

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 OF SECRETARIES OF STATE
OF LOUISIANA AND WYOMING AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICI CURIAE

Amici curiae are Secretaries of State responsible for administering elections in a fair, orderly, and uniform manner. *Amici* have a direct institutional interest in the administrability and finality of federal elections as well as ensuring voter confidence in those elections. *Amici* submit this brief to explain why departing from the traditional receipt-by-Election-Day rule would create serious practical and legal difficulties for those charged with administering elections nationwide. *Amici* are not filing on behalf of their respective States. They are filing as Secretaries.¹

¹ Pursuant to Supreme Court Rule 37.6, *Amici curiae* state that no counsel for any party authored this brief in whole or in part. No one other than amici, their counsel, and The Honest Elections Project, a nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections, has made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Federal law fixes a single “day for the election.” *Foster v. Love*, 522 U.S. 67, 69 (1997). *Foster* and the Fifth Circuit’s decision mark the same boundary from opposite sides. In *Foster*, Louisiana’s October open-primary law failed because it allowed a final choice to occur *before* the congressionally selected “day for the election.” *Id.* at 70-72. Mississippi’s regime extending the federal election for five days *after* the single day Congress selected runs headlong into the same issue.

The Fifth Circuit’s decision honors the plain language of the Election Day statutes, centuries of historical practice, and this Court’s precedent. *See Br. for Resp. Libertarian Party of Miss.* 13-29. But it also safeguards the integrity of the election process in two important ways.

First, the Fifth Circuit’s decision promotes the administrability of federal elections. A receipt-by-Election-Day requirement provides the bright-line rule that effective election administration demands. Election officials cannot efficiently manage elections, meet certification deadlines, or conduct recounts and contests when a potentially large but unknowable number of ballots remain outstanding.

Petitioner’s reliance on postmarks in lieu of receipt is misplaced because postmarking is not an official act of election administration. Postmarks are applied inconsistently, are often illegible or absent, and—under Mississippi’s amended statute—may be bypassed entirely in favor of ballots delivered by private carriers. A trickle of postmarked (or not)

ballots is no substitute for Congress’s delineation of a single “day for the election.”

Second, the Fifth Circuit properly recognized that honoring Congress’s clear choice is necessary for public confidence. “Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). But when ballots continue to arrive after the polls close, the public suspects fraud and loses faith in the integrity of the election. *See Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 33-34 (2020) (Kavanaugh, J., concurring in the denial of application to vacate stay).

The Court should affirm the Fifth Circuit’s well-reasoned decision.

ARGUMENT

I. The Fifth Circuit’s decision promotes administrability of federal elections.

The Fifth Circuit correctly concluded that statutory text, historical understanding, and this Court’s precedent mandate a default rule of government receipt, rather than postmarking, by Election Day. This approach allows election officials to effectively administrate federal elections and avoid the host of issues inherent in Petitioner’s contrary position.

1. “An election involves more than government action; it also involves the polity’s *final* choice of an officeholder.” Pet.App.10a. As the Fifth Circuit correctly concluded, “[t]he selections are done and final”—they are “fixed”—when “*all of the ballots are received* and the proverbial ballot box is closed.” *Id.* (emphasis added).

Such finality is necessary for election officials to effectively administer election laws. “To state the obvious, a State cannot conduct an election without deadlines.” *Wis. State Legislature*, 141 S. Ct. at 33 (Kavanaugh, J., concurring in the denial of application to vacate stay). “[W]hile election officials are still receiving ballots, the election is ongoing.” Pet.App.10a. Election officials cannot conduct the official canvass, adjudicate challenged ballots, respond to recount requests, resolve election contests, or certify results until voting has ended. Those steps can be labor-intensive even in routine elections. They become more demanding when margins are close or

litigation begins.

