

**In the Supreme Court of the United States**

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DONALD J. TRUMP, ET AL.,

*Applicants,*

v.

STATE OF CALIFORNIA, ET AL.,

*Respondents.*

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STATE OF ALABAMA, ET AL.,

*Applicants,*

v.

STATE OF CALIFORNIA, ET AL.,

*Respondents.*

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ON APPLICATIONS FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS PENDING APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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**BRIEF OF NATIONAL SECURITY LEADERS FOR AMERICA  
AS *AMICUS CURIAE* IN OPPOSITION TO APPLICATIONS FOR STAY**

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

National Security Leaders for America (“NSL4A”) is a non-partisan network of over 1,500 former senior military and civilian leaders possessing broad experience in national security issues and sharing viewpoints and affiliations from across the political spectrum. Over 800 of NSL4A’s members are retired Generals, Admirals, or other senior officers from one of the uniformed services of the United States. Approximately 200 of its members served as ambassadors of the United States in foreign countries, while many more served in senior diplomatic posts around the world.

This extensive service to our country has afforded many NSL4A members first-hand experience with the difficulties military and diplomatic personnel encounter in casting ballots when on assignment abroad or in the United States away from their legal residence. NSL4A can speak knowledgeably about the deleterious and prejudicial impact that will be inflicted upon the voting rights of uniformed military members, diplomats, and their families by the restrictive policies propounded in Executive Order 14399. NSL4A and its members also are familiar with the conflict between Executive Order 14399 and the specific protections Congress afforded to voters in federal service under the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”).

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<sup>1</sup> Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part, and that no person other than *amicus* or its counsel made any monetary contributions intended to fund the preparation or submission of this brief.

Consequently, the tabulating of ballots, mailed or otherwise timely dispatched, by citizens away from their legal voting residence is a matter of significant concern to NSL4A members. NSL4A is positioned to provide a unique and meaningful perspective to ensure that American military and diplomatic personnel and their family members who are qualified voters can exercise their fundamental right to access the ballot box and have their votes counted. NSL4A is not aware of any other party having briefed these issues in the instant litigation.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

Congress enacted UOCAVA to ensure that military members, diplomats, and other Americans serving or living away from their voting residence can cast absentee ballots despite the delays and practical barriers inherent in voting from abroad. Section 3 of Executive Order 14399 interferes with that framework by imposing a new barcode-and-enrollment regime for ballot mail, implemented on a compressed election-year timeline, without accounting for the protections Congress guaranteed UOCAVA voters.

This Court should deny the Government's and State Applicants' requests to stay the District Court's injunction for multiple reasons, including two of particular significance to UOCAVA voters.<sup>2</sup> First, Section 3 cannot be lawfully implemented because it conflicts with the States' express responsibility under UOCAVA not to reject covered ballots based on envelope-type restrictions; the Respondent States

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<sup>2</sup> In this brief, "Government" refers to Applicants in No. 26A124 (defendants-appellants below). "State Applicants" refers to Applicants in No. 26A139 (intervenor defendants-appellants below) (collectively, "Applicants"). "Respondent States" refers to the Respondents that oppose a stay of the injunction (plaintiffs-appellees below).

(including the District of Columbia) therefore have standing to seek removal of the obstacles Section 3 erects to their fulfillment of State responsibilities to UOCAVA voters in the November 2026 federal elections. Second, issuing the requested stay would inject confusion and operational disruption into military and diplomatic and other overseas voting during the very time period when State officials must distribute, receive, and count UOCAVA ballots. The processes prescribed to protect UOCAVA voters preclude any realistic conclusion that there will be adequate time to resolve the conflicts and uncertainties associated with the Section 3 ballot procedures before the November 3, 2026, general election. Accordingly, granting the requested stay would create an imminent risk that eligible voters serving their country abroad will lose votes that cannot later be restored.

