

No. 26A305

IN THE SUPREME COURT OF THE UNITED STATES

United States Postal Service, et al.

Applicants,

v.

State of California, et al.

Respondents.

Donald J. Trump, et al.

Applicants,

v.

League of Women Voters of Massachusetts, et al.

Respondents.

On Emergency Application for Stay of the Injunction Issued by
the U.S. District Court for the District of Massachusetts and
Request for an Immediate Administrative Stay

BRIEF OF *AMICUS CURIAE*
AMERICAN POSTAL WORKERS UNION, AFL-CIO
IN SUPPORT OF RESPONDENTS
AND IN OPPOSITION TO STAY APPLICATION

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STATEMENT OF INTEREST¹

The American Postal Workers Union, AFL-CIO (“APWU”) represents almost 200,000 employees in the U.S. postal industry. Over 100,000 are postal clerks who work in post offices across the country. The APWU has filed amicus briefs addressing postal policy including in *Groff v. DeJoy*, 600 U.S. 447 (2023) (Brief of Amicus Curiae American Postal Workers Union, AFL-CIO in Support of Respondent, March 30, 2023) and *Shreve v. U.S. Postal Service*, Case No. 3:25-cv-00214 (W.D.Pa) (Brief of Amicus Curiae the American Postal Workers Union, AFL-CIO, March 9, 2026).

The APWU has unique expertise in the workplace demands and job functions of postal clerks, often at odds with unjustified orders of postal management. APWU’s brief herein demonstrates the practical infeasibility of implementing the Final Rule and the significant risk of wide swaths of Americans not being able to vote by mail if the Final Rule is implemented before the November 2026 mid-term elections. As a result, the Final Rule will likely violate Constitutional and statutory requirements that all mail be delivered.

The Postal Service’s Final Rule and this litigation will directly affect thousands of APWU bargaining

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

unit members tasked with implementing the Final Rule. The record in this case does not currently include information about the operational feasibility of implementing the Final Rule on short notice, and this brief is intended to fill that gap. The APWU submitted comments on the Postal Service's proposed rule and those comments and this brief provide specifics about the practical impediments to the Postal Service implementing the Final Rule for the elections in November 2026.

SUMMARY OF ARGUMENT

The Final Rule violates the Postal Service's Constitutional and statutory duty to deliver mail not containing contraband to the designated addressee. Congress alone has the power to legislate exceptions to that duty. *American School of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 110 (1902).

The Final Rule would likely cause catastrophic wholesale non-delivery of mail to hundreds of thousands of voters. An enormous number of postal clerks in facilities nationwide would be needed to implement the Final Rule's restrictions on mail ballot acceptance. These postal clerks cannot realistically be trained in the operation of the Ballot Portal in the short time before the November elections. The hurried launch of this unprecedented system, at odds with the normal workflow of the Postal Service, will inevitably grind the operation of the postal system to a halt, delaying or preventing timely delivery of mail ballots. The Final Rule therefore threatens the Postal Service's basic function – to deliver mail to addressees without censorship of its contents.

ARGUMENT

I. The Postal Service Is Obligated by the Constitution and the Postal Reorganization Act to Deliver All Mail.

The United States Postal Service predates the Republic. It celebrated its 250th birthday last year, two hundred and fifty years after Benjamin Franklin was appointed the first Postmaster General in 1775. The U.S. Constitution gave Congress the power to establish post offices,² and in 1792 the Post Office Department was established as a federal agency. For decades the Post Office budget was appropriated by Congress and the Postmaster General was a Cabinet-level appointee.

President Nixon signed the Postal Reorganization Act (“PRA”) in 1970, 39 U.S.C. §§ 101 *et seq.* The PRA transformed the Post Office Department from a federal agency into today’s U.S. Postal Service — an independent agency modeled on private-sector corporations and structured to be self-supporting without reliance on taxpayer dollars. The PRA re-crafted the Postmaster General position and established an independent Board of Governors to oversee the Postal Service. Critically, the PRA established that the White House will have no control or authority over day-to-day postal operations. See *Munnelly v. U.S. Postal Service*, 805 F.2d 295, 298-299 (8th Cir. 1986) (PRA was Congress’s abrogation of Presidential control; postmaster appointed by the

² U.S. Const., art. I, § 8. cl. 7.

