

No. 24-1260

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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

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**BRIEF OF AMICI CURIAE LEAGUE OF WOMEN VOTERS,  
RURAL COALITION/COALICIÓN RURAL, CENTER FOR  
RURAL STRATEGIES, AMERICAN ASSOCIATION OF  
PEOPLE WITH DISABILITIES, AND DISABILITY RIGHTS  
MISSISSIPPI IN SUPPORT OF PETITIONER**

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U.S. Bureau of Lab. Stats., <i>Occupational Outlook Handbook—Flight  Attendants</i> (Aug. 28, 2025) .....	33
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## INTEREST OF AMICI<sup>1</sup>

Amici are a coalition of organizations with different perspectives and interests who agree that states should remain able to set rules for the receipt and counting of absentee ballots as they see fit, as they have for many decades notwithstanding the federal statutes at issue in this case.

The League of Women Voters (the League) is a nonprofit, nonpartisan, grassroots membership organization committed to protecting voting rights, empowering voters, and defending democracy. Through advocacy, education, mobilization, and litigation, the League works to ensure that all voters have the opportunity and information to exercise their right to vote. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than one million members and supporters across all states and D.C., including seniors and other voters who would be directly impacted by the elimination of reasonable ballot-receipt grace-period rules.

Rural Coalition/Coalición Rural is a 47-year-old alliance of more than 60 grassroots organizations working to protect land, food, and rural communities. Its constituents include rural voters who rely on mail ballots, and who would be directly affected by the elimination of reasonable ballot-receipt deadlines,

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<sup>1</sup> Counsel for amici certify that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the brief's preparation or submission; and no person other than amici, their members, or their counsel contributed money intended to fund the brief's preparation or submission.

including farmworkers and ranchers in California and Texas, family farmers in Mississippi and Massachusetts, and rural Americans of all stripes from West Virginia to Washington.

The Center for Rural Strategies seeks to improve economic and social conditions for communities in the countryside by producing media and public information campaigns about the problems and opportunities that exist in contemporary rural communities. Rural Strategies' ongoing projects include The Daily Yonder, a digital news platform covering rural news, as well as the Rural Assembly and the Rural Faith Initiative. Rural Strategies serves and represents communities directly impacted in this case.

The American Association of People with Disabilities (AAPD) is a national disability-led organization advocating for the civil rights of over 70 million disabled Americans. AAPD works to build civic engagement in the disability community and improve election accessibility. AAPD has disability vote coalitions in 20 states, including in states that count timely-cast mail-in ballots received after Election Day. AAPD has an interest in ensuring that states can enact laws that ensure voters with disabilities—who disproportionately rely on absentee and mail voting and often face substantial voting barriers—have fairer opportunities to cast effective ballots.

Disability Rights Mississippi (DRMS) is Mississippi's Protection and Advocacy agency, authorized to pursue legal action on behalf of individuals with disabilities in the State. 42 U.S.C. § 15043(a)(2)(A)(i). DRMS has a critical interest in

protecting Mississippi’s absentee-ballot-receipt deadline to prevent Mississippians with disabilities from being disenfranchised at disproportionate levels.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

This case is about the meaning of century-old federal statutes that set a uniform date for federal elections, and whether those statutes’ designation of a “day for the election” of federal officials preempts state election regulations regarding how voters’ mail ballots are received and counted. 2 U.S.C. § 7; *accord* 2 U.S.C. § 1; 3 U.S.C. §§ 1, 21(1). The Mississippi statute challenged here is one of at least thirty similar state statutes nationwide—versions of which have been in place for over a century in some states.

Did Congress, by designating a “day for the election” several generations ago intend to displace state election rules around ballot counting and receipt, despite the comprehensive systems developed in state after state over the last century to administer those processes and serve their voters? Or did it simply mean to require that states hold federal elections on the same day?

The Election Day statutes’ plain text is consistent with Mississippi’s law and does not preempt it, as the State explains. Pet’r’s Br. 24-26. Amici write to emphasize how the states’ and Congress’s longstanding policymaking practices in light of the federal Election Day statutes reinforce this conclusion.

“Long settled and established practice” by relevant political actors sheds light on and shapes

constitutional and statutory meaning. *Chiafalo v. Washington*, 591 U.S. 578, 592 (2020). So does Congress's informed decision not merely to leave such practices undisturbed but to actively and repeatedly accommodate them. E.g., *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983).

Those interpretive principles strongly support reversal because, for decades, Congress and states have acted on the understanding that the federal Election Day statutes do not constrain state mail-ballot receipt policies. In the century since the Election Day statutes were enacted, states have understood, consistent with fundamental federalism principles, that they had flexibility over receipt deadlines for timely-cast absentee ballots. Congress showed the same understanding when it repeatedly enacted legislation touching upon mail and absentee voting and receipt of those ballots, such as the Uniformed and Overseas Citizens Absentee Voting Act, and expressly respected states' receipt deadlines instead of displacing them.

This Court's consideration of the established practices of states and Congress in its interpretive approach does more than help determine statutory meaning. It promotes a stable, federalist policymaking environment in which states can develop procedures that meet the needs of their populations without fear that ancient, longstanding federal statutes will suddenly be reinterpreted to impose new constraints.

This stability has enabled states to respond to their constituents' needs—as Mississippi did in 2020 by enacting the absentee-ballot-receipt provision at

issue on a nearly unanimous bipartisan basis. States have used this flexibility to address their diverse electorates' concrete needs. Rural states like Alaska face unique challenges: vast distances, limited road access, and unreliable mail delivery. States with large elderly or disabled populations—including Mississippi, where nearly a quarter of residents are over 60—have structured absentee-ballot processes to accommodate voters who depend on mail ballots or assistive services. States have long recognized the needs of workers whose jobs require travel—often on short notice—from railroad employees and traveling salespeople a century ago to today's truck drivers and travel nurses. States' ability to respond to constituents' needs in their own chosen ways, through their own political processes, is quintessential federalism in action.

The Court should reverse.

