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 Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

BRIEF FOR FORMER ELECTION ADMINISTRATORS AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTERESTS OF AMICI CURIAE[1]

The question before the Court is whether 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. The Fifth Circuit's affirmative answer to that question upends well-settled practice and, if adopted by this Court, would enormously complicate elections nationwide.

To illustrate: Congress has the power to set the time, place, and manner of *federal* elections, but the Elections Clause does not confer corresponding congressional authority over *state* elections—meaning the Fifth Circuit's decision leaves undisturbed the post-election receipt of ballots for nonfederal races. Primary elections

[1] Pursuant to this Court's Rule 37.6, counsel for amici state that no party or counsel for a party, or any other person other than amici and their counsel, made a monetary contribution to fund the preparation or submission of this brief.

(and, indeed, *any* election other than general elections for federal offices) are likewise unaffected. Consequently, unless impacted states revise their ballot-receipt deadlines to align with the Fifth Circuit's decision, their election officials would be required to apply different rules to different elections—or even to different races in the *same* election—a result Congress neither intended nor pursued.

This brief seeks to bring to the Court's attention the unexamined practical consequences of the Fifth Circuit's decision and the resulting hardships that would be imposed on election administrators throughout the country if the decision is not reversed. Amici are former election administrators who, through their experience and advocacy, have sought to conduct elections in a nonpartisan manner that serves the public interest and retains the trust of the electorate:

Gary O. Bartlett

Executive Director, North Carolina State Board of Elections (1993–2013)

Kevin Kennedy

Director and General Counsel, Wisconsin Government Accountability Board (2007–2016); Executive Director, Wisconsin State Elections Board (1983–2007); President, National Association of State Election Directors (2006)

John Lindback

Executive Director, Electronic Registration Information Center (2014–2017); Director of Elections, Oregon Secretary of State's Office (2001–2009); Chief of Staff, Alaska Lieutenant Governor's Office (1995–2001); President, National Association of State Election Directors (2008)

Conny B. McCormack
Chief election official in Los Angeles County, California (1995–2008); San Diego County, California (1987–1994); and Dallas County, Texas (1981–1987)

Christopher Thomas
State Director of Elections, Michigan Secretary of State's Office (1981–2017); President, National Association of State Election Directors (1997, 2013)

Given their backgrounds, amici offer a pragmatic perspective on the real-world effects of the Fifth Circuit's decision.

Our nation relies on dedicated public servants like amici to administer our elections efficiently and impartially, a task that, even under the best of circumstances, poses a tremendous challenge. Adding to that burden absent a clear and unmistakable directive from Congress would be a mistake. Amici understand all too well the strain our election system is under and the need to restore the public's trust. This case presents an important opportunity to clarify the law, safeguard the integrity of our elections, ensure that all eligible voters have opportunities to cast ballots and have them counted, and, most germane to the interests of amici, allow election workers to do their jobs.

Summary of Argument

States routinely conduct their own elections alongside federal races, efficiently administering all elections in tandem and avoiding unnecessary duplication and expense. Many states also offer absentee voting and accept mail ballots received after election day so long as they are "cast"—voted—by that date. As a result, election officials

are able to undertake their obligations in a careful, methodical manner and voters are spared unjustified disenfranchisement for reasons outside their control. Congress has acquiesced in post-election ballot-receipt deadlines for more than a century, leaving the states to make this policy judgment for themselves and reflecting the Election Clause's function as "a default provision" that "invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to preempt state legislative choices." *Foster* v. *Love*, 522 U.S. 67, 69 (1997) (citation omitted).

The Fifth Circuit's decision upends that long-standing dynamic. Relying on novel interpretations of settled law, the Fifth Circuit disregarded decades of consistent authority and practice in favor of ostensible goals that are undermined, not served, by its judgment. "The nuanced balance of congressional and state authority over electoral procedures provides no green light for federal courts to devise preferences of their own," *Sharma* v. *Hirsch*, 121 F.4th 1033, 1039 (4th Cir. 2024), and given that Congress has not "expressly preempt[ed]" state ballot-receipt deadlines, *Mi Familia Vota* v. *Fontes*, 129 F.4th 691, 709 (9th Cir. 2025), the Fifth Circuit's decision should be reversed.

Amici offer two points to inform this Court's resolution of this case.

First, concurrent administration of state and federal elections is the norm in this country and reflects the cooperative expectations of the Elections Clause, which places default authority for the administration of federal elections with the states. Far from forbidding the post-election receipt of mail ballots, Congress has enacted laws that contemplate the counting of ballots that arrive after election day.

