

No. 24-1260

IN THE
Supreme Court of the United States

MICHAEL WATSON, MISSISSIPPI SECRETARY OF STATE
Petitioner,

v.

REPUBLICAN NATIONAL COMMITTEE, ET AL.,
Respondents.

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

**Brief *Amicus Curiae* of
Citizens United,
Citizens United Foundation,
The Presidential Coalition, LLC,
America's Future,
Gun Owners of America,
Gun Owners Foundation,
U.S. Constitutional Rights Legal Def. Fund,
and Conservative Legal Def. and Ed. Fund
in Support of Respondents**

MICHAEL BOOS
Washington, DC 20003

RICK BOYER
Lynchburg, VA 24506

PATRICK M. MCSWEENEY
Powhatan, VA 23139

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
**Counsel of Record*

Attorneys for *Amici Curiae* February 17, 2026

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
INTEREST OF THE <i>AMICI CURIAE</i>	1
STATEMENT OF THE CASE	1
STATEMENT	3
SUMMARY OF ARGUMENT.	6
ARGUMENT	
I. THE TEXT OF THE ELECTION DAY STATUTES ESTABLISHES A SINGULAR ELECTION DAY	8
II. THE FIFTH CIRCUIT CORRECTLY UNDERSTOOD THAT CONGRESS ESTABLISHED ONE ELECTION DAY TO ADDRESS VOTER FRAUD	10
A. Only a Singular Election Day Accomplishes the Congressional Objective	10
B. Some States Used Multi-Day Voting, Facilitating Fraud.	11
C. The History and Tradition of the “Uniform Election Day” Statute Demonstrate that It Was Intended to Require Voting on a Single Day	15

III. THE CONSTITUTION PLAINLY AUTHORIZES CONGRESS TO OVERRIDE THE TIMES FOR FEDERAL ELECTIONS WHICH THE STATES MAY NOT VIOLATE	19
CONCLUSION	23

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CONSTITUTION</u>	
Article I, Section 4	7, 19
Article II, Section 1	20
Amendment XVII	9
 <u>STATUTES</u>	
2 U.S.C. § 1	9, 19
2 U.S.C. § 7	8, 9, 19
3 U.S.C. § 1	6, 8, 10, 15, 16, 20
Help America Vote Act of 2002, 116 <i>Stat.</i> 1666 . .	20
 <u>CASES</u>	
<i>Crawford v. Marion County Election Bd.</i> , 553 U.S. 181 (2008)	4
<i>Foster v. Love</i> , 522 U.S. 67 (1997)	20, 22
<i>Maddox v. Board of State Canvassers</i> , 116 Mont. 217 (1944)	21, 22
<i>N.Y. State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022)	16
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	3
<i>Voting Integrity Project, Inc. v. Keisling</i> , 259 F.3d 1169 (9th Cir. 2001)	12-15
 <u>MISCELLANEOUS</u>	
John Adams, Inaugural Address in the City of Philadelphia (Mar. 4, 1797)	6
Boris Bazhanov, <u>The Memoirs of Stalin’s Former Secretary</u> (1923)	4

Daniel Biggers & Michael Hanmer, “Who Makes Voting Convenient? Explaining the Adoption of Early and No-Excuse Absentee Voting in the American States,” <i>State Politics & Policy Quarterly</i> , Vol. 15 (2015)	17
Carter-Baker Commission, “Building Confidence in U.S. Elections” (2005)	4
Sarah Jane Capper & Michael Ciaglo, “Shift from Polls to Mail Changes the Way Americans Vote,” <i>News21</i> (Aug. 12, 2012)	18
Cong. Globe, 42 Cong., 2d Sess. 618 (Jan. 26, 1872)	14
“Election Bill,” <i>Cong. Globe</i> , Dec. 13, 1844	13
Jack Greene, <u>Encyclopedia of American Political History</u> (1984)	11, 12
Mollie Hemingway, <u>Rigged: How the Media, Big Tech, and the Democrats Seized Our Elections</u> (2021)	5
Ben Leubsdorf, “Election Day: Frequently Asked Questions,” Congressional Research Service (Jan. 6, 2021)	12, 13
Adam Liptak, “Error and Fraud at Issue as Absentee Voting Rises,” <i>New York Times</i> (Oct. 6, 2012)	5
Poll: “Few Americans Believe 2024 Elections Will Be ‘Honest and Open,’” <i>Public Affairs Council</i> (Oct. 2023)	6
William Rehnquist, “The Notion of a Living Constitution,” 54 <i>Tex. L. Rev.</i> 693 (1976)	15, 16
Antonin Scalia & Bryan Garner, <u>Reading Law</u> (2012)	15
Marc Thiessen, “Trump’s Concern About Mail-in Ballots Is Completely Legitimate,” <i>American Enterprise Institute</i> (May 29, 2020)	4, 5
“Voting by mail and absentee voting,” <i>MIT.edu</i>	17

