

In the Supreme Court of the United States

STATE OF ALABAMA, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR STAY

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In opposing a stay of the District Court’s injunction against Executive Order No. 14399 (“the EO”), Respondents rely on rampant speculation about hypothetical, non-finalized policies. In the process, they repeatedly assert that the EO “force[s]” or “requires” them to comply with presidential mandates. *See, e.g.*, Respondent Brief 1, 11, 25. All those claims are false. The EO imposes *zero* obligations on the States or public. Instead, it merely instructs agencies to consider potential election integrity reforms, none of which have been finalized. In trying to defend their standing to challenge hypothetical policies, Respondents only confirm that the District Court’s injunction violates core Article III standing rules and that this Court should grant a stay.

With regard to Section 2(a), Respondents admit that any use of the State Citizenship Lists would be *optional*. *See id.* at 21. Given that concession, Respondents clearly have no cognizable Article III injury permitting them to challenge Section 2(a).

As for Section 2(b), Respondents insist they are afraid of criminal prosecutions, but they do not point to a single investigation or prosecution of anyone—anywhere—under the EO. Moreover, Respondents do not even bother to address redressability. Even if Section 2(b) remains enjoined, nothing would stop the federal government from enforcing the *unchallenged* laws listed in the EO—which have not been enjoined. Once again, Respondents’ lack of standing is painfully apparent.

With respect to Section 3(b), all parties agree that the EO is not self-executing and that no final rule has been promulgated. *See id.* at 31. Respondents also do not contest that the final rule they predicted in their complaint is materially different from USPS’s proposed rule. *Compare, e.g.*, D. Ct. Doc. 65 ¶ 176 (Amended Complaint) (“Section 3 of the EO grants federal agencies decisive control of this [USPS] list, preventing States from ensuring accuracy.”), *with* Ballot Mail for Federal Elections, 91 Fed. Reg. 32915, 32916 (June 2, 2026) (“[S]tates would retain full control over who would (or would not) be able to vote by mail in federal elections within each state, as states would control enrollment with the Postal Service for inclusion on the state’s Mail-In and Absentee Participation List.”). Respondents’ false assumptions underscore precisely why black letter law does not allow challenges to proposed rules. *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997); *In re Murray Energy Corp.*, 788 F.3d 330, 335 (D.C. Cir. 2015) (Kavanaugh, J.). And they underscore why the federal government and State Defendants are not making merits arguments, *contra* Respondent Brief 2, 20; those must wait until actual, concrete policies exist.

Respondents’ brief also confirms that State Defendants have satisfied the other stay factors. Respondents do not dispute that this case is certworthy given the existing circuit split. *See* Sup. Ct. R. 10(a). On the equitable factors, Respondents’ cited irreparable harms are the same speculative injuries that cannot confer standing—including alleged diversion of resources, voter confusion, and risk of disenfranchisement. *See* Respondent Brief 42–44. At best, these are potential injuries that can be asserted *later*—once there are final policies to challenge. Respondents’ claim that “it would be extremely difficult—if not impossible—to obtain a definitive judicial resolution with enough time” once final policies exist is also baseless. *Id.* at 3–4. As the D.C. Circuit recognized in a parallel proceeding, “[i]f the defendant agencies take steps to implement the Executive Order in a manner that violates federal law or the Constitution, Plaintiffs can promptly seek relief, which the district court and this court can decide in as expeditious a manner as circumstances require.” *DSCC v. Trump*, No. 26-5193, 2026 WL 2168617, at *1 (D.C. Cir. July 28, 2026).

To preserve foundational Article III standing limits on the power of federal courts, the Court should enter a stay pending appeal.

I. Respondents Lack Standing to Challenge Section 2(a).

The District Court’s injunction against Section 2(a)’s instruction for federal agencies to consider creating *optional* State Citizenship Lists is—candidly—the most bizarre part of this case. Respondents employ hyperbolic language suggesting the State Citizenship Lists could displace state voter registration laws. *See* Respondent

Brief 4. But the EO is clear that any use of the State Citizenship Lists would be *optional*. See EO § 2(a). That means Respondents could simply ignore the Lists if they wish. See *DSCC v. Trump*, No. 26-01114, 2026 WL 1487833, at *2 (D.D.C. May 28, 2026), *aff'd*, *DSCC v. Trump*, No. 26-5193, 2026 WL 2168617 (D.C. Cir. July 28, 2026).

