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

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF

Illinois counts mail-in ballots received up to two weeks after Election Day. Petitioners, candidates for federal office, claim that under controlling federal law that is two weeks too long. As a result, Illinois is counting unlawful ballots and producing inaccurate vote tallies, while simultaneously hurting petitioners' prospects at the ballot box and injuring their pocketbooks. Everyone from the United States to the ACLU and the ACLJ agrees that petitioners have standing. Illinois disputes that remarkable consensus only by ignoring common sense (and the dangers produced by the Seventh Circuit's rule) and by imagining non-existent waivers that did not deter the Seventh Circuit from denying standing because Congressman Bost's electoral prospects were too bright and his pocketbook injuries too speculative.

The decision below is wrong and dangerous. It is wrong because candidates have standing to challenge the rules that govern their elections, especially when their merits theory (which must be credited for standing purposes) is that the challenged rule produces an inaccurate final tally. At a minimum, the candidate has standing when (as here) he plausibly alleges that the challenged rule will harm his electoral prospects and reduce his bank balance because he needs to pay campaign staff an extra two weeks. And the decision is dangerous because it forces judges to play political prognosticators, skews standing rules to favor certain kinds of candidates, and funnels election disputes to the worst possible context—namely, after the election where judges are asked to declare political winners. This Court should reverse.

ARGUMENT

I. Candidates For Office Have Standing To Challenge The Rules That Govern Their Elections.

Standing in this case should be straightforward. Candidates for office have Article III standing to challenge the rules that govern the time, place and manner of their elections. Candidates have a unique and concrete interest in the rules that govern the elections into which they pour enormous resources. Even Illinois concedes as much when it comes to rules that dictate whether candidates get access to the ballot and how much they or their opponents can spend on the election. But candidates have an equally unique, concrete, and particularized interest in challenging the rules that govern which ballots will be counted and when. After all, the whole point of an election—and the whole reason candidates dedicate untold personal and financial resources—is to produce a final tally, which must be accurate to provide winners and losers a sense of finality and closure so that they can move on to the business of governing or planning for the next election. Candidates thus have an obvious, concrete, and particularized interest "in ensuring that the final vote tally accurately reflects the legally valid votes cast." *Carson v. Simon*, 978 F.3d 1051, 1058 (8th Cir. 2020) (per curiam).

If Illinois threatened before an election to discard lawfully-cast ballots or count only 90% of the votes cast to save time, a candidate would plainly have standing to sue even if the candidate could not allege with any certainty whether the discarded or disregarded ballots would change the outcome.

Pet.Br.19; U.S.Br.3. Indeed, the candidate would be the obvious party to challenge the ballot-counting rule because no individual voter would have the incentive to bring the challenge or know whether her ballot would be one of those ignored. The candidate, by contrast, would know with certainty that the final vote tally would be inaccurate. For the same reasons, a candidate plainly has standing to sue when the state threatens to count votes cast unlawfully, even if there is no way of knowing with certainty beforehand whether the illegal votes will be decisive. *See Carson*, 978 F.3d at 1058.

The state claims that petitioners' position would create an impermissible "exception" to general standing principles by allowing candidates to challenge election rules "regardless of whether the rule impacts their electoral chances or pocketbooks." Ill.Br.18. That is wrong. Petitioners are simply asking for the normal rules of standing to be applied to the distinct context of elections. Few other situations involve individuals putting their lives on hold and spending millions of dollars on an outcome determinative vote. Given that dynamic, it is hardly a stretch to recognize that candidates have a particularized interest in getting the vote tally right, such that candidates necessarily suffer an injury in fact from an inaccurate count. *See* Pet.Br.16-22; *Carson*, 978 F.3d at 1058.

