

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.

**BRIEF OF DEMOCRATIC PARTY *AMICI CURIAE* IN OPPOSITION TO
THE APPLICATION FOR A STAY OF THE PRELIMINARY INJUNCTION
ISSUED BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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INTERESTS OF *AMICI CURIAE*

Amici curiae are the Democratic Senatorial Campaign Committee (DSCC), Democratic Congressional Campaign Committee (DCCC), Democratic National Committee (DNC), and Democratic Governors Association (DGA) (together, “Democratic Party *Amici*”).¹

DSCC’s mission is to elect Democratic candidates to the U.S. Senate; DCCC’s mission is to elect Democratic candidates to the U.S. House of Representatives; and the DNC is dedicated to electing Democratic candidates up and down the ballot. DGA supports Democratic governors and works to elect Democratic gubernatorial candidates across the United States. Collectively, *Amici*’s membership includes Democratic candidates and voters in all 50 States and the District of Columbia.

With States already distributing mail ballots for the 2026 general election, *Amici* are fully engaged in supporting their candidates and voters. They are helping candidates execute campaign strategies built around each State’s election rules, including the rules governing voter qualifications and mail voting, and they are assisting voters who seek to register and cast ballots—by mail or otherwise.

Amici’s efforts are premised on a constitutional system of free and fair elections. *See Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 77 (2026) (holding candidates’ “interest in [political power] cannot be severed from their interest in the electoral process—a process ‘of the most fundamental significance under our

¹ Pursuant to Supreme Court Rule 37.6, *Amici* state that no counsel for a party authored this brief in whole or in part, and no person other than *Amici* or their counsel made a monetary contribution to fund its preparation or submission.

constitutional structure” (quoting *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)); *see also* *NRSC v. FEC*, 146 S. Ct. 2404, 2418, 2425 (2026) (describing “unique,” “intertwined relationship of parties and their candidates”); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586–88 (5th Cir. 2006) (holding political parties have “both direct and associational” interests in candidates’ electoral efforts).

To achieve their missions, *Amici* require clear, stable rules, especially at this late stage in the election calendar. They require postal services that leave election regulation to the States and focus on seamless, universal ballot delivery—an issue of urgent importance for *Amici* given Democratic Party voters’ disproportionate use of mail voting. The Postal Service’s rule promulgated pursuant to Executive Order 14,399 (the “E.O.”) harms each of these interests. *See* Ballot Mail for Federal Elections, 39 CFR pt. 111 (Aug. 21, 2026) (the “Ballot Mail Rule”).

Amici are now litigating the E.O. and the Ballot Mail Rule in the District of Columbia, where their motion for a preliminary injunction remains pending. *See DSCC v. Trump*, No. 26-cv-1114 (D.D.C.).

INTRODUCTION

The Ballot Mail Rule is a “substantial and unfunded overhaul of election procedures—including the implementation of a nationwide reform to Postal Service mail-handling processes—on the threshold of the November election.” *DSCC v. Trump*, No. 26-5193, 2026 WL 2168617, at *5 (D.C. Cir. July 28, 2026) (per curiam). And this overhaul was undertaken by USPS expressly at the behest of “the President, whom the Constitution vests with no express authority over the conduct of elections.” *Id.* As such, the Rule is unlawful and was properly enjoined by the District of Massachusetts.

Despite Respondents and Democratic Party *Amici* underscoring for months that USPS has no authority to refuse to deliver properly postaged ballot mail, Applicants still cannot identify any legal basis that would allow USPS to take the actions that the Rule now dictates. The best Applicants can do is gesture at USPS’s general authorization to make rules necessary to the exercise of its assigned statutory “functions,” 39 U.S.C. § 401(2), but that begs the fundamental question rather than answering it—where has Congress *ever* tasked USPS with protecting the integrity of federal elections (Applicants’ framing), let alone with gatekeeping which voters may receive their ballot by mail (a truer reading)? It has done neither.

Lacking any on-point authority, Applicants instead highlight the only two regulations in postal history that they deem analogous: those governing cremated human remains and replica explosives. One struggles to think of mail items that are less like a ballot. Applicants’ remaining arguments are no better. USPS envelope-design *recommendations* and ballot-prioritizing *guidance* that *ensure* ballot mail is

timely delivered do not justify *requirements* that would *prohibit* ballot mail from being delivered. A purely *hypothetical* regulation about retirement-home mail does not justify any *final rule* regulating elections. And it makes no sense to *defend* the Ballot Mail Rule as necessary to defend election integrity while *disclaiming* that the Rule has anything to do with elections—or does anything to prevent fraudulent voting—at all.

