

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 OF AMICI CURIAE LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW, NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE LEGAL DEFENSE AND
EDUCATION FUND, ASIAN AMERICAN LEGAL
DEFENSE AND EDUCATION FUND, EQUAL
JUSTICE SOCIETY, NATIONAL URBAN LEAGUE,
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, AND
MISSISSIPPI STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
IN SUPPORT OF PETITIONER**

JIM PASTORE	DAMON T. HEWITT*
STEPHANIE THOMAS	SHAYLYN COCHRAN
SARA WEISS	EDWARD G. CASPAR
JOSE JESUS MARTINEZ III	ROBERT N. WEINER
ROBIN FISHER	<i>Counsel of Record</i>
JACQUELINE HAYES	OLIVIA N. SEDWICK
LAURA HALLAS	LAWYERS' COMMITTEE FOR
DEBEVOISE & PLIMPTON LLP	CIVIL RIGHTS UNDER LAW
66 Hudson Blvd.	1500 K St. N.W.
New York, NY 10001	Washington, D.C. 20005
(212) 909-6000	(202) 662-8600
jjpastore@debevoise.com	rweiner@lawyerscommittee.org

Additional Counsel Listed On Inside Cover

CHESTER DUBOV
DEBEVOISE & PLIMPTON LLP
650 California Street, Fl. 31
San Francisco, CA 94108
(415) 738-5700

Counsel for Amici Curiae

*Admitted in Pennsylvania only. Practice limited to matters before federal courts.

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INTEREST OF *AMICI CURIAE*¹

Amici, the Lawyers' Committee for Civil Rights Under Law, National Association for the Advancement of Colored People Legal Defense and Educational Fund, Asian American Legal Defense and Education Fund, Equal Justice Society, National Urban League, National Association for the Advancement of Colored People, and Mississippi State Conference of the National Association for the Advancement of Colored People are nonpartisan, nonprofit civil rights organizations dedicated to protecting civil rights through litigation and policy work. *Amici* have a significant interest in protecting absentee voting to ensure that Black voters and other voters of color have an equal and fair opportunity to participate in the electoral process.

Amici are the following organizations:

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonpartisan, nonprofit civil rights organization, formed at the request of President John F. Kennedy in 1963, that uses legal advocacy to advance racial justice and to ensure that Black voters and other voters of color have a full and equal opportunity to participate in the political process. For more than 60 years, the Lawyers' Committee has litigated in courts nationwide—including numerous Voting Rights Act Section 2 and election-administration cases—to protect access to the ballot and to safeguard the ability of voters to have their timely cast ballots counted. The Lawyers' Committee has already demonstrated a concrete

¹ Pursuant to Rule 37.6, counsel for *amici curiae* authored this brief in whole; no party's counsel authored, in whole or in part, this brief; and no person or entity other than *amici* and their counsel contributed monetarily to preparing or submitting this brief.

interest in protecting the right to vote in Mississippi, including by successfully suing the State to expand and improve its vote-by-mail system. *See Parham v. Watson*, 3:20-cv-00527 (S.D. Miss., Complaint filed Aug. 25, 2020). That litigation resulted in expanded curbside voting options for those who need them and a new notice-and-cure process allowing voters to correct minor defects in absentee ballots.²

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”), founded in 1940 by Thurgood Marshall, is the nation’s first and foremost civil rights law organization. LDF’s mission is to ensure the full, fair, and free exercise of constitutional and statutory rights for all Americans, and to break down barriers that prevent African Americans from realizing their basic civil and human rights.

Beginning with *Smith v. Allwright*, 321 U.S. 649 (1944), LDF has represented Black voters as private litigants before this Court in most of the precedent-setting cases involving efforts to enforce or defend the constitutional right to vote and the Voting Rights Act of 1965. *See, e.g., Louisiana v. Callais*, No. 24-109 (U.S.); *Alexander v. S. Carolina State Conf. of the NAACP*, 602 U.S. 1 (2024); *Allen v. Milligan*, 599 U.S. 1 (2023); *Shelby County v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Abrams v. Johnson*, 521 U.S. 74 (1997); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996);

² Lawyers’ Committee for Civil Rights Under Law, *Victory! Mississippi Voters Will Have the Ability to Correct Minor Absentee Ballot Issues, Curbside Voting Expanded*, Lawyers’ Comm. For Civ. Rts. Under Law (Oct. 20, 2020), <https://www.lawyerscommittee.org/victory-mississippi-voters-will-have-the-ability-to-correct-minor-absentee-ballot-issues-curbside-voting-expanded/>.

Houston Lawyers' Ass'n v. Att'y Gen. of Tex., 501 U.S. 419 (1991); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *NAACP v. Hampton Cnty. Election Comm'n*, 470 U.S. 166 (1985); *City of Mobile v. Bolden*, 446 U.S. 55 (1980); *E. Carroll Par. Sch. Bd. v. Marshall*, 424 U.S. 636 (1976); *Turner v. Fouche*, 396 U.S. 346 (1970); *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969); *Anderson v. Martin*, 375 U.S. 399 (1964); *Terry v. Adams*, 345 U.S. 461 (1953). As such, LDF and its clients have a significant interest in ensuring that Black voters can participate equally and effectively in the democratic process, including through absentee voting.

The Asian American Legal Defense and Education Fund (“AALDEF”) is a national organization, founded in 1974, that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF focuses on critical issues affecting Asian Americans, including the right of Asian Americans across the country to cast an effective ballot and receive fair representation. AALDEF has litigated cases and filed amicus briefs in cases seeking to protect the ability of Asian Americans to elect candidates of their choice. *See, e.g., N.Y. Cmtys. for Change v. Cnty. of Nassau*, No. 602316/2024 (Sup. Ct. Nassau Cnty., Jan. 23, 2025) (settled); *League of United Latin Am. Citizens v. Abbott*, 601 F. Supp. 3d 147 (W.D. Tex. 2022); *Favors v. Cuomo*, 881 F. Supp. 2d 356 (E.D.N.Y. 2012). Thus, AALDEF has a strong interest in protecting the ability of voters of color to fully participate in the political process, including through voting by mail.

