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July 30, 2024

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Christopher G. Conway
Clerk of the Court
United States Court of Appeals
for the Seventh Circuit
219 South Dearborn Street, 27th Floor
Chicago, Illinois 60604

Re: *Bost v. Illinois State Board of Elections*, No. 23-2644

Mr. Conway:

Pursuant to Fed. R. App. P. 28(j), Plaintiffs-Appellants write in response to the Notice of Supplemental Authority filed by Defendants-Appellees in the above-referenced appeal. *RNC v. Wetzel*, No. 1:24-cv-25 (S.D. Miss. July 28, 2024) clearly supports our arguments that Plaintiffs-Appellants have standing under Article III, and under all non-vacated circuit authorities addressing whether candidates or political parties have standing. *See* Dkt. 6 at 12-26.

In *Wetzel*, the district court determined that costs inflicted on plaintiffs by a challenged ballot receipt law conferred Article III standing, both as an “economic injury” and, independently, as a “diversion of resources.” Slip. op. at 11. Plaintiffs-Appellants in this appeal similarly argued that costs due to a state ballot receipt deadline are tangible economic injuries affording them standing on the same two grounds. *See* Dkt. 6 at 12-20; and Dkt. 34 at 2 (discussing resource allocation injuries). Importantly, the question of injury in fact in *Wetzel* arose in the summary judgment context where, unlike in the motion to dismiss context below, factual questions are not resolved in the non-moving party’s favor.

With respect to the district court’s merits findings, slip op. 12-21, the Court of Appeals for the Fifth Circuit appears to have adopted a heightened standard for preemption under Elections and Electors Clauses, which deviates from the more lenient standard adopted by the Supreme Court. *Compare Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 777-76 (5th Cir. 2000) (requiring “direct[] conflict”) with *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 9 (2013) (finding that state law is preempted if it is merely “inconsistent with” federal statute and rejecting Arizona’s arguments its statute survived a preemption challenge if it “operate[s]

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harmoniously”). To the extent the merits are before this Court, there is no such authority for a heightened standard in this Circuit, and the district court’s conclusions regarding the merits in *Wetzel* will soon be appealed.

Sincerely,

JUDICIAL WATCH, INC.

s/ Russ Nobile _____

T. Russell Nobile
Attorney, Judicial Watch, Inc.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this letter complies with the word limitation set forth in Fed. R. App. P. 28(j) in that the body of the letter is 315 words.

s/ Russ Nobile

T. Russell Nobile

July 30, 2024

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