

IN THE
Supreme Court of the United States

UNITED STATES POSTAL SERVICE, ET AL.,
Applicants,

v.

STATE OF CALIFORNIA, ET AL.
Respondents.

DONALD J. TRUMP, ET AL.,
Applicants,

v.

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, ET AL.
Respondents.

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

**BRIEF OF BIPARTISAN CURRENT AND FORMER MEMBERS OF CONGRESS AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Amici curiae are current and former Members of the United States Senate and House of Representatives who are members of both the Democratic and Republican parties. *See* Appendix (listing *amici*). *Amici* submit this brief to offer their unique perspective on why Executive Order 14399, *Ensuring Citizenship Verification and Integrity in Federal Elections*, 91 Fed. Reg. 17,125 (Mar. 31, 2026) (the “Order”), and the United States Postal Service (“USPS”) final rule, *Ballot Mail for Federal Elections*, 91 Fed. Reg. 54966 (Aug. 26, 2026) (the “Final Rule”), unconstitutionally and unlawfully usurp for the Executive Branch the authority over federal elections that the Framers granted exclusively to the States and to Congress.

As current and former legislators, *amici* took an oath to uphold and defend the Constitution of the United States—including its guarantee of the separation of powers. *Amici* have a particular interest in defending the institutional role of the Legislative Branch under Article I of the Constitution and in vindicating the long-settled principle that the Constitution commits ultimate regulatory authority over federal elections to Congress. The Constitution does not contemplate the Executive Branch acting unilaterally to assert power over federal elections. Yet that is what the Order and Final Rule do. The district court correctly concluded that Respondents are likely to succeed on the merits of their claims that USPS lacked authority to issue the Final Rule, that the Final Rule unconstitutionally imposes mail-ballot requirements on the States, and that

¹ Pursuant to Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief.

the Final Rule unconstitutionally bars non-compliant State and local election officials from using USPS to mail ballots at all.

First, the Executive Branch’s directives to regulate mail-in and absentee ballots are unconstitutional because they encroach on the States’ primary and Congress’s paramount authority under the Constitution’s Elections Clause. U.S. Const. art. I, § 4, cl. 1. The text and history of the Elections Clause categorically bar the Executive Branch from asserting unilateral authority over federal-election administration. And because the Order and Final Rule purport to involve USPS in States’ administration of mail-in voting, the Order also intrudes on the Postal Clause, a second grant of legislative power that Article I commits to Congress with no mention of any role for the Executive. No constitutional provision supplies a legitimate basis for the Order or the Final Rule.

Second, even assuming that Congress could delegate its specified constitutional role under the Elections Clause and the Postal Clause to USPS, the Order and Final Rule must be struck down because they lack any clear grounding in such a delegation. To the contrary, the Order conflicts with numerous statutes that Congress has duly—and carefully—enacted pursuant to the Elections Clause and the Postal Clause. *Amici* therefore submit this brief to urge the Court to deny Applicants’ request for emergency relief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici file this brief to explain why the challenged provisions of the Order and Final Rule conflict with Congress’s longstanding and well-established authority to

regulate federal elections.² The Order and Final Rule unconstitutionally infringe on Congress’s authority under the Elections Clause and the Postal Clause and unlawfully direct federal agencies to act beyond—and in conflict with—what Congress has clearly authorized by law.

First, the text and history of the Constitution’s Elections Clause foreclose the Executive Branch from unilaterally regulating federal elections. The Elections Clause provides that the “Times, Places and Manner of holding” congressional elections “shall be prescribed in each State by the Legislature thereof,” but “Congress may at any time by Law make or alter such Regulations[.]” U.S. Const. art. I, § 4, cl. 1. By its terms, the Elections Clause confers default authority to State lawmakers to regulate the mechanics of federal elections, but provides that Congress retains authority “at any time” to “make or alter” the rules that the States establish. *Id.*; *see, e.g., Ex parte Siebold*, 100 U.S. 371, 372 (1879), *abrogation recognized by Brown v. Davenport*, 596 U.S. 118 (2022); *Foster v. Love*, 522 U.S. 67, 69 (1997); *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 9 (2013) (*ITCA*). Longstanding precedent further establishes that this Clause extends to cover the entire “manner” of holding federal elections, including the procedures for casting ballots and the safeguards for protecting the integrity of ballot-counting. *See Smiley v. Holm*, 285 U.S. 355, 366 (1932) (recognizing that the Clause’s “comprehensive words embrace authority to provide a complete code for congressional elections”).

