

No. 26A305

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 *AMICUS CURIAE* OF THE SOCIETY FOR THE RULE OF LAW
OPPOSING THE APPLICATION FOR A STAY OF THE INJUNCTION
AND THE REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY
AND IN SUPPORT OF RESPONDENTS**

September 8, 2026

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INTEREST OF *AMICUS CURIAE*

Amicus The Society for the Rule of Law and Democracy, Inc., d/b/a The Society for the Rule of Law (“SRL”), is a national non-profit, non-partisan membership organization of conservative, libertarian, right-of-center-lawyers, and others, who are dedicated to defending the rule of law, separation of powers, and federalism.¹ SRL has an interest in seeing that the USPS does not violate these principles by violating the Constitution, federal election statutes, and Title 39.

INTRODUCTION AND SUMMARY OF ARGUMENT

Among the myriad bases for denying a stay, this brief focuses on three independently sufficient reasons why the unprecedented USPS ballot rule plainly lacks authority. First, rather than delegate authority to USPS, in the federal election statutes of the Help America Vote Act of 2002 (“HAVA”), the National Voter Registration Act of 1993 (“NVRA”), and the Voting Rights Act (“VRA”), Congress specifically delineated where federal law altered and where federal law preserved state authority concerning the election practices addressed by the USPS ballot rule—voter lists, delivery of “any . . . paper ballots” to voters, and absentee balloting. 52 U.S.C. §§ 21081, 21083, 20506-07, 10502. Except where expressly altered *by these statutes*, Congress specifically preserved authority concerning these election practices and “election technology and administration requirements” for the States only, thereby withholding any such authority from the USPS. 52 U.S.C. §21084; *see id.* §§21085, 20507(a), 10502(g). And 52 USC §21145(a) specifically superseded resort to all the Title 39 non-election provisions on which Applicants rely.

¹ *Amicus* states that no counsel for any party authored this brief in whole or in part, and that no entity, aside from *amicus* and its counsel, made any monetary contribution toward its preparation or submission. The views of SRL do not necessarily represent the views of all individual members.

Second, election mail was specifically withheld from the nonmailability provisions in 39 U.S.C. §§3001-3018. Those provisions are the only place where—nine times—Congress expressly gives the USPS authority to condition or restrict the mailing of a category of items. Election mail is *not* one of these categories. Instead, the only Title 39 election provisions are 39 U.S.C. §3629, which NVRA enacted and requires USPS to give favorable postage rates to registration mail, and 39 U.S.C. §3406, which UOCAVA enacted and requires expeditious and free carriage of UOCAVA voting materials. The non-election, boilerplate Title 39 provisions on which Applicants rely are not a secret, alternative way for the USPS to bar ballot mail, conditionally or otherwise, on the eve of election day.

Third, under the federalism presumption and the major question doctrine, the USPS needed a clear statement of statutory authority. The boilerplate provisions in Title 39 do not come close.

ARGUMENT

I. The Constitution And Federal Election Statutes Preclude The USPS Ballot Rule.

The Elections Clause empowers only Congress to “alter” state election practices. The USPS ballot rule entitled “Ballot Mail for Federal Elections” is an election-only rule that illegally alters state election practices, not a general postal rule like extra postage for a heavy package or requiring a proper address. The Applicants stated that they needed the final rule for the 2026 election. *Trump v. California*, 2026 WL 2473573, at *4 (U.S. Aug. 24, 2026)(per curiam). The USPS ballot rule is replete with purported election integrity justifications. 91 Fed. Reg. 54966-70 (2026). The rule derives from EO 14399, which is entitled: “Ensuring Citizenship Verification And Integrity In Federal Elections.” The rule applies to ballot mail *only*. The District Court therefore properly considered statutes in Title 52, the Title for “Voting

and Elections,” in addressing whether Congress allocated authority here to the States rather than to USPS.

Because the Constitution gives the States full power over federal elections except where Congress alters their regulations of elections, “Congress’s power to regulate elections ‘supersede[s] state law ‘so far as it is exercised, and no farther.’” *Watson v. Republican Nat’l Comm.*, 146 S. Ct. 2165, 2181 (2026)(citation omitted). This means that where a federal election statute alters a state election practice to a stated extent, the Constitution and Congress are preserving state authority concerning that practice except as so altered. HAVA, NVRA, and the VRA expressly addressed both where federal election law altered and where federal election law *preserved* state authority concerning any voter list, delivering any paper ballots, absentee balloting, and election technology and administration. By specifically preserving state authority over these election practices where these federal election statutes had not altered them, these federal election statutes specifically and necessarily withheld from USPS any additional federal regulatory power to alter such state election practices, by a lot or a little.