Far from a "sweeping" position "antithetical to the separation of powers," Ill.Br.17, that commonsense view is highly protective of the separation of powers. Illinois' contrary rule, which denies standing unless and until a candidate can persuade an Article III court

that the particular species of inaccuracy could cost a candidate the election, forces Article III courts to undertake a task that "requires a degree of … political clairvoyance that is difficult for a court"—or anyone else—"to maintain." *Diamond Alt. Energy v. EPA*, 145 S.Ct. 2121, 2140 (2025); *see also* U.S.Br.24.[1] "Experience proves that accurately predicting electoral outcomes is not … simple." *Rucho v. Common Cause*, 588 U.S. 684, 712 (2019). And for the federal judiciary, the task is not just difficult but dangerous. The prospect of federal courts deeming certain elections toss-ups and others "safe-Republican" is not a happy one. And a rule that limits standing to candidates who can show that the challenged rule might turn the election will force election litigation into contexts where the judicial role is most fraught—either the closest, most contested elections or, worse still, the post-election context where the public will perceive the judiciary as picking political winners. Pet.Br.43-47.

A rule that recognizes that candidates have a distinct interest in accurate vote tallies not only promotes the separation of powers, but also serves broader institutional interests. Part of the reason that candidates have a unique interest in the accuracy of vote tallies is that their inevitable get-out-the-vote efforts depend on their supporters' belief that the

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[1] Illinois denies that its position will "require 'political clairvoyance,'" Ill.Br.51-52, but that cannot be squared with its position that candidates must gather all manner of election data just to show a "substantial risk" of harm to electoral prospects, or with its position that courts must assess the plausibility of the candidate's allegations of future electoral harm. Ill.Br.33-36.

lawful votes will be accurately counted, and the unlawful votes will be disregarded. Moreover, the ability of candidates and their supporters to move on after a disappointing election result likewise depends on faith that the tally was accurate and the right votes were counted. *See Democratic Nat'l Comm. v. Wis. Legislature*, 141 S.Ct. 28, 31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay)

None of this will produce unnecessary litigation or any lack of adverseness in the zero-sum world of electoral politics. Candidates have an obvious interest in the rules that govern the elections that periodically become the near-exclusive focus of their lives, but they have no obvious interest in challenging rules that will have no likely impact on their electoral prospects. Every dollar or hour spent on litigation is a dollar or hour diverted from direct electoral activity. Given that reality, a rule that insists on an elaborate judicially-supervised inquiry into whether the challenged rule will really translate into electoral disadvantage puts the judiciary in a difficult and institutionally-awkward role just to confirm the obvious: candidates challenge the rules that will materially hurt their electoral prospects and materially benefit their opponent.

Illinois insists that it would be improper "to assume that any benefit one candidate may derive from an allegedly illegal election rule necessarily injures his competitor" because some election rules "benefit[] the entire field rather than favor[] some candidates over others." Ill.Br.21-22.n.4. That ignores the zero-sum nature of elections. Virtually every election rule that affects the ultimate tally will

benefit one candidate at the expense of the other. Pet.Br.19-20. The state's own examples underscore the point. Rules that prohibit "vote buying" and "election machine tampering" "benefit[] the entire field" in the sense that they promote "fair, open, and honest competition." Ill.Br.21-22.n.4. But when it comes to the ultimate tally, there is no escaping the mathematical reality that those rules will benefit one candidate at the other's expense. Pet.Br.19-20. That is why, if the state decided to count votes cast pursuant to a vote-buying or machine-tampering scheme, a candidate would have standing to sue, even if it is impossible to know before the election which candidate will benefit from the paid-for or tampered-with votes. The inherent risk that unlawful votes pose to a candidate's electoral prospects suffices.

The state insists that *Already v. Nike*, 568 U.S. 85 (2013), forecloses petitioners' position. Not so. There, the Court rejected the sweeping argument that "a market participant is injured for Article III purposes whenever a competitor benefits from something allegedly unlawful." *Id.* at 99. But however cutthroat the marketplace for athletic footwear, it does not compare to the zero-sum election context where one candidate's gain directly translates to the other's loss. For example, the Court emphasized that Already had "no plans to make anything resembling" the product that Nike had supposedly unlawfully trademarked. *Id.* But every challenger has plans to fill the incumbent's seat and every vote for the candidate's opponent is necessarily a vote against the candidate. Far from "soften[ing]" or "eliminat[ing]" Article III requirements, Ill.Br.17, petitioners' approach simply applies the familiar rules to the distinct context of

elections where every vote counts and inaccurate vote counts necessarily injure the candidates. This case provides a straightforward example. If petitioners' merits theory is correct, every vote counted after Election Day is unlawful and the final tally will inevitably be inaccurate and include unlawful votes.

