

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* LOCAL ELECTION
OFFICIALS AND LOCAL GOVERNMENTS
IN SUPPORT OF PETITIONER**

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Tex. Sec’y of State, <i>Election Advisory No. 2024-17 November 5, 2024 Election and December 14, 2024 Runoff Election Law Calendar</i> , https://perma.cc/6U2R-3BVK	17
Tex. Sec’y of State, Elections Div., <i>Handbook for Early Voting Ballot Board 1</i> (Sept. 22, 2025), https://perma.cc/EHJ2-S4N4	16

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STATEMENT OF INTEREST

Amici are election officials and local governments.¹ As the nation’s front-line election administrators, *amici* deeply understand the practicalities and requirements of running elections. *Amici* are duty-bound by the National Voter Registration Act (“NVRA”) to “promote the exercise of th[e] right [to vote].” 52 U.S.C. § 20501(a). To carry out that duty, *amici* develop policies and procedures for their offices, train staff and poll workers, educate voters, and respond in real time to constituent needs in their respective jurisdictions. In addition, *amici* play a critical role in conducting elections by preparing and sorting different types of ballots, counting ballots, and resolving ballot discrepancies. These processes require care and take time.

Shortening the timeline in which *amici* must perform these tasks would make it much harder for them to smoothly and efficiently administer elections. State legislatures have recognized this issue and set election deadlines that balance the interests of canvassing speed and ballot security depending on the specific needs of each individual state. Variation in state election codes and regulations mean that local election administrators do not share the same day-to-day experience across the nation. Some election officials serve hundreds of thousands (or millions) of voters, operating across multiple bustling offices filled with full-time staff members; others

1. Pursuant to Supreme Court Rule 37.6, no party or party’s counsel authored this brief in whole or in part, and no party or party’s counsel contributed money intended to fund preparation or submission of this brief. A list of all *amici* is provided at Appendix A.

serve individual townships, operating part time as that jurisdiction's sole election administrator. Though their day-to-day operations and experiences may differ, all *amici* share a common "interest in running an orderly, efficient election." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay).

SUMMARY OF ARGUMENT

Amici urge this Court to reverse the decision below and uphold Mississippi's ballot-receipt deadline. First, this Court should not accept the flaws underlying the Fifth Circuit's decision. Either the court of appeals assumed, or its decision inadvertently requires, that all activities prior to ballot counting must be completed on or before Election Day. The court of appeals' insistence that ballots are simply "cast" and then "received" by jurisdictions neglects to consider the myriad ballot processing and adjudication activities that occur on or after Election Day. This includes crucial verification steps, the processing of provisional ballots and ballots cast by military and overseas voters, and other efforts that extend beyond the mere tallying of remaining votes.

Depending on how it is interpreted, the Fifth Circuit's decision could call into question each of these post-Election Day activities and force states to dramatically change their internal procedures for election administration. Federal law's limited sphere under Art. I, § 4, cl. 1 cannot be intended to override the operation of so much state law or to create unique operational rules just for Congressional and Presidential elections.

Second, laws permitting ballot-receipt deadlines after Election Day have enormous practical benefits and few, if any, negative consequences for election officials. They enable administrators in large and small jurisdictions to do their essential work in a timely and reasonable manner. Finally, a ruling striking down post-election ballot receipt deadlines nationwide would increase the administrative burden on many local election officials, the effects of which would be especially problematic in a federal election year.

ARGUMENT

The Constitution grants state legislatures the primary authority for prescribing the time, place, and manner for holding elections. U.S. Const. art. I, § 4. Congress also has a crucial role to play when it comes to federal elections. By overreading the phrase “day for the election” in the applicable federal statutes, however, the Fifth Circuit upset an important balance in our federalized system and imposed an unworkable obligation on local election administrators. Adoption of that decision would tread on powers traditionally reserved to states and undermine the orderly, efficient, and fair management of elections.

I. The Court of Appeals’ Decision Is Unworkable.

The court of appeals concluded that the term “day for the election” requires that a ballot be *cast by the voter and received by the state* on or before Election Day. Acknowledging that “[not] all the ballots must be counted on Election Day,” Pet. App. 10a, the Fifth Circuit explained that “while election officials are still receiving ballots, the election is ongoing.” *Ibid.*; *see id.* at 13a (“The election is consummated when the last ballot is received” because

“officials know there are X ballots to count, and they know there are X ballots to count because the proverbial ballot box is closed.”). Counting and re-counting are among the few administrative tasks that are permitted after Election Day, according to the Fifth Circuit.

