

No. 24-1260

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IN THE  
**Supreme Court of the United States**

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MICHAEL WATSON,  
MISSISSIPPI SECRETARY OF STATE,

*Petitioner,*

*v.*

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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**BRIEF *AMICUS CURIAE* OF THE LEAGUE  
OF UNITED LATIN AMERICANS CITIZENS  
("LULAC") IN SUPPORT OF PETITIONER**

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**IDENTITY AND INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The League of United Latin American Citizens (“LULAC”) is a non-profit, non-partisan organization devoted to improving the lives of Latino families and protecting their civil rights, including their voting rights. With over 400 councils and 500,000 members nationwide, LULAC is the largest and oldest Latino civil rights organization in the United States. Through community-based programs, LULAC advances the economic conditions, educational attainment, political influence, housing, health, and civil rights of Hispanic Americans. LULAC’s members are highly engaged in our electoral system, with at least 80 percent registered to vote.

Across the country, many of these members rely on absentee and mail voting for a variety of reasons, including age, disability, military service, educational commitments, distance from the nearest polling place, and experiences with in-person harassment and intimidation when voting. Thus, a core component of LULAC’s mission and activities is geared toward ensuring that its members—particularly those living in States that accept mail ballots and permit ballot curing post-Election Day—can successfully vote by mail in their home States.

Because mail ballot access is so central to LULAC’s mission, LULAC is currently challenging President Trump’s attempt to impose an Election Day ballot receipt

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1. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* or their counsel made a monetary contribution to its preparation or submission.

deadline via Executive Order. *See LULAC v. Exec. Off. of the President*, No. 1:25-cv-00946 (D.D.C.). LULAC’s experience litigating this issue provides a particularly informed perspective on the practical and constitutional defects in the Fifth Circuit’s position. An Election Day ballot receipt deadline—whether through Executive Order or, as is the case here, judicial fiat—would impose great obstacles on LULAC’s mission. LULAC has already begun fielding urgent questions from members about how changes to mail ballot receipt deadlines will impact their ability to vote, reflecting widespread uncertainty and concern among those who rely most on these protections. Responding to these concerns has required LULAC to devote considerable resources to tracking potential changes to absentee ballot rules and revising educational materials. Implementing an Election Day deadline would only intensify the strain on LULAC leadership and members. Because the question presented concerns whether the Election Day statutes preempt state election systems nationwide—an issue which Amicus is concurrently litigating in *LULAC v. Exec. Off. of the President*—LULAC has a significant interest in this case.

## SUMMARY OF ARGUMENT

1. The Election Day statutes, 2 U.S.C. § 7 and 3 U.S.C. § 1, do not preempt state law ballot receipt windows. In fact, they make no mention of ballot receipt windows. In concluding otherwise, the Fifth Circuit ignored plain text and incorrectly conflated casting ballots with receipt of ballots by election officials. The history of Congressional enactments, including recently defining “Election Day,” confirms that Congress has not acted to preempt state legislatures. *See, e.g.*, Uniformed and Overseas Citizens

Absentee Voting Act (UOCAVA), 52 U.S.C. § 20301 *et seq.*; Electoral Count Reform and Presidential Transition Improvement Act of 2022 (ECRA), Pub. L. No. 117-328, div. P, tit. I, 136 Stat. 4459, 5233 (2022) (codified as amended at 3 U.S.C. §§ 1–21). Every court other than the Fifth Circuit has correctly concluded as much, which is consistent with what Members of this Court expressed in *Democratic Nat’l Comm. v. Wisconsin State Legislature*, 141 S. Ct. 28 (2020).

To reach its anomalous conclusion, the Fifth Circuit misread *Foster v. Love*, 522 U.S. 67, 69 (1997). Among other errors, it projected implications onto the concept of “consummation” that are inconsistent with *Foster* itself as well as with the text, history, and structure of the Election Day statutes. This mistake is further highlighted by the structure and mechanisms of the United States Electoral College, which separate the act of casting a ballot from receipt by election officials. Federal law sets Election Day as the day on which votes are cast, not the day on which results must be finalized, and it provides States with weeks after Election Day to canvass ballots, resolve disputes, certify results, and appoint electors. *See, e.g.*, 3 U.S.C. §§ 5–7. Additionally, the Fifth Circuit engaged in faulty historical analysis, failing to faithfully analyze the one source it primarily relied on.

2. Implementing an Election Day ballot receipt deadline would directly and foreseeably harm members of LULAC, many of whom rely on post-Election Day receipt windows authorized by state laws. Many LULAC members vote by mail because they live in rural communities, are elderly or disabled, wish to avoid in-person intimidation



at the polling place, are students, or are members of the military. For LULAC members in rural areas, mail delays often mean ballots are received late in the election period and can only be sent back close to Election Day. Elderly and disabled members likewise depend on others to assist with mailing ballots, frequently resulting in ballots being mailed very close to Election Day. Student members often receive absentee ballots late in the voting period due to unreliable dormitory mail systems. And service members may be deployed on short notice and must return ballots at the last minute, leaving them at the mercy of unreliable postal infrastructures. Without a post-Election Day receipt window, many of those ballots will predictably miss the deadline. Recent changes to the United States Postal Service will only compound this problem for LULAC members.

Some States have wisely chosen to account for the challenges in receiving mail ballots by implementing post-Election Day receipt windows. These windows allow mail voters an equal opportunity to assess the candidates and make an informed decision before returning their ballots. Voters reasonably and lawfully rely on extended receipt deadlines to ensure their ballots are counted. Thus, an Election Day ballot receipt deadline would directly harm voters and throw longstanding and widely relied-upon voting practices across the country into disarray.

