

No. 26A305

In the Supreme Court of the United States

UNITED STATES POSTAL SERVICE, ET AL.,
Applicants,

v.

CALIFORNIA, ET AL.

DONALD J. TRUMP, ET AL.,
Applicants,

v.

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, ET AL.

ON APPLICATION FOR STAY AND REQUEST FOR AN ADMINISTRATIVE STAY
TO THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

**BRIEF OF COREY J. BIAZZO, ESQ.,
AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICUS CURIAE*¹

Corey J. Biazzo is a civil trial and appellate attorney. His practice includes federal appellate litigation and matters before this Court. He is also a U. S. Navy veteran. *Amicus* has a professional and civic interest in the separation of powers, federalism, and faithful adherence to the procedures Congress prescribed for consequential executive action. He previously briefed this Court as an *amicus curiae* in *Trump v. California*, No. 26A124, concerning the antecedent challenge to Executive Order No. 14,399.

This brief addresses a narrow issue not developed in the present application: 39 U. S. C. §3661 required the Postal Service to submit a qualifying proposal to the Postal Regulatory Commission within a reasonable time before its effective date. Section 3661(c) then required an opportunity for an on-the-record hearing before the Commission issued its advisory opinion. *Buchanan* confirms that courts may preserve this mandatory process through preimplementation relief. That express command supplies the specific statutory prohibition Applicants contend is missing.

SUMMARY OF ARGUMENT

Applicants frame the statutory dispute as a contest between the Postal Service's broad operational powers and an implied exception for election mail. They also contend that respondents cannot obtain ultra vires review because they have not

¹ Under S. Ct. R. 37.6, no counsel for a party authored this brief in whole or in part, and no party, party's counsel, or other person other than amicus or his law firm made a monetary contribution intended to fund the preparation or submission of this brief.

identified a “specific prohibition” that the Postal Service violated. Appl. 14–15. That framing overlooks a narrower statute written specifically for consequential nationwide changes in postal service: 39 U. S. C. § 3661.

Section 3661 does not deny the Postal Service authority to choose policy. It prescribes a sequence. When the Postal Service determines that there should be a change in the nature of postal services generally affecting service nationwide or substantially nationwide, it “shall submit” the proposal to the Postal Regulatory Commission “within a reasonable time prior to the effective date.” 39 U.S.C. § 3661(b). The Commission may not issue its advisory opinion until an opportunity for the specified on-the-record hearing has been accorded to the Postal Service, users of the mail, and the public representative. *Id.*, § 3661(c). The opinion is advisory, but the procedure is mandatory.

Buchanan v. Postal Service, 508 F.2d 259, 262–264 (5th Cir. 1975), gives § 3661 meaningful effect while preserving broad managerial authority. Although *Buchanan* is persuasive rather than controlling authority here, it remains the leading appellate decision interpreting § 3661’s operative language. It identifies three triggers: a meaningful change; a qualitative alteration in postal service available to users; and nationwide or substantially nationwide effect. *Id.*, at 262–263. The present record strongly indicates that the Final Rule satisfies each factor, and Applicants have not shown otherwise on this emergency record. The Rule conditions acceptance of outbound federal ballot mail on federal design review, automation compatibility, prescribed markings, unique barcodes, portal enrollment, voter-linked

data submission, and USPS verification. Noncompliant mailings are returned rather than accepted. Those requirements apply nationwide and were made effective immediately.

The replacement application strengthens that conclusion. Applicants describe the Rule as a significant nationwide measure whose delayed implementation affects countless ballots, requires employee training, demands immediate state compliance, and produces consequences that cannot later be retrieved. Appl. 13, 29–33. Those assertions may support Applicants’ account of urgency, but they also foreclose treating the Rule as a minor operational adjustment outside § 3661.

Applicants may possess substantial authority under 39 U.S.C. §§ 401 and 404 to regulate preparation and handling of sensitive mail. That does not eliminate § 3661’s separate preimplementation condition. General substantive authority and a specific procedural limitation readily coexist. At minimum, Applicants have not shown the fair prospect of reversal required for extraordinary emergency relief while the record indicates that the Postal Service made a qualifying nationwide proposal effective without identifying compliance with the submission, hearing, and advisory process Congress prescribed.

