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

BRIEF OF AMICI CURIAE MEMBERS OF UNITED STATES CONGRESS AND THE AMERICAN CENTER FOR LAW & JUSTICE IN SUPPORT OF RESPONDENTS

JAY ALAN SEKULOW
Counsel of Record
JORDAN A. SEKULOW
STUART J. ROTH
ANDREW J. EKONOMOU
NATHAN J. MOELKER
LIAM R. HARRELL
AMERICAN CENTER FOR LAW & JUSTICE
201 Maryland Ave, NE
Washington, DC 20002
(202) 546-8890
sekulow@aclj.org

February 13, 2026 *Counsel for* Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are members of the U.S. Senate and House of Representatives (listed in the Appendix) who are committed to protecting the integrity of federal elections. Reliable and uniform elections are foundational to democratic government. *Amici* believe that Mississippi's absentee ballot scheme threatens that reliability and uniformity. *Amici* therefore urge this Court to affirm the Fifth Circuit's decision.

Amicus curiae American Center for Law & Justice ("ACLJ") is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have appeared often before this Court as counsel for parties, *e.g. Trump v. Anderson*, 601 U.S. 100 (2024) (unanimously holding that states have no power under the U.S. Constitution to enforce Section Three of the Fourteenth Amendment with respect to federal offices); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); or as *amicus*, *e.g. Bost v. Illinois*, No. 24-568 (2025); *RNC v. Genser*, No. 24A408 (2024); *Trump v. United States*, No. 23-939 (2024); and *Bush v. Gore*, 531 U.S. 98 (2000). The ACLJ has a fundamental interest in defending the uniformity of federal elections and in promoting election security and confidence.

---

[1] Per Rule 37.2, *amici* state that counsel of record received timely notice of the intent to file this brief. Per Rule 37.6, *amici* states that no counsel for any party authored this brief in whole or in part, and no entity or person made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Congress fixed a single day for federal elections. The question presented here is whether states may ignore it—counting ballots that arrive days or weeks late, so long as someone claims they were mailed earlier. The answer is "No." States cannot circumvent the federal deadline.

The argument of amici here proceeds in three parts: first, demonstrating that the purpose of Article I § 4 cl. 1 and Article II, § 1, cl. 4 and 2 U.S.C. §§ 1, 7 and 3 U.S.C. § 1 [hereinafter "Election Day Statutes"] was and is to prevent voter fraud and state manipulation of federal elections and to promote uniformity in the selection of federal officers; second, rebutting the notion that strict construction of this arrangement violates principles of federalism; and third, showing how, absent strict construction of the Election Day Statutes, there is no limiting principle and thus the Constitution's Election Clause would be meaningless or unenforceable. Because strict construction of the Election Day Law is necessary to effect the Constitution's clear mandate, and because the court below embraced precisely that construction, the Court should affirm the decision below.

ARGUMENT

When the Framers gathered in Philadelphia, they built a federal government of carefully cabined powers. Congress, in particular, was hemmed in on nearly every side: its authority enumerated, its reach checked, its default posture one of limitation. *See, e.g.*, THE FEDERALIST 45 (Madison) ("The powers delegated . . . to the federal government are few and defined.

Those which are to remain in the State governments are numerous and indefinite."). Yet in at least one striking respect, the Constitution spoke with sweep and confidence. On the subject of federal elections, the Constitution declares that "Congress may determine the Time of chusing Electors." U.S. Const. art. II, § 1, cl. 4. Similarly, while "the Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof," Congress "may at any time by Law make or alter such Regulations." U.S. Const. art. I § 4 cl. 1. That is no token delegation; rather, as this Court has emphasized, fearing "the diverse interests of the States would undermine the National Legislature," the Framers "adopted provisions intended to minimize the possibility of state interference with federal elections." *U.S. Term Limits v. Thornton*, 514 U.S. 779, 808 (1995). In an era otherwise wary of centralized power, the Framers vested Congress with the prerogative to ensure that the Nation's elections would occur on uniform and reliable terms.