Respondents do not contest this. In fact, they admit that “it is true that Section 2(a) does not mandate that the States take any particular action to use the [State Citizenship] Lists.” Respondent Brief 21 (alteration in original) (quotations and citations omitted). Respondents offer no explanation for how an optional resource could injure them. Notably, they do not even bother to defend the First Circuit’s triple-bank-shot rationale—that the Lists could confuse third parties, who would then somehow seek assistance from the States, who would then have to divert resources. Appl. App. 68a–70a. Instead of defending this part of the District Court’s injunction, Respondents merely pivot to Section 2(b). See Respondent Brief 4–5, 21–22. But here too, Respondents clearly lack standing.

II. Respondents Lack Standing to Challenge Section 2(b).

Respondents insist that Section 2(b) establishes a “threat” that they will be prosecuted. *Id.* at 29. But this comes nowhere close to establishing standing.

A plaintiff cannot get into federal court merely by pleading a fear of prosecution; a plaintiff must show that it faces an “actual or imminent” risk of criminal prosecution. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (quotation omitted). At a minimum, a plaintiff must allege “[1] an intention to

engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and [(2)] there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quotation omitted).

Respondents do not bother to engage with this governing standard. *See* Respondent Brief 29–30. Respondents do not allege an intention to provide ballots to ineligible voters, that any of their future conduct is arguably proscribed by federal election law, or that there is any relevant history of investigations or prosecutions against them. *See Susan B. Anthony List*, 573 U.S. at 161–65. In short, Respondents provide no evidence that any individual—let alone a state official—has been criminally investigated or prosecuted because of Section 2(b), and this Court has made clear that litigants cannot allege fear alone to water down foundational Article III principles. *See Laird v. Tatum*, 408 U.S. 1, 13–14 (1972) (“Allegations of a subjective ‘chill’ are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm[.]”).

Even if Respondents could identify a cognizable fear-of-prosecution injury, such an injury would not be redressed by enjoining Section 2(b) because the EO merely prioritizes the enforcement of preexisting and unchallenged federal election laws. *See* EO § 2(b). None of those laws have been enjoined by the District Court. *See, e.g., Inst. for Free Speech v. Johnson*, 148 F.4th 318, 331 (5th Cir. 2025) (“[R]edressability is undermined where an independent and unchallenged law also causes the plaintiff’s injury.”). Thus, even if Respondents are correct that there is

some plot to prosecute unidentified individuals for violating federal election laws in the future, *see* Respondent Br. 4–5, the District Court’s injunction does not prevent that injury, *see* State Defendant Stay Appl. 15. Surprisingly (or perhaps unsurprisingly), Respondents offer zero response to this dispositive point.

III. Respondents’ Challenge to Section 3(b) is Premature.

Throughout this case, Respondents have been shooting at a moving target—and they have repeatedly missed. For example, Respondents’ operative complaint alleged that, under Section 3, the federal government would build lists of individuals eligible to vote by mail in each State, D. Ct. Doc. 65 ¶ 176, but USPS’s proposed rule makes clear that *States* would retain full control over potential lists, 91 Fed. Reg. at 32916. Respondents additionally alleged that “Section 3 is contrary to the expressed will of Congress, as represented in [the Uniformed and Overseas Citizens Absentee Voting Act].” D. Ct. Doc. 65 ¶ 174(d); *see also* Amicus Brief of National Security Leaders for America 8–11 (arguing that Section 3 conflicts with the UOCAVA). But USPS’s proposed rule states that “[t]he Postal Service is not proposing to apply these standards to primary elections or to UOCAVA ballots UOCAVA is a separate federal statutory scheme with its own requirements, including different timing constraints and deadlines.” 91 Fed. Reg. at 32916. If Respondents had simply waited for a final rule as this Court requires, *see Bennett*, 520 U.S. at 177–78, many of their concerns would have been addressed through the administrative process, including during the notice-and-comment period.

Still, Respondents have not learned their lesson. Even now, they maintain that there is “no room for doubt that [USPS] intend[s] to implement a final rule [c]onsistent with the Proposed Rule and the President’s directives.” Respondent Brief 31 (third alteration in original) (quotations and citations omitted). But federal courts have consistently refused to entertain assumptions like these. *See, e.g., In re Murray Energy Corp.*, 788 F.3d at 335 (Kavanaugh, J.) (explaining that “courts have never reviewed proposed rules”). And rightfully so. The executive branch should be given a chance to at least try to lawfully implement the President’s policy wishes before a court issues an injunction. *See, e.g., Ohio Forestry Ass’n, Inc. v. Sierra Club*, 523 U.S. 726, 735–36 (1998).