## **BACKGROUND**

### **A. The Unique Challenges Military and Diplomatic Families Confront When Voting**

For as long as the United States has sent her citizens to serve at geographically dispersed domestic and overseas military installations and diplomatic postings, military members and diplomatic personnel, along with their family members, have confronted unique challenges in casting their ballots. Stationed hundreds or thousands of miles from home, military members often serve in remote areas with slow or sporadic mail service. They may also be away from their posts for days or weeks at a time. For this group, voting by absentee ballot is frequently the only feasible way to exercise their democratic right. As Congress has acknowledged, “When overseas voters fail to receive their absentee ballots in time to vote and return

them, they are clearly and effectively disenfranchised.” H.R. Rep. No. 99-765, at 12 (1986).

These issues are not abstract. Many of the estimated 1.31 million active-duty members and roughly 549,000 military spouses and voting-age dependents are assigned to areas away from their legal voting residence. U.S. Election Assistance Comm’n, *Election Administration and Voting Survey 2024 Comprehensive Report* 194–95 (2025) (“2024 Report”), <https://perma.cc/SE86-6WBP>. Thousands of diplomatic personnel staff hundreds of foreign U.S. posts. See U.S. Gov’t Accountability Off., GAO-25-107098 Highlights, *State Department: Spending on Pay, Benefits, and Allowances for Overseas Employees* (Dec. 19, 2024), <https://perma.cc/ZF5F-EPPH>. In practice, most of these voters use the postal system to cast their ballots. In the 2024 general election, 65.8 percent of absentee ballots returned and submitted by military and overseas voters arrived via postal mail. 2024 Report at 204.

Yet even with the hundreds of thousands of military and diplomatic ballots mailed out each year, these voters continue to face particular challenges. In 2024, 15 percent of military voters reported they did not receive their ballot in time or that their ballot never arrived. Fed. Voter Assistance Prog. (“FVAP”), *State of the Military Voter*, <https://perma.cc/DRT6-2X8U> (last visited July 29, 2026).

As mail ballots are first sent to the voter and then returned to election officials, delays and other issues arise for two principal reasons. First, due to the distance some of these ballots must travel, military and diplomatic voters often confront



condensed timelines to receive and return their ballots. For example, military families stationed in Japan have stated that mail can take six to eight weeks to arrive. *Why the Wait? Unpacking California's Untimely Election Counting Process: Hearing Before the Comm. on H. Admin.*, 119th Cong. 26–27 (2025) (statement of Rebecca Nowatchik, Dir. of External P'ships, Secure Families Initiative), <https://perma.cc/JSZ6-485C>. In an apparent acknowledgment of mail delays, UOCAVA voters are advised to return their ballots as early as 30 or 35 calendar days before Election Day. See FVAP, *2026–27 Voting Assistance Guide* 10 (Oct. 2025), <https://perma.cc/KG45-TMBD>.

Second, military members and diplomats may have transient posts, further complicating ballot delivery. A 2025 media report highlighted the case of a Navy sailor stationed in Japan, whose post was “essentially his ship.” Camilla Rodriguez Guzman, *Serving in the Military Shouldn't Mean It's Harder to Vote*, Nat'l Conf. of State Legis. (Aug. 26, 2025), <https://perma.cc/G7FB-4MU8>. The sailor requested an absentee ballot for the 2024 presidential election, but the ballot “never made it through the mail” due to processing problems, preventing him from voting. *Id.*

These hurdles underscore the elevated barriers military members and diplomatic personnel commonly face while voting. Faithful implementation of protective laws like UOCAVA is critical to ensuring these individuals can successfully cast their ballots.

## **B. UOCAVA's Framework for Absentee Voting**

Generally, UOCAVA requires States to permit covered voters “to use absentee registration procedures and to vote by absentee ballot in general, special, primary,

and runoff elections for Federal office.” 52 U.S.C. § 20302(a)(1). As amended through the Military and Overseas Voter Empowerment Act (MOVE Act), Pub. L. No. 111-84, Subtitle H, §§ 575–89, 123 Stat. 2190, 2318–35 (2009), UOCAVA requires that (absent a hardship exemption) when the request for an absentee ballot is received at least 45 days before the election, States must “transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter . . . not later than 45 days before the election.” 52 U.S.C. § 20302(a)(8). In practical effect, therefore, UOCAVA requires State procedures for absentee voting to be established and operational significantly in advance of 45 days before the election.

