Exhibit 1

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 FOR RESPONDENT LIBERTARIAN PARTY OF MISSISSIPPI

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QUESTION PRESENTED

Federal law sets Tuesday after the first Monday in November as "the day for the election" of federal officers. 2 U.S.C. §§1, 7; 3 U.S.C. §1 ("federal election-day statutes"). Mississippi continues to count mail-in absentee ballots received up to five business days after Election Day.

The question presented is:

Whether the federal election-day statutes preempt a state law that allows ballots that are cast by federal Election Day to be received by election officials after that day.

CORPORATE DISCLOSURE STATEMENT

The Libertarian Party of Mississippi has no parent corporation, and no corporation owns 10% or more of its stock. No publicly traded company or corporation has an interest in the outcome of this case or appeal.

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INTRODUCTION

This case is about whether federal elections end on the statutorily designated Election Day, or whether the receipt of ballots can continue for days or weeks later. When Congress enacted the Election-Day statutes, it did so to set a uniform day of national elections and to prevent real or perceived fraud occasioned by states setting Election Day at disparate times. The Fifth Circuit, drawing on ordinary meaning, historical practice, and this Court's decision in *Foster v. Love*, 522 U.S. 67 (1997), correctly held that the "day for the election" of federal officeholders in 2 U.S.C. §§1, 7 and 3 U.S.C. §1 encompasses both the submission and receipt of ballots, such that both must conclude on Election Day. Because Mississippi extends ballot receipt beyond the federally fixed Election Day, its law conflicts with—and is thus preempted by—the Election-Day statutes. The Fifth Circuit's commonsense judgment should be affirmed.

The conclusion that an election includes both ballot submission and receipt—and not just the former—finds support from all the usual sources of ordinary meaning. Dictionaries and treatises from around the time of enactment defined an "election" to include ballot receipt. State courts did too. Contemporaneous state election codes viewed an "election" as encompassing both the elector's offer to vote (through presentment of a marked ballot) and the official's acceptance of that vote (through receiving the marked ballot into official custody). The Nation's first foray into absentee voting during the Civil War confirms as much, as virtually every state required ballots to be received by the election officials on or

before Election Day. There is thus overwhelming evidence that the ordinary public meaning of "election" at the time the Election-Day statutes were enacted encompassed ballot receipt. That view likewise corresponds with the dominant theme and purpose of the statutes, namely, that there be a single uniform day by which all the ballots are in and the counting can begin.

Arguing to the contrary, Petitioner and Respondents Vet Voice Foundation and Mississippi Alliance for Retired Americans ("VVF") (hereinafter "Petitioners")[1] advance an entirely implausible understanding of an "election." They define an election to *include* marking and submitting a ballot, but to *exclude* official receipt of that ballot. That counterintuitive distinction would have struck the 19th-century public as bizarre. At the time, virtually all ballots were marked, submitted, received, and deposited at polling stations in a matter of moments. Nobody from the relevant era would have thought that an election was over before the ballots were received by election officials. After all, receipt into official custody was the very act that transformed an elector's ballot from an ordinary piece of paper into a legally operative vote. To them, the election would not have been over until the ballot box was closed and no further ballots could be received.

Petitioners attempt to overcome textual and historical shortcomings with policy arguments. Such arguments are no match for text and history, but they

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[1] Although VVF is a Respondent supporting Petitioner, this brief will reference Petitioner and VVF collectively as "Petitioners."

are unpersuasive in all events. The Fifth Circuit's rule does not require ballots to be tallied and certified on Election Day. Historically, states distinguished between the "election" and the "canvass" of the votes, with the latter referring to the counting of votes, which could occur after Election Day. That said, by requiring ballots to be received by Election Day, the decision below does give jurisdictions a fighting chance to ascertain the winner on election night. Nor does defining an election to include ballot receipt pose any danger to absentee voting or erase ballot-receipt deadlines set by other federal statutes.

The whole point of the federal Election-Day statutes is to set a single uniform day for the election. Allowing ballots to trickle in days or weeks after Election Day is antithetical to that basic goal. Indeed, a patchwork of state ballot-receipt deadlines replicates the problems Congress was trying to remedy with a single national Election Day. It is entirely implausible to conclude that Congress—when thrice exercising its preemptive power under the Elections and Electors Clauses—left the door open for states to vitiate those statutes by postponing electoral outcomes with post-election ballot-receipt deadlines. Congress certainly did not leave states the power to undo this important federal time regulation by simply declaring all mailboxes to be ballot boxes. Allowing ballots to be received by election officials well after the polls closed on Election Day would have struck the Congresses that passed those statutes and the public that first read them as unthinkable. In short, text, history and common sense all converge on a single result: the election ends on Election Day, not days or weeks later when the last ballots are received.

STATEMENT OF THE CASE

A. Legal Background

1. The Constitution vests states with the initial "responsibility" to set "the mechanics" of elections to federal offices. *Foster*, 522 U.S. at 69. But that initial responsibility ceases when Congress steps in. The Constitution "grants" Congress the ultimate authority over federal elections, including the "power to override" most state election regulations and provide uniform rules for federal elections. *Id.*

The Elections Clause provides: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, §4, cl. 1. The Electors Clause provides: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" to vote for President and Vice President. U.S. Const. art. II, §1, cl. 2; *see id.* art. II, §1, cl. 1; *id.* amend. XII. But "[t]he Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." U.S. Const. art. II, §1, cl. 4.

For the first decades after the Founding, Congress largely "left the actual conduct of federal elections to the diversity of state arrangements." *Voting Integrity Project v. Keisling*, 259 F.3d 1169, 1171 (9th Cir. 2001). Congress initially set the deadline by which states must choose their electors "within thirty-four days preceding the first Wednesday in December in

every fourth year succeeding the last election." Act of Mar. 1, 1792, ch. 8, §1, 1 Stat. 239, 239. While most states "held their presidential elections during the first 10 days of November," others held their elections at different times throughout the nearly month-long interval allowed by federal law. J. Stonecash, *Congressional Intrusion to Specify State Voting Dates for National Offices*, 38 Publius 137, 141 (2008). The absence of a uniform Election Day soon led to mischief, as "political parties recruit[ed] voters to move from site to site to engage in repeat voting." *Id.* States likewise set "varying times" for "congressional elections," which "provid[ed] some States with an 'undue advantage' of 'indicating to the country the first sentiment on great political questions." Pet.App.4a.

Concerns about fraud, delay, and other "evils" forced Congress to set some "uniform" national "rules" for federal elections. *Foster*, 522 U.S. at 69-70. In 1845, Congress fixed a "uniform time" for appointing presidential electors. Act of January 23, 1845, ch. 1, 5 Stat. 721. Congress instructed that "[t]he electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in the month of November." 3 U.S.C. §1 (1948). After the Civil War, Congress extended the rule to the House of Representatives. Act of Feb. 2, 1872, ch. 11, §3, 17 Stat. 28. And after ratification of the Seventeenth Amendment, Congress required elections for Senators to occur on the uniform Election Day too. *See* Act of June 4, 1914, ch. 103, §1, 38 Stat. 384.

The Election-Day statutes remain in place today. Together, they set Tuesday after the first Monday in

November as "the day for the election" of federal officers. 2 U.S.C. §7.

2. Ordinarily, conflicts between state and federal law implicate the reserved sovereignty of the states and the Supremacy Clause. Preemption analysis in that context "starts with the assumption that the historic police powers of the States [are] not to be superseded by … Federal Act unless that [is] the clear and manifest purpose of Congress." *Cipollone v. Liggett Grp.*, 505 U.S. 504, 516 (1992). But that starting assumption is fundamentally misplaced when it comes to the Elections and Electors Clauses. When states exercise authority over federal elections via the Elections Clause, they are not exercising any residual powers that pre-existed the Founding. Instead, when states set rules for federal elections, they wield federal power conferred by the Constitution. For that reason, when Congress exercises its own supervisory and superior powers under the Elections and Electors Clauses, "it *necessarily* displaces some element of a pre-existing legal regime erected by the States." *Arizona v. Inter Tribal Council of Ariz.*, 570 U.S. 1, 14 (2013) ("*ITCA*"). Hence, federal laws enacted under the Elections Clause "supersede those of the State which are inconsistent therewith." *Id.* at 9. When looking for such an inconsistency, courts "do not finely parse the federal statute for gaps or silences into which state regulation might fit." *Fish v. Kobach*, 840 F.3d 710, 729 (10th Cir. 2016). They should instead "straightforwardly and naturally read the federal and state provisions" to identify any conflicts. *Id.*

B. Factual and Procedural Background

1. This case involves claims arising from the relationship between the federal Election-Day statutes and Mississippi's election code. Before the pandemic, Mississippi required absentee ballots to be received by 5pm the day before the election to be counted. *See* Miss. Code Ann. §23-15-637 (2012). Today, Mississippi allows qualified electors to vote in federal elections through mail-in absentee ballots. For those ballots to be counted, they "must be postmarked on or before the date of the election and received by the registrar no more than five (5) business days after the election." Miss. Code Ann. §23-15-637(1)(a).

2. The Libertarian Party of Mississippi filed suit against the Mississippi Secretary of State and several county officials charged with election administration. Pet.App.5a. The complaint alleged, *inter alia*, that the Election-Day statutes preempt Mississippi's law. *Id.* The challenged law's effects are "especially burdensome for minor political parties, such as Plaintiff, which have minimal resources compared to the major political parties," because they must divert those scarce resources "to monitor canvassing" that extends longer into November because of the state's post-election "ballot receipt deadline." 24-00037.Dist.Ct.Dkt.1.¶47. Major party entities also filed suit, and the district court consolidated the cases and allowed VVF to intervene as defendants. Pet.App.5a & n.2. The parties cross-moved for summary judgment, and the district court granted judgment for defendants on the preemption claim. Pet.App.78a-82a.