Respondents also contend that, absent an injunction, they will need to divert resources to comply with what they predict the final rule will be. *See* Respondent Brief 26, 28–29. But as previously explained, diverting resources in response to speculation about future, non-final rules is a self-inflicted injury that cannot confer standing. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024) (litigants “cannot spend [their] way into standing” by expending “considerable resources” in response to challenged policy); *Clapper*, 568 U.S. at 418; State Defendant Stay Appl. 19. If that were enough, it “would mean that all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies.” *Alliance for Hippocratic Medicine*, 602 U.S. at 395. All told, Respondents’ resource-diversion theory does not square with this Court’s precedent and should be rejected.

Finally, Respondents fault State Defendants for not addressing the legality of the EO on the merits. *See* Respondent Brief 20. When there is a final policy to address, State Defendants will do so, but they will not (like Respondents) ask this Court to “entangle[*e*] [*itself*] in abstract disagreements” by prematurely adjudicating a non-final USPS rule. *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 807 (2003) (quotation omitted).

IV. The Other Factors Favor a Stay.

Respondents’ brief confirms that State Defendants have satisfied the other requirements for a stay. First, Respondents do not contest that this case is certworthy. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Nor can they—as two panels of the D.C. Circuit have already split with the First Circuit on whether it is too early to challenge the EO. *See DSCC*, 2026 WL 2168617, at *5; *NAACP v. U.S. Postal Serv.*, No. 26-5257, 2026 WL 2168004, at *1 (D.C. Cir. July 17, 2026). This case therefore warrants this Court’s attention. *See* Sup. Ct. R. 10(a).

Second, on the balance of irreparable harms, Respondents do not actually dispute that the federal government and State Defendants have identified irreparable harms. *See* Respondent Brief 40 (merely claiming asserted harms are “overstated”). Instead, Respondents try to play up their own harms by pointing to speculative injuries based on non-final agency actions. *See id.* at 42–44 (asserting diversion of resources, voter confusion, and risk of disenfranchisement). Since Respondents cannot plead an injury-in-fact for purposes of standing, it follows that they cannot show the necessary irreparable harm for injunctive relief. *See, e.g.,*

DSCC, 2026 WL 1487833, at *13 (explaining that “[t]he irreparable-harm standard requires a more significant showing than the injury-in-fact standard” (alteration in original) (citations omitted)).

Despite this, Respondents argue that a stay would not leave them with enough time to obtain judicial review before elections this fall. *See* Respondent Brief 3–4. This is baseless. As this litigation and parallel proceedings have shown, courts can act quickly in response to time-sensitive motions. *See DSCC*, 2026 WL 2168617, at *1 (“If the defendant agencies take steps to implement the Executive Order in a manner that violates federal law or the Constitution, Plaintiffs can promptly seek relief, which the district court and this court can decide in as expeditious a manner as circumstances require.”). Although State Defendants have frequently faced the burdens of urgent litigation themselves, that is merely the inevitable consequence of Article III requiring litigants to wait for an actual or imminent injury before suing. There is no convenience exception to Article III’s standing rules.

Finally, Respondents speculate that the federal government or State Defendants could raise a *Purcell* defense in a future lawsuit. *See* Respondent Brief 37–38. And they fault the federal government and State Defendants for not preemptively renouncing the use of that argument in future cases. *Id.* at 39. But State Defendants are aware of no authority suggesting they must concede potential arguments in hypothetical future cases to defeat a meritless and premature lawsuit.

Even more bizarrely, Respondents ask this Court to “make clear in its order that neither *Purcell* nor any other restriction on judicial review . . . would preclude

injunctive relief.” *Id.* at 38. This Court should not reward Respondents’ premature lawsuit by indulging their request for an advisory opinion on *Purcell*. In any event, Respondents misunderstand how *Purcell* works. That doctrine prevents *courts* from making last-minute changes to the rules governing elections. *See, e.g., Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026) (per curiam). This Court reaffirmed that point just a few months ago—when it acknowledged that the political branches “are free to decide for themselves whether last-minute changes to an election are in their best interests.” *See id.*; *see also Democratic Nat’l Comm. v. Wis. State Legis.*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring) (emphasizing this distinction). This Court should decline Respondents’ request for an incorrect advisory opinion on *Purcell*.

CONCLUSION

For the foregoing reasons, this Court should stay the injunction of the United States District Court for the District of Massachusetts, pending resolution of State Defendants’ appeal to the United States Court of Appeals for the First Circuit and any proceedings in this Court.

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