The Equal Justice Society (“EJS”) is a national legal organization founded in 2000 to transform the nation’s consciousness on race through law, social

science, and the arts. EJS's focus is to repair the harm of historic racial discrimination and to promote and defend policies that move society toward a true multiracial democracy where race is no longer a barrier to opportunity. The protection and full realization of the anti-discrimination safeguards of the Fourteenth Amendment and the other Reconstruction Amendments are central to EJS's mission.

The National Urban League is a historic civil rights organization dedicated to helping African Americans and historically underserved communities to achieve their highest potential, self-reliance, power, civil rights and social parity. For more than a century, the National Urban League has worked to uplift communities through economic empowerment, civic engagement, social justice and equity, and the exercise of their constitutional rights.

Founded in 1910 in New York City, the National Urban League has established a network of 92 local affiliate Urban League organizations in 36 states and the District of Columbia, which serves more than 300 communities and more than two million people annually. The National Urban League is a leading voice in advocating for the protection of the right to vote for all Americans, regardless of race, gender, religion, or zip code. We use a grassroots approach to register and educate voters nationwide. Thus, the National Urban League has a strong and vested interest in the rights of all voters to fully and freely participate in elections, including voting by mail.

The National Association for the Advancement of Colored People (“NAACP”), founded in 1909, is the nation's first and foremost civil rights organization. The NAACP's mission is to achieve equity, political rights, and social inclusion by advancing policies and

practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color. Included in its membership are Black non-citizens and other non-citizens of color.

The Mississippi State Conference of the National Association for the Advancement of Colored People (“Miss. State Conference”) was chartered in 1945 in order to coordinate the efforts of local NAACP branches and to carry out the mission and vision of the national organization across the state of Mississippi. It has been on the forefront of all major civil rights battles during the 1950s, 1960s, and 1970s and continues that work today through direct action campaigns, public education, demonstration, and litigation. Today, the Miss. State Conference consists of 112 units that include local branches, college chapters, and youth councils, with a revolving membership of over 11,000 members across the state.

SUMMARY OF THE ARGUMENT

1. Given its firmly embedded history in the United States, absentee voting—including deadlines allowing receipt of timely cast ballots after election day—has emerged as a national expectation in elections. In repeatedly enacting and amending legislation to expand access to absentee voting, Congress left intact state laws with post-election-day deadlines for receipt of absentee ballots despite demonstrable awareness of those laws. Today, all states allow absentee voting, and the majority permit the counting of at least some absentee ballots received by a specified deadline after election day. Until recently, the federal government both acknowledged the importance and legality of state laws allowing receipt of ballots after election day

and defended those laws in court. The Fifth Circuit’s interpretation of “election day” strayed far from this widely accepted and understood historical practice.

2. Absentee voting has expanded access to voting for all, while also neutralizing some of the hurdles that people of color face when voting in person. Restrictions on absentee voting, such as requiring absentee ballots to be received by election day, disproportionately harm voters of color. Such restrictions reduce participation and yield higher rejection rates for ballots cast by voters of color, forcing them to vote in person even as the risks of intimidation, violence, and harassment at polling places increase. These effects impede equal access to the ballot.

The federal statutes designating the first Tuesday in November as election day were not enacted to cause those harmful effects or otherwise curtail absentee ballots or suppress participation by voters of color. Nothing in the text, structure, or legislative history of the federal election day statutes indicates congressional intent to limit absentee voting or bar receipt of absentee ballots after election day. On the contrary, these statutes are consistent with the array of federal election laws designed to facilitate voting and secure the right to vote, especially for those previously denied access to the ballot. This Court should thus decline to adopt the Fifth Circuit’s aberrational interpretation of the term “election day,” which contradicts Congress’s design, risks resurrecting discriminatory barriers to participation that federal voting laws have sought to remove, and harms the very people that the election laws were designed to protect.

ARGUMENT

I. State Laws Setting the Ballot-Receipt Window Reflect the Historic American Understanding of Election Laws as Measures to Facilitate Voting.

Absentee voting has deep roots in American election law. It originated as a pragmatic, bipartisan accommodation to prevent disenfranchisement of eligible citizens—most notably soldiers serving away from home. Absentee voting thus has long functioned as an access-expanding feature of the electoral system. Today, every state permits absentee voting in some form, and most permit officials to count at least some timely cast absentee ballots received after election day. This result reflects a settled, national consensus. Far from a bespoke or modern innovation, absentee voting and the counting of ballots received after election day are routine and unremarkable components of election administration, established in state law for generations. And throughout that history, the federal government has treated state absentee-voting regimes—including the counting of timely cast absentee ballots received after election day—as effectuating, not violating, federal election statutes.

A. Absentee Voting Is a Deep-Rooted, Bipartisan Feature of American Elections.

Absentee voting in the United States took root during the Civil War, when Union and Confederate states allowed soldiers to cast ballots from the field; by 1874, states began formally codifying those practices.³

³ Kylan Sophia Josephine Memminger, *Minority and Vulnerable Populations Voting by Mail: A Convenience or a*

States gradually expanded eligibility for absentee voting,⁴ and by 1944, many state laws expressly permitted absentee ballots to be counted if received within a defined period after election day.⁵ *The Soldier Vote*, Time, Oct. 23, 1944, <https://time.com/archive/6865579/the-soldier-vote/>. By the mid-twentieth century, absentee voting had become a routine feature of state election law for state and federal elections.

As Congress recognized, however, election administration itself began to interfere with the ability to vote when administrative rules or breakdowns prevented eligible voters from casting a ballot and having their vote counted. *See, e.g.*, Dep’t of Just., *History of Federal Voting Rights Laws*, <https://www.justice.gov/crt/history-federal-voting-rights-laws> (Congress determined that existing federal anti-discrimination laws and case-by-case litigation were insufficient to overcome discriminatory election practices and administrative barriers to voting.).

Over decades and despite shifts in its partisan makeup, Congress repeatedly intervened to strengthen and regularize access to the ballot through absentee voting and to require states to administer it in ways

Disadvantage, 28 Wash. & Lee J. Civ. Rts. & Soc. Just. 289, 320–21 (2022).

