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 CAMPAIGN LEGAL CENTER AND PROTECT DEMOCRACY PROJECT AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes and Codes

Legislative Materials

Other Authorities

INTERESTS OF *AMICUS CURIAE*[1]

Campaign Legal Center ("CLC") is a nonpartisan, nonprofit organization dedicated to solving the wide range of challenges facing American democracy. CLC is a nonpartisan, nonprofit organization dedicated to solving the wide range of challenges facing American democracy. The Protect Democracy Project (Protect Democracy) is a nonpartisan nonprofit whose mission is to prevent our democracy from declining into a more authoritarian form of government. As part of that mission, Protect Democracy engages in litigation and advocacy aimed at ensuring elections are fair, free, and secure.

The Electoral Count Reform Act of 2022 ("ECRA") updates the Electoral Count Act ("ECA") of 1887. The ECA, as updated by the ECRA, provides the primary legal framework for casting and counting Electoral College votes in presidential elections. In the wake of January 6, 2021, CLC and Protect Democracy played leading roles in advocating for the need to amend the ECA. Both organizations worked closely with the bipartisan group of Senators who worked to write and pass the ECRA. Congress enacted this legislation to ensure that the process by which Congress counts each state's electoral votes for President and Vice President is not subject to manipulation or abuse. The ECRA reenacted certain federal election-day statutes at issue in this case.

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[1] No counsel for a party authored this brief in whole or in part and no person or entity other than *Amicus*, their members, or their counsel made a monetary contribution to its preparation or submission.

Amici submit this brief to explain that Congress passed the ECRA with full knowledge that states had varied deadlines for the receipt of mail-in ballots. Rather than disrupt the states' ability to set their own deadlines for post-election ballot receipt, Congress crafted the ECRA to ensure that states retained the ability to set their own deadlines for the receipt and counting of validly cast ballots.

SUMMARY OF ARGUMENT

The core principles that frame this case are undisputed. Under the Elections Clause, Congress has the power to "make or alter" states' election laws in order to regulate federal elections. U.S. Const. art. I, § 4, cl. 1. But where Congress has not acted, states retain and must exercise their "constitutional duty to craft the rules governing federal elections." *Moore v. Harper*, 600 U.S. 1, 29 (2023). The dispute here is over whether Congress has acted to bar states from setting their own ballot receipt deadlines for ballots validly cast by Election Day. Congress has done no such thing.

While the federal election day statutes—2 U.S.C. § 7; 2 U.S.C. § 1; 3 U.S.C. § 1—set the date of the federal Election Day, neither these statutes nor any other federal law has ever set a uniform requirement that validly cast ballots must be received by Election Day. To the contrary, federal statutes such as the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") and the Military and Overseas Voter Empowerment ("MOVE") Act recognize—and, in some cases, mandate—that the receipt of votes will extend beyond Election Day.

Critically, Congress very recently considered the impact and meaning of the federal election-day statutes when passing the Electoral Count Reform Act (ECRA) in 2022. When Congress drafted and passed the ECRA, it did so with full knowledge not only that many states' ballot receipt deadlines fell after the federal Election Day, but also that existing court precedents had unanimously held that the federal election-day statutes do not displace state ballot receipt deadlines. Congress ratified that understanding by reenacting 3 U.S.C. § 1 and 3 U.S.C. § 21 without any change that would have undermined that line of consistent precedent. Where Congress adopted new deadlines in the ECRA, those provisions were crafted to ensure respect for the "laws of the State enacted prior to . . . 'election day,'" 3 U.S.C. § 21(1), in express deference to the states' ability to regulate the casting and counting of ballots, including ballot receipt deadlines.

This Court should reverse the judgment below.

ARGUMENT

I. State laws that extend receipt deadlines for mail-in ballots postmarked by Election Day comport with the federal election-day statutes.

In three provisions of the United States code, Congress has set the federal election day as the Tuesday after the first Monday in November in certain years. 2 U.S.C. § 7; 2 U.S.C. § 1; 3 U.S.C. § 1 (hereinafter, "federal election-day statutes"). Nowhere in the federal election-day statutes or elsewhere in federal law has Congress ever set a

requirement that validly cast ballots must be *received* by Election Day. To be sure, Congress can impose certain uniform federal election rules. But Congress has never chosen to displace states' primary authority to set deadlines and rules regarding post-election acceptance and counting of ballots validly cast by Election Day. Indeed, if ever there was a time that Congress might have done so, it would have been in passage of the ECRA in 2022. But Congress did no such thing. Instead, Congress only changed federal law as necessary to protect the integrity of the Presidential electoral count while continuing to preserve state authority and discretion to set rules for ballot receipt.