“[P]articularly in a Presidential election, counting all the votes quickly can help the State promptly resolve any disputes, address any need for recounts, and begin the process of canvassing and certifying the election results in an expeditious manner.” *Wis. State Legislature*, 141 S. Ct. at 33 (Kavanaugh, J., concurring in the denial of application to vacate stay) (citing 3 U.S.C. § 5). Maximizing the time available for these activities is important. In a close election, post-election processes can require significant time. *See Bush v. Gore*, 531 U.S. 98, 110 (2000) (reversing a judgment “ordering a recount to proceed” because no recount meeting constitutional muster could be completed by a statutory deadline). This concern has particular force today, as “it has become a routine practice for election officials to count (or recount) ballots after Election Day.” Pet.App.13a (internal quotation marks and brackets omitted).

A receipt-by-Election-Day rule preserves the time needed to complete post-election tasks with accuracy and uniformity. After all, “[e]lections must end sometime, a single deadline supplies clear notice, and requiring ballots be in by election day puts all voters on the same footing.” *Wis. State Legislature*, 141 S. Ct. at 28 (Gorsuch, J., concurring in denial of application to vacate stay). These important considerations bolster the text, precedent, and historical practice the Fifth Circuit relied on to honor the single deadline envisioned by Congress. Pet.App.2a-3a.

2. Petitioner’s contrary position lacks any clear limiting principle and undermines the general

temporal uniformity Congress mandated. If Mississippi can extend the receipt deadline five business days, can it extend it ten? Twenty? The original 34-day window that Congress prohibited? *See* Act of Mar. 1, 1792, ch. 8, § 1, 1 Stat. 239 (appointing presidential electors over a 34-day period “preceding the first Wednesday in December”).

Petitioner fails to identify where this flexibility would end. If one accepts that states can extend receipt deadlines beyond Election Day, there is no logical stopping point. This vacuum “permit[s] States to engage in gamesmanship, experiment with deadlines, and renew the very ills Congress sought to eliminate: fraud, uncertainty, and delay.” Pet.App.34a (Oldham, J., concurring in denial of rehearing en banc).

Mississippi’s emphasis on postmarking raises as many administrability questions as it answers. Postmarking is not an official act of election administration. They are applied inconsistently, are often illegible or absent, and—under Mississippi’s amended statute—may be bypassed entirely for ballots delivered by private carriers.

Some mail arrives without a postmark, both because “the Postal Service does not postmark all mail in the ordinary course of operations and because occasional circumstances may arise where a legible postmark is not applied.” U.S. Postal Serv., *Statements: Postmarking Myths and Facts* (Jan. 2, 2026), <https://about.usps.com/newsroom/statements/010226-postmarking-myths-and-facts.htm>. In other circumstances, a postmark may not reflect the actual

date of mailing. According to the Postal Service itself, postmarks “will not necessarily match the date on which the customer’s mailpiece was collected by a letter carrier or dropped off at a retail location” due to “adjustments to our transportation operations that will result in some mailpieces not arriving at our originating processing facilities on the same day that they are mailed.” *Id.* In other words, “[a] postmark date does not necessarily indicate the first day that the Postal Service took possession of the mailpiece.” *Id.*

For that reason, the USPS recently disclaimed the responsibility Mississippi’s law seeks to place on it: “postmarking is not and has not been a service that the Postal Service has provided to the public” as a way of “proving when mail was sent.” *Id.* It “has always fundamentally existed to perform functions (including cancelation of postage) internal to Postal Service operations.” *Id.*

Receipt by election officials, by contrast, is a single, objective, government-controlled event that conclusively closes voting and allows post-election processes to begin. The Fifth Circuit thus correctly concluded that by the close of Election Day, all the “combined actions of voters and officials meant to make a final selection of an officeholder” must occur. Pet.App.9a; *Foster*, 522 U.S. at 71.

3. The existence of narrow congressionally created exceptions to the default rule only underscores the point. Congress has long required states to accommodate certain overseas and military voters under the Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, §§102, 104, 100 Stat.

