

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 Emergency Application for a Stay of the Injunction
Entered by the United States District Court
for the District of Massachusetts

**BRIEF OF 56 FORMER JUDGES
AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS**

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INTEREST AND IDENTITY OF *AMICI CURIAE*¹

Amici curiae are 56 former judges, including federal and state judges appointed by Presidents and governors of both major political parties. The majority of *amici*—33 of 56—were appointed by Republican Presidents or governors or ran for their positions as Republicans. *Amici* served on trial courts and appellate courts on both the state and federal benches throughout the country. As former judges, *amici* have a deep and abiding appreciation for the judiciary, the lower courts, and the unique and essential role that courts at all levels play in protecting constitutional and statutory rights, maintaining public confidence in government, and protecting the rule of law.

This matter concerns the President and federal executive branch’s attempt to unilaterally upend long-settled rules on state administration of elections, not only raising questions of the utmost constitutional significance, but also posing practical challenges for state officials and lower court judges. *Amici* contribute their insights into the role of the lower courts in factfinding based on the record established by the parties. Moreover, *amici*’s prior positions as both state and federal court judges give them a unique vantage point on the grave federalism problems underlying this case, where Respondents have presented, and the lower courts have found, serious violations of state sovereignty under multiple constitutional provisions. They also offer particularly salient perspectives on the impact that the Applicants’ requested

¹ No counsel for a party authored this brief in whole or in part, and no person other than amici or their counsel made a monetary contribution to its preparation or submission.

relief would have on the public interest, in particular risks to harming public confidence in elections and burdens on court operations if the challenged Executive Order were to go into effect.

A list of the individual *amici* and the courts on which they most recently served can be found in the Appendix to this brief. This brief reflects the views of *amici* as individuals only.

INTRODUCTION AND SUMMARY OF ARGUMENT

This emergency application should be denied. The District Court found on an uncontroverted factual record that the Respondents are suffering injury now because Executive Order 14399's ("EO 14399" or "the EO") extraordinary decree has already forced them to incur costs, disrupt election preparations, and endure ongoing intrusions on their sovereign authority over election administration. The First Circuit denied a stay on that same record, emphasizing that Applicants do not contest the District Court's assessment of the summary judgment evidence and do not defend the legality of the contents of the EO in seeking emergency relief. In this posture, respect for orderly judicial review and for the institutional role of lower courts, and the constitutionally-prescribed role of States in administering elections, strongly counsels against emergency relief.

That Applicants do not contest the merits is dispositive. This case is about serious invasions of state sovereignty. The Respondents have shown, and the lower courts have found, that the EO intrudes on authority the Constitution assigns to the States through the Elections and Electors Clauses. The EO compounds that intrusion

by commanding state officials to implement a new federal election program, created by the Executive Branch out of whole cloth with no authorization from Congress, in violation of basic anti-commandeering principles under the Tenth Amendment. The injury is not abstract. It is the current displacement of the States' power to create, enforce, and administer their own election rules—including overhauling entire mail-ballot systems—as they conduct imminent federal elections.

A stay would also harm the public interest in practical and immediate ways. This Court has repeatedly warned against judicially-sanctioned changes to election rules on the eve of an election because such changes breed confusion, disrupt orderly administration, risk disenfranchising eligible voters, and invite emergency litigation. Here, granting a stay would inject new federal requirements into state election systems just months before the November election, after state and local officials have already begun preparing under existing rules. Emergency relief from this Court would impose these burdensome new requirements on state and local election officials simply because the President wishes to impose them, notwithstanding his lack of any role in administering elections under the Constitution, and even as Applicants have repeatedly declined to defend the legality of the commands in the EO on the merits. That is a recipe for confusion among voters, strain on election administrators, and unnecessary burdens on lower courts asked to resolve last-minute disputes. Denying the applications avoids these needless harms.

Because Applicants have not carried their burden on the stay factors, and because the public interest weighs strongly against disruption of imminent elections, the applications should be denied.

