

No. 26A124

**IN THE
SUPREME COURT OF THE UNITED STATES**

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

Applicants,

v.

CALIFORNIA, *et al.*,

Respondents.

*On Application for a Stay of the Order Issued by the United States
District Court for the District of Massachusetts*

**BRIEF OF THE
BIPARTISAN AMERICAN ELECTION PROJECT
AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS**

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INTERESTS OF AMICUS CURIAE

Lawyers affiliated with both the Democratic and Republican parties have formed *amicus curiae* The Bipartisan American Election Project (BAEP).¹ BAEP is led by Bob Bauer and Ben Ginsberg, veteran election lawyers and the former co-chairs of the bipartisan Presidential Commission on Election Administration. BAEP is committed to reinforcing principled constitutional positions, defending democratic norms, and countering efforts to obstruct the lawful casting and tallying of votes or to undermine public confidence in election outcomes. BAEP's efforts and goals are supported by attorneys from both major parties, including Michael Carvin, who has represented conservative and Republican Party organizations in election-law litigation, including voting rights, recount, and redistricting matters; Daniel Troy, whose background includes appellate litigation in private practice and service as Chief Counsel to the Food and Drug Administration in the George W. Bush Administration; Donald Verrilli, former Solicitor General of the United States in the Obama Administration and a senior litigation adviser to the Obama–Biden and Harris–Walz presidential campaigns; John Devaney, who has tried election-law cases on behalf of Democratic presidential campaigns and the Democratic National Committee; and Dana Remus, who served as White House Counsel in the Biden Administration. Mr. Verrilli, Mr. Devaney, and Ms. Remus are also members of the BAEP Board of Directors.

¹ No counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than BAEP, its members, or its counsel made such a monetary contribution.

Our country is experiencing extraordinary conflict over the administration of elections and the acceptance of election outcomes. The foundational principles on which free and fair elections have been based are now the subject of a flood of litigation in federal and state courts, intense regulatory battles, and polarizing rhetoric about the reliability of elections. The major political parties have long brought sharply differing perspectives on how best to administer a fair electoral process. Yet the intensity of the current partisan conflict threatens to undermine the lawful conduct of elections and weaken public trust in our voting systems.

The line between legitimate disagreements over election laws and anti-democratic challenges to longstanding constitutional principles and norms has too often been lost in these conflicts. To assist the judiciary in drawing and upholding that line, BAEP focuses exclusively on frontal challenges to constitutional protections and democratic norms. As a bipartisan group of veteran attorneys, BAEP seeks to highlight for the Court paths to a principled resolution of the legal issues that these partisan conflicts are now generating. This case involves just such an effort.

SUMMARY OF ARGUMENT

Executive Order 14399 directs the Department of Homeland Security and the United States Postal Service to take certain actions with immediate and substantial effect to shape the rules for the 2026 elections. *See* Exec. Order 14399, Ensuring Citizenship Verification and Integrity in Federal Elections, 91 Fed. Reg. 17125 (Mar. 31, 2026). More specifically, the EO directs the Department of Homeland Security to compile and transmit to the States a citizenship list that would determine eligibility to receive and cast a mail ballot. It further commands the Postal Service to issue—and

specifies the content for—a proposed rulemaking to establish requirements for the Postal Service’s delivery of election materials, including mail ballots.

The stay applicants assert that this case is not justiciable because any harm is conjectural at this stage. This is wrong: it fails to account for the realities of election administration. Unlike in *DSCC v. Trump*, No. 26-5193, 2026 WL 2168617 (D.C. Cir. July 28, 2026)—where the D.C. Circuit found that national-party plaintiffs were not “directly regulated” by the EO—Plaintiff States here are directly affected by the EO, right now. The EO sets forth specific, fixed requirements that election officials across the country have no choice but to prepare for now given the country’s fixed election-year timetable, with voting only a few months away. Under federal law, States have until September 19, less than two months from now, to begin mailing Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) ballots. Some States must begin mailing all absentee and mail-in ballots by September, as required by state laws. *See* Dist. Ct. Doc. 100-14 ¶ 60 (September 18 in Minnesota); *id.* 100-24 ¶ 62 (September 24 in Illinois). But the States have had to divert personnel and resources from the work necessary to comply with these and other legal obligations in now preparing to carry out the EO’s election mandates.

