

Nos. 26A124 & 26A139

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, President of the United States, *et al.*,

Applicants,

v.

STATE OF CALIFORNIA, *et al.*,

Respondents.

STATE OF ALABAMA, *et al.*,

Applicants,

v.

STATE OF CALIFORNIA, *et al.*

Respondents.

**On Application for Stay of the Injunction Issued by The United States
District Court for The District of Massachusetts and Requests for
Administrative Stay**

**BRIEF *AMICUS CURIAE* OF THE SOCIETY FOR THE RULE OF LAW
IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICUS CURIAE*

Amicus The Society for the Rule of Law and Democracy, Inc., doing business as The Society for the Rule of Law (“SRL”) is a national non-profit, non-partisan membership organization of conservative, libertarian, and right-of-center-lawyers, and others, who are dedicated to defending the constitutional principles of the rule of law, limited government, separation of powers, federalism, and other checks and balances.¹ SRL has an interest in seeing that Executive Order (“EO”) 14399 does not violate these principles by directing the USPS to violate the Constitution and federal statutes.

INTRODUCTION AND SUMMARY OF ARGUMENT

This single brief opposes both applications and focuses on Section 3(b), (d) of EO 14399 (“Section 3(b)”). Part I shows that under recent precedents, there is already sufficient harm for standing, ripeness, and irreparable harm, particularly as the federal Applicants have stated that they may later argue that it would then be too close to the election to enjoin their illegal rules. *A.A.R.P. v. Trump*, 605 U.S. 91, 93-94 (2025), recognizes that irreparable harm has occurred when the federal government, as here, has stated that it may argue that courts cannot order relief later when the government takes additional steps. Independently, *Bost v. Illinois State Board of Elections*, 607 U.S. 71, 80 (2026), precludes imposing standing or ripeness requirements that “channel . . . election disputes” towards election day.

¹ *Amicus* states that no counsel for any party authored this brief in whole or in part, and that no entity, aside from *amicus* and its counsel, made any monetary contribution toward the preparation or submission of this brief. The views of SRL do not necessarily represent the views of all individual members.

Parts II through IV confirm ripeness exists here by showing that Section 3(b) illegally directs the USPS to exercise rulemaking powers that the Constitution and Congress have withheld from the USPS. Contrary to Applicants, the complete, facial invalidity of Section 3(b) does not turn on any future facts and cannot be avoided by anything the USPS might do. Section 3(b)'s indefensible facial illegality also shows the public interest favors denying a stay.

Part II shows that the Constitution and the National Voter Registration Act of 1993 ("NVRA"), the Help America Vote Act of 2002 ("HAVA"), and the Voting Rights Act Amendments of 1970 deny the USPS *any* rulemaking role concerning any voter list, any voting system, or any absentee balloting restriction.

Part III shows that, in addition, provisions of Title 39 deny the USPS *any* rulemaking role concerning any voter list or any voting system, much less any power to refuse to deliver absentee ballots. Congress has withheld from the USPS any rulemaking authority to create a new category of nonmailable items. Further, none of providing or administering voter lists, modifying voter systems, or restricting absentee balloting is a postal service or a function of the USPS.

Part IV discusses how constitutional and statutory design, structure, and history confirm that any rulemaking authority here was withheld from the USPS. The Constitution and applicable statutes deliberately render it impossible for any centralized federal authority to have power to manipulate federal election results. This Court should preserve those time-tested principles, rather than embolden every administration every two years to try to orchestrate favorable election results.

ARGUMENT

I. Recent Supreme Court Cases Establish Standing and Ripeness.

A. *A.A.R.P.* And *Bost.*

Under *A.A.R.P. v. Trump*, it would be error to rule that standing or ripeness, or irreparable harm, is absent until the USPS issues a final rule. This is because Applicants have stated they may argue that under *Purcell v. Gonzales*, 549 U.S. 1 (2006) (*per curiam*), it would then be too late to enjoin their final rule. *A.A.R.P.* issued an injunction because the putative plaintiff class was “facing an imminent threat of severe, irreparable harm.” 605 U.S. at 94. This was because the government might argue, after it transferred detainees, that another legal principle rendered it too late for a federal court to order relief. *See id.* at 95; *see also id.* at 93 (after transfer, “the Government *may* have argued, as it had previously argued [in a different case], that no U.S. court had jurisdiction to order relief”) (emphasis added). The possibility that the government might later argue that it was too late defeated the government's arguments in *A.A.R.P.* that now was too soon.

