

IN THE
Supreme Court of the United States

DONALD J. TRUMP, ET AL.,

Applicants,

— V. —

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, ET AL.,

Respondents.

TO THE HONORABLE KETANJI BROWN JACKSON, ASSOCIATE JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIRST CIRCUIT

OPPOSITION TO APPLICATION FOR A STAY

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CORPORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court Rule 29.6, Respondents League of Women Voters of Massachusetts, League of Women Voters of the United States, League of Women Voters Lotte E. Scharfman Memorial Education Fund, League of Women Voters Education Fund, Association of Americans Resident Overseas, U.S. Vote Foundation, OCA-Asian Pacific American Advocates, and Delta Sigma Theta Sorority, Inc. have no parent corporations, nor have they issued any stock owned by a publicly held company.

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INTRODUCTION

The United States Postal Service (USPS) seeks to impose unprecedented eleventh-hour requirements on mail ballots that dictate how states administer mail voting. If states do not or cannot comply, USPS will refuse to deliver their ballots—even though states are required by their own laws to mail those ballots to millions of voters now and in the coming days. No federal statute gives USPS that power, and the Constitution assigns the Executive Branch no role in prescribing the manner of federal elections. Yet, at the President’s direction, USPS rushed to adopt these requirements just days before the start of mail voting for the November 3, 2026 elections. *See* Ballot Mail for Federal Elections, 91 Fed. Reg. 54966 at 54990–91 (Aug. 26, 2026) (§§ 705.24.3, 705.24.5) (Rule); Ensuring Citizenship Verification and Integrity in Federal Elections, 91 Fed. Reg. 17125 (Mar. 31, 2026) (Executive Order or Order). USPS’s Rule gives states mere weeks to implement sweeping changes to their election systems—even though USPS has not yet established the necessary infrastructure to administer its new requirements. The Rule would disrupt the administration of mail voting mid-election and disenfranchise eligible voters nationwide, including voters in all-mail states like Colorado and Utah and elderly, rural, and disabled voters who must vote by mail.

Despite the Rule’s sweeping effect on election administration—and the ballots of millions of voters—USPS does not claim to act on any authority delegated under the Elections Clause. Instead, it relies solely on Congress’s Postal Clause power. U.S. Const. art. I, § 8, cl. 7. But Congress charged the Postal Service with delivering the

mail nationwide, 39 U.S.C. §§ 101, 403(a), subject to a scheme of narrow exceptions for specified categories of material that Congress itself—not USPS—has deemed “nonmailable,” *id.* §§ 3001–3018, and subject to rules of general application such as sufficient postage, *id.* § 404(a)(2). Mail ballots fall outside those congressionally prescribed exceptions. USPS’s assertion of “general rulemaking authority” over the mail cannot override Congress’s specific judgments and reservation of power about what matter is mailable. This Court foreclosed that theory long ago: The Postal Service “cannot exclude or refuse to deliver” mail unless “some law of Congress” authorizes it. *Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 109 (1902).

USPS’s failure to identify statutory authority for its Rule is especially egregious given the extraordinary power it claims. The Rule would allow USPS to preempt state election administration and to withhold delivery of valid ballots to millions of eligible voters nationwide—a claim of authority over a matter of “political significance” for which this Court requires “clear congressional authorization.” *Learning Res., Inc. v. Trump*, 607 U.S. 229, 246–48 (2026). The “lack of historical precedent” for such authority makes the case clearer still. *Id.* at 231. USPS cannot identify a single example of the Postal Service deeming otherwise mailable matter nonmailable absent express congressional authorization. Rather, it relies primarily on special packing requirements for cremated remains and replica explosives, but these were adopted not using “general rulemaking authority,” Appl. 17–18, but under a statute that specifically authorizes USPS to prescribe rules for the “preparation and packing” of matter that could, if improperly handled, injure the mails or property. 18

U.S.C. § 1716(a)–(b); 39 U.S.C. § 3001(a); *see* USPS, Publication 52 §§ 211, 434, 451.2.

This has no bearing on paper ballots.

Nor did Congress delegate to USPS authority to alter the manner of federal elections—much less on such an expedited timeframe. The Constitution entrusts states with the responsibility to regulate federal elections, while empowering Congress to alter those state rules. U.S. Const. art. I, § 4. Congress gives states years—not weeks—to comply with major federal election mandates. *E.g.* National Voter Registration Act of 1993, Pub. L. No. 103-31, § 13, 107 Stat. 77, 89 (1993) (giving states two years for implementation). It did not silently confer authority on USPS to impose sweeping election mandates on merely a few weeks’ notice.

Because no law authorizes USPS’s Rule, no stay should issue. But even were the merits debatable, it is far too late for this Court to intervene now. By rushing to issue the Rule just weeks before states began mailing general election ballots, USPS has left itself, much less the states, virtually no time to overhaul long-standing election-mail systems. Predictably, USPS’s timing has made the Rule’s requirements logistically impossible to meet before the midterms, as the district court found based on the Rule’s text itself, USPS’s own statements, and unrebutted declarations from elections officials in nearly two dozen states. App.32a–43a. The undisputed record shows that attempting to impose the Rule now would result in catastrophic failure.

The Rule conditions delivery of a state’s mail ballots to voters on (1) USPS’s approval of each state and local jurisdiction’s ballot-envelope design under new standards, (2) enrollment of every expected mail-ballot recipient in a new Federal

Mail Ballot Portal (Portal), and (3) an exact match between several fields of voter information on the mailing and the voter's information in the Portal. *See* 91 Fed. Reg. at 54990–91 (§§ 705.24.3, 705.24.5). Yet there is not enough time to allow state and local officials across the country to redesign their envelopes to meet these requirements, let alone time for USPS to review and approve them, which has historically taken weeks or months. App.36a–37a. There is not enough time for election officials in 10,000 jurisdictions to enter every voter's information into the Portal, particularly because the Portal *still does not exist*. App.38a–40a, 44a; Decl. of Steven Monteith (Monteith Decl.) ¶ 3, Dkt. 280-1.¹ And there is not enough time for USPS to scan each envelope prior to mailing, especially in states with tens of millions of ballots. App.41a–42a. Despite these unavoidable facts, USPS offers no contingency plan for the inevitable technical failures of any new system of this scale. App.41a. To the contrary, USPS will enforce these requirements under a punishing zero-tolerance regime: If a single envelope barcode fails to scan for any reason, USPS must reject *all ballots* submitted in the same mailing, even when that means refusing to deliver thousands or millions of Rule-compliant ballots in the same mailing. 91 Fed. Reg. at 54990–91 (§§ 705.24.1, 705.24.3.1–2, 705.24.5.3).

Based on this unrefuted record, the district court found that implementing the Rule for the November elections would “nearly guarantee[] significant disenfranchisement for eligible voters.” App.32a–35a. The court therefore entered a narrow injunction to preserve the longstanding status quo for *only* the November

¹ “Dkt.” refers to the district court docket in Plaintiffs’ case unless otherwise noted.

2026 election and prevent the chaos that USPS’s rushed implementation of the Rule would cause. The court did not prevent states from voluntarily complying with the Rule’s envelope-design and Portal-registration provisions where consistent with state law. It simply prohibited USPS from refusing to deliver Rule-noncompliant ballots.

The balance of equities is not close. Staying the injunction would throw the upcoming elections into utter chaos, potentially disenfranchising millions of voters, including Plaintiffs’ members and the voters Plaintiffs serve, many of whom must vote by mail due to age, disabilities, language-assistance needs, college attendance, residence in rural areas, and other reasons. By contrast, maintaining the injunction imposes no comparable harm on USPS, where the agency concedes that, despite its asserted interest in “election integrity,” it has no role in verifying whether mail voters are eligible. Appl. 6, 29. The Constitution, Congress, and centuries of practice have left that task to the states. On the eve of a national election, this Court should maintain that status quo and deny USPS’s application for a stay.

STATEMENT

A. Constitutional and Statutory Background

The Constitution grants Congress the power to “establish Post Offices and post Roads,” U.S. Const. art. I, § 8, cl. 7. This reflects the Founding generation’s distrust of Executive control of the post; they understood the Crown’s discretionary control over the mail was “dangerous in the extreme.” William Goddard, *The Plan for Establishing a New American Post-Office* (1774). When Congress formalized the Post Office in 1792, it prohibited postal officials from “unlawfully detain[ing], delay[ing],

or open[ing]” the mail. An Act to Establish the Post-Office and Post Roads within the United States, §§ 3, 16, 1 Stat. 232, 234, 236 (1792).