The record shows, without contradiction, the immediate, concrete harms associated with these mandates. For example:

- Given that the EO directs the Postal Service to consider specific ballot-design requirements, States must anticipate that they will be included in a final rule. States that have *already* finalized or printed their election

ballots differently face “certainly impending pocketbook injuries.” *California v. Trump*, Nos. 26-1774, 26-1779, 2026 WL 2144084, __ F.4th __, at *8 (1st Cir. July 25, 2026). With Election Day only 92 days away and the deadline for mailing UOCAVA ballots only 47 days away, States cannot risk waiting to plan for the potential of meeting these requirements. Several States have determined they must expend funds now for both the planning and possible implementation of the rulemaking.

- Consistent with the EO, the rulemaking also will likely require States to redesign ballot envelopes to include Intelligent Mail barcodes. Again, States that have already finalized their ballot envelopes in accordance with the different requirements of state law face the significant costs of creating new envelopes and, for many States, the costs of purchasing barcode technology they do not currently have.
- These likely ballot- and envelope-design requirements and other potential requirements that the EO directs the Postal Service to consider would conflict with state law, leaving States with the difficult choice *now* of planning for meeting those requirements, preparing for legal challenges weeks before the election, or both.

The “wait and see” approach urged by the stay applicants is not an answer to these harms but instead would compound them. With just three months until Election Day and, in some States, less than 60 days until all absentee ballots must be sent to voters, election officials in thousands of jurisdictions would be asked to plan now

for two different election-law regimes: the one now in place under their States' laws, and a radically different one directed by the federal government that would require reprinting election materials, violating state laws, and scrambling to comply with a first-ever national citizenship list for determining voter eligibility. And they would do so under the pressures of potential criminal prosecution or the withholding of vital federal funds, both threatened by the EO.

This Court has recognized the irreparable harms that follow from sudden changes in election law as the days of voting, including early voting, fast approach. These harms include voter confusion and “the possibility that qualified voters might be turned away from the polls.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). These probable harms are irreparable because they “erode[] public confidence that the election results reflect the people’s will” and “undermine the winner’s legitimacy.” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 78 (2026).

Adding to the propriety of equitable relief now, the EO entails a clearly unconstitutional assertion of executive power. The President has no power to issue election regulations. His 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). Yet none of the constitutional powers or statutes upon which the EO purports to rely provides this authorization. Whether the EO reflects this President’s stated desire to “nationalize” elections and “take over” voting procedures from the States,²

² See Reid J. Epstein & Nick Corasaniti, *Trump, in An Escalation, Calls for Republicans to ‘Nationalize’ Elections*, N.Y. Times (Feb. 2, 2026), <https://www.nytimes.com/2026/02/02/us/politics/trump-nationalize-elections.html>.

or is a misconceived exercise in law enforcement, it cannot be reconciled with the Constitution’s federalist design.

For these reasons, the Court should deny the stay applications.

ARGUMENT

I. The EO is already compelling state election officials to take expensive, disruptive steps and to divert limited resources from work that must be done to prepare for the November election.

The EO commands the Postal Service to consider a rule that would require all the States’ “outbound ballot mail” to (A) bear an “Official Election Mail” logo, (B) bear “a unique Intelligent Mail barcode, or successor USPS technology,” and (C) pass a “mail envelope design review by USPS.” EO § 3(b)(i). Under such a rule, States would have to notify the Postal Service, at least ninety days before an election, if they intend for their “mail-in or absentee ballots to be transmitted by the USPS.” *Id.* § 3(b)(ii). And the Postal Service would have to “provide each State with a list of individuals” eligible to receive a ballot by mail—named the “Mail-In and Absentee Participation List”—and “not transmit mail-in or absentee ballots from any individual unless those individuals have been enrolled on” that list. *Id.* § 3(b)(iii)–(iv). Ninety days before the upcoming November 3, 2026 Election Day is Wednesday, August 5, 2026.