Illinois suggests that *McConnell v. FEC*, 540 U.S. 93 (2003), and *Wittman v. Personhuballah*, 578 U.S. 539 (2016), foreclose petitioners' rule, Ill.Br.18, but neither case dealt with a challenge to election rules that allegedly produce inaccurate tallies. *McConnell* concerned a First Amendment challenge to a broadcasting regulation. 540 U.S. at 224-25. And *Wittman* involved an appeal of a district court decision striking down a redistricting plan. 578 U.S. at 545. Forcing a candidate to participate in an election where the final tally will include unlawful ballots or an inaccurate tallying mechanism inflicts a far more direct injury.

The state insists that a candidate's interest in an accurate vote count "is a classic generalized grievance." Ill.Br.19. That is nonsense. Every sports fan may have an interest in referees with 20-20 vision and an accurate scoreboard, but the players who put their bodies on the lines have a far greater and far more particularized and concrete interest. So too with candidates and elections. A "generalized grievance" is one where the injured party is "claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573-75 (1992). But as Judge Oldham has

explained, the "injury suffered by a candidate for office is in no sense 'common to all members of the public.'" *Hotze v. Hudspeth*, 16 F.4th 1121, 1126 (5th Cir. 2021) (Oldham, J., dissenting).

Lance v. Coffman, 549 U.S. 437 (2007) (per curiam), is not to the contrary. Pet.Br.35. That case was about whether *voters* had standing to challenge a redistricting plan under the Elections Clause. "It said nothing about *candidates*, who clearly have different (and more particularized) interests." *Hotze*, 16 F.4th at 1126 (Oldham, J., dissenting) (emphasis original). "The candidate who pours money and sweat into a campaign, who spends time away from her job and family to traverse the campaign trail, and who puts her name on a ballot has an undeniably different—and more particularized—interest in the lawfulness of the election as compared to the interests of some random voter." *Id.* Indeed, it is "hard to imagine anyone who has a more particularized injury than the candidate has." *Id.* *Carney v. Adams*, 592 U.S. 53 (2020), is equally inapposite. That case held that an attorney who had no intention of "apply[ing] to become a judge in the reasonably foreseeable future" lacked standing to challenge a Delaware rule governing judicial appointments. *Id.* at 60. If that same attorney had declared his candidacy for a judicial election, taken a break from his practice, and spent time and resources on the campaign trail, his standing to challenge the rules governing his eligibility or other salient aspects of the election would have been beyond question.

Finally, the state insists that adopting petitioners' rule will turn the federal courts into fora for airing "generalized grievances" about election law.

Ill.Br.23. That seems fanciful. Given the financial and time pressures on candidates, they seem among the least likely individuals to divert resources into purely academic lawsuits. Pet.Br.21. That said, to the extent the courts are open to challenges by independents and minor-party candidates with "no realistic chance of winning," Ill.Br.23 (citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979)), that is a feature, not a bug. The plaintiffs in both *Anderson* and *Socialist Workers Party* not only had standing but prevailed on the merits, establishing important election law precedent in the process. A contrary rule that would reserve Article III standing for candidates with a "realistic chance of winning," Ill.Br.23, would violate the cardinal principle that rules of standing should be neutral as between major and minor party candidates and between Republicans and Democrats as well. Pet.Br.21-22.

II. Congressman Bost Has Standing To Challenge The Illinois Law Here.

At the very least, Congressman Bost has standing to challenge the Illinois ballot-receipt deadline here, as a host of diverse amici confirm. Congressman Bost plausibly alleged a substantial risk that counting mail-in ballots received after Election Day will harm his electoral prospects both by risking electoral defeat and reducing his margin of victory. The plausibility of those allegations was amply reinforced by the Illinois Democratic Party's attempted intervention and voting and litigation patterns nationwide. And he has also plausibly alleged a classic pocketbook injury because he expended additional campaign funds as a direct

result of the state's extended deadline for receiving mail-in ballots. Here too, the notion that an election artificially extended a fortnight costs more than one that ends on Election Day hardly strains credulity. The state's contrary arguments lack merit.

