No. 24-60395

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPUBLICAN NATIONAL COMMITTEE; MISSISSIPPI REPUBLICAN PARTY; JAMES PERRY; MATTHEW LAMB,

Plaintiffs – Appellants

v.

JUSTIN WETZEL, in his official capacity as the clerk and registrar of the Circuit Court of Harrison County; TONI JO DIAZ, in their official capacities as members of the Harrison County Election Commission; BECKY PAYNE, in their official capacities as members of the Harrison County Election Commission; BARBARA KIMBALL, in their official capacities as members of the Harrison County Election Commission; CHRISTENE BRICE, in their official capacities as members of the Harrison County Election Commission; CAROLYN HANDLER, in their official capacities as members of the Harrison County Election Commission; MICHAEL WATSON, in his official capacity as the Secretary of State of Mississippi,

Defendants – Appellees

VET VOICE FOUNDATION; MISSISSIPPI ALLIANCE OF RETIRED AMERICANS,

Intervenor Defendants – Appellees

LIBERTARIAN PARTY OF MISSISSIPPI,

Plaintiff – Appellant

v.

JUSTIN WETZEL, in his official capacity as the clerk and registrar of the Circuit Court of Harrison County; TONI JO DIAZ, in their official capacities as members of the Harrison County Election Commission; BECKY PAYNE, in their official capacities as members of the Harrison County Election Commission; BARBARA KIMBALL, in their official capacities as members of the Harrison County Election Commission; CHRISTENE BRICE, in their official capacities as members of the Harrison County Election Commission; CAROLYN HANDLER, in their official capacities as members of the Harrison County Election Commission; MICHAEL WATSON, in his official capacity as the Secretary of State of Mississippi,

Defendants – Appellees.

On Appeal from the United States District Court for the Southern District of Mississippi, Nos. 1:24-cv-25 and 1:24-cv-37 (Guirola, J.)

BRIEF OF APPELLANT LIBERTARIAN PARTY OF MISSISSIPPI

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August 16, 2024

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CERTIFICATE OF INTERESTED PARTIES

Case No. No. 24-60395

Undersigned counsel certifies that the following listed persons have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

1. Plaintiffs-Appellants Libertarian Party of Mississippi, Republican National Committee, the Mississippi Republican Party, James Perry, and Matthew Lamb.
2. Defendants-Appellees Justin Wetzel, Toni Jo Diaz, Becky Payne, Barbara Kimball, Christene Brice, and Carolyn Handler, in their official capacities as members of the Harrison County Election Commission, and Secretary of State Michael Watson, in his official capacity.
3. Intervenor-Defendants Vet Voice Foundation and Mississippi Alliance for Retired Americans.
4. Amicus Curiae Disability Rights Mississippi, League of Women Voters of Mississippi, and Democratic National Committee.
5. T. Russell Nobile, Robert Popper, Eric W. Lee, Spencer Mark Ritchie, Tim C. Holleman, Rex M. Shannon, III, Wilson D. Minor, Christopher D. Dodge, Elizabeth C. Frost, Michael Brandon Jones, Paloma Wu, Richard

Alexander Medina, Robert B. McDuff, Tina Meng Morrison, Greta K. Martin, Joshua F. Tom, and David W. Baria.

August 16, 2024

s/ Russ Nobile
T. Russell Nobile

STATEMENT REGARDING ORAL ARGUMENT

Federal and state regulatory authority over Congressional and Presidential elections is set forth in the Elections and Electors Clauses of the U.S. Constitution. The boundaries of this authority are not always clear, but unquestionably Congress has final and plenary authority over the timing of federal elections.

The issue in this case is whether Congress, in exercising its authority over the timing of federal elections, preempted Mississippi's law extending its Ballot Receipt deadline with respect to federal elections. Stated differently, when Congress enacted the federal Election Day statutes, did it "necessarily displace" Mississippi's authority to extend its absentee ballot Receipt Deadline to fall after Election Day, and is Mississippi's Receipt deadline "inconsistent with" the federal Election Day statutes. Oral argument would aid in expounding the legal issues raised here.

CORPORATE DISCLOSURE STATEMENT

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

s/ Russ Nobile
T. Russell Nobile

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JURISDICTIONAL STATEMENT

The complaint filed by Plaintiff-Appellant Libertarian Party of Mississippi ("Plaintiff" or "Libertarian Party") alleged constitutional and federal statutory claims arising under 42 U.S.C. § 1983. ROA.1281-94. The district court had subject matter jurisdiction over this action under 28 U.S.C. § 1331. This appeal is from the district court's July 28, 2024 memorandum opinion and order ("Order") granting Defendants' motions and dismissing Plaintiff's claims with prejudice. ROA.1160-83. Plaintiff timely filed its notice of appeal on August 2, 2024. ROA.1186-87; FED. R. APP. P. 4(a)(1)(A). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. What is the standard for preemption under the Elections and Electors Clauses after *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013).

2. Whether Miss. Code Ann. § 23-15-637(1)(a) ("Receipt Deadline") is "inconsistent with" and preempted by the federal Election Day statutes under *Inter Tribal* and *Foster v. Love*, 522 U.S. 67 (1997).[1]

3. Whether Mississippi's Ballot Receipt Deadline violates Plaintiff's rights under the U.S. Constitution and 42 U.S.C. § 1983.

[1] "Election Day" and "Election Day statutes" used herein refer to "election day" or "day of election" as used in 2 U.S.C. §§ 1, 7, and 3 U.S.C. § 1.

STATEMENT OF THE CASE

A. Legal Background

The United States Congress is authorized under U.S. Const. art. I, § 4 cl. 1 ("Elections Clause") and art. II, § 1 cl. 4 ("Electors Clause") to establish the time for conducting federal elections. Though the Elections Clause provides state Legislatures the power to regulate the times, places, and manner of holding Congressional elections, that power ceases when Congress "at any time by Law make[s] or alter[s] such Regulations[.]" *Id.*

> [T]hese comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.

Smiley v. Holm, 285 U.S. 355, 366 (1932). Similarly, the Electors Clause assigned Congress the power to determine the "Time of chusing" presidential and vice-presidential electors, which date shall be "uniform."[2]

These two clauses give "Congress 'the power to override state regulations' by establishing uniform rules for federal elections, binding on the States." *Foster*, 522 U.S. at 69 (citing *U.S. Term Limits v. Thornton*, 514 U.S. 779, 832-833 (1995)).

[2] The text of the Elections and Electors Clauses is not identical. However, with respect to regulating the timing of federal elections, Congressional authority in both is treated the same. *Foster*, 522 U.S. at 69-70 (affirming that congressional time regulations are "paramount").

Federal election laws "are paramount to [election laws] made by the State legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be operative." *Ex parte Siebold*, 100 U.S. 371, 384 (1879); and *Inter Tribal*, 570 U.S. at 7-18.

Congress exercised this authority over 175 years ago when it enacted the first of a trio of statutes that establish a uniform national Election Day. In 1845, Congress passed the "Presidential Election Day Act," which is now codified as 3 U.S.C. § 1.[3] Twenty-seven years later, Congress passed what is now 2 U.S.C § 7, establishing the same day for congressional elections. In 1914, following the adoption of the Seventeenth Amendment, Congress aligned Senate elections with those in the House. 2 U.S.C. § 1. Together, those statutes designate the Tuesday after the first Monday in November in every even-numbered year as the uniform national Election Day for all federal elections. *See* 2 U.S.C. §§ 1 and 7, and 3 U.S.C. § 1.

In December 2022, Congress enacted the Electoral Count Reform Act ("ECRA"). 136 Stat. 5233, 525 (enacted as Div. P., Title I, § 102(b) of the Consolidated Appropriations Act, 2023, 117 Pub. L. No. 328, Dec. 29, 2022). Relevant here, the ECRA revised Title 3 dealing with Presidential elections, adding new 3 U.S.C. § 21, which provides in part:

[3] Originally codified as 5 Stat. 721, non-material wording changes occurred over the years before it was recodified as 3 U.S.C. § 1.

> (1) "election day" means the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President held in each State, except, in the case of a State that appoints electors by popular vote, if the State modifies the period of voting, as necessitated by force majeure events that are extraordinary and catastrophic, as provided under laws of the State enacted prior to such day, "election day" shall include the modified period of voting.

Prior to 2020, Mississippi required absentee ballots to be received by 5:00 p.m. on the day prior to Election Day to be counted. 2012 Miss. ALS 465, 2012 Miss. Gen. Laws 465, 2012 Miss. S.B. 2552. In 2020, Mississippi's Receipt Deadline was amended to allow absentee ballots to be received up to five business days after Election Day. 2020 Miss. H.B. 1521, 2020 Miss. Gen. Laws 472, 2020 Miss. ALS 472 25.

B. Plaintiff Libertarian Party's Lawsuit

Plaintiff Libertarian Party of Mississippi challenged Mississippi law by filing a complaint for declaratory and injunctive relief related to the 2024 federal elections. ROA.1281-94. Plaintiff, a registered political party in Mississippi, sued Defendants Justin Wetzel, in his capacity as the clerk and registrar of the Circuit Clerk of Harrison County, all five members of the Harrison County Election Commission (Toni Jo Diaz, Becky Payne, Barbara Kimball, Christene Brice, and Carolyn Handler), in their official capacities, as well as Mississippi's Secretary of State Michael Watson in his official capacity. *Id*. The Libertarian Party sought a declaratory judgment that Mississippi's Receipt Deadline violated federal law and requested, among other

things, permanent injunctive relief enjoining the canvassing of ballots that arrived after Election Day. ROA.1290-93. The gravamen of Plaintiff's claims is that the receipt of all qualified ballots by election officials—*viz.*, the "combined actions of voters and officials meant to make a final selection of an officeholder" (*Foster*, 522 U.S. at 71)— must occur on or before Election Day. ROA.1288. To be clear, Plaintiff does not allege voter fraud; nor does it allege that ballots were *mailed* after Election Day contrary to Mississippi law. Rather, Plaintiff alleges that all ballots *received* after Election Day pursuant to Mississippi's Receipt Deadline are inconsistent with the text of the federal Election Day statutes and the Supreme Court's holding in *Foster*, and are, therefore, illegal and invalid. These ballots are as invalid as if they were received one year after Election Day, because they violate the federal Election Day statutes. ROA.1290.

Plaintiff alleged three claims. First, Plaintiff claimed that ballots received by state election officials *after* Election Day are invalid and that counting such ballots violates its supporters' right to vote under the First and Fourteenth Amendments in violation of 42 U.S.C. § 1983. ROA.1290-93. Second, for similar reasons, Plaintiff claimed these invalid ballots violated its federal candidates' right to stand for office under the First and Fourteenth Amendments in violation of 42 U.S.C. § 1983. *Id.* Third, Plaintiff claimed the Receipt Deadline violates both the Elections and Electors Clauses in violation of 42 U.S.C. § 1983. *Id*.

C. Procedural Background

This appeal comes from a consolidation of two cases. Plaintiffs Republican National Committee, Mississippi Republican Party, James Perry, and Matthew Lamb (hereinafter "RNC Plaintiffs") filed case no. 1:24-cv-25 on January 26, 2024. ROA.23-36. Plaintiff Libertarian Party of Mississippi filed case no. 1:24-cv-37 on February 5, 2024. ROA.1281-94. Both raise similar claims against the same Defendants. On March 1, 2024, the district court consolidated these cases, making case no. 1:24-cv-25 the lead case. ROA.307. On March 4, 2024, the court granted the motion of Vet Voice Foundation and Mississippi Alliance for Retired Americans (hereinafter "Vet Voice") to intervene as defendants.[4] ROA.13. On March 5, 2024, the district court granted the parties' joint motion to set a scheduling order for cross-motions for summary judgment. ROA.312.

During the period from March 26 through April 16, 2024, the parties briefed the following cross motions for summary judgment: 1) Secretary Watson's Motion for Summary Judgment against the RNC Plaintiffs, ROA.431-34 ; 2) Secretary Watson's Motion for Summary Judgment against the Libertarian Party, ROA.476-79 ; 3) the Libertarian Party's Motion for Summary Judgment, ROA.527-28 ; 4) the RNC's Motion for Summary Judgment, ROA.611-13 ; 5) Vet Voice's Motion for

[4] Other third parties moved to intervene. ROA.181-85 and ROA.340-428. On March 7, 2024, the district court denied these additional requests, allowing them instead to participate as *amici*. ROA.388-98.

Summary Judgment, ROA.654-56 ; 6) County Defendants' Motion for Summary Judgment against the RNC Plaintiffs, ROA.688-90 ; and 7) County Defendants' Motion for Summary Judgment against the Libertarian Party. ROA.691-93.[5] Plaintiff Libertarian Party moved for summary judgment on the grounds that Mississippi's receipt deadline violates federal law and is preempted based on the original public meaning of "day of election." ROA.555-80. Plaintiff's complaint set forth allegations of tangible concrete injuries caused by Mississippi's invalid Receipt Deadline, and submitted two undisputed factual declarations by a senior official within the state's Libertarian Party. ROA.1287-89 and ROA.545-47. Specifically, Plaintiff's undisputed evidence showed its ability to monitor election canvassing has been diminished because the costs and resources needed to monitor for five business days following Election Day have increased. As a result, the increased costs to a minor political party to participate in extended canvassing puts Plaintiff in a worse position relative to the other parties. ROA.546-57.

Defendants' and Vet Voices' motions, read together, primarily argued that summary judgment should be granted because Plaintiffs lacked standing under Article III and, alternatively, Plaintiffs' claims lack merit. The motions were fully briefed and submitted on April 16, 2024. The district court heard arguments on all motions on July 9, 2024. ROA.1138.

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[5] In substance, County Defendants joined State Defendants' Motions.

D. The District Court's Memorandum Opinion and Order

On July 28, 2024, the district court entered its memorandum opinion and order denying the motions for summary judgment filed by both sets of Plaintiffs and granting Defendants' and Vet Voice's motions for summary judgment. ROA.1160-83. The court ruled that that although RNC Plaintiffs and the Libertarian Party had standing under Article III, Defendants were entitled to summary judgment on the merits. ROA.1160-61. With respect to standing, the district court held the record showed that the RNC Plaintiffs and the Libertarian Party had two tangible injuries, an economic injury and a diversion-of-resources injury. ROA.1170. The court, thus, concluded that RNC Plaintiffs and the Libertarian Party had organizational standing. ROA.1170-71.

With respect to the merits, the court agreed with all parties that there were no further material questions of fact to be resolved and all that remained was a "pure question of law." ROA.1171. The court noted that the Fifth Circuit had not yet considered whether ballots received after Election Day may be counted. ROA.1174. The court rejected the Libertarian Party's argument that the Supreme Court adopted a more lenient preemption standard for Elections Clause preemption in *Inter Tribal*, 570 U.S. at 14-15, determining instead that the standard applied by the Supreme Court in *Inter Tribal* and by this Court in *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776-777 (5th Cir. 2000) "do not appear to be different standards under

Fifth Circuit precedent." ROA.1174-77 n.11. The court accepted Defendants' and Vet Voice's argument that Mississippi's Receipt Deadline was not preempted because "the federal statutes do not directly address whether ballots must be received on or before election day." ROA.1177-81.

Plaintiffs timely filed this appeal.

SUMMARY OF ARGUMENT

Preemption under the Elections and Electors Clause is unique and the usual federalism concerns are weaker. *Inter Tribal*, 570 U.S. at 14-15. When Congress legislates under these Clauses, "it *necessarily* displaces some element of a pre-existing legal regime erected by the States" and preempts any state law that is "inconsistent with" federal law. *Id*. States cannot modify existing federal election laws for their own ends. *Fish v. Kobach*, 840 F.3d 710, 726 (10th Cir. 2016). Courts do not "finely parse the federal statute for gaps or silences into which state regulation might fit." *Id.* at 729. "If Congress intended to permit states to so alter or modify federal election statutes […] it would have so indicated." *Id.* at 729. "Congress possess the power to alter existing state regulations—not the other way around." *Id.* at 726.

This case involves the question of whether the federal Election Day statutes preempt Mississippi's Receipt Deadline, Miss. Code Ann. § 23-15-637(1)(a). That question largely turns on the meaning of "the election" as used in the Election Day statutes and 3 U.S.C. § 21. "[T]he election" as used in these statutes "plainly refers

to the combined actions of voters and officials meant to make a final selection of an officeholder." *Foster*, 522 U.S. at 71. The combined actions of voters and officials—not the unilateral actions of either. These actions must be intended to make a final selection of an officeholder, and must occur by Election Day. States do not have the power to extend these actions beyond the deadline set by Congress. But Mississippi, by extending its ballot Receipt Deadline, causes the combined action of voters and election officials to occur five business *after* Election Day. Accordingly, that Receipt Deadline is invalid because it is contrary to federal law.

History supports the Libertarian Party's interpretation. Congress enacted a uniform national election day in 1845 (presidential elections) and 1872 (congressional elections). A historical survey shows that the ordinary public meaning of Election Day at the time of these enactments was the day by which all qualified ballots must be received by election officials. Historical electoral practices under the common law and during Colonial, early Republic, Civil War, and Reconstruction eras show that the public would have understood this. Defendants', Vet Voice's, and *amici*'s arguments are attempts to "finely parse the federal statute for gaps or silences into which state regulation might fit." *See Fish*, 840 F.3d at 729. Preemption under the Elections and Electors Clauses "does not require Congress to expressly foreclose such modifications by the states." *Id.*

The Libertarian Party of Mississippi respectfully requests that this Court reverse the district court and enter an order granting summary judgment on its behalf. The case should be remanded back to the district court for remedial proceedings.

STANDARD OF REVIEW

This court reviews a district court's grant of summary judgment *de novo*, applying the same standards as the district court. *Keller Founds., Inc. v. Wausau Underwriters Ins. Co.*, 626 F.3d 871, 873 (5th Cir. 2010). Summary judgment is appropriate "if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The court's factual and legal conclusions are reviewed *de novo* when determining if there is a genuine issue of material fact. *See Guy v. Cockrell*, 343 F.3d 348, 351 (5th Cir. 2003). The evidence presented is viewed with any reasonable inferences drawn in the light most favorable to the non-moving party. *Ezell v. Kan. City S. Ry. Co.*, 866 F.3d 294, 298 (5th Cir. 2017).

ARGUMENT

I. When Congress Enacts a Timing Regulation It "Necessarily Displaces" State Authority to Regulate the Timing of Federal Elections.

"The dominant purpose of the Elections Clause, the historical record bears out, was to empower Congress to override state election rules[.]" *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n.*, 576 U.S. 787, 814-15 (2015). The grant of complete Congressional power over the timing of federal elections "was the

Framers' insurance against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress." *Inter Tribal*, 570 U.S. at 8; *see also* THE FEDERALIST No. 59, at 362-63 (C. Rossiter ed. 1961) (A. Hamilton) (providing exclusive authority in state legislatures "would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it by neglecting to provide for the choice of persons to administer its affairs"). This "insurance" "enables Congress to alter such regulations as the states shall have made with respect to elections." *See* 4 DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 68 (Jonathan Elliot ed., 1836).

Unquestionably, the Election Day statutes are valid exercises of Congress' power to establish the time for electing congressional representatives and electors, *see Foster*, 522 U.S. at 70, and no state regulation can alter, limit, or abridge these valid exercises of Congressional power. *Id.* at 71-72; *see also Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1170 (9th Cir. 2001) ("Without question, Congress has the authority to compel states to hold these elections on the dates it specifies."). To hold otherwise would allow state legislatures to "make or alter" congressional time regulations, contrary to the plain language of the Elections and Electors Clauses.

Preemption analysis under the Elections and Electors Clause "operates quite differently from the Supremacy Clause." *See Gonzalez v. Arizona*, 677 F.3d 383,

391 (9th Cir. 2012) (en banc), *aff'd sub nom*. *Inter Tribal,* 570 U.S. at 20. And "[t]here is good to reason for treating Elections Clause legislation differently[.]" *Id.* at 14. "[T]he regulation of congressional elections is not […] traditionally the province of the states."[6] *Fish*, 840 F.3d at 727. Thus, the usual federalism concerns regarding state power are "somewhat weaker" in the Elections Clause context. *Inter Tribal*, 570 U.S. at 14. That is because "the power the Elections Clause confers [on Congress] is none other than the power to preempt[.]" *Id.* When Congress "legislates with respect to the 'Time, Place and Manner' of holding congressional elections, it *necessarily* displaces some element of pre-existing legal regime erected by the States" and preempts any state law that is "inconsistent with" federal law. *Id*. at 14-15.

