

No. 26A305

IN THE
Supreme Court of the United States

**UNITED STATES POSTAL SERVICE, ET AT.
APPLICANTS**

V.

**STATE OF CALIFORNIA, ET AL.
RESPONDENTS**

**DONALD J. TRUMP, ET AL.
APPLICANTS**

V.

**LEAGUE OF WOMEN VOTERS
OF MASSACHUSETTES, ET AL.
RESPONDENTS**

On Application for a Stay of the Injunction Issued by the United States District
Court for the District of Massachusetts and Request for an Immediate
Administrative Stay

**BRIEF OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-
RESPONDENTS AND AFFIRMANCE**

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INTEREST OF AMICUS CURIAE¹

The National Association for the Advancement of Colored People ("NAACP") is the oldest and largest civil rights organization in the country. Its mission is to achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color. The NAACP has been at the forefront of fighting against racial discrimination in voting and fighting for the rights of its members and those of all lawfully registered US citizens to cast ballots and have those ballots counted. Consequently, the NAACP dedicated a great deal of time and resources to voter education and get-out-the-vote ("GOTV") efforts.

Ballot Mail for Federal Elections, 91 Fed. Reg. 54,966, 54,990-92 (Aug. 26, 2026) ("Final Rule") poses a direct threat to the rights of lawfully registered voters to receive and cast ballots through the mail. The NAACP is a plaintiff in *NAACP v. Trump*, Case Number 1:26-cv-01151-CJN, U.S. District Court for the District of Columbia. In that case, the NAACP and other plaintiffs are challenging the Final Rule, pointing out, *inter alia*, that the Final Rule is contrary to USPS's rulemaking

¹ Pursuant to Supreme Court Rule 37.6, counsel for amicus curiae state that no counsel for a party authored this brief in whole or in part and that no person other than amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief.

authority under 39 U.S.C. § 404(a); is unlawful, pursuant to the major question doctrine, *see Learning Resources, Inc. v. Trump*, 607 U.S. 229, 243 (2026); and violates the separation of powers. At the time of this filing, the NAACP's Renewed Motion for Preliminary Injunction is pending.

INTRODUCTION AND SUMMARY OF ARGUMENT

Voting is the cornerstone of a citizen's rights in a democracy because it is the wellspring from which our institutions derive power. The right to vote is chief among the bundle of rights that define American citizenship. Indeed, over a half-century ago, the Court cemented that principle, writing that "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights." *Reynolds v. Sims*, 377 U.S. 533, at 562 (1964). The right to vote is fundamental in substance but can be hollowed empty by haphazard and poorly designed procedural impediments, and that is the issue before the Court in this case.

The NAACP was founded in 1909 as an organization committed to ensuring that the rights guaranteed in the Constitution were, in law and in practice, guaranteed to Black Americans who had been shut out of the legal and political process for centuries. For decades, the NAACP fought an uphill legal battle to secure the right to vote through the Court and through Congress. Much of the caselaw that comprises the foundation of voting jurisprudence flows from hard-won legal challenges brought by the NAACP. *See e.g. Smith v. Allwright*, 321 U.S. 649 (1944); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). As an organization founded on the principle that voting is fundamental, much of the NAACP's current work is comprised

of voter education, voter registration, voting advocacy, information sharing, and direct voter assistance.

Mail-in voting has been a part of the American elections process since the Civil War when states permitted soldiers to vote by absentee ballot. See, e.g., J. Benton, *Voting in the Field: A Forgotten Chapter of the Civil War* 4–14 (1915). Over the 20th century, absentee voting expanded and every state currently lets at least some of its citizens vote by mail. Federal law, in fact, requires that states permit absentee voting in certain circumstances. *See* 52 U. S. C. §10502(d). In 2024, nearly one-in-three voters in the United States voted by mail in the general election.²

The NAACP, as an organization, and its individual units and members have already experienced the harm caused by the United States Postal Service's (USPS) Final Rule. From interfering with voter assistance services, to needing to restructure or rededicate resources for mobilization, to even the fundamentally basic issue of

² States United Democracy Center. Nearly 1 in 3 Americans From Across the Aisle Voted by Mail in 2024 and 2022. <https://statesunited.org/resources/americans-vote-by-mail-2024/#section-2>. Published September 4, 2025; Updated September 3, 2026.

whether an individual person's vote will be counted, the harm produced by the Final Rule is real and cognizable.