3. The Fifth Circuit unanimously reversed. Pet.App.3a, 25a-26a. It interpreted the Election-Day statutes' reference to the "day for the election" as "the day by which ballots must be both *cast* by voters and *received* by state officials." Pet.App.3a. It reached that conclusion based on "[t]ext, precedent, and historical practice." Pet.App.2a-3a.

The court began with the text and this Court's decision in *Foster*, which interpreted the "day for the election" in the Election-Day statutes. The court used *Foster* to "guide[] [its] understanding of the statutory text," and took from *Foster* "three definitional elements" of an "election": "(1) official action, (2) finality, and (3) consummation." Pet.App.8a-9a.

The court drew the "official action" definitional element from *Foster*'s analysis that "[w]hen the federal statutes speak of 'the election' of a Senator or Representative, they plainly refer to the *combined actions of voters and officials* meant to make a final selection of an officeholder." Pet.App.9a. That reasoning was problematic for Mississippi, the court explained, because Mississippi's definition separated the voter's role in the election from the "official action" of state election officials. *See* Pet.App.9a-10a.

As to "finality," the court drew on earlier precedent from this Court interpreting the word "election" in the Constitution to mean the "final choice of an officer by the duly qualified electors," Pet.App.10a (quoting *Newberry v. United States*, 256 U.S. 232, 250 (1921)). The court thus held that "[a]n election involves more than government action; it also involves the polity's *final* choice of an officeholder." *Id.* That definitional element posed difficulties for the

state because Mississippi's own regulations explain that an "absentee ballot" qualifies as "the final vote of a voter when, during absentee ballot processing by the Resolution Board, *the ballot is marked accepted*." Pet.App.11a. For mail-in absentee ballots, that happens "after receipt"—which can occur five business days after the election—when the election official accepts and deposits the ballot into a secure box. *Id.* The court pointed out that "mail-in ballots are less final" than the state claimed because the "postal service permits senders to recall [domestic] mail," which "indicates that at least domestic ballots are not cast when mailed, and voters can change their votes after Election Day," thus undermining "the State's claim that ballots are 'final' when mailed." Pet.App.12a.

The court emphasized the distinction between the "election" and the canvass—i.e., the "count[ing]" of the ballots. Pet.App.10a-11a. "Even if the ballots have not been counted" on Election Day, the election has nevertheless ended because "the result is fixed when all of the ballots are received and the proverbial ballot box is closed." *Id.* "By contrast, while election officials are still receiving ballots, the election is ongoing: The result is not yet fixed, because live ballots are still being received." *Id.*

As to "consummation," the court returned to *Foster*'s instruction that an election "may not be *consummated* prior to federal election day." Pet.App.12a. It then drew on precedent from circuits across the country to conclude that an "election is consummated when the last ballot is received and the ballot box is closed." Pet.App.12a-13a.

The court next turned to historical practice to "confirm[] that 'election' includes both ballot casting and ballot receipt." Pet.App.14a. A survey of early American history underscored that "at the time Congress established a uniform Election Day in 1845 and 1872, voting and ballot receipt necessarily occurred at the same time." *Id.* The history of absentee balloting, which first rose to prominence during the Civil War, buttressed treating ballot receipt as part of the election. *See* Pet.App.15a. "Early postwar iterations of absentee voting" during the 19th century likewise supported defining an election to encompass receipt because states "universally required" those absentee ballots to be received "by Election Day." Pet.App.16a.

Thus, the court concluded that the Election-Day statutes require ballots in federal elections to be received by Election Day, and held that Mississippi's law was preempted because it deviated from that federal rule by allowing post-election ballot receipt.

4. The Fifth Circuit denied rehearing en banc 10-5 with two dissenting and two concurring opinions. Pet.App.29a-58a.

SUMMARY OF ARGUMENT

Through the federal Election-Day statutes, Congress exercised its constitutional authority to set a uniform time for federal elections to occur. Text, historical practice, precedent, and common sense all demonstrate that those statutes set the deadline by which ballots must be submitted *and* received. Simply put, the ballot box closes on Election Day, and ballots that are not received until days or weeks after the date

specified by Congress arrive after Election Day and should not be counted.

The Election-Day statutes set the Tuesday after the first Monday in November as "the day for the election." 2 U.S.C. §7; *see id.* §1; 3 U.S.C. §1. Under the original public meaning of the term "election," those statutes set a uniform day for ballots to be cast and received. At the time, everyone would have understood an election to include ballot submission and receipt—as evident from dictionaries, treatises, courts, and state election codes, all of which described an election to include the receipt of marked ballots into official custody. The notion that the ballot box could remain open for continued receipt of ballots days or weeks after Election Day, and that states could pick their own disparate deadlines for ballot receipt, would have struck the Congress that enacted those statutes and the citizens that first read them as absurd.

Historical practice bolsters that position. At all relevant times, *i.e.*, in 1845, 1872, and 1914, states overwhelmingly required ballots to be submitted into the custody of election officials by Election Day. Although some states during the Civil War allowed soldiers to send their ballots through the mail to proxy voters, each one required those ballots to be received by election officials by Election Day to be valid. That states did not permit post-election receipt by officials in that era provides strong evidence that an "election" included ballot submission and receipt.

This Court's precedent points the same direction. In *Foster*, this Court construed the phrase "the election" in the Election-Day statutes to mean "the combined actions of voters and officials meant to make

a final selection of an officeholder." 522 U.S. at 71. That interpretation fits squarely within the Fifth Circuit's rule. It covers the voter's act of marking and presenting a ballot and the official's act of receiving that ballot; those "combined actions" are what consummate the election. *Id.*

Petitioners' contrary arguments are light on the text and heavy on policy, legislative history, and post-enactment congressional action. Their ordinary-meaning arguments rest on little more than *ipse dixit*. They invoke various dictionaries that defined "election" as the voter's "choice," but they lose sight of *how* voters make that choice count. The voter's choice has electoral consequences only through the combined action of the elector presenting the ballot and the official receiving it. Absent receipt, a ballot is just an ordinary piece of paper that is neither binding nor effectual. Until a ballot is received by the official, the voter's choice is not operative and final. The mail ballot could be recalled by the voter, lost in transit, destroyed, or stolen. None of those scenarios remains possible when the ballot is received by the official, as it is at that point final and the proverbial ballot box is closed. Petitioners' treatment of historical practice is similarly unpersuasive. They identify virtually no state laws from before 1914—when the last of the Election-Day statutes became law—that allowed ballots to be received after the day set for the election. And the subsequent laws they identify cannot change the meaning of the federal Election-Day statutes. At most, those statutes confirm the baseline rule that ballots must be received by Election Day, and that Congress can create narrow exceptions to that rule.

Finally, Petitioners' various policy arguments cannot override the congressional choice to set a uniform day for federal elections. At most, the decision below would require voters in certain states to mail their ballots a handful of days earlier. It casts no doubt on the validity of absentee voting, early voting, or the common practice of counting and certifying electoral outcomes after the day set for the election. That said, the decision below does give jurisdictions a fighting chance to ascertain election outcomes on election night, and it eliminates the patchwork of state ballot-receipt deadlines and replaces it with a commonsense rule that the ballot box closes on Election Day, not days or weeks later.

ARGUMENT

I. The Federal Election-Day Statutes Preempt Mississippi's Mail-In Ballot Receipt Law.

The federal Election-Day statutes set "Tuesday next after the 1st Monday in November" in "every even numbered year" as "the day for the election." 2 U.S.C. §7; *see id.* §1; 3 U.S.C. §1. The "straightforward textual question here is whether" Mississippi's post-election deadline for receiving mail-in ballots is "inconsistent with" that mandate. *ITCA*, 570 U.S. at 9, 15. It is. Text, historical practice, and precedent confirm that the "day for the election" is the day by which ballots must be cast by voters and received by election officials. The election ends when the ballot box closes on Election Day, not days or weeks later based on disparate state deadlines. Because Mississippi allows absentee ballots to be received up to five business days after Election Day, it is "inconsistent with" the Election-Day statutes.

A. The Text of the Election-Day Statutes Confirms that Ballot Receipt Is Part of the Election.

The Election-Day statutes set a uniform national Election Day. 2 U.S.C. §7; *see id.* §1; 3 U.S.C. §1. The statutes do not define "election," so that term carries its "ordinary meaning" at the time of enactment. *Wisc. Cent. v. United States*, 585 U.S. 274, 277 (2018). Then, as now, "the election" referred to the "combined actions" of the voters casting their ballots and election officials receiving them into their custody. *Foster*, 522 U.S. at 71. Hence, an "election" is the "[v]oting and *taking the votes* of citizens for members to represent them." W. Anderson, *A Dictionary of Law* 394 (1889) (emphasis added).