Just so here. The Applicants argue here that this litigation is too soon. But federal Applicants have stated that, “of course [they] can’t and won’t take off the table” the argument that after USPS issues the final rule, *Purcell* would make it too late for a federal court injunction before the 2026 elections. *DSCC v. Trump*, No. 26-5193 (D.C. Cir.), Joint Appendix at 641 (filed June 17, 2026). This statement makes this case different from a normal EO in a non-election context. Even in a

non-election context, an EO with savings language is reviewable when there is a “reason to think that the usual mechanisms for seeking expedited review [of a final rule] would be inadequate.” *Bldg. & Const. Trades Dept., AFL-CIO v. Allbaugh*, 295 F.3d 28, 33-34 (D.C. Cir. 2002) (quotations omitted). In contrast, in *Trump v. New York*, the government and all Justices stated timely adjudication was available later. 592 U.S. 125, 134 (2020); *id.* at 135 (Breyer, J., dissenting).

Even if Applicants bindingly waived *Purcell*, *Bost v. Illinois State Board of Elections*, 607 U.S. 71 (2026), independently establishes standing and ripeness. *Bost* instructed courts not to “channel . . . election disputes” over vote-counting towards election day. *Id.* at 80. *Bost* would be neutered if it did not apply to ripeness. This Court has equated the imminence component of standing and ripeness. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007).

Under *Bost*, plaintiffs who “have an interest in a fair process”—as the states surely do—“suffer [harm] *when* the process departs from the law.” 607 U.S. at 77 (emphasis added). Accordingly, relief should be granted promptly when government officials announce illegal rulemaking that would “govern the counting of votes,” including by the possibility of “discarding of lawful ones.” *Id.* at 77-78, 82. Here, already “the process [has] depart[ed] from the law.” *Id.* at 77. *Infra*, Parts II-IV.

Section 3(b)(iv) requires that the USPS rule “*shall* include” that the “USPS *shall provide* each State with a list of individuals (Mail-In and Absentee Participation List) who are *enrolled* with the USPS . . . for mail-in and absentee ballots provided by such state” (Emphases added.) Section 3(b)(iii) further

mandates that “the USPS *shall not transmit* mail-in or absentee ballots from any individual unless those individuals have been *enrolled* on a State-specific [Mail-In and Absentee Ballot Participation List]” (emphasis added) with the USPS. Section 3(b)(i) and (iv) also bar mailing ballots between state officials and voters when envelopes lack a unique bar code. Section 1 of EO 14399 states that these “measures are necessary” to fulfill the “unavoidable duty” of the executive branch. All this would preclude “the counting of [potential] votes.” *Bost*, 607 U.S. at 82.

The savings language in EO 14399 does not make this case unripe. This is because Section 3(b) directs rulemaking where USPS has *no* rulemaking authority. *See* Parts II-IV, *infra*. *Trump v. New York* is distinguishable because there the Secretary of Commerce indisputably had statutory authority to issue a report with census information. 592 U.S. at 129. The apt comparison is *Trump v. Barbara*, slip op. (U.S. June 30, 2026), where this Court invalidated the entirety of the birthright citizenship executive order, even though that order said it would be implemented only “consistent with applicable law.” 84 Fed. Reg. 8449, §5(b) (Jan. 20, 2025). Federal Applicants correctly have admitted that savings language does not exempt from judicial review an EO that “is without any valid application.” ECF 195, at 17 (quoting *Allbaugh*, 295 F.3d at 33). The Applicants do not rebut facial invalidity here. Indeed, they have *never* identified in any court any circumstance, or action by the USPS, that might make any restriction set forth in Section 3(b) legal.

Perhaps to hide the ball, the government has deliberately delayed the issuance of the final USPS rule. The District Court’s injunction expressly allows

the USPS to issue the final USPS rule, both for potential use in the 2028 election for all voters *and* in 2026 for voters registered in 27 non-respondent states, ECF 207, at 4. (All ECF references are to the District Court record in this case.) Yet, the federal Applicants have misused that injunction as the reason for delaying the USPS final rule. ECF 210, at 2.

