

No. 26A305

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED STATES POSTAL SERVICE, *et al.*,

Applicants,

v.

CALIFORNIA, *et al.*,

Respondents.

*On Application for a Stay of the Injunction Issued by the
United States District Court for the District of Massachusetts*

BRIEF OF THE
BIPARTISAN AMERICAN ELECTION PROJECT
AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE

Lawyers affiliated with both the Democratic and Republican parties have formed *amicus curiae* The Bipartisan American Election Project (BAEP).¹ BAEP is led by Bob Bauer and Ben Ginsberg, veteran election lawyers and the former co-chairs of the bipartisan Presidential Commission on Election Administration. BAEP is committed to reinforcing principled constitutional positions, defending democratic norms, and countering efforts to obstruct the lawful casting and tallying of votes or to undermine public confidence in election outcomes. BAEP's efforts and goals are supported by attorneys from both major parties, including Michael Carvin, who has represented conservative and Republican Party organizations in election-law litigation, including voting rights, recount, and redistricting matters; Daniel Troy, whose background includes appellate litigation in private practice and service as Chief Counsel to the Food and Drug Administration in the George W. Bush Administration; Donald Verrilli, former Solicitor General of the United States in the Obama Administration and a senior litigation adviser to the Obama–Biden and Harris–Walz presidential campaigns; John Devaney, who has tried election-law cases on behalf of Democratic presidential campaigns and the Democratic National Committee; Joseph Guerra, who served as a Deputy Assistant Attorney General, Office of Legal Counsel, during the Clinton Administration and as a Principal Deputy Associate Attorney

¹ No counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than BAEP, its members, or its counsel made such a monetary contribution.

General during the Obama Administration; and Dana Remus, who served as White House Counsel in the Biden Administration. Mr. Verrilli, Mr. Devaney, and Ms. Remus are also members of the BAEP Board of Directors.

Our country is experiencing extraordinary conflict over the administration of elections and the acceptance of election outcomes. The foundational principles on which free and fair elections have been based are now the subject of a flood of litigation in federal and state courts, intense regulatory battles, and polarizing rhetoric about the reliability of elections. The major political parties have long brought sharply differing perspectives on how best to administer a fair electoral process. Yet the intensity of the current partisan conflict threatens to undermine the lawful conduct of elections and weaken public trust in our voting systems.

The line between legitimate disagreements over election laws and anti-democratic challenges to longstanding constitutional principles and norms has too often been lost in these conflicts. To assist the judiciary in drawing and upholding that line, BAEP focuses exclusively on frontal challenges to constitutional protections and democratic norms. As a bipartisan group of veteran attorneys, BAEP seeks to highlight for the Court paths to a principled resolution of the legal issues that these partisan conflicts are now generating. This case involves just such an effort.

SUMMARY OF ARGUMENT

On August 26, the United States Postal Service published a Final Rule that impermissibly constrains States' ability to have their officially mailed ballots reach their qualified voters. *See Ballot Mail for Federal Elections*, 91 Fed. Reg. 54966, 54990–54991 (Aug. 26, 2026). The Final Rule cites no statute clearly authorizing the

Postal Service to impose these burdens on the States’ administration of mail-in and absentee voting. None exists. Congress has given the Postal Service authority to enforce postal laws that execute the agency’s core mission of providing efficient mail service. Congress has not authorized the Postal Service to regulate election procedures, reject official election mail, or screen election mail. Nor does the President have independent authority to order the Postal Service to interfere with the States’ administration of elections. The Final Rule is thus *ultra vires* and unconstitutional.

Recognizing that neither the President nor the Postal Service has any authority over the administration of federal elections, Applicants attempt to characterize the Final Rule as imposing only “modest” envelope-design and voter-information requirements that do not infringe on States’ constitutional authority to determine and manage how their citizens vote. Appl. at 13. According to Applicants, these requirements merely reflect the Postal Service’s exercise of authority over the efficient movement of mail, analogous to its rules governing the transport of cremated remains and replica explosives. *Id.* at 16–17.

These characterizations are grossly misleading. The Final Rule is explicit: its purpose is to “achieve the goals articulated in” Executive Order 14399 (the “EO”), titled “Ensuring Citizenship Verification and Integrity in Federal Elections.” *See* 91 Fed. Reg. 17125 (Mar. 31, 2026). Like the EO, the Final Rule repeatedly intones the

goals of protecting election integrity and preventing voting fraud.² To achieve these goals, the Postal Service claims authority to refuse to transmit ballots that do not comply with its newly minted, eleventh-hour envelope-design and voter-registration requirements. Throughout the Final Rule, in other words, the Postal Service claims the power to decide whose ballots will be transmitted and whose won't. This scheme is neither a "modest" change nor unrelated to the administration of federal elections. To the contrary, the Postal Service's interpretation of its powers exerts "a breathtaking amount of authority" over election procedures. *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 764 (2021).