Equitable considerations also weigh against a stay. On one side of the scale are the millions of voters who already are casting or imminently will cast mail ballots in the 2026 elections. Applicants themselves warn that, if the Rule goes into effect, “***there is a grave risk that States may not have taken the necessary steps to comply,***” which will result in “***potentially depriving those States’ citizens of the ability to vote by mail.***” Appl. 6–7 (emphasis added). Additionally, mail ballots may be delayed (or not transmitted at all) if any one of several brand-new technologically complex components of the Rule’s untested system fails. Catastrophe is sure to befall voters if the Rule is implemented in the manner a whistleblower foreshadowed, whereby a discrepancy on a single ballot envelope could freeze the delivery of thousands of other ballots in the accompanying batch. Further still, parties and candidates, like *Amici*, would have to reconfigure campaigns in the final stretch of fiercely contested elections—not unlike competitors in a 100-meter dash learning mid-sprint that the race has been extended to 105 meters. *See Bost*, 607 U.S. at 79.

On the other side, Applicants can claim no interest in the implementation of an unlawful regulation, and the injunction below preserves the rules under which

every State planned this election before federal executive overreach spawned chaos. *See DSCC*, 2026 WL 2168617, at *5. Moreover, as this Court has repeatedly emphasized, federalism principles preclude last-minute interference with State election administration. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006).

The Application should be denied.

ARGUMENT

I. Applicants are unlikely to succeed on the merits because the Ballot Mail Rule exceeds any authority Congress gave the Postal Service.

The Ballot Mail Rule exceeds any authority afforded to the Executive Branch by the Constitution or by Congress. Applicants fail to show otherwise.

A. The Rule violates the separation of powers.

The Ballot Mail Rule violates separation-of-powers principles multiple times over. To start, the Rule violates the “vertical separation of powers between the National Government and the States.” *Thomas More L. Ctr. v. Obama*, 651 F.3d 529, 564 (6th Cir. 2011) (Sutton, J., concurring in part). The Constitution delegates to the States the power to regulate the “Times, Places and Manner of holding [federal] Elections,” absent congressional preemption. U.S. Const. art. I, § 4, cl. 1. And the Elections Clause authorizes States alone to set voter qualifications. *Arizona v. Inter Tribal Council of Ariz., Inc. (“ITCA”)*, 570 U.S. 1, 16 (2013) (recognizing “the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them”). States have exercised their authority by permitting mail ballots to be submitted by classes of voters that they select, and according to rules of their choosing. *See generally Watson v. RNC*, 146 S. Ct. 2165, 2170 (2026).

The Ballot Mail Rule infringes on these State prerogatives by requiring States to enroll their mail voters with USPS, requiring States to conform their ballot mail envelopes to USPS’s specific design parameters, and by refusing to transmit ballots that do not comply with these unlawful requirements. *See* App. 27a. Though Applicants characterize the Rule as a mere postal regulation unconnected to election administration, the text and stated goals of the Rule make clear that its express purpose is to regulate elections. The Rule’s title is “*Ballot Mail for Federal Elections*,” and it explicitly states “Federal election” policy aims. 91 Fed. Reg. 54966 (Aug. 26, 2026) (setting policy “regarding the transmission of mail-in or absentee ballots for federal elections”).²

Applicants have no real response to this vertical separation-of-powers problem. They claim that “the Postal Service can exercise its general rule-making authority to adopt election-specific mail-preparation rules, as it has long done.” Appl. 19–20. But the examples Applicants cite—like the use of an “Election Mail logo” to “prioritize delivery of ballot mail” and the rapid delivery of mail ballots, *id.*—are not *rules* that

² *See also* 91 Fed. Reg. at 54966 (expressing purpose of “ensur[ing] the faithful execution of federal law in connection with federal elections,” and tying effective date to “election” calendar); *id.* (repeatedly referring to requirements of “election officials”); *id.* at 54967 (reiterating purpose of “enhancing election security by improving the visibility of Federal Ballot Mail”). Additionally, the Rule was promulgated pursuant to an Executive Order titled, “Ensuring Citizenship Verification and Integrity in Federal Elections,” with the stated goal and purpose of ensuring “only citizens receive and cast ballots.” *See* 91 Fed. Reg. 17125 (“E.O.”) § 1; *see also id.* § 3(b) (further reiterating purpose of “protect[ing] the integrity of the mail as a medium for transmitting Federal election ballots”); *id.* § 3(b)(ii) (requiring “a list of voters eligible to vote in a Federal election in such State”); *id.* § 3(b)(v) (tying policy goal to “Federal election” calendar); *id.* § 3(c) (mandating “investigation of suspected unlawful use of the mail involving Federal election materials”).

regulate states or voters. Rather, the “Election Mail” logo and other “ballot-mail envelope design elements” enshrined in existing USPS practice, *id.* at 20, are *voluntary*—and thus do not intrude on States’ election-regulation prerogatives because they do not require States to do or refrain from doing anything. Similarly, USPS’s policy of prioritizing election mail over other categories of mail is an internal mail-processing heuristic—one that, again, has not been formalized in a rulemaking and does not impose obligations on any third parties. The difference between an optional procedure that facilitates mail delivery and a final rule that prohibits the delivery of noncompliant ballot mail is the difference between lawful and lawless. *Cf. Wooley v. Maynard*, 430 U.S. 705, 717 (1977) (holding state could offer, but not require, license plates displaying state motto).

