No. 24-568

IN THE
Supreme Court of the United States

MICHAEL J. BOST, ET AL.,

Petitioners,

—v.—

ILLINOIS STATE BOARD OF ELECTIONS, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF AMICI CURIAE LEAGUE OF WOMEN VOTERS, LEAGUE OF WOMEN VOTERS OF ILLINOIS, AMERICAN CIVIL LIBERTIES UNION, ROGER BALDWIN FOUNDATION OF ACLU, INC., AND RUTHERFORD INSTITUTE IN SUPPORT OF PETITIONERS

Cecillia D. Wang
Evelyn Danforth-Scott
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104

Kevin Fee
ROGER BALDWIN FOUNDATION OF ACLU, INC.
150 North Michigan Avenue
Chicago, Illinois 60601

Scott Michelman
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF THE DISTRICT OF COLUMBIA
529 14th Street NW, Suite 722
Washington, DC 20045

Ari Savitzky
Counsel of Record
Sophia Lin Lakin
Davin Rosborough
Theresa Lee
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
asavitzky@aclu.org

Jacob Van Leer
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW
Washington, DC 20005

Additional counsel listed inside cover

John W. Whitehead
William E. Winters
THE RUTHERFORD INSTITUTE
109 Deerwood Road
Charlottesville, VA 22911

Counsel for Amici League of Women Voters, League of Women Voters of Illinois, American Civil Liberties Union, Roger Baldwin Foundation of ACLU, Inc., and Rutherford Institute

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes & Other Authorities:

INTEREST OF AMICI

The League of Women Voters ("The League") is a nonprofit, nonpartisan, grassroots membership organization committed to protecting voting rights, empowering voters, and defending democracy. The League empowers voters and defends democracy through advocacy, education, mobilization, and litigation at the local, state, and national levels and works to ensure that all voters—particularly those from historically underrepresented communities—have the opportunity and the information they need to exercise their right to vote. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than one million members and supporters and is organized in more than 750 communities, all 50 states, and the District of Columbia. Since the 1970s, the League has filed dozens—if not hundreds—of cases in federal court to remedy violations of the federal civil rights laws and the U.S. Constitution on its own behalf or on behalf of its members in challenges to election laws and policies. The League is dedicated to ensuring that private plaintiffs have access to justice and that the courts remain accessible for parties to challenge election laws and policies.

The League of Women Voters of Illinois ("LWVIL") is the Illinois state affiliate of the League. It is a nonprofit, nonpartisan, grassroots organization that works to protect fair elections and increase civic engagement. LWVIL endeavors to influence public policy through education and advocacy. LWVIL has 44 local Leagues and over 4,300 members. LWVIL provides voters with information about access to their ballots, including how to vote by mail. LWVIL is

dedicated to representing itself and its members in litigation to empower voters and defend democracy.

The American Civil Liberties Union (the "ACLU") is a nationwide, nonprofit, nonpartisan organization with more than 1.7 million members, founded in 1920 and dedicated to the principles of liberty and equality enshrined in the Constitution. In support of those principles, the ACLU has appeared before this Court as counsel or amicus curiae in numerous cases involving electoral democracy, including *Smith v. Allwright*, 321 U.S. 649 (1944), *Reynolds v. Sims*, 377 U.S. 533 (1964), *Thornburg v. Gingles*, 478 U.S. 30 (1986), *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019), and *Allen v. Milligan*, 599. U.S. 1 (2023). The Roger Baldwin Foundation of ACLU, Inc., is the ACLU's Illinois affiliate.

The Rutherford Institute is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute provides legal assistance at no charge to individuals whose constitutional rights have been threatened or violated and educates the public about constitutional and human rights issues affecting their freedoms. The Rutherford Institute works tirelessly to resist tyranny and threats to freedom by seeking to ensure that the government abides by the rule of law and is held accountable when it infringes on the rights guaranteed by the Constitution and laws of the United States.

