

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.

On Application for Stay of Injunction of the Order of the
United States District Court for the District of Massachusetts

**BRIEF OF PROFESSORS EDWARD B. FOLEY, RICHARD L. HASEN,
PAMELA S. KARLAN, AND DOUGLAS LAYCOCK AS *AMICI CURIAE* IN
SUPPORT OF RESPONDENTS STATE OF CALIFORNIA, ET AL.**

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INTEREST OF *AMICI CURIAE*¹

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¹ No party’s counsel authored this brief in whole or in part; no party, counsel for a party, or any person other than amici curiae or their counsel made a monetary contribution toward the preparation and submission of this brief. *Amici* submit this brief in their personal capacities; organizations are listed for identification purposes only.

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Laycock and Hasen are co-authors of the casebook, *Modern American Remedies* (6th edition 2025) and are co-Reporters on the American Law Institute's, Restatement (Third) of Torts, Remedies.

SUMMARY OF THE ARGUMENT

This is an application for emergency interim relief in which the Applicant's asserted irreparable injury is so speculative and weak—and the balance of the equities and the public interest so one-sided in favor of Respondents and the public—that the Court may deny a stay in its judicial discretion without undertaking an in-depth consideration of the constitutional and statutory merits questions presented. The Court did just that in *Winter v. Nat. Resources Defense Council, Inc.*, 555 U.S. 7, 23-24 (2008), denying preliminary relief under the balance of the equities despite assuming applicants could show irreparable injury and “even if [applicants] are correct on the underlying merits.” *Id.* at 31 n.5; *see also NetChoice, LLC v. Fitch*, 145 S. Ct. 2658, 2658 (2025) (Kavanaugh, J., concurring in the denial of application to vacate stay) (interim relief not warranted despite Applicant's showing that it was likely to succeed on the merits because Applicant “has not sufficiently demonstrated that the balance of harms and equities favors it at this time”).

Applicant argues that the district court's preliminary injunction causes irreparable injury by denying USPS the chance to implement its rules in time for the

2026 midterms (Appl. 29; *see* Dkt. No. 156 at 23)² to prevent the “federal mails” from being “used to perpetuate voter fraud.” Appl. at 5. Yet, this asserted injury is slight and speculative at best. Applicant offered no evidence in the district court showing how or that the USPS rule would stop any appreciable amount of voter fraud or even that voter fraud through the mails is a widespread problem that USPS should address (assuming it has the authority to impose conditions on mailing for that purpose, which it likely does not). Worse, the undisputed evidence presented to the district court—and ignored by Applicant here (*see* Appl. 29-30)—shows that USPS is still not prepared to implement its new rule or do so accurately and efficiently, even as states have begun mailing out their ballots. (*See* Part II *infra*.) Whether or not the rule ultimately could be adequately implemented for the 2028 elections, the rule is unlikely to serve any significant governmental interests in 2026, the subject of this application.

In contrast to Applicant’s weak and speculative injury, the harm to the states and to voters is enormous, as the rule threatens to disenfranchise millions of elderly voters, disabled voters, military voters and all others including the most vulnerable who depend on mail voting, in both red and blue states.

This disenfranchisement risk is literal, not hyperbolic. Under the rule’s *envelope requirements*, USPS will reject all ballots from states that, at this late date, cannot design, get USPS approval of, and print and pay for new ballot envelopes with

² All citations to the docket are to the district court docket in *State of California v. United States Postal Service*, unless otherwise noted.

“Intelligent Mail barcodes” with just days to go before the mailing of ballots. Under the rule’s *portal and matching requirements*, USPS officials will reject ballots mailed from states to voters unless the relevant election jurisdiction has, ahead of time, uploaded the name and registered mailing addresses for *all* the voters in question to USPS. The portal is not operational, much less fully tested in real election conditions, meaning that if the rule were in effect USPS could not accept *any* ballots from *any* states. Even once the portal is ready, the undisputed evidence shows that election administrator compliance is “effectively impossible” at this late date so close to the election. Patrick Decl. ¶ 38; Dkt. No. 171-3. Election administrators would need to find a way to export their voter lists and upload them to the (so far nonexistent) portal. Even in those states that could comply under tremendous time pressures, the rule requires USPS to reject an entire batch of ballots if there are *any* discrepancies between a single submitted ballot and the state’s list of voters with their registration addresses. Yet, discrepancies are inevitable when states mail ballots to voters who have registered after the state uploaded its list to the portal, when states mail ballots to voters’ temporary addresses while traveling, and when states make predictable, inconsequential administrative mistakes (or even follow different conventions such as using “Apt. 2” instead of “Apt. #2”).