INTEREST OF THE *AMICI CURIAE*¹

Amici Citizens United, Citizens United Foundation, America's Future, Gun Owners of America, Gun Owners Foundation, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under either section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. The Presidential Coalition, LLC is a political committee. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

These *amici* filed *amicus* briefs with this Court in a recent case involving post-election ballot counting in *Bost v. Illinois State Board of Elections*, No. 24-568. See Brief *Amicus Curiae* of America's Future, et al. (Dec. 23, 2024) and Brief *Amicus Curiae* of America's Future, et al. (July 29, 2025).

STATEMENT OF THE CASE

Mississippi law permits votes to be counted as long as they are “postmarked on or before the date of the election and received by the registrar no more than

¹ It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

five (5) business days after the election.” Brief of Republican Respondents (“Republican Br.”) at i.

Respondents, the Republican National Committee, Republican Party of Mississippi, and the Libertarian Party of Mississippi, challenged the law in the Southern District of Mississippi. Respondents argued that “Mississippi law conflicts with federal statutes establishing a national uniform ‘election day.’” *Republican Nat’l Comm. v. Wetzel*, 742 F. Supp. 3d 587, 590 (S.D. Miss. 2024) (“*RNC I*”). That date, under federal law, is “the Tuesday next after the first Monday in November.” *Id.* at 596.

The district court concluded that “[a]ll that occurs after election day is the delivery and counting of ballots cast on or before election day,” and that accordingly ballots mailed before election day may be counted. *Id.* at 599.

A panel of the Fifth Circuit reversed, ruling that “[h]istory confirms that ‘election’ includes both ballot casting and ballot receipt.” *Republican Nat’l Comm. v. Wetzel*, 120 F.4th 200, 209 (5th Cir. 2024) (“*RNC II*”). The court noted that until 1977, only two states allowed counting of ballots received after election day. *Id.* at 210. The court therefore concluded that the term “election” in federal law requires both the casting and the receipt of ballots. *Id.* Therefore, no part of the election, neither casting nor receipt of ballots, can occur after “the Tuesday next after the first Monday in November.”

In March 2025, the full Fifth Circuit denied *en banc* review of the panel decision. *Republican Nat’l Comm. v. Wetzel*, 132 F.4th 775 (5th Cir. 2025) (“*RNC III*”). Mississippi sought review, which this Court granted on November 10, 2025. *Watson v. Republican Nat’l Comm.*, 146 S. Ct. 355 (2025) (“*RNC IV*”).

STATEMENT

The longer the period over which the election is conducted, the greater the opportunity for and risk of fraud. Nevertheless, some states are determined to extend election day, both before and after, transforming a day into a election season, providing numerous opportunities for all manner of election manipulation. These changes in state law should be of great concern to this Court, which has been unequivocal that the integrity of elections is paramount to the preservation of our Republic. As was said in *Reynolds v. Sims*:

It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote.... “Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted....” [*Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964).]

Any discussion of the right to have votes counted presupposes that they be counted fairly in elections conducted without fraud.²

This Court has been clear that both citizens and government have a preeminent interest in having elections that both are and appear to be fair and honest. This Court has recognized and protected “the State’s interest in protecting the integrity and reliability of the electoral process” by “detering and detecting voter fraud.” *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 191 (2008). Further, this Court has recognized the state’s “interest in protecting public confidence ‘in the integrity and legitimacy of representative government,’” and noted that “public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.” *Id.* at 197.

