

No. 24–1260

In the Supreme Court of the United States

MICHAEL WATSON,
MISSISSIPPI SECRETARY OF STATE,
Petitioner,

v.

REPUBLICAN NATIONAL COMMITTEE, ET AL.,
Respondents.

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

**BRIEF OF COREY J. BIAZZO AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONER**

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QUESTIONS PRESENTED

Under Mississippi law, voters who vote absentee must mark their absentee ballot and either deliver it directly to their clerk's office before election day or place it in the mail so that it is postmarked by election day, and the ballot will be considered timely as long as it is delivered within five business days after election day. Miss. Code § 23-15-637(1)(a). The question presented is whether federal statutes designating a single, nationwide "day of the election" for members of Congress and presidential electors preempt Mississippi's law. See 2 U.S.C. §§ 1, 7; 3 U.S.C. §§ 1, 21(1).

TABLE OF CONTENTS

Questions Presented	i
Table of Contents	ii
Table of Authorities.....	iii
Interest of Corey J. Biazzo	1
Summary of the Arguments.....	1
Argument.....	3
I. Federal Election Day Statutes Regulate When Ballots Must Be Cast, Not When They Must Be Received.....	3
II. The Fifth Circuit’s Interpretation Conflicts with the Elections Clause and the Presumption of State Authority.....	6
III. Separation-of-Powers Considerations Reinforce the Need for Clear Congressional Authorization.....	8
IV. The Constitutional and Historical Understanding of “Election” Demonstrates That Casting—Not Delivery—Defines the Elector’s Act	9
Conclusion	9

TABLE OF AUTHORITIES

Cases

<i>Arizona v. Inter Tribal Council of Arizona</i> , 570 U. S. 1 (2013).....	2, 7
<i>Bush v. Gore</i> , 531 U. S. 98 (2000).....	3, 5
<i>Foster v. Love</i> , 522 U. S. 67 (1997).....	2, 3, 5
<i>Gregory v. Ashcroft</i> , 501 U. S. 452 (1991).....	2, 7
<i>Purcell v. Gonzalez</i> , 549 U. S. 1 (2006).....	8
<i>Roudebush v. Hartke</i> , 405 U. S. 15 (1972).....	5, 6
<i>Storer v. Brown</i> , 415 U.S. 724 (1974).....	5, 6
<i>West Virginia v. EPA</i> , 597 U. S. 697 (2022).....	8
<i>Whitman v. American Trucking Assns., Inc.</i> , 531 U.S. 457 (2001).....	7
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U. S. 579 (1952).....	8

Statutes

2 U.S.C. § 1	1, 2
2 U.S.C. § 7	1, 2
3 U.S.C. § 1	1, 2
U.S.Const., Art. I, § 4	1, 5, 6
Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301, <i>et seq.</i>	5

Other Authorities

Noah Webster (1828).....	3
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INTEREST OF COREY J. BIAZZO¹

Corey J. Biazzo is a civil litigation attorney, constitutional scholar, and United States Navy veteran. He has authored educational works on constitutional law, including *Florida Gun Ownership and the Second Amendment* (2nd ed. 2025), and has briefed this Court on numerous occasions addressing separation of powers and structural constitutional integrity.

Biazzo’s interest in this case arises from a professional and civic commitment to maintaining the constitutional equilibrium among federal and state powers. The Elections Clause represents one of the clearest textual divisions of authority in the Constitution—allocating to Congress the power to regulate elections only where it clearly acts, and otherwise reserving authority to regulate elections to the States. This balance is essential to preserving democratic legitimacy and public confidence in the electoral process.

SUMMARY OF THE ARGUMENTS

Congress has exercised its Elections Clause authority to designate a uniform Election Day for federal offices. U.S.Const., Art. I, § 4, cl. 1 But Congress has never required States to receive or count all ballots on that day. The federal Election Day statutes—2 U.S.C. §§ 1 and 7, and 3 U.S.C. § 1—regulate only when

¹ No counsel for any party authored this brief in whole or in part, and no person or entity, other than Biazzo has contributed money that was intended to fund preparing or submitting the brief.

voting must occur, not when mailed ballots must be delivered or when they must be tabulated.

The Fifth Circuit’s decision misconstrues those statutes by collapsing the distinction between the voter’s act of casting a ballot and the State’s administrative receipt of that ballot. That conflation rewrites federal law from the bench, disregards longstanding historical practice and disrupts the constitutional presumption that States regulate the mechanics of elections unless Congress unmistakably directs otherwise.

Mississippi’s statute does not extend voting beyond Election Day. It merely recognizes that ballots cast by that day, but delivered later through the mail, remain part of the election. The federal statutes at issue—2 U.S.C. §§ 1 and 7, and 3 U.S.C. § 1—fix the day when voting occurs, not the day when votes must be received or counted.