INTRODUCTION AND SUMMARY OF ARGUMENT

When a defendant's actions directly affect a plaintiff's pre-existing core activities and force a tangible, specific drain on their resources to compensate for those effects, that is a form of concrete economic injury that gives rise to Article III standing. *See, e.g.*, *Food and Drug Admin. v. All. for Hippocratic Med. ("AHM")*, 602 U.S. 367, 381, 383 (2024); *Dep't of Com. v. New York*, 588 U.S. 752, 766–767 (2019); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 165 (2014); *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 152–155 (2010); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–379 (1982). Representative Bost, a congressional candidate who won re-election but nonetheless maintains a challenge to Illinois's law requiring the counting of mail ballots received after Election Day, has standing here on that basis: He challenges an election rule that assertedly forces him to continue staffing particular campaign operations well after Election Day and to expend campaign resources, like the time and effort of his volunteers, that he otherwise could put to other uses. *See* Pet. App. 65a–68a. The court of appeals erred in holding otherwise.

Considering Representative Bost's injury as a form of "diversion-of-resources"-type economic harm—his most straightforward suggested theory, Pet'rs' Br. 2, 14–15, 33–34—comports with the basic requirements for Article III standing under this Court's precedents. Representative Bost asserts that the mail-ballot receipt deadline that he challenges causes him to alter his campaign conduct and expend campaign resources that he previously did not need to

expend and prevents him from allocating those resources to other campaign priorities, thus directly affecting his campaign's core activities. This forced resource diversion creates both immediate costs and opportunity costs—direct and tangible effects that give Representative Bost "'a personal stake in th[e] dispute' and a basis to proceed in federal court." Pet. App. 16a–18a, 23a (Scudder, J., dissenting) (citing *AHM*, 602 U.S. at 379).

The standard set forth most recently in *AHM* for demonstrating such a diversion-of-resources-type economic injury is, concededly, demanding. Affected plaintiffs must assert (and ultimately prove) that the defendant's challenged conduct has specific and direct effects on their pre-existing core activities, and that they experience tangible and concrete effects as a result, typically by having to shift finite resources (such as, in the campaigns and elections context, funding for staff and volunteer hours) from one core activity to counteract the effects on another. At least in the current, pre-discovery posture, Representative Bost's allegations meet this test. Understanding his harm in this manner—and reversing the court below—would apply ordinary standing rules to candidate-plaintiffs in election-law cases, consistent with established principles regarding concrete economic injuries.

Bost's diversion-of-resources-type injury is one form of a traditionally recognized harm—namely, harm that is economic in nature. *See, e.g.*, *TransUnion LLC v. Ramirez*, 594 U.S. 413, 433 (2021). Representative Bost's alternative standing theories rely on "competitive injuries" due to potential reductions in his margin of victory but with no

allegation that the outcome might change (*see* Pet'rs' Br. 2, 16–22) and on suggested reputational harms from these speculatively lower margins (*see* Pet'rs' Br. 23–33; Pet. App. 68a–69a). His diversion-of-resources-type economic injury is much more concrete and does not require speculation about inherently unpredictable, multi-step chains of events.

While the League and its state and local affiliates have fought to advance state laws like the one challenged here, and thus vehemently oppose Petitioners' position on the merits,[1] they often find themselves in the same position that Representative Bost does here: injured because a challenged election rule materially interferes with their pre-existing core activities and drains resources that would otherwise be deployed elsewhere. In such instances, the League and its state and local affiliates often bring suit—and the ACLU and its affiliates frequently represent the League and other similar civil society groups in such cases. All amici have an interest in ensuring that plaintiffs who have suffered such concrete economic injuries—including when a defendant's actions force them to divert resources from their core activities—

[1] Amici the League and the ACLU have fought to advance state laws like the one challenged here, through political advocacy and litigation, to ensure that voters who complete and mail in their ballots by Election Day are not disenfranchised through no fault of their own. *See* Mot. to Intervene, *Issa v. Weber*, No. 25-cv-598 (S.D. Cal. Apr. 18, 2025), Dkt. No. 8 (intervention by League of Women Voters of California, represented by ACLU, in similar receipt-deadline challenge)*; see also* Amici Curiae Br., *Republican Nat'l Comm. v. Wetzel*, No. 24-60395 (5th Cir. Sept. 9, 2024) (amicus brief of League of Women Voters of Mississippi, represented by ACLU, in similar receipt-deadline challenge).

continue to have their Article III standing recognized by the federal courts.

