

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 APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS AND REQUEST FOR AN
IMMEDIATE ADMINISTRATIVE STAY

**BRIEF OF WISCONSIN DEMOCRACY CAMPAIGN, INC., EXPO OF
WISCONSIN, INC., JALEYCE ORAEDU, JASMINE ORAEDU, AND
AHARON SHELEF AS *AMICI CURIAE* IN OPPOSITION TO THE
APPLICATION**

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INTEREST OF *AMICI CURIAE*¹

Wisconsin Democracy Campaign, Inc. (WDC) is a Wisconsin nonstock corporation recognized as nonpartisan and tax exempt under Section 501(c)(3) of the Internal Revenue Code (IRC). WDC functions as a watchdog, advocating for and educating about government transparency and accountability to create a just democracy. WDC engages in many activities designed to encourage Wisconsinites to vote, including voter registration and get-out-the-vote campaigns. WDC advocates for secure, broadly accessible voting rules and litigates to protect Wisconsinites' voting rights.

EXPO of Wisconsin, Inc. (EXPO) is a Wisconsin nonstock corporation recognized as nonpartisan and tax exempt under Section 501(c)(3) of the IRC. EXPO supports people affected by the criminal legal system and encourages civic engagement across Wisconsin. EXPO conducts voter education, registration, and advocacy efforts, including focused efforts to educate individuals with past or current involvement in the criminal legal system about their voting rights, enabling them to exercise those rights where eligible under Wisconsin law. Because eligibility to vote in Wisconsin depends on the status of an individual's criminal sentence, EXPO works with populations for whom voting eligibility is complicated and often misunderstood and advocates for the rights of Wisconsin voters in related litigation. The USPS Final Rule enjoined by the district court² threatens to exacerbate confusion and create

¹ No party's counsel authored this brief in whole or in part; no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than *Amici*, their members, or their counsel made such a monetary contribution.

² United States Postal Service (USPS) final rule, Ballot Mail for Federal Elections, 91 Fed. Reg. 164,

additional barriers to voting, especially for voters who may already face heightened scrutiny and administrative obstacles, thereby undermining WDC's and EXPO's advocacy work.

Individual *Amici* Jaleyce Oraedu, Jasmine Oraedu, and Aharon Shelef are current or prospective Wisconsin voters who will rely on absentee voting in Wisconsin's November 2026 general election while attending college outside the state. Ms. Jaleyce Oraedu and Ms. Jasmine Oraedu are students at the University of Minnesota–Twin Cities in Minneapolis, Minnesota, and are residents of Germantown, Wisconsin. They are newly registered Wisconsin voters who voted for the first time in the August 2026 partisan primary and intend to vote in the November 2026 general election. Mr. Shelef is a student at Yale University in New Haven, Connecticut, and a resident of Madison, Wisconsin. He is a registered Wisconsin voter who previously voted absentee by mail in the April 2026 spring election and who attempted to vote by absentee ballot in the February 2026 primary but did not receive his ballot.

Because they reside out of state for school, the individual *Amici* will vote absentee in the future. As less experienced voters, they are particularly vulnerable to confusion and barriers arising from changes to election procedures. Mr. Shelef's recent experience demonstrates the real challenge that voters may face in receiving and returning their ballots in time to be counted. The Final Rule's requirements, including those affecting absentee ballot transmission, voter verification, and

54966 (Aug. 26, 2026) (to be codified at 39 C.F.R. pt. 111) (the Final Rule).

coordination with federal systems, complicate the absentee voting process and increase the risk that ballots will be delayed or not counted. These risks are especially acute for Wisconsin student voters residing outside Wisconsin, who depend on the consistent, efficient, and reliable functioning of Wisconsin’s absentee voting systems to exercise their constitutional right to vote.

Together, the organizational and individual *Amici* have a strong interest in ensuring that they and other eligible Wisconsin voters are able to exercise their constitutional right to vote through Wisconsin’s existing election administration system; that elections in Wisconsin continue to be administered in ways that are accessible, reliable, and consistent with *Amici*’s rights under existing state constitutional, statutory, and administrative law; and that eligible voters—particularly those who rely on absentee voting or who face additional barriers to participation—are not disenfranchised by the implementation of the Final Rule.

SUMMARY OF ARGUMENT

The November 2026 general election in Wisconsin already has begun. The Wisconsin Elections Commission (WEC) instructed Wisconsin’s 1,850-plus local clerks—who are responsible for sending absentee ballots to voters—to send absentee ballots when they are ready in compliance with Wisconsin law.³ WEC reports that some ballots already have been sent to absentee voters and that some have been returned.⁴

³ *USPS Rule Update*, WIS. ELECTIONS COMM’N (Aug. 31, 2026), <https://elections.wi.gov/sites/default/files/documents/Clerk%20Communication%20%26%20FAQ%20on%20USPS%20Rule.pdf>.

⁴ Ann Jacobs (@AnnJacobsMKE), X (Sept. 9, 2026), <https://x.com/AnnJacobsMKE/status/2097675314352513239?s=46&t=28YhNUzNq8DfIRBSQtWHrA>; Anya Van Wagtendonk, *Absentee ballots on their*

These facts fit with district court’s opinion accompanying the injunction order, which is the subject of the stay application at issue here. The opinion held that the Plaintiff States’ and Plaintiff Organizations’ requests for injunctive relief below satisfied all four elements required to issue a preliminary injunction. Specifically, the district court concluded that Plaintiffs are likely to succeed on the merits of their claims that the Final Rule unconstitutionally violates the separation of powers, and is both *ultra vires*, having been enacted without statutory authorization, and in conflict with the statutory authority controlling USPS actions. App. 25a-31a. The district court agreed with Plaintiffs, especially Plaintiff States, that it is too late for states to comply with the Final Rule for the November 3, 2026 election and that mandating they do so threatens mass disenfranchisement. App. 32a-45a. The district court found that the interests of Plaintiffs and the public in preventing mass disenfranchisement far outweighed the Defendants’ asserted interests in thwarting unsupported and amorphous claims of voter fraud. App. 45a-46a.