A. HAVA.

HAVA sets the limits of federal alteration of state election practices concerning voter lists, the delivery of any paper ballots to voters, and election technology and administration. Tellingly, 52 U.S.C. §21085 states: “The specific choices on the methods of complying with the requirements of this subchapter *shall be left to the discretion of the State.*” (Emphasis added).

HAVA requires only “a *single*, . . . official . . . statewide voter registration list” for each state with such list “defined, maintained, and administered at the State level.” 52 U.S.C. §21083(a)(1)(A)(emphasis added). This “computerized list shall serve as *the single system* for storing and managing *the official list* of registered voters throughout the State” and “shall serve

as *the official voter registration list* for the conduct of all elections for Federal office in the State.” *Id.* §21083(a)(1)(A)(i), (viii)(emphases added). Contradicting “the” and “single,” the USPS ballot rule illegally establishes a second federally-mandated statewide voter list for each State, *i.e.*, a list of those enrolled to vote by mail. A State cannot have *any* mail-in voting unless the state enrolls voters through a portal on a “List” of mail-in voters, and then only for voters verified by the USPS as “enrolled” on the new “List.” DMM 705.24.5.

Moreover, Applicants ignore that the District Court found that the ballot rule transgressed 52 U.S.C. §21084. App. 26a. Section 21084 provides that only “a *State*”—not a federal agency—may “establish[] *election technology and administration requirements* that are more strict than the requirements under this subchapter so long as such State requirements are not inconsistent with the Federal requirements under this subchapter or [four other federal election statutes and two federal disability statutes] described in section 21145 of this title.” (Emphases added). The USPS ballot rule exceeded this §21084 limit by establishing stricter federal requirements for portals, Lists, and verification by the USPS.

There is more. 52 U.S.C. §21081(a) establishes the federal “requirements” for “[*e*]ach voting system used in an election for Federal office.” (Emphasis added.) The term “voting system” includes “the practices and associated documentation used . . . to make available *any* materials to the voter (such as notices, instructions, forms, or *paper ballots*).” 52 U.S.C. §21081(b)(2)(E)(emphases added). “[T]he word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 219 (2008)(brackets added; citation omitted). Every method for delivering any “paper balloting” is a “voting system” under HAVA. *United States v. Town of Thornapple*, 143 F.4th 793, 798-99 (7th Cir. 2025).

The documentation and practices used for delivering any paper ballots to mail-in voters, including mailing and envelopes, constitute a “voting system.” Here, under the USPS ballot rule, the barcoded Outbound Federal Ballot Mail Envelopes, portal information, and Mail-in and Absentee Participation List, singly and combined, illegally establish a new, more restrictive federally-imposed “voting system” because they are documentation and practices used to make notices, instructions, forms, and mail-in paper ballots available to *fewer* voters. But again 52 U.S.C. §21084 provides that only “a *State*”—not a federal agency—may “establish[] *election technology and administration requirements* that are more strict than the requirements under this subchapter.” (Emphases added).

To remove any doubt, 52 U.S.C. §21145(a) states that “nothing in this chapter may be construed to authorize or require conduct prohibited under any of *the following laws*, or to supersede, restrict, or limit the application of *such laws*.” (Emphases added). The six, specified, protected federal statutes that comprise “the following laws” and “such laws” are only UOCAVA, VRA, NVRA, the Voting Accessibility for the Elderly and Handicapped Act, and two primarily non-election disability statutes. *Id.* Both “such laws” and “the following laws” are narrowing phrases. *See Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799, 817 (2024) (“the” “focuses on a specific” thing); *Slack Technologies, LLC v. Pirani*, 598 U.S. 759, 767 (2023) (“‘such’ ... narrows the law’s focus”). The “well established canon of statutory interpretation: *expressio unius est exclusio alterius* . . . has particular force here because the” six federal statutes protected by §21145(a) “constitute an ‘established series,’ such that any ‘omission’ from that series necessarily ‘bespeaks a negative implication.’” *Esteras v. United States*, 606 U.S. 185, 195 (2025)(citation omitted). Congress here “exclude[d] another [federal provision] left unmentioned.” *Id.* (quotations omitted). Thus,

