No. 24-1260

In the Supreme Court of the United States

MICHAEL WATSON, MISSISSIPPI SECRETARY OF STATE,
Petitioner,

v.

REPUBLICAN NATIONAL COMMITTEE, ET AL.,
Respondents.

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

BRIEF FOR THE REPUBLICAN PARTY RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Over a century ago, Congress designated "the day for the election" for U.S. House, Senate, and President. *See* 2 U.S.C. §§1, 7; 3 U.S.C. §1. This trio of statutes "mandates holding all elections for Congress and the Presidency on a single day throughout the Union." *Foster v. Love*, 522 U.S. 67, 70 (1997). Any state law that "conflicts" with Congress's timing decision is preempted. *Id.* at 74.

During the COVID-19 pandemic, Mississippi enacted emergency legislation to accept absentee ballots "postmarked on or before the date of the election and received by the registrar no more than five (5) business days after the election." Act of July 8, 2020, ch. 472 §1, 2020 Miss. Laws 1411. Mississippi later made that post-election receipt deadline permanent. 2024 Miss. Laws H.B. 1406; Miss. Code §23-15-637(1)(a). In the decision below, the Fifth Circuit held that "[b]ecause Mississippi's statute allows ballot receipt up to five days after the federal election day, it is preempted by federal law." *Republican Nat'l Comm. v. Wetzel*, 120 F.4th 200, 204 (5th Cir. 2024).

The question presented is whether the federal election-day statutes preempt state laws that accept ballots received by election officials after "the day for the election."

RULE 29.6 STATEMENT

Neither the Republican National Committee nor the Mississippi Republican Party has a parent corporation. Neither is publicly held, and no publicly held corporation owns 10% of more of either's stock.

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INTRODUCTION

Congress has established the Tuesday following the first Monday in November as the uniform day for federal elections. *See* 2 U.S.C. §§1, 7; 3 U.S.C. §1. For more than 150 years after the enactment of the first election-day statute, States complied with Congress' mandate by ensuring that the ballot box closed on the federally mandated election day. With rare outliers, the States mandated that ballots must be received by election officials by election day. But recently, an increasing number of States—including Mississippi—have deviated from that practice by permitting at least some ballots to be received after election day. Here, the Fifth Circuit ruled that Mississippi's law permitting ballot receipt after election day "is preempted." App.26a.

The Fifth Circuit's decision raises an important question: whether state officials can accept ballots after the federal election day. Many States have recently adopted post-election receipt of mail-in ballots. These States risk "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." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 33 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay). They reduce the time to resolve post-election disputes. *See id.* And they deprive the electorate of a clear nationwide deadline that "puts all voters on the same footing." *Id.* at 28 (Gorsuch, J., concurring in denial of application to vacate stay).

Vet Voice Foundation and Mississippi Alliance for Retired Americans—who intervened below to defend Mississippi's law—don't dispute that the importance

of the question merits this Court's review. Instead, they ask this Court to delay a resolution based on a standing argument that no party advances. VetVoice-Resp.8-12. Their request to hold this case for *Bost v. Illinois*, No. 24-568, is meritless. *Bost* asks what kind of injury a candidate must allege to challenge the late receipt of ballots. But here, the district court found that the Republican National Committee, Mississippi Republican Party, and Libertarian Party of Mississippi had organizational standing. That conclusion flowed from a straightforward application of established doctrine to a detailed summary-judgment record. And it was sufficiently strong that neither Petitioner—Mississippi Secretary of State Michael Watson—nor Intervenors argued standing on appeal. Even now, Intervenors don't argue that the RNC or the Mississippi Republican Party lack standing. They gloss over the detailed record and decision in this case, instead equating this case and *Bost* based only on a single allegation in the complaint. *See* VetVoice-Resp.8-9 & n.5. They provide no basis to delay consideration of this petition.

While the question in this case is important, this Court should decline review here because the Fifth Circuit answered it correctly. The Secretary asks this Court to grant certiorari and draw a line between "casting" ballots and receiving ballots by election officials. But that line was unknown at the time of the election-day statutes. The Fifth Circuit correctly held as much, persuasively applying text, history, and precedent.

Text and context confirm the Fifth Circuit's view. When the Secretary speaks of an election, he means a voter's selection of a candidate. But "the day for the

election" that Congress refers to means the State's election. As the Fifth Circuit observed, "[t]hose are … not the same thing." App.10a. "[W]hile an individual voter might be able to make his or her selection in private, alone, it makes no sense to say the electorate as a whole has made an election and finally chosen the winner before all voters' selections are received." App.10a.

History overwhelmingly supports the Fifth Circuit's interpretation. The Secretary puts up little fight on that score. He concedes that pre-enactment history shows that elections required election-day receipt of ballots. Pet.25-26. Post-enactment history did, too, for at least several decades. App.14a-18a. Rarely do courts have such a clear picture of uniform public meaning. That history cuts through the Secretary's linguistic debate, and "demonstrates that the election concludes when all ballots are received." App.18a.

Precedent, too, supports the Fifth Circuit's conclusion. This Court has held before that the election-day statutes preempt state law. In *Foster v. Love*, the Court held that Louisiana's open-primary system conflicted with "the day for the election." 522 U.S. at 69. That was true even though the election-day statutes said nothing about open primaries. What mattered was that Louisiana's system consummated the election before "the day for the election." *Id.* Mississippi's *post*-election-day consummation similarly conflicts with Congress's choice.

The Court should deny the petition. It should await a case where the lower court answers the question presented incorrectly, should one ever arise.