The Rule also violates the horizontal separation of powers between the executive and legislative branches. The Constitution entrusts power over federal elections to “[S]tate legislatures ‘primarily’ and [to] Congress ‘ultimately.’” *Watson*, 146 S. Ct. at 2170 (citing *The Federalist* No. 59, at 362 (Alexander Hamilton) (C. Rossiter ed. 1961)); *see also* U.S. Const. art. I, § 4, cl. 1; *id.* art. II, § 1, cl. 2. The Constitution also makes clear that it “empowers [only] Congress to pre-empt state regulations governing” federal elections, not the President. *ITCA*, 570 U.S. at 8; *accord DSCC*, 2026 WL 2168617, at *5 (noting the Constitution affords the President “no express authority over the conduct of elections”); *Ex parte Siebold*, 100 U.S. 371, 384 (1879) (recognizing only “the action of Congress,” not the President, may “supersede[]” contrary State law). Even then, Congress’s authority goes only “so far

as it is exercised, and no farther.” *ITCA*, 570 U.S. at 9 (quoting *Ex parte Siebold*, 100 U.S. at 371).

The Rule, which creates a system under which USPS enrolls voters, tracks ballot mailings sent to voters, regulates state ballot envelope design, and refuses to transmit nonconforming ballot mail, has zero congressional authorization. While the Rule states that USPS is authorized “to adopt, amend, and repeal such rules and regulations, *not inconsistent with this title*, as may be *necessary in the execution of [existing USPS] functions*,” 91 Fed. Reg. at 54971 (citing 39 U.S.C. § 401(2)), that grant of statutory authority to carry out USPS’s congressionally prescribed functions in no way permits it to adopt *election* regulations that federal agencies have no inherent or express power to proscribe, *see, e.g., Kobach v. Election Assistance Comm’n*, 772 F.3d 1183, 1193–97 (10th Cir. 2014); *see also, e.g., ITCA*, 570 U.S. at 8; *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015).³

B. The Rule exceeds the Postal Service’s statutory authority.

1. *Ultra vires* review is available where the Postal Service acts in excess of its delegated powers.

Applicants start by distorting the applicable standard of review for agency *ultra vires* claims. Congress, they say, exempted the Postal Service from some forms of ordinary APA review, 39 U.S.C. § 410(a), such that Respondents may prevail only by identifying “a specific prohibition in a statute” that the Postal Service has violated.

³ To the extent the Court believes review of the Ballot Mail Rule is unavailable under its precedents on *ultra vires* agency action, *see* Appl. 14, the Rule’s blatant violation of separation-of-powers principles provides an independent reason to invalidate it. *But see infra* Argument § I.B.1 (explaining why *ultra vires* review is available).

Appl. 14. In their view, it seems, courts would have no authority to enjoin USPS rulemakings that are so extreme in their unlawfulness (such as a rule permitting USPS to euthanize obstructive pets) that Congress never contemplated the need for an explicit proscription. That perverse reading is not the law.

Applicants rely on *Nuclear Regulatory Commission v. Texas*, 605 U.S. 665 (2025) (“*NRC*”), which analogized certain *ultra vires* actions to a “Hail Mary pass,” *id.* at 681. But the standard described in *NRC* polices attempts to “end-run” a review scheme that Congress designed to funnel challenges elsewhere. *Id.* It has no purchase where, as here, Congress did not create an alternative path for review. *See Bd. of Governors of Fed. Rsrv. Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 43–44 (1991). As the D.C. Circuit—whose precedent Applicants invoke, Appl. 14—has held in the postal context: “So long as a statutory provision plainly delineates the outer limits of agency authority and Congress has not expressly precluded judicial review,” courts may set aside Postal Service action that exceeds those limits. *Nat’l Ass’n of Postal Supervisors v. U.S. Postal Service*, 26 F.4th 960, 970–71 (D.C. Cir. 2022); *accord N. Air Cargo v. U.S. Postal Service*, 674 F.3d 852, 858 (D.C. Cir. 2012).

Thus, determining whether “a regulation in the [Domestic Mail] Manual was a valid exercise of the Postal Service’s authority” is the paradigmatic case for “*ultra vires*” review of USPS actions. *Sears, Roebuck & Co. v. U.S. Postal Service*, 844 F.3d 260, 265 (D.C. Cir. 2016). And that principle is grounded in the precedent of this Court, which has long held that a postal official’s “right to exclude letters, or to refuse to permit their delivery to persons addressed, must depend upon some law of

Congress, and if no such law exists, then he cannot exclude or refuse to deliver them.”
Am. Sch. Of Magnetic Healing v. McAnnulty, 187 U.S. 94, 109 (1902).

