

No. 26A305

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES POSTAL SERVICE, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

DONALD J. TRUMP, ET AL., APPLICANTS

v.

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, ET AL.

BRIEF OF AMICUS CURIAE WHISTLEBLOWER AID IN OPPOSITION TO
THE APPLICATION FOR A STAY

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IDENTITY AND INTEREST OF AMICUS¹

Amicus Whistleblower Aid is a nonpartisan, nonprofit legal services organization dedicated to supporting and protecting whistleblowers for the public interest in pursuit of a robust, resilient, and thriving democracy. Whistleblower Aid provides pro bono representation to government and private-sector workers who report and expose wrongdoing—safely, lawfully, and responsibly.²

Whistleblower Aid represents an anonymous federal official (the “Whistleblower”) who has direct knowledge of the potentially catastrophic problems with the United States Postal Service’s (“USPS” or “Postal Service”) new procedures, policies, and information technology tools (together, the “systems”) for handling outgoing federal election ballot mail (“ballot mail”).³ Those systems, including the USPS’ “Federal Ballot Mail Portal” and related information technology, are supposed to be used to implement 39 C.F.R. pt. 111, the rule promulgated by USPS under Section 3 of Exec. Order No. 14399, “Ensuring Citizenship Verification and Integrity in Federal Elections,” 91 Fed. Reg. 17125 (Mar. 31, 2026) (“Executive Order” or “Order”).

¹ Under Supreme Court Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

² For more information on amicus, see Whistleblower Aid, <https://whistlebloweraid.org/> (last visited Sept. 8, 2026).

³ USPS defines “ballot mail” as any mailpiece sent to or from an authorized election official containing a live ballot that may be used to cast a vote in an election. USPS, *Election Mail*, <https://perma.cc/K2ED-JFEQ> (last visited Sept. 8, 2026). Outgoing ballot mail refers to blank ballots mailed to voters.

The Whistleblower cannot come forward publicly for fear of reprisal. They speak now through amicus, which compiled the Whistleblower's Disclosure and filed it with U.S. Senator Richard Blumenthal, Ranking Member of the Permanent Subcommittee on Investigations, on August 30, 2026.⁴ That Disclosure was then submitted to the Office of U.S. Representative Robert Garcia, Ranking Member of the House Committee on Oversight and Government Reform. The Disclosure was also provided to the Office of the Inspector General of the U.S. Postal Service.

The Whistleblower must remain anonymous, but they have the expertise and proximity to speak authoritatively on the facts adduced in the Disclosure. Because of its relationship with the Whistleblower, amicus is uniquely positioned to provide critical information on both the design and the functioning of the systems that were built in response to the Rule, whose legality is before the Court. Neither amicus nor the Whistleblower has any stake here beyond an interest in seeing that the Court decides this application on an accurate understanding of the systems it is being asked to switch on.

STATEMENT

The Whistleblower has come forward with direct and detailed knowledge of the systems the United States Postal Service developed to implement the Order and the Postal Service's related final rule, Ballot Mail for Federal Elections, 91 Fed. Reg. 54966 (Aug. 26, 2026) (to be codified at 39 C.F.R. pt. 111) (the "Rule"). The

⁴ Letter from Sen. Richard Blumenthal to Postmaster General Steiner Appending Disclosure (Aug. 31, 2026), <https://perma.cc/377A-P85V> (hereafter, the "Disclosure").

Whistleblower knows nonpublic details about the systems’ intended functioning—and about the chaotic design process that almost guarantees malfunctioning.

On August 30, 2026, on the Whistleblower’s behalf, amicus transmitted a lawful Disclosure describing those systems to Senator Richard Blumenthal, the Ranking Member of the Senate Permanent Subcommittee on Investigations. Senator Blumenthal forwarded the Disclosure to the Postmaster General the next day. The Disclosure reveals new facts, but it does not stand alone. Instead, it is amply corroborated by the public record, including recent reporting on the systems’ design and build process.⁵

Three relevant themes emerge from the Disclosure. *First*, even if the new systems work exactly as designed, they will deny ballots to eligible voters. The systems were designed with a pair of chokepoints: one that can block ballots from even being brought to USPS facilities, and another that can reject an entire mailing—with tens of thousands of ballots or even more—when a barcode on a single sampled envelope fails to properly scan. *Second*, the systems will almost certainly fail, because they are the product of a rushed, secretive, and chaotic development process. The systems are largely untested and, as of the hearing below, still inoperable. *Third*, the systems were built in defiance of court orders, and the Postal Service appears to have misled the courts and Congress about its compliance with those orders.

