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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether petitioners alleged Article III standing.

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BRIEF IN OPPOSITION

Petitioners are three Illinois political candidates who disagree with the choice the State has made to count mail-in ballots that are cast on or before Election Day but arrive after Election Day. They do not claim that Illinois's ballot receipt deadline affected their likelihood of prevailing in any race in which they have ever competed or are likely to compete in the future. Rather, petitioners contend that they are entitled to challenge the deadline simply by virtue of their status as candidates, on the theory that a political candidate can *always* challenge a state's regulation of the time, place, and manner of conducting an election. Alternatively, petitioners say, one of them has standing because he expends campaign resources to monitor ballots that were cast before but arrive after Election Day. The Seventh Circuit, applying this Court's settled precedents, held that petitioners had failed to allege Article III standing.

Petitioners ask the Court to review the Seventh Circuit's decision to "clarify . . . questions about candidate standing" that they assert are important to the public. Pet. 17. But the Seventh Circuit's highly factbound application of settled precedent to the allegations in the complaint does not warrant review. There is no division of authority implicated by this case, and petitioners barely assert otherwise. Instead, petitioners' request for further review boils down to an assertion that the Seventh Circuit misapplied the law of Article III standing. But the Court does not grant review to correct factbound errors, and, in any event, the Seventh Circuit did not err in concluding that

petitioners failed to allege standing. The petition should be denied.

STATEMENT

1. The United States Constitution "'imposes' on state legislatures the 'duty' to prescribe rules governing federal elections," while simultaneously permitting Congress to alter the rules that States enact. *Moore v. Harper*, 600 U.S. 1, 10 (2023) (quoting *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013)); see U.S. Const. art. I, § 4, cl. 1; *id.* art. II, § 1, cl. 2. Pursuant to the authority granted them by the Constitution, the States have exercised sweeping "responsibility for the mechanics" of federal elections, *Arizona*, 570 U.S. at 9, in areas ranging from voter registration to ballot access to mail-in voting.

Illinois has enacted a comprehensive statutory scheme governing federal and state elections. See 10 ILCS 5/1-1 *et seq.* Among other things, Illinois, like many States, has chosen to permit any voter to cast a ballot by mail in any election held in the State. See *id.* § 5/19-2. An Illinois voter who chooses to vote by mail must sign and date a certification on the ballot envelope attesting under penalty of perjury that he or she is eligible to vote in the election. *Id.* §§ 5/19-5, 5/19-6. A vote-by-mail ballot will be counted only if it is postmarked on or before Election Day, or, where there is no postmark, if the voter's ballot certification is dated on or before Election Day. *Id.* § 5/19-8(c). Because a ballot that is cast by mail on or just before Election Day may not arrive at the local election authority until after Election Day, Illinois law provides that such ballots must be counted by the election

authorities as long as they arrive "before the close of the period for counting provisional ballots" — *i.e.*, within 14 days of Election Day. *Ibid.*; see *id.* § 5/18A-15(a). Over half of the States have made a similar decision to count ballots that arrive after Election Day. 7th Cir. Doc. 18 at 5 & n.2.

2. Petitioners are three Illinois voters and political candidates: Michael Bost, who has served since 2015 in the U.S. House of Representatives, and Laura Pollastrini and Susan Sweeney, who were presidential electors in 2020. Pet. App. 4a.

Petitioners filed suit to challenge Illinois's decision to count mail-in ballots that are cast on or before Election Day but received after Election Day. *Ibid.* Petitioners contend principally that Illinois's ballot receipt deadline is preempted by two federal statutes setting the Tuesday after the first Monday in November of even-numbered years as Election Day. See *ibid.*; 2 U.S.C. § 7; 3 U.S.C. § 1. Petitioners contend that Illinois has unlawfully decided to count "'untimely' ballots" in violation of these federal statutes, Pet. App. 4a, "expand[ing] Election Day" in a manner not permitted by federal law, *id.* at 81a (¶ 4).