Amici submit this brief in support of the district court’s ruling, especially with respect to the issue of irreparable harm, and in opposition to the Application. In sum, neither the federal executive branch broadly, nor the Office of the President or any federal agency specifically, has the authority to unilaterally seize control of and dictate the regulation of elections. Yet, the Final Rule seeks to do just that, with particularly alarming and immediate potential consequences for Wisconsin’s system

way to Wisconsin voters, as Supreme Court considers Trump’s restrictions, WIS. PUBLIC RADIO (Sept. 9, 2026), available at <https://www.wpr.org/news/absentee-voting-latest-trump-order-injunction-wisconsin-madison>.

of election administration and Wisconsin voters, some of whom already are receiving and casting their absentee ballots by mail. *Amici* submit this brief to provide the Court with an explanation of Wisconsin's unique and complex election administration system that is relevant to this Court's analysis but not already brought to the Court's attention by the parties. In particular, *Amici* highlight for the Court several ways in which the Final Rule contravenes Wisconsin election law and would impose substantial changes to Wisconsin election procedures, distorting Wisconsin's electoral process and harming Wisconsin voters. Namely, the Final Rule establishes procedures that:

- threaten unlawful disenfranchisement of Wisconsin voters;
- conflict with Wisconsin election laws and practices, creating procedural confusion and compromising Wisconsin voter confidence; and
- imperil the privacy interests and expectations of Wisconsin voters.

Not only is there no basis for making such changes to state election law by a USPS rule, but also doing so in a rushed, haphazard fashion in the middle of an ongoing Wisconsin election—as the Final Rule requires—is both legally improper and practically imprudent.

Were the Application is granted, the district court's injunction stayed, and the Final Rule implemented as written, the consequences are imminently foreseeable: disenfranchisement of lawful Wisconsin voters, the creation of unnecessary confusion among election officials and voters alike, increased conflict over the validity of absentee ballots properly cast under Wisconsin law, violation of voter privacy laws, and damage to public faith in Wisconsin elections. Implementation in these circumstances would be an affront to federalism, to election administration, and to

the most fundamental principles of our democracy. It cannot be countenanced, and the practical consequences in Wisconsin illustrate why the district court correctly enjoined implementation of the Final Rule during the ongoing election.

For these reasons, in addition to those set forth in the district court’s opinion and in other responses to the Application, *Amici* urge the Court to deny the Application to stay the district court’s injunction and to enter an administrative stay.

ARGUMENT

I. Wisconsin has a uniquely decentralized system of election administration that inevitably and immediately would be impacted by implementation of the Final Rule.

Wisconsin has a uniquely decentralized election system. *State ex rel. Zignego v. Wis. Elections Comm’n*, 2021 WI 32, ¶13, 396 Wis. 2d 391, 957 N.W.2d 208.⁵ Unlike many states, rather than place responsibility for overseeing and administering elections in a single official, such as a secretary of state, Wisconsin administers elections using a multi-tiered system. *See Priorities USA v. Wis. Elections Comm’n*, 2024 WI 32, ¶27, 412 Wis. 2d 594, 608, 8 N.W.3d 429, 436; *Zignego*, 2021 WI 32, ¶13. Election administration in Wisconsin occurs primarily at the local level, where approximately 1,850 municipal clerks supervise election officials, verify voter registrations, accept requests for absentee ballots, send and receive absentee ballots, select and establish polling places, review and count ballots, complete the local

⁵ See *Wisconsin*, MIT ELECTION DATA + SCIENCE LAB, <https://electionlab.mit.edu/landscapes/wisconsin> (“Wisconsin is notable for having perhaps the most decentralized system of election administration in the nation.”) (last visited Aug. 1, 2026).

canvass, and conduct any recount that candidates request. *See* Wis. Stat. §§ 6.27–6.57, 6.84–6.89; *id.* §§ 7.15–7.22, 7.51–7.53, 9.01.

Wisconsin’s 72 county clerks also play a role. They print ballots and absentee ballot return envelopes, which they distribute to municipal clerks, and they lead the county-wide canvass for all votes within their jurisdiction. *Id.* §§ 7.10, 7.60.⁶

Finally, the Wisconsin Elections Commission (WEC) provides statewide election oversight. WEC is a six-member, bipartisan body established by statute in 2015. WEC comprises three Republican and three Democratic appointees,⁷ with a nonpartisan Administrator, nominated by the Commission and subject to Senate confirmation, who runs the Commission on a day-to-day basis and serves as Wisconsin’s “chief election officer.” Wis. Stat. § 5.05(3d), (3g), (4); *id.* § 15.61. WEC administers Wisconsin’s election code. *Id.* § 5.05(1), (2w). WEC trains and supports the municipal and county clerks who conduct elections throughout the state, *see, e.g., id.* § 5.05(5t)–(7), designs and approves ballot forms and absentee ballot envelopes and return certificates, *id.* § 7.08(1), and develops and maintains online tools to inform Wisconsin voters about election eligibility requirements, the registration process, polling locations, and how to request absentee ballots, *id.* § 5.05(12)–(13).

