No. 24-568

In the Supreme Court of the United States

MICHAEL J. BOST, ET AL.,
Petitioners,

v.

ILLINOIS STATE BOARD OF ELECTIONS, ET AL.,
Respondents.

On Petition for Writ of Certiorari from the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICI CURIAE* MEMBERS OF MICHIGAN FAIR ELECTIONS INSTITUTE, PA FAIR ELECTIONS, AND WISCONSIN VOTER ALLIANCE IN SUPPORT OF PETITIONERS

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STATEMENT OF IDENTITY AND INTEREST OF THE AMICI CURIAE[1]

Three election integrity organizations in the swing states of Michigan, Pennsylvania and Wisconsin are amici curiae supporting congressional candidate standing. First, Michigan Fair Elections Institute (MFEI) is a Michigan non-profit corporation and a charitable 501(c)3) organization. Patrice Johnson is its Chairperson. Since 2021, the group has grown to approximately 3,000 supporters across the state. MFEI's mission is to help restore integrity to Michigan elections, and the group works to achieve maximum transparency, checks and balances, ethics, and integrity in election law. MFEI engages in investigation of Michigan's elections to ensure legal compliance, and it communicates the results of its investigations in order to educate the public and government officials as to ways to improve Michigan's elections. MFEI analyzes bills and laws with an eye toward closing gaps and opportunities for abuse by those who would undermine free and fair elections. MFEI is a peaceful, issue-based, nonpartisan organization that welcomes all who support election integrity and the U.S. and Michigan Constitutions.

Second, PA Fair Elections (PAFE) is an association of Pennsylvania voters dedicated to election integrity and election official legal

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[1] Pursuant to S. Ct. Rule 37, counsel for amici curiae have provided 10 day written notice to counsel for all parties prior to the filing of this brief. No counsel for a party authored this brief in whole or in part and no person or entity other than amicus sponsor, its member signatories, or counsel made a monetary contribution to its preparation or submission.

compliance. PAFE is led by a committee of Pennsylvania volunteers. PAFE members regularly meet to discuss election matters. PAFE trains its members to serve in various roles in the election process. PAFE has sponsored reports on election official legal compliance. PAFE has been involved in litigation seeking election official legal compliance.

Third, Wisconsin Voter Alliance (WVA) is a Wisconsin non-profit corporation. Ron Heuer is its President. WVA's vision statement is "[t]o facilitate and coordinate restoration of voting integrity in the State of Wisconsin." WVA's mission statement is "to effect change to law and policies surrounding elections. We will accomplish this goal by creating multi-faceted objectives to restore voter confidence, and integrity in the election process." WVA uses the following means to accomplish its goals: educating the public and elected officials; working to establish best election practices; identifying and encouraging debate on election policy and law; and encouraging fairness during elections.

MFE, PAFE and WVA have an interest in the policy and legal implications regarding federal candidate standing as implicated in the petitioners' questions presented. MFEI, PAFE and WVA, as amici curie, file this brief on behalf of petitioners.

SUMMARY OF THE ARGUMENT

The amici curiae assert that congressional candidate Michael Bost, under the "well-established"[2] doctrine of competitor standing, has a concrete and particularized interest in ensuring that the final vote tally accurately reflects the legally valid votes cast. State laws and election officials' policies that fail to exclude invalidly cast ballots present an actual and imminent invasion of the Congressional candidate's legally protected interest. An inaccurate vote tally is a concrete and particularized injury to a federal candidate. This amici curiae brief is filed in support of petitioners. The petitioners seek review of whether federal candidates have standing in federal court to enforce federal elections laws when state laws and election officials' policies fail to exclude invalidly cast ballots.

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[2] Comment, *Mendoza v. Perez*, 754 F.3d 1002 (D.C. Cir), *reh'g denied*, No. 13-5118 (D.C. Cir. 2014), 128 Harv. L. Rev. 1850, 1855 (2015).

ARGUMENT

The amici curiae urge the Court to grant the petition in this case to determine whether federal candidates have standing when state election officials are violating federal election law resulting in invalid ballots being counted in the final tally.

I. Michael Bost, as a federal candidate, claimed an injury-in-fact based on the Illinois election officials creating an illegally-structured competitive environment—and the Seventh Circuit erred in rejecting Bost's claim as "speculative."