1. That much is clear from the historical backdrop against which Congress enacted the Election-Day statutes. State election codes at the time uniformly treated an election as an event to be "held" or "conducted." 1852 Ind. Acts ch.31, §§1-4.[2] That event

[2] *E.g.*, Ill. Rev. Stat. ch.37, §§1, 10 (1845); Va. Code tit.5, ch.10, §§117, 120 (1887); Ala. Code §§174, 176, 194, 259 (1852); Cal. Pol. Code §1041 (1876), *reprinted in* 1 Codes & Statutes of California 184 (T.H. Hittell ed., 1876) [hereinafter Cal. Pol. Code]; Md. Pub. Gen. Laws art.5, §§6, 68 (1878); 1887 Minn. Laws ch.4, 7, 35, §§1, 79; Wisc. Rev. Stat. §15 (1878); Mich. Comp. Laws ch.6, ¶32 (1872); 1863 W. Va. Acts ch.100, §§2-3; Iowa Code §303 (1851); Ark. Rev. Stat. ch.54, §§1-2 (1837); Neb. Gen. Stat. ch.20, §1 (1873); Tenn. Code §825 (1858); Or. Laws ch.14, §1 (1874); Del. Rev. Stat. ch.16, §§15-16 (1874); Fla. Stat. tit.3, ch.3, §1 (1847), *reprinted in* L.A. Thompson, *Digest of the Statute Law of Florida* 70 (1847) [hereinafter Fla. Stat.]; Conn. Gen. Stat. tit.17, §106 (1866); Ga. Code §§1312, 1315 (1868); Kan. Gen. Laws ch.87, §1 (1862); Ky. Rev. Stat. ch.32, art. I §1 (1867); La. Rev. Stat., Elec. Code §1 (1856); Miss. Rev. Code ch.4, art. 1 (1857); Mo. Stat.

had two essential components: The elector's act of "offering to vote," Ala. Code §§208, 212 (1852),[3] and the official's act of "receiving" the ballot and (where appropriate) "deposit[ing]" it in the ballot box, *id.* §§205, 210.[4] Everything else that occurred on Election

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ch.51, §1 (1872); Nev. Gen. Stat. ch.12, §1524 (1885); N.J. Stat., Elec. Code §1 (1877); N.Y. Stat. pt.1, ch.6, tit.2, §1 (1867); N.C. Code ch.16, §2668 (1883); Ohio Stat. ch.211, §1 (1854); F. Jordan, *Digest of Pa. Elec. Laws*, ch.4, §111 (1872); S.C. Rev. Stat. ch.8, §1 (1873); Tex. Rev. Civ. Stat. art. 1659 (1879).

[3] *E.g.*, Cal. Pol. Code §1225 (1876); 1887 Minn. Laws ch.4, 14, §16; Wisc. Rev. Stat. §§34-36 (1878); Mich. Comp. Laws ch.6 ¶134 (1872); 1863 W. Va. Acts ch.100, §§23-24; Iowa Code §§257-58 (1851); Ark. Rev. Stat. ch.54, §20 (1837); Neb. Gen. Stat. ch.20, §9 (1873); Tenn. Code §852 (1858); Del. Rev. Stat. ch.18, §19 (1874); 1852 Ind. Acts ch.31, §20; Va. Code tit.5, ch.10, §122 (1887); Fla. Stat. tit.3, ch.3, §5(2); Ga. Code §1307 (1867); Ill. Rev. Stat. ch.37, §§18-19 (1845); Kan. Gen. Laws ch.86, §§7, 9 (1862); Ky. Rev. Stat. ch.32, art. III §7 (1867); La. Rev. Stat., Elec. Code §13 (1856); Me. Rev. Stat. tit.1, ch.4, §27 (1884); Md. Pub. Gen. Laws art.5, §15 (1878); Mass. Pub. Stat. ch.6, §2 (1882); Miss. Rev. Code ch.4, art. 9 (1857); Mo. Stat. ch.51, §15 (1872); Nev. Gen. Stat. ch.12, §1515 (1885); N.H. Gen. Stat. ch.27, §3 (1867); N.J. Stat., Elec. Code §§24, 35 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §13 (1867); N.C. Code ch.16, §2680 (1883); Ohio Stat. ch.211, §2 (1854); T. Patterson, *Election Laws of Oregon*, ch.2, §15 (1870) [hereinafter Or. Elec. Laws]; S.C. Rev. Stat. ch.8, §5 (1873); Tex. Rev. Civ. Stat. art. 1692 (1879).

[4] *See, e.g.*, Va. Code tit.5, ch.10, §125 (1887); Gantt's Digest of the Statutes of Ark. §2328 (1874); Cal. Pol. Code §§1226-27 (1876); Fla. Stat. tit.3, ch.3, §5(7); Conn. Gen. Stat. tit.17, §§768, 74-76, 108 (1866); Ga. Code §1315 (1867); Ill. Rev. Stat. ch.37, §§15, 24 (1845); 1852 Ind. Acts ch.31, §18; Iowa Code §257 (1851); Kan. Gen. Laws ch.86, §8 (1862); Ky. Rev. Stat. ch.32, art. III §5 (1867); La. Rev. Stat., Elec. Code §13 (1856); Me. Rev. Stat. tit.1, ch.4, §§25, 29 (1884); Md. Pub. Gen. Laws art.5, §15 (1878); Mass. Pub. Stat. ch.7, §§11-12 (1882); Mich. Comp. Laws ch.6, ¶59 (1872); 1889 Minn. Laws ch.1, §15; Miss. Rev. Code ch.4, art. 12

Day facilitated the lawful and orderly casting and receipt of ballots. Thus, although qualified electors would "vote *at* an[] election," 1863 W. Va. Acts ch.100, §23 (emphasis added),[5] the vote itself was not the election.

That is apparent from how the process of casting and receiving ballots functioned in practice. What modern-day Americans now describe as "marking and submitting" a ballot, Pet.Br.1, was in 19th-century parlance called "offering to vote," *supra*, pp.14-15 &

(1857); Mo. Stat. ch.51, §15 (1872); Neb. Gen. Stat. ch.20, §9 (1873); Nev. Gen. Stat. ch.12, §1537 (1885); N.H. Gen. Stat. ch.28, §9 (1867); N.J. Stat., Elec. Code §36 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §28 (1867); N.C. Code ch.16, §§2678, 2684 (1883); Ohio Stat. ch.211, §§17, 21 (1854); Or. Elec. Laws ch.2, §19; Jordan Pa. Digest, *supra*, ch. 4, §§37-38; R.I. Rev. Stat. ch.26, §§1, 13 (1857); S.C. Rev. Stat. ch.8, §§9, 11 (1873); Tenn. Code §850 (1858); Tex. Rev. Civ. Stat. art. 1694 (1879); 1870 W. Va. Code ch.3, §18; Wisc. Rev. Stat. §32 (1878).

[5] *See, e.g.*, Va. Code tit.5, ch.8, §63 (1887); Me. Rev. Stat. tit.1, ch.4, §3 (1884); Ala. Code §§171, 267 (1852); Gantt's Ark. Digest, *supra*, §2327; Cal. Pol. Code §1360 (1876); 1889 Minn. Laws ch.1, §47; Miss. Rev. Code ch.4, art. 16 (1857); Mo. Stat. ch.51, §§14, 22 (1872); Neb. Gen. Stat. ch. 20, §10 (1873); Nev. Gen. Stat. ch.12, §1503 (1885); N.H. Gen. Stat. ch.28, §5 (1867); N.J. Stat., Elec. Code §11 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §13 (1867); N.C. Code ch.16, §2709 (1883); Ohio Stat. ch.211, §§3, 6, 15 (1854); Or. Elec. Laws ch.1, §1; Jordan Pa. Digest, *supra*, ch.4, §40; R.I. Rev. Stat. ch.22, §1 (1857); S.C. Rev. Stat. ch.8, §5 (1873); Tenn. Code §834 (1858); Tex. Rev. Civ. Stat. art. 1696 (1879); Conn. Gen. Stat. tit.17, §109 (1866); Del. Rev. Stat. ch.18, §9 (1874); Fla. Stat. tit.3, ch.1, §2(2); Ga. Code §1320 (1867); Ill. Rev. Stat. ch.37, §§19-20 (1845); 1852 Ind. Acts ch.31, §23; Iowa Code §259 (1851); Kan. Gen. Laws ch.86, §8 (1862); Ky. Rev. Stat. ch.32, art. XII §8 (1867); Mass. Pub. Stat. ch.6, §1 (1882); Md. Pub. Gen. Laws art.5, §19 (1878); Wisc. Rev. Stat. §34 (1878).

n.3. That offer occurred when an elector filled out a ballot or a ticket and presented it to the election official for review. *See, e.g.*, Ala. Code §§207-08 (1852); *see supra* n.3. Although Petitioners identify *that* as the moment the election ends, Pet.Br.24-26, in reality that was just one of the "combined actions" that constitute the election, *Foster*, 522 U.S. at 71. Upon "receiving" the ballot, the official would typically announce the elector's name and give the public or other officials an opportunity to object to the elector's qualifications. 1852 Ind. Acts ch.31, §18; *see* J. Harris, *Election Administration in the United States* 200-46 (1934).[6] If anyone objected—or if the official had independent reason to doubt the elector's eligibility—the official could do anything from require the elector to swear to his qualifications, to examine the elector, or even receive evidence on the issue. *See* 1852 Ind. Acts ch.31, §§21-22.[7] Only once the official was

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[6] Ala. Code §§208, 212 (1852); Cal. Pol. Code §§1226-27 1230 (1876); Del. Rev. Stat. ch.18, §18 (1874); Ill. Rev. Stat. ch.37, §§15, 18 (1845); Kan. Gen. Laws ch.86, §8 (1862); 1889 Minn. Laws ch.1, §§15, 68; Mo. Stat. ch.51, §15 (1872); Neb. Gen. Stat. ch.20, §9 (1873); Nev. Gen. Stat. ch.12, §§1537, 1547 (1885); Or. Elec. Laws ch.2, §§11, 15; Jordan Pa. Digest, *supra*, ch.4, §37; R.I. Rev. Stat. ch.26, §12 (1857); Tenn. Code §§852, 859 (1858); Va. Code tit.5, ch.10, §125; 1870 W. Va. Code ch.3, §18.

