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

AMICI CURIAE BRIEF OF WISCONSIN VOTER ALLIANCE, MICHIGAN FAIR ELECTIONS INSTITUTE, PA FAIR ELECTIONS, AND VETERANS FOR AMERICA FIRST, IN SUPPORT OF RESPONDENTS

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STATEMENT OF IDENTITY AND INTEREST OF THE AMICI CURIAE[1]

Three election integrity groups, Wisconsin Voter Alliance (WVA), Michigan Fair Elections Institute (MFEI), and PA Fair Elections (PAFE), alongside Veterans for America First (VFAF), submit this amicus brief in support of Respondents and upholding a public consummate uniform Election Day, requiring receipt of all ballots, including active-duty military and overseas votes under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

WVA, MFEI, and PAFE are each non-partisan, non-profit volunteer organizations dedicated to promoting election integrity, transparency, and strict observance of federal and state election laws, including direct litigation and amicus support. These organizations focus on empirical study of election administration and data-driven analysis to identify systemic vulnerabilities in state and federal voting systems. They, with their individual members and donors, also seek to educate the public, and local, state, and federal officials, with respect to election law, administration, and data analysis.

WVA, MFEI, and PAFE have observed firsthand and have documented discretionary gaps in state administration that allow processing unverified

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[1]Pursuant to S. Ct. Rule 37.6, no counsel for any party authorized this brief in whole or in part, and no person or entity, other than amicus curiae or its counsel made any monetary contribution to its preparation or submission.

ballots, the failure to track ineligible voters, and alarming occurrences of human and technical glitches during forced overtime receipt windows. Systemic collapse occurs when federal Election Day is treated as an aspirational suggestion rather than as an actual boundary. Each group seeks to honor our veteran and active military members and their votes. WVA is led by veteran Ron Heuer, who served as a U.S. Army Captain with meritorious command service in both Vietnam and the Wisconsin National Guard.

Veterans for America First (VFAF) is an LLC and grassroots volunteer organization. Consistent with their focus on protecting the rights of veterans and first responders, VFAF advocates to protect the UOCAVA overseas military vote from ineligible-ballot dilution. They support America First policies, which include clean voter rolls and protection from noncitizens voting in U.S. Elections. They join the Lead Amici WVA, MFEI, and PAFE to support their efforts to protect military votes.

WVA, MFEI, and PAFE and the VFAF have an interest in the policy and legal implications regarding election day and rightly interpreting the election day statutes as implicated in the question presented. They submit this amici curiae brief to provide unique empirical evidence of the verification vacuum that arises when the structural mandate of 2 U.S.C. § 7 and 3 U.S.C. § 1 is ignored. By reaffirming the long held federal standard of election consummation, this Court will protect the integrity of the national vote and ensure that the mandatory safeguards of federal law apply simultaneously and uniformly to all fifty states.

SUMMARY OF THE ARGUMENT

The amici assert that the resolution of this case is governed by the principle that states may not adopt a rival or diminished understanding of the electoral process to evade federal structural mandates. This Court must choose between two mutually exclusive legal constructs, the long-standing election "Consummation" view or the newer "Private-Intent" theory regarding how a federal election is "held" under the Election Day Statutes 2 U.S.C. § 7 and 3 U.S.C. § 1. The federal "day for the election" established by these statutes is a structural mandate for finality and consummation, not an aspirational suggestion for state administrative convenience.

The structural necessity of this uniform deadline is confirmed by the fundamental transition from pre-election to post-election duties. As established by the long-standing mandatory-directory distinction in jurisdictions like Minnesota, Election Day serves as the irreversible cutoff where the judiciary's power to enforce mandatory verification procedures effectively ends. By allowing receipt to bleed past this date, states move critical verification safeguards into a directory administrative black hole where they are no longer strictly enforceable. The federal UOCAV and MOVE Acts provide for ballots to reach military and non-military overseas voters well ahead of Election Day to facilitate timely return. But, neither of those two statutes, allowance for HAVA provisional ballots, or other remedial measures, comprise exceptions to Election Day.

Amici's empirical evidence from Pennsylvania, Wisconsin, and Michigan proves that where states adopt the "Private-Intent" or "No-Limit" theory, they create a systemic "verification vacuum" in which the integrity of the vote collapses. In Wisconsin, the lack of a firm consummation point created a systematic failure to track and deactivate ineligible wards. In Pennsylvania, tens of thousands of ballots bypassed HAVA identification safeguards through administrative directives that exploited post-election flexibility. In Michigan, the pressure of "forced overtime" led to technical glitches and human errors that skewed reported outcomes and undermined public confidence. The resulting verification vacuum gave rise to an unconstitutional dual-track system. Voters casting pre-Election-date ballots were subjected to rigorous real-time verification, while allowing tranches of post-Election-dated ballots to bypass those safeguards altogether, in violation of equal protection principles.

To protect the finality of the national vote, the Amici request this Court explicitly adopt the consummation view of Election Day and reaffirm that the federal "day for the election" is a day of finality, uniformity, and consummation. Enforcing Election Day ballot receipt deadlines is critical to protect the votes of our citizens and military. Election Day closes discretionary gaps that invite post-election gamesmanship and ensure that no state may impose a rival theory of election day that undermines the constitutional and statutory requirements of the federal deadline.

