

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 from the United States
Court of Appeals for the Fifth Circuit

**BRIEF OF *AMICI CURIAE*
INDIVIDUALS AND ORGANIZATIONS
REPRESENTING MILITARY AND OVERSEAS VOTERS
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

Individual *Amici* are retired defense officials, military leaders, and diplomats who have served the United States under every President from John F. Kennedy to Donald Trump. They include former secretaries of the Army, Navy, and Air Force, retired four-star generals, admirals, and retired senior U.S. diplomats. As a result of their service to the United States, these individuals, their families, and the people they worked with and served alongside have direct experience with voting while stationed and deployed abroad and away from their home states. A complete list of individual *Amici* appears as an Appendix to this brief.

Organizational *Amici* are nonpartisan, non-profit organizations and associations of current and former United States military servicemembers, military families, and overseas voters that seek to protect and ensure the ability of all eligible American voters—especially U.S. military servicemembers stationed away from their home states and abroad, and eligible civilian voters living abroad—to participate in our democracy.

¹ Under Rule 37.6, counsel for *amici curiae* states that they authored this brief in whole and that no party's counsel authored, in whole or in part, this brief. No person or entity other than *amici*, their members, and counsel contributed monetarily to preparing or submitting this brief.

The Association of Americans Resident Overseas (“AARO”), founded in 1973 and headquartered in Paris, is a global association with members in over 40 countries. AARO works to build awareness of the issues affecting Americans overseas and seeks fair treatment by the U.S. government for Americans abroad. AARO’s advocacy in voting led to the promulgation of the Overseas Citizens Voting Rights Act of 1975, which then led to the enactment of the Uniformed and Overseas Citizens Absentee Voting Act, commonly known as “UOCAVA,” in 1986. AARO assists U.S. citizens living overseas in the voting process in every federal election and continues to advocate for the removal of the remaining barriers to overseas voting.

Blue Star Families (“BSF”) is a national organization dedicated to ensuring that American military families are connected, supported, and empowered to thrive—in every community, across the nation, and around the globe. Founded in 2009, BSF serves over 400,000 members through its growing nationwide chapter network and the Blue Star Neighborhood, the largest secure online platform for military and veteran families. As the nation’s largest military and veteran family support organization, BSF delivers programming and support across the military lifecycle and conducts research that provides insights into the unique challenges of military and veteran family life.

The Chamberlain Network is a national, veteran-led civic organization dedicated to defending democratic institutions, the rule of law, and civil order

in the United States. Founded by veterans, the organization works to mobilize former service members as engaged citizens through community organizing, public education, and advocacy focused on democracy protection and nonpartisan civic norms. Named for Civil War hero Joshua L. Chamberlain, the Network emphasizes the continued civic responsibilities of military service beyond the uniform. The Chamberlain Network builds state and local veteran networks, convenes public forums, and advances veteran-informed perspectives on issues affecting democratic governance, civilian control of the military, and the peaceful resolution of political conflict.

Founded in 1931, the **Federation of American Women's Clubs Overseas** (“FAWCO”) is an international network of independent volunteer clubs and associations comprising 59 member clubs in 29 countries worldwide—the oldest and largest non-partisan organization representing private sector Americans abroad. FAWCO’s U.S. Voting Committee encourages and assists U.S. overseas citizens to participate in every federal election for which they are eligible by providing a dedicated website and information and training to volunteers in FAWCO member clubs. The Committee also works to reduce the barriers to voting from overseas imposed by federal and state legislation.

Secure Families Initiative (“SFI”) is a nonpartisan 501(c)(4) not-for-profit organization representing military spouses and family members that advocates for federal and state policies to increase

accessibility for registered military-affiliated and overseas voters. SFI represents actively serving military families stationed abroad in at least eight different countries as well as those posted to military bases within the United States. A portion of SFI's membership are also families living abroad who have transitioned out of military service. SFI has members residing or registered to vote in every state other than Vermont, as well as the District of Columbia. Because voting remains less accessible for its members and the broader military and overseas community, SFI educates and registers those voters and engages in non-partisan "get-out-the-vote" efforts for military voters in all elections.

U.S. Vote Foundation ("US Vote") is a civic technology and voter assistance organization dedicated to making it easier for all U.S. citizens to register to vote and stay active in the electoral process. With a core mission to ensure that every U.S. citizen can participate in their democracy regardless of location, US Vote serves as a vital resource for voters facing challenges due to their geographic circumstances. Its Overseas Vote initiative provides easily accessible, nonpartisan voting tools, services and election information for overseas citizens and military voters who vote under the protections of UOCAVA.

Veterans for All Voters ("VAV") is a national, nonpartisan, veteran-led 501(c)(3) organization founded in 2021. VAV empowers military veterans and military-connected Americans to advocate for election reforms that put voters first—strengthening

competition, reducing polarization, and promoting more effective, accountable government. Through a nationwide network of thousands of supporters and volunteer leaders across all 50 states, VAV elevates trusted veteran voices in public education, coalition-building, advocacy, and related civic engagement efforts.

We the Veterans and Military Families aims to engage and empower the 16 million+ veterans and their family members living in the United States to help build a more perfect Union.

SUMMARY OF ARGUMENT

The Fifth Circuit’s construction of the term “Election” under the federal election-day statutes—2 U.S.C. § 1, 2 U.S.C. § 7, and 3 U.S.C. § 1 (the “Election-Day Statutes”—is erroneous as a matter of both plain statutory meaning and constitutional structure under the Election Clause. *Amici* here submit this brief to explain that the Fifth Circuit’s decision also flies in the face of at least a century of congressional and state legislation incorporating ballot receipt “grace periods” protecting the right to vote for U.S. military and overseas voters. In light of this indisputable history, the Fifth Circuit’s overreaching assertion of federal preemption in this area cannot be sustained.