There was a time that the effort to ensure fair elections was a bi-partisan undertaking, such as the Carter-Baker Commission’s 2005 report “Building Confidence in U.S. Elections” noted by this Court in *Crawford*. *See id.* The Carter-Baker Commission specifically warned that “‘absentee ballots remain the largest source of potential voter fraud’ and that ‘vote buying schemes are far more difficult to detect when

² In his 1923 book, *The Memoirs of Stalin’s Former Secretary*, Boris Bazhanov quotes Joseph Stalin as saying, “I consider it completely unimportant who in the party will vote, or how; but what is extraordinarily important is this—who will count the votes, and how.” *See* <https://www.oxfordreference.com/display/10.1093/acref/9780191843730.001.0001/q-oro-ed-00010383>.

citizens vote by mail.”³ As recently as 2012, the *New York Times* conceded that “[t]here is a bipartisan consensus that voting by mail ... is more easily abused than other forms,” and that “votes cast by mail are less likely to be counted, more likely to be compromised and more likely to be contested than those cast in a voting booth.”⁴

Sadly, the bi-partisan nature of the efforts to develop rules to protect the election process has been shattered. One pro-Republican analyst of election corruption explained:

Long-standing historical concerns about the integrity of elections led to the development of a single Election Day, a secret ballot, and governmental running of elections – all developments that went a long way toward building up trust in America's electoral process. In recent years, Democrats have lobbied to move away from each of those things, saying that efforts to stop them from doing so were “voter suppression.”⁵

³ Marc Thiessen, “Trump’s Concern About Mail-in Ballots Is Completely Legitimate,” *American Enterprise Institute* (May 29, 2020).

⁴ Adam Liptak, “Error and Fraud at Issue as Absentee Voting Rises,” *New York Times* (Oct. 6, 2012).

⁵ Mollie Hemingway, Rigged: How the Media, Big Tech, and the Democrats Seized Our Elections at 329 (2021).

It is not just Republican voices that demonstrate concern. Polls demonstrates that American voters have lost confidence in the integrity of our election system. A 2023 poll by Morning Consult showed that only 37 percent of voters believed that elections are both “honest” and “open’ to rightful voters,” while fully 43 percent had “serious doubts” of that outcome.⁶

Ballot counts that drag on for days are veritable invitations to fraud, meaning that the stakes in this case could not be higher. As John Adams put it, “If an election ... can be procured by a party through artifice or corruption, the Government may be the choice of a party for its own ends, not of the nation for the national good.”⁷ The federal election-day statutes were established by Congress to limit voting to a single day across the nation in order to minimize fraud, and thus are of the highest order of importance, and must be given full effect by this Court.

SUMMARY OF ARGUMENT

The legislative history of what is now 3 U.S.C. § 1 makes crystal clear that the statute was intended to require all States to hold their federal election — the entire election — on the same day. The primary evil which Congress sought to address by the designation

⁶ Poll: “Few Americans Believe 2024 Elections Will Be ‘Honest and Open,’” *Public Affairs Council* (Oct. 2023).

⁷ John Adams, Inaugural Address in the City of Philadelphia (Mar. 4, 1797), reprinted in Inaugural Addresses of the Presidents of the United States at 10 (1989).

of one day as “election day” was to prevent the type of election fraud that had been facilitated when states conducted elections over a period of days or weeks. Petitioners ask this Court to devise a new interpretation of the nearly 200 year-old term “Election Day” to retroactively sanction a series of state laws and procedures which weaken ballot security. The purpose of the three election-day laws can only be achieved through the choice different Congresses made in 1845, 1872, and 1914 — using their Constitutional authority under Article I, Section 4 — to override state laws. Congress has exercised an authority expressly granted it, and it is not the role of this Court to not latch onto some clever theory such as that votes are cast before being received, to negate the decision of multiple Congress and thereby usurp the authority of that body.

The Fifth Circuit decision below was entirely correct — as far as it went. The three federal election law statutes forbid counting of ballots received after the polls close. But these statutes actually do more than that. A review of the history of the drafting and enactment of the prototype 1845 “election day” statute makes clear that the primary purpose and object of that statute was to limit the opportunity for election fraud by confining the election to one day. This Court should not only uphold the Fifth Circuit’s determination, but also clearly announce that “election day” is not and cannot be read to be “election season.”