Members of the NAACP, moreover, derive real benefits from voting by mail and members have built a reliance on mail-in voting to the extent that their right to vote effectively hinges on the ability to vote by mail. NAACP members have voted by mail for decades, and their respective voting plans for the 2026 general midterm election require USPS mail services to cast their ballot. The interests they possess in voting by mail span from avoiding threats of voter intimidation to physical ability needs, the geographic limitations of rural living and the constraints placed on professionals whose jobs require travel on Election Day.

ARGUMENT

The NAACP and Its Members Will Be Irreparably Harmed by the Final Rule

Given the untested but mandatory systems proposed by the U.S. Postal Service ("USPS"), the hurried and chaotic way in which the Final Rule is being implemented, and the lack of notice and due process afforded voters, there is substantial risk that many jurisdictions will be unable to conduct mail voting, resulting in a significant amount of voters not receiving or being able to cast ballots. In furtherance of its

mission, the NAACP assists voters in curing ballots to ensure that such ballots are counted. The USPS's flawed and opaque system creates an ever-changing landscape that thwarts all such NAACP organizational efforts and prevents the NAACP from being able to assist voters.

Moreover, the Final Rule raises grave constitutional concerns as it runs afoul of the Elections Clause which specifically gives states the authority to regulate the “time, place and manner of elections.” With approximately 200,000 members across every state of this nation, the NAACP's members necessarily will be negatively impacted by the Final Rule. Indeed, some states already have expressly voiced that they will not be able to comply with the requirements of the Final Rule. Thus, members in those states will not receive their ballots by mail despite being registered voters and having complied with all applicable laws and deadlines related to voting by mail.

The Final Rule does not provide for would-be mail-in voters to receive any notice that USPS is refusing to transmit ballots to them. Such refusal to transmit comes despite state election officials having predetermined on an individualized basis that each such voter is lawfully registered and entitled to receive and cast a mail-in ballot. Nor does the Final Rule provide for voters to receive any due process by which

they can challenge USPS's decision. Furthermore, a recent whistleblower complaint reports that USPS has adopted a “zero percent” failure protocol under which even one failed barcode verification in a sampled ballot-mail batch can cause USPS to reject the entire batch of ballots and require the state to cure the single error and restart the submission process from the beginning. Because each batch may contain thousands of ballots, an error in the new system can simultaneously delay or withhold ballots for large swaths of voters.

The uncertainty of potential vote-invalidation amounts to leaving NAACP members without the ability to effectively vote by mail. Some members utilize mail-in voting to avoid historic and present-day intimidation they have faced at the polls. They also depend on mail-in voting because of health and age-related issues that limit their physical ability to cast a ballot in person. Geographic remoteness and professional travel on Election Day, moreover, make it necessary to cast their ballot by mail through the USPS.

A. The Final Rule Directly Impairs NAACP Members’ and Voters’ Ability to Provide Effective Mail-Voting Assistance

Consistent with its mission, the NAACP operates longstanding voter-registration, voter-assistance, mail-voting, and election-protection programs. Those

programs help voters register and maintain accurate registration records; obtain mail ballots, including through emergency applications; and overcome barriers to voting or having their votes counted. Voter registration, mobilization, and direct voter assistance are longstanding NAACP operations central to the organization's mission. Its network of state conferences, local branches, college chapters, prison chapters, and youth councils conducts voter-registration drives, canvassing, voter contact, and election-protection work. The NAACP recruited more than 100,000 volunteers for that work before the 2024 election and launched a \$20 million GOTV campaign to mobilize 6.5 million Black voters across 14 states in 2026. Its staff and volunteers assist voters in registering, verifying their registration status, completing mail-ballot and emergency-ballot applications, and addressing barriers to voting, including voters who depend on mail voting because of disability, age, rural residence, incarceration, military service, or lack of transportation.