I. Overview of the systems designed to implement the Order and the Rule.

⁵ See generally Jen Fifield, New Mail Voting Rules Moved Forward Despite USPS Officials’ Concerns About Mass Disenfranchisement, ProPublica (Sept. 2, 2026), <https://perma.cc/PPV3-NN4W>.

The Order’s Section 3 directed the Postmaster General to propose a rule under which States would give the Postal Service lists of voters approved to vote by mail; the Postal Service, in turn, would furnish States with lists of the voters “enrolled” with the Postal Service; and the Postal Service would “not transmit the ballot of any voter” not so enrolled. App. 2a–3a.

The Rule purports to carry out that directive. Under the Rule, every federal-election ballot sent by mail must be enclosed in an envelope bearing a unique Intelligent Mail barcode (“IMb”) and the official Election Mail logo; state election officials must submit their envelope designs to the Postal Service for pre-approval; election officials must upload the name, address, and barcode of every voter receiving a mail ballot to a new Postal Service database, the Federal Ballot Mail Portal; and the Postal Service must verify, before accepting any outbound ballot mailing, that the barcodes on the envelopes match the data in the Portal. 91 Fed. Reg. 54990–91; App. 7a–8a. If the barcodes on a mailing do not match, the Postal Service will not mail it. 91 Fed. Reg. 54991; App. 8a.

To implement that last requirement, the Postal Service undertook to roll out an entirely new set of information technology systems—the kind of massive project that ordinarily takes nine months to a year, or even longer, to design, build, test, and bring online. Disclosure ¶ 14. The Postal Service needed to build the Portal; it needed to establish connections between the Portal and existing bulk-mail systems, so that the manifest a local election official uploads for each batch of ballots can be verified against the Portal’s data before the official brings the batch to a post office; and it

needed a procedure, and scanning equipment and protocols, for Postal Service clerks to perform a second round of verification, checking physical envelopes against the data in the Portal. *Id.* ¶¶ 3, 11–13.⁶

II. The verification procedures are designed to disenfranchise lawful voters.

Under the Rule, state election officials must upload into the Portal the name, address, and unique IMb associated with every voter who will receive a mail ballot. 91 Fed. Reg. 54991. Per the Postal Service’s plans, as revealed by the Disclosure, there is then an initial verification step that appears nowhere in the text of the Rule: Before election officials can even bring outgoing bulk mailings of ballots to a postal facility for mailing, they must upload a manifest with the names of the intended recipients, and match that manifest with the data in the Portal. Disclosure ¶¶ 11–12. A mismatch means the ballots do not pass Go. *Id.*

The second verification point occurs when election officials bring a batch of outgoing mail ballots to a postal facility. There, Postal Service employees are to scan barcodes and confirm that they match the Portal’s data. 91 Fed. Reg. 54981. The Rule describes this step as “straightforward.” *Id.* It says that “[s]canning a barcode generally takes less than a minute per mailpiece,” that “the verification process should take no more than a few hours for larger mailings,” and that a mailing which fails may be corrected and “resubmit[ted].” *Id.* 54981, 54991. Asked in the rulemaking

⁶ The Whistleblower speaks to the verification process and the related systems, but does not and cannot speak to envelope design review, to the States’ ability to comply, or to anything outside the Postal Service.

what share of ballots it expected to reject, the Postal Service “decline[d] to conduct, publish, or otherwise disclose” any “anticipated ballot-rejection rate.” *Id.* 54988.

Three planned features of this second verification step do not appear in the Rule. The Whistleblower knows them from direct knowledge of the work of building the implementation systems. Disclosure ¶ 26. Together, those three features mean that systems operating exactly as intended, with no software failure of any kind, will reject entire batches of ballots if they find even a single mismatch. And batches can be enormous. The Disclosure describes batches of tens of thousands of ballots, Disclosure ¶ 3(c), and mailings can be far larger than that: Maricopa County, Arizona, “often sends out more than 2 million ballots at a time in its initial mailing.”⁷

First, the verification standard is zero percent failure: a batch is deemed non-compliant if a single envelope fails the barcode verification. Disclosure ¶¶ 3, 26–27. *Second*, the unit of rejection is the batch, not the ballot. When one sampled barcode fails to scan, or scans but is not found in the uploaded Portal data, the Postal Service will reject the entire mailing. *Id.* ¶ 27. The State is expected to take the whole batch back, locate and cure the single ballot, upload a new batch manifest, and restart the process. *Id.* ¶¶ 28, 35. The Postal Service’s systems and process, as designed and built, do not allow curing a batch at the postal facility. And as Senator Blumenthal observed in forwarding the Disclosure, “there is no clear process by which state election officials or voters themselves can challenge the rejection,” so voters “may not even be aware that their ballots have been rejected, or were part of a rejected batch, until it