Michael Bost was a candidate for political office in 2024 and is a multiterm member of the United States House of Representatives. In May 2022, Congressman Bost along with the other petitioners ("Petitioners") filed this suit against the Illinois State Board of Elections ("Board") and Bernadette Matthews in her official capacity as the Executive Director of the Board (collectively, "Defendants"). The petitioners alleged that the Illinois ballot receipt procedure impermissibly extends Election Day and thereby violates 2 U.S.C. § 7 and 3 U.S.C. § 1.

The petitioners' theory of the case was that the fourteen-day post-election period for the receipt and counting of mail-in ballots increases the number of total votes cast in Illinois by counting "untimely" ballots. *Bost v. Illinois State Board of Elections*, 114 F.4th 634, 639 (7th 2024). The petitioners had several standing arguments—including the competitor standing doctrine, which is addressed in this amici curiae brief.

The Seventh Circuit rejected Bost's competitor standing doctrine argument because Bost could only speculate as to which candidates would benefit from the invalid, untimely ballots cast:

> Plaintiffs also argue that the ballot receipt procedure imposes an intangible "competitive injury." This theory posits that allowing votes to be received and counted after Election Day could decrease their margin of victory, which, in turn, could impact their reputations and decrease their fundraising. We have recognized similar types of injuries involving politicians in other circumstances. *See, e.g., Fulani v. Hogsett*, 917 F.2d 1028, 1030 (7th Cir. 1990) (holding that a third party and its candidates faced the injury of "increased competition" when the defendants allegedly improperly placed major-party candidates on the ballot). The problem is that Plaintiffs do not (and cannot) allege that the majority of the votes that will be received and counted after Election Day will break against them, only highlighting the speculative nature of the purported harm.

Bost, 114 F.4th at 643.

Unfortunately, the Seventh Circuit, in rejecting the competitor standing doctrine, failed to acknowledge the hidden nature of the injury that the insertion of invalid, untimely ballots into the ballot

stream caused the federal candidate in a close election. The Illinois post-election contest procedures would never reveal for whom the invalid, untimely ballots were cast either. See, e.g., 10 Ill. Comp. Stat. 5, art. 23.

In Illinois, post-election procedures generally involve and only allow for recounting the ballots already counted:

> Sec. 23-1.8a. Election contest - Statewide - Procedures for recount and initial hearing. In all cases for which the Supreme Court finds it appropriate that there be conducted a recount or partial recount of ballots cast in any election jurisdiction, or a hearing regarding the conduct of the election within any election jurisdiction, the Supreme Court shall, in consultation with the Chief Judge of the Judicial Circuit in which each such election jurisdiction is located, assign a Circuit Judge of that Judicial circuit to preside over the recount or hearing. *Id*.

After the election, little opportunity exists for Bost to challenge the untimely ballots being counted. And, even if Bost did, the untimely ballots have already been counted, and the untimely ballots will be re-counted in any post-election contest. Therefore, there is no post-election remedy for the Illinois election officials illegally accepting untimely ballots and counting them in the final tally. As a result, after the election, federal candidates such as Michael Bost

are left without a remedy to correct the invalid ballots being counted.

The Seventh Circuit statement, "Plaintiffs do not (and cannot) allege that the majority of the votes that will be received and counted after Election Day will break against them," applies post-election as well. *Bost*, 114 F.4th at 634. Federal candidates will never know after the election which candidate was favored by the counting of untimely received ballots. For this reason, the injury from the invalid, untimely ballots being counted, as a pre-election matter, is not "speculative" as the Seventh Circuit held.

Further, the Seventh Circuit erred in failing to recognize that the competitor standing doctrine turns on whether there is an illegally-structured competitive environment. Michael Bost, as a federal candidate, alleged an illegally-structured competitive environment causes a change in the federal candidates' final vote tallies, based on the Defendants acceptance of invalid, untimely ballots in violation of 2 U.S.C. § 7 and 3 U.S.C. § 1. This description of the federal candidate's injury-in-fact is not speculative.

II. The U.S. Supreme Court has yet to apply the competitor standing doctrine to federal candidates and should do so in this case and other cases in which an illegally structured election environment can be demonstrated.

The Court's well-known standing test sets forth an "irreducible constitutional minimum" of three elements that a plaintiff must satisfy: (1) "the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and

particularized, and (b) actual or imminent, not conjectural or hypothetical," (2) "there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court[,]" and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Manuel v. NRA Group LLC*, 722 Fed. Appx. 141, 145 (3d Cir. 2018).