## ARGUMENT

### I. THE STATES AND CONGRESS HAVE LONG UNDERSTOOD THE ELECTION DAY STATUTES NOT TO PREEMPT LAWS LIKE MISSISSIPPI'S.

The federal Election Day statutes provide that the first Tuesday in November is “established as the day for the election” for various federal offices during even years. 2 U.S.C. § 7; *accord* 2 U.S.C. § 1; 3 U.S.C. §§ 1, 21(1). The statutes are old—the oldest enacted in the 1840s to end the practice of states holding presidential elections on different days, sometimes weeks or months apart. Act of Jan. 23, 1845, 5 Stat. 721

(codified as amended at 3 U.S.C. § 1); *see* Cong. Globe, 28th Cong. 2d Sess. 14, 27-31 (1844).

This case involves an utterly novel interpretation of these longstanding statutory authorities. The Fifth Circuit held that the Election Day statutes do not merely require all states to hold their federal elections on the same day but also preempt a wide swath of state election administration rules, including rules relating to ballot receipt and counting and the conduct of mail or absentee ballot voting. *See* Pet. App. 26a.

In such circumstances, the interpretations—and resulting actions—of political actors like the states and Congress help confirm statutory meaning. And here, contrary to the Fifth Circuit’s conclusion, the conduct of the states and the actions of Congress over the last century demonstrate that the Election Day statutes have never been understood to preempt state ballot-counting and absentee-ballot rules.

**A. The Regular Course of Practice by the States Helps Settle the Meaning of the Election Day Statutes.**

Especially where some party advances a novel interpretation of a longstanding provision of law, this Court looks to how that provision of law has been carried out in practice. “Long settled and established practice” can thus elucidate constitutional and statutory meaning. *Chiafalo*, 591 U.S. at 592-93 (quoting *The Pocket Veto Case*, 279 U.S. 655, 689 (1929)).

This principle has deep roots. Madison “emphasized that ‘a regular course of practice’ could ‘liquidate and settle the meaning’ of disputed

provisions in written laws, whether statutory or constitutional.” Caleb Nelson, *Stare Decisis and Demonstrably Erroneous Precedents*, 87 Va. L. Rev. 1, 11-12 (2001); *see also N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 35-36 (2022); *accord Chiafalo*, 591 U.S. at 593. In the Madisonian conception, while a “single instance” of some legislative act was not dispositive, “a course of practice” could be powerful enough to settle interpretive questions. William Baude, *Constitutional Liquidation*, 71 Stan. L. Rev. 1, 31 (2019).

*Chiafalo* is instructive. There, a group of presidential electors challenged a Washington state law that would penalize them if they did not support their pledged candidate, claiming they were entitled under the Constitution to make an independent judgment. This Court disagreed and deemed the states’ established practices requiring electors to support their pledged candidates critically important. “From the first,” the Court explained, states had dispatched electors to the Electoral College “to vote for pre-selected candidates, rather than to use their own judgment.” 591 U.S. at 593. “State election laws evolved to reinforce that development, ensuring that a State’s electors would vote the same way as its citizens.” *Id.* at 595.

*Chiafalo* arose in the constitutional context, but the Madisonian conception of deriving interpretive meaning through the consideration of a course of practice is not limited to constitutional provisions. *See, e.g., McGirt v. Oklahoma*, 591 U.S. 894, 914 (2020). “[T]he longstanding practice of the government—like any other interpretative aid—can

inform a court’s determination of what the law is.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (citation modified); *see Baldwin v. United States*, 589 U.S. 1231, 1236 (2020) (Thomas, J., dissenting from denial of certiorari) (describing statutory liquidation, “in which consistent and longstanding interpretations of an ambiguous text could fix its meaning”). As Madison explained, “[a]ll new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications.” The Federalist No. 37 (Madison).

Here, as in *Chiafalo*, the states’ legislative actions since the advent of the Election Day statutes demonstrate a consistent and widespread understanding that those federal statutes do not constrain states from developing absentee and mail ballot rules to meet their particular needs.

The tradition of counting timely-cast ballots received after Election Day extends back generations. Over a century ago, when California began offering absentee voting to all eligible voters, it permitted the counting of “[a]ll ballots cast” absentee by mail “received by the county clerk or registrar of voters . . . within fourteen days after the date of the election.” *See* 1923 Cal. Stat. ch. 283. Around that same time, several other states began enacting similar laws accepting timely-sent ballots received after

Election Day from certain classes of voters.<sup>2</sup> Further, the record in this case includes even earlier evidence of states permitting post-Election Day receipt of absent soldiers' ballots during the Civil War. *See Pet. App.* 48a-50a (Graves, J., dissenting from denial of rehearing en banc) (detailing state laws that "allowed Civil War soldiers to vote on Election Day" and have their "ballots . . . transported back home . . . after Election Day" to be counted by election officials).

Thus, for at least a century, states have enacted absentee-ballot laws that allow post-Election Day receipt of timely-cast mail ballots. At least nine states were doing so by 1943. *See Br. of Resp'ts Vet Voice Found., et al., in Supp. of Pet.* (Vet Voice Br.) at 26. Today, thirty-one states allow post-Election Day receipt of absentee ballots cast by at least some voters—fourteen of which (along with D.C. and

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<sup>2</sup> A 98-year-old publication by amicus the League offers early examples. *See* Helen M. Rocca, *A Brief Digest of Laws Relating to Absentee Voting and Registration* 34, Nat'l League of Women Voters (1928), <https://perma.cc/9AJV-VDZA> (describing Kansas's 1923 law permitting "those absent in . . . civil or military services" to mail an absentee ballot "in time to reach the [election] officer on or before the tenth day following election"); *id.* at 41 (describing Maryland's 1924 law counting servicemembers' ballots if postmarked "on or before election day" and received within "seven days after election"); *id.* at 61 (describing New Jersey law permitting servicemembers to vote by mail to the Secretary of State, who must receive them "not later than the fourth Tuesday following any election"); *id.* at 70 (describing North Dakota's accommodation for absent military voters' late-arriving ballots "received too late to be canvassed" in the normal course); *id.* at 79 (describing South Carolina's law providing that ballots cast by those "absent on account of sickness" may be "counted [until] the time when the executive committee meets to declare the result").

several territories) have such receipt windows for all absentee ballots.<sup>3</sup> Courts should not lightly disregard a course of state policymaking practice that has operated for decades without disruption—particularly where, as explained below, Congress has repeatedly validated it.