Applicant demonstrates particular *chutzpah* in claiming that states should have “started making at least some preparations to comply months ago” (Appl. 31-32) with the expected rule after Applicant successfully convinced this Court just two weeks ago that earlier challenges to the *future* rule were unripe and that states had

no standing because any steps they took to comply with the expected rule were based on speculation and not concrete injury. *See Trump v. California*, No. 26A139, slip op. at 4 (U.S. Aug. 24, 2026).

Amici are hard-pressed to think of another case in their decades of studying Remedies and Election Law in which the balance of the equities and the public interest point so strongly against this Court granting emergency relief. Applicant’s repeated assertion that the new USPS election rule is “modest” (Appl. 2, 7, 13, 17, 22, 23, 24, 25, 27) does not make it so. *Cf.* Jonathan Swift, *A Modest Proposal* (1729), Project Gutenberg, <https://tinyurl.com/2jmeysf6>.

An applicant is not entitled to “extraordinary” relief as a matter of right. *Winter*, 555 U.S. at 22 (preliminary injunctions); *Nken v. Holder*, 556 U.S. 418, 432 (2009) (stays). Instead, the applicant bears the burden of showing that circumstances justify the exercise of judicial discretion, *Nken*, 556 U.S. at 432, something that an applicant cannot demonstrate when the balance of the equities tip sharply against it and when the proposed extraordinary relief disserves the public interest. *See Winter*, 555 U.S. at 32-34; *Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571, 580 (2017) (per curiam) (“*IRAP*”).

The grant or denial of a stay is not application of a mechanical rule but the exercise of discretion by a court sitting in equity. When courts collapse their decisions on preliminary relief into consideration only of the merits, they miss the essence of what it means for a court sitting in equity to exercise judicial discretion. *See* Samuel L. Bray, *Preliminary Injunction Realism*, 44 Rev. Litig. 203 (2025); Samuel L. Bray,

The Purpose of the Preliminary Injunction, 78 Vand. L. Rev. 809 (2025).

Applicant is correct that this “is not remotely a close case” (Appl. 6), but its analysis is backwards. Here, the government’s interest in a rushed mail-ballot rule rollout that has not been shown likely to prevent any appreciable voter fraud pales next to the mass disenfranchisement and electoral chaos that looms ahead if this Court lifts the stay. This Court should not sanction the pointless turmoil that would follow.

ARGUMENT

I. This Court Has Consistently Held That an Applicant Seeking the Extraordinary Relief of a Stay Cannot Meet Its Burden When the Balance of the Equities Tilts Sharply Against It and When Granting a Stay Will Disserve the Public Interest.

As this court explained in *Nken*, 556 U.S. at 433, “[a] stay is not a matter of right, even if irreparable injury might otherwise result. It is instead an exercise of judicial discretion, and [t]he propriety of its issue is dependent upon the circumstances of the particular case” (citation modified); *see also Winter*, 555 U.S. at 24 (preliminary injunction “never awarded as a matter of right”); *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024) (same). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Nken*, at 433-34.

As Professor Bray has explained, citing cases going back to 1830 and up to the present, balancing the equities “is a critical part of the judicial decision, and it has a long history in equity.” Bray, *Preliminary Injunction Realism*, at 225 & nn.50-51; *see also Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982) (“These commonplace

considerations,” including balancing the equities and the public interest, “applicable to cases in which injunctions are sought in the federal courts reflect a ‘practice with a background of several hundred years of history.’”) (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1933)); *Starbucks*, 602 U.S. at 346.