Petitioners did not allege that Illinois's ballot receipt deadline affected their likelihood of prevailing in any race in which they have ever competed or would compete in the future. Rather, petitioners alleged two bases for standing.[1] First, petitioners contended that,

[1] Below, petitioners also alleged that they had Article III standing as voters, asserting that Illinois's ballot receipt deadline "diluted" the value of their votes. Pet. App. 6a-9a. All three members of the Seventh Circuit panel rejected that claim, and

as political candidates, they were "entitled to have their elections results certified with votes received in compliance with the federal Election Day statutes," and so were automatically entitled to challenge any state election rule interfering with that interest. *Id.* at 87a (¶ 32). Second, petitioners alleged that Illinois's choice to count mail-in ballots received after Election Day forced them to "spend money" and "devote time" to "organizing, funding, and running their campaigns" that they would not otherwise have expended. *Id.* at 89a (¶ 46).

Respondents moved to dismiss the complaint, and petitioners moved for partial summary judgment, relying on three declarations executed by petitioners to establish standing. *Id.* at 4a-5a, 64a-79a. The district court granted respondents' motion to dismiss, holding that petitioners had failed to allege Article III standing, that their claims were barred by sovereign immunity, and that those claims failed on the merits. *Id.* at 27a. In granting the motion to dismiss, the district court did not reference petitioners' declarations.

3. The Seventh Circuit affirmed, holding that petitioners had failed to allege Article III standing. Pet. App. 2a. It explained that, under this Court's settled precedents, to invoke federal jurisdiction, a plaintiff had to allege a plausible injury in fact that was "'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* at 6a (quoting *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560 (1992)). By contrast, it explained, a plaintiff alleging only a "general

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petitioners do not challenge that aspect of the Seventh Circuit's decision. Pet. 31 n.13.

and undifferentiated" injury—one "'common to all members of the public'"—lacked standing and could not invoke Article III jurisdiction. *Ibid.* (quoting *United States v. Richardson*, 418 U.S. 166, 177 (1974)).

Applying these precedents, the Seventh Circuit held that petitioners had failed to plausibly allege an injury in fact. Specifically, the court explained, petitioners had failed to allege a "competitive injury"—a risk that the "votes that will be received and counted after Election Day" would materially affect their likelihood of prevailing in their elections. *Id.* at 13a. And it rejected petitioners' assertion of an intangible harm premised on interference with their asserted interest in "ensuring that the final official vote tally reflects only legally valid votes," explaining that any such interest could not give rise to Article III standing absent an allegation of a competitive injury. *Id.* at 13a-15a.

The court also rejected petitioners' argument that their alleged expenditure of resources on monitoring mail-in ballots that arrived after Election Day gave rise to Article III standing. *Id.* at 10a. Although the parties disputed whether the declarations petitioners filed in support of their motion for summary judgment were appropriately considered on appeal, that dispute was irrelevant, the court reasoned, because petitioners had failed to establish standing even accounting for the declarations. *Id.* at 9a-10a. That was so, the court explained, because, given petitioners' failure to explain why the mail-in ballots arriving after Election Day might affect their likelihood of prevailing in their elections, any tangible costs that petitioners incurred to monitor those ballots could not give rise to Article

III standing. See *id.* at 11a-12a ("Plaintiffs cannot manufacture standing by choosing to spend money to mitigate such conjectural risks.").

Judge Scudder dissented in part. *Id.* at 16a. Although he agreed that petitioners had failed to allege a competitive or intangible injury as candidates, he would have held that Bost had alleged standing. *Ibid.* In Judge Scudder's view, Bost's expenditure of resources monitoring ballots that arrived after Election Day constituted injury in fact sufficient to give rise to Article III standing. *Ibid.*

REASONS FOR DENYING THE PETITION

Petitioners ask the Court to grant certiorari to review the Seventh Circuit's application of settled precedents to the facts of this case. The Court should deny that invitation. The case presents no sufficiently important—or even sufficiently discrete—legal question warranting the Court's review, it does not conflict with this Court's opinions, and it does not implicate a division of authority among lower courts. The petition should be denied.

