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 DISTRICT OF COLUMBIA, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, MARYLAND, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, RHODE ISLAND, VERMONT, AND WASHINGTON AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether petitioners, as federal candidates, have pleaded sufficient factual allegations to show Article III standing to challenge state time, place, and manner regulations concerning their federal elections.

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*

Article III standing doctrine "is built on a single basic idea—the idea of separation of powers." *Transunion LLC v. Ramirez*, 594 U.S. 413, 422 (2021). Given the "overriding and time-honored concern" with issuing advisory opinions, this Court has resisted "the natural urge to proceed directly to the merits of [an] important dispute." *Raines v. Byrd*, 521 U.S. 811, 820 (1997). Instead, at the threshold of each case, the Court "carefully inquire[s] as to whether [plaintiffs] have met their burden of establishing that their claimed injury is personal, particularized, concrete, and otherwise judicially cognizable." *Id.*

Time and again, this Court has rejected novel standing theories that would grant certain litigants special treatment and instead applied its usual Article III injury-in-fact analysis. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 565-67 (1992). Nevertheless, petitioners and some *amici* urge the Court to adopt a sweeping rule that automatically confers standing on all political candidates to challenge all election-related rules. But candidates have no "talismanic power" that allows them to side-step Article III principles. *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 853 (1986). Petitioners identify no court that has ever embraced their expansive position, which is wrong as a matter of law. A special per se standing rule for candidates would absolve them of their burden to establish an injury for each claim they seek to press and would result in courts issuing advisory opinions in the thicket of contentious elections.

Moreover, granting candidates automatic standing would embroil states in frivolous election-related litigation, diverting valuable time and resources away from election administration. Accordingly, the District of Columbia and the States of Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington (collectively, "*Amici* States") submit this brief as *amici curiae* in support of respondents.

As *Amici* States know, ensuring that elections run efficiently, securely, and fairly is no small feat. States have a long history of implementing election rules that regulate everything from ballot formatting—including font, color, and size—to voter qualifications. Many of these rules do not directly govern candidates. Categorically allowing candidates to challenge any election law without having to prove *any* actual injury would put courts in the untenable position of having to adjudicate the merits of every conceivable election rule, and states in the impossible position of defending every quotidian election regulation.

To be sure, litigation can play an important role in policing the integrity of the electoral process. And where possible, that litigation should be brought earlier rather than later. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). Candidates, as well as voters, political parties, and states, may well have standing to challenge election rules in certain circumstances. But standing should be assessed on a case-by-case basis, and there is no reason for the Court to bend Article III guardrails to adopt petitioners' novel

standing rule. This Court should reject petitioners' sweeping standing theory and affirm the Seventh Circuit's judgment.

SUMMARY OF ARGUMENT

1. Individuals who purport to be candidates should not categorically be granted standing to challenge any election-related rule. That approach would contravene basic Article III principles that require plaintiffs to establish an injury-in-fact for each claim they seek to press. Standing doctrine ensures the separation of powers by limiting the role of the judiciary, and needlessly expanding standing would result in courts issuing advisory opinions. Neither candidate interest in "lawful" elections nor an "accurate" vote count can justify such an approach. At most, petitioners suggest injuries that could provide standing to *some* candidates but fail to show that *all* candidates suffer such injuries as the result of every election-adjacent rule.

2. Granting candidates per se standing would open the door to litigation over every conceivable election-related rule. States have the difficult but important role of promulgating, implementing, and administering election operations under a plethora of rules. These rules govern topics as disparate as permissible email addresses for election officials, font size for ballots, and voting processes for home care facility residents. A categorical standing rule would allow candidates to challenge any of these rules without having to prove an actual injury. This would force states to divert valuable time and resources to responding to legal challenges instead of focusing on administering elections. And it would put courts in

the position of second-guessing states' every policy judgment about the minutiae of election administration. This Court should decline petitioners' invitation to open the floodgates of election litigation based solely on candidates' whims.