1. Mailed absentee ballots are frequently the only accessible option for voting available to the nearly 4 million members of the U.S. military serving abroad or domestically outside of their home state, members of military families, and civilians working, studying,

teaching, or preaching abroad. At every stage of the process, military and overseas voters encounter time-consuming challenges to register to vote, obtain absentee ballots, and return those ballots.

Since the passage of the Election Day Statutes in 1845, 1872, and 1914, respectively, Congress has repeatedly adopted special protections to encourage voting by military and civilian voters abroad, including by mandating grace periods under certain circumstances. Moreover, Congress has taken those steps with full knowledge that numerous states had already enacted broader grace periods benefitting (but not limited to) military and overseas voters, and it has consistently deferred to and abstained from displacing state statutory provisions requiring such voters' timely mailed ballots to be counted if received within a specified time period after Election Day. From the 1944 enactment of the Soldier Voting Act to the 1986 Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), and its 2009 amendments through the Military and Overseas Voter Empowerment Act ("MOVE Act"), the statutory history of congressional legislation in this area makes clear that Congress did not intend to limit states' ability to adopt more protective grace periods on their own.

The logic of the Fifth Circuit's ruling in this case would upend multiple, long-established state laws that specifically use grace periods to alleviate the unique barriers to voting faced by U.S. military and overseas voters. At the same time, it would overturn broader statutes—from which U.S. military and

overseas voters benefit—in 14 other states and the District of Columbia that have adopted generally applicable grace periods like Mississippi’s. The Fifth Circuit’s misconstruction of the term “election” under the Election Day Statutes permits no distinction between such generally applicable grace periods and more tailored statutes: any suggestion that Congress somehow authorized only a special exception for military and overseas voters is refuted by the language, structure, and legislative history of congressional law-making in this area over many decades. If adopted by this Court, such a ruling would erroneously sweep away these important statutory protections and cast aside the careful policy choices that states have made to address the needs of their voters. The Fifth Circuit’s decision should be reversed to prevent this result and avoid exacerbating the already significant barriers faced by U.S. military and overseas voters in exercising their fundamental right to vote.

2. The statutory history supporting the validity of state-level grace periods as applied to military and overseas voters is overwhelming, and it demonstrates that the Fifth Circuit’s ruling is erroneous as to grace periods generally. In 1944, Congress passed the Soldier Voting Act at a time when at least *nine* states already had grace periods for mail-in ballots, including four that allowed both civilian and military ballots to be received and counted after Election Day. Congress specifically incorporated into that federal law a provision stating that “any extension of time for the receipt of absentee ballots permitted by State law shall apply” to troops’ votes. With those state laws still on the

books, Congress enacted UOCAVA in 1986, including a provision requiring that any state failing to provide a military or overseas voter with a ballot “by . . . the deadline for receipt of the State absentee ballot under State law,” 52 U.S.C. § 20303(b)(3), must *accept and count* timely-mailed ballots within the time period (on *or after* Election Day) prescribed by each state’s independent ballot receipt deadline. In 2009, Congress amended UOCAVA through the MOVE Act, yet it once again deferred to and left unchanged state deadlines. Partly in response to UOCAVA and the MOVE Act, additional states *adopted* grace periods allowing timely mailed military and overseas ballots to be counted after Election Day. Yet at no time has Congress called into question or taken any steps to displace or disturb either states’ generally applicable grace periods or their more targeted provisions directed at military and overseas voters.

Under basic canons of statutory interpretation, the history of congressional action compels the conclusion that Congress did *not* intend to preempt or otherwise narrow the state grace period provisions that benefit U.S. military and overseas voters, or to deprive individual states of the ability to make policy in this area generally by providing even greater protections to such voters than Congress specifically mandated on a national level. Particularly in view of the imminent 2026 elections, this Court should swiftly reject the Fifth Circuit’s misguided negation of Congress’s clearly established legislative deference to the states.

ARGUMENT

I. The Fifth Circuit's Decision Must Be Reversed to Avoid Exacerbating the Steep Barriers to Voting Faced by U.S. Military and Overseas Voters.

For military and overseas voters, voting from out-of-state or abroad requires more than a trip down the street to a local polling place. It often requires such onerous, costly, and time-consuming efforts that many are deterred from voting. Worse, some who make these efforts may still not have their votes counted due to mail delays or other circumstances outside of their control. The unique barriers that these voters face help to underscore why numerous states have enacted protections benefiting military and overseas voters, like Mississippi's ballot receipt deadline. Invalidating Mississippi's law would remove similar protections enjoyed by hundreds of thousands of military and civilian voters across more than two dozen states.

A. Military and Overseas Voters Face Unique Hurdles to Exercising Their Fundamental Right to Vote.

Military and overseas voters find themselves away from their home states for many reasons. These U.S. citizens include active-duty, reserve, and National Guard soldiers, sailors, Marines, airmen, guardians, or Coast Guardsmen deployed as far away as a foreign combat zone or domestically away from their home states. They also include military spouses

and families, who come from all fifty states and the U.S. territories and comprise members of every ethnic group, religion, and sexual orientation. Nearly 50 percent of servicemembers identify as Black, Indigenous, or a Person of Color; over 50 percent are under 30 years old; and 92 percent of military spouses are women. *See Why the Wait? Unpacking California’s Untimely Election Counting Process, Hearing before the Committee on House Administration*, 109th Cong. 30 (Apr. 29, 2025), <https://perma.cc/MKT4-L3PN>. Many of these voters must move every two to three years and endure altered career paths or changes in their children’s educational and social lives. Non-military overseas voters include U.S. citizens living and working abroad as teachers, researchers, business-people, diplomats, missionaries, and more—taxpaying citizens who deserve an equal opportunity to participate fully in our democracy.²

There are a lot of these voters. As of 2022, nearly three-quarters of the roughly 1.3 million active-duty servicemembers are eligible to vote absentee. Fed. Voter Assistance Prog. (“FVAP”), *2022 Post-Election Voting Survey: Active Duty Military (ADM)* 5 (2023), <https://perma.cc/58C4-MWGV> (“2022 Active Duty Military Survey”). So are around 2.8 million voting-age American citizens who live abroad. FVAP, *State of the Overseas Voter* (2022), <https://perma.cc/SD74-J6DC>.