² The Final Rule is now before the Court, and *amici* address the Order only as the source and the stated justification of the Final Rule’s requirements.

Consistent with the Constitution, Congress has passed several laws regulating federal elections—though it has always done so surgically, deliberately leaving the States with considerable room to maneuver. By contrast, there is no historical basis for unilateral executive action with respect to federal elections, as the drafting history, early commentary, and early practice under the Elections Clause all confirm. Because nothing in the Elections Clause, the Postal Clause, or any other constitutional provision governing federal elections confers authority on the Executive Branch to act alone in this arena, the Order and Final Rule are not constitutional exercises of executive authority.

Second, the Executive Branch cannot justify the Order or Final Rule under any delegation of authority from Congress. Any such delegation would require a clear statement given the fundamental significance of federal elections in our system of government. The Executive Branch has not identified any such clear statement, because none exists. Congress built the modern federal-elections regime through landmark statutes like the Help America Vote Act (“HAVA”), the National Voter Registration Act (“NVRA”), and the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”). None of these statutes remotely confers the authority that the Executive Branch has asserted here. Far from it: The Order and Final Rule in fact *violate* numerous statutory provisions that Congress has enacted. And even where Congress has not acted, the Order and Final Rule disrupt Congress’s authority—and deliberate choice—to leave many aspects of election regulation to the States, as the Framers intended.

Because the Order and Final Rule claim power that the Constitution has assigned to the States and Congress and that Congress has otherwise withheld from the Executive

Branch, the district court correctly enjoined the Final Rule's mandatory implementation, and this Court should deny Applicants' request.

ARGUMENT

I THE ORDER AND FINAL RULE USURP CONGRESS'S CONSTITUTIONAL ROLE AS THE ULTIMATE AUTHORITY ON FEDERAL-ELECTION ADMINISTRATION.

The text and history of the Elections Clause unambiguously foreclose the Executive Branch from acting unilaterally with respect to federal elections. So, too, does the Postal Clause. And no other constitutional provision authorizes the Order or Final Rule. The Guarantee Clause, which the Order invokes, confers authority on Congress rather than the Executive, and the Take Care Clause imposes on the Executive a duty rather than an affirmative grant of authority.

Applicants seek to sidestep these principles by emphasizing that the Final Rule issued from USPS rather than from the President. That argument is unconvincing for two reasons. *First*, USPS issued the Rule only after directed to do so by the President. *See* Order § 3(b), (d). The Order and the Final Rule must be read together. USPS itself acknowledges that the Order began the deliberative process that yielded the Rule. 91 Fed. Reg. at 54977. The Order remains relevant as the source and the stated justification of the Rule's requirements. *Second*, Congress did not delegate its authority over federal elections to USPS through a general statute that nowhere mentions elections. *Cf.* 39 U.S.C. § 401(2). Both standard principles of statutory interpretation and history confirm that when Congress displaces state electoral regulations, it must—and does—do so explicitly.

A. The Text of the Elections Clause Confers Authority on the States and Congress, and Nowhere Mentions the Executive.

The text of the Elections Clause is unambiguous: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations[.]” U.S. Const. art. I, § 4, cl. 1. The Clause thus sets forth both *what* it confers power over and *who* may exercise that power.