President before 1970 could no longer claim Article II immunity from removal after passage of the PRA).

The PRA promises that “[t]he Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together...,” and that “...[i]n determining all policies for postal service, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.” 39 U.S.C. §§ 101 (a), (e). 39 U.S.C. § 101(e) (1976); *see also* 18 U.S.C. § 1701 (1976) (criminal offense to delay the mail).

This statutory duty supersedes regulatory actions that impede universal mail service. *See United States v. City of Pittsburg*, 661 F.2d 783, 785–86 (9th Cir. 1981) (local trespass ordinance requiring postal carriers to obtain residents’ consent was unconstitutional under U.S.C.A. Const. Art. I § 8, cl. 7 as well as Postal Reorganization Act, Const. Art. 6, cl. 2, because it “frustrate[d] a major Congressional objective” to “promote the efficiency of mail delivery and interfered with “postal carriers’ federal duty to deliver the mail efficiently.”) “The Postal Service has a duty to deliver postal matter to the address indicated by the sender.” *United States v. Anton*, 547 F.2d 493, 495 (9th Cir. 1976).

II. Only Congress May Grant The Postal Service the Right To Refuse Mail Delivery.

Not only does the Final Rule infringe on the Constitutional power of the States to regulate

elections; it also infringes on Congress' exclusive power to prescribe exceptions to the Postal Service's duty to deliver mail. The Postmaster General's "right to exclude letters, or to refuse to permit their delivery to persons addressed, must depend upon some law of Congress, and if no such law exists, then he cannot exclude or refuse to deliver them." *American School of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 110 (1902). The Postal Service may not therefore grant itself a power to exclude mail from its duty to deliver that Congress has not conferred.

That is exactly what the Final Rule seeks to do. *McAnnulty* forecloses the Postal Service's attempt to make itself the arbiter of which addresses are entitled to receive mail that is not hazardous, obscene, or contraband.

III. Voting By Mail is a Critical Postal Function.

The Postal Service has moved ballots through the mail since the Civil War when several states introduced absentee voting by mail for military personnel.³ Voting by mail took on a new importance during the Covid-19 pandemic. The APWU led efforts to move ballots in a national health crisis through an Election Mail Task Force that collaborated on federal election mail issues to ensure careful handling of

³ National Postal Museum, *What is Election Mail and its History in the US?* Available at: <https://postalmuseum.si.edu/what-is-election-mail-and-its-history-in-the-us>. Such material may be considered on motions for temporary restraining orders or preliminary injunctions notwithstanding the Federal Rules of Evidence. Wright & Miller, 11A Fed. Prac. & Proc. Civ. § 2949 (3d ed. 2026)

Election Mail and ballots when many Americans could not vote in person. The Postal Service Inspector General reported that the Postal Service delivered over 135 million ballots in the 2020 general election.⁴

IV. The Final Rule Cannot be Feasibly Implemented Before the November 2026 Elections.

On March 17, 2026, Postmaster General David Steiner testified before the House Committee on Oversight and Government Reform’s Subcommittee on Government Operations. He started his testimony by saying “...the Postal Service is at a critical juncture...we will be out of cash in less than 12 months. So, *less than a year from now the Postal Service will be unable to deliver the mail if we maintain the status quo.*”⁵

Two weeks later, on March 31, 2026, the White House issued Executive Order 14399, *Ensuring Citizenship Verification and Integrity in Federal Elections*.⁶

After proposing a radical rule that entirely changes the Postal Service’s policy and process for accepting outgoing ballots, the Postal Service officially published a Final Rule implementing

⁴ See USPS OIG Report No. RISC-WP-21-004, p.1 (June 1, 2021).

⁵ *Oversight of the Postal Service: The Financial Future under Postmaster General Steiner*, 119th Cong. (2026) (statement of David Steiner), p. 2 (emphasis added). Available at: <https://oversight.house.gov/wp-content/uploads/2026/03/Steiner-Written-Testimony.pdf>.