STATEMENT OF THE CASE

A. Legal Background

Congress has the final say over the timing of federal elections. The Elections Clause gives States initial authority to determine the "Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, §4. But "Congress may at any time by Law make or alter such Regulations." *Id.* And the Electors Clause vests in "Congress" the power to "determine the Time of chusing the Electors" for the offices of President and Vice President. *Id.*, art. II, §1. State legislatures have power only to "appoint" presidential electors "in such Manner" as they choose. *Id.* The congressional Elections Clause and the presidential Electors Clause are "counterpart[s]" that "regulate the time of the election, a matter on which the Constitution explicitly gives Congress the final say." *Foster*, 522 U.S. at 69, 71-72.

At the Founding, Congress largely stayed out of regulating elections. It set basic ground rules, such as a month-long window for States to appoint presidential electors. *See* Act of Mar. 1, 1792, ch. 8, §1, 1 Stat. 239. But through most of the Nation's first century, "Congress left the actual conduct of federal elections to the diversity of state arrangements." *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1171 (9th Cir. 2001). The result was scattered elections held on different days through the month of November.

As the telegraph ushered in an era of instant communication, Congress foresaw the need for a uniform election day. In 1845, Congress mandated that, in presidential election years, "the 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." Act of Jan. 23, 1845, ch. 1, 5 Stat. 721. After the Civil War, Congress extended the rule to the House of Representatives by providing that "the Tuesday next after the first Monday in November, in every second year … is … established as the day for the election." Act of Feb. 2, 1872, ch. 11, §3, 17 Stat. 28. After the Seventeenth Amendment was ratified, Congress included Senators in the uniform election day. *See* Act of June 4, 1914, ch. 103, §1, 38 Stat. 384. Elections throughout this period were conducted on a single day.

These election-day requirements remain in place. For members of the House of Representatives, "the day for the election" is the "Tuesday next after the 1st Monday in November" in "every even numbered year." 2 U.S.C. §7. Senatorial elections occur at the same time, and Senators are elected "[a]t the regular election held in any State next preceding the expiration of the term for which any Senator was elected … at which election a Representative to Congress is regularly by law to be chosen." *Id.* §1. As for the "President and Vice President," "[t]he electors … shall be appointed, in each State, on election day," meaning "the Tuesday next after the first Monday in November, in every Fourth year." 3 U.S.C. §§1, 21(1).[1]

[1] In 2022, Congress passed the Electoral Count Reform Act, which amended the language governing presidential electors to align it with the historical statutes governing congressional elections. Pub. L. No. 117-328, 136 Stat 4459. Before the Act, federal law provided that "[t]he electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November." 3 U.S.C. §1 (1948). Now, presidential electors are appointed "on election day," 3 U.S.C. §1, which is defined as "the Tuesday next after the first Monday in November,

At the time these requirements were enacted, elections were held on a single day. Absentee voting first appeared during the Civil War, but it did not change the rules of election day. At the beginning of the war, "there was no legislation under which a soldier or sailor, having the right to vote in an election district of any State could vote anywhere outside of his district." Josiah Henry Benton, *Voting in the Field* 5 (1915), perma.cc/QEY2-92FK.

States wanted to ensure that soldiers deployed across the nation could still exercise their right to vote, so they generally employed two methods of absentee voting. The first method was "voting in the field," where an election official took a ballot box to the soldiers to enable them to cast their ballots. *Id.* at 15. Through this method, the soldier'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 in his voting precinct, at home." *Id.* The other method, "proxy voting," let an authorized agent take the soldier's ballot and cast it into the ballot box back home. *Id.* The soldier's agent would deliver his ballot, "[o]n the day of the election, between the opening and the closing of the polls." *Id.* at 145 (describing New York's procedure). "Under this method it was claimed that the voter's connection with his ballot did not end until it was cast into the box at the home precinct, and therefore that the soldier really did vote, not in the field, but in his precinct." *Id.* at 15.

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in every fourth year succeeding every election of a President and Vice President held in each State," with an exception for "force majeure events that are extraordinary and catastrophic, as provided under laws of the State enacted prior to such day," *id.* §21(1).

Under both methods, election officials took custody of the ballots by election day. States devised creative ways to allow their soldiers to vote away from home, revising their laws and even amending their constitutions to do so. But no State thought it a permissible solution to simply require "marking and submitting" the ballot to a carrier, to be delivered on some day after the election. *Contra* Pet.16. Rather, the history shows that States uniformly understood that it mattered *to whom* the voter delivered the ballot. Only after delivering the ballot to an election official could the ballot be considered "cast" and the election complete.

When States revisited absentee voting during World War I, they still required election-day receipt. A number of States returned to the Civil War playbook, requiring either proxy voting or field voting. *See* P. Orman Ray, *Military Absent-Voting Laws*, 12 Am. Pol. Sci. Rev. 461, 461-62 (1918). But other States required ballots to be received at home on or before the election. *See* App.16a. "[E]ven during the height of war-time exigency, a ballot could be counted only if received by Election Day." App.16a (emphasis omitted).

By 1918, several States had adopted a variety of absentee voting laws. Washington, for example, permitted voters to vote anywhere within the State on election day. Ray, *Absent-Voting Laws*, *supra* at 253. Each voter had to vote in person on election day, but they could do so in any district. The election official receiving the ballot could then transmit the ballot to the voter's home district after election day. *See* 1917 Wash. Sess. Laws 712. But even as absentee voting became more common, States generally structured

their system to require ballots to be received by election officials on or before election day. *See* App.16a-17a.

A few States experimented with post-election receipt in the mid-Twentieth Century. But by 1971, only two States counted ballots received after election day. *See* Overseas Absentee Voting: Hearing on S. 703 before the S. Comm. on Rules and Admin., 95th Cong. 33-34 (1977).