A. Under the Elections Clause, states have primary authority to regulate elections unless Congress acts to preempt state law.

The Constitution's Elections Clause empowers states to prescribe the "Times, Places and Manner of holding" congressional elections. U.S. Const. art. I, § 4, cl. 1. Similarly, while Article II, Section 1, Clause 4 provides that "Congress may determine the Time of ch[oo]sing the [presidential] Electors, and the Day on which they shall give their Votes," U.S. Const. art. II, § 1, cl. 4, the Electors Clause reserves to the states the power to choose the "Manner" of appointing electors, *id.* art. II, § 1, cl. 2. These provisions provide states with sweeping authority to enact election laws, subject only to the rest of the Constitution and preemption by acts of Congress. *Moore v. Harper*, 600 U.S. 1, 29 (2023) (states hold a "constitutional duty to

craft the rules governing federal elections"); *Foster v. Love*, 522 U.S. 67, 69 (1997) (as a "default" rule, the Constitution "invests the States" with "responsibility" over most of "the mechanics" of federal elections); *United States v. Classic*, 313 U.S. 299, 311 (1941) ("the states are given, and in fact exercise a wide discretion in the formulation of a system for" federal elections).

Where Congress acts to regulate federal elections, federal law governs. This is so given that the Elections Clause invests Congress with the power to "make or alter" states' election laws. U.S. Const. art. I, § 4, cl. 1. But where Congress has not acted to displace state law, the Constitution assigns states with the responsibility for regulating elections. *See Foster*, 522 U.S. at 69. Indeed, the "substantive scope" of states' authority to regulate Federal elections is "broad" and "comprehensive," covering all areas where Congress has not "exercised" its powers to preempt state legislation. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8–9 (2013). Consistent with this framework, states "provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, . . . [and] protection of voters," among other issues. *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

This constitutional structure reflects the Framers' view that states, as an authority "more convenient" and responsive to the people, are best situated to carry out such responsibilities except where Congress has made a deliberate choice to respond to issues "where the need arose." *League of United Latin Am. Citizens v. Exec. Off. of the*

President, 780 F. Supp. 3d 135, 159 (D.D.C. 2025) (quoting The Federalist No. 59 (Alexander Hamilton)). James Madison explained the rationale for this presumption of state authority: "[i]t was found necessary to leave the regulation of [federal elections], in the first place, to the state governments, as being best acquainted with the situation of the people." 3 Records of the Federal Convention of 1787, at 312 (M. Farrand ed. 1911).

In addition to Mississippi, fourteen states (as well as Guam, Puerto Rico, the Virgin Islands, and the District of Columbia) have enacted laws that permit mail ballots to be received after Election Day. *Table 11: Receipt and Postmark Deadlines for Absentee/Mail Ballots*, National Conference of State Legislatures (updated Dec. 24, 2025), https://www.ncsl.org/elections-and-campaigns/table-11-receipt-and-postmark-deadlines-for-absentee-mail-ballots. Each of these states, however, requires that mail ballots be *cast* by Election Day. Likewise, another seventeen states have laws that permit post-Election Day receipt of ballots timely cast by military and overseas voters.[2] Thus, Mississippi's law is consistent with the practice of allowing post-Election

[2] Ala. Code § 17-11-18(b); Ark. Code § 7-5-411(a)(1)(A)(ii); Colo. Rev. Stat. § 1-8.3-113(2); Fla. Stat. § 101.6952(5); Ga. Code § 21-2-386(a)(1)(G); Ind. Code § 3-12-1-17(b); Iowa Code § 53.44; Mich. Comp. Laws § 168.759a(18); Mo. Rev. Stat. § 115.920(1); Mont. Code Ann. §§ 13-21-206(1)(c), 13-21-226(1); N.C. Gen. Stat. § 163-258.12(a); N.D. Cent. Code § 16.1-07-24; Ohio Rev. Code Ann. § 3511.11(B); 25 Pa. Cons. Stat. § 3511(a); R.I. Gen. Laws § 17-20-16; S.C. Code § 7-15-700(A); Utah Code Ann. § 20A-16-408.

Day ballot receipt of timely cast ballots for some or all mail and absentee voters in more than thirty states.