⁴ *Id.*

⁵ *See, e.g.*, Neb. Comp. Stat. §§ 2007, 2009, 2011, 2035 (1921) (permitting receipt 6 days after election day); Cal. Pol. Code § 1360 (1923) (permitting receipt 14 days after election day if mailed by election day); Kan. Stat. § 25-1106 (1929) (permitting receipt 10 days after election day if mailed by election day); Mo. Rev. Stat. § 10135 (1933) (permitting receipt the day after election day if postmarked by election day); 1933 Wash. Sess. Laws Extraordinary Sess. 102–103 (permitting receipt 6 days after election day if postmarked by election day).

that enable participation and prevent exclusion. The Voting Rights Act of 1965 (“VRA”), Pub. L. No. 89-110, 79 Stat. 437, as amended by Pub. L. No. 91-285, 84 Stat. 314 (1970), seeks to ensure access to absentee voting that “denies or abridges” the core constitutional right to vote. 52 U.S.C. § 10502(a) (“The Congress hereby finds . . . the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections-- (1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President.”); *id.* § 10502(b)–(f) (expanding opportunities to vote by requiring states to provide absentee registration and absentee balloting for presidential elections and abolishing durational residency requirements); 52 U.S.C. § 10301 (prohibiting any “voting qualification or prerequisite to voting or standard, practice, or procedure” that results in the denial or abridgement of citizens’ right to “vote on account of race or color”); *id.* § 10310(c)(1) (defining “voting” to include all action necessary to make a vote effective, such as registration, casting a ballot, and having that ballot counted and included in the totals).

Recognizing that the logistics of transmitting ballots to and from voters could impede absentee voting, Congress enacted the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), Pub. L. No. 99-410, 100 Stat. 924, in 1986, to secure the absentee-voting rights of active-duty service members and accompanying family stationed outside their state of residence, as well as the rights of other overseas citizens. It requires states to provide absentee ballots sufficiently in advance of federal elections and to accept and process them. 52 U.S.C. §§ 20302(a)(1), (a)(8), (a)(10).

UOCAVA reflects not merely congressional acceptance of absentee voting but a judgment that expanding access to it—and accommodating difficulties in transmitting ballots—was essential to the compelling national interest in safeguarding the right to vote by eligible citizens. H.R. Rep. No. 99-765, at 7, 13 (1986) (recognizing that “the job of the Federal Government is to provide a mechanism [such as UOCAVA] so that a person can participate in elections”).

Finally, after the 2000 presidential election exposed widespread problems in election administration, Congress enacted the Help America Vote Act (“HAVA”) to expand access to voting and to modernize election administration. Pub. L. No. 107-252, 116 Stat. 1666 (2002) (codified at 52 U.S.C. § 20901 et seq.). HAVA “establish[ed] minimum election administration standards” that protect the right of citizens to vote. Its requirements prioritize accepting and counting votes, confirming that Congress sought to prevent eligible voters from being disenfranchised by administrative or clerical barriers in election administration. *See, e.g.*, 52 U.S.C. § 21082(a) (mandating that voters who encounter registration or poll-book issues must be permitted to cast a provisional ballot by election day that must be counted if eligibility is later confirmed); *id.* § 21083(a)(4)(B) (implementing “[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters”). In imposing these requirements, HAVA presupposed that essential election administration steps, including verification and counting, routinely occur after election day without disturbing the federally designated date.

Taken together, these statutes establish a federal floor requiring states to expand and protect full and

equal opportunity to vote through absentee and mail-in voting, setting broad standards to achieve this goal but leaving the mechanics of election administration—including ballot-receipt deadlines—to state law. Notably, when Congress passed these statutes, it never set or even suggested a nationwide deadline for receiving ballots by election day but rather intervened only to remove impediments to absentee voting. *Compare* 52 U.S.C. § 21082(a) (requiring provisional ballots to be counted once voter eligibility is verified, without specifying when verification or counting must occur); H.R. Rep. No. 99-765, at 5–6 (1986) (explaining that UOCAVA contemplated transmission and counting of ballots according to state deadlines, without establishing a federal deadline for ballot receipt), *with infra* note 10 (surveying state laws expressly allowing timely cast absentee ballots to be counted for a specified period after election day).

B. State Adoption of Absentee Voting, Including Post-Election-Day Ballot Receipt, Is Commonplace.

With this federal assent, all states have allowed absentee voting, and approximately 47.6 million absentee ballots were counted in 2024.⁶ Eight states and the District of Columbia automatically send mail-in ballots to every registered voter;⁷ 28 states make

⁶ U.S. Election Assistance Comm'n, *Election Administration and Voting Survey: 2024 Comprehensive Rep.* 35 (June 2025), https://www.eac.gov/sites/default/files/2025-06/2024_EAVS_Report_508c.pdf.

⁷ See Cal. Elec. Code § 3000.5(a); Colo. Rev. Stat. Ann. § 1-5-401(1); D.C. Code § 1-1001.05(a)(9A)(B)(iii); Hawaii Stat. § 11-101; Nev. Rev. Stat. Ann. § 293.269911(1); Or. Rev. Stat. Ann. § 254.465(1); Utah Code Ann. §§ 20A-3a-202(1)(a), (2)(a); Vt. Stat. Ann. tit. 17 § 2539(a); Wash. Rev. Code Ann. § 29A.40.010.

absentee voting available without the need for an excuse;⁸ and the remaining 14 states, including Mississippi, permit absentee voting under enumerated circumstances.⁹

Most states have enacted laws permitting some, if not all, absentee ballots to be received after election day. Specifically, in addition to Mississippi, 14 states and the District of Columbia allow all absentee ballots to be counted if received within a specified number of days after election day, often on the condition that such ballots are postmarked by or on election day.¹⁰ More

⁸ See Alaska Stat. § 15.20.010; Ariz. Rev. Stat. § 16-541(A); Florida Stat. § 101.62(1)(a); Ga. Code Ann. § 21-2-380(b); Idaho Code § 34-1001; 10 Ill. Comp. Stat. § 5/19-1; Iowa Code Ann. § 53.1; Kan. Stat. Ann. § 25-1119(a); 21-A ME Rev. Stat. § 751; Md. Elec. Law § 9-304; Mass. Gen. Laws ch. 54 § 25B; Mich. Comp. Laws Ann. §§ 168.759(1)(a)–(c), (5); Minn. Stat. § 203B.02(1); Mont. Code Ann. § 13-13-201(1); Neb. Rev. Stat. Ann. § 32-938(1); N.J. Rev. Stat. § 19:63-3(a); N.M. Stat. § 1-6-3; N.Y. Elec. Law § 8-700(2); N.C. Gen. Stat. § 163-226(a); N.D. Cent. Code Ann. § 16.1-07-01; Ohio Rev. Code Ann. § 3509.02(a); 26 OK Stat. § 14-105(A); 25 Pa. Stat. Ann. § 3150.11(a); R.I. Gen. Laws § 17-20-2(4); S.D. Codified Laws § 12-9-2; VA Code Ann. § 24.2-700; Wis. Stat. §§ 6.20, 6.85, 6.86(1)(a); WY Stat. § 22-9-102(a).

