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

AMICUS BRIEF FOR THE DEMOCRATIC PARTY OF ILLINOIS IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICUS CURIAE*[1]

The Democratic Party of Illinois ("DPI") participated as amicus curiae in both the court of appeals and the district court and has a vital interest in ensuring that eligible Illinois voters' ballots are counted in the State's elections. The challenge brought by Congressman Bost and his co-Petitioners (hereinafter, collectively "Bost") to 10 Ill. Comp. Stat. § 5/19-8(c) (the "Receipt Deadline") threatens that interest.

For decades, the Receipt Deadline has ensured that mail ballots cast by election day are counted if delivered to election officials within 14 days later. Bost seeks to overturn that practice and require ballots to be rejected if election officials receive them after election day, even if voters cast them on time. Such a regime would leave eligible Illinois voters—including DPI's members and supporters—at the mercy of the postal service's ability to timely deliver their ballots. DPI has a strong interest in protecting its members and supporters from that risk.

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[1] No counsel for a party authored this brief in whole or in part, and none of the parties or their counsel made a monetary contribution intended to fund the preparation or submission of the brief. JB for Governor made a monetary contribution to fund multiple DPI programs, a portion of which was used to fund the preparation and submission of this brief. No other person or entity, other than amicus curiae, its members, or its counsel, made a monetary contribution intended to fund the preparation and submission of this brief.

What's more, recent election cycles have been increasingly marred by aggressive efforts by litigants in Illinois and elsewhere to judicially alter election rules to make it harder for voters to vote. DPI does not dispute that candidates and parties often face injuries from election procedures and, as a result, often have standing to challenge them. But Petitioners argue for a *per se* rule that candidates always have standing to challenge election rules or procedures, regardless of whether they suffer actual injury traceable to those rules. This has never been the law, and adopting the rule that Petitioners advocate would only result in a further proliferation of litigation that will make it harder for eligible voters to successfully cast their ballots and will cast unjustified doubt on the integrity of elections. DPI therefore also has a strong interest in the proper application of the Article III standing framework in the election context.

SUMMARY OF THE ARGUMENT

Petitioners Michael Bost, Laura Pollastrini, and Susan Sweeney filed this case to make it harder for their constituents—eligible Illinois voters—to cast their ballots, by seeking to invalidate a commonsense Illinois law that requires counting mail ballots as long as they are completed and mailed by the voter by election day, even if election officials receive them later. But Petitioners failed to allege or show that they face any concrete injury from this sensible law, so the district court properly dismissed their case for lack of standing, and the Seventh Circuit appropriately affirmed.

In their principal argument to this Court, Petitioners seek to exempt political candidates from the ordinary Article III limits on judicial authority, advocating for a *per se* rule that candidates always have standing to challenge the rules that govern their elections. But this Court has never recognized a categorial exemption from Article III for candidates or any other class of litigant. To the contrary, it has held candidates to the same standard as everyone else. *See Wittman v. Personhubballah*, 578 U.S. 539, 545 (2016). DPI agrees that candidates and political parties will often be able to show standing in such cases—but the Constitution nevertheless requires that the showing be made.

Contrary to Petitioners' arguments, they simply failed to make the necessary showing here. They filed a threadbare complaint devoid of any factual allegations of injury, and the district court was within its discretion to cabin its analysis to that document. But even if Petitioners' additional averments in declarations are considered, they do not suffice. Petitioners claim competitive injury, but they failed to offer any factual showing that the law they challenge actually injures their competitive prospects. They asserted only that Bost "*may*" be injured "*if*" late-arriving ballots break against him, without any factual reason to think that will occur. And they claim "pocketbook injury," but the alleged expenditures are not causally connected to any concrete, imminent injury threatened by the challenged law.

The Court should affirm the Seventh Circuit. Candidates and parties often face injuries from election procedures and therefore have standing to challenge them. But these Petitioners made no such showing here, so their case was properly dismissed.