The Final Rule upended these programs, imposed chaos on the NAACP's election planning, and created a need to "drain [] the organization's resources" to "counteract" the USPS's unlawful conduct. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). That is a "concrete and demonstrable injury." *Id.*

Even if the mail-ballot program for particular states is approved, the Final Rule adds a separate federal condition that the NAACP's existing services cannot satisfy or address; for each properly registered voter who is entitled to receive a mail ballot, USPS will refuse the election official's outbound ballot mailing unless the responsible election office has timely submitted the voter's name, address, and ballot-envelope barcodes through the Federal Ballot Mail Portal, and the mailing satisfies USPS's independent verification requirements. *See* Final Rule at 54,990-91. NAACP members and voters, however, have no access to the proposed Portal. As a result, NAACP members and voters cannot inspect the information submitted about a voter, determine whether an election official associated the correct barcode with that voter, determine whether the election official has the ability to comply with bar coding requirements, identify an omission or error, or direct USPS to accept a rejected mailing. Nor will NAACP members and voters receive notice if USPS rejects their ballot or have any ability to correct an error that led to the ballot rejection. Indeed, the USPS Final Rule confirms that "the ability to cure rests not with the voter," but with the officials and mailers responsible for preparing the envelope and entering the Portal data. *See* Final Rule at 54,981.

A voter who has completed every step to receive a mail ballot before the Final Rule was published, moreover, may nevertheless fail to receive a ballot. When that occurs, the NAACP and voters cannot determine from the voter's registration or ballot-request records alone whether transmission problems arose from the voter's own records, the election office's Portal submission, barcode assignment or printing, USPS's verification process, or another failure in the ballot-transmission process. To continue providing this and other direct voter-assistance services, the NAACP would need to undertake additional voter-specific work across dozens of states such as, for example: communicating with election officials and vendors, investigating rejected or delayed ballot mail, providing information on how to obtain a replacement ballot, and helping the voter identify and complete an alternative means of voting before the applicable deadline.

Those burdens are compounded by the compressed timeline between the Final Rule's publication and the fast-approaching November 2026 election deadlines. Distribution of mail ballots in certain states already started or will start in early September. *See, e.g.*, N.C. Gen. Stat. § 163-230.1(c).⁴

The Final Rule requires the NAACP to extend its services beyond its established registration and ballot-application assistance in its Get Out The Vote campaign. Its staff and volunteers must revise voter-education materials and trainings, provide individualized assistance when ballots do not arrive, communicate with the responsible election officials, help secure replacement ballots or alternative voting methods, and coordinate those efforts across the NAACP's national, state conference, and local units. The NAACP has already finalized some of its voter materials, conducted volunteer trainings, conducted voter education programs,, expanded individualized voter-assistance efforts, and devoted additional staff and volunteer resources to programs—including Ride to the Polls initiatives—for voters who cannot successfully vote by mail. The Final Rule requires the NAACP to plan for contingencies, such as particular states or jurisdictions being unable or unwilling to apply, being rejected by USPS, or USPS rejecting large numbers of ballots, forcing the NAACP to expand and place emphasis on initiatives such as the Ride to the Polls programs. In multiple states, NAACP staff and units have been required to launch programs earlier, recruit more volunteers earlier, and steer organizational efforts away from its traditional activities and other organizational priorities that the NAACP normally would be conducting before the General Election.