ARGUMENT

I. THE TEXT OF THE ELECTION DAY STATUTES ESTABLISHES A SINGULAR ELECTION DAY.

The question presented in this case is narrow, but of great significance:

whether the federal election-day statutes preempt state laws that accept ballots received by election officials after “the day for the election.” [Republican Br. at i.]

These three federal election-day statutes are addressed here in the order in which they were enacted. The first was enacted in 1845, setting the date for the appointment of Presidential electors:

The 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**. [3 U.S.C. § 1 (emphasis added).]

That statute envisioned that there would be a singular “election day” and therefore, all that is required for the casting and receipt of votes would occur on that one day.

The election day statute for House elections, enacted in 1872, used the phrase “the day for the election” rather than the nearly identical phrase

“election day” used in 1845, but having the same meaning — there would be one election day:

The Tuesday next after the 1st Monday in November, in every even numbered year, is established as **the day for the election**, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter. [2 U.S.C. § 7 (emphasis added).]

The third election-day statute governing Senate elections was enacted in 1914, after the ratification of the Seventeenth Amendment in 1913, which established the direct election of U.S. Senators:

At **the regular election** held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a **Representative to Congress** is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter. [2 U.S.C. § 1 (emphasis added).]

Although this statute neither used the phrase “election day” nor “the day for the election,” it referenced “the regular election” for House members, and thereby it can be seen to have adopted the same change applicable to House members — that there would be one “day for the election.”

Thus, it should be clear that all three election day statutes provide for a singular “election day,” and whatever are the essential components of “an election” must occur on that day. As seen *infra*, that includes the casting of ballots by the voters, and the receipt of those ballots by the election officials. The next question to address in interpreting these election-day statutes is, what was their object or purpose?

II. THE FIFTH CIRCUIT CORRECTLY UNDERSTOOD THAT CONGRESS ESTABLISHED ONE ELECTION DAY TO ADDRESS VOTER FRAUD.

A. Only a Singular Election Day Accomplishes the Congressional Objective.

The interpretation of a statute is informed by the purpose or object the law was crafted to achieve. The Fifth Circuit correctly identified the problem Congress was addressing in 1845 when it fashioned language creating a uniform national election day for presidential electors in what is now 3 U.S.C. § 1. The problem Congress was addressing was that some states had:

adopt[ed] **multi-day voting periods** — but this **caused election fraud, delay, and other problems**. *See, e.g.*, Cong. Globe, 28th Cong. 2d Sess. 14-15, 29 (1844). So Congress intervened in 1845, fixing a “uniform time” for appointing presidential electors on the Tuesday after the first Monday in November.

Act of Jan. 23, 1845, ch. 1, 5 *Stat.* 721 (to be codified at 3 U.S.C. § 1). [*RNC II* at 204 (emphasis added).]

Congress understood that having multi-day voting periods created opportunities for election fraud, and to accomplish this purpose, the statutes it crafted declared there to be one election day. Mississippi's statute authorizing the acceptance of ballots after election day creates the same multi-day voting periods which Congress found open the door to fraud. Should any court now re-interpret federal law to deny the existence of a true singular "election day," it would negate through the mechanism of statutory re-interpretation the very method Congress chose to ensure fair elections. If Mississippi is to be allowed to accept ballots after election day, by that act it would allow state law to override federal law, while simultaneously increasing the likelihood of voter fraud.

B. Some States Used Multi-Day Voting, Facilitating Fraud.

In the 19th Century, a number of states had various election days, and some had "election seasons":

In North Carolina and South Carolina ... polls generally were open two days; New York allowed up to five days at the discretion of the presiding officials. New Jersey initially failed to specify any particular period, and during the first congressional election partisans kept the ballot box open for three weeks in some

counties and for almost ten weeks in Essex County.⁸

Not surprisingly, this practice led to widespread fraud:

With elections scheduled on **different days** in different states, **illegal voting by repeaters** became common, and in 1840 and 1844 both parties organized gangs of voters who went from state to state. **To reduce such fraud**, Congress in 1845 **established the date** for electing electors as the first Tuesday after the first Monday in November for all states. Similarly, in 1872, Congress adopted the same date for the election of representatives **unless a state's constitution prescribed a different date**. [Greene at 496 (emphasis added).]