ARGUMENT

I. In Evaluating These Applications, Deference To The Record Established By The Lower Court Is Appropriate.

Applicants litigated the facts of this case in the District Court and lost. The District Court, applying Fed. R. Civ. P. 56, determined that any asserted factual disputes were neither genuine nor material to the questions before it and entered judgment accordingly. Applicants ignored those factual determinations in their stay motions and on appeal. U.S.App.6a & n.5. They did not dispute the declarations and other factual submissions by the Respondents, nor did they contest the District Court's assessment of the summary judgment record. *Id.*

The factual premises of the judgment are therefore settled for purposes of these applications. A party that declines to contest a ruling on appeal may not resurrect it in this Court, which only reviews questions “pressed or passed upon below,” *United States v. Williams*, 504 U.S. 36, 41 (1992), and which confines itself to the questions the applicant has actually presented, *see* Sup. Ct. R. 14.1(a). Nor is the compressed schedule of an emergency application the occasion to revisit settled facts, especially in a Court that sits as “a court of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

The findings of fact reached by the District Court below—and uncontested by the Applicants on appeal—strongly support the Respondents' position that this case

is justiciable. *First*, the Applicants do not contest the lower court’s findings on imminent injury. In particular, the District Court found that the Respondents must begin planning *now* on how to comply with the EO’s directives given the proximity of imminent federal elections. Indeed, failing to plan for the EO’s dramatic directives against pressing election deadlines would be exceedingly irresponsible. For example, the First Circuit credited the unchallenged summary judgment record reflecting that the EO has forced Connecticut officials—among others—to take “immediate action,” including by “coordinat[ing] with other state and local agencies” to develop a plan that would achieve the EO’s stated goals “on the designated timeline and with no financial support.” U.S.App.8a. The Circuit affirmed that between the compressed timelines and anticipated changes to the Respondents’ election processes, the summary judgment record indicated that the EO has already “produced an incredible strain” on state election officials and their teams. U.S.App.7a-8a, 41a-43a. And contrary to the Intervening States’ argument, Respondents cannot “wait . . . until a final policy exists” to assert their injuries. Intervenor.App.19 (citing *Alliance for Hippocratic Medicine*, 602 U.S. at 394). Unlike the plaintiffs in *Alliance*, who the Court held could have avoided their claimed injury by simply declining to act—state and federal law compel Respondents to print and distribute ballots on fixed statutory timelines, U.S.App.36a-39a, leaving no way to avoid incurring compliance costs before a final rule issues.

Second, the uncontested summary judgment record supports the District Court’s conclusion that the Respondents are incurring present pocketbook injury

from the EO's direction that USPS control the design of envelopes in all federal vote-by-mail processes. The First Circuit relied on the summary judgment record, which showed that several states had already ordered mail-ballot envelopes for the 2026 federal election cycle. U.S.App.11a, 42a-44a. Massachusetts alone already purchased \$3 million worth of envelopes for mail-in ballots, but USPS has proposed a rule pursuant to the EO that would render those envelopes unusable. U.S.App.11a, 42a. Applicants did not contest that the Respondents had already purchased mail-ballot envelopes and conceded that design changes would force the Respondents to incur monetary and operational costs. U.S.App.11a, 43a-44a; *see also* USPS Notice of Proposed Rulemaking, Ballot Mail for Federal Elections, 91 Fed. Reg. 32,915 (June 2, 2026).

Third, the uncontested record supports the Respondents' position that the EO threatens them and their officials with criminal penalties if they do not comply with its directives. For example, the record establishes that the DHS Citizenship Lists would necessarily be underinclusive when transmitted to the Respondents. U.S.App.12a, 53a, 77a. The District Court rightly concluded that this underinclusivity would subject the Respondents to a credible threat of criminal prosecution. U.S.App.12a, 53a-54a, 77a-78a. Applicants repeatedly indicated below that the Lists could be used to "facilitate . . . post-election law-enforcement activity," including prosecuting violations of laws that "explicitly prohibit non-citizens from registering to vote." U.S.App.13a, 55a-57a. And when asked whether the Government would have probable cause to prosecute a state official for simply sending a ballot to someone not

on the Lists, Applicants’ counsel would not disclaim that approach. U.S.App.13a; *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 165 (2014) (finding threat of future enforcement was “substantial” in part because “respondents have not disavowed enforcement if petitioners make similar statements in the future”).