ARGUMENT

I. Candidates Lack Per Se Standing To Challenge Every Election Law.

A. Candidates are required to show an Article III injury-in-fact for each claim they seek to press.

Article III of the Constitution restricts the jurisdiction of federal courts to genuine "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. "No principle is more fundamental to the judiciary's proper role in our system of government than [this] constitutional limitation." *Raines*, 521 U.S. at 818 (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 37 (1976)). This Court has long established the "irreducible constitutional minimum" required to show standing: a 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).

It is hornbook law that an injury-in-fact must be both concrete and particularized, meaning that it affects the plaintiff "in a personal and individual way." *Lujan*, 504 U.S. at 560 & n.1. The injury must also be actual or imminent, not merely conjectural or hypothetical. *Id.* at 560. Furthermore, the plaintiff, "as the party invoking federal jurisdiction, bears the

burden of establishing these elements." *Spokeo*, 578 U.S. at 338.

These standing requirements impose an "essential limit" on federal courts by ensuring that courts "act *as judges*, and do not engage in policymaking properly left to elected representatives." *Hollingsworth v. Perry*, 570 U.S. 693, 700 (2013). Standing doctrine thus implements "the Framers' concept of 'the proper—and properly limited—role of the courts in a democratic society.'" J. Roberts, *Article III Limits on Statutory Standing*, 42 Duke L. J. 1219, 1220 (1993)) (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984)).

These "bedrock" standing rules do not dissipate simply because a plaintiff purports to be a candidate running for public office. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982). Candidates have no "talismanic power in Article III inquiries." *Schor*, 478 U.S. at 853. And because the separation of powers counsels judicial restraint, this Court has long cautioned that "standing is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). Nevertheless, petitioners and some *amici* advocate for a blanket rule that political candidates need not plead any *specific* Article III injury because they automatically have standing to challenge any election-related rule—including rules that concededly have no direct effect on the candidate or that might be affirmatively helpful to them. *See, e.g.*, Pet'rs' Br. 17.

But standing "turns on the nature and source of the claim asserted." *Warth v. Seldin*, 422 U.S. 490, 500 (1975). A "plaintiff must demonstrate standing for each claim he seeks to press" and "for each form of

relief" that is sought. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). Thus, even if a party has standing to challenge one particular provision of a law, they may nevertheless lack standing to challenge another provision of the same law. *See California v. Texas*, 593 U.S. 659, 678-80 (2021). This principle holds true for candidate-plaintiffs seeking to challenge election rules. *See Davis v. FEC*, 554 U.S. 724, 733-34 (2008) (explaining that just because a candidate "has standing to challenge [one provision of an election statute] does not necessarily mean that he also has standing to challenge [another provision of that same statute]"). There is no standing shortcut for political candidates.

Ignoring this settled precedent and adopting petitioners' theory "would significantly weaken the longstanding legal doctrine preventing this Court from providing advisory opinions at the request of one who, without other concrete injury, believes that the government is not following the law." *Carney v. Adams*, 592 U.S. 53, 64 (2020). This Court's "refusal to serve as a forum for generalized grievances has a lengthy pedigree." *Lance v. Coffman*, 549 U.S. 437, 439 (2007). No matter the "great gravity and delicacy" of the issue at hand, the Court has "no power to give advisory opinions" in the absence of a genuine case or controversy. *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 345-46 (1936). "As this Court explained to President George Washington in 1793 . . . courts do not issue advisory opinions about the law—even when requested by the President." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 378-79 (2024) (quoting 13 Papers of George Washington: Presidential Series 392 (Christine S. Patrick ed.,

Univ. of Va. Press 2007)). Not even the import of elections—critical as they are to democratic self-government—justifies courts issuing advisory opinions when plaintiffs have failed to establish any actual Article III injury.