concerning HAVA subjects, the application of a federal statute *not* listed in “the following” series of six specified statutes *is* superseded, restricted, and limited. Section 21145(a) *omits* from the series all the Title 39 provisions on which the Applicants rely. Enforcing this deliberate exclusion fulfills a central HAVA purpose that state and local “administration” of federal elections “must be preserved” so that it remains “*impossible* for a single centrally controlled authority to dictate how elections will be run, and thereby be able to control the outcome.” H.R. Rep. No. 107-329, pt. 1, at 31-32 (2001)(“HAVA Report”)(emphasis added).

The Application at 28 nonetheless argues that the party-presentation principle blinds this Court to HAVA, the federal election statute that specifically preserves for States only, and thus withholds from USPS, authority on the very subjects in this case: voter lists, delivery of any paper ballots to voters, and election technology and administration. Applicants are incorrect for three independently sufficient reasons. First, the plaintiffs relied in the District Court on HAVA (and NVRA and the VRA) in support of their preliminary injunction motions. For example, the State Plaintiffs-Respondents wrote: “Congress has set requirements related to voter lists, the sending of paper ballots to voters, and absentee ballots. *See, e.g.*, 52 U.S.C. §§ 21083(a)(1)(A); 21081, 10502(c)-(f). But Congress has otherwise left decisions about the administration of federal elections, including mail ballot programs, in the hands of the States. *See, e.g.*, 52 U.S.C. §§ 21084, 10502(g).” *California v. USPS*, ECF 103 at 7. *See also id.*, ECF 5 at 2; *id.*, ECF 1 at 35, 45; *League of Women Voters v. Trump* (“*LVW*”), ECF 207 at 9; *id.*, ECF 205, at 22; *see also* Sept. 3, 2026 Hrg. at 41-42. This was more than sufficient for the District Court to rely on the federal election statutes that preserved state authority concerning the election practices at issue.

Second, under the related-statute canon and clear statement rules, the express provisions of the Title 52 election statutes must be considered. That is because they are pertinent to refuting

the Applicants’ argument that non-election Title 39 provisions surreptitiously delegated authority to USPS to alter state election practices where Title 52 provisions preserved state authority for those practices . *See infra*, at 9, 13-14, 17, 19-20.

Third, *Trump v. Illinois*, 146 S. Ct. 432, 434 (2025), denied a stay based on a statutory argument “that the District Court had addressed” but that the parties “had not” raised in the District Court, the Seventh Circuit, or this Court, until this Court in response to an *amicus* brief directed the parties to do so in supplemental briefs. *See also Greenlaw v. United States*, 554 U.S. 237, 250 & n. 5 (2008)(Court may affirm based on a “novel” argument “presented for the first time in the brief amicus filed in this Court”). Here, in addition to Plaintiffs-Respondents raising the arguments, the Applicants cannot dispute that the HAVA, NVRA, and VRA arguments were raised in an amicus brief filed with leave from the District Court two days before the Applicants’ preliminary injunction opposition briefs. *LWV v. Trump*, ECF 213, Attach. 1, at 3-8; *see California v. USPS*, ECF 40, Attach. 1, at 3-8. The USPS should not be allowed in this case to transgress the provisions of HAVA, NVRA and the VRA that preserve the election authority of the States and thus deny the same authority to USPS.

B. NVRA.

NVRA charges only *state* agencies with “the registration of voters in elections for Federal office” and “the *administration* of voter registration for elections for federal office.” 52 U.S.C. §§20506(a)(1), 20507(a)(emphasis added). 52 U.S.C. §20508(a)(1)-(3) limits the federal authority to issue “regulations” on NVRA topics to the Election Assistance Commission and one subject – “a mail voter registration application form.” NVRA gives the USPS no regulatory power concerning enrolling voters on or administering any voter list. To the contrary, NVRA’s only mention of the USPS, now codified in 39 U.S.C. §3629, is to require the USPS to give

favorable postage rates to registration mail. The USPS ballot rule transgresses NVRA's very limited alteration of state election practices.