As to registration and application, UOCAVA requires States to accept any valid voter registration application and absentee ballot application received at least 30 days before any election. *Id.* § 20302(a)(2). In addition to any method of registering to vote or applying for an absentee ballot prescribed by the States, UOCAVA requires States to accept and process “an official post card form, containing both an absentee voter registration application and an absentee ballot application” prescribed by federal authorities. *Id.* §§ 20301(b)(2), 20302(a)(4). UOCAVA also provides for a “Federal write-in absentee ballot . . . for use in general, special, primary, and runoff elections for Federal office by . . . voters who make timely application for, and do not receive, States[] absentee ballots.” *Id.* § 20303(a)(1). Among other requirements, UOCAVA requires the States to establish procedures to enable covered voters to request and receive voter registration and absentee ballot applications by mail or electronically, *id.* § 20302(a)(6)(A)–(B), and to transmit “blank

absentee ballots” to eligible voters “by mail and electronically,” *id.* § 20302(a)(7).

As to ballot collection and delivery of marked ballots, UOCAVA requires federal authorities to implement procedures for collecting and facilitating the delivery of marked absentee ballots “to the appropriate election officials” “not later than the date by which an absentee ballot must be received in order to be counted in the election.” *Id.* § 20304(a)–(b). For these purposes, UOCAVA directs federal authorities to “cooperat[e] and coordinat[e] with the United States Postal Service” to “provide expedited mail delivery service for all such marked absentee ballots . . . that are collected on or before the [prescribed] deadline . . . and then transferred to the United States Postal Service.” *Id.* § 20304(b). Absent an applicable exception, the prescribed collection deadline “is noon (in the location in which the ballot is collected) on the seventh day preceding the date of the regularly scheduled general election for Federal office.” *Id.*

## ARGUMENT

The Respondent States collectively include within their populations hundreds of thousands of UOCAVA voters. For example, in 2024 California reported having 165,341 UOCAVA voters, Virginia reported 174,315 such voters, and Washington State reported 124,410 such voters. 2024 Report at 210–11. Thousands more reside in other Respondent States. *See id.* As explained below, implementation of Section 3 of Executive Order 14399 would directly, immediately, and irrevocably interfere with the States’ fulfillment of their obligations to these UOCAVA voters. The District Court properly found that the Respondent States established standing and grounds for an injunction, and the applications for stay should be denied.

**I. The Requirements of Section 3 of Executive Order 14399 Conflict with UOCAVA’s Mandates to the States.**

Section 3 of the Executive Order is irreconcilable with UOCAVA’s specific commands governing military and overseas ballots. Section 3 was immediately effective upon issuance of the Executive Order and, unlike Section 2(a), is not conditioned on any further agency determination of feasibility or legality. It directs that the United States Postal Service (“USPS”) “shall” specify “that all outbound ballot mail must be mailed” in an envelope that must, among other requirements, be “marked as Official Election Mail” and “bear[] a unique Intelligent Mail barcode [“IMb”] or successor USPS technology.” Exec. Order No. 14399, § 3(b)(i)(A)–(B), 91 Fed. Reg. 17,125, 17,126 (Mar. 31, 2026). That command admits no exceptions for ballots governed by UOCAVA.

The USPS’s Proposed Rule implementing Section 3 confirms this inescapable conflict. *See* Ballot Mail for Federal Elections, 91 Fed. Reg. 32,915, 32,918 (proposed June 2, 2026) (to be codified at 39 C.F.R. pt. 111). To implement Section 3’s command, USPS proposes to require that “[o]utbound Federal Ballot Mail must be mailed in an envelope that . . . [b]ears a unique IMb with the Delivery Point ZIP Code embedded and a Federal Ballot Mail Service Type Identifier.” *Id.* at 32,918 (amending Mailing Standards of the USPS, Domestic Mail Manual (“DMM”) 705.24.3.1.c). The States’ return ballot mail must meet similar requirements. *Id.* (DMM 705.24.3.2 (Return Federal Ballot Mail Envelope Standards) & DMM 705.24.4.2.f (requiring certification of compliance with standards for return ballots)). USPS “will review mailings identified as Outbound Federal Ballot Mail prior to acceptance to evaluate whether

