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 FOURTEEN UNITED STATES SENATORS AS *AMICI CURIAE* SUPPORTING PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are United States Senators Ron Wyden, Alex Padilla, Angela Alsobrooks Richard Blumenthal, Maria Cantwell, Catherine Cortez Masto, Tammy Duckworth, Tim Kaine, Amy Klobuchar, Jeff Merkley, Jacky Rosen, Adam Schiff, Chris Van Hollen, and Mark Warner. These *amici* are well positioned to weigh in on federal preemption of state election laws. *Amici* served in Congress for a combined 224 years, representing districts across the United States. Several *amici* have overseen the passage of significant federal election statutes, including laws addressing absentee and mail-in voting. These *amici* took part in the drafting of the current federal statutory election law framework and can therefore speak to a congressional intent to accommodate and even encourage—not preempt—state election statutes that allow ballots to be counted when received after, but postmarked by, Election Day. As members of Congress, *amici* submit this brief not to advance a policy preference, but to explain how Congress operated in the context of existing state laws when enacting new election statutes.

The invalidation of Mississippi's mail-in ballot law, Miss. Code Ann. § 23-15-637(1)(a), would disrupt elections not only in Mississippi, but across the nation. Many states, including California, Illinois, Maryland, Nevada, Oregon, Virginia, and Washington have adopted sensible policies to allow mail-in ballots to be counted so long as they are postmarked no later than

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[1] In accordance with Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

Election Day. The Fifth Circuit's ruling undermines the viability of these laws and threatens the disenfranchisement of voters, especially those living abroad or in rural areas.

INTRODUCTION AND SUMMARY OF ARGUMENT

Federal law establishes a uniform day for holding federal elections, but it has never imposed a uniform federal deadline for receipt of mail-in ballots. It is undisputed that Congress has the constitutional authority to enact a "complete code" for federal elections to "supersede" state election law. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8–9 (2013); U.S. Const. art. I, § 4, cl. 1. For more than a century, Congress has legislated on federal elections, including enacting laws pertaining to mail-in voting, all the while leaving undisturbed state rules governing mail-in ballot receipt. The choice to upend certain areas of state law and let others be was consciously done. Congress has never—explicitly or implicitly—displaced state "mailbox rule" statutes that accept ballots postmarked by Election Day and received thereafter.

Congress's most significant modern interventions in the field of election administration confirm that Congress has continued to allow the states to determine when mail-in ballots must be received to be counted. For example, in the Uniformed and Overseas Citizens Absentee Voting Act of 1986 ("UOCAVA"), and its later amendment by the Military and Overseas Voter Empowerment ("MOVE") Act, Congress directly addressed late-received absentee ballots by creating federal backstop mechanisms—most notably, the Federal Write-in Absentee Ballot—that assume the validity of and operate within pre-existing state

absentee ballot regimes. Specifically, UOCAVA's provisions turn expressly on state-law receipt deadlines, and its provisions presuppose that those deadlines may extend beyond Election Day.

Congress reaffirmed its decision to allow states to continue setting their own ballot deadlines when it enacted the Help America Vote Act of 2002 ("HAVA"). In response to the election-related shortcomings exposed during the 2000 election, Congress comprehensively revisited federal election administration—regulating voting systems, voter registration, election technology, accessibility, and federal funding. Notwithstanding the comprehensive reforms enacted by Congress in response to the 2000 election, after which the validity and influence of mail-in ballots counted after Election Day were closely scrutinized,[2] Congress declined to impose any federal rule governing mail-in ballot receipt. HAVA neither amended the federal Election Day statutes nor suggested that existing state mailbox rules were unlawful. Instead, in enacting HAVA, Congress chose to selectively employ its authority over federal elections by imposing uniform standards in some areas but by leaving other components—notably ballot receipt deadlines—to the states.