Because the Postal Service's new procedures indisputably regulate if and when ballots will be transmitted, the Final Rule is the product of a "proceeding[] concerning the mailability of matter" and thus is subject to review under the APA. *See* 39 U.S.C. § 3001(m) ("[P]roceedings concerning the mailability of matter . . . shall be conducted in accordance with [the APA]."). Indeed, the Final Rule repeatedly characterizes the rulemaking process as a "proceeding." *See* 91 Fed. Reg. 54967–54968. And because the Final Rule improperly encroaches on the States' constitutional authority to administer congressional elections without any authorization from Congress to do so, it is "contrary to constitutional right[s]" and "in excess of statutory [] authority" under

² *See, e.g.*, 91 Fed. Reg. 54966 (goal to "facilitate enforcement of federal law, reduce the risk of fraud, and help protect the integrity of federal elections"); *id.* at 54969 (claiming "the Postal Service has the legal authority to take the measures in this rule to facilitate enforcement of federal law, reduce the risk of fraud, and help protect the integrity of federal elections"); *id.* at 54983 (stating the Rule will "mak[e] it easier to detect and deter potential fraud or irregularities while protecting the integrity of mail-in voting").

the APA. 5 U.S.C. § 706(2)(B)–(C). Accordingly, contrary to Applicants’ claim, the States’ challenge is not governed by a “Hail Mary pass” standard of review or anything like it.

If allowed to take effect, the Final Rule will cause immediate, irreparable harm to the States’ administration of the November 3, 2026 election. The Final Rule will create administrative chaos as election administrators nationwide scramble to redesign ballot envelopes, wait for agency approval of those ballot envelopes, reprint ballot envelopes to meet imminent mailing deadlines, wait for the Postal Service to release an online “Portal,” and rush to upload individualized information into the Portal for tens of millions of voters across the country. The work-in-progress Portal that the Postal Service is building for this verification process has never been used—or even tested—on a nationwide scale. At the same time, the Final Rule imposes new financial and administrative burdens that will force election administrators to divert resources from other essential tasks. And it exposes state officials who follow conflicting state election laws—like nondisclosure “laws protecting victims of domestic abuse or intimate partner violence,” Doc. 285 (26-cv-11549) at 38—to the criminal penalties the President threatened in the EO. The result will be disenfranchisement on a potentially unprecedented scale as the Postal Service rejects mail-in and absentee ballots. That is because the perfect compliance the Final Rule demands is “virtually impossible” for the November election. *Id.* at 44.

These impacts will irreparably injure the States, voters, and the integrity of the midterm election. These impacts, moreover, are wholly unjustified. The Postal

Service cites no evidence of voter fraud, and in fact acknowledges that fraud may be “uncommon.” 91 Fed. Reg. 54969. Yet, the agency nevertheless asserts, without further explanation, that these rushed measures are needed “to facilitate enforcement of federal law, reduce the risk of fraud, and help protect the integrity of federal elections.” *Id.* at 54966. These generalized and unsubstantiated claims cannot justify the severe burdens the Final Rule imposes on the States and voters. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). The Postal Service’s failure to provide any evidence as to why these last-minute election regulations must be implemented also confirms that they are not necessary.

Just as “federal courts should not impose changes close to an election,” *Allen v. Milligan*, 608 U.S. 511, 516 (2026), so too should they consider, in assessing the likelihood of irreparable harm, the consequences of imposing disruptive changes in every State’s election procedures at this late date. This Court has resisted last-minute changes to election rules that create a “possibility that qualified voters might be turned away from the polls.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). That concern applies with particular force here: the Postal Service’s unprecedented and wholly untested new system could cause hundreds of thousands of citizens to effectively lose the right to vote.

The Constitution allocates responsibility for administering congressional elections to the States in the first instance, subject to an override by Congress. The President has no authority over such elections, and Congress has never assigned any election-related power to the Postal Service. Through the Final Rule, the President seeks

to impose “a significant federal election-integrity measure shortly before an election,” Appl. at 13, of the type that he has been unable to persuade Congress to enact. *See Safeguard American Voter Eligibility Act (SAVE Act)*, S. 1383, 119th Cong. § 2(f)(3) (2026). That effort was properly enjoined below, and this Court should not stay the injunction.

STATEMENT OF THE CASE

On August 26, the Postal Service issued the Final Rule, which regulates how States administer mail-in and absentee ballots and demands immediate compliance. *See* 91 Fed. Reg. 54990–54991 (adding regulations to the Domestic Mail Manual). In addition to the fact that the Postal Service lacks statutory authority to regulate elections and the President has no authority to authorize or command election regulations, at least four of the Final Rule’s requirements are unworkable and certain to cause lasting harm if applied during the November 2026 election or to subsequent elections.