2. Title 39 prohibits the Postal Service from implementing the Ballot Mail Rule.

Even if a “Hail Mary” pass were all Respondents had, Appl. 14—*but see McAnnulty*, 187 U.S. at 109—it would be sure to score, as the plain text of Title 39 confirms the legal violation. Congress authorized USPS to “provide postal services,” 39 U.S.C. § 101(a), and to adopt rules “necessary” to carry out those functions, *id.* § 401(2), while forbidding USPS from providing “any nonpostal service,” *id.* § 404(e)(2). Congress also provided a comprehensive scheme for the categories of mail that USPS may decline to carry, *id.* §§ 3001–3018. A rule that exceeds the outer limits of Title 39 is necessarily “inconsistent with” Congress’s grant of authority, *id.* § 401(2), and a rule that offends Section 404(e) or the nonmailability scheme runs into the very prohibitions Applicants argue must exist. Because agencies have “literally . . . no power to act” absent congressional authorization, *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986), the question under any formulation is the same: What statute authorizes this Rule? The answer is equally straightforward: None.

First, the Ballot Mail Rule has nothing to do with the functions that Congress assigned to USPS. USPS’s governing statute authorizes it to “provide postal services,” 39 U.S.C. § 101(a), to “provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail,” *id.* § 404(a)(1), and to make regulations “necessary” to carry out these functions, *id.* § 401(2). The Rule does not involve the

provision of “postal services”—instead, it imposes a bevy of *non-postal* obligations on third parties, including requiring States to submit to USPS (1) their envelopes for design review and (2) lists of mail-ballot-eligible voters. The Ballot Mail Rule also requires action by USPS that has nothing to do with providing “postal services,” including (1) the operation of an online portal for States to submit lists of voters, (2) the provision of such lists to the states, and (3) the implementation of an envelope-by-envelope verification process for ballot mail. There is simply no statutory support for these directives.

In arguing otherwise, Applicants rely heavily on statutory provisions authorizing USPS to make regulations “necessary in the execution of its functions under this title” and to the exercise of “other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers.” Appl. 15 (quoting first 39 U.S.C. § 401(2), then *id.* § 401(10)). This statutory language, however, does not assign USPS any functions at all, let alone functions related to mail ballots—it merely allows USPS to make rules and exercise powers to execute functions that are assigned by *some other* statutory provision. Applicants’ reliance on USPS’s rulemaking powers is circular: to invoke it, they must identify a statutorily defined function for which the Ballot Mail Rule is “necessary,” 39 U.S.C. § 401(2), and that is precisely what they have been consistently unable to do.

Second, the Ballot Mail Rule purports to create a new category of nonmailable matter out of whole cloth. But USPS has no freestanding authority to decide not to transmit vast categories of mail. Title 39 provides an exhaustive list of categories of

“nonmailable matter” that USPS may not process or transmit. *See* 39 U.S.C. §§ 3001–18. Applicants respond that the federal statutory scheme for mail processing is not comprehensive. *See* Appl. 22–23 (arguing statutory categories are not “*exclusive*”). They are wrong. *See Conte & Co., Inc. v. Stephan*, 713 F. Supp. 1382, 1386 (D. Kan. 1989) (“There is little doubt that the federal statutory scheme for handling, delivering and sorting the mails is comprehensive. The United States Postal Service may determine whether matter is nonmailable *under statutory guidelines*, and may return any nonmailable matter to the sender.” (emphasis added)).

Applicants also propose that the Ballot Mail Rule does not create a new category of nonmailable matter because USPS may deliver mailpieces within that category *if* certain conditions are satisfied. *See* Appl. 22. But whether a type of mailpiece is “nonmailable” does not turn on whether the *entire category* of mailpieces is fully prohibited. Title 39 defines many nonmailable categories conditionally, providing that certain mail shall not be delivered “unless” a condition is satisfied. *See* App. 31a (explaining there is “no distinction between the USPS’s refusal to accept noncompliant mail ballots and other conditionally nonmailable materials”). What makes a category “nonmailable” is that USPS will not ultimately carry it—not whether the prohibition on transmission is absolute or conditional.

Third, USPS’s governing statute forbids it from performing “any nonpostal service.” 39 U.S.C. § 404(e)(1)–(2). Yet the Rule contemplates USPS offering a number of nonpostal services, including the maintenance of lists of mail-ballot-eligible voters and the provision of those lists to the states. *See* 39 U.S.C. § 102(5)

(defining “postal service”); *see also id.* § 404(e)(1) (defining “nonpostal service” as “any service that is not a postal service”). Applicants do not address this blatant defect in the Rule, even though it unquestionably places the Rule in violation of a “specific prohibition in a statute.” Appl. 14 (quoting *NRC*, 605 U.S. at 681). Housing state voter lists in a custom portal and adopting rules that restrict who may receive a mail ballot, all to advance a contentious view of election integrity, have nothing to do with the “delivery of letters” and are not “ancillary” to mail delivery. 39 U.S.C. § 102(5). By Applicants’ logic, USPS could require anything of users of the mail—from providing USPS with lists of voters to installing residential solar panels—so long as it conditioned mail delivery on compliance. There is no support for such a breathtaking aggrandizement of USPS power.