the mailing meets the standards in 24.3.1 and is being sent to individuals who have been enrolled . . . on the state’s Mail-In and Absentee Participation List,” *id.* (DMM 705.24.5.1)—a review USPS elsewhere describes as “checking the barcodes,” *id.* at 32,916. Any mailing that does not pass this review “will not be accepted and will be returned to the authorized ballot mailer.” *Id.* at 32,918 (DMM 705.24.5.3.a). Likewise, “[m]ailings . . . for any state that has not submitted a certification [of compliance with the return mail requirements] will not be accepted and will be returned to the authorized ballot mailer.” *Id.* (DMM 705.24.5.3.b).

UOCAVA, however, commands a very different outcome. States “shall not refuse to accept and process” an otherwise valid marked absentee ballot “solely on the basis of” “[r]estrictions on . . . envelope type,” 52 U.S.C. § 20302(i), (i)(3), leaving no room for a verification standard that conditions a ballot’s acceptance on the presence of a particular barcode. A ballot Congress has specifically directed the States to accept regardless of its envelope type is, under Section 3 and proposed DMM 705.24.3.1.c and 705.24.5.1, precisely the kind of mailing that the Executive Order’s verification and rejection provisions target for rejection. If it were allowed to be implemented, Section 3 thus would prevent the States from satisfying their obligations under UOCAVA.

USPS has attempted to whitewash this defect by proposing that the conditions in its Proposed Rule “do not apply to ballots covered under the Uniformed and Overseas Citizens Absentee Voting Act.” 91 Fed. Reg. at 32,915–32,916. The Executive Order, though, supplies no such exception. It directs, without qualification,

that all outbound ballot mail bear the required barcode, Exec. Order § 3(b)(i), 91 Fed. Reg. at 17,126, and a proposed rule cannot rewrite the Order it purports to implement. Nor is Section 3 saved by the general “consistent with applicable law” language in Section 7(b). Such boilerplate does not immunize specific provisions of a governing text that are unlawful. *See Atl. Richfield Co. v. Christian*, 590 U.S. 1, 23 (2020) (“[W]e have long rejected interpretations of sweeping saving clauses that prove ‘absolutely inconsistent with the provisions of the act’ in which they are found.”); *HIAS, Inc. v. Trump*, 985 F.3d 309, 325 (4th Cir. 2021) (rejecting use of “a purely theoretical savings clause, with no method or standard for invoking it, the application of which would undermine” the substance of the order).

This Court’s recent decision in *Watson v. Republican National Committee*, 609 U.S. \_\_\_, 2026 WL 1855462 (June 29, 2026), is consistent with the above analysis. There, the Court refused to read a general federal ballot-timing statute to override UOCAVA’s specific accommodations for military and overseas voters, explaining that UOCAVA “repeatedly presupposes” that its own commands govern these voters’ ballots and that a contrary reading “would make little sense” alongside UOCAVA’s text. *Id.* at \*6. This Court accordingly construed the general statute to avoid any conflict with UOCAVA. *Id.* But no such harmonizing construction of a general statute with a specific statute is available here. Executive Orders must be consistent with enacted laws, and Section 3 of Executive Order 14399 fails this basic test. *See Cole v. Young*, 351 U.S. 536, 557 (1956) (invalidating operative provision of Executive Order 10450 because “the standard prescribed by the Executive Order . . . is not in

conformity with the Act”).

Here, the Executive’s unqualified bar on transmitting an unenrolled voter’s ballot, and the barcode-dependent verification standard USPS has proposed to enforce it, cannot be harmonized with UOCAVA’s superior command that States must accept a ballot regardless of envelope type. Section 3(b), in short, directly interferes with the States’ fulfillment of their UOCAVA obligation to accept and count ballots.