⁷ Fifield, *supra*, note 5.

is too late to secure an alternative ballot or vote in person.”⁸ *Third*, the verification requires sampling. Postal Service clerks are to scan a fixed number of pieces from each batch, on a schedule that as of the final week before the planned September 1 launch called for 15 sampled pieces from a batch under 1,000; 350 from a batch of 1,000 to 10,000; and 400 from a batch above 10,000. Disclosure ¶ 32. Those numbers were still provisional in the week before that planned launch. *Id.* ¶ 33.⁹

Barcode scanning is not error-free, and the Postal Service knows it. Its Inspector General audited package scanning in 2017 and found that one scanner issue contributed to errors in five percent of audited scans, with additional failures caused by signal obstruction. Disclosure ¶ 31 & n.25.¹⁰ Information available to the Whistleblower also appears to reflect concern that some of the scanners to be used to validate ballot samples have connectivity and docking limitations, so that not all sampling can occur in real time. Disclosure ¶ 31. A Postal Regulatory Commission

⁸ Disclosure at 3. The Rule provides only that mailers “will be informed of the escalation procedures should they decide to challenge a rejection.” 91 Fed. Reg. 54981. The District Court found that the Rule “excludes any detail as to how the USPS intends to handle States’ disagreement with the USPS’s feedback” and that there is an “absence of an appeals or escalation process.” App. 38a. The Postal Service has also “declined to publish a contingency plan for if the Ballot Portal is not operational or user-error impedes the process.” App. 41a.

⁹ The Rule does not mention sampling, though it assumes it. 91 Fed. Reg. 54981. Two people who attended internal Postal Service committee meetings on the Rule have separately described the same design to the press: “USPS officials confirmed it was possible that one ballot with a bad barcode or wrong voter information within the more than 2 million ballots could delay the entire mailing,” and “[s]ome in the meetings recommended trying to limit harm to voters by not rejecting the entire batch.” Fifield, *supra*, note 5.

¹⁰ USPS Office of Inspector Gen., Audit Rep. No. DR-AR-18-001, *Package Delivery Scanning—Nationwide* 12–14 (Oct. 27, 2017), <https://perma.cc/HW3G-XJML>. That audit concerned package-tracking scanners, not letter-mail barcodes. Amicus cites it for the proposition that the Postal Service’s scanning equipment produces errors at measurable rates, not for a specific error rate for ballot envelopes.

member with thirty-five years at the Postal Service put the point cleanly, before the Disclosure was made: “No system works at 100% accuracy.”¹¹

Simple math shows that, under a zero-tolerance standard and with the Postal Service’s planned sampling rates, rejecting batches of ballots will be the rule, not the exception. If one piece in a hundred fails to scan, a 400-piece sample—the prescribed sample size for a batch of more than 10,000—will virtually always fail.

The systems described in the Disclosure diverge radically from Postal Service precedent. In prior elections, officials would enter a mailing into the Postal Service’s existing bulk-mail systems and bring it to a postal facility, where checks were directed at confirming postage and mail class—not at stopping the mailing. Disclosure ¶¶ 9–10. Historically, where bulk mailing checks involved sampling, some have tolerated a twenty-percent failure rate. *Id.* ¶ 10 & n.14. Amicus’ review of the Postal Service’s published acceptance procedures found no other process or policy that required rejecting an entire mailing because of a single failed scan. *Id.* ¶¶ 10, 29 & n.24.

III. The systems are the product of a rushed, secretive, and chaotic process.

If the systems work as intended, then, many legitimate ballots will never even be sent to legal voters. But the systems are unlikely to work even as well as intended, because the design and build process was rushed and chaotic—and the testing process was virtually nonexistent. None of the design choices described above was disclosed

¹¹ Eric Katz, *Postal Officials Say Trump’s Mail-Ballot Push Will Create Widespread Errors*, NOTUS (Aug. 27, 2026), <https://perma.cc/2NW4-8KU4> (quoting Commissioner Thomas Day).

in the rulemaking. They emerged from a development process that ran on oral instruction, without written requirements, on a schedule driven by an unrealistic launch date rather than by the project's own complex demands.

The Executive Order issued on March 31, 2026, and directed a final rule by July 29. App. 2a. The Postal Service proposed the Rule on June 2. App. 4a. Regular meetings of the development teams responsible for building the Federal Ballot Mail Portal and the related verification systems did not begin until about June 15. Disclosure App. A ¶ a. Work stopped on or about June 25, when employees were told that a court had enjoined the Order's implementation, and resumed on or about July 29. *Id.* ¶ 37. On or about August 6, Postal Service leadership set the Portal's launch date for September 1. *Id.* App. A ¶ 1. So there were only about eleven weeks, from the first development meeting to launch, to build and test a system designed to handle every mail ballot in the country. *See* Disclosure ¶ 4.