3. Other Postal Service regulations—real and imagined—are not analogous.

With nothing helpful from Congress, Applicants turn to their own regulatory history for support. *But see Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 396 (2024) (holding courts need not defer to agency interpretations of their governing statutes).

First, Applicants assert the authority to regulate mail “raising unique operational considerations,” such as “cremated remains” and “replica explosives.” Appl. 16–17. For reasons that ought to be obvious, mail ballots do not create operational concerns that are in any way analogous to the ash of cremated human and animal bodies or look-alike bombs.

Cremated remains must be labeled as such and sent in secure, sift-proof containers with cushioning to prevent breakage. *See* Cremated Remains Packaging Requirements, 90 Fed. Reg. 9843 (Feb. 19, 2025). These measures ensure that postal services are not halted for safety concerns every time a powdery substance is identified in a mail item; that postal services are not obstructed or contaminated by leaking ashes; and that USPS customers can expect that any cremated remains they place in the mail will be handled respectfully. Replica explosives, in turn, must be labeled as such in large font. *See* Restricting the Mailing of Replica or Inert Explosive Devices, 75 Fed. Reg. 282 (Jan. 5, 2010). This is because, as USPS explained in its rulemaking, “[i]n the past, postal operations have been disrupted and facilities have been evacuated when replica or inert explosive devices have been discovered in the mail.” *Id.* “Such evacuations result in unnecessary expense and loss of productivity to the Postal Service and can jeopardize USPS service commitments.” *Id.*

Applicants do not suggest that mail ballots have disrupted mail operations at all, much less in any way remotely similar to cremated remains or replica explosives. They do not defend the Ballot Mail Rule as necessary to 1) protect the safety of USPS employees, 2) prevent the contamination of other mail, 3) honor a voter’s expectations of how their ballot will be handled, or 4) avoid unnecessary evacuations that result in productivity losses. Nor do they argue that ballot mail will regularly appear indistinguishable from materials that Congress identified as nonmailable. *See* 18 U.S.C. § 1716(a) (labeling “all explosives [and] hazardous materials” as “nonmailable

matter [that] shall not be conveyed in the mails or delivered from any post office”).⁴ That defeats Applicants’ regulatory-authority argument: USPS’s interest in maintaining “an efficient system of collection, sorting, and delivery of the mail,” Appl. 15–16 (quoting *USPS v. Council of Greenburgh Civic Ass’ns*, 453 U.S. 114, 123 (1981)), cannot support the regulation of categories of mail that admittedly do not present “operational issues,” Appl. 17.

Applicants’ characterization of ballot mail as “sensitive,” Appl. 16, makes no difference. They present no authority suggesting that USPS can impose arbitrary regulations on “sensitive” mail (a subjective category not defined by statute). And the only “sensitive” aspect of ballot mail that Applicants identify is the need to “[t]imely deliver[]” it due to “specific state deadlines for receipt of ballots.” Appl. 17. That is a great point, just not for Applicants. The Ballot Mail Rule, which requires a novel and time-intensive processing step for the tens of millions of mail ballots Americans will cast imminently, can only undermine—not serve—society’s interest in the timely delivery of those ballots.

Second, Applicants imagine a rule “impos[ing] special design and registration rules for envelopes used to send solicitations” to retirement communities, which Applicants propose could mitigate elder-abuse mail scams. Appl. 18. That

⁴ Notably, Congress explicitly instructed USPS to regulate the manner in which hazardous material is to be mailed, 39 U.S.C. § 3018(a) (USPS “shall prescribe regulations”), and determined that hazardous materials would be nonmailable absent compliance with those conditions, *see id.* § 3018(b)(2). USPS’s interpretation of Sections 401 and 404 as giving it limitless rulemaking authority to condition mailing would render the detailed hazardous materials statutes surplusage.

hypothetical does them no good. As an initial matter, this made-up rule would need to be justified by some statutory function, and—as with the Ballot Mail Rule—Applicants fail to identify one. There is, however, a plausible statutory hook for the hypothetical: The Deceptive Mail Prevention and Enforcement Act requires “skill contest or sweepstakes” mail to include a “conspicuously displayed” statement on how to opt out from all such future mailings. 39 U.S.C. § 3017. Congress specifically enacted this legislation “because of the deep concern regarding the need to protect recipients, particularly the elderly, who fall prey to the deceptive information transmitted in the mailings,” H.R. Rep. No. 106-431, at 13 (1999). To the extent Applicants believe this statute would *not* authorize the vague hypothetical they have in mind (hence their failure to cite it), then the hypothetical rule would, like the Ballot Mail Rule, be unlawful. And if Applicants *do* believe this statute provides the relevant authority, then that distinguishes it from the Rule here, which has nothing to do with skill contests or sweepstakes.