⁶ Because of the size of its population, one Wisconsin municipality—the City of Milwaukee—and one Wisconsin county—Milwaukee County—are statutorily required to have their elections conducted by special commissions, the Milwaukee Election Commission and the Milwaukee County Election Commission, respectively. Wis. Stat. § 7.20. The Milwaukee Election Commission generally fulfills the duties under state law for the City of Milwaukee that are fulfilled by municipal clerks in other cities. *Id.* §§ 7.21–7.22. Likewise, the Milwaukee County Election Commission generally fulfills the duties under state law for Milwaukee County that are fulfilled by county clerks in other counties. *Id.* § 7.21.

⁷ WEC membership can be expanded to include representatives from other political parties were any to qualify for ballot status under Wisconsin law and receive at least 10 percent of the vote in a gubernatorial election. Wis. Stat. § 15.61(1)(a)6.

WEC’s primary voter-facing tool is MyVote, an online portal through which voters can, among other things, request that absentee ballots be mailed to them. Although WEC operates MyVote, a voter’s absentee ballot request is routed to their local clerk, who reviews their request and sends out their ballot. *Id.* § 6.86. Currently, WEC’s Chair is Don M. Millis, a Republican appointee who is also a lawyer; during proceedings below, Chair Millis submitted a detailed declaration in support of the preliminary injunction motion, and the district cited that declaration several times in its opinion. App. 33a, n.37, 34a-35a, 39a-40a, 44a.

To administer this complex election administration system, the Wisconsin Legislature has—over many years—enacted a comprehensive set of statutes that (along with regulations and guidance promulgated by WEC and its predecessor agencies) provide the framework for Wisconsin’s elections. *See generally* Wis. Stat. chs. 5–10, 12; Wis. Admin. Code chs. EL-2–EL-20.⁸ Wisconsin provides no-excuse absentee voting, including both in-person absentee voting in the days leading up to an election and absentee voting by mail. Wis. Stat. §§ 6.20, 6.85, 6.86(1)(a). The statutes and regulations governing absentee voting by mail are summarized briefly below.

Wisconsin courts have also, over a period of many years, interpreted and applied Wisconsin’s election statutes, in the context of our state’s constitution and the federal constitution. This body of law is substantial and growing.⁹

⁸ Wisconsin’s campaign finance rules are codified in Wis. Stat. ch. 11 and Wis. Admin. Code chs. ETH-1–ETH-26, which are administered by the Wisconsin Ethics Commission, a separate six-member, bipartisan body established by statute in 2015. *See* Wis. Stat. §§ 15.62, 19.47–19.55.

⁹ *See, e.g., Brown v. Wis. Elections Comm’n*, 2025 WI 5, 414 Wis. 2d 601, 16 N.W.3d 619 (limiting

Collectively, Wisconsin's enacted statutes governing absentee voting and the court decisions interpreting and applying those laws (and implicated state constitutional provisions) encourage voter participation by ensuring that absentee voting by mail is convenient and secure. In recent years, the number of absentee ballots Wisconsin's approximately 3.6 million registered voters¹⁰ returned by mail has risen from 565,591 in 2018¹¹ to more than 1.5 million in 2024.¹²

A. Eligibility to vote in Wisconsin.

To vote in Wisconsin, a person must be a United States citizen who is at least 18 years old by election day, and have resided in the city, village, or town in which the person wishes to vote for at least 28 days before election day. Wis. Stat. § 6.02. If convicted of a felony, the person must have fully completed their applicable sentence, including any probation, parole, or extended supervision. *Id.* § 6.03(1)(b).

standing to appeal a WEC administrative decision to parties aggrieved by the decision); *Priorities USA*, 2024 WI 32 (allowing use of drop boxes to return absentee ballots); *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519 (barring use of drop boxes and ballot return assistance for absentee ballots); *Sewell v. Racine Unified Sch. Dist. Bd. of Canvassers*, 2022 WI 18, 401 Wis. 2d 58, 972 N.W.2d 155 (electors do not have independent right to have ballots opened and re-examined); *Zignego*, 2021 WI 32 (requiring municipal clerks and local boards of elections commissioners, not WEC, to change the voter registration of electors who move out of the applicable jurisdiction); *Jefferson v. Dane Cnty.*, 2020 WI 90, 394 Wis. 2d 602, 951 N.W.2d 556 (photo identification required to obtain absentee ballot during declared health emergency unless voter's own age, physical illness or infirmity renders the voter indefinitely confined); *Rise, Inc. v. Wis. Elections Comm'n*, 2024 WI App 48, 413 Wis. 2d 366, 11 N.W.3d 241 (requiring municipal clerks to count absentee ballots with immaterial omissions from the ballot return envelope).

¹⁰ According to WEC, Wisconsin had 3,601,785 active registered voters as of February 1, 2026. *February 1, 2026 Voter Registration Statistics*, WIS. ELECTIONS COMM'N (Feb. 2, 2026), <https://elections.wi.gov/resources/statistics/february-1-2026-voter-registration-statistics>.

¹¹ Lawrence Andrea, *Absentee voting numbers in Wisconsin soar over the 2018 midterms*, MILWAUKEE J. SENTINEL (Nov. 8, 2022), available at <https://www.jsonline.com/story/news/politics/elections/2022/11/08/absentee-voting-numbers-in-wisconsin-soar-over-the-2018-midterms/69627990007/>.

