and political organizations are in the business of winning elections. They must have standing to vindicate the injury occasioned when election rules force them to spend or redirect resources in a manner that directly interferes with this core activity. *See generally FDA v. Alliance for Hippocratic Med.*, 602 U.S. 367, 395 (2024). This is already recognized by at least four circuits in the context of political candidates and organizations. *See, e.g., Republican Nat'l Comm. v. North Carolina State Bd. of Elections*, 120 F.4th 390 (4th Cir. 2024); *Texas Democratic Party v. Benkiser*, 459 F.3d 582 (5th Cir. 2006); *Mi Familia Vota v. Fontes*, 129 F.4th 691 (9th Cir. 2025); *Arcia v. Florida Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014). The Seventh Circuit's stark departure from acknowledging this sort of pocketbook injury—that would be recognized in any other context—needlessly threatens to force lawsuits over voting rules into emergency pre-and-post election actions that are necessarily fraught for litigants, courts and democratic society.

A. Forced Expenditure or Diversion of Limited Resources is a Classic Article III Injury.

Economic pocketbook injuries, often referred to as "resource diversion" in election litigation, easily satisfy this Court's Article III standing rules. While the labels may differ, the core elements of this injury are common in challenges to election procedures. A candidate or political organization will typically challenge an election procedure prior to election day because the procedure would require that candidate or political organization to spend additional funds or labor that the plaintiff would otherwise spend on other election-related activities. For example, a longer mail-in period for ballots may require a candidate or political organization to pay additional poll watchers and observers to the detriment of its ability to pay for political advertising. In other words, a classic "economic injury" that is "a quintessential injury upon which to base standing." *Benkiser*, 459 F.3d at 586–87 (finding that plaintiff had standing to challenge other party's substitution of candidates because it "would need to raise and expend addition funds and resources to prepare a new and different campaign in a short time frame").

The diversion of resources to compete under a new rule or regulation for a party contending in an election satisfies the requirements for an injury under Article III. Under the injury prong of standing, plaintiffs have long been required to show an injury that is concrete, particularized, not abstract or generalized, and actually imminent.. As Judge Scudder in dissent observed in this case, Petitioner Bost demonstrated an intent to expend "substantial time, money, and resources" in response to the election law being challenged

(counting mail ballots received after election day), and this injury was personal, concrete, particularized, imminent, fairly traceable, and redressable, thus meeting "all the requirements of Article III standing." *Bost v. Illinois State Bd. of Elections*, 114 F.4th 634, 645 (7th Cir. 2024) (Scudder, dissenting).

Resource diversion standing applies to political parties and organizations no less than particular candidates. While Bost and his co-Petitioners are candidates, much modern election litigation is filed by organizations, such as political parties, social welfare organizations and public charities which have a close relationship to an affected candidate or block of voters in an election. Such political organizations have long been recognized as having standing to bring election litigation, *see Owen v. Mulligan*, 640 F.2d 1130, 1132–33 (9th Cir. 1981) (finding that a county Republican Central Committee had standing to challenge preferential mail rates for a rival candidate), including when their standing is based on resource diversion or pocketbook injuries, *see Brnovich v. DNC*, 594 U.S. 647 (2021) (Democratic Party had standing to challenge ballot-counting and ballot-collection laws); *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1266 (N.D. Ga. 2019) (the "need to divert resources from general voting initiatives or other missions of the organization" establishes standing "[i]n election law cases"); *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040 (9th Cir. 2015) (collecting cases).

When it comes to elections, just as in any case, "[m]onetary costs are of course an injury." *United States v. Texas*, 599 U.S. 670, 676 (2023). There is no financial harm threshold for Article III standing purposes, and no one "dispute[s] that even one dollar's

worth of harm is traditionally enough to qualify as concrete injury under Article III." *Id.* at 688 (Gorsuch, J., concurring). Moreover, "that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury." *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008) (citing *Friends of the Earth, Inc. v. Laidlaw Environmental Servs.,* 528 U.S. 167, 180–84 (2000)).

Though the general rules governing standing are known, courts have sometimes—and curiously—imposed additional requirements on election law challenges that function to reject standing when presented with what would otherwise be a straightforward economic injury. The recurring reticence to recognize standing in these cases cannot be squared with this Court's precedent.