Time and again, this Court has refused to carve "novel standing doctrine out of whole cloth" and declined to grant blanket standing to various categories of plaintiffs. *Id.* at 391; *see id.* (rejecting a theory of "doctor standing" that would allow doctors to challenge government safety regulations); *Carney*, 592 U.S. at 60 (noting that lawyers who "sincerely and strongly" believe that a statute is unconstitutional do not have an interest that can create standing); *Lujan,* 504 U.S. at 566 (rejecting a "vocational nexus" approach under which anyone with a professional interest could sue). Indeed, this Court has rejected the notion that "a plaintiff automatically satisfies the injury-in-fact requirement" even when Congress purports to confer an affirmative right to sue by statute. *Spokeo*, 578 U.S. at 341. As the Court has reiterated, "Article III standing requires a concrete injury even in the context of a statutory violation." *Id.*

In short, the normal standing rules should apply to candidates, just as they do for litigants in any other context. No one disputes that some candidates in some elections will expend resources, lose votes, or suffer other adverse consequences that may give rise to standing to challenge certain election-related regulations. But candidates must still affirmatively prove a specific and particularized injury that is fairly traceable to the challenged law.

Accordingly, this Court and lower courts have routinely entertained candidate-initiated litigation, but only after first confirming that candidate-plaintiffs have standing. *See, e.g.*, *FEC v. Cruz*, 596 U.S. 289 (2022) (candidate challenge to Section 2 of the Bipartisan Campaign Reform Act (BCRA)); *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011) (candidate and PAC challenge to matching funds provision of Arizona state law); *Davis*, 554 U.S. 724 (candidate challenge to Section 319(a) of BCRA); *N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196 (2008) (candidate challenge to New York's system of choosing party nominees); *Cook v. Gralike*, 531 U.S. 510 (2001) (candidate challenge to a Missouri constitutional amendment). At bottom, there is no reason for the Court to adopt a novel standing theory for *all* candidates simply because the Seventh Circuit found that candidates in *this* specific case failed to plead facts sufficient to establish standing.

B. A generalized interest in "lawful" elections or an "accurate" vote tally cannot relieve candidates of their burden to establish an Article III injury-in-fact.

Petitioners, along with West Virginia and other states as *amici curiae* (collectively, "West Virginia *Amici*"), contend that candidates maintain a "distinct" interest in the supposed lawfulness of elections and the accuracy of vote tallies. *See* Pet'rs' Br. 16-22; W. Va. *Amicus* Br. 10-14. But neither rationale explains why every candidate should have standing to challenge every election-adjacent rule.

1. Candidate interest in "lawful" elections is simply a generalized interest in law enforcement.

First, petitioners attempt to justify their sweeping rule by asserting that candidates have a "distinct interest in ensuring that the rules that govern their elections are lawful." Pet'rs' Br. 18; *see* Pet'rs' Br. 20 (arguing that candidates have an interest in "the legality and fairness" of election rules). But this alleged interest, on its face, is nothing more than a "generalized grievance about the conduct of government"—"precisely the kind" that this Court has "refused" to entertain. *Lance*, 549 U.S. at 442. An interest in compliance with the law, "no matter how sincere," is insufficient to confer Article III standing. *Hollingsworth*, 570 U.S. at 706.

Nothing about candidates categorically allows them to raise generalized grievances above and beyond other members of the public. *See Bullock v. Carter*, 405 U.S. 134, 143 (1972) ("the rights of voters and the rights of candidates do not lend themselves to neat separation"). To be sure, if a challenged election rule applies to the candidate, then they may have standing as a directly regulated party, depending on the rule and circumstances. But there is a panoply of time, place, and manner regulations that have no bearing on a candidate's conduct, or even the outcome of the election. *See infra* pp. 19-21.

Petitioners' only basis for their argument is the circular logic that candidates *must* have some distinct interest because otherwise they would not sue. *See* Pet'rs' Br. 18 (candidates have an "obvious incentive to challenge rules that [they] believe will work to their

electoral disadvantage"); Pet'rs' Br. 21 ("a candidate will almost certainly spend her money on another campaign advertisement rather than another lawsuit"). Petitioners therefore assure the Court that the risks of conjectural and hypothetical harms will "largely take care of themselves" because the litigation *itself* is evidence of concrete harm. Pet'rs' Br. 21.