Even if Applicants could identify a generic anti-fraud function vested in USPS by Congress, their attempted analogy to the retirement-home hypothetical would still fail. The hypothetical rule would mitigate fraud, it appears, by warning retirees that an envelope contains a commercial solicitation and perhaps by banning repeat violators from the registry of permitted mailers. The Ballot Mail Rule, in contrast, is entirely untethered to the supposed anti-fraud interests. *See* App. 45a–46a (finding “no evidence relating to fraudulent mail voting to support the rushed implementation of the Final Rule”); *see generally* 91 Fed. Reg. at 54968–69 (asserting an election

integrity aim but never explaining if or how the rule advances it). Applicants repeatedly insist that States retain “full control over who is permitted to vote in federal elections in their state by U.S. mail.” *E.g.*, Appl. 8. But if States enjoy the same discretion to send mail ballots to voters under the Ballot Mail Rule as they would enjoy absent the Ballot Mail Rule, then the Ballot Mail Rule is completely ineffectual at preventing States from mailing ballots to unauthorized voters.

The anti-fraud rationale is intelligible *only* if Applicants intend to take action in some future election to restrict mail voting in States that are deemed to have sent ballots to unauthorized voters—or to facilitate criminal prosecutions of state officials. Applicants cannot admit that is their plan, however, because such an extraordinary action would contradict their protestations that States’ authority to administer their own elections is entirely undisturbed. The decision to proceed by inference and innuendo, however, severs the Rule from its only proffered justification. The Ballot Mail Rule represents an aggressive expansion of USPS authority into entirely new domains that Congress has never authorized.

II. The equities and the public interest weigh heavily against a stay.

When the government is a party, the balance-of-equities and public-interest inquiries merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the scales are one-sided. Tens of millions of voters across the country are preparing to vote by mail—and political parties and candidates have prepared all cycle to encourage that voting method—but a hurricane of chaos will ensue if the Ballot Mail Rule goes into effect. Applicants, meanwhile, will suffer no comparable injury if the stay remains in place.

A. Nothing in the record plausibly rebuts the evidence that the Rule will disenfranchise entirely lawful voters.

Applicants are candid about what consequences will follow if “the rule takes effect for this year’s elections.” Appl. 5. In that scenario, they acknowledge, “there is a grave risk that States may not have taken the necessary steps to comply,” which will result in “potentially *depriving those States’ citizens of the ability to vote by mail.*” *Id.* at 5–6 (emphasis added). By their own admission, there is *no such risk* of any voter being deprived of the ability to vote by mail if the Ballot Mail Rule remains enjoined. That disaster will result only if a stay is granted and States have insufficient time to comply with the new requirements—as is already the case, given that North Carolina has already sent mail ballots and additional states will do so imminently. *See* Appl. 29–30.

Various election officials and voters also attested—without any rebuttal—to profound concerns that the Rule will prevent eligible voters from voting in November. *See, e.g.,* Brunton Decl. ¶ 10, *California v. USPS*, No. 1:26-cv-13917, Doc. No. 4-18 (D. Mass. Aug. 26, 2026); *see also, e.g.,* App. 21a–24a (summarizing evidence of likely injury to voters). Several States also explained factual realities that make compliance impossible on this timeline, making it certain that some ballots will not reach voters. Barber Decl. ¶ 24, *California v. USPS*, No. 1:26-cv-13917, Doc. No. 4-15 (D. Mass. Aug. 26, 2026); Michalowski Decl. ¶¶ 37, 57, 59, *California v. USPS*, No. 1:26-cv-13917, Doc. No. 4-24 (D. Mass. Aug. 26, 2026). The district court specifically found that Applicants and Intervenor offered no reply to those facts—and they fail to do so on appeal.

Applicants instead attempt to recharacterize the evidence of burden as merely a cost of compliance, Appl. 31, but those costs are too steep to overlook and are directly attributable to the Rule itself. For example, each State must first obtain Postal Service approval of its ballot and return-envelope designs, 91 Fed. Reg. at 54990–91, and only then may it upload voter information to the Portal, *id.* at 54989. The Rule sets no deadline for approval, and the thousands of postal workers throughout the country who are expected to implement the new procedures have not been trained. *See* Appl. 6 (conceding that training will be necessary to implement the Rule). Applicants say that design analysts *aim* to respond to similar requests within two business days, Appl. 32, but that unrealistic aspiration assumes thousands of ballot designs will be reviewed and approved within 48 hours, App. 37a, which is no answer when the consequence of a delay is that the Postal Service will not transmit voters' ballots, 91 Fed. Reg. at 54979.