## **II. A Stay Is Likely to Produce Chaos in Military and Diplomatic Voting That Prevents the States from Counting Ballots of Eligible Voters.**

Even apart from Section 3’s conflict with UOCAVA’s text, a stay of the injunction would inflict immediate, concrete, and irreversible harm on the States’ voting processes for military and diplomatic voters in the November 3, 2026, elections. UOCAVA’s statutory deadlines leave no slack to absorb the untested enrollment-and-barcode regime Section 3 would impose. The harms from the resulting election-administration disruption would fall hardest on the voters least equipped to bear it—service members and diplomatic personnel who cannot appear at a polling place or easily correct an erroneous voter record from their domestic or overseas assignment, and who have no practical opportunity to recast or otherwise remedy a ballot rejected because of the Executive Order. Indeed, it is the Applicants’ claimed injuries from the District Court’s injunction that are speculative, whereas a stay would visit upon UOCAVA voting harms that are concrete, imminent, and beyond later remedy.

**A. A stay will precipitate a nationwide rollout of Section 3’s untested enrollment-and-barcode regime while UOCAVA’s firm deadlines are running.**

UOCAVA’s timeline leaves no room for the States to accommodate the change in ballot-mail procedure Section 3 contemplates. As explained above, UOCAVA requires States to transmit ballots to covered voters no later than September 19, 2026 (45 days before the election, 52 U.S.C. § 20302(a)(8)), while continuing to accept valid registration forms and ballot requests submitted as late as 30 days before that election, *id.* § 20302(a)(2), and further to ensure that completed ballots reach election officials by the deadline generally applicable under State law, *id.* § 20304(b)(1). Once a ballot is transmitted by State election officials, military and overseas voters must return it—often across international mail systems—in sufficient time for it to arrive by Election Day; the Federal Voting Assistance Program accordingly instructs voters to mail their ballots back 30 to 35 days before Election Day. FVAP, *2026–27 Voting Assistance Guide* 10. These statutory and practical deadlines will run through the fall regardless of the outcome of this litigation.

Section 3’s architecture wreaks havoc on that timeline. The Executive Order provides that a State choosing to submit a list of voters eligible to vote by mail can do so up to 60 days before the election. Exec. Order § 3(b)(ii), 91 Fed. Reg. at 17,126. Significantly, earlier submission, although technically permitted, will compound the risk of an incomplete or inaccurate list. The Proposed Rule separately requires the State officials enrolling individual voters with USPS to submit that voter-specific enrollment data “at least 30 days before the date of the federal election, to the extent practicable, or by the date on which mail-in or absentee ballots may begin to be mailed



under state law,” with supplemental submissions permitted only “until the last day that ballots may be mailed out . . . under state law.” 91 Fed. Reg. at 32,918 (DMM 705.24.4.2.d). The table below illustrates the inconsistent schedules imposed on the States by UOCAVA and the Proposed Rule.

| <b>Days Before Election<br/>(Date in 2026)</b> | <b>UOCAVA</b>                                                                                                                                                                                                                                    | <b>Section 3 / Proposed Rule</b>                                                                                                                                                                                                                                                         |
|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>90 days</b><br>(Aug. 5, 2026)               |                                                                                                                                                                                                                                                  | State <i>may</i> notify USPS of intent to use the mail for federal ballots. Exec. Order § 3(b)(ii), 91 Fed. Reg. at 17,126; 91 Fed. Reg. at 32,917 (DMM 705.24.2).                                                                                                                       |
| <b>60 days</b><br>(Sept. 4, 2026)              |                                                                                                                                                                                                                                                  | States choosing to submit an eligible-voter list to USPS must do so. Exec. Order § 3(b)(ii), 91 Fed. Reg. at 17,126.                                                                                                                                                                     |
| <b>45 days</b><br>(Sept. 19, 2026)             | States <b>must transmit</b> ballots to UOCAVA voters by this date. 52 U.S.C. § 20302(a)(8).                                                                                                                                                      | The Proposed Rule’s voter-specific enrollment deadline (30 days) has <b>not yet arrived</b> — meaning a ballot UOCAVA requires be mailed <i>today</i> may not yet carry the enrollment data or barcode Section 3 will require for acceptance. 91 Fed. Reg. at 32,918 (DMM 705.24.4.2.d). |
| <b>30 days</b><br>(Oct. 4, 2026)               | States must accept UOCAVA registration forms and ballot requests submitted this late. 52 U.S.C. § 20302(a)(2).<br><br>FVAP instructs voters to mail back <b>completed ballots</b> by this date. FVAP, 2026–27 <i>Voting Assistance Guide</i> 10. | Proposed Rule’s deadline for USPS enrollment-data submission. 91 Fed. Reg. at 32,918 (DMM 705.24.4.2.d). USPS will also verify barcode/ enrollment before accepting Return Federal Ballot Mail. <i>Id.</i> (DMM 705.24.5.1).                                                             |