Section 3661 therefore provides a narrow ground for denying a stay. The Court need not now resolve the full reach of the Elections Clause, the statutory treatment of nonmailable matter, the Help America Vote Act, or the major-questions doctrine. Nor need it decide every ultimate question concerning the injunction’s

scope. It need only conclude that Applicants have not carried their burden on this emergency record.

ARGUMENT

I. Section 3661 Supplies the Specific Statutory Command the Application Says Is Missing.

Applicants begin from the premise that 39 U. S. C. § 410(a) generally exempts the Postal Service from ordinary review under the Administrative Procedure Act. Appl. 14. They accordingly contend that respondents must satisfy the narrow form of ultra vires review associated with *Leedom v. Kyne*, 358 U. S. 184 (1958), and *Nuclear Regulatory Commission v. Texas*, 605 U. S. 665 (2025). In their formulation, respondents must identify action “entirely in excess of [the agency’s] delegated powers and contrary to a specific prohibition in a statute.” Appl. 14 (*quoting Nuclear Regulatory Commission*, 605 U. S., at 681). Applicants insist that no such specific prohibition exists. Appl. 15.

Section 3661 supplies the express statutory command missing from Applicants’ account and, at minimum, raises a substantial question under their own ultra vires framework. In relevant part, Section 3661 identifies the agency, the covered class of decisions, the recipient of the required submission, its timing, and the associated public process:

“(b) When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such

proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.

(c) The Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public.” 39 U. S. C. § 3661(b)–(c).

A qualifying proposal must be submitted within a reasonable time before its effective date, and the Commission cannot issue its advisory opinion until the specified opportunity for an on-the-record hearing has been afforded. Implementing such a proposal without timely submission is contrary to an express command, not an inference drawn from silence.

Buchanan confirms both the mandatory character and the limited reach of that command. The Postal Reorganization Act reflected two policies: managerial freedom and a postal service responsive to the public. 508 F. 2d, at 262. Congress reconciled them by preserving broad management power while requiring public procedures for a specified class of significant decisions. *Ibid.* Section 3661 therefore applies when three factors coexist: first, a “change” with a meaningful impact; second, a change “in the nature of postal services,” requiring qualitative examination of service available to users; and third, nationwide or substantially nationwide effect. *Id.*, at 262–263.

That standard does not make the Commission the ultimate policymaker. Its opinion remains advisory. 39 U.S.C. § 3661(b)–(c). The Postal Service retains authority to select the policy it considers best after receiving the benefit of the process. *Buchanan*, 508 F.2d, at 262. Under *Buchanan*’s interpretation, the Postal Service may not avoid the statutory process merely by invoking the breadth of the discretion it retains after that process is completed.

Currently, § 3662 provides an administrative complaint mechanism materially different from the provision discussed in *Buchanan*. An interested person alleging nonconformance with specified provisions or “this chapter” may file a complaint with the Commission. 39 U.S.C. § 3662(a). Within 90 days, the Commission must either begin proceedings upon finding material issues of fact or law or dismiss the complaint with a written explanation. *Id.*, § 3662(b). If the complaint is justified, the Commission “shall order” appropriate corrective action. *Id.*, § 3662(c).

That mechanism does not eliminate § 3661’s separate command. Nor does it automatically provide the advance process § 3661 requires: § 3662 contains no automatic stay, and proceedings commenced after implementation cannot recreate public participation before ballots are accepted, rejected, or returned. At the same time, the availability of administrative review under § 3662 and judicial review under § 3663 may bear on the proper forum, cause of action, exhaustion requirements, and availability of nonstatutory ultra vires review. See *Nuclear Regulatory Commission*, 605 U.S., at 681–682. Those remedial questions do not establish that the Postal

Service complied with § 3661 or make an omitted preimplementation process retroactively available.