The Fifth Circuit’s contrary view violates basic separation-of-powers principles. It invites courts to legislate uniform election administration rules from the bench, under the guise of statutory “clarity,” effectively transferring state regulatory authority to the judiciary without congressional command.

This Court’s precedents—including *Foster v. Love*, *Arizona v. Inter Tribal Council of Arizona* and *Gregory v. Ashcroft*—confirm that preemption in this area requires clarity that Congress did not provide. 522 U.S. 67 (1997); 570 U.S. 1 (2013); and 501 U.S. 452 (1991)

Finally, judicial expansion of federal election rules without congressional authorization raises substantial separation-of-powers concerns. Courts may not manufacture national election policies from congressional silence. The Constitution assigns such choices to Congress, not to the Executive nor the Judiciary.

The judgment below should be reversed.

ARGUMENT

I. Federal Election Day Statutes Regulate When Ballots Must Be Cast, Not When They Must Be Received

The federal statutes at issue specify that elections for federal office “shall be held on” a single day—Tuesday after the first Monday in November. That command fixes when the people vote, not when states must complete post-election logistics. The act of casting a ballot—making a final choice—is the constitutional essence of an “election.” A ballot cast by Election Day satisfies current federal law. A ballot mailed after Election Day does not.

This Court has repeatedly interpreted the Election Day statutes in precisely this way. In *Foster*, the Court invalidated a Louisiana system that concluded an election before federal Election Day. 522 U.S. 67. The impropriety was that the decisive act of choosing federal officers—“the election”—occurred prior to the federally designated day. Nothing in *Foster* suggested that post-Election Day canvassing or receipt of ballots cast on or before Election Day is unlawful—indeed, such administrative steps have always occurred after Election Day.

Historically and structurally, “election” refers to the voter’s act of choosing. As contemporaneous dictionaries confirm, an election is “the act of choosing, choice, selection.” Noah Webster (1828). Likewise, this Court in *Bush v. Gore* recognized that the fundamental right at stake is the right “to vote as the legislature has

prescribed”—meaning the act of making a choice. 531 U.S. 98, 104 (2000). The statutory phrase “held on” Election Day must therefore be understood in accordance with its historical meaning, not as a command that the entire electoral process be completed within a single day.

The phrase “held on” Election Day has never been understood to require that the entire electoral process—including receipt, canvassing, tabulation, and certification—be completed within a single calendar day. At the founding and throughout American history, an “election” was “held” when voters exercised the franchise by making their choice, not when election officials finished the administrative work that necessarily follows. Contemporaneous usage confirms that to “hold” an election meant to conduct the act of voting—to open the polls, receive ballots, and permit electors to cast their votes—while post-election canvassing was universally performed afterward.

Interpreting “held on” to demand final receipt and tabulation by midnight would render unlawful the routine post-Election Day counting that has occurred in every State for over two centuries, including the counting of provisional ballots, absentee ballots, and military ballots expressly authorized by Congress. Such a completion theory proves too much: it would invalidate not merely postmark-based receipt rules, but every election in which ballots are lawfully counted after Election Day. Nothing in the text, history, or settled practice surrounding the federal Election Day statutes supports so sweeping and destabilizing a construction.

All States, without exception, count ballots after Election Day. Many States—including those accom-

modating military and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301, *et seq.*—have long accepted timely case ballots that arrive days afterwards. Congress has repeatedly approved absentee-voting statutes that necessarily contemplate late-arriving ballots.

Mississippi’s law comports with this understanding: every voter must mark and submit their ballot by Election Day. The later receipt of those ballots merely reflects the administrative realities of mail delivery. Nothing in the statutory text converts postmark-based acceptance into unlawful “multi-day voting.” “When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.” *Bush*, 531 U.S. at 104.

The Elections Clause of the U.S. Constitution, provides that “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.” U.S. Const., Art. I, § 4, cl. 1. “This Clause is a default provision; it invests the States with responsibility for the mechanics of congressional elections, see *Storer v. Brown*, 415 U.S. 724 (1974), but only so far as Congress declines to preempt state legislative choices, see *Roudebush v. Hartke*, 405 U.S. 15, 24 (1972).” *Foster*, 522 U.S. at 69.

Foster confirms that the federal statutes prevent states from concluding elections earlier than the federal Election Day—not from engaging in routine post-election administrative functions that have always

occurred after the day of voting. The Fifth Circuit’s rule conflates voting with canvassing. Congress never required that all votes be counted or received on Election Day—indeed, it could not, as all states conduct tabulations and certifications afterward.

This Court recognized in *RNC v. DNC* that allowing voters to mail ballots after Election Day “would fundamentally alter the nature of the election.” 589 U.S. 423, 426 (2020). The inverse—accepting ballots cast by Election Day—is entirely consistent with federal law and democratic practice. Nothing in federal law transforms postmark-based acceptance rules into multi-day voting or prohibits States from receiving ballots after the statutory day of voting. Federal law fixes the day for casting, not the completion of the electoral process.

