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 *AMICUS CURIAE* THE CLAREMONT INSTITUTE'S CENTER FOR CONSTITUTIONAL JURISPRUDENCE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE[1]

The Center for Constitutional Jurisprudence is the public interest law arm of the Claremont Institute, a non-profit educational foundation dedicated to restoring the principles of the American Founding to their rightful and preeminent authority in our national life. The Center's mission is to uphold the Constitution as the Framers intended it and as it was understood by the people who ratified it. The Center achieves this mission through strategic litigation, including the filing of *amicus curiae* briefs in this Court to provide the historical and constitutional context necessary for the proper resolution of significant constitutional questions.

The Center has represented parties or filed *amicus* briefs in numerous cases of constitutional import before this Court, including cases involving the separation of powers, the structure of the federal government, and the integrity of the electoral process. *See, e.g.*, *Moore v. Harper*, 600 U.S. 1 (2023); *Brnovich v. Democratic National Committee*, 594 U.S. 647 (2021); *Evenwel v. Abbott*, 578 U.S. 54 (2016); *Bush v. Gore*, 531 U.S. 98 (2000).

The Center has a particular interest in this case because it concerns the structural safeguards the Constitution and Congress established to protect the integrity of federal elections. The Framers understood that the timing of elections is not merely a matter of

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[1] In accordance with Rule 37.6, counsel affirms that no counsel for any party authored this brief in whole or in part and that no person or entity other than *amicus curiae* made a monetary contribution to fund the preparation and submission of this brief.

administrative convenience but a substantive check against faction, intrigue, and the distortion of the popular will. The Center writes to assist the Court in understanding the original public meaning of the relevant constitutional provisions and the historical purpose of the federal Election Day statutes, ensuring that state regulations do not override the structural commands of federal law.

SUMMARY OF ARGUMENT

The Constitution does not leave the timing of federal elections to chance or local convenience; it treats timing as a structural safeguard. The Framers expressly authorized Congress to set the "Times" of congressional elections and mandated a uniform "Day" for the appointment of presidential electors. *See* U.S. Const. art. I, § 4, cl. 1; *id.* art. II, § 1, cl. 4. This grant of authority was born of a specific fear: that staggered or extended elections would invite "cabal," "intrigue," and "undue influence." James Wilson, Remarks in the Pennsylvania Ratifying Convention (Dec. 11, 1787), *in* 2 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 567 (Merrill Jensen ed., 1976) (hereinafter "DOCUMENTARY HISTORY"). Leading Framers like James Iredell and Edmund Randolph warned that if the act of choosing is stretched over time, or if results in one area were known before voting concluded in another, the election would become vulnerable to strategic manipulation and corruption. James Iredell, Remarks in the North Carolina Ratifying Convention (July 26, 1788), *in* 30 DOCUMENTARY HISTORY 321 (John P. Kaminski et al. eds., 2019); Edmund Randolph, Remarks in the Virginia Ratifying

Convention (June 17, 1788), *in* 10 DOCUMENTARY HISTORY 1367 (John P. Kaminski et al. eds., 1993).

Congress exercised this constitutional authority to erect a statutory firewall against those very dangers. By enacting the federal Election Day statutes, Congress established a single, uniform day to "consummate" the election. *See* 2 U.S.C. § 7; 3 U.S.C. § 1. These statutes are the legislative implementation of the Constitution's structural design. In 1845 and 1872, Congress established a uniform day specifically to prevent practices like "political colonizing"—the movement of voters or manipulation of results made possible by temporal disparities. *See* Act of Jan. 23, 1845, ch. 1, 5 Stat. 721. The federal statutes thus function as an anti-corruption device, ensuring the national choice is made simultaneously, thereby foreclosing the opportunities for fraud that arise when the election is transformed from a discrete event into a prolonged process.

This Court confirmed that statutory command in *Foster v. Love*, holding that the federal "day for the election" is the day the election is "consummated"—the point at which the officials and voters make the final selection. 522 U.S. 67, 71–73 (1997). A State may not shift that consummation earlier, nor may it shift it later. *Id.* Yet, by defining the "election" to include the receipt of ballots after Election Day, Mississippi has decoupled the legal act of choosing from the day Congress prescribed. *See Republican Nat'l Comm. v. Wetzel*, 120 F.4th 200 (5th Cir. 2024); Miss. Code Ann. § 23-15-637(1)(a).

