

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 HARRIS COUNTY, TEXAS AS *AMICUS CURIAE* OPPOSING APPLICATION FOR A
STAY OF INJUNCTION AND REQUEST FOR ADMINISTRATIVE STAY**

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INTERESTS OF *AMICUS CURIAE*

Harris County is the nation's third most populous county, with over 5 million residents, or over one in every six residents of the State of Texas. If Harris County were a state, it would be the 25th largest state in the country. As of July 29, 2026, the County has 2,748,714 registered voters. It is home to the most diverse population and electorate in Texas. More than 145 languages are spoken in Harris County. The size and scope of the County make the smooth operation of elections challenging even in the most ideal of circumstances.

The Harris County Tax Assessor-Collector and the Harris County Clerk are responsible for voter registration and administering and managing elections in Harris County, respectively. The Assessor maintains the voter rolls as well as district and precinct lists, but the actual mailing of mail ballots is handled by the Clerk.

Given the size and scope of administering an election in Harris County, the County has intense interest in a continued injunction of the new USPS Rules. *See* USPS, Ballot Mail for Federal Elections, 91 Fed. Reg. 54,966 (Aug. 26, 2026 (codified at 39 C.F.R. pt. 111) ("USPS Rules"). Harris County filed an Amicus Curiae in the prior proceeding before this Court on the earlier injunction. *See* Brief Amicus Curiae of Harris County, Texas *California v. Trump*, 26A124 (Aug. 3, 2026). In that brief, the County communicated that *at that time*, the postal rule would cause havoc in election administration. The days that have passed since render implementation of the new rules impossible for the 2026 elections.

SUMMARY OF ARGUMENT

The Court should deny the application for a stay, which would dangerously upend the November 2026 election and allow haphazard implementation of the USPS Rule that violates the Constitution, federal statutes and Texas law.

The public interest strongly favors denying a stay. It is wholly unworkable for Harris County—and likely most any other jurisdiction—to comply with the regulatory scheme envisioned by the USPS Rule in time to administer the November 2026 election. Preparation for administering mail balloting for the upcoming election is well underway. It is too late for Harris County to comply with USPS Rule and, regardless, Texas law and election procedures make it impossible for it to take effect as written.

Public interest aside, the USPS Rule is blatantly unconstitutional and violates numerous federal and state laws. States and Congress, not the President or Postal Service, have the constitutional power to regulate federal elections. Congress did not impliedly grant the USPS authority to usurp states' Elections Clause power by fiat. It would be incompatible with the constitutional design if Congress had in fact delegated election regulation authority to the USPS. The district court's injunction should not be disturbed.

ARGUMENT

I. The public interest favors avoiding the electoral chaos a stay of the injunction would cause.

The public interest favors denying the application for a stay because granting it would cause electoral chaos in the administration of the November 2026 election—

which is now just two months away. “Last-minute changes to longstanding election rules . . . invit[e] confusion and chaos and erod[e] public confidence in electoral outcomes.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 30 (2020) (Mem.) (Gorsuch, J., concurring). While this principle ordinarily is applied in the context of federal *court* intervention in state election laws, it stems from broader federalism principles because, as this Court has recently recognized, “[s]tates are free to decide for themselves whether last-minute changes to an election are in their best interests.” *Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026) (per curiam). Here, the *states* have not opted to rewrite their election laws, the *President* has and the USPS has obliged. Federal agency administrative efforts to regulate elections, even if timely issued and carefully crafted (unlike these), violates the Constitution and federal laws, *see infra*, but it also should begin and end the Court’s consideration of whether a stay helps or harms the public interest. The President and USPS’s disregard for federalism and constitutional boundaries is enough on its own for the Court to leave the injunction undisturbed. But the chaotic disruption USPS Rules could cause to the November election would be intolerably damaging to the public interest.

A. It is impossible to implement the USPS Rule for the November 2026 Election.

It is difficult to exaggerate the extent of the chaos that will ensue if the USPS Rule is permitted to take effect now. It is September 9. The Texas Secretary of State has issued no guidance on how counties could feasibly comply with the USPS Rule were a stay to be granted by this Court. It is operationally impossible for the USPS Rule to govern this election. The deadline to send mail ballots to military and overseas

voters is September 19, 2026. *See* Tex. Election Code § 86.004(b); Tex. Sec’y of State, November 3, 2026 Election Law Calendar, <https://www.sos.state.tx.us/elections/laws/advisory2026-21-november-3-election-law-calendar.shtml>. For a jurisdiction the size of Harris County (with 1,224 voting precincts), meeting this deadline takes time. Logic and accuracy testing must be undertaken in advance to ensure that the ballot style—*i.e.*, listing the correct election contests for a particular voter’s registration address—appears for each voter. Harris County is required to produce ballots in four different languages. *See* 52 U.S.C. § 10503. The work to provide mail ballots to Harris County voters is underway. It is much too late for the process to be as radically transformed as the USPS Rule envisions.