First, the Rule requires that outbound and return mail ballots use an envelope that: (a) shows the Postal Service’s “official Election Mail logo”; (b) is “automation compatible”; and (c) bears a voter-specific IMb barcode created and assigned by state election officials. Domestic Mail Manual (DMM) §§ 24.3.1, 24.3.2. The Final Rule allows no exception for jurisdictions that have already designed, finalized, and printed their ballot envelopes for the November 2026 election. *See* Doc. 31 (26-cv-13917) at 8 (noting that “[m]ost Plaintiff States have already ordered their mail ballots”). Rather, it requires compliance during the November 2026 election. *See* 91 Fed. Reg. 54966.

Second, the Postal Service will not deliver mail ballots in any State unless that State’s election officials first register all mail-in or absentee voters “with the Postal Service for inclusion on the state’s Mail-In and Absentee Participation List.” DMM § 24.4.2(a). To do so, officials must input into the agency’s online “Ballot Mail Portal” (1) the name and address of every registered mail-in or absentee voter; (2) a voter-specific IMb barcode to be printed on each voter’s outgoing and return ballot envelopes; and (3) information about the “originating election office.” DMM § 24.4.2(b). This information must be inputted “at least 30 days before the date of the federal election . . . or by the date on which mail-in or absentee ballots may begin to be mailed under state law.” DMM § 24.4.2(d). The Final Rule provides no exception for States that cannot access the Portal or encounter technical problems with it—a likely problem, since the Portal is not yet operational. *See* Doc. 150-1 (26-cv-13917) at 2 (averring on September 3, 2026, the Portal will be available for “use by sometime next week”).

Third, the Final Rule requires that compliant outgoing- and return-ballot-envelope designs “be submitted to the Postal Service for mailpiece design review and feedback.” DMM §§ 24.3.1, 24.3.2. The Final Rule doesn’t specify how quickly the Postal Service will complete this review-and-feedback process. But the review must be complete before election officials can input voter information into the Ballot Mail Portal, because election officials “must certify in the Federal Ballot Mail Portal that any mail-in or absentee ballots . . . have been submitted for [Postal Service] review and that they have received feedback.” DMM § 24.2(f). The process is unworkable for

States already mailing ballots, or about to do so.³ *See* Doc. 100-1 (26-cv-13917) ¶ 21 (Wisconsin absentee ballots began going out on September 1).

Fourth, the Rule requires postal workers to “review mailings identified as Outbound Federal Ballot Mail prior to acceptance” and ensure that each ballot envelope complies with the Final Rule’s design requirements and that the recipient is “enrolled with the Postal Service.” DMM § 24.5.1. Postal workers will try to confirm the recipient’s registration by scanning “the IMb on the outside of the Outbound Federal Ballot Mail envelope.” 91 Fed. Reg. 54981. If a postal worker determines that an outbound ballot does not satisfy the Rule’s envelope-design requirements or that the recipient has not been registered on the Portal, the ballot “will not be accepted and will be returned to the authorized ballot mailer.” DMM § 24.5.3(a).

ARGUMENT

The Final Rule is plainly unlawful. No statute authorizes the Postal Service to condition the delivery of official election mail on States’ compliance with the agency’s election regulations. And the President possesses no independent constitutional or statutory authority to direct the agency to impose such regulations by executive order. The Final Rule is thus *ultra vires* and unconstitutional, because it interferes with the States’ constitutional responsibility to administer congressional elections. The postal laws provide for the Postal Service to enforce only *those* laws, not others, such as the election laws.

³ *See* N.C. State Bd. of Elections, *Absentee Voting Begins: November 2026 General Election*, <https://www.ncsbe.gov/news/events/absentee-voting-begins-november-2026-general-election> (last visited Sep. 8, 2026) (mailing ballots on September 4).

Moreover, imposing the Final Rule in the closing weeks of an election cycle will inflict immediate and irreparable harm: administrative chaos, widespread disenfranchisement, and voter confusion. It will do so to fix a supposed problem that the Final Rule does not substantiate. Particularly because Election Day is less than two months away and mail-in ballots have already been sent to voters in some States, this Court should deny the requested stay.

I. The Final Rule exceeds the Postal Service’s authority and impermissibly interferes with the States’ constitutional authority.

The Final Rule far exceeds the Postal Service’s authority. Despite their gross mischaracterization of the Final Rule as imposing “modest” changes, Applicants ultimately acknowledge, as they must, that the Final Rule is “a significant federal election-integrity measure.” Appl. at 13. But Congress has assigned no election-related responsibilities to the Postal Service.

