IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*, Plaintiffs, v. EXECUTIVE OFFICE OF THE PRESIDENT, *et al.*, Defendants.	Civil Action No. 25-0946 (CKK)
DEMOCRATIC NATIONAL COMMITTEE, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Defendants, *and* REPUBLICAN NATIONAL COMMITTEE, Intervenor-Defendant.	Civil Action No. 25-0952 (CKK)
LEAGUE OF WOMEN VOTERS EDUCATION FUND, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Defendants.	Civil Action No. 25-0955 (CKK)

THE REPUBLICAN NATIONAL COMMITTEE'S
CROSS-SUMMARY JUDGMENT BRIEF ON REMAINING CLAIMS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

INTRODUCTION

"If this government is anything more than a mere aggregation of delegated agents of other states and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends." *Ex Parte Yarbrough*, 110 U.S. 651, 657-58 (1884). The Constitution vests all "executive Power" in the President. U.S. Const. art. II, §1. It "enable[s]" the President to give to the "enforcement of acts of congress" all "the protection implied by the nature of the government under the constitution." *Cunningham v. Neagle*, 135 U.S. 1, 64 (1890). The President's power "necessarily involves the power to command obedience" to "laws" passed by Congress. *Id*. at 60 (cleaned up). Without that authority, the President's "executive power would be absolutely nullified," and "the national government would be nothing but an advisory government." *Id*. at 61.

Plaintiffs disagree. They deny that the President can "protect the elections" by directing Executive Branch agencies to prevent against the corruption of non-citizen voting. *E.g.*, DNC Compl. (Doc. 1, No. 1:25-cv-952) at 43.[1] They deny that the President has power to remedy "more than one evil" by enforcing federal statutes establishing a single uniform national election-day. *Ex Parte Yarbrough*, 110 U.S. at 661; *e.g.*, LULAC Compl. (Doc. 1) at 45. And they rely on the "old argument often heard, often repeated, and in this court never assented" that "the advocate" of the President's power "must be able to place his finger on words which expressly grant it." *Ex Parte Yarbrough*, 110 U.S. at 658.

Plaintiffs claim that the Executive Order violates the Administrative Procedure Act and constitutes *ultra vires* action. Both claims require Plaintiffs to show violations of other federal law. Plaintiffs claim, for example, that §2(d) violates the NVRA by directing federal agencies to assess

[1] Unless otherwise noted, docket entries refer to the lead case: *LULAC v. EOP*, No. 1:25-cv-946.

public-benefit applicants' citizenship before handing them a voter registration form. DNC Compl. 63. But other federal laws already require those agencies to assess citizenship. *E.g.*, 8 U.S.C. §§1611, 1642. The Executive Order doesn't add requirements to that process. Rather, it tells those agencies *when* in the process they should provide voter-registration forms: after they assess citizenship. Nothing in the NVRA contradicts that sequencing. And nothing in the Due Process Clause prohibits that sensible requirement. States have strong interests in prohibiting non-citizens from registering to vote. By targeting processes in which applicants must *already provide* proof of citizenship, Section 2(d) reduces the chance that agencies will hand out voter-registration forms to non-citizens without imposing any burden on the applicants themselves.

Plaintiffs also claim that the Executive Order violates the election-day statutes establishing a uniform national "day for the election." DNC Compl. 53. But the Order authorizes the Attorney General to enforce those statutes, which preempt state laws accepting ballots received after election day. *Compare* 2 U.S.C. §§1, 7; 3 U.S.C. §1, *with* Exec. Order 14,248, §7(a). "Text, precedent, and historical practice confirm this 'day for the election' is the day by which ballots must be both *cast* by voters and *received* by state officials." *Republican Nat'l Comm. v. Wetzel*, 120 F.4th 200, 203-04 (5th Cir. 2024). "When the federal statutes speak of 'the election'" those statutes "plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder." *Foster v. Love*, 522 U.S. 67, 71 (1997). That final selection occurs "when the State takes custody" of all the ballots. *Wetzel*, 120 F.4th at 207. So under "the original public meaning of the federal Election Day statutes," States must "receive all ballots by Election Day." *Id.* at 211-12.