These rules are aimed squarely at the States and their administration of elections, not at third parties one step removed from these potential requirements. The D.C. Circuit specifically noted the difference between national-party plaintiffs that are not “directly regulated by the [EO]” and “the States charged with administering elections and adapting their procedures to the requirements contemplated by the [EO].” *DSCC*, 2026 WL 2168617, at *5. Plaintiff States here are those States. The

reality of preparing for the upcoming election leaves them no choice but to prepare now for the requirements the EO directs the Postal Service to consider—a textbook concrete, particularized injury in fact.

The record evidence supporting each of these harms—diverted resources, pocketbook injury, expenditure of government personnel’s time, and the threat of prosecution—is substantial and unrefuted. *See California*, 2026 WL 2144084, at *6–10.

First, copious evidence shows that Plaintiff States are already making changes to meet the EO’s new election requirements. For instance, Connecticut officials took multiple “steps in response to the issuance of the EO,” including planning a redesign of Connecticut ballot envelopes to include an Intelligent Mail barcode, Dist. Ct. Doc. 100-7 ¶ 10; Minnesota officials devoted many hours to assessing and preparing for “the impact the EO would have on Minnesota voter registration requirements and Minnesota’s statewide voter registration system,” *id.* 100-14 ¶ 9; and New York officials diverted staff to “work on funding and legislative/partner initiatives to address the” EO’s requirements, *id.* 100-17 ¶ 10. Pennsylvania plans to “allocate additional resources to responding to the queries of county election officials regarding compliance with the EO, particularly given the threat of criminal prosecution.” *Id.* 100-20 ¶ 23.

Second, Plaintiff States have demonstrated the imminent pocketbook injuries that all jurisdictions across the country will suffer by having to redesign and reprint ballot envelopes to comply with the potential, even likely, Postal Service requirement that all ballots bear an Intelligent Mail barcode. *See id.* 100-14 ¶ 66 (“Intelligent Mail

barcodes are not required nor . . . used by most Minnesota counties and municipalities for absentee or mail ballots.”); *id.* 100-20 ¶ 66 (“More than two dozen Pennsylvania counties, many of them small, rural counties, fulfill ballot requests in-house and do not currently use Intelligent Mail barcodes on ballot mail.”); *id.* 100-6 ¶¶ 69–70 (stating that while Colorado counties “have already ordered mail ballot envelopes for the 2026 federal election cycle,” about a quarter of them “do not currently use Intelligent Mail barcodes on ballot mail”); *id.* 100-17 ¶ 65 (averring that in New York “[m]any boards of elections who send out ballots are not currently using Intelligent Mail barcodes on ballot mail”).

For some States, obtaining and paying for compliant ballot envelopes in time for November, let alone the start of early and absentee voting in 60 days or less, is likely impossible. *See id.* 100-12 ¶¶ 75–76 (explaining that because “1,521 separate envelope design styles” are used throughout Michigan, it is “likely too late . . . to order additional [envelopes] for the November election”); *id.* 100-21 ¶¶ 11, 73 (expressing the “pressing concern” that Rhode Island election officials may not be able to afford reprinting ballot envelopes).

Third, the States are faced now with planning for an unworkable voter list-screening process directed by the federal government only weeks before the election. The process contemplated by the rulemaking, at the direction of the President, assumes that States’ voter rolls freeze at some fixed point before Election Day. The opposite is true—nearly every State allows voters to request mail ballots thirty days or less before an election. For example, New Hampshire accepts requests up to the

day before the election, N.H. Rev. Stat. § 657:15(I), Georgia allows requests up to eleven days out, Ga. Code § 21-2-381(a)(1)(A), and most States fall somewhere in between.³ Any such screening requirements cannot work: most States have no final list of mail-in voters until shortly before Election Day.