A. Following *Inter Tribal*, State Law Need Only Be "Inconsistent With" Federal Law to be Preempted.

The Supreme Court's most recent Elections Clause preemption analysis was in *Inter Tribal*. There, the Court affirmed the Ninth Circuit's *en banc* decision in *Gonzalez* that an Arizona law requiring voters to provide documentary proof of citizenship ("DPOC") in order to register to vote using the Federal Form prescribed by the National Voter Registration Act of 1993 ("NVRA") was preempted.[7] Under the

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[6] State power to regulate federal elections is neither an inherent nor a reserved power. *Cook v. Gralike*, 531 U.S. 510, 522 (2001); and *U.S. Term Limits*, 514 U.S. at 800-06 (describing the nature of state power with respect to federal elections).

[7] Like the Election Day statutes, Congress passed the NVRA pursuant to its Elections Clause powers. *See Harkless v. Brunner*, 545 F.3d 445, 454 (6th Cir. 2008).

NVRA, the Election Assistance Commission was required to create a universal voter registration form ("Federal Form"), which state voter registration systems are required to "accept and use[.]" *Id.* at 4. Arizona unquestionably *did* use the Federal Form required by the NVRA to register voters in federal elections. But in addition to the requirements to register to vote under the NVRA, Arizona enacted a DPOC requirement, which mandated that all registration applicants provide DPOC along with their Federal Form applications. *Id.* When advocacy groups sued, Arizona defended its law, arguing that it still accepted and used the Federal Form and, therefore, that its DPOC requirement "operate[d] harmoniously" with the NVRA's "accept and use" mandate.[8] *Id.* at 9.

Justice Scalia, writing for the majority, acknowledged that the "accept and use" language in the NVRA was "broad enough to encompass Arizona's preferred construction." *Id.* Notwithstanding that there was no direct textual conflict, the Court looked to the context supplied by other NVRA provisions before ultimately determining that Arizona's DPOC requirement was "'inconsistent with' the NVRA's mandate[.]" *Id.* at 15 (quoting *Ex Parte Siebold*, 100 U.S. at 397). In other

[8] Like the Defendants and Vet Voice here, Arizona argued it could require DPOC because the NVRA's text did not expressly forbid it. *See* Petition for Writ of Certiorari at 44, 225 fn. 26, and 350, *Arizona, et al., v. Inter Tribal Council of Arizona, Inc., et al*., No. 12-71 (July 16, 2012), 2012 U.S. S. Ct. Briefs LEXIS 2980. "[T]the NVRA neither expressly authorizes nor expressly forbids the additional information being required of the applicant." *Id*. at 350; *see also* Brief of Petitioner at 42 and 57, *Arizona, et al., v. Inter Tribal Council of Arizona, Inc., et al.*, No. 12-71 (December 7, 2012), 2012 U.S. S. Ct. Briefs LEXIS 5183 (citing *expressio unius* canon of construction).

words, Congress displaced state authority to add requirements to register to vote that were "*inconsistent with*" the NVRA, even in cases where there was no "direct conflict" between state law and the NVRA.

Three years later, in another NVRA preemption case involving Kansas, the Tenth Circuit explained the substantive evolution of Elections Clause preemption following *Inter Tribal*. *See Fish*, 840 F.3d at 724-29. After noting that *Inter Tribal* "hew[ed]" to the Court's longstanding precedent in *Siebold* and *Foster*, the *Fish* Court discussed Congress' "presumptively preemptive power" and the "relationship" between states and the federal government under the Elections Clause. *Id.* at 725-26. The court rejected Kansas' argument that "states should be able modify existing federal election regulations, in order to repurpose an existing federal [law] for the states' own ends." *Id.* Such a finding, the court explained, "would invert the relationship that the Elections Clause establish[ed] […] because it would give the states—rather than Congress—the last word." *Id.* at 726. "Congress possesses the power to alter existing state regulations—not the other way around." *Id.*

In *Fish*, the Tenth Circuit next surveyed the "framework" and "scope of preemption" in caselaw leading up to *Inter Tribal*. *Id*. at 726-729 (describing the preemption analysis used in *Gonzalez*, *Inter Tribal*, *Siebold*, and *Foster*). It explained that the Ninth Circuit's holding in *Gonzalez*, which the Supreme Court affirmed, "construed *Siebold* and *Foster* as requiring courts to consider the relevant

congressional and state laws as part of a single statutory scheme but treating the congressional enactment as enacted later and thus superseding any conflicting state provision[.]" *Id.* at 726 (noting this framework was "supported by close readings" of *Siebold*, *Foster*, and *Inter Tribal*). Summarizing the scope of preemption following *Inter Tribal*, the Court explained:

> Guided by these cases, it is clear to us that the Elections Clause requires that we straightforwardly and naturally read the federal and state provisions in question as though part of a unitary system of federal election regulation but with federal law prevailing over state law where conflicts arise. *We do not finely parse the federal statute for gaps or silences into which state regulation might fit. We refrain from doing so because were states able to build on or fill gaps or silences in federal election statutes—as [Kansas suggests it] is permitted to do with respect to the NVRA—they could fundamentally alter the structure and effect of those statutes*. If Congress intended to permit states to so alter or modify federal election statutes, like the NVRA, it would have so indicated. The Elections Clause does not require Congress to expressly foreclose such modifications by the states.

Id. at 729 (emphasis added).

Turning to the law of this Circuit, prior to *Inter Tribal*, this Court rejected a challenge to Texas' early voting law, finding that the law did not "directly conflict" with the federal Election Day statutes and therefore was not preempted.[9] *Bomer*, 199 F.3d at 774. As the district court noted below, *Bomer* is still controlling precedent in this Circuit and there has only been one opportunity since *Inter Tribal* for

[9] *Bomer*'s discussion of "direct[] conflict" cites *Foster* and *U.S. v. Classic*, 313 U.S. 299 (1941). 199 F.3d at 775. However, neither case used the "direct" language.

this Court to consider its impact on the law in this Circuit. ROA.1176, n.11. That opportunity occurred in *Voting for America, Inc. v. Steen*, 732 F.3d 382 (5th Cir. 2013), which was pending at the time *Inter Tribal* was decided.[10] Unlike *Fish*, the nature of the dispute in *Steen* did not require this Court to reconcile to what degree, if any, the "scope of preemption" changed after the Supreme Court's "inconsistent with" analysis in *Inter Tribal*. While the majority opinion and dissent in *Steen* cited *Inter Tribal*, both did so mostly in passing. *Id.* at 400, 407.

Inter Tribal altered the scope of preemption previously adopted in *Bomer*, showing that a "direct conflict" is not required.[11] The Court rejected Arizona's DPOC requirement even though it was not expressly forbidden by the NVRA and even though Arizona intended to continue accept and use the Federal Form. 570 U.S. at 10. The Court made no finding of a "direct conflict" and rejected Arizona's arguments to "finely parse the federal statute for gaps or silences into which state reg-

[10] After *Inter Tribal* was decided, the parties in *Steen* filed Fed. R. App. 28(j) letters notifying the Court of supplemental authority. *Voting for Am., Inc. v. Steen*, No.12-40914, ECF No. 94 and 96. Neither addressed what effect, if any, *Inter Tribal* had on this Circuit's precedent.

[11] The Supreme Court was aware of an emerging difference in the scope of preemption between this Court and the Ninth Circuit. *See* Petitioners' Supplemental Brief in Support of Petition for Writ of Certiorari, *Arizona, et al., v. Inter Tribal Council of Arizona, Inc., et al*., at 1-5, No. 12-71 (July 16, 2012), 2012 U.S. S. Ct. Briefs LEXIS 4311 (comparing this Court's "directly conflict" analysis in *Bomer* to the Ninth Circuit's analysis in *Gonzalez*). While it did not acknowledge this apparent difference, *Inter Tribal* clearly affirmed *Gonzalez*.

ulation might fit." *See Fish*, 840 F.3d at 729. Accordingly, insofar as *Bomer* required an express conflict in statutory language between state and federal law, that standard has been supplanted by the standard used in *Inter Tribal*.

B. Mississippi's Receipt Deadline Is Preempted Under the Elections and Electors Clauses.

Inter Tribal established a more lenient standard for preemption than the "direct conflict" required under *Bomer*. Under this standard, Mississippi is precluded from extending its Receipt Deadline for federal elections, for the same reasons that Arizona was precluded from adding a DPOC requirement to the Federal Form. Mississippi's Receipt Deadline is "inconsistent with" the time regulations established by Congress in the Election Day statutes.

The Supreme Court unanimously held that "Election Day" means "the combined actions of voters and officials meant to make a final selection of an officeholder."[12] *Foster*, 522 U.S. at 71-72. "Election Day" can no more conclude five-business days *before* Election Day, as in *Foster*, than it can conclude five-business days *after* Election Day, as it does here in Mississippi. The Election Day statutes established the time in which "the combined actions of voters and officials meant to make a final selection of an officeholder" must occur. They necessarily displaced state authority to modify or alter (even slightly) Congress' deadline.

[12] Like Arizona's law in *Inter Tribal*, the Supreme Court in *Foster* did not need to find Louisiana's open primary system was expressly forbidden to be preempted.

"At bottom," Defendants' and Vet Voice's arguments are that states can "fill gaps or silences" in federal law with their own time regulations so long as they are not expressly forbidden by federal law. *Fish*, 840 F.3d at 726 and 729. As the Tenth Circuit noted, this gets backwards the relationship between the states and federal government once Congress has exercised its paramount authority. Like Kansas in *Fish*, Mississippi cannot modify existing federal election regulations in order "to repurpose an existing federal [law] for the states' own ends." 840 F.3d at 726. "If Congress intended to permit states to so alter or modify federal election statutes […] it would have so indicated." *Id.* at 729. "The Elections Clause does not require Congress to expressly foreclose such modifications by the states." *Id.* "Congress possesses the power to alter existing state regulations—not the other way around." *Id.* at 726.

As discussed *infra*, an election is consummated when all qualified ballots are *received* by election officials. When the Election Day statutes were adopted in 1845 and 1872, the public understood it as the deadline for giving their ballot to election officials because that is what the electoral practices emphasized. The public would have understood that "Election Day" was when election officials must receive all qualified votes.

At least two *amici* below, including the United States, refer to Mississippi's Receipt Deadline as a "mailbox rule."[13] ROA.591 and ROA.970. This effort to rebrand the Receipt Deadline only adds more force to the preemption arguments.[14] First, other than pointing out that Congress did not expressly address it in the text of the Election Day statutes, proponents of this recharacterization offer no authority in support of this argument. As *Inter Tribal*, *Foster*, and *Fish* all show, express displacement of state authority to create a "mailbox rule" is not necessary for such a rule to be preempted. But *amici* contend that, many years following the passage of the Election Day statutes, states exercised some sort of dormant right to enact special electoral "mailbox rules" extending the deadline for ballot receipt to after Election Day. Further, they contend mailbox rules do not alter or affect the timing of federal elections and that ballot receipt is not one of *Foster*'s "combined actions." Like the state defendants in *Inter Tribal* and *Fish*, they attempt to read into federal law residual state authority that does not exist.

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[13] The "mailbox rule" is a common law contract doctrine where "proof that a letter properly directed was placed in a U.S. post office mail receptacle creates a presumption that it reached its destination in the usual time and was actually received by the person to whom it was addressed." *Beck v. Somerset Techs., Inc.*, 882 F.2d 993, 996 (5th Cir. 1989). On at least one occasion, Congress has provided a statutory "mailbox rule" that mirrors the common law rule for tax filings. *See Pond v. United States*, 69 F.4th 155, 162 (4th Cir. 2023) (citing 26 U.S.C. § 7502). Congress has *never* authorized such a rule for absentee ballots post-Election Day.

[14] Because a "mailbox rule" creates a legal fiction about when something occurred, characterizing Mississippi's Receipt Deadline as a "mailbox rule" is a tacit admission that it affects the timing of federal elections.

Second, *amici* cannot cite to any historical record or practice from 1845 or 1872 that supports their position that states retained any authority to enact electoral mailbox rules. Indeed, the historical record confirms there was no common law right to vote absentee and, thus, no equivalent to an electoral mailbox rule. *See infra* part II.C. In fact, historical absentee practices, such as proxy voting and state-deputized military officials, *emphasized* Election Day receipt.[15] *See* Josiah Henry Benton, VOTING IN THE FIELD, 15-17, and 43 (1915), available at https://bit.ly/3p4OQaq (describing the practice of establishing poll sites in the field during the Civil War that were operated by servicemen deputized under oath as state election "constables, supervisors, etc."). *Amici*'s claim that states have the authority to create a mailbox rule for federal elections is exactly the kind of impermissible attempt to "fill gaps or silences" that is prohibited under the Elections Clause.

Before the trial court, neither Defendants nor Vet Voice offered a limiting principle on the maximum days states may allow post-Election Day receipt.[16] Stated differently, they offer no clear limit on state authority to extend receipt deadlines. The fact that they cannot do so illustrates that arguments in support of post-Election Day receipt are really attempts to "fill gaps or silences" in federal law. If ballot

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[15] Today's practice of allowing post-Election Day receipt in Mississippi is nothing like the practice at remote Civil War poll sites operated by officers who were deputized under oath as state election officials. Those deputized officers were state actors ensuring timely receipt. "It was said that voting was a civil matter, which was under the control of civil officers, answerable for the performance of their duties to the civil and not military power." Benton at 17.

[16] ROA.1261:19-1263:16.

delivery to the U.S. Postal Service qualifies as *Foster*'s "combined actions of voters and officials meant to make a final selection," nothing would prevent a state from extending its receipt deadline for weeks or months after the election.

II. Under Either Preemption Standard, Mississippi's Receipt Deadline Alters the Time for "the Election" Mandated by Congress.

Mississippi's receipt deadline is preempted under either *Inter Tribal* or *Bomer*. The question of whether Mississippi's Receipt Deadline either directly conflicts with or is inconsistent with the Election Day statutes depends on the meaning of "the election" in those statutes. Congress "mandate[d] holding all elections for Congress and the Presidency on a single day throughout the Union." *Foster*, 522 U.S. at 70. The election "plainly refer[s] to the combined actions of voters and officials meant to make a final selection of an officeholder[.]" *Id.* at 71. The "combined actions of voters and officials" referenced in *Foster* includes ballot receipt by state election officials, which means that an election occurs when the final ballot is received by the proper state election official on Election Day. Mississippi's Receipt Deadline delays by five business days the "combined actions" and, ultimately, the occurrence of "the election."

Beyond the Election Day statutory text and precedent, historical practices under the common law and from the Colonial, early Republic, Civil War, and Reconstruction eras speak to that original public meaning of "the election" when Congress established a federal Election Day in 1845 and 1872. This history shows that ballot

receipt by election officials on Election Day is *the* final act of selection required by *Foster*. *Id.* at 73. *That is because the act of receipt by election officials transforms a ballot into a vote*. Whether "the election" is defined under *Foster*, by the original public meaning, or by 3 U.S.C. § 21, Mississippi's Receipt Deadline unquestionably alters the time for elections established by Congress and, therefore, is preempted.

A. "The Election" Requires on Election Day the "Combined Actions" That Are "Meant to Make a Final Selection."

"When [Election Day] statutes speak of 'the election' […], they plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder[.]" *Foster*, 522 U.S. at 71. This "final act of selection," *id.* at 72, "means a 'consummation' of the process of selecting an official." *See Keisling*, 259 F.3d at 1175. Notably, the Court definition emphasized *combined*, not unilateral, actions of voters and officials. It is not the unilateral actions of voters, such as registering, requesting and marking ballots, or handing a ballot to the U.S. Postal Service for delivery. Nor is it the unilateral actions of officials such as registering voters, distributing ballots, canvassing and counting ballots, or certifying election results. Ballots in transit or sitting in the postal distribution center similarly are not combined actions. The only moment in an election that constitutes the "combined actions of voters and election officials" is the depositing and receipt of ballots into the custody of state election officials. When all qualified ballots are received by election officials, that is "the election."

One of the best explanations of this principle comes from the Montana Supreme Court. Voters' role in the "combined actions" includes not just marking a ballot but also "having it delivered to the election officials and deposited in the ballot box." *See, e.g., Maddox v. Bd. of State Canvassers*, 149 P.2d 112, 115 (Mont. 1944) (citation omitted). This "consummation" does not occur until *ballots are received* by state election officials, at which point the voter's choice is made. The Montana Supreme Court described the combined actions by which a ballot is transformed into a vote:

> Nothing short of the delivery of the ballot to the election officials for deposit in the ballot box constitutes casting the ballot, which fact was unmistakable so long as the ballot continued to be, as originally, a ball or marble or other marker which was "cast" or deposited in an official receptacle or custody. The fact that the ballot has now become a sheet of paper upon which the voter's choices for the various offices are marked before it is deposited has not changed either the word used to characterize the act of casting the ballot, or the meaning of the word.

Id. "It is not the marking but the depositing of the ballot in the custody of election officials which constitutes casting the ballot or vot[ing]."[17] *Id.* After all, a ballot has "no effect until it is deposited with the election officials, by whom the will of the voters must be ascertained and made effective." *Id.* Stated differently, it is the *receipt of a qualified ballot by state election officials* that creates a vote, and these

[17] A "ballot originally consisted of a little ball, a bean or a grain of corn, a coin, or any other small article which could be concealed in the hand so that others might not know how the voter cast his ballot." *Lynch v. Malley*, 74 N.E. 723, 725 (Ill. 1905). Beans or grains of corn convey no meaning, certainly no electoral meaning, until the combined action of voters depositing them and election officials receiving them is complete.

repeated combined actions together constitute an election. Under Mississippi law, these "combined actions" do not occur until five business days *after* Election Day.

Mississippi's Receipt Deadline is invalid in the same way that Louisiana's open primary was in *Foster*. The Supreme Court did not need to find that Louisiana's open primary was expressly forbidden to be preempted in *Foster*. Rather, the Court said that "the combined actions of voters and officials meant to make a final selection of an officeholder" cannot occur "*prior* to federal election day." *Id*. at 71, 73 (emphasis added). Similarly, these "actions" cannot conclude *after* Election Day.

The Supreme Court considered the meaning of "the election" in the Constitution prior to *Foster*. In *Newberry v. United States*, 256 U.S. 232, 250 (1921) the Court ruled that ratification of the Seventeenth Amendment did not alter the original textual understanding of an "election" as the "final choice of an officer by the duly qualified electors." *Id.* (citation omitted). Reading *Foster*, *Newberry*, and the Election Day statutes together, "the election" requires both the final "combined actions of voters and officials" and that these "actions" are "meant to make a final selection," all of which must occur on Election Day.

As noted above, this Court previously considered and rejected claims that state early voting laws are preempted. *Bomer*, 199 F.3d at 776. Other circuits also

reviewed state early voting laws.[18] *See Keisling*, 259 F.3d 1169; and *Millsaps v. Thompson*, 259 F.3d 535 (6th Cir. 2001).[19] Like the Fifth Circuit, the Ninth Circuit ruled in *Keisling* that Oregon's early voting practices were not preempted because early voting did not "consummate" the election before Election Day.[20] 259 F.3d at 1175-76. That is because, unlike Louisiana's open primary system, early voting has "the residual ritual of in person voting" that occurs on Election Day. *Id.* at 1175. Stated differently, early voting laws were not preempted because early voting is not "meant to make a final selection of officeholder" before Election Day. That "final selection" still occurs on Election Day. *Id.* at 1175-76; *see also Bomer*, 199 F.3d at 776 ("Allowing some voters to cast votes before election day does not contravene the federal election statutes because the final selection is not made before the federal election day."). But in Mississippi, neither the "combined actions" nor the "final selection" occurs on Election Day, because state law allows it to occur *after* Election Day.[21]

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[18] Ballot receipt was not at issue in the early voting cases because not all qualified ballots were received before Election Day. In *Foster*, however, receipt was implicitly part "combined action" because all ballots had been clearly received before Election Day.

[19] Though the Libertarian Party cites *Millsaps*, it notes that the Sixth Circuit seemingly applied conflict preemption under the Supremacy Clause rather than Elections Clause preemption. 259 F.3d at 549.

[20] The Seventh Circuit is currently considering an appeal from a preemption challenge to Illinois' Receipt Deadline. *Bost v. Ill. State Bd. of Elections*, No. 23-644 (reviewing *Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720 (N.D. Ill. 2023)).