But the existence of a lawsuit cannot be proof of its justiciability. This would fly in the face of petitioners' burden to prove every element of standing. *See Spokeo*, 578 U.S. at 338. Just as the time and cost of filing litigation does not create Article III standing, neither can the mere act of initiating the lawsuit. *See, e.g.*, *OCA-Greater Hou. v. Texas*, 867 F.3d 604, 611 (5th Cir. 2017) ("It is fundamental that no plaintiff may claim as injury the expense of preparing for litigation, for then the injury-in-fact requirement would pose no barrier."); *Fair Emp. Council of Greater Wash., Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1277 (D.C. Cir. 1994) ("By this logic, the time and money that plaintiffs spend in bringing suit against a defendant would itself constitute a sufficient 'injury in fact',[sic] a circular position that would effectively abolish the requirement altogether.").

Moreover, candidates may file lawsuits, including losing ones, for any number of reasons. Elections can be contentious, and litigation has increasingly become a part of many campaigns' strategies. *See* Derek Muller, *Reducing Election Litigation*, 90 Fordham L. Rev. 561, 563-67 (2021) (observing that political campaigns have increased legal expenditures and identifying a trend of "campaigning by litigation").

Candidates can have various motivations for pursuing litigation, including fundraising, rallying their base, or building fodder for press coverage and social media. *See id.* As West Virginia *Amici* note, a losing candidate may care about building "credibility and viability in future elections, more influence within the party, greater strength and legitimacy for the party itself (especially for third-party candidates), issue amplification, and moral victory." W. Va. *Amicus* Br. 6. These may all be independent reasons for suing. Courts cannot assume that the mere existence of a lawsuit satisfies a candidate-plaintiff's burden of proving Article III standing—let alone justify a broader rule of per se candidate standing.

2. Candidate interest in an "accurate" vote tally still requires proving an actual, concrete, and particularized injury.

Next, petitioners attempt to repackage their alleged "intangible injuries," Plaintiffs-Appellants' Br. 20-21, *Bost v. Ill. State Bd. of Elections*, No. 23-2644 (7th Cir. Oct. 2, 2023), Dkt. No. 6, as an interest in an "accurate" vote tally to justify their novel and expansive standing rule, Pet'rs' Br. 18.

As a general matter, *Amici* States are keenly aware that accuracy is critical in elections. States devote significant time and resources to ensuring that the correct votes are counted, and that votes are counted correctly. Still, an interest in accuracy for accuracy's sake, without more, cannot confer automatic standing for candidates. *Cf. Franklin v. Massachusetts*, 505 U.S. 788, 802 (1992) (interest in census data accuracy is insufficient for standing when there was no showing that "more accurate" data

would change state's reapportionment). If it is true, as petitioners contend, that an inaccurate vote tally will "lead[] to all sorts of concrete and particularized harm for the candidate," Pet'rs' Br. 18, then it should be easy enough for the candidates to plead as much. If a candidate is unable to articulate any particularized harm resulting from an inaccurate vote count, then there is no justiciable case for courts to adjudicate. At bottom, petitioners and West Virginia *Amici* identify possible sources of particularized injuries that might provide standing to a candidate but fail to show that *all* candidates necessarily suffer such injuries at the hands of *every* conceivable voting rule.

First, no one disputes that a vote tally that changes an election outcome could be a concrete injury sufficient for Article III standing. But if a plaintiff is going to rely on a theory of outcome-determinative effect, it is their burden to meaningfully establish a "'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013)).