A. Congressman Bost Plausibly Alleged a Substantial Risk That Counting Mail-In Ballots Received After Election Day Will Harm His Electoral Prospects.

1. Illinois does not dispute that a candidate has standing if he plausibly alleges a substantial risk that the challenged rule will harm his electoral prospects. Ill.Br.25-26. It just insists that the only harm that counts is a risk of losing the election and Congressman Bost never alleged any risk that counting mail-in ballots received after election day could cost him the election—and that he affirmatively waived the argument below. Ill.Br.24, 31. That contention does not survive even a quick review of the record. As Illinois acknowledges elsewhere in its brief, Congressman Bost squarely asserted in his declaration that he "risk[s] injury if untimely and illegal ballots cause [him] to lose [his] election." Pet.App.68a. And petitioners unquestionably raised a "competitive injury" theory of standing in the Seventh Circuit. *See* CA7.Pet.Br.20-21. That is why the Seventh Circuit addressed that theory—an inexplicable step if petitioners "waived" the point. Pet.App.13a (rejecting petitioners' "competitive injury" theory because petitioners "do not (and cannot) allege that the majority of the votes that will be received and counted after Election Day will break against them"); *see also* Pet.App.11a. To be sure,

petitioners emphasized that their "competitive injury" would take the form of a diminished margin, as opposed to outright defeat (allegations which remain sufficient to support a competitive-injury theory of injury/standing, *see infra*), but petitioners never "disclaimed," Ill.Br.24, Congressman Bost's assertion that he "risk[s] injury if untimely and illegal ballots cause [him] to lose [his] election," Pet.App.68a.

Illinois argues otherwise by stripping two sentences in petitioners' filings of their context. The state first emphasizes petitioners' statement in their opening brief below that Congressman Bost's "stated injury is not based on a risk of losing the election." Ill.Br.31 (quoting CA7.Pet.Br.19). But the rest of the paragraph makes clear that petitioners were simply making the (correct) point that Congressman Bost's pocketbook injury sufficed for Article III purposes regardless of whether petitioners can demonstrate that the extended ballot-receipt deadline harmed his chances of winning. CA7.Pet.Br.19. Far from "disclaiming," Ill.Br.24, reliance on Congressman Bost's statement that he "risk[s] injury if untimely and illegal ballots cause [him] to lose [his] election," Pet.App.68a, petitioners doubled down on it. That same paragraph argued that the district court was wrong "as a factual matter" to dismiss as "speculative" the risk that "late-arriving ballots" could "affect the outcome of an election." CA7.Pet.Br.19.

Nor did petitioners "waive" anything in their reply brief below by pointing out that their other theories of standing "did not depend on [Bost's] practical, electoral prospects." Ill.Br.31 (quoting CA7.Pet.Reply.8). In response to Illinois' argument

(which it reprises here) that "compliance with electoral law can only support candidate standing when a law 'affects his or her electoral prospects,'" petitioners argued that, "[i]n related contexts, this Court has recognized injuries to the constitutional right to stand for office that did not depend on candidates' practical, electoral prospects." CA7.Pet.Reply.7-8. Pointing out that their pocketbook injury sufficed and that harm to electoral prospects was not the only injury-in-fact a candidate could allege did not somehow waive Congressman Bost's plausible assertions of a substantial risk that the late-arriving ballots could cost him the election.

The state's felt need to assert waiver is understandable, because its substantive response to petitioners' argument is untenable. The state contends that Congressman Bost failed to plausibly allege a substantial risk that counting mail-in ballots received after Election Day could cost him the election. Ill.Br.30-32. But there is no denying that Congressman Bost asserted in his declaration that he "risk[s] injury if untimely and illegal ballots cause [him] to lose [his] election." Pet.App.68a. And the plausibility of that statement is powerfully buttressed by the state's own warning in the previous election that "[a]s mail ballots arrive in the days after Nov. 3, it is *likely* that close races may see leads change as results are reported." Pet.App.85a (emphasis added).