First, as to *what* the Elections Clause confers power over, it is the “Times, Places and Manner” of congressional elections. *Id.* Because these are “comprehensive words,” *Smiley*, 285 U.S. at 366, the “substantive scope is broad,” *ITCA*, 570 U.S. at 8. While “Times” and “Places” cover *when* and *where* elections may occur, “Manner” adds a sweeping residual category, capturing *how* elections occur. Accordingly, this Court recognized nearly a century ago that the Elections Clause confers the “authority to provide a complete code for congressional elections, not only as to times and places,” but also as to all the “numerous requirements as to procedure and safeguards which experience shows are necessary” *Smiley*, 285 U.S. at 366; *see also ITCA*, 570 U.S. at 8.

This “comprehensive” power to provide a “complete” code for elections necessarily includes the authority to regulate how eligible voters may cast their ballots, as well as how to secure elections against fraud. Thus, this Court has held that the Clause confers specific authority with respect to “notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns,” *Smiley*, 285

U.S. at 366; procedures “necessary to guard against irregularity and error in the tabulation of votes,” *Roudebush v. Hartke*, 405 U.S. 15, 25 (1972); and the registration of voters to vote by mail, *see ITCA*, 570 U.S. at 5, 8–9. In purporting to regulate these areas, the Order and Rule seek to address topics squarely within the Elections Clause’s ambit.

Second, as to *who* may exercise that regulatory power, the Clause confirms Congress’s paramount role. To be sure, as a “default” rule, the Elections Clause “invests the States with responsibility” over the “mechanics” of elections to federal offices. *Foster*, 522 U.S. at 69; *see also Storer v. Brown*, 415 U.S. 724, 730 (1974) (noting the “comprehensive” and “complex” codes that States have developed). But by its terms, the Clause gives Congress the power to “make or alter” state regulations at will and “at any time.” U.S. Const. art. I, § 4, cl. 1. These broad terms express a clear intent to give Congress expansive authority to act in relation to existing state regulation (including authority both to “make” and “alter” regulations) and to do so in Congress’s broad discretion (“may at any time”), *id.*; *see Foster*, 522 U.S. at 69 (noting Congress’s “power to override” certain state election regulations (citation omitted)). And to the extent Congress declines to regulate, the structure of the Clause makes clear that such declination is merely a choice to leave many aspects of election regulation to the States. *See generally* Appl. App. 10a-11a (adopting this reading).

Thus, in case after case for nearly 150 years, this Court has recognized that Congress holds “a general supervisory power over the whole subject” of federal elections, *Siebold*, 100 U.S. at 387, and “may make regulations on the same subject, or may alter or add to those already made,” *id.* at 386. States exercise power over federal elections, but

“only so far as Congress declines to preempt state legislative choices.” *Foster*, 522 U.S. at 69 (internal citations omitted). And the Court has reiterated that as the “power the Elections Clause confers is none other than the power to pre-empt,” the “States’ role in regulating congressional elections . . . has always existed subject to the express qualification that it ‘terminates according to federal law.’” *ITCA*, 570 U.S. at 14–15 (citation omitted); *see also U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 833 (1995) (recognizing Congress’s “power to override state regulations” under the Elections Clause). Indeed, this Court very recently reaffirmed this established proposition, taking as given that the “Constitution’s Elections Clause empowers state legislatures to ‘prescrib[e]’ the ‘Times, Places and Manner of holding’ congressional elections,” but “Congress may ‘override’ most of these choices.” *Watson v. Republican Nat’l Comm.*, 146 S. Ct. 2165, 2169–70 (U.S. 2026) (citations omitted).

This “comprehensive” constitutional scheme governing the time, place, and manner of federal elections nowhere mentions the Executive Branch. Under the Elections Clause’s two-part scheme, congressional inaction merely leaves state regulations in place, as the Clause intends. The Executive Branch thus encounters not a vacuum to be filled, but a fully occupied field, entirely assigned by the Constitution to other actors.

B. The History of the Elections Clause Confirms that the Executive Branch Lacks Any Unilateral Authority over Federal Elections.