A. The Postal Service lacks statutory authority to regulate elections.

In promulgating the Final Rule, the Postal Service repeatedly stressed that it seeks to “protect the integrity of federal elections.” 91 Fed. Reg. 54966; *see also id.* at 54969 (same); *id.* at 54983 (“protect[] the integrity of mail-in voting”). This objective, however, is entirely outside the agency’s domain. The Constitution’s Elections Clause, art. I, § 4, cl. 1, “invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to preempt state legislative choices.” *Foster v. Love*, 522 U.S. 67, 69 (1997) (internal citation omitted). In recent decades, Congress has exercised its power under the Elections Clause by adopting a series of incremental and carefully calibrated measures. These measures

completely refute any notion that the Postal Service’s authority to regulate the mail includes the power to regulate absentee ballots.

1. No statute authorizes the Final Rule’s election rules.

Contrast the Final Rule with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. § 20302, which imposes certain duties and prohibitions on States with respect to absentee voting. In UOCAVA, Congress has prescribed a number of detailed requirements concerning absentee ballots,⁴ and has expressly overridden a limited number of state laws that might impair the use of such ballots.⁵ None of these provisions, however, confers any regulatory power on the Postal Service, much less authorizes it to (1) dictate specific envelope features for absentee ballots, (2) require States to upload information into a Postal Service database, or (3) reject ballots. And where UOCAVA—and thus Congress—is silent, the Elections Clause “empowers the States to regulate.” *Roudebush v. Hartke*, 405 U.S. 15, 24 (1972).

Similarly, the Help America Vote Act of 2002 (HAVA) prescribes certain standards for state administration of federal elections, but it expressly allows States to decide how to comply with these standards. HAVA requires “a single, uniform,

⁴ States must allow servicemembers and citizens living abroad to register and vote absentee in all federal elections, 52 U.S.C. § 20302(a)(1), must process valid registration and absentee-ballot applications received at least 30 days before an election, *id.* § 20302(a)(2), and must transmit timely and validly requested absentee ballots no later than 45 days before the election, *id.* § 20302(a)(8)(A).

⁵ For example, States cannot refuse to accept “any otherwise valid voter registration application or absentee ballot application . . . or marked absentee ballot submitted . . . by an absent uniformed services voter or overseas voter solely on the basis of” a State’s “[n]otarization requirements,” “[r]estrictions on paper type,” or “[r]estrictions on envelope type.” 52 U.S.C. § 20302(i)(1)–(3).

official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State.” 52 U.S.C. § 21083(a)(1)(A). It also includes certain minimum standards for state voting equipment. *Id.* §§ 21081(a)(1)(A)–(B), (2). HAVA authorizes the Election Assistance Commission (EAC) to provide “guidance” to “assist” the States in complying with these standards. *Id.* § 21101(a). But that guidance is “*voluntary*,” *id.* (emphasis added), and HAVA ultimately leaves the “specific choices on the methods of complying . . . to the *discretion of the State*,” *id.* § 21085 (emphasis added).

Finally, the National Voter Registration Act (NVRA) requires States to establish programs to review their voter rolls and remove individuals who are ineligible to vote by reason of death or a change in residence. *Id.* § 20507(a)(4). It requires proof of voter eligibility for its mail-in registration form, but requires only an attestation under penalty of perjury, not any other type of formal authentication. *Id.* § 20508(b)(2)(B)–(C), (b)(3). And it confers very narrow powers on the EAC,⁶ and

⁶ The EAC can develop the mail voter registration application form and submit reports to Congress assessing the NVRA’s impact; prescribe regulations governing these two duties; inform States of their responsibilities under the Act; adopt voluntary guidance to assist States in complying with HAVA’s minimum standards for voting systems; and conduct financial audits of recipients of HAVA assistance payments. 52 U.S.C. §§ 20508(a), 21101(a), 21142(b).

prescribes the ways the EAC can exercise those powers.⁷

In light of these detailed and carefully circumscribed measures addressing State administration of congressional elections—including measures that specifically address use of absentee ballots and are designed to “protect the integrity of the electoral process,” 52 U.S.C. § 20501(b)(3)—it is utterly implausible that Congress authorized the Postal Service, an entity with no expertise in elections, to adopt additional election-integrity measures. It is equally implausible that Congress empowered the Postal Service to compel States to upload voter information into an agency-designed database and to reject mail-in or absentee ballots if a State does not comply. The “‘basic and consequential tradeoffs’ inherent” in intensifying federal power over voting so substantially “are ones that Congress would likely have intended for itself.” *Biden v. Nebraska*, 600 U.S. 477, 506 (2023) (citation omitted). Congress has specified what categories of mail the Postal Service may or must not deliver. *See* 39 U.S.C. §§ 3001–3018. Election mail is not one of them. By expanding those categories to reach election mail, the Final Rule far exceeds the Postal Service’s general rulemaking authority. *See* 39 U.S.C. § 401(2) (authorizing the Postal Service only to make rules “necessary in the execution of its functions”).