The decision below hinges on when ballots are “cast” and “received”, focusing on both terms in a narrow sense, but imposing a potentially broad reach.² The Fifth Circuit failed to grapple with the actual ballot processing and adjudication steps implemented by election administrators as required under various state laws. In fact, the decision overlooks the very steps administrators take to be able to know “there are X ballots to count”. Pet. App. 13a. This Court’s adoption of this unworkable theory could force election administrators to process and adjudicate hundreds of thousands of ballots—an operation that typically occurs over a period of days—in mere hours, in order to ensure that these ballots are in fact “cast” by the voter and officially “received” under state law by local election officials by the end of Election Day. And it thus necessarily risks ballots that were lawfully cast as being deemed untimely received, because processing and adjudication could not be completed by the end of Election

2. *Amici* acknowledge that portions of the decision below are unclear. The decision could be read narrowly to establish only a requirement that all ballots be in the physical possession of election officials by the end of Election Day, without regard to whether those ballots have been processed and verified. By its own terms, however, the decision appears broader, establishing a requirement that all ballot-processing activities except the final count must be completed by Election Day. *Amici* write here to highlight the practical implications, and flawed reasoning, of that broader reading.

Day. *Amici* urge the Court to reject such an unnecessary framework.³

A. Processing all mail-in and absentee ballots by Election Day would be impracticable for election officials and local governments in states that require ballots to be processed in a particular order.

The court of appeals’ exception for “counting” ballots fails to acknowledge the processing and adjudication procedures local elections officials are required to complete before transitioning to ballot counting. A mandate that all mail-in ballots be processed and adjudicated so as to be eligible for counting by the conclusion of Election Day would result in an unworkable system for many election administrators nationwide, given the many requirements of state law—some of which require officials to wait until Election Day itself to begin certain processes.

To illustrate the point, consider Mississippi. Like other states, Mississippi requires election officials to process absentee ballots in a specific order. Election officials only begin processing absentee ballots received *before* Election Day when the polls open on Election Day.⁴ Miss. Code Ann. § 23-15-639(1)(a). Ballot processing entails announcing

3. *Amici* agree with Petitioner that the court of appeals’ textual and historical analysis are incorrect. *Amici* do not repeat those arguments here.

4. Other state laws prohibit local election officials from processing absentee ballots until Election Day, including West Virginia. W. Va. Code § 3-3-8 (requiring that absentee ballots be delivered to a central counting center for processing and counting on Election Day).

the name, address, and precinct inscribed on each ballot envelope and comparing the voter's signature on the absentee ballot with the signature on their application. *Id.* § 23-15-639(1)(a)–(b). If the county resolution board finds the applicant is a registered and qualified voter, and if the ballot appears valid (both steps that are examples of state requirements for ballot adjudication), the ballot will be deposited in the ballot box and the voter's name will be entered in the pollbook. *Id.* § 23-15-639(1)(c).

At this stage, the court of appeals' decision could be read to hold that the ballot qualifies as lawfully cast by the voter and received by the state because election officials have formally accepted the ballot after completing processing. *See* Pet. App. 11a (noting that in Mississippi, an absentee ballot is considered final after it is received, processed, accepted by the resolution board, and deposited into a secure ballot box). *Amici* do not seek to get bogged down by the question of whether ballot processing procedures are a part of the process of vote-casting or ballot-receipt. Instead, *amici* underscore that the court of appeals erred in ruling that all steps short of ballot counting—whether relating to the casting of a ballot or the receipt of that ballot—must be completed by the end of Election Day. *Id.* at 13a.

This Court's adoption of the Fifth Circuit's rule would create absurd results based on the voting habits of the public. For example, in the November 2024 General Election, Mississippi received 197,903 absentee ballots by Monday, November 4, 2024, the day before Election Day.⁵

5. Press Release, Michael Watson, Miss. Sec'y of State, 2024 November General Election Absentee Report (Nov. 4, 2024), <https://perma.cc/QVC2-BHP7>.

By law, Mississippi election officials began processing those ballots—each of which required individual announcement, signature comparison, and a determination of regularity—at the opening of the polls on Election Day.⁶ Miss. Code Ann. § 23-15-639(1)(a). Pursuant to Mississippi law, only after the pre-Election Day ballots were processed and tallied could the resolution board begin to process and tally absentee ballots received on or after Election Day. *Id.* §§ 23-15-639(1)(c), 23-15-645(1).⁷

Applying the court of appeals’ reading to the 2024 General Election, Mississippi election officials would have been required to process and adjudicate the nearly 200,000 mail-in ballots physically received before Election Day, along with the likely thousands of mail-in ballots physically received on Election Day itself, by 11:59 p.m. on Election Day for these ballots to be considered lawfully cast. Imposing such a requirement on election officials and local governments would result in unnecessary and costly administrative burdens.

6. Processing day-of absentee ballots happens in addition to the array of other activities that occur after the polls close on Election Night, including counting election-day ballots, reconciling provisional ballots (performed by poll managers), and manually reviewing all damaged, defective, blank, or overvoted ballots (handled by the resolution board).

7. *See also* Miss. Sec’y of State, *County Elections Handbook* § XV (2024), <https://perma.cc/BJL7-M2K5> (discussing the steps for processing and counting ballots).