The history of the Elections Clause also rules out any unilateral attempt by the Executive Branch to regulate federal elections. This Court has long looked to Founding Era history in construing the Constitution’s structural provisions. In particular, the

Court has drawn on the records of the Constitutional Convention, the ratification debates, and *The Federalist*, which it has treated as evidence of “the original understanding of the Constitution.” *Printz v. United States*, 521 U.S. 898, 910 (1997); *see also NLRB v. Noel Canning*, 573 U.S. 513, 523 (2014) (drawing on *The Federalist* for evidence of what “the Founders intended”). In addition, early congressional enactments furnish “contemporaneous and weighty evidence of the Constitution’s meaning.” *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 214 (2020) (citation omitted). And “[l]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions’ regulating the relationship between Congress and the President,” *Noel Canning*, 573 U.S. at 524 (citation omitted). These historical sources speak with one voice here.

First, the records of the Constitutional Convention make clear that the Framers ruled out a unilateral executive role in federal-election administration. The debate was understood from the start as involving shared power between the States and Congress, with no role for the Executive Branch. As reported by the Committee of Detail, the first draft of the Elections Clause read: “The times and places and [the] manner of holding the elections of the members of each House shall be prescribed by the Legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States.” 2 *Records of the Federal Convention of 1787*, at 179 (Max Farrand ed., 1911) (Committee of Detail report, Aug. 6, 1787) (Art. VI, § 1).

To the extent there was debate, the question was whether to permit a congressional override or to leave the field to the States alone. Charles Pinckney and

John Rutledge, for example, moved to strike the congressional-override clause, contending that the States “could & must be relied on” to regulate federal elections themselves. *Id.* at 240. But their efforts were unsuccessful: The result of the debate was that Congress’s role in the Elections Clause was *strengthened* such that state regulations “may at any time, be *made* or altered by the Legislature of the U.S.” *Id.* at 242 (emphasis added). The change was “meant to give the Natl. Legislature a power not only to alter the provisions of the States, but [also] to make regulations” of its own. *Id.* (statement of James Madison).

This exclusion of the Executive Branch was deliberate. The Founding generation had just lived through a monarch’s manipulation of representative government. The Declaration of Independence catalogued these abuses, charging that King George III had “dissolved Representative Houses repeatedly”; had “refused for a long time, after such dissolutions, to cause others to be elected”; and had “called together legislative bodies at places unusual, uncomfortable, and distant” for “the sole purpose of fatiguing them into compliance with his measures.” The Declaration of Independence para. 2 (U.S. 1776). Having fought a revolution to end executive manipulation of legislative-branch elections, the Framers would not hand the same power to the President alone.

Second, the ratification debates confirm that all parties took as given that the Executive would not have a role in federal-election administration. Both Federalists and Anti-Federalists alike understood the power to regulate federal elections as a power held by the States and Congress alone. In *The Federalist No. 59*—the most significant treatment of the question from the period—Alexander Hamilton explained that there

were “only three ways in which this power could have been reasonably modified and disposed[:] that it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former.” *The Federalist No. 59*, at 397–98 (Alexander Hamilton) (Jacob E. Cooke ed., 1961). “The last mode,” he concluded, “has, with reason, been preferred by the convention.” *Id.*; see also *Watson*, 146 S. Ct. at 2170.

Hamilton also explained *why* Congress uniquely needed to exercise the role assigned to it in the Elections Clause, echoing the reasoning of the other Framers at the convention. A congressional backstop was needed to protect Congress’s own institutional interest. He warned that an “exclusive power of regulating elections for the national government, in the hands of the State legislatures would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs.” *The Federalist No. 59*, at 398; see also, e.g., 2 *Records of the Federal Convention of 1787*, at 241 (observation of Gouverneur Morris that without a grant of ultimate power to Congress, the States “might make false returns and then make no provisions for new elections”).