That single opening to allow multiple election dates was seen as opening the door to fraud: “[a]s travel and communication methods became faster in the 19th century, potential manipulation and fraud concerns grew due to different election days in different states.” Ben Leubsdorf, “Election Day: Frequently Asked Questions,” *Congressional Research Service* at 2 (Jan. 6, 2021).

Multi-day voting provided impetus to Congress to establish a single election day. “[I]t is plain that Congress considered and rejected the practice of

⁸ II Jack Greene, Encyclopedia of American Political History at 495 (1984) (hereinafter “Greene”).

multi-day voting allowed by some states.” *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1172 (9th Cir. 2001).

“Members of the House, when debating a bill in 1844 that would set a uniform presidential Election Day across the country, declared the goal was ‘to guard against frauds in the elections of President and Vice President.’” Leubsdorf at 2.

Congressman George Rathbun (D-NY) noted that “[t]he object of this bill was to guard against frauds in the elections of President and Vice President, by declaring that they shall all be held on the same day.”⁹ Congressman Hugh Haralson (D-GA) likewise argued that “a majority of that House were for passing some bill that would guard against these election frauds that had been so loudly complained of.” *Id.* Although the bill governed only presidential elections, as Congress would not act on House elections until 1872, Congressman William Payne (D-AL) presaged the 1872 legislation. He remarked:

If the election for electors is holden [sic] on the same day throughout the Union, it is to be hoped that the State legislatures will, by law, adopt the same day for the election of members of Congress. By doing this, frauds will be prevented in the election of members of Congress, as well as in the election of electors. [*Id.*]

⁹ “Election Bill,” *Cong. Globe*, Dec. 13, 1844, p. 29.

The 1872 legislation applying a uniform election day to House elections reflected the same concerns of fraud. Senator Allen Thurman (D-OH) stated,

I think as a general principle it is best to have our elections on the same day whenever we can.... Whenever you provide that elections shall take place upon the **same day**, you do interpose a not inconsiderable **check to frauds in elections**, to double voting, to the transmission of voters from one State to another, and you do allow the people to vote for their Representatives undisturbed by considerations which they ought not to take at all into account.¹⁰

The abolitionist leading debate said that the “object of this amendment is to provide a uniform time of electing Representatives in Congress.” He explained that a uniform day of election would address fraud “on account of the facility for colonization and repeating among the large central States, ... the privilege is allowed the border states, in any man is so disposed, of throwing voters across from one into the other.” [*Voting Integrity Project* at 1174 (citing Cong. Globe, 42 Cong., 2d Sess. 112 (Dec, 13, 1871)).]

In the end, “Congress rejected the provision to allow multi-day voting to continue so long as states

¹⁰ *Cong. Globe*, 42 Cong., 2d Sess. 618 (Jan. 26, 1872) (emphasis added).

provided for it by law. Instead, it allowed multi-day voting to continue through the election of 1872, but not thereafter.” *Voting Integrity Project* at 1174 (citing Cong. Globe, 42 Cong., 2d Sess. 676 (Jan. 29, 1872)).

**C. The History and Tradition of the
“Uniform Election Day” Statute
Demonstrate that It Was Intended to
Require Voting on a Single Day.**

The history and tradition of 3 U.S.C. § 1 demonstrate that it was intended to confine voting to a single day — with absentee voting exceptions only for those who cannot be at the polling place on Election Day. No broad absentee vote-by-mail scheme was contemplated in the statute of 1845, and it is sophistry to argue that what was not contemplated was implicitly provided for. “[N]ew rights cannot suddenly be ‘discovered’ years later in a document, unless everyone affected by the document had somehow overlooked an applicable provision that was there all along. This is true of contracts and statutes as much as it is of constitutions.”¹¹ Chief Justice Rehnquist once stated that disregard of original meaning:

is a formula for an end run around popular government. To the extent that it makes possible ... one or more appointed federal judges to impose on other individuals a rule of conduct that the popularly elected branches of government would not have enacted ... [it] is

¹¹ Antonin Scalia & Bryan Garner, Reading Law at 80-81 (2012).

genuinely corrosive of the fundamental values of our democratic society. [William Rehnquist, “The Notion of a Living Constitution,” 54 Tex. L. Rev. 693, 706 (1976)].