I. Petitioners Identify No Important Question Of Federal Law Warranting Review.

Petitioners' primary argument in support of certiorari is not that there is some division of authority implicated by the opinion below. Pet. 13-21. Rather, petitioners assert that certiorari is warranted for the primary purpose of "clarify[ing] . . . questions about candidate standing" that they contend are generally important to the public. *Id.* at 17. But that is wrong for multiple reasons. The petition does not present a

discrete legal question, but instead a request for fact-bound error correction; this case is a poor vehicle to resolve petitioners' standing theories; and, in any event, petitioners are incorrect that the issues presented by the petition are important enough to warrant review.

a. To start, the question petitioners ask the Court to review is essentially a factbound dispute. Petitioners ask the Court to grant certiorari to decide "whether Petitioners . . . have pleaded sufficient factual allegations to show Article III standing" to challenge Illinois' ballot receipt deadline. Pet i. But that is just the kind of factbound question the Court does not generally grant certiorari to decide. "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." S. Ct. R. 10; see, *e.g.*, *United States v. Johnston*, 268 U.S. 220, 227 (1925) (explaining that the Court ordinarily does not "grant . . . certiorari to review evidence and discuss specific facts"). There is no reason the Court should depart from its usual practice here.

When the Court grants certiorari to address questions of Article III standing, it generally does so in cases presenting discrete questions of law that have divided the lower courts. See, *e.g.*, *Laboratory Corp. of Am. Holdings v. Davis*, No. 24-304 (U.S.) ("Whether a federal court may certify a class action when some of its members lack any Article III injury," alleged 2-2-3 split); *Diamond Alternative Energy, LLC v. EPA*, No. 24-7 (U.S.) ("Whether a party may establish the redressability component of Article III standing by relying on the coercive and predictable effects of

regulation on third parties," alleged 4-1 split). Petitioners' request that the Court consider whether they "pleaded sufficient factual allegations" for standing purposes, Pet. i, is a question that, by its nature, carries no implications for anyone but the parties to this case.

That defect is exacerbated by the threadbare nature of petitioners' complaint. A plaintiff invoking the jurisdiction of the federal courts must, at the pleading stage, "clearly . . . allege facts demonstrating" standing in the complaint. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (cleaned up)); *Allen v. Wright*, 468 U.S. 737, 752 (1984) (at the motion to dismiss stage, standing focuses on "complaint's allegations"). But petitioners' complaint contains only a handful of allegations relevant to their assertion of candidate standing, namely that they (a) are "entitled to have their election[] results certified with votes received in compliance" with the law, Pet. App. 87a (¶ 32), and (b) "rely on provisions of federal and state law in conducting their campaigns including" allocating resources, *id.* at 87-88a (¶ 33). It is hard to see what public interest would be served by refereeing a factbound dispute about the adequacy of such a barebones complaint.

b. In any event, neither of petitioners' two standing theories—that they automatically have standing as political candidates to challenge state election rules and that they have standing because they

expend campaign resources monitoring ballots that arrive after Election Day, see Pet. 2, 22-24; 7th Cir. Doc. 6 at 15-21—warrants the Court's review in this case.

First, the Seventh Circuit's rejection of petitioners' "competitive injury" theory, Pet. App. 13a, does not warrant the Court's review. Most basically, petitioners failed to plead any actual competitive injury, in that they failed to allege in the complaint any reason that Illinois's ballot receipt deadline might affect the likelihood that they might prevail in any election, past or future. Pet. App. 87a-88a (¶¶ 32-33). Instead, petitioners rested solely on their asserted "entitle[ment] to have their election[] results certified in compliance with" the law and reliance on "provisions of federal and state law in conducting their campaigns." *Ibid.* So although petitioners criticize the district court for "not address[ing] [their] competitive injuries," Pet. 9, it did so for the obvious reason that petitioners failed to allege any such injury in the complaint or, indeed, advance any such argument in the district court at all, see Dist. Ct. Doc. 53 at 3-12. Likewise, when respondents observed that deficit in challenging petitioners' standing at the Seventh Circuit, 7th Cir. Doc. 18 at 22-23 (explaining that petitioners did "not allege that the ballot receipt deadline statute in some way affects their electoral prospects"), petitioners did not contest it, 7th Cir. Doc. 34 at 1-8, and the Seventh Circuit in turn relied on it in finding that petitioners had not alleged standing, Pet. App. 13a (petitioners did not allege that the "votes that will be received and counted after Election Day" might impact the outcome of their elections).