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[2] *See, e.g.*, David Barstow & Don van Natta Jr., *Examining the Vote; How Bush Took Florida: Mining the Overseas Absentee Vote*, N.Y. Times (Jul. 15, 2001), *available at* https://www.nytimes.com/2001/07/15/us/examining-the-vote-how-bush-took-florida-mining-the-overseas-absentee-vote.html (last visited Jan. 6, 2026); Kosuke Imai & Gary King, *Did Illegally Counted Overseas Absentee Ballots Decide the 2000 U.S. Presidential Election?*, 2:3 Perspectives on Politics 537 (2004), *available at* https://gking.harvard.edu/files/ballots.pdf (last visited Jan. 5, 2026).

The legislative histories of UOCAVA, the MOVE Act, and HAVA confirm what the statutory texts already make clear. When Congress spoke about absentee voting, it did so against the backdrop of existing state ballot receipt deadlines. At no point did Congress suggest that current federal law prohibits states from counting ballots received after Election Day in accordance with state law requirements.

In short, the text, structure, and legislative history of modern federal election law provide compelling evidence that Congress has not preempted Mississippi's mail-in ballot receipt statute, and that the judgment below should be reversed.

ARGUMENT

I. The Text, Structure, and Legislative History of Recent Federal Election Laws Are Valid Sources of Discerning Congressional Purpose.

This Court has repeatedly held that "'the purpose of Congress is the ultimate touchstone in every pre-emption case.'" *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (quoting *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 485 (1996)); *see also Retail Clerks Int'l Ass'n, Loc. 1625, AFL-CIO v. Schermerhorn*, 375 U.S. 96, 103 (1963). In this analysis, "the language of the [ ] statute and the 'statutory framework' surrounding it" are the focal point for determining preemptive intent, if any. *Medtronic,* 518 U.S. at 486. When the statute is ambiguous, other factors become relevant. *See, e.g.*, *Medtronic*, 518 U.S. at 496, 505; *Wyeth*, 555 U.S. at 576. Courts, including this Court, have looked to statutory objectives, legislative history, and congressional silence to discern congressional purpose. *See, e.g.*, *New York State Conference of Blue Cross & Blue Shield*

Plans v. Travelers Ins. Co., 514 U.S. 645, 656, 665 (1995) (looking to statutory objectives and legislative history to determine ERISA's preemptive scope); *California Div. of Lab. Standards Enf't v. Dillingham Const.*, 519 U.S. 316, 325, 329–31 (1997) (same); *Medtronic,* 518 U.S. at 490–91 (1996) (looking to statutory objectives, legislative history, and legislative silence to determine whether parts of the Food, Drug, and Cosmetic Act preempted state law).

In this case, where the Court is being asked to assess whether laws that are more than a century old preempt state statutes, it is indispensable to understand the long-since-evolved "statutory framework" that makes up federal election law. *See Medtronic*, 518 U.S. at 486. Though "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one," *Cipollone v. Liggett Grp. Inc.,* 505 U.S. 504, 520 (1992) (quoting *United States v. Price*, 361 U.S. 304, 313 (1960)), the statutes enacted by a later Congress can alter or clarify the preemptive scope of prior legislation. *See Dorsey v. United States*, 567 U.S. 260, 274 (2012) ("[S]tatutes enacted by one Congress cannot bind a later Congress, which remains free to repeal the earlier statute, to exempt the current statute from the earlier statute, to modify the earlier statute, or to apply the earlier statute but as modified. And Congress remains free to express any such intention either expressly or by implication as it chooses." (citations omitted)). Furthermore, "when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Breed Int'l., Inc.,* 534 U.S. 124, 143–44 (2001) (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)). Federal law long ago set the

timing of elections without addressing ballot receipt, so states stepped in with laws setting forth mailbox rules. Subsequent Congresses legislated against that settled backdrop, repeatedly enacting federal election laws that presuppose the continued validity of pre-existing state mailbox rules, making clear that Congress did not intend federal law, as it stood at the time, to preempt them.