² The United States is one of only two countries that requires citizens and residents living abroad to file tax returns. *See Internal Revenue Serv., U.S. citizens and residents abroad – Filing requirements*, <https://perma.cc/B6JE-HV8F> (last visited Jan. 6, 2026).

And there are 1.4 million active-duty military family members, including hundreds of thousands of spouses and adult dependents, not to mention hundreds of thousands of reserve and National Guard members and families. *See U.S. Dep’t of Def., 2023 Demographics: Profile of the Military Community* 87, 116, 155 (2023), <https://perma.cc/H2AK-2CRL>.

Yet despite widespread recognition of military and overseas citizens’ fundamental right to vote and numerous state- and federal-led initiatives to facilitate their access to the franchise,³ many of them continue to face daunting barriers to voting. In 2020, out of active-duty military who did not vote, 43 percent of those covered by UOCAVA wanted to or tried to vote but were unable to do so. FVAP, *2020 Post-Election Voting Survey: Active Duty Military* 2, 37, 39 (2021), <https://perma.cc/TVD6-DHD6> (“*2020 Active Duty Military Survey*”). Even the Defense Advanced Research Projects Agency (“DARPA”)—the military agency dedicated to developing emerging technologies like the internet and GPS—recognized the challenges inherent to overseas voting when, in 2024, it funded a project to develop technology to ease the process for these voters. Joseph Clark, *Researchers Set Out to Tackle Voting Challenges of Military Members*, DOD News (Feb. 12, 2024), <https://perma.cc/3TM9-U3P7>. Due to state laws and other considerations, traditional mail remains the only option for most military voters. *See FVAP, 2022 Active Duty Military Survey, supra*, at 27.

³ For more on federal and state policies serving military and overseas voters, see *infra* Part I.B & Part II.

U.S. citizens working or living abroad also face obstacles in casting their ballots. Only 7.8 percent of eligible overseas voters returned a ballot for the 2020 General Election compared to 79.2 percent of domestic voters. FVAP, *2020 Report to Congress* 5, 17-18 (July 2020), <https://perma.cc/4527-Z7P7>. Among overseas citizens surveyed as to why they did not vote, 82 percent reported that they wanted to vote but were unable to complete the process. *Id.* at 17.

From registering to vote to requesting, receiving, and submitting an absentee ballot, as well as troubleshooting any challenges associated with that ballot, a military or overseas voter faces obstacles throughout the voting process that can be time-consuming and onerous to overcome.

1. Registering to vote. Simply registering to vote can be a challenge for a military or overseas voter. A voter may fill out their state or local registration form for the applicable jurisdiction. Or the voter may turn to the recommended Federal Post Card Application (“FPCA”), which both registers the voter and requires the voter’s state to provide a ballot to the voter at least 45 days before the next election. See FVAP, *How to Vote Absentee in the Military*, <https://perma.cc/JQF3-YVV6> (last visited Jan. 6, 2026). But in 2020, only 26 percent of surveyed active-duty servicemembers knew about the FPCA. FVAP, *2022 Active Duty Military Survey*, *supra*, at 50. Moreover, both registration routes subject a voter to mail delays in most states, which do not accept registrations electronically. Indeed, a military or overseas voter is encouraged to

submit the FPCA at least three months in advance to avoid delays. FVAP, *How to Vote Absentee in the Military, supra*. Thus, as a practical matter, the effective deadline for a military or overseas voter to register may be months before an election. Given long distances and often remote locations, even proactive voters are at risk of running out of time to receive and return a ballot.

2. Requesting and receiving a ballot. Although the FPCA registration form doubles as a ballot request form, relatively few military and overseas voters know about it. Those who register through the more traditional route must take the additional step of requesting a ballot from state or local election officials. In a survey of active-duty military voters, the difficulty of obtaining a ballot was the most frequently reported barrier to voting, with 49 percent of active-duty military and 14 percent of civilian overseas would-be voters reporting difficulties requesting an absentee ballot. FVAP, 2022 *Active Duty Military Survey, supra*, at 50; FVAP, 2020 *Overseas Citizen Population Analysis Report* 35 (2021), <https://perma.cc/42DV-XL5R>. Requesting ballots through existing state and local processes may require internet access, yet 14 percent of overseas voters in 2020 and 19 percent of active-duty military in 2022 did not report that they had reliable internet access. FVAP, 2020 *Overseas Citizen Population Analysis Report*, at 101; FVAP, 2022 *Active Duty Military Survey*, at 33. Voters who successfully request a ballot on time may still not receive it with sufficient time to return it. Military families stationed in Japan, for instance, report that mail can regularly

take six to eight weeks to arrive. *Why the Wait?*, *supra*, at 31. As a former Marine whose son serves in the Navy recounted, her son’s “base is essentially his ship”: she tried to send him his ballot, but it never arrived and “he wasn’t able to cast his ballot in the presidential election.” Camilla Rodriguez Guzman, *Serving in the Military Shouldn’t Mean It’s Harder to Vote*, Nat'l Conf. of State Legis. (Aug. 26, 2025), <https://perma.cc/K7L6-FXSP>.

3. Submitting a ballot. Because ballots need to be sent both to the voter and then back to the election official, potential delays must be overcome *twice* every time someone votes from abroad. Military or overseas voters often need to mail ballots back as early as a month before Election Day. FVAP, *2024-25 Voting Assistance Guide* 10 (Aug. 2023), <https://perma.cc/9EKK-JRTF>.