The Rule provides that USPS refuse delivery of mail ballots, unless election officials meet a bevy of new requirements: ballot envelope designs reviewed and approved by USPS, including voter-specific Intelligent Mail barcodes (IMbs), DMM 705.24.3.1–2; enrollment of every mail voter through a USPS Mail Ballot Portal, including the IMbs for each voter’s ballot mail; DMM 705.24.4.2.b; and USPS’s review of each outgoing ballot to ensure the presence of such barcodes on the envelope, and on USPS’s voter list, prior to acceptance for mailing. DMM 705.24.5.1.

Take the Mail Ballot Portal as an example. Such a list is impossible to compile today because the County does not yet hold the information it needs to compile the list. The National Voter Registration Act (“NVRA”) compels states to accept voter

registrations up to *30 days* prior to an election.¹ *See* 52 U.S.C. § 20507(a)(1). And under Texas law, voters have until *11 days* before the election (October 23, 2026) to request a mail ballot. *See* Tex. Elec. Code § 84.007. Furthermore, Texas law allows only limited categories of people to vote by mail. In addition to voters over age 65, Tex. Election Code § 82.003, voters who (1) will be absent from their county of residence on election day and for in person early voting, Tex. Election Code § 82.001, (2) have a sickness or physical condition preventing them from voting in person, Tex. Election Code § 82.002, (3) are expecting to give birth within three weeks of Election Day, *id.*, or (4) are confined in jail, Tex. Election Code § 82.004, are eligible to vote by mail. It is not possible for Harris County or the Texas Secretary of State to compile a list of such voters now. In some cases, the voters themselves do not yet know they will be eligible to vote by mail at the time the list of eligible mail voters must be transmitted to the federal government.

Were the USPS Rule to take effect, Harris County would be required to submit a list of eligible mail voters to the Mail Ballot Portal “at least 30 days before the date of the federal election, to the extent practicable, or by the date on which mail-in or absentee ballots may begin to be mailed under state law.” *See* DMM 705.24.4.2.d. In reality, the County would have to submit its first list of eligible mail voters 45 days before the federal election because federal and state law² requires the County to mail

¹ In Texas the registration deadline is October 5, 2026 because the 30-day deadline falls on a Sunday. *See* Tex. Elec. Code §§ 1.006, 13.142(e) and 15.025.

² Implementing the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) Pub. L. No. 99-410, 100 Stat. 924 (1986) (codified at 52 U.S.C. §§ 20301–11).

out military and overseas ballots starting September 19, 2026. *See* Tex. Elec. Code § 86.004. The Rules provide that outbound ballots will not be delivered if the USPS cannot confirm the mail ballot is being sent to a person on the uploaded list. *See* DMM 705.24.5.3.

It is no help that the USPS Rule allows for the list to be continuously updated. For one, maintaining and timely uploading an accurate list of Harris County citizens who are eligible to vote by mail will require significant staffing and prior training, neither of which has been budgeted. Training materials would have to be developed on the fly. Each of Texas’s 254 counties (or the Texas Secretary of State on their behalf) would need to make daily updates to the Portal. This is because counties mail ballots as the voters request them. A system would have to be developed to print these mail ballot envelopes with the unique IMbs required for each voter. Not only is that impractical and impossibly burdensome, but there is also little to no chance that counties, SOS, and USPS could implement those updates in time to ensure eligible voters’ ballots were not affected. In Harris County’s experience, mail delivery and processing times have considerably deteriorated, while the frequency of USPS errors has considerably increased. As one example, when *amicus* recently mailed voter registration cards to registered voters, approximately 130,000 were returned as “undeliverable.” Upon investigation, many of those “undeliverable” determinations were erroneous—the voters in fact reside at the residences to which they were mailed.

B. Harris County handles tens of thousands of mail ballots.

The number of Harris County voters who are likely to be adversely affected by the USPS Rule is significant. For the November 2022 election, 64,171 mail ballots were returned (to the then Elections Administrator's Office). For the November 2024 Presidential Election, 66,085 ballots were returned. As of September 8, 2026, 47,584 eligible voters have requested mail ballots for the November 2026 Election. If as expected at least 30,000+ additional voters request mail ballots prior to the October 23 deadline, tens of thousands could see their ability to vote jeopardized. Voters will not know whether they can still reliably vote by mail. County election officials will not know either. And voters (and also election officials) will be at risk of criminal prosecution for not timely implementing the USPS Rule and the Executive Order that called for the Rule.