B. Even in states that allow mail-in and absentee ballots to be processed ahead of time, the court of appeals’ approach would be unworkable.

The Fifth Circuit’s decision proves impracticable even in states that allow election officials and local governments to begin processing ballots before Election Day, such as California and Nevada. *See* Cal. Elec. Code § 15101(a) (establishing that election officials may begin reviewing mail ballots 29 days before the election); Nev. Rev. Stat. § 293.269927 (establishing that election officials may begin reviewing mail ballot envelopes upon receipt). Even with a buffer, the number of mail-in ballots received and the specific steps required to process each ballot under state law means that processing continues through Election Day itself and for many days thereafter.⁸ That is because, in these states, election officials are further required by law to adjudicate the validity of each mail-in ballot before it is formally received and eligible for counting. *See* Cal. Code Regs. tit. 2, § 19092(b)–(c) (establishing processes for reviewing and tracking ballots that have been rejected or accepted); Nev. Rev. Stat. § 293.269927 (establishing the election officials’ ballot verification duties). That adjudication process can take considerable time as it involves both reviewing voter file information and confirming the veracity of the ballot.⁹ Given the sheer

8. *See* Devin Herenda, *CA Secretary of State details vote count process following Election Day*, KRCR (Nov. 6, 2025), <https://perma.cc/FB2W-VM7S> (describing the process of verifying and processing ballots in California post-Election Day); Andrew Nomura, *Ballot signature issues, same-day registration delay results of some key Nevada races*, KSNV (Nov. 6, 2024), <https://perma.cc/W5KY-QXAQ>.

9. *See* Jesse Salinas, Yolo Cnty. Assessor, Clerk-Recorder & Registrar of Voters, *Why it will take until early December to*

scale of elections in these states—and typical behavior of mail-in voters—that process is not completed through the end of Election Day alone.

1. California

The voting data from California’s November 2024 General Election bear out this conclusion. California election officials processed and counted 16,140,044 ballots from the General Election.¹⁰ Of those ballots, over eighty percent, or 13,034,378 ballots, were vote-by-mail ballots.¹¹

Each of the vote-by-mail ballots received after Election Day required adjudication before they could be counted by local election officials. *See* Cal. Code Regs. tit. 2, § 19092(b)–(c) (establishing processes for reviewing and tracking ballots that have been rejected or accepted); *see also* Cal. Code Regs. tit. 2, §§ 20990–20992 (discussing process of verifying vote-by-mail and provisional ballots). In California, election officials must confirm that each ballot was not submitted by a voter who has already voted at another voting location, returned a vote-by-mail ballot previously, or returned a provisional ballot in that county or another county that had been processed and counted. *Id.* § 19092(c)(1). Election officials must also confirm that

certify this election in California (Nov. 22, 2024), <https://perma.cc/UM33-3R46> (explaining that the extra verification steps required for vote-by-mail ballots may result in a slower timeline for certifying election results); Nomura, *supra* note 8.

10. Shirley Weber, Cal. Sec’y of State, *Statement of Vote: General Election November 5, 2024* at 3 (Nov. 2025), <https://perma.cc/XX5E-BW87>.

11. *Id.*

the voter provided a signature on their vote-by-mail ballot envelope, *id.* § 19092(c)(2), and they must scrutinize the voter’s signature on the vote-by-mail ballot envelope to ensure that it reasonably compares to the signature on the county voter file. *Id.* § 19092(c)(3); *see also id.* § 20960 (discussing the process of signature verification in California); Cal. Elec. Code § 3019 (describing signature verification process in California).

Immediately upon adjudication, elections officials are required by law to enter the ballot’s return status to either “Accepted” or “Not Accepted” in the statewide voter registration system. Cal. Code Regs. tit. 2, § 19091(c). It is simply not feasible to require California election officials to complete all these ballot adjudication and voter file review tasks by the close of Election Day, even if the ballots were to be physically received by that day. What is more, requiring election officials to adjudicate ballots on a condensed time frame would do nothing to improve election security or voter confidence in election administration. A longer timeline for ballot adjudication allows for more careful processing, and that careful processing results in greater election security.

2. Nevada

The same holds true for Nevada. There, 669,334 Nevada voters, or nearly forty-five percent of the Nevada electorate, voted by mail in the 2024 General Election.¹² These mail-in ballots go through numerous processing

12. *See* Francisco V. Aguilar, Nev. Sec’y of State, *Silver State General Election Results 2024*, <https://perma.cc/3HED-LNKC> (Dec. 19, 2025) (noting that 669,334 Nevada voters voted by mail, and the state saw a total turnout of 1,487,887 voters).

stages before they are formally accepted by elections officials. Upon physical receipt of each of those mail-in ballots, an election official must first make a ballot record showing that each of those ballots were returned (an example of a processing step). *See* Nev. Rev. Stat. § 293.269927(1) (requiring the election clerk to check the signature used for each mail ballot). Next, the election official must check the signature used for the ballot by either manual or electronic means. *Id.* A manual check requires the election official to compare the signature used for the mail-in ballot with all signatures of the voter available in the records of the clerk. *Id.* § 293.269927(3). If the election official believes the signatures do not match, he or she must consult with at least two employees in the office of the clerk regarding that determination (an example of an adjudication step). *Id.* § 293.269927(3)(b).