[21] The district court's order relied, in part, on *Bognet v. Sec'y Commonwealth of Pa.*, 980 F.3d 336 (3d Cir. 2020), *cert. granted, vacated as moot sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021). ROA.1180. The Libertarian Party previously summarized *Bognet*'s extensive

Mississippi's Receipt Deadline is preempted because it alters both the "combined actions of voters and officials" and what actions are "meant to make a final selection of an officeholder." *Foster*, 522 U.S. at 71-72. Because the "final selection" of candidates in Mississippi can never conclude on Election Day, it does not, in fact, take place on the date chosen by Congress. *Id.* All combined actions can no more conclude five business days before Election Day than five days after. As a matter of law, Mississippi's Receipt Deadline allows a "contested selection of candidates" to continue after Election Day. *Id.* at 72.

Like *Foster*, Mississippi's Receipt Deadline clearly "affect[s] the timing of federal elections." *Id*. at 73. Holding voting open five business days after Election Day in Mississippi necessarily requires "further act[s] in law or in fact" meaning further receipt of cast ballots before the election is over. *See id.* at 72. Like Louisiana's open primaries in *Foster*, Mississippi's Receipt Deadline contravenes Congress' "final say" about the time for federal elections and violates the Election Day statutes. *Id.* at 72.

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appellate history. ROA.894-95. Even ignoring its vacatur, the claims in *Bognet* are categorically distinguishable from the claims here. "[T]he nub of Plaintiffs' argument here is that the Pennsylvania Supreme Court intruded on the authority delegated to the Pennsylvania General Assembly under Articles I and II of the U.S. Constitution to regulate federal elections." *Bognet*, 980 F.3d at 351. "Reduced to its essence, the Voter Plaintiffs' claimed vote dilution would rest on their allegation that federal law required a different state organ [*i.e*., the state legislature] to issue the Deadline Extension." *Id.* at 355-56. *Bognet* did not involve preemption, but rather a challenge under the "legislature thereof" provisions of the Elections and Electors Clause, raising similar issues to *Moore v. Harper*, 600 U.S. 1 (2023).

B. Congress Intended to Remedy Several Evils When It Adopted The Day of "Final Selection."

By establishing a uniform date, Congress sought "to remedy more than one evil arising from the election of members of congress occurring at different times in the different states." *Millsaps*, 259 F.3d at 541 (quoting *Ex parte Yarbrough*, 110 U.S. 651, 661 (1884)). Indeed, the Ninth Circuit described how the Congressional debates in 1844 and 1871-1872 over the national Election Day legislation were animated by accusations by both political parties of various "great frauds."[22] *Keisling*, 259 F.3d at 1172-73; *see also Millsaps*, 259 F.3d at 540-4 (describing the various "evils," such as fraud, that Congress sought to remedy). That history further shows that Congress considered and rejected multi-day voting amendments in favor of a single national Election Day. *Keisling*, 259 F.3d at 1172-75; *see also Millsaps*, 259 F.3d at 540-43.

In 2022, Congress enacted the Electoral Count Reform Act ("ECRA"). The ECRA revised Title 3 dealing with Presidential elections, adding new 3 U.S.C. § 21, explaining that with respect to those elections:

> (1) "election day" means the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President held in each State, except, in the case of a State that appoints electors by popular vote, if the State modifies the period of voting, as necessitated by force majeure events that are extraordinary

[22] The Ninth Circuit also relied on the history of absentee voting and "express congressional approval of absentee balloting when it has spoken on the issue." *Keisling*, 259 F.3d at 1175. As discussed *infra*, Part II.C, the "history" of post-election receipt is short and recent.

> and catastrophic, as provided under laws of the State enacted prior to such day, "election day" shall include the modified period of voting.

Id. While ECRA preserved the term "the election" as interpreted in *Foster*, Congress ceded back to the states specific, narrow authority related to Election Day. That is, in certain "force majeure events that are extraordinary and catastrophic[,]" not at issue here, states can modify the period for voting. 3 U.S.C. § 21. Any other state authority to modify "election day" necessarily remains displaced by the Election Day statutes. The text of this new *force majeure* exception underscores that, in the ordinary course, the "combined actions of voters and officials" referenced in *Foster* must still occur on Election Day.

C. The Ordinary Public Meaning of Election Day Is the Date by Which All Ballots Must Be Received by Election Officials.

As with all questions of statutory interpretation, analysis starts with the text of the statute to ascertain its plain meaning. *Hughey v. United States*, 495 U.S. 411, 415 (1990); *Jackson v. Blitt & Gaines, P.C.*, 833 F.3d 860, 863 (7th Cir. 2016). "[T]he court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier*, 486 U.S. 281, 291 (1988) (citations omitted). A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, common public meaning at the time of enactment. *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 654-655 (2020); *Perrin v. United States*, 444 U.S. 37, 42 (1979) (citing

Burns v. Alcala, 420 U.S. 575, 580-581 (1975)). "[I]f judges could freely invest old statutory terms with new meanings, we would risk amending legislation outside the 'single, finely wrought and exhaustively considered, procedure' the Constitution commands." *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (citation omitted). This inquiry often looks to the development and evolution of the common law definition, *id.*, or refers to dictionaries contemporaneous with the enactment. *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 228 (2014).

From 1845 until circa 2004, the overwhelming national practice was that Election Day was the day by which all ballots must be received by the proper election officials.[23] Election Day was, in effect, ballot receipt day. Federal elections in Mississippi today are wholly unmoored from the ordinary public meaning of Election Day, pushing the day of final selection to five business days after Election Day.

To be sure, Election Day administration, especially in Mississippi, has improved since the 19th century. *See generally Minn. Voters All. v. Mansky*, 585 U.S. 1, 5-8 (2018) (quoting *Burson v. Freeman*, 504 U.S. 191 (1992)). While society and

[23] *See infra* part II.C.

election administration have benefited from these changes, the recent efforts to radically redefine Election Day by extending final selection for (sometimes) weeks after Election Day is contrary to the original public meaning of the term.[24]

Dictionaries published before and after 1845 define "election" as "[t]he *day* of a public choice of officers," emphasizing the temporal nature of this regulation. Noah Webster, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE, 288, (Joseph E. Worcester, *et al*. eds. 1st ed. 1830), available at https://bit.ly/3lNC9nG; and Noah Webster, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE, 383, (Joseph E. Worcester, *et al*. eds. 2nd ed. 1860), available at https://bit.ly/3LK7ZMF (emphasis added). These contemporaneous dictionary definitions from around 1845 speak to the ordinary public meaning of the term "election." A historical survey of contemporaneous practices leaves little doubt that the original public meaning of election meant the final act of selection, which was the receipt of ballots by election officials.

1. There Was No Common Law Right to Vote Absentee.

Colonial electoral practices can be grouped together depending on whether the colony followed Puritan, British royal, or some other proprietary rule. *See*

[24] It also has decreased public confidence in elections. A recent national survey found that 76% of respondents want all ballots in by Election Day. Scott Rasmussen, "80% Favor Requiring Photo ID Before Casting a Ballot," ScottRasmussen.com (Jan. 17, 2022), https://bit.ly/3aupaFn. This finding was up 6% from a previous poll conducted less than a year before. Scott Rasmussen, "70% Want All Mail-In Ballots Received By Election Day," ScottRasmussen.com (July 13, 2021), https://bit.ly/3OYyJvd.

Cortland F. Bishop, HISTORY OF ELECTIONS IN THE AMERICAN COLONIES, 98-99 (1893), available at https://bit.ly/3yso7xC; and Kirk H. Porter, HISTORY OF SUFFRAGE IN THE UNITED STATES, 1-3 (1918), available at https://bit.ly/3RsJ9ES (explaining that colonies were essentially corporations and the right to vote was "much the same" as a stockholder's right to vote). Many of these practices lasted through the American Revolution and early republic. *See* Porter at 1-3; *see generally* Bishop at 1-45. Votes needed to be "personally given" at poll sites.[25] George W. McCrary, A TREATISE ON THE AMERICAN LAW OF ELECTIONS, 132 (Henry L. McCune eds. 4th ed. 1897) available at https://bit.ly/3PlGMCa.[26]

"During the colonial period, many government officials were elected by the *viva voce* method or by the showing of hands, as was the custom in most parts of Europe." *Burson*, 504 U.S. at 200; *see also Doe v. Reed*, 561 U.S. 186, 224-27 (2010) (Scalia, J., concurring in judgment) (describing historic voting practices). It was simply not physically possible during this time for votes—whether conducted *viva voce* or by electors dropping balls or beans in a bowl—to be received after Election Day.[27]

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[25] Certain areas of colonial America did allow limited "proxy voting." *See* Bishop at 127-40. In its basic form, proxy voting allowed eligible voters to assign their vote to a qualified proxy who was required to appear in person on Election Day to cast the assigned vote. *Id.*

[26] Because there was no common law right to proxy voting and absentee voting was yet to be invented, the common law's mailbox rule for contracts would not have applied to voting.

[27] *See Lynch*, 74 N.E. at 725.

2. The Public Understood That Election Day Required The Receipt of All Ballots to Consummate An Election.

After the Constitution's ratification, concerns immediately arose about the federal government relying on states to fulfill their duties to conduct federal elections. *See* Jeffrey M. Stonecash, Jessica E. Boscarino, Rogan T. Kersh, CONGRESSIONAL INTRUSION TO SPECIFY STATE VOTING DATES FOR NATIONAL OFFICES, PUBLIUS: THE JOURNAL OF FEDERALISM, Vol. 38, Issue 1, Winter 2008, Pages 137–151. ROA.1071-86. In particular, Congress was unsure whether states would conduct timely elections, especially for the newly created office of the president, or, indeed, whether the states would appoint electors at all. *Id.* at ROA.1074-75.; *Inter Tribal*, 570 U.S. at 8 (discussing the Framers' purpose for adopting the Elections Clause out of concern "a State would refuse to provide for the election of representatives to the Federal Congress." (citing THE FEDERALIST NO. 59, pp. 362-363 (C. Rossiter ed. 1961) (A. Hamilton))). This concern led to a 1792 act wherein Congress provided a deadline, rather than a designated day, by which states must appoint electors. Act of March 1, 1792, Sess. I, Ch. 8; *see* Stonecash, et al., at 140-41. ROA.1074-75.[28] But further legislation was needed to resolve issues arising from the nation's diverse state electoral calendars, including the issue of electoral fraud. *Id*. This prompted

[28] This was Congress' first federal election regulation. Stonecash, *et al*., at 140-41. ROA.1074-75. Save Election Day regulations, Congress used its election powers very rarely until after the Civil War. *See* James H. Lewis and Albert H. Putney, HANDBOOK ON ELECTION LAWS 239 (1912), available at https://bit.ly/3cceuvC.

Congress to establish a national Election Day for the appointment of presidential electors in 1845. *Id.* at 142; 3 U.S.C. § 1; ROA.1076. Within three years, all states had adopted the national Election Day for presidential elections. *Id*. at 141. ROA.1075

While Congress sought to create a more uniform national election calendar, new state electoral practices emerged, none of which facilitated or envisioned ballots being received after Election Day. In the 18th and early part of the 19th century, some states began adopting paper ballots, which quickly became the majority practice. E. Evans, A HISTORY OF THE AUSTRALIAN BALLOT SYSTEM IN THE UNITED States, 11 (1917) (Evans); *Burson*, 504 U.S. at 200. This practice generally involved voters' handwriting their votes on personal paper, which they delivered to polling places on Election Day. *Id.* at 200. These "ballots" were only cast once marked and deposited in the ballot box or otherwise delivered to election officials on Election Day. *Id.*

Viva voce and handwritten ballots remained the majority practices until the advent of preprinted "ticket" ballots in 1829. Evans at 11-12. Ticket voting grew in popularity as newspapers, political parties, unions, and other private groups distributed tickets with advertisements or political messages. *Id.* at 12; and *Burson*,

504 U.S. at 201-03. States abandoned *viva voce* voting as tickets grew more popular.[29] *See* Donald A. Debats, HOW AMERICA VOTED: BY VOICE, 5, Univ. of Virg. Inst. For Advanced Tech. in Humanities, (2016), available at https://bit.ly/3sVOMRu. Like handwritten ballots, tickets were simply privately created paper of no legal consequence until deposited (*i.e.*, received by election officials) in a ballot box on Election Day. *See Maddox*, 149 P.2d at 115. Following "the 1888 presidential election, which was widely regarded as having been plagued by fraud," many States moved to the secret (Australian) ballot system we use today. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 356 (1997); *see also* J. Harris, ELECTION ADMINISTRATION IN THE UNITED STATES, 153-54 (1934), available at https://bit.ly/3cdio7z. By 1896, almost 90 percent of states had adopted that system. *Burson*, 504 U.S. at 203-205.

3. The Development of Absentee Voting In Times of War Adhered to the Public Understanding that Election Day Required Ballot Receipt By Election Officials.

Historically, there have been two waves in which absentee voting was adopted in the United States. It first arose primarily in response to the Civil War. Benton at

[29] Virginia (1867) and Kentucky (1890) were the last states to abandon it. Evans at 17.

4-5. Prior to 1861, all states required that voting be exercised by the casting of ballots in person in one's election district.[30] *See id.* After war broke out, there was an effort to ensure Union soldiers could still exercise their franchise. *Id.* at 4-14. Thus, between 1861 and 1864 several states adopted one of two absentee voting methods to allow "voting in the field," both of which facilitated ballots being received by state election officials on Election Day. *Id.* at 4, 15. Some states enacted proxy voting whereby a soldier would mail his marked ballot to someone back home to deliver at his home precinct on Election Day.[31] *Id.* at 15, 265. Under the second method, states created actual poll sites near the battlefield, providing them with ballot boxes and deputizing servicemen as state election officials (*e.g.*, bailiffs) to receive ballots on Election Day. *Id.* at 15-17; *see also id.* at 43 (describing Missouri's field voting practices). After they were received by the deputized state election officials, the ballots would be counted in the field or sent back the servicemen's home states.[32] *Id.* at 317.

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[30] Technically, Pennsylvania had the first absentee law in 1813. *See* Benton at 17 and 189-203. That statute was later struck down, in part because ballots were not being received by deputized state officials at poll sites. *Id.* at 17 (discussing *Chase v. Miller*, 41 Pa. 403 (1862)). This decision is what led to the practice of deputizing servicemen as state officials. *Id.*

[31] "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." Benton at 15 (emphasis added).

[32] Below, Vet Voice argued that Civil War ballots sometimes would take days to be delivered to a soldier's home county, which, it argued, is analogous to Mississippi's Receipt Deadline. ROA.1254:5-14. Indeed, ballots might not reach a soldier's home county until after Election Day, but the system of deputizing servicemen as state election officials was designed to ensure that these ballots were timely received. Benton at 15-17. Mississippi's Receipt Deadline would only be

Absentee voting largely disappeared after the Civil War, *id.* at 314, but reemerged in the early 20th century as a result of the changing economics and war.[33] Charles Kettleborough, THE AMERICAN POLITICAL SCIENCE REVIEW, Vol. 11, No. 2, 320-322 (May 1917), available at https://bit.ly/3z14deH; and *see also* John C. Fortier, ABSENTEE AND EARLY VOTING: TRENDS, PROMISES, AND PERILS, AEI Press, at 8-11 (2006), available at https://bit.ly/3P3HaFD. While these new practices took different forms, they adhered to the original public meaning that Election Day meant receipt day. *See generally* P. Orman Ray, THE AMERICAN POLITICAL SCIENCE REVIEW, Vol. 12, No. 2, 251-261 (May 1918) (describing different state absentee voting procedures) available at https://bit.ly/3PjmtVS. For example, some states required absentee voters to swear that they would return their ballots to election officials on or before Election Day. *Id.* at 255. Washington State required absentee voters to appear at any state poll site on Election Day to absentee vote. *Id.* at 253. "[T]he act of voting is not completed until the ballot is deposited in the ballot-box." *Goodell v. Judith Basin County*, 224 P. 1110, 1111-14 (Mont. 1924) (collecting cases on absentee statutes).

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analogous if it also claimed that postal employees are deputized state election officials, which no party has so far argued here.

[33] Because 20th century absentee practices were adopted almost seven decades after Congress enacted Election Day, they are hardly "contemporaneous to the enactment" or explain the "development and evolution of the common-law definition" of Election Day. *See generally*, *Sandifer*, 571 U.S. at 228. To the extent these practices assist in determining the original public meaning, they reinforce Plaintiff's view that Election Day meant receipt day.

Similarly, early 20th century military absentee laws adopted many of the voting practices from the Civil War that reflected the original public meaning that Election Day meant receipt day. *See generally* P. Orman Ray, THE AMERICAN POLITICAL SCIENCE REVIEW, Vol. 12, No. 3, at 461-69 (Aug. 1918) (summarizing 20th century military absentee voting procedures), available at https://bit.ly/3auLHlv. These practices included proxy voting, express requirements that ballots be cast on or before Election Day, opening polling sites at a regiment's location, and deputizing service men to serve as state election officers in the field to receive ballots. *Id.* at 464-68.

4. Purported Congressional Tolerance Should be Afforded Minimal, if Any, Weight

Other than the fact that post-Election Day receipt is not expressly forbidden by the Election Day statutes, all defendants and *amici* argued to the district court that purported long Congressional tolerance weighs against preemption. The district court's decision on the merits relied, in part, on the fact that "Congress 'has never stepped in and altered the rules.'" ROA.1179 (quoting *Bost*, 684 F. Supp. 3d at 736). This is incorrect for several reasons.

First, Congressional inaction does not meaningfully aide the preemption analysis or the meaning of Election Day. "[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *United States v. Price*, 361

U.S. 304, 313 (1960); *United States v. Craft*, 535 U.S. 274, 287 (2002) ("Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction.") (alteration in original) (quoting *Cent. Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164, 187 (1994)); *Patterson v. McLean Credit Union*, 491 U.S. 164, 175 n.1 (1989) ("It does not follow . . . that Congress' failure to overturn a statutory precedent is reason for this Court to adhere to it. It is 'impossible to assert with any degree of assurance that congressional failure to act represents' affirmative congressional approval of the Court's statutory interpretation." (citation omitted)); *see also Let Congress Do It: The Case for An Absolute Rule of Statutory Stare Decisis*, 88 Mich. L. Rev. 177, 186 ("The notion of silent acquiescence has long been condemned as based on unrealistic and irrelevant assumptions about the legislative process.").

Second, save a few short-lived exceptions, most state post-Election Day receipt statutes were enacted over the last fifteen years.[34] Thus, compared to the his-

[34] *See* Tbl. 11: Receipt and Postmark Deadlines for Absentee/Mail Ballots, Nat'l Conf. of State Legis., available at https://bit.ly/3vRBB5G; *see, e.g.,* Cal. Elec. Code. § 3020 (2014); D.C. Code § 1-10001.05(a)(10A) (2019); 10 ILCS 5/19-8 (2005); Kan. Stat. Ann. § 25-1132 (2017); Md. Code Regs. 33.11.03.08 (2004); Mass. Gen. Laws ch. 54, § 93 (2021); Miss. Code. Ann. § 23-15-637 (2020); Nev. Rev. Stat. § 293.269921(2021); N.J. Stat. Ann. § 19:63-22 (2018); N.Y. Elec. Law § 8-412 (1994); Or. Rev. Stat. § 253.070(3) (2021); Tex. Elec. Code Ann. § 86.007 (1997); Utah Code Ann. § 20A-3a-204 (2020); Va. Code Ann. § 24.2-709(B) (2010); W. Va. Code §§ 3-3-5(g)(2), 3-5-17(1993); Ala. Code § 17-11-18(b) (2014); Ark. Code. Ann. § 7-5-411(a)(1)(A) (2001); Ind. Code § 3-12-1-17(b) (2006); Fla. Stat. § 101.6952(5) (2013); Ga. Code

tory of absentee voting, the history surrounding post-Election Day receipt is negligible. Prior to 2004, a *very* small number of jurisdictions experimented with and abandoned post-Election Day receipt practices. For example, a 1971 absentee voting study by the Department of Defense reported that 52 of 54 U.S. jurisdictions required ballot receipt on or before Election Day.[35] Washington and Nebraska were the lone outliers holding voting open for 15 and 1 day(s), respectively. Nebraska long ago abandoned this practice, and now requires Election Day receipt.[36] Neb. Rev. Stat. Ann. § 32-950. Washington state has probably experimented with this practice the longest, but its 1917 absentee statute required voters to appear at state poll sites to cast absentee ballots.[37] Washington notwithstanding, these experiments were short lived and involved a very small number of ballots.[38] But since the advent of all-mail

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Ann. § 21-2-386(a)(1)(G) (2005); Mich. Comp. Laws § 168.759a (2012); Mo. Rev. Stat. § 115.920(1) (2013); 25 Pa. Cons. Stat. § 3511(a) (2012); R.I. Gen Laws § 17-20-16 (2019); and S.C. Code Ann. §§ 7-15-700(a), 7-17-10 (2015).