The Court should reverse on that basis.

ARGUMENT

I. CONCRETE ECONOMIC HARMS THAT ARISE FROM A DIVERSION OF RESOURCES CAN SUPPORT ARTICLE III STANDING

A. Diversion-of-Resources-Type Economic Injuries Can Support Standing

Standing requires a plaintiff to demonstrate "(i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *AHM*, 602 U.S. at 380 (internal citations omitted).

The contours of the injury-in-fact requirement are well established. An injury must be "'concrete,'—that is, "real, and not abstract.'" *TransUnion*, 594 U.S. at 424 (citing *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 340 (2016)); *accord AHM*, 602 U.S. at 381. Quantifiable injuries—paradigmatically, "monetary harms"—are the "most obvious" harms that "readily qualify as concrete injuries under Article III." *TransUnion*, 594 U.S. at 425; *accord AHM*, 602 U.S. at 381. An injury-in-fact also must be particularized, such that it "affect[s] the plaintiff in a personal and individual way." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 n.1 (1992). And the particularized effects of the challenged conduct must themselves be tangible and concrete. While "intangible harms" like reputational injuries or stigma may sometimes suffice,

TransUnion, 594 U.S. at 425, a plaintiff may not rely on "a strong moral, ideological, or policy objection to a government action" alone for standing. *AHM*, 602 U.S. at 381 (citing *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 473 (1982)).

The requisite injury must be "actual or imminent," *Lujan*, 504 U.S. at 560 (internal citations omitted), that is, it "must have already occurred or be likely to occur soon." *AHM*, 602 U.S. at 381 (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)). Thus, standing exists when there is a "'substantial risk' that the harm will occur." *E.g.*, *Susan B. Anthony List*, 573 U.S. at 158 (internal citation omitted); *accord Dep't of Com.*, 588 U.S. at 767 (same). And critically, the asserted injury or substantial risk thereof must be caused by the challenged conduct—there must be a non-speculative, "predictable chain of events leading from the [challenged] action to the asserted injury." *E.g.*, *AHM*, 602 U.S. at 384–385.

Applying these core principles, courts find standing when a defendant's actions impair (or imminently threaten to impair) a plaintiff's existing activities and consequently force that plaintiff to redirect financial or labor resources away from other core activities to counteract the impediment. This form of concrete economic injury, sometimes referred to in shorthand as a "diversion of resources," can befall a wide array of plaintiffs, including political candidates like Representative Bost who head up political campaigns and public interest organizations like the League.

For instance, in *Monsanto*, the Court held that farmers who incurred specific costs as a result of the deregulation of genetically modified crop plants had standing to sue the government and the manufacturers of the genetically modified plants. *See* 561 U.S. 139 (2010). The Court concluded the farmers had standing based on the costs they would "reasonably incur[] . . . to mitigate or avoid th[e]" risk that their crops would become intermixed with the genetically modified plants through uncontrollable cross-pollination from nearby fields. *See Clapper*, 568 U.S. at 414 n.5 (citing and discussing *Monsanto*, 561 U.S. at 152–153). Those costs included testing for contamination of their crops and measures to mitigate the risk of contamination. *Monsanto*, 561 U.S. at 154. Such harms were "sufficiently concrete to satisfy the injury-in-fact prong of the constitutional standing analysis," "even if their crops are not actually infected" with the modified gene. *Id.* at 155. The substantial risk of economic harms via interference with the farmer-plaintiffs' core business activities were backed by specific facts and "concrete" evidence. *Id.*

Similarly, in *Department of Commerce*, this Court held that States had standing based on a number of injuries, including their "diversion of resources" to mitigate the negative effects of the inclusion of a citizenship question on the Census. 588 U.S. at 766–767. And in *Susan B. Anthony List*, the Court concluded that the threat of prosecution under a statute prohibiting false statements in connection with a political campaign constituted injury-in-fact when, among other things, the plaintiff might "be forced to divert significant time and resources to hire

legal counsel and respond to discovery requests in the crucial days leading up to an election" if targeted. 573 U.S. at 165.