¹² Rich Kremer, *More than 1.5M Wisconsin absentee ballots cast in presidential election*, WIS. PUBLIC RADIO (Nov. 4, 2024), updated Jan. 14, 2025, available at <https://www.wpr.org/news/more-than-one-million-absentee-ballots-cast-wisconsin-presidential-election-2024-nov-4>.

B. Registering to vote.

Wisconsin permits eligible electors to register to vote in person at the municipal or county clerk's office, by US mail delivered to the municipal clerk's office, or online by the third Wednesday preceding an election (up to 20 days before the election). *Id.* § 6.28. Beyond that date, eligible electors may register in person at the applicable municipal clerk's office by 5:00 p.m. or the close of business, whichever is later, on the Friday before election day. *Id.* § 6.29. And eligible electors may register and vote at in-person absentee voting locations, if permitted by the applicable municipal clerk, *Id.* § 6.28(a), or in person at the polling location on election day. *Id.* § 6.55. Because Wisconsin permits same-day voter registration at the polls, and has done so since before 1994, Wisconsin is exempt from provisions of the National Voter Registration Act. 52 U.S.C. § 20503(b)(2).

C. Requesting an absentee ballot.

Wisconsin provides qualified voters with a range of options to request to vote absentee; most frequently, this is accomplished by mail, in person at the municipal clerk's office, by electronic mail, or through MyVote. Wis. Stat. § 6.86.¹³

A qualified Wisconsin voter may request an absentee ballot for one election or may register to automatically receive absentee ballots “for every election that is held within the same calendar year in which the application is filed.” *Id.* § 6.86(2m)(a). The latter option means a voter may submit one request that absentee ballots for up to four elections (spring primary, spring election, partisan primary, general election)

¹³ See also, *Vote Absentee by Mail*, MYVOTE WISCONSIN, available at <https://archive.ph/fiux0> (last visited Aug. 1, 2026).

in a calendar year be automatically sent to them. If a voter moves during the year that they made such a request, they must notify their municipal clerk of the move. *Id.* The notified clerk “shall forward” the elector’s request for an absentee ballot to the voter’s new municipal clerk, and “that municipal clerk shall honor the request.” *Id.* § 6.86(2m)(b).

A Wisconsin voter who is indefinitely confined due to age, physical illness, permanent disability or other infirmity may request “that an absentee ballot be sent to the elector automatically for every election.” *Id.* § 6.86(2)(a). When such a voter does not return their absentee ballot for an election, the municipal clerk stops mailing ballots to that voter until and unless another request is made. *Id.* § 6.86(2)(b).

Requests for absentee ballots made by mail must generally be received no later than 5:00 p.m. on the Thursday (the fifth day) before election day. *Id.* § 6.86(1)(b). Requests made in person must be made no earlier than 14 days before the election and no later than the Sunday before the election. *Id.*

In response to a proper absentee ballot request, the municipal clerk shall initial an absentee ballot, *id.* § 6.87(1), “verify that the name or proof of identification” matches that found on the absentee ballot request form, and place the absentee ballot in an unsealed envelope, *id.* § 6.87(2). On one side of the envelope, a certificate must be printed for the voter and the voter’s witness to fill out. *Id.* Through that certificate, the voter certifies, under state penalties for false statements, that they are qualified to vote absentee, and further certifies that they marked their ballot in the presence of a witness. *Id.* The same certification provides space for the witness to certify, under

state penalties for false statements, that they (the witness) are a United States citizen and that the relevant absentee ballot was properly executed, as described on the certificate. *Id.* The ballot and certificate envelope are then mailed by the municipal clerk to the voter's residence or may be delivered "personally" to the voter at the clerk's office or at an alternate site that has, in accordance with Wis. Stat. § 6.855, been properly designated in advance of the election. *Id.* § 6.87(3).

Military and overseas voters have additional options for voting absentee. They are permitted not only to request absentee ballots by email or fax, but also to receive absentee ballots from the municipal clerk by email or fax or, if eligible, by direct download from MyVote.¹⁴ *Id.* § 6.22(1)(b). They are also permitted to request an absentee ballot using a federal absentee ballot request form. *Id.* §§ 6.24(4)(b), 6.865. Requests for non-military overseas voters must be submitted and received by the clerk by 5:00 p.m. on the Thursday (fifth day) before the election. *Id.* § 6.86(1)(b). Requests for military voters must generally be submitted and received by the clerk by 5:00 p.m. on the Friday before election day, *id.* §§ 6.22(4)(b), 6.86(1)(c), except that for elections involving a federal office, active military voters may request an absentee ballot up until 5:00 p.m. on election day, *id.* §§ 6.34(1), 6.86(1)(b).

D. Marking an absentee ballot.

Upon receipt of their absentee ballot (contained in the certificate envelope) the voter marks the ballot in the presence of a witness and places the ballot in the certificate envelope. The voter must then seal, sign, date, and put their residential

¹⁴ See also, *Military and Overseas Voters*, WIS. ELECTIONS COMM'N at <https://myvote.wi.gov/Military-Overseas-Voters> (last visited Aug. 1, 2026).

address on the envelope. The witness must also sign, date, and put their printed name and residential address on the envelope. *Id.* § 6.87(4).