Petitioners' choice not to allege a traditional competitive injury of this kind thus drove the Seventh Circuit's conclusion that they lacked standing. *Supra* pp. 4-6. That choice is an idiosyncratic one: Political candidates in other cases challenging state election laws have not hesitated to explain why the laws that they challenge might in fact affect their likelihood of prevailing in elections—including in cases challenging ballot receipt deadlines materially identical to Illinois's. See *infra* pp. 22-23 (discussing analogous challenge to Mississippi's ballot receipt deadline). And it makes this case a poor vehicle in which to offer guidance on the circumstances under which a political candidate might have standing to challenge state election laws.

To the extent petitioners' view is that they were not obligated to plead such an injury because, as political candidates, they *automatically* have standing to challenge state election regulations, see Pet. 2 (explaining that, "[u]ntil recently, it was axiomatic that candidates had standing to challenge" state "time, place, or manner regulations"), or because—put differently—they have an interest in an "[ ]accurate vote tally," *id.* at 20, entitling them to challenge any state law plausibly affecting that tally, petitioners identify no reason why that question would be sufficiently important to warrant this Court's review absent any division of authority among the lower courts or other reason sounding in Rule 10. *Infra* pp. 14-23. Indeed, even the dissenting judge, who would have found standing for Bost on a resource-diversion theory, rejected this argument without comment. Pet. App. 16a (Scudder, J., dissenting). The Court should not grant

certiorari for the purpose of relaxing its traditional standing rules in the manner petitioners suggest.

Second, the Seventh Circuit's rejection of petitioners' resource-diversion theory of standing, Pet. App. 10a, likewise does not warrant review. For one, this question is an entirely factbound one, in that it turns on the application of this Court's caselaw on Article III standing to petitioners' specific statements regarding their campaign expenditures. *Supra* pp. 7-8. Petitioners identify no plausible reason for the Court to review a question with such limited applicability beyond this case.

Petitioners' resource-allocation theory of standing does not warrant the Court's review for the additional reason that it is dependent on resolution of an antecedent dispute that does not itself warrant review. As noted, *supra* p. 8, petitioners alleged in the complaint only that they "rely on provisions of federal and state law in conducting their campaigns including" allocating resources, see Pet. App. 87-88a (¶ 33). Petitioners' account of the resources they expend monitoring mail-in ballots that arrive after Election Day depends instead on declarations they filed with their motion for partial summary judgment. *Id.* at 64a-79a. But the district court did not reference those declarations in resolving respondents' motion to dismiss, *id.* at 44a-47a, and the Seventh Circuit expressed uncertainty about whether the declarations were properly before it, ultimately concluding that it did not need to resolve the question given that petitioners had failed to establish standing regardless, *id.* at 9a-10a. If the Court were to grant certiorari to consider petitioners' resource-diversion theory, it would have to answer

this antecedent procedural question first. That vehicle defect counsels against certiorari.

c. Petitioners advance a range of arguments in support of their claim that this case is sufficiently important to warrant the Court's review, Pet. 13-21; see S. Ct. R. 10(c), but all lack merit.

Petitioners' primary argument appears to be that lower courts have "struggled . . . with the question of candidate standing" since the litigation surrounding the 2020 election. Pet. 14. But the fact that the 2020 election (which took place in the immediate aftermath of the Covid-19 pandemic) yielded a number of opinions addressing candidate standing is not evidence that questions of candidate standing are sufficiently important to warrant a splitless grant, or that courts are "struggl[ing]," *ibid.*, with these questions. Although petitioners cite nine cases decided in or after that timeframe as examples of this trend, *id.* at 14-17, these cases apply the same fundamental principles of Article III standing as does the opinion below to different claims brought by different plaintiffs regarding different state election laws. Compare Pet. App. 5a-6a with, *e.g.*, *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 924 (7th Cir. 2020); *Carson v. Simon*, 978 F.3d 1051, 1057 (8th Cir. 2020) (*per curiam*). To the extent these courts reached different results, they did so based largely on those factual distinctions, not disagreement as to the applicable legal principles. See, *e.g.*, *Bognet v. Sec'y*, 980 F.3d 336, 347-63 (3d Cir. 2020) (conducting lengthy claim-by-claim analysis of plaintiffs' standing), *vacated as moot sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021); *Donald J. Trump for President, Inc. v. Cegavske*, 488 F. Supp. 3d