ARGUMENT

I. The Election Day "Consummation" View Excludes States from Adopting a Rival Diminished "No-Limits" or "Private Intent" Understanding of the Electoral Process to Evade Federal Structural Mandates.

Resolving this case does not require complex linguistic analysis of the word "election" in a vacuum. Instead, it requires the Court to choose between the only two plausible legal theories— "Consummation" or "Private Intent"—of how a federal election is "held" under 2 U.S.C. § 7 and 3 U.S.C. § 1. The Fifth Circuit's opinions on the denial of rehearing *en banc* below confirm a profound divide, with Judge Oldham's concurrence explicitly expressing incredulity at the dissent's no-limits view:

> According to the dissenting opinion, States should be free to accept ballots for as long as they'd like after Election Day. . . . [D]o our dissenting colleagues really think that federal law imposes no time limits at all on ballot acceptance?

Republican National Committee v. Wetzel, 132 F.4th 775, 778–79 (5th Cir. 2025) *denying reh'g en banc* (Oldham, J., concurring).

This Court's choice in this case is governed by the principle that states may not adopt a rival understanding of the electoral process to evade federal structural mandates. As this Court established in *Republican Party of Minnesota v. White*, 536 U.S. 765,

788 (2002), once a State chooses to hold an election, "it may not then say that the characteristics of an election do not apply" to that process. *Id.*

The "Consummation" view is premised on the necessary structural transition from pre-election duties to post-election duties. Pre-election duties—including the collection and verification of ballots—must end on the Election Date to allow the post-election phase of counting to begin. Allowing pre-election collection to bleed into the post-election period complicates the entire judicial framework. Generally, lawsuits involving violations of pre-election duties must be completed before the post-election anonymous counting begins—so as not to disenfranchise voters. *See, e.g., Erickson v. Sammons*, 65 N.W.2d 198, 202 (Minn. 1954). Extending the collection window past the Election Date creates a "legal overlap" that prevents courts from granting relief without unmixing already-counted anonymous ballots.

A. The "Private-Intent" Theory Erroneously Equates Private Intent with Public Action.

The Private-Intent Theory (or "No-Limit" Theory) rests on the flawed premise that the term "election" refers exclusively to the individual voters' internal act of choosing. Under this theory, an election is reduced to a collection of private moments in which voters make a "final selection" within their homes.

Proponents argue that as long as this private act is completed by the end of Election Day, the federal requirement is satisfied, regardless of when the State

receives or verifies that choice. Because it equates private expression with public action, this theory is legally untenable. As held in *Foster v. Love*, 522 U.S. 67, 71 (1997), an election refers to the "combined actions of voters and officials." By treating the State's essential role—receipt and verification—as a mere clerical afterthought, this theory fails to meet the standard characteristics of an election.

Furthermore, as Judge Oldham identified in his concurrence with the Fifth Circuit's *en banc* denial, this Private-Intent theory "lacks any legal limit." *Wetzel*, 132 F.4th at 779. If the federal deadline does not require receipt, nothing prevents States from innovating receipt deadlines months or even years after Election Day. The dissenters rely only on "pragmatic assurances" that states simply will not push the envelope that far—a position that has no limit. *Id.*

B. "Consummation" Correctly Identifies the Election as a Singular, Public Act Subject to a Firm Deadline.

"Consummation" is the only interpretation that respects the functional divide between pre-election and post-election judicial enforcement. This structural necessity is best illustrated by the "mandatory-directory" distinction established in long-standing state case law, which recognizes that the legal nature of election duties fundamentally changes the moment an election is consummated. *See e.g., Erickson*, 65 N.W.2d at 202.

In Minnesota, for example, the state Supreme Court has consistently held for decades that "before an election is held, statutory provisions regulating the conduct of the election will usually be treated as mandatory and their observance may be insisted upon and enforced. After an election has been held, the statutory regulations are generally construed as directory." *Id.*; *see also Green v. Indep. Consol. Sch. Dist. No. 1*, 89 N.W.2d 12, 13 (Minn. 1958).

This means that while courts have the authority to compel strict compliance with election procedures—such as the physical receipt and verification of ballots—before the election is completed, they generally cannot invalidate results for procedural violations after the fact unless there is proof of fraud or bad faith. *Moulton v. Newton*, 144 N.W.2d 706, 710 (Minn. 1966). As recently as 2015, the Minnesota Court of Appeals reaffirmed that once the "consummation" point passes, technical defects in administration are construed as directory to avoid the disenfranchisement of voters who have already cast ballots. *In re Contest of Special Election held on Nov. 4, 2014*, 2015 WL 4528374 (Minn. App. 2015).

The Amici encourage the Court to adopt Minnesota's approach at the federal level in conjunction with a firm and absolute Election Date for completing pre-election duties. Accordingly, the Court would hold that: before an election is held, federal statutory provisions regulating the conduct of the election will usually be treated as mandatory and their observance may be insisted upon and enforced. After an election has been held, the statutory

regulations are generally construed as directory—and cannot be enforced in court.

Allowing pre-election collection duties to extend beyond the federal Election Date—as the "No-Limit" Theory suggests—effectively strips the judiciary of its power to enforce mandatory pre-election safeguards. If the "collection" phase continues into the "post-election" phase, the mandatory verification duties become merely directory before they are ever fully performed. By adopting the "Consummation" construct and a firm and absolute Election Date, this Court ensures that the state's mandatory duties are completed while they are still enforceable, protecting the integrity of the vote before the anonymous counting process begins.