⁹ Ala. Code § 17-11-3(a); Ark. Stat. Ann. § 7-5-402; Conn. Gen. Stat. § 9-135(a); Del. Code Ann. tit. 15 § 5502; Ind. Code § 3-11-10-24; Ky. Rev. Stat. §§ 117.077, 117.085(1)(a), (h); La. Rev. Stat. Ann. § 18.1303(B)–(L); Miss. Code Ann. § 23-15-715(b); Mo Rev. Stat. § 115.277(3)–(6); N.H. Rev. Stat. Ann. § 657.1; S.C. Code Ann. § 7-15-320; Tenn. Code Ann. § 2-6-201; Tex. Elec. Code Ann. §§ 82.001(a), 82.002(a), 82.003, 82.004(a), 82.007–82.008; W. Va. Code § 3-3-1.

¹⁰ See Alaska Stat. § 15.20.081(e) (receipt within 10 days of election day if postmarked on or by election day); Cal. Elec. Code §§ 3011, 3020(b) (receipt within 7 days of election day if postmarked on or by election day or “signed and dated pursuant to Section 3011 [of the California Election Code] on or before election day”); D.C. Code § 1-1001.05(a)(10B)(A) (receipt within

than 46 percent of Black Americans live in these jurisdictions,¹¹ which are also home to a large

10 days of election day if postmarked on or by election day); 10 Ill. Comp. Stat. §§ 5/18A-15(a), 5/19-8(c) (receipt within 14 days of election day if postmarked on or by election day); Mass. Gen. Laws ch. 54 § 93 (receipt by “5 p.m. on the third day after the election” if postmarked on or by election day); Md. Code Ann. Elec. Law § 11-302(a)(1) (describing canvassing of absentee ballots); Md. Code Regs. 33.11.03.08(B)(4) (receipt “before 10 a.m. on the second Friday after” election day if postmarked on or by election day or accompanied “[b]y the voter’s affidavit that the ballot was completed and mailed on or before election day”); Miss. Code Ann. § 23-15-637(1)(a) (receipt within 5 business days of election day if postmarked on or before election day); Nev. Rev. Stat. Ann. §§ 293.269921(1)(b), (2) (receipt within 4 days of election day if postmarked on or by election day or, if postmark is unclear, receipt within 3 days of election day); N.J. Rev. Stat. § 19:63-22(a) (receipt within 6 days of election day if postmarked by election day, or receipt within 2 days of election day if not postmarked); N.Y. Elec. Law § 8-412(1) (receipt within 7 days of election day if postmarked on or by election day or if time stamped by “the receiving board of elections indicating receipt . . . on the day after the election”); Ohio Rev. Code Ann. § 3509.05(D)(2)(a) (receipt within 4 days of election day if postmarked before election day); Or. Rev. Stat. Ann. §§ 253.070(3)–(4), 254.470(6)(e)(B) (receipt within 7 days of election day); Tex. Elec. Code Ann. § 86.007(a) (receipt the day after the election if marked by 7 p.m. on election day); Va. Code Ann. § 24.2-709(B) (receipt by “noon on the third day after the election” if postmarked on or by election day); Wash. Rev. Code Ann. §§ 29A.40.091(4), 29A.60.190 (receipt within 20 days of a general election if postmarked on or by election day); W. Va. Code § 3-3-5(g) (receipt the day after the election or receipt “by the official designed to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass” if postmarked on or by election day).

¹¹ *Black Population by State*, Black Demographics (June 2024), <https://blackdemographics.com/population/black-state-population/>; Gracie Martinez & Jeffrey S. Passel, *Facts about the U.S. Black Population*, Pew Rsch. Ctr, (Jan. 23, 2025), <https://www.pewresearch.org/fact-tank/2025/01/23/facts-about-the-u-s-black-population/>.

percentage of the Asian American population in the U.S., with approximately 54 percent of Asian Americans living in California, Texas, New York, New Jersey and Washington alone.¹² Further, although UOCAVA does not expressly mandate acceptance of ballots after election day, another 14 states enacted laws to permit ballots of overseas or military voters to be counted if received within a set time after election day, again often on the condition that such ballots are postmarked on or before election day.¹³

[research.org/race-and-ethnicity/fact-sheet/facts-about-the-us-black-population/](https://www.pewresearch.org/race-and-ethnicity/fact-sheet/facts-about-the-us-black-population/)

¹² Jens Manuel Krogstad & Carolyne Im, *Key Facts About Asians in the U.S.*, Pew Research Ctr. (May 1, 2025), <https://www.pewresearch.org/short-reads/2025/05/01/key-facts-about-asians-in-the-us/>.

¹³ See Ala. Code § 17-11-18(b) (receipt within 7 days of election day if postmarked on or by election day); Ark. Code Ann. § 7-5-411(a)(1)(A)(ii)(b) (receipt within 10 days of election day if executed by election day); Colo. Rev. Stat. Ann. §§ 1-8.3-111, 1-8.3-113(2) (receipt within 8 days of the election day if submitted by 7:00 p.m. MT on election day); Fla. Stat. § 101.6952(5) (receipt within 10 days of election day if postmarked on or by election day); Ga. Code Ann. § 21-2-386(a)(1)(G) (receipt within 3 days of election day if postmarked by election day); Ind. Code § 3-12-1-17(b) (receipt within 10 days of election day if postmarked on or by election day); Iowa Code Ann. § 53.44(2) (receipt by “noon on the Monday following the election” if postmarked by “the day before the election”); Mich. Comp. Laws Ann. § 168.759a(18) (receipt within 6 days of election day if postmarked on or by election day); Mo. Rev. Stat. § 115.920 (receipt by “noon on the Friday after election day” if postmarked by election day or the “voter has declared under penalty of perjury that the ballot was timely submitted”); N.C. Gen. Stat. §§ 163-258.10, 163-258.12, 163-182.5(b) (receipt of military ballots the business day before the canvass is held 10 days after the election); N.D. Cent. Code Ann. §§ 16.1-07-09, 16.1-15-25 (receipt within 13 days of election day); 25 Pa. Cons. Stat. § 3511(a) (receipt within 7 days of election day);

C. The Federal Government Has Consistently Regarded Statutes Allowing Receipt of Absentee Ballots After Election Day as Furthering Federal Requirements.