The factfinding in our court system depends on the adversarial process, which Applicants failed to take advantage of in this posture. This Court should not depart from the well-settled rules of judicial review by relitigating those facts now, on an emergency motion.

II. The First Two Stay Factors Decidedly Favor The Respondents.

A. Applicants Make No Merits Showing.

A stay pending appeal is an “intrusion into the ordinary processes of administration and judicial review,” not “a matter of right.” *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quoting *Va. Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)). Applicants therefore bear the burden under *Nken* to make a “strong showing” of likely success on the merits and to show irreparable injury absent a stay, and those two factors “are the most critical.” *Id.* at 434. Applicants cannot satisfy either requirement here.

That Applicants do not defend, and have never even attempted to defend, “the legality of the EO in requesting a stay,” is telling. U.S.App.6a; Dist.Ct.ECF.195 at 11-26; Dist.Ct.ECF.157 at 31-37. As with the stay proceedings before the First Circuit, the question of the EO’s constitutionality is not before this Court. U.S.App.6a. Rather, Applicants press only threshold objections—standing and ripeness—which fail, considering the “uncontroverted” facts furnished by the Respondents before the

District Court. U.S.App.4a. Thus, Applicants cannot clear the likelihood of success requirement because they do not contest the District Court’s merits ruling that the EO unlawfully intrudes on constitutional limits, and because the uncontested factual record shows that the EO is burdening the Respondents *now*. See U.S.App.61a; see also *id.* at 18a, n.12.

Applicants’ cited cases are inapposite. For example, *Trump v. New York*, 592 U.S. 125, 133-34 (2020), differs from this case because there, the Court held that a challenge to a presidential memorandum was unripe where it was merely a “general statement of policy” that the Government acknowledged could not feasibly be implemented as written, and thus any injury depended on uncertain future executive action. *Id.* at 131, 133–34. By contrast, EO 14399 is no mere “general statement of policy,” and Applicants notably do not suggest that it cannot be “feasibly implemented” as written. *Id.* at 132–33. Rather than announcing an abstract policy, EO 14399 directs specific agency action on a compressed timetable, forcing state election officials to act now. See U.S.App.9-10. Indeed, the Government already “has taken steps,” including initiating USPS rulemaking, to develop the EO’s ballot-verification program and maintains the stated goal of “implement[ing] a final rule applicable to the November 2026 election,” which would require its program to be fully operational “[b]y the time that the first mail-in ballot is ready to mail” Dist.Ct.ECF.194-2 ¶ 7. Thus, unlike in *Trump v. New York*, if a stay is granted in this case, the Respondent States will certainly suffer an imminent Article III injury.

Nor does Justice Sotomayor’s concurrence in *Trump v. American Federation of Government Employees*, 145 S. Ct. 2635 (2025), support Applicants’ position. There, Justice Sotomayor found the savings clause in the EO at issue in that case—requiring that the EO be implemented “consistent with applicable law”—sufficient to defer judicial review because the authority it invoked was lawful in at least some applications, leaving questions regarding its future implementation for the District Court to resolve once concrete plans emerged. As the District Court held below, a savings clause does not cure an EO’s legal infirmities where, as here, a plaintiff demonstrates the order is invalid in *all* possible applications. U.S.App.51a (citing *Bldg. & Constr. Trades Dep’t, AFL-CIO v. Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002)). No statute delegates to the Executive Branch any authority to bind States to disruptive new election rules, making EO 14399’s own savings clause “meaningless” since it is impossible for it to be implemented “consistent with applicable law.” U.S.App.51a (citing *League of United Latin Am. Citizens v. Exec. Off. of President*, 780 F. Supp. 3d 135, 176 (D.D.C. 2025)).

Applicants press for emergency relief to implement the Order now while postponing any defense of why the Order is lawful. That would flip *Nken* on its head. *Nken* made clear that the burden is on Applicants *seeking the stay* to justify interim relief. Applying that framework here means that the burden is not on the Respondents to disprove a merits defense Applicants have not advanced before this Court or the First Circuit. Applicants point to no case where an emergency stay was granted on ripeness grounds alone without the government advancing any merits

defense of the underlying challenged government policy. And for good reason. At the stay stage, a government bears a heavy burden to merit extraordinary relief: it is certainly novel to demand such extraordinary relief while offering no defense of the legality of the enjoined actions.

