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 the Public Interest Legal Foundation as *Amicus Curiae* in Support of Petitioners

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INTERESTS OF *AMICUS CURIAE*[1]

The Public Interest Legal Foundation, Inc. ("Foundation") is a non-partisan, public interest 501(c)(3) organization whose mission includes working to protect the fundamental right of citizens to vote and preserve election integrity across the country. The Foundation has sought to advance the public's interest by protecting the federalist arrangement in the Constitution regarding elections, including in a case involving the same central issue posed here.

SUMMARY OF ARGUMENT

When the doctrines of standing and the *Purcell* principle conflict, litigants are left in a Catch-22 as to when to file their lawsuit, as Petitioners here discovered. This case presents the opportunity for this Court to resolve this tension.

Standing doctrine requires there to be an active case or controversy with an "injury-in-fact" in order for a federal court to have jurisdiction. *See* U.S. Const. art. III, § 2; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Meanwhile, the *Purcell* principle encourages federal courts to refrain from altering or interfering with a state's election rules and procedures on the eve of an election. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). Conflict emerges when litigants must decide between either filing their case too early (in which case courts may

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[1] No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amicus curiae* and its counsel, make a monetary contribution intended to fund the preparation or submission of this brief.

rule there has been no "injury-in-fact" yet) or too late (in which case the *Purcell* principle will block any redress, since in election cases, that invariably means an eleventh hour change to elections rules).

Within this conflict, *Amicus* believes standing poses an easier resolution and propose this Court find that individuals with election-related positions, such as candidates or election officials, have standing to challenge election laws that cause an injury– assuming, for standing purposes, that they win on the merits.

This solution incentivizes potential plaintiffs to file suit as soon as they are under the proverbial gun of a potentially illegal election procedure, and promotes judicial economy by allowing courts to adjudicate election law cases sufficiently in advance of an election. It also ensures that plaintiffs have sufficient time for redress, and that defendants have time to make necessary changes to their election laws, should plaintiffs prevail. By connecting standing to a concrete position which makes a potential plaintiff uniquely vulnerable to an injury caused by state law, challenges to election laws will be brought by individuals who will *actually* suffer an injury if the challenged law is found to be unconstitutional. This solution also refines judicial understanding of "certainly impending" injuries by creating a bright line beyond which courts can fairly say an injury is likely enough to occur that they can rule on whether that injury *will* occur.

Finally, this proposed solution promotes the goals of the *Purcell* principle by making sure that the "rules of the road" are "clear and settled" as far in advance of an election as feasible.

ARGUMENT

I. Plaintiffs face conflicting guidelines when deciding when to litigate against potentially illegal election procedures.

The doctrine of standing originates from the U.S. Constitution, which limits federal court jurisdiction to actual "cases" or "controversies." U.S. Const. art. III, § 2. Limiting the category of litigants who can bring a lawsuit serves separation of powers principles by preventing "the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Raines v. Byrd*, 521 U.S. 811, 818 (1997) (citations omitted).

Standing began its evolution into its modern form in *Massachusetts v. Mellon*, 262 U.S. 447 (1923), in which plaintiffs sought to prevent certain federal government expenditures which they considered to violate the Tenth Amendment. In that case, the Court held that it had "no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act." *Massachusetts*, 262 U.S. at 488. Injury is thus central to standing, and legal injuries are straightforwardly defined: "[W]hether someone has suffered an 'injury' depends

on whether he has a cause of action: a 'legal right' that has been violated, 'for which the law provides a remedy.'" *Sierra v. City of Hallandale Beach*, 996 F.3d 1110, 1130 (2021) (*quoting* Black's Law Dictionary 905 (10th ed. 2014) (Newsom, J. concurring).

But the element of injury and its relationship to standing was complicated in *Lujan*, in which the Court held plaintiffs, alleging injuries on the basis of downgraded environmental protection regulations, had not met the "irreducible constitutional minimum of standing," containing three elements. *Lujan*, 504 U.S. at 560. "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), as revised (May 24, 2016) (citing *Lujan*, 504 U.S. at 560-61). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo*, 578 U.S. at 339 (citing *Lujan*, 504 U.S. at 560). To establish redressability, the plaintiff must show that a favorable outcome of the case would remedy the alleged injury. *See Lujan*, 504 U.S. at 568-71.