An electronic signature check requires the election official to use an electronic device to take a digital image of the signature used on the mail ballot. *Id.* § 293.269927(2)(a). That device then compares the digital image of the signature with the signatures of the voter from voter registration records. *Id.* If the signatures do not match, election officials must then conduct the manual signature review process described above. *Id.* § 293.269927(2)(b). Once the ballot signatures are verified, the election official is then permitted by law to deposit the mail-in ballot in the proper ballot box for counting. *Id.* § 293.269927(5). To again apply the Fifth Circuit's decision to practice, at this stage the ballot would be considered both lawfully cast by the voter, received by the state, and eligible for counting.

Mail-in ballot data from Clark County, Nevada's most populous county, show why an Election Day deadline for these processing and adjudication steps is exceedingly

difficult, if not impossible, to meet, even in states that allow for pre-processing of ballots before Election Day. In Clark County alone, 67,397 mail-in ballots arrived on Election Day for the 2024 General Election.¹³ Nevada law requires each of those ballots to undergo the thorough signature verification process described above. No team of election administrators, no matter how experienced or efficient, can physically review over 60,000 mail-in ballots for signature matches by midnight on that same day, particularly when it is Election Day and many other responsibilities are at hand. It is these practical realities that make the court of appeals' decision complex to implement in practice, and why states, per their constitutional authority in administering elections, have adopted more flexible deadlines.

C. Taking the court of appeals' reasoning to its logical endpoint, election officials would need to finish processing provisional and UOCAVA ballots by midnight on Election Day as well.

The Fifth Circuit attempts to cast provisional ballots and ballots cast by overseas voters in the military as exceptions to its general rule that, given congressional silence on this issue, all ballots must be cast and received by end of Election Day. Pet. App. 21a–22a. But those exceptions cannot reasonably be squared with the reasoning underlying the decision. If this rule is applied uniformly, election officials would have to complete the processing of all provisional and Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) ballots by

13. Francisco V. Aguilar, Nev. Sec’y of State, *Mail Ballots and Election Results – Clark County* at 1 (Apr. 29, 2025), <https://perma.cc/ST65-Y5UL>.

midnight on Election Day as well. The texts of both the Help America Vote Act (“HAVA”) and UOCAVA are silent regarding any federal deadline: “[UOCAVA and HAVA] say nothing about the date or timing of ballot receipt.” Pet. App. 19a. *See generally* 52 U.S.C. § 21082(a) & 52 U.S.C. § 20307(a); *see also* Br. of Resp’ts Vet Voice Found., et al. at 48 (UOCAVA “simply permits voters using federal write-in ballots to enjoy the benefit of state extended receipt laws where they exist.”).

For election officials nationwide, processing these ballots by the close of Election Day is significantly burdensome, and, in many cases, impracticable. In 2024, 806,743 UOCAVA voters returned and submitted regular absentee ballots nationwide.¹⁴ Members of the Uniformed Services were far more likely to submit their ballot via the mail compared to overseas voters, who utilize other means, such as email-balloting.¹⁵ Just like other mail-in ballots, ballots cast by mail by UOCAVA voters must undergo similar verification processes as other absentee-ballots in each state.¹⁶

In some counties, invalidating all UOCAVA ballots received after Election Day would have a significant impact on the number of ballots cast. For example, in

14. U.S. Election Assistance Comm’n, *Election Administration and Voting Survey 2024 Comprehensive Report* 204 (Jun. 2025), <https://perma.cc/Y4HB-LLZB>.

15. *Id.* at 203.

16. *See* Cong. Rsch. Serv., *Absentee Voting for Uniformed Services and Overseas Citizens, Roles and Process*, *In Brief* 2 (Apr. 11, 2025), <https://perma.cc/499H-8F8L> (noting that UOCAVA provides overseas voters with certain protections, but the law “does not otherwise change the way in which states, territories, and localities administer elections”).

King County, Washington, election officials counted 23,101 UOCAVA ballots and ultimately rejected just 449 of them in the 2024 General Election.¹⁷ King County has the second-largest UOCAVA population nationwide, behind Los Angeles County.¹⁸ King County had 792 UOCAVA ballots returned after Election Day in the 2024 General Election.¹⁹ Nonetheless, only 15 were rejected because they were returned too late to be processed.²⁰ In other words, UOCAVA voters registered in King County are diligent in voting their ballots and signing their ballot declarations. However, under the Fifth Circuit's opinion, election officials would be required to process all ballots on Election Day by midnight, and every other UOCAVA ballot that arrived after that date, or could not be processed in time, would be invalidated.