C. VRA.

The Application ignores that the District Court correctly found, App. 26a, that the ballot rule transgressed 52 U.S.C. §10502. Subsections (b)-(f) set forth the full extent to which federal rules alter "absentee balloting in presidential elections." Most important, 52 U.S.C. §10502(g) preserves the authority of "any *State* or political subdivision" to "adopt[] *less restrictive* voting practices than those that are described herein." (Emphasis added). Unlike subsections (b)-(f) of §10502, subsection (g) is not limited to presidential elections. Thus, it preserves the absentee balloting authority of the States in all federal elections. The executive branch is denied authority to adopt more restrictive absentee balloting practices. The USPS ballot rule illegally does this.

D. Judicial Review

Because the USPS ballot rule transgressed Title 52's preservation of state authority over the pertinent election practices, the rule arrogated the constitutional powers of the States over elections. For this and other reasons, 39 U.S.C. §410(a) does not limit APA or *ultra vires* review. 39 U.S.C. §410(a) precludes applying the APA to only "the exercise of the powers of the Postal Service." But election powers allocated by the Constitution to the States, and preserved by Title 52, are not among "the powers of the Postal Service." Further, *ultra vires* review protects the constitutional powers of the States. In all events, because federal election statutes "specifically withheld," *NRC v. Texas*, 605 U.S. 665, 681 (2025)(quotations omitted), from USPS power to alter state election practices concerning voter lists, delivery of any paper ballots, absentee balloting, and election administration and technology, *ultra vires* review is proper even under Applicants' standard.

II. Title 39 Provisions Preclude USPS Authority To Bar Ballot Delivery.

Assuming that USPS may sometimes use the non-election provisions of Title 39 to establish election-only rules that alter state election practices, related statutes are to be “interpreted together, as though they were one law.” A. Scalia & B. Garner, *Reading Law* 252 (2012). This “most rudimentary rule of statutory interpretation” applies to federal elections. *Watson*, 146 S. Ct. at 2173. “[T]he body of the law should make sense” and “it is the responsibility of the courts, within the permissible meanings of the text, to make it so.” *Reading Law*, at 252. It makes no sense where the express and detailed election provisions of Title 52 preserve state authority over voter lists, the delivery of any paper ballots, absentee balloting, and election administration and technology, for the non-election boilerplate provisions in Title 39 to authorize the USPS to nullify all the Title 52 preservations of state authority in these areas.

A. Nonmailability.

Even looking at Title 39 alone, Congress in the nonmailability provisions prohibited USPS from adding ballot mail to the categories for which the USPS is authorized to bar mail. Those provisions are the exclusive place in Title 39 where Congress gave USPS authority to bar mailing those items in the named categories that do not meet the regulatory conditions that the USPS imposes. “The postal laws make a clear-cut division between mailable and nonmailable material.” *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 152 (1946). 39 U.S.C. §§3001-18 specify *all* the categories that are “nonmailable.” Indeed, nonmailability rules “ha[ve] been zealously watched and *strictly confined*” by Congress. *Hannegan*, 327 U.S. at 156 n.18 (emphasis added). “[P]roceedings concerning the nonmailability of matter” are subject to APA review, 39 U.S.C. §3001(m), and “strictly confined” satisfies any “specifically withheld” standard.

The USPS ballot rule did not and could not argue that any of the Title 39 nonmailability

provisions authorize nonmailability for any ballots. 91 Fed. Reg. 54974. Instead, USPS argued only that conditioning the acceptance of an entire category for mailing on satisfying USPS regulations is not a nonmailability rule. 91 Fed. Reg. 54973. The statutory nonmailability provisions refute this argument. Nine statutory nonmailability provisions take the same conditional nonmailability approach as the USPS ballot rule. Those nine statutory nonmailability provisions bar the mailing of a category of items except when a sender satisfies the conditions set by USPS regulations, including conditions about what is on the envelope. *See* 39 U.S.C. §§3001(d)(2), 3001(g)(2), 3001(h)(1)(b), 3001(i)(1)(b), 3001(n)(1), 3002(b), 3010(a), 3014(c), 3018(a)&(b)(1). This is how the statute renders some items in specified categories nonmailable—from fragrance advertising samples to hazardous materials. For example, 39 U.S.C. §3001(g)(2) states: “The Postal Service shall by regulation establish the standards or requirements which a fragrance advertising sample must satisfy in order for the mail matter involved not to be considered nonmailable under this subsection.” *See also* 39 U.S.C. §3001(n)(1)(“Except as otherwise authorized by law or regulations of the Postal Service, hazardous material is nonmailable.”). Contradicting the withholding of statutory conditional nonmailability authority for ballots, the USPS ballot rule illegally uses the same exact conditional nonmailability approach to bar all Outbound Federal Ballot Mail unless USPS’s regulatory conditions are satisfied.