## **ARGUMENT**

Under Article I, § 4 of the Constitution, States retain “primary” authority over the time, place, and manner of

elections. *Democratic Nat’l Comm. v. Wisconsin State Legislature*, 141 S. Ct. at 34 (Gorsuch, J., concurring). This “invests the States with responsibility for the mechanics of congressional elections” unless Congress decides to pre-empt state legislative choices. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013) (quoting *Foster*, 522 U.S. at 69). Because Congress has consistently declined to impose mail ballot receipt deadlines, States have exercised their authority to institute post-Election Day receipt windows that recognize the reality of voting by mail, including issues such as postal and administrative delays. As this Court explained, “the variation in state responses reflects our constitutional system of federalism. Different state legislatures may make different choices.” *Democratic Nat’l Comm.*, 141 S. Ct. at 34 (Kavanaugh, J., concurring). By inferring an Election Day ballot receipt deadline that Congress never enacted, the Fifth Circuit reallocated constitutional authority and disregarded core principles of judicial restraint, federalism, and individual liberty. This runs contrary to the great weight of precedent and is precisely the kind of judicial overreach this Court has rejected.

LULAC members have reasonably relied on absentee voting regimes designed and administered by their States for decades. Elderly, disabled, rural, military, and student voters would be severely burdened by a court-mandated receipt deadline. Unfortunately, despite their best efforts, these voters are often subject to postal and election administration delays. If States are unable to provide post-election receipt flexibility, hundreds of thousands of voters could be unjustifiably disenfranchised.

**I. The Election Day Statutes Do Not Mandate a Ballot Receipt Deadline.**

**A. The text of the Election Day statutes regulates when votes must be cast, not when they must be received.**

The Elections Clause provides that the “Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4, cl. 1. The Clause’s “substantive scope is broad,” and “the terms ‘Times, Places, and Manner’ are ‘comprehensive words’ that ‘embrace authority to provide a complete code for congressional elections.’” *LULAC v. Exec. Off. of the President*, 780 F. Supp. 3d at 155 (citing *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013)). That broad scope creates a constitutional “default” that States make the rules for federal elections, unless Congress enacts a superseding law. *Foster*, 522 U.S. at 69. Likewise for presidential elections, the Electors Clause grants States primary authority to decide how electors are chosen. U.S. Const. art. II, § 1, cl. 2, 4. Thus, unless a federal statute *requires* States to reject ballots cast on or before Election Day but received afterwards, there is no role for federal court action. Here, no such federal statute exists.

The plain text of the Election Day Statutes—2 U.S.C. § 7 and 3 U.S.C. § 1—say absolutely nothing about ballot receipt deadlines. 2 U.S.C. § 7 merely sets forth “[t]he Tuesday next after the 1st Monday in November, in every even numbered year . . . as the day for the election,” for

Congressional offices. And 3 U.S.C. § 1 provides that “[t]he electors of President and Vice President shall be appointed, in each State, on election day, in accordance with the laws of the State enacted prior to election day.” While these statutes establish a date for Election Day, they do not prohibit counting mail-in ballots that are mailed on or before that date yet received afterward. They are silent on the state administrative processes that accompany Election Day, including collecting, tabulating, canvassing, and certifying elections.

Importantly, when Congress recently added a statutory definition of “election day” as part of the ECRA, it incorporated the concept of a “period of voting” yet made no reference to mail ballot receipt deadlines despite the fact that numerous States at the time accepted mail-in ballots postmarked by Election Day and received after Election Day. Pub. L. No. 117-328, div. P, tit. I, § 102, 136 Stat. 4459, 5236–37 (2022); U.S. Election Assistance Comm’n, *Mail Ballot Deadlines, 2012-2022*, <https://perma.cc/JYG6-U2BQ>. Courts have found this “long history of congressional tolerance, despite the federal election day statute, of absentee balloting” persuasive. *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1175 (9th Cir. 2001). If Congress was of the view that ballots mailed by Election Day but received thereafter cannot be counted, it would have said so when it defined the term in 2022. *Cf. Parker Drilling Mgmt. Services, Ltd. v. Newton*, 587 U.S. 601, 611 (2019) (“It is a commonplace of statutory interpretation that ‘Congress legislates against the backdrop of existing law.’”) (quoting *McQuiggin v. Perkins*, 569 U.S. 383, 398 n.3 (2013)).

**B. The overwhelming weight of authority cuts against the Fifth Circuit, and Congress has repeatedly declined to impose a federal receipt deadline.**

The Fifth Circuit’s opinion is an outlier. Every other court to consider this issue has declined to judicially manufacture an Election Day receipt deadline.<sup>2</sup> For example, in the most recent opinion on the matter, a district court granted several States’ motions for preliminary injunction against an Executive Order that would have imposed an Election Day receipt deadline, holding that the President’s interpretation of the Election Day statutes was contrary to law. *California v. Trump*, 2025 WL 1667949, at \*13–14. Relying on the plain meaning of the two statutes as well as the rulings in *Bost*, 684 F. Supp. 3d 720, and *Way*, 492 F. Supp. 3d 354, the court embraced not only the prevailing consensus, but also the most sensible interpretation—that the text of the Election Day statutes requires only that all votes are cast by Election Day, “not that they are received by that date.” *California v. Trump*, 2025 WL 1667949, at \*13. The court further reasoned that the “[t]he logic behind such a

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2. *California v. Trump*, 2025 WL 1667949, at \*13 (D. Mass. June 13, 2025); *Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 736 (N.D. Ill. 2023), *aff’d on other grounds*, 114 F.4th 634 (7th Cir. 2024); *Donald J. Trump for President, Inc. v. Way*, 492 F. Supp. 3d 354, 372 (D.N.J. 2020); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 368 & n.23 (Pa. 2020); *see also Bognet v. Sec’y Commonwealth of Pa.*, 980 F.3d 336, 353–54 (3d Cir. 2020), *cert. granted, judgment vacated sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021); *see also Harris v. Fla. Elections Canvassing Comm’n*, 122 F. Supp. 2d 1317, 1325 (N.D. Fla. 2000), *aff’d sub nom. Harris v. Fla. Elections Comm’n*, 235 F.3d 578 (11th Cir. 2000).

ruling is simple: States that allow ballots received after Election Day to be counted still require that all votes are cast by Election Day, meaning a candidate’s ‘electoral fate is sealed at midnight on Election Day.’” *Id.* (quoting *Bost*, 684 F. Supp. 3d at 733–34).