The federal government has long treated states' post-election-day ballot deadlines as fully consistent with federal law. In passing amendments to the VRA in 1970 to strengthen protections against discrimination, Congress intentionally preserved such state deadlines. *See* 52 U.S.C. § 10502(g). Senator Barry Goldwater, the sponsor of those amendments, informed Congress that 40 states¹⁴ "expressly permit[ted] absentee ballots of certain categories of their voters to be returned as late as the day of the election *or even later.*" 116 Cong. Rec. S6996 (1970) (emphasis added). Senator Goldwater contended that laws restricting the window for ballot receipt to election day or earlier were "burdensome" and that Congress should not adopt "more restrictive rules." *Id.* at S6991, S6993.

Further demonstrating its comfort with post-election-day deadlines, Congress recognized and preserved state laws that protected UOCAVA voters by accepting and counting absentee ballots received after election day. Congress expressly identified this

R.I. Gen. Laws § 17-20-16 (receipt by 4 p.m. "on the seventh day following an election"); S.C. Code Ann. §§ 7-15-700, 7-17-20 (receipt "by the close of business on the business day before the county canvass," which occurs "no later than noon on the Saturday next following the election").

¹⁴ *See, e.g.*, 115 Cong. Rec. S4862–89 (1969) (in a survey of then-current state absentee voting statutes, identifying Alaska, Nebraska, New York, and North Dakota as among the states that permitted receipt of ballots after election day).

practice as an “acceptable option for States whose constitution and laws allow it and who want that flexibility.” 156 Cong. Rec. S4518 (2010). In fact, Congress considered—but ultimately declined to adopt—a proposal *requiring* states to accept UOCAVA ballots up to 10 days after election day or until certification, whichever was later. *Id.* Congress rejected that mandate not because of any objection to allowing receipt of ballots after election day, but rather because of concerns whether a uniform federal deadline might intrude on states’ authority to certify elections in accordance with their own laws and constitutions. *Id.* With UOCAVA, Congress thus purposely facilitated greater access to absentee voting by expanding its availability and effectiveness, with no preconception that election day was a statutory deadline for receiving ballots.

Tellingly, despite having ample opportunity to do so, Congress has never taken action to displace states’ policy choices regarding ballot receipt deadlines. Even though Congress has been demonstrably aware for decades that states count ballots received after election day, has enacted multiple provisions governing the timing of voting, and amended the Presidential election day statute as recently as 2022, it has never imposed a ballot-receipt deadline,¹⁵ nor has Congress otherwise revised the election day statute in this manner.

Until recently, the federal government defended the legality of state laws setting deadlines after election day for receipt of absentee ballots. Specifically, the

¹⁵ See Electoral Count Reform and Presidential Transition Improvement Act of 2022, Pub. L. No. 117-328, 136 Stat. 5233 (2022).

Department of Justice argued that “[p]ermitting the counting of otherwise valid ballots cast by election day even though they are received thereafter does not violate federal statutes setting the day for federal elections.” Statement of Interest of the United States at 1, *Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720 (N.D. Ill. 2024) (Dkt. No. 47); Statement of Interest of the United States at 1, *Splonskowski v. White*, 714 F. Supp. 3d 1099 (D. N.D. 2024) (Dkt. No. 19) (explaining that counting ballots cast on or before election day but received and tallied afterward does not violate federal election statutes and is a longstanding, lawful feature of election administration). Further, since 2000, the United States has litigated numerous cases under its UOCAVA enforcement powers to extend deadlines for receiving the ballots of military and overseas voters until after election day.¹⁶

Accordingly, absentee voting, including the receipt of ballots post-election day, is a firmly established state practice with federal imprimatur. The Fifth Circuit’s interpretation of “election day” contravenes this longstanding, well-accepted historical practice.

II. Absentee Voting Restrictions Can Hinder Participation by Voters of Color.

Absentee voting is one of the few mechanisms that has proven effective in counteracting barriers to participation in the electoral process by voters of color.

¹⁶ U.S. Dep’t of Justice, *Cases Raising Claims Under the Uniformed and Overseas Citizen Absentee Voting Act, Civil Rights Division* (published May 8, 2021), <https://www.justice.gov/crt/cases-raising-claims-under-uniformed-and-overseas-citizen-absentee-voting-act> (UOCAVA enforcement actions have produced court orders and consent decrees that extended the ballot return deadline for UOCAVA voters).

Conversely, restrictions on absentee voting—like the Fifth Circuit’s imagined requirement that ballots be received by election day—have disproportionately harmed voters of color across the country. The Circuit’s holding conflicts with the language, history, and purpose of the federal election day statutes—which were never intended to constrict absentee voting or impede voters of color—and repudiates the body of federal election law designed to facilitate voting and protect equal access to the right to vote.

A. Absentee Voting—including Post-Election-Day Receipt—Expands the Opportunity to Vote.

Nationwide, absentee voting has become an effective and safe mechanism for expanding the opportunity to vote, especially for Black Americans and other voters of color. In jurisdictions that automatically send mail-in ballots to every registered voter, the overwhelming majority of voters vote by mail.¹⁷ In addition, a study of the 2024 election found that, in 32 states, absentee voting accounted for approximately 31 percent of votes cast, with nearly two million Black voters, nearly three million Asian voters, and over four million Hispanic voters in those states relying on mail-in voting to participate in the election.¹⁸ Empirical research also

¹⁷ See U.S. Election Assistance Comm’n, *supra* note 6, at 34–40 (Table 1: Mail Voting in the 2024 General Election); U.S. Election Assistance Comm’n, *Election Administration and Voting Survey 2022 Comprehensive Report* 33–34 (Table 2: Mail Voting in the 2022 General Election) (June 2023), https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf.