Applicants misplace reliance on the treatment of cremated remains and replica or inert explosive devices as “Restricted Matter.” 90 Fed. Reg. 9843 (2025); 75 Fed. Reg. 282, 283 (2010). Both these restrictions are based on an express nonmailability statute, 18 U.S.C. §1716, which 39 U.S.C. §3001(a) incorporates, *not* on the boilerplate provisions of Title 39. Applicants have argued that 18 U.S.C. §1716(a) does not make cremated remains or replica or inert

explosive devices nonmailable, but this contradicts that statute's text as well as USPS statements in the Federal Register and C.F.R. 18 U.S.C. §1716(a) applies not only to actual "explosives" but also makes "*all other* natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property . . . nonmailable matter," except when USPS "regulations" under 18 U.S.C. §1716(b) and (j)(1) "permit[]" mailing some such materials under restrictions. (Emphasis added). The Federal Register's descriptions of the remains and devices track 18 U.S.C. §1716(a) exactly. The remains were "materials that could cause soiling, damage, discomfort or destruction," 90 Fed. Reg. 9843, and "postal operations have been disrupted and facilities have been evacuated when replica or inert explosive devices have been discovered in the mail." 75 Fed. Reg. 283.

Moreover, Applicants ignore USPS Publication 52, which is incorporated in the C.F.R. and cited in 90 Fed. Reg. 9843. Section 21 of Publication 52 identifies 18 U.S.C. §1716 as the *sole* authority making "[r]estricted" matter "nonmailable" except when USPS regulatory conditions are satisfied, and Sections 434 and 451.22 regulate the remains and replica or inert explosive devices *solely* as "Restricted Matter." In contrast, the USPS ballot rule did not and could not classify ballot mail as "Restricted Matter" or rely on 18 U.S.C. §1716.

The Application at 21 also conflates nonmailability by conditioning or restricting a disfavored category with helpful address standards that apply to *all* mail. Universal address standards that ensure delivery are the antithesis of the USPS ballot rule that blocks deliveries in a disfavored category.

Congress would not have strictly confined conditional and restricted nonmailability to express, specific statutory nonmailability provisions like 18 U.S.C. §1716 if the USPS had authority to use other, general, indeed boilerplate provisions like 39 U.S.C. §401(2) ("the

boilerplate provisions”), to impose the exact same requirements, including for categories in what would become the many superfluous statutory conditional nonmailability provisions. Doing so creates “the superfluity of a specific provision that is swallowed by the general one.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). It also violates the negative-implication canon with “particular force” because 39 U.S.C. §§3001-18, including the incorporation of 18 U.S.C. §1716, “constitute an established series, such that any omission from that series necessarily bespeaks a negative implication.” *Esteras*, 606 U.S. at 195 (quotations omitted). Further, 39 U.S.C. §401(2) precludes regulations “inconsistent with this title.”

Another inconsistency is that 39 U.S.C. §§3001(a) and 3003(a) limit criminal-based nonmailability to when a specific mailing is in “violation” of one of ten *specified* criminal-law statutes. 39 U.S.C. §§3001(a), 3003(a). Merely helping investigations or deterring potential violations is never enough to make an overwhelmingly-legitimate category nonmailable. And the two potential crimes involving non-citizens cited here—18 U.S.C. §611; 52 U.S.C. §20511—are *not* among the ten specified criminal statutes.

The USPS should offer its purported policy justifications for a new ballot nonmailability rule to “legislatures, not courts.” *Watson*, 146 S. Ct. at 2179-80. Otherwise, an Administration could use the Applicants’ logic to condition mailing ballots on having the voter and a witness sign the envelope and having the envelope postmarked five days before the election. Or, because these topics would now be USPS matters, a future administration could override state-law signature and postmark date requirements. And so on.

Finally, Applicants assert a false equivalence between the new USPS ballot rule and the prior USPS practice of prioritizing election mail. Prioritizing election mail does *not* conditionally bar mail or alter any state election practice.