17. See Steve Hobbs, Wash. Sec'y of State, *2024 Annual Report of Washington State Elections* 55 (2024), <https://perma.cc/8PZC-4PWK> (showing in a table of statewide UOCAVA data that 23,101 UOCAVA ballots counted and 449 rejected in King County, Washington).

18. *Id.* at 67.

19. Data from King County Elections (Dec. 31, 2025) (on file with author). Unless otherwise indicated in this section, data is reported directly from King County Elections.

20. See *2024 Annual Report of Washington*, *supra* note 17, at 55 (showing in a table of statewide UOCAVA data that 15 UOCAVA ballots had a late postmark).

D. Even in states that limit mail-in or absentee voting, compelling election administrators to process and accept all ballots by the conclusion of Election Day would impose unworkable administrative requirements.

Mandating that all ballots be processed and adjudicated so as to be considered “received” by the conclusion of Election Day would impose unworkable requirements, even in states that have historically limited mail-in voting, such as Texas and West Virginia. *See* Tex. Elec. Code Ann. § 84.007 (requiring Texas voters to apply to vote by mail); W. Va. Code § 3-3-5 (requiring West Virginia voters to apply to vote absentee). For example, in both states, the rules governing the processing of provisional ballots would directly conflict with an Election Day ballot receipt deadline.

1. Texas

By law, Texas voters are permitted to cast provisional ballots when they fail to present a voter registration certificate when voting and when their name is not on the list of registered voters in the precinct where they attempt to vote. Tex. Elec. Code Ann. §§ 63.009, 63.011. Voters may cast their ballot provisionally during early voting²¹ or on Election Day itself.²² The presiding judge of

21. *Early Voting Frequently Asked Questions*, VoteTexas.gov, <https://perma.cc/Y2G5-J55X>.

22. Tex. Sec’y of State, *Welcome to Provisional Ballots: “No Pressure” Refresher Webinar 3* (Feb. 16, 2024), <https://perma.cc/S7NJ-YRV4> (stating that provisional ballots “should be offered during Early Voting and Election Day at all Polling Locations”).

an election precinct is required to deliver in person to the general custodian of election records the box containing the provisional ballots cast in that precinct (an additional example of a processing step). Tex. Elec. Code Ann. § 65.053. Because provisional ballots are often cast on Election Day, the presiding judge inevitably must deliver these ballots to the precinct either later in the night on Election Day or after Election Day. *See id.* (requiring that the presiding judge of an election precinct to deliver provisional ballots to the general custodian of election records).

Each county’s Early Voting Ballot Board (“EVBB”), which consists of a presiding judge, alternate judge, and at least one other member,²³ typically meets multiple times during the election period to review and qualify provisional ballots.²⁴ The EVBB is required by law to examine each affidavit that accompanies a voter’s provisional ballot to determine whether to accept the ballot (a further example of an adjudication step). Tex. Elec. Code Ann. § 65.054(a). This process requires the EVBB to determine whether the person: (1) is eligible to vote in the election; (2) has voted previously in the election; (3) meets Texas’s identification requirements or has a legally valid excuse for not doing so; and (4) has been challenged for reasons other than failing to meet Texas’s identification requirements. Tex. Elec. Code Ann. § 65.054(b). It is highly unlikely that adjudication of all provisional ballots received in Texas would be completed by midnight on Election Day. Under

23. Tex. Sec’y of State, Elections Div., *Handbook for Early Voting Ballot Board 1* (Sept. 22, 2025), <https://perma.cc/EHJ2-S4N4>.

24. *Id.* at 4–5.

the court of appeals’ ruling, these provisional ballots would subsequently be disqualified, and the voters would be disenfranchised.

Data from Harris County, the most populous county in Texas, support that conclusion. In the 2024 General Election, 1,988 voters in Harris County²⁵ cast provisional ballots during the early voting period, which lasted twelve days.²⁶ On Election Day, Harris County received an additional 552 provisional ballots.²⁷ It would be a near physical impossibility for the EVBB to individually review each of the more than 500 ballots using the process described above before midnight on Election Day.

Moreover, the passage of a new Texas state law would likely exacerbate the impracticability of processing and adjudicating ballots by end of Election Day. The new state law modifies the dates of the state’s early voting period to grant Texas voters more time on weekends to vote

25. See *Cumulative Results Report: General and Special Elections*, Harris Cnty., Tex., <https://perma.cc/8XSK-ACVG> (showing the cumulative total election results for Harris County, and showing that there were 1,988 “EV Provisional,” or “Early Vote Provisional,” votes cast in the county).

26. See Tex. Sec’y of State, *Election Advisory No. 2024-17 November 5, 2024 Election and December 14, 2024 Runoff Election Law Calendar*, <https://perma.cc/6U2R-3BVK> (noting that early voting in person began on October 21, 2025 and ended on November 1, 2025).