As the Third Circuit has concluded, these states' laws "and federal laws setting the date for federal elections can, and indeed do, operate harmoniously" and therefore are not federally preempted. *Bognet v. Sec'y Commonwealth of Pennsylvania*, 980 F.3d 336, 354 (3d Cir. 2020), *cert. granted*, *judgment vacated as moot sub nom.*, *Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021). *See also Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 736–37 (N.D. Ill. 2023), *aff'd*, 114 F.4th 634 (7th Cir. 2024) *cert. granted on other grounds*, 145 S. Ct. 2751 (2025); *Donald J. Trump for President, Inc. v. Way*, 492 F. Supp. 3d 354, 372 (D.N.J. 2020). Until the decision below, no court had ever concluded that a state ballot-receipt deadline statute conflicted with the federal election-day statutes.

B. The text of the federal election-day statutes does not preempt state laws like Mississippi's ballot receipt deadline.

The text of the federal election-day statutes confirms they do not preempt ballot-receipt laws like Mississippi's. The federal election-day statutes set the Tuesday after the first Monday in November as "the day for the election" of Members of Congress, 2 U.S.C. § 7; *see* 2 U.S.C. § 1 (tying Senate elections to the same day), and presidential electors, 3 U.S.C. §§ 1, 21(1). The text establishes only a uniform "day" for federal "election[s]." *See, e.g.*, 2 U.S.C. § 7 ("The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the

election, 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.") The statutes are silent as to the details—of which there are many—of how states conduct election administration including, for example, ballot receipt deadlines. This silence alone should be fatal to Respondent's sweeping and unprecedented preemption argument. *See Arizona*, 570 U.S. at 14 (when interpreting laws adopted under the Elections Clause, "the reasonable assumption is that the statutory text accurately communicates the scope of Congress's pre-emptive intent").

Further, the plain meaning of "election" confirms that the federal election-day statutes do not preempt Mississippi's ballot-receipt deadline. The meaning of "election" as used by Congress in these statutes was clear at enactment and has not changed in the many years since. *See* Noah Webster, *An American Dictionary of the English Language* 433 (C. Goodrich & N. Porter eds. 1869) (defining "election" as "[t]he act of choosing a person to fill an office"). As this Court has repeatedly acknowledged, the word "election" signifies the "final choice" of the voter. *Newberry v. United States*, 256 U.S. 232, 250 (1921); *see, e.g.*, *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) ("Extending the date by which ballots may be cast by voters—not just received by the municipal clerks but cast by voters—for an additional six days after the scheduled election day fundamentally alters the nature of the election"); *Foster*, 522 U.S. at 73 ("Because the candidate said to be 'elected' has been selected by the voters from

among all eligible office-seekers, there is no reason to suspect that the Louisiana Legislature intended some eccentric meaning for the phrase 'is elected.'"). Voters in Mississippi must make their "final choice" by Election Day, and the fact that state law allows validly cast mail ballots to be received and counted thereafter represents no conflict with the federal election-day statutes.

C. Congress has never repudiated or expressed disapproval of post-Election Day ballot receipt deadlines.

Respondents' theory is further undermined by the existence of other federal statutes that recognize—and, in some cases, mandate—that the *receipt* of votes cast by Election Day will sometimes extend beyond Election Day. These statutes also make clear that Congress has long been aware of, and taken no action to preempt, state laws permitting post-election day receipt of ballots cast by Election Day.

For example, in 1986, Congress enacted the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). UOCAVA requires states to accept absentee federal ballots for certain overseas and military voters in the event they are unable to submit a timely vote using their state absentee ballot. The statute mandates that federal absentee ballots "shall be submitted and processed in the manner provided by law for absentee ballots in the State involved" and that the state absentee ballot deadline applies. UOCAVA, Pub. L. No. 99-410, § 103(b), 100 Stat. 924, 924–926 (1986) (codified at 52 U.S.C. § 20303(b)).

Critically, in drafting UOCAVA, Congress did not set "election day" as the ballot receipt deadline; it did not cite the federal election-day statutes as a reference date for ballot receipt; nor did it simply assume states' ballot receipt deadlines to be coextensive with "election day." Rather, Congress expressly contemplated that the reference date would vary and be determined by the individual states—i.e., "the deadline for receipt of the State absentee ballot under State law."