B. The Boilerplate Provisions.

Not only do the Title 39 boilerplate provisions fail to provide an end-run around the statutory limits on conditional nonmailability, by their own terms they preclude the USPS ballot rule. 39 U.S.C. §401(2) is the only boilerplate provision to mention “regulations” and it prohibits the USPS from promulgating “regulations” that are “inconsistent with this title” or not “necessary in the execution of its functions under this title [or] such other functions as may be assigned to the Postal Service under any provisions of law outside of this title.” To start, the USPS ballot rule is “inconsistent” with the nonmailability limits in 39 U.S.C. §§ 3001-18. *Supra*, at 9-12. It is also inconsistent with 39 U.S.C. §404(e)(2), because each of imposing and administering new voter lists, modifying voting systems, restricting absentee balloting, and election administration is a “nonpostal service.” HAVA, NVRA, and the VRA establish that these functions are the exclusive domain of a state or Congress. *Supra*, Part I.A-C. This means that the USPS ballot rule additionally violates the limit in §401(2) that regulations must be “necessary” to execute “functions” assigned *to the USPS* by statute.

Finally, when Congress alters state election practices, it does not do so for the upcoming election. NVRA was enacted on May 20, 1993, but was effective January 1, 1995. 107 Stat. 77, 89 (1993). HAVA was enacted October 29, 2002, but its voter list and voting system provisions were effective January 1, 2006. 52 U.S.C. §§21081(d), 21083(d)(1)(B). Congress would never authorize using a non-election provision to impose immediately-effective federal alterations of state election practices on the eve of an election. Nothing in Title 39 authorizes the arbitrary, belated, hurried mess that is the USPS ballot rule.

Because Title 39 prohibits the USPS ballot rule, there is no conflict with Title 52. Indeed, there could be none because HAVA supersedes Title 39’s non-election provisions,

supra, at 5-6, and all federal election statutes are omitted from the laws that 39 U.S.C. §410(a) says are inapplicable to “the exercise of the powers of the Postal Service.” In all events, the prohibitions from the specific federal election statutes would prevail over the general postal statutory provisions that do not mention elections. *See Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 228–29 (1957) (“Specific terms prevail over the general in the same or another statute which otherwise might be controlling.”).

III. Clear Statutory Authorization Is Required And Absent.

A. The Federalism Presumption.

The District Court correctly applied the federalism presumption, App. 29a n. 34, which the Application ignores. Title 39’s boilerplate provisions were enacted under the Postal Clause, *not* the Elections Clause. Federalism and Tenth Amendment principles apply to federal elections. *Shelby County v. Holder*, 570 U.S. 529, 543 (2013). Accordingly, USPS’s use of non-election Title 39 provisions must overcome the presumption that, absent a clear statement, a federal statute does not change the usual allocation of authority to the States. *See Bond v. United States*, 572 U.S. 844, 857-60 & n.2 (2014); *United States v. Gradwell*, 243 U.S. 476, 485 (1917) (non-election statute did not apply to federal elections because “whenever [Congress] has assumed to regulate elections, it has done so by positive and clear statutes”).² The usual allocation is that States determine and administer election practices. *Supra*, at 3-8. The Title 39 boilerplate provisions do not come close to a clear statement. *See West Virginia v. EPA*, 597 U.S. 697, 723, 732 (2022)(“modest words, vague terms, or subtle devices” do not provide a clear statement).

² There is an exception for statutes enacted “under the Elections Clause.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 13-15 & n.6 (2013). But the Title 39 non-election provisions are enacted under the Postal Clause.

Contrast the Title 39 provisions here with the two times when Congress gave limited power concerning election administration to federal officials. Both times Congress did so in crystal clear language in an election statute, and later repealed that authority. In 1871, Congress gave federal “supervisors of election” in larger cities and towns in House elections authority to “verify” and sometimes make voter “lists,” inspect and scrutinize “the manner in which voting is done,” and “prevent fraudulent registration and fraudulent voting” and “fraudulent conduct on the part of any officer of election.” 16 Stat. 433, 434-36, 438 (1871). However, in 1894, Congress repealed all these statutory provisions. 28 Stat. 36, 36-37 (1894).