993, 1001-04 (D. Nev. 2020) (describing "fact-intensive" nature of standing analysis). And many of these cases challenged ballot access measures undertaken during the Covid-19 pandemic, further underscoring the limited utility of granting certiorari to review any aspect of their reasoning. See, *e.g.*, *Bognet*, 980 F.3d at 342; *Carson*, 978 F.3d at 1055; *Cegavske*, 588 F. Supp. 3d at 996.

Petitioners do not appear to genuinely argue that courts disagree on the legal principles applicable to candidate standing. Instead, they attack the Third Circuit's decision in *Bognet*, 980 F.3d 336, which was vacated as moot in the wake of the 2020 election. Pet. 15-16 (arguing at length that *Bognet* "permeate[s] lower court rulings"). In support of this critique, petitioners contend that several Justices argued that two "companion cases" to *Bognet* warranted review. *Ibid.* But petitioners' account of these cases is misleading. In denying certiorari in these cases, multiple Justices wrote separately to express the view that the Court should grant certiorari to consider the circumstances under which a state court can override a state statute regulating federal elections—the question ultimately addressed in *Moore v. Harper*, 600 U.S. 1. See *Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732, 732 (2021) (Thomas, J., dissenting); *id.* at 738 (Alito, J., dissenting); *Republican Party of Pennsylvania v. Boockvar*, 141 S. Ct. 1, 1 (2020) (statement of Alito, J.). No Justice wrote to indicate an interest in addressing questions regarding the Article III standing of political candidates in either of these cases, and no Justice wrote separately in *Bognet* at all.

Regardless, petitioners' disagreement with a single now-vacated appellate court decision has no relevance to whether the Court should grant certiorari in *this* case, especially in the absence of any showing that the opinion below conflicts with this Court's precedents or the opinions of other courts of appeals. *Infra* pp. 14-23. If some later opinion relying on *Bognet* creates some division of authority warranting review, the Court can always consider granting certiorari in that case at that time.

Petitioners' remaining arguments lack merit. Petitioners observe that it is "important that courts hear and resolve" election disputes, Pet. 17, but the same could be said for many other areas of the law, and petitioners identify no reason that this case presents a specific question of law that is sufficiently important to warrant the Court's review. Petitioners also observe that this case arises from "the ordinary litigation process" rather than through "emergency or expedited procedures." *Id.* at 21. But that feature, whatever its virtues, does not itself justify granting certiorari to consider the fundamentally factbound question that petitioners propose.

II. The Opinion Below Is Consistent With This Court's Precedents.

Petitioners' attempts to establish a conflict between the opinion below and either this Court's own precedent or the opinions of other courts of appeals also fail. Petitioners first assert that the opinion below is incorrect and conflicts with this Court's precedents on Article III standing. Pet. 24-27. Petitioners are wrong: The Seventh Circuit correctly held that

petitioners lacked standing, and at minimum its opinion does not conflict with any of this Court's precedents.

First, petitioners misunderstand the Court's criteria for granting certiorari. Petitioners' primary contention is that the Seventh Circuit "erred" in applying this Court's caselaw on Article III standing. *Id.* at 24. But the Court does not grant certiorari to consider "the misapplication of a properly stated rule of law." S. Ct. R. 10. And the Seventh Circuit correctly stated this Court's precedents, as petitioners do not appear to dispute. See Pet. App. 5a-6a. Petitioners' objection is instead to the application of those precedents to the "factual allegations" set out in their complaint. Pet i. But that is a request for error correction, not a serious argument that the Seventh Circuit "decided an important question of law in a way that conflicts with" this Court's opinions. S. Ct. R. 10(c). It does not warrant review.