Post-election ballot receipt surged during the COVID-19 pandemic. Among the States that changed their rules, Mississippi enacted emergency legislation permitting receipt of a ballot up to five business days after the election so long as the ballot is postmarked by election day. Act of July 8, 2020, ch. 472 §1, 2020 Miss. Laws 1411. Although other States reverted to their election-day deadlines after the pandemic, Mississippi made its post-election receipt deadline permanent. 2024 Miss. Laws H.B. 1406; Miss. Code §23-15-637(1)(a).

Mississippi is not alone. Sixteen States currently allow post-election-day receipt of mail ballots. *Table 11: Receipt and Postmark Deadlines for Absentee/Mail Ballots*, Nat'l Conf. of State Legislatures (Aug. 1, 2025), bit.ly/45uZhOb. Illinois counts ballots that are received up to fourteen days after election day, so long as the ballot was postmarked or certified on or before election day. 10 Ill. Comp. Stat. 5/19-8. Washington doesn't even have a deadline. So long as the ballot is "postmarked no later than the day of the primary or election," it's counted. Wash. Rev. Code §29A.40.110(3). Even "[i]f the postmark is missing or illegible," Washington accepts the "date on the ballot

declaration" in lieu of the postmark. *Id.* §29A.40.110(4).

Nevada's postmark rule is receipt by "5 p.m. on the fourth day following the election." Nev. Rev. Stat. §293.269921(1)(b)(2). But if "the date of the postmark cannot be determined," Nevada will still *presume* the ballot was sent before the election so long as it's received by "5 p.m. on the third day following the election." *Id.* §293.269921(2). In fact, the Nevada Supreme Court said the "presumption that a ballot was cast in time" applies "even if it lacks a postmark." *Republican Nat'l Comm. v. Aguilar*, 558 P.3d 895 (Nev. 2024) (table op.) (cleaned up). New Jersey requires no presumption. Mail ballots that do "not bear a postmark date" are counted so long as they are received "within 48 hours" after "the closing of the polls." N.J. Stat. §19:63-22(a).

B. Procedural Background

The Republican National Committee, the Mississippi Republican Party, Mississippi voter James Perry, and county election commissioner Matthew Lamb sued the state officials responsible for enforcing Mississippi's ballot-receipt deadline. ROA.23-36. They claim that the federal election-day statutes preempt Mississippi's law accepting ballots that are received after election day. ROA.33-36. And they claim that the law violates their First and Fourteenth Amendment rights, enforceable through 42 U.S.C. §1983. App.5a; *cf. Love v. Foster*, 90 F.3d 1026, 1028 (5th Cir. 1996) (granting "declaratory and injunctive relief … under 42 U.S.C. §1983"), *aff'd*, 522 U.S. 67.

The Libertarian Party of Mississippi filed a separate suit against the same defendants raising the same claims. App.5a. The district court consolidated

the cases and allowed Vet Voice Foundation and the Mississippi Alliance for Retired Americans to intervene as defendants. App.5a-6a & n.2. The parties agreed to cross-motions for summary judgment.

The district court granted summary judgment for the defendants. App.59a-85a. It ruled in the plaintiffs' favor on justiciability, finding that the political committees have Article III standing. App.62-72a. The district court pointed to both "economic loss and diversion of resources" by the RNC and Mississippi Republican Party. App.70a. As a result of "more extensive and expensive ballot-chasing and poll-watching efforts," the RNC and Mississippi Republican Party would have to curtail "specific activities and projects" to promote their core mission of electing Republicans. App.68a. These activities included "registration of Republican voters and efforts to increase in-person turnout." *Id.* The result would be "frustrat[ion] and imped[iment]" of "the Republican Party's mission." *Id.*

On the merits, the district court ruled in the defendants' favor, holding that Mississippi's law didn't conflict with the federal election-day statutes. App.72a-82a. The district court reasoned that "no 'final selection' is made after the federal election day under Mississippi's law," because "[a]ll that occurs after election day is the delivery and counting of ballots." App.79a (emphasis omitted). The court dismissed the plaintiffs' rebuttal that "no ballots are 'cast' until they are in the custody of election officials," reasoning that "their only authority for this proposition is a Montana state-court decision from 1944." *Id.* The court looked to court-ordered extensions of ballot-receipt deadlines under the Uniformed and Overseas

Citizen Absentee Voting Act, and concluded that it must read Mississippi's law "in harmony" with those orders. App.79a-80a. The court declined to consult history and tradition to discern the meaning of "election," instead relying on the "persuasive" reasoning of other district-court opinions. App.78a-82a. The court thus ruled that Mississippi's post-election receipt rule "is consistent with federal law." App.84a. And it dismissed the plaintiffs' constitutional claims, which it reasoned "stand or fall on whether the Mississippi absentee-ballots statute conflicts with federal law." App.82a.

The plaintiffs appealed to the Fifth Circuit. A unanimous panel reversed in part, vacated in part, and remanded. The Fifth Circuit first acknowledged that the plaintiffs' standing "fits comfortably within our precedents." App.6a n.3. Then the court reversed on the merits, holding that "'day for the election' is the day by which ballots must be both *cast* by voters and *received* by state officials." App.3a. "Text, precedent, and historical practice" each support that conclusion. App.2a-3a.

The court began with the text. It found that dictionaries don't "shed light on Congress's use of the word 'election' in the nineteenth century" because most "make no mention of deadlines or ballot receipt." App.8a-9a n.5.

