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 to the
United States Court of Appeals for the
Seventh Circuit

Brief of the Public Interest Legal Foundation as *Amicus Curiae* in Support of Petitioners

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INTERESTS OF *AMICUS CURIAE*[1]

The Public Interest Legal Foundation, Inc. ("Foundation") is a non-partisan, public interest 501(c)(3) organization whose mission includes working to protect the fundamental right of citizens to vote and preserving election integrity across the country. The Foundation has sought to advance the public's interest by protecting the federalist arrangement in the Constitution regarding elections, including in a case involving the same central issue as here.

SUMMARY OF ARGUMENT

This case presents the opportunity for this Court to clarify conflicting doctrines of standing and the *Purcell* principle. The former requires there to be an active case or controversy with redressability in order for a federal court to have jurisdiction. *See* U.S. CONST. art. III, § 2; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). The latter encourages federal courts to refrain from altering or interfering with a state's election rules and procedures on the eve of an election. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). Thus, litigants and courts in election cases are left to decipher when they have standing to bring a case – if plaintiffs bring the case too early, there is no live controversy and they do not

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[1] *Amicus curiae* notified counsel of record for all of the parties of its intention to file an amicus brief at least 10 days prior to the deadline to file the brief in accordance with S. Ct. R. 37.2. No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amicus curiae* and its counsel, make a monetary contribution intended to fund the preparation or submission of this brief.

have standing, but if they bring it too late, the *Purcell* principle will prevent them from getting immediate redress from the injury. This dilemma ignores the reality of election campaigns. A bright line on when litigants have standing in election cases dealing with election administration is vitally important for litigants who bring these cases, and the trial courts who must hear them.

ARGUMENT

I. The *Purcell* principle presents unique challenges to the standing analysis in election administration cases, and clarification is needed on how the two doctrines work together.

When the doctrines of standing and the *Purcell* principle conflict, litigants are left in a Catch-22 as to when to file their lawsuit, as the Petitioners here discovered. The doctrine of standing originates from the U.S. Constitution, which limits federal court jurisdiction to actual "cases" or "controversies." U.S. CONST. art. III, § 2. Limiting the category of litigants who can bring a lawsuit serves separation of powers principles by preventing "the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Raines v. Byrd*, 521 U.S. 811, 818 (1997).

The "irreducible constitutional minimum of standing contains three elements." *Lujan*, 504 U.S.

at 560. "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), as revised (May 24, 2016) (citing *Lujan*, 504 U.S. at 560-561). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo*, 578 U.S. at 339 (citing *Lujan*, 504 U.S. at 560). To establish redressability, the plaintiff must show that a favorable outcome of the case would remedy the alleged injury. *See Lujan*, 504 U.S. at 568-571.

The injury in fact element often makes the standing analysis in election cases challenging because the alleged grievance stems from an application of an election process that affects the entire voting public of that jurisdiction. This court has "consistently held that a plaintiff raising only a generally available grievance about government—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—does not state an Article III case or controversy." *Lujan*, 504 U.S. at 573–74. In election cases it is often difficult "to identify parties that are uniquely and concretely harmed by violations of fair election principles than it is in the normal way we think of standing harms." Steven J. Mulroy, *Baby & Bathwater: Standing in Election Cases After 2020*, 126 DICK. L. REV. 9, 14 (2021).

Political candidates, however, have traditionally been able to prove standing because of the particular and distinct injury they incur due to election administration laws. *See, e.g.*, *Moore v. Ogilvie*, 394 U.S. 814 (1969) (deciding a case brought by candidates for the offices of electors of President and Vice President of the United States from Illinois); *Anderson v. Celebrezze*, 460 U.S. 780 (1983) (deciding a case brought by a candidate for the office of President of the United States); *Bush v. Gore*, 531 U.S. 98 (2000) (deciding a case brought by a candidate for the office of President of the United States); *Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 313 (2022) (deciding a case brought by a candidate regarding a campaign finance law).