B. The Executive Order’s Ongoing Intrusions Into State Sovereignty Create Present Injury And Irreparable Harm.

In deciding these applications, the Court should focus on the fact that the constitutional violation Applicants decline to oppose on the merits before the Court is also the Respondents’ *present* Article III injury to their sovereign interests and a source of irreparable harm. The Court has recognized that a State’s sovereign interests include “the exercise of sovereign power over individuals and entities within the relevant jurisdiction” which “involves the power to create and enforce a legal code, both civil and criminal.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982); *see also Maine v. Taylor*, 477 U.S. 131, 137 (1986) (“[A] State clearly has a legitimate interest in the continued enforceability of its own statutes.”). The sovereign interest is not free-floating—it is part of what this Court has described as our “system of ‘dual sovereignty’.” *Printz v. United States*, 521 U.S. 898, 918 (1997) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991)). And under that system, “[a]lthough the States surrendered many of their powers to the new Federal Government, they retained a residuary and inviolable sovereignty that is reflected throughout the Constitution’s text.” *Id.*

This balance of power is reflected throughout the Constitution’s text, particularly the Tenth Amendment’s command that “the 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; *see also Carter v. Carter Coal Co.*, 298 U.S. 238, 294 (1936) (the Framers “meant to carve from the general mass of legislative powers, then possessed by the states, only such portions as it was thought wise to confer upon the federal government”). In subsequent cases involving the Tenth Amendment, the Court has made clear that the federal government may not issue commands that conscript state officials “into administer[ing] a federal regulatory program.” *Printz*, 521 U.S. at 926; *see also New York v. United States*, 505 U.S. 144, 155 (1992). Under the Tenth Amendment, states are not only entitled to have their own legal codes, but they are also entitled to administer those codes free from federal executive control.

Because state sovereignty is central to our system of federalism, courts, including this Court, have recognized that states suffer a cognizable injury for purposes of constitutional standing when the federal government intrudes on powers “reserved” to the states, whether by direct interference or by substantial pressure to change state laws. *Colorado v. Toll*, 268 U.S. 228, 229 (1925) (holding that a state could challenge federal regulations that the state alleged “interfer[ed] with the sovereign rights of the State”); *Missouri v. Holland*, 252 U.S. 416, 431 (1920) (same); *Texas v. EEOC*, 933 F.3d 433, 446 (5th Cir. 2019) (“[B]eing pressured to change state law constitutes an injury because states have a sovereign interest in the power to create and enforce a legal code.”) (cleaned up).

That is especially true in the elections context. There, the Respondents’ sovereign interest is at its apex because the Constitution itself assigns authority over elections to the States unless Congress provides otherwise. The Elections Clause gives states authority over the times, places, and manner of federal elections, subject to Congress’s power to alter those rules, U.S. Const. art. I, § 4, cl. 1, and the Electors Clause likewise assigns to the States the manner of appointing presidential electors, *id.* art. II, § 1, cl. 2. As this Court explained in *Smiley v. Holm*, the Elections Clause’s “comprehensive words” embrace authority to provide a complete code for congressional elections, including notices, registration, supervision of voting, protection of voters, prevention of fraud, counting of votes, and related safeguards. 285 U.S. 355, 366 (1932); *see also Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8–9 (2013) (reaffirming the breadth of that authority). And the Constitution does not confer any equivalent authority over elections to the President. While it is the President’s general duty to “take Care that the Laws be faithfully executed,” U.S. Const. art. II, § 3, this general grant of authority does not authorize the President to create novel election procedures or programs out of whole cloth. Rather, the President’s authority “must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). That authority is lacking.²

² Moreover, federal election statutes specifically allocate authority to the States, not federal agencies. Neither the National Voter Registration Act (“NVRA”) nor the Help America Vote Act (“HAVA”) authorizes DHS, USPS, or any other federal agency to create federal voter eligibility lists; instead, those statutes assign States responsibility for maintaining voter rolls while imposing very specific federal