The Fifth Circuit next turned to this Court's decision in *Foster v. Love*. There, this Court held that Louisiana's open-primary system, which allowed elections to be concluded "without any action to be taken on federal election day," violated the election day. *Foster*, 522 U.S. at 68-69. The Court reasoned 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." *Id.* at 71. *Foster* didn't require the Court to "isolat[e] precisely what acts a State must cause to be done on federal election day," but it found that a State cannot conclude an election "as a matter of law before the federal election day, with no act in law or in fact to take place on the date chosen by Congress." *Id.* at 72. Because Louisiana's open-primary statute "conflict[ed] with federal law," the Court declared it "void." *Id.* at 74.

The Fifth Circuit found several guiding principles in this Court's decision. First, "*Foster* teaches that elections involve an element of government action." App.9a. Quoting *Foster*, the Fifth Circuit observed 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.'" App.9a (quoting *Foster*, 522 U.S. at 71). The court thus rejected the State's argument that "a ballot can be 'cast' before it is received" by election officials. App.10a.

Second, the Fifth Circuit recognized that the "day for the election" requires "finality." App.10a-12a. It distinguished between an individual "voter's *selection* of a candidate" and "the public's *election* of the candidate." App.10a. An "election" is final only "when the final ballots are received and the *electorate*, not the individual *selector*, has chosen." App.11a. The Fifth Circuit supported that conclusion with Mississippi's own law, under which mail ballots "'shall be final, if accepted by the Resolution Board' after receipt, processing, and deposit into a secure ballot box." App.11a (quoting 01-17 Miss. Code R. §2.3(a)). It also pointed

to the only case in decades to confront this issue, in which "the Montana Supreme Court found the Electors Clause preempted a state law that allowed receipt of ballots after Election Day." App.11a (citing *Maddox v. Bd. of State Canvassers*, 149 P.2d 112 (Mont. 1944)). And it supported the conclusion with federal postal-service rules, which allow "senders to recall mail." App.12a (citing Domestic Mail Manual, §§507.5, 703.8; 39 C.F.R. §§111.1, 211.2). The court concluded that each source "undermines the State's claim that ballots are 'final' when mailed." App.12a.

Third, the Fifth Circuit respected this Court's holding that an election "'may not be *consummated* prior to federal election day.'" App.12a (quoting *Foster*, 522 U.S. at 72 n.4). Looking to other cases that upheld early-voting procedures, the court reasoned that "the election is consummated when the last ballot is received and the ballot box is closed." App.12a-13a. Although States count, tabulate, and reconcile ballots after election day, it is the "*[r]eceipt* of the last ballot" that "constitutes consummation of the election, and it must occur on Election Day." App.13a.

"History confirms that 'election' includes both ballot casting and ballot receipt." App.14a. "[A]t the time Congress established a uniform election day in 1845 and 1872, voting and ballot receipt necessarily occurred at the same time." *Id.* Field voting and proxy voting during the Civil War confirmed "that official receipt marked the end of voting." App.15a-16a. And the scattered "'late-in-time outliers'" implementing post-election receipt in the 20th Century "say nothing about the original public meaning of the Election-Day statutes." App.18a.

The court found the defendants' counterarguments unpersuasive. The other federal statutes on which defendants relied, it observed, "are *silent* on the deadline for ballot receipt," and so have little bearing on the meaning of "election." App.19a-20a. And even when some statutes permitted exceptions, "the fact that Congress authorized a narrow exception for potentially ineligible voters to cast provisional ballots after Election Day does not impliedly repeal all of the other federal laws that impose a singular, uniform Election Day for every other voter in America." App.21a-23a. Because the Elections Clause permits Congress to "alter such Regulations," U.S. Const. art. I, §4, those statutes prove at most that when "Congress wants to make exceptions to the federal Election Day statutes, it has done so," App.23a.

The court next rejected the Secretary's "mailbox" theory of finality. The theory suffered from the same problem as the Secretary's textual argument, confusing an individual voter's *selection* on a ballot with the State's *election* conducted every two years. App.23a. The court also rejected the Secretary's expansive reading of *Republican National Committee v. Democratic National Committee*, 589 U.S. 423 (2020). In that case, this Court reversed a district-court decision that "would allow voters to mail their ballots after election day." *Id.* at 426. The Fifth Circuit rejected the Secretary's argument that *RNC v. DNC* "proves the act of mailing ballots equates to voting." App.24a. That reading is neither "logical nor necessary." App.24a.

The Fifth Circuit thus reversed on the merits and remanded to the district court for further proceedings. App.24a-25a. After the full Fifth Circuit denied

intervenor-defendants' petition for rehearing en banc, the Secretary timely petitioned for a writ of certiorari.

REASONS FOR DENYING THE PETITION

I. There is no reason to hold for *Bost*.

Intervenors Vet Voice Foundation and the Mississippi Alliance for Retired Americans agree that the Fifth Circuit's decision is "exceptionally important" and "will warrant the Court's review." VetVoice-Resp.1. But they urge this Court to delay resolving the merits, potentially for another election cycle. They argue that this Court should hold this petition because *Bost v. Illinois State Board of Elections*, No. 24-568, will address standing in a case "like this one." VetVoice-Resp.10.

Intervenors gloss over the many differences between *Bost* and this case. Here the lower courts found standing on a different basis—organizational standing. The district court's findings were supported by a detailed record presented on summary judgment. And both the Secretary and Intervenors abandoned their standing arguments on appeal. Even now, Intervenors don't argue that the RNC and Mississippi Republican Party *lack* standing. *See* VetVoice-Resp.8-12.