C. The USPS Rule provides no mechanism for notice and opportunity to cure.

The USPS Rule provides that USPS will not transmit mail ballots sent to voters whose names are not on the list. *See* DMM 705.24.5.3. Voters, relying on Texas state law permitting them to vote by mail, will request a mail ballot and wait for it, not knowing the USPS has refused to deliver it. The Rules provide that refused outbound mail ballots "will be returned to the authorized ballot mailer." *See* DMM 705.24.5.3.a. But the Rules provide for no notice to the voter, nor do they set a deadline to return the blocked ballot. Unless the County can timely satisfy the USPS and re-mail the ballot, the voter will never receive it. The voter will be in the dark that the USPS has refused to transmit their ballot. Even if the County could develop

and implement a notice procedure for voters at this late date, it would remain unworkable for voters who requested to vote by mail right up to the eleventh day before the election deadline.

Without notice, how will the voter know that USPS has seized their ballot and is refusing to deliver it? State law requires a person who has requested a mail ballot to surrender that unvoted ballot if they attempt to vote in person. *See* Tex. Elec. Code § 84.032(c). What happens if the voter shows up to vote early, having heard on the news the massive confusion on whether mail ballots are being delivered by the USPS, and asks to vote in person? The voter will not have a mail ballot to surrender. Is the County to permit the citizen to vote in person? What happens if the voter later receives their ballot in the mail, votes it and returns it? Which ballot controls?

Even if all that could be worked out, the USPS Rule makes no provision for a pre-deprivation notice and hearing for voters whose ballots have been intercepted, violating the Constitution's guarantee of due process. *See, e.g., Self Advocacy Solutions N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1054 (D.N.D. 2020) (concluding that failure of state to provide notice and opportunity to cure perceived signature mismatch on absentee ballot violated procedural due process rights). The Rule provides the County should receive notice of the failed mailing but not the voter. *See* DMM 705.24.5.3. Should the postal rejection occur for voters who timely submitted a vote by mail application 13, 12 or 11 days before election day, there will be no time for the County to satisfy the USPS. Texas provides a ballot tracking system for voters,

but it will not notify voters that USPS has *seized* their ballots. Even if such a system could be implemented, there is no time to do so now.

Preventing citizens from voting who are eligible under Texas law is illegal. *See* 52 U.S.C. § 10307(a) (“No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote”). In that regard, the USPS Rule actually directs USPS to violate federal criminal law. *See* 52 U.S.C. § 10308(a) (“Whoever . . . shall violate section 10307(a) of this title, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.”); *see also* 52 U.S.C. § 10308(c) (“Whoever conspires to . . . interfere[] with any right secured by section . . . 10307(a) of this title shall be fined not more than \$5,000, or imprisoned not more than five years, or both.”).

If voters whose ballots have been intercepted by USPS do somehow manage to learn that the postal service refuses to deliver their ballot to the voter or to county officials, what are they to do? Federal law makes it a felony punishable by up to five years in prison and a \$10,000 fine to “vote more than once” in a federal election. 52 U.S.C. § 10307(e)(1). Does that law preclude these voters from voting in person early or on election day because they already have a mail ballot in transit limbo? That section does not apply when “all prior ballots of that voter were invalidated,” but the USPS Rule does not *invalidate* the ballot, it just directs USPS to refuse to deliver it. What are county election officials supposed to tell voters, or permit them to do, if they learn their ballots were seized by USPS? If they inform the eligible voter they can vote in person given USPS’s interception of their mail ballot, is that a conspiracy to

permit a person to vote twice? Section 5 of the President’s Executive Order calling for the USPS Rule threatens to prosecute election officials under a litany of federal statutes, including conspiracy to violate federal law. *See* Executive Order 14,399, “Ensuring Citizenship Verification and Integrity in Federal Elections,” 91 Fed. Reg. 17,125 (Mar. 31, 2026) (“Executive Order”).

D. The USPS Rule’s requirement of new ballot envelopes with USPS applied barcodes is unworkable.

Harris County has already ordered mail ballots and the accompanying envelopes. Printing is underway. Even if these orders were cancelled and the printed ballots destroyed, funds are not budgeted for another round of printing. Furthermore, there are a limited number of vendors that print Texas ballots. They set order deadlines that have come and passed so that they can manage the printing for all the counties they serve. There is no time or money to shred that work and start printing brand new envelopes even were the envelopes already approved and even if printing could restart today. The USPS Rule requires preparation and approval of a mail ballot envelope that has not yet been designed. *See* DMM 705.24.3.1.