Nuclear Regulatory Commission involved an effort to bypass a reticulated review scheme governing a licensing dispute. 605 U.S., at 681–682. *Buchanan*, for its part, affirmed preliminary relief concerning the Retail Analysis Program, while vacating relief concerning district-office consolidation because the plaintiffs had not shown a substantial likelihood that the reorganization would affect the nature of postal service available to users. 508 F.2d, at 264–267. It therefore provides persuasive authority that § 3661 can support preimplementation relief when its triggers are adequately shown, although it did not address the current versions of §§ 3662–3663 or the modern *Nuclear Regulatory Commission* framework.

Thus, even accepting Applicants’ reviewability framework, § 3661 supplies a specific statutory command that the application does not address. Whether that command ultimately establishes ultra vires action may depend on the Rule’s qualification under § 3661 and the availability and adequacy of the statutory review process. Those unresolved questions materially undermine Applicants’ assertion that the Rule is plainly lawful and that they have demonstrated the fair prospect of reversal necessary for emergency relief.

II. Sections 401 and 404 Do Not Displace Section 3661’s Separate Preimplementation Requirement.

Applicants rely on broad provisions empowering the Postal Service to adopt rules necessary to execute its functions, 39 U.S.C. § 401(2); exercise powers incidental, necessary, or appropriate to those functions, *id.*, § 401(10); and provide for

collection, handling, transportation, delivery, forwarding, return, and holding of mail, *id.*, §404(a)(1). Appl. 15–16. Those provisions establish substantial operational authority. See *Postal Service v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 123 (1981). They do not answer whether a particular nationwide change must first follow §3661.

The two propositions coexist. Section 401 may authorize adoption of a postal regulation; §3661 may prescribe the process that must precede implementation when the regulation produces a qualifying nationwide service change. *Buchanan* described exactly that accommodation: “Postal management was left with broad decision-making power, subject to §3661 requirements for specified decisions.” 508 F.2d, at 262. Treating general operational authority as an exemption from §3661 would invert that relationship and reduce §3661 to a voluntary procedure.

Applicants’ analogies to special mailing requirements for cremated remains and replica explosives do not alter the analysis. See Appl. 16–18. Those examples may show that the Postal Service sometimes imposes preparation or handling requirements on sensitive material. They do not establish that every exercise of that substantive authority falls outside §3661. The statutory question is not whether the items remain theoretically mailable, or whether the Service may ever regulate them. It is whether this particular package of requirements meaningfully and qualitatively changes nationwide postal service available to users.

The Final Rule does considerably more than prescribe an envelope’s dimensions or require sufficient postage. A state or local election official who

previously could tender properly addressed and prepaid ballots must now obtain federal design approval, satisfy automation and logo rules, generate unique barcodes, establish and certify a portal account, upload voter-linked information, and pass USPS verification at presentment. See 91 Fed. Reg. 54,990–54,991; Domestic Mail Manual 705.24.3–.5. A mailing that fails verification is returned to the authorized ballot mailer and must be corrected and resubmitted. *Ibid.* That changes the conditions under which a nationwide class of postal users may obtain service and whether their mail will enter the system at all.

Section 401(2) also limits regulations to those “not inconsistent with” Title 39. Section 3661 is part of Title 39. A regulation implemented without an applicable preimplementation procedure is not rendered consistent with the title merely because another provision grants general rulemaking power. The specific statutory safeguard remains operative alongside the general grant.

The same conclusion follows from ordinary separation-of-powers principles. Executive Order No. 14,399 directed the Postmaster General to initiate a proposed rulemaking, prescribed minimum subjects for the proposal, and set a deadline for a final rule. 91 Fed. Reg. 17,125, 17,127–17,128 (Mar. 31, 2026). But presidential direction does not relieve an agency of limitations Congress imposed on its statutory authority. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585–589 (1952). The Order did not purport to suspend Section 3661. The now-final Rule must be judged against all applicable law, including Congress’s procedural command.

III. Applicants' Own Account of the Rule Strongly Indicates That Section 3661 Applies.

Buchanan identifies three factors that must coexist before § 3661 applies: a change meaningfully affecting service, a qualitative alteration in the postal services available to users, and nationwide or substantially nationwide effect. 508 F.2d at 262–263.