ARGUMENT

I. Candidates for office must show Article III injury just like everyone else.

To sue in federal court, a plaintiff must face an imminent injury that is "real and not abstract," so a "general legal, moral, ideological, or policy objection" does not suffice. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). An "asserted right to have the Government act in accordance with law" gets a plaintiff nowhere. *Id.* (quoting *Allen v. Wright*, 468 U.S. 737, 754 (1984)). As a result, "federal courts may never need to decide some contested legal questions," even important and controversial ones. *Id.* at 380. "'Our system of government leaves many crucial decisions to the political processes,' where democratic debate can occur and a wide variety of interests and views can be weighed." *Id.* at 380 (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227 (1974)).

Petitioners' argument for a blanket rule that candidates may *always* challenge the "rules that govern their elections," Pet. Br. 16–22, is irreconcilable with these basic Article III principles. Candidates, like everyone else, must show an actual, concrete injury, caused by the challenged conduct and

redressable by the court. *See Personhuballah*, 578 U.S. at 543. It is not enough that a plaintiff thought it worthwhile to sue, as any federal plaintiff by definition has. Pet. Br. 21.

Petitioners' alternative argument that Bost is injured by Illinois' ballot receipt deadline because it results in an "inaccurate vote count," Pet. Br. 18, amounts to the same thing. It is nothing more than an allegation "that the law . . . has not been followed," making it an "undifferentiated, generalized grievance about the conduct of government." *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (per curiam). Illinois' receipt deadline renders the vote tally "inaccurate," in Petitioners' view, *only* because ballots counted pursuant to that rule are "illegal." To say that Petitioners are injured by an "inaccurate" vote tally, therefore, is simply to say that they are injured because those ballots are "illegal"—that is, because "the law . . . has not been followed." *Id.* "But under Article III, an injury in law is not an injury in fact." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021). Candidates, like everyone else, must show an actual injury in fact.

That candidates must make the same showing of standing as everyone else does not, of course, mean that candidates—or political parties and campaigns—may never sue to challenge election rules. To the contrary, election rules often do threaten candidate or party plaintiffs with concrete injury, such as by systematically disadvantaging one party over the other, *Mecinas v. Hobbs*, 30 F.4th 890, 897–99 (9th

Cir. 2022), by making it harder for a candidate to turn out his supporters to vote, *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008), or by limiting access to the ballot, *Anderson v. Celebrezze*, 460 U.S. 780, 786–87 (1983). But that a showing of injury could often be made does not excuse a plaintiff from making it.

Petitioners' *per se* rule that candidates may always challenge the rules governing their elections would allow candidates to challenge even election rules that are entirely harmless or even those that work to their own benefit. Petitioners retort that candidates would not bother suing over laws that do not harm them. Pet. Br. 21. But the Court can have no such confidence. Election rules matter to candidates not only because of their instrumental effect on candidates' own elections, but also as policy matter—candidates have political views on how elections should be conducted. If the Court exempts candidates from the ordinary standing requirements, then candidates—particularly candidates in safe seats like Congressman Bost—may be tempted to sue to challenge election laws they disagree with, even if those laws do not harm them personally. The standing doctrine exists precisely to prevent federal courts from getting roped into abstract partisan disputes by those without a concrete injury. *All. for Hippocratic Med.*, 602 U.S. at 379–80.

Petitioners also argue that requiring candidates to show standing might make it easier to challenge laws that *restrict* voting than to challenge laws that

facilitate voting. Pet. Br. 22. But there is no "symmetrical" rule of standing. More litigants will have standing to challenge a tax hike than a tax cut, for example. It should be no surprise that laws which injure large groups of people will be more susceptible to challenge than laws that do not injure large groups of people. And if a law injures no one, then it is entirely proper that it not be subject to judicial challenge. *All. for Hippocratic Med.*, 602 U.S. at 379.

Finally, Petitioners' argument that it might be useful and less contentious to allow election litigation when there is not much at stake, Pet. Br. 44–46, gets the Article III inquiry exactly backwards. The purpose of the Article III standing requirement is to force courts to resolve legal questions in the context of actual, concrete disputes that matter, not in the "rarified atmosphere of a debating society." *All. for Hippocratic Med.*, 602 U.S. at 379 (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 472 (1982)). Advisory opinions would often be useful—President Washington would have been "much relieved if he found himself free to refer questions" of law to the Supreme Court for advance resolution. Letter from Thomas Jefferson to the Justices of the Supreme Court (Jul. 18, 1793).[2] But the Court has refused to provide advisory opinions for more than 200 years—even for Presidents on matters of war and peace. *See* Letter from Supreme Court Justices to Thomas

[2] Available at https://founders.archives.gov/documents/Jefferson/01-26-02-0462 [https://perma.cc/7DBM-48N7].