The lower courts' standing decision has little in common with *Bost*. The Seventh Circuit's decision in *Bost* focused on what is required for an individual candidate to show standing. It found that any harm to candidates was "speculative at best" because late ballots might not cause them to lose the election. *Bost v. Ill. State Bd. of Elections*, 114 F.4th 634, 642 (7th Cir. 2024). And it rejected any competitive injury because "Plaintiffs do not (and cannot) allege" that most late votes "will break against them." *Id.* at 643; *cf.* RNC

Amicus Br., *Bost*, No. 24-568 (arguing in favor of Appellants' standing). But here, the district court found standing by applying the well-established organizational standing doctrine. The political-party plaintiffs here suffered "economic injury" to themselves. App.71a. These harms included the "more extensive and expensive ballot-chasing and poll-watching efforts" that the RNC and Mississippi Republican Party must undertake. App.68a. But they also included "specific activities and projects" that the parties proved they must curtail, including "registration of Republican voters and efforts to increase in-person turnout." App.68a. When no party disputed standing on appeal, the Fifth Circuit noted "[t]hat is presumably because this case fits comfortably within our precedents." App.6a n.3.

Intervenors' weak attempt to tie this case to *Bost* only highlights the distance between the two. They make only one specific comparison between the cases: that the complaints in both cases allege economic harm and misdirection of resources. VetVoice-Resp.9 n.5. They ignore that this case turned on organizational standing, while the Seventh Circuit in *Bost* focused on whether an individual candidate had alleged harm to his ultimate electoral prospects. Worse, they ignore that the district court's summary-judgment decision here relied on testimony showing both an economic harm and diversion of resources from the RNC and Mississippi Republican Party's core mission. *See* App.62a-72a.

This single comparison is especially weak because Plaintiffs advanced—and introduced evidence to support—several standing theories. ROA.796-815. These

standing bases included competitive injuries,[2] ROA.796-803; individual voters' injuries from unlawful vote dilution, ROA.808-12; and county election officials' injuries in enforcing irreconcilable laws. ROA.812-14. One of those theories—associational injuries on behalf of Republican candidates—turns on injuries similar to those alleged in *Bost*. ROA.803-08. But neither the district court nor the Fifth Circuit addressed that theory. They had no need to, since one plaintiff with one viable theory of standing is enough to satisfy Article III. *Town of Chester v. Laroe Ests.*, 581 U.S. 433, 439 (2017).

In any event, no one has disputed the Republican committees' standing since the district court. For good reason. The RNC and Mississippi Republican Party introduced testimony that they must expend additional resources toward getting out the absentee vote and poll watching as a result of Mississippi's statute. In addition to the economic costs of these actions, the diversion of resources "'directly harms'" the mission of the Republican parties. App.67a. They must direct resources away from activities "critical" to their core mission, including registering voters, get-out-the-vote efforts, and election integrity efforts. App.67a-68a. In other words, the Republican plaintiffs made—and the district court credited—a classic case for

[2] The Democratic National Committee has since conceded that late-arriving absentee ballots disproportionately favor Democratic candidates. *See Democratic Nat'l Comm. v. Trump*, Doc. 1 at 34-35, No. 1:25-cv-952 (D.D.C. Mar. 31, 2025). That's in part because "Democratic voters use mail ballots at higher rates than their Republican counterparts in many States," and because "voters whose ballots are rejected due to receipt past the deadline are disproportionately those from groups of citizens who tend to be registered Democrats." *Id.*

organizational standing. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024) (discussing organizational standing where "actions directly affected and interfered with … core business activities").

II. The Fifth Circuit's decision is correct.

Though the question in this case is important, this Court should decline to review for a simple reason: the Fifth Circuit correctly held that the federal election day "is the day by which ballots must be both *cast* by voters and *received* by state officials." App.3a. So long as election officials continue to accept ballots, the election isn't over; "the proverbial ballot box" is not "closed." App.10a. A post-election receipt deadline for mail ballots thus extends "the election" beyond the "day" set by Congress. Text, history, and precedent all confirm this conclusion. And it is consistent with the only other appellate court to address the question. *See Maddox*, 149 P.2d at 112. This Court need not use its scarce resources to review decisions that are already correct.

A. The meaning of "the day for the election" is the day ballots are received by election officials.

This Court interprets statutes "consistent with their ordinary meaning at the time Congress enacted the statute." *Wis. Cent. v. United States*, 585 U.S. 274, 277 (2018) (cleaned up). At the time Congress established the national election day, the day of an "election" meant "[t]he day of a public choice of officers." Noah Webster, *Election*, *An American Dictionary of the English Language* 288 (1830). Around the time Congress extended the provision to congressional elections, it meant "[t]he act or process of choosing a

person or persons for office by vote." *Election*, 3 *The Century Dictionary and Cyclopedia* 1866 (1901). These definitions indicate that election day is the day for a final public selection of officers. And no final public selection has occurred until the ballot box is closed.

The Secretary argues that "election" instead refers only to a final selection by individual voters. Pet.16-17. He focuses on language defining an election as an "act of choosing," *Foster*, 522 U.S. at 71 (quoting Noah Webster, *An American Dictionary of the English Language* 433 (1869)), or making a "selection," *id*. *See* Pet.16-17. From this language, he concludes that election day "the day by which voters must *conclusively choose* federal officers." Pet.17. Thus, what matters is whether voters have submitted their ballots, even if the ballot box remains open to receive ballots after election day. *Id*. at 17-18.

The Secretary doesn't explain why these definitions support his "voter selection" definition. After all, none of those definitions say anything about "marking and submitting" a ballot. *See* Pet.16-17. They instead emphasize that an election requires a final or definitive choice. The Secretary backfills his preferred theory into words like "final choice" and "final selection." Pet.17. But he gives no reason why finality requires drawing the line after "submitting" the ballot as opposed to earlier (marking the ballot) or later (receiving the ballot). The definitions don't advance his theory, as the Fifth Circuit correctly observed. *See* App.8a-9a n.5.

The Secretary's own definitions refute his narrow focus on voter selection. For example, he cites a nineteenth century definition of election: "The act or the public ceremony of choosing officers of government."

