

In the Supreme Court of the United States

DONALD J. TRUMP, *ET AL.*,

Applicants,

v.

STATE OF CALIFORNIA, *ET AL.*,

Respondent.

To the Honorable Ketanji Brown Jackson, Associate Justice of the United States
Supreme Court and Circuit Justice for the First Circuit

On Application for a Stay of the Injunction Issued by the United States District
Court for the District of Massachusetts and Request for Administrative Stay

**BRIEF OF HARRIS COUNTY, TEXAS AS *AMICUS CURIAE* OPPOSING APPLICATION FOR
A STAY OF INJUNCTION AND REQUEST FOR ADMINISTRATIVE STAY**

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INTERESTS OF *AMICUS CURIAE*

Harris County is the nation's third most populous county, with over 5 million residents, or over one in every six residents of the State of Texas. If Harris County were a state, it would be the 25th largest state in the country. As of July 29, 2026, the County has 2,748,714 registered voters. It is home to the most diverse population and electorate in Texas. More than 145 languages are spoken in Harris County. The size and scope of the County make the smooth operations of elections challenging even in the most ideal of circumstances.

The Harris County Tax Assessor-Collector and the Harris County Clerk are responsible for voter registration and administering and managing elections in Harris County, respectively. The Assessor maintains the voter rolls as well as district and precinct lists, but the actual mailing of mail ballots is handled by the Clerk.

Given the size and scope of administering an election in Harris County, the County has intense interest in a continued stay of the Executive Order. *See* Executive Order 14,399, "Ensuring Citizenship Verification and Integrity in Federal Elections," 91 Fed. Reg. 17,125 (Mar. 31, 2026) ("Executive Order"). Disruption at this late stage would cause havoc in election administration, especially given the sheer number of possible mail ballots and unpredictability of who will request one.

SUMMARY OF ARGUMENT

The Court should deny the President's application for a stay, which would dangerously upend the November 2026 election and allow haphazard implementation of an Executive Order that violates the Constitution, federal statutes and Texas law.

The public interest strongly favors denying a stay. It is wholly unworkable for Harris County—and likely most any other jurisdiction—to comply with the regulatory scheme envisioned by the Executive Order in time to administer the November 2026 election. Preparation for administering mail balloting for the upcoming election is afoot. Not only is it too late for the Executive Order to take effect, Texas law and election procedures make it impossible for it to take effect as written.

Public interest aside, the Executive Order is blatantly unconstitutional and violates numerous federal and state laws. States and Congress, not the President, have the constitutional power to regulate federal elections. While the President can sign or veto federal legislation passed by Congress that regulates federal elections, he cannot bypass Congress and usurp states' Elections Clause power by fiat. The district court's injunction should not be disturbed.

ARGUMENT

I. The public interest favors avoiding the electoral chaos a stay of the injunction would cause.

The public interest favors denying the application for a stay because granting it would cause electoral chaos in the administration of the November 2026 election—which is now just three months away. “Last-minute changes to longstanding election rules . . . invit[e] confusion and chaos and erod[e] public confidence in electoral outcomes.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 30 (2020) (Mem.) (Gorsuch, J., concurring). While this principle ordinarily is applied in the context of federal *court* intervention in state election laws, it stems from broader federalism principles because, as this Court has recently recognized, “[s]tates are free

to decide for themselves whether last-minute changes to an election are in their best interests.” *Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026) (per curiam). Here, the *states* have not opted to rewrite their election laws, the *President* has. That violates the Constitution and federal laws, *see infra*, but it also should begin and end the Court’s consideration of whether a stay helps or harms the public interest. The President’s disregard for federalism and constitutional boundaries is bad enough. But the chaotic disruption that disregard could cause to the November election would be intolerably damaging to the public interest.

A. It is impossible to implement the Executive Order for the November 2026 Election.

It is difficult to exaggerate the extent of the chaos that will ensue if the Executive Order is permitted to take effect now. Consider Section 3, which directs the Postmaster General to propose regulations that (1) mandate the contents of mail ballot envelopes, (2) require states to notify USPS no fewer than 90 days before an election if they intend to utilize the postal service for mail ballot delivery, (3) require states to identify for USPS no fewer than 60 days before the election which of its voters will be casting a mail ballot, and (4) prohibit USPS for transmitting a ballot to any voter not on that list.

The President says (at Application page 4) he would like these regulations implemented by “as soon as early to mid-August.”¹ Harris County cannot implement these policies this year because it is already August—it is not physically or legally possible. To start, the 90-day notice deadline will have already come and gone by

¹ This puts to bed any doubt that this controversy is ripe. Early August is upon us.