These requirements are similarly unworkable for the States that administer elections entirely by mail: California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, Washington, and the District of Columbia.⁴ These “all-mail” States are required by state law to send a ballot to every registered voter, and in most cases, election officials must send the ballots at least a month or two before Election Day. Because voters in these jurisdictions do not need to request a mail ballot, there would be no list of potential mail voters to submit to the Postal Service—these States would have to give the Postal Service a complete copy of their active voter rolls at some fixed point in time. But state voter rolls are not static. They change daily as Election Day approaches, with every new and updated registration. *See, e.g.*, Dist. Ct. Doc. 100-1 ¶ 15 (“California’s statewide voter registration list changes up to and on election day.”); *id.* 100-26 ¶ 10 (“Wisconsin’s statewide voter registration list is dynamic and continues to change throughout the election cycle, including through Election Day via Election Day registration.”). If a State were required to give the Postal Service a final

³ *See, e.g.*, *Absentee Ballot Deadlines*, Vote.Org, <https://www.vote.org/absentee-ballot-deadlines/> (collecting absentee-ballot registration deadlines for all States) (last visited July 31, 2026).

⁴ *See Table 18: States With Mostly Mail Elections*, Nat’l Conference of State Legislatures (Apr. 6, 2026), <https://www.ncsl.org/elections-and-campaigns/table-18-states-with-all-mail-elections>.

copy of its voter list, then any new voters who registered for mail voting would necessarily be barred from voting by mail. And state officials would potentially be subject to criminal prosecution if they allowed those voters to cast ballots.

II. The States are planning now for a federal government-directed change in election rules that would violate state laws.

The EO and the rules it calls on the Postal Service to consider would also conflict with numerous state laws regulating envelope design by requiring that ballot envelopes be marked with an Official Election Mail logo and an Intelligent Mail barcode. EO § 3(b)(i)(A)–(C). Many States have laws prescribing exact, static requirements for ballot envelopes. *See, e.g.*, Ariz. Rev. Stat. § 16-547(A) (requiring the “name, official title and post office address” of the local election officer, and a lengthy printed affidavit); Cal. Elec. Code § 3011(a) (listing ten pieces of information that must be on the envelope); Colo. Rev. Stat. § 1-7.5-107(3)(b) (requiring an affidavit, and no barcode); Conn. Gen. Stat. § 9-139a(a) (delegating envelope design to the Secretary of State, who does not require barcodes); Ga. Code § 21-2-384(b) (numerous envelope requirements); Fla. Stat. § 101.64 (same); Mo. Rev. Stat. § 115.283 (same); Minn. R. § 8210.0710 (specifying the design of ballot envelopes); N.Y. Elec. Law § 7-122 (prescribing specific design elements for New York ballot envelopes); 25 Pa. Stat. § 3150.14 (delegating design authority to the Secretary of the Commonwealth); Tex. Elec. Code § 86.013 (multiple envelope requirements); Va. Code § 24.2-706(C) (same). And for at least some States, a requirement that every envelope bear a Postal Service-approved barcode and specific logo will conflict with state law. Maryland, for instance, allows voters to print mail-in ballots at home, but those ballots are not marked with

a unique Intelligent Mail barcode. Dist. Ct. Doc. 100-11 ¶ 102. Under a final rule that effectuates the requirements the EO commands it to consider, the Postal Service would not deliver those ballots, even though they are authorized by Maryland’s laws.

Because of conflicts like this, state election administrators throughout the country must now determine how to respond, planning for both compliance and legal challenges. They cannot “wait and see” with early voting less than two months away and Election Day only three months away. The urgency and complexity of the task are all the greater given the EO’s command that the Attorney General prosecute anyone who helps send federal ballots to any recipient the federal government believes ineligible to vote, regardless whether such recipient was lawfully registered under state laws. EO §§ 2(b), 5. State and local election administrators must now manage the risk of federal prosecution, in a time when they are already experiencing “threats, accusations of crime and leaked private information (doxing) at much higher rates than usual.”⁵

III. The harms associated with legally flawed, federal government-directed rule changes so close to the election are irreparable and justify the district court’s equitable relief.