Developers had only a fraction of the time it should take to design and build systems like these. The Disclosure explains that an ordinary development cycle for a project of this complexity at the Postal Service runs nine months to more than a year; routine projects involving software patches or price changes are usually scheduled to take about eight months. Disclosure ¶ 14. A Postal Regulatory Commissioner said the same thing publicly, on August 27: the Postal Service "typically would spend at least a year rolling out a new system like the one that will be required for ballot

screening, hold a conference for all impacted jurisdictions and provide training to 8,000 election boards.”¹²

The Government’s self-imposed time pressure showed in defective or nonexistent work processes. Leadership refused to give developers written specifications for the systems they were building, leaving them to “glean requirements from opaque comments at meetings.” Disclosure App. A ¶¶ k, m. Technical requirements were “moving target[s],” changed from one day to the next and still incoming on August 21, eleven days before the projected launch date. *Id.* App. A ¶¶ b, n, r. Basic questions went unresolved, including whether a given validation problem was a “warning,” which lets a ballot through, or an “error,” which stops it. *Id.* App. A ¶ k. Teams worked in isolation, so that components did not fit together when combined. *Id.* App. A ¶ p. One example: the system was meant to have a single toggle to turn the new verification process on or off. In the final week before September 1, the teams discovered that two groups had each built their own. It was too late to fix, so the final build has two toggles, and both must be flipped to turn the system off. *Id.* ¶ 18.¹³

¹² Katz, *supra*, note 11. The Postmaster General has since acknowledged “the compressed project timeline” and “an accelerated development schedule.” Statement from Postmaster General David Steiner Regarding Concerns About Ballot Mail for Federal Elections (Sept. 4, 2026) (“Steiner Statement”).

¹³ Questions as basic as the file format States should use to upload voter lists, and whether to supply mailing or residential addresses, remained open in the first week of September. Fifield, *supra*, note 5. As of the September 3 hearing, the District Court could not determine “whether States will have the ability to migrate data from their electronic voter registration systems . . . or whether they will have to manually enter each voter’s information.” App. 39a.

Testing was one casualty of the chaos. Normally, the Postal Service will test each component of a system; test the assembled system internally; move it to a customer acceptance testing environment where outside users can try it; and only then release it. Disclosure ¶ 16. Here the components were not sufficiently tested before assembly, and the complete systems were first compiled in the customer testing environment the week of August 24. *Id.* The schedule left four days for customer testing—against forty-seven set aside for another Postal Service project the Whistleblower is aware of. *Id.* ¶ 17; *id.* App. A ¶ t. By August 22, the developers had concluded that there was no time left to test, and that the Portal would crash if it were released that day. *Id.* App. A ¶ s. When a team member raised the lack of testing with a senior official, the answer was dogma, not a plan: “[w]e cannot fail,” “everything had to work perfectly,” and “there was no other choice.” *Id.* App. A ¶ g.

The systems failed. On September 3, the Postal Service told the District Court that the Portal was not yet operational and would be made available “sometime next week.” App. 38a, 46a (citing Monteith Decl. ¶ 3). That same day, Government counsel could not say whether the systems were ready to go.¹⁴ The Government’s own application acknowledges that even if a stay issues, the Postal Service will need more time—“a brief period,” according to the Government—before the systems can operate, because its employees have not been trained to conduct the verification. Appl. 30.

¹⁴ See Yunion Rivas, *USPS Says Mail Ballot Portal May Launch Next Week After DOJ Fumbles Questions in Court*, Democracy Docket (Sept. 3, 2026), <https://perma.cc/9B5V-4GLT> (reporting that counsel could not make “specific representations” about readiness and that the court asked: “We’ve been here for a week and you can’t tell me the government is ready to go?”).

IV. The systems were built in defiance of court orders and contrary to the Postal Service’s representations about compliance.

The Postal Service’s slapdash process was driven entirely by the desire to have the systems in place for the November 3, 2026, federal elections. There could be no other reason for setting a do-or-die September 1 launch date; the first ballots for that election went into the mail on September 4. Appl. 29–30. To meet that self-imposed deadline, the Postal Service was apparently willing to defy federal court orders.

When it published the Rule, the Postal Service promised that it would “not take actions to implement the rule specifically for the 2026 election unless and until the government obtains relief” from injunctions. 91 Fed. Reg. 54966; App. 7a n.10. By then, the September 1 launch directive was two weeks old, and it appears that the assembled system was precipitously pushed into (all-too-brief) customer testing three days later, despite the Postal Service’s promise to comply with the injunctions. Disclosure App. A ¶¶ 1, t.