Second, the Fifth Circuit's decision portends new and unwarranted pressures for the nation's already-overtaxed election workers. Among other things, implementing the Fifth Circuit's ruling nationwide would require the application of different rules to different races on the same ballots in the same elections. Confusion, dissatisfaction, and recrimination would inevitably follow the nonuniform application of an election-day receipt deadline—with the attendant burdens foisted squarely on election officials and the judiciary.

ARGUMENT

Affirming the Fifth Circuit's decision would supplant well-settled state election rules and complicate election administration, leading to more uncertainty, not less. There is no reason to believe—and instead strong reason to doubt—that Congress intended this result. Neither theory nor practice supports such a dramatic reworking of our election system. The court of appeals' judgment should be reversed.

A. Consistent with the states' default authority to regulate both federal and state elections, Congress has not preempted post-election ballot-receipt deadlines.

The Framers orchestrated a coordinated electoral system, one in which the "states are afforded great berth in devising proper electoral processes." *Sharma*, 121 F.4th at 1038. The Elections Clause implements this dynamic: "The Times, Places and Manner of holding Elections for Senators and Representatives" are "prescribed in each State by the Legislature thereof" in the first instance, "but the Congress may at any time by Law make or alter such Regulations." U.S. Const. art. I, § 4, cl. 1. The Elections Clause thus presupposes "a necessary co-operation of the two governments in regulating" federal elections, *Ex parte Siebold*, 100 U.S. 371, 383 (1879), reflecting

"[t]he original constitutional premise[] that state governments should oversee the conduct of elections, subject only to limited and necessary federal intervention."[2] Though "Congress may supersede [the states'] discretionary authority," this power

> cannot be considered apart from its historical purpose. The Elections Clause's "grant of congressional power was the Framers' insurance against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress." As Alexander Hamilton put it, Congress should possess the basic power to "regulate, *in the last resort*, the election of its own members."

Sharma, 121 F.4th at 1038–39 (citation omitted) (first quoting *Arizona* v. *Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013); and then quoting The Federalist No. 59 (Alexander Hamilton) (Clinton Rossiter ed., 1961)).

Congress has, on occasion, dictated how the states administer federal elections—for example, the National Voter Registration Act of 1993, Pub. L. No. 103-31, 107 Stat. 77, and the Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666, both of which employ clear directives for the states to follow. But consistent with the text and purpose of the Elections Clause, "[w]hen there is no federal law that directly conflicts with state law regulating the time, place, and manner of federal elections, then state law controls by default." *Texas Voters All.* v. *Dallas County*, 495 F. Supp. 3d 441, 467 (E.D. Tex. 2020)

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[2] *To Assure Pride and Confidence in the Electoral Process*, Nat'l Comm'n on Fed. Election Reform 25 (Aug. 2001).

(citing *Voting for Am., Inc.* v. *Steen*, 732 F.3d 382, 399 (5th Cir. 2013)).

That is the case here.

All but four states had some form of absentee voting by 1924,[3] and some adopted explicit post-election ballot-receipt deadlines.[4] By the mid-1980s, "[t]welve [states] ha[d] extended the deadline for the receipt of voted ballots to a specific number of days after the election" for at least some voters,[5] and today, fourteen states and the District of Columbia accept timely cast mail ballots received after election day from *all* voters.[6] These include three of the nation's five most populous states: California, Texas, and New York.[7] The number of states that accept mail ballots

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[3] *See* P. Orman Ray, *Absent-Voting Laws*, 18 Am. Pol. Sci. Rev. 321, 321 (1924).

[4] *See, e.g.*, Cal. Political Code § 1360 (James H. Derring ed. 1924), https://bit.ly/3VN7GJg (ballot counted if received "within fourteen days after the date of the election"); Mo. Rev. Stat. § 11474 (1939), https://bit.ly/3VQsq2P (ballot counted if received "not later than 6 o'clock p. m. of the day next succeeding the day of such election"); Neb. Rev. Stat. § 32-838 (1943), https://bit.ly/45zCHmX (ballot counted if received "not later than 10:00 a.m. on the second day following election day"); R.I. Sess. Law ch. 1863 § 6 (1932), https://bit.ly/3RrDS1V (ballot counted if received by "midnight of the Monday following said election").

[5] *Uniformed and Overseas Citizens Absentee Voting: Hearing on H.R. 4393 Before the Subcomm. on Elections of the H. Comm. on H. Admin.*, 99th Cong. 21 (1986) (statement of Henry Valentino, Director, Federal Voting Assistance Program).