Regardless, the Seventh Circuit's application of settled precedent does not conflict with this Court's opinions. Petitioners contend that the panel misapplied this Court's opinions in *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013), *FEC v. Ted Cruz for Senate*, 596 U.S. 289 (2022), and *Lance v. Coffman*, 549 U.S. 437 (2000) (*per curiam*). Pet. 21, 24-27. But the panel correctly applied these cases in holding that petitioners had failed to allege Article III standing.

As the Seventh Circuit explained, to allege Article III standing, a plaintiff must show that any injury in fact is "actual or imminent," and not "speculative." Pet. App. 10a (quoting *Lujan*, 504 U.S. at 560, 564

n.2). This Court applied that rule in *Clapper* to reject the standing of individuals who "incurred certain costs" to protect themselves against the possibility of surveillance. 568 U.S. at 416. Where the risk of surveillance itself was only "speculative" in nature, and thus could not support Article III standing, the Court held, the expenditure of resources to prevent that risk likewise did not give rise to Article III standing. *Ibid.* The plaintiffs could not "manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Ibid.*

The Seventh Circuit correctly applied that precedent to petitioners' allegations of resource diversion. Like the plaintiffs in *Clapper*, petitioners failed to allege any *underlying* risk that the ballots that they spend resources to monitor might impact the outcome of their elections. *Supra* pp. 4-6; see Pet. App. 11a. Absent such an allegation, the Seventh Circuit reasoned, the risks that petitioners allegedly spend resources to prevent are merely "conjectural," and they "cannot manufacture standing by choosing to spend money to mitigate" them, just as in *Clapper*. Pet. App. at 11a-12a; see also *id.* at 13a (petitioners "are electing to undertake expenditures to insure against a result that may or may not come").

Petitioners criticize the panel's decision, Pet. 24-26, but their arguments mischaracterize it. Petitioners critique the panel for "requiring . . . consideration of candidates' electoral prospects" in evaluating standing. *Id.* at 25; see also *id.* at 19-20 (decision below requires courts to "predict electoral outcomes"), *id.* at 24 (similar). But the opinion below does not

require courts to "dive into . . . Rasmussen and the Cook Report," *id.* at 19, to determine whether political-candidate plaintiffs have alleged standing. Rather, the Seventh Circuit conducted a "careful . . . examination of [the] complaint's allegations," *Allen*, 468 U.S. at 752, to decide whether petitioners had alleged the existence of a non-speculative risk of injury that their expenditure of resources might prevent, just as *Clapper* instructs, see 568 U.S. at 415. The opinion below thus announces no generally applicable rule requiring consideration of "electoral prospects," Pet. 19, in evaluating candidate standing, much less one that conflicts with this Court's precedents.

The Seventh Circuit's decision also does not conflict with this Court's opinion in *Cruz*. At the threshold, petitioners are wrong to chastise the Seventh Circuit for "ignor[ing]" *Cruz*. Pet. 24, 26. Petitioners did not argue below that *Cruz* was relevant to whether they were injured by Illinois's ballot receipt deadline, instead citing it only for the standard applicable to a motion to dismiss. See 7th Cir. Doc. 6 at 14-15. They cannot now attack the panel for not discussing a case that they themselves failed to bring to its attention below.

Regardless, petitioners are incorrect that the decision below conflicts with *Cruz*. As relevant here, *Cruz* rejected an argument that a plaintiff might lack standing because his or her injuries "could be described in some sense as willingly incurred." 596 U.S. at 297. But the Court expressly distinguished *Clapper* in reaching that conclusion, explaining that the plaintiffs in that case lacked standing not because they voluntarily chose to expend resources, but

because they did so without showing that doing so would alleviate some underlying—and non-conjectural—risk traceable to the challenged conduct. See *ibid.* The Seventh Circuit's conclusion that petitioners are analogous to the plaintiffs in *Clapper*, in that they are "choosing to spend money to mitigate" an underlying risk that is "conjectural" in nature, Pet. App. 11a-12a, is thus fully consistent with *Cruz*.