II. Congress Enacted UOCAVA and the MOVE Act to Facilitate Voting Within Existing State Absentee-Ballot Regimes.

Congress enacted the Uniformed and Overseas Citizens Absentee Voting Act of 1986 ("UOCAVA"), Pub. L. No. 99-410, 100 Stat. 924, codified at 52 U.S.C. § 20301 *et seq.*, to address a persistent problem in federal elections: eligible military and overseas citizens were frequently unable to vote because overseas mail delays meant that ballots were often received too late to satisfy state receipt deadlines, even when voters acted diligently. The proposed bill, which would later become UOCAVA, aimed to revamp the then-existing framework and "facilitate absentee voting by United States citizens, both military and civilian, who are overseas." H.R. Rep. No. 99-765, at 5 (1986).

Congress drafted UOCAVA as a targeted, facilitative statute, with the intent to remedy specific logistical barriers to absentee voting while leaving the basic structure of election administration intact. To that end, Congress consolidated and updated prior federal voting-assistance laws rather than replacing existing state absentee-ballot regimes. *Id.* at 6-7. Nothing in the statute or its accompanying legislative materials suggests that Congress understood Election Day to impose a uniform federal deadline for the receipt of

absentee ballots, or that Congress intended to displace state laws governing when timely cast ballots would be counted.

Twenty-three years later, Congress substantively amended UOCAVA with the Military and Overseas Voter Empowerment ("MOVE") Act, Pub. L. No. 111-84, §§ 575-89, 123 Stat. 2318-2335 (2009),[3] codified at 52 U.S.C. § 20301 *et seq.*, which strengthened the UOCAVA framework while leaving most components of the pre-existing election apparatus untouched. *See* 156 Cong. Rec. S4513-02 (daily ed. May 27, 2010) (Statement of Sen. C. Schumer) (describing the MOVE Act as a "renovation of UOCAVA that brings it into the twenty-first century and streamlines the process of absentee voting for military and overseas voters through a series of common sense, straightforward fixes"). For instance, the MOVE Act required states to incorporate means of electronically communicating ballot material to eligible voters, updated collection procedures, and reinforced timelines for requesting absentee ballots. *See* Military and Overseas Voter Empowerment ("MOVE") Act*,* U.S. Election Assistance Commission, https://www.eac.gov/sites/default/files/document_library/files/Military-and-Overseas-Voter-Empowerment-"MOVE"-Act.pdf. (last visited Jan. 6, 2026). The MOVE Act is silent on receipt deadlines for mail-in ballots.

[3] The MOVE Act was passed by Congress in 2009 as a subtitle of the National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111–84, 123 Stat. 2190.

A. The Text and Structure of UOCAVA and the MOVE Act Reflect Congress's Understanding that States May Count Timely Mailed Ballots Received After Election Day.

UOCAVA and the MOVE Act rely on the premise that state mail-in ballot regimes—including state receipt deadlines—remain operative under federal law.[4]

i. UOCAVA Incorporates State Absentee-Ballot Procedures as the Governing Election-Counting Framework.

UOCAVA requires each state to permit "absent uniformed services voters and overseas voters" to vote by absentee ballot in federal elections. 52 U.S.C. § 20302(a)(1). At the same time, Congress chose to assign federal officials only a supportive role, directing them to prescribe standardized forms, distribute balloting materials, and provide information about state absentee-voting procedures, rather than rewrite or otherwise interfere with those procedures. 52 U.S.C. §20301(b). This measured decision reflects Congress's determination that mail-in voting would continue to be administered principally under state law.

Nothing in UOCAVA purports to federalize the mechanics of mail-in ballot receipt or counting. *See generally* 52 U.S.C. §§ 20301–20311. To the contrary,

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[4] For the sake of reducing complexity and streamlining the argument, we refer to UOCAVA and the MOVE Act as simply "UOCAVA" in this section (II.A.). The MOVE Act amended UOCAVA, melding the two acts. Instead of tracing which provision came from which act, we will treat the law as it exists, cohesively as one. For purposes of legislative history, however, we will discuss each act separately.