“early to mid-August.” Does that effectively prohibit mail voting this year, contrary to state law?

Section 3’s requirement that the State’s list of mail voters be transmitted 60 days prior to the election cannot be squared with federal and state laws Harris County is obligated to follow. The National Voter Registration Act (“NVRA”) compels states to accept voter registrations up to *30 days* prior to an election. *See* 52 U.S.C. § 20507(a)(1). And under Texas law, voters have until *11 days* before the election (October 23, 2026) to request a mail ballot. *See* Tex. Elec. Code § 84.007. Harris County’s statutory obligations are incompatible with the Executive Order’s deadlines, which would seemingly freeze eligibility to vote by mail to only those voters requesting that method 60, rather than 11, days prior to the election.

B. It is impossible under Texas Law to compile and maintain a list of voters eligible to vote by mail.

Texas law allows only limited categories of people to vote by mail. In addition to voters over age 65, Tex. Election Code § 82.003, voters who (1) will be absent from their county of residence on election day and for in person early voting, Tex. Election Code § 82.001, (2) have a sickness or physical condition preventing them from voting in person, Tex. Election Code § 82.002, (3) are expecting to give birth within three weeks of Election Day, *id.*, or (4) are confined in jail, Tex. Election Code § 82.004, are eligible to vote by mail. It is not possible for Harris County or the Texas Secretary of State to compile a list of such voters. In some cases, the voters themselves do not yet know they will be eligible to vote by mail at the time the list of eligible mail voters must be transmitted to the federal government.

It is no help that Section 3 provides that USPS should allow for states to “routinely supplement and provide suggested modifications or amendments” to the list of USPS-approved mail voters. Executive Order § 3(b)(vi). That would require the Texas Secretary of State to gather information from 254 county election offices and update USPS on, for example, the 11th day prior to the election. Not only is that impractical and impossibly burdensome, but there is also little to no chance that USPS could implement those updates in time to ensure eligible voters’ ballots were not affected. In Harris County’s experience, mail delivery and processing times have considerably deteriorated, while the frequency of USPS errors has considerably increased. As one example, when *amicus* recently mailed voter registration cards to registered voters, approximately 130,000 were returned as “undeliverable.” Upon investigation, many of those “undeliverable” determinations were erroneous—the voters in fact reside at the residences to which they were mailed.

C. The Executive Order provides no mechanism for notice and opportunity to cure.

Section 3(b)(iii) of the Executive Order provides that USPS shall not transmit mail ballots sent from voters whose names are not on the list submitted by the State 60 days prior to the election. Those voters, relying on Texas state law permitting them to vote by mail, will request a mail ballot, receive it, mark it with their choices, and place it in the mail only for the USPS to *intercept it* and refuse to deliver it to the county election officials to be counted.² That is illegal. *See* 52 U.S.C. § 10307(a) (“No

² Notably, the Executive Order does not direct USPS to implement regulations prohibiting the transmission of mail ballots *to* voters, only from voters to election offices after the ballot has been marked. *See* Executive Order § 3(b)(iii) (“Proposed

person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote . . .”). In that regard, the Executive Order actually directs USPS to violate federal criminal law. *See* 52 U.S.C. § 10308(a) (“Whoever . . . shall violate section 10307(a) of this title, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.”); *see also* 52 U.S.C. § 10308(c) (“Whoever conspires to . . . interfere[] with any right secured by section . . . 10307(a) of this title shall be fined not more than \$5,000, or imprisoned not more than five years, or both.”).

The Executive Order provides no mechanism to inform voters that their mail ballot will not be delivered. Without notice, how will the voter know that USPS has seized their ballot and is refusing to deliver it? State law guaranteed their right to vote by mail, State officials sent them the ballot, and they returned it by mail, all as permitted by law. The Executive Order makes no provision for a pre-deprivation notice and hearing for voters whose ballots have been intercepted, violating the Constitution’s guarantee of due process. *See, e.g., Self Advocacy Solutions N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1054 (D.N.D. 2020) (concluding that failure of state to provide notice and opportunity to cure perceived signature mismatch on absentee ballot violated procedural due process rights). So, voters will just not be told their ballot was seized and not delivered?³

provisions specifying that the USPS shall not transmit mail-in or absentee ballots *from* any individual unless those individuals have been enrolled on a State-specific list . . .” (emphasis added)).

³ Texas provides a ballot tracking system for voters, but it will not notify voters that USPS has *seized* their ballots.