Mississippi's rule ostensibly concerns the "manner" of absentee voting but, in practice, it overrides

the federal "Time." By accepting ballots into official custody after the federal deadline, the State effectively extends the election window, reviving the precise evils that the Founders feared and that Congress acted to prevent. A ballot is not "cast" in the eyes of the law until it is received by the public authority capable of counting it; to hold otherwise is to allow a State to dismantle the temporal boundaries Congress established to preserve the integrity of the national vote. *See* 3 U.S.C. § 1.

ARGUMENT

I. The Constitution's Design Makes a Single Day for Federal Elections a Structural Safeguard Against Cabal, Undue Influence, and Strategic Manipulation.

The question in this case is statutory, but the statute cannot be understood without the constitutional design on which it is based. The Founders did not treat election timing as a mere administrative detail. They treated time as an anti-corruption device. The Constitution therefore contains two related structural provisions: (1) the Elections Clause authorizing Congress to set and override the "Times" of congressional elections, U.S. Const. art. I, § 4, cl. 1; and (2) the Electors Clause authorizing Congress to determine both the "Time of chusing the Electors" and the "Day" on which the electors "shall give their Votes," which "Day shall be the same throughout the United States," U.S. Const. art. II, § 1, cl. 4.

A. The Founding-Era Understanding Was That Extending Elections Over Time Creates Opportunities for Intrigue and Influence That a Republic Must Avoid.

The Framers understood that staggered or prolonged elections invite manipulation. A multi-day election is not simply "more time to vote;" it constitutes a fundamental alteration of the legal nature of the event. It transforms the election from a discrete, simultaneous act of sovereign choice into an extended process – one in which the electorate remains fluid and exposed to the dangers the Constitution was designed to foreclose: organized pressure, the formation of cabals, and strategic manipulation driven by the early knowledge of results.

This is why the Constitution explicitly insists upon a single day for the electors' vote. At the Philadelphia Convention, Gouverneur Morris explained the purpose in plain terms: if electors "vote at the same time," "cabal" can be avoided, and it becomes "impossible also to corrupt them." *See* 2 *The Records of the Federal Convention of 1787*, at 399 (Max Farrand ed., 1911) (statement of Gouverneur Morris). Far from being one of the Constitution's compromises, the record reveals no contradiction of Morris' premise, nor any defense of staggered voting.

Indeed, ratification-era commentary repeatedly emphasized the same theme. James Wilson, in Pennsylvania, gave the most vivid warning of what happens when elections are extended or deferred. He contrasted the Constitution's design with the "tumultuous" elections of the Polish-Lithuanian Commonwealth, which he famously described as "begun in

noise and ending in bloodshed." Wilson, Remarks in the Pennsylvania Convention, 2 DOCUMENTARY HISTORY 567. Wilson defended the Electoral College system in part because "it will not be easy to corrupt the Electors," and because the system gives "little time or opportunity for tumult or intrigue." *Id.* Wilson underscored that the Constitution "with the same view" directs that "the day on which the Electors shall give their votes shall be the same throughout the United States." *Id.*

John Dickinson – writing as "Fabius" – likewise treated Congress's authority to fix the timing of the choice as a safeguard against influence and coordination. Dickinson explained that, "to guard against undue influence," Congress may determine "the day" for the electors' vote, "which day shall be the same throughout the United States." Fabius II, Pennsylvania Mercury, Apr. 15, 1788, *reprinted in* 17 DOCUMENTARY HISTORY 124 (John P. Kaminski et al. eds., 1995).

In Virginia, Edmund Randolph likewise defended the system precisely because it prevents foreign intrigue. Randolph argued that the Constitution's mode of election "renders it unnecessary and impossible for foreign force or aid to interpose," and asked: "how can foreign influence or intrigues enter?" Randolph, Remarks in the Virginia Convention, *in* 10 DOCUMENTARY HISTORY 1367. He emphasized that "there can be no combination between the Electors, as they elect him on the same day in every State," and asked rhetorically: "When this is the case, how can foreign influence or intrigues enter?" *Id.*

Notably, even Anti-Federalist objections confirm that Congress's control over election timing was understood as a real structural power – not an administrative detail. Again, in North Carolina, Mr. J. Taylor warned that if Congress could fix the time of choosing electors, it could "by their army… compel the electors to vote as they please." J. Taylor, Remarks in the North Carolina Ratifying Convention (July 26, 1788), *in* 30 DOCUMENTARY HISTORY 321 (John P. Kaminski et al. eds., 2019). Richard Spaight's response – that a uniform day would "prevent a combination between the Electors" – shows that both critics and defenders understood uniform timing to foreclose manipulation. *Id*. (statement of Richard Spaight).