⁶ 91 Fed. Reg. 17125 (2026).

Section Three of the Executive Order on August 26, 2026.⁷ The Final Rule makes mail piece design best practices for outgoing ballots *mandatory*⁸ and requires every state to register the recipients of their mail ballots with the Postal Service in a Federal Ballot Mail Portal.⁹ If a state does not register in the Ballot Portal or a ballot does not match Portal data, clerks—represented by the APWU—are required to reject the ballot for mailing.¹⁰ This is the first time the APWU is aware of that the Postal Service has chosen not to accept properly-posted, nonhazardous, government mail because the Postal Service cannot validate the addressee.

A. An Enormous Number of Postal Clerks Would Be Responsible for Implementation of the Final Rule.

Postal clerks are indispensable to the Postal Service and to implementation of the Final Rule. Although the Postal Service has not published official guidance for implementing the Final Rule, the postal clerks who likely will be responsible for validating outgoing ballots in the Ballot Portal are Business Mail Entry Unit Clerks (Occupational Codes 2320-0005 and 2320-15XX) and Business Mail Entry Unit Technicians (Occupational Code 2320-28XX); Lead Sales and Services Associates (Occupational Codes 2320-0004 and 2320-0009) in Level 22 and below retail post offices; and Postal Support Employee Sales

⁷ 91 Fed. Reg. 54966 (2026).

⁸ 91 Fed. Reg. 54990-91 (2026).

⁹ 91 Fed. Reg. 54991 (2026).

¹⁰ 91 Fed. Reg. 54991 (2026).

and Services/Distribution Associates (Occupational Code 2395-0017) who work in Remotely-Managed Post Offices.¹¹

There are 572 Business Mail Entry Units (“BMEUs”) across the country that accept large-volume mailings for mailers who qualify for discounted postage rates if their mailings are properly prepared. The Final Rule indicates that ballots can be mailed through the BMEUs. The entire purpose of the BMEU in postal operations is revenue protection, to ensure that discounts are given only to mailers who prepare their bulk mailings in a manner that lessens the cost of mail processing normally required for First Class Mail. The BMEU is the entry point at which the Postal Service reviews these large mailings to validate postage and confirm the required mail preparation has been done for the claimed discounts.

Bulk mail that is not properly prepared is not barred from being mailed like the Final Rule suggests ballots will be. Bulk mailers can correct their mailing to receive the discounts or mail without a discount. The Final Rule does not give states options to use the mail for ballots that do not meet the preparation or Portal requirements.

The APWU receives Accounting Period (“AP”) files from the Postal Service that detail the bargaining unit employees on postal roles. Based on the AP files as of August 21, 2026, the Postal Service reported just

¹¹ See 91 Fed. Reg. 54981 (2026) (“Both BMEU technicians and Retail clerks will receive training on this process.”).

over 1,300 BMEU Clerks and Technicians total on its rolls nationwide. BMEUs and BMEU employees are distributed unevenly across the country – Missouri has 35 BMEU clerks to Wyoming’s two, Florida’s 66, and Pennsylvania’s 86, for example.

The Final Rule indicates that election officials can also mail ballots at the window of any post office.¹² The Lead Sales and Service Associate (commonly referred to as a Lead Clerk) is the bargaining unit position that currently handles Election Mail in Level 22¹³ and below post offices. Lead Clerks work in post offices that generally have other clerks and letter carriers. According to the AP files, there are 7,550 Lead Clerks on postal rolls nationally and 50,638 Sales and Services/Distribution Associates (likely the Retail Clerks referred to in the Final Rule). Lead Clerks vary in number across the states with the most found in California (874) down to twenty each in Montana, Wyoming, and South Dakota.

In 2012, the Postal Service instituted the Post Office Structure Plan (“POSTPlan”) which reduced operating hours at smaller post offices, removed their postmasters, and renamed them Remotely-Managed Post Offices (“RMPOs”).¹⁴ Smaller RMPOs are staffed

¹² 91 Fed. Reg. 54981 (2026) (...Outbound Federal Ballot mailings must be entered at a Post Office retail counter, including manual post offices, or a BMEU.”).