Now, plaintiffs needed to demonstrate an "injury-*in-fact*," rather than the mere violation of a legal right. This restriction on how injury is defined is at the heart of the Seventh Circuit finding in the case at bar.

This case demonstrates that election law disputes may not neatly fit within modern standing jurisprudence. Real controversies and cases may exist

even with a distant election or with a plaintiff with real controversy by virtue of her office.

In the Petitioners' lawsuit against the State of Illinois, the Seventh Circuit found that Petitioners could not meet the standards of standing. *Bost v. Ill. State Bd of Elections*, 114 F.4th 634 (7th Cir. 2024) In doing so, it distinguished the case at bar from a similar case in the Fifth Circuit, *Carson v. Simon*, 978 F.3d 1051 (7th Cir. 2020). In *Carson,* the election at the heart of the lawsuit was only a few days away, while in the case presently at bar, the election was months away. *See Bost*, 114 F.4th at 644.

But political candidates have otherwise been traditionally held to have standing in election law cases, because of the particular and distinct injury they incur due to election administration laws. *See, e.g.*, *Moore v. Ogilvie*, 394 U.S. 814 (1969) (deciding a case brought by candidates for the offices of electors of President and Vice President of the United States from Illinois); *Anderson v. Celebrezze*, 460 U.S. 780 (1983) (deciding a case brought by a candidate for the office of President of the United States); *Bush v. Gore*, 531 U.S. 98 (2000) (deciding a case brought by a candidate for the office of President of the United States); *Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 313 (2022) (deciding a case brought by a candidate for the United States Senate regarding a campaign finance law).

Does this mean Bost should have waited until the eve of the election to suit the State of Illinois? Not quite, since the *Purcell* principle poses an opposite bar to lawsuits during an election.

The *Purcell* principle espouses that federal courts refrain from altering or interfering with a state's

election administration rules and procedures in the period close to an election. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam); *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). One stated reason for the judicial restraint is to avoid confusing voters and election administrators right before an election. *See Democratic Nat'l Comm. v. Wis. State Legis.*, 141 S. Ct. 28, 30-31 (2020) (Kavanaugh, J., concurring). Indeed, 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. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Milligan*, 142 S. Ct. at 880–81 (Kavanaugh, J., concurring). Additionally, the principle "discourages last-minute litigation and instead encourages litigants to bring any substantial challenges to election rules ahead of time, in the ordinary litigation process." *Wis. State Legis.*, 141 S. Ct. at 31 (Kavanaugh, J. concurring).

Thus, if Bost *had* waited until any questions surrounding injury were clear and unambiguous, he may well have been blocked from any redress by the *Purcell* principle. Too close to an election, and the Court is discouraged from redressing Bost's injury. Too far out, and the Court will have a tough time determining whether an injury is live enough to adjudicate. Standing and the *Purcell* principle are apparently incompatible in this case, according to the lower court, and block *any* possible lawsuit–even when plaintiffs allege unconstitutional procedures giving them an unfair shot in their election.

It would be unconscionable for courts to allow unconstitutional laws or statutory procedures to exist within this zone of ambiguity, where they cannot be challenged under either circumstance.

Recognizing this, the Court has grappled with the *Purcell* principle in the past. In *Milligan*, Justice Kavanaugh suggested a four-part set of factors for plaintiffs seeking to overcome the *Purcell* principle: "(i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship." *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

These factors – especially the third – illustrate the importance of timing in applying the *Purcell* principle, but they also raise an important question for would-be plaintiffs: How long a delay is "undue" in this case? Would waiting until the eve of an election be considered undue? Surely so, but then where does that line fall, especially in relation to standing? This Court has yet to answer such questions, as it admitted in that same opinion, in which it wrote that it "has not yet had occasion to fully spell out all of [the *Purcell* principle's] contours." *Id.*

Amicus suggests that this case is the Court's opportunity to flesh out those contours of the *Purcell* principle. Questions abound about the limits of the principle, with one recent law review article even charting the cases where the *Purcell* principle is applied in an effort to determine how close to an election is too close to get an injunction. *See* Casey P.