For example, courts, including the court below, have rejected standing based on resource diversion in election law cases by characterizing the injury as "manufacture[d]." *Bost*, 114 F.4th at 634. But injuries occasioned by the compelled diversion of limited competitive resources are no more manufactured than those imposed by any other law. Certainly, candidates and political organizations are the ones spending money, but it is the law that forces them to spend in a new manner. Candidates must respond to the playing field in front of them—a field created and defined by election laws—and that requires resources in the form of time and treasure. When the law changes, political organizations are required to "expend[] additional resources that they would not otherwise have … in ways that they would not have expended them." *Nat'l Council of La Raza* , 800 F.3d at 1040 (finding standing for

political organization to challenge election procedure prior to election day).

Some commentators have criticized *Havens Realty Corporation v. Coleman*, 455 U.S. 363 (1982) as making it too easy for organizations to demonstrate standing based on resource diversion. *E.g. North Carolina State Bd. of Elections*, 120 F.4th at 409 (Diaz, J., concurring). Even if misapplied in some cases, *Havens Realty* remains good law. Consistent with more recent organizational standing decisions, it recognizes that a "concrete and demonstrable" injury to an organization's activities (such as a "drain on the organization's resources") can satisfy Article III standing. 455 U.S. 363, 379; *see also All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024) (discussing Havens's application to organizational standing). While *Havens Realty* has sometimes been overextended to cover organizations spending resources on the underlying litigation, those classic examples of creating economic injury by litigation do not apply to the mine-run case of election litigation. Bost, like most political candidate and organization plaintiffs, is being compelled by the law to spend resources on *election activities* that predate the filing of a lawsuit. This Court can readily maintain the distinction between cognizable pocketbook injuries and truly manufactured litigation-as-its-own-injury.

The fact that Bost brought his challenge in advance of an election he and his co-Petitioners would be contesting also distinguishes his case from *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). In *Clapper*, individuals and organizations sued to challenge the Foreign Intelligence Surveillance Act's (FISA) provisions allowing surveillance of foreigners on the theory that they—all U.S. Citizens or

organizations—regularly had to communicate with foreigners and therefore may be subject to surveillance under FISA. 568 U.S. at 407. These individuals and organizations alleged a version of resource-diversion standing: that the likelihood they would be subject to FISA surveillance at some point in the future meant they had to spend resources now to avoid that potential future harm. *Id.* But because this potential harm—surveillance of their communications under FISA—was not certainly impending, this Court held that the *Clapper* respondents' choice to mitigate against such a speculative potential future injury could not support standing. *Id.* at 416-17. Bost and his co-Petitioners faced a wholly different situation: they were already engaged in an electoral competition where the rules seemed to have been changed in a manner favoring their opponents. The requirement to mitigate against the impact of these rules was not a self-inflicted injury, but rather the only reasonable alternative in the zero-sum game of an election.

Additionally, many courts reject election law standing by invoking the rule against generalized grievances. *E.g. Republican Nat'l Comm. v. Benson*, 754 F. Supp. 3d 773, 786 (W.D. Mich. 2024). While it is true that many election rules "by their nature cause widespread harm," that does not mean that all *plaintiffs* face the same "generalized" harm. Steven J. Mulroy, *Baby & Bathwater: Standing in Election Cases After 2020*, 126 Dick. L. Rev. 9, 14 (2021). Candidates have a unique and particularized interest in the application of virtually all election rules because they are among a tiny class of people that are the subject of the election. Such a unique interest (e.g., potential harm) is the antithesis of a generalized grievance. Likewise with political organizations; these groups exist to

influence elections, raise money for candidates, or otherwise expend efforts well beyond the generic voter or citizen. Candidates and political organizations do not advance generalized grievances when they litigate election cases. In the words of *Lujan*, these plaintiffs are the "object" of a government regulation, and thus there should "ordinarily" be "little question" that the regulation causes injury to the plaintiff and that invalidating the regulation would redress the plaintiff's injuries. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); see also *Diamond Alternative Energy, LLC v. Env't Prot. Agency*, 145 S. Ct. 2121, 2135 (2025). Indeed, even where a voting law or regulation acts directly on voters, by altering the zero-sum competitive landscape, they substantially affect candidates and political organizations. *See Columbia Broad. Sys., Inc. v. United States*, 316 U.S. 407, 422 (1942).