¹³ Post Office levels are determined by the office’s overall workload which include factors such as revenue generated and the number of delivery routes and smaller satellite or RMPOs the office oversees. Smaller levels are smaller offices.

¹⁴ United States Postal Service, *Delivering Operational Success*. Available at: <https://about.usps.com/publications/annual->

by a single Clerk who can be a non-career Postal Support Employee. The AP files show 5,616 PSE Sales & Services/ Distribution Associates working in the smallest four-hour RMPOs.

B. Postal Clerks Cannot be Trained Adequately in the Short Time before the November Elections.

Postal regulations require extensive training to execute properly. BMEU Clerks and Technicians spend weeks at the Postal Service's Business Mail Academy training program in Norman, Oklahoma to learn bulk mail requirements and may also participate in dozens of hours of online training. Window clerks undertake rigorous training as well on the varied mailing rules and policies set out across scores of lengthy postal handbooks and manuals. For example, the Domestic Mail Manual, which details prices and standards for all domestic mailing services (and is amended by the Final Rule), is over 1,250 pages long.

Online employee training typically happens through the MyHR homepage on the Postal Service's Intranet *LiteBlue*. The Postal Service identifies employees, nationally, who require training and can also track whether training has been completed by individual employees. Employees are assigned specific training courses accessible online only at work on a non-public secure postal computer using their individual employee password. Training and

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2014/ar2014/annualreport2014_tech_049.htm.

learning tools include workbooks, user guides and manuals, videos, and exams. Associated handbooks and manuals and postal policies are available on *LiteBlue*.¹⁵ Training times vary depending on the subject and the availability of the employee. Retail clerks, particularly those in small offices with limited relief from their regular duties, can find it hard to have uninterrupted time to complete training in one sitting.

Training and learning tools are developed in a training department at Postal Headquarters. It appears to take the Postal Service months to develop new training programs. Occasionally, the Postal Service asks the APWU to provide input on training programs. It has not done so here.

The Postal Service is a document-centric organization. Postal policy and procedure are reduced to writing and published through various handbooks, publications, forms, manuals, fact sheets, and user guides. For example, and consistent with its practice in election years, the Postal Service issued an Election Mail Kit in February 2026 for state officials. The Kit offers links to two official Publications, various forms, links to toolkits and maps, and user guides.

The Postal Service commonly communicates with postal employees through Standup Talks. These are not detailed training. Standup Talks are what their name suggests – ideally supervisors call a meeting

¹⁵ U.S. Postal Service, *Learning Environment*. Available at: https://about.usps.com/strategic-planning/cs09/CSPO_09_085.htm.

and read the Standup Talk to employees who can ask questions. The ideal often does not happen – many times, Standup Talks are posted or left for employees to read and absent employees may not know the Standup Talk occurred or is available. Information about the Final Rule court injunctions has been delivered to postal employees in Standup Talks.

C. Implementation of the Ballot Portal for the November Election is Not Feasible.

The Ballot Portal is unlike anything the Postal Service has undertaken before. Whether it is workable depends not only on programming but on the policies and procedures clerks are expected to follow in using the Portal to verify ballots. Those details are opaque to the APWU and postal workers; the only information clerks have received about the Ballot Portal are Standup Talks about court injunctions. The APWU has little information from the Postal Service; it has been told only that the Portal and training materials are in development and that the Postal Service is committed to complying with the APWU collective bargaining agreement in rolling out the training to bargaining unit employees.

Given this lack of information, the APWU cannot speak to precise issues with the process of verifying ballots through the Ballot Portal. It can say with confidence that completing the programming of the Ballot Portal this week as suggested by Postal Vice

President Monteith¹⁶ does not mean the Ballot Portal will be useable. Many other steps must happen before the Portal is operational. At a minimum, the Postal Service must finish the Portal training program, distribute it to tens of thousands of postal employees, and make time for those tens of thousands of employees to complete the training. Depending on the length of the training, the time for employees to complete it could take several weeks.

