

No. 26A297

In the Supreme Court of the United States

UNITED STATES POSTAL SERVICE, ET AL.,
Applicants,

v.

CALIFORNIA, ET AL.

DONALD J. TRUMP, ET AL.,
Applicants,

v.

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, ET AL.

ON APPLICATION FOR STAY AND REQUEST FOR AN ADMINISTRATIVE STAY
TO THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

**BRIEF OF COREY J. BIAZZO, ESQ.,
AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS**

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SEPTEMBER MMXXVI

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INTEREST OF *AMICUS CURIAE*¹

Corey J. Biazzo is a civil trial and appellate attorney admitted in Florida and North Carolina. His practice includes federal appellate and matters before this Court. He is also a U.S. Navy veteran. *Amicus* has a professional and civic interest in the separation of powers, federalism, and faithful adherence to the procedures Congress prescribed for consequential executive action. He previously briefed this Court as an *amicus* in *Trump v. California*, No. 26A124, concerning the antecedent challenge to Executive Order No. 14,399.

This brief addresses a narrow issue not developed in the present application: 39 U.S.C. § 3661 required the Postal Service to submit a qualifying proposal to the Postal Regulatory Commission within a reasonable time before its effective date. Section 3661(c) then required an opportunity for an on-the-record hearing before the Commission issued its advisory opinion. *Buchanan* confirms that courts may preserve this mandatory process through preimplementation relief. That express command supplies the specific statutory prohibition Applicants contend is missing.

SUMMARY OF ARGUMENT

Applicants frame the statutory dispute as a contest between the Postal Service's broad operational powers and an implied exception for election mail. That framing overlooks a narrower rule Congress wrote specifically for Postal Service.

¹ Under S. Ct. R. 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than *Amicus* made a monetary contribution intended to fund its preparation or submission.

Section 3661(b) provides that, when Postal Service determines that there should be a change in the nature of postal services generally affecting service nationwide or substantially nationwide, it shall submit the proposal to the Postal Regulatory Commission within a reasonable time before the proposal's effective date. Section 3661(c) requires an opportunity for an on-the-record hearing for the Postal Service, mail users, and an officer representing the general public.

The procedure respects postal management. The Commission's opinion is advisory, not binding. But the procedure itself is mandatory. Congress balanced operational flexibility against public participation by reserving the process for significant, broadly effective changes. *Buchanan v. Postal Service*, 508 F.2d 259, 262-64 (5th Cir. 1975), identifies three requirements: a meaningful change, a qualitative alteration in the postal service available to users, and nationwide or substantially nationwide effect.

The Final Rule meets each requirement. It converts recommendations into conditions of acceptance; requires advance federal approval of ballot-envelope designs; requires state and local officials to create portal accounts and upload voter-specific information associated with unique barcodes; and directs the Postal Service to return an entire outbound federal-ballot mailing when the conditions are unmet. The Rule is expressly nationwide. And its immediate consequences are substantial: Applicants themselves say ballots mailed while the order remains in place can never receive the Rule's asserted protections.

Yet the Rule became effective on publication. Applicants identify no Section 3661 submission, Commission proceeding, hearing, or advisory opinion. That omission matters under Applicants' own ultra vires theory. *Nuclear Regulatory Commission v. Texas* requires agency action entirely beyond delegated powers and contrary to a specific statutory prohibition. 605 U.S. 665, 681 (2025). Section 3661 supplies an unusually exact prohibition: the Postal Service shall submit a qualifying proposal within a reasonable time before its effective date. And Section 401(2), the very provision on which the Postal Service relies, authorizes only regulations not inconsistent with Title 39.

The Court therefore need not decide on this emergency record whether the Postal Service could adopt some or all of these requirements after following Congress's procedure. Nor need it decide the full reach of the Elections Clause, the major-questions doctrine, or the statutory provisions governing nonmailable matter. Applicants cannot make the required strong showing of likely success while defending immediate implementation contrary to a directly applicable preimplementation command.

ARGUMENT

I. Congress Prescribed a Specific Procedure For Significant Nationwide Changes in the Postal Service.

Congress broadly empowered the Postal Service to operate the mails. See 39 U.S.C. §§ 401, 404. But Congress did not leave every nationwide change to ordinary management procedures. Section 3661 provides:

“When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.” 39 U.S.C. §3661(b).

The Commission may not issue its opinion until the Postal Service, users of the mail, and an officer representing the general public receive an opportunity for a hearing on the record under 5 U.S.C. §§556 and 557. 39 U.S.C. §3661(c).