### **B. Congress's Deference to States' Divergent Ballot-Receipt Deadlines Further Settles the Meaning of the Election Day Statutes.**

This Court often “resist[s] reading congressional intent into congressional inaction,” *Kimbrough v. United States*, 552 U.S. 85, 106 (2007), but inaction

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<sup>3</sup> Ala. Code § 17-11-18(b); Alaska Stat. § 15.20.081(e); Ark. Code § 7-5-411(a)(1)(A)(ii); Cal. Elec. Code § 3020(b); Colo. Rev. Stat. § 1-8.3-113(2); D.C. Code §§ 1-1001.05(a)(10B), 1-1061.10; 3 Guam Code § 10114; Fla. Stat. § 101.6952(5); Ga. Code § 21-2-386(a)(1)(G); 10 Ill. Comp. Stat. 5/19-8(c); Ind. Code § 3-12-1-17(b); Iowa Code § 53.44(2); Md. Code Regs. 33.11.03.08(B)(4); Mass. Gen. Laws ch. 54, § 93; Mich. Comp. Laws § 168.759a(18); Miss. Code § 23-15-637(1)(a); Mo. Rev. Stat. § 115.920(1); Mont. Code §§ 13-21-206(1)(c), 13-21-226(1); Nev. Rev. Stat. § 293.269921(1)(b)(2); N.J. Stat. § 19:63-22(a); N.Y. Elec. Law § 8-412(1); N.C. Gen. Stat. § 163-258.12(a); N.D. Cent. Code § 16.1-07-24; Ohio Rev. Code § 3511.11(B); Or. Rev. Stat. § 253.070(3)(b); 25 Pa. Cons. Stat. § 3511(a); P.R. Laws tit. 16, § 4736(2); R.I. Gen. Laws § 17-20-16; S.C. Code § 7-15-700(A); Utah Code § 20A-16-408(1); Tex. Elec. Code § 86.007(a)(2); V.I. Code tit. 18, § 665(a); Va. Code § 24.2-709(B); Wash. Rev. Code §§ 29A.40.091(4), 29A.60.190; W. Va. Code § 3-3-5(g). States and jurisdictions with post-Election Day receipt for all absentee ballots are Alaska, California, D.C., Guam, Illinois, Maryland, Massachusetts, Mississippi, Nevada, New Jersey, New York, Oregon, Puerto Rico, Texas, Virginia, Virgin Islands, Washington, and West Virginia.

carries greater weight when Congress regularly legislates in the field, is aware of state practice, and declines to disturb it. Such acquiescence supplies particularly strong evidence of statutory meaning when Congress has affirmatively legislated on the precise topic and accommodates rather than displaces state practice.

The Constitution's Elections Clause provides states the power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," but allows Congress to "make or alter such Regulations," U.S. Const. art. I, § 4, cl. 1. Over time, "Congress has regularly exercised its Elections Clause power." *Rucho v. Common Cause*, 588 U.S. 684, 698 (2019). Any "assumption that Congress is reluctant to pre-empt does not hold when Congress acts under that constitutional provision." *Arizona v. Inter Tribal Council of Ariz., Inc. (ITCA)*, 570 U.S. 1, 14 (2013). But this preemption extends "only so far as it is exercised, and no farther," *id.* at 9, because "Elections Clause legislation . . . always falls within an area of concurrent state and federal power," *id.* at 15 n.6.

The question, then, is what Congress has actually required through the Election Day statutes. Congressional action accommodating state ballot-receipt deadlines illuminates that answer. This Court has recognized that even in a field of exclusive federal interest, "the case for federal pre-emption" may be "particularly weak where Congress has indicated its awareness of the operation of state law . . . and has

nonetheless decided to ‘stand by both concepts and to tolerate whatever tension there was between them.’” *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166-67 (1989) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 256 (1984)). That principle also applies in the elections context, where the Constitution contemplates a critical role for states as the “default” rulemakers. *Foster v. Love*, 522 U.S. 67, 69 (1997). And Congress’s informed decision to preserve state practice carries particular weight “in a high-profile area in which it” has previously exercised its authority. *Kimbrough*, 552 U.S. at 106. The timing and manner of elections is such an area.

Congress’s awareness of state ballot-receipt deadlines could not be clearer. Approximately sixty percent of states, accounting for over eighty percent—357 of 435 seats—of the House of Representatives, allow post-Election Day receipt of timely-cast absentee ballots by at least some voters, and nearly thirty percent of states currently offer such receipt grace periods for all timely-cast absentee ballots, accounting for almost half of the House: 200 of 435 seats.<sup>4</sup>

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<sup>4</sup> See *supra* n.3; U.S. House of Representatives, *Directory of Representatives*, <https://perma.cc/QDK6-QUUF> (states with post-Election Day receipt deadlines for all ballots: AK (1); CA (52); IL (17); MD (8); MA (9); MS (4); NV (4); NJ (12); NY (26); OR (6); TX (38); VA (11); WA (10); WV (2); states with such deadlines for some ballots: AL (7); AR (4); CO (8); FL (28); GA (14); IN (9); IA (4); MI (13); MO (8); MT (2); NC (14); ND (1); OH (15); PA (17); RI (2); SC (7); UT (4)).

Candidates for Congress are well aware of these rules, which govern their own elections. If Congress believed that these state laws conflicted with the Election Day statutes, it would have a strong incentive—and the power and information needed—to preempt them. And yet Congress has done the opposite for a century. *Cf. Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay) (“The Constitution provides that state legislatures . . . bear primary responsibility for setting election rules . . . . If state rules need revision, Congress is free to alter them.”).

Congressional inaction is particularly strong evidence of intent when “Congress affirmatively manifest[s] its acquiescence” to other governmental actors by passing legislation on the precise topic at issue that leaves the challenged conduct unaltered. *Bob Jones Univ.*, 461 U.S. at 601; *see also Haig v. Agee*, 453 U.S. 280, 301 (1981); *Zemel v. Rusk*, 381 U.S. 1, 11-12 (1965). That is precisely the case here. Over the past forty years, Congress has passed and amended three major laws that either explicitly defer to state absentee-ballot deadlines or leave those deadlines undisturbed.

First, in passing—and frequently amending—the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), Congress deferred to states’ receipt deadlines rather than mandating either Election Day receipt or a particular grace period.