Schmidt, *Disrupting Election Day: Reconsidering the Purcell Principle as a Federalism Doctrine*, 110 Va. L. Rev. 1493, 1540 (2024). Additionally, while this court has hinted at possible guidance on when the *Purcell* principle should be abandoned, *see Milligan*, 142 at 881 (Kavanaugh, J., concurring), concrete direction on the issue is needed. *Amicus* requests this Court take this opportunity to not leave these important legal questions "hidden beneath a shroud of doubt." *Republican Party of Pa. v. Degraffenreid*, 141 S. Ct. 732, 738 (2021) (Thomas, J., dissenting). Without clarity on the intersection of the doctrines of standing and the *Purcell* principle, the Court only "invite[s] further confusion and erosion of voter confidence" in the election process. *Id.*

II. Plaintiffs should have standing to challenge election laws that cause an injury by virtue of their role in an election, assuming, for standing purposes, that they win on the merits.

Amicus proposes who has standing should be clarified. Reconciling standing should include a bright line rule that a party with actual consequences, such as candidacy, an obligation to comply with statutory procedures, or liability for an electoral action, will have standing as early as those consequences target them specifically due to their position, assuming (for standing purposes) that they will prevail on merits.

That is, just as Petitioners should have standing by virtue of their positions as candidates in an election, other potential plaintiffs gain standing upon their confirmation to an election-related position connected to the law they are challenging. They must still demonstrate all other elements of standing, but

threading the needle between standing and the *Purcell* principle is no longer a concern for such potential plaintiffs, and they are encouraged to sue as soon as possible. This is not an expansion to standing, as the only people who can sue under this proposed rule are people who already have standing – this rule only clarifies *when* they gain such standing.

In the case presently at bar, Petitioners should have standing due to their positions as candidates. Yet in other election-related disputes, other officials might have standing. For example, officials who are tasked with accepting or rejecting late-arriving ballots would also have a live "case or controversy" if they challenged extensions of time, as in Illinois.

The core purpose animating this proposed solution is that of the *Purcell* principle: making sure that the "rules of the road" are "clear and settled" as far in advance of an election as feasible. *Wis. State Legis.*, 141 S. Ct. at 31. This Court has "repeatedly stated that federal courts ordinarily should not enjoin a state's election laws in the period close to an election," *id.* at 30, due to the potential disruption following a federal court tinkering with state election laws. But in *Milligan*, the Court also recognized that how tough it could be to determine "[h]ow close to an election is too close," *Milligan*, 142 S. Ct. at 881 n.1, and that it may depend on the nature of the election law, how feasible requested relief is, and any collateral effects those changes might have.

Attaching standing to clear parameters cuts through that guesswork. Such parameters can include whether a candidate has registered for an election *as* a candidate, or whether an official has been tasked with accepting or rejecting ballots. As

soon as those parameters are met, he can immediately know whether or not he would be injured if his allegations are factual. In many of these election law cases, injuries crystalize around positions. An alleged injury becomes concrete, particularized and imminent precisely because it impacts someone due to their role in that election, whether as an election official or a candidate, and courts can move forward to adjudicate the dispute right away. Potential plaintiffs are thus incentivized to file suit as soon as their position puts them in a situation where they could be potentially injured by an election procedure. This solution also promotes judicial economy by allowing courts to adjudicate election law cases as far in advance of an election as possible.

Under the current confusion surrounding *Purcell* and standing, district courts embark on time-consuming procedures in an attempt to adjudicate based on facts, only to run aground on the *Purcell* principle. That's exactly what happened in *Merrill v. People First*, 141 S. Ct. 25 (2020). There, plaintiffs challenged a ban on curbside voting during the COVID-19 pandemic. *People First,* 141 S. Ct. at 26. This Court denied a lower court's injunction on the ban. In her dissent, Justice Sotomayor wrote that the injunction was a "reasonable accommodation" by the district court. *Id* at 27. The district court so found after discovery and an expedited trial were conducted. *Id*. at 26. Although *People First* likely would not have benefited from expanded standing discussed here, due to the specific facts in that case, it nevertheless demonstrates how courts benefit from having more time before *Purcell* blocks any redress they might provide prevailing plaintiffs.