The court emphasized that Congress itself has never “endorsed” an Election Day receipt deadline despite having had many opportunities to do so. *Id.* For example, in enacting the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. § 20301 *et seq.*, Congress could have required that military and overseas ballots be received by election officials no later than Election Day. But it chose not to. Instead, Congress expressly acknowledged that “State law” sets the “deadline for receipt of the State absentee ballot,” as well as the Federal Write-in Ballot if the State ballot is not received by the State first. 52 U.S.C. § 20303(b)(3). At the time of UOCAVA’s passage, twelve States already permitted ballots to be received after Election Day—a fact noted in the legislative hearings—undercutting any suggestion that Congress intended the Election Day statutes to impose the restrictive interpretation advanced by the Executive Order. *See Uniformed and Overseas Citizens Absentee Voting: Hearing on H.R. 4393 Before the Subcomm. on Elections of the H. Comm. on House Admin.*, 99th Cong. 21 (Feb. 6, 1986) (Statement of Henry Valentino, Director, Federal Voting Assistance Program).

The Fifth Circuit’s awkward treatment of UOCAVA underscores the weakness of its opinion. After initially writing that UOCAVA was “silent” on receipt deadlines, the *Wetzel* opinion author later acknowledged that UOCAVA accounts for state law post-Election Day receipt

windows. Compare *Republican Nat’l Comm. v. Wetzel*, 120 F.4th 200, 211 (5th Cir. 2024), with *Republican Nat’l Comm. v. Wetzel*, 132 F.4th 775, 778 (5th Cir. 2025) (Oldham, J., concurring in denial of petition for rehearing *en banc*). The panel, citing no authority, attempted to paint federal laws that accommodate post-Election Day receipt deadlines as “narrow exception[s]” to the Election Day statutes, *Wetzel*, 120 F.4th at 212; however, Congress never explicitly or implicitly suggested the Election Day statutes were implicated, nor that it was making exceptions to those statutes, but rather took as a baseline “the deadline for receipt of the State absentee ballot under State law” for federal write-in ballots. 52 U.S.C. § 20303. Similarly, in the Military and Overseas Voter Empowerment Act of 2009 (“MOVE”), Congress directed federal officials to implement procedures to ensure ballots are returned to state election officials by “the date by which an absentee ballot must be received in order to be counted in the election.” 52 U.S.C. § 20304(b)(1); *Cf. CTS Corp. v. Waldburger*, 573 U.S. 1, 18 (2014) (“The case for federal pre-emption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there is between them.”).

The consensus of courts against the Fifth Circuit is consistent with what Members of this Court have written. In *Democratic National Committee v. Wisconsin State Legislature*, both Justices Gorsuch and Kavanaugh recognized that States have discretion to determine receipt deadlines for mail-in ballots. In that case, voters argued that Wisconsin’s Election Day mail ballot receipt deadline should be enjoined to ensure voters could

exercise their right to vote amid the challenges posed by the COVID-19 pandemic. The district court ordered that mail-in ballots cast by Election Day and received within six days of Election Day could be counted. *Id.* at 30 (Kavanaugh, J., concurring). The Supreme Court reversed by a 6–3 vote in a summary order. Justice Gorsuch wrote:

The Constitution provides that state legislatures . . . bear primary responsibility for setting election rules. Art. I, §4, cl. 1. And the Constitution provides a second layer of protection too. If state rules need revision, Congress is free to alter them. *Ibid.* (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . .”). Nothing in our founding document contemplates the kind of judicial intervention that took place here, nor is there precedent for it in 230 years of this Court’s decisions.

*Id.* at 29 (Gorsuch, J., concurring). Notably, Justice Gorsuch did not say Wisconsin was forbidden from counting mail ballots received within six days of Election Day. Rather, Justice Gorsuch reasoned that this determination should be left to state discretion. Justice Kavanaugh, in his concurring opinion, adopted similar reasoning and, in doing so, referenced the Mississippi law at issue here as an example of the discretion states have been authorized to exercise:



Of particular relevance here, a few States such as Mississippi no longer require that absentee ballots be received before election day. *See, e.g.*, Miss. Code Ann. §23-15-637 (2020). 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. *See, e.g.*, Vt. Stat. Ann., Tit. 17, § 2543 (2020). The variation in state responses reflects our constitutional system of federalism. Different state legislatures may make different choices.

*Id.* at 32–33 (Kavanaugh, J., concurring).

**C. The Fifth Circuit’s outlier opinion rests on misreading *Foster v. Love* and a flawed concept of consummation.**

The Fifth Circuit’s interpretation relies on misreading *Foster*, 522 U.S. 67. *Foster* dealt with a challenge to Louisiana’s congressional election system, wherein the State held a primary for all candidates in October and, if one candidate received a majority of votes in that primary, that candidate was elected without a November election. 522 U.S. at 70. If no candidate received a majority, the top two finishers would have a runoff on the November election day. *Id.* The Supreme Court held “that a contested selection of candidates for a congressional office that is concluded as a matter of law before the federal election day, with no act in law or in fact to take place on the date chosen by Congress, clearly violates § 7 [because the election concluded before Election Day].” *Id.* at 72. The

holding dealt solely with the conclusion of casting ballots and did not in any way discuss or imply that ballots could not be received or counted after Election Day if they were cast by Election Day.