Pub. L. No. 99-410, 100 Stat. 924.<sup>5</sup> UOCAVA requires states to count absentee ballots of overseas servicemembers in accordance with “the date by which an absentee ballot must be received in order to be counted” under state law. 52 U.S.C. §§ 20302(a)(10), 20304(b)(1). This codifies federal acceptance of states’ longstanding decisions to allow post-Election Day receipt of military and overseas ballots. *See* Vet Voice Br. at n.3.

Second, Congress has expressly facilitated counting of ballots from military and overseas voters received after Election Day. In one amendment to UOCAVA, the MOVE Act of 2009, Congress mandated that the head of an executive department designated by the President “shall implement procedures that facilitate the delivery of marked absentee ballots of absent overseas uniformed services voters . . . not later than the date by which an absentee ballot must be received in order to be counted in the election.” Nat’l Def. Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, 123 Stat. 2190. Congress therefore required not just deference to state receipt deadlines but active federal compliance with them for overseas servicemembers.

Thus, when the Fifth Circuit described “some federal election statutes” as merely “silent about . . . receiving and counting ballots after Election Day,”

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<sup>5</sup> See Cong. Rsch. Serv., *The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues* (Oct. 26, 2016), <https://perma.cc/T9LG-RHFR> (detailing numerous congressional amendments to UOCAVA).

Pet. App. 20a, it was wrong. UOCAVA and its amendments are not silent: they demonstrate that Congress not only knew about states' choices of receipt deadlines and did not care whether they had chosen deadlines before, on, or after Election Day, but went further in affirmatively mandating that the federal government "shall implement" them for voters covered by UOCAVA.

Third, in amending the presidential Election Day statute, 3 U.S.C. § 1, in 2022 through the Electoral Count Reform Act, Pub. L. 117-328, 136 Stat. 4459, Congress had ample opportunity to reject a century of state practice and impose a uniform deadline. Instead, it emphasized that presidential electors shall be appointed "in accordance with the laws of the State enacted prior to election day." 3 U.S.C. § 1. In other words, Congress deferred to state judgments about mail-ballot-receipt deadlines so long as that law was in place on Election Day—just two years after several states, including Mississippi, enacted ballot-receipt grace periods. *See* Pet. App. 19a-20a.

Considering Congress's actions reinforcing its interpretation that the Election Day statutes do not touch states' authority to count ballots received after Election Day, the Fifth Circuit's conclusion that "congressional silence does not 'reinforce[ ]' anything," *id.* at 19a, is misplaced. While "[g]eneral acquiescence cannot justify departure from the law," a "long and continuous interpretation in the course of official action under the law may aid in removing doubts as to its meaning." *Smiley v. Holm*, 285 U.S. 355, 369

(1932). Given Congress’s “regular[] exercise [of] its Elections Clause power,” *Rucho*, 588 U.S. at 698, its intimate knowledge of a century of state legislation choosing differing ballot-receipt deadlines, and its explicit decades-long deference to those deadlines in its lawmaking, the Court has much more than “congressional silence” to aid its interpretation.

## **II. THE FIFTH CIRCUIT’S RULE WOULD CURTAIL STATES’ LONGSTANDING ABILITY TO DEVELOP ABSENTEE-BALLOT ADMINISTRATION POLICIES THAT RESPOND TO THEIR VOTERS’ NEEDS.**

### **A. Decades of Unbroken State Practice Reflect the Needs of Individual States and Their Voters.**

Because they never understood the federal Election Day statutes as a constraint, states have for a century permitted post-Election Day ballot receipt in response to their voters’ needs. For instance, as California’s economy boomed in the 1920s, it offered absentee voting—with the two-week receipt deadline described above—to traveling workers or businesspeople, and military service members. *See* 1923 Cal. Stat. ch. 283. Other states contemporaneously accepted timely-sent ballots received after Election Day from specific classes of voters, ranging from servicemembers to the sick. *See* Rocca, *supra* n.2.

Through the subsequent decades, states have made divergent choices to suit their needs. Thus, absentee voting procedures are highly state-specific.

But while the list of states that have availed themselves of a system with a post-Election Day receipt deadline has changed over time, the practice has endured for over a century.

Currently, fourteen states, D.C., and several territories allow post-Election Day receipt of all timely-cast absentee ballots. *See supra* n.3. These states run the gamut: Politically, they fill the spectrum from deep red to purple to deep blue.<sup>6</sup> The list features California and Texas, the two most populous states, as well as some of the least populous jurisdictions, such as Alaska, D.C., and even smaller territories.<sup>7</sup> The states with the largest urban populations and largest rural populations both make the list.<sup>8</sup> And much like the states themselves, receipt deadlines—and the complex absentee voting regimes built around them and premised on their long-accepted legitimacy—vary, according to balances struck by each state’s legislature, reflecting the particular needs of local voters and election administrators.

For instance, some states set their absentee application deadlines early to make ballot receipt by

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<sup>6</sup> For instance, the list includes West Virginia and Maryland, the “most Republican-friendly” and “most Democratic-friendly” states, respectively. Louis Jacobson, *Ranking the States Demographically, from Most Republican-Friendly to Most Democratic-Friendly*, Univ. Va. Ctr. for Pol. (Feb. 10, 2022), <https://perma.cc/A8VB-WTRH>.

<sup>7</sup> U.S. Census Bureau, *State Population Totals and Components of Change: 2020-2024* (Dec. 2024), <https://perma.cc/2XHS-982A>.

<sup>8</sup> See U.S. Census Bureau, *Nation’s Urban and Rural Populations Shift Following 2020 Census* (Dec. 29, 2022), <https://perma.cc/M5TL-TTKQ>.

Election Day more likely. *See, e.g.*, R.I. Gen. Laws § 17-20-2.1 (application due 21 days before election); *id.* § 17-20-16 (Election Day receipt deadline); *see also* Vt. Stat. tit. 17, § 2537a(a)(1) (automatically mailing general election ballot to *every* registrant as early as “43 days before the election”); *id.* § 2543(d)(1)(B) (Election Day receipt deadline). Other states permit later applications but allow in-person absentee ballot return, drop boxes, or additional time for timely-cast mail ballots to be received after Election Day. *See, e.g.*, Mass. Gen. Laws ch. 54, § 89 (allowing applications for mail ballots until five days before election and in-person absentee ballots until the day before election); *id.* § 93 (permitting drop-box or in-person return until Election Day, or timely-postmarked ballot receipt within three days of election).