II. Federal Statutes for Military and Overseas Voters and Provisional Ballots Support the "Consummation" View of a Firm Deadline of a Single Uniform Election Day.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the subsequent Military and Overseas Voter Empowerment (MOVE) Act are examples of Congress setting baseline rules that uniformly govern how federal elections are conducted in the states. *See* 52 U.S.C §§ 20301–20311 (codifying substantial portions of both UOCAVA and MOVE). Ensuring active military and overseas citizens are not disenfranchised in federal elections is related to the fair rules of competition. *See, e.g.*, Oral Argument, *Michael Bost v. Illinois Board of Elections*, (No. 23-2644) (7th Cir. March 28, 2024) (discussing concerns

regarding receipt of UOCAVA ballots with multiple parties); *Bost v. Illinois State Board of Elections*, 607 U.S. --, No. 24-568, 2026 WL 96707, at *4 (2026) (comparing competitors in a 100-meter dash that would suffer harm if the race were unexpectedly extended to 105 meters, thus depriving all "of the chance to compete for the prize that the rules define.")

UOCAVA applies to active-duty military members, their spouses, and other American citizens living overseas. 52 U.S.C. § 20310. Veterans are not eligible to vote UOCAVA unless they otherwise qualify as eligible voters living overseas, Therefore, no veteran voter group is uniquely impacted by UOCAVA ballot receipt deadlines. *See id.* at (4)(A). However, uniformed service members and other eligible voters (including veterans) are impacted when their legally cast votes are diluted either when ballots by ineligible voters or untimely ballots are counted. The right to vote "can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533 (1964).

UOCAVA establishes procedures for the collection and delivery of ballots from overseas members of the military. It directs the Presidential designee to ensure that ballots are delivered to state and local elections offices before the deadline, which is the "regularly scheduled general election for Federal office," 52 U.S.C. § 20304(a), and to ensure that ballots are delivered to the "appropriate election officials" prior to the election. *Id.* at (b)(1).

The deadline for mailing voted UOCAVA ballots is "the seventh day *preceding* the date of the regularly scheduled general election for Federal office." 52 U.S.C. § 20304(b)(3)(A). UOCAVA further directs the Presidential designee to move the mailing deadline *earlier* than the seventh day if the designee determines that the particular location or remoteness would prevent the ballots from being delivered by election day. *Id.* at (b)(3)(B). The exception to the seventh-day-preceding requirement does not contemplate later marked ballot transmittal. Rather, it requires an earlier deadline for collection of voted (marked) UOCAVA ballots if location remoteness or something else would interfere with "timely delivery of the ballot" to the potential voter. *Id.*

The United States Postal Service must expedite delivery of UOCAVA ballots so long as those ballots were "collected on or before the deadline described in paragraph (3)." 52 U.S.C. § 20304(b)(2). That deadline is the seventh day preceding the date of the election. *Id.* at (b)(3)(A).

Given that UOCAVA makes explicit and extensive provisions for prior collection and expedited return of marked ballots in the week before Election Day, interpreting UOCAVA to intend to have marked ballots delivered to states after Election Day would be absurd.

Even as Congress does not completely control the field of election law nor completely dictate the minutiae of federal elections to the states, the UOCAV and MOVE Acts demonstrate Congressional intent to

require states to receive their ballots by Election Day. Elections Clause, U.S. Const., Art. III, sec. 1; 2 U.S.C. § 7 ("The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election," establishing the uniform day for the federal elections) and 3 U.S.C. § 1 ("electors... shall be appointed, in each state on election day…."); *see, e.g.*, *Murphy v. National Collegiate Athletic Association*, 584 U.S. 453, 477–78 (2018) (discussing the three different types of federal preemption of state law, "conflict," "express," and "field.") When any state extends its ballot receipt past Election Day, that state bypasses the baseline election rules that Congress mandated in the elections statute.

A. Congress *Rejected* Post-Election Day Absentee Ballot Receipt when adopting the UOCAV and MOVE Acts.

When the federal MOVE Act was initially discussed and post-Election Day receipt of UOCAVA ballots was proposed, Congress debated the issue. Senator Chuck Schumer had introduced the MOVE Act with language that would have created a flexible ballot receipt deadline without regard to the date of Election Day.[2] But, Congress rejected this aspect of the initially proposed MOVE Act. Instead Congress amended the act to affirm the ballot receipt deadline is election day:

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[2]Originally proposes as the Military and Overseas Voter Empowerment Act. S.1415, 11th Cong. (2009), https://www.congress.gov/bill/111th-congress/senate-bill/1415/text/is#.

> [T]he amendment removed language from the original version of the bill which would have required States to accept and count absentee ballots received up to 55 days after the date on which an absentee ballot was transmitted or the date on which the State certified an election, whichever was later. The negotiated modification placed a 45-day mandate on States to promptly respond to military and overseas absentee ballot requests.

156 Cong. Rec. No. 82, S4516 (May 27, 2010).[3]

Then, Congress passed legislation instructing all states to transmit UOCAVA ballots at least 45 days before an election if the ballot was requested before that early date. 156 Cong. Rec. No. 82, S4513 (May 27, 2010)[4]; 52 U.S.C. § 20302(a)(8).