⁷ To change the federal mail voter registration form, the EAC must propose a rule with the approval of at least three EAC Members. 52 U.S.C. § 20928. After issuing a notice of proposed rulemaking and receiving public comments, the EAC must also “consult[] with the chief election officers of the States” regarding its proposed changes. *Id.* § 20508(a)(2). Once the EAC receives feedback from the public and the States, it must consider revisions to its proposed rule, and any revisions must again be approved by at least three EAC Members. *Id.* § 20928.

Congress specified the enforcement authority it intended for the Postal Service to possess. It expressly conferred on the agency the power “to investigate *postal* offenses and civil matters *relating to the Postal Service*” and “to offer and pay rewards for information and services in connection with violation of the *postal laws*.” 39 U.S.C. § 404(a)(6)–(7) (emphases added). This targeted enforcement authority is consistent with the Postal Service’s other enumerated powers, *see id.* § 404(a), all of which concern efficient mail delivery. None remotely indicates a congressional intention to expand the agency’s powers to create election procedures or enforce the President’s preferred voting policies. It “strains credulity” to assert that the Postal Service’s generic governing statute grants it “the sweeping authority that it asserts.” *Ala. Ass’n of Realtors*, 594 U.S. at 760.

Under the Postal Service’s theory of its powers, there would be no reason to confine the agency’s enforcement of election laws to what it here terms “modest” conditions for the delivery of ballots. Consider, for example, the President’s March 2025 executive order, which established as an election-law enforcement priority his interpretation that federal law requires all federal election mail ballots to be physically received by election officials by Election Day, not just postmarked by that date. While the judicial review of that executive order was pending, could the Postal Service have promulgated a rule that it would not transmit mail ballots to States conducting mail voting on the “postmark rule”? It clearly could not. The Postal Service cannot prevail here on a similar claim of enforcement authority merely by characterizing the exercise of this power as “modest.”

2. Applicants' counterarguments are meritless.

Tacitly recognizing the problems with their claimed legal authority, Applicants make two moves. First, they claim that these extraordinary new requirements are run-of-the-mill regulations governing “the collection, handling, transportation, delivery, forwarding, returning, and holding of mail,” Appl. at 3 (quoting 39 U.S.C. § 404(a)(1)), on par with regulations governing the mailing of “cremated human and animal remains” and “replica explosives,” *id.* at 16–17. These examples, however, only highlight the impropriety of the Final Rule.

The Postal Service developed a rule governing the mailing of replica explosive devices because, “[i]n the past, postal operations have been disrupted and facilities have been evacuated when replica or inert explosive devices have been discovered in the mail.” *Restricting the Mailing of Replica or Inert Explosive Devices*, 75 Fed. Reg. 282, 283 (Jan. 5, 2010). This rule, therefore, addressed a type of mail that interfered with the operation of the mail system—something the Postal Service cannot possibly claim with respect to absentee ballots. Similarly, the Postal Service adopted rules governing the shipping of human or animal cremated remains after its Inspector General found that “[t]he U.S. Postal Service is the only courier that ships cremated remains,” that “[m]aintaining proper handling of cremated remains as a service is vital to the Postal Service’s customer satisfaction and brand image,” and that the Service’s procedures for such mail had resulted “in undeliverable and/or unidentifiable Cremated Remains packages.” USPS Office of Inspector General, Report No. 23-018-R23 (July 5, 2023), <https://www.uspsoig.gov/reports/audit-reports/cremated-remains>; *see*

also Cremated Remains Packaging Requirements, 90 Fed. Reg. 9843, 9843 (Feb. 19, 2025) (noting that shipping cremated remains “is a sensitive matter”).

Thus, these rules addressed inefficiencies in the Postal Service’s own operations and resulting consumer dissatisfaction—concerns central to “the execution of its functions,” 39 U.S.C. § 401(2), and wholly disconnected from the integrity of federal congressional elections.

Second, in support of their claim that the Final Rule imposes only “modest” conditions on the delivery of federal election ballots, Applicants remarkably assert that “the rule does not regulate . . . the timeline for transmission of ballots . . . or anything similar.” Appl. at 18. But, by its express terms, the Rule has an obvious effect on the timelines for ballot delivery. The Postal Service will reject mailings that “do not comply” with its ballot envelope requirements: the rejected ballots will be returned to the States, which “must address the error(s) before resubmitting the mailing.” DMM § 24.5.3(a). States are offered “further review” of rejected mailings, *id.* § 24.5.3(b), but there are no deadlines built into the process to limit delays. To the contrary, the Postal Service emphasizes that it “is not responsible for service delays when the Federal Ballot Mail Portal User or authorized ballot mailer does not meet the applicable preparation or entry standards.” *Id.* § 24.5.3(c). These procedures effectively “regulate . . . the timeline for transmission of ballots,” contrary to Applicants’ claim. Appl. at 18.

