

No. 24-5071

**In the United States Court of Appeals
for the Ninth Circuit**

REPUBLICAN NATIONAL COMMITTEE et al.,

Plaintiffs-Appellants,

v.

ANDREW McDONALD, in his official capacity as
the Washoe County Registrar of Voters, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Nevada
Case No. 3:24-cv-00198-MMD-CLB

**SUPPLEMENTAL BRIEF OF
THE DEMOCRATIC NATIONAL COMMITTEE**

Charles G. Curtis, Jr.
PERKINS COIE LLP
33 East Main Street, Suite 201
Madison, Wisconsin 53703
(608) 663-7460
CCurtis@perkinscoie.com

Kevin J. Hamilton
Margo S. Jasukaitis
Jonathan P. Hawley
PERKINS COIE LLP
1301 Second Avenue, Suite 4200
Seattle, Washington 98101
(206) 359-8000
KHamilton@perkinscoie.com
MJasukaitis@perkinscoie.com
JHawley@perkinscoie.com

Counsel for the Democratic National Committee

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	2
I. <i>Bost</i> established the standing analysis for candidates and political parties in election cases—including this one.	2
II. The Court should continue to defer submission of this appeal pending the Supreme Court’s decision in <i>Watson</i>	6
CONCLUSION	8
CERTIFICATE OF COMPLIANCE.....	9
CERTIFICATE OF SERVICE.....	9

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

CASES

<i>Bost v. Illinois State Board of Elections</i> , 146 S. Ct. 513 (2026).....	passim
<i>Clark v. Chappell</i> , 936 F.3d 944 (9th Cir. 2019)	6
<i>Colorado Republican Federal Campaign Committee v. FEC</i> , 518 U.S. 604 (1996)	4
<i>Crawford v. Marion County Election Board</i> , 553 U.S. 181 (2008)	2
<i>Drake v. Obama</i> , 664 F.3d 774 (9th Cir. 2011)	4
<i>Mecinas v. Hobbs</i> , 30 F.4th 890 (9th Cir. 2022)	3–4
<i>Ochoa v. Public Consulting Group, Inc.</i> , 48 F.4th 1102 (9th Cir. 2022)	7
<i>Owen v. Mulligan</i> , 640 F.2d 1130 (9th Cir. 1981)	3
<i>Storer v. Brown</i> , 415 U.S. 724 (1974)	4
<i>Texas Democratic Party v. Benkiser</i> , 459 F.3d 582 (5th Cir. 2006).....	4
<i>Watson v. Republican National Committee</i> , No. 24-1260 (U.S.).....	1, 6–8

OTHER AUTHORITIES

<i>Never Surrender, Inc.</i> , FEC, https://www.fec.gov/data/committee/CO0828541 (last visited Feb. 24, 2026)	3
--	---

INTRODUCTION

Pursuant to the Court’s order of January 21, 2026, *see* Dkt. 78.1, the Democratic National Committee (“DNC”) submits this supplemental brief to address two issues:

- (1) The effect of the U.S. Supreme Court’s recent decision in *Bost v. Illinois State Board of Elections*, 146 S. Ct. 513 (2026), on the standing issues in this case; and
- (2) Whether this Court should continue to defer submission of this appeal pending a decision of the Supreme Court in *Watson v. Republican National Committee*, No. 24-1260.

For the reasons raised in the DNC’s Rule 28(j) letter, *see* Dkt. 77.1, *Bost*’s analysis of Article III standing for political candidates (and, by extension, political parties) directly impacts this appeal. If this Court were to determine that submission of this case should no longer be deferred, then remand to the District Court would therefore be appropriate for reconsideration of Plaintiffs’ standing in the first instance. But given that *Watson* will address the basic merits issue underlying this case—whether the federal election-day statutes preempt state laws allowing ballots cast by election day and received by election officials within a grace period to be counted—judicial

economy would best be served by continuing to defer submission until the Supreme Court weighs in on this potentially dispositive legal issue.