The power to fix the "time" of federal elections—exercised when Congress established a single Election Day—was not merely incidental. It was a structural safeguard against the disorder, manipulation, and unequal influence that would inevitably follow when elections stretched across days or weeks. (Compare the case of presidential party primaries on different dates in different states, where earlier states have greater influence) A Constitution that so jealously rationed federal power chose, in this specific domain, to speak unequivocally: Congress would have the last word in the "Times" of Elections for federal officers.

Congress exercised that power here. It picked a day. One day. Congress has adopted a rule related to elections to the House of Representatives that "sets the date of the biennial election for federal offices." *Foster v. Love*, 522 U.S. 67, 69 (1997). Congress has scheduled the House and Senate elections to occur on the presidential election day. 2 U.S.C. §§ 1, 7. Presidential electors shall be appointed "on the Tuesday next after the first Monday in November." 3 U.S.C. § 1. In order to ensure uniformity, federal statutes "mandate[] holding all elections for Congress and the Presidency on a single day throughout the Union." *Foster*, 522 U.S. at 70. As to both the President and Congress, it is on that day and that day only that the federal election must be conducted. For a state to hold elections any time other than election day is contrary to this express obligation, other than in specified exceptions for special elections.

For this reason, Petitioner's novel interpretation of "election day," being more of an abstract concept than an administrative deadline, must fail. Petitioner would have the Court believe election day is an abstraction—a philosophical concept untethered to actual deadlines. Under this theory, States would be without guardrails, free to continue the election well beyond the Congressional mandated election day, frustrating the purpose of the Elections Clause and the Election Day Laws. Congress has, with clear Constitutional authority, set the day for "the election" of federal officers. Mississippi must follow it.

I. CONGRESS ESTABLISHED A UNIFORM NATIONAL ELECTION DAY AS A STRUCTURAL SAFEGUARD OF ELECTORAL INTEGRITY.

The language of the Constitution presumes that States will, as a default, handle elections with Congressional oversight and approval. *See Foster*, 522 U.S. at 69. However, the Constitution authorizes Congress to override and alter the States' choices. Congress has done so with respect to the date of elections, and for over a century, the nation's federal Election Day has been governed by Congress. The background and history of that provision, aimed at the prevention of fraud which accompanied "rolling" elections, illustrate the rationale for Congress doing so.

The Elections Clause, U.S. Const. Art. I, § 4, cl. 1, grants Congress "the power to override state regulations" by establishing uniform rules for federal elections, binding on the States. *U.S. Term Limits, Inc.*, 514 U.S. at 832-33 (1995). "The regulations made by Congress are paramount to those made by the State legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be operative." *Ex parte Siebold*, 100 U.S. 371, 384 (1880).

For the first years of the Constitutional government, States were given considerable latitude in choosing their Presidential electors. However, as the game of politics grew ever more cutthroat, the opportunity to exploit this irregularity grew, leading to the institution of a nationally uniform Presidential

Election Day.[2] "The object of the bill was to prevent frauds at the ballot box, as in 1840." CONG. GLOBE 28th Cong., 2d Sess. 14 (1844) (statement of Rep. Duncan). The 1840 election had stretched over a month, allowing the practice of "pipe-laying," or transporting those who had already voted in one state to other states with later elections to vote again, a practice which had become widespread. Michael T. Morley, *Election Emergencies*, 80 WASH. & LEE L. REV. 369, 403 (2023). Numerous representatives emphasized this purpose. *See* Michael T. Morley, *Postponing Federal Elections Due to Election Emergencies*, 77 WASH. & LEE L. REV. ONLINE 179, 186 n.33 (2020) (collecting statements).