The Congressional records reflect that Election Day is the UOCAVA ballot receipt deadline. As Under Secretary for Personnel and Readiness for the Department of Defense Gail McGinn testified in a hearing about the MOVE Act, the "45 days [are] between the ballot mailing date and the date the ballots are *due*." 156 Cong. Rec. No. 82, S4514 (May 27, 2010) (emphasis added). This necessarily implicates understanding the absentee UOCAVA ballots are "due" on Election Day.

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[3]https://www.congress.gov/congressional-record/volume-156/senate-section/page/S4516.

[4]https://www.congress.gov/111/crec/2010/05/27/CREC-2010-05-27-pt1-PgS4513-2.pdf.

In addition to the uniform 45-day mandate, the statute also uniformly allows states to transmit UOCAVA ballots instantly over email and provides for blank ballots to allow ample time for voters to receive, vote and return the ballots. 52 U.S.C. § 20302. Therefore, enforcing the uniform UOCAVA Election Day return for all UOCAVA ballots also helps to alleviate potential confusion among military and oversea voters. *See id.*

B. The UOCAV and MOVE Acts Are Not Exceptions to a Uniform Election Day.

Simply put, those who claim the text in UOCAVA "deadline for receipt of the State absentee ballot under State law," 52 U.S.C. § § 20303(b)(3), (e)(2) somehow nullifies an election day receipt deadline are incorrect based on both the text and Congressional record discussing the UOCAV and the MOVE Acts.

The Federal UOCAVA in 52 U.S.C. § 20303(b)(3) states that a Federal write-in absentee ballot shall not be counted "if a State absentee ballot of the absent uniformed services voter or overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law." Twenty-one states (*e.g.*, Minnesota and Utah) statutorily require absentee ballots (including UOCAVA ballots) to be received on Election Day.[5] Requiring ballot receipt by

[5]*See* Resp. Br. at 46 (citing *Ballot Receipt Deadlines for Military and Overseas Voters*, Nat'l Conf. of State Legislatures (Dec. 24, 2025), bit.ly/4tpJGuu).

Election Day is administratively simple and comports with the consummate view of elections. And, with the Election Day receipt deadline intent expressed in the Congressional record, it makes more sense that any allowance to accommodate a deadline for an "absentee ballot under State law" was intended to address variations in state laws regarding ballot receipt deadlines variation in minutiae. These minutiae may include varying poll closing times, as well as differing time zones across the country. For example:

Minnesota and New Hampshire require absentee ballot receipt by 5p.m. on Election Day Minn. Stat. §203B.08; N.H. Rev. Stat. § 657:17(III), 657:20 (including UOCAVA voters), and § 657:22 (excepting those who require assistance in voting due to disability, or emergency service workers under certain circumstances from the strict 5p.m. cutoff).

Arizona, New Mexico, and Oklahoma (with additional provision for electronic transmission) require UOCAVA ballot receipt by 7p.m. on Election Day. Ariz. Rev. Stat. §§ 16-543.02, 16-548; N.M. Stat. §1-6B-8, 1-6-10; Okla. Stat. T. 26, § 14-145, 14-147.

Idaho, Montana, and Wisconsin require ballot receipt by 8pm on election day. Idaho Code § 34-1005; Montana, Mont. Code Ann. §13-21-226; Wis. Stat. § 6.87(6).

Thirteen other states (Connecticut, Delaware, Hawaii, Kansas, Kentucky, Louisiana, Maine, Nebraska, South Dakota, Tennessee, Utah, Vermont, and Wyoming) require ballot receipt by "the close of polls" on election day. Conn. Gen. Stat. § 9-158g; Del. Code 15 § 5508; Haw. Rev. Stat. §15D-10; Kan. Stat. §§ 25-1221, 25-1222; Ky. Rev. Stat. § 117A.090; La. Rev. Stat. Ann. § 18:1311(D); Me. Rev. Stat. 21-A, §§ 782, 755; Neb. Rev. Stat. §32-939.02, 32-947; S.D. Cod. L. §§ 12-4-4.5, 12-19-12; Tenn. Code §§ 2-6-502, 2-6-304; Utah Code Ann. § 20A-16-404; Vt. Stat. 17, §§ 2539, 2543; Wyo. Stat. § 22-9-119.

- Pennsylvania's ballot receipt deadline is 8PM (Eastern Time) on Election Day. Pa. Stat. 25 § 3146.8(g)(ii).
- Wisconsin's ballot receipt deadline is 8PM (Central Time) on election day. Wis. Stat. § 6.87(6).
- Arizona's ballot receipt deadline is 7PM (Arizona Mountain Standard Time) on Election Day. Ariz. Stat. § 16-548(A).

Further, UOCAVA applies to federal primary elections, which states hold on different dates. For example, Tuesday, August 4, 2026, is Arizona's Congressional, State and Gubernatorial Primary Election.[6] Tennessee holds its primary election that same week, but on Thursday, August 6, 2026.[7] Because states have differing Primary Election Days, the ballot receipt deadline for those primaries will have a different date and a different deadline in various states.

In its 2020 survey, the Election Assistance Commission (EAC) suggested one of the primary benefits of greater uniformity in state-level UOCAVA rules is that uniformity could help UOCAVA voters: "Among the challenges UOCAVA sought to address was the wide variability in rules and procedures governing registration and voting across states which

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[6] *2026 Election Information*, Ariz. Sec. State, https://azsos.gov/elections/election-information/2026-election-info (last visited Feb. 9, 2026).