If a stay were granted, a USPS rule that mimics Section 3(b) will imminently follow. Federal Applicants state that the “irreparable harm is the government’s inability to *implement the order* as to the *November 2026* election in the respondent States.” Fed. App’n 28-29 (first emphasis added). And despite their own delay, they complain that after the USPS rule, “there is not enough time to obtain ordinary appellate relief from the [district court’s] injunction in order to carry [the rule] out before the November 3, 2026, election.” Fed. App’n 28. They further state that they need to be able to carry out the rule “well before November—indeed, as soon as early to mid-August.” Fed. App’n. 27. As this Court held in reversing a no-standing decision: “When as here a government seeks to justify its regulatory actions by, on the one hand, touting the consequences ... while, on the other, maintaining that those same regulations are unreviewable because there are no consequences, courts can appropriately be skeptical.” *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 122 (2025). The courts below properly did not “exhibit a naivete from which ordinary citizens are free,” *id.* (quotations omitted), especially as the President has asserted control over the USPS under unitary executive principles. The USPS’s NPRM confirms this control by parroting the restrictions of Section 3(b)

quoted above. *See* 91 Fed. Reg. 32,915, 32,917-18 (June 2, 2026).

Delaying injunctive relief would encourage *every* administration, every two years, to announce invalid election rules early enough to induce some states and localities to pre-comply, but delay the formality of agency finality to forestall judicial review. “[I]n the law, what is sauce for the goose is normally sauce for the gander.” *Heffernan v. City of Paterson*, 578 U.S. 266, 272 (2016). In our tit-for-tat world, a future Democratic President could, for example, order a USPS rulemaking for restricting delivery of mail-in ballots to and from rural counties because they have higher USPS costs and mail theft rates. And so on. Fortunately, *Bost* requires relief “when the process departs from the law,” 607 U.S. at 77, which already has occurred here. *Infra*, Parts II-IV.

B. *If There Were A Stay, The Court Should Rule That *Purcell* Would Not Apply.*

Assuming for argument’s sake, that this Court were to stay the decision below, like the D.C. Circuit, this Court should rule that *Purcell* would not apply to a final rule and this Court will never allow any federal administration belatedly to impose new election rules without judicial review. *See DSCC v. Trump*, No. 26-5193, at 7-8 (D.C. Cir. July 28, 2026). First, the usual application of *Purcell* occurs when a federal court is asked to enjoin a state executive official’s election rule for violation of federal law. In that situation, *Purcell* does not mean the state official can violate its own state’s law. *State courts* remain free to enjoin that state official based on *state constitutional or statutory law*. The equivalent is equally true here. *Purcell* could not mean that anything goes under federal law for belated federal

executive branch election rules. *Purcell* in no way precludes federal courts from judicial review in response to a prompt challenge of a federal agency's late-issued election rule for compliance with *federal constitutional and statutory law*.

Second, *Purcell* is based on equity and it is inequitable for a rule's proponents to have their cake and eat it too. The movants cannot be permitted to argue that now is too soon and later is too late. For similar reasons, the Virginia Supreme Court recently held that merits review was fully available to invalidate a state constitutional amendment on redistricting after voters approved it, because the amendment's proponents had successfully opposed judicial review as unripe before the vote. *Scott v. McDougle*, 930 S.E.2d 332, 337-38 & nn. 13-14 (2026).

Even when this Court stays or vacates a lower court's injunctive relief, this Court has power, including under the All Writs Act, 28 U.S.C. §1651(a), "to act responsibly." *Nken v. Holder*, 556 U.S. 418, 426-27 (2009). In particular, whether a court's appellate review of preliminary relief should address potential issues in further proceedings is "ultimately a matter of prudence," including the interest of "the public" and protecting the Nation's "institutions" from "doubt." *Trump v. Cook*, slip op. at 23-24 (U.S. June 29, 2026); *see also id.* at 2 (Kavanaugh, J., concurring) (preventing "temporary uncertainty" that "could spark political upheaval"). *Trump v. J.G.G.*, 604 U.S. 670 (2025) (*per curiam*), also illustrates this. The Court vacated injunctive relief. But the Court also ruled that the losing parties must receive reasonable notice and be heard by the federal courts at a later stage on their constitutional, statutory, and factual challenges. *Id.* at 672-73. *A.A.R.P.*

subsequently fulfilled the Court's promise. So too here. *Assuming* judicial review is too soon now, the Court should rule now that *Purcell* will not bar subsequent challenges to agency implementation of EO 14399.