This Court recognized an analogous economic injury in *Havens Realty* as a basis for standing. There, a housing counseling nonprofit sued an apartment-complex owner who was providing Black prospective renters with false information about rental availability. 455 U.S. at 366–368, 378–379. The nonprofit, along with individual home seekers whose claims were mooted out during the course of the litigation, alleged that its provision of counseling services for home seekers had "been frustrated by [Havens's] racial steering practices" and, as a consequence, it "had to devote significant resources to identify and counteract" those practices. *Id.* at 379. Specifically, the group "was forced to employ" staff time and "divert[]" "funds . . . from its operating budget for counseling activities" toward combatting Havens's racial steering. Resp'ts' Br., *Havens Realty*, 1981 WL 390425, at *36 (U.S. Sept. 9, 1981). This Court concluded that "there can be no question that the organization has suffered injury in fact" because "[s]uch concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitutes far more than simply a setback to the organization's abstract social interests." *Havens Realty*, 455 U.S. at 379 (internal citation omitted).

The common thread in these cases is that the various plaintiffs suffered an economic injury (or the substantial risk of one) caused by the defendant's interference with their core activities, and the consequent need to divert their resources to mitigate

that injury. Such tangible, concrete, economic injuries are the most traditional type of injury that can support Article III standing. *See, e.g.*, *TransUnion*, 594 U.S. at 425 (the "most obvious" forms of harm supporting standing "are traditional tangible harms" such as "monetary harms"); *accord Diamond Alt. Energy, LLC v. Env't Prot. Agency*, 145 S. Ct. 2121, 2135 (2025) (potential "monetary costs are of course an injury" (internal quotation marks and citation omitted)).

Most recently, in *AHM*, this Court described the outer limits of *Havens Realty* and confirmed its bedrock principle that diversion-of-resources standing based on concrete economic injuries can and must adhere to Article III fundamentals. In *AHM*, medical associations supportive of abortion restrictions challenged the FDA's regulatory actions, claiming an injury "based on their incurring costs to oppose FDA's actions." 602 U.S. at 394. That was not enough: The Court unanimously rejected the "expansive theory" that standing to sue exists based solely on an organization's assertion that it "divert[ed] its resources in response to a defendant's actions." *Id.* at 395 (internal citation omitted). Such a theory would allow organizations to strategically "spend [their] way into standing" by choosing to "expend[] money to gather information and advocate against the defendant's action." *Id.* at 394. A group that had merely suffered some "setback to [its] abstract social interests" could under that theory sue any time it voluntarily "diverts its resources *in response to* a defendant's actions." *Id.* at 394–395 (citing *Havens Realty*, 455 U.S. at 379) (emphasis added).

AHM clarified that diverted resources can support standing only when they are concrete and caused by the challenged action's effects on a plaintiff's existing core business. Thus, as the Court explained in *AHM*, the plaintiffs in *Havens Realty* had standing because the defendant's conduct "directly affected and interfered with [the nonprofit's] core business activities." 602 U.S. at 395; *see Havens Realty*, 455 U.S. at 379 (holding "perceptibl[e] impair[ment]" of services, "with the *consequent* drain on the organization's resources" constitutes "injury in fact") (emphasis added). By contrast, there was no standing in *AHM* because the "FDA's actions . . . have not imposed any similar impediment to the medical associations' advocacy businesses." 602 U.S. at 395.[2] *AHM* thus reiterated the basic principle that a plaintiff cannot manufacture standing simply because it opposes the defendant's actions due to its "general legal, moral, ideological, and policy concerns," *id.* at 386.