Under the Rule, all ballot envelopes mailed by State election officials themselves must be approved by USPS, and failure at any point in the system can block ballots from being delivered. *See* App. 36a–42a. Indeed, the very purpose of the Rule is to condition access to USPS for ballot delivery on advance federal sign-off on ballot mail design and the uploading of individual voter records. 91 Fed. Reg. at 54989. When a condition is unmet, the ballots do not go to voters—despite the affected voters doing nothing wrong. *See id.*

Remarkably, USPS was told all of this, and yet it did nothing in response. Hundreds of commenters (including the Democratic Party *Amici*) identified the risk

that administrative errors and chaos would lead to ballot mail rejection, and the agency suggested for months that the concerns would eventually be addressed. *See* Stay Appl. 11–12, *Trump v. California*, No. 26A124 (U.S. July 27, 2026). They never were. Indeed, USPS’s only response was to “decline[] to conduct, publish, or otherwise disclose any additional analysis or information concerning the rule or Portal,” including any anticipated rate of rejection. 91 Fed. Reg. at 54988. USPS now claims that there is no risk at all (or that the risk is the States’ responsibility alone, *see* Appl. 5), but there is nothing in the record that even begins to dispute the growing mountain of evidence that the Rule will result in the effective rejection of entirely qualified voters’ ballots.

Recent and largely undisputed disclosures illustrate that intolerable risk. On August 30, a federal employee submitted a whistleblower disclosure to the Postmaster General through the Office of Senator Richard Blumenthal describing the Portal’s development as rushed and inadequately tested, and warning of significant operational problems. *See* Amicus Br. of Whistleblower Aid 1–3. Alarming, the disclosure describes a batch-level failure mode: if a single record in a submitted batch fails to match—because (for example) a voter married and changed her name or moved, or because USPS’s technology malfunctions at any step in the process—the Postal Service would decline to mail the rest of the batch, which could contain thousands of ballots, and the State would be expected to take the whole batch back to cure the one error. *Id.* This disclosure, while not necessary to credit in order to deny the Application, comes from a federal government employee with direct

knowledge, submitted under whistleblower process, and Applicants have offered no reason to doubt it in any forum.

Finally, the public interest weighs against a stay because harms to fundamental voting rights in the upcoming election cannot be remedied after the fact, as courts “routinely deem” imminent injury to voting rights irreparable, *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *accord Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016), and because confusion of this magnitude, introduced during the voting period, “will create a disincentive for citizens who would otherwise attempt” to cast a ballot, *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 13 (2016).

B. The Rule is disrupting political parties and candidates competing in the November election.

The Respondent States and organizations aptly describe how the Ballot Mail Rule is harming States and nonpartisan interests. *Amici* further describe what the Rule does to the critical intermediaries in between—political party committees and candidates who are spending the final days before the election mobilizing their voters and supporters, helping them cast their ballots, and working to get themselves elected.

These fundamental interests depend on being able to say, with reasonable confidence, that a voter who takes the steps mandated by state law will be able to cast a mail ballot. The Ballot Mail Rule removes that baseline predicate—and it accordingly harms Democratic Party *Amici* and the public’s critical interests in a fair and lawful electoral process. *See, e.g., Bost*, 607 U.S. at 77 (holding that candidates’

“interest in [political power] cannot be severed from their interest in the electoral process—a process ‘of the most fundamental significance under our constitutional structure’” (quoting *Socialist Workers Party*, 440 U.S. at 184); *see also NRSC v. FEC*, 146 S. Ct. at 2418, 2425; *Tex. Democratic Party*, 459 F.3d at 586–88.

The D.C. Circuit has already worked through this. In July, it recognized that a USPS regulation like the Ballot Mail Rule would inflict substantial injuries on the Democratic Party *Amici*. *DSCC*, 2026 WL 2168617, at *4 n.8. The Democratic Party *Amici*’s vote-by-mail programs, for example, are keyed to particular deadlines and particular procedures: when a voter may request a ballot, when the ballot will be mailed, what the ballot envelope will look like, how a voter tracks their ballot, and what to do if the ballot does not arrive. Because of the Rule—and only because of the Rule—every one of those inputs is now contingent on whether USPS and each State properly executes the design approval protocols and completes all required uploads of approved voter lists, and then whether USPS approves the ballots at entry points to the mail.

Further still, when something goes wrong, neither voters nor *Amici* will have a sufficient opportunity to ameliorate the issue. A voter whose ballot is not transmitted or is delayed unbeknownst to them, for example, is not given any meaningful opportunity to do anything about it—and while parties and campaign organizations like Democratic Party *Amici* ordinarily might be able to help by funding or operating mail-ballot “cure” programs, the Rule likewise offers no means for organizations to close the gap.