Delays and other issues with the mail can make receiving and submitting a ballot difficult even for servicemembers or their family members stationed within the United States. One military spouse reported that her home state within the continental United States mailed her absentee ballot to the base in Hawaii where her family was stationed. Then, with no explanation, the ballot was sent from the post office in Hawaii back to her permanent address in her home state—not to her home on the base. Due to the mail delivery error, she did not get to vote. *See Why the Wait?*, *supra*, at 30. And if a problem arises during voting, a military or overseas voter cannot simply visit

their local board of elections or contact the board as easily as a local voter can.

4. Real-world examples. The manifold obstacles to voting by U.S. military and overseas voters can be captured by numerous real-world examples from affected voters⁴:

- During the spring 2024 Texas primary, a military couple in Germany mailed their ballots from their Army Post Office (“APO”) three weeks before the election. Their ballots did not arrive until one day after the election.
- In the last presidential election, one overseas voter based in Canada did not receive their ballot until five days before the election. The instructions said that it could not be returned by courier. Despite tracking the ballot sent by regular mail, it did not arrive by the deadline so their vote did not count.
- A missionary teaching at a school in Hungary used to be able to fax their ballot to Florida, but their school had to remove its phone line. They now have to pay more than \$10 per election to send their ballot via mail. It can take over three weeks for mail to be returned to

⁴ The information below reflects just a small sampling of thousands of similar responses to a survey of over 5,000 military and overseas voters, including members of *amici* organizations, conducted in December 2025. *See Military/Overseas Voter Survey* (Dec. 2025) (on file with authors).

their home jurisdiction. In the last election, their ballot never arrived at all.

- One servicemember stationed overseas stated that their efforts to register to vote were thwarted because their Texas county officials did not respond to “any mail or correspondence” regarding the 2020 and 2024 General Elections.
- An overseas voter in Belgium, after enduring a complicated process of printing a ballot and gluing identification information to it, had to pay \$30 to \$40 on multiple occasions to get their ballot back in time. That is not a one-off: voters in places including Kenya, Vietnam, Italy, the U.K., and Australia have had to spend \$50 or more to mail their ballot by private courier. At the extreme end, a Texas voter based in Panama spent over \$100 to receive and send their ballot through a traveling mailbox in Miami. Paying these fees is still no guarantee that a ballot will arrive by Election Day.⁵

These individual experiences exemplify how military and overseas voters already encounter delays and expenses that no other voters are expected to overcome. As a military spouse shared, “It’s disheartening

⁵ If a military or overseas voter does not receive their state absentee ballot in time, the voter may use the Federal Write-In Absentee Ballot (“FWAB”) as a backup. FVAP, *2024-25 Voting Assistance Guide*, *supra*, at 9. But the FWAB is still subject to state ballot receipt deadlines. *Id.* at 455.

because living overseas you can do everything right and you don't have control of mail coming from an overseas base.”⁶

Laws like Mississippi’s help to mitigate some of these challenges by ensuring that a validly cast ballot that arrives shortly after Election Day can be counted; such laws can mean the difference between a military or overseas voter being able to participate in American democracy or being disenfranchised.

B. The Fifth Circuit’s Erroneous Interpretation of the Term “Election” Would Arbitrarily Sweep Away State Statutes Designed to Alleviate Obstacles to Voting Faced by U.S. Military and Overseas Voters.

A significant majority of states throughout the nation have enacted grace periods for absentee ballots that help U.S. military and overseas voters overcome the severe obstacles to voting they face in every election. The logic of the Fifth Circuit’s decision would irrationally sweep away these protections, contrary to the clear intent of Congress.

Today, a total of 30 states (including Mississippi), the District of Columbia, and three U.S. territories provide a grace period for at least some voters. *See* Nat'l Conf. of State Legis., *Table 11: Receipt and Post-mark Deadlines for Absentee/Mail Ballots* (Dec. 24,

⁶ December 2025 interview with military spouse/staff member of amicus organization (notes on file with authors).

2025), <https://perma.cc/89SD-PPDF> (“*Table 11*”). Fourteen count these ballots for all voters while 16 count absentee ballots received after Election Day if those ballots come from military or overseas voters. *See id.*; Utah Code Ann. §§ 20A-16-404, 20A-16-408.⁷ Some states that have grace periods for all voters even provide additional extensions for military and overseas voters. *See* Alaska Stat. § 15.20.081(h)(2); Mass. Gen. Laws Ann. ch. 54, §§ 95, 91C, 99; N.Y. Election Law § 10-114; Tex. Elec. Code Ann. §§ 86.007(d), 101.057. Although states have taken different approaches, with different deadlines, each state has implemented a grace period that protects the votes of military and overseas voters and is tailored to their individual state needs and election procedures.

Several states passed grace period laws specifically to benefit military and overseas voters after Congress enacted the MOVE Act in 2009. Prompted by the MOVE Act, the Uniform Law Commission (the “ULC”—the same commission that enacts widely adopted laws like the Uniform Commercial Code)—developed the Uniform Military and Overseas Voters Act (“UMOVA”) in consultation with state election officials and affected voters. *See* Unif. Mil. and Overseas Voters Act, Prefatory Note, at 1–2 (Unif. L. Comm’n Final Act Sept. 30, 2010), <https://perma.cc/TX63-UN7D>. In drafting UMOVA, the ULC plainly understood that states were not preempted from enacting grace periods benefiting military and overseas voters.

⁷ In addition, Montana allows an FWAB submitted by a military or overseas voter to be counted if received by 3 p.m. the Monday after Election Day. *See* Mont. Code Ann. § 13-21-206(1)(c).