Over time, Congress authorized certain exceptions and conditions on mailable material. For example, in 1797, Congress declared that newspapers were nonmailable unless dried and wrapped, Act of March 3, 1797, § 6, 1 Stat. 509, 512 (1797), and in 1872, Congress deemed “poisons,” “explosive materials,” and other hazardous items nonmailable, Act of June 8, 1872, § 133, 17 Stat. 283, 300–01 (1872).

The Postal Reorganization Act of 1970 (PRA), 39 U.S.C. § 101 *et seq.*, transferred “the functions, powers, and duties of the Post Office Department” to the newly created USPS. *See* 39 U.S.C. § 201 (note). The PRA mandates that USPS must “operate[] as a basic and fundamental service,” “provide postal services to bind the Nation together,” “provide prompt, reliable, and efficient services to patrons in all areas,” and “render postal services to all communities.” *Id.* § 101(a). USPS must “receive, transmit, and deliver” “written and printed matter, parcels, and like materials” “throughout the United States” and “throughout the world” and “serve as nearly as practicable the entire population of the United States.” *Id.* § 403(a).

To achieve these goals, Congress delegated to USPS specific powers to “provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail, and for the disposition of undeliverable mail,” “prescribe, in accordance with this title, the amount of postage and the manner in which it is to be paid,” and “investigate postal offenses and civil matters relating to the Postal Service.” *Id.* § 404(a)(1), (2), (6). USPS may also promulgate “rules and regulations”

that are “necessary in the execution of its functions” and “not inconsistent with this title,” *id.* § 401(2), and exercise “other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers,” *id.* § 401(10). Congress also enacted a detailed statutory scheme that preserves the same division of authority as at the Founding: Congress specifies the situations in which matter is “nonmailable,” *see id.* §§ 3001–18, and USPS carries out that determination—including, where Congress has expressly authorized it to do so, by issuing regulations that establish standards for determining whether matter falls within a statutory category of nonmailable matter. *See, e.g., id.* § 3001(g)(2) (directing USPS to issue standards that fragrance samples must satisfy to avoid being deemed nonmailable).

The Constitution vests authority to regulate federal elections in the states and Congress. U.S. Const. art. I, § 4. States exercise this power, subject to congressional laws concerning the time, place, and manner of federal elections.² *Watson v. RNC*, 146 S. Ct. 2165, 2169–70 (2026). The Executive Branch has no authority in this scheme, except to the extent specifically delegated by Congress.

States have exercised this authority to permit at least some residents to cast their ballots by mail since the Civil War. *Watson*, 146 S. Ct. at 2171. Today, every state permits at least some residents to vote by mail. *Id.* Congress has largely left the regulation of mail voting to the states, but it requires states to permit absent uniformed-services voters and overseas voters to vote by mail in federal elections.

² Congress may also legislate to enforce voting-related constitutional amendments, *see, e.g.,* U.S. Const. amends. XIV, XV.

Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. § 20302(a)(1). And Congress has specifically directed USPS to deliver those ballots “expeditiously and free of postage.” 39 U.S.C. § 3406; *see also* 52 U.S.C. § 20304(b)(4).

B. Executive Order and USPS Rule

On March 31, 2026, President Trump issued the Executive Order. Section 3 directs the Postmaster General “to initiate a proposed rulemaking pursuant to 39 U.S.C. [§] 401 and other applicable authority within 60 days of the date of this order,” and details the “minimum” requirements that the rule “shall include.” 91 Fed. Reg. at 17126 (§ 3(b)). On June 2, USPS issued a proposed rule complying with the Order’s directives. Ballot Mail for Federal Elections, 91 Fed. Reg. 32915 (June 2, 2026).

On August 26, USPS issued the Rule, effective August 21, which confirms that USPS will not deliver mail ballots unless (1) the envelope meets USPS’s new design standards, (2) election officials upload voters’ information into the Portal, and (3) the voter’s address, unique barcode, and originating state are the same on the envelope and in the Portal. 91 Fed. Reg. at 54990–91 (§§ 705.24.3, 705.24.5).

Complying with each of these requirements necessitates several steps across 10,000 different election jurisdictions. Local election officials must, among other things: ensure that ballot envelopes conform to USPS’s new design standards (which many jurisdictions have not previously used and which may conflict with state law);³ submit them to USPS for approval (which historically has taken weeks or months,

³ *See* App.34a–36a & n.43; R.I. Gen. Laws §§ 17-20-19, 17-20-21.

and for which USPS intends to hire no new staff);⁴ proceed with printing (which typically requires four to sixteen weeks);⁵ learn how to upload voter information into the Portal (which is not yet functional and on which the local officials have not been trained);⁶ upload information for each eligible mail ballot voter (which may number in the millions and conflict with state law);⁷ and be physically present while USPS scans each mailing. *Id.* (§§ 705.24.3.1–3); App.33a–45a; Expert Decl. of Tammy Patrick (Patrick Decl.) ¶¶ 21–122, Dkt. 264-1 (detailing “extraordinary complexity of election administration” and logistical challenges that render compliance with the Rule “effectively impossible” for the November election).

For its part, before mailing the ballots to voters, USPS “will review” each batch of ballots (also known as a “mailing,” which is “a group of pieces . . . that may be sorted together,” while a “piece” or “mailpiece” refers to an “individually addressed” item)⁸ to determine whether the envelopes meet the new design standards and whether the information on each envelope matches the information in the Portal. 91 Fed. Reg. at 54990–91 (§§ 705.24.3, 705.24.5). If even a single envelope within a

⁴ 91 Fed. Reg. at 54986.

⁵ Patrick Decl. ¶ 86, Dkt. 264-1.

⁶ Monteith Decl. ¶ 3; *e.g.*, Decl. of Kristen Stavisky (Stavisky Decl.) ¶ 36, *California*, No. 26-cv-13917, Dkt. No. 4-17.

⁷ *See* App.38a–39a & n.49; Cal. Elec. Code § 2166; N.M. Stat. § 1-6C-1, *et seq.* (2019); N.Y. Election Law § 5-508; Va. Code § 24.2-706(A).

⁸ USPS, Domestic Mail Manual (DMM), 235 Mail Preparation, §§ 1.2(a), 1.4(a) <https://pe.usps.com/text/dmm300/235.htm> (defining a “mailing” as “a group of pieces within the same class of mail and same processing category that may be sorted together” and “pieces” as “individually addressed mailpieces”).

mailing fails to properly scan or match, the entire mailing (no matter the size) will be rejected. *Id.* (§§ 705.24.4.2(d), 705.24.5.1, 705.24.5.3); *see also* Br. of Amicus Curiae Whistleblower Aid in Opp. to Appl. for Stay at 15–16 (Whistleblower Br.). This zero-tolerance approach threatens to delay “tens of thousands of ballots” without any “clear process by which state election officials or voters themselves can challenge the rejection.” Whistleblower Br. 6 (citation omitted).

According to testimony from an election-administration expert and leader of a national association of election officials the district court properly considered, the Rule’s requirements have no prior precedent. *See* App.44a n.61, *see also* Whistleblower Br. 8, 17. USPS has never rejected ballots based on envelope design, refused entire ballot mailings because of a defect in a single mail piece, subjected ballot mail to requirements inapplicable to other mail, or required voter lists from election officials. Patrick Decl. ¶¶ 17, 71, 94, 113.

C. Plaintiff Organizations

Plaintiffs—League of Women Voters of Massachusetts, League of Women Voters Lotte E. Scharfman Memorial Education Fund, League of Women Voters of the United States, League of Women Voters Education Fund, Association of Americans Resident Overseas, U.S. Vote Foundation, OCA-Asian Pacific American Advocates, and Delta Sigma Theta Sorority, Inc.—are civic organizations who, as a core part of their work, educate and assist Americans with exercising their fundamental right to vote, including mail voting. App.3a, 21a–24a. Their members reside in D.C., all 50 states, and several overseas territories; many rely on mail voting

due to disabilities, college attendance, rural residence, and other reasons. App.21a.