Second, the mere possibility that the margin of victory could change does not per se create a concrete injury for every single candidate. Petitioners speculate that a diminished margin could trigger a chain reaction: it could influence public perceptions, which could lead to constituent concerns, which could "harm the candidate's standing with 'future voters, Congressional leadership, donors, and potential political opponents.'" Pet'rs' Br. 27 (quoting Pet. App. 68a-69a). West Virginia *Amici* similarly contend that

the vote margin has "signaling value" and could deprive the candidate of a "clear mandate." W. Va. *Amicus* Br. 11. But this chain of events is not concrete, actual, or imminent. *See Lujan*, 504 U.S. at 560. Nor is it universal. Moreover, a regulation's impact on the margin of victory could equally cut in a candidate's favor. *See* Pet. App. 69a (Bost Decl.) (explaining that a margin of victory could create both "[n]egative and positive perceptions" about the candidate's effectiveness). Endorsing petitioners and West Virginia *Amici*'s theory would mean that an election rule that bolsters or has no material effect on a candidate nevertheless confers standing to sue. *See* Br. for the United States as *Amicus Curiae* in Support of Pet'rs' 30-31 (arguing the same). That cannot be right.

West Virginia *Amici* separately urge the Court to adopt the "competitor standing" theory that the D.C. Circuit applied in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005). But *Shays* and its progeny involve plaintiffs who were "directly regulated parties" with claims that fell within the challenged statute's "zone of interests." 414 F.3d at 83, 94; *see New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002) (competitor injury theory is premised on the plaintiff being a "direct" competitor who is "adversely affected" by the challenged government action). Petitioners, by contrast, concede that they seek a broad standing rule that allows candidates to challenge rules that "do *not* operate directly" on them or their competitors. Pet'rs' Br. 17 (emphasis added). They do not and cannot argue that the Illinois mail-in ballot count law at issue confers a statutory right on candidates. "[W]hen the plaintiff is not himself the object of the

government action or inaction he challenges," standing is ordinarily "substantially *more* difficult" to establish, not less. *Lujan*, 504 U.S. at 562 (internal quotation marks omitted) (emphasis added).

This Court has never expressly endorsed a candidate competitor standing theory, but even if it were to do so, such a theory would not support standing in every case where a candidate challenges an election rule. Rather, candidates must demonstrate some adverse effect on their ability to compete caused by the challenged rule, beyond its alleged illegality. *See Castro v. Scanlan*, 86 F.4th 947, 956 (1st Cir. 2023) (competitor injury cannot be defined "so loosely" that it allows federal courts to entertain "generalized concern[s]"); *New World Radio, Inc.*, 294 F.3d at 172 (competitor injury cannot rely on a remote "chain of events"). -Petitioners provide no reason for the court to embrace a rule so broad that it would sweep in every candidate and every law without proof of competitive harm.

Third, a freestanding interest in the "legitimacy" of elections is once again nothing more than a generalized interest in law enforcement that cannot create Article III standing. *Amici* States know that "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell*, 549 U.S. at 4. As a corollary to that principle, this Court has found that the government has a legitimate interest in preventing the "appearance of corruption" in the political process. *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014) (plurality opinion). But in the Article III standing context, a candidate's interest in "legitimate"

elections is the same as an interest in lawful elections. As characterized by petitioners and their *amici*, a vote is legitimate if it is cast in compliance with the governing election laws. And elections are accurate when laws are followed. At bottom, then, petitioners simply seek to repackage their desire to sue over the validity of any and every election law under a new label of "legitimacy" and "accuracy." This Court should reject that gambit.

In this context, legitimacy is best served by courts adhering to their constitutional limits. When the Court invents new standing law, "like all expansions of standing beyond traditional constitutional limits," it "has grave implications for democratic governance." *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 202 (2000) (Scalia, J., dissenting). The Court should not embroil federal courts in election disputes where no plaintiffs allege a specific injury. At bottom, the Court should be reticent to invent a new rule where the usual Article III standing principles should apply.

II. Granting Candidate Standing To Challenge All Election Laws Would Embroil States In Time-Consuming And Costly Election Litigation.

