

No. 24-5071

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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REPUBLICAN NATIONAL COMMITTEE, et al.,  
*Plaintiffs-Appellants,*

v.

CARI-ANN BURGESS, in her official capacity as the Washoe County Registrar of  
Voters, et al.,  
*Defendants-Appellees,*

VET VOICE FOUNDATION, et al.,  
*Intervenor-Defendants-Appellees.*

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On Appeal from the United States District Court  
for the District of Nevada, Case No. 3:24-CV-00198  
Hon. Miranda M. Du

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**APPELLANTS' SUPPLEMENTAL BRIEF**

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## INTRODUCTION

This Court deferred submission of this case pending a decision in *Bost v. Illinois State Board of Elections*, 146 S. Ct. 513 (2026). The Supreme Court released its opinion in *Bost* on January 14, 2026. *Bost*'s holding that candidates for political office have “standing to challenge the rules that govern the counting of votes in [their] election” confirms that Plaintiffs have standing here. *Id.* at 523. Meanwhile, the Court granted certiorari in *Watson v. Republican National Committee*, No. 24-1260. *Bost* and *Watson* concern the same merits issue in this case: whether state laws directing election officials to count mail-in ballots that are received after election day are preempted by the federal statutes establishing a uniform day for the election. Following *Bost* and the certiorari grant in *Watson*, this Court directed the parties to brief two questions:

1. What is the effect, if any, of *Bost* on the issues in this case?
2. Regardless of the answer to question (1), should this court continue to defer submission of this appeal pending a decision from the United States Supreme Court in *Watson*?

Both questions have straightforward answers. First, *Bost* confirms that Plaintiffs here “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.” *Bost*, 146 S. Ct. at 522. As political committees who compete in elections, the Republican National Committee and the Nevada Republican Party have an “interest in ‘fair competition.’” *Mecinas v. Hobbs*, 30 F.4th 890, 898

n.3 (9th Cir. 2022). And in any event, they represent candidates who indisputably have “standing to challenge the rules that govern the counting of votes in [their] election[s].” *Bost*, 146 S. Ct. at 522. Whether through direct or associational standing, Plaintiffs have pled an Article III injury. Second, this Court should continue to hold the case for *Watson*, which will likely resolve the merits issue in this case.

## ARGUMENT

### I. *Bost* confirms that Plaintiffs have standing.

Candidates running for office have “an obvious answer” to the question of standing. *Bost*, 146 S. Ct. at 519. They have “a personal stake in the rules that govern the counting of votes in [their] election.” *Id.* *Bost* thus confirms what this Court has long recognized: “Competitive standing recognizes the injury that results from being forced to participate in an illegally structured competitive environment.” *Mecinas*, 30 F.4th at 898 (cleaned up). Political committees such as the RNC and NVGOP share that “personal stake” in fair election rules. *Bost*, 146 S. Ct. at 519. This Court has already held as much: both “a candidate and a candidate’s political party can assert standing based on their shared interest in ‘fair competition.’” *Mecinas*, 30 F.4th at 898 n.3.

*Bost* thus supports Plaintiffs’ standing twice over. It supports the RNC and NVGOP’s direct standing, since as political committees they “compete for the support of the people” in elections, just as candidates do. *Bost*, 146 S. Ct. at 520. And it supports their associational standing on behalf of candidates who “have a concrete

and particularized interest in the rules that govern the counting of votes in their elections.” *Id.* at 522. Either basis is sufficient reason to reverse the district court.

**A. *Bost* supports the political committees’ direct standing.**

Political committees such as the RNC and NVGOP share the same “personal stake” in elections as candidates. *Id.* at 519. As the DNC explained in its Rule 28(j) letter, the interests identified in *Bost* “apply to political party committees no less than candidates.” DNC Rule 28(j) Notice at 1 (citing *Mecinas*, 30 F.4th at 898 n.3). Those interests are injured by unlawful “rules that govern the counting of votes.” *Bost*, 146 S. Ct. at 523. So political committees such as the RNC and NVGOP have standing to challenge Nevada’s “procedure for counting mail-in ballots received after election day.” *Id.* at 518.