Moreover, at the time Congress enacted UOCAVA, at least eight states and the District of Columbia already had laws that, like Mississippi's here, required that absentee ballots postmarked by election day but received within some period after election day must be counted. 1986 Ala. Sess. Laws, ch. 85, §§ 9–11; 1985 Md. Laws 2768; 1985 Mass. Acts 792, 792–93; 1984 N.Y. Laws 1784; 1981 N.D. Laws 564, 564–65; 1984 Ohio Laws 137; 1984 V.I. Sess. Laws 132; 32 D.C. Reg. 3828 (July 5, 1985). Congress' passage of UOCAVA not only permitted post-Election Day ballot receipt deadlines, but mandated that states apply them (where applicable) to UOCAVA ballots. This is clear evidence that Congress has not understood the federal election-day statutes to prohibit laws like Mississippi's. Indeed, that UOCAVA was crafted to operate harmoniously with these state laws is indicative of Congress's intent to facilitate rather than constrain participation in federal elections. H.R. Rep. No. 99-765, at 7, 13 (1986) (UOCAVA House Report).

In 2009, Congress enacted the Military and Overseas Voter Empowerment (MOVE) Act, amending UOCAVA to establish new voter registration procedures for federal elections, making voting more accessible to military and overseas voters. Pub. L. No. 111-84, Div. A, Tit. V, Subtit. H, 123 Stat. 2318 (codified at 10 U.S.C. § 1566a; 52 U.S.C. §§ 20301–20308, 20311). As in UOCAVA, the MOVE Act reaffirmed Congress's choice to defer to states' divergent ballot receipt deadlines; it neither insisted nor assumed that "Election Day" is the final date by which states must receive all ballots. Specifically, the MOVE Act requires that overseas servicemembers' ballots must be delivered "to the appropriate election officials" "*not later than the date by which an absentee ballot must be received in order to be counted in the election*." 52 U.S.C. § 20304(b)(1) (emphasis added). This language clearly shows that Congress was aware of and deferred to the states' choices in setting particular ballot receipt deadlines.

II. Congress's enactment of the Electoral Count Reform Act in 2022 confirms that the federal election-day statutes do not displace state ballot receipt laws.

The text of the federal election day statutes and well-established principles regarding preemption under the Elections Clause plainly establish that federal law does not displace state ballot receipt laws. If Congress wanted to mandate a uniform federal ballot receipt deadline, it would have done so in the ECRA. But Congress did no such thing; instead, Congress amended and reenacted the operative

language of 3 U.S.C. § 1 and 3 U.S.C. § 21 as part of its passage of the Electoral Count Reform Act in 2022, all without taking any action to set a uniform ballot receipt deadline. *See* Pub. L. No. 117-328, 136 Stat. 5233 (2022).

Prior to enactment of the ECRA, 3 U.S.C. § 1 read: "The electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President." *See* Pub. L. No. 771, 62 Stat. 672, 672 (1948). The ECRA amended 3 U.S.C. § 1 to read: "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." *See* Pub. L. No. 117-328, § 102(a), 136 Stat. 5233 (2022). Likewise, 3 U.S.C. § 21, as amended by the ECRA defines "election day" as "the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President held in each State . . . *as provided under laws of the State enacted prior to such day*." 3 U.S.C. § 21(1).

When Congress drafted and passed the ECRA, it did so with full knowledge that many states' ballot receipt deadlines fell after the federal Election Day. In fact, controversy around ballot receipt deadlines had recently taken center stage—capturing headlines and courtroom attention in the wake of the COVID-19 pandemic.

Congress was also aware that existing court precedent had unanimously held that the federal

election-day statutes do not displace state law ballot receipt deadlines. Congress declined to affect a "dramatic departure" from "settled [] understanding" and current practice on this high-profile issue in the ECRA. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024). To the contrary, Congress ratified that uniform precedent by reenacting 3 U.S.C. § 1 and 3 U.S.C. § 21 without any change that would have disrupted it. (2 U.S.C. § 7, concerning election of members of Congress, also remained unchanged.) In so doing, Congress reaffirmed that the power to set ballot receipt deadlines is one afforded to the states. Congress's actions in passing the ECRA are therefore fatal to Respondents' arguments.

A. Congress was well-aware of state ballot receipt deadlines and acted to respect, rather than override, those laws in passing the ECRA.