[6] *See Table 11: Receipt and Postmark Deadlines for Absentee/Mail Ballots*, Nat'l Conf. of State Legislatures (Dec. 24, 2025), https://bit.ly/4aQNQVq.

[7] *See id.*

received after election day for at least some voters is even higher.[8]

"Despite these ballot receipt deadline statutes being in place for many years in many states, Congress has never stepped in and altered the rules." *Bost* v. *Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 736 (N.D. Ill. 2023), *aff'd*, 114 F.4th 634 (7th Cir. 2024), *cert. granted*, 145 S. Ct. 2751 (2025). Far from evincing a congressional antipathy to post-election ballot-receipt deadlines, federal law *contemplates* them: Congress has passed legislation that recognizes and preserves state-law choices about ballot-receipt deadlines, including the Uniformed and Overseas Citizens Absentee Voting Act of 1986 ("UOCAVA"), Pub. L. No. 99-410, 100 Stat. 924. By the Fifth Circuit's own reading, UOCAVA "say[s] nothing about the date or timing of ballot receipt" and defers to the states' own receipt laws. Pet.App.19a. In enacting and amending UOCAVA, Congress has not invalidated laws in many states (indeed, the *majority*[9]) that count UOCAVA ballots cast on election day but received at a later date—strong evidence that the practice is consistent with Congress's understanding of federal law. *See Bob Jones Univ.* v. *United States*, 461 U.S. 574, 599 (1983).

B. The Fifth Circuit's decision threatens to further burden the nation's overtaxed election administrators and inject uncertainty into the electoral process.

As much as history and doctrine undermine the Fifth Circuit's decision, this case is more than an abstract constitutional exercise. Significant practical consequences flow from the Fifth Circuit's interpretation of the federal election-day statutes that further urge reversal.

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[8] *See id.*

[9] *See id.*

As a Justice of this Court recognized in the leadup to the 2020 general election,

> running a statewide election is a complicated endeavor. Lawmakers initially must make a host of difficult decisions about how best to structure and conduct the election. Then, thousands of state and local officials and volunteers must participate in a massive coordinated effort to implement the lawmakers' policy choices on the ground before and during the election, and again in counting the votes afterwards.

Democratic Nat'l Comm. v. *Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). The demands imposed on officials, workers, and volunteers at all levels of election administration have only increased in the years since. They are "under attack," censured by some party leaders, threatened with violence simply for doing their jobs, and, "most troublingly for the future of our democracy, . . . strip[ped] of the power to run, count, and certify elections."[10] They have been targeted by new laws that "criminalize actions taken by everyone involved in an election, including voters, people who assist voters, and election officials."[11] And, understandably, they are quitting.[12]

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[10] *Election Officials Under Attack: How to Protect Administrators and Safeguard Democracy*, Brennan Ctr. for Just. & Bipartisan Pol'y Ctr. 3 (June 16, 2021), https://bit.ly/4qJEteS.

[11] Kira Lerner, *Election Officials Risk Criminal Charges Under 31 New GOP-Imposed Penalties*, Kan. Reflector (July 17, 2022), https://bit.ly/4qIYLFh.

[12] *See, e.g.*, Michael Wines, *After a Nightmare Year, Election Officials Are Quitting*, N.Y. Times (July 2, 2021), https://bit.ly/3Z1QVdX.

Now is not the time to tax the nation's electoral machinery—and the hardworking public servants who administer it—even further. The Fifth Circuit's decision, however, threatens inconsistency and instability in the majority of states that accept some (if not all) mail ballots that arrive after election day.

Most significantly, Congress's authority under the Elections Clause extends only to federal general elections, not state elections. But given the inherent complexity of managing elections, from organizing primaries to verifying the accuracy of results to holding election contests, concurrent administration of federal and state elections is the norm. Forty-five of the fifty states conduct their elections for executive and legislative offices on the same calendar used for federal elections; the other five states conduct off-year state elections under the same comprehensive election codes applicable to federal elections, carried out by the same state and local election personnel. This synchronicity—temporally, procedurally, or both—makes sense because a dual voting system would impose enormous costs and administrative burdens on state election officials.[13]

And yet a dual voting system is exactly what the Fifth Circuit's preemption ruling creates because the federal election-day statutes govern *only* the general election day for federal offices. Were this Court to adopt the Fifth Circuit's judgment, state laws allowing the receipt of ballots after election day would still be valid as applied to *non*federal races. Likewise, ballot-receipt deadlines for federal (and state) *primary* elections would be unaffected, raising the prospect that voters and officials in some states would

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[13] *See, e.g.*, Kathleen Hale & Mitchell Brown, *How We Vote: Innovation in American Elections* 55, 75 (2015).

be subject to different deadlines for different elections in the same year—or even different deadlines for different races in the same election.