[35] *See The Overseas Citizens Voting Rights Act of 1975 and S. 703 Before S. Comm. on Rules and Admin.*, 95th Cong. 33-34 (1977), available at https://bit.ly/38z9zU9.

[36] Similarly, a 1933 treatise reported that California allowed ballots to arrive to 15 days after Election Day. Harris at 291. Like Nebraska, however, California abandoned the practice. As recently as 2015 California required Election Day receipt. Cal. Elec. Code § 3020 and 2014 Cal ALS 618, 2014 Cal SB 29, 2014 Cal Stats. ch. 618.

[37] Assuming, *arguendo*, that Washington has maintained this practice since it joined the Union in 1889, it would provide little guidance regarding the original public meaning of statutes enacted in 1845 and 1872. Indeed, a "few late-in-time outliers" from territories do not provide much insight into historical meaning, especially if it contradicts the overwhelming weight of other, contemporaneous historical evidence. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 64-70 (2022) (finding that one-off, localized firearm regulations affecting "miniscule territorial populations" do not outweigh more contemporaneous historical evidence).

[38] Another brief state "experimentation" comes from the 1864 Maryland presidential election. Seven days before that election, Maryland amended its constitution to allow its Union soldiers to mark their ballots as many as five days *after* Election Day. Benton at 223. These votes were vital

balloting in some states and the increased use of mail balloting during the COVID-19 pandemic in 2020, that is no longer the case.[39]

Indeed, a straight line can be drawn connecting recent state adoption of post-Election Day receipt statutes to the adoption of provisional ballot requirements under § 302 of the Help America Vote Act ("HAVA") of 2002, which followed the controversial 2000 election.[40] Voting advocates viewed the new federally-mandated period for provisional ballots as an opportunity to lobby states to allow post-Election Day receipt.[41] Accordingly, Defendants', Vet Voices', and *amici*'s arguments about Congressional tolerance are based on statutes that, in most cases, have existed for 15 years or less. This does not constitute long Congressional tolerance, certainly not

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to keeping secessionists from office, which would have forced Maryland to secede and left Washington, D.C. surrounded. *Id.*

[39] From 1920-30, absentee ballots were estimated to account for less than .5% of total votes. Harris at 293. Thus, only a fraction of that .5% might be affected, for example, by California's brief experiment with post-election receipt. In 2000, 10% of voters nationwide voted by mail. *See* Charles Stewart III, *How We Voted in 2020: A First Look at the Survey of the Performance of American Elections*, MIT Election Data + Science Lab, (Dec. 15, 2020), available at https://bit.ly/39WCp0H. That number doubled to 21% by 2016 before doubling yet again to **46%** in 2020. Vote by mail is now the predominant voting method over early voting and Election Day voting.

[40] In its most basic form, provisional voting allows voters who appear at a polling place to cast a ballot if there is a question about the voter's eligibility. 52 U.S.C. § 21082(a); *see also Hunter v. Hamilton Cty. Bd. of Elections*, 635 F.3d 219, 222 (6th Cir. 2011). In this scenario, a voter marks her ballot, which is provisionally "received" by poll workers on Election Day subject to a later determination of the voter's eligibility. This process ensures a vote is timely received on Election Day while allowing the voter and election officials time after Election Day to resolve any eligibility questions. 52 U.S.C. § 21082(a)(4).

[41] From that controversy, two competing election reform visions arose. *See* John C. Fortier & Norman J. Ornstein, *Symposium, Election Reform: The Absentee Ballot and the Secret Ballot: Challenges For Election Reform*, 36 U. Mich. J.L. Reform 483, 484 (2003) (explaining how one view sought to improve poll sites while the other believed that poll sites discouraged voting and sought to promote voting by mail).

compared to the long history of absentee voting cited in early voting cases. *See Keisling*, 259 F.3d at 1175; and *Millsaps*, 259 F.3d at 544.

Moreover, Congress' failure to pass legislation expressly forbidding one-off state experiments with post-Election Day receipt does not show it acquiesced and must be kept in context. Congress "tolerated" Louisiana's open primary for nearly 20 years and Tennessee's malapportionment for 94 years before the Supreme Court put an end to those practices. *See Foster*, 522 U.S. at 70; and *Baker v. Carr*, 369 U.S. 186 (1962). Mississippi's Receipt Deadline was enacted in 2020.

Of course, Congressional inaction is in the eye of the beholder, which is why interpreting it is discouraged. Here, it also supports preemption argument, for example, based on Congress' repeated refusal to make Election Day a multiday event or extend it beyond the first Tuesday after the first Monday in November.[42] *See Keisling*, 259 F.3d at 1172-74; Cong. Globe, 42 Cong., 2d Sess. 676 (1872); and 95th Cong. pp. 13, 34, 59, 67, 84, and 94 (1977) (rejecting requests to extend ballot receipt deadlines for overseas voters). If Congress understood that states were free to extend ballot receipt deadlines past Election Day, why would such legislation need to be proposed?

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[42] In general, the Supreme Court has cautioned against drawing inferences from failed attempts to pass legislation. *See Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990). Notwithstanding this reticence, the Court has on occasion drawn inferences from the failure to enact a bill where the sheer number of legislative attempts to pass it and the clarity of the issue presented make such inferences reasonable. *Bob Jones University v. United States*, 461 U.S. 574 (1982).

Vet Voice argued below that Plaintiff's reading of the federal Election Day statutes "would disenfranchise large numbers of Mississippians." ROA.684. They never explain how. "[R]easonable election deadlines do not 'disenfranchise' anyone under any legitimate understanding of that term." *Democratic Nat'l Comm. v. Wis. State Legis.*, 141 S. Ct. 28, 35 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay related to challenge to Wisconsin's Election Day deadline for absentee ballots). "This Court has long explained that a State's election deadline does not disenfranchise voters who are capable of meeting the deadline but fail to do so." *Id.* (citing *Rosario v. Rockefeller*, 410 U.S. 752, 758 (1973)).

Below, Vet Voice and *amicus* DNC claim that, during the Civil War, sometimes a soldier's ballots would not arrive to their home county until after Election Day, which they contend supports post-Election Day receipt.[43] ROA.601 and ROA1253-55. Their argument, however, completely ignores that states mandated that deputized servicemen set up poll sites in the field to receive soldier's ballots on or before Election Day. Benton at 15-17 and 43. That is a completely different practice than the one in question here. To be clear, the post-Election Day receipt

[43] DNC also cites 19th Century statutes from New Jersey and Pennsylvania. ROA.601. The Pennsylvania statute was later struck down and gave rise to the practice of deputizing servicemen as election officials. Benton at 14-17 and 189-193 (describing Pennsylvania's practice that was later struck down); *see also Chase*, 41 Pa. 403. Both statutes ultimately required remote poll sites to be operated by servicemen deputized as state election officials. *See* Benton 14-17 and 189-93; and 269-70 (discussing New Jersey practice, which was repealed in 1818).

examples they refer to involve timely receipt by servicemen acting as civilly deputized poll workers, which is fully consistent with Plaintiff's historical arguments. Nothing in the record suggests that U.S. Postal employees are deputized by Mississippi as election officials. The fact that state-deputized servicemen received ballots on Election Day under those statutes supports, rather than undermines, Plaintiff's argument. *See* Benton at 17.

5. Other Federal Statutes Do Not Support Finding Non-Preemption

Defendants, Vet Voice, and *amici* below discussed other federal statutes either in support of their arguments against preemption or to bolster purported long congressional tolerance of state post-Election Day receipt laws. ROA.786; ROA.938-39; ROA.946-47. and ROA.598. In most instances, these discussions posit inferences that the statutory text cannot possibly support and do not meaningfully advance the preemption analysis. Reading the tea leaves related to perceived Congressional action, inaction, tolerance, or "acquiescence" raises more questions than answers, *see Rapanos v. United States*, 547 U.S. 715, 749-50 (2006), and attenuated readings muddle more than clarify.

For example, the *entire* discussion regarding an alleged threat this lawsuit poses to UOCAVA voters is a strawman.[44] ROA.1063-64; ROA.786; ROA.945-48; and ROA.975-79. When initially enacted, UOCAVA updated federal regulations regarding state duties to timely transmit absentee ballots to military and overseas voters.[45] In the 2009 amendments, Congress updated these regulations again, mandating a hard 45-day deadline for states to transmit timely-requested UOCAVA ballots. 52 U.S.C. § 20302(a)(8). UOCAVA did not modify ballot receipt deadlines or grant states authority to do the same. Plaintiff agrees that *federal courts* can order receipt deadline extensions as *remedies* for UOCAVA violations if the state failed to mail ballots within the 45-day deadline.[46] In situations where a state fails to timely transmit ballots, the United States often obtains court-ordered relief extending receipt deadlines to ensure UOCAVA voters get the benefit of the full 45-day period to receive and return their ballots. *See* ROA.980 n.9 and ROA.948 n.8. But this

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[44] Overseas Citizens Absentee Voting Act of 1986 ("UOCAVA"), 52 U.S.C. §§ 20301 to 20311, as amended by the Military and Overseas Voter Empowerment Act of 2009, Pub L. No. 111 84, Subtitle H, §§ 575 589, 123 Stat. 2190, 2318 2335 ("MOVE Act").

[45] *See generally* Robert T. Reagan, Fed. Jud. Ctr., *Overseas Voting: The Uniformed and Overseas Citizens Absentee Voting Act*, (2016) at pp. 1-3 (available at https://bit.ly/3QapF67).

[46] Congress gave federal courts remedial authority under UOCAVA. 52 U.S.C. § 20307. The United States' citation below to *Harris v. Florida Elections Comm'n*, 235 F.3d 578, 579 (11th Cir. 2000), *aff'g Harris v. Florida Elections Canvassing Comm'n*, 122 F. Supp. 2d 1317, 1324–25 (N.D. Fla. 2000), which the district court unfortunately adopted, is inapposite. ROA.1180; ROA.966. That admittedly convoluted case was ultimately about a "federally ordered mandate" (*i.e.*, consent decree) to extend ballot receipt deadlines for a violation of UOCAVA. 122 F. Supp. 2d at 14-15. Whether a *federal* court acting under a *federal* statute has authority to extend ballot receipt deadlines has no bearing on Election Clause preemption.

case is about Election Clause preemption of *state* authority to extend receipt deadlines, not that of *Congress* or the *federal judiciary*. It goes without saying that Congress has authority to pass a law that contemplates such relief—as it could repeal or amend the Election Days statutes to allow late ballot receipt in any other circumstances, or even at the unfettered discretion of the states. But Congress has not done so.

Simply put, UOCAVA is a statute designed for a set of circumstances that have no bearing here. A textual analysis of its provisions does not shed any light on the preemption question. At the district court level, Vet Voice pointed to 52 U.S.C. § 20304(b)(1). ROA.946. While 52 U.S.C. § 20302(a) sets forth *state* UOCAVA responsibilities, 52 U.S.C. § 20304 sets forth the *Secretary of Defense* responsibilities, including to "implement procedures that facilitate" the timely delivery of military ballots, including the collection of certain military ballots seven days before Election Day for delivery "not later than the date by which an absentee ballot must be received in order to be counted in the election." 52 U.S.C. § 20304(a)-(b). According to Vet Voice, it made "no sense" for Congress to include this language if it considered state authority preempted. ROA.946. The defect in their reasoning is the fact that some states require that absentee ballots arrive *before* Election Day. S*ee, e.g.,* Miss. Code Ann. § 23-15-637 (amended 2020); and La. Rev. Stat. § 18:1311. If 52 U.S.C. § 20304 provided instead "not later than Election Day,"

UOCAVA ballots for voters from these states could arrive too late to be counted under state law.

Likewise, federal statutes concerning special elections do not meaningfully further the preemption analysis.[47] First, the timing of *special* federal elections is not covered by the Election Day statutes. *See* 2 U.S.C. § 8 ("the time for holding [special] elections […] may be prescribed by the laws of the several States and Territories respectively"); *see id*. at § 8(b) (specifying special rules for "extraordinary circumstances").[48] For any of a number of possible reasons, Congress has decided not to establish a national special election day, relying instead on states to regulate the timing of special elections. Beyond that, little else can be extracted from the text of 2 U.S.C. § 8, other than to note that in a 2005 amendment Congress established the first 45-day deadline for UOCAVA voters. 2 U.S.C. § 8(b)(5)(B). As enacted, it provides that regardless of state time regulations, states must accept UOCAVA ballots if returned within 45 days of transmission. Mandating that states "accept" such

[47] Unlike *Inter Tribal*, where the Supreme Court used the "surroundings" and "neighboring provisions" *within* the NVRA to discern the meaning of "accept and use," opponents of preemption here reach for whatever they can find in the federal code, which they then fashion into Congressional intent or tolerance. Many of the provisions cited to the district court were not part of the original acts codifying Election Day. *See* Presidential Election Day Act, 28 Cong. Ch. 1, 5 Stat. 721; and 42 Cong. Ch. 11, 17 Stat. 28, 42 Cong. Ch. 11.

[48] *See Foster*, 522 U.S. at 71 n.3 (discussing 2 U.S.C. § 8's use of "by a failure to elect at the time prescribed by law" and what happens "if no candidate receives a majority vote on *federal election day*" (emphasis added)).

ballots is necessary to enforce the 45-day deadline since Congress again deferred to the states on the timing of special elections in extraordinary circumstances.

III. Mississippi's Receipt Deadline Violates Plaintiff's First and Fourteenth Amendment Rights.

Plaintiff's members and candidates' constitutional rights to vote and run for office are burdened by Mississippi's enforcement of its unlawful Receipt Deadline. Courts have routinely found that a burden on a candidate's rights is also a burden on a voter's right to freely associate and express political preferences. *See e.g.*, *Ill. State Bd. of Elec. v. Socialist Workers Party*, 440 U.S. 173, 184 (1979); *Nader v. Keith*, 385 F.3d 729, 737 (7th Cir. 2004) ("the right to stand for office is to some extent derivative from the right of the people to express their opinions by voting" (citing *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986)).

The district court wrongly assumed that since there was no violation of federal law, there was no burden on Plaintiff's constitutional rights. ROA.1182. But as stated in Part II *supra*, the Mississippi Receipt Deadline is inconsistent with the text of the Election Day statutes and the scope of the Elections and Electors Clauses. Plaintiff's constitutional rights are violated for the simple reason that its members and candidates must abide by a preempted and unconstitutional state timing regulation to run for office. States have no interest, much less a legitimate one, in enforcing a state time regulation that violates the timeline required by federal law.

CONCLUSION

Plaintiff respectfully requests this Court reverse the district court order granting summary judgment for Defendants and enter an order granting summary judgment for Plaintiff. This matter should be remanded to the district court for further remedial proceedings.

August 16, 2024

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CERTIFICATE OF SERVICE

I, T. Russell Nobile, certify that I electronically filed this brief with the Clerk of the Court, using the electronic filing system, which sent notification of such filing to all counsel of record.

August 16, 2024

s/ Russ Nobile
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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because, excluding parts of the document exempted by Fed. R. App. P. 32(f) and 5th Cir. R. 32.2, this document contains 12,858 words. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 5th Cir. R. 32.1 and the type-style requirements of Fed. R. App. P. 32(a)(6), because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Mac, Version 16.88, in 14-point Times New Roman font and 12-point Times New Roman font for footnotes.

August 16, 2024

/s/ Russ Nobile
T. Russell Nobile

No. 24-60395

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPUBLICAN NATIONAL COMMITTEE; MISSISSIPPI REPUBLICAN PARTY; JAMES PERRY; MATTHEW LAMB,

Plaintiffs – Appellants

v.

JUSTIN WETZEL, in his official capacity as the clerk and registrar of the Circuit Court of Harrison County; TONI JO DIAZ, in their official capacities as members of the Harrison County Election Commission; BECKY PAYNE, in their official capacities as members of the Harrison County Election Commission; BARBARA KIMBALL, in their official capacities as members of the Harrison County Election Commission; CHRISTENE BRICE, in their official capacities as members of the Harrison County Election Commission; CAROLYN HANDLER, in their official capacities as members of the Harrison County Election Commission; MICHAEL WATSON, in his official capacity as the Secretary of State of Mississippi,

Defendants – Appellees

VET VOICE FOUNDATION; MISSISSIPPI ALLIANCE OF RETIRED AMERICANS,

Intervenor Defendants – Appellees

LIBERTARIAN PARTY OF MISSISSIPPI,

Plaintiff – Appellant

v.

JUSTIN WETZEL, in his official capacity as the clerk and registrar of the Circuit Court of Harrison County; TONI JO DIAZ, in their official capacities as members of the Harrison County Election Commission; BECKY PAYNE, in their official capacities as members of the Harrison County Election Commission; BARBARA KIMBALL, in their official capacities as members of the Harrison County Election Commission; CHRISTENE BRICE, in their official capacities as members of the Harrison County Election Commission; CAROLYN HANDLER, in their official capacities as members of the Harrison County Election Commission; MICHAEL WATSON, in his official capacity as the Secretary of State of Mississippi,

Defendants – Appellees.

On Appeal from the United States District Court for the Southern District of Mississippi, Nos. 1:24-cv-25 and 1:24-cv-37 (Guirola, J.)

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CLOSED,APPEAL,LEAD,RPM

U.S. District Court
Southern District of Mississippi (Southern)
CIVIL DOCKET FOR CASE #: 1:24-cv-00025-LG-RPM
Internal Use Only

Republican National Committee et al v. Wetzel et al
Assigned to: District Judge Louis Guirola, Jr
Referred to: Magistrate Judge Robert P. Myers, Jr
Case in other court: USCA Fifth Circuit, 24-60395
Cause: 42:1983 Civil Rights Act

Date Filed: 01/26/2024
Date Terminated: 07/29/2024
Jury Demand: None
Nature of Suit: 441 Civil Rights: Voting
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
01/26/2024	1 (p.23)	COMPLAINT against Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Michael Watson, Justin Wetzel (Filing fee $ 405; receipt number 5321685), filed by Mississippi Republican Party, Matthew Lamb, Republican National Committee, James Perry. (Attachments: # 1 (p.23) Civil Cover Sheet)(JCH) (Entered: 01/26/2024)
01/26/2024		(Court only) ***Set NO-CMC and Magistrate-RPM Flags (JCH) (Entered: 01/26/2024)
01/26/2024	2 (p.38)	Summons Issued as to Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Michael Watson, Justin Wetzel. (JCH) (Entered: 01/26/2024)
01/26/2024		Issued summons mailed to attorney to address listed on docket. (JCH) (Entered: 01/26/2024)
02/05/2024	3 (p.45)	NOTICE *of Reissuance* by Matthew Lamb, Mississippi Republican Party, James Perry, Republican National Committee (Ritchie, Spencer) (Entered: 02/05/2024)
02/05/2024	4 (p.47)	Summons Reissued as to Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Michael Watson, Justin Wetzel. (JCH) (Entered: 02/05/2024)
02/05/2024		Re-Issued summons returned to attorney via email. (JCH) (Entered: 02/05/2024)
02/05/2024	5 (p.54)	SUMMONS Returned Executed by Mississippi Republican Party, Matthew Lamb, Republican National Committee, James Perry. Michael Watson served on 2/5/2024, answer due 2/26/2024. (Ritchie, Spencer) (Entered: 02/05/2024)
02/09/2024	6 (p.57)	MOTION to Intervene by Vet Voice Foundation, Mississippi Alliance for Retired Americans (Attachments: # 1 (p.23) Exhibit 1 - Declaration of Janessa Goldbeck, # 2 (p.38) Exhibit 2 - Declaration of James Sims, # 3 (p.45) Proposed Motion to Dismiss, # 4 (p.47) Proposed Memorandum Brief in Support of Motion to Dismiss)(McDuff, Robert) (Entered: 02/09/2024)
02/09/2024	7 (p.100)	MEMORANDUM in Support re 6 (p.57) MOTION to Intervene filed by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 02/09/2024)