AHM did not somehow overrule *Havens Realty* or any of the other cases sub silentio. In observing that *Havens Realty* was an "unusual" case, the Court in *AHM* was simply distinguishing between cases where an organization suffers a concrete economic injury to its core existing business by having to divert resources to prevent and mitigate direct impacts caused by the

---

[2] *See also, e.g.*, *Connecticut Parents Union v. Russell-Tucker*, 8 F.4th 167, 174 (2d Cir. 2021) (Cabranes, J.) ("[W]hen the [diverted] expenditures are not reasonably necessary to continue an established core activity of the organization bringing suit, such expenditures, standing alone, are insufficient to establish an injury in fact for standing purpose."

defendant, and others where an organization asserts standing based only on a setback to its social or ideological interests. In the former case, plaintiffs have standing; in the latter, they do not. *See AHM*, 602 U.S. at 396. *AHM* necessarily left untouched the broad body of precedents holding that when a defendant's challenged actions force a plaintiff to incur concrete expenses, that plaintiff has standing based on tangible, economic harms. *See supra* at 7–10.

Taken together, the cases provide a framework clarifying when a plaintiff has standing based on its diversion of resources. When a defendant's actions force a plaintiff to divert resources to counteract the effects of the defendant's actions on their core business activities, as in *Department of Commerce* or *Susan B. Anthony List* or *Monsanto* or *Havens Realty*, there is a concrete economic harm giving rise to standing. But a plaintiff may not manufacture standing merely by asserting that it has spent resources to oppose defendant's actions as a policy matter; in such cases, there is not a sufficiently concrete and cognizable harm. *AHM*, 602 U.S. at 395.

B. Diversion-of-Resources-Type Economic Injuries Can Support Standing in the Context of Campaigns and Elections

Like the states in *Department of Commerce,* or the farmers in *Monsanto*, or the nonprofit organization in *Havens Realty*, political actors, candidates, and civic organizations may have standing to challenge electoral laws and regulations that affect their activities, force them to divert resources, and thus cause them concrete and tangible harms under the Court's established economic-harm framework.

Crawford v. Marion County Election Board, 553 U.S. 181 (2008), illustrates the point. In *Crawford*, state Democratic party entities sued to enjoin enforcement of a voter identification law. This Court agreed with the court of appeals' determination that they had standing to do so. *Id.* at 189 n.7 (plurality op.); *see id.* at 209 n.2 (Souter, J., dissenting) (same). In the lower court's telling, even though the law facially regulated voters and election officials—rather than party entities themselves—the law nevertheless "injure[d] the Democratic Party by compelling the party to devote resources to getting to the polls those of its supporters who would otherwise be discouraged by the new law from bothering to vote." *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (Posner, J.) (citing *Havens Realty*, 455 U.S. at 378).

Consistent with the Court's cases and the established economic-harm framework, courts of appeals have also found that political campaigns or civic organizations have standing when they must incur costs or divert resources to counteract concrete

harms to their core business activities. *See, e.g.*, *Republican Nat'l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 396–397 (4th Cir. 2024) (following *AHM*, holding political committees had standing where they asserted state's actions "directly 'affected and interfered with'" their core services and "forced them to divert significantly more of their resources into combatting election fraud" at the expense of "their organizational and voter outreach efforts"); *see also Vote.Org v. Callanen*, 89 F.4th 459, 471 (5th Cir. 2023) (voting organization had standing when challenged voter registration requirement "'perceptibly impaired' [its] ability to pursue its mission," and required it "to expend additional time beyond the routine activities of multiple departments and divert resources away from particular projects" (cleaned up) (citing *Havens Realty*, 455 U.S. at 379)).

Conversely—and again consistent with the Article III framework—lower courts reject standing arguments from political actors when their alleged injuries fall short of Article III's irreducible minimum. *See, e.g.*, *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1250 (11th Cir. 2020) (Democratic National Committee failed to "establish an injury based on diversion of resources" or allege "a cognizable injury" because "[h]arm to an organization's generalized partisan preferences describes only 'a setback to [its] abstract social interests,' which is insufficient to establish a concrete injury in fact") (citing *Havens Realty*, 455 U.S. at 379).

This Court can and should apply these principles to resolve this appeal, because Representative Bost's assertions about his alleged injury sound in the same diversion-of-resources-type economic harm.