B. Standing to Challenge Election Rules in Advance of Elections Benefits Election Participants, the Judiciary and Democratic Systems.

Recognizing standing based on resource diversion injuries in election litigation has an important practical benefit. It encourages candidates and political organizations to file suit well in advance of voting, thereby giving litigants, courts and concerned citizens breathing room to consider challenged rules outside the fraught context of an immediately impending or contested election result. While such emergency litigation is sometimes unavoidable, it typically results in "rushed, high-stakes, low information decisions" in matters of sometimes national and historic importance. *See Dep't of Homeland Sec. v. New York*, 140 S.Ct. 599, 600 (2020) (Gorsuch, J., concurring); *see*

also Purcell, et al. v. Gonzales, 549 U.S. 1, 4-5 (2006) ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.")

Even where the matters to be decided are amenable to adjudication on an emergency basis, the closer litigation is to dealing with votes cast in reliance on a challenged set of rules, the more difficult a court's job becomes. This case is a perfect example: Bost challenges Illinois' law requiring the counting of ballots received after Election Day. Counting such ballots typically—as in Illinois—requires some proof the ballots were actually cast on or before Election Day. The requirement for evidence the ballots were timely cast means there are necessarily more potential avenues to challenge such ballots and hence for litigation regarding their validity. But if a court were asked to decide—in an emergency action just before or just after Election Day—that what had seemed to be a valid ballot according to Illinois law and regulations was now a late-cast and invalid ballot, it would necessarily be forced to choose between disenfranchising a good-faith voter and enforcing the law. This Court should vindicate standing for candidates and political organizations to challenge rules they are forced to compete under and disincentivize a rush to the courthouse in the midst of what should be a rush to the polls.

II. The Uneven Application of Standing Doctrine to Bar some Election Litigation and Allow Others Proves The Need for this Court's Clear Guidance.

Litigation about how elections are conducted in America uniquely supports the democratic process and instills confidence in the free and fair election system that should be the envy of the world. Unfortunately, courts have increasingly used threshold standing requirements to shut down important cases. Sometimes, that is. Lower courts appear to struggle with application of standing in the election litigation context and, for whatever reason, courts now *routinely* grant standing to Democrat-associated challenges while rejecting the same types of challenges from Republican-associated litigants.

This Court should provide emphatic and pellucid guidance to lower courts and affirm that Bost has standing on account of his pocketbook or resource diversion injury. Such guidance would help minimize the perception that lower courts are not applying standing analysis in an evenhanded way.

A. In election cases, courts fail to apply resource diversion standing consistently

Election litigation is not rare. Along with each new election comes challenges to the ever-changing rules governing elections. Courts thus have a growing body of precedent to consider for recurring legal questions, such as when resource diversion satisfies Article III standing.

Despite the regularity of election litigation, courts provide drastically divergent answers about election law standing. Some courts grant or deny standing on virtually identical facts. This Court should provide clear guidance to lower courts in order to facilitate a more uniform and even-handed application of the law. This is particularly true given the adverse political interests at play and the potential for one side to conclude that standing doctrine is being applied unequally. Because the test for resource-diversion standing is difficult to apply, exogenous factors can easily distort the results of a given case or set of cases. A particularly prolific and able litigator on one side, an especially litigious candidate, or even one side's political litigation strategy could result in uneven results across the country that appear partisan. That is bad for the judiciary and bad for the country. No matter who benefits, courts should be equipped to apply the Article III rules for standing in a neutral and predictable way whenever possible.

1. Post-election day ballot counting.

This case arises from a dispute over the counting of ballots after election day. There were several cases in the last few years where candidates or political organizations challenged how ballots were to be counted after election day. The challenges differed on the exact legal challenge (some federal law, some state law), but for standing analysis purposes, the cases are virtually identical. Each case featured candidate or political party plaintiffs raising resource diversion standing. Courts split wildly on the question:

In *Republican National Committee v. Wetzel*, 742 F. Supp. 3d 587, 595 (S.D. Miss.), rev'd in part, vacated in part, 120 F.4th 200 (5th Cir. 2024), the

Southern District of Mississippi credited the RNC's allegation that acceptance of ballots after election day "forces the RNC to spend more money on ballot-chase programs and poll-watching activities." *Wetzel*, 742 F. Supp. 3d at 593. The court credited the RNC's allegations and found resource-diversion standing.