Designing that new envelope presents its own challenges. The USPS Rule’s provisions regulating the format and bar codes on the ballot envelope are unworkable and especially so within the next two months. *See* USPS Rule § 3(b)(i). Texas law provides detailed and extensive requirements for the format and content of official election envelopes. *See, e.g.*, Tex. Election Code §§ 86.013; 86.015. That includes a requirement for a barcode unique to each voter to permit online tracking of a ballot’s status, *id.* § 86.015(c)(2). The dueling envelope barcodes required by Texas law and

the USPS Rule could create difficulties and errors in ballot processing. The USPS list and barcode, without carefully considered implementation rules, could also jeopardize the secrecy of each voted ballot.

E. Harris County voters are uniquely vulnerable to disenfranchisement by the USPS Rule.

Another unique feature of Texas law makes its voters even more vulnerable to disenfranchisement than are citizens of other states. Texas law does not provide for drop boxes but rather allows only mail, common carrier, or in-person delivery of the ballot to a single location in the county only on election day. *See* Tex. Election Code § 86.006. Unlike states that provide plentiful neighborhood drop boxes, in Harris County, the vast majority of the ballots at issue will in fact be placed in the mail. Voters who seek to avoid the additional risks these last-minute federal mandates create for their voting rights will face significant burdens to timely, personally deliver their voted ballots to the one drop-off location in the county. Much of Harris County is unincorporated and is not served by public transit.

The public interest factor weighs decidedly against granting the President's application for a stay.

II. The USPS Rule unlawfully usurps state power in violation of the Elections Clause.

Regardless of how the USPS Rule is implemented, it is an unconstitutional usurpation of State power in violation of the Elections Clause and the Tenth Amendment of the United States Constitution.

A. The USPS Rule facially violates the Elections Clause and the Tenth Amendment.

The USPS Rule and the Executive Order demanding it are facially unconstitutional acts by the President and the USPS to rewrite Texas election laws and impose a new election regime on *amicus* absent any congressional mandate to do so.

The United States Constitution confers broad authority on the States to regulate the conduct of state and federal elections and the eligibility of voters. U.S. CONST. art. I, § 4, cl. 1; *see* U.S. CONST. art. I, § 2, cl. 1; *Storer v. Brown*, 415 U.S. 724, 729–30 (1974); *Marston v. Lewis*, 410 U.S. 679 (1973) (per curiam); *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8 (2013). Under the Voter Qualifications Clause, the States have the power to determine who is eligible to vote in state and federal elections. *See* U.S. CONST. art. I, § 2, cl. 1; *League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 156–57 (D.D.C. 2025) (“*LULAC I*”).

The Elections Clause provides “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.” U.S. CONST. art. I, § 4, cl. 1. Without explicit directives from Congress regarding the times, places, and manner of federal elections, the States retain exclusive power over their election systems. *See Inter Tribal Council of Arizona, Inc.*, 570 U.S. at 9 (“In practice, the Clause functions as ‘a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far

as Congress declines to pre-empt state legislative choices.’ *Foster v. Love*, 522 U.S. 67, 69 (1997”).

The “Elections Clause grants [only] Congress ‘the power to override state regulations’ by establishing uniform rules for federal elections, binding on the States.” *Foster v. Love*, 522 U.S. 67, 69 (1997) (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 832–33 (1995)). The Constitution does not grant the President the authority to regulate federal elections. *See Washington v. Trump*, 814 F. Supp. 3d 1173, 1214 (W.D. Wash. 2026); *Watson v. Republican Nat’l Comm.*, No. 24-1260, 2026 WL 1855462, at *3 (U.S. June 29, 2026) (“[T]he Constitution lodges power over congressional elections in state legislature ‘primarily’ and in Congress ‘ultimately.’”) (quoting *The Federalist* No. 59).

The USPS Rule, however, expressly attempts to regulate federal elections and does so with a Rule that plainly did not and would not achieve a favorable vote in Congress. In refusing to transmit ballots that do not meet the requirements of the USPS Rule, the USPS is *de facto* imposing both federal voter qualifications and election regulations not enacted by Congress. Indeed, a search of the United States Code would leave one wanting to find any law that delegates to the Executive Branch or, for that matter, the Postal Service, the ability to regulate mail voting in such a manner. The Framers recognized that empowering the federal government to have complete control over elections would be an “unwarrantable transposition of power” and “a premeditated engine for the destruction of the State governments[.]” *See The Federalist* No. 59. The USPS Rule attempts precisely what the Framers rejected.