The theory that that an election is not “complete” until a ballot is received or counted cannot be reconciled with federal law, historical practice, or this Court’s precedents, all of which recognize that the elector’s act of casting a ballot—rather than the State’s later administrative processing—defines when voting occurs for purposes of the federal Election Day statutes.

II. The Fifth Circuit’s Interpretation Conflicts with the Elections Clause and the Presumption of State Authority

The Elections Clause gives States primary authority to regulate the “Times, Places and Manner” of congressional elections unless Congress clearly provides otherwise. U.S.Const., Art. I, § 4, cl. 1. This is a default rule of state control. *Storer* and *Roudebush* both

reaffirm that States retain broad regulatory authority absent unmistakable congressional displacement.

By invalidating Mississippi’s statute, the Fifth Circuit effectively declared that Congress—by omission—commandeered all state elections timing. That approach inverts the default presumption of state control and contradicts this Court’s admonition that federal preemption must be “unmistakably clear.” “Extraordinary grants of regulatory authority are rarely accomplished through “modest words,” “vague terms,” or “subtle devices[s].” *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001). See also *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. at 14. (“States retain the power to regulate the mechanics of elections” unless Congress clearly displaces them”).

This Court’s broader federalism precedents reinforce the same rule. In *Gregory*, the Court explained that when federal action intrudes on traditional state authority, Congress must employ “unmistakably clear” language. 501 U.S. at 460. Election administration is exactly such an area. Even outside the Elections Clause, this Court has consistently rejected the idea that sweeping federal policies can be adopted through “modest words,” “vague terms,” or “subtle devices.” *Whitman*; *MCI*. If Congress wishes to impose a national ballot-receipt deadline, it knows how. It has not done so.

The Fifth Circuit’s contrary construction would destabilize election systems nationwide. More than thirty jurisdictions use postmark-based deadlines. Declaring them preempted invites widespread disenfranchisement and administrative turmoil—all without a clear federal command. Federalism is not a

mere structural formality; it protects democratic legitimacy by keeping authority close to the people. The Fifth Circuit’s approach erodes that constitutional safeguard.

III. Separation-of-Powers Considerations Reinforce the Need for Clear Congressional Authorization

This Court has consistently emphasized that significant changes to the structure or administration of federal elections must originate with Congress, not through judicial construction of statutory silence. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *West Virginia v. EPA*, 597 U.S. 697 (2022). Executive actions, policy statements, or administrative preferences—whatever their source or content—can-not supply the clear legislative authorization required to displace state authority under the Elections Clause.

Where Congress has not enacted a national rule governing ballot-receipt deadlines, courts should exercise caution before interpreting general Election Day statutes to impose one. Preserving the Constitution’s allocation of authority ensures that changes to election law occur through the deliberative processes prescribed by Article I, thereby maintaining institutional legitimacy, federalism, and the separation of powers.

Finally, this Court has repeatedly cautioned against late-breaking judicial changes to election rules that risk voter confusion and administrative instability. See *Purcell v. Gonzalez*, 549 U.S. 1 (2006). This matter is under review less than a year before Congressional elections.

**IV. IV. The Constitutional and Historical
Understanding of “Election”
Demonstrates That Casting—Not
Delivery—Defines the Elector’s Act**

The meaning of “election” at the time Congress enacted the Election Day statutes confirms that the statutes govern the act of voting, not administrative procedures afterward. Contemporaneous dictionaries defined “election” as the “act of choosing” an officeholder. Legislative debates and early state practices likewise show that the decisive moment is the voter’s choice, not the handling of the ballot.

Historical practice overwhelmingly supports Mississippi’s approach. During the Civil War and both World Wars, Congress expressly accommodated absentee voting for soldiers whose ballots routinely arrived after Election Day. Congress did not treat late arrival as inconsistent with the federal Election Day requirement. To the contrary, Congress designed systems that presupposed it.

The Fifth Circuit’s reading contradicts this unbroken line of practice. It would require courts to treat receipt as determinative—a position Congress has never adopted. If Congress wishes to redefine “election” to include ballot receipt, it may enact such a rule. Until then, the Constitution and history make clear that casting a ballot by Election Day satisfies federal law.

CONCLUSION

The federal Election Day statutes establish a uniform day for conducting the act of voting. They do not impose a national deadline for receiving mailed bal-

lots, nor do they prohibit States from accepting timely cast ballots that arrive thereafter.

Mississippi's statute aligns with the constitutional structure, with two centuries of practice, and with the text of federal law. The Fifth Circuit's contrary interpretation expands federal preemption where Congress has chosen not to act and disrupts the balance of authority between States and the national government.

For these reasons, the judgment of the Fifth Circuit should be reversed.

Respectfully submitted

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