The same pattern preceded the Rule. In July, with an injunction in force, the Postal Service told Senators that it was abiding by the court rulings that had halted the Executive Order. At the same time, the president of the American Postal Workers Union reported that the Postal Service’s information-technology teams were working on the Portal “behind the scenes,” and the Postal Service declined to say whether work related to the Order was proceeding.¹⁵

¹⁵ John Hanna, *Trump’s Attacks on Mail Balloting and Concerns Over Delays Turn Midterms Spotlight on Postal Service*, Associated Press (July 30, 2026), <https://perma.cc/Z6L4-SFJD>.

The Whistleblower’s experience matches the union’s account. The Disclosure shows that work resumed on or about July 29 without any explanation of what had changed, and without word of any order having been lifted. Disclosure ¶ 37. Work continued through the injunction entered August 11 and after the temporary restraining order of August 27, which barred the Postal Service from taking “further preparatory steps” toward the enjoined verification process for this election. *Id.* ¶¶ 5, 39.

The District Court has already found that the Postal Service fell short of compliance. On August 25, addressing the Postal Service’s completion of the rulemaking while the August 11 injunction expressly barred “initiating or completing rulemaking,” the court found that “Defendants violated the preliminary injunction,” that they “cannot contend that they misunderstood the scope of the court’s order,” and that they had “feigned complete compliance” with the earlier injunction in their July 27 application to this Court, where they described the agencies as “unable to take steps to carry out the Executive Order.” Memorandum and Order at 2–3, *League of Women Voters of Mass. v. Trump*, No. 1:26-cv-11549 (D. Mass. Aug. 25, 2026), Dkt. 201 (hereafter, “Dkt. 201”).

SUMMARY OF ARGUMENT

The Disclosure speaks to every *Nken* factor, showing why the Government cannot meet its heavy burden to win an election-altering stay.

First, the Government is not likely to succeed on the merits. Its argument rests on the mischaracterization that the Rule is a routine mail regulation because it

imposes “modest envelope-design and addressee-information requirements.” The Disclosure shows what the Rule does as built. It places two federal checkpoints between a State’s ballots and its voters, applies a zero-tolerance standard at the second, and will reject an entire mailing—tens of thousands of ballots—if a single sampled envelope fails to scan. Nothing in the Postal Service’s practice, and nothing in the Government’s analogies to cremated remains, replica explosives, or postage, works that way. An agency that can unilaterally block mail-in voting for thousands of indisputably legal voters is regulating the manner of an election, a power the Constitution assigns to the States and Congress and that Congress has never delegated to the Postal Service.

Second, the Government faces no irreparable harm from the injunction. The Disclosure shows that the injunction is not what prevents implementation: the systems were not operational as of September 3, the day of the hearing below; were built in about eleven weeks with four days of testing; and were expected by their own developers to fail. The Government concedes that even after a stay it cannot operate its systems until employees are trained. To the extent the calendar now forecloses implementation for November 2026, the Government set the calendar, and harm of a party’s own making “is not properly the subject of inquiry on a motion for stay.”

Third, the public interest and the equities weigh against a stay. The Government dismisses the District Court’s harm findings as speculation by officials without knowledge of the Postal Service’s plans. The Disclosure is that knowledge, and it confirms the District Court’s findings. A stay would make mandatory, in the

middle of the election season, a not-yet-operable process designed to return conforming ballots in bulk. And the Government asks the Court to stay an injunction it has been found to have violated, on assurances of compliance the District Court found feigned. That is not a record on which equity grants extraordinary relief.

ARGUMENT

I. The Disclosure confirms that the Rule regulates elections.

The Government’s merits argument recharacterizes game-changing voting barriers as simple logistics. The Government does not contend that Congress delegated any Elections Clause power to the Postal Service. It says that none was needed, and it accepts that the constitutional question follows the statutory one: “if the Postal Service’s rule is authorized by Congress, then that necessarily means there is no Elections Clause . . . problem.” Appl. 26. But the Disclosure shows that the Rule, as implemented, is beyond the Postal Service’s general authority over the mail: it is not just a “modest” design regulation. Absent statutory authority, then, and on the Government’s own account, the Rule is both ultra vires and unconstitutional.

A. The Rule gives the Postal Service a veto over the transmission of mail ballots.

The Postal Service’s implementation of the Rule inserts two federal chokepoints on outgoing mail ballots. At the first, the manifest for each batch of ballots is compared against the data in the Federal Ballot Mail Portal; a batch that does not return “a 100% match” cannot be brought to a postal facility at all. Disclosure ¶¶ 12 & n.16, 23. At the second, when local election officials bring ballots to postal

facilities, clerks scan a sample of envelopes at the counter and compare them to the Portal's data. Disclosure ¶¶ 11–13, 23, 25.