Winter itself is an excellent example of how the equities and the public interest can dominate a court’s consideration of interim relief in certain cases. There, plaintiffs obtained a preliminary injunction in the lower courts to stop the United States Navy from conducting training activities using sonar without first completing an environmental impact statement, alleging that sonar would harm marine life and impair “ecological, scientific, and recreational interests.” 555 U.S. at 25. This Court held that the lower courts erred in not balancing the equities and considering the public interest: “While we do not question the seriousness of [plaintiffs’] interests, we conclude that the balance of equities and consideration of the overall public interest in this case tip strongly in favor of the Navy. For the plaintiffs, the most serious possible injury would be harm to an unknown number of the marine mammals that they study and observe. In contrast, forcing the Navy to deploy an inadequately trained antisubmarine force jeopardizes the safety of the fleet.” *Id.* at 26.³

This Court reversed the grant of a preliminary injunction in *Winter* even while assuming plaintiffs could show irreparable injury and “*even if [plaintiffs] are correct on the underlying merits.*” *Id.* at 23-24, 31 n.5 (emphasis added). Balancing the

³ Notably, in *Winter* the government had not created its supposedly irreparable harm by rulemaking delay; nor did federal government action endanger federalism by impinging upon core state powers.

equities was key to this Court’s exercise of judicial discretion.

Consideration of the equities is necessary for the exercise of discretion, whether or not the likelihood of success on the merits and movant’s irreparable injury might be the “most critical” factors in some cases. (Appl. 6, citing *Nken*, 556 U.S. at 434). As this Court explained just two weeks ago in *Trump v. California*, slip op. at 2, to “secure a stay pending appeal, the Government must show that it is likely to succeed on the merits and that it is likely to suffer irreparable harm without a stay. . . . It must also demonstrate that the balance of equities does not counsel against relief” (citation omitted); *see also Trump v. Cook*, 146 S. Ct. 2234, 2246 (2026) (“The standards for [a stay] are well established: The applicant must show that it is likely to succeed on the merits of its appeal, that we would likely grant certiorari to review any decision to the contrary, that it will likely suffer irreparable harm in the interim, and that the balance of equities tip in its favor.”).

Moreover, as the Court wrote in *IRAP*, 582 U.S. at 580, before issuing a stay, “[i]t is ultimately necessary . . . to balance the equities—to explore the relative harms to applicant and respondent, as well as the interests of the public at large” (quoting *Barnes v. E-Systems, Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991) (Scalia, J., in chambers)). “The purpose of such interim equitable relief is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward.” *Id.*

Thus, in *North Carolina v. Covington*, 581 U.S. 486, 488 (2017), this Court criticized the district court for “failing to meaningfully weigh any equitable

considerations” in deciding to order special elections to cure a likely racial gerrymander. Rejecting the district court’s “ cursory” analysis, the Court explained that “[a] district court . . . must undertake an ‘equitable weighing process’ to select a fitting remedy for the legal violations it has identified [] taking account of ‘what is necessary, what is fair, and what is workable’[].” *Id.* (citations omitted).

Applicant in this case makes too much (Appl. 6, 30-31) of this Court’s recent statement in *National Republican Senatorial Comm. v. Brown*, No. 26A274, slip op. at 2 (U.S., Sept. 4, 2026), that “[*in*] close cases ‘we balance the equities and weigh the relative harms to the applicant and to the respondent.’” (Citing *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010)) (emphasis added). Applicant misreads *Brown* as holding that balancing the equities and public interest factors are irrelevant to this Court’s exercise of equitable discretion once applicant sufficiently shows a likelihood of success on the merits and irreparable injury.⁴ Appl. 6, 31. This Court’s precedents prove this reading false.

Although any time “a state is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury”

⁴ There is some disagreement over whether the Court’s four-part tests for interim relief in *Winter* and *Nken* list separate elements each to be met or factors to consider in an overall balancing test. See Douglas Laycock & Richard L. Hasen, *Modern American Remedies* 432-35 (6th ed. 2025). But in this case, as in *Winter*, it does not matter. “It is clear that the Court [*in Winter*] thought the Navy’s interest in training dwarfed the plaintiffs’ interest in whale watching.” *Id.* at 432. So too here, where the equities and the public interest in keeping voters enfranchised and allowing election administrators to continue using their well-tested election administration procedures dwarf the government’s interest in enforcing a new, untested rule where the government has made no effort to demonstrate that it would advance the government’s alleged interests.