Examples abound of how the Fifth Circuit misread *Foster*, but one is particularly salient—the panel’s emphasis on “consummation.” *Wetzel*, 120 F.4th at 208. Despite the panel’s emphasis, *Foster* references “consummation” only once, in a footnote with a completely different meaning: “We hold today only that if an election does take place, it may not be consummated prior to federal election day.” 522 U.S. at 72 n.4 (emphasis added). *Foster*’s narrow holding prohibits only the complete determination of an election’s outcome prior to Election Day but says nothing about the administrative process of receiving and counting ballots cast *on or before* Election Day. In fact, *Foster* highlights that a congressional primary may be held on Election Day, La. Rev. Stat. Ann. § 42:1360, with a runoff taking place *after* Election Day, *Foster*, 522 U.S. at 71 & n.3. Like *Foster*, none of the other authorities the Fifth Circuit panel relied upon in its “consummation” discussion say anything about receiving ballots. *See Wetzel*, 120 F.4th at 208.

The panel’s logic that votes are not “complete” until they have been received by election officials, *id.* at 213, is further undermined by the structure of the Electoral College, which distinguishes between the act of voting and the later administrative processes of receipt and counting. *See Wetzel*, 132 F.4th at 790, n.1 (Higginson, J., dissenting from denial of rehearing *en banc*) (citing Richard Bernstein, *The Fifth Circuit Was Wrong – Counting Timely-Cast Remote Votes That Are Received After Election Day is as Old as the Founding*, Soc’y for

the Rule of L. (Nov. 1, 2024), <https://societyfortheruleoflaw.org/fifth-circuit-wrong>). Although Congress sets a uniform day on which presidential electors must cast their votes, federal law has never required that those votes be received or counted that same day. Article II provides that each State shall appoint electors “in such Manner as the Legislature thereof may direct,” and authorizes Congress to determine “the Time of ch[oo]sing the Electors, [and] the Day on which the[] [Electors] shall give their Votes.” U.S. Const. art. II, § 1. The Twelfth Amendment then governs the period after those votes are cast: electors meet, vote by ballot, “sign and certify” lists of their votes, and transmit those lists to the President of the Senate, who later opens and counts them in Congress. Neither provision conditions the validity of an electoral vote on same-day receipt by the federal government. To the contrary, the constitutional text contemplates the day of casting votes from the later processes of transmission, receipt, and counting.

Congress implemented this design by statute and has always distinguished between the date on which a vote must be cast and the date on which that vote must be received by the government. Specifically, under 3 U.S.C. § 7, electors must meet and cast their electoral votes on the first Tuesday after the second Wednesday in December. But federal law does not require those votes to be received or counted on that day. Instead, Congress directed that the sealed certificates of electoral votes be transmitted to the President of the Senate and that Congress convene to open and count those votes weeks later, on January 6. 3 U.S.C. § 15. Federal law thus expressly permits a

weeks-long separation between the act of voting and the government receiving the votes. Compliance with the federal election framework turns on when a vote is cast, not when it is received by the government.

**D. The Fifth Circuit’s historical analysis was flawed.**

In addition to misreading *Foster*, the Fifth Circuit rested on flawed historical analysis. The panel relied on what “election day” meant in 1845 and 1871, when 2 U.S.C. § 7 and 3 U.S.C. § 1 were enacted—yet it conveniently overlooks that Congress first formally defined “election day” as a statutory term in 2022, by which time nearly half of the States allowed post-Election Day receipt. It also heavily relied on an early twentieth-century text, Josiah Henry Benton’s *Voting in the Field: A Forgotten Chapter of the Civil War* (1915), to assert that absentee voters “voted when the vote was received by election officials,” and that this had to occur by Election Day. *Wetzel*, 120 F.4th at 210. However, the cited source fails to support this claim.

Benton in fact shows that not all methods used in the States resulted in mail ballots being in the hands of election officials by Election Day. For example, according to Benton, soldiers in Nevada, Rhode Island, and Pennsylvania were permitted to vote at a place designated by, or by delivering their ballots to, their commanding officer, whom Benton does not describe as an election official. *Id.* at 171, 186–87, 190. This is a crucial omission, since Benton otherwise noted when officers were acting as election officials. *See, e.g., id.* at 37 (describing South

Carolina's law as authorizing "the commissioned officer on duty commanding any company of volunteers, after being first duly sworn to manage the election fairly and impartially according to law, 'to open a poll[.]'"

Benton's description of the railways at the time casts more serious doubt on the proposition that all soldiers' ballots were in the hands of election officials by Election Day. *Id.* at 317. He comments on the "difficulty of getting the votes home to the various States" due to the underdeveloped rail network at the time. *Id.* at 316. For example:

It seems to have been understood in all these Northern States except Maryland that a sufficient period would elapse between the day of the election, which was the day on which the soldiers were to vote in the field, and the counting of the votes of the State by the officers who were to count them, to enable the votes to reach them.

*Id.* at 318. Thus, to the extent historical practice is informative, it only undercuts the Fifth Circuit's reasoning and does nothing to dispel the lopsided weight of authority rejecting the panel's position.

## **II. An Election Day Ballot Receipt Deadline Would Severely Impact LULAC's Members.**

The Fifth Circuit's court-imposed ballot receipt deadline does not merely regulate the vote; for tens of thousands of rural, elderly, disabled, military, and student voters, it would threaten to eliminate it. States have

chosen to address the systemic realities of mail transit and election administration to ensure that ballots cast by Election Day are counted. This legitimate legislative policy decision reflects a long-standing judgment that individuals who rely on voting by mail should be given a meaningful window to assess the candidates and cast their ballots by Election Day. Only Congress, not the courts, can override this legislative judgment.