A. Pursuant to their constitutional duties, States have enacted extensive regulatory regimes to govern elections.

In our federalist system, the Constitution leaves to "[s]tates" the primary "power to regulate elections." *Shelby County v. Holder*, 570 U.S. 529, 543 (2013) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 461-62 (1991)). States thus employ different systems to

guarantee both that their elections are run efficiently and that their residents have free and fair access to the franchise.

Indeed, states have set the rules for federal elections since our nation's Founding. *See* U.S. Const. art. I, § 4, cl. 1; *id.* art. II, § 1, cl. 2; *see also Moore v. Harper*, 600 U.S. 1, 29 (2023) (highlighting states' "constitutional duty to craft the rules governing federal elections"). Just as candidates devote their "time and treasure" to elections, Pet'rs' Br. 17, so too do states. "Running elections state-wide is extraordinarily complicated and difficult. Those elections require enormous advance preparations by state and local officials, and pose significant logistical challenges." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (mem.) (Kavanaugh, J., concurring in grant of applications for stays).

Take statewide voter registration systems as an example. These systems alone can require "tens of millions of dollars to develop and millions of dollars annually to operate." Charles Stewart III, *The Cost of Conducting Elections* 4 (Nat'l Inst. for Civil Discourse & MIT Election Data + Science Lab, May 16, 2022), https://tinyurl.com/yr2a9tr6. Then there are the operational costs of holding an election, which include recruiting, training, and paying poll workers; printing ballots and other paper documents; renting polling locations; and providing postage for informational materials and mail-in ballots. Every ballot must be certified and counted. And virtually every state mandates some form of post-election auditing. *Post-Election Audits*, Nat'l Conf. of State Legislatures (July 7, 2025),

https://tinyurl.com/4dcm4n5m. These audits can include tabulation reviews that require hand-counting a portion of the paper records and comparing them to electronic voting results. *Id.* Audits can also include procedural reviews that confirm ballot security and chain of custody. *Id.* Finally, there are the ongoing administrative needs of maintaining election infrastructure year-round and investing in cybersecurity and other safety-related improvements. All told, state and local governments spend at least $2 billion each year to conduct elections. Stewart, *supra*, at 3; Zachary Mohr et al., *Election Administration Spending in Local Election Jurisdictions: Results from a Nationwide Data Collection Project* 26 (Paper for the 2018 Election Sciences, Reform, and Administration Conference, Univ. of Wis.-Madison, July 26-27, 2018), https://tinyurl.com/226sjpfu.

In addition to administering elections, states also bear the brunt of defending election rules against legal challenges. The sheer volume of recent election litigation makes a hard job even harder. Between 1996 and 2018, the volume of election-related lawsuits tripled. Richard L. Hasen, *Election Meltdown: Dirty Tricks, Distrust, and the Threat to American Democracy* 55-56 (2020). The 2020 election season then became the most litigated in American history. *See* Miriam Seifter & Adam Sopko, *Election-Litigation Data: 2018, 2020, 2022, 2024 State and Federal Court Filings*, State Democracy Rsch. Initiative (Feb. 17, 2025), https://tinyurl.com/n7v7vb5x; Michael Wines, *As November Looms, So Does the Most Litigious Election Ever*, N.Y. Times (July 7, 2020), https://tinyurl.com/yw356bez.

This litigation—even when meritless—forces states to divert valuable resources that would otherwise be spent on preparing for and managing elections. *See* Nicholas Riccardi, *Voter challenges, records requests swamp election offices*, Associated Press (Sept. 17, 2022), https://tinyurl.com/ys9p5xmx (noting that even when the "vast majority" of litigation challenges are "irrelevant," frivolous lawsuits can nevertheless create "hundreds of hours of extra work" for state election officials); Tammy Joiner, *Ongoing demand for election documents keep county election officials trapped in 2020*, GPB (Dec. 23, 2021), https://tinyurl.com/mry4x746 (noting that state election officials were "trapped in 2020" as they prepared for the 2022 midterms, and that the sheer volume of complaints took valuable "time away from . . . elections office staff's daily work"). Because a single lawsuit could have downstream effects on thousands (or even millions) of voters and ballots, election officials must conduct due diligence for every complaint. At minimum, they may need to review internal processes and consult with local or state counsel to ensure an appropriate response. But every minute spent investigating an unfounded claim is a minute taken away from running elections.