The ECRA was crafted by a bipartisan group of legislators to update the Electoral Count Act (ECA) of 1887, the law that had provided the primary framework for the casting and counting of electoral college votes in presidential elections for more than a century. In the wake of the 2020 Presidential Election, however, it became clear that the outdated language of the ECA needed to be modernized to ensure the orderly and peaceful transition of presidential power. Senators Joe Manchin and Susan Collins were leading

sponsors of the ECRA, legislation that drew broad, bipartisan support.[3]

In hearings on the ECRA, Senator Manchin explained that while the original ECA had been passed in 1887 to address the problem of dueling slates of presidential electors, many of the fixes that had been established by the ECA "are not merely outdated, but actually serve as the very mechanisms that bad actors have zeroed in on, as a way to potentially invalidate presidential election results." S. Hrg. 117–332 at 7 (2022), *The Electoral Count Act: The Need for Reform: Hearing Before the Comm. on Rules and Admin.* (testimony of Sen. Joe Manchin). As Minority Leader McConnell remarked at the time, "Congress's process for counting their presidential electors' votes was written 135 years ago. The chaos that came to a head on January 6th [of 2021] certainly

[3] Before its inclusion in the omnibus appropriations package in which it passed Congress, the Electoral Count Reform Act had obtained thirty-nine cosponsors in the Senate. Specifically, it had twenty-two Democrats, sixteen Republicans, and one Independent, including both then-Senate Majority Leader Chuck Schumer and then-Senate Minority Leader Mitch McConnell. S.4573—Electoral Count Reform and Presidential Transition Improvement Act of 2022, CONG., https://www.congress.gov/bill/117th-congress/senate-bill/4573/cosponsors?s=1&r=1&q=%7B%22search%22%3A%22S.4573+%282022%29%22%7D).

underscored the need for an update."[4] The ECRA was that update.[5]

In passing the ECRA, Congress sought to replace ambiguous text in the ECA with clear federal mandates where necessary, while also affording states as much flexibility as possible to regulate their own elections. As Senator Shelley Moore Capito explained, the purpose of the ECRA was to provide clear rules for the certification of presidential elections while allowing "states to tailor their election laws to the specific needs of their citizens." *The Electoral Count Act: The Need for Reform: Hearing Before the Comm. on Rules and Admin.*, 117th Cong. 6 (2022) (testimony of Sen. Shelley Moore Capito). Thus, where the ECRA displaces state election procedures in favor of new, uniform federal procedures, it does so clearly and expressly.

By design, the ECRA did not touch state ballot receipt deadlines. Instead, and as relevant here, the ECRA sets a firm deadline for state election officials to certify the appointment of electors, 3 U.S.C. § 5(a)(1); creates an expedited pathway in federal court

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[4] Amy B. Wang, *McConnell, Schumer Back Bill to Prevent Efforts to Subvert Presidential Election Results*, Wash. Post (Sep. 28, 2022), https://www.washingtonpost.com/politics/2022/09/27/mcconnell-schumer-electoral-reform.

[5] *See also* Kate Hamilton, *State Implementation of the Electoral Count Reform Act and the Mitigation of Election-Subversion Risk in 2024 and Beyond*, 133 Yale L.J. Forum 249, 250 (2023); Cass R. Sunstein, *The Rule of Law v. "Party Nature": Presidential Elections, the Constitution, the Electoral Count Act of 1887, the Horror of January 6, and the Electoral Count Reform Act of 2022*, 103 B.U. L. Rev. 1171, 1177 (2023).

for legal challenges to the executive's certification without displacing existing state and federal causes of action around an election; and adds a single day before the meeting of the electors to provide time for all judicial action to conclude, 3 U.S.C. §§ 5(c), 5(d), 7. In all, the ECRA provides that each State must finish its electoral processes and certify the election by the second Wednesday of December to meet the combined deadlines.

These deadlines were drawn to ensure respect for "the laws of the State enacted prior to election day," in express deference to the states' ability to regulate the casting and counting of ballots, including ballot receipt deadlines. 3 U.S.C. § 1. For example, the ECRA defined Election Day to mean "the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President held in each State." 3 U.S.C. § 21. If "the State modifies the period of voting, as necessitated by force majeure events that are extraordinary and catastrophic," then election day "shall include the modified period of voting." *Id.* Further, that provision allows states to modify the period of voting "as provided under laws of the State enacted prior to such day[.]" *Id*; *see also The Electoral Count Act: The Need for Reform: Hearing Before the Comm. on Rules and Admin.*, 117th Cong. 6 (2022) (opening statement of Sen. Susan Collins).