Contrast this with the analysis from *Republican National Committee v. Burgess*, 2024 WL 3445254, at *2 (D. Nev. July 17, 2024). Facing the same allegation from the same plaintiff, "[t]he Court first recognize[d] that Nevada's mail ballot receipt deadline may require Organization Plaintiffs to devote more resources to poll watching and election-integrity trainings." *Id.* at *5. Despite recognizing that the RNC would have to divert resources because of Nevada law, the court declined to find standing because the resource-diversion injury was not connected to any allegation "that the Nevada mail ballot receipt deadline harms the integrity of the mail ballot counting process." *Id.*

Even within the same district, the analysis varies. In *Donald J. Trump for President, Inc. v. Cegavske*, 488 F. Supp. 3d 993, 1003 (D. Nev. 2020), the District of Nevada deployed yet a third methodology. Examining allegations that the RNC would need to divert resources to accommodate the new deadline, the Court found the allegation to be "a speculative and generalized grievance" and declined to find standing for that reason. *Id.* at 1002 (internal quotation marks omitted). Specifically, the court found the injury speculative because plaintiffs had not alleged that fraud would occur but for their diversion of resources. *Id.*

In *Bognet v. Boockvar*, No. 3:20-CV-215, 2020 WL 6323121, at *3 (W.D. Pa. Oct. 28, 2020), the court bypassed concreteness and particularness entirely to

withhold standing to a congressional candidate based on the redressability of resource diversion. "Bognet has already made the expenditures. Therefore, granting the relief Bognet seeks would not address the expenditures he has already made." *Id.*

The court in this case found yet a fifth way to analyze resource diversion standing. First, the court held that Bost's injury was insufficiently particularized because it was suffered by all candidates. *Bost v. Illinois State Bd. of Elections*, 684 F. Supp. 3d 720, 733 (N.D. Ill. 2023), *aff'd*, 114 F.4th 634 (7th Cir. 2024), *cert. granted sub nom. Bost v. IL Bd. of Elections*, No. 24-568, 2025 WL 1549779 (U.S. June 2, 2025). Second, the court concluded that Bost's harm was not certainly impending because he could not prove that diverting resources would improve his electoral prospects. *Id.* at 733–734.

These cases do not just differ in their result; they apply wildly differing modes of analysis. Courts cannot agree on when to credit the plaintiffs' allegations, the kind of injury the plaintiff must have suffered, or what the plaintiff must allege. Not to mention whether resource diversion is concrete, particularized, or even redressable. This Court should provide clear guidance to the lower courts to minimize the prospect of continued inconsistent application of federal law in election litigation.

2. Courts frequently grant Democrat affiliated challengers standing and deny Republican affiliated challengers standing.

Worse, these inconsistent results do not appear to apply the same to each of the two major political parties. The problem of inconsistent standing decisions is

not limited to just the universe of post-election day ballot counting challenges. Looking to election litigation more broadly over the past few cycles, there has been widely divergent application of resource diversion standing. The Democratic Party, its candidates and allied political organizations tend to bring challenges to laws they allege make it more difficult to vote (like state laws requiring voter identification or regulations limiting polling place hours), alleging such laws force them to divert resources to help their voters overcome the obstacles to casting their ballots. The Republican Party, its candidates and allied political organizations tend to bring challenges to laws making it harder to ensure no unlawful ballots are counted or to expansions of the election calendar, alleging that they are forced to divert resources to additional election observation and/or longer direct competition for votes. The first category of plaintiffs and cases (the "Democratic" category for the purpose of this analysis) tends to be granted standing on a resource diversion theory. The second category of plaintiffs and cases (the "Republican" category for the purpose of this analysis) tends to be denied resource diversion standing. There are undoubtedly nonpartisan explanations for the disparity—for example, the lack of clear guidance—but the disparity is troubling regardless of its cause.