**A. A rigid receipt deadline would disproportionately harm LULAC members.**

LULAC has more than 180,000 members who reside in Alaska, California, Illinois, Massachusetts, Maryland, Nevada, New Jersey, New York, Oregon, Texas, Virginia, Washington, West Virginia, and Washington, D.C. Decl. of Juan Proaño ¶ 75, *LULAC v. Exec. Off. of the President*, No. 1:25-cv-00946 (D.D.C. Sept. 17, 2025), ECF No. 194-5 (hereinafter Proaño Decl.). Each of these States provides a ballot receipt window after Election Day for mail ballots cast by Election Day. *See, e.g.*, Alaska Stat. § 15.20.081(e) (by the tenth day after Election Day); Cal. Elec. Code § 3020 (seven days after Election Day); 10 Ill. Comp. Stat. 5/19-8, 5/18A-15 (received within fourteen days after Election Day); Md. Elec. Law § 11-302(c); Md. Code Regs. § 33.11.03.08(B)(4) (by 10 a.m. on the second Friday after Election Day); Mass. Gen. Laws ch. 54, § 93 (until 5 p.m. on the third day after Election Day); Nev. Rev. Stat. § 293.269921(1)(b), (2) (by 5 p.m. on the fourth day following Election Day); N.J. Stat. Ann. § 19:63-22(a) (six days); N.Y. Elec. Law §§ 8-412(1), 8-710(1) (within seven days of Election Day); Or. Rev. Stat. § 254.470(6)(e) (B) (within seven days of Election Day); Tex. Elec. Code § 86.007(a), (d)-(f) (by the day following Election Day or, if

mailed from abroad, within five days of Election Day); Va. Code § 24.2-709 (by noon the third day after Election Day); Wash. Rev. Code §§ 29A.40.110(4), 29A.60.190 (received no later than the day before certification); W. Va. Code § 3-3-5 (received by the start of the vote canvass, i.e. five days after the election, not counting Sundays); D.C. Code § 1-1001.05(10A) (received by the seventh day after Election Day).

Many LULAC members living in those States routinely vote by mail and plan to continue doing so in the future. Proaño Decl. ¶ 28. Those voters often rely on mail-in voting due to age or disability-related mobility issues that preclude standing for any significant period, driving, or traveling to the post office without assistance. Decl. of Irma Gonzalez ¶¶ 8–10, 13, *LULAC v. Exec. Off. of the President*, No. 1:25-cv-00946 (D.D.C. Sept. 17, 2025), ECF No. 194-7 (hereinafter Gonzalez Decl.); Decl. of James Fukuda ¶¶ 15–17, *LULAC v. Exec. Off. of the President*, ECF No. 194-8 (hereinafter Fukuda Decl.); Decl. of Luis Reyna ¶¶ 20–22, *LULAC v. Exec. Off. of the President*, ECF No. 194-6 (hereinafter Reyna Decl.). There are also LULAC members, including military veterans, who rely on mail-in or absentee voting as they recover from temporary disabilities, such as recovering from medical procedures. Reyna Decl. ¶ 20; Gonzalez Decl. ¶ 8; Decl. of Ana Orellana ¶ 17, *LULAC v. Exec. Off. of the President*, ECF No. 194-9 (hereinafter Orellana Decl.). Without absentee ballots, these individuals would face extreme hardship when attempting to vote.

Further, many LULAC members—predominantly Latino voters—rely on voting by mail to avoid the harassment and intimidation they fear at physical polling

places. LULAC leaders report that their members “rely on mail-in voting because polling locations . . . can be intimidating.” Orellana Decl. ¶ 19. For example, one LULAC member states that she now votes by mail after having experienced first-hand intimidation at the polls. Orellana Decl. ¶ 20. Such intimidation tactics have repeatedly been used to target and intimidate Latino voters at in-person polling places. *See, e.g.,* Emily Eby & Joaquin Gonzalez, *Opening the Floodgates for Racial Intimidation, Disenfranchisement, and Violence by Expanding Poll Watcher Authority* 8, Tex. Civil Rights Project (2021), <https://perma.cc/4NPR-UQ9L>; Lawyers’ Comm. for Civ. Rights Under L., *Voting Barriers Fueled Record Number of Calls into Election Protection Hotline During 2020 Election Season* (Nov. 19, 2020), <https://perma.cc/4PM2-YLJJ> (noting that “voter intimidation” was among the top categories of complaints received on Election Day). In Texas, for example, poll watchers in recent elections have had to be removed after hovering over and harassing voters at the polls. Eby & Gonzalez, *Opening the Floodgates* at 6. For Latino voters who have witnessed or endured such threats, the availability of vote-by-mail is a critical safeguard that allows them to cast a ballot without exposure to these intimidating practices. Orellana Decl. ¶¶ 19–20.

Ballot receipt windows created by state legislatures have been, and will continue to be, essential to LULAC members. Proaño Decl. ¶¶ 34–38. For example, the ability of many LULAC members to return their ballots by mail, including those with permanent or temporary mobility disabilities and elderly voters lacking transportation, depends on whether a caregiver, friend, or family member can take those ballots to the post office. Gonzalez Decl.