This added provision at 3 U.S.C. § 21 replaced the now-repealed provisions of 3 U.S.C. § 2, which vaguely provided that any state could modify an election if it had "failed to make a choice," which created

controversy during the ballot receipt and counting processes in 2000 and 2020. *See The Electoral Count Act: The Need for Reform: Hearing Before the Comm. on Rules and Admin.*, 117th Cong. 21-22 (2022) (testimony of Derek T. Muller, University of Iowa College of Law). As one noted expert testified to Congress, this provision is a "clever, practical, and minimally-intrusive way to address election emergencies" while "defer[ing] to state determinations about when to modify the period of voting[.]" *The Electoral Count Act: The Need for Reform: Hearing Before the Comm. on Rules and Admin.*, 117th Cong. 74-75 (2022) (written testimony of Professor Derek T. Muller, University of Iowa College of Law) (internal quotation marks omitted). Congress intentionally created a "mechanism [that] allows absentee ballots, including military and overseas personnel, to be counted in the election, rather than a new election being held." *Id.*

Likewise, the ECRA provides that 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). This provision expressly requires each state to abide by its own enacted election procedures, which would include a state's ballot receipt deadlines.

Throughout the statute, in multiple sections, the ECRA defers to the "laws of the State enacted prior to election day." *See* 3 U.S.C. § 4 (providing for the filling of vacancies in the electoral college according to the laws of each state); *id.* § 5 (providing for the

appointment of electors according to the laws of each state); *id.* § 7 (providing for the meeting of the electors according to the laws of each state). As bill proponents noted, this language was intended to provide "a clear set of rules and principles that people can all understand and accept in advance," *The Electoral Count Act: The Need for Reform: Hearing Before the Comm. on Rules and Admin.*, 117th Cong. 74-75 (2022) (opening statement of Sen. Angus King), while "ultimately empower[ing] state legislatures to set those rules in the manner that they deemed best in each individual state." *Id.* at 21 (testimony of former Trump administration Principal Deputy Assistant Attorney General John M. Gore). Indeed, as a practical matter, as elected officials holding federal office, members of Congress were keenly aware that multiple states had post-election ballot receipt deadlines.

Moreover, the ECRA came in the wake not only of January 6, 2021, but also the COVID-19 pandemic, which led to both massive expansions in absentee voting and last-minute changes to election procedures to accommodate the national emergency.[6] And perhaps no issue captured headlines more—or was litigated more—than concerns about mail delays and

[6] Michael T. Morley, *Election Emergencies: Voting in Times of Pandemic*, 80 Wash. & Lee L. Rev. 359, 408 (2023).

absentee ballot receipt deadlines.[7] Members of Congress were thus "abundantly aware" of the divergence in state laws governing absentee ballot receipt deadlines when enacting the ECRA. *See Bob Jones Univ. v. United States*, 461 U.S. 574, 599–601 (1983) (finding an "unusually strong case of legislative acquiescence" where Congress was "constantly reminded" and "acute[ly] aware[]" of the relevant issue "when enacting . . . legislation"). In addition, since the passage of the ECRA, several states have expanded their post-election ballot receipt deadlines, further underscoring how state laws on this topic operate harmoniously with the federal election day statutes, including as amended and reenacted in the ECRA.[8]

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[7] *See, e.g.*, Jason Nagel, *Standardizing State Vote-by-Mail Deadlines in Federal Elections*, 2022 Cardozo L. Rev. De-Novo 1, 16 (2022) (discussing litigation concerning absentee ballot receipt deadlines); Larry Buchanan, Lazaro Gamio & Alicia Parlapiano, *Will You Have Enough Time to Vote by Mail in Your State?*, N.Y. Times (Aug. 31, 2020), https://www.nytimes.com/interactive/2020/08/31/us/politics/vote-by-mail-deadlines.html; Jacob Bogage & Christopher Ingraham, *Key swing states vulnerable to USPS slowdowns as millions vote by mail, data shows*, Wash. Post (Oct. 20, 2020), https://www.washingtonpost.com/business/2020/10/20/swing-states-election-usps/.

[8] Following passage of the ECRA, the District of Columbia, California, Michigan, and New York each extended their post-election day deadlines for ballot receipt or ballot cure. B24-0507, 24th Council (D.C. 2023); Assemb. B. 930, Reg. Sess. (Cal. 2025); S.B. 259, 102nd Leg. (Mich. 2023); Assemb. B. A7690, 2023–2024 Gen. Assemb. (N.Y. 2023). In contrast, Kansas, North Dakota, Ohio, and Utah have recently amended their election laws to

The ECRA's passage has not affected the states' ability to receive and count ballots after election day: the state of Washington has the longest ballot receipt deadline in the country, allowing all ballots postmarked by election day and received the day before the certification of results to be counted.[9] In 2024, the Washington legislature undertook a series of reforms to their mail-in ballot process, but left the receipt deadline undisturbed.[10] That states have expanded or maintained their post-election ballot receipt deadlines after the passage of the ECRA further highlights that Congress left this choice with the states.