E. Returning an absentee ballot.

Wisconsin does not currently allow electronic return of absentee ballots. Rather, they must be returned by mail or delivered in person to the municipal clerk. *Id.* § 6.87(4)(b)1. State law has been interpreted to allow an elector to also return their absentee ballot to their polling location on election day. *See Luedtke v. Yunker*, No. 25CV1277, Order (Waukesha Cnty. Cir. Ct. Feb. 13, 2026) (dismissing challenge to WEC guidance permitting return of absentee ballots to polling place on election day).¹⁵ Municipal clerks may, but are not required to, provide secure drop boxes for absentee voters to return their completed ballots. *Priorities USA*, 2024 WI 32, ¶34. In general, each voter must personally return an absentee ballot, but voters with disabilities may use assistance to return their ballots. *Carey v. Wis. Elections Comm’n*, 624 F. Supp. 3d 1020, 1033 (W.D. Wis. 2022). In all circumstances, absentee ballots must be delivered to the polling place or, in municipalities that use a central-count procedure to canvass absentee ballots, to the municipal clerk by 8:00 p.m. on election day. Wis. Stat. §§ 6.87(6), 7.52(1)(a).

F. Wisconsin’s elections schedule and absentee ballot distribution deadlines for 2026.

Wisconsin holds as many as four regularly scheduled elections in a calendar year. Nonpartisan elections occur every year in a spring election held during the first

¹⁵ Order available at <https://www.lawforward.org/wp-content/uploads/2026/02/11048018.pdf>.

week of April, with the primary for that election occurring in February. *Id.* § 5.02(21), (22). Partisan elections are held in November of even-numbered years, with the partisan primary occurring during the second week of August. *Id.* § 5.02(5), (12s). Wisconsin already has held three elections in 2026: the primary for the spring election for nonpartisan offices on February 17, 2026; the spring election on April 7, 2026; and on August 11, 2026, the partisan primary for the November 3, 2026 general election, which includes elections for partisan state and federal offices (such as congressional elections).

For the November 3, 2026 election, state law requires municipal clerks to begin distributing absentee ballots to voters with requests on file, no later than September 17, 2026, and local clerks will continue to send absentee ballots to non-military voters who submit requests by October 29, 2026.¹⁶ However, as WEC Chair Don Millis told the district court in a filed declaration, municipal clerks may begin sending absentee ballots as soon as the primary results are certified. App. 33a-34a, n.37. As of August 31, 2026, many Wisconsin clerks had already printed ballots for the November 3, 2026, general election, and Chair Millis was “aware that at least some municipal clerks in Wisconsin plan[ned] to mail out their absentee ballots as early as September 1, 2026.” Millis Decl. ¶¶13-14, *California v. U.S. Postal Serv.*, No. 1:26-cv-13917 (Dkt. 100-1). Over 270,000 non-UOCAVA mail-in absentee ballots had already been requested by Wisconsin voters as of August 31, 2026, and, to Chair Millis’ knowledge,

¹⁶ *Deadlines for the November 3, 2026 General Election*, WIS. ELECTIONS COMM’N at <https://myvote.wi.gov/en-us/Voter-Deadlines> (last visited Aug. 1, 2026).

were being processed by clerks. App. 33a-34a, n.37. The latest data available at the time of finalizing this brief for filing show that at least 65,565 absentee ballots have already been mailed to voters and 36 have already been returned.¹⁷

II. The Final Rule threatens to unlawfully disenfranchise Wisconsin voters.

To date, Congress has considered and declined to enact several bills that would impose documentary proof of citizenship requirements for voter registration and participation in federal elections and would restrict the use of mail-in absentee votes. *See* SAVE Act, H.R. 22, 119th Congress (2025–2026); SAVE America Act, H.R. 7296, 119th Congress (2025–2026); Make Elections Great Again Act, H.R. 7300, 119th Congress (2025–2026). The Final Rule attempts an executive end-run around Congress, threatening to disenfranchise Wisconsin voters in at least two ways.

A. Verifying voter citizenship with inaccurate federal data will disenfranchise eligible Wisconsin voters.

The Final Rule was promulgated in compliance with Executive Order (EO) 14399, *Ensuring Citizenship Verification and Integrity in Federal Election*, which in addition to the directives given to USPS contains several provisions requiring the Department of Homeland Security and the Social Security Administration to compile lists of eligible voters and to investigate and prosecute state and local officials who participate in printing, producing, shipping, or distributing ballots to ineligible voters. EO 14399, § 2. Although the directives to other federal agencies are not specifically addressed in the Final Rule, the EO, in its entirety, and the Final Rule

¹⁷ Jacobs, *supra* note 4.

must be read together. Of significant concern is the lack of clarity on what USPS will do with the voter information uploaded to its yet-to-be developed Federal Ballot Mail Portal or to whom it may grant access. The Final Rule supplementary information notes that the voter information will not be subject to **public** disclosure, 91 Fed. Reg. at 54970, but is silent on whether other federal agencies will be permitted access for other purposes, including voter citizenship verification. Review of the related Systems of Record Notice published by USPS ostensibly in compliance with provisions of the Privacy Act of 1974 suggest that disclosure might be granted to law enforcement agencies. Notice of New Systems of Records, 91 Fed. Reg. 136, 44880 (July 17, 2026). Indeed, one of the new Systems of Records' purposes is to help determine adherence to federal law and facilitate law enforcement efforts. *Id.* Plainly, the Final Rule and the EO as a whole are intended to threaten state and local election officials to coerce compliance with the federal government's current desire that states use the federal SAVE System to verify voter citizenship and vet the accuracy of state voter registration lists.