Moreover, the ULC considered but rejected recommending a uniform receipt deadline. Mem. of Steve Huefner to Uniform Military Services and Overseas Civilian Absentee Voters Act Drafting Committee and Observers (Feb. 19, 2010), <https://perma.cc/5PAP-5A56>. Instead, UMOVA suggests a grace period provision: a ballot cast before Election Day must be counted if “delivered by the end of business on the business day before [the latest deadline for completing the county canvass or other local tabulation used to determine the final official results].” Unif. Mil. and Overseas Voters Act § 12(a) (brackets in original). “Even those ballots of overseas and military voters that arrive after election day can and must be included in these official results[.]” *Id.* § 12(a) cmt. This recommended provision is consistent with states’ varying practices and, in the absence of congressional action,⁸ states’ continued prerogative to set ballot receipt policies in accordance with their individual needs.

Some states that adopted all or some of UMOVA—with its grace period provision—expressly understood it as a measure to effectuate the purposes of UOCAVA and the MOVE Act. Alabama’s law was enacted “to facilitate compliance with the federal Uniformed and Overseas Citizens Absentee Voting Act.” H.B. 62, Reg. Sess., pmbl. (Ala. 2014). Colorado adopted its version of UMOVA to “comply with the [MOVE] Act.” S. Journal, 68th Gen. Assemb., Reg. Sess., at 1205 (Colo. 2011). As these states understood, UOCAVA and the

⁸ To be clear, Congress could have established a national ballot receipt deadline, including one that requires all states to accept ballots received after Election Day. But it did not.

MOVE Act did not limit their freedom under the Election Clause to adopt grace periods.

States have continued to provide for grace periods as a policy choice to respond to the needs of voters, including military and overseas voters. As described further below, *see infra* Part II.B., multiple states have had such statutes in place for decades. Nor were more recent, generally applicable grace period statutes adopted only in response to the COVID-19 emergency. *Cf.* Pet. App. 5a. To the contrary, California designed its current absentee ballot grace period in 2014 to “mitigate the negative impacts” of U.S. Postal Service delays, which resulted in over 26,000 mail ballots arriving too late to be counted in California’s 2010 election. *See* S. Comm. on Elections and Constitutional Amendments, *Bill Analysis: S.B 29*, at 3 (Cal. 2013), <https://perma.cc/D637-UDNY>. Observing other states’ generally applicable grace periods for both regular absentee ballots and military and overseas ballots, California changed the deadline to three days after Election Day to “protect voters’ right to vote.” *Id.* During the COVID-19 pandemic, California lengthened the grace period to 17 days after Election Day. *See* A.B. 860 (Cal. 2020), <https://perma.cc/DU37-6XE2>. But after successfully navigating through the 2020 election, the state shortened that deadline to a more modest seven days for all absentee ballots. *See* Cal. Elec. Code §§ 3020, 3116, 3106; A.B. 37 (Cal. 2021), <https://perma.cc/U7QJ-MEGL>.

Other states have similarly cut back their general grace periods in light of changed circumstances, while

retaining grace periods for military and overseas voters. Ohio will continue to count military and overseas ballots mailed before Election Day and arriving up to four days after Election Day. *See* S.B. 293, 136th Gen. Assemb., § 1 (Ohio 2025), <https://perma.cc/8WJT-BSGD> (codified at Ohio Rev. Code § 3509.05(D)); Ohio Rev. Code § 3511.11(C)(2). North Dakota still allows a timely-mailed military or overseas absentee ballot to arrive any time before the county canvass. *See* H.B. 1165, 69th Leg., §§ 11, 13 (N.D. 2025), <https://perma.cc/8CJN-9E3P>. So does Utah. *See* H.B. 300, 66th Legis., 2025 Gen. Sess. (Utah 2025), <https://perma.cc/7R6K-JKC2>; Utah Code Ann. § 20A-16-408(1). As the above history illustrates, in the absence of congressional regulation, states are fully capable of setting and then recalibrating reasonable grace period deadlines.

State legislation on grace periods for military and overseas voters also reflects a widespread understanding that UOCAVA and the MOVE Act did not displace state authority in that area. Texas, for example, responded to the MOVE Act by adding a *longer* deadline of five days after Election Day for civilian overseas voters and six days after Election Day for military servicemembers and families. *See* H.B. 1151, 85th Leg., Reg. Sess. (Tex. 2017), <https://perma.cc/4NRH-B8MU>; H.B. 929, 85th Leg., Reg. Sess. (Tex. 2017), <https://perma.cc/M7UT-QHEE>. In so doing, lawmakers expressed concern that “[i]n every election tens of thousands of military and family members are unable to vote” because “the military absentee voting process often leaves overseas voters

with insufficient time to complete and return ballots.” S. Rsrch Ctr., *Bill Analysis: H.B. 929*, at 1 (Tex. May 17, 2017), <https://perma.cc/T3KP-JBWU>. But these provisions only supplemented that state’s generally applicable provision allowing all voters’ timely mailed absentee ballots to be counted if received within the day after Election Day. Tex. Elec. Code Ann. § 86.007. There was no suggestion that UOCAVA or the MOVE Act had any impact on the validity of Texas’s preexisting generally applicable provision.

Mississippi followed examples of states like the ones above when its law was passed in a unanimous, bipartisan manner in 2020. H.B. 1406, Reg. Sess. (Miss. 2024). A finding that federal law preempts these provisions would be a finding that dozens of states ignored or misunderstood federal law on the exact same point, yet Congress sat silently while they did so for decades. That defies common sense.

II. Federal Statutory History Demonstrates That Congress Did Not Intend to Preempt States’ Efforts to Protect Military and Overseas Voters’ Right to Vote.

Since the early 1800s, states have developed absentee voting processes to accommodate the needs of military voters, including time after Election Day to receive and count ballots. Congress passed the Election Day Statutes against this backdrop and has subsequently passed laws to facilitate military and overseas voting that rely on the ability of states to meet their voters’ needs. The Fifth Circuit’s interpretation of the Election Day Statutes and the practical

consequences of its ruling are entirely out of step with the long, uninterrupted history of states exercising their authority to protect their voters, including military and overseas voters.