Jefferson (Aug. 8, 1793).[3] The Court should not carve out an election-administration exception to that unbroken practice.

The Court should therefore reject Petitioners' argument to give candidates a free pass from the generally applicable standing requirements. Candidates will often be able to show Article III standing in challenges to election laws. But they must still meet the ordinary test.

II. Bost's purported competitive injury is inadequately pleaded and speculative.

One way candidates may often establish standing to challenge election rules is by showing concrete harm to their competitive prospects, but Petitioners failed to allege any facts that could support such a showing here. Much like the standing evidence rejected as insufficient in *Personhuballah*, 578 U.S. at 545, the Complaint says nothing *at all* about the Receipt Deadline's anticipated effects on Bost's chances of re-election. Bost did not allege, for example, that a majority of mail voters in his district support his opponents rather than him, much less that a majority of ballots arriving after election day in his district have historically contained votes for his

[3] Available at https://founders.archives.gov/documents/Washington/05-13-02-0263 [https://perma.cc/D9S5-BDWN].

opponents rather than him.[4] Nor did he allege the existence of any state-imposed "barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group." *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993).

Instead, Petitioners' complaint pleaded nothing more than conclusory allegations of harm. It generally alleged, for example, that "[c]ounting ballots received after Election Day harms Plaintiffs," Pet. App. 87a (Compl. ¶ 29), and that "Plaintiffs will be subject to harms beyond even these above-stated harms," Pet. App. 88a (Compl. ¶ 36). But there are no particularized facts to support those conclusions. "It is a long-settled principle that standing cannot be 'inferred argumentatively from averments in the pleadings.'" *FW/PBS, Inc. v. City of Dallas*, 493 U.S.

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[4] Petitioners claim multiple times without citation that they "plausibly alleged a substantial risk that counting mail-in ballots received after Election Day will harm their election prospects." Pet. Br. 14; *see also id.* at 2 ("allege that Illinois' extension of the mail-in-ballot deadline harms their chances for election"); *id.* at 23 ("Bost plausibly alleged a substantial risk that counting mail-in ballots received after Election Day will harm [] his electoral prospects"). They similarly claim, again without citation, to have made "allegations that extending the mail-in deadlines will work to their electoral disadvantage." *Id.* at 14; *see also id.* at 8 (complaining that the district court "refused to credit Congressman Bost's allegations that the extended ballot receipt deadline injured him competitively, either by diminishing his margin of victory . . . or by causing him to lose the election outright"). Those allegations, however, appear nowhere on the face of the Complaint.

215, 231 (1990) (quoting *Grace v. Am. Cent. Ins. Co.*, 109 U.S. 278, 284 (1883)). "[I]t is the burden of the 'party who seeks the exercise of jurisdiction in his favor' 'clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute.'" *Id.* (first quoting *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936), then quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)). Petitioners alleged none.

No doubt because of these serious pleading deficiencies, most of Bost's arguments rely not on the barebones and conclusory allegations of his complaint, but instead on a series of allegations that appeared for the first time in Bost's declaration in support of his motion for summary judgment. *See, e.g.*, Pet. Br. 30 (arguing Bost "plausibly alleged that, at the time he filed his lawsuit in May 2022, there was a substantial risk that counting mail-in ballots received after Election Day would harm his electoral prospects—including by diminishing his margin of victory" (citing Pet. App. 68a)); *see also* Pet. Br. 32, 42.[5]

[5] Petitioners repeatedly rely on Bost's declaration and frequently characterize statements therein as allegations. *See* Pet. Br. 7 (citing Pet. App. 66a), 18 (citing Pet. App. 68a–69a), 27 (citing Pet. App. 68a–69a), 30 (citing Pet. App. 68a), 31 (citing Pet. App.