D. Proceedings Below

Plaintiffs challenged the Executive Order on April 2, 2026, Dkt. 1, and obtained a preliminary injunction on August 11, Dkt. 183. A group of states intervened to defend the Executive Order and Rule (Intervenor States). Dkt. 106. After this Court stayed the injunction entered in a parallel suit brought by a group of states and D.C. (Plaintiff States) on ripeness grounds—while explaining that if “the Postal Service’s final rule harms the States, they may challenge that rule,” *Trump v. California*, No. 26A124, 2026 WL 2473573, at *4 (U.S. Aug. 24, 2026)—the district court vacated Plaintiffs’ initial preliminary injunction. Dkt. 204.

On August 26, the day the Rule was published, Plaintiffs filed a Supplemental Complaint and moved for a temporary restraining order (TRO) and a new preliminary injunction. Dkt. 205, 206. Plaintiff States likewise filed a new action and moved for the same. *California v. USPS*, No. 26-cv-13917 (D. Mass. Aug. 26, 2026), Dkt. 1, 3. On August 27, the district court issued a 14-day TRO partially enjoining the Rule while it considered Plaintiffs’ preliminary injunction motion. Dkt. 218 at 10–11.⁹

On September 4, the district court entered the narrow preliminary injunction at issue. It found that compliance with the Rule for this November’s election is “virtually impossible” which “nearly guarantee[d] significant disenfranchisement for eligible voters.” App.43a–44a, 32a–34a. It further held the Rule unconstitutionally

⁹ USPS appealed the TRO and sought a stay from the First Circuit and this Court, but withdrew the latter stay request on September 6. See Letter, *USPS v. California*, No. 26A297 (U.S. Sept. 6, 2026).

intrudes on Congress's and states' powers under the Elections Clause, exceeds USPS's delegated power, and contradicts Congress's enactments regarding nonmailable material. App.31a. It thus partially enjoined the Rule for the November elections, prohibiting USPS from rejecting Rule-noncompliant ballots, but preserving states' ability to voluntarily comply with the Rule's envelope standards and Portal-enrollment process. App.31a, 47a–48a.

USPS appealed and filed stay applications with the First Circuit and this Court. As of this filing, the First Circuit has not ruled on the stay application.

ARGUMENT

With less than two months until the midterms, USPS asks this Court to upend the longstanding status quo and allow USPS—a federal entity with absolutely no authority to make the rules that govern federal elections—to unleash pandemonium upon the electoral process. USPS has not made the strong showing required for a stay. The district court found based on extensive evidence (including from USPS itself) that Plaintiffs' members, who reside in every state and rely on mail voting, face an imminent, substantial threat of disenfranchisement and that the Rule directly impedes Plaintiffs' core voter-assistance activities. App.21a–24a, 44a. USPS rebuts none of this with facts. On the merits, the court correctly held the Rule both *ultra vires* and unconstitutional: It creates a new category of nonmailable matter—without any statutory authority—exceeds the constraints on USPS's general rulemaking authority—especially as a major question—and makes USPS the unconstitutional arbiter of who may receive mail ballots. App.25a–31a. And the equities run entirely

one way: Staying the preliminary injunction would upend the status quo at the expense of voters and election officials—risking the disenfranchisement of millions of eligible voters—while USPS faces no irreparable harm from a time-limited, narrow injunction solely for the November elections. This Court should deny the stay.

I. PLAINTIFFS HAVE STANDING.

The district court correctly held that Plaintiffs have standing based on its well-supported factual findings that the Rule directly harms both their members and their core voter-engagement activities.¹⁰ App.21a–24a.

First, Plaintiffs have established associational standing through unrebutted testimony identifying members who need to vote by mail in the upcoming election and are now at “substantial risk” of disenfranchisement. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). Just as Plaintiff States unquestionably have standing because the Rule interferes with their ability to *send* ballots, the Rule interferes with Plaintiffs’ members’ ability to *receive* them. *Cf. Procunier v. Martinez*, 416 U.S. 396, 408–09 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401 (1989) (a party’s injury stemming from mailing restrictions “does not depend on whether the . . . correspondent is the author or intended recipient of a particular letter” because “the interests of both parties are inextricably meshed”).

Plaintiffs are nationwide organizations whose members reside in all fifty states and D.C., who “need to vote by mail because of physical disabilities, mobility

¹⁰ USPS contests Plaintiffs’ standing but makes no separate argument contesting that if Plaintiffs have standing, those injuries are also sufficient to show irreparable harm.

impairments or other health issues, limited English proficiency, residence in rural areas, service as poll workers on election day, or [their being] college students away from their resident home.” App.21a.¹¹ For example, Plaintiffs’ members include registered voters in states where voting by mail is the primary method of election, with ballots sent to all voters: California, Colorado, Hawai’i, Oregon, Utah, and Washington.¹² They also include members in places such as Arkansas, Louisiana, Massachusetts, North Dakota, Ohio, and Texas who are rural, elderly, disabled, or Indigenous voters who lack access to transportation; out-of-state college students who cannot return home to vote at the polls; and people who are serving as poll workers on election day—who intend to request a mail ballot for the November midterms.¹³

This record is dispositively different from *Summers v. Earth Island Institute*, 555 U.S. 488 (2009). *Contra* Appl. 34. There, the Court rejected standing based on members’ generalized desire to visit forests that might someday be affected by a

¹¹ See, e.g., 3d Decl. of Thu Nguyen (3d Nguyen Decl.) ¶¶ 3–7, 13, 35–36, Dkt. 208-3 (identifying “Member A” as “an OCA youth member and qualified voter residing in Colorado who needs to vote by mail while at college in Massachusetts” and “Member B” as “an OCA youth member and qualified voter residing in Hawai’i who needs to vote by mail while at college in California”); 3d Decl. of Celia Canavan (3d Canavan Decl.) ¶¶ 24–25, 59, Dkt. 208-4 (discussing 93-year-old member who votes by mail because of health and transportation challenges and a member whose cancer and autoimmune disease require mail voting, among other members).

¹² 4th Decl. of Celina Stewart (4th Stewart Decl.) ¶¶ 7–8, Dkt. 251-1; 3d Nguyen Decl. ¶ 35.

¹³ 3d Decl. of Celina Stewart (3d Stewart Decl.) ¶¶ 41–43, 45–46, Dkt. 208-1; 4th Stewart Decl. ¶¶ 2, 5, 9–10; 3d Nguyen Decl. ¶¶ 9, 13, 35–36; 3d Decl. of Dorcas Washington (3d Washington Decl.) ¶¶ 31–33, 36, 71, Dkt. 208-5; 3d Canavan Decl. ¶¶ 24–25, 59; see also 3d Nguyen Decl. ¶¶ 3–7, 13, 35–36.

challenged regulation. *Id.* at 495–96. Here, Plaintiffs have identified members across the country who need to vote by mail for specific reasons, intend to do so in November, and face concrete risks that the Rule will prevent their ballots from being delivered.

Nor, contrary to USPS’s reliance (at 34) on *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), is this risk “speculative.” As the district court found, compliance with the Rule for the midterm elections is “virtually impossible” given the compressed timeframe. App.34a–40a, 43a–44a. And even if compliance were possible, the members would still face substantial risk of disenfranchisement, given the high likelihood that millions of ballots will be rejected from the Rule’s rushed implementation and zero-tolerance verification regime. Disenfranchisement is not only “predictable,” *Dep’t of Com. v. New York*, 588 U.S. 752, 768 (2019), it is “unavoidable.” App.43a–44a; *see also* Whistleblower Br. 7–8.

Second, Plaintiffs also have standing because the Rule directly impairs their core voter-engagement activities. Relying on extensive, unrebutted testimony, the district court found “[t]he chaos engendered by the Final Rule’s immediate deadlines is significantly interfering with Plaintiff Organizations’ mission to provide its members with accurate and reliable information about how to vote, including by mail,” leading to confusion about “whether to advise their members to vote by mail, despite legal entitlement, due to the high risk of disenfranchisement.” App.21a–22a & nn.27–28. Contrary to USPS’s assertions (at 34), this is a concrete organizational injury. An organization is materially harmed where, as here, government action directly interferes with that organization’s core work of helping voters participate in

democracy. *See RNC v. N.C. State Bd. of Elections*, 120 F.4th 390, 397 (4th Cir. 2024) (political party had standing to challenge policy that “affected and interfered with” core mission of “counseling . . . voters”); *see also Get Loud Ark. v. Jester*, 171 F.4th 1058, 1064 (8th Cir. 2026) (voter-engagement organization had standing to challenge rule that “directly interfered with [its] voter registration activities”); *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016).