Given the prior practice of States managing their own elections, many questions were raised during the debate on this bill. The New Hampshire delegation inquired about run-off elections. CONG. GLOBE 28th Cong., 2d Sess. 14 (1844) (statement of Rep. Hale). States still using *viva voce* voting worried about natural disasters stranding potential voters from polling centers. *Id*. at 15 (statement of Rep. Chilton). Eventually, language was adopted to allow state legislators to put in place contingency plans when a held election "fail[ed] to make a choice on the day aforesaid." *Id*. at 21 (statement of Rep. Duncan).

But others attempted to further dilute the act. One suggestion was that the act should not "be construed to prevent the legislatures of the several States from providing for the appointment of electors on some

[2] Calling it "Election Day" in 1844 is a slight anachronism, as South Carolina continued to have its legislature appoint Electors until after the Civil War.

other subsequent day, in case the electors, or any of them, in any State, shall not be chosen at the time herein determined." *Id.* at 28 (statement of Rep. Droomgoole). This suggestion was roundly rejected: representatives noted that "so wide a latitude being given to the State legislatures . . . would defeat the objects of the bill." *Id*. at 30 (statement of Rep. Elmer). Under this modification, a State could simply "negative and nullify the law." *Id*. At 28 (statement of Rep. Hamlin).

The experiment of the federal government insisting on a single election day proved a success. Congress, for the same anti-fraud concerns, would later adopt a substantially identical bill to include Representative elections on the same Election Day. CONG. GLOBE, 42d Cong., 2d Sess. 112 (1871) (statement of Rep. Butler, citing "colonization and repeating" of votes for the need to extend the law to Congressional elections). Since the passage of the Seventeenth Amendment, the Election Day statutes have now been set for all federal elections on the same day for over 100 years. *Cf.* Act of June 4, 1914, ch. 103 § 1, 38 Stat. 384. The unbroken, uniform, decades-long practice of concluding ballot receipt on election day is strong evidence of Congress's original meaning.

This is not to say that Congressional election regulation is moribund. Congress knows how to create limited and narrow statutory exceptions, and in fact has done so. For instance, the Uniformed and Overseas Citizens Voting Act forces states to allow absentee ballots for American citizens residing overseas, most notably uniformed service members. 52 U.S.C. §§ 20301–20311. The National Voter

Registration Act of 1993, or "Motor Voter Act," regulates the voter registration process. 52 U.S.C. §§ 20501–20511. The Help America Vote Act of 2002 establishes a procedure for provisional voting when a voter's eligibility is in question. 52 U.S.C. § 21082. Some of these regulations have some process for post-Election Day ballot counting. But these exceptions weaken Petitioner's argument, as they "show that Congress knew how to authorize post-Election Day voting when it wanted to do so." *Republican Nat'l Comm. v. Wetzel*, 120 F.4th 200, 212 (5th Cir. 2024).

Congress has, as the parties discuss, chosen to allow certain carve-outs in these regulations for early receipt of ballots. Crucially, the "choice" of Election Day still occurs *on* Election Day, despite any early-received ballots. Everything required to know the decision of election day is within the State's possession on Election Day so long as absentee ballots are received by Election Day or earlier. "All of this further proves Congress did not abrogate the uniform Election Day in other, non-excepted circumstances." *Id.* at 213. This is completely distinguishable from ballots received after the Election Day deadline. Late-received ballots have the effect of altering the results well beyond Election Day. This is not to say early-received ballots are always permissible. *See Foster*, 522 U.S. at 69. Allowing ballots to be cast too early, as the Court ruled in *Foster*, similarly deprives Election Day of its force and meaning. But permitting late-received ballots, even by a day, necessarily moves the moment of choosing a candidate to another day, depriving Congress of its unquestioned authority on this subject. In any case, it was Congress's legislative

decision to make in allowing early, not late, ballots, not Louisiana's or Mississippi's.