Throughout the Anti-Federalists’ unsuccessful opposition to the Constitution, they focused any attack on the Elections Clause on its grant of power to *Congress*, never once mentioning the Executive Branch as an alternative. See, e.g., Essay of Brutus No. IV (Nov. 29, 1787), in 2 *The Complete Anti-Federalist* 382, 386 (Herbert J. Storing ed., 1981) (complaining of the amount of power the Elections Clause granted to Congress by virtue of its authorization “at any time, by law, to make, or alter, regulations respecting

the time, place, and manner of holding elections”). The delegates who gathered in state conventions likewise debated the balance of power only between the States and Congress—leaving the President out entirely. As Caleb Strong put it at the Massachusetts convention, the power to regulate federal elections “must be lodged somewhere,” and he “kn[e]w of but two bodies wherein it can be lodged—the legislatures of the several states, and the general Congress.” 2 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 24 (Jonathan Elliot ed., 2d ed. 1836). That no Framers even suggested an executive role in regulating congressional elections stands in stark contrast with the Framers’ extensive debates about the President’s powers in other contexts—such as the war, pardon, and treaty powers. *See, e.g.,* 2 *Records of the Federal Convention of 1787*, at 318–19 (war power); *id.* at 626–27 (pardon power); *id.* at 538–39 (treaty power). That omission is telling.

Third, at its first opportunity to revisit the Clause, Congress reaffirmed the Framers’ and ratifiers’ understanding. When the House took up what would become the Bill of Rights, opponents of the Elections Clause’s broad congressional override made one final effort to curtail it. On August 21, 1789, Representative Aedanus Burke of South Carolina moved to add an amendment providing that “Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections of Senators, or Representatives, except when any State shall refuse or neglect, or be unable, by invasion or rebellion, to make such election.” 1 *Annals of Cong.* 797 (1789) (Joseph Gales ed., 1834). The House rejected Burke’s amendment. Indeed, Massachusetts Congressman Fisher Ames defended Congress’s regulatory power as “essential to a body representing the

whole community[] that they should have power to regulate their own elections, in order to secure a representation from every part, and prevent any improper regulations.” *Id.* And Madison, urging the House not to delay the amendments already agreed upon, concluded that he was “inclined to think the constitution stands very well as it is.” *Id.* at 798. No Member suggested that the Executive had, or should have, any role in regulating federal elections.

Subsequent practice further confirms that the Executive Branch lacks the unilateral authority to regulate the manner of federal elections. *Cf. Noel Canning*, 573 U.S. at 525. For two centuries, every federal regulation relating to federal elections has originated with Congress, confirming that when Congress seeks to regulate elections, it does so explicitly. Congress’s first substantive exercise of its Elections Clause authority came with the Apportionment Act of 1842, which required that Representatives be elected from single-member districts. *See* Act of June 25, 1842, ch. 47, § 2, 5 Stat. 491, 491. Congress followed that effort with subsequent Apportionment and Reapportionment Acts—in 1872, 1901, 1911, 1929, 1941, and 1967. *See* Act of Feb. 2, 1872, ch. 11, § 2, 17 Stat. 28, 28; Act of Jan. 16, 1901, ch. 93, § 3, 31 Stat. 733, 734; Act of Aug. 8, 1911, ch. 5, § 3, 37 Stat. 13, 14; Act of June 18, 1929, ch. 28, § 22, 46 Stat. 21, 26; Act of Nov. 15, 1941, ch. 470, § 1, 55 Stat. 761, 761; 2 U.S.C. § 2c. Each enactment followed the Constitution’s prescribed process for promulgating law, as provided for in the Elections Clause. None of these enactments rested on implicit delegation or general grants of power.

The pattern continues unbroken to today. The modern federal statutes governing federal elections are products of the same legislative process. *See, e.g.*, Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. § 10301 *et seq.*); UOCAVA, Pub. L. No. 99-410, 100 Stat. 924 (1986) (codified as amended at 52 U.S.C. § 20301 *et seq.*); NVRA, Pub. L. No. 103-31, 107 Stat. 77 (1993) (codified as amended at 52 U.S.C. § 20501 *et seq.*); HAVA, Pub. L. No. 107-252, 116 Stat. 1666 (2002) (codified at 52 U.S.C. § 20901 *et seq.*). Across more than 200 years, the President has never acted unilaterally to regulate the manner of federal elections, and Congress has never implicitly delegated the power to displace state regulations. These facts alone provide a powerful reason to hold the Order and Final Rule unconstitutional.