The Disclosure supplies what the Rule omits: at the second chokepoint, the standard is zero tolerance, and the unit of rejection is the batch. If one sampled envelope fails to scan, or scans but is not found in the Portal, the Postal Service stops scanning and rejects the whole mailing, which may hold tens of thousands of ballots. Disclosure ¶¶ 3(c), 26–28, 32. There is no provision for cure at the counter: state election officials must start over. *Id.* ¶¶ 3(c), 28, 35. The voters whose ballots were not sent may not learn that they were returned until it is too late to vote another way. Disclosure at 3; *see supra*, at 6–7.

An agency empowered to decide wholesale whether a State's entire batch of ballots leaves the building—even when almost all of those ballots are indisputably compliant—is deciding whether States can conduct voting by mail. That is not mail regulation; it is regulating the manner in which States hold their elections, a power reserved by the Elections Clause to Congress and the States. U.S. Const. art. I, § 4, cl. 1.

B. Nothing in the Postal Service's prior practice resembles this wholesale batch rejection.

The Government argues, by defective analogy, that the Rule merely executes the authority granted USPS by Congress. According to the Government, the Postal Service may prescribe envelope standards for ballots just as it prescribes packaging and handling rules for cremated remains and replica explosives. Appl. 16–17, 21–22, 26. The analogy fails doctrinally: the Constitution assigns the regulation of elections

to the States and Congress, and assigns the regulation of cremated remains to no one in particular.

The analogy fails practically, too. In every example the Government offers, the USPS’ regulations are applied to particular pieces of mail—not to batches. Pieces that meet the conditions are mailed; pieces that do not are returned, and the sender may correct and resubmit. The Rule as built works differently, through a kind of guilt by association. A ballot envelope that satisfies every Rule requirement is rejected if it travels with one that does not, or with one whose barcode failed to read. Disclosure ¶¶ 26–27. None of the Government’s analogies has that feature, and the Government does not claim otherwise.

The systems designed to implement the Rule diverge from the Postal Service’s own prior practices for bulk mail. Before the Rule, ballot mail entered the mailstream as bulk First-Class mail, and acceptance checks were directed only at postage and mail class. Disclosure ¶¶ 9–10. Where bulk mail checks involve sampling, some tolerate a twenty-percent failure rate. *Id.* ¶ 10 & n.14. And there is no precedent for returning an entire mailing because of a single failed scan, or for checking a mailer’s manifest against a separate list the mailer must first supply. *Id.* ¶¶ 10, 29.

The District Court held that exercising authority of this consequence, in this domain, requires a clear statement from Congress. App. 29a & n.34 (citing *Learning Resources, Inc. v. Trump*, 607 U.S. 229, 242–43 (2026) (plurality opinion), and *West Virginia v. EPA*, 597 U.S. 697, 744 (2022) (Gorsuch, J., concurring)). The Government’s response is to echo the Rule’s self-characterization as “modest

envelope-design and data reporting standards.” Appl. 23. But that description does not reflect reality. The Disclosure shows how the Rule will operate—a radical new set of practices, not a modest tweak.

When Congress enacted the Help America Vote Act, it left election administration authority decentralized to make it “impossible for a single centrally controlled authority to dictate how elections will be run,” to allow local officials to “tailor their procedures to meet the demands of disparate and unique communities,” and to ensure that citizens “know whom to hold accountable.” H.R. Rep. No. 107-329, at 32 (2001); App. 26a. The Disclosure describes the opposite of Congress’ vision: one national database through which every mail ballot must pass, one rejection standard applied to every jurisdiction, a cure process that assigns the work back to the States, and design choices that were never disclosed in the rulemaking. 91 Fed. Reg. 54988; Disclosure ¶ 26. An arrangement that defies express congressional intent should not be inferred from statutory silence.

C. The Disclosure disproves the premise behind the Government’s nonmailability argument.

The District Court held that the Rule creates a category of nonmailable matter that Congress did not authorize. App. 30a–31a. The Government answers that the Rule renders nothing nonmailable, because “[a]ll outbound federal-election ballot mail that meets the Rule’s requirements will be accepted, processed, and delivered as before.” Appl. 22.

The Disclosure shows why that premise is wrong. Under the process the Disclosure describes, a ballot envelope that meets every requirement is rejected if

another envelope in the same batch fails a scan. Disclosure ¶¶ 26–27, 32. Contrary to the Government’s insistence, compliance does not ensure transmission. The Government’s postage analogy, Appl. 22, shows the difference: the customer who pays the postage mails the package, but the State that meets every condition of the Rule may still find its ballots returned. A rule under which conforming mail is rejected because of other, unrelated mail is not a condition on acceptance of the conforming mail. It is a categorical bar, which only Congress can impose. App. 30a–31a.