[7] *Elections Calendar*, Tenn. Sec. State, https://sos.tn.gov/elections/calendar (last visited Feb. 9, 2026).

made it difficult for the uniformed service members and overseas citizens to navigate the voting process."[8]

Transmitting ballots to voters overseas has never been easier. After the 2010 MOVE Act, due to significant increase in civilian overseas voters exercising their UOCAVA privileges, the landscape of UOCAVA voting has undergone substantial changes. As Time magazine reported the sheer number of UOCAVA ballots has drastically increased: "The U.S. Election Assistance Commission, which sources the number of ballots cast by both overseas civilian and military voters directly from states, puts the number of overseas votes counted at 890,000 in 2020—nearly twice as many as those in 2016 (496,000) and 2012 (479,000)."[9]

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[8]*Election Administration and Voting Survey 2020 Comprehensive Report*, U.S. Election Asst. Comm'n, 173 (2021), https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf (hereinafter "EAVS 2020").

[9]Yasmeen Sherhan, *The Overlooked Voting Bloc that Could Impact the U.S. Midterms*, TIME (Nov. 3, 2022, 2:54 EDT); *compare* 2012 *Election Administration and Voting Survey*, U.S. Election Asst. Comm'n (2013), https://www.eac.gov/sites/default/files/eac_assets/1/6/2012ElectionAdministrationandVoterSurvey.pdf *with Election Administration and Voting Survey 2016 Comprehensive Report*, U.S. Election Asst. Comm'n (2017), https://www.eac.gov/sites/default/files/eac_assets/1/6/2016_EAVS_Comprehensive_Report.pdf (hereinafter "EAVS 20016") *and* EAVS 2020; *Election Administration and Voting Survey 2024 Comprehensive Report*, U.S. Election Asst. Comm'n, 201–211 (2025), https://www.eac.gov/sites/default/files/2025-06/2024_EAVS_Report_508c.pdf (hereinafter "EAVS 2024").

The majority of UOCAVA voters are actually civilians living overseas, including study-abroad students, vacation travelers and US citizens who have permanently moved overseas. In 2016, 43.6% of UOCAVA voters were military as opposed to 56.1% civilian overseas voters.[10] By 2020, the military component decreased to 36.3% while the overseas civilian component increased to 62.9%.[11] In 2024, this shift toward civilian overseas voters continued, with the EAC reporting that of ballots cast, only 27.5% of UOCAVA votes came from uniformed military and their families, and more than 69.7% of UOCAVA votes came from overseas civilians.[12]

C. Remedies and HAVA Provisional Ballots Do Not Nullify a Consummate Election Day.

There is a distinction between ballots submitted under a state's general mail-in-ballot procedure and absentee ballots submitted and governed under UOCAVA. *Wetzel*, 132 F. 4th at 778 (Oldham, J., concurring). The Fifth Circuit explained the extent of UOCAVA's post-Election Day ballot receipt through remedial measures in appropriate instances: "UOCAVA also permits post-Election Day balloting, but it does so through its statutory text. UOCAVA's remedial provisions authorize the Attorney General to bring civil action in federal court for declaratory or injunctive relief to enforce the Act 52 U.S.C. § 20307(a). And the Attorney General has

[10]EAVS 2016.
[11] EAVS 2020.
[12]EAVS 2024 at iv, 205–06.

done so to remedy state noncompliance with the federal law, namely the federal 2010 MOVE Act requiring mailing of UOCAVA ballots 45 days before federal elections. *Republican Nat'l Comm. v. Wetzel*, 120 F.4th 200, 213 (5th Cir. 2024).

It is also true that an additional baseline federal law governing elections, the Help America Vote Act (HAVA), in 52 U.S.C. § 21802, allows for provisional ballots that may be cured and later counted after Election Day proper as votes if a questionably eligible voter is determined to be entitled to cast a vote. *Wetzel*, 120 F.4th at 212. However, a HAVA provisional ballot allowance is not an exception to consummate receipt of the ballot by Election Day. And indeed, as the Fifth Circuit concluded, "a ballot is 'cast' when the State takes custody of it." *Id.* at 207.

Even if UOCAVA permits states to count UOCAVA ballots received after Election Day to be counted only in cases of remedial action, and while HAVA allows provisional ballots to be cured, those specific, narrow allowances do not extend to mail-in ballots or UOCAVA ballots, generally. That is, these Federal statutes do not authorize a general license for post-election receipt. Rather, they are narrow, categorical exceptions for a protected class of military and their families to remedy unique international mail obstacles. Under the principle of *expressio unius est exclusio alterius*,[13] the fact that Congress explicitly authorized late receipt for narrow classes confirms

[13]The expression of one thing is the exclusion of the other.

that no such authority exists for the general domestic electorate.

Furthermore, the "mailbox rule" fails as a domestic defense because domestic mail remains recallable through the U.S. Postal Service until physical delivery, whereas only overseas UOCAVA ballots are generally considered final upon mailing. Allowing states to override the Congressionally mandated Election Date creates a confusing "jurisdictional patchwork" that defeats Congress's intent for a uniform national system.

If Congress had intended to permit a generalized post-election receipt window, it would have modified the primary election statutes rather than creating surgical exceptions. Historically, the power of states to regulate the "manner" of elections under *Smiley v. Holm*, 285 U.S. 355 (1932), is strictly subordinate to the overriding federal mandate for a uniform day.