James Iredell made the purpose even more explicit. He called the clause "a most excellent" safeguard because "Nothing is more necessary than to prevent every danger of influence." *See id.* at 320-21. (statement of James Iredell). If the time were different in different states, Iredell warned, electors chosen in one state "might have gone from state to state and conferred with the other Electors," and "the election might have been thus carried on under undue influence." *Id.* The uniform day, by contrast, means "the Electors must meet in the different states on the same day, and cannot confer together," so that "There can be therefore no kind of combination." *Id.* Iredell further reasoned that this structure makes it more likely that the chosen candidate will be one who "possesses in a high degree the confidence and respect of his country." *Id.*

These statements share a unified premise: the integrity of the election depends on closing the decisive act of choice on the day set by law.

B. The Same Logic Supports Congress's Power to Require a Single Day for the Popular Election That Appoints Electors and Elects Representatives.

It would be a mistake to treat the Electors Clause as uniquely concerned with simultaneity while treating congressional elections as indifferent to timing. The Founders' reasoning was structural and general. In fact, the Elections Clause was adopted precisely because the national government required a reliable mechanism for choosing federal officers without dependence on state discretion that could be abused or withheld. *See* THE FEDERALIST NO. 59, at 360–64 (Alexander Hamilton) (Clinton Rossiter ed., 1961); THE FEDERALIST NO. 61, at 372–76 (Alexander Hamilton). That premise necessarily includes the power to fix a uniform time that ensures elections happen and happen in a way that is resistant to manipulation.

Founding-era writers discussing Congress's authority over election timing treated uniformity as a feature of republican government. "Cassius," writing during the ratification debates, pointed to Congress's power to determine the time for choosing electors and to require a uniform day as proof of a "liberal and free government," because "No one state will in the least be influenced in their choice by that of another." *Cassius VI*, Massachusetts Gazette, Dec. 18, 1787, *reprinted in* 5 DOCUMENTARY HISTORY 482–83 (John P. Kaminski et al. eds., 1998).

Samuel Holden Parsons likewise explained that, while states would control qualifications, Congress properly could determine the time of elections because the states had adopted "different practices," and because it is "expedient, at least, they should be in one day throughout the Union." Samuel Holden Parsons, Remarks in the Connecticut Ratifying Convention (Jan. 11, 1788), *in* 3 DOCUMENTARY HISTORY 571 (Merrill Jensen ed., 1978). Parsons added that frequent changes in the "manner of elections" may be necessary "to prevent corruption," suggesting again that timing and mechanics are not neutral – they are tools for preserving republican integrity. *Id.*

Joseph Story – writing as an early constitutional commentator in the generation that inherited the Founders' settlement – captured the same understanding: Congress's power to fix a uniform day exists "calculated to repress" the risk that electors (and by analogy elections) would be influenced by communications and combinations across states. 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1469 (1833).

The core point is straightforward: a "single day" is a constitutional means of preventing undue influence, not a mere calendar selection.

C. Congress's Current Presidential-Election Framework Defines "Election Day" and Confirms That Electors Must Be Appointed on That Day.

Congress has now codified, in the presidential-election chapter itself, both (i) a definition of "election

day" and (ii) the command that presidential electors be appointed on that day. See 3 U.S.C. §§ 1, 21.

First, Congress defines "election day" for presidential electors as the Tuesday next after the first Monday in November every fourth year – while providing only a narrow carveout for extraordinary, catastrophic force majeure events where state law enacted prior to election day modifies the period of voting. 3 U.S.C. § 21(1). That definition confirms that "election day" is ordinarily a fixed national day, and that any departure must fit within a tightly described, congressionally recognized exception.

Second, Congress provides that presidential electors "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). The statute thus requires appointment on election day while locking the governing rules in place as of that day – reinforcing the principle that a State may not keep the decisive act of appointment open after the federally prescribed day has passed.