¶¶ 8–10, 13; Fukuda Decl. ¶¶ 15–17; Reyna Decl. ¶¶ 20–22. The difficulties and uncertainty around returning mail ballots have been exacerbated by recent increased state restrictions limiting how ballots by mail can be returned. *See, e.g.*, Coryn Grange & Sara Loving, *Impacts of Restrictive Voting Legislation Since the 2020 Election*, Brennan Ctr. for Just. (updated Mar. 10, 2023), <https://perma.cc/9NCB-VKJ8> (describing post-2020 enactments restricting mail ballot return, including limits on drop boxes and tighter restrictions on third-party return and assistance); Nat’l Conf. of State Legislatures, *Table 10: Ballot Collection Laws*, <https://tinyurl.com/53jzau8k> (last visited Dec. 19, 2025) (compiling state limits on who may return a voter’s mail ballot); Tex. Elec. Code §§ 86.006, 276.015 (restricting drop boxes and criminalizing activity that includes third-party assistance of mail ballot voters). This frequently means that affected LULAC members’ ballots end up getting mailed close to Election Day. Gonzalez Decl. ¶ 13; Fukuda Decl. ¶ 17.

Overriding state legislatures to impose an artificial Election Day receipt deadline would also severely impact LULAC members living in rural communities. *See* Proaño Decl. ¶ 34; Orellana Decl. ¶¶ 10, 16; Gonzalez Decl. ¶¶ 11, 17. In such communities, long delays in USPS mail delivery and collection are routine and only getting worse. *See* U.S. Postal Regul. Comm’n, *Advisory Opinion on the Operational and Service Standard Changes Related to the Delivering for America Plan 2*, Docket No. N2024-1 (Jan. 31, 2025) (analyzing USPS’s Delivering for America plan and concluding that it will have “significant negative impacts on rural communities throughout the United States”) (hereinafter USPRC Opinion); *Cf.* Torey Dolan, *Where’s Mr. Postman? The Struggles of Voting*

*by Mail in Indian Country*, 59 Harv. C.R.-C.L. L. Rev. 123 (2024). Latinos are disproportionately likely to live in “postal deserts,” where lack of accessible postal locations combines with socio-economic barriers to make participation particularly resource intensive. *See Black Voters Matter Fund v. Raffensperger*, 478 F. Supp. 3d 1278, 1297, 1323 (N.D. Ga. 2020), *aff’d sub nom. Black Voters Matter Fund v. Sec’y of State for Georgia*, 11 F.4th 1227 (11th Cir. 2021). As just one example, approximately 500,000 Texans, over 90% of whom are Latino, live in border community “colonias,” where home delivery of mail is impossible because there are no official street addresses. Tex. Dep’t of Hous. & Cmty. Affs., *2019 State of Texas Low Income Housing Plan and Annual Report* at 40 (2019), <https://perma.cc/J5QS-XCWX>; U.S. Census Bureau, *2010 Census Participation Rates* (Oct. 8, 2021), <https://perma.cc/8696-WUJN> (describing impossibility of mail participation due to lack of addresses).

The negative effect on rural voters would be particularly pronounced in States where mail ballot applications must be physically signed by a voter. *See, e.g.*, Tex. Elec. Code § 84.001(b); W. Va. Code Ann. § 3-3-2.<sup>3</sup> In these States, a voter who does not have the ability to download and print their application at home must first request an application from their county, wait for the application to arrive, sign the application, send back the application, wait for the application to be processed, and then wait for the actual ballot to arrive. Given that

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3. Additionally, although several states with post-Election Day receipt deadlines allow voters to request absentee ballots online, voters who lack internet access or technological facility must still sign a physical mail ballot application. *See, e.g.*, Alaska Stat. § 15.20.081; Md. Elec. Law § 9-305; Va. Code Ann. § 24.2-701.

counties can take many days to process an application, *see, e.g.*, Tex. Elec. Code § 86.004(a) (providing up to seven days), and that each leg of mail for a rural voter may take up to five days, voters often face a thirty-plus day period between requesting an application and their completed ballot being received by the election administrator. The delay in receiving the ballot itself means that, despite applying for mail ballots well in advance, rural LULAC members often are only able to return their ballot days before Election Day. Proaño Decl. ¶ 34; Orellana Decl. ¶¶ 10, 16; Gonzalez Decl. ¶¶ 11, 17. Thus, rural LULAC members are often forced to rely on their States' ballot receipt windows to ensure that their mail ballots count. Orellana Decl. ¶¶ 16–18; Gonzalez Decl. ¶¶ 8–10, 17.

LULAC also has a significant number of members in the military, many of whom can be deployed at a moment's notice such that they are forced to send their mail-ballots at the last minute and must rely on their States' ballot receipt window. Proaño Decl. ¶ 37; Reyna Decl. ¶¶ 11–16. For example, one LULAC member was deployed with only six hours' notice. Reyna Decl. ¶ 11. These deployments, which include domestic deployments to respond to natural disasters, “can occur at any time, including in the run-up to—or even during—Elections.” *Id.* ¶¶ 12, 14. Because of last-minute deployments, LULAC service members often do not know “where [they] will be sending [their] ballots from, how long [their ballots] will take to arrive, or how reliable the mail service is” at any given location. *Id.* ¶ 17; Fukuda Decl. ¶ 27. And for those members of LULAC deployed abroad, especially those in developing countries, ballots routinely encounter postal delays, justifying a window of time after Election Day for ballots to be received by election officials. *See Fed.*

Voting Assistance Program, *Int’l Mailing Sys. & Voting by Overseas Citizens* (Nov. 28, 2016), <https://perma.cc/D68M-6D3Q> (“Overseas citizens in countries with the most reliable postal systems are 65 percent more likely to have a vote recorded compared to those in countries with the lowest observed levels of postal reliability.”); *see generally* Pew Ctr. on the States, *No Time to Vote: Challenges Facing America’s Overseas Military Voters* (Jan. 2009), <https://perma.cc/GFQ7-2794>. Without any post-Election Day window, many of these service members will be disenfranchised.