B. The Final Rule Creates a Substantial Risk That NAACP Members and Voters Will Be Prevented From Voting By Mail

The Rule requires USPS to reject outbound ballot mailings unless election officials first satisfy its new envelope-design, barcode, portal-registration, certification, and voter-enrollment requirements. *See* 91 Fed. Reg. at 54,990-91. As the various state parties have made clear in their filings, many of them will be unable to comply with the Final Rule. That threat is concrete. There are NAACP members across the states and in every corner of the nation who intend to vote by mail in the November election and rely on that method because of age, disability, incarceration, caregiving responsibilities, rural residence, and lack of transportation. Because USPS must reject the mailings containing those members' ballots if their election officials cannot comply, the Final Rule creates a substantial risk that those members will be unable to vote by mail.

A voter need not wait for USPS to reject a particular ballot mailing to challenge a rule that changes the terms on which he or she may vote. *See Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1351-52 (11th Cir. 2009); *Fish v. Schwab*, 957 F.3d 1105, 1119-20 (10th Cir. 2020). The Final Rule conditions NAACP members' planned use of mail voting on the states' ability to submit their mail program for USPS's approval,

and enrollment of voters in USPS's federal system, the state officials' ability to meet the Rule's technological and logistical requirements, and the submission, verification, and five-year retention of voter-specific records linking their names and addresses to the unique barcodes on their outbound and return ballot envelopes. Members cannot verify that the required information has been submitted or entered accurately and USPS has confirmed that the voter cannot cure a rejected outbound mailing. *See* Final Rule at 54,981.

C. NAACP Members Depend on Mail-In Voting

1. Mail-In Voting Eliminates Concerns of Voter Intimidation

It is beyond dispute that voter intimidation historically has been a tool used by those seeking to disenfranchise Black voters. The prevalence of such actions was so great that Congress passed the Ku Klux Klan (KKK) Act of 1871,³ the Civil Rights

³ 42 U.S.C. § 1985(3) (“if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy . . .”).

Act (CRA) of 1957,⁴ and the Voting Rights Act (VRA) of 1965.⁵ Relying upon information from the Department of Justice, the Georgetown Law Institute for Constitutional Advocacy and Protection has identified forms of intimidation, including “conduct near polling sites that likely would constitute illegal voter intimidation: (i) Violent behavior inside or outside the polling site; Verbal threats of violence; (ii) Confronting voters while wearing military-style or official-looking uniforms; (iii) Spreading false information about voter fraud, voting requirements, or related criminal penalties; (iv) Brandishing firearms or the intimidating display of firearms; (v) Aggressively approaching voters’ vehicles or writing down voters’ license

⁴ 52 U.S.C. § 10101(b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.”).

⁵ 52 U.S.C. § 10307(b) (“No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 10302(a), 10305, 10306, or 10308(e) of this title or section 1973d or 1973g of Title 42.”)

plate numbers; (vi) Following voters to, from, or within the polling place; (vii) Harassing voters, aggressively questioning them about their qualifications to vote.”⁶

Of note, these examples of intimidation occur when a voter is physically present at a polling place to cast their ballot. As such, they have little to no effect on people who vote by mail. Mail voters easily avoid being in the immediate proximity of those who are engaged in intimidation and who might threaten bodily harm to stop them from voting. The Final Rule would strip Black and other marginalized citizens of the ability to cast their ballots free from intimidation or the threats of intimidation that plague the democratic process and interfere with a fundamental right.

2. The Final Rule makes it more difficult for elderly, physically challenged, and rural voters to cast ballots.

Amongst the membership ranks of the NAACP are older voters, some of whom no longer drive or may find it physically challenging to wait outdoors in long lines at polling places, particularly in inclement weather; voters with physical disabilities that prevent easy, readily available, or inexpensive travel to polling places which

⁶ Institute for Constitutional Advocacy and Protection at Georgetown University Law. Fact Sheet: Protecting Against Voter Intimidation, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2024/08/Voter-Intimidation-Fact-Sheet.pdf> (last checked 9/8/2026).

ultimately may not be accessible for people with disabilities; and voters who live great distances away from polling places and without affordable and reliable public transportation, *e.g.*, rural areas. For this cohort of lawfully registered voters, mail-in voting is a necessity. Their choice becomes vote by mail or not vote at all.