02/12/2024	8 (p.123)	SUMMONS Returned Executed by Mississippi Republican Party, Matthew Lamb, Republican National Committee, James Perry. Justin Wetzel served on 2/8/2024, answer due 2/29/2024. (Ritchie, Spencer) (Entered: 02/12/2024)
02/12/2024		DOCKET ANNOTATION as to #6. L.U.Civ.R. 7(b)(2) requires that all supporting exhibits to a document be denominated by an exhibit letter or number and a meaningful description. Attorney is advised to follow this rule in future filings by including the exhibit number on each exhibit. (wld) (Entered: 02/12/2024)
02/12/2024	9 (p.125)	MOTION for Thomas R. McCarthy to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5334228) by Matthew Lamb, Mississippi Republican Party, James Perry, Republican National Committee (Ritchie, Spencer) (Entered: 02/12/2024)
02/12/2024	10 (p.132)	MOTION for Conor D. Woodfin to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5334236) by Matthew Lamb, Mississippi Republican Party, James Perry, Republican National Committee (Ritchie, Spencer) (Entered: 02/12/2024)
02/13/2024	11 (p.139)	MOTION for Elisabeth C. Frost to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5335000) by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 02/13/2024)
02/13/2024	12 (p.147)	MOTION for Christopher D. Dodge to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5335026) by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 02/13/2024)
02/13/2024	13 (p.154)	MOTION for Michael B. Jones to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5335034) by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 02/13/2024)
02/13/2024	14 (p.161)	MOTION for Richard A. Medina to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5335040) by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 02/13/2024)
02/13/2024	15 (p.168)	MOTION for Tina Meng Morrison to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5335044) by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 02/13/2024)
02/14/2024		DOCKET ANNOTATION as to #9,10,11,12,13, 14 and 15. Motion and certificates are filed as one main document. Exhibits/attachments should be scanned separately and docketed as properly identified attachments to the main document within the same docket entry. Attorney is directed to follow this procedure in future filings. L.U.Civ.R. 7.(b)(2). (wld) (Entered: 02/14/2024)
02/16/2024	16 (p.175)	NOTICE of Appearance by Paloma Wu on behalf of Mississippi Alliance for Retired Americans, Vet Voice Foundation (Wu, Paloma) (Entered: 02/16/2024)
02/16/2024	17 (p.177)	Unopposed MOTION to Exempt Defendant from Filing Answer to Plaintiffs' Complaint to Accommodate Parties' Anticipated Filing of Early Cross-Motions for Summary Judgment by Michael Watson (Shannon, III-State Gov, Rex) (Entered: 02/16/2024)
02/20/2024		DOCKET ANNOTATION as to #16. This document is incorrectly styled for the "Northern" division. The correct division is "Southern". Counsel does not need to refile. (wld) (Entered: 02/20/2024)

02/21/2024	18 (p.181)	MOTION to Intervene by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - Tribble Declaration, # 2 (p.38) Exhibit B - Ciraldo Declaration, # 3 (p.45) Exhibit C - Proposed Motion to Dismiss, # 4 (p.47) Exhibit D - Memorandum ISO Proposed Motion to Dismiss)(Tom, Joshua) (Entered: 02/21/2024)
02/21/2024	19 (p.234)	MEMORANDUM in Support re 18 (p.181) MOTION to Intervene filed by Disability Rights Mississippi, League of Women Voters of Mississippi (Tom, Joshua) (Entered: 02/21/2024)
02/22/2024	20 (p.256)	NOTICE of Appearance by Greta K Martin on behalf of Disability Rights Mississippi (Martin, Greta) (Entered: 02/22/2024)
02/22/2024	21 (p.258)	MOTION for Sophia Lin Lakin to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5341164) by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - Certificate of Good Standing)(Tom, Joshua) (Entered: 02/22/2024)
02/22/2024	22 (p.265)	MOTION for Jacob van Leer to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5341203) by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - Certificate of Good Standing)(Tom, Joshua) (Entered: 02/22/2024)
02/22/2024	23 (p.272)	MOTION for Davin Rosborough to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5341210) by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - Certificate of Good Standing)(Tom, Joshua) (Entered: 02/22/2024)
02/22/2024	24 (p.279)	NOTICE of Appearance by Tim C. Holleman on behalf of Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Justin Wetzel (Holleman, Tim) (Entered: 02/22/2024)
02/22/2024	25 (p.281)	Joinder in Document by Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Justin Wetzel to 17 (p.177) Unopposed MOTION to Exempt Defendant from Filing Answer to Plaintiffs' Complaint to Accommodate Parties' Anticipated Filing of Early Cross-Motions for Summary Judgment filed by Michael Watson (Holleman, Tim) (Entered: 02/22/2024)
02/22/2024	26 (p.283)	NOTICE *Regarding Defendant Watson's Unopposed Motion and Position on Consolidation* by Mississippi Alliance for Retired Americans, Vet Voice Foundation re 17 (p.177) Unopposed MOTION to Exempt Defendant from Filing Answer to Plaintiffs' Complaint to Accommodate Parties' Anticipated Filing of Early Cross-Motions for Summary Judgment (McDuff, Robert) (Entered: 02/22/2024)
02/23/2024		DOCKET ANNOTATION as to #21, 22 and 23. L.U.Civ.R. 7(b)(2) requires that all supporting exhibits to a document be denominated by an exhibit letter or number and a meaningful description. Attorney is advised to follow this rule in future filings by including the exhibit letter or number on each exhibit. (wld) (Entered: 02/23/2024)
02/23/2024		DOCKET ANNOTATION as to #25. The body of this document incorrectly references document #5 instead of document #17 as the document being joined. The joinder is linked correctly to document #17. (wld) (Entered: 02/23/2024)
02/23/2024	27 (p.288)	ORDER granting 17 (p.177) Motion to Exempt Defendant from Filing Answer to Plaintiffs' Complaint to Accommodate Parties' Anticipated Filing of Early Cross-Motions for Summary Judgment. Signed by District Judge Louis Guirola, Jr.,

		on 2/23/2024. (BR) (Entered: 02/23/2024)
02/26/2024	28 (p.290)	SUMMONS Returned Executed by Mississippi Republican Party, Republican National Committee, James Perry. Becky Payne served on 2/22/2024, answer due 3/14/2024. (Ritchie, Spencer) Modified on 2/27/2024 (wld). (Entered: 02/26/2024)
02/26/2024	29 (p.292)	SUMMONS Returned Executed by Republican National Committee, James Perry. Christene Brice served on 2/22/2024, answer due 3/14/2024. (Ritchie, Spencer) Modified on 2/27/2024 (wld). (Entered: 02/26/2024)
02/26/2024	30 (p.294)	SUMMONS Returned Executed by Mississippi Republican Party, Republican National Committee, James Perry. Toni Jo Diaz served on 2/22/2024, answer due 3/14/2024. (Ritchie, Spencer) Modified on 2/27/2024 (wld). (Entered: 02/26/2024)
02/26/2024	31 (p.296)	SUMMONS Returned Executed by Mississippi Republican Party, Republican National Committee, James Perry. Carolyn Handler served on 2/22/2024, answer due 3/14/2024. (Ritchie, Spencer) Modified on 2/27/2024 (wld). (Entered: 02/26/2024)
02/26/2024	32 (p.298)	SUMMONS Returned Executed by Mississippi Republican Party, Republican National Committee, James Perry. Barbara Kimball served on 2/22/2024, answer due 3/14/2024. (Ritchie, Spencer) Modified on 2/27/2024 (wld). (Entered: 02/26/2024)
02/26/2024	33 (p.300)	Unopposed MOTION for Extension of Time to File Answer re 1 (p.23) Complaint, *Exempt from Answer* by Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Justin Wetzel (Holleman, Tim) (Entered: 02/26/2024)
02/26/2024		TEXT ONLY ORDER granting 33 (p.300) Motion to *Exempt Defendants from Filing Answer to 1 (p.23) Complaint* . JUSTIN WETZEL, in his official capacity as the clerk and registrar of the Circuit Court of Harrison County, and TONI JO DIAZ, BECKY PAYNE, BARBARA KIMBALL, CHRISTENE BRICE, and CAROLYN HANDLER, in their official capacities as members of the Harrison County Election Commission are exempted from filing an answer or other response to Plaintiffs 1 (p.23) Complaint by February 26, 2024, or otherwise, subject to further order of this Court regarding the prospective entry of a briefing schedule on the parties anticipated cross-motions for summary judgment. NO FURTHER WRITTEN ORDER WILL ISSUE FROM THE COURT. Signed by District Judge Louis Guirola, Jr., on 2/26/2024. (BR) (Entered: 02/26/2024)
02/27/2024		DOCKET ANNOTATION as to #28,29,30,31 and 32. Based on the service date on the summons return, clerk corrected the service date to 2/22/2024, and the answer deadline to 3/14/2024. (wld) (Entered: 02/27/2024)
02/27/2024		Set/Reset Deadlines: Christene Brice answer due 3/14/2024; Toni Jo Diaz answer due 3/14/2024; Carolyn Handler answer due 3/14/2024; Barbara Kimball answer due 3/14/2024; Becky Payne answer due 3/14/2024. Answer due by 3/14/2024 (wld) (Entered: 02/27/2024)
02/27/2024	34 (p.303)	NOTICE *REGARDING LACK OF OPPOSITION TO MOTION TO INTERVENE* by Mississippi Alliance for Retired Americans, Vet Voice Foundation re 6 (p.57) MOTION to Intervene (Wu, Paloma) (Entered: 02/27/2024)
03/01/2024	35 (p.307)	ORDER CONSOLIDATING CASES: Republican National Committee, et al. v. Justin Wetzel, et al., 1:24cv25-LG-RPM, and Libertarian Party of Mississippi v. Justin Wetzel, et al., 1:24cv37-LG-RPM, are consolidated for all purposes, with

		Republican National Committee v. Justin Wetzel, et al., 1:24cv25-LG-RPM, serving as the lead case. All subsequent motions, notices, and pleadings shall be filed in the lead case only. See Order for more details. Signed by District Judge Louis Guirola, Jr. on 3/1/24 (RLW). (Entered: 03/01/2024)
03/01/2024		(Court only) ***Set Lead Flag (RLW) (Entered: 03/01/2024)
03/04/2024		TEXT ONLY ORDER granting Vet Voice Foundation and Mississippi Alliance for Retired Americans' 6 (p.57) Motion to Intervene as unopposed. The Clerk of Court is directed to list Vet Voice Foundation and Mississippi Alliance for Retired Americans as Intervenor-Defendants on the docket sheet. NO FURTHER WRITTEN ORDER WILL ISSUE FROM THE COURT. Signed by District Judge Louis Guirola, Jr., on 3/4/2024. (BR) (Entered: 03/04/2024)
03/04/2024	36 (p.310)	Rule 16(a) INITIAL PRETRIAL ORDER TO CONFER Signed by District Judge Louis Guirola, Jr on 03/04/2024 (Guirola, Louis) (Entered: 03/04/2024)
03/05/2024	37 (p.312)	Joint MOTION for Scheduling Order by Mississippi Republican Party, James Perry, Republican National Committee (Ritchie, Spencer) (Entered: 03/05/2024)
03/05/2024	38 (p.316)	ORDER granting 37 (p.312) Motion Summary Judgment Briefing Schedule Signed by District Judge Louis Guirola, Jr on 03/05/2024 (Guirola, Louis) (Entered: 03/05/2024)
03/05/2024	39 (p.318)	ORDER granting 11 (p.139) Motion to Appear Pro Hac Vice; granting 12 (p.147) Motion to Appear Pro Hac Vice; granting 13 (p.154) Motion to Appear Pro Hac Vice; granting 14 (p.161) Motion to Appear Pro Hac Vice; granting 15 (p.168) Motion to Appear Pro Hac Vice. Signed by Magistrate Judge Robert P. Myers, Jr on March 5, 2024 (SK) (Entered: 03/05/2024)
03/05/2024		(Court only) Attorney Elisabeth C. Frost - PHV,Christopher D. Dodge - PHV,Michael B. Jones - PHV,Richard A. Medina - PHV,Tina Meng Morrison - PHV for Mississippi Alliance for Retired Americans,Elisabeth C. Frost - PHV,Christopher D. Dodge - PHV,Michael B. Jones - PHV,Richard A. Medina - PHV,Tina Meng Morrison - PHV for Vet Voice Foundation added. (JCH) (Entered: 03/05/2024)
03/06/2024	40 (p.320)	RESPONSE to Motion re 18 (p.181) MOTION to Intervene filed by Mississippi Republican Party, James Perry, Republican National Committee (Ritchie, Spencer) (Entered: 03/06/2024)
03/06/2024	41	(DISREGARD) MOTION for Eric Lee to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5354015) by Libertarian Party of Mississippi (Nobile, T. Russell) Modified on 3/6/2024 (wld). (Entered: 03/06/2024)
03/06/2024		DOCKET ANNOTATION as to #41. This motion should be styled with the lead case caption. Also the attached certificates should be scanned separately and docketed as properly identified attachments to the main document within the same docket entry.L.U.Civ.R. 7.(b)(2). Attorney is directed to refile. Motion #41 will be terminated and disregarded. (wld) (Entered: 03/06/2024)
03/06/2024		(Court only) ***Motions terminated: 41 MOTION for Eric Lee to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5354015) filed by Libertarian Party of Mississippi. (wld) (Entered: 03/06/2024)
03/06/2024	42	(DISREGARD) MOTION for Eric Lee to Appear Pro Hac Vice by Libertarian Party

		of Mississippi (Attachments: # 1 (p.23) Exhibit -1, State Bar of California Certificate of Good Standing, # 2 (p.38) Exhibit -2, DC Bar Certificate of Good Standing)(Nobile, T. Russell) Modified on 3/6/2024 (wld). (Entered: 03/06/2024)
03/06/2024		DOCKET ANNOTATION as to #42. Counsel is again advised to correct the case caption. The lead plaintiff should be Republican National Committee. Also, exhibit 1 is labeled as exhibit 2 and exhibit 2 is labeled as exhibit 1. Counsel should refile correctly. Motion #42 will be terminated and disregarded. (wld) (Entered: 03/06/2024)
03/06/2024		(Court only) ***Motions terminated: 42 MOTION for Eric Lee to Appear Pro Hac Vice filed by Libertarian Party of Mississippi. (wld) (Entered: 03/06/2024)
03/06/2024	43 (p.328)	Response in Opposition re 40 (p.320) RESPONSE to Motion re 18 (p.181) MOTION to Intervene filed by Mississippi Republican Party, James Perry, Republican National Committee (Ritchie, Spencer), 18 (p.181) MOTION to Intervene by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 Exhibit A - Tribble Declaration, # 2 Exhibit B - Ciraldo Declaration, # 3 Exhibit C - Proposed Motion to Dismiss, # 4 Exhibit D - Memorandum ISO Proposed Motion to Dismiss)(Tom, Joshua) filed by Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Justin Wetzel (Holleman, Tim) (Entered: 03/06/2024)
03/06/2024	44 (p.330)	MOTION for Eric Lee to Appear Pro Hac Vice by Libertarian Party of Mississippi (Attachments: # 1 (p.23) Exhibit -1 DC Bar Certificate of Good Standing, # 2 (p.38) Exhibit -2 California Bar Certificate of Good Standing)(Nobile, T. Russell) (Entered: 03/06/2024)
03/06/2024	45 (p.340)	MOTION to Intervene *as Defendant* by Democratic National Committee (Attachments: # 1 (p.23) Exhibit A-[Proposed] Motion to Dismiss, # 2 (p.38) Exhibit B-[Proposed] Memorandum in Support of Motion to Dismiss)(Baria, David) (Entered: 03/06/2024)
03/06/2024	46 (p.370)	MEMORANDUM in Support re 45 (p.340) MOTION to Intervene *as Defendant* filed by Democratic National Committee (Baria, David) (Entered: 03/06/2024)
03/07/2024		DOCKET ANNOTATION as to #43. This document reads as a joinder to document #40 in the last paragraph. If counsel intends for this document to also be a joinder, a separate document should be filed using the event code "Joinder in Document" which can be found under "Other Documents". Counsel should change the title if this document is refiled. (wld) (Entered: 03/07/2024)
03/07/2024	47 (p.388)	ORDER granting in part and denying in part 45 (p.340) Motion to Intervene; the DNC's amicus brief will be due March 26, 2024, and it may be no longer than thirty-five pages in length, denying 18 (p.181) Motion to Intervene; DRMS and the League are permitted to file amici curiae briefs that are no more than thirty-five pages in length by March 26, 2024. Signed by District Judge Louis Guirola, Jr. on 3/7/2024 (wld) (Entered: 03/07/2024)
03/13/2024	48 (p.399)	NOTICE of Appearance by Wilson D. Minor-State Gov on behalf of Michael Watson (Minor-State Gov, Wilson) (Entered: 03/13/2024)
03/14/2024	49 (p.401)	ANSWER to 1 (p.23) Complaint, by Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Justin Wetzel.(Holleman, Tim) (Entered: 03/14/2024)

03/18/2024		DOCKET ANNOTATION as to # 49. Attorney is advised that all future filings should contain the lead case style and the member case style, pursuant to the Order filed on 3/1/24 that consolidated both cases for all purposes. (JCH) (Entered: 03/18/2024)
03/26/2024	50 (p.408)	Brief of Amicus Curiae by Disability Rights Mississippi, League of Women Voters of Mississippi filed by Disability Rights Mississippi, League of Women Voters of Mississippi (Tom, Joshua) (Entered: 03/26/2024)
03/26/2024	51 (p.431)	MOTION for Summary Judgment *in Consolidated Republican Party Case* by Michael Watson (Attachments: # 1 (p.23) Exhibit 1 - RNC "Who We Are" Statement (gop.com), # 2 (p.38) Exhibit 2 - MSGOP Statement (msgop.org))(Shannon, III-State Gov, Rex) (Entered: 03/26/2024)
03/26/2024	52 (p.442)	MEMORANDUM in Support re 51 (p.431) MOTION for Summary Judgment *in Consolidated Republican Party Case* filed by Michael Watson (Shannon, III-State Gov, Rex) (Entered: 03/26/2024)
03/26/2024	53 (p.476)	MOTION for Summary Judgment *in Consolidated Libertarian Party Case* by Michael Watson (Attachments: # 1 (p.23) Exhibit 1 - Libertarian Party Bylaws)(Minor-State Gov, Wilson) (Entered: 03/26/2024)
03/26/2024	54 (p.497)	MEMORANDUM in Support re 53 (p.476) MOTION for Summary Judgment *in Consolidated Libertarian Party Case* filed by Michael Watson (Minor-State Gov, Wilson) (Entered: 03/26/2024)
03/26/2024	55 (p.527)	MOTION for Summary Judgment by Libertarian Party of Mississippi (Attachments: # 1 (p.23) Exhibit 1 - Statement of Material Facts in Support of Plaintiff's Motion for Summary Judgment, # 2 (p.38) Exhibit 2 - Declaration of T. Russell Nobile, # 3 (p.45) Exhibit 3 - Declaration of Vicky Hanson, # 4 (p.47) Exhibit 4 - 2022 General Election Absentee Report, # 5 (p.54) Exhibit 5 - Official 2020 General Election Certified Results)(Nobile, T. Russell) (Entered: 03/26/2024)
03/26/2024	56 (p.555)	MEMORANDUM in Support re 55 (p.527) MOTION for Summary Judgment filed by Libertarian Party of Mississippi (Nobile, T. Russell) (Entered: 03/26/2024)
03/26/2024	57 (p.581)	Brief of Amicus Curiae by Democratic National Committee filed by Democratic National Committee (Baria, David) (Entered: 03/26/2024)
03/26/2024	58 (p.611)	Cross MOTION for Summary Judgment by Matthew Lamb, Mississippi Republican Party, James Perry, Republican National Committee (Attachments: # 1 (p.23) Exhibit Declaration of Ashley Walukevich, # 2 (p.38) Exhibit Declaration of Frank Bordeaux, # 3 (p.45) Exhibit Declaration of James Perry, # 4 (p.47) Exhibit Declaration of Matthew Lamb)(Ritchie, Spencer) (Entered: 03/26/2024)
03/26/2024	59	(DISREGARD)Cross MOTION for Summary Judgment by Matthew Lamb, Mississippi Republican Party, James Perry, Republican National Committee (Ritchie, Spencer) Modified on 3/27/2024 (wld). (Entered: 03/26/2024)
03/26/2024	60 (p.632)	MEMORANDUM in Support re 58 (p.611) Cross MOTION for Summary Judgment filed by Matthew Lamb, Mississippi Republican Party, James Perry, Republican National Committee (Ritchie, Spencer) (Entered: 03/26/2024)
03/26/2024	61 (p.654)	MOTION for Summary Judgment by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 03/26/2024)
03/26/2024		