Each state has designed its election system around its choice of absentee-ballot-receipt deadline. Receipt deadlines anchor election calendars and administration—shaping everything from candidate filing deadlines to certification procedures— influencing voter behavior patterns that become entrenched over multiple election cycles.

The panoply of state absentee-balloting regimes reflects our federalist system of election administration—a system erected by the Framers that this Court has praised. In the wake of challenges to absentee ballot deadlines at the height of the COVID-19 pandemic, Justice Kavanaugh wrote:

To be sure, in light of the pandemic, some state legislatures have exercised their Article I, § 4, authority over elections and have changed their election rules for the

November 2020 election. Of particular relevance here, a few States such as Mississippi no longer require that absentee ballots be received before election day. Other States such as Vermont, by contrast, have decided not to make changes to their ordinary election-deadline rules, including to the election-day deadline for receipt of absentee ballots. The variation in state responses reflects our constitutional system of federalism.

*Democratic Nat'l Comm.*, 141 S. Ct. at 32 (Kavanaugh, J., concurring in denial of application to vacate stay) (citations omitted). While “[o]ne may disagree with a State’s policy choice” to either “require that absentee ballots be received by election day” or “require only that absentee ballots be *mailed* by election day,” each state makes their choice “for weighty reasons.” *Id.* at 34. When a state constructs a complex absentee balloting regime—including its choice of receipt deadline—it “bring[s] to bear the collective wisdom of the whole people,” and “must compromise to achieve the broad social consensus necessary to enact new laws.” *Id.* at 29 (Gorsuch, J., concurring in denial of application to vacate stay).

For over a century, this federalist arrangement went undisturbed. Where Congress acted, it was only to accommodate state receipt deadlines. And until 2024, no federal court found any conflict with the ancient Election Day statutes. *See Pet. App. 3a.* Indeed, this Court has recognized that post-Election Day receipt of timely-cast absentee ballots is “designed to ensure that the voters of [states] can cast

their ballots and have their votes count.” *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 423-26 (2020).

### **B. Receipt Periods Vary Based on Each State’s Balancing of Voters’ and Election Administrators’ Needs.**

States choose election administration policies that suit the needs of their electorate and election administrators. Some states have structured absentee voting regimes around post-Election Day receipt deadlines, and generations have come to rely on these policies.

#### **1. States rely on receipt-deadline cushions to safeguard rural voters.**

States with rural voters who are widely dispersed across harder-to-reach areas face unique election administration difficulties. In 1923, Nevada was the first state to authorize absentee voting beyond those physically absent or with a disability; instead, the State authorized mail voting by those living in sparsely populated precincts. P. Orman Ray, *Absent-voting Laws*, 18 Am. Pol. Sci. Rev. 321, 324 (1924). The provision’s “main purpose” was to “avoid the trouble and expense involved in establishing polling places and appointing election officers in the sparsely settled portions of the state.” *Id.*

Administering elections in rural areas raises distinctive challenges. Rural voters live far from polling places. The median land area served by each polling place in rural counties is sixty-two square

miles, compared to only two square miles for urban polling places.<sup>9</sup> Some rural states have employed generous absentee voting policies to ease those burdens. For instance, rural counties with no-excuse mail voting have higher overall turnout than rural counties that require a qualifying reason to vote absentee.<sup>10</sup>

But rural voters face challenges even when voting by mail. Rural mail service is unreliable, and the U.S. Postal Service (USPS) has reduced hours and ended evening mail pick-ups at rural post offices, or even shuttered branches, as it faces budget crises.<sup>11</sup> “[S]ignificant negative impacts on rural communities throughout the United States” are only expected to worsen as the USPS implements operational and service standard changes amid continued financial losses.<sup>12</sup> Several rural states have chosen to mitigate

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<sup>9</sup> Secure Democracy USA, *The Forgotten Voters: How Current Threats to Voting Hurt Rural Americans* 4, 11 (June 2022), <https://perma.cc/HM7T-KR4R>.

<sup>10</sup> See *id.* at 3-4 (8% higher turnout in 2020).

<sup>11</sup> See, e.g., *id.* at 4; U.S. Postal Serv., *Changes in Service Standards—FAQs* 6-9 (Dec. 17, 2025), <https://perma.cc/N925-QUU6>; Aspen Inst., *Supporting Ballot Access in Rural Communities* (Sept. 3, 2025), <https://perma.cc/5QE7-2A6W>.

<sup>12</sup> U.S. Postal Regul. Comm'n, *Advisory Opinion on the Operational and Service Standard Changes Related to the Delivering for America Plan* (Jan. 31, 2025), <https://perma.cc/K792-G4YA>; see also, e.g., Nick Loomis, *Privatize or downsize the USPS? Rural customers worry either option will hurt them*, Neb. Pub. Media (July 16, 2025), <https://perma.cc/32XA-V64U> (describing threats to rural mail service and detailing how “[c]utting services to rural

the risk of such voters being disenfranchised due to postal delays by adopting a post-Election Day receipt deadline.<sup>13</sup> For example, a 2024 USPS audit found that in all regions of Mississippi, one of the most rural states in the nation, less than 80% of first-class mail arrived on time, and some parts of the state lost evening mail pickup, delaying delivery by a day.<sup>14</sup>

Alaska illustrates these challenges. It has the nation's lowest population density by far.<sup>15</sup> More than a third of its residents live in extremely remote areas—many accessible only by plane or boat.<sup>16</sup> Alaska's more than 200 remote Native villages face persistent voting challenges. In 2024, some had no polling stations during primary elections due to a lack of election officials.<sup>17</sup>

Absentee voting—an obvious solution to these issues—faces distinct hurdles in rural Alaska. “Due to

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communities as a means of pulling the Postal Service out of the red has already started”).

<sup>13</sup> See *The Forgotten Voters* at 12 (explaining that “a postmark deadline with a generous receipt deadline several days after Election Day helps to protect voters against th[e] risk” that “mail delays” cause rural voters’ “ballots to arrive late”).

<sup>14</sup> U.S. Postal Serv., Off. of the Inspector Gen., *Alabama-Mississippi District: Delivery Operations, Audit Report 3*, 7 (Oct. 22, 2024), <https://perma.cc/NXX9-4RU6>.