The Postal Service must also make the Portal available and accessible in not only the 572 BMEUs but tens of thousands of post offices. The Postal Service will have to develop new policies and procedures for employees on how to access the Portal and give the APWU 60 days advance notice before policies that affect wages, hours, and working conditions take effect. If those policies violate the collective bargaining agreement, an arbitrator could order that they be rescinded. And if the procedures require programming of mail processing equipment for scanners or machines to be able to review ballots against data in the Portal, that will add more time before the system is ready for use. For mail as important as ballots and for consequences as significant as preventing election officials from using the mail because the Portal cannot be accessed, the Postal Service would normally complete and thoroughly test the implementation preparations over many months before using the Ballot Portal on live mail.

¹⁶ Decl. of Steven W. Monteith at ¶3, Case No. 1:26-cv-11549-IT (D.Mass. Sept. 3, 2026), ECF No. 280-1.

There are other timing concerns created by too-quickly launching the Ballot Portal. Today, when ballots arrive in bulk at a post office, they are not scanned individually. Postal clerks work tirelessly to ensure that mail received on a given day is placed in an outgoing truck the same day; this is especially true for ballots. If, however, clerks must scan ballots individually or in large numbers to verify them in the Portal, the volume of mail ballots will necessarily mean that some ballots – especially those received late in the day – will not make the last outgoing truck. Some voters may not get their ballots in time to return them to be counted.

Other practical realities limit the Postal Service's ability to launch the Ballot Portal this Fall. Currently the Postal Service is in its choice vacation period until late October. Approximately ten percent of the workforce is on or will be on leave that they requested over a year ago and was approved by management. At the same time, postal management has strictly curtailed the use of overtime. New special tasks such as clerks scanning ballots to verify them against the Ballot Portal will have to be completed, in addition to their other work, during normal business hours which for some smaller post offices are only four hours a day.

D. Hurried Launch of the Ballot Portal Will Likely Cause Catastrophic Problems for the Public and Mail Service.

Postal employees have reason to fear that the Postal Service will rush them to implement an incomplete procedure for verification through a Ballot Portal that does not work. A slapdash approach to the Ballot Portal normally would be unacceptable. As the inevitable problems with the Portal reveal themselves while it is being used, the likely result is that ballots will not be verified and will then be refused – and that could easily prevent timely delivery of hundreds of thousands of ballots. The Postal Service will end up having the opposite effect on the 2026 elections as it did on the 2020 elections – instead of facilitating voting using time-tested policies and practices, rushing through an unusual and untested new process will deprive thousands of people from ever receiving a ballot.

Moreover, the Postal Service’s claim that the Final Rule will “enhance the efficiency of postal operations”¹⁷ is a far cry from the truth. Postal customers are already frustrated with slow service and understaffed post offices. Adding another set of tasks that could take hours for clerks to perform will make service to other customers worse. The Postal Service’s claims that there will be no consequential effects of the Ballot Portal simply do not comport with

¹⁷ 91 Fed. Reg. 54969 (2026); *see also* 91 Fed. Reg. 54986 (2026) (“The Postal Service already possesses the necessary staffing capacity at BMEUs and retail locations as well as mail acceptance infrastructure necessary to administer the rule...”).

a reality where all mail, including Election Mail, continues to slow down.

The Postal Service's hurried demands on the courts to allow it to implement the Final Rule as soon as possible belie a troubling reality – the Postal Service will not be able to competently launch an unorthodox program like the Final Rule for the November elections. Even if the courts conclude the Final Rule is lawful and despite the Herculean efforts of postal workers to implement it, mailers and customers will suffer if the Postal Service tries to push the Final Rule through on a needlessly short timeline.

CONCLUSION

The Postal Service's Final Rule is the first time in the Postal Service's 250-year history that the Postal Service has created a rule to reject mail—ballots at that—because the mail does not meet mail design requirements. It also is the first time in the Postal Service's history that the Postal Service has created a rule to reject mail unless the mailer registers the recipients of the mail pieces with the Postal Service.

The U.S. Postal Service is the best way to vote by mail in the world. It has a duty to ensure that ballots are accepted and delivered by the Postal Service to their addressees. The hurried implementation of the Final Rule will prevent this from happening for the November 2026 election. The application for a stay of the District Court's order should be denied.

Respectfully submitted,

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