Maryland v. King, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers); *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025), *the nature and extent* of that irreparable injury must be considered as the court exercises its equitable discretion.⁵ Irreparable injury is not an on/off switch that is either met or not. As Justice Barrett explained in her concurring opinion in *Mirabelli v. Bonta*, 607 U.S. 492, 501 (2026), the *amount* of irreparable harm matters in the equitable balancing: “If the [plaintiffs] were probably right but would suffer little harm from the Ninth Circuit’s stay, they would not be entitled to interim relief.” *Id.* at 501 (Barrett, J., joined by the Chief Justice and Justice Kavanaugh, concurring).⁶

Hollingsworth v. Perry, which this Court relied upon in last week’s *Brown* case, indeed says that “[i]n close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent.” 588 U.S. at 190. But it is instructive that *after* the *Hollingsworth* Court held that applicants were likely to succeed on the merits, *id.* at 190-95, *and* that applicants would suffer irreparable injury without a stay, *id.* at 195-96, the Court *still proceeded* to balance the equities, concluding that “[t]he balance of the equities favors applicants,” *id.* at 196. *See also IRAP*, 582 U.S. at 580 (“Here . . . we are not asked to grant a preliminary injunction, but to stay one. In assessing the lower courts’ exercise

⁵ In this case, the government’s mail rules came from a potentially illegal executive order, not from a statute “enacted by representatives of the people.”

⁶ This Court similarly explained in *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025), that the purpose of “interim equitable relief is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward” (quoting *IRAP*, 582 U.S. at 580)).

of equitable discretion, we bring to bear an equitable judgment of our own. Before issuing a stay, [i]t is ultimately necessary . . . to balance the equities—to explore the relative harms to applicant and respondent, as well as the interests of the public at large.”) (citations omitted).

In any event, for reasons given by Respondents, it is unlikely that Applicant is likely to succeed on the merits, rendering it at best a “close case” for Applicant and therefore an occasion to balance the equities and consider the public interest.

II. Applicant’s Claim of Irreparable Injury is Weak and Relies Upon Speculation.

Applicant’s showing of irreparable injury is remarkably thin. Here, the government’s only identified injury is delay in implementing the USPS rule before the November 2026 elections. Appl. 29-30. But “delay alone” of a government program does not itself meet the demanding standard of irreparable injury. *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1317 (1983) (Blackmun, J., in chambers) (citing *Whalen v. Roe*, 423 U.S. 1313, 1317 (1975) (Marshall, J., in chambers)).

Moreover, the government’s own record demonstrates that the practical benefit to it of the injunction is far smaller than it suggests. USPS officials have acknowledged that the ballot portal at the heart of the rule is still being refined and is not yet operational. Monteith Decl. ¶ 2, No. 1:26-cv-11549-IT, Dkt. No. 280-1. Meanwhile, states have already begun mailing ballots. Appl. 5. That fact is particularly significant because the rule would prohibit USPS from accepting ballots from states that have not complied with the portal requirements. Yet the portal itself

remains unavailable. Thus, even absent the injunction, Applicant does not, and cannot, demonstrate that the rule could be implemented in any meaningful way before the already-underway 2026 midterm elections. Dkt. 156 at 43-44. The district court's order therefore does not halt an existing government program. At most, it postpones the rollout of a system that remains in development. *See* Dkt. 156 at 45-46; Monteith Decl. ¶ 2. Any resulting injury to the government is necessarily limited and of its own making.

Moreover, uncertainty regarding whether and how a program will be implemented substantially weakens claims of immediate and irreparable harm from an injunction preserving the status quo. Applicant points to no concrete operational, financial, or administrative harm resulting from the district court's order. Instead, it baldly asserts only that the new USPS rule may help combat voter fraud—offering little more than speculation that the rule would actually produce the intended outcome. The district court, whose factual findings deserve deference, found no evidence that the ballot portal, even if operational, would prevent voter fraud, increase election integrity, or otherwise achieve the objectives Applicant asserts the injunction threatens. *See* Dkt. 156 at 46. The government's theory of injury therefore depends on multiple layers of speculation—that the portal becomes operational in time, it works as intended, that states are able to comply with its requirements, and implementation would meaningfully reduce voter fraud.