	62 (p.657)	MEMORANDUM IN SUPPORT re 61 (p.654) MOTION for Summary Judgment filed by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 03/26/2024)
03/26/2024	63 (p.688)	MOTION for Summary Judgment by Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Justin Wetzel (Holleman, Tim) (Entered: 03/26/2024)
03/26/2024	64 (p.691)	MOTION for Summary Judgment by Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Justin Wetzel (Holleman, Tim) (Entered: 03/26/2024)
03/27/2024		DOCKET ANNOTATION as to #59. This document is filed as a motion but has a memorandum in support attached. Document #59 will be terminated as a motion and disregarded. Counsel should refile correctly. DOCKET ANNOTATION as to #58: Counsel is reminded to include the exhibit letter in the description of each exhibit in future filings. (wld) (Entered: 03/27/2024)
03/27/2024		(Court only) ***Motions terminated: 59 Cross MOTION for Summary Judgment filed by James Perry, Matthew Lamb, Mississippi Republican Party, Republican National Committee. (wld) (Entered: 03/27/2024)
04/01/2024	65	**DISREGARD** MOTION for Julia Markham-Cameron to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5373593) by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - Certificate of Good Standing)(Tom, Joshua) Modified on 4/1/2024 (JCH). (Entered: 04/01/2024)
04/01/2024	66	**DISREGARD** MOTION for Christopher Merken to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5373615) by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - NY Certificate of Good Standing, # 2 (p.38) Exhibit B - DC Certificate of Good Standing, # 3 (p.45) Exhibit C - Bar and Court Admissions)(Tom, Joshua) Modified on 4/1/2024 (JCH). (Entered: 04/01/2024)
04/01/2024	67	**DISREGARD** MOTION for Angela Liu to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5373630) by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - Certificate of Good Standing)(Tom, Joshua) Modified on 4/1/2024 (JCH). (Entered: 04/01/2024)
04/01/2024		(Court only) ***Motions terminated: 65 MOTION for Julia Markham-Cameron to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5373593) filed by League of Women Voters of Mississippi, Disability Rights Mississippi, 67 MOTION for Angela Liu to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5373630) filed by League of Women Voters of Mississippi, Disability Rights Mississippi, 66 MOTION for Christopher Merken to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5373615) filed by League of Women Voters of Mississippi, Disability Rights Mississippi. (JCH) (Entered: 04/01/2024)
04/01/2024		DOCKET ANNOTATION as to # 65 - # 67. These motions have been terminated. The applications are incomplete. Attorney should re-file all 3 applications with section J completed. It is not necessary to pay the fee again. The motions will be disregarded on the docket. (JCH) (Entered: 04/01/2024)

04/01/2024	68 (p.694)	MOTION for Angela Liu to Appear Pro Hac Vice by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - Certificate of Good Standing)(Tom, Joshua) (Entered: 04/01/2024)
04/01/2024	69	(DISREGARD) MOTION for Christopher Merken to Appear Pro Hac Vice by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - NY Certificate of Good Standing, # 2 (p.38) Exhibit B - DC Certificate of Good Standing, # 3 (p.45) Exhibit C - Bar and Court Admissions)(Tom, Joshua) Modified on 4/2/2024 (wld). (Entered: 04/01/2024)
04/01/2024	70 (p.701)	MOTION for Julia Markham-Cameron to Appear Pro Hac Vice by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - Certificate of Good Standing)(Tom, Joshua) (Entered: 04/01/2024)
04/02/2024		DOCKET ANNOTATION as to #69. Counsel should refile this motion with section J completed. This section is still missing the resident attorney's name and bar number. Document #69 will be terminated and disregarded. Counsel should not pay the fee when refiling. (wld) (Entered: 04/02/2024)
04/02/2024		(Court only) ***Motions terminated: 69 MOTION for Christopher Merken to Appear Pro Hac Vice filed by League of Women Voters of Mississippi, Disability Rights Mississippi. (wld) (Entered: 04/02/2024)
04/02/2024	71 (p.708)	MOTION for Christopher Merken to Appear Pro Hac Vice by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - NY Certificate of Good Standing, # 2 (p.38) Exhibit B - DC Certificate of Good Standing, # 3 (p.45) Exhibit C - Bar and Court Admissions)(Tom, Joshua) (Entered: 04/02/2024)
04/04/2024	72 (p.717)	MOTION to Clarify, or in the Alternative, MOTION to be Exempt from Filing an Answer by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert). Added MOTION to be Exempt on 4/4/2024 (RLW). (Entered: 04/04/2024)
04/04/2024		DOCKET ANNOTATION as to #72: This document requests several motion reliefs. Every motion relief should be selected from the list of motion titles. It is not necessary to refile as court staff has made the necessary correction. Attorney is advised to follow this procedure in future filings. (RLW) (Entered: 04/04/2024)
04/08/2024		TEXT ONLY ORDER granting as unopposed 72 (p.717) Motion to Clarify; granting 72 (p.717) Motion to be exempt from filing answer. Vet Voice Foundation and Mississippi Alliance for Retired Americans are exempt from filing a responsive pleading to the Complaint and are subject to the summary judgment briefing schedule [27, 38] previously entered by the Court. NO FURTHER WRITTEN ORDER WILL ISSUE FROM THE COURT. Signed by District Judge Louis Guirola, Jr., on 4/8/2024. (BR) (Entered: 04/08/2024)
04/09/2024	73 (p.723)	MEMORANDUM in Opposition re 58 (p.611) Cross MOTION for Summary Judgment filed by Michael Watson (Shannon, III-State Gov, Rex) (Entered: 04/09/2024)
04/09/2024	74 (p.759)	MEMORANDUM in Opposition re 55 (p.527) MOTION for Summary Judgment filed by Michael Watson (Minor-State Gov, Wilson) (Entered: 04/09/2024)
04/09/2024	75 (p.793)	RESPONSE in Opposition re 51 (p.431) MOTION for Summary Judgment *in Consolidated Republican Party Case*, 64 (p.691) MOTION for Summary Judgment ,

		63 (p.688) MOTION for Summary Judgment , 61 (p.654) MOTION for Summary Judgment filed by Matthew Lamb, Mississippi Republican Party, James Perry, Republican National Committee (Attachments: # 1 (p.23) Exhibit Exhibit A Declaration of James Blair, # 2 (p.38) Exhibit Exhibit B Supp Declaration of Frank Bordeaux of)(Ritchie, Spencer) (Entered: 04/09/2024)
04/09/2024	76 (p.833)	MOTION for Neil Steiner to Appear Pro Hac Vice (Paid $100 PHV fee; receipt number AMSSDC-5380356) by Disability Rights Mississippi, League of Women Voters of Mississippi (Attachments: # 1 (p.23) Exhibit A - Certificate of Good Standing)(Tom, Joshua) (Entered: 04/09/2024)
04/09/2024	77 (p.840)	RESPONSE in Opposition re 55 (p.527) MOTION for Summary Judgment filed by Mississippi Alliance for Retired Americans, Vet Voice Foundation (Attachments: # 1 (p.23) Exhibit A - Declaration of E. Frost, # 2 (p.38) Exhibit B - Response to Statement of Material Facts)(McDuff, Robert) (Entered: 04/09/2024)
04/09/2024	78 (p.861)	RESPONSE in Opposition re 58 (p.611) Cross MOTION for Summary Judgment filed by Mississippi Alliance for Retired Americans, Vet Voice Foundation (Attachments: # 1 (p.23) Exhibit A - Declaration of E. Frost)(McDuff, Robert) (Entered: 04/09/2024)
04/09/2024	79 (p.867)	RESPONSE in Opposition re 53 (p.476) MOTION for Summary Judgment *in Consolidated Libertarian Party Case*, 61 (p.654) MOTION for Summary Judgment filed by Libertarian Party of Mississippi (Attachments: # 1 (p.23) Exhibit -1 Second Declaration of Vicky Hanson, # 2 (p.38) Exhibit -2 Amended Certification of Vote for Electors for President and Vice President Official 2020 General Election Results, Mississippi Secretary of States Office)(Nobile, T. Russell) (Entered: 04/09/2024)
04/09/2024	80 (p.877)	MEMORANDUM in Opposition re 53 (p.476) MOTION for Summary Judgment *in Consolidated Libertarian Party Case*, 61 (p.654) MOTION for Summary Judgment filed by Libertarian Party of Mississippi (Nobile, T. Russell) (Entered: 04/09/2024)
04/09/2024	81 (p.918)	MEMORANDUM IN SUPPORT re 77 (p.840) Response in Opposition to 55 (p.527) Motion, 78 (p.861) Response in Opposition to 58 (p.611) Motion filed by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) Modified on 4/10/2024 to add link to related motions (wld). (Entered: 04/09/2024)
04/10/2024	82 (p.955)	RESPONSE in Opposition re 55 (p.527) MOTION for Summary Judgment filed by Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Justin Wetzel (Holleman, Tim) (Entered: 04/10/2024)
04/10/2024	83 (p.958)	RESPONSE in Opposition re 58 (p.611) Cross MOTION for Summary Judgment filed by Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, Justin Wetzel (Holleman, Tim) (Entered: 04/10/2024)
04/10/2024		DOCKET ANNOTATION as to #81. Incomplete linkage made. This memorandum should have also been linked to motion #55 and motion #58. All related filings to motions (using the"Responses and Replies" category, with the exception of "Response to Order") should be linked back to the original motion. Court staff has made the correction. DOCKET ANNOTATION as to #77 and #78. Counsel is reminded to include the exhibit letter or number on the exhibits in future filings. Counsel is not required to refile. (wld) (Entered: 04/10/2024)
04/11/2024	84 (p.961)	Brief of Amicus Curiae by United States of America filed by United States of America (Jhaveri-Federal Gov, Sejal) (Entered: 04/11/2024)

04/15/2024	85 (p.984)	Unopposed MOTION for Leave to File Excess Pages *for Rebuttal Memorandum Brief* by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 04/15/2024)
04/15/2024	86 (p.988)	Unopposed MOTION for Leave to File Excess Pages *to Accommodate Full Briefing of Defendant's Cross-Motions for Summary Judgment* by Michael Watson (Shannon, III-State Gov, Rex) (Entered: 04/15/2024)
04/15/2024		TEXT ONLY ORDER granting 85 (p.984) Intervenor-Defendants' Unopposed Motion for Leave to File Excess Pages. The rebuttal brief page limit is extended to ten pages as requested. NO FURTHER WRITTEN ORDER WILL ISSUE FROM THE COURT. Signed by District Judge Louis Guirola, Jr on 04/15/2024 (cf) (Entered: 04/15/2024)
04/15/2024		TEXT ONLY ORDER granting 86 (p.988) Unopposed Motion for Leave to File Excess Pages. Briefing page limit increased by 10 pages as requested in each case. NO FURTHER WRITTEN ORDER WILL ISSUE FROM THE COURT. Signed by District Judge Louis Guirola, Jr on 04/15/2024 (cf) (Entered: 04/15/2024)
04/16/2024	87 (p.993)	REPLY to Response to Motion re 51 (p.431) MOTION for Summary Judgment *in Consolidated Republican Party Case* filed by Michael Watson (Shannon, III-State Gov, Rex) (Entered: 04/16/2024)
04/16/2024	88 (p.1006)	REPLY to Response to Motion re 53 (p.476) MOTION for Summary Judgment *in Consolidated Libertarian Party Case* filed by Michael Watson (Minor-State Gov, Wilson) (Entered: 04/16/2024)
04/16/2024	89 (p.1022)	REPLY to Response to Motion re 61 (p.654) MOTION for Summary Judgment filed by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 04/16/2024)
04/16/2024	90 (p.1034)	REPLY to Response to Motion re 58 (p.611) Cross MOTION for Summary Judgment filed by Matthew Lamb, Mississippi Republican Party, James Perry, Republican National Committee (Ritchie, Spencer) (Entered: 04/16/2024)
04/16/2024	91 (p.1055)	REPLY to Response to Motion re 55 (p.527) MOTION for Summary Judgment filed by Libertarian Party of Mississippi (Attachments: # 1 (p.23) Exhibit 1 - Stonecash, et al., "Congressional Intrusion to Specify State Voting Dates for National Offices")(Nobile, T. Russell) (Entered: 04/16/2024)
05/02/2024	92 (p.1087)	MOTION to Withdraw as Attorney *Michael B. Jones* by Mississippi Alliance for Retired Americans, Vet Voice Foundation (McDuff, Robert) (Entered: 05/02/2024)
05/06/2024		TEXT ONLY ORDER granting 92 (p.1087) Motion to Withdraw as Attorney Michael B. Jones. Attorney Michael Brandon Jones - PHV terminated as counsel of record. No further written order will issue. Signed by Magistrate Judge Robert P. Myers, Jr on May 6, 2024 (SK) (Entered: 05/06/2024)
05/09/2024	93 (p.1093)	ORDER TO SHOW CAUSE. Show Cause Response due by 5/23/2024. Signed by Magistrate Judge Robert P. Myers, Jr on May 9, 2024 (SK) (Entered: 05/09/2024)
05/09/2024	94 (p.1095)	ORDER TO SHOW CAUSE. Show Cause Response due by 5/23/2024. Signed by Magistrate Judge Robert P. Myers, Jr on May 9, 2024 (SK) (Entered: 05/09/2024)
05/09/2024	95 (p.1097)	ORDER TO SHOW CAUSE. Show Cause Response due by 5/23/2024 Signed by Magistrate Judge Robert P. Myers, Jr on May 9, 2024 (SK) (Entered: 05/09/2024)

05/23/2024	96 (p.1099)	NOTICE *of Withdrawal* by Libertarian Party of Mississippi re 44 (p.330) MOTION for Eric Lee to Appear Pro Hac Vice (Nobile, T. Russell) (Entered: 05/23/2024)
05/23/2024	97 (p.1100)	Response to Order re 95 (p.1097) ORDER TO SHOW CAUSE. Show Cause Response due by 5/23/2024 Signed by Magistrate Judge Robert P. Myers, Jr on May 9, 2024 (SK) filed by Libertarian Party of Mississippi (Attachments: # 1 (p.23) Exhibit - 1 Order from Arnesen v. Raimondo, No. 1:23-CV-145)(Nobile, T. Russell) (Entered: 05/23/2024)
05/23/2024	98 (p.1113)	RESPONSE TO ORDER TO SHOW CAUSE re 93 (p.1093) ORDER TO SHOW CAUSE. Show Cause Response due by 5/23/2024. Signed by Magistrate Judge Robert P. Myers, Jr on May 9, 2024 (SK) by Matthew Lamb, Republican National Committee, Mississippi Republican Party, James Perry filed by Matthew Lamb, Republican National Committee, Mississippi Republican Party, James Perry (Ritchie, Spencer) (Entered: 05/23/2024)
05/23/2024	99 (p.1120)	RESPONSE TO ORDER TO SHOW CAUSE re 94 (p.1095) ORDER TO SHOW CAUSE. Show Cause Response due by 5/23/2024. Signed by Magistrate Judge Robert P. Myers, Jr on May 9, 2024 (SK) by League of Women Voters of Mississippi, Disability Rights Mississippi filed by League of Women Voters of Mississippi, Disability Rights Mississippi (Tom, Joshua) (Entered: 05/23/2024)
05/24/2024		(Court only) ***Motions terminated: 44 (p.330) MOTION for Eric Lee to Appear Pro Hac Vice filed by Libertarian Party of Mississippi per 96 (p.1099) Notice of Withdrawal of Motion. (wld) (Entered: 05/24/2024)
05/30/2024	100 (p.1136)	ORDER granting 9 (p.125) Motion to Appear Pro Hac Vice; granting 10 (p.132) Motion to Appear Pro Hac Vice. Signed by Magistrate Judge Robert P. Myers, Jr on May 30, 2024 (SK) (Entered: 05/30/2024)
05/30/2024	101 (p.1137)	ORDER granting 68 (p.694) Motion to Appear Pro Hac Vice; granting 70 (p.701) Motion to Appear Pro Hac Vice; granting 71 (p.708) Motion to Appear Pro Hac Vice; granting 76 (p.833) Motion to Appear Pro Hac Vice; granting 21 (p.258) Motion to Appear Pro Hac Vice; granting 22 (p.265) Motion to Appear Pro Hac Vice; granting 23 (p.272) Motion to Appear Pro Hac Vice, Signed by Magistrate Judge Robert P. Myers, Jr on May 30, 2024 (SK) (Entered: 05/30/2024)
05/30/2024		(Court only) Attorney Sophia Lin Lakin - PHV,Jacob Matthew van Leer - PHV,Davin M. Rosborough - PHV,Angela M. Liu - PHV,Christopher J. R. Merken - PHV,Julia M. Markham-Cameron - PHV,Neil Steiner - PHV for Disability Rights Mississippi,Thomas R. McCarthy - PHV,Conor D. Woodfin - PHV for Matthew Lamb,Sophia Lin Lakin - PHV,Jacob Matthew van Leer - PHV,Davin M. Rosborough - PHV,Angela M. Liu - PHV,Christopher J. R. Merken - PHV,Julia M. Markham-Cameron - PHV,Neil Steiner - PHV for League of Women Voters of Mississippi,Thomas R. McCarthy - PHV,Conor D. Woodfin - PHV for Mississippi Republican Party,Thomas R. McCarthy - PHV,Conor D. Woodfin - PHV for James Perry,Thomas R. McCarthy - PHV,Conor D. Woodfin - PHV for Republican National Committee added. (JCH) (Entered: 05/30/2024)
06/05/2024	102 (p.1138)	ORDER SCHEDULING HEARING Signed by District Judge Louis Guirola, Jr on 06/05/2024 (Guirola, Louis) (Entered: 06/05/2024)
06/05/2024		Set Hearing: Motions Hearing set for 7/9/2024 at 01:30 PM in Courtroom 606 (Gulfport) before District Judge Louis Guirola Jr. on the following Summary Judgment motions: 51 (p.431) , 53 (p.476) , 55 (p.527) , 58 (p.611) , 61 (p.654) , 63 (p.688) , and 64 (p.691) . Refer to Order 102 (p.1138) for details. (VLK) (Entered:

		06/05/2024)
07/09/2024		Minute Entry for proceedings held before District Judge Louis Guirola, Jr: Motion Hearing held on 7/9/2024 regarding the following motions: 51 (p.431) MOTION for Summary Judgment *in Consolidated Republican Party Case* filed by Michael Watson; 53 (p.476) MOTION for Summary Judgment *in Consolidated Libertarian Party Case* filed by Michael Watson; 55 (p.527) MOTION for Summary Judgment filed by Libertarian Party of Mississippi; 58 (p.611) Cross MOTION for Summary Judgment filed by James Perry, Matthew Lamb, Mississippi Republican Party, Republican National Committee; 61 (p.654) MOTION for Summary Judgment filed by Vet Voice Foundation, Mississippi Alliance for Retired Americans; 63 (p.688) MOTION for Summary Judgment filed by Carolyn Handler, Toni Jo Diaz, Christene Brice, Barbara Kimball, Justin Wetzel, Becky Payne; AND 64 (p.691) MOTION for Summary Judgment filed by Carolyn Handler, Toni Jo Diaz, Christene Brice, Barbara Kimball, Justin Wetzel, Becky Payne. For reasons as stated on the record, motions 51 (p.431) , 53 (p.476) , 55 (p.527) , 58 (p.611) , 61 (p.654) , 63 (p.688) , and 64 (p.691) were taken under advisement. APPEARANCES: S. Ritchie and C. Woodfin, Attorneys for Plaintiffs Republican National Committee, Mississippi Republican Party, James Perry and Matthew Lamb; R. Nobile, Attorney for Consolidated Plaintiff Libertarian Party of Mississippi; T. Holleman, Attorney for Defendants Justin Wetzel, Toni Jo Diaz, Becky Payne, Barbara Kimball, Christene Brice, and Carolyn Handler; R. Shannon, III, and W. Minor, Attorneys for Defendant Michael Watson; and C. Dodge and P. Wu, Attorneys for Intervenor Defendants Vet Voice Foundation and Mississippi Alliance for Retired Americans; and R. Dedeaux and S. Vance, CSOs. Court Reporter Sherri Penny, Telephone Number: 228-563-1781, E-mail: sherri_penny@mssd.uscourts.gov. (VLK) (Entered: 07/09/2024)
07/22/2024	103 (p.1141)	NOTICE *OF SUPPLEMENTAL AUTHORITY* by Mississippi Alliance for Retired Americans, Vet Voice Foundation (Attachments: # 1 (p.23) Attachment A - Order, RNC v. Burgess)(McDuff, Robert) (Entered: 07/22/2024)
07/28/2024	104 (p.1160)	ORDER granting 51 (p.431) Motion for Summary Judgment; granting 53 (p.476) Motion for Summary Judgment; denying 55 (p.527) Motion for Summary Judgment; denying 58 (p.611) Motion for Summary Judgment; granting 61 (p.654) Motion for Summary Judgment; granting 63 (p.688) Motion for Summary Judgment; granting 64 (p.691) Motion for Summary Judgment Signed by District Judge Louis Guirola, Jr on 07/28/2024 (Guirola, Louis) (Entered: 07/28/2024)
07/29/2024	105 (p.1184)	FINAL JUDGMENT: Ordered that these consolidated cases are dismissed with prejudice. Signed by District Judge Louis Guirola, Jr on 7/28/24. (JCH) (Entered: 07/29/2024)
08/02/2024	106 (p.1186)	NOTICE OF APPEAL by Libertarian Party of Mississippi of 104 (p.1160) Order. Filing fee $ 605, receipt number AMSSDC-5464991. (Nobile, T. Russell) Modified on 8/5/2024 (wld). (Entered: 08/02/2024)
08/02/2024	107 (p.1188)	NOTICE OF APPEAL by Matthew Lamb, Mississippi Republican Party, James Perry, Republican National Committee of 105 (p.1184) Final Judgment. Filing fee $ 605, receipt number AMSSDC-5465110. (Ritchie, Spencer) Modified on 8/5/2024 (wld). (Entered: 08/02/2024)
08/05/2024		DOCKET ANNOTATION as to #106 and #107. Counsel did not link the notice of appeal to the document being appealed. Clerk has made the corrections. Also, the appeal deadline should not have been set. (wld) (Entered: 08/05/2024)