II. REPRESENTATIVE BOST'S ASSERTIONS OF CONCRETE ECONOMIC HARM SUPPORT ARTICLE III STANDING.

By the time the Seventh Circuit ruled, Representative Bost had set forth sufficient facts, at least in the pre-discovery phase, to establish standing under this Court's economic-harm framework.[3] Applying the principles just discussed, *supra*, Representative Bost has articulated facts supporting standing based on a diversion-of-resources-type economic injury.

Representative Bost asserts that the challenged rule affects his campaign's core activities. Specifically, he claims that his campaign will be forced to keep its doors open and spend resources to monitor the post-election arrival and processing of mail ballots

---

[3] Petitioners' complaint initially did not contain allegations of concrete harms to any campaign activities. The sole harm Petitioners alleged in the pleadings was that their "votes will be diluted by illegal ballots received in violation of the federal Election Day statutes," *id.* at 87a, a supposed harm inuring by its terms to Petitioners as individual voters, not "as federal candidates"—a theory of standing Petitioners have abandoned before this Court. Petr's' Br. at i (Question Presented). However, in response to a motion to dismiss for lack of standing, Petitioners submitted sworn declarations articulating additional facts, and the courts below relied upon them. *See, e.g.,* Pet. App. 9a–10a, 64a–69a.

If the Court determines Representative Bost's factual assertions are unclear or disputed, it could vacate and remand for the Seventh Circuit to conduct the proper analysis using the established economic-harm framework, and ultimately to allow Petitioners to amend their pleadings and further develop a factual record on standing.

so long as Illinois's challenged policy remains. *See* Pet. App. 65a–68a. He asserts that he has had to spend more resources each year to do so. *Id.* He claims he is injured through his expenditure of the "time, money, volunteers and other resources" required to field campaign operations for 14 days after Election Day to monitor and at times scrutinize late-arriving mail ballots. Pet'rs' Br. 33 (citing Pet. App. 67a).[4]

On those facts, the challenged policy is causing Representative Bost to alter his campaign activity and his expenditures of campaign resources in a manner that directly affects the functioning of his campaign. *See, e.g.*, *Havens Realty*, 455 U.S. at 379. Bost claims he has had to expend his campaign resources to recruit and fund volunteers and in some instances staff for fourteen additional days, to send them to monitor late ballot returns at various county courthouses for this additional time period, and to extend his ballot chase operations for fourteen additional days. Pet. App. 67a–68a. He claims that the receipt deadline causes him to increase his overall expenditures of campaign funding and volunteer resources in order to run those operations, *id.*, and also that it forces him to spread his campaign's

[4] It is of little moment that Representative Bost is an individual, because the question presented is whether he has standing "as [a] federal candidate[]," *i.e.*, in the context where he is operating as the principal of his political campaign organization. Pet'rs' Br. at i (Question Presented). It is in that context that the challenged rule "directly affect[s] and interfere[s] with [his] core business activities." *AHM*, 602 U.S. at 395; *see also* Pet. App. 16a–18a, 23a (Scudder, J., dissenting) (citing *AHM*, 602 U.S. at 379).

investment of resources across a longer period, rather than "focus[ing] its efforts on observing ballots on or before 'Election Day,'" as his campaigns had done previously. *Id.* at 66a. This is the precise type of injury that courts have properly determined is sufficient to support standing on a diversion-of-resources-type theory of economic harm, consistent with this Court's decisions in cases like *Department of Commerce*, *Susan B. Anthony List*, *Monsanto*, and *Havens Realty*.