Three features are important here. First, Congress used mandatory language: POSTAL SERVICE shall submit a qualifying proposal. Second, submission must occur within a reasonable time before the effective date. Congress thus required the Commission process to begin before implementation, and *Buchanan* affirmed preliminary relief preserving that process for a qualifying program. 508 F.2d ,at 267. Third, Congress made the Commission’s ultimate opinion advisory. Section 3661 regulates the procedure for a qualifying decision without transferring final postal-management authority to the Commission or a court.

That calibrated design is the core of *Buchanan*. The Fifth Circuit explained that the Postal Reorganization Act embodies two policies: granting management freedom to operate and ensuring a public service responsive to the people it serves. Congress struck a balance under which management retains freedom from unnecessary limitations while the public receives an opportunity to present views on decisions affecting it. 508 F.2d, at 262. Postal management thus possesses broad

decisionmaking power, but remains subject to Section 3661 for the specified class of consequential decisions. *Id.*, at 262–63.

The mandatory hearing is not interchangeable with ordinary notice and comment. Congress required a hearing on the record, participation by an officer representing the general public, and a written advisory opinion bearing individual Commissioners’ certifications. 39 U.S.C. §3661(c). And Congress retained this Postal Service-specific safeguard even though it generally exempted the Postal Service from the Administrative Procedure Act. See 39 U.S.C. §410(a). The specific process should not be erased by invoking the general exemption.

Current Section 3662 must be described with care. *Buchanan* called sections 3661 and 3662 complementary, but it construed the 1970 version of section 3662. 508 F.2d, at 263–64. Congress replaced that provision in 2006. Current section 3662 allows any interested person to complain that the Postal Service is not operating in conformity with chapter 36, requires the Commission within 90 days either to begin proceedings or dismiss the complaint, and authorizes an appropriate remedial order if the complaint is justified. 39 U.S.C. §3662(a)–(c). That route is relevant to reviewability, but it does not erase section 3661(b)’s separate command that the Postal Service itself submit a qualifying proposal within a reasonable time before its effective date.

II. The Final Rule Triggers Section 3661 under *Buchanan*.

Buchanan holds that three factors must coexist: (1) a meaningful change rather than a minor alteration with minimal effect; (2) a qualitative alteration in the

manner in which postal services available to users will operate; and (3) effect across a broad geographic area. 508 F. 2d, at 262–63. The Final Rule satisfies each factor.

A. The Rule effects a meaningful change.

Before the Rule, the Postal Service recommended use of the Election Mail logo, automation-compatible envelopes, design review, and unique barcodes. Applicants emphasize that many States already followed some recommendations. Appl. 6. But the Final Rule’s operative change is not merely the graphic design of an envelope. It turns recommendations into mandatory preconditions to the Postal Service acceptance of outbound federal-ballot mail.

The Rule requires election officials to obtain the Postal Service approval for both outbound and return envelopes. 91 Fed. Reg. 54,966, 54,990–91 (Aug. 26, 2026) (DMM 705.24.3.1–.2). Only after approval may officials upload voter data. *Id.*, at 54,991 (DMM 705.24.4.2(f)). The portal submission must connect the voter’s name and address, the sending State, and unique barcode information. *Ibid.*; also DMM 705.24.4.2(e). When officials present outbound ballot mail, the Postal Service verifies the barcode data against the portal data. A noncompliant mailing is returned to the authorized ballot mailer rather than accepted for delivery. *Ibid.* (DMM 705.24.5.1–.3).

That is a meaningful change in access to an essential postal service. A jurisdiction that previously could tender properly addressed and prepaid ballots now must obtain federal design approval, establish and certify a portal account, upload

voter-linked data, and achieve machine-verifiable correspondence between its physical mailing and federal database before the Postal Service will accept the mailing.

Applicants' own requested relief confirms the Rule's significance. They assert that ballots mailed during the injunction cannot later be brought within the Rule; that nonimplementation impairs an important federal election-integrity measure; and that the asserted injury warrants immediate intervention by this Court. Appl. 22-27. The legal standards are not identical, but those descriptions cannot readily coexist with a characterization of the Rule as a minor alteration having minimal effect on users.

B. The Rule qualitatively alters postal service available to users.

Buchanan distinguishes internal managerial reorganizations from changes in service available to postal users. The court found insufficient evidence that consolidating district offices changed service because those offices moved no mail and provided no direct customer service. 508 F.2d, at 264–65, 267. By contrast, the record concerning the Retail Analysis Program supported a likelihood that it involved decisions about the type, number, and location of facilities, and the court affirmed preliminary relief as to that program. *Id.*, at 265–67.