<sup>15</sup> U.S. Census Bureau, *Population Density of the 50 States, the District of Columbia, and Puerto Rico: 1910 to 2020*, <https://perma.cc/N2HJ-PE7L>.

<sup>16</sup> See U.S. Census Bureau, *State-level 2020 and 2010 Census Urban and Rural Information*, <https://perma.cc/Y5TR-BLM4>.

<sup>17</sup> Mark Thiessen et al., *The ability to cast a ballot isn't always guaranteed in Alaska's far-flung Native villages*, Assoc. Press (Oct. 29, 2024), <https://perma.cc/ZN3A-FRVD>.

Alaska’s vast geography and lack of surface highway and road infrastructure, most of its communities are not connected,” forcing the USPS to use “non-traditional transportation to deliver mail to 82 percent of the communities that are not accessible by road.”<sup>18</sup> Even so, reliance on aircraft and watercraft means mail service can be halted for weeks at a time due to severe weather or a single postal worker falling ill.<sup>19</sup> Alaska’s largest statewide Native organization has urged action to address the lack of reliable postal service in rural areas, which is “essential to voting.”<sup>20</sup>

Alaska has designed its absentee regime to give rural voters as much leeway as election administration allows. While officials generally distribute absentee ballots twenty-five days before an election, they must send ballots to voters who self-identify as being “in a remote area of the state” no later than forty-five days before the election. Alaska Stat. § 15.20.081(l).<sup>21</sup> Those ballots must then be postmarked by Election Day and received by election

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<sup>18</sup> U.S. Postal Serv., Off. of the Inspector Gen., *Audit Report: Alaska Mail Services* 3 (Sept. 28, 2022), <https://perma.cc/5PEJ-DCX8>.

<sup>19</sup> Kimberly Cataudella, ‘A perfect storm of confusion:’ Voting faces systemic challenges in Alaska, Ctr. for Pub. Integrity (Oct. 6, 2022), <https://perma.cc/J4P5-UT8B>; see also Thiessen et al., *supra* n.17.

<sup>20</sup> Alaska Fed’n of Natives, *2023 Annual Convention: Resolution 23-29* at 70 (Oct. 21, 2023), <https://perma.cc/UD3P-XZRN>.

<sup>21</sup> See Alaska Div. of Elections, *Alaska Absentee Ballot Application*, <https://perma.cc/M3M8-HJ8S> (“45-day advance ballot” for those “in remote Alaska . . . where mail service is limited”); Alaska Div. of Elections, *Absentee and Early Voting*, <https://perma.cc/7CXT-77UP>.

officials within ten days. *Id.* § 15.20.081(e). Alaska’s receipt deadline has been a fixture of the State’s election apparatus for over forty years. *See* 1980 Alaska Laws ch. 100, § 87 (requiring only that the ballot be “mail[ed]” and “postmarked on or before election day”); 1986 Alaska Laws ch. 85, § 10 (amending to formalize ten-day receipt window).

Alaska’s absentee voting window is carefully nestled between other deadlines with little room to spare. On the front end, Alaska’s elections director has warned that the “window of time between getting the ballots printed and getting them sent is tight,” especially “in our rural areas.”<sup>22</sup> Some rural voters receive their ballots later than the law requires due to “challenge[s] with the mail.”<sup>23</sup> On the back end, the ten-day receipt deadline leaves a narrow window for local officials to collect and mail ballots to the “election supervisor for the district,” Alaska Stat. § 15.20.170, who must process, count, and certify them “[n]ot later than the 15th day” following the election, so that ballots may be forwarded by mail to the elections director, *id.* § 15.20.201, who must start the “state ballot counting review . . . not later than 16 days after an election,” *id.* § 15.15.440; *see id.* § 15.20.220.

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<sup>22</sup> Steve Kirch, *Steps taken to ensure rural Alaska voting goes smoother than primary, state election leaders say*, AK News Source (Nov. 4, 2024), <https://perma.cc/TV87-UTGK>.

<sup>23</sup> *Id.*

Even with these accommodations, problems still arise.<sup>24</sup> Native leaders and poll workers have warned that mandating Election Day receipt risks “further disenfranchis[ing] voters in rural communities,” whose returned ballots often arrive ten days after Election Day.<sup>25</sup>

Alaska’s absentee procedures, including its receipt deadline, have long provided a means of serving its rural voters. Other states with substantial rural populations have made comparable policy choices. *See, e.g.*, Wash. Rev. Code § 29A.60.190 (ballot must be received one day before certification); W. Va. Code § 3-3-5(g)(2) (ballot must be received before the canvass); Or. Rev. Stat. § 253.070(3)(b) (seven-day receipt deadline). These states have crafted rules that serve rural voters by helping to ensure that voters’ timely-cast mail ballots are counted, even if there is a postal service problem or delay.

## **2. State absentee voting systems are designed to meet the needs of older voters and voters with disabilities.**

More than a century ago, states enacted absentee voting laws “making express provision for sick and disabled voters.” Ray, *Absent-voting Laws*, 18 Am. Pol.

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<sup>24</sup> *See, e.g.*, 2023 Annual Convention: Resolution 23-29 at 70 (describing voters across remote Native villages whose timely-cast ballots arrived after receipt deadline).

<sup>25</sup> Alena Naiden, *Alaska Native advocates say new Trump election order would further disenfranchise rural voters*, KNBA-Anchorage (Apr. 2, 2025), <https://perma.cc/RFX8-H5SJ>.

Sci. Rev. at 321. By 1928, fourteen states had extended absentee voting specifically to such voters. Rocca, *supra* n.2, at 7. California, for instance, quickly extended absentee voting—and its fourteen-day receipt window—to voters “who because of injury or disability [were] absent from their precincts or unable to go to the polling place.” 1923 Cal. Stat. ch. 283 (as amended by Supplement to the Codes and General Laws of the State of California of 1923 §§ 1357, 1360 (1927)).