This Court has long recognized the legitimacy of Congress's decision to unilaterally impose a uniform day for federal elections. *See Ex parte Yarbrough*, 110 U.S. 651, 661 (1884) (explaining Congress enacted these statutes "to remedy more than one evil arising from the election of members of Congress occurring at different times in the different States"). Any State law that moves the election to a time other than "the date chosen by Congress, clearly violates [the Election Day statutes]". *Foster*, 522 U.S. at 72; see also *Ex parte Siebold*, 100 U.S. at 388–89 (federal regulation of federal elections "necessarily supersedes" "regulations of the State."). The uniform federal Election Day thus reflects not merely a calendrical preference, but a constitutional judgment entrusted to Congress to preserve the integrity and equality of national elections.

II. FEDERALISM REQUIRES RESPECTING CONGRESS'S AUTHORITY TO FIX THE "TIME" OF FEDERAL ELECTIONS.

Petitioner's suggestion that letting states depart from a uniform federal Election Day "reflects . . . federalism," Pet. Br. at 28, is a nonstarter. The Constitution certainly "reflects" federalism as do federal statutes enacted in compliance with the Constitution. And that constitutional structure provides that, although the States *ordinarily* prescribe the "Times, Places and Manner" of federal elections, Congress possesses ultimate supervisory authority: it "may at any time by Law make or alter

such Regulations." U.S. Const. art. I, § 4, cl. 1. The Constitution likewise commits to Congress the authority to "determine the Time of chusing the Electors" for President. U.S. Const. art. II, § 1, cl. 4.

This Court has repeatedly emphasized that this delegation is both real and robust. Congress's power under the Elections Clause is "paramount," *Ex parte Siebold*, 100 U.S. at 384, and "comprehensive . . . to provide a complete code for congressional elections." *Smiley v. Holm*, 285 U.S. 355, 366 (1932). This includes "prevention of fraud and corrupt practices, counting of votes, . . . and making and publication of election returns," *id.* The Clause is not a grudging carveout; it reflects the Framers' view that State rules provide a default provision, but that any legislation of Congress "with respect to the 'Times, Places and Manner' of holding congressional election, [will] *necessarily* displace[] some element of a pre-existing legal regime erected by the States." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 14 (2013) (emphasis in original).

In dissenting from the denial of the petition for rehearing *en banc* below, Judge Graves claimed that the decision "conflicts with the tradition that forms the bedrock for our nation's governance—federalism—which vests states with substantial discretion to regulate the intricacies of federal elections." Pet. App. at 35a. This misunderstands the federal issues at play. Federalism doesn't mean States get to ignore federal law. The Supremacy Clause already demonstrates that. Nor is federalism an end in itself. The prime directive is therefore respecting the Constitution's allocation of authority. Here, that

allocation is explicit: Congress gets to set the time of federal elections.

The federal offices at issue "arise from the Constitution itself." *U.S. Term Limits Inc.*, 514 U.S. at 805. States, before the Union, had no "prerogative of state power to appoint a representative, a senator, or president for the union." 1 Story § 627. Thus, there is logically no federalism argument for Congressional "interference" in the election of federal officers, as no such preexisting power was there to interfere with in the first place. Mississippi may direct the election of her *own* officers in any manner she may choose, but the election of *federal* officers is subject to control by a separate sovereign.

For this reason, the Framers had no concern of infringing upon states' police powers when drafting the Elections Clauses. The clauses exist precisely to prevent states from altering or undermining the federal electoral process through the manipulation of timing or procedure. See *U.S. Term Limits*, 514 U.S. at 808–09. To enforce a clear congressional deadline for federal elections is therefore not to restrict state authority beyond its constitutional bounds; it is to respect the boundary the Constitution itself draws.

Nor is Petitioner correct that requiring ballots to be received by Election Day transforms Congress's power into something novel or intrusive. Congress set a federal temporal boundary, and States remain free to regulate extensively within it. They may permit absentee voting, early voting, and any number of procedural accommodations—so long as the ballots are cast and received within the federally prescribed

window.[3] *See Foster*, 522 U.S. at 72–74. That is federalism operating as designed: state administration within federal constitutional guardrails.