[7] Ill. Rev. Stat. ch.37, §§18-19 (1845); Ala. Code §§212-18 (1852); Cal. Pol. Code §§1227, 1230-43 (1876); Fla. Stat. tit.3, ch.3, §5(9); Del. Rev. Stat. ch.18, §19 (1874); Ga. Code §§1306-07, 1315 (1867); Iowa Code §§258-259 (1851); Kan. Gen. Laws ch.86, §§10-13 (1862); Ky. Rev. Stat. ch.32, art. III §§7-9 (1867); La. Rev. Stat., Elec. Code §§14, 18 (1856); 1889 Minn. Laws ch.1, §§68-72; Me. Rev. Stat. tit.1, ch.4, §99 (1884); Md. Pub. Gen. Laws art.5, §21 (1878); Mass. Pub. Stat. ch.7, §§10, 22-23 (1882); Mich. Comp. Laws ch.6, ¶56 (1872); Neb. Gen. Stat. ch.20, §§39-40, 43 (1873); Nev. Gen. Stat. ch.12, §§1537, 1547 (1885); N.J. Stat., Elec. Code

satisfied that the elector was entitled to vote would he deposit the ballot into the ballot box, *see* Ala. Code §§208-10 (1852),[8] at which point the "offer to vote" ripened into a "vote." Put differently, "the offer must be made to some one authorized to accept it," and only "when accepted, the vote is complete." *People ex rel. Twitchell v. Blodgett*, 13 Mich. 127, 143-44 (1865); *see also Chase v. Miller*, 41 Pa. 403, 419 (1862).

The time for casting and receiving ballots was clearly defined—it occurred on the day of the election, and no later. "[N]o ballots" could "be received" "[after] the polls [were] closed." Cal. Pol. Code §1164 (1876); 1852 Ind. Acts 260, 263, §25. Officials in some states could postpone the closing of the polls if necessary to give electors the opportunity to vote, *see, e.g.*, Ill. Rev. Stat. ch.37, §14 (1845), but in no circumstances could

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§§37-39 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §§13-23 (1867); N.C. Code ch.16, §§2683-2684 (1883); Ohio Stat. ch.211, §13 (1854); Or. Elec. Laws ch.2, §§15, 19; Jordan Pa. Digest, *supra*, ch.4, §§40-43; Tenn. Code §§852-858 (1858); Tex. Rev. Civ. Stat. art. 1692 (1879); Va. Code tit.5, ch.8, §§126-27 (1887); Wisc. Rev. Stat. §§35-38 (1878).

[8] Cal. Pol. Code §§1227, 1242 (1876); Ill. Rev. Stat. ch.37, §19 (1845); 1852 Ind. Acts ch.31, §§18, 22; Iowa Code §§257-60 (1851); Kan. Gen. Laws ch.86, §§8, 14 (1862); Ky. Rev. Stat. ch.32, art. III §§5, 7 (1867); La. Rev. Stat., Elec. Code §15 (1856); Mass. Pub. Stat. ch.7, §§10-11, 22-23 (1882); Mich. Comp. Laws ch.6, ¶¶56, 59 (1872); 1889 Minn. Laws ch.1, §§15, 68-72; Mo. Stat. ch.51, §15 (1872); Neb. Gen. Stat. ch.20, §§9, 42 (1873); Nev. Gen. Stat. ch.12, §§1537, 1544 (1885); N.J. Stat., Elec. Code §§40-41 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §§17-19, 31 (1867); N.C. Code ch.16, §2684 (1883); Or. Elec. Laws ch.2, §§13, 19; Tenn. Code §§850, 854 (1858); Tex. Rev. Civ. Stat. art. 1692 (1879); Va. Code tit.5, ch.10, §§125, 127 (1887); 1870 W. Va. Code ch.3, §18; Wisc. Rev. Stat. §§34, 38-39 (1878).

polls remain open after the day set for the election, *see id*. It was therefore "illegal" to receive ballots after Election Day. Or. Laws ch.14, §8 (1872).

Just as clearly, states distinguished the "election" from the "canvass of the votes." Iowa Code §§261-62, 274 (1851).[9] The "election" referred to what occurred while the polls were open—the offers to vote (ballot submission) and the acceptances of the votes (ballot receipt). The canvass, by contrast, referred to the process of reviewing and counting the votes "taken at such election," 1887 Minn. Laws ch.4, §30, and it began only after the polls closed and "the election [was] finished," Tenn. Code §§860-61 (1858); *supra*, n.9. States sometimes gave election officials discretion to complete the canvassing process after the day of election, 1852 Ind. Acts 260, 264, §29,[10] thus

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[9] Ala. Code §219 (1852); Cal. Pol. Code §1252 (1876); Fla. Stat. tit.3, ch.3, §§5(10), 11(7) (1866); Del. Rev. Stat. ch.18, §§22-24 (1874); Ill. Rev. Stat. ch.37, §2 (1845); 1852 Ind. Acts ch.31, §§29, 31-32; Kan. Gen. Laws ch.86, §16 (1862); Ky. Rev. Stat. ch.32, art. V §§1-2 (1867); La. Rev. Stat., Elec. Code §§7, 13, 25 (1856); Me. Rev. Stat. tit.1, ch.4, §32 (1884); Mich. Comp. Laws ch.6, ¶66 (1872); 1889 Minn. Laws ch.1, §16; Miss. Rev. Code ch.4, art. 12 (1857); Neb. Gen. Stat. ch.20, §§10, 12 (1873); Nev. Gen. Stat. ch.12, §1548 (1885); N.J. Stat., Elec. Code §§42-46 (1877); N.Y. Stat. pt.1, ch.6, tit.4, §§35, 42 (1867); N.C. Code ch.16, §§2689-2693 (1883); R.I. Rev. Stat. ch.26, §§14, 19 (1857); S.C. Rev. Stat. ch.8, §§13-16 (1873); Tenn. Code §861 (1858); Tex. Rev. Civ. Stat. art. 1696 (1879); Va. Code tit.5, ch.10, §128 (1887); Wisc. Rev. Stat. §42 (1878).

[10] Iowa Code §261 (1851); Del. Rev. Stat. ch.18, §24 (1874); Ill. Rev. Stat. ch.37, §§2, 30 (1845); Ky. Rev. Stat. ch.32, art. V §2 (1867); Me. Rev. Stat. tit.1, ch.4, §34 (1884); Or. Elec. Laws ch.4, §29; S.C. Rev. Stat. ch.8, §§13, 15 (1873); 1870 W. Va. Code ch.3, §§59, 61.

corroborating that the canvass was a post-election administrative step, and not part of the "election" itself.

Those consistent practices underscore what everyone would have known at the time: The elector's act of marking and submitting a ballot—that is, "offering to vote"—did not an "election" make. It was merely a proposal that the election official could accept or reject. Until the proffered ballot was taken "into the hands of an election judge" and deposited into the ballot box, it was just a "meaningless scrap[] of paper." R. Bensel, *The American Ballot Box in the Mid-Nineteenth Century* 16 (2004). The placement of the ballot into the box imbued that piece of paper with electoral significance and marked the "moment" that the official's power to question the elector's qualifications ceased. G. McCrary, *A Treatise on the American Law of Elections* §§199, 244 (1887) ("officers of election have no control over ballots once deposited"). After the ballot box closed, the election was over and the canvassing process could commence.

2. Given the historical backdrop at the time, it is unsurprising that contemporaneous dictionaries and treatises often described an "election" as the process by which ballots are cast by voters and received by election officials. One prominent 19th-century legal dictionary described an "election" as "[v]oting and taking the votes of citizens for members to represent them." Anderson, *Dictionary of Law*, *supra*, at 394. Another (citing state law) explained that the term "election" "means the act of casting and receiving the ballots." B. Abbott, *Dictionary of Terms and Phrases Used in American or English Jurisprudence* 418

(1879). Leading treatises at the time likewise defined "election" in "common parlance" to include "casting and receiving" ballots. W.H. Michael, Elections, *in* 15 *Cyclopedia of Law and Procedure* 279 (W. Mack ed., 1905).

Contemporary judicial interpretations of "election" are in accord. Several state courts of last resort, drawing on "the meaning of the word 'election' in ordinary usage," *Norman v. Thompson*, 72 S.W. 62, 63-64 (Tex. 1903), interpreted "election" to include "the act of casting and receiving the ballots," *State v. Tucker*, 54 Ala. 205, 210 (1875); *Norman*, 72 S.W. at 63-64 (similar), or "the voting and the taking of the votes of the citizens for members to represent them," *Commonwealth v. Kirk*, 43 Ky. (4 B.Mon.) 1, 2 (1843); *cf. In re Op. of Judges*, 30 Conn. 591, 597-98 (1862) (explaining that "the votes of the electors shall be offered and received" "at" or "in" the "electors' meeting"); *Petty v. Myers*, 49 Ind. 1, 3 (1874) (stating that the county board "ordered an election, 'for the purpose of taking the votes of the legal voters of the said township'" regarding an appropriation of funds for railroad construction).