Accordingly, allowing implementation of Section 3 for the upcoming November 2026 elections through a grant of the requested stay would oblige the States, along

with USPS and thousands of local election offices, to race to assemble and implement this enrollment-and-barcode system for the first time during precisely the weeks in which the States already must be printing, addressing, and transmitting UOCAVA ballots to voters at duty stations and diplomatic posts around the country and the globe. *Cf.* Exec. Order § 3(d), 91 Fed. Reg. at 17,127 (setting a July 29, 2026, deadline for any final rule).

Even the Government does not claim this rollout can be done without disruption. Instead, the Government contradictorily argues (at 2, 11–12) that implementation remains evolving (if it happens “at all”) but also (at 27–29) that the injunction must be stayed because implementation cannot wait. If the Government itself is seized with uncertainty regarding whether, when, or how it will implement Section 3, then the District Court’s injunction plainly is not causing irreparable harm. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

**B. Any errors in a rushed rollout of Section 3 will impact those voters least able to correct them.**

A stay would leave USPS free to finalize a rule on a timeline that affords no meaningful opportunity for the States to educate UOCAVA voters on new procedures or to address the resulting issues these voters will face. As explained above, nearly two million active-duty members, military spouses, and voting-age dependents are stationed away from their legal voting residence, and this population moves with a frequency uncommon to civilian voters domiciled in the United States, often relocating under orders that provide little notice and no latitude in execution. Even under existing procedures, UOCAVA voters are encouraged to submit a new Federal

Post Card Application (“FPCA”) every January and every time they move to reduce the possibilities of error and delay. If Section 3 is precipitously implemented for the November 2026 elections, the States will have little practical ability to educate their military and diplomatic voters stationed outside the jurisdiction about whether UOCAVA procedures still apply, to help these voters navigate an unfamiliar enrollment process that will be layered atop their existing FPCA obligations, or to correct registration errors before the relevant cutoff date. These difficulties are exacerbated by the undisputed reality that most election jurisdictions design and print their mail ballot envelopes well in advance of an election, leaving little or no time to accommodate a late-breaking change in USPS’s treatment of UOCAVA mail.

Compounding these problems, a stay would sow confusion for the mail handlers charged with applying it. Even if UOCAVA ballots could be exempted by regulation, postal employees will be tasked, for the first time and on a compressed timeline, with distinguishing UOCAVA-covered mail from the general mail-in and absentee ballots subject to the new barcode-and-enrollment verification standard. *See* 91 Fed. Reg. at 32,918 (DMM 705.24.5.1–705.24.5.3). That confusion will arise and intensify as UOCAVA’s 45-day transmission deadline and 30-day registration and ballot-request deadlines approach, leaving no room for course correction once the rollout begins. A rushed, bifurcated system administered nationwide across thousands of postal facilities during the run-up to a federal election is sure to cause grave operational disruption to State voting procedures.