C. The Order and Final Rule Also Violate the Postal Clause.

The Postal Clause also forecloses the Executive Branch from enlisting USPS to implement a comprehensive program to monitor and screen mail ballots. The Final Rule’s assertion of authority reaches a subject that Article I assigns to Congress: the power “[t]o establish Post Offices and post Roads,” together with the power to make all laws “necessary and proper” for carrying that power into execution. U.S. Const. art. I, § 8, cls. 7, 18. Like the Elections Clause, the Postal Clause is a grant of legislative power that nowhere mentions the Executive. And as this Court has recognized for well over a century, the power that the Postal Clause grants is broad. The postal power “embraces the regulation of the entire postal system of the country,” and “[t]he right to designate what shall be carried necessarily involves the right to determine what shall be excluded.” *Ex parte Jackson*, 96 U.S. 727, 732 (1878). That breadth measures *Congress’s* authority,

not the President's. It is for Congress, "in the exercise of a sound discretion, to determine in what manner it will exercise the power it undoubtedly possesses." *Ex parte Rapier*, 143 U.S. 110, 134 (1892). But that does not mean that Congress's authority, through either the Postal Clause or the Elections Clause, gives USPS the power to issue the Final Rule here. The authority remains *Congress's* to delegate, and given the importance of federal elections, Congress must—and would—make such a delegation clearly and unambiguously. *See infra* Part II; *see also West Virginia v. EPA*, 597 U.S. 697, 723–24 (2022).

D. No Other Constitutional Provision Can Justify the Order or Final Rule.

The Elections Clause and Postal Clause affirmatively foreclose the President's assertion of authority over mail balloting in the Order and the Final Rule and no other constitutional provision can justify either. A basic tenet of our system is that the Executive Branch enjoys only those powers that the People—through the Constitution—have delegated to it. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) ("The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself."); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819) ("This government is acknowledged by all, to be one of enumerated powers.").

Here, the specific provision addressing federal-election administration—the Elections Clause—bars the Executive Branch from acting alone, and that provision governs the constitutional question here. In any case, no other provision confers the required authority, either. No other provision that mentions federal elections confers

any authority on the Executive. *See* U.S. Const. art. I, § 2, cl. 1 (election of House of Representatives); *id.* art. I, § 2, cl. 4 (writs of election to fill House vacancies); *id.* art. I, § 5, cl. 1 (each House is the judge of its members' elections); art. II, § 1, cl. 2 (Electors Clause); art. II, § 1, cl. 4 (Congress to set the time of choosing Electors). And this silence runs both ways: Not only do none of the clauses in the Constitution governing federal elections mention the President, none of the clauses delineating the President's powers even arguably authorize the Executive to regulate federal elections. *See generally* U.S. Const. art. II; Appl. App. 12a (recognizing that the "Constitution does not grant the President any specific powers over elections").

To justify the Order, the Executive Branch has alluded to the Guarantee Clause and the Take Care Clause. *See* U.S. Const. art. IV, § 4; *id.* art. II, § 3. But neither provides any justification for unilateral presidential action relating to federal elections.

The Guarantee Clause cannot justify the challenged executive actions. The Guarantee Clause does not appear in Article II and does not refer to the Executive Branch at all. Moreover, the Guarantee Clause has canonically been understood to grant authority to *Congress*, not the Executive Branch. *See, e.g., Luther v. Borden*, 48 U.S. 1, 42–43 (1849) ("[I]t rests with Congress to decide what government is the established one in a State . . . as well as its republican character."); *Texas v. White*, 74 U.S. 700, 730–31 (1868) ("[T]he power to carry into effect the clause of guaranty is primarily a legislative power, and resides in Congress."). And more broadly, the Executive's dissatisfaction with how federal elections are presently administered does not constitute the kind of grave threat to republican government that could trigger the Guarantee Clause. *See*

Largess v. Sup. Jud. Ct., 373 F.3d 219, 227–29 (1st Cir. 2004) (limiting federal enforcement of the Guarantee Clause to “unusual and extreme cases”).