If voters whose ballots have been intercepted by USPS do somehow manage to learn that the postal service refuses to deliver their ballot to county officials, what are they to do? Federal law makes it a felony punishable by up to five years in prison and a \$10,000 fine to “vote more than once” in a federal election. 52 U.S.C. § 10307(e)(1). Does that law preclude these voters from voting in person on election day because they already cast an (ill-fated) mail ballot? That section does not apply when “all prior ballots of that voter were invalidated,” but the Executive Order does not *invalidate* the ballot, it just directs USPS to refuse to deliver it. What possible authority does the *postal service* have to “invalidate” a ballot? What are county election officials supposed to tell voters, or permit them to do, if they learn their ballots were seized by USPS? If they inform the eligible voter they can vote in person given USPS’s interception of their mail ballot, is that a conspiracy to permit a person to vote twice? The Executive Order threatens to prosecute election officials under a litany of federal statutes, including conspiracy to violate federal law. *See* Executive Order § 5.

For the November 2022 election, 64,171 mail ballots were returned (to the then Elections Administrator’s Office). For the November 2024 Presidential Election, 66,085 ballots were returned. As of July 29, 32,398 eligible voters have requested mail ballots for the November 2026 Election. If as expected at least 30,000+ additional voters request mail ballots prior to the October 23 deadline, tens of

thousands could see their ability to vote jeopardized.⁴ Voters will not know whether they can vote by mail. County election officials will not know either. And voters (and also election officials) will be at risk of criminal prosecution merely for attempting to vote.

D. The Executive Order's requirement of new ballot envelopes with USPS applied barcodes is unworkable.

The Executive Order's provisions regulating the format and bar codes on the ballot envelope are unworkable and especially so within the next three months. *See* Executive Order § 3(b)(i). Texas law provides detailed and extensive requirements for the format and content of official election envelopes. *See, e.g.*, Tex. Election Code §§ 86.013; 86.015. That includes a requirement for a barcode unique to each voter to permit online tracking of a ballot's status, *id.* § 86.015(c)(2). The dueling envelope barcodes required by Texas law and the Executive Order could create difficulties and errors in ballot processing. The USPS list and barcode, without carefully considered implementation rules, could also jeopardize the secrecy of each voted ballot.

E. There is Not Time to Implement the Executive Order.

It is August 3. The Texas Secretary of State has issued no guidance on how counties could feasibly comply with the Executive Order were a stay to be granted by this Court. It is operationally impossible for the Executive Order to govern this election. Indeed, even the *threat* of rulemaking of this kind in advance of the

⁴ Because Texas law does not provide for drop boxes (as other states do) but rather allows only mail, common carrier, or in-person delivery of the ballot to a single location in the county only on election day, *see* Tex. Election Code § 86.006, the vast majority of the ballots at issue will in fact be placed in the mail.

November election would seriously disrupt the election process.⁵ The deadline to send mail ballots to military and overseas voters is September 19, 2026. *See* Tex. Election Code § 86.004(b); Tex. Sec’y of State, November 3, 2026 Election Law Calendar, <https://www.sos.state.tx.us/elections/laws/advisory2026-21-november-3-election-law-calendar.shtml>. For a jurisdiction the size of Harris County (with 1,224 voting precincts), meeting this deadline takes time. Logic and accuracy testing must be undertaken in advance to ensure that the ballot style—*i.e.*, listing the correct election contests for a particular voter’s registration address—appears for each voter. Harris County is required to produce ballots in four different languages. *See* 52 U.S.C. § 10503. The work to provide mail ballots to Harris County voters is underway. It is much too late for the process to be as radically transformed as the Executive Order envisions.

The public interest factor weighs decidedly against granting the President’s application for a stay.

II. The Executive Order unlawfully usurps state power in violation of the Elections Clause.

Regardless of how an executive agency may implement the Executive Order, any application of the Order is an unconstitutional usurpation of State power in violation of the Elections Clause and the Tenth Amendment of the United States Constitution.

⁵ Given that the President applies for a stay on ripeness grounds and contends (at Application page 4) that the correct time for litigation to commence is “early to mid-August,” the period of uncertainty a stay would cause would alone cause the electoral process to be thrown into chaos and confusion.

A. The Executive Order facially violates the Elections Clause and the Tenth Amendment.

The Executive Order is a facially unconstitutional act by the President and the Executive Branch to rewrite Texas election laws and impose a new election regime on *amicus* absent any congressional mandate to do so.