II. The Disclosure shows that the Government faces no irreparable harm from the injunction.

According to the Government, it cannot implement the Rule for the November election without a stay: ballots are entering the mail and cannot be recalled, and this Court has already said that reversal “would come too late for the 2026 midterms.” Appl. 5, 29 (quoting *Trump v. California*, No. 26A124, 2026 WL 2473573, at *4 (Aug. 24, 2026)). The Disclosure undercuts that claim about irreparable harm, in two ways. *First*, the Postal Service’s own chaotic processes, not the injunction, are what hindered the systems’ implementation. *Second*, the Government itself set the calendar that now purportedly forecloses implementation.

A. A stay would not cure the Government’s claimed harm, because the systems do not yet work.

The Government’s irreparable harm argument assumes that, but for the injunction, the Postal Service would be verifying ballot mailings by now. The record says otherwise: the systems are not ready, and would not be ready even if the injunction were lifted today. *See supra*, at 10–12. What remains enjoined is the

mandatory operation of a system that, on the Government's own showing, could not operate on September 3, the day of the hearing below. A stay, then, would not restore the Rule to operation. It would make mandatory a verification process that has not been tested and that its own developers expect will fail. Disclosure App. A ¶ s. That is not relief from harm. It is the harm the District Court found, transferred to voters. App. 45a.

B. The Government's own choices created any time pressure here.

Harm of a party's own making does not support a stay. In granting the Government's application in *Dep't of Educ. v. California*, this Court held that any irreparable harm the respondents would suffer from declining to keep their programs running "would be of their own making," and that "[s]uch self-imposed costs are not properly the subject of inquiry on a motion for stay." 604 U.S. 650, 652 (2025) (per curiam) (quoting *Cuomo v. NRC*, 772 F.2d 972, 977 (D.C. Cir. 1985) (per curiam)). A stay "is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009). And a party seeking interim relief "must generally show reasonable diligence," a requirement "as true in election law cases as elsewhere." *Benisek v. Lamone*, 585 U.S. 155, 159 (2018) (per curiam); see 11A WRIGHT & MILLER'S FEDERAL PRACTICE & PROCEDURE § 2948.1 (3d ed. Apr. 2026) ("a party may not satisfy the irreparable harm requirement if the harm complained of is self-inflicted").

The Disclosure shows that the Government's claimed harm is a product of its own self-imposed calendar. The Executive Order issued on March 31, only seven

months before the midterm elections. App. 2a. The Postal Service did not propose a rule until June 2, App. 4a, and the teams responsible for building the system did not begin meeting until June 15. Disclosure App. A ¶ a. The Rule was published on August 26, less than seventy days before the election, App. 7a & n.10, and leadership set the September 1 launch date only on August 6. Disclosure App. A ¶ 1. The Government cannot blame anyone else for its belated decision to embark on an ambitious project and for its months-long failure to launch. The costs of that poor project-planning are self-imposed and “not properly the subject of inquiry on a motion for stay.” *Dep’t of Educ.*, 604 U.S. at 652.

The Disclosure also refutes the Government’s suggestion that the District Court’s orders are “partly to blame” for the Postal Service’s unreadiness. Appl. 32. Work resumed on July 29 while the June 25 injunction was in force, continued through the injunction of August 11, and continued after the August 27 temporary restraining order. Disclosure ¶¶ 5, 37–39. The rulemaking itself was completed while the Postal Service was enjoined. Dkt. 201 at 3. Whatever else may be said of the Government’s conduct, *see infra* Part III, it forecloses the claim that court orders are responsible for the project’s delays.

III. The Disclosure shows that the public interest and the balance of equities weigh against a stay.

The Government contends that the Court balances the equities only in close cases, Appl. 6, 31, and that this is not one. Parts I and II of this Argument, *supra*, refute the second point. As to the first, election cases are the setting in which this Court has weighed the equities most heavily. *Purcell* rests on consequences alone:

late changes to the rules of an election “can themselves result in voter confusion and consequent incentive to remain away from the polls.” *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam). *Purcell* need not be a binding rule to matter here: it reflects the Court’s judgment that, in the weeks before an election, the equities can make all the difference. And here, as the Disclosure highlights, the equities and the public interest militate in favor of keeping the injunction in place.