The district court, however, acted within its discretion when it cabined its review to the allegations of the Complaint. Although "it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing," *Warth*, 422 U.S. at 501, courts are not required to do so. Whether to consider materials beyond the operative Complaint in resolving a Rule 12(b)(1) motion is instead committed to the district court's discretion. *See, e.g.*, *Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 805–06 (11th Cir. 1993) (recognizing that "consider[ation] [of] affidavits" that "go beyond the complaint" is within the district court's "discretion"); *McBurney v. Cuccinelli*, 616 F.3d 393, 409 (4th Cir. 2010) (Agee, J., concurring in part) ("*Warth* stands only for the proposition, clearly in accord with our precedent, that a district court may, but is not required, to consider such materials.").

In their briefing before this Court, Petitioners ignore this issue entirely. Petitioners do not argue that the district court abused its discretion, nor identify any authority that *required* the district court

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66a), 33–34 (citing Pet. App. 65a–68a), 41 (citing Pet. App. 66a), 42 (citing Pet. App. 68a), 45 (citing Pet. App. 66a). In contrast, Petitioners reference the Complaint *only four times*, and they do so only for the proposition that mail-in voting has increased during and since the 2020 election and that the mechanics of the mail-in voting process could, especially during a pandemic, affect the timing of the election results. *See* Pet. Br. 7 (citing Pet. App. 85a), 31 (citing Pet. App. 85a).

to consider Bost's summary judgment declaration in ruling on Defendants' earlier-filed motion to dismiss. There is therefore no basis for the Court to second-guess the district court's choice to focus on the Complaint's allegations alone.

Even if the Court also considers Bost's summary judgment declaration, however, it does not adequately support competitive injury either. The sum total of the declaration's competitive harm assertions are as follows:

- "Because [the Receipt Deadline] does not comply with federal Election Day statutes, I risk injury *if* untimely and illegal ballots cause me to lose my election for federal office." Pet. App. 68a (Decl. ¶ 23) (emphasis added).
- "Because Section 19-8(c) does not comply with federal Election Day statutes, I risk injury because my margin of victory in my election *may* be reduced by untimely and illegal ballots." *Id.* (Decl. ¶ 24) (emphasis added).

Neither of those assertions does anything to show competitive harm, because both simply *assume*, rather than support, the key factual questions—whether ballots received after election day *will* cause Bost to lose his election, or *will* reduce his margin of victory, much less in a way that has concrete consequences for him. These assertions therefore show, at most, a possible future injury, but they do nothing to establish that it is "certainly impending."

Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409 (2013) (citation modified). And "[a]llegations of *possible* future injury are not sufficient" to support standing. *Id.* (internal quotation marks omitted).

Bost attempts to bolster this meager showing by citing his allegations regarding the number of ballots that have arrived after election day in past elections in Illinois. Pet. Br. 31. That is irrelevant. Bost is surely right that if he succeeds in his lawsuit, some number of Illinois voters will have their ballots thrown out because they will arrive after election day. And it is *possible* that most of those ballots might belong to electors who voted for Bost's opponents. But those votes *also* may very well be for *Bost*. After all, most voters in Bost's district supported him—that is why he won. On the facts alleged in the Complaint (and even the assertions in Bost's declaration) both outcomes are equally possible. And when Article III standing is at issue, the mere possibility of future injury does not suffice. *Id.* at 409.

Moreover, even if Petitioners had alleged that late-arriving mail ballots have favored their opponents in the past, in this case seeking prospective relief, the question is not what happened in the past but what will happen in the future. "[T]he past is relevant only insofar as it is a launching pad for a showing of *imminent* future injury." *Murthy v. Missouri*, 603 U.S. 43, 59 (2024) (emphasis added). Petitioners' argument, however, requires speculation about the future choices of third parties—voters—in response to a different set of election rules. Neither the Complaint

nor Bost's declaration offers any factual basis to conclude that, were the deadline for submitting mail ballots changed by court order, voters would not adjust their behavior accordingly.

Thus, while DPI agrees that candidates and political parties often do have competitive standing to challenge election rules, Bost has entirely failed to allege facts showing that *he* faces any competitive injury, much less one that could be redressed by the judicial relief he seeks.

III. Bost failed to adequately plead a "pocketbook injury."

That leaves Bost's—and only Bost's—argument that the Receipt Deadline has caused him a "classic pocketbook injury." Pet. Br. 33. The problem with this asserted injury, again, is that Bost did not plead facts to support it.