“To start,” political committees (like candidates) “have an interest in a fair process.” *Id.* at 519. That process is a competition “for the people’s support.” *Id.* at 520. Like the candidates they represent, the RNC and NVGOP compete “for the people’s support.” *Id.*; see ER-22 (“The RNC works to elect Republican candidates to state and federal office.”). Indeed, this Court has already applied that rule to political parties: both “a candidate and a candidate’s political party can assert standing based on their shared interest in ‘fair competition.’” *Mecinas*, 30 F.4th at 898 n.3 (emphasis added). That’s why the DNC had standing in *Mecinas* to challenge allegedly “unlawful election regulations.” *Id.* at 898.

Also like candidates, political parties suffer a “loss of legitimacy” when they participate in elections conducted in violation of law. *Bost*, 146 S. Ct. at 520. “Rules that

undermine the ‘integrity of the electoral process’” necessarily “undermine the winner’s political legitimacy.” *Id.* (quoting *Cranford v. Marion County Election Bd.*, 553 U.S. 181, 197 (2008)). And “when public confidence in the election results falters, public confidence in the elected representative follows.” *Id.* Again, the same is true of political committees, who survive on reputation and public support no less than candidates. “The RNC represents over 30 million registered Republicans in all 50 states, the District of Columbia, and the U.S. territories.” ER-22. And “[r]eputational harms, as a general matter, are classic Article III injuries.” *Bost*, 146 S. Ct. at 520 (cleaned up).

Political committees participating in an election thus “have an obvious personal stake in how the result is determined and regarded.” *Id.* That’s why Justice Kagan suggested at oral argument in *Bost* that the Court has “always allowed” these “kinds of suits” by political parties when they plead “that the new rule will harm them.” Oral Arg. Trans. 68:14-18, No. 24-568 (S. Ct. Oct. 8, 2025). And it’s why the Supreme Court has never “actually asked the RNC or the DNC to do anything like” gamble on the election outcome before filing suit. *Id.* at 69:5-9.

*Bost* rejects the very arguments that Defendants raise here. The Secretary argues here that “Plaintiffs’ competitive standing theory fails because they do not adequately allege that they could potentially lose an election because of the mail ballot receipt deadlines.” Sec’y Red Br. 11. But the Supreme Court rejected the argument that plaintiffs “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.” *Bost*, 146 S. Ct. at 521. “That approach,” the Supreme Court held, “finds no support in Article III’s case or controversy requirement or our case law interpreting that requirement.” *Id.*

The Supreme Court likewise rejected the argument that a candidate’s interest in an accurate vote tally is too generalized. “Such harm to candidates is in no sense ‘common to all members of the public.’” *Id.* at 520 (quoting *Lance v. Coffman*, 549 U.S. 437, 440 (2007)). The Secretary here argued that “a party cannot assert an injury based on their interest in ‘requir[ing] that the Government be administered according to law,’” because otherwise “[c]andidates and voters alike would have a similar interest in an accurate vote tally.” Sec’y Red Br. 40 (quoting *Lance*, 549 U.S. at 44). But as the Supreme Court explained, “a candidate’s interest differs in kind” from a voter’s. *Bost*, 146 S. Ct. at 520. That’s because “[a]n unfair and inaccurate election plainly affects those who compete for the support of the people in a different way than it affects the people who lend their support.” *Id.* Political committees who spend innumerable “resources” on “in-person voting activities,” “mail ballot chase programs,” and “post-election activities” fall squarely on the competitor side of that line. ER-22-23. “Those who spend untold time and resources” on those electoral activities “have ‘an undeniably different—and more particularized—interest’” in the rules governing those activities. *Bost*, 146 S. Ct. at 520 (quoting *Hotze v. Hudspeth*, 16 F.4th 1121, 1126 (5th Cir. 2021) (Oldham, J., dissenting)).

As Plaintiffs explained in their opening brief, “[t]he Republican organizations have competitive standing regardless of whether the post-election deadline actually favors one party over another.” Blue Br. 17. The Supreme Court applied the same rule: “Win or lose, candidates suffer when the process departs from the law.” *Bost*, 146 S. Ct. at 519. And this Court has already recognized that political parties like the RNC and NVGOP share those interests. *Mecinas*, 30 F.4th at 898 & n.3. Plaintiffs thus have standing to challenge “the rules that govern the counting of votes in their elections.” *Bost*, 146 S. Ct. at 522.