III. PETITIONER'S INTERPRETATION OF THE ELECTION DAY STATUTES HAS NO LIMITING PRINCIPLE.

Petitioner's conception of "Election Day" as an abstract or symbolic concept, detached from the actual receipt and counting of ballots, proves far too much. If states may accept and count ballots days after Election Day so long as they were allegedly mailed earlier, nothing in Petitioner's theory prevents them from doing so weeks—or even months—later. Yet this Court has already rejected the idea that federal elections may occur at different times across the country once Congress has spoken. See *Foster*, 522 U.S. at 73. Petitioner's theory has no stopping point. If States may count ballots arriving three days late, why not five, or ten, or thirty? Why not until the Electoral College meets? Petitioner offers no principle to distinguish permissible delay from impermissible delay—because his interpretation contains no such principle. Once "on" means "around," the statute ceases to constrain anything.

Without a judicially administrable limiting principle, Petitioner's proposed rule would fail to prevent the very evils Congress enacted the Election Day statutes to prevent: rolling elections, strategic voting, and prolonged uncertainty. *Cf. Purcell v.*

[3] Of course, nothing prevents Congress from altering these regulations as to federal elections.

Gonzalez, 549 U.S. 1, 4–5 (2006) (*per curiam*) (recognizing the acute public confidence interests implicated by election procedures and their timing). Under Petitioner's model, the federal election does not end when Congress says it does; it ends whenever a state chooses to stop receiving late-arriving ballots. That is not federal supremacy. It is state-by-state nullification.

This Court has long declined to interpret constitutional and statutory provisions in a manner that would render them ineffective or meaningless. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 174 (1803) ("It cannot be presumed that any clause in the constitution is intended to be without effect."). Petitioner's approach would transform Congress's uniform Election Day into a flexible suggestion, and the Elections Clause into a hollow promise. A construction that deprives the statute, or even a single word of a statute, of operative force must be rejected. *Cf. Montclair v. Ramsdell*, 107 U.S. 147, 404 (2000). This Court has recognized the constitutional importance of equal treatment in administering federal election rules. *See Bush v. Gore*, 531 U.S. 98, 109–10 (2000). A uniform federal deadline avoids those disparities between states and protects the legitimacy and finality of federal elections.

* * *

CONCLUSION

Congress, exercising a power the Constitution expressly grants it and which this Court has consistently affirmed, fixed a single day for the election of federal officers. That judgment reflects structural concerns about uniformity, integrity, and finality in national elections. The Constitution requires that federal elections be conducted within the temporal boundary Congress has set. Congress chose one day for federal elections, and one day only. The counting of late-arrived ballots flaunts this choice by altering the pool of received votes after Election Day, in other words, by changing the results of an election that has already taken place. This Court should affirm the decision below.

Respectfully submitted,

JAY ALAN SEKULOW
Counsel of Record
JORDAN A. SEKULOW
STUART J. ROTH
ANDREW J. EKONOMOU
NATHAN J. MOELKER
LIAM R. HARRELL

AMERICAN CENTER FOR LAW & JUSTICE
201 Maryland Ave, NE
Washington, DC 20002
(202) 546-8890
sekulow@aclj.org

Counsel for Amici

APPENDIX

APPENDIX – LIST OF AMICI CURIAE

U.S. Senate

Mike Lee (UT)

Marsha Blackburn (TN)
Tedd Budd (NC)
John Cornyn (TX)
Ted Cruz (TX)
Lindsey Graham (SC)
James Lankford (OK)
Ashley Moody (FL)
Jim Justice (WV)

U.S. House of Representatives

Eric Burlison (MO)

Tim Burchett (TN)
Andrew Clyde (GA)
Mike Collins (GA)
Byron Donalds (FL)
Randy Fine (FL)
Mark Harris (NC)
Andy Harris (MD)
Clay Higgins (LA)
Mary Miller (IL)
Barry Moore (AL)
Troy Nehls (TX)
Scott Perry (PA)
Derek Schmidt (KS)
Keith Self (TX)