This structure accords with the original 1845 enactment, which established the uniform day and permitted later appointment only in the rare instance of a "failure to make a choice" on that day. *See* § II.C, *infra*. Whether framed in the modern statutory definition of "election day," or in Congress's historic insistence that deviation required a narrowly specified contingency, the point is the same: the federal presidential election is to be completed on the day Congress

has prescribed, absent an explicit and limited congressional exception.[2]

II. Congress Implemented the Constitution's "Single Day" Safeguard Through the Election Day Statutes, Which Require the Election – The Act of Choosing – to Be Completed on the Prescribed Day.

The case turns on federal statutes. But those statutes represent Congress's decision to exercise its constitutional authority to address the very dangers the Framers foresaw. When Congress finally established a uniform day, it did so to activate the Constitution's structural safeguard against "cabal" and "intrigue," ensuring that federal elections do not become staggered, extended, or manipulable. *See* 2 U.S.C. § 7; 3 U.S.C. § 1.

A. The Text: Congress Set a "Day" for the Election, Not a Multi-Day Window.

Congress fixed a uniform day for appointing presidential electors. *See* 3 U.S.C. § 1. The statutory choice of the singular "day" mirrors the Constitution's singular "Day" in Article II. *See* U.S. Const. art. II, § 1, cl. 4. A "day" is not an indefinite interval. It is a calendar

[2] The State Legislatures may also have a narrow power to act, pursuant to their plenary constitutional power to direct the manner of choosing presidential electors, U.S. Const. Art. II, § 1, cl. 2, if election officials conducted the election contrary to the manner directed by the Legislature. That issue is not presented by this case.

date on which a specified legal act occurs. It is precisely because a day is definite that it can function as a safeguard against manipulation.

Congress likewise fixed a uniform day for electing Representatives. *See* 2 U.S.C. § 7. This choice was deliberate. When Congress enacted the House Election Day statute in 1872, it rejected an amendment that would have authorized States to hold the election on a later date – proposing that if the election were not held on the federal Tuesday, it "may be held on any subsequent day, to be fixed by the laws of the State." Cong. Globe, 42d Cong., 2d Sess. 676 (1872). That rejection confirms that Congress was imposing a meaningful national deadline for when the federal election must occur.

Founding-era usage aligns with this ordinary meaning. Samuel Johnson defined "election" as the act of choosing. *See* Samuel Johnson, *A Dictionary of the English Language* (1755) (defining "election"). A choice must occur at a point in time; it is not an ongoing state of affairs. An election held "on" a day is an election whose legally operative act of choosing occurs on that day.

Of course, tabulation and canvassing can continue after Election Day. But continuing to count ballots already cast is not the same thing as continuing to receive new votes. A state may take time to determine what the already-cast ballots show. But it may not redefine "the election" to include ballots that were not in election officials' possession on Election Day. *See Foster v. Love*, 522 U.S. 67, 71–73 (1997).

B. Congress's 1845 Presidential-Elector Statute Was Enacted to Prevent Fraud and Strategic Timing – Concerns That Apply With Full Force to Post-Election Receipt Rules.

In 1845, Congress enacted the statute that remains (as amended) the basis for presidential Election Day. Congress required that presidential electors be appointed on "the Tuesday next after the first Monday in November." *See* Act of Jan. 23, 1845, ch. 1, 5 Stat. 721 (codified as amended at 3 U.S.C. § 1).

The 1844–1845 debates make the point explicit in the very terms at issue here – receipt. Representative Chilton described the bill as establishing "that no votes cast after that day should be received." Cong. Globe, 28th Cong., 2d Sess. 15 (1844). In the statutory context of 1845, when voting was an in-person act and casting and receipt were simultaneous, Chilton's insistence that no votes be received after Election Day confirms that the statute was meant to close the window of the election – and the official acceptance of ballots – on the single day Congress prescribed.

The same debates identified a concrete abuse that flowed directly from staggered or extended elections: so-called "political colonizing." Representative Rathbun explained that its object 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." Cong. Globe, 28th Cong., 2d Sess. 29 (1844). Other Members warned that, absent a uniform day, partisan actors would move voters into doubtful States after learning results elsewhere, manipulating outcomes by exploiting temporal disparities. *Id.* at 28.

The uniform Election Day was thus designed to foreclose not merely abstract corruption, but a specific, well-understood practice made possible only when elections were not completed contemporaneously.

The legislative history reflects Congress's recognition that the timing of elections is intimately connected to election integrity. During debate, Members described the bill as "a simple naked proposition to fix a uniform day" and emphasized that it preserved state authority over "the manner of elections," "canvassing the votes," and "making the returns," while still establishing the national rule that the election is held on a single day. *See* Cong. Globe, 28th Cong., 2d Sess. 28 (1844).