ARGUMENT

I. ***Bost* established the standing analysis for candidates and political parties in election cases—including this one.**

In *Bost*, “[t]hree political candidates challenged Illinois’s procedure for counting mail-in ballots received after election day,” and the Supreme Court “consider[ed] whether the candidates have standing to maintain their suit.” 146 S. Ct. at 518. The Court held that the plaintiff-candidates did indeed have Article III standing to challenge Illinois’s vote-counting rules because they (1) have a particularized “interest in a fair [electoral] process” and (2) suffer “[r]eputational harms” from “[r]ules that undermine the ‘integrity of the electoral process’” and their own “political legitimacy.” *Id.* at 519–20 (quoting *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008) (plurality opinion)).

In so ruling, *Bost* rejected the Seventh Circuit’s position that candidate standing to challenge a vote-counting rule requires either a nonvoluntary diversion of resources or a demonstrable competitive injury. *See also id.* at 521 (further rejecting respondents’ and dissent’s argument that, “in order to have standing, plaintiff-candidates must show some substantial risk that a rule will cause them to lose the election, prevent them from achieving a

legally significant vote threshold, or damage their reputation or finances”). Instead, *Bost* concluded that “[c]andidates have a concrete and particularized interest in the rules that govern the counting of votes in their elections, regardless whether those rules harm their electoral prospects or increase the cost of their campaigns.” *Id.* at 522.

Considered here, *Bost* raises two questions: (1) Does the Supreme Court’s ruling on candidate standing apply to political parties like Plaintiffs Republican National Committee and Nevada Republican Party?¹ And (2) if so, are the claims here analogous to those alleged in *Bost* such that its standing analysis applies?

On the first question, there is little reason to distinguish between political parties and candidates for purposes of standing to challenge ballot-counting rules. As this Court has observed,

[t]hat both a candidate *and a candidate’s political party* can assert standing based on their shared interest in “fair competition” follows not only from our decision in *Owen* [*v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981)], which held as much, but also

¹ At the time of the District Court’s dismissal order, one of the Plaintiffs was not merely a party organization but a candidate’s campaign apparatus: Donald J. Trump for President 2024, Inc. ER-4 n.1. That campaign has now ended. See Dkt. 13.1 at 1 n.1 (“Donald J. Trump For President 2024, Inc. has changed its name to Never Surrender, Inc.”); *Never Surrender, Inc.*, FEC, <https://www.fec.gov/data/committee/Co0828541> (last visited Feb. 24, 2026). Thus, considering the standing of the party Plaintiffs in light of *Bost* is most appropriate.

from the fact that typically . . . , “after the primary election, a candidate steps into the shoes of his party, and their interests are identical.”

Mecinas v. Hobbs, 30 F.4th 890, 898 n.3 (9th Cir. 2022) (emphasis added) (citations omitted) (first quoting *Drake v. Obama*, 664 F.3d 774, 782 (9th Cir. 2011); and then quoting *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 588 (5th Cir. 2006)). The synchronicity between candidates and political parties has long been recognized. *See, e.g., Storer v. Brown*, 415 U.S. 724, 745 (1974) (political party’s “goal is typically to gain control of the machinery of [] government by electing its candidates to public office”). And the interests recognized in *Bost*—“an interest in a fair process” and “an accurate result,” “the opportunity to compete for the people’s support,” and a “winner’s political legitimacy,” 146 S. Ct. at 519–20—apply to candidates’ affiliated party organizations no less than the candidates themselves, *see also, e.g., Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 630 (1996) (Kennedy, J., concurring) (recognizing “a practical identity of interests between” political parties and their candidates “during an election”).

Political parties, just like candidates, “are not mere bystanders in . . . elections. They have an obvious [] stake in how the result is determined and

regarded.” *Bost*, 146 S. Ct. at 520 (citation modified). Both this Court’s precedent and logic lead naturally to the conclusion that the *Bost* standing analysis applies to political parties.

As to the second question *Bost* raises—whether the claims here are analogous—this case and *Bost* address the same basic legal issue, *compare* 146 S. Ct. at 518 (*Bost* plaintiffs “sued the Illinois State Board of Elections . . . , claiming that counting ballots received after election day violates federal law”), *with* ER-21 (alleging that “Nevada contravenes [] federal laws by counting mail ballots that are received up to four business days after Election Day”). Both *Bost* and this litigation challenge vote-counting rules that include mail-ballot-receipt grace periods. Any distinction between the Illinois and Nevada rules are inconsequential to the standing analysis, and so *Bost* applies with full force to this case.²