II. The Constitution And Federal Voting Statutes Deny The USPS Any Rulemaking Authority Here.

Applicants have implied vaguely that the case is unripe because some unnamed subsequent development may render some aspect of Section 3(b) legal. This is wrong because the Constitution and federal statutes deny the USPS *any* rulemaking role concerning voter lists, voting systems, or restricting absentee balloting. Section 3(b)'s indefensible, facial illegality also shows the public interest factor favors denying a stay.

The Elections and Electors Clauses constitute a rare area where the Constitution confers all powers on the states, unless Congress by statute provides differently. Thus, where as here a federal election statute expressly leaves a rulemaking power with the states, the Constitution and Congress necessarily withhold that power from the executive branch. *See Watson v. RNC*, slip op. at 21-22 (U.S. June 29, 2026) (federal election statute extends federal law “so far as it is exercised, and no farther”) (quotations omitted). This means that unless Congress confers an election-related rulemaking power on a federal agency, only a state legislature—never a federal agency—may prescribe “everything from the date[s] on which voters go to the polls to the dimensions and font of individual ballots . . . , including regulations relating to . . . registration, supervision of voting, . . . prevention of fraud and corrupt practices, counting of votes, [and] duties of

inspectors.” *Moore v. Harper*, 600 U.S. 1, 29 (2023) (quotations omitted).

The federal government has admitted that it lacks authority for its new mail-in ballot delivery restrictions to apply to “ballots covered under the Uniformed and Overseas Citizens Absentee Voting Act” because “UOCAVA is a separate federal statutory scheme with its own requirements.” 91 Fed. Reg. at 32915-16. But UOCAVA is actually part of a broader, integrated “federal statutory scheme with its own requirements” that also includes UOCAVA, NVRA, HAVA, and the Voting Rights Act (“VRA”). Indeed, HAVA expressly integrates all of HAVA, UOCAVA, NVRA, and the VRA. *See* 52 U.S.C. §21145(a); *infra*, at 11-12. This integrated scheme covers all federal ballots in all federal elections, often as here by allocating regulatory authority exclusively to the states. As Part II.A-C demonstrates, in the texts and overall structure of the NVRA, HAVA, and the Voting Rights Act Amendments of 1970, Congress specifically withheld from the USPS any rulemaking role concerning any voter list or voting system or absentee ballot restriction.

A. NVRA.

As “enrolled” and “Participation List” in Section 3(b) indicate, each USPS Mail-In and Absentee Participation List would be a new voter list that the USPS would administer to block the counting of potential mail-in votes. Indeed, “enrolled” and “registered” are synonyms. *Enrolled*, Merriam-Webster, www.merriam-webster.com/dictionary/enrolled (last visited April 10, 2026); *Registered*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/registered> (last visited April

10, 2026). NVRA, HAVA, and the Court describe voter lists as “voter *rolls*.” 52 U.S.C. §§20507(d), 20984(a)(1)(B)(ii) (emphasis added); *Husted v. A. Philip Randolph Institute*, 584 U.S. 756, 781 (2018) (emphasis added).

But NVRA charges *state* agencies with “the registration of voters in elections for Federal office” and “the *administration* of voter registration for elections for federal office.” 52 U.S.C. §§20506(a)(1), 20507(a) (emphasis added). 52 U.S.C. §20508(a)(1)-(3) limits the federal authority to issue “regulations” to the Election Assistance Commission, and one subject – “a mail voter registration application form.”

In particular, NVRA withheld all rulemaking authority from USPS concerning voter lists. 52 U.S.C. §20507(a)(4), (c)(1) merely permits a *state* to use “change-of-address information supplied by the Postal Service” in meeting the state’s obligations to make a “reasonable effort” to remove voters who changed residence from the state’s voter list. And 39 U.S.C. §3629 mandates that the USPS make available nonprofit rates to state and local officials for the mailings required or authorized by NVRA. That’s all.