A. The Rule effects a meaningful change.

The Rule converts longstanding USPS recommendations into mandatory conditions. Appl. 9; 91 Fed. Reg. at 54,986. It establishes an advance envelope-review process; requires official Election Mail logos, automation compatibility, and unique barcodes; demands portal submission of identifying data; and authorizes verification before mail is accepted. Appl. 7–9. Failure is consequential: noncompliant ballot mail is returned for correction and resubmission rather than accepted into the mailstream. Appl. 8.

Applicants themselves describe the Rule as a “significant federal election-integrity measure,” Appl. 13, and an “important federal policy” affecting “countless ballots[.]” *Ibid.* They argue that each day without implementation creates irretrievable losses, that multiple States must comply immediately, and that an injunction produces a “serious setback” to Executive goals. Appl. 29–30. A change said to have those consequences is not a minor alteration with minimal effect on postal users.

B. The Rule qualitatively alters postal service available to users.

The relevant question is how the service available to the user changes. *Buchanan*, 508 F.2d., at 262–263. Here, state and local election officials are postal

users. Before the Rule, compliance with the Postal Service's Election Mail guidance was substantially voluntary. Under the Rule, acceptance of outbound federal ballot mail depends on satisfying a new integrated federal process.

The process changes both access and handling. Election officials must secure design approval before using the portal; connect each ballot envelope's barcode with portal data; and tender mailings that survive Postal Service verification. 91 Fed. Reg. at 54,979, 54,990–54,991. Postal Service employees must be trained to conduct the verification process. Appl. 12, 30, 32. Mailings that do not satisfy those requirements are returned. Appl. 8. These are qualitative changes in the conditions, sequence, and treatment governing access to postal service—not merely internal management arrangements invisible to mail users.

C. The Rule operates nationwide and was made immediately effective.

The Domestic Mail Manual provisions apply to every state or local jurisdiction using the U. S. Mail to send ballots for federal elections. Domestic Mail Manual 705.24. The Rule was promulgated on August 21, published on August 26, and made effective immediately. Appl. 7; 91 Fed. Reg. at 54,966. Neither the Rule's statement of authority nor the materials identified in the application disclose a § 3661 submission, Commission hearing, or advisory opinion.

Applicants' irreparable-harm theory removes any serious doubt about geographic scope. They identify North Carolina and Alabama as immediately affected, list States whose mailing obligations begin in the following weeks, and contend that the injunction's effects extend to ballots nationwide. Appl. 29–30 & nn.2–3. They

also challenge the District Court’s limitation of the Rule beyond respondent States precisely because the Rule is national in operation. Appl. 33–35.

Buchanan cautioned that applicability can require factual development. 508 F. 2d at 264–267. Here the emergency record may not resolve every factual question about the portal or verification system. But the Rule’s mandatory text, Applicants’ account of its nationwide consequences, and the admitted implementation work establish at minimum that Applicants cannot simply assume § 3661 is irrelevant while demanding immediate nationwide enforcement.

IV. Section 3661 Provides A Narrow Ground For Denying Extraordinary Relief

To obtain a stay pending appellate review, Applicants must show a reasonable probability that four Justices would vote to grant certiorari, a fair prospect that a majority would reverse, and a likelihood of irreparable harm absent a stay. In close cases, the Court also balances the equities. *Hollingsworth v. Perry*, 558 U. S. 183, 190 (2010) (*per curiam*). An unresolved, directly applicable statutory limitation bears on whether Applicants have shown the required fair prospect of reversal. The burden remains with Applicants; respondents need not conclusively prevail on every theory to show that burden has not been carried.

Section 3661 supplies a narrower path than the broad disputes emphasized in the application. The District Court concluded that the Rule exceeds Postal Service authority, intrudes on election regulation, effectively establishes new nonmailable material, and conflicts with HAVA-related limitations. Appl. App. 25a–31a. Applicants respond at length to each proposition and object that the District Court relied

on a HAVA theory not presented by the parties. Appl. 18–28. Whatever the ultimate resolution of those questions, none answers § 3661.