The *Purcell* principle, however, presents a complicating factor to the standing analysis. The *Purcell* principle stems from the case, *Purcell v. Gonzalez*, 549 U.S, 196 (2008) (per curiam). It espouses that federal courts refrain from altering or interfering with a state's election administration rules and procedures in the period close to an election. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam); *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). One stated reason for the judicial restraint is to avoid confusing voters and election administrators right before an election. *See Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 30-31 (2020) (Kavanaugh, J., concurring). Indeed, the *Purcell* principle "reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair

consequences for candidates, political parties, and voters, among others." *Merrill v. Milligan*, 142 S. Ct. at 880–81 (Kavanaugh, J., concurring). Additionally, the principle "discourages last-minute litigation and instead encourages litigants to bring any substantial challenges to election rules ahead of time, in the ordinary litigation process." *Wis. State Legis.*, 141 S. Ct. at 31 (Kavanaugh, J. concurring).

In the case at bar, the Seventh Circuit found that "Plaintiffs cannot establish the injury in fact necessary for Article III standing." *Bost v. Illinois State Bd. of Elections*, 114 F.4th 634, 641 (7th Cir. 2024). According to the Court of Appeals opinion, the plaintiff political candidate alleged a pecuniary injury in having to: (a) fund his campaign for two additional weeks after Election Day in order to contest any objectionable ballots, and; (b) organize poll watchers to monitor the counting of the votes after Election Day. *Bost*, 114 F.4th at 642. However, the Seventh Circuit found this argument unconvincing, claiming, among other things, that an injury must be "imminent" and "certainly impending," and because "the Illinois ballot receipt procedure does not impose a 'certainly impending' injury on Plaintiffs," it does not satisfy the injury element of standing. *Bost*, 114 F.4th at 642. Basically, because the election was months away, Plaintiffs' injury was not imminent and therefore not sufficient.

This case demonstrates the seemingly incompatible doctrines of standing and the *Purcell* principle. If a political candidate brings his case to the court too early, he will not have an injury sufficient for standing. If he waits too close to an election, the court will refrain from granting any

immediate relief. If Bost had waited until the two weeks after Election Day to bring his case, when Illinois was still receiving ballots, his injury would have been concrete, imminent, and impending. But, he would not have been able to get an injunction due to the *Purcell* principle. This dichotomy of the two legal doctrines presents absurd motivations for plaintiffs. While the *Purcell* principle was adopted to reduce confusion for voters and election administrators and to incentivize litigants to file early and go through the regular litigation process, the instant case does the opposite by only confusing litigants and forcing them to file on the eve of an election.

Litigants need guidance on how to maneuver the injury element of standing while abiding by the incentives of the *Purcell* principle. This Court has admitted it "has not yet had [the] occasion to fully spell out all of [the *Purcell* principle's] contours," *Merrill v. Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). Amicus suggests that this case is the Court's opportunity to flesh out those contours of the *Purcell* principle. Questions abound about the limits of the principle, with a recent law review article even charting the cases where the *Purcell* principle is applied in an effort to determine how close to an election is too close to get an injunction. *See* Casey P. Schmidt, *Disrupting Election Day: Reconsidering the Purcell Principle as a Federalism Doctrine*, 110 VA. L. REV. 1493, 1540 (2024). Additionally, while this court has hinted at possible guidance on when the *Purcell* principle should be abandoned, *see Merrill v. Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring), concrete direction on the issue is needed. Amicus requests this court take up this case so as to

not leave these important legal questions "hidden beneath a shroud of doubt." *Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732, 738 (2021) (Thomas, J., dissenting). Without clarity on the intersection of the doctrines of standing and the *Purcell* principle, the Court only "invite[s] further confusion and erosion of voter confidence" in the election process. *Id.*

II. This case presents an ideal vehicle to provide clarity on the *Purcell* principle's intersection with the doctrine of standing.

This case is a model case to clarify *Purcell* because this case only pertains to the standing of a political candidate in a very specific administrative context. It is not encumbered by the judicial analysis needed to determine the associational or organizational standing of public advocacy or political groups, which may complicate the *Purcell* principle's analysis and further confuse the issue. It is not in the middle of a hotly contested election or a once-in-a-lifetime pandemic that infuses emotion into an otherwise pallid legal debate. The court has the rare opportunity here to offer guidance on a clean issue — when a federal candidate has standing to bring a case related to the time, place, and manner of elections, and how the *Purcell* principle affects his standing. Such a scenario makes this case an ideal vehicle. The possible injury here occurs only late in the election. The practice challenged here pokes the limits of *Purcell* and this presents an opportunity to clarify those limits.

CONCLUSION

For these reasons, *amicus* respectfully requests that this Court grant the petition for writ of certiorari and reverse the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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