Other dictionaries and cases defined an election more generally as the "act of choosing a 'person to fill an office,'" and the "day of a public choice of officers." N. Webster, *An American Dictionary of the English Language* 383 (1860); *see also* H. Black, *A Dictionary of Law* 412 (1891) (similar); *cf. Bourland v. Hildreth*, 26 Cal. 161, 194, 216 (1864). This Court similarly interpreted "election" as used in the Constitution to mean the "final choice of an officer by the duly qualified electors." *Newberry*, 256 U.S. at 250. Those

sources further support the Fifth Circuit. No one doubts that marking and submitting a ballot—or, in 19th-century terms, "offering to vote"—is integral to an election. *See supra*, pp.14-18, 20. But the "election" does not end with the "offer" to vote because that by itself has no electoral consequence. Pet.App.10a. Only once the "scrap[] of paper" is received into official custody does the preference reflected on the ballot turn into a completed vote. *Supra*, p.20; *see* McCrary, *supra*, §§199, 244; *cf. People v. Gagliardi*, 111 N.Y.S. 395, 396 (N.Y. Sup. Ct. 1908) (distinguishing between a vote and an offer to vote); *Twitchell*, 13 Mich. at 143-44 (same). Divorcing the concept of ballot receipt from "the election" conflates the individual's expressed preference (as reflected on the marked ballot) with an actual vote (which occurs only once the marked ballot is deposited into official custody). Pet.App.10a. It thus defies ordinary meaning, common sense, and historical practice to say that an election can finish before the votes are received.

B. Contemporaneous Historical Practice Reinforces That an "Election" Includes Ballot Receipt.

1. Consistent with the ordinary meaning of "election" at the time of enactment, the overwhelming contemporaneous practice among the states was to require ballots to be received by Election Day.

During the colonial era, votes were cast through various methods—sometimes by voice, by show of hands, or by casting beans or corn in a bowl. *See Burson v. Freeman*, 504 U.S. 191, 200 (1992) (plurality). An "election" using those methods necessarily encompassed ballot submission and

receipt. Although some jurisdictions allowed proxy voting, those votes had to be delivered to officials by Election Day. *See* C. Bishop, *History of Elections in the American Colonies* 143, 131-32 (1893).

In the 18th and early part of the 19th century, states began adopting paper ballots—which quickly became the preferred practice. *See Burson*, 504 U.S. at 200. These "ballots" were rudimentary at first; "[i]ndividual voters made their own handwritten ballots, marked them in the privacy of their homes, and then brought them to the polls for counting." *Id.* That ballot was considered cast once the voter marked and "deposit[ed] such a vote in the box … kept by the proper officers" of the election. T. Cooley, *A Treatise on the Constitutional Limitations* 604 (1868).

Absentee voting was not commonly available until the Civil War, when that practice became necessary to "secure the franchise of soldiers in the field." Pet.App.15a. But even then, the practice among the states was to require ballots to be submitted and received by Election Day.

"States authorized absentee voting for soldiers using two methods." Pet.App.15a. The first involved "voting in the field." *Id.* "Election officials brought ballot boxes to the battlefield, where soldiers cast their ballots" directly "into official custody with no carrier or intermediary." *Id.* Over a dozen states in the union used this method, which involved setting up election sites "at every place" where the state's soldiers "may be found or stationed." 1862 Iowa Acts (Extra Sess.) 28, 29, ch. 29, §8; *see* D. Collins, *Absentee Soldier*

Voting in Civil War Law and Politics 27 (2014).[11] These elections would often "be held on the same day" as the Election Day for civilians. *E.g.*, 1862 Iowa Acts at 28, §4. States "tried to recreate the full choreography of elections back home, complete with election judges, poll books, [and] procedures for challenging qualifications." *Collins*, *supra*, at 27. Hence, the soldier "voter's 'connection with his vote ended when he put it in the box, precisely as it would have ended if he had put it into the box … at home." Pet.App.15a.

States that allowed voting in the field went to great lengths to ensure that ballots would be received into the custody of election officials on Election Day. Of the fourteen states that allowed field voting, twelve formally deputized servicemen to act as civil election officials.[12] Those election officials "swore oaths, as their counterparts did back home," Collins, *supra*, at 363, to uphold the law and to "studiously endeavor to prevent fraud, deceit and abuse in conducting" the election, 1862 Iowa Acts at 30, §11; *see, e.g.*, 1864 Pa. Laws 990, 990-91, §§4-5. The other two states required military officers to "certify" the legitimacy of

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[11] The Commonwealth of Pennsylvania allowed both field and proxy voting. 1864 Pa. Laws 990, 990-91, 997, §§2, 4-5, 33-34.

[12] 1862 Iowa Acts (Extra Sess.) 28, 29-30, ch. 29, §§9-12; 1864 Pa. Laws 990, 990-91, §§2, 4-5; 1863 Vt. Acts & Resolves 7, 7-9, §§1-2, 4-6; 1864 N.H. Laws 3061, 3061-62, §§2-3; 1864 Ky. Acts 122, 122-23, §§1-5; 1864 Mich. Pub. Acts (Extra Sess.) 40, 40-42, §§1-2, 7-11; 1864 Kan. Sess. Laws 101, 101-03, §§1, 4-6; 1864 Me. Laws 209, 209-10, §§1-2, 4; 1864 Cal. Stat. 279, 280-81, §§4-6; 1863 Ohio Laws 80, §§1-2, 4-5; Md. Const. of 1864, art. XII, §11; *see* Ord. Passed at Mo. State Convention, at 15, §§2-4 (June 12, 1862).

the votes to the Secretary of the State.[13] As a result, the ballots of soldiers in the union states were received into official custody the moment they were cast on Election Day. *See* Pet.App.15a-16a.

Other states allowed proxy voting, which permitted "soldiers to prepare ballots in the field and send them to a proxy for deposit in the ballot box of the soldier's home precinct." Pet.App.15a. This method closely resembles "the form of absentee voting seen today," D. Inbody, *The Soldier Vote* 43 (2016), in part because the soldier's completed ballot could be "transmitted by mail" to the proxy voter, 1863 W. Va. Acts ch.100, §26; 1864 N.Y. Laws 549, 550, §4; 1864 Pa. Laws 990, 990, 997, §§1, 33; 1862 Minn. Laws (Extra Sess.) 13, 14-16, §§2, 4; 1865 Ill. Laws 59, 59-61, §§1, 4. Critically, every single state that used proxy voting required that ballots be received into official custody "[o]n the day of [the] election" to be counted. 1864 N.Y. Laws 549, 550, §5.[14]

2. Absentee voting largely disappeared after the Civil War and did not regain popularity until the early 20th century. Pet.App.16a. By 1914, when the last of the three Election-Day statutes became law, very few states allowed absentee voting. By the end of World

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[13] 1866 Nev. Stat. 210, 215, ch.107, §§25-27; 1864 R.I. Acts & Resolves, ch.529, §1, art. IV.

[14] 1864 Pa. Laws 990, 990, 997-98, §§1, 33-34 ("The elector, to whom the ballot shall be sent, shall, on the day of election, and whilst the polls of the proper district are open, deliver the envelope … to the proper election officer, who shall open the same … and deposit the ballots."); 1864 Conn. Pub. Acts 51, 52-53, §§3, 6-8 (similar); 1863 W. Va. Acts 114, 119-20, §26 (similar); 1862 Minn. Laws (Extra Sess.) 13, 15, §4 (similar); 1865 Ill. Laws 59, 61, §5 (similar).

War I, however, several had adopted absentee voting laws. Some limited absentee voting to soldiers and further limited it to only wartime elections. P. Ray, *Military Absent Voting Laws*, 12 Am. Pol. Sci. Rev. 461, 461-62 (1918). New York, for example, allowed commanding officers to set a date for voting and account for military emergencies, but "in no case shall it be later than the day of the general or special election." *Id.* at 464. Other states required ballots to be marked and submitted before Election Day. *Id.* Still others required ballots to be returned by mail "in time to be counted at home on election day." *Id.* "Thus, *even* during the height of war time exigency, a ballot could be counted only if *received* by Election Day." Pet.App.16a.

Around the same time, and decades after the first two of the Election-Day statutes were enacted, states began experimenting with civilian absentee voting laws. But even then, the universal practice was to require absentee ballots to be received by election officials by Election Day. Pet.App.16a-17a (citing P. Ray, *Absent-Voting Laws, 1917*, 12 Am. Pol. Sci. Rev. 251, 253 (1918)). Those laws fell into one of "two general types, namely, the Kansas and the North Dakota types." *Absent-Voting Laws*, *supra*, at 251. States in the Kansas camp (including Missouri, Washington, New Mexico, Oklahoma, Oregon, and Florida) required absent voters to cast their ballots *in person on Election Day* at the local precinct where they were temporarily located. P. Ray, *Absent Voters*, 8 Am. Pol. Sci. Rev. 442, 443 (1914). The "election official" at the local precinct would then endorse the ballot and mail it to the voter's home precinct. *See id.*; *Absent-Voting Laws*, *supra*, at 253-54; Harris, *supra*,

at 287-88. States in the North Dakota camp required absentee voters to fill out a ballot in the presence of a magistrate and mail their completed ballots to election officials in time to be "opened only on election day at the polls while the same are open." *Absent Voters*, *supra*, at 444-45.

Even as absentee and mail-in voting became "more common over the course of the twentieth century," the vast majority of states required ballot receipt on or before Election Day. Pet.App.17a; *but see* VVF.Br.36-37. According to one count, by 1977, "only two of the 48 States permitting absentee voting counted ballots received after Election Day." Pet.App.17a (citing Overseas Absentee Voting: Hearing on S.703 Before the S. Comm. on Rules and Admin, 95th Cong. 33-34 (1977)). Even today, the majority of states prohibit officials from counting ballots received after Election Day. Of the states that permit absentee ballots from the general public to be received after Election Day, most did not do so until the 21st century.[15] The other states continue to require *receipt* on or before that date. Pet.App.17a (citing Nat'l Conf. of State Legislatures, Table 6: The Evolution of Absentee/Mail Voting Laws, 2020-22 (Oct. 26, 2023)).