Against that constitutional backdrop, the “EO’s intrusion into [the Respondents’] sovereign interests in administering state elections consistent with the Constitution and state statutes” constitutes Article III injury-in-fact. U.S.App.13a-14a. Contrary to Applicants’ characterization of the harms as speculative, this case concerns concrete harms to the ability of the Respondents to regulate their elections, which this Court has found to be central to State prerogatives. Being forced to change mail-ballot systems contrary to existing state law, alter voter-eligibility administration under threat of investigation and funding consequences, and conduct elections under a presidentially-imposed regime is not a mere policy disagreement. It is a concrete injury to the Respondents’ “sovereign power . . . to create and enforce a legal code” for elections. *Alfred L. Snapp & Son, Inc.*, 458 U.S. at 601; *see also Cameron v. EMW Women’s Surgical Center, P.S.C.*, 595 U.S. 267, 277 (2022) (stating that a State “clearly has a legitimate interest in the continued enforceability of its own statutes” and “a federal court must respect the place of the States in our federal system”) (cleaned up).

Thus, Article III standing exists because harm to the Respondents—including intrusion on their sovereignty—is happening *now*. And the practical effects of that encroachment are plain. The EO has disrupted the Respondents’ administration of

standards governing that responsibility. 52 U.S.C. §§ 20503(a), 20507(a), 21083(a), 21085. And nothing in Title 39 authorizes USPS to determine voter eligibility or regulate state election procedures. Instead, Congress limited USPS’s authority to postal services and required USPS to provide reliable service to all communities without unreasonable discrimination. 39 U.S.C. §§ 101(a), 102(5), 401(2), 403(a)–(c), 404(e).

upcoming elections, forced them to divert personnel, required immediate compliance planning, imposed imminent impending costs, and created a credible threat of enforcement. *See generally* Dist.Ct.ECF.105. Recognizing these disruptions, the First Circuit expressly rejected the Government’s characterization that the Respondents have prepared for EO 14399’s directives “voluntarily,” U.S.App.8a, explaining that the Respondents “have no practical choice but to respond to the EO now,” U.S.App.9a; *see Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (noting “state and local election officials need substantial time to plan for elections” because “[r]unning elections state-wide is extraordinarily complicated and difficult” and “pose significant logistical challenges”).

Applicants are wrong to argue that these harms are not concrete because Section 3 of the EO contemplates rulemaking and USPS has not yet completed the process. U.S.App.20; Intervenors.App.17-20. That argument is hard to square with the Applicants’ own position. The Government has admitted that it intends to implement the Executive Order and seeks to do so before the November 2026 election. U.S.App.28 (“[O]nce the agencies finalize their decisions regarding implementation of the Order, it will still take time to carry out those policies with respect to the November election (an election for which mail-in and absentee voting begins, in some States, several weeks in advance)”; *see also* Privacy Act of 1974; System of Records, 91 Fed. Reg. 44,880 (U.S. Postal Serv. July 17, 2026) (proposing new System of Records to go into effect simultaneously with “any final rule in connection with that rulemaking” should the government obtain relief from injunctions). Those

implementation efforts undermine the Government’s assertion that Respondents face no imminent harm, instead underscoring why the Respondents’ injuries are certain if the injunction is stayed.

The loss of sovereignty is also a basis for finding irreparable harm. Damage to states’ sovereign authority during a live election cycle cannot be repaired after the fact. If a stay is granted, the Respondents will be forced to administer the 2026 election cycle under a federal regime the District Court found “legally void.” U.S.App.61a. By the time appellate review is complete, the Respondents will already have been compelled to alter procedures, retrain officials, redesign election materials, and conduct elections under federal command. That harm cannot be unwound. *See Bost v. Ill. State Bd. of Elections*, 607 U.S. 71 (2026) (“The democratic consequences [are]. . . dire if courts intervene only after votes have been counted.”). Thus, the Hobson’s choice imposed on the Respondents—submit to an unconstitutional presidential decree or face prosecution and loss of federal funding—constitutes an irreparable injury. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (blocking states from “effectuating statutes” thus constitutes irreparable injury); *Doe v. Trump*, 157 F.4th 36, 79 (1st Cir. 2025) (recognizing that when States are compelled to change their systems, processes, and guidance in response to an executive order, the irreparable harm takes the form of “unrecoverable costs”).