The history of federal enforcement actions underscores that post-election receipt is a remedial tool managed by federal authority. In *United States v. Wisconsin*, Case No. 10-cv-518 (W.D. Wis. Sept. 15, 2010) (consent decree), the federal government had initiated an action because state law prevented timely transmission of ballots. The resulting consent decree allowed receipt until November 19, 2010—a specific, court-ordered extension required only because the State failed to meet the 45-day pre-Election Day transmission mandate.

Similarly, in *United States v. Alabama*, Case No. 2:12-cv-179-MHT-WC (M.D. Ala. Jan. 17, 2014) (order granting remedial relief), a federal court intervened to ensure UOCAVA compliance by ordering specific administrative changes to document adherence to federal deadlines. These surgical federal exceptions, or court-ordered remedies for federal violations, are not a license for states to dismantle the uniform receipt deadline for the general domestic electorate.

Reaffirming that the federal "day for the election" is an absolute boundary ensures that no state may impose a rival theory that undermines the constitutional and structural requirements of the federal deadline.

III. State Laws Authorizing Post-Election Receipt Create a Nationwide "Verification Vacuum" as Demonstrated by Empirical Evidence in Pennsylvania, Wisconsin, and Michigan.

The empirical evidence collected by Amici in Pennsylvania, Wisconsin, and Michigan demonstrates that the "Private-Intent" theory is not merely a legal abstraction, but a catalyst for a systemic "verification vacuum." This vacuum arises because state administrative processes are unable or unwilling to maintain the same level of rigorous verification during a post-election window as they do on the federal Election Date. When a State adopts a rival understanding of an election that separates the voter's private act from the public act of receipt, it inevitably

sacrifices the structural characteristics of an election—namely finality and uniformity—that this Court identified as non-negotiable in *Republican Party of Minnesota*, 536 U.S. at 788.

A. The Wisconsin Evidence: Systemic Failure to Track Ineligible Wards.

In Wisconsin, the lack of a firm "consummation" point allows for the systematic failure to track ineligible voters. Despite court orders rendering specific wards "incompetent" to vote, a disorganized system allows these individuals to remain on active rolls and receive absentee ballots. Amici's litigation in *Ward v. Secord*[14] demonstrates that without a hard "stop," officials continue to process ballots from individuals legally stripped of their voting rights.

The evidence from Wisconsin provides an alarming demonstration of the "verification vacuum." Over the past years, the Wisconsin Voter Alliance (WVA) conducted an investigation of wards under "no vote" guardianship orders issued by county circuit court judges.

The WVA investigation revealed that wards under these orders were registered, active voters, being sent absentee ballots and casting votes. For example, ward Sandra Klitzke, whose right to register and vote was removed by court order on February 21, 2020, continued to be a registered, active voter and

[14]*See Wisconsin Voter Alliance v. Secord*, 2025 WI App 28 (Wis. App., 2025), rev. granted, No. 2023AP36 (Wis. Jan. 7, 2026) (case renamed *Ward v. Secord*).

cast ballots in subsequent elections, including the November 2020 and April 2021 contests.

The Wisconsin Elections Commission (WEC) has failed to ensure complete and accurate reporting of these court-ordered ineligibilities in the WisVote database. Despite Wisconsin Statutes § 54.25(2)(c)(1)(g) requiring circuit court clerks to communicate voting ineligibility to election officials, a massive reporting disparity exists. Data collected from 13 (of 72) county registers in probate showed 2,559 wards under "no vote" guardianship orders, yet the WisVote database—the state's primary election management system—recorded only 123 ineligible incompetents for those same counties. This means only 5% of ineligible voters whose status was confirmed by a specific court order were accurately recorded as ineligible, and the same issue likely pervades Wisconsin's other 52 counties.

Furthermore, a review by the Dane County Clerk's office, not an ally of the Wisconsin Voter Alliance, found 95 examples of individuals adjudicated incompetent to vote who altogether cast more than 300 ballots in past elections. The Dane County Clerk himself stated that "the system for identifying those voters and getting them out of the voter rolls is not working."[15]

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[15]Matthew DeFour, *Dane County Election Review Finds Dozens of People Deemed Incompetent to Vote Who Cast Ballots*, Milwaukee J. Sentinel (March 28, 2023, 6:02 AM), https://www.jsonline.com/story/news/politics/elections/2023/03/28/dozens-of-people-deemed-incompetent-to-vote-found-to-have-voted-dane-county-wisconsin/70052199007/.

Because the WisVote database automatically checks for deceased voters and felons but fails to automatically check for people on the adjudicated incompetent list, ineligible wards remain on the rolls and are automatically sent absentee ballots as "indefinitely confined" voters. This is the functional reality of a "verification vacuum"—a discretionary gap in which Wisconsin administrative officials fail to honor court orders and statutory verification mandates.

The Wisconsin Supreme Court has granted review of Wisconsin Voter Alliance's Open Records Act case on this issue. *Wisconsin Voter Alliance v. Secord*, 2025 WI App 28 (Wis. App., 2025), rev. granted, No. 2023AP36 (Wis. Jan. 7, 2026).