FDA v. Alliance for Hippocratic Medicine, 602 U.S. 367 (2024) (*AHM*), does not alter this conclusion. *Cf.* Appl. 33–34. *AHM* rejected standing based on a “setback to the organization’s abstract social interests” and expenditures on advocacy undertaken in opposition to government policy. 602 U.S. at 394–95. Plaintiffs’ standing depends on neither. The Rule directly interferes with core voter-assistance activities that have long been central to Plaintiffs’ operations. App.21a–24a.¹⁴ Plaintiffs are forced to spend resources countering the inevitable, predictable disruption of their civic work, not advocating against the Rule. App.21a–24a.

¹⁴ *See also, e.g.*, 3d Nguyen Decl. ¶¶ 21–22, 28 (the Rule would significantly disrupt OCA’s creation, translation, and distribution of state-specific voter guides in time for the election); 3d Stewart Decl. ¶¶ 13, 20, 26, 29–33, 40, 44, 47 (the League’s VOTE411.org page—which provides nonpartisan voter education to millions across the country—would have to be overhauled in the short time prior to the election absent an injunction); 3d Washington Decl. ¶¶ 42, 52–53, 70 (the Rule renders Delta Sigma Theta “unable” to educate members and other voters with specificity, and would make already printed materials useless); 3d Decl. of Susan Dzieduszycka-Suinat ¶¶ 12–15 33, 35, Dkt. 208-6 (U.S. Vote’s Civic Data product—which provides state- and territory-specific information on voting requirements—is “essential to U.S. Vote’s survival” and relied on by many thousands of voters; the Rule would require taking the tool offline entirely); 3d Canavan Decl. ¶¶ 34–41, 48, 51.

II. DEFENDANTS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR APPEAL.

A. Plaintiffs May Sue in Equity to Enjoin the Rule's Enforcement.

Everyone agrees that Plaintiffs may challenge the Rule in equity “without a congressionally provided cause of action to prevent an ‘injurious act by a public officer.’” *Trump v. Cook*, 146 S. Ct. 2234, 2251 n.2 (2026) (quoting *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015)); see also *McAnnulty*, 187 U.S. at 109.

USPS incorrectly contends (at 14–15) that Plaintiffs must satisfy the heightened standard described in *Nuclear Regulatory Commission v. Texas*, 605 U.S. 665 (2025) (*NRC*). That standard never applies to constitutional claims. *E.g.*, *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010). And it applies to statutory claims only when the plaintiff invokes equitable review to “end-run” a statutory scheme governing judicial review. *NRC*, 605 U.S. at 680–81. In *NRC*, for example, Congress had provided a specific avenue for judicial review of agency action but limited that review to parties to the underlying agency proceeding. *Id.* at 674–75. The Court applied the heightened standard because the plaintiffs, who were not parties to that proceeding, nevertheless sought judicial review in equity. *Id.*

NRC has no bearing here. Congress did not limit judicial review of USPS regulations; it simply exempted certain USPS actions from the Administrative Procedure Act (APA). 39 U.S.C. § 410(a). That exemption merely “take[s] away what the APA has otherwise given—namely, the APA’s own guarantee of judicial review,” but it “does not repeal the review of *ultra vires* actions that was recognized long

before, in *McAnnulty*.” *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988). Because there is no “end-run,” the heightened standard does not apply. *E.g.*, *Cook*, 146 S. Ct. at 2251 n.2; *Learning Res.*, 607 U.S. at 240; *Trump v. Illinois*, 146 S. Ct. 432, 434 (2025). In any event, Plaintiffs would easily satisfy the heightened standard because the Rule plainly contravenes the clear and specific statutory commands discussed below.

B. The Rule Is Unlawful.

The Rule is unlawful for three reasons. First, it creates a new category of nonmailable matter without congressional authorization. Second, apart from nonmailability, it imposes unauthorized mailing restrictions that interfere with state election administration. Third, its unprecedented assertion of authority over federal elections requires clear congressional authorization—which USPS plainly lacks.

1. The Rule Exceeds USPS’s Authority Because USPS May Not Create New Categories of Nonmailable Matter.

Congress, not USPS, decides what matter may be excluded from the mails. That principle is deeply rooted in the federal postal system’s history and preserved in the PRA, where “Congress has established a detailed statutory and regulatory scheme to govern this country’s vast postal system.” *USPS v. Council of Greenburgh Civic Ass’ns*, 453 U.S. 114, 122 (1981). This holds especially true where, as here, the question concerns whether a statute “confers authority upon an administrative agency”—a question shaped by “whether Congress in fact meant to confer the power the agency has asserted.” *West Virginia v. EPA*, 597 U.S. 697, 721 (2022).

This Court has long recognized that the Postal Service must deliver the mail

unless Congress permits otherwise. As the Founding generation recognized, the power to withhold mail was “dangerous.” Goddard, *supra* at 5. Thus, while “[t]he validity of legislation prescribing what should be carried . . . has never been questioned,” *Ex parte Jackson*, 96 U.S. 727, 732 (1877), the Postal Service “cannot exclude or refuse to deliver” mail unless “some law of Congress” authorizes it, *McAnnulty*, 187 U.S. at 109. That allocation of authority dates to the postal system’s founding. From the very first postal laws, Congress itself has prescribed what matter could not be carried, while the Post Office has been tasked with administering and enforcing those congressional judgments. *See supra* Statement § A.

The PRA thus requires that USPS “receive, transmit, and deliver” the mail “throughout the United States.” 39 U.S.C. § 403(a). It delegates to USPS authority “to provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail, and for the disposition of undeliverable mail,” *id.* § 404(a)(1)—and to promulgate rules and exercise other powers in service of that task, *id.* § 401(2), (10). But Congress did not grant USPS general power to declare categories of matter nonmailable. Instead, it enacted a comprehensive statutory scheme specifying what matter is “nonmailable” and the circumstances in which USPS may refuse to carry it. *Id.* §§ 3001–3018. When Congress intends USPS to regulate nonmailable matter, it expressly delegates that authority. *See, e.g., id.* § 3001(g)(2). The PRA thus preserves the historical allocation of authority: USPS administers the postal system; Congress determines what may be excluded from it.

The “overall statutory scheme” confirms the point. *West Virginia*, 597 U.S. at

721 (citation omitted). Congress repeatedly specified when matter may not be carried yet nowhere gave USPS a comparable “specific power” to add categories of nonmailable matter by regulation. *See* 39 U.S.C. § 404(a). Congress’s enactment of a series of provisions identifying certain categories of nonmailable matter therefore “necessarily bespeaks a negative implication” that there are no other categories. *Esteras v. United States*, 606 U.S. 185, 195 (2025) (citation modified).¹⁵ USPS seeks to add them anyway.

The Rule squarely violates the basic statutory precept that Congress determines what materials are nonmailable. It makes mail ballots nonmailable unless states comply with USPS’s unprecedented voter-data demands and data- and barcode-matching requirements. *See* 91 Fed. Reg. 54991 (§ 705.24.5.3). In doing so, the Rule does not merely regulate how USPS handles or delivers mail; it creates new conditions under which an entire category of mail may not be delivered. It thus creates a new condition of nonmailability that Congress never enacted.

USPS fails to locate any statutory authority for the Rule. First, USPS suggests (at 23) that the PRA’s nonmailability provisions are not “exclusive” and that it may therefore use its “general rulemaking powers” to create its own categories of nonmailable matter. But USPS offers no support for this proposition, which flouts the text and structure of the PRA and the history of the postal laws. Congress authorized

¹⁵ Congress knows how to authorize an agency to add exceptions or conditions to a statutory scheme. *See, e.g.*, 18 U.S.C. § 39A(d) (authorizing agency to create additional exceptions to general prohibition against pointing lasers at aircraft); 42 U.S.C. § 7412(c)(5) (delegating authority to agency to create additional categories of regulated air pollutants). Congress enacted no comparable provision here.