Competitor standing doctrine is "well-established."[3] In *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970), which is generally accepted as establishing modern standing doctrine, the Court recognized competitor standing. *Id.* at 152. That Court had "no doubt" that the plaintiff suffered "injury in fact" because the alleged increased competition "might entail some future loss of profits." *Id.*

And, when evaluating any form of standing, one must not "confus[e] weakness on the merits with absence of Article III standing." *Davis v. United States,* 564 U.S. 226, 249, n. 10 (2011). See *Warth v. Seldin,* 422 U.S. 490, 500 (1975) (standing "often turns on the nature and source of the claim asserted," but it "in no way depends on the merits" of the claim);

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[3] Comment, *Mendoza v. Perez*, 754 F.3d 1002 (D.C. Cir), *reh'g denied*, No. 13-5118 (D.C. Cir. 2014), 128 Harv. L. Rev. 1850, 1855 (2015).

Arizona State Legislature v. Arizona Independent Redistricting Com'n, 576 U.S. 787, 800 (U.S. 2015).

Generally, the competitor standing doctrine is a legal principle that allows a direct competitor to challenge an agency's decision if the decision could negatively impact the competitor's business. This doctrine is based on Article III of the U.S. Constitution, which limits federal courts to hearing "cases or controversies."

The competitor standing doctrine specifically recognizes the injury that results from being forced to participate in an "illegally structure[d] competitive environment," *Shays v. Fed. Election Comm'n*, 414 F.3d 76, 87 (D.C. Cir. 2005), a type of harm that the federal courts have identified in a variety of different contexts, *see, e.g., City of Los Angeles v. Barr*, 929 F.3d 1163, 1173 (9th Cir. 2019) ("[The] inability to compete on an even playing field constitutes a concrete and particularized injury."); *Preston v. Heckler*, 734 F.2d 1359, 1365 (9th Cir. 1984) ("[W]hen challenged agency conduct allegedly renders a person unable to fairly compete for some benefit, that person has suffered a sufficient 'injury in fact' and has standing ....").

As an example, the competitor standing doctrine was explained and applied in the *Shays* case. In Shays, the D.C. Circuit held that members of United States House of Representatives fell within the "zone of interests" protected by Bipartisan Campaign Reform Act (BCRA). Here, congressional representatives had constitutional standing to challenge Federal Election Commission (FEC) regulations implementing the BCRA. Members

alleged that they suffered injury to their competitive interests protected by BCRA and sought contests untainted by BCRA-banned practices and sought reelection untainted by BCRA-banned practices. They argued that their injury was traceable to the FEC regulations allowing what BCRA prohibited, and that their injuries could be redressed through a favorable decision invalidating the regulations. *Shays*, 414 F.3d at 76; U.S. Const., Art. III, § 2, cl. 1; Bipartisan Campaign Reform Act of 2002, § 1 et seq., 116 Stat. 81.

In its ruling, the D.C. Circuit explains that the competitor standing doctrine applies when a statute reflects a legislative purpose to protect a competitive interest because an injured competitor has standing to challenge the unfair competitive environment:

> Likewise indicating that illegal structuring of a competitive environment injures those who are regulated in that environment, longstanding precedent establishes that when a statute "reflect[s] a legislative purpose to protect a competitive interest, [an] injured competitor has standing to require compliance with that provision." *Hardin v. Ky. Utils. Co.,* 390 U.S. 1, 6, 88 S.Ct. 651, 19 L.Ed.2d 787 (1968).

Shays, 414 F.3d at 85–86. Based on their competitor standing, the Congressional members eventually prevailed on their claims. *Id.* at 115.

A number of circuit courts have also come to the conclusion that federal candidates and other election participants have competitor standing when forced to compete in an illegally-structured competitive environment. *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020); *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 907 (8th Cir. 2020) (political committees, including the DSCC, had standing to challenge Minnesota's ballot order statute "insofar as it unequally favors supporters of other political parties"); *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 544 (6th Cir. 2014) (political parties had standing to challenge a ballot ordering statute because the candidates the party financially backed were negatively "affected by" the law); *see also Nelson v. Warner*, 12 F.4th 376, 384 (4th Cir. 2021) (candidate had standing to challenge ballot order statute that "allegedly injure[d] his chances of being elected").

In *Carson*, (*See Carson*, 978 F.3d at 1051), the Eighth Circuit recognized that the federal candidates, specifically presidential electors, had a cognizable interest in ensuring that the final vote tally accurately reflect[ed] the legally valid votes cast. An inaccurate vote tally is a concrete and particularized injury to federal candidates. *Id.* Indeed, the federal candidates rely upon an accurate vote tally to achieve at least a claim to hold the federal office they seek. A count of votes that includes legally invalid ballots is a particularized harm to the federal candidate. Because no post-election process or procedure exists to identify and remove invalid tallied ballots, the harm cannot be undone in a post-election challenge.