B. HAVA.

52 U.S.C. §21084 provides that “a *State*” may “establish[] election technology and administration requirements that are more strict than the requirements under this subchapter” provided that the stricter “State requirements” are not inconsistent with the “Federal requirements” of HAVA “or any law described in section 21145 of this title.” (Emphasis added.) 52 U.S.C. §21145(a) not only lists

those federal laws, it also limits *any* government entity—federal or state—from using other *unlisted* federal statutes to impose stricter requirements. Section 21145(a) specifies that HAVA does not "supersede, restrict, or limit the application of" only "the following laws." The "following laws" are six specified federal statutes—four voting statutes, including UOCAVA, the VRA, and NVRA, and two primarily non-election statutes. *Id.*

Unlike these six specified statutes, §21145(a) *omits* Title 39 from the series of statutes that §21145(a) saves from HAVA's superseding and restrictions and limits. Under the "well established canon of statutory interpretation: *expressio unius est exclusio alterius*," *Esteras v. United States*, 606 U.S. 185, 195 (2025), 52 U.S.C. §§21084 and 21145(a) prevent the federal executive branch from using Title 29 to establish stricter requirements on HAVA topics. "Indeed, the *expressio unius* canon has particular force here because the" six preserved federal statutes in §21145(a) "constitute an 'established series,' such that any 'omission' from that series necessarily 'bespeaks a negative implication.'" *Esteras*, 606 U.S. at 195 (citation omitted). Congress here "exclude[d] another [provision] left unmentioned." *Id.* (quotations omitted).

Section 3(b)'s ordering USPS to use the excluded Title 39 to establish stricter election technology and administration rules violated both HAVA's text and its purpose that state and local administration of federal elections "must be preserved" so that it remains "*impossible* for a single centrally controlled authority to dictate how elections will be run, and thereby be able to control the outcome." H.

R. Rep. No. 107-329, pt. 1, at 31-32 (2001) (“HAVA Report”) (emphasis added).

First, HAVA directs that the “*single*, . . . official . . . statewide voter registration list” for each state be “defined, maintained, and administered at the State level.” 52 U.S.C. §21083(a)(1)(A) (emphasis added). This “computerized list shall serve as *the single system* for storing and managing *the official list* of registered voters throughout the State” and “shall serve as *the official voter registration list* for the conduct of all elections for Federal office in the State.” *Id.* §21083(a)(1)(A)(i), (viii) (emphasis added). But Section 3(b), and consequently the USPS’s NPRM, illegally use Title 39 to impose a second federally mandated statewide voter list for each state, *i.e.*, a list of those registered to vote by mail. As the NPRM confirms, a state cannot have *any* mail-in voting unless the “state submitted a list” of those voters through a USPS portal, and “States would provide” the USPS with the “information” for “compiling the [USPS] lists.” 91 Fed. Reg. at 32,916. This confirms that Section 3(b) illegally directed the USPS to violate HAVA by establishing stricter election technology and administration requirements concerning voter lists.

Second, 52 U.S.C. §21081(a) establishes “requirements” for “[e]ach voting system used in an election for Federal office.” The term “voting system” includes “the practices and associated documentation used . . . to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).” 52 U.S.C. §21081(b)(2)(E). Every method used for “paper balloting” is a “voting system” under HAVA. *United States v. Town of Thornapple*, 143 F.4th 793, 798-99

(7th Cir. 2025).

Certainly, the documentation and practices used for delivering paper ballots to mail-in voters, including mailing and envelopes, constitute a “voting system.” Here, under Section 3(b), the barcoded Outbound Federal Ballot Mail Envelopes, portal information, and Mail-in and Absentee Participation List, singly and combined, constitute a stricter “voting system” because they are documentation and practices used to make notices, instructions, forms, and mail-in paper ballots available to *fewer* voters. Federal Applicants admitted that Section 3(b) “would be imposing a new requirement with respect to election mail.” ECF 181, at 65-66. Therefore, Section 3(b) illegally directed the USPS to promulgate rules that establish stricter election technology and administration requirements concerning voting systems.

C. VRA.

The Voting Rights Act Amendments of 1970 confirm that, as in NVRA and HAVA, although Congress sometimes permits states to vary from federal statutory baseline requirements regarding a voting process, Congress never permits federal agencies to add requirements. 52 U.S.C. §10502(b)-(f) set forth federal standards that require states to make available “absentee balloting in presidential elections.” Most important, 52 U.S.C. §10502(g) allows “any *State* or political subdivision” to “adopt[] *less restrictive* voting practices than those that are described herein.” (Emphasis added.) Unlike subsections (b)-(f) of §10502, subsection (g) does not refer to presidential elections and thus reflects that the absentee balloting authority

allocated to the states is *not* limited to presidential elections. The executive branch is not allowed to adopt more restrictive practices, nor even less restrictive practices. As Section 3(b) directs USPS rulemaking to adopt more restrictive practices for absentee balloting, it is illegal.