Republican candidates or affiliates have frequently been denied resource diversion standing:

- *Bognet v. Boockvar*, No. 3:20-CV-215, 2020 WL 6323121, at *3 (W.D. Pa. Oct. 28, 2020), *aff'd sub nom. Bognet v. Sec'y Commonwealth of Pennsylvania*, 980 F.3d 336 (3d Cir. 2020), *cert.*

granted, judgment vacated sub nom. Bognet v. Degraffenreid, 141 S. Ct. 2508 (2021)

- *Donald J. Trump for President, Inc. v. Cegavske*, 488 F. Supp. 3d 993, 997 (D. Nev. 2020)
- *Donald J. Trump for President, Inc. v. Way,* 2020 WL 6204477, at *9 (D.N.J. Oct. 22, 2020).
- *Jud. Watch, Inc. v. Illinois State Bd. of Elections*, 2024 WL 4721512, at *2 (N.D. Ill. Oct. 28, 2024).
- *Mussi v. Fontes*, 2024 WL 4988589, at *2 (D. Ariz. Dec. 5, 2024).
- *Republican Nat'l Comm. v. Benson*, 754 F. Supp. 3d 773, 778 (W.D. Mich. 2024)
- *Republican Nat'l Comm. v. Burgess*, 2024 WL 3445254, at *3 (D. Nev. July 17, 2024)

Republican candidates or affiliates have only rarely been granted standing bases on resource diversion as plaintiffs:

- *Donald J. Trump for President, Inc. v. Bullock*, 491 F. Supp. 3d 814 (D. Mont. 2020).
- *Republican Nat'l Comm. v. North Carolina State Bd. of Elections*, 120 F.4th 390, 396 (4th Cir. 2024)
- *Republican Nat'l Comm. v. Wetzel*, 742 F. Supp. 3d 587, 592 (S.D. Miss.), *rev'd in part, vacated in part*, 120 F.4th 200 (5th Cir. 2024)

Democrat candidates or affiliates have rarely been denied standing based on resource diversion as plaintiffs.

- *League of United Latin Am. Citizens v. Abbott*, 2023 WL 4055392, at *2 (W.D. Tex. June 16, 2023).
- *603 Forward, et al. v. Scanlan, et al.*, No. 226-2022-CV-00233 (N.H. Supr. Ct. Nov. 1, 2023).

Democrat candidates or affiliates have frequently been granted standing based on resource diversion.

- *Democratic Cong. Campaign Comm. v. Kosinski*, 614 F. Supp. 3d 20, 27 (S.D.N.Y. 2022).
- *Democratic Nat'l Comm. v. Bostelmann*, 447 F. Supp. 3d 757, 761 (W.D. Wis. 2020).
- *Democratic Party of Virginia v. Brink*, 599 F. Supp. 3d 346, 351 (E.D. Va. 2022).
- *League of Women Voters of Fla., Inc. v. Lee*, 566 F. Supp. 3d 1238, 1245 (N.D. Fla. 2021).
- *Mar. for Our Lives Idaho v. McGrane*, 697 F. Supp. 3d 1029, 1035 (D. Idaho 2023).
- *Mecinas v. Hobbs*, 30 F.4th 890, 895 (9th Cir. 2022).
- *Montana Pub. Int. Rsch. Grp. v. Jacobsen*, 731 F. Supp. 3d 1175, 1180 (D. Mont. 2024), *aff'd*, No. 24-2811, 2024 WL 4023781 (9th Cir. Sept. 3, 2024)
- *New Georgia Project v. Raffensperger*, 2021 WL 12300689, at *2 (N.D. Ga. Dec. 9, 2021).
- *Pavek v. Simon*, 467 F. Supp. 3d 718, 729 (D. Minn. 2020).
- *Texas State Lulac v. Elfant*, 629 F. Supp. 3d 527, 535 (W.D. Tex. 2022), *rev';d and remanded*, 52 F.4th 248 (5th Cir. 2022)