3. There are judicial remedies for the agency’s unlawful action.

In light of the foregoing, the Final Rule exceeds the Postal Service’s authority and is thus *ultra vires*. Moreover, because Congress has not preempted the States’

authority under the Elections Clause in this area, the States retain it, and the Final Rule’s invasion of that authority is also unconstitutional. Contrary to Applicants’ claims, injunctive relief is available to remedy these wrongs.

First, the Final Rule is the product of a “proceeding[] concerning the mailability of matter”—*i.e.*, whether absentee ballots will or won’t be delivered—and thus is subject to review under the APA. *See* 39 U.S.C. § 3001(m) (“[P]roceedings concerning the mailability of matter . . . shall be conducted in accordance with [the APA].”). Applicants ignore this provision in arguing that judicial review under the APA is foreclosed. *See* Appl. at 14. But Congress has specified that “proceedings concerning the mailability of matter” are subject to APA review, which plainly encompasses rule-making proceedings on the mailability of absentee ballots. 39 U.S.C. § 3001(m). And the Postal Service itself acknowledged that it conducted a “proceeding” in issuing the Final Rule. *See* 91 Fed. Reg. 54967–54968 (a dozen usages). The provisions Applicants cite hardly constitute the “clear and convincing evidence” necessary to foreclose APA review. *Abbott Lab’s v. Gardner*, 387 U.S. 136, 141 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

Second, if APA review were foreclosed, then non-statutory review is available. Applicants assert that such a claim requires a showing that the Final Rule is “contrary to a specific prohibition in a statute.” Appl. at 14 (quoting *Nuclear Reg. Comm’n v. Texas*, 605 U.S. 665, 681 (2025)). But *Texas* involved “a typical statutory-authority argument.” 605 U.S. at 666. Here, the Postal Service’s action is also *unconstitutional*, and there is no reason why the availability of judicial review for unconstitutional

agency action turns on whether that action also violates a specific statutory prohibition. Imposing such a barrier to injunctive relief here would be inconsistent with principles of federalism and the Tenth Amendment, as well as the Framers’ decision to entrust the administration of congressional elections to the States, absent preemptive legislation enacted under the Elections Clause. *See Gregory v. Ashcroft*, 501 U.S. 452, 461–462 (1991) (Framers “intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections” (citation omitted)); *Carrington v. Rash*, 380 U.S. 89, 91 (1965) (States have “broad powers to determine the conditions under which the right of suffrage may be exercised” (citation omitted)).

B. The President lacks authority to independently authorize the Final Rule’s election regulations.

Because the President has no role in administering federal elections, the EO underlying the Final Rule cannot independently authorize its election regulations. The EO purports to be authorized by HAVA, the NVRA, and “the Federal Government’s constitutional obligation to guarantee a republican form of Government to every State in the Union.” EO pmb1. None supplies the claimed authority.

The President’s authority to act “must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The EO invades territory that the Constitution assigns to Congress and the States—the President has no constitutional authority to regulate “[t]he Times, Places and Manner of holding Elections.” U.S. Const. art. I, § 4, cl. 1. And neither HAVA, the NVRA, nor any other statute grants the President authority to issue election regulations or remold the Postal Service into an election enforcement agency. *See*

supra Part I.A. Congress, not the President, determines the Postal Service’s authority. U.S. Const. art. I, § 8, cl. 7; *Ex parte Jackson*, 96 U.S. 727, 732 (1877) (“The power possessed by Congress embraces the regulation of the entire postal system of the country.”). And only Congress and the States have constitutional authority to regulate elections—the President does not. U.S. Const. art. I, § 4, cl. 1; *Arizona v. Inter Tribal Council of Ariz.*, 570 U.S. 1, 8–9 (2013).

Nor can the EO draw authority from the Constitution’s Guarantee Clause. U.S. Const. art. IV, § 4. This clause “guarantee[s] to every *State* a republican form of government,” *id.* (emphasis added), but these election regulations apply only to mail-in or absentee ballots “that may be used to cast a vote in a *federal* election,” DMM § 24.1(c) (emphasis added). On its face, the Final Rule does not burden state elections, though in practice, its screening and rejection requirements will affect other elections because federal, state, and local elections are typically combined on a single ballot. Even so, because the Rule’s election regulations are limited in scope to federal elections, the Guarantee Clause is not a valid source of authority for them.