Congress knew that it could change the states' ballot receipt deadlines for federal elections, but chose not to. Instead, in passing the ECRA, Congress took bipartisan action to work *with* the states' ballot receipt deadlines, in express deference to the states' individual circumstances.

B. In enacting the ECRA, Congress ratified the existing and then-uniform understanding that the federal election-day statutes do not displace state ballot receipt deadlines.

While the decision below spends several pages discussing the meaning of "election," including in

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require receipt by election day for all or most absentee voters. *See* 2025 Kan. Sess. Laws 33; 2025 N.D. Laws, ch. 200; S.B. 293, 136th Gen. Assemb., Reg. Sess. (Ohio 2025); H.B. 300, 2025 Gen. Sess. (Utah 2025).

[9] Wash. Rev. Code §§ 29A.40.091, 29A.60.190.

[10] S.B. 5890, 68th Leg., 2024 Reg. Sess. (Wash. 2024).

1845 and 1872 when the Federal Election Day Statutes were first enacted, *see* Pet. at 14a, the panel spent no time at all investigating Congressional understanding of "election" at the most relevant time: in 2022 when Congress again very expressly defined "election day" in the ECRA. *See* 3 U.S.C. § 21.

When Congress enacted the ECRA, it ratified the then-existing consensus among courts and states that the federal election-day statutes do not displace state law governing ballot receipt deadlines. Federal precedent was clear on this issue. All courts to address the question of whether the federal election-day statutes displaced state laws regarding ballot receipt deadlines came out the same way: they do not. Against this backdrop, Congress enacted the ECRA.

Where Congress "adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." *Lorillard v. Pons*, 434 U.S. 575, 581 (1978). Moreover, when "Congress reenacted the same language in [a statute], it adopted the earlier judicial construction of that phrase." *Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.*, 586 U.S. 123, 131 (2019); *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 439 (2019) ("Ratification canon . . . derives from the notion that Congress is aware of a definitive judicial interpretation of a statute when it reenacts the *same* statute using the same language.").

In addition, while a "single decision of this Court can be enough" to create a presumption that Congress

meant to ratify an existing judicial interpretation, in the absence of such a decision, lower court decisions that are "uniform and sufficiently numerous" can do the same. *Minerva Surgical, Inc. v. Hologic, Inc.*, 594 U.S. 559, 585 n.3 (2021) (Barrett, J., dissenting). Where lower federal courts have a "consensus interpretation" of statutory language, and Congress reenacts such language without change, "[t]his is persuasive that the construction adopted by the [lower federal] courts has been acceptable" to Congress. *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 537 (2015) (quoting *Manhattan Props., Inc. v. Irving Tr. Co.,* 291 U.S. 320, 336 (1934) (alternation in original)). This element of the reenactment canon is well established. *See Texas Dep't of Hous. & Cmty. Affs.*, 576 U.S. at 536–37; *see also Minerva Surgical, Inc.*, 594 U.S. at 585 n.3 (Barrett, J., dissenting) (citing A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 323–324 (2012)).

When the ECRA was enacted in 2022, the leading case in this Court to address the interaction between the federal election-day statutes and state election laws was *Foster v. Love*, 522 U.S. 67 (1997). In *Foster*, this Court held that the federal election-day statutes did not permit an election to be "consummated" prior to Election Day. *Id.* at 72 & n.4. The *Foster* Court also acknowledged that some aspects of the election process will naturally occur before and after Election Day itself. *See id.* Lower federal courts applying the logic of *Foster* concluded that *Foster* "clear[ly] signal[ed]" that state laws allowing the post-Election Day processing and counting of validly cast ballots

were permissible. *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776 (5th Cir. 2000); *see also Millsaps v. Thompson*, 259 F.3d 535, 546 n.5 (6th Cir. 2001) (holding that it is a necessary reality that "official action to confirm or verify the results of the election extends well beyond federal election day").