While candidates, campaigns, and political parties often do have standing to challenge election rules that force them to spend their limited resources, that is not what Congressman Bost has alleged. The Complaint contained only a single conclusory statement that the Receipt Deadline will force Bost's campaign "to spend money, devote time and otherwise injuriously rely on unlawful provisions of state law in organizing, funding, and running their campaigns." Pet. App. 89a (Compl. ¶ 46). Nowhere in the Complaint did Bost explain how the Receipt Deadline would have that effect. Such "conclusory allegations of injury are not enough to confer standing." *Tsao v. Captiva MVP Rest.*

Partners, LLC, 986 F.3d 1332, 1343 (11th Cir. 2021) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Even if the Court considers the summary judgment declaration that the district court declined to consider, *but see supra* Part II, the result is the same. Bost's declaration lists two types of expenditures that his campaign assertedly must undertake "because" of the Receipt Deadline. Pet. App. 65a–68a (Decl. ¶¶ 10–20). First, he asserts that he must "monitor" late-arriving ballots and "respond" to any "discrepancies" for an additional fourteen days. Pet. App. 65a–66a (Decl. ¶¶ 13–17). And second, he asserts that his campaign must continue its "ballot chase program . . . [which] is used to evaluate [the] campaign's get-out-the-vote efforts and other concerns. Because Section 19-8(c) holds voting open an additional fourteen days, [his] campaign has to keep this program active fourteen additional days longer than it would have prior to the 2005 amendment." Pet. App. 68a (Decl. ¶ 20).

Both of these assertions are the type of thing that *could* be a cognizable injury for a candidate or a party. But neither suffices to support Petitioners' standing here, because Petitioners do not provide sufficient facts to tie the expenditures they complain about to the law they challenge.

As for the monitoring of ballots arriving after election day, Bost did not offer allegations or assertions in his declaration to show why such monitoring was necessary to avoid any injury to him. For this type of diversion-of-resources injury to confer

standing, a plaintiff must show that the diversion is necessary to protect it from some injury to the plaintiff's core activities that the law would otherwise cause. *All. for Hippocratic Med.*, 602 U.S. at 394. But Bost did not offer allegations or evidence of any injury his campaign faced that post-election monitoring would help to avoid. And in the absence of such an injury, a plaintiff cannot "manufacture its own standing" simply by "expending money" in response to a challenged law. *Id*. Nor did Bost offer allegations or evidence to explain why he must devote additional resources to "monitor" the counting of mail ballots after election day when such ballots are counted during the same 14-day period as provisional ballots, the counting of which Bost would presumably also want to monitor. 10 Ill. Comp. Stat. § 5/18A-15(a). Bost therefore did not show that any monitoring expenses are traceable to the Receipt Deadline.

The fundamental problem with the asserted need to maintain a ballot chase program runs even deeper—it is entirely illogical. Under current law, there is no reason for Bost's campaign to keep its ballot chase program open for fourteen days after election day, because *all mail ballots must be completed and deposited in the mail by election day*. *See id.* § 5/19-8(c). If Bost is encouraging voters to return their ballots after that, his efforts are entirely wasted. And even pre-election, switching to an election day receipt deadline, instead of a postmark deadline, would not shorten the time in which campaigns need to chase ballots. Illinois law allows voters to return their mail ballots in person or to drop

boxes on election day—so even with an election day receipt deadline, Bost would have every reason to chase ballots *through* election day. *See id.* § 5/19-6. There is therefore no causal relationship between the period of time in which candidates like Bost might benefit from running ballot chase programs and the challenged Receipt Deadline.

These issues are fact specific. The types of activities that Petitioners invoke—post-election expenses and get-out-the-vote expenses—could easily form a basis for candidate or party standing in other cases if, as a factual and legal matter, those expenses were necessary to avoid or ameliorate some actual injury from the challenged law. The problem with Petitioners' pocketbook standing is not that candidates can never have pocketbook standing based on similar activities—it is only that Petitioners fail to show that Bost's asserted pocketbook injuries are sufficiently causally related to the law they challenge. Absent such a showing, Bost "cannot spend [his] way into standing simply by expending money." *All. for Hippocratic Med.*, 602 U.S. at 394.

Bost therefore lacks standing based on a "pocketbook injury" as well.

CONCLUSION

The Court should affirm the decision below.

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Respectfully submitted,

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