B. The Pennsylvania Evidence: 27,392 Unverified Voters Had Their Ballots Counted Post-Election.

In Pennsylvania, administrative directives instructed counties to bypass federal verification requirements for UOCAVA voters, resulting in 27,392 ballots being accepted without HAVA-required database matching. *See, e.g.*, 52 U.S.C. § 21083(a)(5) (outlining verification of voter registration information). This verification vacuum exists only because the state operates on the theory that post-election receipt windows allow for the processing of ballots that would otherwise be rejected on a uniform Election Day.

Records indicate that 27,392 UOCAVA ballots were processed and counted despite having "zero

pending" identification flags in the state's tracking system. While domestic voters casting ballots on the federal Election Date were subject to rigorous matching, a massive tranche of UOCAVA ballots bypassed these essential verification steps entirely.

During the 2024 election cycle, state data showed that while standard domestic mail-in ballots were regularly flagged for "ID Pending" status, the UOCAVA categories showed exactly zero pending applications across more than 27,000 ballots.

Ballot Application Types	Application Type	Ballots	ID Pending /No ID
Online MB **Verified**	OLMAILV	385,693	Verified
Online AB **Verified**	OLREGV	9,694	Verified
Paper MB	MAILIN	846,577	5,685
Online MB Not Verified	OLMAILNV	324,215	1,849
Paper AB	REG/CIV	13,541	172
Online AB Not Verified	OLREGNV	2,888	53
UOCAVA Ballot Types			
Federal Only (Unregistered)	F	12,794	0
Civilian Overseas	CVO	10,287	0
Military	M	4,178	0
Civ. Overseas Remote/Isolated	CRI	82	0
Military Remote/Isolated	MRI	51	0
UOCAVA Ballot Applications	**TOTAL**	**27,392**	**0**

Figure 1: DOS data from 10/7/2024, AB= absentee ballot application, MB = mail ballot applications

The *Amici* participated in presenting this data table, based on government information, before the U.S. District Court prior to the 2024 election in *Hon. Guy Reschenthaler, et al. v. Secretary Al Schmidt, et al.* No. 1:24-cv-1671-CCC (M.D. Pa.), ECF No. 31.

This documented "zero pending" result is not the result of perfect compliance by overseas voters, but rather the result of administrative directives that explicitly instruct counties that UOCAVA registration applications cannot be rejected based solely on a non-match with government databases. *See id.*

By allowing these ballots to arrive and be counted after the close of the polls, the state permits election officials to exercise unchecked discretion in a period where the "proverbial ballot box" should be closed. In Pennsylvania, officials have instructed that no verification is required for absentee ballot applications submitted by UOCAVA applicants, meaning these individuals receive and cast ballots without the identity verification required of their domestic counterparts. This environment demonstrates that a flexible receipt deadline directly facilitates an illegally structured competitive environment where unverified votes can be used to alter the final tally in close federal contests. *See Bost*, WL 96707 at *4.

C. The Michigan Evidence: Leelanau Human Glitch and the Danger of Post-Election Reporting Windows.

The 2024 "Leelanau Human Glitch" in Michigan provides a third empirical pillar

demonstrating the instability of post-election windows. In Leelanau County, a human error during the post-election window caused a 3,000-vote counting error.[16] This omission initially signaled a 6-1 Democratic supermajority on the County Commission, a result that was widely reported before being corrected days later during the canvass to show a 4-3 Republican majority. *See id.*

This incident highlights a fundamental danger: the post-election "discretionary gap" creates a window where results remain in flux and unverified, inviting gamesmanship and public distrust. Contrarians suggest that the rules for counting ballots are set well in advance. But, the Leelanau County human glitch proves that without the finality of a singular Election Date, the "rules" of administrative processing and digital reporting become the decisive factor in close electoral outcomes. The reliance on retroactive "correction" during the canvassing period is a poor substitute for the uniform finality mandated by federal law.

IV. The Court Must Choose Between the "Integrity Standard" of Equal Protection and the "Private-Intent" Standard of Administrative Flexibility.

[16]Ellie Katz, *Vote Reporting Error Skewed Appearance of Unofficial Results in Leelanau County*, WGVU News (Nov. 12, 2024, 6:33 AM), https://www.wgvunews.org/news/2024-11-12/vote-reporting-error-skewed-appearance-of-unofficial-results-in-leelanau-county.

The constitutional challenge presented here creates a binary choice between an "Integrity Standard" of uniform verification and the "Private-Intent" Theory's standard of administrative flexibility. While contrarians argue that state laws extending receipt deadlines are merely accommodations for process flexibility, this standard allows administrative convenience to override the necessity of uniform safeguards.

The Court's choice here is governed by the principle that states may not adopt a rival or diminished understanding of the electoral process to evade federal structural mandates. As this Court established in *Republican Party of Minnesota*, 536 U.S. at 788, once a State chooses to hold an election, "it may not then say that the characteristics of an election do not apply" to that process. *Id.* The state could not re-define a "judicial election" as a speech-free zone merely because of the judicial office involved. *Id* By attempting to redefine an "election" as a series of unverified private selections, states violate the fundamental characteristics of an election—finality and public consummation—that the federal deadline was intended to protect.