Members also explained that a uniform day prevents "frauds upon the ballot-box." *Id.* One Member reasoned that the "same reasons" that make it "necessary to elect presidential electors on the same day" apply "with equal force" to congressional elections because "the inducement for frauds upon the ballot-box is about equal in both cases," and fixing a single day would "prevent" such frauds. *Id.* at 29.

C. Congress's Original Election-Day Statute Included Only a Narrow Contingency Proviso – Confirming That Election Day Is the Day of Choice.

Congress's original presidential Election Day statute did not treat Election Day as the beginning of an open-ended window. It treated it as the day on which the choice is made – so much so that Congress included a narrow contingency proviso for the excep-

tional circumstance in which the State held the election but "shall fail to make a choice" on the federal day. Act of Jan. 23, 1845, ch. 1, 5 Stat. 721 (codified at 3 U.S.C. § 2 until deleted in 2022).

That statutory structure is incompatible with the theory that the federal election is still "held" on Election Day even if a State continues to accept decisive votes into official custody after that day. A State that counts ballots received after Election Day necessarily treats the "choice" as contingent on later arrivals rather than made on the day Congress fixed.

This matters here because the question is not whether a State may canvass or tabulate after Election Day. It is whether the State may accept and count votes not yet in officials' custody once the federally fixed day has passed. Congress's insistence on a single day – together with the narrow contingency proviso in the 1845 Act – underscores that Election Day is the day of choice, not merely the first day of a multi-day voting period.

III. This Court's Precedent Confirms That the Election Day Statutes Fix the Day the Election Is "Consummated," and States May Not Shift That Consummation Earlier or Later.

The Court's modern Election Day precedent begins with *Foster v. Love*. The principle it announces is broader than the specific early-election scheme at issue there. *See Foster*, 522 U.S. at 71–73.

A. *Foster* Holds That the Federal "Day for the Election" Is the Day on Which the Election Is Held – Not Merely a Deadline for Counting.

In *Foster*, Louisiana held an "open primary" before the federal Election Day. If a candidate won a majority, the candidate was elected and no further election occurred on the federal day. The Court held that the federal Election Day statute preempted Louisiana's scheme because the federal statute requires the election to be *held* on the uniform day. *Id.*

The Court explained that the statute establishes "the day for the election" – the specific time at which the "combined actions" of voters and officials "make a final selection." *Id.* at 71. While *Foster* invalidated a scheme that concluded the election too early, it did so by enforcing the federal "day" as the legally decisive time. The statute thus prohibits decoupling the election from the federally prescribed day – whether by moving the decisive acts earlier or by extending them later.

That reasoning applies symmetrically. The statute prohibits shifting consummation earlier than Election Day. It also prohibits shifting consummation later than Election Day by leaving the decisive inputs of the election open after the day has passed. *Id.*

B. Elections-Clause Preemption Is Real Preemption: When Congress Sets the Time, Conflicting State Rules Must Yield.

The Constitution grants Congress the final word on the timing of federal elections. Regarding presidential electors, the Constitution empowers Congress to determine the "Time of chusing the Electors" and the "Day" on which they vote. U.S. Const. art. II, § 1, cl. 4. Regarding congressional elections, Article I allows States to prescribe "Times, Places and Manner," but

empowers Congress to "make or alter" such regulations at any time. *Id.* art. I, § 4, cl. 1. In either context, once Congress fixes the "Time," any inconsistent state rule must yield; the subordinate cannot override the superior. *Ex parte Siebold*, 100 U.S. 371, 383–84 (1879). This Court has stated the same point in direct preemption terms. In *Arizona v. Inter Tribal Council of Ariz., Inc.*, the Court explained that the Elections Clause empowers Congress "to pre-empt state regulations" governing the "Times, Places and Manner" of federal elections. 570 U.S. 1, 8–9 (2013). So when Congress sets the federal "Time" by fixing a single Election Day, state rules that effectively extend that Time beyond the federally prescribed day must yield.

A ballot-receipt deadline is not a mere administrative "manner" detail when it extends the period in which votes may be accepted; it changes the temporal boundary of the election itself. *Foster v. Love*, 522 U.S. 67, 71–72 (1997). Mississippi's receipt rule therefore inverts the constitutional order by using "Manner" (absentee administration) to displace "Time" (the federal Election Day Congress prescribed). U.S. Const. art. I, § 4, cl. 1; 2 U.S.C. § 7; 3 U.S.C. § 1.