924, 925-26 (1986) (“UOCAVA”), even though those ballots may arrive after Election Day. Likewise, as the Fifth Circuit recognized, the Help America Vote Act of 2002, 52 U.S.C. § 20901 *et seq.*, provides a “narrow exception that authorizes States to receive a certain small number of provisional ballots after Election Day from potentially unqualified voters.” Pet.App.22a. Those limited accommodations do not undermine the need for a firm endpoint for the election. Rather, they confirm that when Congress wants later receipt, it says so directly.

As election officials know from experience, ballots submitted under these statutes are a small, administratively manageable category, with established procedures and predictable volumes. *See* Election Administration and Voting Survey 2024 Comprehensive Report, https://eac.gov/sites/default/files/2025-07/2024_EAVS_Report_508.pdf, at 21 (UOCAVA votes accounted for 0.5% of votes in 2024 general election); *id.* at 19 (“For the 2024 general election, 0.9% of voters who cast a ballot that was counted did so by provisional ballot.”).

Mississippi’s five-business-day extension for all absentee ballots is different in kind. It is not a narrow federal accommodation for a discrete class of voters facing unique barriers. It broadly covers the largest and fastest-growing category of mail voting. Mail ballots accounted for more than 30% of ballots cast in the 2024 general election. *See id.* at ii; *see also* Paul Gronke et al., *Vote-By-Mail in the United States: Best Practices and New areas for Research*, MIT Election Lab, <https://electionlab.mit.edu/sites/default/files/>

2023-10/vote-by-mail.pdf (reporting that the “rate of mail voting has tripled since 2000, and mail ballots now constitute a third of ballots returned”). The delayed receipt of such a substantial share of ballots, not the relatively few overseas ballots, is what threatens administrability.

4. Although requiring receipt by Election Day simplifies the administration of federal elections, some *amici* erroneously argue that enforcing Congress’s decision will create administrative complexities in certain states. Those arguments rest on the unjustified premise that states will decide to accept later-arriving ballots for state elections even if they cannot do so for federal elections. *See* Br. for Former Election Administrators 10-11. In reality, States often make the opposite choice, voluntarily applying to state elections procedures Congress has mandated for federal elections. Voter registration is a good example: “While the [National Voter Registration Act] applies to elections for federal office, States have extended its procedures to all elections.” U.S. Dep’t of Justice, Civil Rights Division, *The National Voter Registration Act Of 1993 (NVRA)* (Nov. 1, 2024), <https://justice.gov/crt/national-voter-registration-act-1993-nvra>.

To the extent States choose to administer their own elections differently from federal elections, that is not a problem, much less one this Court should strain to avoid. It is a natural consequence of the Framers’ choice to give Congress more authority over federal elections than state elections. *See* U.S. Const. art. I, § 4; *id.* art. II, § 1. In regulating the timing of federal

elections, “Congress was concerned” with the uniformity of federal elections across states to ensure “one State” would not affect “other States.” *Foster*, 522 U.S. at 73. Congress was not concerned with uniformity across state and federal elections within a single state. That is a matter for state legislative consideration.

Other *amici* fear that requiring ballots to be received by Election Day would cause some voters to shift from voting by mail to voting in person. *See Br. of Amici Curiae Local Election Officials and Local Governments* 27. Voters choosing to cast ballots in person instead of by mail is not cause for concern. In fact, it would make securely administering elections easier in important ways. This Court has recognized that “[f]raud is a real risk that accompanies mail-in voting” *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 686 (2021). As the Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James Baker explained, “[a]bsentee ballots remain the largest source of potential voter fraud.” Report of the Comm’n on Fed. Election Reform, Building Confidence in U.S. Elections 46 (Sept. 2005).

II. The Fifth Circuit’s decision protects public confidence in elections.

“Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” *Purcell*, 549 U.S. at 4; *see also Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008) (plurality op.) (“[P]ublic confidence in the integrity of the electoral process has independent

significance . . .”). That confidence depends not only on preventing actual fraud, but on avoiding even the appearance of fraud or manipulation.