² Underscoring the symmetry between this case and *Bost* is the reliance below on the same theories adopted by the Seventh Circuit and rejected by the Supreme Court: compelled expenditure of resources, *see* ER-10–13 (“Neither of [Organizational Plaintiffs’] alleged additional expenditures amounts is a cognizable diversion-of-resources injury.”), and demonstrable competitive injury, *see* ER-6–10 (“The causal link between counting mail ballots received after Election Day in Nevada and Organizational Plaintiffs’ alleged electoral injuries is too speculative to support standing. . . . Organizational Plaintiffs have failed to establish that the Nevada mail ballot receipt deadline gives their Democratic opponents some unfair advantage in the election process.” (citation modified)).

That being said, *Bost* has introduced a new rule (or, at least, a newly definitive one).³ Should the Court deem this matter ready for adjudication—and it should not, as discussed below—remand to the District Court would therefore be appropriate for consideration of Plaintiffs’ standing under the *Bost* standard in the first instance. *See, e.g., Clark v. Chappell*, 936 F.3d 944, 971–72 (9th Cir. 2019) (per curiam).

II. The Court should continue to defer submission of this appeal pending the Supreme Court’s decision in *Watson*.

Rather than remand immediately, however, the Court should continue to defer submission until the Supreme Court decides *Watson*. As this Court’s briefing order recognized, *Watson* will address “[w]hether the federal election-day statutes . . . preempt a state law that allows ballots that are cast by federal election day to be received by election officials after that day.” Dkt. 78.1 at 1 (citation modified). This is the same legal question underlying Plaintiffs’ complaint here. *See* ER-20–21 (“Congress has established a uniform, national day to elect members of Congress and to appoint presidential electors Nevada contravenes those federal laws by counting mail ballots

³ As the DNC explained in its answering brief, prior authority from this and other courts had suggested that the Seventh Circuit’s position—that “*something more* than the unlawfulness” of an illegally structured competitive environment “is needed” to satisfy Article III—was correct. Dkt. 36.1 at 9–15.

that are received up to four business days after Election Day[.]”); *see also* Dkt. 53.1 at 23 (arguing that Fifth Circuit’s decision now pending before Supreme Court in *Watson* constitutes “the only precedential appellate decision to address the merits of Plaintiffs’ claims”).

Because this Court may “affirm the [District Court’s] dismissal on any basis fairly supported by the record,” *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1106 (9th Cir. 2022) (citation modified)—and given that both this case and *Watson* hinge on a purely legal question—the Supreme Court’s *Watson* decision might well obviate the need for remand and further proceedings in the District Court. If the Supreme Court rules that the federal election-day statutes do *not* prohibit the counting of mail ballots mailed by (but received after) election day, then this Court can affirm dismissal on the merits. If, however, *Watson* endorses Plaintiffs’ view of the federal election-day statutes, then remand (for consideration of both standing and the merits) will still be appropriate. But since the District Court would be obliged to await the *Watson* decision anyway, judicial economy would best be served by giving this Court the first opportunity to apply *Watson* to this case and thus avoiding a potentially unnecessary remand.

CONCLUSION

For these reasons, the DNC respectfully suggests that, while *Bost* controls the standing analysis in this case, the Court should continue to defer submission until the Supreme Court issues its decision in *Watson*.

Respectfully submitted this 27th day of February, 2026.

PERKINS COIE LLP

By: s/ Kevin J. Hamilton

Kevin J. Hamilton

Margo S. Jasukaitis

Jonathan P. Hawley

1301 Second Avenue, Suite 4200

Seattle, Washington 98101

(206) 359-8000

KHamilton@perkinscoie.com

MJasukaitis@perkinscoie.com

JHawley@perkinscoie.com

Charles G. Curtis, Jr.

33 East Main Street, Suite 201

Madison, Wisconsin 53703

(608) 663-7460

CCurtis@perkinscoie.com

*Counsel for the Democratic
National Committee*

CERTIFICATE OF COMPLIANCE

I hereby certify that the type size and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6) and that this supplemental brief complies with the page limit ordered by the Court. *See* Dkt. 78.1 at 2.

s/ Kevin J. Hamilton

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the attached document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 27, 2026.

s/ Kevin J. Hamilton

RETRIEVED FROM DEMOCRACYDOCKET.COM