This Court has repeatedly reinforced the principle that a state cannot redefine terms—such as "election," "property," or "legislature"—to avoid federal constitutional requirements. In the context of property rights, this Court has disallowed states from legislating to redefine private property (i.e., to bypass the Fifth Amendment Takings Clause without just compensation). U.S. Const. amend. V; *E.g.*, *Tyler v.*

Hennepin County, 598 U.S. 631, 638–39 (2023) (declaring that "state law cannot be the only source" to define property rights, elsewise "a State could 'sidestep the Takings Clause by disavowing traditional property interests' in assets it wishes to appropriate"); *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 167 (1998) ("[A] State may not sidestep the Takings Clause by disavowing traditional property interests long recognized under state law.").

A state cannot simply by "*ipse dixit*" saying so, transform private property into public property, by redefining the relationship between the two. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980). States cannot avoid the Takings Clause by "newly legislating" definitions of nuisance. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1029 (1992). For a state to take property without pay, the restriction must be based on "background principles" of existing law, not a new statutory label designed to evade federal law. *Id.*

Likewise, in *Moore v. Harper*, 600 U.S. 1 (2023), the North Carolina legislators argued the "Independent State Legislature" theory, claiming the U.S. Constitution's use of the word "Legislature" meant the body could act independently of state constitutional checks. *Id.* at 11. This Court rejected this attempt to redefine "Legislature" as an entity separate from the state's constitutional structure. *Id.* at 21–22 A legislature is a creature of its state constitution and remains subject to judicial review. *Id.*

In all these cases, this Court effectively applies a "Substance over Form" test. Whether a state calls something a “non-election,” “public interest,” or “not-property,” the Supreme Court looks past the label to ensure federal rights are not being "defined away" by clever drafting. In line with this reasoning and consistent with substance over form, states may not redefine “Election Day” to mean a series of private intents expressed through votes without regard to the federally-defined Election Day. The consummate view of Elections is the only one that aligns with the Election Day statutes.

The evidence of unverified ballots in Pennsylvania, Wisconsin, and Michigan demonstrates that this rival understanding creates an unconstitutional dual-track election system. Under the Equal Protection Clause, a state cannot, “by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104–05 (2000). The current system results in two distinct, unequal classes of voters: the Verified Class, consisting of Election Day voters subject to rigorous, real-time identity and eligibility checks, and the Unverified Class, consisting of late or post-election voters where verification safeguards are bypassed due to administrative flexibility.

Shifting administrative standards during the post-election window represents the exact type of varying standards this Court warned against in *Bush v. Gore*. When states allow 27,392 unverified UOCAVA ballots to bypass HAVA safeguards in Pennsylvania or fail to deregister 95% of ineligible

wards in Wisconsin, they engage in the disparate treatment of voters based on the timing of their ballot's arrival.

The synthesis of *White* and *Bush v. Gore* demands a uniform, national definition of an election to prevent systematic vote dilution. Without a clear, uniform date for the Election, the promise of "one person, one vote" is replaced by an administrative vacuum. This verification vacuum is the inevitable byproduct of state laws that substitute a state-based theory of "private intent" replacing the federal mandate of "consummation." To protect the integrity of the national vote and ensure equal treatment of all voters, this Court must reject contrarian ideas of flexible standards and reaffirm that the federal "day for the election" is a structural guardrail that requires a single, fixed point of finality for all participants.

V. The Lesson of *Franken v. Coleman*: Post-Election Receipt Invites the "Nightmare" of a Litigation-led Election.

Beyond constitutional infirmity, the failure to enforce a firm deadline triggers a collapse of administrative order. *Franken v. Coleman* stands as the definitive warning of the nightmare that ensues when the "proverbial ballot box" remains open long after polls close. *In re Contest of General Election Held on November 4, 2008 (Franken v. Coleman)*, 767 N.W.2d 453 (Minn. 2009).

Contrarians suggest post-election deadlines are sensible grace periods, but history shows they lead to litigation-led elections in which results are

determined months later by shifting standards. This attempt to justify administrative "flexibility" is a rival understanding of the electoral process that seeks to evade the structural finality required by 2 U.S.C. § 7 and 3 U.S.C. § 1. As established in *Republican Party of Minnesota*, 536 U.S. at 788, once a State chooses to hold an election, "it may not then say that the characteristics of an election do not apply" to that process. *Id.* One of the most essential characteristics of an election is the combined action of voters and officials on a uniform day; deferring this consummation through post-election receipt strips the election of its necessary finality.

Franken was a struggle to define which late ballots should be admitted, exactly the type of quagmire fueled by the verification vacuum documented by the Amici in Pennsylvania, Wisconsin, and Michigan. In *Franken*, the election remained undecided for nearly eight months because of the failure of statutory boundaries. Allowing receipt after the federal deadline, as Petitioners request, ensures that close elections are transformed into litigation-led nightmares where official action replaces voter action.

The history of *Franken* is the proof of what happens when consummation is deferred. This forced overtime allows for the post-election gamesmanship the federal uniform deadline was designed to abolish. Flexibility invites a system where the results are determined by the discretionary processing of unverified ballots in the weeks and months following the election, rather than by the voters on the day prescribed by Congress. To prevent this, the Court

must reaffirm that the federal "day for the election" is an absolute structural boundary that cannot be redefined by a state's rival theory of administrative convenience.

CONCLUSION

Election day is a public act of consummation that requires both the voter's action and the State's receipt to culminate on a single, uniform day: An election is not a series of isolated private intents. Congress has already set the standard for Election Day, and uniform enforcement of that day would help prevent future systemic failures and aid restoring confidence in the integrity of our elections. Amici therefore respectfully request this Court affirm the decision of the U.S. Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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