Furthermore, time becomes exponentially more valuable as elections draw near. So, too, do the litigation stakes soar. *See Purcell*, 549 U.S. at 4-5. As the clock runs down to election day, officials must balance the demands of responding to legal threats while running election operations. *See* Tierney Sneed & Fredreka Schouten, *Avalanche of early lawsuits could pave way for disputes over Tuesday's election results*, CNN (Nov. 7, 2022),

https://tinyurl.com/4ds6rdu3. Elections thus require "heroic efforts" by state and local authorities to ensure that the electoral process is implemented as seamlessly and safely as possible. *Merrill*, 142 S. Ct. at 880.

B. States would bear the brunt of responding to a proliferation of candidate-initiated litigation.

Petitioners' theory of per se candidate standing would unleash an even greater torrent of litigation on elections officials. "For at this high level of generality," candidate-initiated actions "would invite claims in every sphere of legitimate governmental action affecting" elections. *Wilkie v. Robbins*, 551 U.S. 537, 561 (2007). This would put states in the untenable position of having to defend every conceivable election-related rule against candidate litigation, without candidate-plaintiffs having to first prove any actual, concrete, or particularized injury caused by the challenged policy.

It is difficult to understate the vast grounds covered by state election codes. "Elections are complex affairs, demanding rules that dictate everything from the date on which voters will go to the polls to the dimensions and font of individual ballots." *Moore*, 600 U.S. at 29. State legislatures must "provide a complete code for congressional elections" that cover the minutiae of "notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

For example, states maintain broad authority to set the "Times, Places and Manner of holding Elections" absent congressional preemption. U.S. Const. art. I, § 4, cl. 1; *see id.* art. II, § 1, cl. 2; *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986) (noting this "broad power" conferred to states). In exercising their judgment to establish rules for federal elections, states have enacted a range of absentee ballot laws to account for timely-cast votes, with some dating back to statehood. *See, e.g.*, Nev. Election Ordinance §§ 9, 11 (1864) (allowing Civil War soldiers to cast mail-in ballots). Illinois's ballot-receipt deadline law is not unique. The District of Columbia and most states count at least some otherwise-valid mail-in ballots that arrive after election day, so long as those ballots were postmarked or certified on or before election day. *See* Br. of the District of Columbia et al. as *Amici Curiae* in Support of Pet'rs 6-10, *Watson v. Republican Nat'l Comm.*, No. 24-1260 (U.S. July 10, 2025) (reviewing laundry list of state examples).

Beyond vote-counting, states regulate myriad other aspects of elections. For example, every state specifies ballot font and typeface for a multitude of circumstances. *See, e.g.*, Iowa Code Ann. § 49.57(3) (candidate names "shall be not less than ten point type"); La. Stat. Ann. § 18:503B(1) (notice that a ballot was printed with a withdrawn candidate's name must be in "bold typed print of not less than fourteen-point font"); Va. Code Ann. § 24.2-622 (sample ballot must have title printed "in a font size no smaller than 24 point"); Vt. Stat. Ann. tit. 17, § 2471(a)(2) (candidate name must be in font "at least 10 points" unless the name exceeds 24 characters, in

which case "the font may be reduced" with candidate consent).