The Government, by contrast, asserts only the burden of impeding the President’s “ability to direct his subordinates” and preemption of “the Executive’s deliberative policymaking” in the Respondent States before the midterm election.

U.S.App.4-5. But the Government cannot simultaneously cast the EO as merely “general policy guidance,” U.S.App.2, *and* claim that a temporary injunction within the Respondent States for the purposes of the November 2026 election would cause irreparable harm. Nor can it claim that any intrusion into the President’s Take-Care Clause powers has occurred, U.S.App.27, since there is no Congressional directive to execute. Rather, denying the application would preserve the preexisting system under which the Respondents administer elections under state law and federal statutes actually enacted by Congress, a system that has existed since the Constitution’s enactment. Granting a stay would seriously upset the status quo, imposing a new federal regime first and leaving the courts to sort out legality only after the Respondents have already been forced to comply. *See Nken*, 556 U.S. at 434 (“The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.”).

The undisturbed merits ruling below is that the EO unlawfully intrudes on state sovereignty and separation of powers.³ That unlawful intrusion is itself a present Article III injury to the Respondents—an injury that is significant and imminent. And because it forces the Respondents to surrender control over a live

³ The separation-of-powers doctrine is a critical structural safeguard that preserves the Constitution’s allocation of authority among the branches of government, the States, and the people. *See Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 239 (1995) (explaining that separation of powers is “a structural safeguard rather than a remedy to be applied only when specific harm, or risk of specific harm, can be identified” and serves as “a prophylactic device, establishing high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of interbranch conflict”). The EO threatens this essential constitutional safeguard.

election cycle, it is irreparable harm as well. On Applicants' own chosen posture, the first two *Nken* factors weigh decisively against a stay. As discussed below, the equities point the same way.

III. The Third And Fourth Stay Factors Also Weigh In The Respondents' Favor.

A stay of the injunction is not in the public's interest and would undermine confidence in elections and the court system. The public's interest in fair, open, and orderly elections is best served by clear, settled rules that let voters, candidates, and administrators plan and act with confidence and accuracy. Last-minute changes and disruptions to election rules breed confusion, chill turnout, increase the risk of erroneous disenfranchisement of eligible voters, and invite the kind of emergency litigation that undermines the stable and effective administration of elections. This Court has repeatedly warned against precisely these harms. It is by now black letter law that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam); *see also Bost*, 607 U.S. at 80. As Justice Kavanaugh has explained, "[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays). The Court has repeatedly been clear that last minute changes to long-standing election rules invite "confusion and chaos" and "erod[e] public confidence in electoral outcomes," *Democratic Nat'l Comm. v. Wis.*

State Legislature, 141 S. Ct. 28, 31 (2020) (Gorsuch, J., joined by Kavanaugh, J., concurring in denial of application to vacate stay).

Reinstating EO 14399 roughly 100 days before the November 3, 2026, general election—and sooner still before Uniformed and Overseas Citizens Absentee Voting Act mailed ballot deadlines, early voting, and federal primaries that are just weeks away—would make timely compliance practically impossible. As the Government has acknowledged, “at least some states will be preparing to mail their first mail-in ballots by the end of August.” Dist.Ct.ECF.194-2 ¶ 7. And given the illegality of the EO’s substance—which Applicants do not bother to contest—it is highly likely that further litigation and injunctions will follow. In short, granting the Government’s request here will likely not result in any final implementation of the EO (which the Government has failed to defend on the merits) but the yo-yoing of rules will certainly confuse voters and election administrators alike as to which individuals remain eligible to receive and cast a ballot and how mail ballots are to be sent out, transmitted, and received. That confusion would discourage otherwise-eligible voters from going to the polls. It will also almost certainly generate a wave of lawsuits brought by voters who find themselves wrongly excluded. *See* U.S.App.15a (“The undisputed summary judgment record indicates that, were the EO to take effect for the elections taking place in September and November, it would sow confusion and threaten disenfranchisement of many eligible voters.”)