This is a wholly unnecessary and improper intrusion into Wisconsin's election administration. Wisconsin already has appropriate mechanisms in place to continuously verify the accuracy of its voter registration list. The task is a shared responsibility, shouldered primarily by municipal clerks with support from WEC. *See Zignego*, 2021 WI 32, ¶13. By law, Wisconsin is enrolled in the Electronic Registration Information Center (ERIC), Wis. Stat. § 6.36(1)(ae), a nonprofit, nonpartisan membership organization created by and comprised of state election officials.

Currently, 26 states and the District of Columbia participate in ERIC.¹⁸ At least every 60 days, members securely submit certain voter registration, motor vehicle licensing, and identification data to ERIC. In turn, ERIC's technical staff compare the data received from all states to create list maintenance reports that identify voters who appear to have moved to other states or within the same state, who have duplicate registrations within the same state, and who have died. Wisconsin and other member states use these reports to keep their voter registration lists up to date.¹⁹

The SAVE System was not designed to verify the accuracy of voter registration lists and has significant limitations that threaten to disenfranchise eligible voters,²⁰ especially naturalized citizens. Wisconsin is home to over 140,000 naturalized citizens, of whom nearly 21,000 were naturalized between 2016 and 2020.²¹ In a state where the results of presidential elections are often decided by fewer than 30,000 votes, unlawfully disenfranchising voters can have significant effects, including changing the outcome.²²

¹⁸ *What is ERIC?*, ELECTRONIC REGISTRATION INFORMATION CENTER, <https://ericstates.org/about/> (last visited Aug. 1, 2026).

¹⁹ *How ERIC Works*, ELECTRONIC REGISTRATION INFORMATION CENTER, <https://ericstates.org/how-does-it-work/> (last visited Aug. 1, 2026).

²⁰ *See also Eligible Voters at Risk: Examining Changes to USCIS's SAVE System*, FAIR ELECTIONS CENTER <https://fairelectionscenter.org/wp-content/uploads/2025/07/Examining-Changes-to-USCISs-SAVE-System.pdf> (last visited Aug. 1, 2026).

²¹ *New American Voters in Wisconsin: Building the Electoral Power of Naturalized Citizens*, NATIONAL PARTNERSHIP FOR NEW AMERICANS, 5 (Sept. 2022) available at <https://partnershipfornewamericans.org/wp-content/uploads/2022/09/WI-NAV-State-Report-Final-2.pdf#:~:text=There%20are%20more%20than%20140.>

²² Donald Trump won Wisconsin in the 2016 presidential election by 22,748 votes and the 2024 presidential election by 29,397 votes; Joe Biden won Wisconsin in the 2020 presidential election by 20,682 votes. This not a new development in Wisconsin; Al Gore won Wisconsin in the 2000 presidential election by 5,708 votes. *Wisconsin vote in presidential elections since 1848*, WISCONSIN BLUE BOOK 2025–2026, 495, available at <https://legis.wisconsin.gov/lrb/media/10uewg3p/2025200->

B. Burdening USPS with election duties outside its expertise and without additional resources will further delay mailed absentee ballots and increase the risk of disenfranchising Wisconsin voters.

Under the Final Rule USPS must, for the first time in its history, take a proactive role in mail-in voting. EO 14399 requires that, within 60 days of the date of the order (by May 30, 2026), the Postmaster General must initiate proposed rulemaking, with final rules issued no later than 120 days after the order's issuance (by July 29, 2026). EO 14399, § 3. The Postmaster General has largely complied with this requirement, publishing the Final Rule on August 21, 2026. The EO identifies express requirements that the rule must contain, but provides no implementation details, leaving it to USPS to fill the logical gaps with procedures currently in development on an extremely compressed timeline.²³ The Final Rule does little to provide clarity, offering only a basic outline that requires states to: (1) upload mail-in absentee voter information to a federal portal (which is still in development, weeks after publication and the effective date of the Final Rule), get approval of absentee ballot outbound and return envelopes, and use only those approved envelopes for the distribution and receipt of ballots. The Final Rule does not address several questions, including:

- By when must a state seek and obtain ballot envelope approval from the USPS?

[elections-and-political-parties.pdf](#).

²³ Nor does the order clarify how states in the midst of election cycles when USPS completes its rulemaking are to implement the new rule. Wisconsin's 2026 partisan primary was held on August 11, 2026—a mere 13 days after the initially established July 29 rulemaking deadline. Absentee ballots for the November 3, 2026, general election are already being distributed, and in-person absentee voting will begin on October 20, 2026. The Final Rule indicates that it will go into effect immediately but does not account for the chaos that would cause. 91 Fed. Reg. at 54966

- Does that approval apply to all elections so long as the envelope design used does not change? Or must states seek approval anew before every election?
- Absentee ballot envelopes must be verified by USPS employees upon receipt. What does verification require? Must every single envelope be reviewed? If so, what happens if envelopes are deemed noncompliant? Must only those that are noncompliant be fixed? Is the entire batch of envelopes rejected? Recent whistleblower reporting suggests the latter.²⁴

The duties imposed on USPS present problems. Notably, the agency is underfunded and overburdened and implementing the Final Rule in light of this would significantly affect Wisconsin voters.²⁵ USPS already delivers absentee ballots postmarked before election day after election day. In Wisconsin, absentee ballots received after election day are not counted. Wis. Stat. § 6.87(6). For example, in April of this year, 269 absentee ballots cast by City of Milwaukee voters in Wisconsin's spring election were received the day after election day and could not be counted.²⁶ Wisconsin has only two major USPS sorting facilities, located in Milwaukee and Green Bay. Most mail in Wisconsin, even when sent from one address to another in the same municipality, is routed to Milwaukee or Green Bay, sorted, and then transmitted back to the local post office before delivery. A smaller portion of

²⁴ Chris Cameron, *Whistle-Blower Says Trump Officials Are Defying Court Orders on Voting by Mail*, N.Y. TIMES (Sept. 1, 2026), <https://www.nytimes.com/2026/09/01/us/politics/whistle-blower-voting-by-mail.html>.