If Applicant ultimately prevails, it remains free to implement the rule and deploy an operational portal for 2028 and other future elections. What it identifies is

therefore not the permanent loss of governmental authority, but a temporary postponement of a program whose effectiveness, necessity, and readiness for deployment are untested. At most, Applicant has shown an interest in accelerating implementation of a non-operational system whose effectiveness remains entirely unproven. That showing falls well short of the substantial and irreparable injury required to justify the extraordinary relief it seeks.

III. The Balance of the Equities and Public Interest Tip Sharply Against a Stay. The USPS Rule Would Impose an “Effectively Impossible” Burden on Election Administrators in the Middle of the Election Period and Risk Disenfranchising Millions of Voters.

Lifting the stay and thereby allowing the USPS rule to go into effect would be inequitable and contrary to the public interest. Applicant tries to conflate the two key parts of the rule, the *envelope requirement* and the *portal and matching requirement*, but they impose discrete burdens and risks of mass disenfranchisement.

The envelope requirement and its inequity for the 2026 elections. The rule prohibits USPS from accepting and delivering ballots from states to voters—including to valid voters with proper addresses and postage—unless the envelopes for ballot materials mailed both from the states and from the voters meet new USPS conditions, including the inclusion of a unique “Intelligent Mail barcode” printed on each envelope. 91 Fed. Reg. 54991 (§§ 705.24.3.1-705.24.3.2). States must submit their proposed envelope design to USPS for approval before ballots can be mailed. 91 Fed. Reg. 54991 (§ 705.24.5.1). If a state does not participate in the program, USPS must reject ballots submitted for mailing. 91 Fed. Reg. 54991 (§ 705.24.5.3).

The envelope requirement risks imposing serious irreparable injury for

election administrators and voters in the 2026 elections. States have already designed and purchased ballots, envelopes, and other election materials. Wise Decl. ¶ 14 (Washington); Wise Decl. ¶ 42 (Colorado). Some states have mailed, or are about to mail, ballots. Millis Decl. ¶ 14 (Wisconsin); Brunton Decl. ¶ 6 (North Carolina). In other words, administration of this election has already begun, and it is too late to implement sweeping changes. With only eight weeks until the election, there is simply not enough time even for states that do have the technical capacity to redesign, submit their envelopes to USPS for approval, and then reprint envelopes, all of which requires substantial time, costs, and resources. Dkt. 156 at 43-45.

States that have already purchased and printed their ballots and envelopes do not have compliant envelopes that contain the Intelligent Mail barcodes required under the USPS rule. Fontes Decl. ¶ 37 (Arizona); Tassinari Decl. ¶ 45 (Massachusetts). States would need to design new envelopes and submit the design for USPS approval, a process that process can take weeks or months. *See* Hanzas Decl. ¶ 37 (in Vermont, approval took approximately three months); Brater Decl. ¶ 41 (in Michigan, approval takes “weeks at minimum”); Flynn Decl. ¶¶ 37-38 (in Maine “USPS took weeks” to approve an envelope design). States would need to print new envelopes after receiving USPS approval, which can take significant time as large-scale printing of ballots and ballot envelopes is typically scheduled months in advance. *See* Holmes Decl. ¶ 42 (Washington).

Further, under state law, Rhode Island cannot put an Intelligent Mail barcode on the return mail envelopes, so it is unclear how Rhode Island could comply with

both the new USPS rules and state law. Rock Decl. ¶ 18 (Rhode Island). Some jurisdictions, especially rural ones, do not have the ability to print Intelligent Mail barcodes. Wlaschin Decl. ¶ 23 (Nevada); Millis ¶¶ 30-31 (Wisconsin). These states cannot currently comply with the new rules due to legal or logistical constraints.

The district court found that many election jurisdictions simply could not change their envelope designs in time and purchase new envelopes from vendors to comply with their mailing obligations for the 2026 election that concludes in less than eight weeks, in which case the voters in those jurisdictions will effectively be denied their ability to vote by mail. Dkt. 156 at 43-45. And for some voters—including the elderly, disabled, or those traveling—denying those voters a mailed ballot effectively denies them their ability to vote at all. Dawson Decl. ¶ 18 (Oregon); Nago Decl. ¶ 24 (Hawaii). Other jurisdictions might be able to alter their ballots before they are required to mail them out, but only with enormous expense and diversion of resources.