Similarly, due to the invalid and untimely counting of ballots, Michael Bost, as a federal candidate, was forced to operate in an illegally-structured competitive environment. Under the doctrine of competitor standing, federal candidate Michael Bost has a concrete and particularized interest in ensuring that the final vote tally accurately reflects the legally valid votes cast.

State election officials failing to exclude invalidly cast ballots cause an actual, imminent invasion of the Congressional candidate's legally protected interest. An inaccurate vote tally is a concrete and particularized injury to a federal candidate. *Id.*, 1051, 1058. Essentially, if an allegedly unlawful election regulation makes the competitor landscape illegal for a candidate or that candidate's party, and it would otherwise be legal if the regulation were declared unlawful, those injured parties have the requisite, concrete, non-generalized harm to confer standing. *Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022).

Additionally, Congressional candidate Bost meets the causal-connection requirement. Essentially, the injury has to be traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. In *Carson*, the Eighth Circuit found a causal connection based on a state court's consent decree extending the deadline for counting absentee ballots beyond Election Day:

> Next, the Electors meet the causal-connection requirement because the injury flows from the challenged conduct (the Secretary's policy). *Carson*, 978 F.3d at 1058.

Also, the Congressional candidate Michael Bost's inaccurate final vote tally injury flows from the Defendants' violations of 2 U.S.C. § 7 and 3 U.S.C. § 1. The Congressional candidate's inaccurate final vote tally is "fairly traceable" to the Defendants' fourteen-day post-election period for the receipt and counting of mail-in ballots increasing the number of total votes cast in Illinois by counting "untimely" ballots in violation of 2 U.S.C. § 7 and 3 U.S.C. § 1.

Finally, a favorable court decision will redress the injury because only valid votes will be counted in the Congressional candidates' final vote tally, making the election's results accurately reflect the legally valid votes cast. A court injunction will resolve the Congressional candidates' injuries. *See Carson*, 978 F.3d at 1058.

III. Rules of fair competition for elections bar election official illegalities from casting doubt on or changing the election outcome.

Playwright Tom Stoppard wrote, "It's not the voting that's democracy; it's the counting."[4] Tom Stoppard's quote emphasizes that the essence of a true democracy rests not just in voting but in the fair and accurate counting of those votes, ensuring every individual's voice is heard and represented, and

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[4] Tom Stoppard, *Jumpers*, London: Faber and Faber, 1972 (play's original publication).

indicating the significance of transparency and procedural integrity in a democratic system. So, in a true democracy, election officials, when they are counting the votes, follow rules of fair competition.

The election officials' rules to disregard invalid ballots and accurately count valid ballots are consistent with the rules of fair competition. "[W]hen regulations illegally structure a competitive environment—whether an agency proceeding, a market, or a reelection race—parties defending concrete interests (e.g. retention of elected office) in that environment suffer legal harm under Article III." *Shays*, 414 F.3d at 76, 87.

Fair competition law is a set of rules that prohibit business practices that restrict free trade and competition. These rules include: no false claims; no improper interference; no price fixing; no illegal boycotting; no misuse of market power; no predatory practices; no exchanging confidential information; no inducing employees to disclose information; requirements to follow competition and consumer protection law; report suspected violations; and, report suspected violations of competition and consumer protection laws.

Federal laws that ensure fair competition include the Sherman Act, 15 U.S.C. §§ 1-7, the Clayton Act, 15 U.S.C. §§ 12-27, the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, and the Robinson-Patman Act, 15 U.S.C. § 13.

Similarly, federal and state laws exist to ensure fair competition in elections—including deterring election official misconduct. For example, the Help

America Vote Act, 52 U.S.C. § 20901, requires that states establish a procedure for voters to lodge complaints against election officials concerning the voting process. Specifically, states receiving HAVA funds must establish administrative procedures so that "…any person who believes that there is a violation of any provision of HAVA's Title III (including a violation which has occurred, is occurring, or is about to occur) may file a complaint." Consistently, Georgia and Arizona have state post-election contest laws authorizing a new election if election officials' counting of the votes cast doubt or change a close election result. Georgia's post-election contest law provides that an election result may be contested on election officials' misconduct, fraud or irregularities:

> A result of a primary or election may be contested on one or more of the following grounds: (1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result… Ga. Code § 21-2-522.