Numerous laws recognize that voters with disabilities are entitled to accommodations in the voting process, including the ability to vote absentee and by mail. *See, e.g.*, Miss. Code § 23-15-713(d) (extending absentee voting to those with “a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship”); *id.* § 23-15-629(1)-(2) (allowing voters with permanent disabilities to automatically receive absentee ballots without reapplying). All fourteen states that require an excuse to vote absentee include illness or disability as permissible excuses,<sup>26</sup> and eight include age.<sup>27</sup>

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<sup>26</sup> *See* Ala. Code § 17-11-3; Ark. Code § 7-5-402; Conn. Gen. Stat. § 9-135; Del. Code tit. 15, § 5502; Ind. Code § 3-11-10-24; Ky. Rev. Stat. § 117.085(1)(a), § 117.077; La. Stat. § 18:1303; Miss. Code § 23-15-713; Mo. Rev. Stat. § 115.277; N.H. Rev. Stat. § 657:1; S.C. Code § 7-15-320; Tenn. Code § 2-6-201; Tex. Elec. Code § 82.002; W. Va. Code § 3-3-1.

<sup>27</sup> *See* Ind. Code § 3-11-10-24; Ky. Rev. Stat. § 117.085(1)(a); La. Stat. § 18:1303; Miss. Code § 23-15-713; S.C. Code § 7-15-320; Tenn. Code § 2-6-201; Tex. Elec. Code § 82.003; W. Va. Code § 3-3-1.

These protections can be critical for voters who face substantial voting barriers, including bedbound or hospitalized voters who must vote by mail. Voters with disabilities consistently report higher incidences of voting difficulties.<sup>28</sup> In 2022, fourteen percent of voters with disabilities reported difficulties voting—more than three times the rate of other voters.<sup>29</sup> In Virginia’s 2024 general election, for example, only 69% of polling places had both properly set-up accessible voting machines and staff who knew how to operate them, among other barriers.<sup>30</sup>

Transportation challenges also affect older voters and voters with disabilities.<sup>31</sup> National data from the Election Assistance Commission show that only 70.8% of people with disabilities can drive their own or a family vehicle, compared to 90.5% of people without disabilities.<sup>32</sup>

Voters with disabilities are therefore more likely to return their ballots by mail or need assistance to ensure their ballot is returned.<sup>33</sup> Mail delays

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<sup>28</sup> See Dr. Lisa Schur et al., *Disability and Voting Accessibility in the 2022 Elections: Final Report on Survey Results Submitted to the Election Assistance Commission* 9 (July 2023), <https://perma.cc/5AEN-48KB>.

<sup>29</sup> *Id.*

<sup>30</sup> Press Release, The disAbility Law Ctr. of Va., Accessibility Gaps Found at Virginia Polling Places During 2024 Election (May 21, 2025), <https://perma.cc/BN3Z-UVWH>.

<sup>31</sup> See Shengxiao Li, *Characteristics of Zero-Vehicle Households Among Older Americans and Their Travel Implications*, 91 J. Am. Planning Ass’n 430 (2025); Bureau of Transp. Stats., Dep’t of Transp., *Travel Patterns of American Adults with Disabilities* (Nov. 22, 2024), <https://perma.cc/7AAW-HD72>.

<sup>32</sup> Schur et al., *supra* n.28, at 58.

<sup>33</sup> *Id.* at 8, 25, 38.

compound these challenges.<sup>34</sup> And voters who rely on assistance to request, cast, or return their absentee ballot need additional time. For example, even where states fund support services to DeafBlind individuals, some service providers (like in Ohio and New Jersey) cap the amount at sixteen hours a month,<sup>35</sup> generally meaning one visit per week. This leads to time lags between when a ballot is received, cast, and returned. A voter might complete their ballot but lack access to an assistor for another week. The reliance on others—either the USPS or a trusted assistor—makes the ballot-receipt grace period particularly critical for older voters and voters with disabilities.

With 23.3% of the national population over the age of sixty,<sup>36</sup> and people with disabilities making up 13% of the non-institutionalized population,<sup>37</sup> states have understandably made policy choices to address the

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<sup>34</sup> See, e.g., Letter from Nat'l Ass'n of Sec'y's of State & Nat'l Ass'n of State Election Dirs. to U.S. Postmaster Gen. (Sept. 11, 2024), <https://perma.cc/M63T-HF57> (raising concerns over “lost or delayed election mail” and receipt of election mail well outside the delivery standards for first class mail); *see also Jones v. U.S. Postal Serv.*, 488 F. Supp. 3d 103, 135 (S.D.N.Y. 2020) (granting injunction to ensure timely ballot delivery based on findings that “USPS has offered no satisfactory explanation for failing to set clear, uniform policies for the handling of Election Mail” and that there had been “meaningful documented delays in service”); *see also supra* 21 & nn.11, 12.

<sup>35</sup> Helen Keller Nat'l Ctr. for DeafBlind Youths and Adults, *Active Support Service Provider (SSP) and CoNavigator (CN) Programs* (Mar. 2024), <https://perma.cc/AR4S-58FE>.

<sup>36</sup> U.S. Census Bureau, *Table S0101, 2023: American Community Survey (“ACS”) 5-Year Estimates Subject Tables*, <https://perma.cc/F9WK-3MTH>.

<sup>37</sup> U.S. Census Bureau, *Table S1810, 2023: ACS 5-Year Estimates Subject Tables*, <https://perma.cc/K9K5-AHMC>.

needs of large swaths of their populations. In Mississippi these percentages are higher: 23.4% of Mississippians are over the age of 60,<sup>38</sup> and 17.4% have disabilities.<sup>39</sup> The State has unsurprisingly extended absentee voting to voters with disabilities and voters over sixty-five. Miss. Code § 23-15-713(d), (f). For at least forty years, Mississippi has allowed absentee voting for voters with disabilities and older voters. 1986 Miss. Laws ch. 495, § 230.

Building on these longstanding protections, in 2020, a nearly unanimous Mississippi legislature expanded its absentee policies to protect those populations who faced greater risks from the global pandemic and disproportionately rely on absentee voting from inadvertent disenfranchisement. Considering well-documented postal delays,<sup>40</sup> the State enacted a ballot-receipt grace period for ballots “postmarked on or before the date of the election.” See H.B. 1521 § 1, 135th Legis. Sess. (Miss. 2020). In 2024, Mississippi reaffirmed this grace period’s significance and clarified that it applies not only to ballots returned “by mail,” but also by “common carrier, such

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<sup>38</sup> U.S. Census Bureau, *Table S0101, 2023: ACS 5-Year Estimates Subject Tables*, <https://perma.cc/X8PW-QBY4>.