USPS to issue regulations only when “necessary in the execution of its functions” under law, 39 U.S.C. § 401(2); it did not delegate to USPS the function of designating new categories of mail as “nonmailable.” While USPS points to its general, undisputed authority to provide for the *handling* of mail, *see id.* § 404(a)(1), Congress clearly did not intend to allow USPS to deem new categories of matter “nonmailable” under this provision. If it had, it would not have enacted a detailed scheme of provisions for “nonmailable” matter, under which USPS *does* have the authority to create regulations for nonmailable items as specific as “fragrance advertising sample[s].” *Id.* § 3001(g)(2). USPS’s reading would render those specific delegations “superfluous” by allowing USPS to accomplish under its general rulemaking authority what Congress has long authorized only through specific provisions. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645–47 (2012).

Second, USPS argues (at 22) that the Rule does not render mail ballots nonmailable matter but merely imposes “conditions on [their] acceptance.” That is a distinction without a difference. Regardless of how USPS characterizes the Rule, “it is the substance of what the [agency] has purported to do and has done which is decisive.” *Columbia Broad. Sys. v. United States*, 316 U.S. 407, 416 (1942). And the substance here is unmistakable: The Rule makes otherwise mailable ballots nonmailable unless specified conditions are satisfied.

The PRA itself demonstrates why. The PRA lists many types of “nonmailable matter.” 39 U.S.C. §§ 3001–3018. Some of them are outright bans, *e.g.*, *id.* § 3001(a), but others render otherwise mailable matter nonmailable unless specified conditions

are met. For example, a fragrance sample is “nonmailable matter” *unless* the sample is sealed, wrapped, treated, or otherwise prepared to prevent involuntary exposure. *Id.* § 3001(g)(1); *see also id.* §§ 3001(d), (g), (h), (i), (n), 3002, 3014, 3018. This approach is not new. In 1797, Congress deemed newspapers nonmailable *unless*, among other things, they were “sufficiently dried and enclosed in proper wrappers.” Act of March 3, 1797 § 6, 1 Stat. 509, 512 (1797). The Rule works the same: It treats otherwise mailable ballots as nonmailable *unless* states submit voter data and satisfy the Rule’s other requirements. That is a nonmailability provision, regardless of USPS’s convenient label for it.

USPS’s own examples confirm this. USPS repeatedly analogizes (at 16–17, 19, 21–22) to special packaging rules for cremated remains and replica explosives that, it claims, demonstrate its authority to impose content-specific conditions short of rendering the matter nonmailable. But those regulations do not rest on USPS’s “general rulemaking authority”; rather, USPS issues those regulations—which govern hazardous, restricted, and perishable mail—based explicitly on 18 U.S.C. § 1716. *See* USPS, Pub. No. 52, Hazardous, Restricted, and Perishable Mail (2026), at §§ 434, 451.22; *see also* 39 C.F.R. § 211.2(a)(2). Section 1716(a) categorically deems nonmailable “material which may kill or injure another, or injure the mails or other property.” For potentially dangerous materials that are not “outwardly or of their own force dangerous or injurious to life, health, or property,” § 1716(b) authorizes USPS to prescribe rules governing their “preparation and packing” for safe mailing. *See also* 39 U.S.C. § 3001(a).

USPS now tries (at 16) to disclaim § 1716 as the basis for those regulations because, it says, replica explosives and cremated remains are not inherently dangerous. But this ignores that § 1716(b) authorizes USPS to regulate the transmission of otherwise-covered material in that exact circumstance. Consistent with that statutory authority, USPS explained, when adopting the replica-explosives restriction, that unmarked replicas had prompted evacuations, requiring “emergency first responder[]” intervention. 75 Fed. Reg. 282, 283 (Jan. 5, 2010). Its Inspector General has likewise noted that other couriers refuse to even ship cremated remains because they are hazardous material. USPS, Off. of Inspector Gen., No. 23-018-R23, Cremated Remains, Audit Report (July 5, 2023), at 2 n.1.

USPS’s hypothetical about elder-abuse solicitations (at 18) fares no better. USPS suggests that to deal with elder-abuse mail scams, it could impose “special design and registration rules” on solicitations to retirement communities even though such rules “are not authorized by any of Congress’s specific regulations addressing fraudulent use of mails.” But such rules could in fact be authorized by statute. If a scam solicits payment, for example, USPS may regulate the envelope’s design or deem the matter nonmailable under several existing provisions. *E.g.*, 39 U.S.C. § 3001(d), (h)–(j). What USPS may not do is create new nonmailability requirements untethered to any statutory authorization. If Congress believes additional restrictions are warranted, it can enact them. All of these examples only reinforce the bedrock principle that Congress sets the general categories around nonmailability and, when it chooses to do so, may provide USPS the leeway to implement those

statutorily specified restrictions.

Finally, USPS suggests (at 19–20) that Plaintiffs’ theory would deny USPS any legal authority to make election-specific rules. But USPS surely may make rules specific to election-related mail *when Congress has authorized it to do so*. See, e.g., Mailing Standards of USPS, DMM (§ 703.8.2.1–2) (specifying the class of outbound and return ballot mail); 39 U.S.C. § 404(b) (authorizing USPS to “establish reasonable and equitable classes of mail”). But USPS may not *reject* election-related mail based on category-specific requirements absent congressional authorization. USPS’s examples (at 9, 19–20) of “election-specific mail-preparation policies” are especially inapposite because they are all voluntary. USPS does not reject ballots that fail to follow them, consistent with its statutory mandate to deliver the mail.

2. *The Rule Exceeds USPS’s Authority Even If It Does Not Create a New Category of Nonmailable Matter.*

Even if the Rule was not an unauthorized nonmailability provision, it would still be ultra vires because no provision of federal law grants USPS the authority to enact it.

USPS contends (at 20) that the Rule is authorized as a “simpl[e] exercise[] of the Postal Service’s general rulemaking power to regulate the efficient handling and timely delivery of mail.” Specifically, USPS points (at 15–16) to its power to provide for the “delivery . . . of mail,” 39 U.S.C. § 404(a)(1), and to promulgate rules in service of its statutory functions, *id.* § 401(2). But those provisions do not authorize the Rule. Under § 401(2), any rules USPS issues under its general rulemaking authority must not be “inconsistent with” the PRA and must be “necessary in the execution of its

functions under this title.” *Id.* The Rule bulldozes past both limitations by coercing states to comply with onerous mail ballot and data requirements and then granting USPS itself the authority to reject and return noncompliant ballots. 91 Fed. Reg. at 54991 (§§ 705.24.4.2–24.5.3). This is both inconsistent with USPS’s mandate to provide “adequate and efficient postal services . . . throughout the United States,” 39 U.S.C. § 403(a), and unnecessary for USPS’s core mission of delivering the mail, *see id.* § 404(a)(1).

USPS tries (at 16) to cast the Rule as a mere attempt to “impose reasonable requirements for envelope design and addressee information with respect to particularly sensitive items.” Of course, this Rule does not merely regulate what must appear on a ballot envelope or its size or weight—it reaches into state election systems, demanding voter data in advance and then designating itself the arbiter of which ballot mail may be sent to eligible voters. Moreover, this Rule is hardly consistent with the PRA as is required for rulemaking, 39 U.S.C. § 401(2), because it impedes rather than furthers USPS’s responsibility to “maintain an efficient system of . . . delivery of the mail nationwide,” *id.* § 403(b)(1).

USPS’s reliance (at 21–22) on regulations concerning insufficient postage and illegible addresses only underscores the problem. Those are broadly applicable mail regulations, not restrictions targeting a particular category of mail. And they are not, as USPS claims (at 21), exercises of “USPS’s general rulemaking powers.” Rather they implement specific statutory powers authorizing USPS to prescribe “the amount of postage and the manner in which it is to be paid,” 39 U.S.C. § 404(a)(2), establish

classes of mail, rates, and fees, *id.* § 404(b), and provide for the “delivery . . . of mail,” and the “disposition of undeliverable mail,” *id.* § 404(a)(1).

USPS’s cited cases are not to the contrary. *Greenburgh*, 453 U.S. at 123, and *Associated Third Class Mail Users v. USPS*, 600 F.2d 824, 826 n.5 (D.C. Cir. 1979), generally recognize USPS’s rulemaking authority; neither holds that USPS may use that rulemaking authority to create new categories of nonmailable matter or prescribe the manner of federal elections. And *Associated Third Class Mail Users* makes clear that USPS rules must “further the objectives of [the PRA].” 600 F.2d at 826 n.5. A rule that adds a new categorical exception to USPS’s duty to deliver ballot mail does the opposite.