A. The Disclosure substantiates the District Court’s harm findings.

The Disclosure shows that allowing the Postal Service to resume implementation of the Rule would disrupt the November 2026 election and threaten the “disenfranchisement of millions of United States citizens who seek to vote by mail.” App. 45a. The District Court found that compliance with the Rule for this election would be “virtually impossible,” and that disenfranchisement of eligible voters was “practically inevitable,” because “any minor malfunction will result in the denial of mail ballots.” App. 44a–45a. The Government claims that the District Court’s findings on harm rest on “speculative fears, mischaracterizations of the record, and delays occasioned by its own improper orders,” and on the views of state officials “who lack direct knowledge of the Postal Service’s implementation plans.” Appl. 6, 32. But the Disclosure reflects direct knowledge, and it confirms the findings the Government calls speculation.

The Disclosure shows that the predicted malfunction is almost inevitable—baked into the design and rollout of the new systems. As the Whistleblower explains, the problems with the Postal Service’s new system began with its “slapdash software

development process as the USPS attempted to create [a] complex IT system, with multiple points of ballot review, in a matter of weeks.” Disclosure ¶ 14; *see id.* ¶¶ 16–18.

The risk that this “slapdash” process will disable mail-in voting is compounded by the likelihood of failure in the two new ballot verification processes. *Id.* ¶ 22. As shown above, the manifest verification process is a prerequisite to ballots even reaching the post office. *Id.* ¶ 23. The second process is characterized by batch-rejection, a zero-percent failure tolerance, and sampling rather than individual checking. *See supra*, at 6–7. After a single failed barcode verification, the Postal Service will stop the sample scanning and reject the entire batch of ballots. Disclosure ¶¶ 26–27. This is notwithstanding the fact that zero-percent failure is far stricter than documented error rates for USPS scanning, *see* Disclosure ¶ 31 & n.25; *supra*, at 8, and appears without precedent for IMb scanning. *Supra*, at 8. Because of the “apparently sloppy and rushed manner in which the Federal Ballot Mail Portal and supporting IT systems are being built,” “[p]otentially millions of American voters may not receive their mail-in ballot this election cycle in a timely manner, or at all.” Disclosure ¶ 8. Mass voter disenfranchisement is a quintessential harm to the public interest, and the risk of that harm weighs heavily against the Government’s stay request.

The implementation’s deficiencies matter on the other side of the scale as well. The Government’s asserted injury is that the injunction bars “an important federal policy to protect the mails from being used to commit voter fraud.” Appl. 13. But a

verification system that does not work protects against nothing. The Postal Service cannot run the system it built, and its own developers expected it to fail. *Supra*, at 20. What remains of the Government’s interest is that it has been enjoined from enforcing a rule it considers important—an argument that the Government is harmed because it says it is harmed. That interest cannot outweigh the “foreseeable catastrophic disruption to our coming nationwide elections” that the Disclosure describes. Disclosure ¶ 40.¹⁶

B. The Government’s conduct weighs against it.

A stay is equitable relief, and stay applicants “must come into court with clean hands.” *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 244 (1933) (quoting 1 J. Story, *Equity Jurisprudence* § 98 (14th ed.)).

The District Court found that the Government violated the August 11 injunction, and had “feigned complete compliance” with the June 25 injunction. Dkt. 201 at 2–3. The Disclosure shows that the rulemaking was not the only work that went forward in the face of court injunctions. Portal development resumed on July 29, while an injunction was in force. Disclosure ¶ 37. It continued through the August 11 injunction and, the Whistleblower reports, after the August 27 temporary restraining order that barred “further preparatory steps” for this election. *Id.* ¶¶ 5, 39; Memorandum and Order at 10, *League of Women Voters of Mass. v. Trump*, No. 1:26-cv-11549 (D. Mass. Aug. 27, 2026), Dkt. 218.

¹⁶ Contrary to the Government’s suggestion, Appl. 13, 30, *Nken* does not help the Government here. It held that the harm-to-others and public-interest factors “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. Here the Government is the applicant. The public interest is weighed against it, not folded into its account of the Executive’s goals.

The calendar refutes any Government suggestion that the work on the Portal while the injunctions were in force was aimed at elections after November 3. A system built for 2028 does not need an urgent launch date of September 1, set on August 6, or just four days of testing. Disclosure App. A ¶¶ 1, t. And the Government's answer leads nowhere the Government wants to go. If the Portal was built for this November, then the Rule's assurance to the courts was not accurate when made, and the work after August 27 was barred by the temporary restraining order. If the Portal was built for later elections, then the Government's claimed harm rests on the delay in deploying systems it says were not built for this cycle.

The Government asks this Court to stay the injunction it already violated, on both the strength of assurances about compliance that the District Court found feigned and assurances about readiness that the Disclosure contradicts. That is not a record on which equity grants extraordinary relief.

CONCLUSION

This Court should deny the stay application.

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Respectfully submitted,

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