Pet.17 (citing Joseph E. Worcester, *Dictionary of the English Language* 469 (1860)). And *Foster* explained that the election-day statutes "plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder." 522 U.S. at 71. These definitions highlight the need for a public act to make the decision final—and the public act that makes the choice of a candidate final is the closing of the ballot box.

Even if dictionaries supported the Secretary's voter-selection definition, context confirms that definition doesn't apply here. The word "election" can carry different meanings. A "voter's election" is different from a "candidate's election," which is different from a "State's election." The word "election" in each of those uses conveys a different meaning: the "voter's choice," the "candidate's victory," and the "State's process," respectively. The Fifth Circuit understood these differences: "A voter's *selection* of a candidate differs from the public's *election* of the candidate." App.10a When Congress established the "day for the election," it regulated when States could *conduct* elections. Congress wasn't regulating each individual voter's choice, as the Secretary suggests—it was regulating the State's administrative process of facilitating voting.

The Secretary's theory is at odds with a statute regulating when States hold elections. For example, under the Secretary's theory, "only ballot casting," but not ballot receipt, "is essential to the election." Pet.20. Ballot receipt may not be essential for a single voter to make her "selection," but it's essential for a State to *conduct* an election. When an "election" is properly understood as the State's process of facilitating voting, the Secretary's view that ballot receipt isn't

"essential" makes no sense. *Id.* Courts have long understood that "[n]othing short of the delivery of the ballot to the election officials for deposit in the ballot box constitutes casting the ballot." *Maddox*, 149 P.2d at 115. Mississippi's regulations agree. *See* 01-17 Miss. Code R. §2.1 (indicating an "Absentee Ballot Cast" is a ballot that "is marked accepted").[3]

The Secretary's voter-selection theory is also at odds with the very law he defends. Although the Secretary insists the election concludes when a ballot is "marked and submitted," Mississippi doesn't treat all ballots "marked and submitted" as valid, final votes. *Cf.* Pet.18. To be accepted as final ballots, mail ballots must first be postmarked (by someone who is neither the voter nor an election official). Miss. Code §23-15-637(1)(a). The ballots must then be "received by the registrar" within five business days of the election (delivered by someone who is neither the voter nor an election official). *Id.* If either element is missing, even a ballot that the voter "marked and submitted" isn't a final, valid ballot under state law.

Finally, the Fifth Circuit correctly rejected the Secretary's reliance on other statutes to support post-election receipt. Below, the Secretary argued that other federal statutes—the Voting Rights Act, the Help America Vote Act, and the Uniform and

[3] No "presumption against pre-emption" applies to the election-day statutes. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 14-15 (2013). Elections Clause legislation "*necessarily* displaces some element of a pre-existing legal regime erected by the States." *Id.* at 14. "Because the power the Elections Clause confers is none other than the power to pre-empt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress's pre-emptive intent." *Id.*

Overseas Citizens Absentee Voting Act—show that "Congress 'has reinforced that the federal election-day statutes do not require ballot receipt by election day.'" App.19a (quoting Sec'y CA5 Resp. Br. 2). The Secretary no longer defends that view. Instead, he criticizes the Fifth Circuit for rebutting it, and shifts the goalposts by arguing that the statutes don't "show[] that the federal election-day statutes require ballot receipt by election day." Pet.26-28. But the court correctly observed that the statutes relied on by the Secretary "are *silent* on the deadline for ballot receipt." App.19a. That silence—and the Secretary's newfound reluctance to rely on it—is reason enough to disregard the notion that those federal statutes implicitly amended Congress's election-day deadline.

B. History proves that States understood "election day" as the day ballots are received by election officials.

The Secretary doesn't contest that, for almost all of the Nation's first hundred years, "voting and ballot receipt necessarily occurred at the same time." App.14a. That's a significant concession, since pre-enactment history is generally the best source of fixed public meaning. *See N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1 (2022). The States' unbroken, uniform, decades-long practice of ending ballot receipt on election day is strong evidence that the practice was part and parcel of conducting an "election."

The Secretary argues "there was little or no reason for another practice" during that time because voting was done in person. Pet.26. But that argument highlights the implausibility of the Secretary's definition of ballot casting to exclude receipt. An ordinary person would not understand an "election" to require ballot-

marking but not official receipt when all elections were conducted in a way that made that distinction impossible. Mississippi isn't excused from complying with the "historically fixed meaning" just because its law deviates in other ways from the historical practice. *Cf. Bruen*, 597 U.S. at 27-31.

Even when it comes to absentee voting, the Secretary gives up virtually all of the history. The Secretary doesn't attempt to rebut the Civil War history, which "demonstrates that the election concludes when all ballots are received." App.18a. The Secretary obliquely relies on Judge Graves' opinion dissenting from the denial of rehearing en banc (which in turn relied on the United States' amicus brief). *See* Pet.25. But the supposed counterexamples don't rebut the panel's conclusion that States understood the "election" to require receipt of ballots by election officials. Pennsylvania and Nevada allowed "field voting," which, as the majority explained, "involved soldiers directly placing their ballots into official custody with no carrier or intermediary." App.15a; *see* Act of Mar. 29, 1813, ch. 171, 1813 Pa. Laws 213, 214 (providing procedures for soldiers to hold an "election" in the field "on the second Tuesday in November next"); Act of Mar. 21, 1864, ch. 36, 13 Stat. 30-32 (federal law allowing soldiers to vote in the field to admit Nevada into the Union).