As this Court has held, there are special “considerations specific to election cases” that caution against late-hour changes to election rules that, in themselves, increase “the possibility that qualified voters might be turned away from the polls.” *Purcell*, 549 U.S. at 4. These election-specific considerations—namely, voter

⁵ See *State Laws Providing Protection for Election Officials and Staff*, Nat’l Conference of State Legislatures (July 16, 2025), <https://www.ncsl.org/elections-and-campaigns/state-laws-providing-protection-for-election-officials-and-staff>.

confusion and disenfranchisement—are irreparable harms because they “erode[] public confidence that the election results reflect the people’s will” and “undermine the winner’s legitimacy.” *Bost*, 607 U.S. at 78. This is precisely the kind of harm this Court’s equitable practice treats as irreparable—not because *Purcell* itself bars the EO, but because the same considerations that counsel courts against changing election rules close to an election are appropriately considered and given great weight in assessing the likelihood of irreparable harm.

“When an election is close at hand, the rules of the road must be clear and settled.” *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (mem.) (Kavanaugh, J., concurring). The portion of the November election that the EO targets—mail-in and absentee voting—is “close at hand.” By the time the Postal Service issues its final rule, many States will have already conducted their primaries, and all States are presently working to finalize election materials for November’s general election. *See California v. Trump*, No. 1:26-cv-11581-IT, 2026 WL 1826490, at *7 (D. Mass. June 25, 2026) (finding that “all Plaintiff States are presently preparing to administer the November 2026 general election”). All States must begin mailing ballots to overseas and uniformed voters in less than two months. *See, e.g.*, Dist. Ct. Doc. 100-5 ¶ 57 (Arizona); *id.* 100-12 ¶ 70 (Michigan); *id.* 100-15 ¶ 68 (New Jersey). And some States will begin mailing all absentee and mail-in ballots in that period. *See, e.g., id.* 100-14 ¶ 60 (Minnesota on September 18); *id.* 100-24 ¶ 62 (Illinois on September 24).

Moreover, no less relevant to the assessment of the propriety of equitable relief is the absence of any statute that authorizes the President to direct the Postal

Service, or the Postal Service to issue a rule, to screen ballots by citizenship status or withhold delivery on that basis. The EO claims authority from the Help America Vote Act of 2002 (HAVA), the National Voter Registration Act (NVRA), and the Guarantee Clause. *See* EO pmbl. None authorizes the EO’s regulations.

First, neither HAVA nor the NVRA authorizes the EO’s election regulations. HAVA sets standards for state voting systems and voter registration lists, and it provides federal funding for any States that implement its standards. *See* 52 U.S.C. §§ 20901–21145. The NVRA establishes list-maintenance requirements for federal elections, to be implemented by the States. *See* 52 U.S.C. §§ 20501–20511. Both statutes provide federal funding for States that comply with their requirements—neither lets the executive branch withhold funds to punish noncompliance with a process it has no authority to impose. Nor does either statute grant the President wide-ranging powers to create new federal election rules.

Nor can the EO derive authority from the Constitution’s Guarantee Clause. *See* EO pmbl. (citing “the Federal Government’s constitutional obligation to guarantee a republican form of Government to every State in the Union”); U.S. Const. art. IV, § 4. This Court has long held that the power “to determine when a state has ceased to be republican in form, and to enforce the guaranty of the Constitution,” is “solely committed by the Constitution to the judgment of Congress.” *Pac. States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 133 (1912); *Luther v. Borden*, 48 U.S. 1, 42 (1849) (holding that Congress’s admission of a State’s senators and representatives “recognized” the State’s republican character and that this determination “could not be questioned in

a judicial tribunal”). The Court has rejected a President’s attempt to invoke the Clause unilaterally, explaining that “the power to carry into effect the clause of guaranty is primarily a legislative power, and resides in Congress.” *Texas v. White*, 74 U.S. 700, 730 (1868). Because Congress, not the President, holds whatever authority the Guarantee Clause confers, the Clause supplies no basis for the EO’s election mandates.

Just as “federal courts should not impose changes close to an election,” *Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026), the potential changes by executive action at issue in this case, lacking constitutional or statutory foundation, violate to this principle in a manner that supports equitable relief.

CONCLUSION

For the reasons above, the Court should deny the applicants’ requests to stay the district court’s injunction.

Respectfully submitted,

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