- *Vote.org v. Byrd*, 700 F. Supp. 3d 1047, 1050 (N.D. Fla. 2023).
- *Vote.org v. Callanen*, 609 F. Supp. 3d 515, 521 (W.D. Tex. 2022), rev'd, 89 F.4th 459 (5th Cir. 2023)
- *Vote.org v. Georgia State Election Bd.*, 661 F. Supp. 3d 1329, 1336 (N.D. Ga. 2023).
- *Voto Latino v. Hirsch*, 712 F. Supp. 3d 637, 647 (M.D.N.C. 2024).
- *Crawford v. Marion County Election Bd.*, 472 F.3d 949 (7th Cir. 2007)

Not only are these bare results one-sided, but the analysis in the decisions cannot be reconciled. In *Nat'l Council of La Raza*, for example, the Ninth Circuit held that plaintiff organizations that regularly engaged in voter registration assistance had standing based on having to devote more resources to voter registration assistance. 800 F.3d at 1039–40. In *Mi Familia Vota*, the Democratic Party had standing to challenge citizenship verification and investigation laws based on having to register new voters and further train staff on communicating about the effects of these voting laws to potential voters. 2024 WL 862406, at *27 & *30.

In contrast, also within the Ninth Circuit, Republican candidates and organizations were denied resource diversion standing with the reasoning being that "[n]either of these alleged additional expenditures amounts is a cognizable diversion-of-resources injury." *Burgess*, 2024 WL 3445254, at *4. The alleged expenditures were being "require[d]" to "'spend money on mail ballot chase programs and post-election

activities,' as opposed to 'in-person voting activities and election-integrity measures.'" *Id.* In other words, devoting resources to voter assistance counts; devoting resources to ballot chase activities—which help ensure ballots voters attempted to cast are counted—does not.

The starkly disparate treatment of the two major political parties and their candidates for resource diversion standing highlights the need for this Court to provide clear guidance that can assist lower courts.

B. The Supreme Court should provide definitive guidance in favor of fair and neutral application of recognized resource diversion standing for pre-election litigation.

The Seventh Circuit should be reversed on the question of pocketbook injury or resource diversion. In order to minimize the starkly inconsistent application of standing below, this Court should provide definitive guidance that candidates and political parties satisfy Article III when they plausibly allege resource diversion based on the challenged election rule or procedure, and nothing in *Hippocratic* or *Clapper* forecloses this result.

As this Court recently noted, "standing doctrine" should be applied "evenhandedly." *Diamond Alternative Energy,* 145 S. Ct. at 2141 (collecting recent cases). The commitment to a neutral and predictable test for standing is even more critical when the subject of the litigation is the democratic process itself. Democrats, Republicans, and minor parties now regularly seek judicial review of election procedures to ensure compliance with federal law and the Constitution.

When the litigants are definitionally partisan, the courts should avoid even the perception of selective application of standing doctrine.

The Supreme Court sits to ensure the uniform application of federal law. See Sup. Ct. Rule 10 (certiorari factors). Fred M. Vinson, *Work of the Federal Courts, Address Before the American Bar Association* (Sept. 7, 1949) *in* 69 S. Ct. v, vi (1949) ("The debates in the Constitutional Convention make clear that the purpose of the establishment of one supreme national tribunal was, … to secure the national rights and uniformity of [Judgments]."); Byron R. White, *The Work of the Supreme Court: A Nuts and Bolts Description*, 54 N.Y. St. B.J. 346, 349 (1982) (suggesting that the Court should focus on "provid[ing] some degree of coherence and uniformity in federal law").

Just as this Court has long recognized the harms from disparate legal rules in different territorial circuits, and "disarray among federal and state courts" can "strongly suggest[] that prior decisions of this Court offer no clear guidance on the question." *Lakeside Bridge & Steel Co. v. Mountain State Construction Co.*, 445 U.S. 907, 911 (1980) (mem.) (White, J., dissenting from denial of certiorari). If the Seventh Circuit is reversed, there will surely be more election litigation cases that include standing based on resource diversion and related pocketbook injuries. Lower courts should be equipped and encouraged to apply those standards uniformly.

***

CONCLUSION

The Court should reverse the Seventh Circuit and confirm that candidates and political organizations alleging a pocketbook or competitive injury from election rules may challenge those rules outside the fraught context of election-eve litigation or a post-election contest.

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