¹⁸ States United Democracy Ctr., *Nearly 1 in 3 Americans Voted by Mail in 2024* (Sept. 4, 2025), <https://www.statesunited.org/resources/americans-vote-by-mail-2024/#section-3>. In addition, in 2024, nearly half of Asian American voters (46%) preferred

shows that vote-by-mail systems have caused a two-to-three percent increase in voter turnout,¹⁹ which voting experts attribute to the participation by new, previously marginalized voters and the retention of those who might not have voted if required to do so in person.²⁰ This expanded absentee voting has not engendered fraud. A study by the Heritage Foundation reflects that the incidence of mail-in ballot fraud between 2000 and 2020 was about 0.00006 percent of total votes cast, *i.e.*, almost zero.²¹ Absentee voting has thus been a safe and effective means of increasing and preserving voter participation.

voting by mail or dropping their ballot off, instead of voting in-person. AAPI Data, *2024 Asian American Voter Survey* (July 10, 2024), <https://aapidata.com/featured/2024-asian-american-voter-survey/>; see Natalie Masuoka et al., *Asian American Voter Access in LA County: In-Language Ballot Use, Voter Experiences, and Effectiveness of Voter Outreach* (Aug. 2024), <https://www.aasc.ucla.edu/resources/AAVoterAccessLACounty882024.pdf> (reporting that roughly 60% of Asian American voters in a 2024 LA County survey preferred dropping off their ballot or voting by mail).

¹⁹ See Samara Angel et al., *Mail Voting in the US: Data Points to Very Low Fraud and Significant Benefits to Voters*, Brookings Inst. (Nov. 6, 2025), <https://www.brookings.edu/articles/mail-voting-in-the-us-data-points-to-very-low-fraud-and-significant-benefits-to-voters>.

²⁰ MIT Election Data + Sci. Lab, *Voting by Mail and Absentee Voting* (Feb. 28, 2024), <https://electionlab.mit.edu/research/voting-mail-and-absentee-voting>.

²¹ Amber McReynolds and Charles Stewart III, *Let's Put the Vote-by-Mail 'Fraud' Myth to Rest*, The Hill (Apr. 28, 2020), <https://thehill.com/opinion/campaign/494189-lets-put-the-vote-by-mail-fraud-myth-to-rest> (noting that of roughly 250 million mail ballots cast over the past 20 years, only 143 resulted in criminal convictions for mail-ballot fraud—about 1 case per state every 6 to 7 years) (citing Heritage Found., *Election Fraud Map*, <https://electionfraud.heritage.org>).

Moreover, widely available absentee voting helps mitigate other barriers that voters of color face. Take the law at issue in this case. Mississippi expanded the absentee ballot receipt window in response to the COVID-19 pandemic. *Republican Nat'l Comm. v. Wetzel*, 120 F.4th 200, 205 (5th Cir. 2024) (citing Act of July 8, 2020, Ch. 472 § 1, 2020 Miss. Laws 1411; Miss. Code Ann. § 23-15-637(1)(a)); see Sarah Ulmer, *Absentee Voting Changes Possible Amid COVID-19 Social Distancing*, Magnolia Tribune (June 16, 2020), <https://magnoliatribune.com/2020/06/16/absentee-voting-changes-possible-amid-covid-19-social-distancing> (discussing social distancing during the COVID-19 pandemic as motivating the absentee ballot provisions at issue in this case). This change maintained absentee voting as an effective, safer alternative to in-person voting for Mississippi's sizable Black community,²² which was disproportionately affected by the pandemic.²³

²² America Counts Staff, *Mississippi's Population Declined 0.2%*, United States Census Bureau (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/mississippi.html> (reporting that Mississippi's population is 36.6 percent Black or African American alone and 1.3 percent is Black or African American in combination).

²³ Luma Akil et al., *COVID-19 Incidence and Death Rates in the Southern Region of the United States: A Racial and Ethnic Association*, NIH Lib. of Medicine (Oct. 27, 2022), <http://pmc.ncbi.nlm.nih.gov/articles/PMC9657288> ("Significant variations in COVID-19 cases and death rates were observed among different races and ethnic groups. The highest number of COVID-19 cases were observed among the Hispanic and Black populations, and the highest death rates were found among non-Hispanic Blacks and Whites."); Sebastian D. Romano et al., *Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region — United States, March–December 2020*, CDC (April 16, 2021), <https://www.cdc.gov/mmwr/vol>

Nationwide, absentee voting, including reasonable post-election-day receipt deadlines, ameliorates other voting restrictions that unduly burden Black voters. For example, with in-person voting, Black voters disproportionately face long lines and wait times at polls. Survey data from the 2018 midterm election show that 7 percent of Black voters, as compared to 4.1 percent of White voters, reported waiting 30 minutes or longer to vote and that Black voters reported waiting on average 45 percent longer than White voters.²⁴ Long wait times are detrimental because “[f]or every hour voters are forced to wait, the probability of voting in the next election drops by one percentage point,” meaning that hundreds of thousands of voters drop out after each electoral cycle as a result of long wait times.²⁵

The data also suggest that other time, place, and manner restrictions on in-person voting disproportionately burden voters of color. The elimination of Sunday voting the weekend prior to election day in Florida caused voters who had voted on that day in the

umes/70/wr/mm7015e2.htm?utm (CDC’s COVID-NET data show that non-Hispanic Black persons experienced disproportionately higher COVID-19 hospitalization rates relative to non-Hispanic White persons during 2020).

²⁴ See Hannah Klain et al., *Waiting to Vote: Racial Disparities in Election Day Experiences*, Brennan Ctr. for Just., 8 (June 3, 2020), https://www.brennancenter.org/sites/default/files/2020-06/6_02_WaitingtoVote_FINAL.pdf.