A. Congress Has Long Been Aware of States' Special Rules for Ballots Cast by Military and Overseas Voters and Has Done Nothing to Displace or Interfere with Them.

“Unless Congress acts, Art I, § 4 empowers the States to regulate.” *Foster v. Love*, 522 U.S. 67, 69 (1997) (quoting *Roudebush v. Hartke*, 405 U.S. 15, 24 (1972)). In other words, states have the power to regulate elections to the extent that Congress does *not* act. Consequently, congressional *inaction* in the context of election regulation is significant, because it indicates an intention *not* to preempt. Moreover, “[b]ecause 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.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 14 (2013). Subsequent legislative developments can “particularly weak[en]” the case for federal preemption when Congress “has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to ‘stand by both concepts and to tolerate whatever tension there [is] between them.’” *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166–67 (1989) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 256 (1984)).

By the time Congress passed the Election Day Statutes in 1845, 1872, and 1914, multiple states had enacted grace periods to ensure troops' votes were received and counted. These state practices undercut the argument that the word "election" in the statutes was ever intended or understood to require election officials to count only ballots received on or before Election Day.

State practices allowing absentee ballots to arrive after Election Day predate the Civil War. During the War of 1812, Pennsylvania enacted a law that allowed those in military service to vote in the field and directed commanding officers, who acted as election judges, to transmit the results to the relevant local officials within three days of the election. Act of Mar. 29, 1813, ch. 171, 1813 Pa. Laws 213–14. Two years later, New Jersey passed a law with a similar provision. *See* George Frederick Miller, *Absentee Voters and Suffrage Laws* 204 (1948).

During the Civil War, most states in the Union passed laws enabling soldiers to vote while deployed.⁹ Josiah Henry Benton, *Voting in the Field: A Forgotten Chapter of the Civil War*, 4 (1915). In at least three states, ballots cast in the field were often not received and counted at soldiers' home precincts until after

⁹ These laws only benefited white men, even though Black men served as soldiers and women traveled to provide medical care and other supports to soldiers; race and gender restrictions on voting were not banned until after the Civil War.

Election Day, yet were still accepted.¹⁰ *Id.* at 171–73, 186–87, 190; *see also* 1866 Nev. Stat. 215, <https://perma.cc/6YJK-SXPV>; R.I. Acts and Resolves, May Sess., 1864, ch. 529, at 4 (1864), <https://perma.cc/W8SU-M9WA>; Pa. Act of July 2, 1839, ch. 6, § 43, <https://perma.cc/S3S5-S9L7>. At least six Union states allowed soldiers’ ballots to be counted if they arrived after Election Day. *See* Benton, *supra*, at 317–18. Maryland required officials to wait fifteen days after the election before counting soldiers’ votes, and officials in Maine, New Hampshire, Vermont, and Rhode Island gave military voters until the deadline for canvassing in-state ballots to have their votes delivered to state officials. *Id.* Then, as now, states were free to figure out how to help troops vote.

Congress undoubtedly knew states were implementing grace periods, but it never acted to contradict them. When Congress set a uniform federal “Election Day” through the Election Day Statutes, it did not define the word “election” and remained silent on when absentee votes had to be received by election officials. *See* 3 U.S.C. § 1; 2 U.S.C. § 7; 2 U.S.C. § 1. Moreover, the history of states adopting grace period laws makes it even more difficult to “conceive that Congress

¹⁰ In stating that field voting involved soldiers placing their ballots directly into the custody of election officials, Pet. App. 15a, the Fifth Circuit’s decision overlooks a key historical fact. Under Nevada, Pennsylvania, and Rhode Island law, military personnel overseeing polling sites or receiving soldiers’ ballots were not deputized as state election officials. So when a soldier cast his ballot, that ballot was not received by election officials until it was delivered to officials in the soldiers’ home states. *See* Benton, *supra*, at 171–73, 186–87, 189–90.

intended the federal election day statutes to have the effect of impeding citizens in exercising their right to vote.” *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 777 (5th Cir. 2000), *cert. denied*, 530 U.S. 1230 (2000).

That history continued after World War I. In the decade following the war, at least six states enacted grace period laws. *See* Neb. Comp. Stat. §§ 2007, 2009, 2011, 2035 (1921); 1933 Wash. Sess. Laws Extraordinary Sess. 102–03, <https://perma.cc/2ZF7-TBJE>; Mo. Rev. Stat. § 10135 (1933) <https://perma.cc/GPU9-X2VZ>; Kan. Stat. § 25-1106 (1929), <https://perma.cc/N7TR-KHB2>; Cal. Pol. Code § 1360 (1923); Pa. Act of June 3, 1937, Pub. L. 1333, No. 320, §§ 1301, 1327–30, <https://perma.cc/F57M-VHMD>.

By 1938, state deadlines for ballot receipt across 41 states ranged from six days before the election to six days after the election. *See* Paul G. Steinbicker, *Absentee Voting in the United States*, 32 Am. Pol. Sci. Rev. 898, 905–06 (Oct. 1938). As states enacted wide-ranging ballot receipt deadlines, Congress took no action suggesting it intended to preempt those policies or restrict the states’ ability to legislate for the needs of their voters.

B. This Court Should Not Disturb Congress’s Consistent Choice to Respect State Ballot Receipt Deadlines.

Courts assume that Congress means what it says and what it does not say—especially “when Congress has shown elsewhere in the same statute that it

knows how to make such a requirement manifest.” *Jama v. Immigr. & Customs Enft*, 543 U.S. 335, 341 (2005). This Court has refused to infer that Congress, in enacting a later statute, intended to disrupt a prior statute without expressly identifying the prior law. *See Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (noting “strong presumption” that “Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute.” (alterations and citation omitted)). Not only has Congress left state ballot receipt deadline laws undisturbed, but over the past 80 years it has passed at least five statutes to protect military and overseas voters’ ability to exercise their right to vote and have their votes counted. Congress’s awareness of its ability to set a national ballot deadline is clear: In the first of those five laws, Congress set a ballot receipt deadline for some voters—only to repeal it two years later. Since then, Congress has consistently refrained from mandating any such deadline and instead has left the question to the states.