Congress directed a presidential designee—charged with coordinating federal voting assistance—to implement procedures that facilitate delivery of marked absentee ballots by reference to the applicable state-law receipt deadline—that is, "not later than the date by which an absentee ballot must be received in order to be counted in the election." 52 U.S.C. § 20304(b)(1). Such procedures concern the mechanics of transmitting ballots, such as coordination with military and overseas mail systems and other delivery channels, not the establishment of a federal rule governing when ballots must be received or counted. These provisions do not authorize the Designee to alter state receipt deadlines or counting rules. Congress thus legislated against the background assumption that state rules would remain operative.[5]

ii. The Federal Write-In Absentee Ballot Incorporates by Reference State Receipt Deadlines.

UOCAVA's central innovation, the Federal Write-In Absentee Ballot ("FWAB"), is expressly designed to function only if state receipt deadlines remain legally effective. The FWAB serves as a backstop mechanism, enabling eligible voters who have timely requested a state absentee ballot, but who may not receive it in time to vote, to submit a federal write-in ballot in its place. *See generally* 52 U.S.C. § 20303 (describing the FWAB and its procedure). Despite the federal creation of the ballot form, the statute provides that, except as

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[5] *See* Brief of Intervenor Defendants – Appellees VET Voice Foundation and the Mississippi Alliance for Retired Americans at 39–42, *Republican National Committee v. Wetzel*, No. 24-60395 (5th Cir. 2024) (discussing Congress's longstanding acceptance of post-Election Day vote counting).

otherwise specified, the FWAB "shall be submitted and processed in the manner provided by law for absentee ballots in the State involved." 52 U.S.C. § 20303(b).

The statute then makes state receipt deadlines dispositive: a FWAB "shall not be counted" if the voter's regular state absentee ballot "is received" by "the deadline for receipt of the State absentee ballot under State law." 52 U.S.C. § 20303(b)(3). Congress could have identified Election Day as a receipt cutoff. Instead, Congress expressly conditioned ballot counting on state law receipt deadlines, allowing for the potential receipt after Election Day.

By incorporating state law receipt deadlines into the FWAB procedure, Congress assumed that the state law deadlines are lawful and operative. If federal law already required all ballots to be received by Election Day, Congress's repeated reliance on state law receipt deadlines would be unnecessary and internally inconsistent. *See J.E.M.*, 534 U.S. at 145–46.

iii. UOCAVA's Two-Ballot Mechanism Presupposes Post-Election-Day Receipt.

UOCAVA authorizes an overseas voter to submit a FWAB when the voter has timely applied for a state absentee ballot but does not expect to receive it in time. 52 U.S.C. § 20303(a). If the voter later receives the state absentee ballot in time to mail it in by the state deadline, the voter "may submit the State absentee ballot," even after having submitted the FWAB. 52 U.S.C. § 20303(d).

That sequencing functions coherently only if election officials may receive and process ballots pursuant to state receipt deadlines. The House Report confirms that if both ballots are received "in time to be counted under State law," the regular absentee ballot is

counted and the FWAB disregarded. H.R. Rep. No. 99-765, at 6. That design is irreconcilable with a categorical receipt-by-Election-Day rule.

B. The Legislative Record Confirms That Congress Legislated on the Understanding That State Receipt Deadlines Govern Whether Ballots Are Counted.

UOCAVA's and the MOVE Act's legislative history confirms the understanding reflected in the statute's text and structure. That record matters because it shows how Congress itself understood the legal landscape in which it was legislating. Throughout the hearings and reports that produced UOCAVA and its amendment, members of Congress and witnesses focused on the problem of ballots mailed on time but received too late under state law. They repeatedly accepted that state-law receipt deadlines would govern and declined to alter the status quo.

i. Congress Identified Late Receipt Under State Deadlines as the Central Problem.

At the principal House Administration Committee hearing on the bill that became UOCAVA, Chairman Al Swift (D-WA) explained that although many barriers to overseas voting have been removed, a critical problem remained: mail delivery often prevented voters from meeting state receipt deadlines. "[M]ail service," he noted, "is slow and unreliable in many parts of the world," and as a result, "a voter may not receive his absentee ballot in time to cast it before the State's deadline." Hearing on H.R. 4393 Before the H. Comm. on House Admin., 99th Cong. 12 (1986) (statement of Rep. Swift). Chairman Swift emphasized

that the legislation was aimed at voters who had complied with the rules but were defeated by timing, explaining that the FWAB would be available to voters who applied "in a timely fashion" but "did not receive [the absentee ballot] in time to return it before the voting deadline." *Id.* at 12.