C. This Court's Emergency-Election Cases Reflect the Same Baseline Principle: Courts and States Should Not Extend Elections Beyond the Day Set by Law.

Even outside the specific context of statutory preemption, this Court has repeatedly treated Election Day as a meaningful legal line. During the 2020 election, for example, the Court stayed lower-court orders that altered ballot deadlines close to the election, emphasizing the importance of maintaining the rules

established by legislatures and the risks of judicially altering election procedures. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424–25 (2020) (per curiam); *see also, Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam).

Those cases concern equitable doctrines, but they reflect a consistent judicial recognition that elections are structured events with legally defined endpoints. The statutory endpoint Congress set for federal elections should be treated at least as seriously as the Court treats state deadlines in equitable contexts. *See Foster*, 522 U.S. at 71–73.

IV. Mississippi's Post-Election-Day Receipt Rule Conflicts With Federal Law Because a Ballot Is Not "Cast" in the Election Until It Is Delivered Into the Custody of Election Officials.

Mississippi's rule requires officials to count certain mail ballots received after Election Day. *See* Miss. Code Ann. § 23-15-637(1)(a). The State seeks to reconcile that rule with federal Election Day by arguing, in substance, that the ballot is "cast" when the voter mails it (or when it is postmarked), so that the election still occurs "on" Election Day even if ballots arrive later. That theory is incompatible with the constitutional and historical understanding of elections.

This Court's own description of what an "election" entails confirms that official custody is required. *Foster* explained that the federal Election Day statutes govern "the combined actions of voters and officials meant to make a final selection of an officeholder." 522 U.S. at 71. A mail ballot that remains outside election

officials' custody has not yet entered that combined, legally supervised electoral act – and a State cannot extend the federal "day for the election" by treating such ballots as valid votes when they arrive after the day Congress prescribed.

A. The Original Understanding of an "Election" Presupposes a Public, Legally Supervised Act That Closes on the Day Prescribed.

At the Founding, elections were public acts administered by authorized officials at prescribed places and times. The key feature was not merely the voter's private intention. It was the public, legally cognizable act by which that intention became part of the community's official choice. Parsons, Remarks in the Connecticut Convention, 3 DOCUMENTARY HISTORY at 571 (recognizing Congress's authority to adjust election "manner" to prevent corruption and ensure electors can convene).

The Founders' emphasis on preventing "tumult," "intrigue," and "undue influence" presupposed that the election is a bounded public event. Wilson, Remarks in the Pennsylvania Convention, 2 DOCUMENTARY HISTORY at 567; Iredell, Remarks in the North Carolina Convention, 30 DOCUMENTARY HISTORY at 321.

A private act performed in isolation, with no public custody or legally supervised receipt, is not an "election" act in the sense the Constitution and early statutes assumed. A ballot becomes part of the election when it enters the election process – i.e., when it is

delivered to officials tasked with receiving and counting it in accordance with law. *See Foster*, 522 U.S. at 71–73.

Mississippi (and the dissents below) may invoke Civil War–era soldier-voting arrangements to argue that ballots historically could be transported and counted after Election Day. But that history does not establish a general state power to extend the federal election beyond the day prescribed by Congress. The cited soldier-voting practices typically involved voting on the legally designated election day under authorized supervision, followed by later transportation and canvassing once ballots and returns could physically reach home precincts. That post-election canvass is categorically different from a modern rule that keeps the decisive electorate open after Election Day by accepting additional votes into official custody after the federal deadline has passed.

B. Treating a Postmark as the Moment the Vote Is Cast Detaches the Election From Public Administration and Undermines the Uniform-Day Safeguard.

A postmark is not an election act performed by an election official. It is an artifact of the postal system. It may be missing, illegible, delayed, or subject to dispute. If the operative act of voting is shifted from delivery to election officials to a postal mark, the election's boundaries cease to be defined by election law and become dependent on a separate system. *See* Miss. Code Ann. § 23-15-637(1)(a).