In 1965, Sections 6 and 7 of the original VRA authorized, in certified jurisdictions, the federal Civil Service Commission (CSC) to appoint examiners to place a person “on a list of eligible voters” and “transmit” that partial list to state officials. 79 Stat. 437, 440 (1965). Section 9(b) gave the CSC authority to “prescribe[] . . . regulations” concerning the partial “eligibility lists.” *Id.* at 441. In 2006, however, Congress repealed §§6, 7, and 9 of the original VRA. 120 Stat. 577, 580 (2006).

The Court relied on “the history” of the 1894 repeal to reject shoehorning into a non-election federal statute the kind of federal authority that had been withheld by Congress. *See Gradwell*, 243 U.S. at 479-85. Yet such shoehorning is what the USPS ballot rule attempts to do through its illegal use of Title 39 non-election provisions to alter state election practices.

B. The Major Questions Doctrine.

The District Court also properly applied the major questions doctrine, App. 29a, which independently requires clear authorization. That doctrine applies to important political issues, not just economic ones. *See West Virginia*, 597 U.S. at 722 (relying on an assisted suicide case, *Gonzales v. Oregon*, 546 U.S. 243 (2006)). Under the major questions doctrine, courts “presume

that Congress intends to make major policy decisions itself, not leave these decisions to agencies.” *West Virginia*. 597 U.S. at 723 (quotations omitted). This reflects “both separation of powers principles and a practical understanding of legislative intent.” *Id.* at 723-24. “[A] reasonable interpreter would not expect Congress to pawn . . . a big-time policy call . . . off to another branch.” *Learning Resources, Inc. v. Trump*, 607 U.S. 229, 246 (2026) (plurality opinion) (“*Learning Resources* Plurality”) (cleaned up). The decision as to what is a major question also reflects “constitutional structure and common sense.” *Id.* at 243.

“[T]he electoral process” is “of the most fundamental significance under our constitutional structure.” *Bost v. Illinois State Board of Elections*, 607 U.S. 71, 77 (2026)(quotations omitted). Elections are “preservative of all rights,” including economic liberty. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

At the Constitutional Convention, Madison explained that the Constitution gave election powers to Congress because “the influence of the Crown was most dangerously exerted” on elections. 2 The Records of the Federal Convention of 1787, at 204 (M. Farrand ed., 1911). In particular, the founding generation knew the lessons of the Glorious Revolution and the English Bill of Rights of 1689. A critical reason for both was that King James II and his agents attempted to subvert elections for Parliament by exercising control concerning election practices and voting. *See Harper v. Hall*, 866 S.E.3d 393, 434-37 (N.C. 2023) (reviewing history). The Court has relied on the history of the Glorious Revolution and the English Bill of Rights in interpreting both our Constitution and limits on federal executive power. *See, e.g., United States v. Rahimi*, 602 U.S. 680, 694 (2024); *Trump v. Barbara*, 146 S. Ct. 2438, 2458 (2026); *Learning Resources, Inc. v. Trump*, 607 U.S. at 298 (Gorsuch, J., concurring).

The Elections Clause made the power over federal elections a core congressional power. “There is no major questions exception to the major question doctrine.” *Learning Resources* Plurality, 607 U.S. at 248.

Applicants nonetheless argue that the election issues in this case are not important enough for the major questions doctrine. This is wrong for at least six reasons. *First*, voter lists, voting systems, the extent of absentee voting, and election administration comprise the heart of election regulation and determine who votes and how they vote. That is why HAVA, NVRA, and the VRA set the limits of federal regulation for these areas and preserved the remaining authority to the States. *See* Part I, *supra*. These federal statutes demonstrate that the USPS ballot rule arrogates an important policy choice and “[t]he basic and consequential trade-offs involved in such a choice are ones that Congress would likely have intended for itself.” *West Virginia*, 597 U.S. at 730.

This fundamental policy choice here goes to the very structure of our republic. As the HAVA Report stated, *supra*, at 6, our federalist election structure, designed by the Elections and Electors Clauses, fosters both the reality and appearance of election integrity by decentralizing election rules and their administration. Otherwise, an Administration’s control concerning voter lists, voting systems, absentee balloting, and election administration, via the USPS, could be exercised to skew elections to favor either of the two major parties. “[I]n the law, what is sauce for the goose is normally sauce for the gander.” *Heffernan v. City of Paterson*, 578 U.S. 266, 272 (2016). In our tit-for-tat world, for example, a future Democratic President could order the USPS to restrict delivery of mail-in ballots to and from rural counties because they have higher mail theft rates and higher USPS costs.