Finally, petitioners are also wrong that the opinion below conflicts with this Court's opinion in *Lance*. Pet. 21. *Lance* rejected an Elections Clause challenge brought by four voters to a Colorado election rule on the ground that the voters lacked standing. 549 U.S. at 441-442. The voters, the Court explained, alleged only "that the law—specifically the Elections Clause—has not been followed," which is "the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past." *Id.* at 442. Petitioners suggest that the Seventh Circuit "misread" *Lance*, in that it has "nothing to do with" the standing of political candidates (as opposed to voters). Pet. 16-17, 21. But the panel opinion is consistent with petitioners' reading of *Lance*, in that it cites *Lance* primarily for the proposition that petitioners lacked standing as voters, not as candidates. Pet. App. 7a.[2]

[2] The panel also questioned whether the Eighth Circuit's opinion in *Carson* was "consistent with . . . *Lance*," Pet. App. 14a, but ultimately did not reach that question, given its conclusion that this case and *Carson* were distinguishable on their facts. Regardless, there is no reason to grant certiorari in *this* case to consider the intersection between *Lance* and an Eighth Circuit

There is no conflict between the opinion below and this Court's precedents on Article III standing.

III. The Opinion Below Does Not Implicate Any Division Of Authority.

Petitioners finally assert that the opinion below implicates "inter- and intra-circuit splits" over candidate standing. Pet. 27. Petitioners are incorrect.

Petitioners' primary complaint is that the opinion below is inconsistent with the Eighth Circuit's opinion in *Carson*, 978 F.3d 1051. Pet. 27-28. But there is no conflict between the opinion below and *Carson*. The plaintiffs in *Carson* were two Minnesota presidential electors who challenged that State's decision, in response to the Covid-19 pandemic, to extend absentee voting past the deadline set out in state law. See 978 F.3d at 1054-1056. But the *Carson* plaintiffs alleged exactly the kind of competitive injury that petitioners here did not, *supra* p. 16: They alleged that, if the State enforced the challenged policy, that would increase the likelihood of their political party losing the election, thus "prevent[ing] [them] from participating in the Electoral College." Doc. 15 at 2 (¶ 16), *Carson v. Simon*, No. 20-cv-2030 (D. Minn. Sept. 24, 2020); accord Doc. 16 at 2 (¶ 11), *Carson*, No. 20-cv-2030 (D. Minn. Sept. 24, 2020) (alleging that whether policy was enforced would determine whether plaintiff would be "elect[ed] or not elect[ed]" as a presidential elector).

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opinion that the panel here correctly viewed as factually distinguishable. See *infra* pp. 19-20.

There is thus no conflict between *Carson* and the opinion below: The plaintiffs in *Carson* plausibly alleged that the challenged policy might materially affect their likelihood of prevailing in an election, and petitioners here did not, *supra* p. 16—a decision that drove the panel's conclusion that they failed to allege the existence of Article III standing, *supra* pp. 5-6. To be sure, as petitioners observe, Pet. 28, the Eighth Circuit used broad language to describe its holding, reasoning that "[a]n inaccurate vote tally is a concrete and particularized injury" to the plaintiffs. 978 F.3d at 1058. But it did so cognizant of the plaintiffs' allegation that the "vote tally" at issue might have meant the difference between service as a presidential elector and not. Here, by contrast, petitioners have never advanced any allegation that Illinois's ballot receipt deadline might materially impact their likelihood of prevailing in any election. *Carson* is thus distinguishable.[3]

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[3] That distinction also explains why petitioners' amici are wrong that the decision below implicates "multiple circuit splits." RITE Br. 7. One of those circuit splits is simply the alleged disagreement between the opinion below and *Carson*, *id.* at 18-21, but, as discussed, the two cases are not in conflict, given that the *Carson* plaintiffs alleged a competitive injury and petitioners did not. That same distinction explains why the opinion below conflicts with neither a handful of cases finding standing on a diversion-of-resources theory, *id.* at 14-17, nor cases finding standing on a competitive-injury theory, *id.* at 8-14: Both of those theories turn on the existence of some underlying risk that the candidate may lose an election if the offending conduct is not enjoined. Petitioners have never alleged any such risk, as the Seventh Circuit observed, Pet. App. 11a-12a, and so the panel's conclusion that they failed to allege standing does not conflict with the cases cited by petitioners' amici.