<sup>39</sup> U.S. Census Bureau, *Table S1810, 2023: ACS 5-Year Estimates Subject Tables*, <https://perma.cc/42Z7-YLHX>.

<sup>40</sup> See *supra* n.34; see also, e.g., Letter from Thomas J. Marshall, Gen. Couns., U.S. Postal Serv., to Jocelyn Benson, Mich. Sec'y of State 2 (July 29, 2020), <https://perma.cc/L7Z4-ZF8E> (warning that in conveying ballots by mail “there is a significant risk that . . . ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted”).

as United Parcel Service or FedEx Corporation.” H.B. 1406 § 12, 137th Legis. Sess. (Miss. 2024).

Many other states have similar provisions. For instance, West Virginia includes disability and “advanced age” as permissible excuses for absentee balloting, W. Va. Code § 3-3-1, and allows a ballot-receipt grace period for absentee ballots received the day after the election or “bearing a postmark of the United States Postal Service dated no later than election day,” *id.* § 3-3-5(g)(2).<sup>41</sup>

### **3. States have long accommodated workers and businesspeople through absentee voting systems.**

For generations, states have helped citizens vote when their jobs prevent them from visiting a polling place on Election Day—many through robust absentee policies, including a post-Election Day receipt deadline.

States have tailored absentee policies to local industries’ needs for more than a century. While some states created no-excuse systems, others required a specific reason to vote absentee—and as early as the

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<sup>41</sup> Mississippi and West Virginia are two of the most rural states, U.S. Census Bureau, *Table P2, 2020: Decennial Census 118th Congressional District Summary File*, <https://perma.cc/AGN2-5JV>, and people living in rural areas are more likely to have disabilities, Ctrs. for Disease Control, *Prevalence of Disability and Disability Types by Urban-Rural County Classification* (Apr. 8, 2025), <https://perma.cc/AYJ7-YNFK>. The combination of responding to both the specialized needs of rural voters, *see supra* Section II.B.1, and voters with disabilities provides a strong basis for these states’ policy choice to permit a ballot-receipt grace period.

1920s, more than a dozen states cited occupation or job duties as permissible excuses. *See* Rocca, *supra* n.2, at 6-7. As one contemporary political scientist noted, the expansion of civilian absentee voting “seems to be inseparably connected with the changing economic conditions of the country.” Charles Kettleborough, *Absent Voting*, 11 Am. Pol. Sci. Rev. 320, 320 (1917).<sup>42</sup>

Some states targeted occupations that predictably required travel, such as railroad employees and salespersons. *E.g.*, Act of Mar. 14, 1913, § 1, 1913 Mo. Laws 324 (railroad employees and traveling salespersons); Act of Mar. 4, 1919, § 1, 1919 Or. Laws 637, ch. 361 (government employees and traveling salespersons). Delaware even contrasted workers absent from the place of their registration “because of the inherent nature of [their] business,” such as “commercial travelers, railroad employees, pilots and sailors”—who could vote absentee—with workers who “merely . . . find it more convenient to follow his or her work or employment in localities other than those in which they may reside,” listing mechanics, farm workers, and “other ordinary laborers” as examples—who could not. *See* Del. Laws 264 (1923). State laws often reflected industries and occupations specific to their states; for example, New York allowed actors to vote absentee, *see* Act of Apr. 12, 1922, § 117, 1922 N.Y. Laws 1385, while Michigan did the same for sailors “employed on the great lakes or in coastwise

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<sup>42</sup> *See also* N.Y. Times, *Voters to Pass On Four Amendments* (Oct. 14, 1919), <https://perma.cc/X7AG-LTUC> (describing advocacy for state constitutional amendment allowing absentee voting “by commercial travelers’ associations” and others “whose callings take them away from home for long and frequent periods”).

trade,” *see* Act of May 27, 1925, § 1, 1925 Mich. Pub. Acts 597.

Today, states continue to experiment with different ways of accommodating voters’ work-related duties in their absentee voting laws. For example, among the states that require an excuse to vote absentee, conflicts with a work shift remain a permissible reason. *See* Ala. Code § 17-11-3(a)(3); Ind. Code § 3-11-10-24(a)(7). Others allow absentee voting more generally “[b]ecause of the nature of [a voter’s] business or occupation.” Del. Code tit. 15, § 5502(3); *accord* N.H. Rev. Stat. § 657:1(I); S.C. Code § 7-15-320(A)(1); W. Va. Code § 3-3-1(b)(2). Tennessee has retained a profession-specific exemption, allowing truck drivers and other transportation workers to vote absentee. *See* Tenn. Code § 2-6-201(9).

Generous absentee policies may complement other worker-friendly voting laws, such as the mandated voting leave required in a majority of states.<sup>43</sup> But absentee balloting also reaches other voters who cannot take leave on Election Day: small business owners who cannot leave their firms on a Tuesday; millions of truck drivers, travel nurses, flight attendants, and airline pilots whose jobs require constant travel;<sup>44</sup> workers on remote jobsites such as

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<sup>43</sup> *See* Jeanne Sahadi, *Here are the states where employers must give you time off to vote*, CNN (Nov. 1, 2024), <https://perma.cc/8UFZ-RXZF>.

<sup>44</sup> *See* Am. Trucking Ass’ns, *Economics and Industry Data* (Jan. 8, 2026), <https://perma.cc/KZ2N-FU83>; Ivan Gan, *Many travel nurses opt for temporary assignments because of the autonomy and opportunities—not just the big boost in pay*, Am. Nurse J. (Apr. 3, 2024), <https://perma.cc/T2MJ-BWBC>; U.S. Bureau of

oil rigs or mines; and those with an important business trip scheduled for early November, among others. Post-Election Day receipt deadlines allow states to accommodate these workers and businesspeople, whose ballots may arrive late for reasons beyond their control. *See supra* 21 & nn.11-12, 28 & n.34. No federal law preempts the states' power, exercised for decades without question, to accommodate these voters' needs through carefully crafted policies.

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Lab. Stats., *Occupational Outlook Handbook—Flight Attendants* (Aug. 28, 2025), <https://perma.cc/8ZUB-4X9J>; U.S. Bureau of Lab. Stats., *Occupational Outlook Handbook—Airline and Commercial Pilots* (Aug. 28, 2025), <https://perma.cc/Z2FB-QH3M>.

## CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

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