Second, the errors, disenfranchisement of voters, and intrusion on state sovereignty would be amplified exponentially because the massive efforts required are coming on the eve of an election. For one example, the USPS will reject an entire batch of upwards of 20,000 ballots if one scanned ballot barcode is not on the list. *California v. USPS*, ECF 119, at 4; *id.*, ECF 115, at 19-20. The haste and zeal of Applicants both confirms the political importance of the USPS ballot rule and magnifies the rule's negative impacts. As the 2013 Obamacare portal nightmare reminds us, even with the best intentions, a new federal government portal will be riddled with problems and errors. The inevitable widespread errors here would deprive citizens of voting rights without any provision in the rule requiring notice to a voter or an opportunity for the voter to fix or challenge an omission or mistake. Large errors are particularly guaranteed because the USPS has no expertise or history concerning voter lists, modifying voting systems, restricting absentee balloting, or election administration. *See West Virginia*, 597 U.S. at 730 (relying on an agency's lack of expertise as support for applying the major questions doctrine); *Biden v. Nebraska*, 600 U.S. 477, 518 (2023)(Barrett, J., concurring) ("Another telltale sign that an agency may have transgressed its statutory authority is when it regulates outside its wheelhouse.").

Third, having the USPS verify envelopes against voter lists also would slow down the delivery of mail-in ballots to voters. This shortens the time determined by state legislatures that voters have to consider and submit their choices for federal, state, and local offices.

Fourth, the major questions doctrine prevents using executive branch action as a response to unadopted legislation. *See West Virginia*, 597 U.S. at 731-32; *Biden v. Nebraska*, 600 U.S. at 503 & n.8. The USPS ballot rule came after numerous failed attempts to enact new election statutes that would expressly expand federal regulation and administration concerning voter lists,

voting systems, and restricting absentee balloting. *See* SAVE Act, H.R. 8281, 118th Cong. (2024); SAVE Act, H.R. 22, 119th Cong. (2025); SAVE America Act, H.R. 7296, 119th Cong. (2026); Make Elections Great Again Act, H.R. 7300, 119th Cong. (2026); *see also* Vote By Mail Tracking Act, H.R. 5658, 118th Cong. (2023) .

Fifth, the USPS ballot rule results from a presidential directive at the highly-publicized center of the President’s agenda. This confirms the political importance of the new ballot rule. To argue otherwise asks this Court to “exhibit a naivete from which ordinary citizens are free.” *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 122 (2025)(quotations omitted).

Sixth, the USPS ballot rule would be the very large camel’s nose under the tent. If the Court enabled USPS’s use of non-election statutes to alter the important state election practices here, every election cycle *numerous* federal agencies in every administration will scour the non-election statutes in the gargantuan U.S. Code to find every potential hook to tilt or control every biennial federal election. The inevitable legal challenges each election cycle would drag federal courts “over and over again” into “one of the most intensely partisan aspects of American political life.” *Rucho v. Common Cause*, 584 U.S. 684, 718-19 (2019). Rather than creating “such an extraordinary and unprecedented” departure, *id.* at 719, for both the federal executive and judicial branches, this Court should keep those evils sealed in the box in which the Elections and Electors Clauses put them 238 years ago by empowering only Congress to alter state election practices.

Federal election statutes have regulated federal elections since 1791, *see* 1 Stat. 239 (1792), regulated aspects of election administration since 1871, *see supra*, at 15, and aspects of voting by mail since 1942, ch. 561, §9, 56 Stat. 753, 756 (1942). Today, in hundreds of election statutes, Congress has carefully chosen when to regulate elections, when to preserve regulation

for the States, and *never* to delegate altering state election practices to USPS. *See* 52 U.S. §§10101-30146; 2 U.S.C. §§1-9, 381-96; 3 U.S.C. §§1-22; 18 U.S.C. §§592-611. The Court should rule that Congress has not hidden for decades the elephant of USPS authority to alter state election practices concerning voter lists, delivering paper ballots to voters, absentee balloting, and election administration in a non-election mousehole in Title 39.

CONCLUSION

The Court should deny the Application.

September 8, 2026

Respectfully submitted,

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