Additionally, LULAC has many student members who vote by mail and live in States with ballot receipt windows. Proaño Decl. ¶ 36; Orellana Decl. ¶¶ 8–11. Many such students receive ballots at their parents’ home address, or through slow and unreliable student mail. Orellana Decl. ¶ 8; Gonzalez Decl. ¶ 11. These members are then faced with a ticking clock to return their ballots, and the small post-Election Day receipt window is essential for their successful exercise of the franchise. Orellana Decl. ¶ 11; Gonzalez Decl. ¶¶ 11, 15.

Finally, thousands of ballots arrive by Election Day with minor defects, such as a signature mismatch, that then need to be cured. Reyna Decl. ¶ 22. Some voters are only notified of such defects *after* Election Day. Gonzalez Decl. ¶ 20. LULAC’s elderly and disabled members who vote by mail are more likely to make minor errors—for example, by omitting the date or a hyphen in their middle name—in completing their ballot. *See id.*; Reyna Decl. ¶ 22; Proaño Decl. ¶ 39; Lisa Schur & Douglas Kruse, *Disability and Voting Accessibility in the 2020 Elections: Final Report on Survey Results Submitted to the Election*

*Assistance Commission* 1 (Feb. 16, 2021) (“One in seven (14%) of voters with disabilities using a mail ballot needed assistance or encountered problems in voting, compared to only 3% of those without disabilities”); Michael C. Herron & Daniel A. Smith, *Assisting the Vote? Disability as a Cost of Voting*, 98 Electoral Stud. (2025) (finding voters who need assistance are more likely to have their VBMs rejected). Eliminating States’ post-Election Day receipt windows would predictably reduce these LULAC members’ access to equal voting opportunities.

Many States choose to account for the realities of mail voting by permitting post-Election Day receipt and cure processes. The Fifth Circuit’s judicial overreach risks widespread disenfranchisement, confusion, and hardship for LULAC’s members who are well-served by their States’ election administration choices.

**B. An Election Day receipt deadline would punish vulnerable LULAC members for circumstances beyond their control.**

As described above, restricting States from adopting flexible receipt deadlines would disproportionately harm LULAC members even under normal circumstances. To make matters worse, despite a voter’s best efforts to request and return their mail ballots well in advance, their ballots may still arrive late due to postal delays and election administration problems. This risk is not hypothetical for LULAC’s members, as many have relied on post-Election Day receipt deadlines when administrative delays beyond their control hinder their ability to ensure ballots are received by Election Day. *See* Proaño Decl. ¶ 34; *see also* Gonzalez Decl. ¶ 17; Orellana Decl. ¶¶ 10, 16–18; Fukuda Decl. ¶ 17.

Election officials nationwide have raised alarms that ballots postmarked by Election Day are frequently delivered after state deadlines, through no wrongdoing by the voters. *See* Alexander Shur, *Election Officials Send the U.S. Postal Service a Sharp Message: The Mail Must Go Through*, *Votebeat* (July 29, 2024, 9:00 AM), <https://perma.cc/JU8B-A3PA> (quoting Kansas’ Election Director as stating, “[t]he actual elections are being determined by these delays.”). In the most recent federal general election, the National Association of Secretaries of State and National Association of State Election Directors wrote to the United States Postal Service to express concerns, highlighting that “election officials across the country have raised serious questions about processing facility operations, lost or delayed election mail, and front-line training deficiencies impacting USPS’s ability to deliver election mail in a timely and accurate manner.” Letter from Nat’l Ass’n of Sec’y’s of State & Nat’l Ass’n of State Election Dirs. to Louis DeJoy, Postmaster Gen., U.S. Postal Serv. 1 (Sept. 11, 2024), <https://perma.cc/WGG6-V3TN>. They warned that officials were routinely “receiving timely postmarked ballots well after Election Day and well outside the three to five business days USPS claims as the First-Class delivery standard.” *Id.* at 2. They also noted an uptick in mail being misrouted, properly addressed election mail being returned as undeliverable, “as well as ballots being deliberately held to remediate erroneous billing issues, significantly delayed, or otherwise improperly processed.” *Id.* This resulted in many ballots arriving “10 or more days after postmark.” *Id.* These problems are not isolated; the groups stressed that the widespread nature of the delays shows they are “not one-off mistakes or a problem with specific facilities,” but a systemic issue across “nearly every state” in the country. *Id.* at 1–2. LULAC leaders hear directly

from members trying to navigate these problems; for example, LULAC's local council leadership has fielded calls from members the day before or on Election Day who are worried their ballots will not be counted due to administrative delays. Fukuda Decl. ¶ 14.

Extensive data from recent elections backs up these concerns. During the 2020 general election, for example, the Postal Service reported that more than 189,000 ballots were still caught up in processing facilities on the two days following the election and thus were not delivered by Election Day despite being sent on time. Jacob Bogage & Christopher Ingraham, *More Than 150,000 Ballots Were Produced After Election Day Deadlines*, *Wash. Post* (Nov. 5, 2020), <https://tinyurl.com/mr2895hc> (describing over 150,000 on Wednesday and 39,000 on Thursday). In some regions, the on-time delivery rate for ballots fell as low as 85%, meaning “roughly 15 out of every 100 ballots in processing plants were not sorted – or delivered – in time.” *Id.* USPS attempted to alleviate concerns by noting that a majority of the delayed ballots “were destined for States that accept ballots with pre-Election Day postmarks and that the votes would be counted under state laws.” *Id.* The Fifth Circuit seeks to upset the constitutionally assigned federal balance by overturning these very state laws. If permitted to stand, this judicial overextension would invalidate hundreds of thousands of ballots *despite* voters' best efforts. For LULAC's members who must mail their ballots close to Election Day, a post-Election Day receipt window is the difference between having their timely-cast votes counted or discarded. Proaño Decl. ¶¶ 34–35; Gonzalez Decl. ¶ 15; Orellana Decl. ¶ 11; Fukuda Decl. ¶ 17.