Nor can USPS justify this sweeping Rule with passing references to mail “frauds that undermine public confidence in federal elections.” Appl. 17. USPS identifies no statutory basis for that proposition, and the Rule itself cites only 18 U.S.C. § 3061(b) in support. 91 Fed. Reg. at 54974. But § 3061(a) grants postal inspectors authority to investigate “criminal matters related to the Postal Service and the mails” using warrants, arrests, and property seizures. It does not authorize USPS to condition delivery of otherwise mailable matter. At most, § 3061(b) supports regulations governing postal criminal investigations—not a rule dictating whether ballot mail may be carried and delivered.

3. The Rule Exceeds USPS’s Authority Because Congress Did Not Clearly Authorize This Extraordinary Power.

The Rule would still be unlawful even if USPS had a plausible statutory basis for the Rule. Where, as here, the Executive Branch claims an extraordinary power of

great political significance, it must “identify clear congressional authorization” for that power. *Learning Res.*, 607 U.S. at 255. USPS’s claimed authority to interfere with the states’ distribution of election ballots, indeed, to withhold those ballots if its conditions are not met, is extraordinary in both its breadth and its unprecedented intrusion into state election administration. USPS cannot identify any provision that clearly authorizes it to exercise that power.

The scale and significance of that asserted power are difficult to overstate. As is their sovereign prerogative, every state authorizes at least some residents to vote by mail. *Watson*, 146 S. Ct. at 2169–71. Plaintiff States anticipate mailing over 50 million ballots between now and Election Day. App.32a–34a & n.37. But USPS now claims it is empowered to condition its delivery of election mail on generic grants of authority having nothing to do with elections. This assertion of federal power over state election processes lacks the explicit, unambiguous congressional authorization needed before an executive agency “claims the power to resolve a matter of great political significance.” *E.g., West Virginia*, 597 U.S. at 743 (Gorsuch, J., concurring) (citation modified); *accord Learning Res.*, 607 U.S. at 246.

Here, USPS’s Rule intrudes on two “core congressional power[s],” *Learning Res.*, 607 U.S. at 243—the regulation of federal elections, U.S. Const. art. I, § 4, cl. 1, and the federal postal system, U.S. Const. art. I, § 8, cl. 7. Indeed, Congress has “zealously watched and strictly confined” its “power” over nonmailable matter. *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 156 n.18 (1946). But the Rule would permit USPS to determine whether an entire category of election mail may enter the federal

postal system, thereby overriding a sovereign state’s choice to conduct its elections by mail. Contrary to USPS’s arguments (at 23), that asserted power has vast political significance—it affects millions of ballots, thus triggering the “major-questions doctrine,” independent of its sizable compliance costs. *West Virginia*, 597 U.S. at 743 (Gorsuch, J., concurring).

USPS repeatedly characterizes the Rule as a “modest” regulation of the mail. Appl. 2, 7, 13, 17, 22–25, 27. It is anything but. The Rule dictates conditions under which states may send ballots to their eligible voters, directly affecting how millions exercise the franchise. And the general grants of authority on which USPS relies supply no limiting principle. USPS does not explain what election-related conditions it may impose, what standards govern those conditions, how close to an election they may take effect, or how much compliance burden USPS may impose. The Pandora’s box of unfettered interference in federal election regulation by USPS, if opened here, will not soon be closed.

The Rule’s total “lack of historical precedent” further supports the conclusion that it is ultra vires. *Learning Res.*, 607 U.S. at 245–46. Congress has never delegated USPS authority to restrict the delivery of election ballots. The one time Congress has addressed USPS’s treatment of mail ballots—in UOCAVA—it directed the Postal Service to carry qualifying ballots “expeditiously and free of postage.” 39 U.S.C. § 3406(a)(1). Thus, when Congress has spoken specifically about USPS and mail ballots, it has done so to facilitate, rather than impede, their delivery. Moreover, it is especially implausible that Congress would have authorized USPS to impose

sweeping changes to election administration with immediate effect, on the eve of an election, when Congress itself has delayed the effective date of federal election legislation to give states time to comply. *See, e.g.*, National Voter Registration Act of 1993, Pub. L. No. 103-31, § 13, 107 Stat. 77, 89 (1993) (two-year delay); Help America Vote Act of 2002, Pub. L. 107-252, § 302, 116 Stat. 1666, 1708 (2002) (same).

Nor has USPS ever previously understood its general statutory authority to permit it to create new categories of nonmailable matter. There are many examples of USPS invoking specific statutory authority—even if odious or constitutionally suspect for other reasons—to justify past attempts to exclude mail. *E.g.*, *U.S. ex rel. Milwaukee Soc. Democratic Publ'g Co. v. Burleson*, 255 U.S. 407 (1921) (defending exclusion under Espionage Act of 1917); *Manual Enters., Inc. v. Day*, 370 U.S. 478 (1962) (defending exclusion under Comstock Act of 1873). But USPS identifies no precedent in which it relied on its general rulemaking authority to declare an otherwise mailable category of matter nonmailable, *see supra* at 22–23—let alone to condition delivery of ballots on compliance with its preferred election-administration practices, even though mail voting dates back to the Civil War, *Watson*, 146 S. Ct. at 2171; *see* Patrick Decl. ¶¶ 17, 71, 94.

The combination of the Rule's extraordinary breadth, its intrusion into state election administration, and the absence of historical precedent confirms what the statutory text makes clear: Congress did not authorize USPS to wield this power.

C. The Rule Is Unconstitutional.

The Rule is also unconstitutional because USPS intrudes on states' sovereign

authority to administer elections by refusing to deliver mail ballots sent by states to their citizens unless states follow USPS's preferred mail-ballot practices. The Elections Clause empowers states to prescribe the manner of federal elections absent a conflict with federal law. *E.g.*, *Watson*, 146 S. Ct. at 2181. But the power claimed by USPS upsets the federalism that the Elections Clause honors, intruding deep into the process of election administration, “an area that is the particular domain of state law.” *See Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 764 (2021).

USPS argues (at 25–26) that the constitutional challenge collapses into the statutory one because, if Congress authorized the Rule, there is no Elections Clause violation. But statutory and constitutional limits are distinct: An agency action may exceed its statutory authority without violating the Constitution, but an action that also transgresses an independent constitutional limit is unlawful on both grounds. *See Dalton v. Specter*, 511 U.S. 462, 472 (1994). Here, the Rule does more than regulate the mail generally; it targets the ballots states use to conduct their elections and declares them nonmailable. By doing so, USPS has not merely exceeded its statutory authority; it has unconstitutionally exercised control over the manner in which states conduct elections.

USPS also claims (at 19) that the Rule “does not regulate elections,” only the mail. That characterization cannot be reconciled with the text of the Rule or the Executive Order that spawned it. The Rule expressly invokes the Executive Order and “the need . . . [to] help protect the integrity of federal elections.” 91 Fed. Reg. at 54966. And the Order, entitled “Ensuring Citizenship Verification and Integrity in

Federal Elections,” likewise states that its purpose is to “enhance election integrity via the United States Mail.” 91 Fed. Reg. at 17125. By invoking purported election integrity rationales (at 5, 9, 13, 17, 18), USPS further reveals how this Rule targets election administration rather than postal administration.

Nor is USPS’s characterization of the Rule consistent with its practical effect. The Rule expressly provides that ballot mailings that do not comply with the voter-specific enrollment requirement “*will not be accepted and will be returned* to the authorized ballot mailer.” 91 Fed. Reg. at 54991 (§ 705.24.5.3(a)) (emphasis added). USPS is imposing conditions on states’ ability to conduct elections by mail, requiring them to provide detailed information about each voter or forgo USPS’s delivery of their ballots altogether. USPS’s expansion of the power to prescribe the manner of federal elections and its supplanting of longstanding state laws around voting by mail is unconstitutional as well as ultra vires.