There's no genuine dispute of material fact, and Plaintiffs' claims fail as a matter of law. The Court should thus grant summary judgment in Defendants' favor on Plaintiffs' claims against Sections 2(d) and 7(a) of the Executive Order.

FACTUAL BACKGROUND

On March 25, 2025, President Trump issued Executive Order 14,248 to "enforce Federal law and to protect the integrity of our election process." §1, 90 Fed. Reg. 14005 (Mar. 25, 2025). Recognizing that "the United States has not adequately enforced Federal election requirements" that "prohibit non-citizens from registering to vote," the Order directs several federal agencies to implement specific measures to "enforce the Federal prohibition on foreign nationals voting in Federal elections." *Id.* §§1-2. Likewise, to "achieve full compliance with the Federal laws that set the uniform day for appointing Presidential electors and electing members of Congress," the Order takes steps to "prohibit States from counting ballots received after Election Day." *Id.* §7.

This motion concerns two provisions. First, Section 2(d) requires each federal agency designated as a "voter registration" agency under the NVRA to "assess citizenship prior to providing a Federal voter registration form to enrollees of public assistance programs." *Id.* §2(d). Second, Section 7(a) requires the Attorney General to "take all necessary action to enforce" the election-day statutes "against States that violate these provisions by including absentee or mail-in ballots received after Election Day in the final tabulation of votes for the appointment of Presidential electors and the election of members of the United States Senate and House of Representatives." *Id.* §7(a).

These provisions enforce federal law. Congress already prohibits any "alien who is not a qualified alien" from receiving "any Federal public benefit." 8 U.S.C. §1611(a). Federal public assistance agencies must therefore "requir[e] verification that a person applying for a Federal public benefit … is a qualified alien and is eligible to receive such benefit." *Id.* §1642(a). A required element of this verification system is that each enrollee "provide proof of citizenship." *Id.* at §1642(a)(2)-(b). Consequently, federal law already mandates that federal agencies providing public assistance verify the citizenship status of persons seeking assistance before providing them with

a public benefit. *Id*. Section 2(d) merely requires that each federal agency make this citizenship assessment "prior to providing a Federal voter registration form to enrollees of public assistance programs" because, if the enrollee is a non-citizen, they would likely not only be unqualified to receive a public benefit, but also would not be qualified to register to vote. Exec. Order 14,248 §2(d); 18 U.S.C. §§611, 1015.

Section 7(a) enforces the federal election-day statutes that Congress passed over a century ago. In 1845, Congress mandated that in presidential election years "[t]he electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in the month of November." Act of Jan. 23, 1845, ch. 1, 5 Stat. 721. In doing so, "Congress considered and rejected the practice of multi-day voting allowed by some states." *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1172 (9th Cir. 2001). Even though establishing a uniform time for the selection of the electoral college presented an "expense to some states," that was "a 'slight consideration in the decision of a matter of such momentous importance.'" *Id.* (quoting Cong. Globe, 28th Cong. 2d. Sess. 28 (1844)). After the Civil War, Congress extended the uniform election day to congressional elections, providing that "the Tuesday next after the first Monday in November, in every second year" is "hereby fixed and established as the day for the election." Act of Feb. 2, 1872, ch. 11, §3, 17 Stat. 28. And after the Seventeenth Amendment was ratified, Congress included Senators in the uniform election day. Act of June 4, 1914, ch. 103, §1, 38 Stat. 384.

In the wake of the passage of the federal election-day statutes, States uniformly understood that those laws "mean what they say: that ballots must be *received* no later than the first Tuesday after the first Monday in November." *Wetzel*, 120 F.4th at 209. Only in the last few years did it become more common for States to begin counting mail ballots received after election day. *See* Nat'l Conf. of State Legislatures, *Table 11: Receipt and Postmark Deadlines for Absentee/Mail*

Ballots (June 12, 2024), perma.cc/X254-RTK2. Many of those post-election deadlines were reactions to the COVID-19 pandemic. *See, e.g.*, Act of July 8, 2020, ch. 472, §1, 2020 Miss. Laws Chapter 1410, 1411. But Congress's law means the same thing today that it did when it was adopted: the "'day for the election' is the day by which ballots must be both *cast* by voters and *received* by state officials." *Wetzel*, 120 F.4th at 204.