Such nonuniformity would naturally lead to greater expense, greater delay, and greater confusion for voters and election workers alike as they navigated a baffling and unfamiliar process on the eve (or even in the midst) of the 2026 election cycle. "Last-minute changes to long-standing election rules . . . invit[e] confusion and chaos and erod[e] public confidence in electoral outcomes," *Democratic Nat'l Comm.*, 141 S. Ct. at 30 (Gorsuch, J., concurring), and this Court has repeatedly admonished that conflicting election rules—including those altered by the judiciary—"can [] result in voter confusion and consequent incentive to remain away from the polls," a risk that increases "[a]s an election draws closer," *Purcell* v. *Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam). The risks of confusion and disenfranchisement stemming from conflicting rules in *the same election* are evident. And though legislative intervention might assure some degree of consistency, time is short and "legislatures are often slow to respond and tepid when they do." *Democratic Nat'l Comm.*, 141 S. Ct. at 29 (Gorsuch, J., concurring).[14]

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[14] Legislatures inclined to act would, moreover, confront a dilemma. Those that opt for uniformity—adoption of an election-day ballot-receipt deadline for *all* elections, state and federal alike—would have to abandon whatever policy preferences led them to adopt post-election ballot-receipt deadlines in the first place. Those unwilling to surrender post-election deadlines for nonfederal elections would be required either to acquiesce in inconsistency or to decouple federal and state races to reduce confusion. Reduced voter turnout would be likely either way, as evidenced by the five states that hold statewide races in odd-numbered years and see dramatic turnout declines in off-year elections. *See* Charles Stewart III, *The Cost of Conducting Elections*, MIT Election Data + Sci. Lab. 9–10 (2022), https://bit.ly/3NbGUbt.

The nonuniform application of ballot-receipt deadlines would create an enormous burden for election administrators: dueling deadlines for federal and state offices in general elections, with the particular races to be counted on a given ballot determined by when the ballot arrived. The novel questions that would have to be answered by officials in states implementing this new and inconsistent regime are myriad. Would administrators be obliged to print *two* ballots—one with federal races that must be received by election day, the other with state races that could be received after? If the two ballots were contained in the same envelope, how could they be separately processed without compromising the secrecy of a voter's selections? A ballot, after all, does not itself contain any indicia of when it was received. Ballots would need to be kept in their original return envelopes to correctly track their receipt dates, greatly complicating both processing and counting—especially since there is no error-free method to return a ballot to its correct envelope if separated.

The burdens imposed on election workers would accompany new costs for the states and localities charged with administering elections. Estimates range widely, but the expense of administering federal, state, and local elections likely exceeds $5 billion annually.[15] Effectively requiring some states to adopt a two-ballot system—with one ballot for federal elections and another for state races—or some other hybrid alternative to satisfy the Fifth Circuit's ruling would significantly increase the expense of administering elections as state and local officials scrambled to operationalize an inherently unwieldly new process.

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[15] *See id.* at 3 & nn.6–7.

Adding to the confusion for election officials (and voters) is that the federal election-day statutes do not define "receipt," and the Fifth Circuit did not specify whether this critical detail should be subject to a uniform national standard or vary from jurisdiction to jurisdiction. Absent clarification, election officials would need to fill in the gaps themselves—deciding, for example, whether to accept and count ballots deposited in a drop box on or before election day but not retrieved until later, or ballots delivered to election officials but not received by the precinct charged with processing the ballots until after election day, or ballots in the custody of the U.S. Postal Service on election day but delayed in their delivery to election officials by distance, weather, or human error. Election administrators would inevitably answer these questions differently. Some might adopt a strict definition of "receipt" and count only those ballots in the hands of officials by the end of election day. But others might avoid disenfranchising voters whose ballots were delayed through no fault of their own.[16]

As an additional point of uncertainty, half of the states allow voters to cure mail-ballot defects *after* election

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[16] This position would not be unprecedented. The U.S. House of Representatives "'has chosen overwhelmingly in election cases throughout its history not to penalize voters for errors and mistakes on election officials.' That is, in the absence of fraud, and where the honest intent of the voters' may be determined, 'the House has counted votes . . . rather than denying the franchise to any individual due to malfeasance of election officials.'" L. Paige Whitaker, Cong. Rsch. Serv., RL33780, *Procedures for Contested Election Cases in the House of Representatives* 15–16 (2016), https://bit.ly/49qvyaV (alteration in original) (footnote omitted) (quoting H.R. Rep. No. 99-58, at 24 (1985)). In this spirit, some election administrators might accept ballots received after election day that were delayed due to administrative errors on the part of postal workers or others—or even due to inclement weather.

day.[17] Would these commonplace post-election cure opportunities still be permissible? And again: Who would make that determination?