The portal and mailing matching requirement and their inequity for the 2026 elections. The USPS rule bars postal officials from mailing ballot envelopes from states to voters—even *with* the new envelope designs—unless the relevant election jurisdiction has, ahead of time, provided the name and registered mail addresses of all of its voters to USPS for inclusion on its web-based “portal,” a portal which is not yet operational. 91 Fed. Reg. 54991 (§§ 705.24.5.1-705.24.5.3); Monteith Decl. ¶ 3. The rule requires USPS to reject ballots from states that have not uploaded their voting lists to the portal. 91 Fed. Reg. 54991 (§ 705.24.5.3). And for states that do

comply, or attempt to comply, once the portal is actually available, the rule requires USPS to reject an entire batch of scanned ballots if there are *any* discrepancies or mismatches between the information gleaned via the intelligent bar code on each submitted ballot and the state’s list of voters and their registration addresses. Decl. Michael Cohen, Exhibit A.

The risks of the portal requirement to the 2026 elections are serious. The rule bars USPS from accepting ballots from states that have not uploaded their voter lists to the portal. 91 Fed. Reg. 54991 (§ 705.24.5.3). But, *as of this filing, there is no operational portal*. A USPS official told the district court in a court-ordered affidavit submitted last week on September 3, 2026, that USPS *anticipated* that that the portal would be ready for use “sometime” the week of September 7 “on a voluntary basis.” Monteith Decl. ¶ 3.⁷ If USPS cannot implement its rule because the portal is not yet available, then it cannot accept *any ballots* from *any states*, requiring all states and voters who depend on mail ballots to scramble in order to avoid mass disenfranchisement. Fontes Decl. ¶ 42 (Arizona); Rudy Decl. ¶ 45 (Colorado). Many states will be unable to find sufficient alternative means to deliver ballots or provide in-person voting opportunities, leaving voters disenfranchised.

Even once the portal becomes operational—if not fully functional—many states will not have the time and expertise to prepare and submit lists in time to get the

⁷ The delay in implementation cannot be attributed to the district court’s order, it is USPS’s own delay to build the new system, and at this late stage, there is no time to implement a new system in the middle of an election without causing widespread chaos.

ballots out to voters for the already-underway 2026 elections. Dkt. 156 at 40 (“[All Plaintiff States] characterize uploading voter data to the Portal for the midterms as a massive undertaking and seriously doubt their ability to do so.”). The undisputed evidence submitted to the district court shows that, even putting aside new expenses, state compliance is “effectively impossible” at this late date. Patrick Decl. ¶ 38. Elections take months of preparation and cannot turn on a dime.

The inequity and risk of disenfranchisement is magnified by USPS’s draconian requirement that it *must reject an entire batch of scanned ballots* if there are *any* discrepancies between a single submitted ballot and the state’s list of voters and their registration addresses. Decl. Michael Cohen, Exhibit A; Patrick Decl. ¶ 113. As states cobble together and upload a voter list under tremendous time pressures, rejections of ballot batches are not just foreseeable but inevitable. Patrick Decl. ¶¶ 90-92. Aside from administrative errors, uploaded lists will not include eligible voters who register after the upload, requiring constant adjustments to the list. Stavisky Decl. ¶ 28 (New York). And voters who ask election administrators to mail their ballots to a temporary address where they may be residing will be flagged as a mismatch because their mailing address will not match their registration address. Patrick Decl. ¶ 104.

And no one should expect instant perfection from the postal service. It is likely that USPS’s portal, and its use of the portal to decide which ballots to send to voters, will have glitches that are inevitable in the government rollout of a new website. *Cf.* Sheryl Gay Stolberg & Michael D. Shear, *Inside the Race to Rescue a Health Care Site, and Obama*, N.Y. Times, Nov. 20, 2013, <https://tinyurl.com/53r5vhkt>. New

voting systems take months or years to implement; they are not done in a slapdash way once election administration has already commenced. Even if states do everything perfectly, millions of ballots risk still being rejected by a poor rollout, leaving states and voters scrambling again. *See* Stavisky Decl. ¶¶ 54-55 (New York); Brunton Decl. ¶ 22 (North Carolina).