To make matters worse, the Postal Service’s cost-saving plans are set to exacerbate the existing problems. Its implementation of the “Regional Transportation Optimization” (RTO) and service standard changes has institutionalized delivery delays that disproportionately burden rural residents, as documented by the Postal Regulatory Commission. *See* USPRC Opinion at 112 (“the Postal Service also fails to ‘preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.’”) (quoting 39 U.S.C. § 3691(b)(1)(B)). Under the Postal Service’s changes, mail originating from post offices located more than 50 miles from a regional processing hub “will be collected 12 to 18 hours later than under current operations, and the Postal Service will add an additional day to the service expectation.” *Id.* at 105. This would result in 57 percent of rural zip codes experiencing a “multi-day service standard downgrade[.]” *Id.* at 215, Table VII-E2. Ultimately, the Commission found that the Postal Service’s “analysis” had “obscure[d] and minimize[d] negative impacts on rural areas,” *id.* at 227, and that “rural communities will experience significantly higher rates of downgraded service and significantly lower rates of upgraded service” *id.* at 210.

Mail ballot voters are not only at the mercy of USPS, but they also rely on local election administrators at every step of the process to ensure their ballots are timely received. Unfortunately, technical glitches, administrative errors, and logistical failures have on many occasions slowed or derailed the mail ballot receipt.

A vivid example occurred in Wisconsin’s April 2020 primary, where a USPS audit revealed that a computer



glitch in the City of Milwaukee’s election office prevented about 2,700 requested absentee ballots from ever being mailed out to voters. Will Kenneally, *USPS Audit Finds Issues, Few Irregularities in April Absentee Ballots*, *PBS Wisconsin* (July 10, 2020), <https://perma.cc/DVE8-KJ3Z>. Those thousands of voters did everything required to cast their ballot, yet due to an internal error, their ballots were not even sent. In that same Wisconsin election, the city of Appleton entrusted trays of outbound ballots to a third-party mailing vendor, but the vendor failed to deliver 749 of those ballots to the post office by Election Day. *Id.*

Federal court records corroborate that administrative delays are a recurring issue. The Department of Justice has had to intervene in numerous jurisdictions over multiple election cycles when election officials have failed to comply with deadlines that allow for timely ballot receipt. *See, e.g.*, Civil Rights Div., U.S. Dep’t of Justice, *Cases Raising Claims Under the Uniformed and Overseas Citizen Absentee Voting Act* (last updated Mar. 24, 2022), <https://perma.cc/98P9-DSZZ> (collecting cases). For example, 65 municipalities in Wisconsin were found to have mailed ballots late to military and overseas voters in a 2012 primary; a court order subsequently extended the ballot receipt deadline by a commensurate number of days so that those voters would not be disenfranchised. *Id.* That same year in California, eleven counties failed to send over 8,000 absentee ballots on time for a federal primary election, leading to a DOJ settlement with the State to ensure affected voters could have their votes counted. *Id.* It would be perverse if sovereign States cannot preemptively address the possibility of postal and election administration delays, yet federal agencies and courts remain free to do so.

**C. Federal courts should respect the choice of state legislatures that wish to give mail ballot voters sufficient time to make an informed decision before voting.**

Finally, many LULAC members choose to cast their ballots close to Election Day so that they have the benefit of all available information in making their candidate selections. *See* Rivera Decl. ¶ 9–11; Gonzalez Decl. ¶ 16; Orellana Decl. ¶ 15. Critical late-breaking news such as political scandals, major policy shifts, endorsements, or revelations about a candidate’s record often emerges in the final days of a campaign, shifting a member’s perspective on a given candidate or race. *Id.* Latino voters in recent decades have exhibited independent, or “swing,” voting patterns. *See, e.g.,* Pew Rsch. Ctr., *A Year Ahead of the Midterms, Americans’ Dim Views of Both Parties* 33 (Oct. 30, 2025), <https://perma.cc/MM3E-4MFJ> (reporting that 29 percent of Hispanic voters said that neither political party represents their interests well); Bernard L. Fraga, Yamil R. Velez & Emily A. West, *Reversion to the Mean, or Their Version of the Dream? Latino Voting in an Age of Populism*, 119 Am. Pol. Sci. Rev. 517, 517 (2025) (noting that “historical voting patterns reveal significant ebbs and flows” in Latino partisan voting patterns). It is often the case that late October surprises influence undecided voters. Mandating an Election Day ballot receipt deadline would deny absentee voters the ability to safely incorporate such late-breaking information into their decisions without risking disenfranchisement, even if their state legislature wished to provide time to do so. This directly flouts a purpose underlying the federal Election Day statutes, which were adopted at least in part so that

all voters would make their final selection with equal access to the full universe of information available up to that moment. *See* 3 U.S.C. §§ 1, 7; *Love v. Foster*, 90 F.3d 1026, 1029 (5th Cir. 1996) (citing *Cong. Globe*, 42d Cong., 2d Sess. 112 (1871)), *aff'd*, 522 U.S. 67 (1997) (noting that Congress wanted voters to have equal access to the same information for the election).

The Fifth Circuit’s Election Day receipt deadline overrides the will of state legislatures and arbitrarily creates a subclass of voters who will have substantially less time to make their decisions than other voters. *Cf. Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (“the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another”). For many of these voters—the elderly lacking transportation, disabled, military, and student voters—voting by mail is their *only* means to exercise the franchise. The Fifth Circuit’s judicial activism displaces state authority and disrupts settled reliance interests. *See* Rivera Decl. ¶ 15.

## CONCLUSION

For the foregoing reasons, this Court should reject the Fifth Circuit’s dubious statutory interpretation rather than overturn States’ sound legislative decisions.

Respectfully submitted,

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