Petitioners' remaining arguments fare no better. Petitioners assert that the opinion below creates an "intra-circuit split[]" within the Seventh Circuit, Pet. 27, identifying two Seventh Circuit cases recognizing candidate standing on different facts, see *id.* at 29-30 (citing *Krislov v. Renour*, 226 F.3d 851 (7th Cir. 2000), and *Libertarian Party of Ill. v. Scholz*, 872 F.3d 518 (7th Cir. 2017)). But this Court does not grant certiorari to resolve an inconsistency among a court of appeals' own cases. See S. Ct. R. 10(a); Shapiro et al., *Supreme Court Practice* 4-24 (11th ed. 2019) ("Ordinarily, a conflict between decisions rendered by different panels of the same court of appeals is not a sufficient basis for granting a writ of certiorari.").

Regardless, there is no tension between the opinion below and *Krislov* and *Scholz*, as the opinion itself explains. See Pet. App. 12a-13a. The laws challenged in *Krislov* and *Scholz* expressly imposed direct obligations on political candidates or parties: in one case a signature requirement to access the ballot, see *Krislov*, 226 F.3d at 856, and in another case a requirement that parties nominate "full slates" of candidates, see *Scholz*, 872 F.3d at 521. Both statutes, in other words, "imposed . . . direct affirmative obligations on the candidates or political parties," Pet. App. 13a, making standing axiomatic. See *Lujan*, 504 U.S. at 561 (standing is apparent where plaintiff is directly regulated by the "action . . . at issue"). Here, by contrast, Illinois's ballot receipt deadline does not regulate petitioners directly as political candidates; it simply recognizes the reality that ballots cast by mail may be delayed. Petitioners' attenuated standing

argument looks nothing like the arguments accepted in *Krislov* and *Scholz*.

Petitioners also contend that the opinion below conflicts with two Fifth Circuit cases, Pet. 30 & n.12, but those cases are also distinguishable. *Texas Democratic Party v. Benkiser*, 459 F.3d 582 (5th Cir. 2006), presented no question regarding whether the plaintiff political party could establish standing based on allegations that it had expended resources to ameliorate a risk of injury that was "conjectural" only, Pet. App. 11a-12a; to the contrary, the panel held that the party had standing for the separate reason that the conduct it was challenging might reduce its "chances of victory," 459 F.3d at 586, in the election. Petitioners, by contrast, have never made such an allegation here.

Nor does the Fifth Circuit's recent opinion in *Republican National Committee v. Wetzel*, 120 F.4th 200 (5th Cir. 2024), *reh'g en banc denied*, 132 F.4th 775 (5th Cir. 2025), conflict with the decision below. Pet. 30 n.12. To be sure, as petitioners observe, plaintiffs in *Wetzel* challenged Mississippi's ballot receipt deadline on grounds essentially "identical" to petitioners' claims here. *Ibid.* But plaintiffs in *Wetzel*, unlike petitioners, did allege a competitive injury traceable to Mississippi's deadline: One political party plaintiff alleged that the "mail-in ballot deadline . . . specifically and disproportionately harms" candidates from its party, given partisan voting patterns, Doc. 1 at 3 (¶ 13), *Republican Nat'l Comm. v. Wetzel*, No. 1:24-cv-25 (S.D. Miss. Jan. 26, 2024), while another alleged that it "receives a relatively lower proportion of total ballots cast for its candidates from absentee ballots as opposed to in-person voting," Doc. 1 at 9 (¶ 54),

Libertarian Party of Miss. v. Wetzel, No. 24-cv-37 (S.D. Miss. Feb. 5, 2024). These allegations are precisely what the Seventh Circuit found lacking—an explanation of why ballots cast before but arriving after Election Day might materially affect petitioners' likelihood of prevailing in an election. *Supra* pp. 5-6. *Wetzel*, in other words, is entirely consistent with the opinion below, in that the plaintiffs there alleged the existence of a non-speculative harm that justified their expenditure of campaign resources, whereas petitioners here did not. There thus is no conflict warranting the Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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