This Rule operates directly at the point of acceptance. The Postal Service does not merely reorganize personnel, upgrade internal machinery, or gather information for possible future use. It conditions whether a defined category of otherwise ordinary mail will enter the postal system. It also adds an approval and data-

verification relationship between Postal Service and state or local election officials that did not previously govern acceptance.

Applicants answer that ballot mail remains mailable because a jurisdiction may correct a rejected mailing and resubmit it. Appl. 18. That submission may bear on whether the Rule creates a new statutory category of nonmailable matter, an issue another amicus addresses. It does not answer Section 3661. A service may remain theoretically available yet be qualitatively changed by new nationwide conditions governing whether, when, and how the user may obtain it. The earlier House formulation covered changes in the type, quality, terms, or conditions of service, and *Buchanan* found the enacted wording essentially equivalent. 508 F. 2d, at 263, n. 9.

C. The Rule operates nationwide and was made immediately effective.

The geographical element is indisputable. The Rule governs outbound federal-election ballot mail throughout the Nation. Its requirements are codified in the Domestic Mail Manual and apply to every State or local jurisdiction that uses the Postal Service to transmit ballots for a federal election. 91 Fed. Reg. at 54,990–92.

The Rule became effective on August 26, 2026, fewer than seventy days before the November election. 91 Fed. Reg. at 54,966; App. 6a, 12a. Applicants do not assert that the Postal Service submitted the proposal to the Postal Regulatory Commission within a reasonable time before that date. Nor does the Final Rule’s statement of authority identify Section 3661 compliance. On the present record,

immediate effectiveness is incompatible with section 3661(b)'s advance-submission command.

The Postal Service cannot avoid the trigger by declining to label the Rule a change in the nature of postal services. *Buchanan* independently applied Section 3661's statutory criteria and remanded for factual resolution; it did not treat postal management's characterization as controlling. 508 F.2d, at 264–66. Otherwise, an agency could nullify the procedural trigger merely by refusing to acknowledge that the statutory conditions exist. The objective features Applicants describe—nation-wide operation, mandatory acceptance conditions, voter-linked data, and claimed permanent consequences for ballots mailed before implementation—establish at minimum a substantial likelihood that section 3661 applies.

III. Postal Service's Failure to Follow Section 3661 Defeats Applicants' Likelihood-of-Success Showing.

Applicants seek relief under Rule 23 and the All Writs Act. They therefore must show a likelihood of success on the merits, a reasonable probability that the Court will grant certiorari, a likelihood of irreparable harm, and a balance of equities supporting relief. See *Trump v. California*, 609 U.S. ___, ___ (2026) (*per curiam*) (slip op., at 3); *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (*per curiam*). They cannot make the required merits showing while defending implementation contrary to an express condition Congress imposed.

A. Section 3661 is the specific statutory prohibition Applicants say is absent.

Applicants invoke the Postal Service’s APA exemption and contend that respondents must satisfy the narrow form of ultra vires review associated with *Leedom v. Kyne*, 358 U. S. 184 (1958). Relying on *Nuclear Regulatory Commission v. Texas*, they say respondents must identify agency action entirely beyond delegated power and contrary to a specific prohibition, rather than merely dress an ordinary statutory-authority claim in ultra vires language. Appl. 10–11 (quoting 605 U. S., at 681–82). *NRC* also asks whether an adequate statutory review route exists. 605 U. S., at 682.

Section 3661 meets that test in unusually concrete terms. It identifies the agency, the triggering decision, the class of changes, the required recipient, and the timing. Postal Service shall submit the qualifying proposal to the Commission within a reasonable time before the effective date. 39 U. S. C. §3661(b). Separately, the Commission shall not issue its opinion without the specified on-the-record hearing. *Id.*, §3661(c). Implementing a qualifying proposal without timely submission is incompatible with the statutory text.

This is not an invitation to infer a limitation from statutory purpose or legislative silence. It is a claim that the Postal Service exercised its rulemaking power without satisfying an express statutory condition. Current section 3662 does provide a Commission complaint route, a point the Court must consider under *NRC*. But the Commission may take up to 90 days merely to begin proceedings or dismiss a complaint, and section 3662 does not stay the challenged change while that occurs.

39 U.S.C. §3662(b). Here that period extends beyond the November election and cannot restore the advance submission and participation section 3661 prescribes. That timing distinguishes *NRC*, where the challengers had an agency proceeding and judicial review of intervention or the final licensing order. 605 U.S. at 682. *Leedom* treated review as available where its absence would sacrifice or obliterate a congressionally created right. 358 U.S. at 190. And *Buchanan* affirmed an injunction protecting Section 3661's process. 508 F.2d at 267. At minimum, Applicants have not established on this emergency record that Section 3662 is an adequate substitute for the time-sensitive right Congress created in Section 3661.