Moreover, this Court has long held that the power “to determine when a state has ceased to be republican in form, and to enforce the guaranty of the Constitution,” is “solely committed by the Constitution to the judgment of Congress.” *Pac. States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 133 (1912); *Luther v. Borden*, 48 U.S. 1, 42 (1849) (holding that Congress’s admission of a State’s senators and representatives “recognized” the State’s republican character and this determination “could not be questioned in a judicial tribunal”). The Court has rejected a President’s attempt to

invoke the Clause unilaterally, because “the power to carry into effect the clause of guaranty is primarily a legislative power, and resides in Congress.” *Texas v. White*, 74 U.S. 700, 730 (1868). Because Congress, not the President, holds whatever authority the Guarantee Clause confers, it provides no basis for the EO’s election mandates.

II. The Final Rule will disrupt the upcoming election, disenfranchise voters, and increase electoral confusion.

This Court has often recognized the “considerations specific to election cases” that caution against last-minute changes to election rules that increase “the possibility that qualified voters might be turned away from the polls.” *Purcell*, 549 U.S. at 4. The Final Rule is likely to cause lasting, irreparable harm if applied in the coming election. It will disrupt election administration, disenfranchise voters, and sow voter confusion. So injunctive relief that prevents the Rule’s “massive changes” from causing these grave harms properly “preserve[s] the States’ existing electoral status quo.” *DSCC v. Trump*, No. 26-5193, 2026 WL 2168617, at *6 (D.C. Cir. July 28, 2026).

A. The Final Rule is creating administrative chaos and will cause operational errors and confusion during the November 2026 election.

As the district court found, compliance with the Final Rule’s envelope-design requirements is “virtually impossible” at this late stage because most Plaintiff States have already ordered mail ballots, and all “are required under state law to mail millions of ballots to voters on a prescribed timeframe.” Doc. 285 (26-cv-11549) at 32 n.37, 44. Some States simply cannot comply at all. North Carolina, for example, did not “use the new Postal Service portal” before it began mailing ballots on

September 4, 2026.⁸ Unrebutted evidence shows that some election offices cannot afford or manage to reprint ballot envelopes even if the Postal Service approves their new designs. *See* Doc. 5 (26-cv-13917) at 20–23 nn.3–13 (collecting States’ evidence).

The Final Rule compounds the problem by setting no deadline for the agency to review envelope designs and provide feedback. There are many thousands of envelope designs nationwide that must be reviewed. *See, e.g.*, Doc. 5 (26-cv-13917) at 21 n.5 (noting that in Michigan alone there are “1,521 separate envelope styles corresponding to each municipal jurisdiction, which must all be designed, tested, reviewed, and printed individually” under the Rule); Doc. 285 (26-cv-11549) at 44 (finding the Final Rule implicates design requirements in “10,000 different election jurisdictions”). States have no time to wait for that approval: under federal law, all must begin sending ballots under UOCAVA by September 19. *See* 52 U.S.C. § 20302(a)(8)(A). Some States, like North Carolina, have already begun mailing ballots; many others will begin in the coming weeks.⁹

At this late stage, state election administrators lack “time [and] funds,” Doc. 31 (26-cv-13917) at 9, to design new envelopes, obtain approval, order envelope production, train officials on how to properly input data in the Portal, run due diligence

⁸ Eileen Sullivan, *Postal Service Is Building Ballot Screening System Despite Ongoing Court Fight*, N.Y. Times (Sep. 2, 2026), <https://www.nytimes.com/2026/09/02/us/politics/postal-service-ballot-screening-system.html>.

⁹ *See* Nat’l Conf. of State Legislatures, *Table 7: When States Mail Out Absentee/Mail Ballots*, <https://www.ncsl.org/elections-and-campaigns/table-7-when-states-mail-out-absentee-mail-ballots> (last updated Aug. 27, 2026) (collecting deadlines and relevant statutes for each state); Doc. 285 (26-cv-11549) at 32 n.37 (collecting deadlines).

to make sure data is appropriately entered, and upload voter registration data on a rolling basis until the November election. Compliance costs may run into the millions—an exceedingly heavy burden at this late hour. Doc. 5 (26-cv-13917) at 22 n.12. For most jurisdictions, complying will mean diverting scarce personnel and money away from other tasks mid-cycle while the midterm elections are already underway or soon to begin. *See, e.g., id.* at 22 n.9 (complying with the Rule “will necessarily divert close to 100% of [New Mexico’s] understaffed team’s resources from other important election administration tasks”). The Intervenor States’ motion to stay in the First Circuit proves the point: it seeks only “the *option* to comply with the Rule”—never claiming the twelve Intervenor states are ready and willing to comply. *See* Mot. to Stay at 6, 28, *League of Women Voters v. Trump*, No. 26-1991 (1st Cir. Aug. 31, 2026), Doc. 1.