III. Title 39 Provisions Also Deny The USPS Any Rulemaking Authority Concerning Voter Lists, Voting System, And Restricting Absentee Balloting.

Section 3(b) orders rulemaking where Title 39 prohibits it. First, the USPS cannot by rule create a new nonmailable category. 39 U.S.C. §§3001-18 specify all the items that are “nonmailable.” “The postal laws make a clear-cut division between mailable and nonmailable material.” *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 152 (1946). The “power” to make nonmailability rules “has been zealously watched and *strictly confined*” by Congress. *Id.* at 156 n.18 (emphasis added). Title 39 renders nonmailable items deposited in violation of *only 12 specified* criminal-law sections of other Titles by expressly cross-referencing in 39 U.S.C. §§3001(a), 3003(a), and 3014(a)(2) that series of 12 criminal-law sections. Under the *expressio unius* canon, *supra*, at 12, violations of other criminal-law sections that are *omitted* from these Title 39 nonmailable sections are excluded from USPS’s authority to block delivery of mail. The nonmailable provisions of 39 U.S.C. §§3001-18 omit any reference to the six sections from Titles 18 and 52 that EO 14399 and the NPRM cite as the basis for “prohibit[ing] non-citizens from registering to vote or voting.” These six omitted sections are 18 U.S.C. §§241, 611, 1015, 3061(b), and 52 U.S.C. §§10307, 20511. These six omissions confirm that Title 39 bars the USPS

rulemaking directed by Section 3(b).

Second, the providing and administering of voter lists, modifying a voting system, and restricting absentee balloting are each a “nonpostal service” and thus barred by 39 U.S.C. §404(e)(2). NAVA, HVRA, and the VRA establish that providing and administering voter lists is exclusively done by states, and modifying a voting system or restricting absentee balloting is the exclusive domain of a state legislature or Congress. *Supra*, Part II.A-C. *See Watson*, slip op. at 7-8, 15 n. 8 (applying the “most rudimentary rule” of “the related-statute canon” to federal election law) (quotations omitted).

Third, 39 U.S.C. §401(2) bars the USPS from promulgating regulations that are “inconsistent with this title” or not “necessary in the execution of its functions under this title [or] such other functions as may be assigned to the Postal Service under any provisions of law outside of this title.” To start, as described in the prior two paragraphs, Section 3(b) illegally directs the USPS to provide regulations “inconsistent” with 39 U.S.C. §§3001-18 and 39 U.S.C. §404(e)(2). In addition, Section 3(b) violates the bar in 39 U.S.C. §401(2) because no federal statute assigns the USPS any “function” concerning voter lists or a voting system or restricting absentee balloting. Nothing the USPS might do could evade the many, complete, independent statutory bars against USPS rulemaking in federal election statutes, *see* Part II.A-C *supra*, and Title 39.

IV. Constitutional And Statutory Design, Structure, And History Confirm That USPS Has No Rulemaking Powers Concerning Voter Lists, Voting Systems, And Restricting Absentee Balloting.

Start with constitutional design. *See Watson v. RNC*, slip op. at 8 (making “th[e] interpretation of the election-day statutes . . . consistent with the way the Constitution treats elections”). The Constitution excluded the federal executive branch both from making election rules and administering such rules without statutory authorization. This was deliberate. The founding generation was well aware of the lessons of the Glorious Revolution and the English Bill of Rights of 1689. A critical reason for both was that King James II and his agents attempted to subvert elections for Parliament by exercising control concerning election practices and voting. *See Harper v. Hall*, 866 S.E.3d 393, 434-37 (N.C. 2023) (reviewing history). This Court has relied on the history of the Glorious Revolution and the English Bill of Rights in interpreting both our Constitution and limits on federal executive power. *See, e.g., United States v. Rahimi*, 602 U.S. 680, 694 (2024); *Trump v. Barbara*, slip op. at 26 (U.S. June 30, 2026); *Learning Resources, Inc. v. Trump*, 607 U.S. 229, 298 (2026) (Gorsuch, J., concurring).

As Justice Gorsuch recently explained, all Presidents have a “desire for more power.” *Id.* at 270. The Constitution gave power over election rules to legislatures, rather than the federal executive branch, to give opportunity for “deliberation [to] temper[] impulse, and compromise hammer[] disagreements into workable solutions” that “tend to endure.” *Id.* at 300. Giving power to “one man”—any President—to make the rules for *elections* “is no recipe for a republic.” *Id.* at 271.