Last year, the RNC and several other plaintiffs filed a lawsuit against Mississippi's post-election receipt deadline. *Id*. at 205. In that case, the Fifth Circuit held that the Mississippi statute permitting ballot receipt up to five business days after election day was "preempted by federal law." *Id.* at 204. "Text, precedent, and historical practice confirm" that the "day for the election" is the last day ballots are "*received* by state officials." *Id.* at 203-04. The Executive Order recognizes that the Fifth Circuit is correct. Exec. Order 14,248, §1. The Order thus declares a federal policy "to enforce" the election-day statutes and "require that votes be cast and received by the election date established in law." *Id*.

Within a week of the President signing the Executive Order, Plaintiffs sued. They ask that this Court depart from the Fifth Circuit's opinion and enjoin the Order from being carried out by multiple federal government agencies. *See* DNC Compl. 17-18. This Court denied the Plaintiffs' preliminary-injunction motion concerning the election-day enforcement directive of Section 7(a). *LULAC v. Exec. Off. of the President*, 2025 WL 1187730, at **50-52 (D.D.C.). It concluded that "Plaintiffs are not entitled to a preliminary injunction against enforcement of Section 7(a)." *Id.* at 52. The Court granted Plaintiffs' motion concerning the citizenship-assessment directive of Section 2(d), but noted that the United States didn't "raise any defense of the merits of Section 2(d)." *Id.* at 49.

In June, the RNC moved to intervene. The RNC claimed "an interest in defending key provisions" of the Executive Order "because they affect the RNC's political programs." RNC Interv. Mot. (Doc. 125) at 1. Specifically, the RNC argued that it "has a direct and unique interest in defending the lawfulness" of the Fifth Circuit's decision in *RNC v. Wetzel* and "enforc[ing] observance of Election Day as the conclusion of all voting in federal elections." *Id.* at 8. The RNC also asserted its "direct interest" in "preventing non-citizens from voting in federal elections and diluting the votes of its members, and in defending provisions that assist states in maintaining accurate voter rolls, which the RNC relies on to turn out voters." *Id.* at 9. The League and LULAC Plaintiffs opposed the RNC's participation, but the Court granted the motion in part, "allowing the RNC to intervene as a Defendant against all Plaintiffs' claims regarding Sections 2(a), 2(b), 2(d), 3(a), and 7(a)" of the Executive Order. Order Granting Interv., (Doc. 135) at 2. The Court held that "[t]he RNC has standing both in its own right ('organizational' standing) and standing to represent the interests of its members ('associational' standing) to defend those provisions of the Executive Order that directly benefit the electoral prospects of Republican candidates for federal office." *Id.* at 6.

The RNC has continuing interests in this case. The RNC represents over 30 million registered Republicans, including candidates and voters from all 50 states, the District of Columbia, and U.S. territories. 1st RNC Statement of Facts (Doc. 161-3) at ¶28. In November 2026, the RNC's candidates will appear on the ballot in every State for election to the U.S. House of Representatives, and in each State holding an election for the U.S. Senate. *Id.* ¶30. Republican candidates will compete for votes against Democratic candidates and others in the upcoming election, especially in competitive election contests. *See id.* ¶33. The RNC devotes substantial time and resources to election-day and post-election activities such as poll watching, observing absentee

ballots, and canvassing processes. *Id.* ¶¶34-35. Post-election ballot-receipt deadlines harm Republican candidates and voters. 2nd RNC Statement of Facts at ¶13. Democratic voters tend to mail their ballots later on average than Republican voters, which results in late-arriving ballots favoring Democratic candidates. *Id*. ¶¶14-15. And because voting by mail is polarized by party, late deadlines heavily favor Democratic candidates and harm Republican candidates. *Id*. ¶¶15-16. Late-arriving ballots that skew heavily in favor of one party undermine confidence in the integrity of the election, dilute the timely votes of Republican voters, and harm the RNC, its members, and voters. *Id.* ¶16. Because post-election mail-in ballot deadlines violate federal law, they result in an inaccurate tally of the lawfully cast votes. *Id.* ¶17. That inaccurate vote tally undermines Republican candidates' rights to a fair and accurate electoral count, and it undermines confidence in the election. *Id.* Enjoining enforcement of the election-day provisions of the Executive Order will require the RNC to divert more resources toward absentee-voting, poll-watching activities, voter-roll monitoring, and voter-registration efforts. *Id.* ¶18-19.