27. See *Cumulative Results Report*, *supra* note 25 (showing the cumulative total election results for Harris County, and showing that there were 552 “ED Provisional,” or “Election Day Provisional,” votes cast in the county).

early.²⁸ It also eliminates the three-day break between the end of early voting and Election Day. *See* Tex. Elec. Code Ann. § 85.001.²⁹ That break gave election officials in Texas a three-day breathing period over which they would process early-vote ballots and prepare for Election Day voting.³⁰ The elimination of this three-day break could require Texas election officials to process and adjudicate early-vote ballots, provisional ballots, and other ballots cast in-person simultaneously on Election Day and into the evening, further complicating Texas' ability to implement the framework established by the court of appeals.

2. West Virginia

In West Virginia, validating and counting provisional ballots would be similarly unworkable. West Virginia voters whose right to vote is challenged by a state or local election official are still permitted to vote in the election using a provisional ballot. W. Va. Code § 3-1-41(b). A West Virginia election official is entitled to challenge a voter on the following grounds: the official cannot find a voter's registration record; the voter's signature in the poll book does not match that on their registration record; the registration record includes any other disqualification; the voter fails to present a valid identifying document; or on any other grounds that exist against the voter. *Id.* § 3-1-41(a).

28. Natalia Contreras, *Texas bill creating more weekend early voting could boost turnout, but delay election results*, Texas Tribune (Jun. 6, 2025), <https://perma.cc/VDU5-FXKD>.

29. Contreras, *supra* note 28 (explaining that the new law eliminates the three-day break between the end of Early Voting and the start of in-person voting on Election Day).

30. *Id.*

Under West Virginia law, provisional ballots may not be counted by election officials. Instead, West Virginia requires the county commission, on its own motion, to adjudicate the ballot by determining the validity of any challenged provisional ballots at the time of canvassing. *Id.* § 3-1-41(e). By operation of state law, that canvassing does not occur in West Virginia until the fifth day *after* Election Day, excluding Sundays. *Id.* § 3-6-9(a)(1). In other words, if the Election Day deadline is imposed on West Virginia election workers, it would directly conflict with the state’s rules for verifying the legality of provisional ballots, which must start five days after Election Day.

* * *

These examples, spanning several states and means of voting, underscore the error of the court of appeals’ apparent insistence that all ballots must be processed and adjudicated to be considered “cast” and “received” before end of Election Day. That theory has impacts well beyond whether absentee ballots can travel in the mail after Election Day to administrators and risks jeopardizing crucial state laws designed to ensure security, efficiency, and accuracy in the election process. State election codes are written to incorporate several steps that then allow administrators to know exactly how many votes there are to count—the precise formulation utilized by the Fifth Circuit. The court of appeals’ failure to grapple with, let alone acknowledge, these processing and adjudication steps demonstrate crucial flaws in its reasoning.

As Petitioner explains, the Constitution’s balance between state management of federal elections and Congressional oversight is designed precisely to allow states to innovate and respond to the practical realities of

election administration, such as questions related to mail-in ballot processing and adjudication. Pet. Br. at 4–5. The court of appeals’ ruling, whether wittingly or not, calls into question numerous state election laws beyond the ballot receipt deadline. Such an outcome cannot reasonably square with the general principle that the Constitution “invests the States with responsibility” over most of “the mechanics” of elections to federal offices, *Foster v. Love*, 522 U.S. 67, 69 (1997), and states enjoy “a wide discretion” in establishing a system for federal elections, *United States v. Classic*, 313 U.S. 299, 311 (1941). This Court should reject the court of appeals’ disruption of this balance.

II. Ballot Postmark Laws Have Enormous Practical Benefits for Election Administrators in Urban and Rural Jurisdictions Alike.

A decision striking down states’ post-election ballot receipt deadlines would undoubtedly frustrate the states’ “interest in running an orderly, efficient election.” *Democratic Nat’l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). As discussed in Section I, *supra*, post-Election Day ballot receipt deadlines allow election administrators time to complete essential processing and adjudication tasks, such as matching signatures on ballots with voter signatures on file with counties, validating mail-in ballots received before Election Day, checking the registration status of provisional voters, and processing UOCAVA ballots. Both urban and rural jurisdictions benefit from post-Election Day ballot receipt deadlines.

A. Los Angeles County, California

A detailed analysis of activities by administrators in Los Angeles County show that the ballot postmark deadline—rather than an Election Day receipt deadline—makes it possible for election officials to effectively process and count the votes for a jurisdiction with 5,745,214 registered voters,³¹ covering a land area spanning over 4,000 square miles.³² In the 2024 General Election Los Angeles County operated 649 in-person polling locations and 428 ballot drop boxes across the county. In the General Election, fifty percent of county residents voting by mail did so by dropping off their ballots in a drop box; thirty-two percent voted by mail by sending their ballots through the U.S. Postal Service; and sixteen percent did so by dropping off their ballot at a physical polling location.