²⁵ See Brielle Autumn Brown, *Where’s My Ballot?: Why Congress Should Amend House Bill H.R.1 to Include a National Mandate of Drop Boxes for Federal Elections to Help Protect the Black Vote*, 14 Drexel L. Rev. 405, 430 (2022) (citing Stephen Pettigrew, *The Downstream Consequences of Long Waits: How Lines at the Precinct Depress Future Turnout*, Electoral Stud. 1, 8 (July 1, 2020)).

previous election in 2008 to be “considerably less likely to turn out to vote in 2012,” the next election cycle.²⁶ Furthermore, having to travel longer distances to polling places causes a stark drop-off in turnout by voters of color, with one study finding that in nine municipalities in Massachusetts and Minnesota, a one-mile difference in the distance to a polling place in 2016 reduced voter turnout in high-minority districts by approximately 18 percent, as compared to approximately 5 percent in low-minority areas.²⁷ These impacts are compounded by polling place closures, which, following the Court’s decision in *Shelby County*, disproportionately occurred in communities with large minority populations.²⁸

²⁶ Michael C. Herron and Daniel A. Smith, *Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election*, 67 Pol. Rsch. Q. 646, 647, 662 (2014). In addition, using mail-in voting, Asian American voters with limited English proficiency may be able to receive at home the language assistance that polling sites are required, but frequently fail, to provide. Jane Park, *AsAmNews: Poll shows language access remains a barrier for AAPI voters*, Asian Am. Legal Def. & Educ. Fund (Nov. 11, 2024) <https://www.aaldef.org/news/asamnews-poll-shows-language-access-remains-a-barrier-for-aapi-voters/>.

²⁷ Enrico Cantoni, *A Precinct Too Far: Turnout and Voting Costs*, 12 Am. Econ. J. Applied Econ. 61, 63 (Jan. 2020) (non-converted measurements in log points were 19 log points and 5 log points, respectively).

²⁸ See, e.g., Leadership Conf. Educ. Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote* 14, 17–18 (Sept. 2019), <https://civilrightsdocs.info/pdf/reports/Democracy-Diverte d.pdf> (discussing closures in high-minority population areas); Matt Vasilogambros, *Polling Places in Black Communities Continue to Close Ahead of November Elections*, Governing (Sept. 5, 2018), <https://www.governing.com/archive/sl-polling-place-close-ahead-of-november-elections-black-voters.html> (same).

State laws that permit flexibility in absentee voting, such as the ballot-receipt deadline being challenged here, help offset the effects of these barriers to voting, a result consistent with multiple federal election laws designed to protect and fortify the right to vote. *See, e.g.*, H.R. Rep. No. 99-765, at 7, 13 (1986).

B. Restrictions on Absentee Voting Disproportionately Burden Voters of Color.

Restrictions on absentee voting can cause electoral participation by voters of color to decline, and for those voters of color who do vote absentee, result in rejection of their ballots at a higher rate than for the absentee ballots of White voters. For example, in 1998, Florida heightened the procedural requirements for absentee voting—including by requiring voters to secure a notarized certificate or a signature and oath by a resident witness who was registered to vote and had not witnessed more than five absentee ballots—and criminalized violations of the new requirements.²⁹ DOJ explained that “[m]inority voters were more likely to fail to meet one of the States’s new requirements than were [W]hite voters” because of socioeconomic differences and that “minority voters will be less likely to participate in absentee voting because of the new requirements.”³⁰ Accordingly, DOJ objected to the provisions under the VRA, preventing their enforcement.³¹ In North Carolina, where absentee ballots are subject to a witness

²⁹ U.S. Dep’t of Justice, *Voting Determination Letter to The Hon. Robert A. Butterworth* (Aug. 14, 1998), <https://www.justice.gov/crt/voting-determination-letter-13>.

³⁰ *Id.*

³¹ *Id.*

requirement, Black voters comprised 40 percent of rejected absentee ballots, even though they accounted for only 16 percent of absentee ballots cast.³² And in Texas, where new stringent voter ID laws caused tens of thousands of applications and absentee ballots to be rejected, Latino, Asian, and Black voters were “at least 30 percent more likely to have [their] application or mail ballot rejected than [W]hite voters.”³³

Affirming the Fifth Circuit’s decision would exacerbate attrition of Black voters and other voters of color from the electorate for additional reasons. The long history of violence against minorities seeking to vote plus well-publicized incidents in recent years have amplified the inhibiting fears by voters of color regarding harassment and intimidation at the polls. Six million voters may have stayed home in 2024 because of safety concerns, and voters of color as well as women were more likely than White men to view the voting environment as unsafe.³⁴ Over the past three election cycles, high-profile instances of voter intimidation and harassment have permeated the news. For example, two armed men, impersonating security guards hired by a campaign, patrolled outside

³² Sam Levine, *Black Voters’ Mail-in Ballots Being Rejected at Higher Rate*, The Guardian (Oct. 17, 2020), <https://www.theguardian.com/us-news/2020/oct/17/black-voters-mail-in-ballots-rejected-higher-rate-north-carolina>.

³³ Kevin Morris and Coryn Grange, *Records Show Massive Disenfranchisement and Racial Disparities in 2022 Texas Primary*, Brennan Ctr. for Just. (Oct. 20, 2022), <https://www.brennancenter.org/our-work/research-reports/records-show-massive-disenfranchisement-and-racial-disparities-2022-texas>.

³⁴ States United Democracy Center, *New Research: Fears of Election-Related Violence Kept Millions of Women from Voting in 2024* (May 12, 2025), <https://statesunited.org/election-safety>.

an early voting location in St. Petersburg, Florida in 2020,³⁵ White poll workers intimidated Black voters at a polling place in a predominantly Black community in Beaumont, Texas, resulting in a temporary restraining order to bar such discriminatory actions in 2022,³⁶ and at a polling place in Neptune Beach, Florida, in 2024, a man threatened two voters with a two-foot machete.³⁷ Beyond these types of incidents, a 2024 survey showed that more than a third of election officials experienced threats or harassment, an 8 percentage point increase over the prior year, contributing to concerns about violence at the polls.³⁸ Given the racial anxieties generated by these types of incidents, restricting mail-in voting—leaving only the option of voting in person for many voters of color—will likely increase the number who just stay home.

³⁵ Paul Blest, *Armed Men Who Claimed to Be Hired by Trump Showed Up at a Florida Polling Place*, Vice (Oct. 22, 2020), <https://www.vice.com/en/article/armed-men-who-claimed-to-be-hired-by-trump-showed-up-at-a-florida-polling-place>.