In accordance with the Court's Scheduling Order, the RNC moves for summary judgment on Plaintiffs' claims concerning Sections 2(d) and 7(a) of Executive Order 14,248. *See* Scheduling Order (Doc. 141) at 2.

SUMMARY JUDGMENT STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. Pro. 56(a). Because the genuine dispute here is legal, not factual, the Court can resolve this case on summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The "mere existence of some factual dispute is insufficient on its own to bar summary judgment; the dispute must pertain to a 'material' fact." *Congress v. Gruenberg*, 643 F. Supp. 3d 203, 215 (D.D.C. 2022) (quoting Fed. R. Civ. P. 56(a)). Defendants are "entitled to a judgment as a matter of law" if the

Court finds that Plaintiffs have "failed to make a sufficient showing on an essential element" of their case "with respect to which [they have] the burden of proof." *Maydak v. United States*, 630 F.3d 166, 181 (D.C. Cir. 2010) (cleaned up). For example, because Plaintiffs bring multiple claims under the Administrative Procedure Act, "the burden" is on them "to establish" that they "meet[]" the "statutory requirements" of that Act. *Fam. Tr. of Mass., Inc. v. United States*, 892 F. Supp. 2d 149, 154 (D.D.C. 2012) (cleaned up).

ARGUMENT

I. The APA claims fail because Plaintiffs have not identified any governmental action contrary to law.

Plaintiffs allege that the Executive Order violates the Administrative Procedure Act because its provisions are contrary to the NVRA, the equal protection component of the Fifth Amendment, and the federal election-day statutes. Even if the Court were to conclude that Plaintiffs can challenge the Executive Order under the APA, *contra* United States' PI Opp. (Doc. 84) at 23-26, and that the APA claims are ripe, *contra id.* at 39-43, those claims fail for the additional reason that Plaintiffs don't identify a conflict between the Executive Order and federal law.

A. Assessing citizenship before handing out voter-registration forms does not violate the NVRA.

Federal law prohibits any "alien who is not a qualified alien" from receiving "any Federal public benefit." 8 U.S.C. §1611(a). Federal public assistance agencies must therefore "requir[e] verification that a person applying for a Federal public benefit … is a qualified alien and is eligible to receive such benefit." *Id.* §1642(a)(1). A required element of this verification system is that each enrollee "provide proof of citizenship." *Id.* at §1642(a)(2)-(b). The DNC doesn't challenge any portion of this verification system. Section 2(d) must be read "consistent" with this "applicable law," Exec. Order 14,248, §11(b), which already requires federal agencies to assess the citizenship status of persons seeking public assistance, 8 U.S.C. §1642(a)(1)-(2).

The DNC argues that requiring "[t]he head of each Federal voter registration" agency to "assess citizenship" before providing the federal voter-registration form to public assistance enrollees runs afoul of the NVRA. DNC Compl. 57. But the DNC doesn't specify what NVRA provision prohibits federal agencies from complying with 8 U.S.C. §1642. Nor could it. The Executive Order establishes nothing more than a sequencing requirement. Just as providing a public benefit must come after assessing citizenship, so too must providing a voter-registration form come after assessing citizenship. *See* 8 U.S.C. §1642(a)(1)-(2). The NVRA doesn't prevent federal agencies from first doing what other federal law directs, which is verifying the citizenship status of persons seeking public assistance. *Id.* In the NVRA, Congress permitted States to designate federal offices as "voter registration agencies" so long they obtain "the agreement of such offices." 52 U.S.C. §20506(a)(3)(B). Generally, those offices must provide the federal voter-registration form to persons seeking public assistance. *Id.* §20506(a)(6)(A). Section 2(d) requires that "prior to providing" the federal form, federal offices take their statutorily required step of assessing and verifying the citizenship status of public assistance enrollees. Exec. Order 14,248, §2(d). Nothing in the NVRA prohibits that common-sense sequence of events.

