No. 24-1260

In the Supreme Court of the United States

MICHAEL WATSON, MISSISSIPPI SECRETARY OF STATE,
Petitioner,

v.

REPUBLICAN NATIONAL COMMITTEE, ET AL.,
Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

RESPONSE IN OPPOSITION TO MOTION OF RESPONDENTS VET VOICE FOUNDATION AND MISSISSIPPI ALLIANCE FOR RETIRED AMERICANS FOR DIVIDED ARGUMENT

Respondents Vet Voice Foundation and Mississippi Alliance for Retired Americans ask this Court to allow them to participate in oral argument and to grant them half of petitioner's argument time. Mot. 1. This Court should deny that request.

1. This case presents the question whether the federal election-day statutes (2 U.S.C. § 7, 2 U.S.C. § 1, and 3 U.S.C. § 1), which set the Tuesday after the first Monday in November in certain years as the "election" day for federal offices, preempt a state law that allows ballots that are cast by federal election day to be received by election officials after that day. The case arises from two lawsuits challenging

Mississippi's law allowing timely cast mail-in absentee ballots to be counted if election officials receive them within 5 business days after election day. Miss. Code Ann. § 23-15-637(1)(a). Plaintiffs in both cases sued the Mississippi Secretary of State (petitioner here) and several county election officials, because of their roles in administering election laws enacted by the Legislature. The district court consolidated the lawsuits and allowed respondents Vet Voice Foundation and Mississippi Alliance for Retired Americans to intervene as defendants. The district court later granted summary judgment to defendants, rejecting plaintiffs' preemption claim. The Fifth Circuit reversed in relevant part, holding that Mississippi's law is preempted. The Fifth Circuit denied rehearing en banc.

Petitioner then filed a petition for certiorari in this Court. Respondents did not. After the petition was filed, respondents filed what they called a "response ... in support of petition." VV Pet'n-Stage Br. cover page (formatting altered). That brief did not support certiorari outright. Rather, respondents' lead argument was to oppose petitioner's request for plenary review and to urge this Court to instead hold the petition for *Bost v. Illinois State Board of Elections*, No. 24-568—a case presenting a question of Article III standing that is not at issue in this case. VV Pet'n-Stage Br. 8-12; *see* Pet'n Reply 11. Had this Court taken respondents' approach, it would not have acted on the petition here before January 14, 2026 (when *Bost* was decided), which would have made it very difficult for this Court to resolve the question presented before the 2026 federal elections. Petitioner urged this Court to reject respondents'

proposal and to instead grant certiorari and resolve the question presented this Term. Pet'n 31-32; Pet'n Reply 1, 11. On November 10, 2025, this Court granted the petition.

Respondents now ask this Court to allow them to participate in oral argument and to give them half of petitioner's argument time. Mot. 1.

2. In cases set for oral argument in this Court, "[o]nly one attorney will be heard for each side, except by leave of the Court." S. Ct. R. 28.4. "Divided argument is not favored." *Ibid.* "[I]n the ordinary case allotted a total of one hour for argument, the Court usually denies divided argument even if the parties on one side of the case have divergent interests or perspectives." Stephen M. Shapiro et al., Supreme Court Practice 778 (10th ed. 2013). "Whether the lawyers agree to the division" is "a relevant factor." *Id.* at 777; *see* Stephen M. Shapiro et al., Supreme Court Practice, ch. 14.5, p. 14-17 (11th ed. 2019) (same, on both points).

This Court should deny respondents' motion. There is no reason to take the "[dis]favored" and "[un]usual[ ]" step of granting respondents' request for divided argument. This case involves a constitutional challenge to a Mississippi state law. No one is better positioned to defend a Mississippi law than the Mississippi Attorney General, who represents petitioner and has vigorously defended Mississippi's law throughout this case. Only petitioner sought this Court's review; indeed, respondents worked against petitioner's effort to secure a definitive resolution of the question presented and to do so before the next federal election. And the Attorney General has filed a merits brief making all the strongest arguments for upholding Mississippi's law. Pet. Br. 23-47. Respondents do not claim otherwise.

Respondents say that they "make several arguments that Petitioner does not." Mot. 3; *see* Mot. 3-4. That does not distinguish them from the countless amici that do the same thing yet are not permitted to participate in oral argument. And respondents do not explain why they must participate in oral argument to vindicate their interests. Unlike an amicus that is limited to 8,000 words of merits-stage briefing, S. Ct. R. 33.1(g)(xii), respondents will enjoy 19,000 words of merits-stage briefing, *see* S. Ct. R. 25.1, 25.3, 33.1(g)(vi), (vii). Respondents do not claim that this allotment is inadequate to advance what they call their "distinct perspectives" and "distinct interests." Mot. 2. Quite the contrary: respondents pledge that they have made their "different" arguments "in detail" already, in their principal brief. Mot. 2, 3. And although respondents say that they have "distinct" interests and perspectives, Mot. 2, they do not claim that they have "*divergent* interests or perspectives" (Shapiro 778 (emphasis added)): a decision by this Court upholding Mississippi's law would fully vindicate respondents' interests and perspectives. And even "divergent" interests are "usually" not a basis for divided argument. *Ibid.* Respondents say nothing to show that this case is unusual in any way that matters.

Respondents claim that this Court "has regularly granted motions for divided argument in cases where private litigants and state parties appear on the same side." Mot. 4; *see* Mot. 4-5. That is not so. Indeed, in every example they cite to support that claim the State (or government official) joined or consented to the request for divided argument. *See* Unopposed Joint Motion of Petitioners for Divided Argument 1-2 (Jan. 6, 2021), *Brnovich v. Democratic National Committee*, No. 19-1257 (joint request by

Arizona and private parties); Respondents' Unopposed Motion for Divided Argument 1 (Jan. 19, 2021), *Brnovich v. Democratic National Committee*, No. 19-1257 (joint request by Arizona Secretary of State and other respondents); Respondents' Joint Motion for Divided Argument 1 (Apr. 28, 2025), *Trump v. CASA, Inc.*, No. 24A884 (joint request by New Jersey and private parties); Appellants' Unopposed Joint Motion for Divided Argument 3 (Jan. 16, 2025), *Louisiana v. Callais*, No. 24-109 (joint request by Louisiana and intervenors); Motion of Respondents Growth Energy and Renewable Fuels Association for Divided Argument 1 (Jan. 17, 2025), *EPA v. Calumet Shreveport Refining, LLC*, No. 23-1229 (U.S. Solicitor General consented to dividing time with respondents); *see also* Joint Motion of Court-Appointed *Amicus Curiae* and Intervenors Democratic National Committee, et al. for Divided Argument 1 (Oct. 6, 2025), *National Republican Senatorial Committee v. FEC*, No. 24-621 (joint request by Court-appointed amicus and intervenors); Motion of Federal Respondents for Divided Argument 1 (Aug. 21, 2025), *National Republican Senatorial Committee v. FEC*, No. 24-621 (U.S. Solicitor General proposing that Court-appointed amicus and intervenors divide argument time).

Here, there is no such agreement: the State opposes respondents' motion. That lack of agreement should always be "a relevant factor." Shapiro 777. And where, as here, a request for divided argument is opposed by a *State* that is defending its own *state law*, that opposition should weigh powerfully against divided argument.

This Court should deny respondents' motion.

Respectfully submitted.

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