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[15] Alaska Stat. §15.20.150 (1979); Cal. Elec. Code. §3020 (2014); D.C. Code §1-10001.05(a)(10A) (2019); 10 ILCS 5/19-8 (2005); 1987 Md. Laws, ch. 398, §1 (27-9); Mass. Gen. Laws ch.54, §93 (2022); Miss. Code Ann. §23-15-637 (2020); Nev. Rev. Stat. §293.317 (2020); N.J. Stat. Ann. §19:63-22 (2018); N.Y. Elec. Law §8-412 (1994); Or. Rev. Stat. §253.070(3) (2022); Tex. Elec. Code Ann. §86.007(a) (2017); Va. Code Ann. §24.2-709(B) (2011); Wash. Rev. Code §29.36.040 (1965); W. Va. Code §§3-3-5(g)(2) (1993).

In short, the historical practice provides considerable support for the notion that the "election" concludes when all ballots are received. "A few 'late-in-time outliers' say nothing about the original public meaning of the Election-Day statutes," which clearly provided that the election ended when the ballot box closed on the single day specified by Congress. Pet.App.18a.

C. Precedent Reaffirms That Ballots Must be Received by Election Day.

This Court's precedents reaffirm that an "election" includes both ballot submission and receipt, not just the former. In *Foster*, this Court held that Louisiana violated the Election-Day statutes by administering an open primary in October that could conclusively select a winner before Election Day in November. 522 U.S. at 71-73. That holding turned on the plain meaning of "the election" in the Election-Day statutes. Although the Court did not "par[e] the term 'election' … down to the definitional bone," it construed "the election" in those statutes as "the combined actions of voters and officials meant to make a final selection of an officeholder." *Id.* at 71-72.

Foster undermines Petitioners' argument that the official's distribution of the ballot and the voter's submission of the ballot in the mail is the final step in "the election." First, ballot submission *and* receipt together comprise the "combined actions of voters and officials" necessary for "the election" to occur. *Id.* at 71; *see supra*, pp.14-18. Of course, a voter must mark and submit their ballots in an election because those completed ballots are how "the will of the voters [is] ascertained." *Maddox v. Bd. of State Canvassers*, 149

P.2d 112, 115 (Mont. 1944). But the "action[] of … officials" of receiving those ballots is equally important, *Foster*, 522 U.S. at 71, because no ballot can affect the outcome of an election "until it is deposited with the election officials," *Maddox*, 149 P.2d at 115; *see supra*, pp.17-18. Second, the "final selection of an officeholder" does not occur until the final ballots are received. *Foster*, 522 U.S. at 71. Mail-in ballots can be lost, they can be recalled, and they can be delayed, thus illustrating that such ballots "are less final than Mississippi claims." Pet.App.12a. So long as the ballot box remains open to receive those ballots after Election Day, the election has not concluded because the universe of votes is unsettled and the electoral outcome is contingent on ballots yet to be received. Pet.App.12a-13a. Simply put, no "final selection" happens—and thus no election happens—until the ballots are received. Pet.App.9a.

To be sure, this Court had no need to definitively parse the term "election," and thus, for example, did not explore the distinction between the election and canvassing. But *Foster* did get close enough "to the definitional bone" to undermine Petitioners' effort to divorce the submission of a ballot from its receipt and view the election as the act of the voter alone. This case presents the flipside of the law in *Foster*. Louisiana tried to end the election too early—well before Election Day. Mississippi ends the election too late—keeping the ballot box open well after the federal Election Day.

II. Petitioners' Contrary Arguments Lack Merit.

A. Petitioners' Text and History Arguments Fall Short.

Petitioners argue that "an election occurs when the voters have cast their ballots"—*i.e.*, when they have "marked and submitted them to election officials as state law requires." Pet.Br.25; *see* VVF.Br.18-19. That counterintuitive and voter-centric interpretation of "election" lacks any principled textual basis and departs from that term's broader historical meaning, this Court's precedent, and common sense.

1. Petitioners begin with dictionary definitions, pointing out that some dictionaries in the 1800s defined "election" to mean "[t]he act of choosing a person to fill an office." Pet.Br.24; VVF.Br.17. But "words 'must be read' and interpreted 'in their context,'" *Sw. Airlines v. Saxon*, 596 U.S. 450, 455 (2022), and that includes the context in which words are used and the historical context in which the relevant statutes were enacted, *see New Prime v. Oliveira*, 586 U.S. 105, 114-16 (2019). When Congress set a single national Election Day, it was plainly setting deadlines for the mechanics of voting, which is, not coincidentally, the principal focus of the Elections and Electors Clauses. These laws set the date on which states shall hold elections, provide instructions for states as they administer elections, and impose consequences on states that interfere with the rights of voters to participate in those elections. *See* 38 Stat. at 384; 17 Stat. at 28-29; 5 Stat. at 721. Thus, the legislation was not addressed exclusively to voters, but was instead directed principally to state election

officials whose disparate laws were being displaced by a uniform federal rule. It makes sense, then, that Congress would use "election" in the sense that invokes the state official's role in "receiving" or "taking" the ballots. *See supra*, pp.14-18, 20. By focusing narrowly on dictionaries that define "election" only from the perspective of the voter, Petitioners at best address only half the electoral equation and at worst ignore the context in which Congress enacted the statutes. *See, e.g.*, *ITCA*, 570 U.S. at 10-12 (looking to statutory context to interpret the National Voter Registration Act).

What is more, when Congress set the "Tuesday next after the 1st Monday in November" as "the day for the election," 2 U.S.C. §7, there was little question that the "act of choosing a person to fill an office," Pet.Br.24, encompassed both the casting of ballots by electors *and* the receiving of ballots by election officials, *see supra*, pp.14-18, 20. Casting a ballot, after all, was just an "offer to vote." The "offer must be made to some one authorized to accept it," and only "when accepted, the vote is complete." *Twitchell*, 13 Mich. at 143-44. That is why other dictionaries and judicial decisions at the time defined "election" to include not just the casting of ballots, but the receipt of them as well. *See supra*, pp.20-22.

VVF (but not Mississippi) insists that if an "election" includes ballot receipt, then there is no reason it would not include *counting* the ballots as well. VVF.Br.22-24; *accord* DNC.Amicus.Br.25. That contention is equally ahistorical and insensitive to context. There is a critical and historically grounded difference between the "election" and the "canvass of

the votes," which is why state election codes at the time routinely distinguished between the two. *See supra*, pp.19-20. While states routinely permitted officials to *tally* votes after Election Day when the Election-Day statutes were enacted, *see* DNC.Amicus.Br.20, no state counted ballots *received* after Election Day. *See supra*, pp.18-19. Indeed, the possibility of a "recount" all but necessitates separating the election from canvassing and forecloses the possibility that canvassing could end on a single nationally uniform date.

VVF (but not Mississippi) points to several contemporaneous state laws (it says) authorized ballot receipt after Election Day. VVF.Br.33-35 (Pennsylvania, Nevada, and Rhode Island). In reality, all three states permitted "voting in the field" whereby soldiers would cast ballots *on Election Day* to military officers empowered by the state to administer elections. *See supra*, pp.23-25. Contrary to VVF's claim (VVF.Br.35), Pennsylvania deputized those officers as election officials. *See* 1839 Pa. Laws 519, 528 §§44-46. Nevada and Rhode Island likewise required military officers tasked with administering the field election to certify the legitimacy of the votes before sending the ballots to the Secretary of the State for counting. *See supra*, pp.24-25 & n.13. Thus, the ballots of soldiers in those states were effectively received into official custody on Election Day. *See* Pet.App.15a-16a. But even if VVF were right about those state laws, a "few late-in-time outliers" do not overcome the "overwhelming weight of other evidence" from the remaining 19th-century practice that uniformly supports Respondents. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 67-70 (2022).

VVF questions why "calling military officers 'election officials' would change the analysis, when their role is the same as the Postal Service's role today—to convey the ballots to the real election officials who will then count them." VVF.Br.35. But that understates the role that deputized military officials played in the electoral process and overstates the sanctity of a mailbox. Unlike the postal service, those officers were specifically tasked with administering the election in the field, swore an oath to uphold the law and accept ballots only from qualified voters, and had affirmative duties to prevent fraudulent ballots and to certify the legitimacy of the votes. *See* 90 Fed. Reg. 52,883, 52,886 (Nov. 24, 2025). The postal service, by contrast, accepts all comers.

The Democratic National Committee, for its part, grossly misrepresents state practice in an effort to give VVF's position historical pedigree. It claims that states (most of which were in the confederacy at the time) "routinely authorized post-election-day receipt windows: North Carolina accepted ballots received within 'twenty days' after election day; Alabama 'two or three weeks after the election,' Georgia 'within fifteen days after the election,' South Carolina on 'the first Saturday next ensuing' after the election, Florida on 'the twentieth day after the election,' and Maryland 'fifteen days after the election.'" DNC.Amicus.Br.20 (quoting J.H. Benton, *Voting in the Field* 317-18 (1915)). But the source they cite says nothing whatsoever about "receipt windows." That source explains how states routinely provided more time "for *canvassing* the votes." Benton, *supra*, at 317 (emphasis added). Thus, North Carolina "counted"

ballots "twenty days" after Election Day,[16] Alabama "counted" ballots two or three weeks after the election,[17] Georgia "counted" ballots "within fifteen days after the day of elections,"[18] South Carolina "counted" ballots on "the first Saturday next ensuing" after the election,[19] Florida "counted" ballots on "the twentieth day after the election,"[20] and Maryland "count[ed]" ballots "fifteen days after" the election.[21] Benton, *supra*, at 317-18. If anything, the DNC's argument underscores why the Fifth Circuit was right to distinguish between ballot receipt (which must occur by Election Day) and the counting of the vote (which *may* occur after Election Day and *must* occur afterward in the context of recounts).[22]

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[16] 1861 N.C. Laws 40, 40-41, §§2-3.