Federal courts asked to address the issue were also clear that the "Federal Election Day Statutes are silent on methods of determining the timeliness of ballots," *Donald J. Trump for President, Inc. v. Way*, 492 F. Supp. 3d 354, 372 (D.N.J. 2020), and where state law permitted post-Election Day ballot receipt, courts found that those state laws and the federal election-day statutes "can, and indeed do, operate harmoniously." *Bognet v. Sec'y Commonwealth of Penn.*, 980 F.3d 336, 354 (3d Cir. 2020), *cert. granted, judgment vacated sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021).[11] Respondents' flawed argument had already been clearly raised at the time of passage of the ECRA, and had been squarely rejected by the courts.[12]

The same trend continued in the years following passage of the ECRA as well. Some cases that raised

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[11] There were also cases that raised the theory Respondents raise here but were dismissed on standing or other grounds before reaching the merits. *E.g.*, *Donald J. Trump for President, Inc. v. Cegavske*, 488 F. Supp. 3d 993, 997 (D. Nev. 2020).

[12] Courts have also long rejected arguments similar to those that Respondents make here, but as to the other side of Election Day, holding that the federal election-day statutes do not preempt various early voting regimes. *See Millsaps*, 259 F.3d at 545; *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1176 (9th Cir. 2001); *Bomer*, 199 F.3d at 774.

the issue were dismissed, *e.g.*, *Splonskowski v. White*, 714 F. Supp. 3d 1099 (D.N.D. 2024), while the sole post-ECRA case to reach the merits followed the long-standing view that no conflict was present between the federal election-day statutes and state ballot receipt laws. *See, e.g.*, *Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 736 (N.D. Ill. 2023) (post-Election Day ballot receipt deadline "operates harmoniously with the federal statutes that set the timing for federal elections," *aff'd*, 114 F.4th 634 (7th Cir. 2024), *cert. granted on other grounds*, 145 S. Ct. 2751 (2025).

Though the issue has been raised multiple times, including in the leadup to the ECRA's passage, prior to the Fifth Circuit's decision in this case, no federal court adopted the flawed reading of the federal election-day statutes advanced by Respondents. Congress thus saw no need to address Respondents' novel (and losing) construction of "election" when re-enacting 3 U.S.C. § 1, amending 3 U.S.C. § 21, and leaving 2 U.S.C. § 7 unchanged.

In addition to court precedent, the practice of the states prior to the enactment of the ECRA is also helpful in illuminating Congressional understanding. "[T]he longstanding 'practice of the government,' can inform [a] determination of 'what the law is.'" *N.L.R.B. v. Noel Canning*, 573 U.S. 513, 525 (2014) (internal citations omitted). As this Court has made clear for over a century, "long-continued practice, known to and acquiesced in by Congress, would raise a presumption" that it had been done "in pursuance of its consent." *United States v. Midwest Oil Co.*, 236

U.S. 459, 474 (1915). As detailed *supra*, the majority of states permitted post-Election Day receipt of mail ballots by some or all mail voters when the ECRA was passed, and many had done so for years. This was not some obscure government activity of which Congress cannot be presumed to have been aware. Rather, this is a core election administration rule in many states, and one that governed the election of scores of Members of Congress who voted to enact the ECRA.

Given the overwhelming evidence of precedent and practice finding no conflict between the federal election day statutes and state laws permitting post-Election Day ballot receipt, Congress can be presumed to have adopted that interpretation when it reenacted 3 U.S.C. § 1 and codified a definition of "election day" in 3 U.S.C. § 21 that left this understanding untouched. The panel decision from the Fifth Circuit ignored this. Instead, the court of appeals erred in reading the force majeure portion of 3 U.S.C. § 21(1) as somehow supporting its decision. Pet. App. 23a. But it does not. In that provision, Congress expressly provided that, "where consistent with state law enacted prior to the election," states may extend the period of voting when necessitated by "force majeure events." 3 U.S.C. § 21(1). There is nothing in that language that preempts ballot receipt deadlines that are provided for by "state law enacted prior to the election." Instead, the ECRA reemphasized throughout a respect for preexisting state law that it did not otherwise modify. *See, e.g.*, 3 U.S.C. §§ 4, 5, 7.

"[L]ong-continued practice, known to and acquiesced in by Congress, would raise a presumption that the [action] had been [taken] in pursuance of its consent." *Dames & Moore v. Regan*, 453 U.S. 654, 686 (1981) (citation omitted). If Congress disapproved of state laws such as Mississippi's, it could and would have exercised its authority to expressly preempt them when it amended the ECRA in 2022. *See Arizona*, 570 U.S. at 13–14. Instead of doing so, Congress retained the interpretation of the federal election-day statutes under which states have long administered their own ballot receipt deadline policies without issue, and which courts universally approved until this case.

CONCLUSION

The judgment of the court of appeals should be reversed.

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