**B. *Bost* supports the RNC and NVGOP’s associational standing to represent candidates.**

Even if *Bost* didn’t apply to political parties, *contra Mecinas*, 30 F.4th at 898 & n.3, the RNC and NVGOP represent candidates squarely covered by *Bost*. An association “may have standing” to represent its members “[e]ven in the absence of injury” to itself. *Warth v. Seldin*, 422 U.S. 490, 511 (1975). An association can sue on behalf of one of its members who “would otherwise have standing to sue in their own right.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977). “As Republican organizations,” the RNC and NVGOP “represent ‘Republican candidates’ in Nevada elections and other States ‘for election to the Presidency, U.S. Senate, and U.S. House of Representatives.’” Blue Br. 12 (quoting ER-22). And those candidates suffer an “obvious” injury when officials don’t conduct their election in accordance with law. *Bost*, 146 S. Ct. at

519. The RNC and NVGOP thus have associational standing to represent those candidates.

The district court rejected associational standing on only one ground: that the RNC and NVGOP's candidate members do not suffer injury. ER-13-14. *Bost* rejected that conclusion. "Candidates 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." *Bost*, 146 S. Ct. at 522. No Defendant contests that the RNC and NVGOP meet the other two requirements—germaneness and the absence of a need for the individual members to participate. *See* Blue Br. 40-41 & n.3. So *Bost* supports the RNC and NVGOP's associational standing on behalf of their members who are candidates in upcoming elections.

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*Bost* supports Plaintiffs' standing two times over. Because "only one plaintiff needs standing for a suit to proceed," either basis warrants reversing the district court. *Bost*, 146 S. Ct. at 519 n.3. But Plaintiffs also briefed other bases for standing. Late-arriving mail ballots favor their political competitors. *See* Blue Br. 20-24. And Nevada's post-election receipt deadline injures the RNC and NVGOP's mission "to turn out Republican voters and elect Republican candidates." Blue Br. 27-35. To mitigate those injuries, Plaintiffs must "divert resources from in-person voting activities and election-integrity measures, and instead spend money on mail ballot chase programs and post-election activities." ER-22-23. Because those "expenditures mitigate a substantial risk

of harm,” they satisfy even the concurrence’s rationale for an “Article III injury” in this case. *Bost*, 146 S. Ct. at 524 (Barrett, J., concurring in the judgment). Any one of the numerous Article III injuries in this case is sufficient grounds for reversal. *See Bost*, 146 S. Ct. at 519 n.3.

## **II. The Court should hold for *RNC v. Watson*.**

A forthcoming decision in *Watson v. Republican National Committee*, No. 24-1260 (S. Ct.), could resolve the merits issue in this appeal. The Fifth Circuit’s decision in that case is correct, and a Supreme Court affirmance would likely resolve the merits of this case. *See Gray Br. 22-27*. But if the Supreme Court does not affirm, a remand could be warranted to address Nevada’s different ballot-receipt procedures like acceptance of a ballot “even if it lacks a postmark” in certain circumstances. *RNC v. Aguilar*, 558 P.3d 805 (Nev. 2024) (table op.) (cleaned up).

Apart from the merits, the Fifth Circuit’s decision in *Watson* confirms that Plaintiffs have standing. The district court in that case found that post-election-day receipt of mail-ballots “frustrates and impedes the Republican Party’s mission of represent[ing]” Republican “interests” and “secur[ing] the election of Republican candidates.” *RNC v. Wetzel*, 742 F. Supp. 3d 587, 594 (S.D. Miss. 2024). The Fifth Circuit affirmed that finding, noting that the RNC and state party’s injuries “fit[] comfortably within [the court’s] precedents.” 120 F.4th 200, 205 & n.3 (5th Cir. 2024) (collecting cases). At the Supreme Court, no party has contested the plaintiffs’ standing in their merits briefs.

## CONCLUSION

For these reasons, the Court should continue holding the case for *RNC v. Watson*.

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### **CERTIFICATE OF COMPLIANCE**

I certify that this brief is fewer than 15 pages in compliance with the Court's January 21, 2026 order for supplemental briefing, and that it complies with the typeface requirements of Rule 32(a)(1)-(7).

*/s/ Thomas R. McCarthy*

### **CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing brief on February 27, 2026, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system, which will serve all parties requiring notice.

*/s/ Thomas R. McCarthy*