The United States Constitution confers broad authority on the States to regulate the conduct of state and federal elections and the eligibility of voters. U.S. CONST. art. I, § 4, cl. 1; *see* U.S. CONST. art. I, § 2, cl. 1; *Storer v. Brown*, 415 U.S. 724, 729–30 (1974); *Marston v. Lewis*, 410 U.S. 679 (1973) (per curiam); *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8 (2013). Under the Voter Qualifications Clause, the States have the power to determine who is eligible to vote in state and federal elections. *See* U.S. CONST. art. I, § 2, cl. 1; *League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 156-57 (D.D.C. 2025) (“*LULAC I*”).

The Elections Clause provides “[t]he 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.” U.S. CONST. art. I, § 4, cl. 1. Without explicit directives from Congress regarding the times, places, and manner of federal elections, the States retain exclusive power over their election systems. *See Inter Tribal Council of Arizona, Inc.*, 570 U.S. at 9 (“In practice, the Clause functions as ‘a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices.’ *Foster v. Love*, 522 U.S. 67, 69, 118 S.Ct. 464, 139 L.Ed.2d 369 (1997)”).

The “Elections Clause grants [only] Congress ‘the power to override state regulations’ by establishing uniform rules for federal elections, binding on the States.” *Foster v. Love*, 522 U.S. 67, 69 (1997) (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 832–33 (1995)). The Constitution does not grant the President the authority to regulate federal elections. See *Washington v. Trump*, 814 F. Supp. 3d 1173, 1214 (W.D. Wash. 2026); *Watson v. Republican Nat’l Comm.*, No. 24-1260, 2026 WL 1855462, at *3 (U.S. June 29, 2026) (“[T]he Constitution lodges power over congressional elections in state legislature ‘primarily’ and in Congress ‘ultimately.’”) (quoting *The Federalist* No. 59).

The Executive Order, however, expressly attempts to regulate federal elections. In instructing that USPS not “transmit mail-in or absentee ballots from any individual” unless that individual is “enrolled” on the USPS’s state-specific “Mail-In and Absentee Participation List,” the Executive Branch is *de facto* imposing both federal voter qualifications and election regulations not enacted by Congress. 40 Fed. Reg. at 17126, § 3(b)(iii)-(iv). Indeed, a search of the United States Code would leave one wanting to find any law that delegates to the Executive Branch or, for that matter, the Postal Service, the ability to regulate mail voting in such a manner.

Thus, the Order improperly seizes for the President a power the Constitution commits primarily to the States and in part to Congress, transgressing federalism and violating the Elections Clause.

The Framers recognized that empowering the federal government to have complete control over elections would be an “unwarrantable transposition of power”

and “a premeditated engine for the destruction of the State governments[.]” *See* The Federalist No. 59. The Executive Order attempts precisely what the Framers rejected.

B. The Executive Order violates Texas’s power to regulate elections.

The Executive Order violates Texas’ power to regulate elections and conflicts with the requirements Texas has enacted through its Legislature. In doing so, the Executive Order forces *amicus* and other Texas jurisdictions to choose between defying state law or risking prosecution by the Department of Justice.

The Tenth Amendment prohibits the commandeering of state power, providing that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. CONST. amend. X. “Art. I, § 4, empowers the States to regulate” the mechanics of federal elections absent congressional action. *Roudebush v. Hartke*, 405 U.S. 15, 24–25 (1972). The States’ power to regulate is comprehensive and wide-ranging: the Elections Clause gives the States the 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; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.

Id. at 24–25 quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

Section 2 of the Executive Order commandeers Texas’s authority to regulate the manner of its elections. This is because the Executive Order uses the threat of

investigation and prosecution of State and local officials, such as *amicus*, “who issue Federal ballots to individuals not eligible to vote in a Federal election” to coerce States into using the DHS-generated “State Citizenship List” to verify a voter’s citizenship. *See* 40 Fed. Reg. at 17126, § 2(b). But by using such information to determine who is eligible to vote, Texas election officials would violate state law. Texas Election Code § 18.061(c) makes county voter registrars, not outside sources such as the federal government, the exclusive source for the Texas Secretary of State’s voter registration list. With respect to citizenship verification, the Texas Election Code makes clear that only information from the Texas Department of Public Safety may be used to verify the accuracy of citizenship status for purposes of voter registration. Tex. Elec. Code § 16.0332(a-1).