B. The Final Rule will cause widespread disenfranchisement if applied during the November 2026 election.

By its terms, the Final Rule will punish noncompliance with disenfranchisement: the Postal Service will not accept mail-in or absentee ballots that do not comply with the Rule’s envelope-design and Portal-registration requirements. Given the undisputed record that “compliance is practically impossible as to the 2026 midterm elections,” Doc. 31 (26-cv-13917) at 8, voters nationwide face a substantial risk of never receiving the ballots their election officials send. That will bar their access to the franchise, above all in States that conduct all-mail elections—California,

Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, and Washington.¹⁰

The Final Rule’s requirement that state officials input voter information into the Portal before mailing any ballots also threatens disenfranchisement. The Final Rule expressly requires postal workers to reject any ballot sent to a voter who is not registered on the agency’s Portal. It thus depends on a Portal that is error-free. But the Portal is not even *operational*. *See* Doc. 150-1 (26-cv-13917) at 2. Without extensive testing, this brand-new database—built to hold tens of millions of voter records while state officials constantly update it—will inevitably have technical issues and errors.¹¹ *See System of Records*, 91 Fed. Reg. 56368 (Sep. 1, 2026) (official notice for Portal not describing any testing or safety measures in place). The consequences of such technical issues are undisputed: any error uploading data into the Portal could have widespread effects. *See* Doc. 285 (26-cv-11549) at 41 n.53.

Many States are also legally barred from revealing the identities of protected voters—such as “California’s numerous confidential voters”—so the Final Rule necessarily bars those voters from voting by mail. Doc. 5 (26-cv-13917) at 24 n.14. And it conflicts with other state laws in ways likely to disenfranchise voters. For example, voters in Maryland may print an absentee ballot at home and mail that ballot directly

¹⁰ *See All-Mail Voting*, Ballotpedia, https://ballotpedia.org/All-mail_voting (last visited Sep. 8, 2026) (“In these states, voting is conducted primarily by mail, and all eligible voters receive a ballot by default.”).

¹¹ Luke Belant, *6 Questions: What’s Going on With the New Mail Ballot Rules?*, Nat’l Conf. of State Legislatures (Aug. 27, 2026), <https://www.ncsl.org/state-legislatures-news/details/6-questions-whats-going-on-with-the-new-mail-ballot-rules> (“[T]he type of testing [the Portal] has undergone, and how it will perform under stress, remains unclear.”).

to the local election office. Doc. 100-1 (26-cv-13917) ¶ 102. Such ballots would be non-compliant with the Final Rule’s envelope-design requirements and would be rejected.

These problems matter because the Final Rule expressly authorizes the Postal Service to reject ballots it deems noncompliant. Disenfranchisement will inevitably follow. The Final Rule requires no timely notice to local election officials when a ballot is rejected and no notice to the voter that he or she can no longer vote by mail. And in most States, ballots not received by Election Day go uncounted, so any delay in delivery likely means no vote at all. *See* Doc. 5 (26-cv-13917) at 23 n.13. Every ballot the Postal Service rejects is, in essence, a denial of the right to vote. *See* Doc. 207 (26-cv-11549) at 14.

C. The Final Rule will increase voter confusion throughout the country.

Unrebutted evidence shows that the Final Rule is already confusing both election administrators and voters. *See* Doc. 207 (26-cv-11549) at 15 (collecting evidence about how the Final Rule imposes an “overnight change” that “creates profound uncertainty about the viability of mail ballots”). The Plaintiff voting-education organizations must now rewrite, at great expense, the advice they give officials and voters. *Id.* at 16–17.

In all these ways, the Final Rule imposes heavy burdens on the franchise and on state election officials, all to supposedly “facilitate enforcement of federal law, reduce the risk of fraud, and help protect the integrity of federal elections.” 91 Fed. Reg. 54966. Mere incantation of this vague, unsubstantiated interest in election integrity cannot justify the burdens the Final Rule creates. *Burdick*, 504 U.S. at 434. Nor does the Final Rule explain why these ever-present concerns would justify rule changes in

the final weeks of an election cycle; the Postal Service has presented no evidence “regarding fraudulent absentee or mail-in voting.” Doc. 31 (26-cv-13917) at 10; *see* 91 Fed. Reg. 54969 (asserting the Rule is lawful and appropriate “[w]hether or not voter fraud is common”). A burdensome election regulation is permissible only if the government interests at stake “make it necessary to burden the plaintiff’s rights.” *Anderson*, 460 U.S. at 789. The Postal Service has not demonstrated *any* pressing necessity here.

Just as “federal courts should not impose changes close to an election,” *Allen*, 608 U.S. at 516, this Court should not allow the Final Rule’s *ultra vires* changes to be imposed just weeks before key election deadlines. If they are, the Final Rule will “erode[] public confidence that the election results reflect the people’s will.” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 78 (2026). If permitted, the Final Rule will cause irreparable public harm for the midterm elections that are already in progress. And fundamentally, it will have profound prospective implications regarding the Constitution’s allocation of authority for administering elections.

CONCLUSION

The stay should be denied.

Respectfully submitted,

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