The state has little to say about its own statements. It just insists (in a footnote) that "petitioners do not allege that any such lead change actually occurred in Bost's race." Ill.Br.33.n.8. But petitioners need not allege that a lead change actually

occurred in Congressman Bost's 2020 race to plausibly allege a substantial risk that one might occur in the future. Pet.Br.43. Nor does it matter that the state's statement addressed elections in Illinois generally rather than Congressman Bost's election specifically. In assessing whether a plaintiff has established a substantial risk of future injury, this Court often looks to the experience of similarly situated parties. *See, e.g.*, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164-65 (2014). And the state did not exempt Congressman Bost's district from its general 2020 warning about late-arriving mail ballots potentially affecting outcomes. Pet.App.85a. That makes sense because the state itself would not want to get into the precarious business of prognosticating election results or of signaling that some races would be impervious to the impact of late-arriving ballots.

Illinois invokes data from a single county in 2020 showing that absentee votes there cut in Congressman Bost's favor "by nearly a 2-to-1 margin." Ill.Br.36. But without knowing the comparative margin for *timely* ballots in that county, that data point is about as useful as knowing that the score of a football game was "24." Worse still, Illinois cites no data about absentee ballots in the other counties in the district. Equally important, "past is not prologue for political candidates, including an incumbent like Congressman Bost." Pet.App.19a. The fact that Congressman Bost won the mail-in vote in one county in one of his past elections does not show that he will win the mail-in vote in that county, let alone district-wide, in the future.

Common sense and real world events underscore the risk that counting mail-in ballots received after Election Day will harm Congressman Bost's electoral prospects. Pet.Br.30-33. The state agrees that courts can consider commonsense realities, but insists that no "principle dictates that mail-in ballots that arrive after Election Day in Bost's district are likely to favor his opponents." Ill.Br.37. But the Court need look no further than its own docket. Over the last few years, this Court has seen a slew of cases brought by candidates and political parties challenging deadlines for casting and counting mail-in ballots, with the Republican Party and its candidates seeking shorter deadlines, and the Democratic Party and its candidates seeking longer ones. Pet.Br.31-32 (collecting cases). That is just the tip of the iceberg, as lower court cases confirm the same pattern. *Id.*

The state insists that "[f]inding standing any time competing political parties disagree about an election rule would eviscerate Article III's case-or-controversy requirement." Ill.Br.38. But that just reprises the misguided complaint that petitioners seek an exception to normal standing principles, rather than to have those rules applied to the electoral context without any special rule that only candidates in toss-up elections can sue. The point is not that candidates have standing whenever the parties disagree about a rule. *Id.* But the very fact that the parties fight so vigorously (and so frequently) about deadlines for casting and counting mail-in ballots underscores that those deadlines can have a real impact on elections.[2]

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[2] The Democratic National Committee has specifically argued that a federal Election Day deadline for receiving mail-in ballots

In assessing whether the usual pattern holds in a particular district, the court can surely take notice that the political parties have intervened and/or filed briefs confirming that the usual pattern applies. As this Court explained just last Term, requiring courts to ignore the parties' own "litigation positions" would demand "a naivete from which ordinary citizens are free." *Diamond Alt. Energy*, 145 S.Ct. at 2140 (quoting *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019)).[3] Of course, to the extent that judicial acknowledgment of such obvious realities gives discomfort, that is just another argument for a more straightforward rule allowing candidates to challenge the rules of the electoral road.

2. In all events, while Congressman Bost's assertions of a risk of defeat from late-arriving ballots is sufficient to give him Article III standing, it is not necessary. Rather, for Article III, assertions that an unlawful rule will diminish a candidate's margin of victory, causing him reputational and financial harm,

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would harm Democratic candidates because "[d]ata … consistently shows that the voters whose ballots are rejected due to receipt past the deadline are disproportionately those from groups of citizens who tend to be registered Democrats." Compl. at 35, *DNC v. Trump*, No. 1:25-cv-952 (D.D.C. Mar. 31, 2025); *see* RNC.Amicus.Br.9-10.