The Secretary doesn't explain why those States actually *conducted an election* on election day, rather than simply collect ballots and ship them back home. And although a Rhode Island constitutional amendment permitted soldiers' ballots to be returned "'to the Secretary of State within the time prescribed by law for counting votes in such elections,'" App.49a

(cleaned up), the legislature "did not undertake for many years to pass any act under this amendment," Benton, *supra*, at 187-88. These supposed counterexamples prove the Fifth Circuit right. The uniform practice of States for decades after Congress instituted the national "day for the election" was to require ballots to be delivered to election officials on that day. Everyone understood that's what it meant to conduct an "election."

The Secretary hasn't shown any similar historical practice to Mississippi's law addressing the issue of absentee voting. *See Bruen*, 597 U.S. at 26. That States addressed absentee voting "through materially different means" like field voting and proxy voting without permitting post-election receipt is "evidence that a modern regulation" doesn't comport with the statutes' meaning. *Id.* at 26-27. And that one of the early post-election receipt deadlines was "rejected on constitutional grounds" is "probative evidence" that post-election receipt is unlawful. *Id.* at 27; *see Maddox*, 149 P.2d at 115 (declaring "unconstitutional" a statute that "purport[ed] to extend beyond the election day the time within which voters' ballots may be received by the election officials for the election of presidential electors").

The Secretary would prefer evidence like a "legislator's statement" or a "treatise." Pet.25. But those demands misunderstand this Court's approach to history. It's the "'settled and established *practice*'" that guides legal interpretation, not a sole legislator's one-off opinion. *See Moore v. Harper*, 600 U.S. 1, 32 (2023) (emphasis added). The point is to identify a "tradition in the historical materials" that indicates how the "historically fixed meaning applies." *Bruen*, 597 U.S.

at 27-31. The Secretary doesn't even try to identify a historical tradition justifying post-election receipt of ballots.

That so few people contemplated post-election receipt of ballots when Congress enacted the election-day statutes is further evidence that "States understood those statutes to mean what they say: that ballots must be *received* no later than the first Tuesday after the first Monday in November." App.14a. Even where the plaintiffs and Fifth Circuit offer sources of the kind the Secretary prefers, the Secretary resists them. *E.g.*, *Maddox*, 149 P.2d at 115; *Cast*, Black's Law Dictionary (4th rev. ed. 1968).

After the Civil War, history becomes much less relevant to the original public meaning of "election." *See Bruen*, 597 U.S. at 35 ("[W]e must also guard against giving postenactment history more weight than it can rightly bear."). The Secretary doesn't suggest otherwise. Below, the Secretary argued that modern "[w]idespread practice supports the view that the federal election-day statutes allow post-election-day ballot receipt." Sec'y CA5 Resp. Br. 40. He no longer defends that view.

Even if this Court were to consider 20th century deviations, they are few and fleeting. "By 1938," nearly every State "permitted some form of absentee voting." App.17a (citing Paul G. Steinbicker, *Absentee Voting in the United State*s, 32 Am. Pol. Sci. Rev. 898, 898-99 (1938)). Even still, "[a]ll but one of the 42 absentee voting States also had time limits for ballot receipt, with the 'usual requirement' of Election Day." App.17a. Some States experimented with temporary post-election receipt rules, but "[b]y 1977, only two of the 48 States permitting absentee voting counted

ballots received after Election Day." App.17a. The Fifth Circuit properly concluded that these "few 'late-in-time outliers' say nothing about the original public meaning of the Election-Day statutes." App.18a (quoting *Bruen*, 597 U.S. at 70).

Rarely is the history so one-sided. The "longstanding practice" requiring receipt by election officials "weighs heavily" against Mississippi's new post-election receipt rule. *Ray v. Blair*, 343 U.S. 214, 228-29 (1952).

C. Precedent indicates that receipt by election officials ends the "election."

Foster supports the Fifth Circuit's decision. Though *Foster* didn't confront "precisely what acts a State must cause to be done on federal election day," 522 U.S. at 72, the Court's reasoning provides the "definitional elements" of election-day receipt, App.9a. The Fifth Circuit explained why each element—official action, finality, and consummation—indicate that "[r]eceipt of the last ballot … must occur on Election Day." App.9a-13a.

The Secretary agrees that "under *Foster* … election day is the day to 'conclude' and 'consummate' the election through a 'final selection.'" Pet.18 (cleaned up). But then the Secretary asserts, with no authority or explanation, that the election is consummated "when voters have marked and submitted their ballots as state law requires: ballots are then cast and the *final selection* is *concluded* and *consummated*." Pet.18-19. That *ipse dixit* distorts the meaning of official action, finality, and consummation.

To start, the Secretary misunderstands the role of official action. According to the Secretary, the only

"official action" necessary for an election is "offering a ballot and a method to cast it." Pet.22. But the Secretary understands "ballot casting" as a unilateral act by the voter, not a "combined action[] of voters and officials." *Foster*, 522 U.S. at 71. As the Fifth Circuit explained, it makes no sense to say a ballot is "cast" when the voter leaves it in a drawer, even if state law permitted that practice. The Secretary criticizes those examples because they don't "satisfy any plausible understanding of *ballot casting*." Pet.22. But that's the point. Those examples satisfy the Secretary's "mark and submit in accordance with state law" theory, but not any reasonable understanding of ballot casting. *See Maddox*, 149 P.2d at 115. The voters' delivery is just one half of the "combined actions of voters and officials." *Foster*, 522 U.S. at 71. Election officials' receipt is the other half.

The Secretary's focus on the individual voter also misunderstands the "final selection." When this Court spoke of the "final selection of an officeholder," it referred to the "contested selection of candidates," not an individual voter's selection on her ballot. *Id.* at 72. The Fifth Circuit thus properly concluded that *Foster* speaks of the actions of "the electorate as a whole," not the action of a lone voter. App.10a.