²⁵ Hansi Lo Wang, *The Postal Service may be out of cash in 2027 without Congress' help, postmaster says*, NATIONAL PUBLIC RADIO (Mar. 17, 2026), available at <https://www.npr.org/2026/03/17/nx-s1-5750419/usps-running-out-of-money-postal-service-david-steiner>; Richelle Wilson, *Wisconsin village faces mail delivery delays amid financial crisis for US Postal Service*, WIS. PUBLIC RADIO (Apr. 16, 2026), available at <https://www.wpr.org/news/wisconsin-village-brown-deer-usps-postal-service-crisis>.

²⁶ Mariana La Roche, *Milwaukee Election Commission reports late delivery of absentee ballots*, WISN 12 (Apr. 9, 2026), available at <https://www.wisn.com/article/milwaukee-election-commission-reports-late-delivery-of-absentee-ballots/70977867>.

Wisconsin mail is sent to the Twin Cities in Minnesota for sorting and then returned to Wisconsin for delivery.²⁷ All of this takes time and resources.

EO 14399 provides no funding to USPS to implement the Final Rule. This unfunded additional work is likely to further delay the delivery of mailed ballots, disenfranchising every Wisconsin voter whose ballot is delivered after election day.

The Final Rule also ignores entirely that Wisconsin law:

- makes county and municipal clerks responsible for printing and distributing ballots, Wis. Stat. § 5.66(1);
- specifies the format for absentee ballot return envelopes, requiring that one side of the envelope include statutorily prescribed certifications for the absentee voter and witness, *id.* § 6.87(2); and
- permits clerks to return incorrectly completed absentee ballots to voters for correction, *id.* § 6.87(9).

EO 14399 provides no guidance for whether or how USPS is to take state-specific rules into account, and the Final Rule barely attempts to do so. In short, the Final Rule, if not enjoined, threatens significant confusion and logistical hurdles that will disrupt, rather than protect, Wisconsin's elections. As Wisconsin election officials have already stated, the Final Rule simply cannot be implemented in time for the November 3, 2026, general election.²⁸

²⁷ *61 Regions with RPDCs*, RESEARCH HUB, available at <https://www.randymajors.org/customgmap?x=-89.4641473&y=44.2557563&cx=-98.2092645&cy=37.5562624&zoom=5&mapbuilder=true&areatype=zip&sheetid=1pN41Qgq4thAjpFngX7j74TNSVE1bcQDbABvb8Lx0LIs&markertype=sheet&markers=1eW0lrO6425MJDEvu4-rKOGWjp5jSa6831aiSx0wRro&title=61+Regions+with+RPDCs&hidelegend=hide> (last visited Aug. 1, 2026).

²⁸ Jessie Opoien, *Wisconsin election officials warn mail-in ballots order is unworkable*, MILWAUKEE J. SENTINEL (Sept. 4, 2026), <https://www.jsonline.com/story/news/politics/elections/2026/09/04/wisconsin-election-officials-warn-mail-in-ballots-order-is-unworkable/91585114007/> (last visited Sept. 9, 2026).

C. The Final Rule contains provisions that are unnecessary and create more problems than they purport to solve.

As USPS recognized in the proposed version of the Final Rule, it already publishes ballot mail preparation recommendations that include use of an “Election Mail Logo.” Ballot Mail for Federal Elections, 91 Fed. Reg. 105, 32916 (June 2, 2026) (to be codified at 39 C.F.R. 111). States may print the logo on their absentee ballot return envelopes to ensure postal employees can readily identify and expedite the processing and delivery of election mail. *Id.* USPS’s recommended best practices for ballot envelope design also include automation compatibility and mailpiece design review. *Id.*

Wisconsin already adopted these recommendations. In 2023, for example, WEC redesigned and adopted new absentee ballot envelopes and return certificates that include prominent display of the USPS Election Mail Logo. WEC, Minutes of the Meeting of Aug. 4, 2023 at 2; *see also*, WEC, Open Session Materials—Aug. 4, 2023 at 12–27.²⁹ And USPS was consulted as the new designs were developed. WEC, Open Session Materials—Aug. 4, 2023 at 3, 7–8.

The Final Rule, in alignment with EO 14399, makes USPS review and approval of state designed absentee ballot envelopes mandatory, but, as noted above, does not specify any further details. The rule is clear that USPS will not accept ballots that do not comply with mandatory design standards and that USPS “assumes no responsibility for any outbound ballot mailing until it is accepted into the mail,” that

²⁹ Available at <https://elections.wi.gov/sites/default/files/documents/August%204%2C%202023%20Open%20Session%20Minutes%20APPROVED.pdf> and <https://elections.wi.gov/sites/default/files/documents/Open%20Session%20Materials%20-%20August%204%202023.pdf>, respectively.

mail that does not comply with the design standards “will not be accepted,” and that USPS “is not responsible for service delays” when “the applicable preparation or entry standards” are not met. 91 Fed. Reg. at 54991. Thus, the federal government seeks to further insert itself into state and local election procedures, while disclaiming any responsibility for delays caused by its involvement.