The DNC argues that the NVRA does not allow federal agencies to assess the citizenship status of persons seeking public assistance "*prior* to providing them with the Federal Form." DNC PI Mot. (Doc. 53) at 48. But it can't point to any NVRA provision that requires federal offices to *immediately* provide the federal voter-registration form to whomever comes through their doors. The NVRA itself contemplates obtaining information from public assistance applicants *before* providing them with the federal voter-registration form. *See id.* §20506(a)(6)(B)(i). Whether the office provides that form depends on the information the enrollee provides. An enrollee shouldn't receive the registration form if, for instance, she answered "no" to the question "would you like to

apply to register to vote here today?" *Id.* That the NVRA contemplates a back-and-forth interaction between the prospective applicant and the federal office indicates that Congress did not intend everyone who enters a public assistance office to be immediately given the voter-registration form. So the NVRA allows for federal offices to collect and process information from persons seeking public assistance before giving those individuals the voter-registration form and then, depending on the information they provide, refrain from giving them the federal form. *Id.*

The DNC's interpretation doesn't account for any of these provisions. Under the DNC's reading, a person seeking public assistance could walk into a federal agency providing such assistance, openly declare that she is a non-citizen ineligible to register to vote, and the NVRA would still require that federal employees hand her a voter-registration form. The DNC believes that the NVRA prohibits "pre-screening" persons seeking public assistance with "citizenship 'assessments.'" DNC PI Mot. (Doc. 53) at 48. But it ignores other federal laws that explicitly require federal agencies to assess citizenship before providing any public benefit. 8 U.S.C. §1642(a)(1). Moreover, the NVRA allows for "investigating potential non-citizens and removing them on the basis of individualized information" from the voter rolls at any time. *See Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1348 (11th Cir. 2014) (90-day prohibition of NVRA does not bar individualized removals). The statute's explicit purposes are "to protect the integrity of the electoral process" and "to ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. §20501(b)(3)-(4). Allowing federal public assistance agencies to assess citizenship *before* giving enrollees access to the federal voter-registration form advances those purposes. The DNC's interpretation does not. Instead, it would require federal agencies to provide voter-registration forms to "persons not eligible to vote." *Cf. Bell v. Marinko*, 367 F.3d 588, 592 (6th Cir. 2004) (rejecting

interpretation of NVRA that conflicts with NVRA's purpose of "protect[ing] the integrity of the electoral process"). Nothing in the NVRA requires that nullity.

B. Assessing citizenship before handing out voter-registration forms doesn't violate the Fifth Amendment.

Because Section 2(d) regulates the right to vote, "the *Anderson-Burdick* framework" applies to constitutional claims against Section 2(d). *Vote Forward v. DeJoy*, 490 F. Supp. 3d 110, 125 (D.D.C. 2020) (analyzing Fifth Amendment right-to-vote claim under *Anderson-Burdick*). In cases like this one, a court does "not engage in a separate Equal Protection Clause analysis." *Anderson v. Celebrezze*, 460 U.S. 780, 786 n.7 (1983). Rather, *Anderson-Burdick* applies whenever "the mechanics of the electoral process" are being challenged. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995). As the RNC has explained, requiring proof of citizenship doesn't impose an undue burden on the right to vote and advances compelling government interests. *See* RNC §2(a) Br. (Doc. 161-1) at 22-32. The citizenship checks in Section 2(d) pass the *Anderson-Burdick* test for the same reasons that Section 2(a) does.

The DNC applies a different test, arguing that Section 2(d) violates an equal protection component of the Fifth Amendment. DNC Compl. 57. But that equal-protection test doesn't apply. *Anderson*, 460 U.S. at 786 n.7. Even if it did, equal protection requires only that "the classification … is rationally related to a legitimate governmental interest." *U.S. Dep.t of Agric. v. Moreno*, 413 U.S. 528, 533 (1973). The DNC agrees that the rational-basis test applies. *See* DNC Compl. 60 (citing *Moreno*, 413 U.S. at 533). The Executive Order passes rational basis because it relies on already-existing legal classifications and is rationally related to the promotion of legitimate government interests.