Even from the voter's perspective, mailing a ballot isn't a "final selection." The U.S. Postal Service allows voters to recall various types of mail, including most election mail. *See* U.S. Postal Serv., Domestic Mail Manual §507.5 (July 14, 2024), perma.cc/43FK-H25K. That's not a "forfeited claim." *Contra* Pet.24. It's an argument rebutting the Secretary's assertion that "Mississippi voters cannot change their votes" after election day. Pet.20. The Secretary's demand for

evidence of voters changing their votes misses the point. The Secretary doesn't argue merely that voters *have not* changed their votes; he argues that "Mississippi voters *cannot* change their votes after that date." Pet.20 (emphasis added). That voters can recall their votes after election day defeats the Secretary's own definition of finality.

Finally, the Secretary misunderstands "consummation." The Fifth Circuit recognized that "the election is consummated when the last ballot is received and the ballot box is closed." App.13a. That's why the circuits unanimously agree that early voting doesn't violate the election-day statutes: so long as election officials are receiving ballots, the election "is not decided or 'consummated.'" *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776 (5th Cir. 2000); *accord Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1176 (9th Cir. 2001); *Millsaps v. Thompson*, 259 F.3d 535, 544-46 (6th Cir. 2001). The election is consummated when "the proverbial ballot box is closed" and election officials are no longer taking in ballots. App.13a.

The Secretary insists that the Fifth Circuit's ruling conflicts with *Republican National Committee v. Democratic National Committee*, 589 U.S. 423 (2020). *See* Pet.19. But that case concerned Wisconsin's presidential primary, so the election-day statutes weren't even at issue. *See RNC v. DNC*, 589 U.S. at 423. Even if the election-day statutes applied to primary elections, the receipt deadline was "not challenged" in that case. *Id.* Rather, the RNC challenged the "extraordinary relief" of allowing voters "to mail their ballots after election day." *Id.* at 426. The "critical point in the case" was that not even the plaintiffs had requested that relief.

Id. at 424. The case didn't interpret the election-day statutes, didn't apply *Foster*, and didn't confront the history and arguments made here. In no sense is it an "on-point holding of this Court." *Contra* Pet.25 (emphasis omitted). In any event, this Court's understanding is consistent with the Fifth Circuit's holding: "If voters can mail their ballots after Election Day, those ballots are necessarily received after Election Day, too." App.24a. Nothing in *RNC v. DNC* undermines the Fifth Circuit's reasoning.

D. Election-day receipt furthers uniformity.

Congress established the "uniform federal election day" in part to prevent "the distortion of the voting process" when States hold the election on different days. *Foster*, 522 U.S. at 73. That distortion occurs "when the results of an early federal election in one State can influence later voting in other States." *Id.* But it also occurs when the election drags on for weeks in States that are still accepting ballots, while others are announcing their results the evening of election day.

When Congress extended the uniform national election day to congressional elections in 1872, it rejected an amendment that would have "allow[ed] multi-day voting to continue so long as states provided for it by law." *Keisling*, 259 F.3d at 1174. Supporters explained that a uniform national election day is a "check to frauds in elections, to double voting, [and] to the transmission of voters from one State to another." *Id.* (quoting Cong. Globe, 42d Cong., 2d Sess. 618 (1872)). Indeed, part of what prompted Congress's action in 1844 was that "in the previous presidential election, 'both parties were charging each other with

having committed great frauds, and both professed to be anxious to guard against them in future.'" *Id.* at 1172 (cleaned up) (quoting Cong. Globe, 28th Cong., 2d Sess. 15 (1844)). The legislators heard the same complaints echoed today, that "'it is an impossibility for the voters to all get together on one day' because 'they are remote from the polls.'" *Id.* at 1174 (quoting Cong. Globe, 42d Cong., 2d Sess. 3408 (1872)). But Congress ultimately decided, "after due consideration of multi-day voting, to reject it." *Id.*

The decision below implements those guarantees. "[A] single deadline" for the receipt of ballots "supplies clear notice, and requiring ballots be in by election day puts all voters on the same footing." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 28 (2020) (Gorsuch, J., concurral). There are "important reasons" to "require absentee ballots to be *received* by election day, not just *mailed* by election day." *Id.* at 33 (Kavanaugh, J., concurral). Among them, election-day receipt helps "avoid the chaos and suspicions of impropriety that can ensue if thousands of absentee ballots flow in after election day and potentially flip the results of an election." *Id.* "Without question, Congress has the authority to compel states to hold these elections on the dates it specifies." *Keisling*, 259 F.3d at 1170. And if Congress disagrees, it can change the statutes again.

Modern election deadlines are anything but "uniform." Many States can't conclude their elections for weeks after election day because they're still *receiving* ballots from voters. Weeks after the "day for the election" has come and gone, the elections in those States continue. Many of those post-election deadlines are accompanied by even more concerning rules, such as

Nevada accepting ballots received three days after the election regardless of whether they're postmarked. *See* Nev. Rev. Stat. §293.269921(2). New Jersey likewise counts ballots that do "not bear a postmark date" so long as they are received "within 48 hours" after "the closing of the polls." N.J. Stat. §19:63-22(a). These are not deadlines. They're vague presumptions untethered from the uniform day Congress "established as the day for the election." 2 U.S.C. §7.

In no sense is the "election" over when ballots are still coming in. Adopting the Secretary's any-deadline-goes rule would "permit States to engage in gamesmanship, experiment with deadlines, and renew the very ills Congress sought to eliminate: fraud, uncertainty, and delay." App.34a (Oldham, J., concurring in the denial of rehearing en banc). Congress did not err in rejecting this scheme. And the Fifth Circuit did not err in discerning Congress's plain meaning.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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