Treating a postmark as the act of voting defeats the purpose for which Congress exercised its constitutional power: simultaneity. If the "election" is defined by a private act (mailing) rather than a public one (receipt), the electorate remains fluid and susceptible to the very strategic manipulation – knowing results in one place before voting concludes in another – that the uniform "Day" was created to foreclose. The whole point of requiring a single day was to cabin the election in a predictable and publicly administered period, not to create a rule under which the electorate's decisive inputs trickle in after the day set by Congress. *See* 2 *The Records of the Federal Convention of 1787*, at 399 (Max Farrand ed., 1911) (statement of Gouverneur Morris); Edmund Randolph, Remarks in the Virginia Ratifying Convention (June 17, 1788), *in* 10 DOCUMENTARY HISTORY 1367 (John P. Kaminski et al. eds., 1993).

Mississippi may attempt to reframe the issue as one of "receipt" rather than "casting," arguing that a ballot is "cast" when mailed. But the federal statutes regulate when the election is "held" and (for presidential electors) when electors are "appointed" – concepts that presuppose a publicly administered, legally cognizable act. For mail ballots, the voter's private act of mailing is not itself the public act that election law can finally tally; that occurs when the ballot is delivered into election officials' custody pursuant to law. Treating a postmark as the operative "cast" moment would make the federal election's endpoint depend on postal artifacts and disputes external to election administration – precisely the temporal indeterminacy the uniform-day rule was designed to avoid.

C. Mississippi's Rule Conflicts With 3 U.S.C. § 1 Because It Means Electors Are Not Truly "Appointed" on the Day Congress Prescribed.

Congress's presidential Election Day statute does not speak in the abstract about "voting." It speaks about the appointment of electors. Electors "shall be appointed" on the specified Tuesday. *See* 3 U.S.C. § 1.

A State appoints electors through its election process. If ballots received after Election Day must be counted as part of that process, then the appointment is not made solely on the day Congress prescribed. Rather, the decisive electorate is defined across multiple days. *See id.*; Miss. Code Ann. § 23-15-637(1)(a).

As detailed above, the 1845 statute recognized only a narrow contingency for proceeding later—when a State held the election but "fail[ed] to make a choice" on the federal day. See § II.C, *supra*. That conditional structure is incompatible with a regime that routinely keeps the choice open after Election Day by accepting additional ballots into official custody afterward. A State that counts ballots received after Election Day necessarily treats the choice as contingent on events after the federal deadline.

The better reading, consistent with the Constitution's structural safeguards and Congress's statutory framework, is that a State may take time after Election Day to canvass and count ballots that were cast (i.e., received by election officials) by Election Day, but it may not treat ballots not received by Election Day as legally valid votes in the federal election. *See Foster*, 522 U.S. at 71–73.

V. Extending Receipt and Counting Beyond Election Day Revives the Evils the Founders and Early Congresses Sought to Avoid, and It Undermines the National Character of Federal Elections.

This Court need not rely on policy alone. The controlling point is statutory and constitutional structure. But the Founders' reasons are instructive precisely because those reasons remain relevant. Extending the election beyond Election Day revives the very dangers the Founders cited.

A. The Founders' Concerns About "Cabal," "Combination," and "Foreign Influence" Are Heightened When the Election Becomes Temporally Extended.

Morris's point about "cabal" assumed that simultaneity reduces the ability to coordinate corruption. *See* 2 *The Records of the Federal Convention of 1787*, *supra*, at 399 (statement of Gouverneur Morris). Iredell's concern about electors traveling and conferring assumed that time enables coordination and undue influence. Iredell, Remarks in the North Carolina Convention, 30 DOCUMENTARY HISTORY 321. Randolph's emphasis on excluding foreign intrigue assumed that a bounded event reduces external leverage. Randolph, Remarks in the Virginia Convention, 10 DOCUMENTARY HISTORY 1367.

Those structural concerns are not relics. Modern communications and high-stakes national politics increase the incentives and the opportunities for coordinated pressure and strategic behavior. A rule that keeps the decisive electorate open after the day set by

Congress is a rule that increases the space for organized contestation and suspicion precisely when the Nation needs finality. *See Cong. Globe*, 28th Cong., 2d Sess. 28 (1844) (linking uniform day to prevention of "frauds upon the ballot-box").

B. Congress's Uniform-Day Rule Serves National Unity and Public Legitimacy – Values Damaged When States Define Federal Elections Over Multiple Days.

Federal elections are national events. Congress set a uniform day precisely so that the Nation chooses its federal officers together. A multi-day election fragments that national act. It also erodes public confidence by creating the appearance that elections are not determinate events but extended processes subject to change after Election Day has passed. *See* 2 U.S.C. § 7; 3 U.S.C. § 1.