[3] Illinois protests that the Court in *Department of Commerce* relied on detailed affidavits rather than common sense and litigation positions. But as this Court explained in *Diamond Alternative Energy*, the Court found standing in *Department of Commerce* based on "a predictable chain of events" and without "requir[ing] the States to produce affidavits or testimony from noncitizens explaining that they would not respond to the census in light of the citizenship question." 145 S.Ct. at 2139.

more than suffices. Pet.App.68a-69a. The state spills significant ink insisting that a diminished victory margin standing alone is not a cognizable Article III injury. Ill.Br.25-29. That may or may not be true, but it is beside the point here where assertions of a diminished margin do not stand alone but are accompanied by claims of associated reputational and financial harm. Pet.Br.27.[4] Congressman Bost specifically claimed that he "risk[s] injury because [his] margin of victory in [his] election may be reduced by untimely and illegal ballots," and that a "diminished margin of victory will lead to the public perception that [his] constituents have concerns about [his] job performance." Pet.App.68a-69a. "Negative and positive perceptions about [his] effectiveness," moreover, "influence numerous third parties, such as future voters, Congressional leadership, donors, and potential political opponents." Pet.App.69a. That more than suffices for purposes of Article III.

Illinois does not dispute Congressman Bost's assertion that "a diminished margin of victory will lead to" reputational harms. Pet.App.68a; Ill.Br.32-33. Nor does it dispute that such reputational harms

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[4] The state's reliance on cases addressing post-election requests for recounts thus gets it nowhere. Ill.Br.27. There may be important *prudential* limits on standing in the immediate post-election context that restrict such fraught litigation to cases where the disputed ballots are outcome determinative, just as there are special rules governing litigation in the final days of the election. *E.g., Purcell v. Gonzalez*, 549 U.S. 1 (2006). But those same rules do not apply to candidates who challenge rules well in advance of Election Day. Indeed, prudence dictates channeling electoral litigation away from the crush and chaos of the immediate pre- and post-election context. RNC.Amicus.Br.14-15.

are cognizable Article III injuries. Ill.Br.32-33. It just complains that Congressman Bost "merely speculate[d] that his 'margin of victory … *may* be reduced.'" Ill.Br.33 (quoting Pet.App.68a) (emphasis original). But using the word "may," not "will," simply acknowledges the reality that Congressman Bost was by necessity making a predictive judgment, and no one—not even Illinois—can limit standing to those with a certainty of injury.

Illinois bravely insists that there is "no reasonable basis to infer that ballots received after Election Day are likely to break for his opponent." Ill.Br.33. That argument fails for all the reasons explained above. *See supra* at 12-16. Indeed, whatever doubts one may have that late-arriving ballots could cost Congressman Bost the election, it is eminently reasonable to think they could reduce his victory margin. Late-arriving ballots will necessarily break for one candidate or another; the possibility that they would exactly mirror the timely vote count is improbable. Pet.31. And for the reasons explained above, Congressman Bost had every reason to believe that those ballots would break for his opponent. *Supra* at 12-16; Pet.Br.31.

3. With no other basis for disputing injury-in-fact, Illinois resorts to a far-fetched traceability and redressability argument that neither court below embraced. Ill.Br.34-35. According to Illinois, even if a court were to invalidate the state's deadline for receiving mail-in ballots, that would not redress Congressman Bost's injuries because voters who rely on the state's extended deadline would simply meet the new deadline. Ill.Br.34-35.

The state's argument is nothing short of bizarre. As the state acknowledges elsewhere, the whole point of extending the deadline for receiving mail-in ballots is to "minimize the burdens placed on exercising the right to vote." Ill.Br.2. The notion that those burdens could be reimposed with zero effect on the number of ballots cast is utterly implausible. *Cf. Democratic Nat'l Comm.*, 141 S.Ct. at 39 (Kavanaugh, J., concurring) ("[M]oving a deadline would not prevent ballots from arriving after the newly minted deadline any more than moving first base would mean no more close plays."); *id.* at 40-41 (Kagan, J., dissenting) (explaining that, absent an extension of the deadline for receiving mail ballots, "many … citizens would not have their votes counted").