B. The USPS Rule violates Texas’s power to regulate elections.

The USPS Rule violates Texas’ power to regulate elections and conflicts with the requirements Texas has enacted through its Legislature. In doing so, the USPS Rule forces *amicus* and other Texas jurisdictions to choose between defying state law or risking prosecution by the Department of Justice.

The Tenth Amendment prohibits the commandeering of state power, providing that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. CONST. amend. X. “Art. I, § 4, empowers the States to regulate” the mechanics of federal elections absent congressional action. *Roudebush v. Hartke*, 405 U.S. 15, 24–25 (1972). The States’ power to regulate is comprehensive and wide-ranging: the Elections Clause gives the States the authority to

provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.

Id. at 24–25 quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

Section 2 of the Executive Order commandeers Texas’s authority to regulate the manner of its elections. This is because the Executive Order (which is the impetus for the USPS Rule) uses the threat of investigation and prosecution of State and local officials, such as *amicus*, “who issue Federal ballots to individuals not eligible to vote in a Federal election.” *See* 40 Fed. Reg. at 17126, § 2(b). But by using such information

to determine who is eligible to vote, Texas election officials would violate state law. Texas Election Code § 18.061(c) makes county voter registrars, not outside sources such as the federal government, the exclusive source for the Texas Secretary of State's voter registration list. With respect to citizenship verification, the Texas Election Code makes clear that only information from the Texas Department of Public Safety may be used to verify the accuracy of citizenship status for purposes of voter registration. Tex. Elec. Code § 16.0332(a-1).

There is also no Texas election official who could produce the list the USPS Rule demands. Mail balloting in Texas is administered county by county by the early voting clerk. *See* Tex. Elec. Code chs. 84, 86. The Secretary of State is not the custodian of mail-ballot applications, and no provision of the Election Code authorizes transmitting a statewide roster of intended mail voters to a federal agency. As such, Texas election officials could not lawfully comply with the Order even if the Order itself were lawful. Texas has been steadfast in efforts to avoid federal encroachment of its election policies. *See e.g.*, Order on Temporary Restraining Order, ECF No. 5, *Texas v. Garland*, 2:24-CV-237-Z (November 5, 2024).

Moreover, the USPS Rule's requirement that States comply with the USPS mail-ballot design provisions is impermissible. Outbound mail ballots must be mailed in yet to be approved envelopes or they will be rejected. *See* DMM 705.24.5. But no federal law authorizes the USPS to dictate the design of mail-ballot envelopes; that power is reserved exclusively to the States. Texas law already prescribes the only lawful layout for an official carrier envelope for mail ballots. Tex. Elec. Code

§§ 86.013, 101.056. There is no discretion to permit the USPS barcode, and § 86.002(g)’s concealed-field requirement constrains where a barcode may be placed without exposing voter identification data. The Texas Supreme Court has recently stressed that county officials may not undertake election administration measures that are not authorized under Texas law. *See State v. Hollins*, 620 S.W.3d 400, 406 (Tex. 2020)(“Any reasonable doubt must be resolved against an implied grant of authority.”)

With respect to military and overseas voters, Texas mandates a different label and a different postage requirement than that in the USPS Rule. Texas Election Code §§ 101.056(a) and 101.058 require the envelope to read “Official Election Balloting Material – via Airmail” and to be mailable free of United States postage under the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”). *See* 52 U.S.C. § 20301, et seq. DMM 705.24.1.i. by contrast requires marking as “Official Election Mail” with USPS-designated logos. The two labels are not interchangeable. Even if Texas election officials wished to satisfy the USPS’s demands, they could not do so absent a federal rule expressly preserving the UOCAVA labeling, which the USPS Rule does not direct the USPS to include.

Furthermore, the USPS rule could violate Texas voters’ right to a secret ballot. Under the rule, election officials will notify the Postal Service of the individuals to whom they are mailing a mail-in or absentee ballot, along with the unique barcode applied to the outbound and return ballot mail envelope for such individuals. *See e.g.*, DMM 705.24.2. The USPS-assigned identifier which is linked to an individual voter

and provided to USPS is creating a record that associates individual voters with a ballot in violation of Tex. Elec. Code § 86.002(i). This list will necessarily have to be shared far and wide within the postal service so that postal officials can reject mailings of voters not enrolled or of voting materials that otherwise do not meet the Rule. Carefully balancing the interests of ballot security with the secrecy of the ballot is a job for legislative bodies, not USPS regulators.

At bottom, the USPS Rule imposes unauthorized federal prerequisites on Harris County, and in doing so it compels state action. Such compulsion is unconstitutional.

CONCLUSION

For the foregoing reasons, the application for a stay should be denied.

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Respectfully submitted,

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