Nor can the Take Care Clause justify the Order or Final Rule. That Clause binds the President to “take Care that the Laws be faithfully executed[.]” U.S. Const. art. II, § 3. The Clause sets forth a duty, not a power: It obligates the President to enforce existing laws that *Congress* enacted, not to enact new rules out of whole cloth. The Take Care Clause “allows the President to execute the laws, not make them.” *Medellin v. Texas*, 552 U.S. 491, 532 (2008). “There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.” *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). In other words, “[u]nder our system of government, Congress makes laws and the President . . . ‘faithfully execute[s]’ them,” which “does not include” the power to “revise clear statutory terms.” *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 327 (2014) (citation omitted). And in fact, the Order impermissibly seeks to regulate federal elections in ways that federal legislation prohibits. *See infra* Part II.

II. CONGRESS HAS NOT DELEGATED AUTHORITY TO USPS TO ISSUE THE FINAL RULE.

Congress has not provided any authority to take the steps outlined in the Final Rule. It is blackletter law that a federal agency “has no power to act . . . unless and until Congress confers power upon it.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986). In this context—given the fundamental importance of federal elections, the Constitution’s specification of Congress as the relevant federal actor, and the unprecedented nature of the Final Rule’s assertion of unilateral executive authority—the Court should require a clear statement of congressional intent to delegate authority

to the Executive. After all, federal agencies cannot undertake major policy decisions without “clear congressional authorization,” *West Virginia*, 597 U.S. at 723–24 (citation omitted), and the Court has long recognized that elections are “of the most fundamental significance under our constitutional structure,” *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). Yet here the Final Rule cannot be justified under *any* congressional statute, and in fact violates several statutes with respect to federal voting requirements.

Over the years, Congress has worked on a bipartisan basis with Presidents of both parties to address various federal election issues. President Reagan signed UOCAVA, which requires the States to allow military and overseas voters to register and vote by mail in federal elections. 52 U.S.C. § 20302. President Clinton signed the NVRA, which mandates that every State accept a federal form from voters who register by mail for federal elections. *Id.* § 20505. President George W. Bush signed HAVA, requiring that first-time voters who register by mail show identification when they register or vote. *Id.* § 21083(b). And President Obama signed the Military and Overseas Empowerment Act, which amended UOCAVA and mandated that States give absentee ballots to covered voters at least 45 days before a federal election. *Id.* § 20302(a)(8). In each of these statutes, Congress overrode state prerogatives only through narrow, targeted commands.

As *amici* can personally attest, each of these statutes passed both chambers with bipartisan majorities. HAVA, for example, was adopted by the House 357-to-48 and the Senate 92-to-2 with sweeping bipartisan majorities. H.R. 3295, Record Vote No. 462,

107th Cong. (Oct. 10, 2002); H.R. 3295, Record Vote No. 238, 107th Cong. (Oct. 16, 2002). UOCAVA likewise cleared both the House and the Senate by voice vote, without recorded opposition. 132 Cong. Rec. 20979 (1986) (House); *id.* at 21894–95 (Senate). And each was signed by a President in cooperation with congressional leaders of both parties. As such, these bipartisan statutes reflect a durable national consensus that has survived for decades.

The Order’s preamble refers to both HAVA and the NVRA to justify its assertion of authority. But far from justifying the Order or the Final Rule, those statutes only confirm their unlawfulness.

Begin with HAVA. In that statute, Congress directed States to create a database of registered voters and identified standards for applicants to verify their identity upon registration. *See* 52 U.S.C. § 21083(a)(1), (5). HAVA thus assigns voter-roll maintenance to the States, not the Executive Branch, requiring “each State” to “implement” and “maintain[]” its own centralized voter-registration list, *see* 52 U.S.C. § 21083(a)(1)–(2), and expressly reserving to the States discretion over methods of implementation and compliance, *id.* § 21085. HAVA does not delegate any authority to USPS to require States to transmit voter-eligibility lists to the federal government as a precondition for mail balloting.