1. Assessing citizenship before providing voter-registration forms treats similarly situated voters alike.

The constitutional principle of equal protection is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); *see also Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975) (Fifth Amendment equal protection claims against federal actors are analyzed under the same standards as Fourteenth Amendment equal protection claims against state actors). Assessing public assistance enrollees' citizenship before giving them a voter-registration form doesn't violate equal protection because it doesn't treat similarly situated voters differently. The Executive Order itself doesn't add a proof-of-citizenship requirement for public assistance enrollees. As Section I.A explains, other federal laws require proof of citizenship for public assistance enrollees. Plaintiffs don't challenge those laws. Their equal protection claim thus challenges only the sequence in which public assistance agencies gather that information. But they don't allege that requiring proof of citizenship *before* handing applicants the registration form unjustifiably burdens qualified voters in a way that requiring proof later in the process doesn't. All of those applicants must provide proof of citizenship.

Even if Section 2(d) required an additional citizenship assessment for enrollees in public assistance programs, it still would not treat similarly situated voters differently. Public assistance enrollees can still access the federal voter-registration form without any citizenship assessment through the same avenues available to any other applicant. That is, they could register to vote outside the context of their "application" for public assistance. *Cf.* 52 U.S.C. §20508(b)(1). But when they apply for federal public assistance, they must *already provide* proof of citizenship. 8 U.S.C. §1642(a)(2)-(b). Section 2(d) does not address proof of citizenship outside of where it's already required by law. So it doesn't treat "similarly situated" voters differently. *Cf. City of Cleburne*, 473 U.S. at 439. When applying to register to vote outside the context of simultaneously

applying for public assistance, public-assistance enrollees generally wouldn't have to provide proof of citizenship.

2. Assessing citizenship before providing voter-registration forms advances compelling governmental interests.

Non-suspect classifications violate equal protection only if they are not "rationally related to a legitimate governmental interest." *Moreno*, 413 U.S. at 533. "'[T]he Supreme Court hardly ever strikes down a policy as illegitimate under rational basis scrutiny.'" *Corbitt v. Sec'y of the Ala. L. Enf't Agency*, 115 F.4th 1335, 1350 (11th Cir. 2024) (cleaned up). Where it has, it was because the only apparent interest was "bare congressional desire to harm a politically unpopular group." *Moreno*, 413 U.S. at 534; *accord Trump v. Hawaii*, 585 U.S. 667, 705 (2018). Plaintiffs don't allege any sort of animus here. The furthest they go is claiming that the Executive Order "targets only 'enrollees of public assistance programs' for extra citizenship review." *Contra* DNC Compl. 61. But that's not even true. Rather, Section 2(d) applies to "enrollees of public assistance programs" because they *already undergo* citizenship review—it doesn't require anything "extra" from them.

In any event, Section 2(d) is supported by numerous compelling interests. Its purpose is to "identify unqualified voters registered in the States." Exec. Order 14,248, §2(b). Assessing citizenship is not only rationally related to identifying applicants' citizenship—it advances the government's compelling interests in "carefully identifying all voters participating in the election process," "preserving the integrity" of elections, and safeguarding voter "[c]onfidence." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008); *accord Eu v. S.F. Cnty. Democratic Central Comm.*, 489 U.S. 214, 231 (1989); *Purcell v. Gonzalez*, 549 U.S. 1, 7 (2006) (per curiam). The DNC's Fifth Amendment claim fails because they have not introduced evidence rebutting Section 2(d) rational connection to these compelling interests.

C. Enforcing Congress's uniform "day for the election" doesn't violate the federal election-day statutes.

Congress has established a uniform election day for congressional and presidential elections. Exercising its powers to dictate the time of federal elections, *see* U.S. Const. art. I, §4, art. II, §1, Congress instructed that "the day for the election" is the "Tuesday next after the 1st Monday in November" in "every even numbered year." 2 U.S.C. §7; *see also id.* §1; 3 U.S.C. §1. "Text, precedent, and historical practice confirm this 'day for the election' is the day by which ballots must be both *cast* by voters and *received* by state officials." *Republican Nat'l Comm. v. Wetzel*, 120 F.4th 200, 203-04 (5th Cir. 2024). The Executive Order implements Congress's timing decision by directing the Attorney General to "take all necessary action to enforce" the election-day statutes against States that accept "absentee or mail-in ballots received after Election Day" for federal elections. Exec. Order 14,248, §7(a).