Representative Bost's economic harms are similar in kind to those in *Havens Realty*, and entirely unlike those found insufficient to confer standing in *AHM*. Critically, in *AHM*, the plaintiff organizations asserted standing "based on their incurring costs to oppose FDA's actions," including by "'expend[ing] considerable time, energy, and resources' drafting citizen petitions to FDA, as well as engaging in public advocacy and public education" to oppose the policy. 602 U.S. at 394. Such expenditures, in other words, were made in opposition to the challenged policy, which is why the Court characterized the *AHM* plaintiffs' theory as attempting to "spend [their] way into standing." *Id.*

But the expenditures that Representative Bost points to are different. He does not claim he was injured by having to spend funds or other resources to lobby or advocate against or otherwise challenge or oppose Illinois's mail-ballot receipt rule. Rather, he claims the type of injury that this Court in its economic-harm cases has identified as cognizable: interference with the "core . . . activities" in which he was already engaged as a candidate for office. *AHM*, 602 U.S. at 395. In other words, Representative Bost's

expenditures of resources like campaign volunteer hours are not *in opposition* to the challenged policy, rather, they are *to mitigate* its concrete impacts on his core campaign activities. *See id.* at 394; *see also Connecticut Parents Union*, 8 F.4th at 173 (requisite injury must involve "an involuntary material burden on its established core activities").

The court of appeals below failed to analyze Representative Bost's assertions of a diversion-of-resources-type economic injury for what they were—a concrete economic harm that was directly caused by Respondent's policy. In the court's view, Bost's injury was "speculative" because "it was [his] choice to expend resources to avoid a hypothetical future harm—an election defeat." Pet. App. 10a–12a (citing *Clapper*, 568 U.S. 398 (2013)). According to the court of appeals, absent some "direct affirmative obligation" on Representative Bost's campaign to expend any resources, his choice to "undertake expenditures to insure against a result that may or may not come" was insufficient. Pet. App. 13a. In this focus on the electoral *result*, the panel conflated Representative Bost's distinct theories of standing and ignored his allegations of a discrete, concrete economic injury—being forced to deploy volunteer time and other resources in the post-election period, rather than being able to commit them to campaigning before the election. This is a concrete injury *regardless of the electoral outcome*. And the court's conflation of Representative Bost's theories was especially problematic here because the record contains no assertions or evidence at all that the challenged rule

poses any substantial risk of affecting the outcome of any of Petitioners' elections. *See* Pet. App. 11a–12a.[5]

The conceptual and legal framework applied by the court of appeals simply does not fit with Representative Bost's asserted standing based on diversion of resources. To start, candidates, campaigns, and civic groups are (for good reason) under very few "direct affirmative obligation[s]" with respect to how they conduct their electoral-democracy-related work during election season. There typically exists no legal requirement mandating voter registration drives, or get-out-the-vote activities, or

[5] The Seventh Circuit's error in failing to recognize Representative Bost's concrete diversion-of-resources injury warrants reversal—but this does not mean that the strictures of Article III permit *any* candidate (let alone a winning one, as here) to sue over *any* election rule merely because the challenged policy might have some effect on the final vote totals. *See* Pet'rs' Br. 16–22. Petitioners' other alternative standing theory is that although Illinois's receipt deadline may not affect the election outcome, Representative Bost's "electoral prospects" are still harmed because the majority of later-arriving ballots will, in his telling, favor his opponent, possibly resulting in a somewhat lower margin of victory. Pet'rs' Br. 23–33. He avers that this theoretical lower margin, while not causing him to lose, will then "lead to the public perception that my constituents have concerns about my job performance," which would in turn have further possible knock-on effects, like somewhat lower fundraising, or a drawing a challenger in some future re-election bid. *E.g.*, Pet. App. 68a–69a; *see also* Pet'rs' Br. 27–28. This purported reputational injury—that, if his vote margin is lower, and then certain unnamed but important persons notice the lower vote margins, Representative Bost might appear comparatively weak, and that he might in turn lose some modicum of political clout—is built of layers of speculation and abstraction, and is thus a more tenuous basis for reversal than his argument based on the diversion of resources. *See, e.g.*, *TransUnion*, 594 U.S. at 433.

election protection operations, although such activities are the very bread and butter of a political campaign or a nonpartisan voter-engagement operation. Yet government rules that tangibly and predictably burden these "core . . . activities" can still result in a cognizable injury for which a plaintiff may seek redress. *AHM*, 602 U.S. at 395.