As the HAVA Report stated, *supra*, at 12-13, our federalist election structure, designed by the Elections and Electors Clauses, fosters both the reality

and appearance of election integrity by decentralizing election rules and their administration. Stealing control of either a house of Congress or the Presidency would be easier if a centralized federal administration controlling all federal agencies (as EO 14399 asserts control over the USPS) had power concerning voter lists, voting systems, and absentee balloting in federal elections *in all 50 states*.

If the Court lifted the lid even a sliver, every two years every administration will scour the gargantuan U.S. Code—including non-election statutes such as postal statutes—to find any potential hook to tilt or control every biennial federal election. The inevitable legal challenges each election cycle would drag this Court “over and over again” into “one of the most intensely partisan aspects of American political life.” *Rucho v. Common Cause*, 584 U.S. 718-19 (2019). Rather than creating “such an extraordinary and unprecedented” departure, *id.* at 719, for both the federal executive and judicial branches, the Court should keep those evils sealed in the box in which the Elections and Electors Clauses put them 238 years ago by empowering only legislatures to make election rules.

Turn to statutory structure. Federal statutes have regulated aspects of federal elections since 1791, *see* 1 Stat. 239 (1792), voter lists and voting practices since 1871, *see infra*, at 19, and voting by mail since at least 1942, ch. 561, §9, 56 Stat. 753, 756 (1942). Congress has not been shy about exercising power concerning federal elections. Not only is there the voluminous Title 52, there are also extensive provisions for federal elections in Titles 2, 3, and 18. *See* 2 U.S.C. §§1-9, 381-96; 3

U.S.C. §§1-22; 18 U.S.C. §§592-611. The elephant of any USPS rulemaking authority concerning voter lists, voting systems, or absentee balloting would never have been hidden for decades in a mousehole in Title 39—which is not even an elections statute and is omitted from the statutes preserved by 52 U.S.C. §21145(a). *See supra*, at 11-12.

Statutory history provides the final proof of Congress’s deliberate denial of authority here to the USPS. When Congress twice gave limited power over a voter list or a voting system to federal nonjudicial officials, both times Congress later repealed that authority. In 1871, the Second Enforcement Act gave federal “supervisors of election” in larger cities and towns in House elections authority related to “verify[ing]” and sometimes making voter “lists” and inspecting and scrutinizing “the manner in which voting is done.” 16 Stat. 433, 434-35, 438 (1871). However, in 1894, Congress repealed *all* these statutory provisions. 28 Stat. 36, 36-37 (1894).

There is a second repeal. In 1965, Sections 6 and 7 of the original VRA authorized, in certified jurisdictions, the federal Civil Service Commission (CSC) to appoint examiners to place an eligible voter “on a list of eligible voters” and “transmit” that partial list to state officials. 79 Stat. 437, 440 (1965). Section 9(b) gave the CSC authority to “prescribe[] . . . regulations” concerning the partial “eligibility lists.” *Id.* at 441. In 2006, however, Congress *repealed* Sections 6, 7, and 9 of the original VRA. 120 Stat. 577, 580 (2006).

The Court relied on “the history” of the 1894 repeal to reject shoehorning

into a non-election federal statute the kind of federal authority that had been withheld by Congress by repealing the prior federal statutes. *See United States v. Gradwell*, 243 U.S. 476, 479-85 (1917). Yet that is what Section 3(b) attempts to do through its illegal direction of Title 39 rulemaking.

Finally, the Applicants are wrong that the injunctions transgressed executive powers. Fed App’n 27. Especially in the election context, it is “obvious from the Constitution and elementary American history” that *none* of the President’s constitutional powers “supersede representative government of internal affairs” through statutes. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 644 (1952) (Jackson, J., concurring). Likewise, for nearly two centuries, and consistent with unitary executive principles, the law has been that a President exceeds his constitutional power by directing postal officials, his executive branch subordinates, to violate valid federal statutory limitations. *See Kendall v. United States*, 37 U.S. 524, 610, 612-13 (1837); *see also Chamber of Commerce of the United States v. Reich*, 74 F.3d 1322, 1332 (D.C. Cir. 1996) (per Silberman, J.) (executive order may not “bypass” constitutional or “statutory limitations on governmental authority”).

CONCLUSION

The Court should deny both applications.

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