Arizona's post-election contest law provides that an election result may be contested on election officials' misconduct:

> A. Any elector of the state may contest the election of any person declared elected to a state office, or declared nominated to a state office at a primary election, or the declared result of an initiated or referred measure, or a proposal to amend the Constitution of Arizona, or other question or proposal

> submitted to vote of the people, upon any of the following grounds: 1. For misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election. Ariz. R. Stat. § 16-672.

Wisconsin provides post-election administrative review for any election official action "contrary to law":

> 5.06 Compliance review; appeal
>
> (1) Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law. The complaint shall set forth such facts as are within the knowledge of the

> complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur. The complaint may be accompanied by relevant supporting documents. The commission may conduct a hearing on the matter in the manner prescribed for treatment of contested cases under Wisconsin's Administrative Procedure and Review Act, Wis. Stat. Ch. 227, if it believes such action to be appropriate. Wis. Stat. § 5.06.

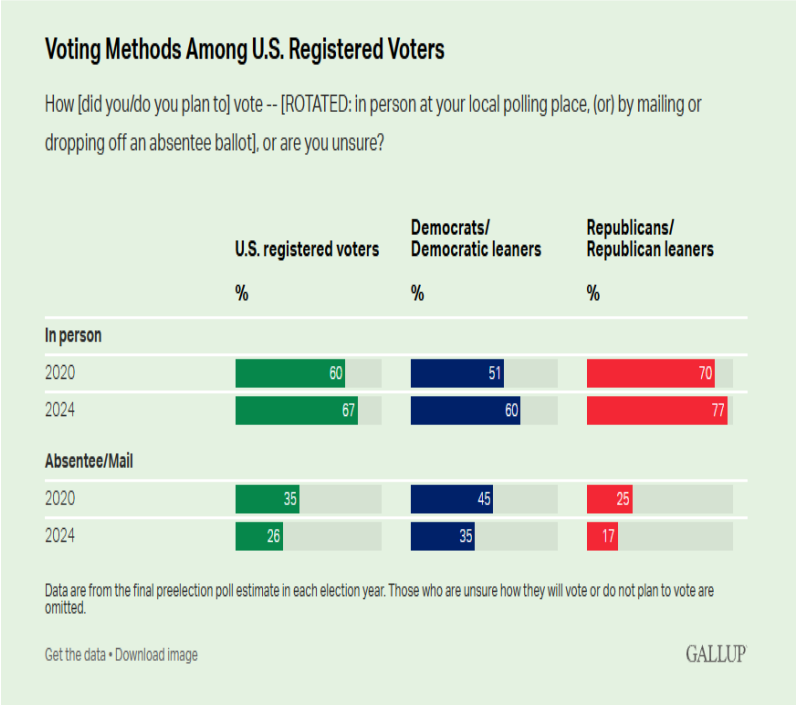
In this case, congressional candidate Michael Bost's alleged inaccurate final vote tally injury flows from the Defendants' violations of 2 U.S.C. § 7 and 3 U.S.C. § 1. The congressional candidate's inaccurate final vote tally is caused by the Defendants' fourteen-day post-election period for the receipt and counting of mail-in ballots increasing the number of total votes cast in Illinois by counting "untimely" ballots in violation of 2 U.S.C. § 7 and 3 U.S.C. § 1. The Seventh Circuit held that such action did not cause Article III injury because the harm was of a "speculative nature."

> The problem is that Plaintiffs do not (and cannot) allege that the majority of the votes that will be received and counted after Election Day will break against them, only highlighting the speculative nature of the purported harm. *Bost*, 114 F.4th at 643.

The Seventh Circuit erred in its conclusion of "speculative nature" because it is well documented that

a much larger percentage of Democrats vote by mail-in ballot. When rules change to accept flawed mail ballots, Democrat candidates benefit from the government-created advantage. This is not speculation.

According to the Gallup Poll, in 2024, 35% of Democrats voted by mail, but only 17% of Republicans did. In 2020, 45% of Democrats voted by mail, but only 25% of Republicans did. This information that Democrats vote more by mail-in ballots than Republicans is public knowledge.



Jeffrey Jones, More Than Half of U.S. Vote Likely Cast Before Election Day, GALLUP (Oct. 31, 2024), https://news.gallup.com/poll/652853/half-votes-likely-cast-election-day.aspx#.