³⁶ Complaint for Temporary Restraining Order and Emergency Declaratory and Injunctive Relief, *Beaumont Chapter of the NAACP v. Jefferson County*, 22-cv-00488 (Nov. 7, 2022), ECF No. 1; Order Granting in Part and Denying in Part Plaintiffs' Emergency Motion for Temporary Restraining Order, *Beaumont Chapter of the NAACP v. Jefferson County*, 22-cv-00488 (Nov. 7, 2022), ECF No. 14.

³⁷ See Terry Spencer, *Teen Trump Supporter in Florida Charged with Threatening Harris Voters with Machete*, PBS NewsHour (Oct. 30, 2024), <https://www.pbs.org/newshour/nation/teen-trump-supporter-in-florida-charged-with-threatening-harris-voters-with-machete>.

³⁸ See Christine Zhu, *Threats, Harassment of Election Workers Have Risen, Poll Shows*, Politico (May 1, 2024), <https://www.politico.com/news/2024/05/01/2024-election-poll-workers-001549> 53 (citing polling from the Brennan Center for Justice).

Beyond the aversive effects of such open acts of voter intimidation and harassment, the mere presence of law enforcement officials and political protestors at the polls has chilled participation by people of color who sought to vote in person. Specifically, as documented by the Southern Poverty Law Center, during the 2020 election, voters reported being intimidated by law enforcement officers stationed at polling places, including one city police officer who “loitered directly outside the entrance to a polling place for much of the day,” as well as by armed political protestors, including a White man carrying an assault rifle outside a polling location in a majority-Black city.³⁹ Further restricting absentee voting, as affirming the Fifth Circuit’s decision would do, will likely decrease participation by Black voters and other voters of color, as mounting concerns regarding intimidation, harassment, and violence at the polls deter more of them from voting in person.

C. In Picking an Election Day, Congress Did Not Intend to Abandon Historical Practice, Restrict Absentee Voting, or Harm Voters of Color.

For more than 60 years, Congress has treated absentee voting as a core mechanism for expanding access to voting and ensuring that the right to vote can be meaningfully exercised despite distance, disability, illness, work obligations, or other unavoidable barriers to in-person voting. From the Civil War to the present,

³⁹ See Monica Elliott et al., *Overcoming the Unprecedented: Southern Voters’ Battle Against Voter Suppression, Intimidation, and a Virus*, S. Poverty. L. Ctr., 21–24 (Mar. 2020), https://www.splcenter.org/wp-content/uploads/files/splc_vr_report_overcoming_the_unprecedented_mar_2021.pdf.

Congress has repeatedly intervened—not to restrict absentee voting—but to protect it, regularize it, and require states to administer it in ways that prevent administrative exclusion and ballot loss. The VRA, UOCAVA, and HAVA reflect a consistent federal judgment that election administration must facilitate fair and equal participation, not frustrate it, and that rigid and unnecessary rules disenfranchise eligible voters. *See supra* Part I.A.

Nothing in the statutes setting the federal election day displaces that judgment. 2 U.S.C. § 7 (setting the “Tuesday next after the 1st Monday in November” as election day for House Representatives); 2 U.S.C. § 1 (setting the same election day for Senators); 3 U.S.C. § 1 (setting election day as the date for the appointment of electors). Those statutes addressed a narrow historical problem—nonuniform election timing across states—not the mechanics of ballot return or counting. *See Foster v. Love*, 522 U.S. 67, 70–72 (1997) (the election day statutes “simply regulate the time of the election”). Nothing in these laws speaks to ballot-receipt deadlines, and this Court has never read these statutes to require receipt of ballots by election day. To the contrary, this Court has long defined an “election” as the final choice of an officer by the electorate—a choice made when voters cast their ballots, not when the Postal Service delivers them or when election officials complete post-election-day administrative tasks. *Newberry v. United States*, 256 U.S. 232, 250 (1921) (defining election as the “final choice of an officer by the duly qualified electors”). Reading the election day statutes to invalidate state laws that count timely cast absentee ballots would invert the purpose of those laws, contradict this Court’s precedent, and transform coordination provisions into instruments of exclusion.

That inversion would have especially grave consequences for voters of color. *See supra* Part II.B. Absentee voting—including reasonable post-election-day receipt windows—has proven essential to mitigating persistent barriers that disproportionately burden Black voters and other voters of color, including long lines, polling-place closures, transportation obstacles, and the heightened risk of intimidation and harassment at the polls. *Id.*

Finally, affirmance would invite widespread disruption. Dozens of states rely on absentee-voting regimes that permit post-election-day receipt of timely cast ballots—often with explicit federal acquiescence. *See supra* Part I.B. Treating those laws as impliedly preempted would trigger nationwide litigation, destabilize election administration, and sow confusion for voters and officials alike on the eve of the 2026 federal elections.

CONCLUSION

Congress has repeatedly declined to impose a federal ballot-receipt deadline, choosing instead to expand access and preserve state flexibility consistent with federal voting guarantees. *Supra* Part I.A. This Court should not supply by judicial fiat what Congress withheld in legislation.

For this reason and those discussed above, *Amici* respectfully urge the Court to reverse the judgment of the Fifth Circuit and uphold Mississippi's statute as a lawful measure that helps all eligible voters—including voters of color—to participate in federal elections.

Respectfully submitted,

JIM PASTORE
 STEPHANIE THOMAS
 SARA WEISS
 JOSE JESUS MARTINEZ III
 ROBIN FISHER
 JACQUELINE HAYES
 LAURA HALLAS
 DEBEVOISE & PLIMPTON LLP
 66 Hudson Blvd.
 New York, NY 10001
 (212) 909-6000
 jjpastore@debevoise.com

CHESTER DUBOV
 DEBEVOISE & PLIMPTON LLP
 650 California Street, Fl. 31
 San Francisco, CA 94108
 (415) 738-5700

DAMON T. HEWITT*
 SHAYLYN COCHRAN
 EDWARD G. CASPAR
 ROBERT N. WEINER
Counsel of Record
 OLIVIA N. SEDWICK
 LAWYERS' COMMITTEE FOR
 CIVIL RIGHTS UNDER LAW
 1500 K St. N.W.
 Washington, D.C. 20005
 (202) 662-8600
 rweiner@lawyerscommittee.org

Counsel for Amici Curiae

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*Admitted in Pennsylvania only. Practice limited to matters before federal courts.