In 1942, Congress hastily created a “war ballot” as millions of American voters began serving in World War II. *See* Act of Sept. 16, 1942, ch. 561, 56 Stat. 753, 756, § 9; H.R. Rep. No. 77-2363, at 1 (1942). That legislation, which applied only to servicemembers training or stationed within the United States,¹¹ set an express Election Day ballot receipt deadline for the newly created war ballots because some states did not

¹¹ Family members were frequently living with servicemembers away from home, but it would take decades before their voting rights were protected by federal law in UOCAVA.

have absentee voting, *see* H.R. Rep. No. 77-2363, at 1, an inclusion that would have been entirely unnecessary had the Election Day Statutes already done so. There would have been no need to set such a deadline if the Election Day Statutes had already done so through the mere use of the word “election.” By the following year, however, the war ballot procedure had already “proved to be complicated and cumbersome.” *Voting in Time of War by Members of the Land and Naval Forces: Hearings before a Subcommittee of the Committee on Privileges and Elections on S. 1285*, 78th Cong. 10 (1943) (statement of Francis Biddle, Attorney General).

In 1944, Congress enacted the Soldier Voting Act, *repealing* the Election Day ballot receipt deadline for military voters contained in the 1942 legislation. In its place, Congress stipulated a default rule requiring that war ballots be received by Election Day to be counted, “*except that any extension of time for the receipt of absentee ballots permitted by State laws shall apply.*” Pub. L. No. 78-277, § 311(b)(3), 58 Stat. 136, 146 (emphasis added).

Notably, in a 1943 hearing on the proposed Soldier Voting Act, lawmakers discussed an Office of War Information memorandum for members of the armed forces. That memorandum highlighted the fact that at least nine states at that time counted ballots received after Election Day so long as they were mailed by Election Day. *See Soldier Voting: Hearings before the Comm. on Election of President, Vice President, and Representatives in Congress on H.R. 3436*, 78th Cong.

107, 108, 114, 116, 119, 124, 128, 129, 134 (1943). There can be no doubt that, in enacting the Soldier Voting Act the following year, Congress knew that several states had grace periods and it deferred to their authority by incorporating them into the law. *See Voting in Time of War, supra*, at 10. This is not congressional inaction or silence: it was an informed act of restraint acknowledging and incorporating states' authority to set policies for counting timely submitted ballots before or after Election Day.

This deference to the states was also reflected in subsequent legislation on military and overseas voting enacted by Congress in 1955 and 1975, each on a bipartisan basis. In 1955, the Federal Voting Assistance Act (“FVAA”) included a provision “recommend[ing]” that states ensure the availability of absentee ballots for mailing to the applicant “as soon as practicable *before the last date on which such ballots will be counted.*” Pub. L. No. 84-296, § 102(12), 69 Stat. 584, 585, (1955) (emphasis added). In the 1975 Overseas Citizens Voting Rights Act (“OCVRA”), Congress required each state to accept absentee ballots by election officials at least up to the time polls close on the day of an election. *See* Pub. L. No. 94-203, §§ 4(b), (b)(3), 89 Stat. 1142, 1143 (1976). Again, however, Congress set a floor, not a ceiling: States had to receive ballots at least through the end of Election Day, but were free to adopt “any voting practice which is less restrictive.” *Id.* at § 7(2), 89 Stat. at 1144. At no point did Congress impose a uniform ballot receipt deadline. Indeed, five years earlier, Congress enacted identical language in the 1970 amendments to the

Voting Rights Act. *See* Voting Rights Act Amendments of 1970, H.R. 4249, 91st Cong. § 202(d), (g) (1970). The FVAA and OCVRA, rather, focused on the receipt of absentee ballots and the right to cast these ballots. Congress continued to leave specific deadlines—and the flexibility to set those deadlines—to the states.

So too with UOCAVA. In 1986, Congress enacted UOCAVA “to facilitate absentee voting by United States citizens, both military and civilian, who are overseas.” H.R. Rep. No. 99-765, at 5 (1986), *reprinted in* 1986 U.S.C.C.A.N. 2009, 2009. UOCAVA is a detailed program establishing minimum national standards for states to facilitate voting by U.S. military and overseas voters. If Congress had wanted to curtail the states’ freedom to set grace periods, UOCAVA would have been the golden opportunity to do that. Instead, Congress again took no action to override the long-standing state grace periods, which by 1986 Congress indisputably knew about. And, again, Congress expressly incorporated deadlines for receipt of state absentee ballots under state laws in several provisions. *See* 52 U.S.C. § 20303(b), (b)(3), (e)(2). First, if a requested state absentee ballot is not received by a covered voter by 30 days before a federal election, the Federal Write-In Absentee Ballot (“FWAB”) may be “submitted and processed in the manner provided by law for absentee ballots in the State involved.” 52 U.S.C. § 20303(b). Second, state election officials should not count a voter’s FWAB if the “State absentee ballot . . . is received by the appropriate State election official not later than the *deadline for receipt of*

the State absentee ballot under State law.” *Id.* § 20303(b)(3) (emphasis added). Third, the FWAB “shall not be valid for use in a general, special primary, or runoff election for Federal office if the State involved provides a State absentee ballot that . . . is made available to absent uniformed services voters and overseas voters at least 60 days before the deadline for receipt of the State ballot under State law.” *Id.* § 20303(e)(2). Built into the framework of UOCAVA is an understanding that some states have grace periods and retain the authority to adopt their own state-level regulations in this area.