Once an election occurs, “there can be no do over and no redress.” *Newby*, 838 F.3d at 9 (citation omitted). That makes these nationwide electoral harms fundamentally irreparable—and strongly militates against Applicants’ requested stay.

III. Applicants have no interest in enforcing the Rule for the November 2026 election.

Applicants’ *Sturm und Drang* rhetoric about the harm they suffer from the district court’s injunction masks a basic reality: USPS has processed mail ballots without the Ballot Mail Rule for decades, and no appreciable harm befell the agency or the American public. USPS has *no* interest in enforcing the Rule at all, and it certainly has no interest in enforcing it for the November 2026 election, where any attempt to do so will result only in chaos.

A. There is no public or governmental interest in the enforcement of an unlawful rule.

Applicants claim that the district court’s injunction inflicts “irreparable harm on the federal government” by preventing agencies from implementing the Ballot Mail Rule. Appl. 29–31. But “neither the Government nor the public generally can claim an interest in the enforcement of an unconstitutional [rule].” *ACLU v. Ashcroft*, 322 F.3d 240, 250, 251 n.11 (3d Cir. 2003), *aff’d*, 542 U.S. 656 (2004).⁵ And contrary

⁵ See also *New York v. Trump*, 171 F.4th 1, 26 (1st Cir. 2026) (inability to take actions that likely “violate the APA” was not a substantial harm to the government); *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (“[T]he Government does not have an interest in the enforcement of an unconstitutional law.” (alteration in original) (citation omitted)); *Leaders of a Beautiful Struggle v. Balt. Police Dep’t*, 2 F.4th 330, 346 (4th Cir. 2021) (the government “is in no way harmed by [the] issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be

to Applicants’ suggestion, this Court has not already determined that the equities support a stay of the Ballot Mail Rule. *Contra* Appl. 29. Last month, the Court stayed an injunction of the *Executive Order* because that injunction would “prevent[] the Postal Service from so much as initiating a rulemaking that could yield a rule applicable to these States.” *Trump v. California*, Nos. 26A124 & 26A139, 2026 WL 2473573, at *4 (U.S. Aug. 24, 2026). That is, it provided Applicants an opportunity to determine whether and how USPS could adopt a lawful rulemaking—not to adopt an unlawful ruling with impunity.

B. *Purcell* counsels against a stay.

This Court has repeatedly recognized that late-breaking federal interference in State election laws can implicate federalism principles. *See Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of stay) (recognizing that a State has an “extraordinarily strong interest” in “avoiding late . . . changes to its

found unconstitutional” (quotation omitted)); *All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, 78 F.4th 210, 251 (5th Cir. 2023) (“[N]either [a government agency] nor the public has any interest in enforcing a regulation that violates federal law.”), *rev’d on other grounds*, 602 U.S. 367 (2024); *EMW Women’s Surgical Ctr., P.S.C. v. Beshear*, No. 17-6151, 2017 WL 11920191, at *4 (6th Cir. Dec. 8, 2017) (“There is no irreparable harm to a government, however, when it is enjoined from enforcing an unconstitutional statute.”); *Am. C.L. Union of Ill. v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012) (the government has no legitimate interest in enforcing a law “that is probably unconstitutional”); *Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) (“[T]he government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented.” (internal quotation marks and citation omitted)); *Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1254 (10th Cir. 2024) (“A governmental interest in upholding a mandate that is likely unconstitutional does not outweigh a movant’s interest in protecting his constitutional rights.”); *Honeyfund.com Inc. v. Governor*, 94 F.4th 1272, 1283 (11th Cir. 2024) (“[T]he government has no legitimate interest in enforcing an unconstitutional law.” (internal quotation marks and citation omitted)).

election laws and procedures” imposed by the federal government). This concept, sometimes referred to as the *Purcell* principle, protects States’ interests against disruptive federal interference in election regimes. *See Purcell*, 549 U.S. 1.

Here, the *Purcell* principle supports the district court’s injunction—not Applicants’ requested stay. The principle recognizes that last-minute federal meddling with election administration can be profoundly disruptive because “candidates, election officials, and voters have relied on the rules in place” before the changes. *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring in grant of stay). Thus, it is the *States*—and *Amici* and voters—who have a powerful interest in maintaining the mail voting rules that are currently in place—rules that do not include compliance with intrusive USPS regulations. By contrast, under the federalism principles this Court has articulated, Applicants can have *no* legitimate interest in eleventh-hour interference with those rules. *See DSCC*, 2026 WL 2168617, at *6 (“*If* the federal agencies . . . were to attempt to impose [the E.O.’s] massive changes on the States’ voting systems on the threshold of the upcoming election,” an injunction would uphold “federalism [and] reliance interests because the injunction would preserve the States’ existing electoral status quo.”). The *Purcell* principle thus supplies an additional reason to reject Applicants’ stay request.

CONCLUSION

The Application should be denied.

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Respectfully submitted,

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