The State Applicants argue (at 3) that any disruption is illusory because the Proposed Rule leaves States in “control over who would (or would not) be able to vote by mail,” since “states would control enrollment with the Postal Service for inclusion on the state’s Mail-In and Absentee Participation List.” 91 Fed. Reg. at 32,916. State control over a general mail-ballot enrollment list, though, says nothing about whether USPS will retain its proposed UOCAVA carve-out in any final rule, and nothing prevents USPS from revising that carve-out—consistent with the Executive Order’s unqualified text—once the 120-day rulemaking clock the Government invokes (at 27–29) as a source of urgency runs its course. If the purported exemption is narrowed or eliminated in compliance with the Executive Order, then State-side enrollment authority will not prevent USPS from rejecting UOCAVA-compliant envelopes for failure to have the newly required barcode. And if the exemption survives, then State and postal officials alike will have to administer, for the first time and under expedited deadlines, a bifurcated system whose lines the Proposed Rule does not yet clearly draw. Either way, the “control” the State Applicants describe fails to eliminate the disruption Section 3 threatens to inflict on military and diplomatic voting.

**C. *Purcell’s* anti-disruption principle applies with particular force to military and overseas voters, who have no opportunity to try again.**

This Court has long cautioned that federal courts should not permit last-minute changes to election rules that risk voter confusion and disenfranchisement. *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam); *see also Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424–25 (2020) (per curiam) (staying

order that altered election procedures shortly before an election). This principle counsels denying the stay the Applicants seek: The District Court’s injunction preserves the ballot-mail procedures under which States, USPS, and voters have operated for decades, while a stay would introduce the very kind of late-breaking change *Purcell* warns against on a nationwide scale, shortly before the November election.

*Purcell*’s concern has particular force for military and diplomatic personnel and their families. A domestic voter whose mail ballot is rejected retains some recourse: She may vote in person, seek a provisional ballot, or return to her local election office to resolve a registration problem before Election Day. A UOCAVA voter may have none of these options. She cannot appear at a polling place thousands of miles away, and once her ballot is transmitted under the schedule UOCAVA requires, *see* 52 U.S.C. § 20302(a)(8), there is ordinarily no time left in the calendar to receive a rejection notice, obtain a compliant envelope or enrollment, and return a replacement ballot before it is due. As the courts of appeals have recognized in analogous contexts, once a ballot deadline has passed, there is “no do-over.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014)); *see also Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (emphasizing that election officials and voters alike need stability, not last-minute change, as an election approaches). For a UOCAVA voter, a mid-cycle change to the rules governing ballot acceptance is not an inconvenience to be managed. It is the loss of a vote that cannot be recovered.

**D. The equities that govern stay requests overwhelmingly favor denial.**

Applicants bear the burden of a “strong showing” that they are likely to succeed and that they will be irreparably injured absent a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Yet neither has defended Section 3’s legality on the merits at any stage of this litigation. The court of appeals expressly noted that “the Government does not defend the legality of the EO in requesting a stay,” GovtApp.6a, and the State Applicants likewise rest entirely on standing and ripeness (at 9–20) rather than any defense of Section 3’s lawfulness. Both press the contention that the injunction is premature due to future uncertainties—a contention in tension with their simultaneous insistence that implementation of Section 3 cannot wait. All three First Circuit judges below agreed that neither the Government’s nor the State Applicants’ asserted harm justified a stay as to the November 2026 elections. Even Judge Dunlap, who would have stayed the injunction as to Section 2(a), concluded that “the Government and Intervenor States have failed to show a substantial likelihood of success” as to Section 3, because they “mount no substantive defense” of that provision at all. GovtApp.18a.

That unanimity reflects the asymmetry of harm in this matter. Denying the stay request leaves the existing ballot-mail system in place while the merits proceed on the ordinary appellate timeline; nothing about that outcome forecloses the Government from defending Section 3 or, if it prevails, implementing a lawful version of it for future elections. Granting the stay, by contrast, risks precisely the harm UOCAVA was enacted to prevent: States failing to count the votes of military

members and diplomatic personnel serving their country at distant posts, as well as the votes of their family members, due to mailing obstacles. *See* H.R. Rep. No. 99-765, at 12 (overseas voters who fail to receive or return their ballots in time are “clearly and effectively disenfranchised”). Because that harm is concrete, imminent, and beyond any court’s power to undo after the fact, the applications for a stay of Section 3 should be denied.

### CONCLUSION

The applications should be denied.

Respectfully submitted,

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