[17] 1861 Ala. Acts 79, 80 §3.

[18] 1861 Ga. Laws 31, §2.

[19] S.C. Act No. 4572, §3 (Dec. 21, 1861).

[20] 1862 Fla. Laws 55, ch.1379, §4.

[21] Md. Const. of 1864, art. XII, §14. Maryland allowed soldiers to hold their election day up to five days *after* the day that civilians cast their ballots. *See id.*, art. XII, §11. Nonetheless, because soldiers deposited their ballots in the field with military officers that had been deputized as election officials, their ballots were submitted and cast on the election day set by state law.

[22] The Democratic National Committee makes the even bolder claim that "Founding-era documents" prove that an "election" did not include ballot receipt. DNC.Amicus.Br.6-7. But it can do so only by conflating the discrete steps in the process for electing the President, specifically the process of electing the President and the process for counting the votes in the Senate, which is analogous to canvassing and can and does occur well after the election is finished.

With virtually no contemporary historical practice to point to, Petitioners dismiss it as irrelevant because "even if States generally received ballots by election day in the 1800s," that does not necessarily mean that "the federal election-day statutes require" that practice. Pet.Br.32. That misses the mark. The principal relevance of contemporary state practices is that they inform the original public meaning of the term "election" in the Election-Day statutes. And the proper interpretation of that term makes clear that a state that deviated from the uniform practice of treating the election as ending when the polls and the ballot box shut would have found its law preempted. The fact that no state even tried such an innovation until long after the Election-Day statutes were enacted just underscores that such a practice cannot be squared with the proper understanding of "election" or the basic idea of having a single national Election Day. *Cf. Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 505-06 (2010) (treating "the lack of historical precedent" as a "telling indication of the" problems with it).

Petitioners next resort to a parade-of-horribles argument, insisting that Respondent's position would freeze election law in the 19th Century. Pet.Br.33-35. Putting aside the prudence of some "permissive" contemporary practices, that alarmist argument has no basis in reality. The relevant provisions in the Election-Day statutes do not regulate the *manner* in which ballots may be cast (absentee, secret, or otherwise). They just set the *time* by which federal elections must occur. *See Foster*, 522 U.S. at 71-73. Because those statutes do not dictate the manner in which the elections must occur, states may continue to

"innovat[e]" on "whether, when, and by whom to allow absentee voting" or "the manner in which absentee voting" occurs, subject to the ultimate supervision of Congress via the Elections Clause. Pet.Br.31. Whether state law allows for absentee voting, secret ballots, or some future innovation, all the Election-Day statutes demand is that the casting and receiving of the vote occur by the day set for the election, so that the polls and the ballot boxes close on the same date nationwide. And contrary to Mississippi's insistence, there is nothing "implausible" about the Election-Day statutes setting the deadline for ballot receipt. Pet.Br.31. The point of creating a time for the election is to establish a deadline by which the election will be consummated. What *is* "implausible" is Mississippi's view that the Election-Day statutes set a uniform time for the election to occur but permit ballots to be received days, weeks, or months after Election Day. That would make the Election-Day statutes "self-defeating." *Quarles v. United States*, 587 U.S. 645, 654 (2019).

Nor would affirming the Fifth Circuit's judgment imperil early voting. As the Fifth Circuit explained, *Foster* instructs that the election concludes once all the ballots have been submitted by the voters and received by the election officials—that cannot happen either before or after "the day" for the election. 522 U.S. at 72-73. That is the "consummation" of the electoral process referenced by the decision below, and it only occurs once the final ballots have been received. *See* Pet.App.8a-13a. As a slew of Civil-War era laws demonstrate, ballots could be kept in the custody of election officials *before* Election Day so long as they were received *by* Election Day. *See supra*, pp.23-25;

see, e.g., 1864 Conn. Pub. Acts 51, 52-53, §§3, 6-8; 1863 W. Va. Acts ch.100, §26; 1862 Minn. Laws (Extra Sess.) 13, 13-15, §§1-4.

Petitioners' other responses to the historical practice fall flat. Mississippi argues that Congress enacted the Election-Day statutes to combat fraud and corruption, not in response to "a problem of ballot receipt." Pet.Br.30-32. Setting aside the obvious problems of Mississippi's "psychoanalysis" of "what Congress probably had in mind" when enacting the Election-Day statutes, *United States v. Pub. Util. Comm'n*, 345 U.S. 295, 319 (1943) (Jackson, J., concurring), the notion that ballot receipt has nothing to do with election fraud (or suspicions about election fraud) is fanciful, *see infra*, pp.46-47, especially in the context of absentee voting, *see Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 685 (2021). Mississippi also ignores Congress' textually evident concern with uniformity. *See Foster*, 522 U.S. at 73 (noting that Congress sought to remedy "more than one evil" in enacting the statutes). All good things, including elections, must end, and Congress wanted the election to end on Election Day nationwide. Just as a vote does not count until it is received, the election cannot end until the ballot boxes are closed. Letting votes trickle in for days and weeks after the date Congress specified for the election cannot be squared with the statutes Congress enacted.

Finally, Petitioners insist that state post-election receipt laws cannot be preempted because the Election-Day statutes do not explicitly say "ballots must be received by Election Day." *See* Pet.Br.38-39; VVF.Br.19-20. Petitioners thus insist that states are

free to experiment and adopt post-election receipt deadlines akin to a "mailbox rule" as a "policy choice." Pet.App.28, 38. But that misunderstands how the preemption inquiry works in this unique context. A state law need not create a "direct conflict" with the text of the federal statute to be invalid under the Elections Clause; it is enough that it is simply "inconsistent with" that statute. *ITCA*, 570 U.S. at 15. As explained above, text, historical context, and precedent all indicate that the term "election" as used in the Election-Day statutes includes ballot receipt, so states lack the discretion to choose when ballots must be received into official custody. That must happen by Election Day.

B. Congress Has Neither Endorsed nor Acquiesced to Post-Election-Day Receipt of Mail Ballots.

Unlike Mississippi, VVF devotes the lion's share of its brief to arguments based on legislative history and ostensible congressional acquiescence and approval of post-election ballot-receipt deadlines. VVF.Br.28-51. Those arguments are meritless and no match for the text, historical practice, or precedent—all of which establish that the ordinary meaning of an "election" includes ballot receipt.

1. To the extent VVF invokes "legislative acquiescence," VVF.Br.49-50, its argument is a non-starter. "Congressional inaction cannot amend a duly enacted statute." *Cent. Bank of Denv. v. First Interstate Bank of Denv.*, 511 U.S. 164, 186 (1994). Nor does VVF improve its lot by framing its argument in terms of congressional "incorporat[ion]" of state post-election receipt deadlines. VVF.Br.50. The

question before the Court concerns the meaning of "the election" at the time the Election-Day statutes were enacted, which in turn informs the preemptive scope of those statutes. "[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one," *United States v. Price*, 361 U.S. 304, 313 (1960), and thus it is neither here nor there whether Congress "in 1942, 1944, 1970, 1986, and 2009" thought that ballots could or could not be received on Election Day, VVF.Br.49.

VVF's argument runs into a more fundamental problem. Virtually all of the statutes VVF cites arise in the narrow context of absentee ballots cast by overseas voters. Congress' treatment of ballots in that specific atypical setting sheds little light on what baseline rule the Election-Day statutes impose. The specific controls the general in the specific context in which it applies, but using specialized statutes to displace the meaning of statutes designed to supply the general rule for federal elections nationwide gets matters backwards.

2. At any rate, the enactments VVF invokes do not even demonstrate congressional acquiescence or approval. VVF spends considerable time scrutinizing two short-lived wartime statutes—from 1942 and 1944—imposing specific ballot-receipt deadlines to argue that the Election-Day statutes did not "already impose" ballot-receipt deadlines. VVF.Br.38-42 (citing Pub. L. No. 77-712, 56 Stat. 753 (1942); Pub. L. No. 78-277, 58 Stat. 136 (1944)). The statutes do not support that argument.

The 1942 Act created the federal war ballot, which the military could use to cast their votes (in federal

and certain state elections) rather than rely on state-created absentee ballots. *See* §§1, 5, 56 Stat. at 753, 754-55. Consistent with the Election-Day statutes, the Act instructed that war ballots would be invalid if "received by the appropriate election officials of the [State] … after the hour of the closing of the polls on the date of … holding the election." §9, 56 Stat. at 756. That reinforces the understanding that the election is over when the polls close and thus the ballot receipt must occur by Election Day for the vote to count. It does not, as VVF suggests, VVF.Br.49-50, produce surplusage because the 1942 act addresses the newly created federal war ballot and extends the ballot-receipt deadline to new contexts not covered by the general federal Election-Day statutes—primary elections, *see* §13, 56 Stat. at 757, and even elections for state officers, if authorized by the state, *see* §5(a), 56 Stat. at 754. *Accord J.E.M. Ag Supply v. Pioneer Hi-Bred Int'l*, 534 U.S. 124, 144 (2001). VVF emphasizes §12, which allows members of the military "to vote … in accordance with the law of the State of his residence." VVF.Br.39. But that provision just makes clear that voters have the option of using the war ballot or state-issued absentee ballots. It should not be read to incorporate states' post-election receipt deadlines simply because Congress "did not displace" those existing practices "expressly." VVF.Br.39.