That distinction matters to Applicants’ party-presentation objection. Amicus does not ask the Court finally to adjudicate a new claim, determine the proper forum for such a claim, or affirm every aspect of the District Court’s reasoning on a ground the parties did not present. Section 3661 instead bears whether Applicants have carried their burden in seeking discretionary emergency relief. Applicants ask this Court to conclude, on an expedited record, that the Rule is plainly lawful and that no specific statutory command constrains immediate implementation. Appl. 13–15. Section 3661 demonstrates that the governing statutory architecture is materially more complicated. At minimum, the Court should not disturb the injunction before the parties and lower courts have had an opportunity to address whether the Rule triggers § 3661 and what review mechanism governs any violation.

The Court therefore need not decide on this emergency record whether ballot-specific mailing conditions invariably regulate the manner of federal elections; whether every noncompliant item becomes “nonmailable matter” within the statutory scheme; whether the portal implicates HAVA’s official-list provisions; or whether the Rule presents a major question. It may deny a stay because Applicants have not shown that immediate implementation is consistent with § 3661.

Nor must the Court finally determine every remedial issue raised by Applicants’ standing and universal-relief arguments. See Appl. 33–35. If its statutory trigger is satisfied, § 3661 imposes a preimplementation obligation on the Postal

Service with respect to the nationwide proposal. That does not automatically resolve who may sue, what relief each plaintiff may obtain, or the ultimate geographic scope of an injunction. It does establish that Applicants cannot premise emergency relief on the Rule's plain lawfulness without confronting the statutory condition governing implementation.

At minimum, the omission creates substantial doubt. *Buchanan* recognized that factual disputes concerning § 3661's triggers may require remand and development. 508 F.2d, at 264–267. Such unresolved questions cut against the party seeking the extraordinary alteration of the status quo, particularly where implementation would affect ballots that cannot later be retrieved or reprocessed.

Alternatively, if the Court concludes that further consideration is warranted, it may deny the application without prejudice or request a response specifically addressing § 3661, the administrative and judicial-review mechanisms provided by §§ 3662-3663, and the relationship between those provisions and Applicants' ultra vires argument. Either course would be preferable to authorizing immediate nationwide implementation without adversarial consideration of the statute Congress enacted for consequential nationwide service changes.

V. The Equities Do Not Permit Applicants to Invert Congress's Sequence.

Applicants argue that delay prevents the Rule from applying to ballots already entering the mailstream and inhibits employee training. Appl. 29-33. Those concerns are relevant to the equitable analysis, but they do not establish that the public interest favors implementation before the process Congress prescribed has been

addressed. Congress required advance submission precisely so that affected mail users and the public could address consequential nationwide changes before implementation, not after irreversible effects accrued.

The Postal Service made the Rule immediately effective, but neither the Rule nor the application identifies prior compliance with § 3661. It now invokes the resulting proximity to state mailing deadlines as a reason to permit immediate enforcement. But urgency created by the agency's chosen timing cannot supply the process Congress required "within a reasonable time prior to the effective date." 39 U. S. C, § 3661(b).

Nor would adherence to § 3661 permanently prevent the Postal Service from pursuing its policy. The Commission's opinion is advisory. Following the prescribed process preserves management's ultimate authority while permitting an informed public record concerning envelope production, portal readiness, barcode verification, training, processing capacity, and the consequences of returning noncompliant ballot mail. Those are the very operational matters now contested in emergency declarations.

Applicants stress that reversal after the election would come too late for ballots mailed in the interim. Appl. 29-30. The same temporal reality supports preserving Congress's preimplementation safeguard. Once a noncompliant ballot mailing is returned, delayed, or never reaches a voter, later review cannot reconstruct the public process that should have preceded the change or cure every resulting consequence. The public interest lies in honoring the sequence Congress enacted.

CONCLUSION

The application for a stay and request for an immediate administrative stay should be denied. Alternatively, the Court should deny relief without prejudice or request a response addressing 39 U. S. C. §3661 and the review mechanisms provided by §§ 3662–3663 before authorizing immediate nationwide implementation of the Rule.

Respectfully submitted.

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