The receipt-by-Election-Day requirement promotes public confidence. It ensures that Election Day is what it purports to be: the day when the election concludes and the electorate’s choice is “fixed,” allowing counting and certification to follow relatively quickly. Pet.App.10a. That is crucial to Americans’ view of an election. As Pew reported in 2024, “[l]arge majorities of both Trump (95%) and Harris (89%) supporters say it is important that Americans know who won the race within days of Election Day.” Pew Research Center, *Harris, Trump Voters Differ Over Election Security, Vote Counts and Hacking Concerns* (Oct. 24, 2024), https://www.pewresearch.org/wp-content/uploads/sites/20/2024/10/PP_2024.10.24_election-security_report.pdf.

When results are delayed—as they necessarily will be if there are enough late-arriving ballots—voters lose trust in the process. “[D]elays in the counting and reporting of election results *do* increase the distrust of voters in elections, even without misinformation or other elite rhetoric amplifying concerns.” Mackenzie Lockhart et al., *Voters distrust delayed election results, but a prebunking message inoculates against distrust*, PNAS Nexus, Vol. 3, No. 10, at 414 (Oct. 2024), https://academic.oup.com/pnas_nexus/article/3/10/pgae414/7815439. The loss of voter confidence can be significant. “Learning about a delay in the reporting of election results caused a decline in trust, moving about one in ten of the respondents who

would have trusted the election instead to distrust.” *Id.*

The problem becomes particularly acute when late-arriving ballots change the apparent result. “[L]ate-arriving ballots open up one of the greatest risks of what might, in our era of hyperpolarized political parties and existential politics, destabilize the election result.” *Wis. State Legislature*, 141 S. Ct. at 33 (Kavanaugh, J., concurring in the denial of application of stay) (quoting Pildes, *How to Accommodate a Massive Surge in Absentee Voting*, U. Chi. L. Rev. Online (June 26, 2020)). As members of this Court have recognized, “[t]he ‘longer after Election Day any significant changes in vote totals take place, the greater the risk that the losing side will cry that the election has been stolen.’” *Id.* at 33-34 (Kavanaugh, J., concurring in the denial of application of stay) (quoting Pildes, *How to Accommodate a Massive Surge in Absentee Voting*, U. Chi. L. Rev. Online (June 26, 2020)).

Thus, it is no surprise that voters want election officials to receive ballots by Election Day. 2023 polling revealed that “89% [of voters] believe every ballot should be received by Election Day.” Honest Elections Project, *Honest Elections Project Polling Shows Strong Support for Election Integrity Measures* (July 31, 2023), <https://honestelections.org/honest-elections-project-polling-shows-strong-support-for-election-integrity-measures/>. The year before, Scott Rasmussen reported that “76% [of voters] favor requiring all ballots to be received by Election Day.” Scott Rasmussen, *Number of the Day*, Ballotpedia

(Jan. 19, 2022), https://ballotpedia.org/Scott_Rasmussen%27s_Number_of_the_Day_for_January_19,_2022. That is the only way to completely “avoid the chaos and suspicions of impropriety that can ensue if thousands of absentee ballots flow in after election day and potentially flip the results of an election.” *Wis. State Legislature*, 141 S. Ct. at 33-34 (Kavanaugh, J., concurring in the denial of application of stay).

“[D]eadlines for the receipt of absentee ballots need to be thought about in this context of [voter] distrust.” Richard H. Pildes, *Election Law in an Age of Distrust*, 74 Stan. L. Rev. Online 100, 107 (2022). Election officials “cannot ignore the continuing risk that the longer it takes to resolve the vote count, the more distrust will feed on that delay.” *Id.* “[I]n our current times, the more absentee ballots that can be processed and included in Election Night vote totals, the better.” *Id.* at 108.

CONCLUSION

The Fifth Circuit’s decision should be affirmed.

Respectfully submitted.

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