Even if one assumes good faith in election administration, the uniform-day safeguard functions in part to prevent reasonable citizens from suspecting manipulation. The Founders recognized that republican government depends not only on actual integrity but on structures that make integrity credible. *See* Wilson, Remarks in the Pennsylvania Convention, 2 DOCUMENTARY HISTORY at 567 (emphasizing avoidance of "tumult or intrigue").

Experience confirms what the Framers understood: finality and legitimacy require a real deadline. Florida – after the 2000 debacle – now requires domestic vote-by-mail ballots to be received by the close of polls on Election Day, eliminating the rolling uncertainty produced by post-Election-Day receipt rules.

Fla. Stat. § 101.67; Fla. Dep't of State, Vote-by-Mail (explaining receipt-by-Election-Day requirement). That clear, enforceable endpoint is widely credited as a substantial reason Florida regularly reports results on election night rather than inviting days of suspicion and "intrigue" while ballots remain in transit. Press Release, Pub. Int. Legal Found., PILF Files Legal Brief to Restore the Day in Election Day (Jan. 24, 2022), https://publicinterestlegal.org/press/pilf-files-legal-brief-to-restore-the-day-in-election-day/ (discussing Florida's turnaround); *Bush v. Gore*, 531 U.S. 98 (2000).

C. Congress Has Power to Create Specific Exceptions – and Has Done So in Limited Contexts – Which Confirms the General Rule That the Election Must Be Completed on Election Day.

When Congress wants to authorize any departure from the fixed federal "election day," it does so expressly. Congress has now defined "election day" for presidential elections, and it recognizes a modified "period of voting" only for extraordinary and catastrophic force majeure events – and only as provided under state laws enacted prior to Election Day. 3 U.S.C. § 21(1).

Nothing in the Election Day statutes provides a comparable authorization for States to extend ordinary domestic voting beyond Election Day by counting ballots first received afterward. Absent an explicit congressional carveout, States may not transform Congress's single-day command into a multi-day election. *See Foster*, 522 U.S. at 71–73.

D. Congress's Targeted Accommodations for Military and Overseas Voters Confirm That States May Not Unilaterally Extend the Federal Election Day

UOCAVA does not dissolve the federal "day" Congress fixed; it confirms that only Congress may create narrow departures from it for compelling federal reasons.

Congress enacted UOCAVA to protect a discrete class of voters – absent uniformed-services voters and overseas voters – whose ballots must traverse extraordinary logistical obstacles. 52 U.S.C. § 20302(a)(1). Congress therefore requires States to transmit requested absentee ballots to such voters well in advance of Election Day (typically 45 days), and to provide specialized mechanisms for electronic transmission and backup voting where needed. 52 U.S.C. §§ 20302(a)(6)–(9), 20303. The Department of Justice likewise describes UOCAVA as ensuring timely transmission and usable procedures for military and overseas voters, not as a general authorization for States to redefine the duration of federal elections for domestic voters. UOCAVA is thus an exercise of Congress's Elections Clause authority to "make or alter" rules for federal elections. U.S. Const. art. I, § 4, cl. 1; *Arizona v. Inter Tribal Council of Ariz.*, Inc., 570 U.S. 1, 8–9 (2013). A congressionally crafted accommodation for federal military and overseas voters cannot be transmogrified into a state-law license to extend the election for everyone else. The existence of tailored federal accommodations underscores the premise of this case: when the "day" Congress set must yield, Congress – not the States – supplies the yielding rule.

Anticipating the contrary argument: UOCAVA's references to state receipt deadlines for overseas and military ballots do not imply a general state power to extend federal Election Day for domestic voting. Those provisions reflect Congress's own targeted accommodation – an exercise of Congress's Elections Clause authority to create narrow, federally specified departures for a discrete class facing exceptional logistical barriers. If Congress chooses to incorporate or coordinate with state receipt rules for that limited context, that confirms (rather than negates) the baseline rule: extensions of the federal election's timing are matters for Congress to authorize, not States to assume unilaterally.

CONCLUSION

The Founders treated the timing of federal elections as a structural safeguard against corruption and undue influence. Congress implemented that safeguard by establishing a single, uniform Election Day. A state rule requiring the counting of ballots received after Election Day transforms the federal "day for the election" into the first day of a multi-day election, contradicting the Constitution's design and Congress's enacted command.

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