Congress has never voted to elongate Election Day to any other day than “the Tuesday after the first Monday in November.” For example, 3 U.S.C § 1 still states, “[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.”

Congress enacted the uniform election day law expressly to end the practice of elections extending over multiple days. At any point, Congress could have acted to declare that “Election Season” could now last from September through “the Tuesday after the first Monday in November.” Congress has never done so. As this Court noted in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), “when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent” with the law. *Bruen* at 26 (2022).

Here, the law has been in effect since the mid-19th century, and for more than a century, nothing existed resembling our modern system of no-excuse vote-by-mail. It is inconceivable that if a Congress acting in 1845 — some 40 years before the automobile and when horses were the fastest readily-available

transportation — declined to establish an “election season” with early voting, that the same law could be read to approve mass vote-by-mail regimes today. Congress at any point could have changed federal law to textually permit “election season” instead of “election day.” It has not chosen to do so. It is not for this Court to read the statute to say more than it says.

After the Civil War absentee ballot laws to permit military voting, the issue largely died away until World War II, and even then, it mostly related to military voters.¹² A few states did begin providing for absentee voting in the late 1800s, but “[t]he first laws were intended to accommodate voters who were away from home or seriously ill on Election Day. The number of absentee ballots distributed was relatively small, and the administrative apparatus was not designed to distribute a significant number.” *Id.*

Indeed, not until 1974 did the first state, Washington, adopt no-excuse absentee voting.¹³ Until that date, absentee voting was reserved to voters who could not be physically present at their polling place on Election Day. Not until 1998 did the first state, Oregon, adopt a policy of mailing ballots to all voters, with Washington becoming the second state in 2011.¹⁴

¹² “Voting by mail and absentee voting,” *MIT.edu*.

¹³ Daniel Biggers & Michael Hanmer, “Who Makes Voting Convenient? Explaining the Adoption of Early and No-Excuse Absentee Voting in the American States,” *State Politics & Policy Quarterly*, Vol. 15, 192, 199 (2015).

¹⁴ “Voting by mail and absentee voting,” *MIT.edu*.

Nothing changed in federal law to permit enactment of such state laws.

The proponents of early voting and vote-by-mail systems readily admit that they seek a “revolution” in how voting happens. “John Fortier, a political scientist of the Washington, D.C.-based Bipartisan Policy Center, has called the shift away from the polls a voting revolution that is fundamentally transforming elections.”¹⁵ Phil Keisling, former Oregon secretary of state and director of the Center for Public Service at Portland State University, declared, “[t]he default is bringing the ballot to the voter, not forcing the voter to go to the ballot.”

This “voting revolution,” this “fundamental transformation” of elections, was never conceived of in 1845. Not a single state would have no-excuse absentee voting for another 130 years, and no state would mail out ballots for more than 150 years. The fact that from 1845 to 1974 — 130 years — no states had adopted no-excuse absentee voting, and from 1845 to 1998 — more than 150 years — no state had dreamed that “[t]he default is bringing the ballot to the voter, not forcing the voter to go to the ballot,” is strong evidence that the law as written in 1845 did not authorize an “election season” regime or even conceive of it.

If there is to be a “fundamental revolution” of the voting system Congress designed, it must be done by

¹⁵ Sarah Jane Capper & Michael Ciaglo, “Shift from Polls to Mail Changes the Way Americans Vote,” *News21* (Aug. 12, 2012).

Congress in amending the three election-day statutes, not by states and certainly not by the courts. This Court should decide that collecting ballots after Election Day violates the law and uphold the Fifth Circuit. But it should also realize that permitting voting on multiple days before Election Day, aside from absentee provisions for those who cannot appear on Election Day, also violates these three election-day statutes.

III. THE CONSTITUTION PLAINLY AUTHORIZES CONGRESS TO OVERRIDE THE TIME FOR FEDERAL ELECTIONS WHICH THE STATES MAY NOT VIOLATE.