Indeed, the disruption that would be caused by any implementation of EO 14399 would be significantly more severe than the “tinkering” this Court’s precedents

caution against. For example, EO 14399 calls for a wholesale alteration of the mechanisms States use to determine voter eligibility and administer mail balloting, displacing state voter-roll systems that have operated—in some cases for decades—with error-prone federal lists and a compressed rulemaking timeline that affords no opportunity for orderly transition. *See* U.S.App.51a-54a (describing Section 2’s Confirmed Citizen List requirements); *id.* at 57a–59a (describing Section 3’s USPS enrollment-list requirements).

The record below establishes that EO 14399’s implementation would place the voting eligibility of large numbers of otherwise-qualified voters into doubt. It also reveals specific, undisputed gaps in EO 14399’s design that would predictably generate countless individual eligibility disputes, and several illustrative examples show how those gaps would play out in practice. Take, for example, voters who have already requested a mail ballot under their state’s vote-by-mail rules. A voter who receives a ballot that is already in transit will possess an envelope that lacks the USPS Intelligent Mail Barcode that Section 3 requires. Several Respondents have already spent significant sums on now-noncompliant envelope stock—including approximately \$3 million in Massachusetts alone, and more than \$50,000 each in Maine and Rhode Island—with no budgeted funds to replace it. U.S.App.42a-43a. As a result, that voter’s ballot would be at risk of rejection or delay through no fault of her own. A related timing gap threatens overseas military voters, who rely on the Uniformed and Overseas Citizens Absentee Voting Act’s guarantee of absentee voting rights and its 45-day ballot-transmission window to cast their ballot. 52 U.S.C.

§ 20302(a)(1), (a)(8)(A); U.S.App.34a-35a. Should USPS's new enrollment-list mechanism fail to reconcile with a state's enrollment list in time, an otherwise eligible servicemember's ballot could be rejected as "not enrolled," despite eligibility under a federal law that predates the EO. And the same timing problem impacts voters who register close to or on the registration deadlines, which in many states are close in time to Election Day. *See id.* at 36a–39a (cataloguing state registration deadlines). Such a voter would be fully eligible under state law yet would necessarily be absent from federal lists transmitted on the EO's 60- and 90-day pre-election schedule. *Id.* at 30a–31a.

Multiplied across the electorates in the Respondent States, disputes like these would require judges around the country to resolve large numbers of individual voter-eligibility challenges in the weeks surrounding the upcoming elections, a scenario that is not only inefficient and burdensome, but also risks creating the public impression that courts, rather than voters, are deciding the outcome of elections. While courts must adjudicate properly presented disputes, placing the judiciary in the position of resolving mass eligibility disputes on a compressed timeline imposes needless strain on judicial resources and on public confidence in the courts themselves.

Maintaining the status quo—the injunction that has governed since June 25, 2026—avoids each of these predictable harms and prevents the courts from being burdened by the wave of emergency litigation that reinstating EO 14399 would invite. It preserves the settled rules under which voters, candidates, and election officials

around the country have long been operating and planning for the upcoming election cycle, and it is that stability, not a last-minute reinstatement of EO 14399, that would best protect voter confidence in the electoral process and ensure that eligible voters are not disenfranchised.

CONCLUSION

For the foregoing reasons, the Court should deny the applications for a stay.

Respectfully Submitted,

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August 3, 2026

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36 Federal Judges

Judge Nancy Gertner, U.S. District Judge, District of Massachusetts (Ret.)

Judge Michael Luttig, U.S. Circuit Judge, U.S. Court of Appeals for the Fourth Circuit (Ret.)

Judge Nancy F. Atlas, U.S. District Judge, Southern District of Texas (Ret.)

Chief Judge John W. Bissell, U.S. District Judge, District of New Jersey (Ret.)

Chief Judge Rubén Castillo, U.S. District Judge, Northern District of Illinois (Ret.)

Judge Robert J. Cindrich, U.S. District Judge, Western District of Pennsylvania (Ret.)

Chief Judge U.W. Clemon, U.S. District Judge, Northern District of Alabama (Ret.)

Chief Judge William F. Downes, U.S. District Judge, District of Wyoming (Ret.)

Judge Gary A. Feess, U.S. District Judge, Central District of California (Ret.)

Judge Jeremy Fogel, U.S. District Judge, Northern District of California (Ret.)

Judge Royal Furgeson Jr., U.S. District Judge, Western District of Texas (Ret.)

Judge Paul W. Grimm, U.S. District Judge, District of Maryland (Ret.)