Each of the states that currently accepts at least some ballots after election day might apply the federal election-day statutes differently, inviting dozens of competing interpretations of the Fifth Circuit's ruling nationwide. In states where uniform guidance were not issued, individual election officials might make those decisions for themselves. The Fifth Circuit's decision thus undermines its stated goal of assuring "finality," Pet.App.10a, because it invites complexity, inconsistency, and significant burdens on the nation's strained election infrastructure and the officials who administer it.

Inconsistent implementation of these untested rules would also open the floodgates of post-election litigation. This Court has noted that, where "uniformity" is otherwise required, "there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied." *Bush* v. *Gore*, 531 U.S. 98, 109 (2000) (per curiam). Litigation based on conflicting application of the election-day receipt deadline could conceivably come from all sides: lawsuits challenging the rejection of ballots based on a given jurisdiction's definition of the term "receipt" *and* those challenging the acceptance of ballots on the same ground.

Courts—the federal judiciary in particular, given the equal-protection concerns inherent in nonuniform election rules—would thus be called on to play an outsized role in the administration of the 2026 general election, requiring judges to serve as ex-post referees charged with

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[17] *See Table 15: States with Signature Cure Processes*, Nat'l Conf. of State Legislatures (July 17, 2025), https://bit.ly/4jvIMYN.

second-guessing the judgments of election workers without clear guidance themselves to address every particular ballot-receipt scenario. Forcing the judiciary to assume a role it neither wants nor is well suited to assume would hardly instill confidence in the electoral process. After all, "[t]he Constitution provides that state legislatures—not federal judges, not state judges, not state governors, not other state officials—bear primary responsibility for setting election rules." *Democratic Nat'l Comm.*, 141 S. Ct. at 29 (Gorsuch, J., concurring). "The legitimacy of democratic politics would be compromised if the results of elections were regularly to be rehashed in federal court." *Hutchinson* v. *Miller*, 797 F.2d 1279, 1280 (4th Cir. 1986).[18]

Confidence in the electoral system is rooted in the belief that rules are applied impartially and not the product of arbitrary or conflicting judgments about the meaning of statutes and regulations. Inconsistent and conflicting rules implemented in the same election cycle (or even the same election), requiring novel and untested determinations by election officials without clear or uniform

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[18] *See* Derek T. Muller, *Reducing Election Litigation*, 90 Fordham L. Rev. 561, 574 (2021) ("'When courts get involved in election disputes, . . . they run a risk of undermining the public's faith in the electoral process and in the fairness of the courts.' . . . The body principally tasked with administering elections is not the judiciary." (first alteration in original) (quoting Richard L. Hasen, *The Untimely Death of* Bush v. Gore, 60 Stan. L. Rev. 1, 37 (2007))).

guidance, would erode trust in the electoral process.[19] Adopting the Fifth Circuit's ruling would reduce voter confidence in election outcomes and increase pressures on administrators facing dissatisfaction from a confused and angry electorate.

* * *

The Fifth Circuit's decision, if not reversed, will lead to a voting system that is more expensive, more confusing, more chaotic, and, ultimately, less reliable. Elections will be subject to greater uncertainty and litigation, and, in turn, the public's faith in the American electoral system will suffer. Congress did not intend that result when it enacted the federal election-day statutes and then acquiesced in the widespread use of post-election ballot-receipt deadlines.

CONCLUSION

The judgment of the Fifth Circuit should be reversed.

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[19] Recent research has shown that, notwithstanding increased partisan polarization and nationalized politics, ticket splitting still occurs in state and local races. *See generally* Shiro Kuriwaki, *Ticket Splitting in a Nationalized Era*, 88 J. Politics 1 (2026). One can only imagine the outcry that would nonetheless follow if, say, a given precinct swung for a congressional candidate of one party and a state-legislative candidate of another if the two races were subject to different ballot-receipt deadlines.

Respectfully submitted,

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