B. Congressman Bost Plausibly Alleged a Classic Pocketbook Injury.

Illinois does not dispute that Congressman Bost suffered a prototypical pocketbook injury when he kept his campaign running for two extra weeks as a result of the state's extended receipt-deadline for mail-in ballots. Like the Seventh Circuit, however, the state dismisses that injury as self-inflicted and thus not traceable to the challenged law. That reasoning is seriously flawed.

1. Like the Seventh Circuit, Illinois attempts to shoehorn this case into *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013). That is a category mistake. *Clapper* very clearly distinguishes between efforts to "manufacture standing" by incurring costs to avoid injury from challenged action that may never occur, and taking "reasonable[] … measures" in response to challenged action that will "concededly" happen. 568

U.S. at 419, 422 (citing *Friends of the Earth v. Laidlaw Env't Servs.*, 528 U.S. 167, 183-84 (2000)). Here, the extended ballot-receipt deadline means that late-arriving ballots and late counting will happen. That is a certainty. Pet.Br.39-40. And the costs of monitoring those late-arriving ballots to ensure accuracy and to give supporters the assurance that the vote count is not being manipulated are entirely reasonable. Pet.Br.40-42. Indeed, dispensing with those efforts would be "political malpractice." LWV.Amicus.Br.20.[5] When "[c]andidates for office spend money, devote time, and otherwise injuriously rely on provisions of the Election Code in organizing, funding, and running their campaigns," the "candidate's injury-in-fact should be self-evident." *Hotze*, 16 F.4th at 1125 (Oldham, J., dissenting); *see also Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008); LWV.Amicus.Br.3; RNC.Amicus.Br.6-8.

Nothing in *Clapper* is to the contrary. The state does not dispute that the "problem" in *Clapper* was that the plaintiffs "could not show that they had been or were likely to be subjected to" the thing that gave rise to their alleged pocketbook injuries—i.e., the challenged surveillance policy. *FEC v. Cruz*, 596 U.S. 289, 297 (2022). Here, by contrast, the cost-increasing extended deadlines and ballot counting are a

[5] While the state implies that Congressman Bost's choice to monitor the tally is unreasonable because the state includes "extensive safeguards to ensure the accuracy of mail-in voting," Ill.Br.43, it forgets that *one of those safeguards is providing candidates with an opportunity to use poll watchers to monitor their elections*. *See* 10 Ill. Comp. Stat. Ann. §5/17-23; WVa.Amicus.Br.7-8.

certainty. Nor can Illinois deny that *Clapper* expressly distinguished *Laidlaw* because the challenged action in *Laidlaw* was "concededly ongoing." *Clapper*, 568 U.S. at 419. Illinois counters that *Laidlaw* did not involve a "pocketbook injury," Ill.Br.47, but the state forgets that it is making a traceability argument. The precise type of injury-in-fact is irrelevant in assessing whether the injury is "fairly traceable" to the challenged conduct. *Clapper*, 568 U.S. at 418. Indeed, if it were relevant, then *Clapper* could have just distinguished *Laidlaw* based on the nature of the injury. Instead, *Clapper* makes clear that the key distinction is that *Laidlaw* involved "reasonable[] … measures" in response to challenged action that will "concededly" happen, not efforts to "manufacture standing" by incurring costs to avoid injury from challenged action that may never occur. 568 U.S. at 419, 422 (citing *Laidlaw*, 528 U.S. at 183-84).

The state seeks to undermine that distinction by pointing to *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024). But that case is even further afield. The plaintiffs there were pro-life medical associations seeking to challenge the FDA's approval of an abortion drug. Plaintiffs claimed standing on the theory that FDA's policy caused them to incur costs in the form of "studies" to "better inform their members and the public" about the drug's risks. *Id.* at 394. The Court held that plaintiffs could not "spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *Id.* That logic does not even begin to carry over to this case. Congressman Bost's resource injuries are not the cost of this litigation or an

advocacy campaign to repeal Illinois' law. The resource injuries are the need to pay campaign staff and finance get-out-the-vote and ballot-monitoring efforts for two more weeks—activities that are the "very bread and butter of a political campaign." LWV.Amicus.Br.20. None of that would be necessary if Illinois stuck to the federal Election Day, and all of it is an eminently reasonable response to Illinois' decision to keep counting ballots until the third Tuesday in November.