The serious risk of disenfranchisement. Changing mail balloting rules this close to the election would have a “disruptive effect” on election administration and risk disenfranchising millions of voters who depend upon mail-in voting to cast a ballot. *Wilcox*, 145 S. Ct. 1417. Important state resources would be diverted from actually administering an election, as state election administrators attempt compliance with a new, untested system that does not exist. Albence Decl. ¶ 55 (Delaware). State election officials are ill-suited to provide public guidance on how the new rules will impact individual voters, as the system is untested and does not yet exist. *See* Stavisky Decl. ¶¶ 40-42 (New York). A rollout of these new rules is not workable in the middle of an election, and to allow USPS’s plan to go into effect would sanction widespread chaos and disenfranchisement, disrupting the entire election.

The unprecedented chaos the rule would cause to election administration harms both plaintiffs and the public; the public interest, therefore, weighs extremely strongly against this Court’s granting of emergency relief. Denying the application would allow states to administer their elections as planned, mailing out the already-designed and purchased ballots, and avoid interjecting widespread confusion and chaos into an active election. *See* Derek Muller, *Some Thoughts on the Merits and the*

Equities in the USPS Absentee Ballots Case, Election Law Blog, Aug. 30, 2026, <https://tinyurl.com/ykc9m9p5>. The government can try again for 2028.

Voting by mail is a method relied on by millions of eligible voters each election cycle, and the USPS rule would risk disenfranchising these voters. The impacts would be especially pronounced for elderly and disabled voters, who depend on voting by mail to cast a ballot. *See* U.S. Election Assistance Commission, *Best Practices: Accessibility for Voting by Mail* (2025), <https://tinyurl.com/zweenyde>; Millis Decl. ¶ 34 (Wisconsin). Particularly in rural areas, an elderly or disabled voter who cannot drive themselves to a polling location and does not have access to reliable public transit, has no other method to cast a ballot. *See* Nago Decl. ¶ 24 (Hawaii). Voters must scramble to adjust their voting plans, but many will not have an alternate way to cast a ballot. Voters should not have to rely on third party assistance to cast a ballot.

There is no reason to disenfranchise thousands, if not millions, of elderly and disabled voters across the entire United States who have successfully voted by mail in previous elections and rely on it to cast their ballot. Applicant has not offered any evidence to show how the new rule, which would risk mass disenfranchisement, would stop any appreciable amount of voter fraud, or that any past elections have been marred by such fraud. Dkt. 156 at 45-46. The disruptive effect of imposing new election administrative rules during an election cycle would cause direct harm to states, election officials, and the public and risks mass disenfranchisement. Patrick Decl. ¶ 123; Wise Decl. ¶ 81 (Washington). The public interest would be greatly disserved by a stay. Applicant's asserted speculative irreparable injury does not

justify the extreme burdens the rule would place on states and election officials, or the widespread harm to the public.⁸

CONCLUSION

For the foregoing reasons, this Court should deny Applicant's request for a stay of the preliminary injunction pending appeal.

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⁸ USPS has said the new rules do not apply to military or overseas voters outside the United States, but these voters may still be harmed by the widespread confusion and chaos created from the new USPS rules. (Military voters *within* the United States face the same risk of disenfranchisement described above as all other voters.) Eligible voters, military or otherwise, temporarily outside the United States already have low rates of voter turnout, due in part from the hurdles these voters already face when casting a ballot. Declaration of Doris Speer, Document 75-5 ¶ 14, No. 1:26-cv-11549 (D. Mass, Apr. 23, 2026) Dkt. No. 75. Interjecting last minute chaos and incomplete rule changes into the election cycle would cause widespread voter confusion, including to these voters, who may be unsure whether their ballot will be delivered under the new rules. *See* Declaration of Susan Dzieduszycka-Suinat, Document 75-4 ¶¶ 27-30, No. 1:26-cv-11549 (D. Mass, Apr. 23, 2026) Dkt. No. 75.