Illinois alone has nearly two dozen statutes that govern the permissible colors of different ballots. *See, e.g.*, 10 Ill. Comp. Stat. 5/7-18 (primary ballot color); *id.* 5/7-21 (specimen ballot color); *id.* 5/16-3 (ballot colors in nonpartisan and consolidated elections); *id.* 5/24A-6 (ballot colors when an electronic voting system utilizes a ballot sheet); *id.* 5/24A-7 (separate write-in ballot color); *id.* 5/24-12 (ballot label colors for facsimile ballot diagrams). Other state laws regulate everything from voting for certain subsets of voters, *see, e.g.*, *id.* 5/3-3 (governing voting for honorably discharged soldiers and sailors, along with home care facility residents), to the format of permissible email addresses used by election board members, *see, e.g.*, Okla. Admin. Code § 230:10-7-48.1.

Most of these election rules have rarely been subject to litigation. This is for good reason: they reflect states' careful policy judgments about how to best run the minutiae of federal elections. And these policies would not plausibly harm candidates in most realistic scenarios. Yet, under petitioners' far-reaching standing theory, all election rules—no matter how indirectly they may affect candidates—would be vulnerable to legal challenges. A candidate could sue, for instance, over whether provisional ballot envelopes are "of a color different than the color of, but printed substantially similar to, the envelopes used for vote by mail ballots," without any evidence that the answer to the question caused the candidate actual harm. Cal. Elec. Code § 14310(3)(b). Such

litigation could easily drain states' (and courts') resources.

Of course, no statute or regulation is entirely immune from litigation. But petitioners would allow candidates to proceed to the merits based solely on a free-floating interest in the "legality" of an election and nothing more. Pet'rs' Br. 20. To be sure, plaintiffs would still have to argue the merits of their claims. But by granting candidates per se standing to proceed with such litigation, states will have to respond in substance rather than seeking to dismiss suits on justiciability grounds. This will drain valuable and limited state enforcement resources that would be better spent elsewhere, including responding to election claims with a more direct impact on candidates or voters.

An avalanche of litigation can create more pernicious downstream effects: these legal challenges, regardless of their merits, can undermine voter confidence in the perceived integrity and legitimacy of the electoral process. *Cf. Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 672 (2021). States would be forced to defend their election policies three-fold: in practice, in legal proceedings, and in the eyes of the public. This Court should be wary of altering the status quo to further tax state and local resources.

A bespoke rule for candidate standing would also harm courts. Ultimately, petitioners' standing theory will force federal courts to second-guess state policy determinations about the technicalities of election operations. As Justice Scalia explained, "[i]f the right to complain of *one* administrative deficiency automatically conferred the right to complain of *all*

administrative deficiencies, any citizen aggrieved in one respect could bring the whole structure of state administration before the courts for review. That is of course not the law." *Lewis*, 518 U.S. at 358 n.6. It is for that reason that standing "is not dispensed in gross." *Id.*

State lawmakers "must make a host of difficult decisions about how best to structure and conduct [an] election." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (mem.) (Kavanaugh, J., concurring in denial of application to vacate stay). And "[d]ifferent state legislatures may make different choices." *Id.* at 32. Indeed, this Court has "emphasized on numerous occasions the breadth of power enjoyed by the States in determining voter qualifications and the manner of elections," so long as that power is exercised in a manner consistent with the Constitution. *Bullock*, 405 U.S. at 141. But opening the gates of candidate-initiated litigation would thrust federal courts into the position of questioning the merits of each of those state policy judgments, even when the plaintiffs lack actual injury and bring abstract claims. This Court should not condone that result.

* * *

In the end, when it comes to standing, "plaintiffs must answer a basic question—'What's it to you?'" *Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121, 2133 (2025)) (quoting *All. for Hippocratic Med.*, 602 U.S. at 379). It is the plaintiffs' burden to *answer that question*, not for courts to reflexively assume as much on the plaintiffs' behalf. The Court should "decline to start the Federal Judiciary down that uncharted

path" and instead apply its usual Article III standing rules to this case. *United States v. Texas*, 599 U.S. 670, 681 (2023).

CONCLUSION

The Court should affirm the Seventh Circuit's judgment.

Respectfully submitted,

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