By Election Day November 5, 2024, Los Angeles election officials had processed 1,675,115 vote-by-mail ballots, or sixty-one percent of the total mail ballots cast in the county. However, the County still had thirty-nine percent, or 1,068,434 vote-by-mail ballots, to process on or after Election Day. Of those ballots, 596,830 were deposited in county drop boxes; 131,797 ballots were received from the U.S. Postal Service; and 333,133 ballots were received at local voting precincts when voters

31. Data from Los Angeles Cnty. Registrar of Voters (Dec. 26, 2025) (on file with author). Unless otherwise indicated in this section, data is reported directly from the Los Angeles County Registrar of Voters.

32. Los Angeles Cnty. Dep't of Hum. Res., *About the County*, <https://perma.cc/WD83-LKN5>.

dropped them off at an in-person polling location. It is physically impossible for election officials in Los Angeles to process and adjudicate all mail-in ballots cast by these three methods by midnight on Election Day.

To start, under California law, ballot drop boxes are sealed shut at 8:00 p.m. on Election Day when the polls close. Cal. Code Regs. tit. 2, § 20136(e). After that, election workers visit each drop box to pick up the ballots and deliver them to the centralized processing center in Los Angeles. But due to the sheer scale of Los Angeles County's ballot drop box infrastructure, these drop box ballots may not even arrive at the central processing center until after midnight on Election Day.³³ After these ballots arrive, each needs to undergo signature processing and adjudication before it can be counted. Cal. Code Regs. tit. 2, § 19092.

Additionally, California voters may place ballots in drop boxes in a different county than the one in which they are registered to vote. For example, in the General Election, nearby counties sent Los Angeles County 16,536 ballots cast by Los Angeles voters in jurisdictions other than Los Angeles, and Los Angeles County received 20,148 ballots from voters registered in other jurisdictions who cast their ballots in Los Angeles County. California law requires election officials to send each of these ballots

33. Some California jurisdictions, like the City and County of San Francisco, require law enforcement to collect and deliver ballots to the Department of Elections, which also affects the timing for ballot delivery and processing. *See* S.F. Charter § 13.104.5 (establishing that the San Francisco Sheriff's department is responsible for transporting all voted ballots to the central counting location).

to the correct county no later than eight days after receipt. Cal. Elec. Code § 3017(a)(3). For ballots delivered by voters on or near Election Day, these processes do not occur by midnight on Election Day.

The data show that a post-Election Day mail-in ballot receipt deadline would significantly disenfranchise younger voters in particular. If the deadline was applied to the 2024 General Election count, over 25% of mail-in ballots cast by voters ages 18 to 24 would be invalidated. Over 17% of mail-in ballots cast by voters 25 to 34 years old and over 12% of mail-in ballots cast by voters 35 to 44 years old would be similarly invalidated. Of course, this disenfranchising risk extends to all ages: in the same scenario, 10,566 ballots cast by voters ages 65 and up would be invalidated.

B. Harney County, Oregon

Requiring all ballots to be processed by Election Day would affect rural jurisdictions as well. For example, in Harney County, Oregon, a rural county located in Eastern Oregon, an Election Day ballot processing deadline would impose significant burdens on election officials and Harney County voters alike.³⁴ Harney County covers a land area spanning 10,000 square miles, and only 7,402 people lived in the county in 2024. The elections office in the county employs just two permanent staff members.

Signature curing processes would be particularly onerous under an Election Day processing deadline in

34. Unless otherwise indicated in this section, data is reported directly from the Harney County Clerk.

Harney County. *See generally* Or. Rev. Stat. § 254.431 (allowing voters to cure mail-in ballots with signatures issues for up to 21 days after Election Day by presenting evidence to or completing certain forms for the local election official). For example, voters who live in an unincorporated community eighty miles south of the county's election offices already may have to drive 160 miles round-trip to cure their ballots by presenting signature evidence—a significant challenge, made even more burdensome if this travel had to occur by end of day Election Day.

Harney County election officials report that, in November, the driving path from the unincorporated community to the elections office is often treacherous due to severe winter weather that is common in Eastern Oregon in late autumn. In addition, Harney County is home to the Burns Paiute Tribe, one of the nine official Native American tribes in Oregon. Election officials note that many of the elders in that community do not drive and would therefore need to rely on younger members of the community to drive them to the elections office to cure their ballots by Election Day.

The Harney County Clerk's Office would also need to hire more temporary workers to meet an Election Day ballot processing deadline. County election officials report that temporary and permanent workers would need to work twenty-four hours a day to meet such a deadline. In addition to hiring more staff, election officials would need to request supplemental budget funds from their county boards mere months before a General Election.

* * *

Though Los Angeles County, California and Harney County, Oregon differ significantly in terms of population and geography, and they confront different challenges in administering their elections, each benefit from post-election ballot receipt deadlines.