The Seventh Circuit should have known that the purported election officials' election illegality in the *Bost* case would benefit the Democratic opponent over Republican candidate Bost. *See Bost,* 114 F.4th at 643. On that basis, congressional candidate Michael Bost was injured by the election officials' illegal acceptance of untimely mail-in ballots because Democrats are more likely to vote that way than Republicans.

The Seventh Circuit, unlike the Eighth Circuit, claims that the federal candidates must prove, prior to the election, that the election officials' misconduct injures them in a specific way. *See Id.* But, the Seventh Circuit errs because the rules of fair competition require that all the rules, and all the laws of elections be followed. Under the rules of fair competition, it is necessary that officials disregard invalid ballots and count all valid ballots. The injury to the federal candidates, here congressional candidate Michael Bost, flows from the election officials counting the invalid ballots and including the invalid ballots in the final vote tally to determine the election's winner.

IV. The Elections Clause's specification of who makes the laws regulating federal elections is an example of a rule of fair competition.

The U.S. Constitution's Elections Clause delineates that the state legislatures regulate times, places and manner of federal election subject to Congressional enactments:

> The Times, Places and Manner of holding Elections for Senators and

> Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const., Art. I, § 4, cl.1.

The Election Clause's delineation of who makes the laws regulating federal elections is an example of a rule of fair competition.[5] The Election Clause's text guards against executive encroachments on Congress's and the state legislatures' law-making authority to regulate federal elections. Where there are executive encroachments on the legislative powers of Congress and the state legislatures, there is violation of the rule of fair competition codified in the Elections Clause.

Three U.S. Supreme Court cases illustrate that the Election Clause is a rule of fair competition for elections. In each of these cases, the Court has been careful to delineate the legislative powers for regulating federal elections and the limitations that apply. First, in *Moore v. Harper,* 143 S.Ct. 2065 (2023), the Court held that the federal Elections Clause does not vest exclusive and independent authority in state legislatures to enact laws regarding federal elections and, therefore, did not bar the North Carolina Supreme Court from reviewing that state's

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[5] Recall that some laws ensuring fair competition are not codified while others are codified such as the Sherman Act, 15 U.S.C. §§ 1-7, the Clayton Act, 15 U.S.C. §§ 12-27, the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, and the Robinson-Patman Act, 15 U.S.C. § 13.

legislature's congressional districting plans for compliance with North Carolina law. Consistently, in so doing, the U.S. Supreme Court recognized that the state legislature's "particular authority" under the Electors Clause is subject to state constitutional limitations (e.g., Governor's veto) and federal and state judicial authority.

Second, in *Smiley v. Holm,* 285 U.S. 355 (1932), the Court confirmed the function of a state legislature in prescribing the times, places, and manner of holding elections for representatives in Congress under Constitution, art. I, § 4, is a lawmaking function in which the veto power of the state governor participates, if the governor has that authority under the state constitution.

Third, in the other 1932 case, *Koenig v. Flynn*, 285 U.S. 375 (1932), the Court held that a concurrent resolution of a New York's bicameral legislative body redistricting state not submitted to and approved by Governor was legally ineffective. This case is consistent with *Moore* decision's statements that there are state constitutional limits on the state legislature's law-making authority under the Elections Clause. In *Koenig,* the state constitutional limitation on the state legislative authority upheld was the presentation of the legislatively-passed bill to the Governor for approval (signature) or veto.

In these cases, the Court recognizes the Elections Clause's constitutional importance. The Elections Clause is a rule for federal election law-making to ensure fair competition among federal candidates. When the Elections Clause is violated,

that rule of fair competition is violated. And, the affected federal candidate suffers an injury-in-fact. The affected federal candidate in this case is Michael Bost. His claim is that the Illinois election officials' acceptance of untimely ballots violated 2 U.S.C. § 7 and 3 U.S.C. § 1 which the Illinois election officials cannot do under the Elections Clause's rule of fair competition. Therefore, in this case, the Court should grant the petition to allow competitor standing for federal candidates to bring claims against state election officials to ensure the rules of fair competition which apply to federal elections, including the Elections Clause which specifies who enacts the laws regulating federal elections, are followed.

CONCLUSION

The U.S. Supreme Court's decision in resolving federal candidate standing has far-reaching consequences. The Court's resolution of the question presented should take into account the doctrine of competitor standing, which is well-established in the U.S. Supreme Court and many circuit courts. Now, the Court should grant the petition to apply the doctrine of competitor standing to federal candidates. If so, the Court would provide a necessary federal forum for federal candidate claims against state election officials who create an illegally-structured competitive environment for federal candidates.

Respectfully submitted,

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