III. THE REMAINING FACTORS WEIGH AGAINST A STAY.

A. The Equities and Public Interest Strongly Counsel Against a Stay.

The balance of equities is stark.¹⁶ USPS evades (at 31–32) the undeniable

¹⁶ USPS argues this Court need not balance the equities because this is not a “close case.” See Appl. 6, 12, 28, 31 (citing *Nat’l Republican Cong. Comm. v. Brown*, No. 26A274, 2026 WL 2618462 (U.S. Sept. 4, 2026) (per curiam)). But *Brown*, and its cited predecessor *Hollingsworth v. Perry*, 558 U.S. 183 (2010), involved stays pending certiorari after appellate merits review. See *Brown*, 2026 WL 2618462, at *1; *Hollingsworth*, 558 U.S. at 188–89. Neither changed this Court’s “well established” standard for stays pending appeal, which includes balancing the equities. *Cook*, 146 S. Ct. at 2246. Indeed, this Court just applied that test in the Plaintiff States’ case. *California*, 2026 WL 2473573, at *2. And even under *Brown*, this is not a “close case,” because the merits and harm are entirely *against* the government. See *supra* § II.

consequences of implementing the Rule now, baldly suggesting that such “overblown” concerns are based on “speculation,” “mischaracterization,” and at most amount to the assertion that “compliance with the Rule may be challenging for the upcoming elections.” But the harms here are far more than “ordinary compliance costs.” Appl. 31. Unrebutted declarations from dozens of state election officials, the Rule’s own provisions, and USPS’s own admissions, all prove that rushing into this unprecedented mail-ballot regime on the eve of an election without the systems, training, or contingency plans needed to administer it will throw election administration into chaos and “nearly guarantee[] significant disenfranchisement” of eligible voters. App.32a–33a. In the face of this record, the government cannot show that a stay will not “substantially injure” the other parties and the public interest, *Nken v. Holder*, 556 U.S. 418, 426 (2009), which strongly favors protecting “constitutional guarantees,” *United States v. Raines*, 362 U.S. 17, 27 (1960).

This Court has repeatedly cautioned against eleventh-hour disruptions of election administration, which cause “much confusion” and “upset[] the delicate federal-state balance in elections.” *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025). That caution sounds primarily in federalism concerns. “States are free to decide for themselves whether last-minute changes to an election are in their best interests,” but the changes here are imposed by a federal agency, without any congressional authorization. *Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026) (per curiam). The Court should decline USPS’s invitation to unsettle every state’s ballot-mailing process on the eve of those mailings.

The district court’s conclusion that the Rule will upend election administration and risk mass disenfranchisement is inescapable, because all facts point to multiple independent points of failure. App.30a–43a.

First, the record contains “overwhelming evidence” laid out in “granular detail” that “it is likely impossible” for states “to comply with the Final Rule for the midterms.” App.23a & n.29.¹⁷ Unrebutted testimony across dozens of states shows how the Rule’s envelope-design requirements cannot be implemented in a manner that enables states to comply for November: States *inter alia* do not yet have barcodes on their envelopes, cannot print the envelopes themselves, and/or have been told by vendors that rush-printing new envelopes in time is impossible. App.34a–35a.¹⁸ Separately, the mandatory process of enrolling tens of millions of voters via USPS’s Portal imposes an “overwhelming expenditure of time by election officials,” across 10,000 election jurisdictions, all of whom would be required to constantly update the Portal as new registrations and requests occur up to Election Day. App.38a–40a & n.48, 44a. Because election administration is typically decentralized, state officials must deputize and train “thousands of Portal users” to submit voter information,

¹⁷ USPS cannot wave away hundreds of pages of sworn declarations from dozens of government officials, providing extensive state-by-state detail regarding election administration—and all pointing to the same conclusion—merely by labelling them “self-serving,” Appl. 31, particularly as these declarations went entirely unrebutted.

¹⁸ USPS faults states for failing to prepare “to comply months ago,” Appl. 31–32, but in late July, USPS said it was “still deliberating over how (if at all) to implement the Order.” Stay Appl., at 2, *Trump v. California*, No. 26A124 (July 27, 2026). USPS cannot tell this Court in July that these mandates might never exist and tell it in September that states were dilatory for not preparing to meet them months earlier.

none of which has occurred yet. App.39a.¹⁹ For that reason, Plaintiff States “all characterize[d] uploading voter data to the Portal for the midterms as a massive undertaking and seriously doubt their ability to do so.” App.40a. And under the Rule’s clear dictates, any Rule-noncompliance—including failure to meet the envelope design or improper Portal submission of voter information—triggers the non-delivery of ballots to eligible voters. 91 Fed. Reg. at 54991 (§ 705.24.5.3).

The district court did not unduly “discount[]” states that “contend that they will be able to comply.” Appl. 31. There was, and remains, no such contention. Missouri’s Secretary of State submitted the lone declaration of all the Intervenor States, and even then, he averred only that his “staff [are] still figuring out some details,” but he “believe[s] it is possible to implement this rule for the 2026 General Election.” Decl. of Denny Hoskins Decl. ¶ 5, Dkt. 234-1. No state has affirmatively and unequivocally stated that it can comply with the Rule’s requirements.

Second, even if the states *could* comply—though they cannot—the record shows that USPS itself cannot implement the Rule in a manner or on a timeline to enable them to do so for the midterms. This conclusion stems not from “speculation by state officials who lack direct knowledge of the Postal Service’s implementation plans,” Appl. 32, but from the words (and silence) of USPS and the Rule.

The Portal is still not operational. As of September 3, USPS said only that it “anticipate[s] being in a position to make the Portal available to users for voluntary

¹⁹ *E.g.*, Stavisky Decl. ¶ 36, *California*, No. 26-cv-13917, Dkt. No. 4-17 (noting that USPS has not committed to training election officials or providing a timeline for access to the Portal for officials to learn to use it).

use by sometime next week,” Monteith Decl. ¶ 3. Even if the Portal were ready, USPS has not trained its employees on the Portal’s use, or even finalized the training materials those employees will need. *See* Br. of Amicus Curiae Am. Postal Workers Union at 12–14.²⁰ Nor has USPS explained how it will simultaneously complete the required envelope-design review for *thousands* of jurisdictions before the midterms, even though the Rule directs that review must precede any data uploads to the Portal, 91 Fed. Reg. at 54989. It was therefore proper for the district court to determine that the “aspirational two-day turnaround set forth in the Final Rule is belied by the record,” App.37a; *cf.* Appl. 32, where the “only” evidence is that USPS historically takes “weeks or months” to review such designs, and USPS provided zero evidence that it could more quickly conduct the unprecedented “simultaneous review of hundreds or thousands of ballot envelopes.” App.36a–38a. That is particularly so where the Rule itself indicates that USPS does not intend to hire any additional staff. 91 Fed. Reg. at 54986.

Finally, the requirement that USPS scan each ballot envelope in the presence of the election official before sending is also likely to cause severe delays and prevent timely delivery of ballots for the general election. 91 Fed. Reg. at 54981; App.41a–42a.²¹ The Rule’s text itself estimates the scanning “generally takes less than a

²⁰ While USPS attempts to shift blame for its lack of internal training, *see* Appl. at 6, 12, 30, 32, nothing in the preliminary injunction prevents USPS from providing training to states who want to participate voluntarily in the Portal, nor from training its own employees to facilitate this voluntary participation. Their failure to do either means that a stay now will undoubtedly lead to delays, confusion, and chaos.

²¹ USPS’s assertion that the district court “mischaracterized the record” by

minute,” 91 Fed. Reg. at 59481, and even if it were only a few seconds, it is indisputable that scanning will “compound[] to substantial time for States with large mailings,” such as California’s 23 million ballots. App.42a; Patrick Decl. ¶¶ 115–19 (detailing scanning delays); Suppl. Decl. of Tammy Patrick (Suppl. Patrick Decl.) ¶¶ 10–11, Dkt. 264-2.

Third, the new USPS systems implementing the Rule face potential “catastrophic problems” from the “rushed, secretive, and chaotic development process” based on “oral instruction, without written requirements.” Whistleblower Br. 1, 3, 9. An amicus brief on behalf of an anonymous federal official with direct knowledge of USPS’s new procedures explains that a project of the scope and complexity the Rule contemplates typically takes nine months to a year, yet USPS began building the necessary IT infrastructure in June 2026, less than three months before election officials were expected to use it. *Id.* at 9. The systems USPS produced “are largely untested,” as of September 3 “still inoperable,” and thus “will almost certainly fail.” *Id.* at 3; *see* Monteith Decl. ¶ 3.