III. Invalidating States' Ballot Postmark Laws Would Impose an Administrative Burden on Local Election Officials, the Effects of Which Would Be Especially Significant in a Federal Election Year.

Mississippi allows absentee ballots postmarked on or before Election Day to be counted if they are received within five business days of the election. Miss. Code Ann. § 23-15-637(1)(a). Laws like Mississippi's are commonplace—thirteen states, three territories, and the District of Columbia have similar laws on the books.³⁵ Eliminating post-election ballot receipt deadlines would

35. They are: Alaska (within 10 days if postmarked on or before Election Day); California (7 days); D.C. (10 days); Illinois (14 days); Guam (within 10 days by 5:00pm); Maryland (within 10 days by 10:00am); Massachusetts (5:00pm on the third day after a biennial state election); Nevada (5:00pm on the fourth day, and for ballots with unclear postmarks, 3 days); New Jersey (144 hours after polls close, and 48 hours for mail-delivered ballots without postmarks); New York (7 days); Oregon (7 days); Puerto Rico (on or before the last day of the general canvass); Texas (5:00pm the day after the election); the Virgin Islands (10 days); Virginia (noon on the third day after the election); Washington (the day before certification); and West Virginia (before the canvass, which happens on the fifth day after the election, or, for ballots without U.S.P.S. postmarks, on the day after the election). Another ten states have similar laws specifically for overseas voters, meaning 23 states and the District of Columbia have rules that allow for some timely-postmarked ballots to be received after Election Day.

affect nearly every aspect of the preparation for and administration of the General Election in these states in 2026, just months before it is set to occur.

Before Election Day, *amici* would have significant responsibility to re-educate voters about new ballot receipt deadlines. *Amici* and state election officials have already devoted significant resources to educating the public about valid post-Election Day deadlines, sometimes for many years. Voters are accustomed to these deadlines. To make matters worse, instead of educating voters about a singular Election Day postmark deadline, *amici* would be required to educate voters to simply submit their ballots “early” and hope that postal service slowdowns due to unforeseen circumstances, such as administrative changes at the U.S. Postal Service,³⁶ do not push ballot receipt past 11:59 p.m. on Election Day.

36. In recent years, cost-cutting measures implemented by the U.S. Postal Service have resulted in the delayed processing and delivery of absentee and mail-in ballots. State and local election officials from across the country have repeatedly highlighted these concerns. *See, e.g.*, Letter from Nat’l Ass’n of Sec’y’s of State & Nat’l Ass’n of State Election Dirs. to Postmaster Gen. Louis DeJoy 1-2 (Sept. 11, 2024), <https://perma.cc/CJ7X-FLBN>. Additionally, the U.S. Postal Service recently adopted a new rule that confirms that an official “postmark” may not be applied to a piece of mail until after the postal service *processes* the mail, as opposed to when the postal service first *possesses* the mail. Postmarks and Postal Possession, 90 Fed. Reg. 52883, 52891 (Nov. 24, 2025) (to be codified at 39 C.F.R. pt. 111). Therefore, even if a mail-in ballot is timely submitted to the U.S. Postal Service by Election Day, it may not be postmarked until after Election Day. Anna Liss-Roy, *Thousands of mail-in ballots could be discounted under new post office policy*, Wash. Post. (Jan. 3, 2026), <https://perma.cc/NL3Q-DBC2>.

A decision striking down post-election ballot receipt deadlines would also require election officials and local governments to spend additional time and resources on educating voters to use county drop boxes rather than post offices to transport their ballots. Installing additional drop boxes to compensate for any delays in mail delivery would require additional money and time, as well as potentially more security and surveillance to protect these locations from tampering. And *amici* would need to hire and train additional staff to pick up the ballots from those drop boxes.

On Election Day, *amici* would be slammed with a heavy administrative burden that is unlikely to be fixed by simply hiring more staff. Local election officials would need to process thousands of ballots in an extremely short timeframe. Simultaneously, they would need to contend with longer lines at in-person voting sites when voters who realize that (or are simply concerned that) their mail-in ballots will not be received by election officials on Election Day flock to the polls to vote in person. This practice will likely result in voters casting more provisional ballots, which would require election officials to process and adjudicate even more ballots on the night of the election. At the same time, local election officials report that they would not be able to hire staff members fast enough to accommodate the increased demand under a receipt-based regime. In Los Angeles County, for example, election officials reported that election workers *already* do double and triple shifts during critical election periods due to high demand. These burdens would only be exacerbated in a receipt-based system.

Ultimately, the voters may be harmed as well. A decision requiring all ballots to be received by Election

Day could result in some votes being timely received physically by local election officials but not processed and adjudicated in time to meet the newly imposed deadline, despite best efforts by careful and proactive administrators and local governments.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX

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APPENDIX A — LIST OF *AMICI CURIAE*

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2a

Appendix A

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