B. POSTAL SERVICE's own source of authority incorporates Section 3661's limitation.

Section 401(2) authorizes POSTAL SERVICE to adopt rules and regulations not inconsistent with Title 39 and necessary to execute functions assigned by law. Applicants quote the grant but do not give operative effect to its first limitation. Section 3661 is part of Title 39. A regulation implemented in disregard of Section 3661's applicable preimplementation procedure is not consistent with that title.

The broad operational powers in Sections 401 and 404 therefore do not resolve this case. *United States Postal Service v. Council of Greenburgh Civic Ass'ns* recognized broad authority to maintain an efficient system of nationwide collection, sorting, and delivery. 453 U.S. 114, 123 (1981). But general operational authority and a specific procedural limitation can coexist. *Buchanan* expressly held that

management retains broad decisionmaking authority subject to Section 3661 for the specified class of significant changes. 508 F. 2d, at 262–64.

This reading also avoids the need to decide, in emergency posture, whether every component of the Rule falls outside the Postal Service’s substantive authority. The Postal Service may ultimately be able to adopt some envelope, barcode, or processing requirements. Section 3661 asks a prior question: did Congress require advance submission before this nationwide package became effective? Because the answer is likely yes, and Applicants do not assert that the required submission occurred, they have not shown likelihood of success.

B. An Executive Order could not eliminate the procedure Congress prescribed.

The compressed schedule arose from Executive Order No. 14,399, which directed the Postal Service to propose specified ballot-mail measures and contemplated a final rule on a 120-day timetable. 91 Fed. Reg. 17,125, 17,126–27 (Mar. 31, 2026). That presidential timetable could operate only within the authority and procedures Congress supplied.

Youngstown provides the baseline: presidential power must stem from an act of Congress or the Constitution. 343 U. S. 579, 585 (1952). And when presidential measures are incompatible with Congress’s expressed or implied will, presidential authority is at its lowest ebb. *Id.*, at 637–38 (JACKSON, J., concurring). Here Congress did not leave the manner of implementing significant nationwide postal changes an open field. It specified an antecedent Commission submission and

public hearing. An Executive Order could not turn that command into an optional step or make an artificially compressed deadline a reason to disregard it.

This point is modest. It does not deny the President's authority to supervise execution of federal law or the Postal Service's broad postal responsibilities. It recognizes only that executive dispatch cannot overcome a procedural safeguard enacted by Congress. As this Court observed in the antecedent case, staying the injunction against rulemaking did not mean that every implementing measure would necessarily be lawful. *Trump*, 609 U. S., at ___ (*per curiam*) (slip op., at 10). The now-final Rule must be judged against all applicable law, including section 3661.

IV. The Equities Confirm That Congress's Procedure Should Be Honored.

Applicants argue that the injunction causes irreparable harm because ballots sent before implementation cannot later receive the Rule's asserted protections. Appl. 22–25. But that urgency is largely self-created. Postal Service published the Rule fewer than seventy days before the election and made it effective immediately, even though section 3661 requires advance submission and a public hearing for qualifying changes. An executive timetable cannot convert noncompliance with Congress's process into an equitable entitlement to immediate enforcement.

The competing risks are asymmetric. Denial of a stay preserves the established ballot-mail system while the courts determine whether the Postal Service followed the law. If Applicants ultimately prevail, the Postal Service may implement lawful requirements in a future election after completing any required process. Granting a stay, by contrast, permits Postal Service to reject or return government

ballot mailings during an ongoing election cycle under a rule that likely bypassed an express statutory prerequisite. A completed election cannot be reconstructed.

Section 3661 also identifies the public interest more specifically than abstract appeals to administrative efficiency. Congress decided that significant nationwide service changes require advance submission and that users of the mail and a representative of the general public must receive an on-the-record opportunity to address the proposal before the Commission issues its opinion. *Buchanan*, 508 F. 2d, at 262–64. That process is especially valuable here, where the Rule affects state election officials, voters who depend on mailed ballots, printing and mailing vendors, data systems, and local postal operations on a compressed schedule.

Enforcing the procedure does not prohibit the Postal Service from improving ballot-mail processing, requesting an advisory opinion, or adopting future requirements after complying with any applicable process. It holds the Postal Service to Congress’s sequence: timely submission first, implementation later. *Buchanan* confirms that preliminary relief may preserve that sequence while the statutory trigger is adjudicated. 508 F. 2d, at 267. The public interest does not favor emergency relief that reverses it.

CONCLUSION

The application for a stay and request for an immediate administrative stay should be denied.

Respectfully submitted.

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