Other Members echoed that understanding. Representative Bill Thomas (R-CA) described a contested election in which military absentee ballots were "postmarked on time" but rejected because they were "received after the State's official reception date," which in that state was "the close of polls on election day." *Id.* at 13 (statement of Rep. Thomas). His remarks assumed that the relevant legal rule was the state's receipt deadline, and that ballots mailed on time but arriving late were lawfully excluded under state law.

Hearing witnesses reinforced the same premise. For instance, Henry Valentino, then the director of the Federal Voting Assistance Program, an organization that administers federal responsibilities established under prior voting laws, submitted a statement to the Committee outlining how he envisioned UOCAVA in practice. In the statement, he noted: "Ideally, election officials should mail absentee ballots to overseas addressees 45 days prior to the election to [ensure] the ballot's timely return—or 45 days prior to the deadline for the receipt of voted absentee ballots if the deadline is other than election day." *Id.* at 20 (Statement of Henry Valentino).[6] Similarly, John

[6] While outside the scope of this brief, the understanding of executive agencies can also be indicative of preemption status. *See, e.g.*, *Medtronic*, 518 U.S. at 505–06 (looking to administrative agency action for clarification of preemptive scope in situations of ambiguous statutes). Here administration officials did

Pearson, the Coordinator of Election Administration in Washington, noted that despite the state's ample grace period, which allowed for absentee ballots to be "counted up to 10 days following the primary and 15 days following the general election, as long as they are postmarked by election day," Washington still encountered issues of citizens receiving their absentee ballots post-election day. *Id.* at 88 (statement of John Pearson). Finally, C.R. (Chuck) Jackson, Vice President for Government Affairs at the Non Commissioned Officers Association of the United States of America, gave testimony to the Committee emphasizing how many military personnel had been disenfranchised by not getting their ballots in by the "State's deadline." *Id.* at 39.

During discussion of the MOVE Act, the sponsor, Senator Chuck Schumer (D-NY) conveyed a similar understanding. In discussing the seriousness and strictness of voting deadlines, Senator Schumer noted:

> All too often our soldiers get their absentee ballot after the deadline has passed to send them in. All too often, even more frequently, the voting ballot does not arrive by the *deadline the State* has set.

155 Cong. Rec. S7965 (daily ed. July 23, 2009) (emphasis added). *See also id.* at S7966 (discussion of witness testimony, where witnesses expressed concerns about ballots not arriving by time of state deadline).

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not view state laws with deadlines after Election Day to be preempted. In fact, Valentino went on to laud the twelve states that, at the time, had "extended the deadline for the receipt of voted ballots to a specified number of days after the election." Hearing on H.R. 4393 at 21.

ii. Congress Designed the Federal Write-In Absentee Ballot to Operate in Concert with State Receipt Deadlines.

The House Report accompanying UOCAVA confirms that understanding and explains Congress's chosen solution. The Committee stated that the Act's "primary purpose" was to "facilitate absentee voting" by overseas citizens who "fail to receive a regular absentee ballot in sufficient time to vote and return the ballot prior to the voting deadline in their State." H.R. Rep. No. 99-765, at 5 (1986).

The Report then described the FWAB as a backstop that would function in concert with state absentee-ballot systems rather than displace them. It explained that even when using the federal ballot, the voter "must comply with State laws applying to regular absentee ballots," *id.* at 6, and that "[i]f both ballots are received in time to be counted under State law, the regular absentee will be counted in lieu of the Federal write-in." *Id*. Congress thus spoke directly to the interaction between the federal ballot and state receipt deadlines, and it keyed ballot counting to state law rather than to the Election Day statutes.

iii. Congress Legislated with Awareness of Existing State Timing Rules and Accommodations.