VVF's arguments about the 1944 act fare little better. VVF identifies a provision explaining that "any extension of time for the receipt of absentee ballots permitted by State laws shall apply to ballots cast under this title." §311(b)(3), 58 Stat. at 146. VVF.Br.40-41. That refinement of the procedures available to servicemembers given the availability of a

specialized federal war ballot says next to nothing about the Election-Day statutes enacted by different Congresses decades earlier. Moreover, whatever limited value that provision offers is weakened further by the fact that Congress repealed it two years later in 1946. *See* Pub. L. No. 79-348, 60 Stat. 96 (1946). That rapid repeal underscores that §311(b)(3) was a short-lived wartime accommodation—not a durable gloss on the meaning of "election" in the Election-Day statutes.

The 1970 amendments to the Voting Rights Act take us three decades further removed from original meaning, but they do not otherwise move the needle. VVF invokes language in those amendments stating that "[n]othing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein," Pub. L. No. 91-285, §202(g), 84 Stat. 314, 317 (1970) (codified at 52 U.S.C. §10502(g)), to prove that states "*may* accept absentee ballots that arrive later" than Election Day, VVF.Br.44. That is wrong. The "voting practices … prescribed herein" do not include the federal Election-Day statutes, and thus the 1970 amendments say nothing about the baseline rule of Election-Day ballot receipt that those statutes establish. Moreover, these changes apply only to presidential elections and not congressional elections, §202(a)-(g), 84 Stat. at 316-17—providing yet another reason the amendments do not support VVF's inference that Congress allowed ballots to be received after Election Day all along.

VVF relies heavily on the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") to suggest that Congress approved state post-election

ballot receipt deadlines. VVF.Br.44-46. But that statute did no such thing. UOCAVA provides that a *federal* absentee ballot "shall not be counted" if a state receives a *state* absentee ballot by "the deadline for receipt of [that] ballot under State law." 52 U.S.C. §20303(b)(3). In other words, it ensures that an overseas absentee voter does not get to vote twice—if a voter submits both a federal ballot and a state ballot, the former does not count if the latter is timely received. So why set the deadline for the state ballot by reference to state law rather than Election Day? The answer is because at least one state at the time required absentee ballots to be received *before* Election Day. *See* §206, 1986 Miss. Laws 773, 832. Congress thus preserved the pre-election receipt deadlines that existed in those states.

Finally, VVF cites the MOVE Act's amendments to UOCAVA, which requires federal military officials to transmit overseas ballots to state 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). Setting aside the fact that this provision does not regulate absentee voters one way or another, it is also explained by the fact that some states at the time—as now—require absentee ballots to be delivered before the day set for federal elections. *See* §206, 1986 Miss. Laws 773, 832; §1308(c), 1987 La. Sess. Law Serv. 831; La. R.S. 18:1308(C).

At the very most, these provisions show that Congress created certain carveouts from the general rule for exceptional circumstances involving absentee ballots cast by members of the armed forces overseas.

They do not establish that, when Congress enacted the Election-Day statutes in 1845, 1872, and 1914, an "election" excluded ballot receipt.

3. If anything, the subsequent congressional enactments highlighted by VVF support *Respondent*'s reading of the statute. Congress repeatedly used the word "election" in the relevant statutes to refer to the combined process of ballot submission and receipt. For example, both the Civil Rights Act of 1960 and the Voting Rights Act of 1965 define voting to include "casting a ballot" and "having such ballot counted properly and included in the appropriate totals of votes" for candidates and ballot propositions "for which votes are received *in an election*." *See* Pub. L. No. 89-110, §14(c)(1), 79 Stat. 437, 445 (1965) (codified at 52 U.S.C. §10310(c)(1)) (emphasis added); Pub. L. No. 86-449, 74 Stat. 86, 91 (1960) (codified at 52 U.S.C. §10101(e)). By describing a vote as something that is "received *in an election*," Congress demonstrated its understanding that ballot receipt is part and parcel of an "election." *See also* 52 U.S.C. §10308(b) (describing a ballot as something that is "cast in [an] election"). That supports interpreting "election" in this context to encompass ballot receipt. *See supra*, p.16 & n.5 (state codes referencing voting as what happens "at" an election).

C. Petitioners' Strained Reliance on *RNC v. DNC* Lacks Merit.

Petitioners' invocation of *Republican National Committee v. Democratic National Committee*, 589 U.S. 423 (2020) (per curiam) ("*RNC*"), gets them nowhere. They boldly claim that the *RNC* decision stands for the proposition that "ballot receipt is not

part of an election." Pet.Br.27. That decision arose from an emergency stay application filed with this Court in the early weeks of the pandemic. The "narrow" question before the Court was whether absentee ballots in Wisconsin's primary election "must be mailed and postmarked by election day, Tuesday, April 7, as state law would necessarily require," or if those ballots may instead (as the district court ordered) be "mailed and postmarked after election day, so long as they are received by Monday, April 13." *RNC*, 589 U.S. at 423-24.

"Importantly," the plaintiffs had not asked the district court to "allow ballots mailed and postmarked after election day … to be counted." *Id.* at 424. "By changing the election rules so close to the election date and by affording relief that the plaintiffs themselves did not ask for in their preliminary injunction motions," the district court violated principles foreclosing federal courts from "alter[ing] the election rules on the eve of an election." *Id.* (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). The Court observed in passing that "the deadline … to receive absentee ballots has been extended from [election day] to Monday, April 13," but noted that the legality of "[t]hat extension … *[was] not challenged in this Court*." *Id.* at 423-24 (emphasis added).

RNC has no bearing on the question presented here for multiple reasons. First, that decision did not turn on the meaning of an "election." It certainly did not involve the Election-Day statutes because the stay application arose from Wisconsin's *primary* election, the timing of which is governed exclusively by state law. Nor did *RNC* address the meaning of "election"

more generally. The Court's holding instead rested on the district court's failure to abide by the *Purcell* limits on a federal court's equitable authority. *See id.* at 424. Second, Petitioners read too much into the fact that the Court's disposition permitted votes to be received after Election Day. The receipt-deadline extension was "not challenged" in this Court. *Id.* at 423. As important as the federal election deadline is, it is not jurisdictional, so this Court was under no obligation to raise it itself. If drive-by jurisdictional rulings are entitled to "no precedential effect," *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 511 (2006), a non-jurisdictional, non-ruling (on an emergency motion, no less) carries no force whatsoever. Indeed, Petitioners' felt-need to rely on *RNC* only underscores the utter paucity of actual authority for their position.

D. Policy Concerns Cannot Rewrite the Election-Day Statutes.

As a final resort, Petitioners and amici raise a flood of arguments about why faithful application of the Election-Day statutes makes for bad policy. Those policy arguments cannot overcome what the plain text of the Election-Day statutes require. But that aside, their arguments are wide of the mark. There are compelling policy arguments in favor of having the election end when the ballot box closes on Election Day. And the one thing all parties can agree on is that the Elections and Electors Clauses give Congress the power to adjust the rules in the unlikely event that Petitioners' arguments gain traction with the body to which those arguments are properly directed.

Petitioners and their amici worry that affirming the judgment below would invalidate a slew of state

laws. But they neglect to mention that up until 2014, the overwhelming majority of states imposed Election Day deadlines for ballot receipt. *See supra*, pp.23-28. Indeed, until the early 2000s, post-election receipt deadlines were the rare exception rather than the rule.[23] Far from having "disastrous consequences," DNC.Amicus.Br.27 (capitalization altered), affirming the judgment would just return things to the status quo that largely prevailed for more than two centuries. And contrary to their contentions, affirming the decision below would not interfere with the ability of "overseas citizens, rural voters, elderly and disabled voters, and voters lacking reliable transportation" from voting absentee. No matter what the deadline is, there will always be a few voters who miss it. *See Democratic Nat'l Comm. v. Wis. Legislature*, 141 S.Ct. 28, 39 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) ("*DNC*"). If anything, having a single clear nationwide deadline should avoid confusion and make it easier to comply.

In reality, the policy arguments cut the other way. As several members of Congress explained at the time, the absence of a uniform Election Day invites fraud—and, just as important, the appearance of fraud. Morley.Amicus.Br.9-17 (collecting sources). The relevant Congresses addressed those concerns about fraud with a uniform federal deadline. And there is no serious debate that a uniform federal deadline for casting *and receiving* ballots better serves that federal interest. As members of this Court have recognized,

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[23] In all events, Congress of course remains free to carve out exceptions from the general rule that the Election-Day statutes set.

there are "important reasons" to "require absentee ballots to be *received* by election day, not just *mailed* by election day." *DNC*, 141 S.Ct. at 33 (Kavanaugh, J., concurring). That rule "avoid[s] the chaos and suspicions of impropriety that can ensue if thousands of absentee ballots flow in after election day and potentially flip the results of an election." *Id.*

As things stand under state law, the ballot boxes remain open in some states for days and even weeks after the day designated by Congress to bring the election to a close. That reality would make no sense to the legislators who enacted the Election-Day statutes or the voters who first read them. Instead, the original public meaning and the common sense of the matter is that the polls and the ballot box should close on Election Day. That allows the counting to begin promptly and substantially reduces both the opportunities for fraud and the perception that the votes are still coming in from precincts that favor one candidate or the other. In short, the policy arguments, plain text and common sense are in one accord: the election ends when the ballot box is closed, and federal law commands that to happen on Election Day.

CONCLUSION

This Court should affirm.

Respectfully submitted,

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