The Final Rule also threatens delay and confusion in the following ways:

- The Rule will not apply to absentee ballots distributed to eligible overseas voters under UOCAVA, nor to absentee ballots distributed for primary elections. Different standards for different voters and different elections increase the risk of confusion, mistakes, and delay.
- The mandatory unique barcodes to be printed on absentee ballot envelopes can be read only by USPS locations with the necessary equipment. For Wisconsin voters, the only locations currently equipped to read such bar codes are located in Milwaukee and Minneapolis, meaning that absentee ballots must be routed exclusively through those locations.³⁰ As noted above, most of Wisconsin’s mail is routed through Milwaukee and Green Bay with some mail from the Western part of the state routed through Minneapolis. Cutting out Green Bay as a processing facility would especially harm rural voters whose ballots *already* face delay under the current process. Mandating that their ballots be routed through far more distant postal outlets will, again, only compound delay.

The Final Rule, hastily developed to comply with EO 14399, is unnecessary and will further burden Wisconsin’s ability to administer elections quickly and efficiently, and with further harms consequently felt by Wisconsin absentee voters.

³⁰ Molly Beck, *Proposed Postal Service rule could risk ballot delivery in Wisconsin*, MILWAUKEE J. SENTINEL (June 11, 2026), available at <https://www.jsonline.com/story/news/politics/2026/06/11/ballot-delivery-at-risk-if-wisconsin-doesnt-hand-over-voter-info/90501373007/> (last visited Sept. 9, 2026).

III. The Final Rule might interfere with Wisconsin’s in-person absentee voting and increase election day challenges to absentee ballots.

Wisconsin’s absentee voters may return their ballots in several ways, including through the mail and “in-person absentee voting.” *See* Wis. Stat. §§ 6.855, 6.87. As noted above, Wisconsin currently provides its absentee voters with different envelopes and ballot certificate and application forms for in-person absentee voting, voting absentee through a special voting deputy, and voting absentee by mail. *See* WEC, Open Session Materials—Aug. 4, 2023, *supra*, at 12–27. Whereas these ballots, absentee ballot envelopes, and certificate and application forms are currently used for all elections in Wisconsin, the Final Rule’s form and its return-procedure requirements purport to apply only to ballots returned via US mail in federal elections. Fed. Reg. 91 at 54990. Using one ballot form for absentee ballots returned in state elections and another for federal elections would be confusing to voters and may invite frivolous challenges to absentee ballots, exacerbating suspicion about election integrity. This will force Wisconsin to either adopt the Final Rule’s form and return requirements for all elections or risk potential voter confusion, complaints, and litigation.

The Final Rule could otherwise cause chaos in Wisconsin’s absentee voting program, as well. Wisconsin formally processes and counts all absentee ballots on election day. *Id.* § 6.88(1). Once the ballots have been returned and are sorted for counting, they are not segregated by the method of their transmittal. Once the ballots are intermixed, there is often no way to tell how any particular ballot was returned to the clerk’s office. And, were the Final Rule’s provisions to take effect, this itself

could lead to confusion, as some election observers may seek to challenge absentee ballots from voters who are not registered with USPS for voting purposes, though often it will not be apparent from the returned absentee ballot whether that voter returned their absentee ballot through the mail. This is likely despite the fact that Wisconsin law recognizes only seven legitimate bases for challenging a voter, none of which contemplates the provisions of the Final Rule, *see* Wis. Admin. Code § EL 9.02(d), and, as clearly articulated by the district court, “[T]he States alone determine voter-eligibility requirements, subject only to the outer limits of the Constitution.” App. 11a, n.13.

IV. The Final Rule threatens the privacy of all Wisconsinites.

Wisconsin law protects the privacy of personally identifiable information, including with respect to matching programs. As defined, a matching program is “the computerized comparison of information in one records series to information in another records series for use by an authority or a federal agency to establish or verify an individual’s eligibility for any right, privilege or benefit or to recoup payments or delinquent debts under programs of an authority or federal agency.” Wis. Stat. § 19.62(3). The state may not “use or allow the use of personally identifiable information maintained by the state authority in a match under a matching program, or provide personally identifiable information for use in a match under a matching program unless the authority has” put the following things in writing and submitted the written materials to the state Public Records Board:

- The “purpose and legal authority for the matching program”; and

- The “justification for the program and the anticipated results, including an estimate of any savings.”

Wis. Stat. § 19.69(1)–(2).

Here, the Final Rule encourages states to provide USPS with lists of voters who will vote by mail. At the same time, USPS must create its own list of individuals who have enrolled with USPS as intended mail-in voters and will not transmit ballots from any individual who is not on the list. Fed. Reg. 91 at 54991. Likewise, the EO requires the federal creation of state citizenship lists, the sharing of those lists with state election officials, and the creation of a procedure pursuant to which states may suggest updates and amendments to the state citizenship lists. EO 14399, § 2. As noted above, neither the EO nor the USPS Final Rule exclude USPS from sharing the voter information it obtains pursuant to the Final Rule with federal law enforcement. This mutual sharing of personally identifiable voter information is arguably a matching program under Wisconsin law, for which the necessary written materials have neither been prepared nor filed with the Public Records Board. Any person who violates Wisconsin’s matching program requirements may be subject to penalties, including discharge or suspension without pay for individuals employed by Wisconsin governmental entities or financial forfeitures. Wis. Stat. § 19.80.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge the Court to deny the Application to stay the district court’s injunction.

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Respectfully submitted,

/s/

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