The legislative record also reflects Congress's awareness that states already employed a range of timing rules and accommodations for absentee voting, including deadlines for counting past Election Day. During the hearing, for instance, Chairman Swift noted that "several States have already provided such ballots on the State level," referring to write-in or fallback

mechanisms designed to address late receipt. Hearing on H.R. 4393 at 12.

The House Report likewise acknowledged these state practices. In discussing "State Initiatives," the Committee noted that "several States accept absentee ballots, particularly those from overseas, for a specified number of days after election day." H.R. Rep. No. 99-765, at 8. And the Committee explained that states providing absentee ballots sufficiently early—measured by reference to "the State deadline for receipt of overseas absentee ballots"—could qualify for exemptions from the federal write-in requirement. *Id.* at 16–17. Congress thus calibrated UOCAVA to operate *alongside* state-law receipt deadlines, not to override them.

III. Congress Revisited Federal Election Administration in HAVA Without Imposing a Federal Absentee-Ballot-Receipt Deadline.

When Congress enacted the Help America Vote Act of 2002 ("HAVA"), Pub. L. No. 107-252, 116 Stat. 1666 (2002), codified as 52 U.S.C. § 20901 *et seq.*, it undertook the most comprehensive revision of federal election-administration law in decades. Through HAVA, Congress addressed voting systems, voter registration, election technology, accessibility, and federal funding for election administration, while establishing new federal institutions to assist states in administering federal elections. *See, e.g.,* 52 U.S.C. §§ 20901–06 (payments to states); 52 U.S.C. §§ 20921–62 (Election Assistance Commission and supporting bodies); 52 U.S.C. §§ 21081–83 (voting systems and voter registration). Notwithstanding that breadth, Congress did not amend the federal statutes establishing the day for

holding federal elections, nor did it impose any federal deadline requiring absentee ballots to be received by Election Day. *See generally* 52 U.S.C. §§ 20901–21145. HAVA is particularly probative here because Congress comprehensively revisited election administration while leaving state mail-in voting receipt rules, including mailbox-rule statutes, untouched.

Though possessing the authority to create a complete code for federal elections, members of Congress made conscious, line-drawing choices about where to exercise their authority and impose federal requirements and where to defer to pre-existing state law. 148 Cong. Rec. H7836 (daily ed. Oct. 10, 2002) (statement of Rep. Ney). For example, Congress established minimum standards for voting systems used in federal elections, including accuracy, auditability, and accessibility. 52 U.S.C. § 21081(a). Congress likewise required States to implement a single, uniform, official, centralized statewide voter registration list. 52 U.S.C. § 21083(a)(1)(A). By contrast, HAVA contains no parallel provision establishing a federal rule governing when mail-in ballots must be received, and no provision displacing state laws that accept ballots timely mailed by Election Day and received afterward. *See generally* 52 U.S.C. §§ 20901–21145. Congress exercised its authority to mandate uniformity with respect to certain election matters but declined to supersede state receipt rules.

The decision to leave state ballot receipt deadlines untouched is all the more meaningful given that Section 706 of HAVA slightly amended UOCAVA to bar states from refusing "to accept or process . . . any otherwise valid voter registration application or absentee ballot application . . . submitted by an [eligible voter] on the grounds that the voter submitted the application before the first date on which the State

otherwise accepts or processes such applications[.]" 52 U.S.C. § 20306. In other words, Congress *has* repeatedly superseded state election law, including on issues of timing. But it has not yet done so with respect to mail-in ballot receipt deadlines.

* * *

Based on their experience legislating in this field, *amici* submit that Congress has repeatedly revisited federal election law while considering how states administer absentee voting. Each time, it chose to leave untouched state laws that govern how timely cast ballots are received and counted. In UOCAVA, the MOVE Act, and HAVA, Congress legislated extensively, spoke precisely, and incorporated by reference state receipt deadlines, leaving state mailbox rules undisturbed. To hold that federal law nonetheless silently preempts fourteen state laws allowing post-Election-Day receipt of mail-in ballots would require reading into federal law a mandate Congress never enacted and a displacement of state law Congress never intended.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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