With respect to elections for the House of Representatives, Article I, Section 4 of the U.S. Constitution states:

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**, except as to the Places of chusing Senators. [Emphasis added.]

Congress exercised that authority when it set the date for election of Representatives as the Tuesday after the first Monday in November in even-numbered years (*e.g.*, November 3 of this year). *See* 2 U.S.C. § 7. Congress set the date for the election of Senators on the same day as for Representatives. *See* 2 U.S.C. § 1.

With respect to the process for the selection of the third category of elected federal officials — Presidential Electors — Article II, Section 1 established a somewhat different system. The Constitution vested in State legislatures the plenary authority to choose the “**Manner**” in which Presidential Electors are selected, without the ability of Congress to override that selection. However, again, Congress was given the exclusive authority to “determine **the Time** of chusing the Electors....” Art. II, Sec. 1, cl. 4 (emphasis added). Congress acted on this grant of authority and set the time for appointing electors on the same day as for House and Senate elections — but only once every four years. *See* 3 U.S.C. § 1.

This authority to override state election laws has been exercised by Congress and recognized by this Court. *See, e.g.,* Help America Vote Act of 2002, 116 Stat. 1666; *Foster v. Love*, 522 U.S. 67 (1997).

In setting the time of the election of House members, Senators, and Presidential Electors, Congress acted exactly as it was authorized to do in the Constitution. Its exercise of power should not be viewed according to any limitations that may apply to any preemption doctrine, because it is the exercise of an express grant of authority to override state laws.

The Montana Supreme Court considered the constitutionality of a state law which provided for the counting of ballots of military members received after Election Day, in its careful and thoughtful opinion.

Maddox v. Board of State Canvassers, 116 Mont. 217 (1944). There, the court concluded that:

the [state] legislature could not constitutionally have extended beyond the statutory election day the time for depositing ballots, so far as presidential electors are concerned....

Being within the powers expressly ceded to the limited federal sovereignty by the people of the United States, and having been exercised by the Congress, it is apparent that the **states have no power to interfere**. [*Id.* at *222 (emphasis added).]

The Montana Court explained the historic meaning of the unusual term “cast” ballots:

Nothing short of the **delivery** of the ballot to the election officials for deposit in the ballot box constitutes **casting** the ballot, which fact was unmistakable so long as the ballot continued to be, as originally, a ball or marble or other marker which was “**cast**” or **deposited** in an official receptacle or custody....

Thus Webster’s New International Dictionary defines “cast” as “to deposit (a ballot) formally or officially.” **It is not the marking but the depositing of the ballot in the custody of the election officials which constitutes casting** the ballot or vote. Obviously, **unless it reaches the officials it is never cast at all**, whether or not it is

marked for any candidate, or forwarded by mail or otherwise. The fact that the ballot has to be marked before its casting can indicate the voter's intent, should not obscure the fact that it is still of no effect until it is deposited with the election officials, by whom the will of the voters must be ascertained and made effective. [*Id.* at *223-24 (emphasis added).]

The Montana court then correctly concluded that a state law allowing post-Election Day ballots to be counted conflicted with the Election Day as established by Congress.

Therefore in so far as [state law] purports to extend beyond the election day the time within which voters' ballots may be **received** by the election officials for the election of presidential electors, it is in **conflict** with the constitutional congressional Act which requires the electing to be done on election day. It is, accordingly, unconstitutional to that extent. A diligent search has disclosed no authorities nor precedents to the contrary. [*Id.* at *224 (emphasis added).]

Similarly, in *Foster v. Love*, this Court determined that a State statute which could have resulted in a federal election being held on a different day than that which was set by Congress was invalid.

CONCLUSION

The decision of the Fifth Circuit should be affirmed.

Respectfully submitted,

MICHAEL BOOS
CITIZENS UNITED
1006 Pennsylvania Ave. SE
Washington, DC 20003

RICK BOYER
INTEGRITY LAW FIRM
P.O. Box 10953
Lynchburg, VA 24506

PATRICK M. MCSWEENEY
3358 John Tree Hill Rd.
Powhatan, VA 23139

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
**Counsel of Record*

Attorneys for Amici Curiae
February 17, 2026