The Final Rule is also in tension with provisions of the NVRA. The NVRA directs state agencies to handle the “registration of voters in elections for Federal office,” as well as the “administration of voter registration for elections for Federal office.” 52 U.S.C. §§ 20506(a), 20507(a). The NVRA also limits federal authority to issue regulations to the

Election Assistance Commission, and only as to specified subjects. *See id.* § 20508(a)(1)–(3). The NVRA does not delegate any authority to USPS to issue regulations governing the mailing of ballots to registered voters.

When Congress legislates as to mail balloting, it does so directly and specifically. In UOCAVA, Congress delineated specific requirements for the transmission of mail-in ballots to overseas Americans and military personnel, including a mandate that States transmit ballots “no[] later than 45 days before” a federal election, *see* 52 U.S.C. § 20302(a)(8)(A), and that States provide the right to register and vote by absentee ballot not conditioned on any federal enrollment requirement, *id.* § 20302(a)(1). The Final Rule exempts UOCAVA ballots from its requirements—an implicit concession that Congress’s explicit commands governing the transmission of federal ballots remain binding. *See* 91 Fed. Reg. at 54990. Yet the Final Rule attempts to impose on every other federal ballot preconditions for mailing that Congress declined to impose, barring USPS from transmitting a ballot to any voter whom the State has not first enrolled with USPS. *See id.* at 54991.

The Final Rule rests primarily on a statute, 39 U.S.C. § 401, that permits USPS to initiate rulemaking, *see* 91 Fed. Reg. at 54971. But the rulemaking power of Section 401 extends only to “such rules and regulations, not inconsistent with this title, as may be necessary in the execution of [USPS’s] functions under this title.” 39 U.S.C. § 401(2). Nothing in Title 39 gives USPS authority to take the actions set forth in the Final Rule. Moreover, that grant of rulemaking authority must be read in its statutory context. Congress assigned USPS the collection, transportation, and delivery of the mail, 39

U.S.C. § 404(a)(1). But as to elections, Congress has either left administration to the States, assigned discrete federal functions to a specialized bipartisan body, *see* 52 U.S.C. § 20508(a) (limiting federal rulemaking under the NVRA to the Election Assistance Commission), or legislated the requirement itself.

Far from the sweeping grant of power the Final Rule claims, Congress has in fact cabined USPS's regulatory authority to its core postal mission and has prohibited USPS from taking on new non-postal services without specific review, *see* 39 U.S.C. § 404(e)(2); defined “postal service” as the delivery of mail or other ancillary functions (and hence, not voter-eligibility determinations), *id.* § 102(5); barred USPS from making “unreasonable” distinctions among mail users, *id.* § 403(c); and required that any proposed nationwide change to postal services be submitted to the Postal Regulatory Commission for a 90-day advisory opinion before any rule may issue, *id.* § 3661(b); 39 C.F.R. §§ 3020.110–3020.112. The Final Rule overrides each of these constraints. The Final Rule attempts to impose a nationwide mail ballot administration program that puts USPS in charge of lists of voters enrolled to vote by mail, and gives USPS the authority to reject and return ballots associated with voters not appearing on its lists—even if the voter is eligible and registered to vote. These are functions for which Congress has granted USPS no authority. Here again, the Final Rule reveals an Executive acting alone, without any statutory basis.

The integrity of our constitutional system depends on each branch keeping to its assigned role. The Framers set up a two-part system that gave States default authority

to regulate federal elections subject to Congress's authority to override the States. The Framers did not provide the President with any authority to interfere in that system, nor has Congress imbued the Executive Branch with any such authority by statute. Because the Final Rule ignores those limits on executive authority, the district court correctly enjoined the Final Rule's mandatory implementation.

CONCLUSION

For the foregoing reasons, the Court should deny emergency relief.

Respectfully submitted,

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12. **Christopher H. Shays**
Representative of Connecticut, 1987-2009
13. **Peter P. Smith**
Representative of Vermont, 1989-1991
14. **David A. Trott**
Representative of Michigan, 2015-2019
15. **James T. Walsh**
Representative of New York, 1989-2009