Fourth, these disenfranchisement threats are compounded by the Rule’s zero-tolerance regime, under which a single mis-scanned or otherwise Rule-noncompliant envelope causes entire batches of ballots to be rejected. 91 Fed. Reg. at 54991; *see* Whistleblower Br. 5–8; Monteith Decl. ¶ 2 (describing “operational steps being taken to implement the final rule” without disclaiming that USPS will implement it as-

“credit[ing] a claim that the verification process could take years for States with tens of millions of ballots,” Appl. 32, is itself a mischaracterization. The court nowhere credited or referenced any such claim.

written). That is particularly consequential for large ballot mailings, which are likely to be rejected as a matter of probability. Patrick Decl. ¶ 114. USPS is therefore wrong that “[a]ll outbound federal-election ballot mail that meets the Rule’s requirements will be accepted, processed, and delivered as before.” Appl. 22. Instead, even ballots with Rule-compliant envelopes, addressed to eligible voters successfully enrolled with USPS under the Rule, will be rejected if they are mailed in the same batch as a mis-scanned or noncompliant ballot. *See* 91 Fed. Reg. at 54991; Whistleblower Br. 7–8.

Collectively, these obstacles create an extraordinary risk to voters and election administration if the injunction is stayed. Voting by mail is a critical feature of U.S. elections. Yet despite all the ways that the Rule’s implementation could go awry and the fact that “any minor malfunction will result in the denial of mail ballots,” USPS disturbingly has not issued any “contingency plan[s].” App.41a, 45a; Suppl. Patrick Decl. ¶11.

In contrast to the harms that would flow from a stay, keeping the injunction in place serves the public interest in several ways. It comports with federalism and the Elections Clause by preserving longstanding mail-voting regimes, while leaving states free to participate voluntarily in the Rule’s envelope-design and Portal procedures. *See supra* § II. It prevents disenfranchisement of eligible voters nationwide who cannot vote except by mail and who are authorized to do so by the law of their states. *See supra* § I. And it protects the ability of nonpartisan voter-service organizations like Plaintiffs to conduct their core activities. *See id.* Parties do not have an entitlement “to avoid any harms associated with complying with a *lawful*

regulation,” Appl. 31, but here, the district court properly concluded that the Rule is *not lawful*, *see supra* § II, and “[t]here is generally no public interest in the perpetuation of unlawful agency action.” *Texas v. Biden*, 10 F.4th 538, 559–60 (5th Cir. 2021) (citation omitted).

B. USPS Has Not Established Irreparable Harm.

USPS has not shown that it is likely to suffer irreparable harm, let alone an injury that merits emergency relief. *See Nken*, 556 U.S. at 434.

First, USPS cannot be “irreparably harm[ed]” by an order restraining unlawful or unconstitutional conduct. *Cf. Abbott v. Perez*, 585 U.S. 579, 602 (2018). USPS misplaces its reliance (at 29–30) on this Court’s prior stay, where the injunction restricted the Executive’s internal communications and efforts, *see California*, 2026 WL 2473573, at *1, *5. Here, the asserted harm is the inability to externally enforce an unlawful policy against scores of election officials and voters across the country. Frustration of policy implementation does not warrant a stay absent likely success on the merits. *E.g., Biden v. Texas*, 142 S. Ct. 926, 926 (2021) (mem.); *see also Danco Lab’ys, LLC v. Louisiana*, 146 S. Ct. 1192, 1196 (2026) (Alito, J., dissenting) (noting that “inability to engage in [unlawful] conduct” cannot constitute irreparable harm).

Second, USPS has not made the requisite factual showing of harm. USPS notes (at 29–30) that two states will likely begin mailing ballots this week, with over a dozen more soon to follow, claiming irreparable harm from the lost opportunity to mandate compliance with the Rule. USPS claims (at 5) that the injunction “nullif[ies] the Postal Service’s efforts to address the risk . . . of voter fraud,” but concedes (at 8)

that “[t]he Postal Service will not perform any verification of voter eligibility,” and otherwise does not provide a single piece of “evidence relating to fraudulent mail voting to support the rushed implementation of the Final Rule.” App.45a–46a. And USPS has never explained how the Rule would actually facilitate supposed law enforcement investigations. What is more, USPS fails to explain how a federal agency with no role in election administration is irreparably harmed when a state’s ballot mail is sent out by state election officials pursuant to the state’s election laws.

More still, a stay is not the “best way to address [states’] fears about [their] inability to comply with the Rule.” Appl. 7. USPS’s “reverse *Purcell*” label, *see* Appl. 7, 9–10, 33–34, gets it backwards. The district court did not invoke election proximity to alter settled rules. It prevented a new *federal* regime from displacing *state* election rules on the eve of an election. Plaintiffs do not contend that the Rule is unlawful just because USPS issued it close to an election. The point is a practical and equitable one: A stay would require states, with the election underway, to abandon their longstanding mail-voting procedures and immediately implement a new federal regime, unmoored from any statute, that the court rightly found cannot be implemented without widespread disruption. Plaintiffs challenged the Rule the day it was published, immediately seeking a TRO and preliminary injunction. Dkt. 205, 206. The status quo ante is USPS’s longstanding practice of delivering all mail ballots. And the preliminary injunction here preserved that status quo. Mindful that “lower federal courts should ordinarily not alter the election rules on the eve of an election,” *RNC v. DNC*, 589 U.S. 423, 424 (2020), the district court issued a carefully

tailored remedy that preserved a decades-long norm for elections that were, at the time, just 60 days away. Far from “suspend[ing] judicial alteration of the status quo,” *Nken*, 556 U.S. at 429 (citation omitted), a stay of the injunction by this Court now would upend the status quo, and unleash pandemonium on voters. *See United States v. Texas*, 144 S. Ct. 797, 798 n.2 (2024) (Barrett, J., concurring) (mem.) (“[T]his Court[] ha[s] . . . described stays as devices meant to maintain the status quo.”).²²

IV. THE SCOPE OF RELIEF IS PROPER.

The preliminary injunction here is carefully limited to address the harms that would result from the chaotic, last-minute implementation of the Rule for the November election. The district court expressly declined to order relief “that precludes States from voluntarily complying with the Final Rule, consistent with their state laws.” App.46a. The preliminary injunction does not prevent voluntary compliance with mail ballot envelope design and Portal participation. App.47a–48a. Nor does it apply to elections beyond November 3, 2026. App.48a. Instead, it only prohibits USPS from rejecting mailings that do not comply with the Rule’s requirements for the November 3, 2026, election. *Id.*

That relief is appropriately tailored to offer “complete relief *to the plaintiffs before the court.*” *Trump v. CASA, Inc.*, 606 U.S. 831, 852 (2025). Collectively, Plaintiffs educate voters and help eligible voters vote by mail in all 50 states, D.C.,

²² Finally, USPS cannot insist that judicial review was premature before the Rule issued, Dkt. 128, then invoke (at 16) the resulting election proximity as an injury. USPS controlled the timing of the Rule’s publication yet issued it less than 70 days before the election, over states’ warnings about a lack of implementation time.

and from abroad, and their millions of members—many of whom rely on mail voting—similarly live in all those locations. *See supra* at 13–16. “As assessed by an expert in election administration, as to all States, none of the Rule’s requirements can feasibly be implemented before the November 3, 2026 General Election.” App.44a (citation modified). Based on the unrebutted record, the court “conclude[d] that disenfranchisement for Plaintiff Organizations members, regardless of residence, is practically inevitable.” App.45a.

Geographically narrower relief therefore could not protect Plaintiffs. Their members vote by mail everywhere—through a single national mail stream—and they need to assist their members in every state to exercise that right. It is thus impossible to afford Plaintiffs the requisite “complete relief” through narrower relief. *CASA, Inc.*, 831 U.S. at 851–52 & n.12. That is particularly true when the remedy affects the rules for voting and elections, which must be uniform to ensure that all voters have an equal opportunity to participate. *See Bush v. Gore*, 531 U.S. 98, 104–06 (2000) (holding that voters and ballots must be subjected to “uniform” rules rather than “arbitrary and disparate” treatment); *see also CASA, Inc.*, 606 U.S. at 852 n.12 (noting that “it is all but impossible for courts to craft relief that is complete *and* benefits only the named plaintiffs” in districting case brought by voters).

CONCLUSION

The Court should deny the stay application.

Respectfully Submitted,

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