Illinois suggests that such out-of-pocket expenditures are unreasonable and self-inflicted unless they are needed to stave off a real risk of electoral defeat. But that argument conflates pocketbook and competitive injuries, while ignoring this Court's teaching that the costs of reasonable measures undertaken to address the certain effects of government action suffice. The argument also ignores that even heavily favored candidates do not dispense with their get-out-the-vote efforts or abandon election monitoring both because elections remain unpredictable and because their supporters want the reassurance that the election will not be stolen. More fundamentally, when a law extends the election by two weeks, there is nothing unreasonable about continuing to pay campaign staff for another two weeks.

With neither law nor common sense on its side, the state shifts to fly-specking Congressman Bost's assertions. The state first tries to diminish Congressman Bost's get-out-the-vote efforts as inconsistent with "the record and Illinois law." Ill.Br.40. But try as it might, Illinois cannot really

deny that a law that allows ballots to be mailed on Election Day—as opposed to requiring them to be received by Election Day—will require the extension of get-out-the-vote efforts directed to likely mail voters. In addition, the state ignores that Illinois law gives voters up to 14 days after Election Day to contest any rejections and cure any errors on their ballots, 10 Ill. Comp. Stat. Ann. §5/19-8(g-5), and that many get-out-the-vote efforts include tracking down voters to ensure that they can correct errors on their mail-in ballots (missing signatures, dates, or postmarks, etc.). Pet.Br.41.

Whatever its quibbles about get-out-the-vote efforts, Illinois has no valid answer to the costs associated with ballot-monitoring and keeping the campaign up and running an extra two weeks.[6] There may be some more difficult cases waiting in the wings, but when a state extends the vote counting by two weeks, the costs of maintaining a campaign staff for an extra two weeks is a classic pocketbook injury that is as directly traceable as injuries come. And if petitioners are correct on the merits that Illinois' effort is forbidden by federal law, then those injuries will be redressed. Article III requires nothing more.

* * *

In the end, Illinois has no real response to the negative effects that the Seventh Circuit's approach would have on election litigation and the Article III

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[6] Contrary to the state's claim, Congressman Bost asserted that "[b]ecause Section 19-8(c) holds voting open an additional fourteen days, my campaign has to keep this program active fourteen additional days longer than it would have prior to the 2005 amendment." Pet.App.68a.

courts. The choice here is stark. Under the approach Illinois advocates, election litigation would be limited to the tightest races where candidates could credibly claim long before Election Day that a challenged rule would turn the election. Every other challenge would be dismissed first as too speculative, and then as too close to the election, with the predictable result that most disputes would be deferred until the worst possible time—i.e., post-election challenges with the federal courts in the untenable position of picking political winners. Moreover, in identifying the handful of cases that could proceed, federal courts would be forced to parse declarations from so-called election experts debating whether a particular change could swing the outcome of a particular race. As if that were not bad enough, the resulting standing rules would not be neutral between minor and major parties or even between the two major parties. Minor parties would find the courthouse door shut, and voters could challenge rules that inconvenience them (while favoring one party), while no one could challenge rules that cut in the opposite direction.

There is a better way. Candidates have an obvious, concrete and particularized interest in the rules that govern the elections into which they pour their time and treasure. They have a particularly acute interest in ensuring accurate vote tallies and preserving their true margin of victory. And they certainly have a vested interest in sending their campaign staff home on Election Day, not two weeks (and a paycheck) later. Courts sometimes make the standing inquiry "more complicated than it needs to be." *Thole v. U.S Bank N.A.*, 590 U.S. 538, 547 (2020). In that regard, the decision below takes the prize.

CONCLUSION

This Court should reverse.

Respectfully submitted,

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