Judge Thelton Henderson, U.S. District Judge, Northern District of California (Ret.)

Chief Judge Robert Harlan Henry, U.S. Circuit Judge, U.S. Court of Appeals for the Tenth Circuit (Ret.)

Judge Richard J. Holwell, U.S. District Judge, Southern District of New York (Ret.)

Judge John E. Jones III, U.S. District Judge, Middle District of Pennsylvania (Ret.)

Judge Barbara M. G. Lynn, U.S. District Judge, Northern District of Texas (Ret.)

Judge John S. Martin Jr., U.S. District Judge, Southern District of New York (Ret.)

Judge A. Howard Matz, U.S. District Judge, Central District of California (Ret.)

Chief Judge Paul Michel, U.S. Circuit Judge, U.S. Court of Appeals for the Federal Circuit (Ret.)

Judge Margaret Morrow, U.S. District Judge, Central District of California (Ret.)

Judge Liam O’Grady, U.S. District Judge, Eastern District of Virginia (Ret.)

Judge Kathleen O’Malley, U.S. Circuit Judge, U.S. Court of Appeals for the Federal Circuit (Ret.)

Judge Philip M. Pro, U.S. District Judge, District of Nevada (Ret.)

Judge Victoria A. Roberts, U.S. District Judge, Eastern District of Michigan (Ret.)

Judge Shira A. Scheindlin, U.S. District Judge, Southern District of New York (Ret.)

Judge Fern M. Smith, U.S. District Judge, Northern District of California (Ret.)

Chief Judge Lawrence F. Stengel, U.S. District Judge, Eastern District of Pennsylvania (Ret.)

Chief Judge Deanell Reece Tacha, U.S. Circuit Judge, U.S. Court of Appeals for the Tenth Circuit (Ret.)

Judge John D. Tinder, U.S. Circuit Judge, U.S. Court of Appeals for the Seventh Circuit (Ret.)

Judge Ursula Ungaro, U.S. District Judge, Southern District of Florida (Ret.)

Judge Thomas I. Vanaskie, U.S. Circuit Judge, U.S. Court of Appeals for the Third Circuit (Ret.)

Judge T. John Ward, U.S. District Judge, Eastern District of Texas (Ret.)

Judge Alexander Williams Jr., U.S. District Judge, District of Maryland (Ret.)

Chief Judge Diane P. Wood, U.S. Circuit Judge, U.S. Court of Appeals for the Seventh Circuit (Ret.)

Judge Lee Yeakel, U.S. District Judge, Western District of Texas (Ret.)

20 State Court Judges

Judge Elaine Andrews, Anchorage Superior Court, Alaska (Ret.)

Judge Martha Beckwith, Anchorage District Court, Alaska (Ret.)

Associate Justice William W. Bedsworth, California Court of Appeal (Ret.)

Judge Beverly W. Cutler, Alaska Superior Court, Third Judicial District (Ret.)

Judge David George, First Judicial District of Alaska (Ret.)

Justice Janine P. Geske, Wisconsin Supreme Court (Ret.)

Chief Justice Mark V. Green, Massachusetts Appeals Court (Ret.)

Judge Brook Hedge, Superior Court of the District of Columbia (Ret.)

Chief Justice Jim Jones, Idaho Supreme Court (Ret.)

Judge Ann O'Regan Keary, Superior Court of the District of Columbia (Ret.)

Judge Richard A. Levie, Superior Court of the District of Columbia (Ret.)

Judge Keith Levy, Alaska District Court, First District (Ret.)

Chief Justice Eric Magnuson, Minnesota Supreme Court (Ret.)

Justice James C. Nelson, Montana Supreme Court (Ret.)

Chief Justice Maureen O'Connor, Supreme Court of Ohio (Ret.)

Associate Justice Robert F. Orr, North Carolina Supreme Court (Ret.)

Chief Justice Thomas R. Phillips, Supreme Court of Texas (Ret.)

Chief Justice Mark Recktenwald, Hawaii Supreme Court (Ret.)

Chief Justice Marsha Ternus, Iowa Supreme Court (Ret.)

Chief Justice Daniel Wathen, Maine Supreme Judicial Court (Ret.)