08/06/2024		USCA Case Number 24-60395 for 107 (p.1188) Notice of Appeal filed by James Perry, Matthew Lamb, Mississippi Republican Party, Republican National Committee, 106 (p.1186) Notice of Appeal filed by Libertarian Party of Mississippi. (RLW) (Entered: 08/06/2024)
08/06/2024	108 (p.1191)	Appeal Remark re 107 (p.1188) Notice of Appeal, 106 (p.1186) Notice of Appeal: Initial case check letter to Attorneys Nobile and Ritchie from U.S. Court of Appeals advising of procedures and case number. (RLW) (Entered: 08/06/2024)
08/09/2024	109 (p.1195)	TRANSCRIPT REQUEST by Matthew Lamb, Mississippi Republican Party, James Perry, Republican National Committee for proceedings held on 07/09/24 before Judge Louis Guirola, Jr., Court Reporter/Transcriber Gabrielle Chambless, Telephone Number : 601-255-6432, E-mail : gabrielle_chambless@mssd.uscourts.gov. (Ritchie, Spencer) (Entered: 08/09/2024)
08/09/2024	110 (p.1196)	NOTICE OF FILING OF OFFICIAL MOTIONS HEARING TRANSCRIPT for dates of 7/9/24 before Judge Louis Guirola, re 107 (p.1188) Notice of Appeal, 106 (p.1186) Notice of Appeal Court Reporter/Transcriber Sherri Penny, Telephone Number : 228-563-1781, E-mail : sherri_penny@mssd.uscourts.gov. NOTICE RE : REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no Notice is filed, the transcript will be made electronically available to the public without redaction after 90 calendar days. The policy is located on the court website at www.mssd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/30/2024. Redacted Transcript Deadline set for 9/9/2024. Release of Transcript Restriction set for 11/7/2024. (SLP) (Entered: 08/09/2024)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

REPUBLICAN NATIONAL COMMITTEE, et al, Plaintiffs, v. JUSTIN WETZEL, et al., Defendants.	No. 1:24-cv-25-LG-RPM (lead case)
LIBERTARIAN PARTY OF MISSISSIPPI, Plaintiff, v. JUSTIN WETZEL, et al., Defendants.	No. 1:24-cv-37-LG-RPM (consolidated)

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Plaintiff Libertarian Party of Mississippi appeals to the United States Court of Appeals for the Fifth Circuit from the Memorandum Opinion and Order entered on July 28, 2024 (Doc. 104) by the Honorable Louis Guirola, Jr., United States District Judge for the Southern District of Mississippi, dismissing Plaintiff's claims under Fed. R. Civ. P. 12(b)(6) in the above-captioned matter.

August 2, 2024

Respectfully submitted

s/ Russ Nobile

T. Russell Nobile (MS Bar 100682)
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

REPUBLICAN NATIONAL COMMITTEE; MISSISSIPPI REPUBLICAN PARTY; JAMES PERRY; and MATTHEW LAMB — **PLAINTIFFS**

v. — **CAUSE NO. 1:24cv25-LG-RPM**

JUSTIN WETZEL, in his official capacity as the clerk and register of the Circuit Court of Harrison County, et al. — **DEFENDANTS**

consolidated with

LIBERTARIAN PARTY OF MISSISSIPPI — **PLAINTIFF**

v. — **CAUSE NO. 1:24cv37-LG-RPM**

JUSTIN WETZEL, in his official capacity as the clerk and register of the Circuit Court of Harrison County, et al. — **DEFENDANTS**

FINAL JUDGMENT

In accordance with the Memorandum Opinion and Order entered herewith, this Court finds that there is no genuine dispute as to any material fact and the Defendants are entitled to judgment as a matter of law pursuant to Fed. R. Civ. P. 56.

IT IS THEREFORE ORDERED AND ADJUDGED that these consolidated lawsuits filed by Libertarian Party of Mississippi, Matthew Lamb, the Mississippi

Republican Party, James Perry, and the Republican National Committee are hereby **DISMISSED WITH PREJUDICE**.

SO ORDERED AND ADJUDGED this the 28th day of July, 2024.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

REPUBLICAN NATIONAL COMMITTEE; MISSISSIPPI REPUBLICAN PARTY; JAMES PERRY; and MATTHEW LAMB — **PLAINTIFFS**

v. — **CAUSE NO. 1:24cv25-LG-RPM**

JUSTIN WETZEL, in his official capacity as the clerk and register of the Circuit Court of Harrison County, et al. — **DEFENDANTS**

consolidated with

LIBERTARIAN PARTY OF MISSISSIPPI — **PLAINTIFF**

v. — **CAUSE NO. 1:24cv37-LG-RPM**

JUSTIN WETZEL, in his official capacity as the clerk and register of the Circuit Court of Harrison County, et al. — **DEFENDANTS**

MEMORANDUM OPINION AND ORDER

BEFORE THE COURT in these consolidated cases is a challenge to a portion of Mississippi's absentee-balloting procedures. At issue is Mississippi Code Ann. § 23-15-637(1)(a) which provides in part for the counting of absentee ballots postmarked on or before the date of the election and received by mail no more than five business days after the election. Plaintiffs contend that Mississippi law conflicts with federal statutes establishing a national uniform "election day."

Defendants argue that Plaintiffs lack standing and that Mississippi law is in harmony with federal statutes and the Constitution. In the opinion of the Court Plaintiffs have Article III standing to proceed. However, for the reasons stated below the Court finds that Defendants are entitled to judgment as a matter of law on the merits of Plaintiffs' claims.

BACKGROUND

In cause number 1:24cv25-LG-RPM, the Republican Plaintiffs — the Republican National Committee ("RNC"), the Mississippi Republican Party, James "Pete" Perry, and Matthew Lamb[1] — filed a Complaint for declaratory and injunctive relief against the Mississippi Secretary of State, Michael Watson; Justin Wetzel, the clerk and registrar of the Circuit Court of Harrison County, Mississippi; and the members of the Harrison County Election Commission. Plaintiffs allege that Miss. Code Ann. § 23-15-637(1)(a) violates federal law. They assert these claims:

(1) violation of 3 U.S.C. § 1, 2 U.S.C. § 1, and 2 U.S.C. § 7, which designate the election day for the offices of President and Vice President, seats in the Senate, and seats in the House of Representatives, respectively.

(2) a 42 U.S.C. § 1983 claim for violation of the right to stand for office; and

(3) a 42 U.S.C. § 1983 claim for violation of the right to vote.

[1] Mr. Perry is the former chair of the Hinds County Republican Party and a current member of the Mississippi Republican Party's executive committee and the Hinds County Republican Executive Committee. Compl. ¶ 16. Mr. Lamb is the District 4 Commissioner for the George County Election Commission. *Id.* ¶ 17.

The Libertarian Party of Mississippi in cause number 1:24cv37-LG-RPM makes essentially the same claims. The Court consolidated the two cases and granted Vet Voice Foundation and Mississippi Alliance for Retired Americans' Motion for Permission to Intervene as Defendants.[2]

The Mississippi Secretary of State has moved for summary judgment separately against [51] the Republican Plaintiffs and [53] the Libertarian Party, and both sets of Plaintiffs have filed their own [55, 58] motions for summary judgment. The individual Defendants have [63, 64] adopted the secretary's briefs, and the intervenor Defendants have [61] filed their own separate Rule 56 motion.

DISCUSSION

I. STANDING

The Constitution gives federal courts the power to adjudicate only genuine "cases" and "controversies." Art. III, § 2. "For there to be a case or controversy under Article III, the plaintiff must have a personal stake in the case — in other words, standing." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (internal quotation marks & citation omitted).

"To prove Article III standing, a plaintiff must show that he or she 'h[as] (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.'"

[2] The Court [47] denied Motions for Permission to Intervene as Defendants that were filed by Disability Rights of Mississippi, the League of Women Voters, and the Democratic National Committee, but granted them leave to file amicus curiae briefs. The United States also filed a [84] Statement of Interest in support of the statute.

Ortiz v. Am. Airlines, Inc., 5 F.4th 622, 628 (5th Cir. 2021) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)). At the summary-judgment stage, a plaintiff can establish standing only by "setting forth by affidavit or other evidence specific facts, which, taken as true, support each element" of the standing analysis. *Id.* (quoting *Texas v. Rettig*, 987 F.3d 518, 527–28 (5th Cir. 2021)) (cleaned up). In other words, [a] plaintiff "must point to specific summary judgment evidence showing that it was 'directly affected' by" the Mississippi statute. *Texas State LULAC v. Elfant*, 52 F.4th 248, 255 (5th Cir. 2022) (citation omitted).

Every plaintiff need not demonstrate standing in this case. *Texas v. United States*, 809 F.3d 134, 151 (5th Cir. 2015) (holding only one plaintiff need succeed because one party with standing satisfies Article III's case-or-controversy requirement); *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 178 (5th Cir. 2020) ("[I]n the context of injunctive relief, one plaintiff's successful demonstration of standing is sufficient to satisfy Article III's case-or-controversy requirement.") (cleaned up).

Groups like the RNC, the Republican Party, and the Libertarian Party can satisfy the injury-in-fact requirement by demonstrating organizational standing, sometimes also called direct standing. *See OCA-Greater Hous. v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006). This form of standing applies when the "defendant's actions perceptibly impair the organization's activities and consequently drain the organization's resources." *Vote.org v. Callanen*, 89 F.4th 459, 470 (5th Cir. 2023) (cleaned up).

However, a "setback to an organization's abstract social interests is insufficient." *Id.* (alterations omitted).

A political party's "need to raise and expend additional funds and resources" satisfies the injury-in-fact requirement of organizational standing because "economic injury is a quintessential injury upon which to base standing." *Benkiser*, 459 F.3d at 586 (citations omitted).[3] An organization's diversion of "significant resources to counteract the defendant's conduct" will also satisfy this requirement, *Vote.org*, 89 F.4th at 470 (quoting *N.A.A.C.P. v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010)), as long as the organization "identifie[s] any specific projects that [it] had to put on hold or otherwise curtail in order to respond" to the defendant's actions. *City of Kyle*, 626 F.3d at 238. Vague assertions and speculation that the organization could have spent the funds elsewhere are insufficient. *Id.* For example, in *City of Kyle*, the Fifth Circuit held that a plaintiff organization's conjecture that resources would need to be diverted in response to city ordinance could not establish an injury in fact. *Id.* at 238–39. The organization did not identify any specific projects that it had to put on hold or curtail, and it cited activities that did not "differ from its routine lobbying activities." *Id.* at 239. The

[3] Defendants argue that *Benkiser* is inapplicable because it pertained to competitive standing, which is means "a candidate or his political party has standing to challenge the inclusion of an allegedly ineligible rival on the ballot, on the theory that doing so hurts the candidate's or party's own chances of prevailing in the election." *Townley v. Miller*, 722 F.3d 1128, 1135 (9th Cir. 2013) (citation omitted). But competitive standing was an alternative finding in *Benkiser*, separate from its finding of economic loss. 459 F.3d at 586 ("A *second* basis for the TDP's direct standing is harm to its election prospects.") (emphasis added).

court contrasted the vague assertions of the *City of Kyle* plaintiff with the following proof submitted by an organization in an Eleventh Circuit case, *Florida State Conference of the NAACP v. Browning*:[4]

> The organizations reasonably anticipate[d] that they [would] have to divert personnel and time to educating volunteers and voters on compliance with [a state statute] and to resolving the problem of voters left off the registration rolls on election day. These resources would otherwise be spent on registration drives and election-day education and monitoring. SVREP anticipates that it will expend many more hours than it otherwise would have conducting follow-up work with registration applicants because voters will have their applications denied due to matching failures. In HAGC's case, compensating for the new obstacles created by [the statute] would divert substantial resources away from helping voters who may need language-translation assistance on election day.

522 F.3d 1153, 1165–66 (11th Cir. 2008), *cited with approval in City of Kyle*, 626 F.3d at 238.

The Fifth Circuit has provided helpful analysis distinguishing the *City of Kyle* case from a subsequent case, *OCA-Greater Houston v. Texas*:

> The *City of Kyle* plaintiffs were dedicated lobbying groups who claimed their lobbying and litigation-related expenses as their injury. It is fundamental that no plaintiff may claim as injury the expense of preparing for litigation, for then the injury-in-fact requirement would pose no barrier. The key fact in *City of Kyle* was that every claimed "injury" either was undertaken to prepare for litigation (such as the commissioning of a $15,000 study on the impact of the ordinances—a study that the plaintiffs then relied on at trial to demonstrate disparate impact) or was no different from the plaintiffs' daily operations (such as the vice president's spending time reviewing ordinances).
>
> Here, by contrast, OCA is not a lobbying group. It went out of its way to counteract the effect of Texas' allegedly unlawful voter-

[4] In *Browning*, the plaintiff organizations challenged a Florida statute that established a new verification process for first-time voter registrants. 522 F.3d at 1158.

> interpreter restriction — not with a view toward litigation, but toward mitigating its real-world impact on OCA's members and the public. For instance, it undertook to educate voters about Texas's assistor-versus-interpreter distinction to reduce the chance that other voters would be denied their choice of interpreter . . .[,] an undertaking that consumed its time and resources in a way they would not have been spent absent the Texas law. Hence, the Texas statutes at issue "perceptibly impaired" OCA's ability to "get out the vote" among its members.

867 F.3d at 611–12 (footnote omitted).

RNC Political Director James Blair maintains that Mississippi's acceptance of ballots five days after election day "forces the RNC to spend more money on ballot-chase programs and poll-watching activities." (Resp., Ex. A ¶ 3, ECF No. 75-1).[5] He further testifies by declaration:

> Specifically, Mississippi's post-election deadline for the receipt of mail-in ballots requires the RNC to divert more resources toward a longer period of ballot chasing. Absentee-ballot chasing requires establishing and executing a separate, parallel get-out-the-vote effort supported by training, voter education, and voter outreach. Those activities require the RNC to divert resources away from traditional get-out-the-vote operations such as encouraging and assisting people [to] vote in person. But for Mississippi's post-election receipt of mail-in ballots, the RNC would spend more money on traditional get-out-the-vote operations.

[5] In a separate declaration, the RNC's Deputy Political Director, Ashley Walukevich, testifies that ballot chasing is a "labor[-]intensive" program "whereby [the party] contacts voters, educates them about the mail-in voting process, informs them of key deadlines and rules, reminds them to return their mail-in ballots in a timely manner, and encourages them to cure any defects . . . ." (Motion, Ex. A ¶ 11, ECF No. 58-1). She adds that this program is more costly due to Mississippi's counting of ballots received by mail after election day and that the RNC must engage in this program in order to "protect its electoral interests and maintain competitive parity with other political parties. (*Id.* ¶ 12).

(*Id.* ¶ 5). He claims that this required diversion of resources "directly harms the RNC's mission" because "[t]raditional get-out-the-vote operations are critical to the RNC's mission to represent the interests of the Republican Party and secure the election of Republican candidates." (*Id.* ¶¶ 6, 8). He further explains that more resources must be devoted to "additional poll-watcher coverage," including training of poll watchers, "preparation of relevant materials, payment to attorneys for review, and securing additional volunteer time." (*Id.* ¶ 7). These efforts and expenditures, he claims, divert resources "away from other election integrity efforts to educate voters, monitor state and local compliance with election laws, and increase confidence in the election." (*Id.*).

Frank Bordeaux, chair of the Mississippi Republican Party, has also submitted a declaration concerning the effect of the Mississippi statute on its mission. (Pls.' Resp., Ex. B, ECF No. 75-2). He testifies that "[t]he MSGOP can afford to expend resources on ballot-chase programs and poll-watching activities in response to Mississippi's mail-in ballot deadline only by diverting them from the pursuit of its mission in other areas." (*Id.* ¶ 4). These "other areas" include "efforts to facilitate voter registration, increase in-person turnout, promote and secure election integrity," and "educate voters, among other activities." (*Id.* ¶ 5) Mr. Bordeaux states: "These activities are critical to the MSGOP's mission to represent the interests of the Republican Party and secure the election of Republican candidates for state and federal office in Mississippi." (*Id.*). He explains, "[i]f not for Mississippi's late-ballot-receipt deadline, the MSGOP would spend more money

registering Republican voters" and "increasing in-person voter turnout in Mississippi." (*Id.* ¶¶ 6–7).[6]

Along with providing evidence of economic loss, these Plaintiffs allege that the Mississippi statute will cause them to curtail and divert resources away from specific activities and projects — registration of Republican voters and efforts to increase in-person turnout — in order to perform more extensive and expensive ballot-chasing and poll-watching efforts necessitated by the acceptance of absentee ballots received after election day. *See Browning*, 522 F.3d at 1165–66; *see also Martin v. Kemp*, 341 F. Supp. 3d 1326, 1335 (N.D. Ga. 2018) (holding that political organizations had established standing by showing they would have to divert resources from "phone banking, finding canvassing volunteers, in-person and written 'get-out-the-vote' efforts" to cautioning voters about rejection of absentee-ballot applications and ballots). This diversion of resources frustrates and impedes the Republican Party's mission of "represent[ing] the interests of the Republican Party and secur[ing] the election of Republican candidates for state and federal office in Mississippi." *See Democratic Cong. Campaign Comm. v. Kosinski*, 614 F. Supp. 3d 20, 45 (S.D.N.Y. 2022) (collecting cases and holding that diversion of resources away from "engaging and mobilizing voters" to educate them about ballot-rejection practices and "mobilize volunteers to assist those [voters]" frustrated a Democratic committee's mission of electing Democratic candidates). Since

[6] In analyzing standing, the Court must assume that the testimony given in these declarations is truthful. *See Ortiz*, 5 F.4th at 628.

"[a]bsentee-ballot chasing requires establishing and executing a separate, parallel get-out-the-vote effort supported by training, voter education, and voter outreach" according to Mr. Blair, these are not the types of routine activities that the Fifth Circuit warned about in *City of Kyle*. *See* 626 F.3d at 238-29.

The Libertarian Party has submitted a declaration signed by Vicky Hanson, who is a lifetime member, the Membership Committee Chairperson, and "the most recent past Secretary of the Libertarian Party of Mississippi." (Libertarian Mot., Ex. 3 ¶¶ 2, 12, ECF No. 55-3). She testifies that "[t]he receipt of absentee ballots after Election Day inhibits [the] Party's ability to monitor counties' receipt of those ballots, as it must sparingly use limited resources during the post-election certification process." (*Id.* ¶ 22). She also states:

> In 2020, due to the change in Mississippi's election code allowing an additional five business days to receive absentee ballots, the Party's ability to monitor the canvassing of ballots diminished. The Party didn't field monitors for all five extra business days in any election held after the law changed, and it is very unlikely it will be able to do so in the near future. The Democrat[ic] and Republican parties, by contrast, can afford to do this extra monitoring, so the Libertarian Party is now in an even worse position compared to them.