The Final Rule will disenfranchise these voters, not because they are ineligible to vote, but because they live in one of the states that is incapable of complying with the burdensome and unconstitutional Final Rule. Even if their state can create the infrastructure necessary to comply with the Final Rule, voters still may be disenfranchised because USPS's currently non-existent or barely functional system can improperly reject their batch of ballots and USPS will refuse to deliver ballots to these U.S. citizens who otherwise have a legal right to vote. In this way, USPS is doing far more than its duty of carrying mail; it is acting as a broken and untested gatekeeper for citizens to exercise the most cherished of rights.

D. NAACP Members Face Real Harm and Have an Existing Reliance on Mail-In Voting

Following USPS's decision on Sunday, September 6, 2026 to appeal the injunction put in place by the District Court of Massachusetts, the NAACP conducted

outreach to its members to measure the extent of the harm that would result should this Court decide to lift the injunction as requested by the USPS.

i. Andria Young

Andria Young is a 64-year-old member from Delaware, who suffered a stroke prior to the 2024 election and, as a result, depends on mail-in voting to cast her ballot. Ms. Young is unable to stand in lines at her polling location. For the first time in her life, Ms. Young is concerned that her vote may not be counted because the Final Rule does not provide a mechanism for a voter to verify that their information is correct in the Portal, nor does the Final Rule allow for a voter to cure a rejected ballot. Ms. Young is left without any assurance that her vote will be considered valid and notified if there is an issue.

ii. Katherine Collings

Katherine Collings is a 74-year-old member from Indiana, who votes by mail. In her jurisdiction, moreover, she is unaware of a location provided by the county election officials to directly deposit her ballot to avoid concerns over USPS's involvement, and potential disqualification of her ballot. In contemplating the impact

on her life as a result of not being able to vote by mail, Ms. Collings considers it an outright denial of her fundamental rights as a citizen of the United States.

iii. Russell Lovell

Russell Lovell is an 82-year-old member from Iowa. He has voted by mail for over a decade. Mr. Lovell is a retired lawyer, who is concerned about potential voter intimidation at the polls this election cycle.

iv. Debra A. Nixon Jordan

Debra A. Nixon Jordan is a 72-year-old member from North Carolina, who votes by mail for health considerations. Ms. Nixon Jordan fears that North Carolina may have submitted a list of qualified voters to USPS under terms of the Final Rule and she has no way to determine whether the state included her married surname. Ms. Nixon Jordan is now left worrying whether USPS will invalidate her ballot because she has no way to verify the accuracy of her voter information on the list North Carolina submitted to USPS.

v. Sheley Secrest Davis

Sheley Secrest Davis is a 52-year-old member from Washington, who has voted by mail for thirty (30) years and in sixty (60) elections. Ms. Secrest Davis is a

practicing criminal defense attorney and her job requires her to travel outside of her polling jurisdiction to various courts for her clients' hearings. Given the nature of her work, Ms. Secrest Davis utilizes Washington's mail-in ballot statute that provides for all registered voters to receive a ballot by mail. (*See* Wash. Rev. Code § 29A.40.010). With the uncertainty of whether Washington's ballots will comply with the Final Rule, Mr. Secrest Davis faces the risk of not being able to get to the polls to vote in-person because she cannot sacrifice the liberty interests of her clients and her duty as their attorney to attend court hearings on Election Day that determine their release.

The NAACP has compiled countless examples of members across the country who fear the risk of disenfranchisement in the 2026 election should this Court allow the USPS to move forward with this burdensome, not-yet-developed rule that would limit and restrict access to mail ballots.

CONCLUSION

For the foregoing reasons, the NAACP respectfully urges this Court to deny Applicant's request for a stay of the preliminary injunction pending appeal. The right to vote is too sacred to risk with so little gained from the Final Rule.

Date: September 9, 2026

Respectfully Submitted,

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