Courts are not the only ones who need time in an election lawsuit. States also need time to implement any relief ordered. In *Wis. State Legis.*, this Court said that states need clear election rules precisely because "running a statewide election is a complicated endeavor. Lawmakers initially must make a host of difficult decisions about how best to structure and conduct the election." 141 S. Ct. at 31. When courts hand down rulings granting redress to plaintiffs challenging election laws, losing defendants cannot just wave a wand and effect change instantly. They need time to make those changes.

In *People First*, this Court recognized such by including feasibility into its analysis. Although that can certainly help plaintiffs overcome the *Purcell* principle when they are already in the thick of litigation, clarifying standing to giving plaintiffs more time to sue accomplishes the same goal of promoting feasible solutions, but does so from the very outset of litigation.

This solution also refines judicial understanding of "certainly impending" injuries by creating a bright line beyond which courts can fairly say an injury is likely enough to occur that they can rule on whether that injury *will* occur. Tying standing to status as an election official or candidate is also an easy way to preserve existing rulings where election law cases were dismissed on standing, usually because injuries alleged by voters are found to be generalized grievances. *See Lutostanski v. Brown*, 88 F.4th 582 (5th Cir. 2023). Plaintiffs are still required to clearly allege facts demonstrating all elements of standing, but by more concretely defining an "impending injury," they can now be sure of when to file a lawsuit.

By ensuring only such plaintiffs can overcome this standard, it guarantees that their injuries will be particularized, since they may suffer unique injuries under a potentially invalid election law, compared to an ordinary voter without a particularized administrative role in election administration.

Thus, this proposed solution preserves the ruling in *Lance v. Coffman*, 549 U.S. 437 (2007), which the Seventh Circuit suggested in dicta was somehow incompatible with the *Carson* decision. *Bost* at 643-44. It also preserves the ruling of cases like *Walsh v. Luzerne County*, 2025 U.S. Dist. LEXIS 79586, *1 (M.D. Pa. Apr. 28, 2025), in which a candidate was found to have lacked standing because he ran unopposed and there was consequently no injury in an election whose processes he sought to contest. This solution will only rescue cases which would have otherwise floundered thanks to *Purcell*, but it does so while giving this Court plenty of time to work out the future of the *Purcell* principle on its own time.

In *Splonskowski v. White*, 714 F. Supp. 3d 1099 (D.N.D. 2024), a North Dakota County Auditor alleged his state's election process of receiving ballots nearly two weeks after Election Day violates federal election law. He sued North Dakota, seeking pre-enforcement review. *Id.* at 1104. The court decided that he did not have standing. Thus, the court never ruled on whether the North Dakota process violates federal law. Voters have no way of knowing whether their votes were legally cast and counted, and a potentially violative election law continues to be on the books now, having dodged judicial review purely because of the court's standing interpretation.

The County Auditor sought standing because he was in the position of either following federal law or state law as, honoring federal law, he'd "necessarily fail … to perform his official, statutory duties, acts that will expose him to adverse consequences, including criminal prosecution." Pl. Mark Splonskowski's Resp. in Opp'n to Def.'s Mot. to Dismiss at 6, Splonskowski v. White, 714 F. Supp. 3d 1099 (D.N.D. 2024) (1:23-cv-00123-DMT-VPH). This should have been sufficient to vest standing in a challenge to whether ballots should be accepted. Thereafter, the case could have proceeded to the merits, and North Dakota voters could have enjoyed increased confidence in their electoral system, knowing either that their state procedure was perfectly permissible under federal law, or that any conflict will be solved.

Under the proposed solution presented in this brief, standing in election cases will turn based on the relationship between the potential plaintiff, the upcoming election, and the election law being challenged. Generalized "voter injuries" will continue to be rightfully excluded from bar, while interested parties will have more leeway to bring lawsuits challenging potentially invalid election laws in advance, without being then-blocked by the *Purcell* principle.

CONCLUSION

For these reasons, *Amicus* respectfully requests that this Court reverse the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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