Equally to the point, it is not merely Representative Bost's choice to monitor incoming mail ballots during the post-Election Day period, as the court of appeals wrongly suggested. It would be political malpractice not to do so. Candidates and civic groups working on elections have to conduct their work in response to the legal framework governing the election in question. Electoral regulations, no less than business regulations, "'may be likely' to cause injuries" to parties other than those who are directly compelled to action by forcing them to spend resources and thus incur potential economic harms. *Diamond Alt. Energy*, 145 S. Ct. at 2136 (citing *AHM*, 602 U.S. at 384). Here, Illinois's regulation of the mail ballot process, predictably and as a matter of "commonsense economic realit[y]," "may cause downstream or upstream economic injuries" to candidates, voters, voter registration groups, or political parties. *Id.* Allowing mail ballots to arrive up to fourteen days after Election Day necessarily means those who must build their efforts around the operative election rules, like campaigns and nonpartisan civic groups whose core activities include election-related work, will continue their election-monitoring, ballot-chase, and other operations, with all the economic effort that entails.

And just as Representative Bost has standing on this basis here, so too does a group like the League of Women Voters have standing in analogous circumstances, *i.e.*, where a challenged policy directly interferes with its core activities, causing it to divert tangible resources like volunteer hours away from pre-planned efforts in order to deal with the effects of the policy change. For instance, the addition of stringent new voter registration rules might force a nonpartisan civic group like the League to expend money and staff and volunteer time on updating its training and educational materials, or to devote more volunteer hours to voter registration efforts earlier in the cycle, at the expense of preexisting, core activities like election-season voter education programming focused on the candidates' positions on local issues of concern. In such cases, where the plaintiff can show that the defendant caused a concrete economic injury to the plaintiff's core business, including by a diversion of resources like Representative Bost asserts here, the requirements of Article III are met.

* * *

Candidate standing to challenge election rules that effectively force their campaigns to incur expenditures, draining resources from other campaign functions, fits comfortably within this Court's long line of cases recognizing standing based on economic injuries, including by resource diversion. If a challenged electoral rule tangibly affects the *way* a candidate campaigns, by altering in specific, articulable ways how they spend their limited staff or volunteer time, money, and resources, it can result in a concrete injury. That rule of law is consistent with Article III's first principles and with cases like

Department of Commerce, Susan B. Anthony List, *Monsanto*, and *Havens Realty*, and it is applicable to candidates, campaigns, and civic groups alike. Candidates and organizations sensibly will have standing under that framework to challenge those electoral rules that actually, tangibly, perceptibly harm them and their core activities—but, consistent with *AHM*, not those that don't.

Here, Representative Bost has set forth sufficient facts to establish standing based on a concrete, diversion-of-resources-type economic harm. The Court should reverse on that basis.[6]

[6] The other Petitioners do not assert diversion-of-resources-type economic harm, *see* Pet. App. 70a–79a, but the Court need not address the other Petitioners because only one plaintiff needs standing for the Court to reverse. *See, e.g., Dep't of Com.*, 588 U.S. at 766 ("For a legal dispute to qualify as a genuine case or controversy, *at least one* plaintiff must have standing to sue." (emphasis added)).

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

Cecillia D. Wang
Evelyn Danforth-Scott
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street,
Suite 700
San Francisco, CA 94104

Kevin Fee
ROGER BALDWIN FOUNDATION OF ACLU, INC.
150 North Michigan Avenue
Chicago, Illinois 60601

Scott Michelman
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF THE DISTRICT OF COLUMBIA
529 14th Street NW,
Suite 722
Washington, DC 20045

Ari Savitzky
Counsel of Record
Sophia Lin Lakin
Davin Rosborough
Theresa Lee
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street,
18th Floor
New York, NY 10004
(212) 549-2500
asavitzky@aclu.org

Jacob Van Leer
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW
Washington, DC 20005

John W. Whitehead
William E. Winters
THE RUTHERFORD INSTITUTE
109 Deerwood Road
Charlottesville, VA 22911

Counsel for Amici League of Women Voters, League of Women Voters of Illinois, American Civil Liberties Union, Roger Baldwin Foundation of ACLU, Inc., and Rutherford Institute

Dated: July 29, 2025