Section 3 of the Executive Order is similarly unlawful. The Order requires that states submit to USPS “no fewer than 60 days before the election, a list of voters eligible to vote in a Federal election in such State to whom the State intends to provide a mail-in or absentee ballot to be transmitted via the USPS.” 40 Fed. Reg. at 17126, § 3(b)(ii). The Order then states that “the USPS shall not transmit mail-in or absentee ballots from any individual unless those individuals have been enrolled on a State-specific list.” *Id.* at § 3(b)(iii). But under Texas law, a voter may register to vote as late as 30 days before an election. *See* Tex. Elec. Code § 13.143. That is the maximum length permitted by *federal* law. *See* 52 U.S.C. § 20507(a)(1). A Texas voter may request a mail-in or absentee ballot as late as 11 days before election day. Tex. Elec. Code § 84.007. Thus, a voter whom Texas has determined to be qualified to vote,

who is eligible to vote by mail, and who has lawfully requested an absentee ballot would nonetheless be disenfranchised, because the request would come too late for enrollment on the federal list. Additionally, a voter wrongly omitted from the federal list would learn of the problem only after the window to fix it had closed. Section 3 further burdens election officials, who must either violate state law by refusing a mail ballot to a voter who requests one outside the 30-day period, or provide the ballot and risk investigation or prosecution by the DOJ, as stated *supra*.

There is also no Texas election official who could produce the list the Executive Order demands. Mail balloting in Texas is administered county by county by the early voting clerk. *See* Tex. Elec. Code chs. 84, 86. The Secretary of State is not the custodian of mail-ballot applications, and no provision of the Election Code authorizes transmitting a statewide roster of intended mail voters to a federal agency. As such, Texas election officials could not lawfully comply with the Order even if the Order itself were lawful.

Moreover, the Executive Order's requirement that States comply with the USPS mail-ballot design provisions is impermissible. Section 3(b)(i)(A)–(C) require the Postmaster General, “at minimum,” to include in the proposed rulemaking a directive that outbound mail ballots be mailed in envelopes that are “marked as Official Election Mail, including through designated marking provided by USPS,” “bear[] a unique Intelligent Mail barcode,” and have “undergone a mail envelope

design review by the USPS to ensure compliance with USPS mailing standards.⁶ But no federal law authorizes the USPS to dictate the design of mail-ballot envelopes; that power is reserved exclusively to the States. Texas law already prescribes the only lawful layout for an official carrier envelope for mail ballots. Tex. Elec. Code §§ 86.013, 101.056. There is no discretion to permit the USPS barcode, and § 86.002(g)’s concealed-field requirement constrains where a barcode may be placed without exposing voter identification data.

With respect to military and overseas voters, Texas mandates a different label and a different postage requirement than that in the Executive Order. Texas Election Code §§ 101.056(a) and 101.058 require the envelope to read “Official Election Balloting Material – via Airmail” and to be mailable free of United States postage under the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”). *See* 52 U.S.C. § 20301, et seq. Section 3(b)(i)(A) of the Executive Order by contrast requires marking as “Official Election Mail” with USPS-designated logos. The two labels are not interchangeable. Even if Texas election officials wished to satisfy the USPS’s demands, they could not do so absent a federal rule expressly preserving the UOCAVA labeling, which the Executive Order does not direct the USPS to include.

Furthermore, the USPS rulemaking undertaken to effectuate the Executive Order demonstrates that the “Mail-In and Absentee Participation List” could violate

⁶ On June 2, 2026, USPS proposed a Federal Ballot Mail Program, which requires mail ballot envelopes to have designated markings, unique barcodes, voter-level information, and a rule that mailings that were not compliant would not be accepted. 91 Fed. Reg. 32915, 32916–18 (June 2, 2026).

Texas voters’ right to a secret ballot. Under the proposed rule, the USPS “would establish a process by which (1) states (including authorized election officials and their mail service providers) will notify the Postal Service of the individuals to whom they are mailing a mail-in or absentee ballot, along with the unique barcode applied to the outbound and return ballot mail envelope for such individuals such that the name and barcode of the voter will be included on a Mail-In and Absentee Participation List.” 91 Fed. Reg. 32915 (June 2, 2026). Under Tex. Elec. Code § 86.002(i), “[n]o record associating an individual voter with a ballot may be created.” The USPS-assigned identifier which is linked to an individual voter and provided to USPS is creating a record that associates individual voters with a ballot in violation of Tex. Elec. Code § 86.002(i).

At bottom, the Executive Order imposes unauthorized federal prerequisites on the very postal services that election clerks and voters must use, and in doing so it compels state action. Such compulsion is unconstitutional.

CONCLUSION

For the foregoing reasons, the application for a stay should be denied.

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