The statutory text of UOCAVA thus “accurately communicates” Congress’s intent *not* to preempt state’ authority under the Elections Clause to adopt grace periods. *Inter Tribal Council*, 570 U.S. at 14. If any plausible doubt about that remained after UOCAVA’s passage, it was extinguished by Congress’s 2009 amendments to UOCAVA through the MOVE Act, which once again deferred to state ballot receipt deadlines and incorporated them into the federal framework. The law requires federal officials to deliver—and states to process—overseas servicemembers’ absentee ballots “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. §§ 20302(a)(10), 20304(b)(1). Congress passed the MOVE Act to address the fact that nearly half the states transmitted ballots to UOCAVA voters too close to Election Day for them to have time to return them. *See* Pub. L. No. 111-84, subtit. H, §§ 575-589, 123 Stat. 2190, 2318–35 (2009). Congress further found that the “States play

an essential role in facilitating the ability of military and overseas voters to register to vote and have their ballots cast and counted.” S. 1415, 111th Cong. § 2 (as reported to Senate, July 16, 2009).

In short, it would be irrational to conclude that when Congress enacted UOCAVA and MOVE, it meant for its actions on behalf of military and overseas voters to be cut back or undermined by an expansively preemptive construction of the word “election” in three century-old statutes—a construction Congress never raised or discussed at the time. *Cf. Dep’t of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 63 (2024) (“[W]e approach federal statutes touching on the same topic with a ‘strong presumption’ they can coexist harmoniously.” (quoting *Epic Sys.*, 584 U.S. at 510)).

Indeed, there is no “tension” between these or other federal statutes and the states’ authority to adopt grace periods—other than that generated by the Fifth Circuit’s cramped construction of the word “election” in a manner that defies both legislative history and common sense. *See Bonito Boats*, 489 U.S. at 141 (internal quotation marks omitted). To the contrary, once that word is accorded the flexibility that ordinary usage and history both confirm, the federal and state statutory schemes at issue here work harmoniously together, as they were intended.

This conclusion is only reinforced by grace periods being an available remedy to the officials charged with enforcing that statute. Since 2000, the Justice

Department and individual states have agreed to incorporate grace periods as a remedy in a total of 29 UOCAVA enforcement actions. U.S. Dep’t of Just., *Cases Raising Claims Under the Uniformed and Overseas Citizen Absentee Voting Act* (Mar. 24, 2022), <https://perma.cc/LD99-RLB2>. As these actions reflect, both Congress and executive branch officials have acted consistently with the statutory framework detailed above, and with the fundamental premise that grace periods do not impair, and may enhance, the rights of all voters, including U.S. military and overseas voters.

III. With Election Deadlines Quickly Approaching for Military and Overseas Voters, the Court Should Decide This Case as Soon as Practicable.

The 2026 elections have already begun. The earliest primaries will take place on March 3 in three states. Two of these states, Texas and North Carolina, have grace period laws. So do 24 of the 33 states with primaries before the end of June 2026. See Nat'l Conf. of State Legis., *2026 State Primary Election Dates* (Dec. 8, 2025), <https://perma.cc/G4S6-A2JK>; Part I.B, *supra*. Because knowing and being able to navigate the rules of an election particularly matters for military and overseas voters, *amici* urge the Court to decide this case at its earliest opportunity.

CONCLUSION

Amici respectfully urge the Court to reverse the decision of the Fifth Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX
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Lieutenant General Karen H. Gibson, United States Army (Retired)

Lieutenant General Claudia J. Kennedy, United States Army (Retired)

Major General Dr. Donna F. Barbisch, United States Army (Retired)

Major General Robert A. Harding, United States Army (Retired)

Major General Sanford E. Holman, United States Army (Retired)

Major General Randy E. Manner, United States Army (Retired)

Major General Antonio M. Taguba, United States Army (Retired)

Major General Dr. Margaret C. Wilmoth, United States Army (Retired)

Major General David T. Zabecki, United States Army (Retired)

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Brigadier General John M. Schuster, United States Army (Retired)

Brigadier General Dr. Stephen N. Xenakis, United States Army (Retired)

Department of the Air Force

General Michael V. Hayden, United States Air Force (Retired)

Honorable Deborah Lee James, Former Secretary of the Air Force

General Craig R. McKinley, United States Air Force (Retired)

Lieutenant General John D. Hopper, Jr., United States Air Force (Retired)

Major General Richard T. Devereaux, United States Air Force (Retired)

Major General Irving L. Halter, Jr., United States Air Force (Retired)

Major General Steven J. Lepper, United States Air Force (Retired)

Major General Frederick H. Martin, United States Air Force (Retired)

Major General Margaret Woodward, United States Air Force (Retired)

Brigadier General Ricardo Aponte, United States Air Force (Retired)

Brigadier General John W. Douglass, United States Air Force (Retired)

Brigadier General Guy M. Walsh, United States Air Force (Retired)

Brigadier General Daniel P. Woodward, United States Air Force (Retired)

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Honorable Sean O'Keefe, Former Secretary of the Navy

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Rear Admiral Dr. Janice M. Hamby, United States Navy (Retired)

Rear Admiral Thomas G. Lilly, United States Navy (Retired)

Rear Admiral Fernandez L. Ponds, United States
Navy (Retired)

United States Marine Corps

General Carlton Fulford, United States Marine
Corps (Retired)

Brigadier General Joseph V. Medina, United States
Marine Corps (Retired)

United States Coast Guard

Admiral Thad W. Allen, United States Coast Guard
(Retired)

Department of State

Ambassador Donald E. Booth (Retired)

Ambassador Kathleen Doherty (Retired)

Ambassador Cameron R. Hume (Retired)

Ambassador Dennis C. Jett (Retired)

Senior Foreign Service Officer Susan R. Johnson
(Retired)

Ambassador Patrick F. Kennedy (Retired)

Ambassador Hugo Llorens (Retired)

Minister-Counselor, Edward Marks (Retired)

Ambassador Ronald E. Neumann (Retired)

Senior Foreign Service Officer Annie Pforzheimer
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