(*Id.* ¶ 26). In a supplemental declaration, she testifies:

> . . . Mississippi's Receipt Deadline adds time and duties to our campaigns[,] and we are going to have to use the existing level of volunteer hours to try to fill them. Our other option is to drop the ball — that is, to not do — either post-election canvassing, or some other campaign[-]related task.

(Libertarian Resp., Ex. 1 ¶ 4, ECF No. 79-1).

Additionally, as the Libertarian Party noted in its Memorandum:

> Whatever tasks a Mississippi political party or candidate performs during the course of a campaign, and however much time is devoted to them, the Receipt Deadline increases those tasks and that time by five business days. Staffing a campaign for an additional five business days necessarily costs more than not doing so. This cost constitutes economic harm that confers standing. . . . If, in the alternative, Plaintiff must forgo this monitoring because it simply cannot afford it, Plaintiff is also harmed.

(Pl.'s Mem. at 6–7, ECF No. 80).

The RNC and the Mississippi Republican Party have established that they suffered concrete injuries in the form of economic loss and diversion of resources. (Resp., Ex. A at 2, ECF No. 75-1). Their injuries are not "generalized grievances" because the general population will not experience these losses. *See Lujan*, 504 U.S. at 575; *see also McMahon v. Fenves*, 946 F.3d 266, 271 (5th Cir. 2020) ("An injury is particularized if it affects the plaintiff in a personal and individual way."). The injuries are also imminent as the statute currently requires five more business days for receipt, processing, and counting of absentee ballots following the next election in November. The Libertarian Party has shown through declarants that the Mississippi statute has harmed its mission to secure votes for its candidates. According to the testimony, it has already significantly curtailed efforts to monitor the counting of absentee ballots, and at the next election, the Libertarian Party will need to choose between post-election canvassing for additional days and other tasks such as getting out its vote on election day.[7] The injuries alleged by the political

[7] Though the injuries to the Libertarian Party are somewhat different, the Court finds that the analysis it applied to the Republican Plaintiffs also applies to the Libertarian Party.

parties — economic injury as well as diversion of resources — in this case are specific to each party, such that these parties have shown they have a direct stake in the outcome of this lawsuit. *See also Voice of the Experienced v. Ardoin*, 2024 WL 2142991 (M.D. La. May 13, 2024) (holding that plaintiffs' alleged diversion of resources adequately to satisfy injury in fact). The injuries threatened to Plaintiffs are fairly traceable to the Mississippi statute's five-day receipt requirement for absentee ballots, and a decision from this Court granting Plaintiffs' requests for declaratory and injunctive relief would redress these injuries by overturning the portion of the statute that will cause Plaintiffs injury at the next election. Plaintiffs have sufficiently alleged standing, and the Court has federal-question jurisdiction to hear this suit.

II. DOES MISSISSIPPI'S ABSENTEE VOTING STATUTE CONFLICT WITH FEDERAL LAW?

Both sides have filed motions for summary judgment, indicating that they discern no material questions of fact to be resolved on the merits. The Court agrees. "Summary judgment is appropriate where the only issue before the court is a pure question of law." *Sheline v. Dun & Bradstreet Corp.*, 948 F.2d 174, 176 (5th Cir. 1991).

The Electors Clause of the United States Constitution states that Congress can "determine the Time of chusing the Electors [for President and Vice President], and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." Art. II, § 1, cl. 4. The Elections Clause provides: "The Times, Places and Manner of holding Elections for Senators and

Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." *Id.* art. I, § 4, cl. 1. Thus, the Elections "Clause empowers Congress to pre-empt state regulations governing the 'Times, Places and Manner' of holding congressional elections." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013). "The Clause's substantive scope is broad," because "Times, Places, and Manner" are "comprehensive words, which embrace authority to provide a complete code for congressional elections." *Id.* at 8–9. The Clause "invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices." *Id.* at 9 (quoting *Foster v. Love*, 522 U.S. 67, 69 (1997)).

Congress's power over the time, place, and manner of elections is "paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith." *Inter Tribal*, 570 U.S. at 9 (quoting U.S. Const. art. I, § 4, cl. 1). Pursuant to this very power, Congress enacted three statutes establishing a single election day for federal elections: 3 U.S.C. § 1, 2 U.S.C. § 1, and 2 U.S.C. § 7. The statute establishing an election day for the offices of President and Vice President provides that "[t]he electors of President and Vice President shall be appointed, in each State, on election day, in accordance with the laws of the State enacted prior to election day." 3 U.S.C. § 1. Congress later defined "election day" in that statute to mean "the

Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President held in each State . . . ." *Id.* § 21(1).

Likewise, the statute applicable to selection of members of the House of Representatives provides: "The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter." 2 U.S.C. § 7. Finally, the statute pertaining to Senate elections provides:

> At the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter.

Id. § 1.[8]

The legislative history "indicates that Congress wanted a uniform election day to prevent earlier elections in some states unduly influencing the later voters, to prevent fraudulent voting in multiple state elections, and to remove the burden of voting in more than one federal election in a given year." *Love v. Foster*, 90 F.3d 1026, 1029 (5th Cir. 1996) (citing *Cong. Globe*, 42d Cong., 2d Sess. 112 (1871)), *aff'd*, 522 U.S. 67 (1997).[9] "By establishing a particular day as 'the day' on which these

[8] A discussion of the Framers' intent behind the Elections Clause can be found in the Supreme Court's opinion in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 832–34 (1995), and the Sixth Circuit's opinion in *Millsaps v. Thompson*, 259 F.3d 535, 539–40 (6th Cir. 2001).

[9] In a separate statute, Congress created two exceptions to the election-day requirement: (1) in states that required a majority vote for election, a runoff could

actions must take place, the statutes simply regulate the time of the election, a matter on which the Constitution explicitly gives Congress the final say." *Foster*, 522 U.S. at 71–72.

Plaintiffs maintain that Miss. Code Ann. § 23-15-637(1)(a) violates these statutes because it permits receipt of absentee ballots by mail for up to five business days after the election day established by the federal statutes. Defendants respond that the federal statutes merely require that a vote be cast, not received, on or before election day. The Mississippi statute provides:

> Absentee *ballots and applications received by mail,* except for fax or electronically transmitted ballots as otherwise provided by Section 23-15-699 for UOCAVA ballots, or common carrier, such as United Parcel Service or FedEx Corporation, *must be postmarked on or before the date of the election and received by the registrar no more than five (5) business days after the election; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted.*

Miss. Code Ann. § 23-15-637 (emphasis added).[10]

The Fifth Circuit has yet to consider whether ballots received after election day may be counted, but it has held that "[a]llowing some voters to cast votes *before* election day does not contravene the federal election statutes because the final selection is not made before the federal election day." *Voting Integrity Project, Inc.*

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be held between the federal election day and the January when officials take office; and (2) an election could be held on a different date if a vacancy occurred in the office. 2 U.S.C. § 8.

[10] The statute references "UOCAVA," the Uniformed and Overseas Citizens Absentee Voting Act of 1986, which requires states to accept absentee ballots in federal elections from absent uniformed-services voters and overseas voters. 52 U.S.C. § 20302(a)(1). States must send validly requested absentee ballots to these voters at least forty-five days before a federal election in order to provide them enough time to vote. *Id*. § 20302(a)(8), (g)(1)(A).

v. Bomer, 199 F.3d 773, 776 (5th Cir. 2000) (emphasis added), *cert. denied*, 530 U.S. 1230 (2000). In *Bomer*, while addressing Texas's early-voting system, the court explained that "[s]tates are given a wide discretion in the formulation of a system for the choice by the people of representatives in Congress." *Id.* at 775. The court said it could not "conceive that Congress intended the federal election day statutes to have the effect of impeding citizens in exercising their right to vote." *Id.* at 777. Thus, the court held that "a state's discretion and flexibility in establishing the time, place and manner of electing its federal representatives has only one limitation: the state system cannot *directly conflict* with federal election laws on the subject." *Id.* at 775 (emphasis added). "Because the election of federal representatives in Texas [was] not decided or consummated before federal election day, the Texas scheme [was] not inconsistent with the federal election statutes." *Id.* at 776.

Defendants argue that, under *Bomer*, the Mississippi statute is not preempted by federal law because it does not "directly conflict" with the election-day statutes. *See id.* at 775. Plaintiffs counter that the appropriate standard — as set forth in the later Supreme Court case *Inter Tribal* — is whether the state statute is "inconsistent" with the federal statutes. *See* 570 U.S. at 9. According to Plaintiffs, the *Inter Tribal* standard "is a less demanding preemption standard than the 'directly conflict' standard" because it "does not require a textual or 'facial

conflict.'"[11] (Reply at 6, ECF No. 91). Thus, Defendants argue that the Mississippi statute is not preempted because the federal statutes do not directly address whether ballots must be received on or before election day, while Plaintiffs claim that Congress's decision to legislate the time of election "*necessarily* displaces some element of a pre-existing legal regime erected by the States." (*Id.* at 8) (quoting *Inter Tribal*, 570 U.S. at 14). Plaintiffs assert that the Mississippi statute must "give way" because it is inconsistent with the election-day statutes. (*Id.*).

Before this Court can determine whether the Mississippi statute conflicts with, or is inconsistent with, the federal election-day statutes, the Court must consider the meaning of the word "election" in those statutes. "[E]very statute's meaning is fixed at the time of enactment." *Wisc. Cent. Ltd v. United States*, 585 U.S. 274, 284 (2018) (emphasis omitted). Therefore, this Court must interpret the word "election" "consistent with [its] ordinary meaning . . . at the time Congress enacted the statute[s]." *Id.* at 277 (internal quotation marks & citation omitted).

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[11] Plaintiffs cite no authority that distinguishes between "direct conflict" and "inconsistency." It appears that the Fifth Circuit does not view the standards set forth in *Inter Tribal* and *Bomer* as conflicting because it cited both standards in *Voting for America, Inc. v. Steen*, 732 F.3d 382 (5th Cir. 2013). First, the Fifth Circuit cited *Voting for America v. Andrade*, 488 F. App'x 890, 896 (5th Cir. 2012), and *Bomer* for the proposition the "state election laws cannot 'directly conflict' with federal election laws on the subject." *Id.* at 399. Later on in the same opinion, the Fifth Circuit cited the holding in *Inter Tribal* and found its facts distinguishable because "the laws do not conflict." *Id.* at 400. Therefore, "inconsistency" and "direct conflict" are essentially synonymous and do not appear to be different standards under Fifth Circuit precedent. In fact, having quoted the "inconsistent" standard from a prior case, *Inter Tribal* then goes on to say that the "straightforward textual question here is whether" the challenged statute "conflicts with" federal law. 570 U.S. at 9.

In 1921, the Supreme Court noted that the word "election" still had "the same general significance as it did when the Constitution came into existence — *final* choice of an officer by the duly qualified electors." *Newberry v. United States*, 256 U.S. 232, 250 (1921) (emphasis added). More recently, while considering the election-day statutes, the Supreme Court held that "election" "refer[s] to the combined actions of voters and officials meant to make *a final selection* of an officeholder." *Foster*, 522 U.S. at 71 (emphasis added). Plaintiffs seize upon the unspecified "actions" of "officials" to argue that no vote is cast until it is received by election officials. (Mem. at 7–8, ECF No. 60). However, the *Foster* Court explained that "there is room for argument about just what may constitute the final act of selection within the meaning of the law," and it found it unnecessary to "isolat[e] precisely what acts a State must cause to be done on federal election day . . . in order to satisfy the statute." 522 U.S. at 72. The Court expressly limited its holding to the single issue of Louisiana's practice of electing most members of Congress in an open primary held before election day: "We hold today only that if an election does take place, it may not be consummated prior to federal election day." *Id*. at 72 n.4.

In *Bomer*, the Fifth Circuit provided the following analysis of the *Foster* decision:

> [T]he plain language of the statute does not require all voting to occur on federal election day. All the statute requires is that the election be held that day. . . . Allowing some voters to cast votes before election day does not contravene the federal election statutes because the final selection is not made before the federal election day. . . . [T]his conclusion is consistent with the [*Foster*] Court's refusal to give a

> hyper-technical meaning to "election" and its refusal to "[pare] the term 'election' in § 7 down to the definitional bone."

199 F.3d at 776 (citations omitted). Likewise, no "final selection" is made *after* the federal election day under Mississippi's law. All that occurs after election day is the delivery and counting of ballots cast on or before election day. Plaintiffs argue that no ballots are "cast" until they are in the custody of election officials, but their only authority for this proposition is a Montana state-court decision from 1944. (Mem. at 9, ECF No. 60; Mem. at 7, ECF No. 56).

Several lower courts have taken a similar approach to that of the *Bomer* court in considering whether a conflict exists between the election-day statutes and state laws permitting receipt of ballots postmarked on or before election day. For example, in *Bost v. Illinois State Board of Elections*, 684 F. Supp. 3d 720 (N.D. Ill. 2023), a district court recently considered a challenge to an Illinois statute that permitted ballots postmarked or certified on or before election day to be received and counted for up to fourteen days after election day. First, the court noted:

> There is a notable lack of federal law governing the timeliness of mail-in ballots. In general, the Elections Clause delegates the authority to prescribe procedural rules for federal elections to the states. If the states' regulations operate harmoniously with federal statutes, Congress typically does not exercise its power to alter state election regulations.

Id. at 736 (citations omitted). The court found that the statute "operates harmoniously" and is "facially compatible" with the federal statutes because only ballots postmarked no later than election day are counted under the Illinois statute. *Id.* It reasoned that many states had enacted similar statutes that had been in

place for many years, but Congress "has never stepped in and altered the rules." *Id.* The court also recognized that Congress's enactment of UOCAVA and the United States Attorney General's repeated efforts in seeking court-ordered extensions of ballot-receipt deadlines for military voters "strongly suggest that statutes like the one at issue here are compatible with the Elections Clause." *Id.* at 737. As a result, the court found that the plaintiffs had "failed to state a viable challenge to the [s]tatute based on federal law." *Id.*

Plaintiffs object that one cannot infer from Congress's enacting supplemental election statutes that state statutes doing similar things are in harmony with federal law, because Congress can amend federal law but states can't. (Resp. at 28, ECF No. 75). But courts must strongly presume that acts of Congress addressing the same topics are in harmony rather than one statute's impliedly repealing the other in whole or part. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018). So if one federal statute implicitly allows post-election receipt of overseas ballots mailed by election day, that statute is presumed not to offend against the election-day statutes, from which one may infer that the similar Mississippi statute on post-election receipt is likewise inoffensive.

Much like in *Bost*, another court explained:

> [O]verseas absentee voters, like all the rest of the voters, cast their votes on election day. The only difference is when those votes are counted. Thus, this case comes down to having very little difference from the typical voting and vote-counting scenario. Routinely, in every election, hundreds of thousands of votes are cast on election day but are not counted until the next day or beyond.

Harris v. Fla. Elections Canvassing Comm'n, 122 F. Supp. 2d 1317, 1325 (N.D. Fla.), *aff'd sub nom. Harris v. Fla. Elections Comm'n*, 235 F.3d 578 (11th Cir. 2000). The court likewise noted that the federal government was surely aware that several states had similar practices of accepting ballots received after election day, but it had not sued any state to challenge that practice. *Id.* This, the court held,

> lends further support to the notion that Congress did not intend 3 U.S.C. § 1 to impose irrational scheduling rules on state and local canvassing officials, and certainly did not intend to disenfranchise voters whose only reason for not being able to have their ballots arrive by the close of election day is that they were serving their country overseas.

Id.

In another opinion (later vacated as moot by the Supreme Court), the Third Circuit upheld a three-day extension of the ballot-receipt deadline granted by the Pennsylvania Supreme Court in response to the Covid-19 pandemic and delays in mail delivery. *Bognet v. Sec'y Commonwealth of Penn.*, 980 F.3d 336, 344 (3d Cir. 2020), *cert. granted, judgment vacated sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021). The court explained that "Congress exercises its power to 'alter' state election regulations only if the state regime cannot 'operate harmoniously' with federal election laws 'in a single procedural scheme.'" *Id.* at 353 (quoting *Gonzalez v. Arizona*, 677 F.3d 383, 394 (9th Cir. 2012), *aff'd sub nom. Inter Tribal*, 570 U.S. 1).

The analysis in these opinions is persuasive. "The legislative history of the [election-day] statutes reflects Congress's concern that citizens be able to exercise their right to vote." *Bomer*, 199 F.3d at 777 (citing *Cong. Globe*, 42d Cong., 2d Sess.

3407–08 (1872)). According to *Foster*, Congress set a national election day to avoid the "evils" of burdening citizens with multiple election days and of risking undue influence upon voters in one state from the announced tallies in states voting earlier. 522 U.S. at 73–74. Neither of those concerns is raised by allowing a reasonable interval for ballots cast and postmarked by election day to arrive by mail. Moreover, as the Fifth Circuit has noted, it is difficult to "conceive that Congress intended the federal election day statutes to have the effect of impeding citizens in exercising their right to vote." *Bomer*, 199 F.3d at 777.

After hearing oral arguments and considering the seven sets of motions, responses, and replies submitted by the parties as well as the three amici briefs, the Court finds that case authority as well as the legislative history, combined with the Framers' intention in drafting the Elections and Electors Clauses, Supreme Court precedent, and Congress's enactment of UOCAVA support a finding that Mississippi's statute operates consistently with and does not conflict with the Electors Clause or the election-day statutes.

III. DOES THE MISSISSIPPI STATUTE VIOLATE PLAINTIFFS' CONSTITUTIONAL RIGHTS?

Counts Two and Three of the Complaint allege violations of the rights to vote and to stand for public office. But neither the Republican Plaintiffs nor the Libertarian Party rebutted Defendants' motions for summary judgment in their responses. The former did however address those issues in supporting their own

Rule 56 motion. (Mem. at 18–19, ECF No. 60; Reply at 18–19, ECF No. 90). The Court will construe that discussion as also rebutting Defendants' arguments.

Essentially, both counts stand or fall on whether the Mississippi absentee-ballots statute conflicts with federal law, in which case Plaintiffs say their rights would be violated. Because the Court finds no such conflict, it finds no such violations. Summary judgment is properly granted to Defendants on Counts Two and Three and is denied as to Plaintiffs.

CONCLUSION

The Elections Clause has two functions. Upon the States it imposes the duty ("*shall* be prescribed") to prescribe the time, place, and manner of electing Representatives and Senators; upon Congress it confers the power to alter those regulations or supplant them altogether. *Inter Tribal*, 570 U.S. at 8. In the absence of federal law regulating absentee mail-in ballot procedures, states retain the authority and the constitutional charge to establish their lawful time, place, and manner boundaries.

The Court finds that the RNC, the Mississippi Republican Party, and the Libertarian Party each have standing to proceed with these lawsuits. They have sufficiently alleged negative consequences they suffer because of Mississippi's statute allowing post-election receipt of ballots mailed by election day. However, the Court also finds that Defendants are entitled to summary judgment as to all of Plaintiffs' claims. Mississippi's statutory procedure for counting lawfully cast absentee ballots, postmarked on or before election day, and received no more than

five business days after election day is consistent with federal law and does not conflict with the Elections Clause, the Electors' Clause, or the election-day statutes.

IT IS THEREFORE ORDERED AND ADJUDGED that the [51] Motion for Summary Judgment in Consolidated Republican Party Case filed by Secretary of State Michael Watson, the [53] Motion for Summary Judgment in Consolidated Libertarian Case filed by the secretary, the [61] Motion for Summary Judgment filed by Intervenor Defendants Alliance for Retired Americans and Vet Voice Foundation, the [63] Motion for Summary Judgment in the Consolidated Republican Case filed by Christene Brice, Toni Jo Diaz, Carolyn Handler, Barbara Kimball, Becky Payne, and Justin Wetzel, and the [64] Motion for Summary Judgment in the Consolidated Libertarian Case filed by the same movants, are **GRANTED**. The Court will enter a separate judgment as required by Fed. R. Civ. P. 58(a).

IT IS FURTHER ORDERED AND ADJUDGED that the [55] Motion for Summary Judgment filed by the Libertarian Party of Mississippi and the [58] Cross Motion for Summary Judgment filed by Matthew Lamb, the Mississippi Republican Party, James Perry, and the Republican National Committee are **DENIED**.

SO ORDERED AND ADJUDGED this the 28th day of July, 2024.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, T. Russell Nobile, certify that I electronically filed this excepts of record with the Clerk of the Court, using the electronic filing system, which sent notification of such filing to all counsel of record.

August 15, 2024

s/ Russ Nobile
T. Russell Nobile