The DNC claims that the Executive Order violates the election-day statutes. DNC Compl. 53-54. The Fifth Circuit has rejected each argument they raise here.

1. Statutory text indicates that Congress preempted State laws permitting post-election-day ballot receipt.

Whether Congress preempted State laws allowing post-election-day ballot receipt "turns on the meaning of the term 'election' within 'the day for the election'" in the federal election-day statutes. *Wetzel*, 120 F.4th 200 at 206. The word "election" must be interpreted "consistent" with the "ordinary meaning" at "the time Congress enacted the statute." *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018) (cleaned up). "When the federal statutes speak of 'the election'" those statutes "plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder." *Foster*, 522 U.S. at 71. Voters make a conclusive choice, a final selection that concludes and consummates the election, "when the State takes custody" of all the ballots. *Wetzel*, 120 F.4th at 207. Under "the original public meaning of the federal Election Day statutes,"

States must "receive all ballots by Election Day." *Id.* at 211-12. A contrary interpretation would be "obviously absurd" because it would mean an "election" has taken place even when voters "mark their ballots and place them in a drawer" or when voters mark their ballots "and then post a picture on social media." *Id.* at 207. "[I]t makes no sense to say the electorate as a whole has made an election and finally chosen the winner before all voters' selections are received." *Id*.

The DNC raises two objections. Both misconstrue the text. First, the DNC claims that the "federal statutes are silent as to the time for ballot *receipt*." DNC Compl. 54. That argument turns a blind eye to the statute, which establishes "the day for the election." 2 U.S.C. §7. "When the federal statutes speak of 'the election,'" they constrain the actions States can take regarding the "selection of an officeholder." *Foster*, 522 U.S. at 71. Congress "establish[ed] a particular day as 'the day' on which these actions must take place." *Id.* The DNC isn't even convinced by its own argument. It claims that state laws don't violate the election-day statutes so long as they "provide for counting ballots *cast* on or before election day." DNC Compl. 17 (emphasis added). But the election-day statutes don't mention "ballot casting," either. The DNC's preferred ballot-casting rule flunks its magic-words test. Courts have thus recognized that the precise acts that States must conduct on that Tuesday in November "turns on the meaning of election within 'the day for the election.'" *Wetzel*, 120 F.4th at 206.

Second, the DNC resorts to their preferred dictionary definition of the word "election" and attempt to pare that term down to "the definitional bone." *Contra Foster*, 522 U.S. at 72. They argue that "election" as defined in a single "contemporaneous" dictionary only refers to an act of the voter. DNC PI Mot. (Doc. 53) at 42. But that's just one sense of the word. The same dictionary, for example, defines "election" as "[t]he act of choosing," (the DNC's preferred definition), but also as "the public choice of officers," and the "day of a public choice of officers." *Election*, Noah

Webster, *An American Dictionary of the English Language* (1830), perma.cc/8N7A-D3VS. The DNC ignores that the word "election" can be used in different ways. A "voter's election" is different from a "candidate's election," which is different from a "State's election." The word "election" in each of these uses carries a different meaning: the "voter's choice," the "candidate's victory," and the "State's process," respectively. When Congress used the word "election" in the federal election-day statutes, it was using the term to refer to a State's administrative process of facilitating voting – not "[a] voter's *selection* of a candidate." *Wetzel*, 120 F.4th at 207. When Congress established the "day for the election," it regulated when States could *conduct* elections. It wasn't regulating each individual voter's choice. It established the day when the State's administrative process of facilitating voting must be "consummated." *Foster*, 522 U.S. at 72 n.4. "So the election concludes when the final ballots are received and the *electorate*, not the individual *selector*, has chosen." *Wetzel*, 120 F.4th at 207.

That the DNC ignores more apt definitions undermines its argument that the Fifth Circuit "buried the dictionary definition of the term 'election.'" DNC PI Mot. 41. The Fifth Circuit contrasted definitions of the word "election" from contemporaneous dictionaries. *Wetzel*, 120 F.4th at 206 n.5. And it concluded that dictionaries alone "do not shed light on Congress's use of the word 'election' in the nineteenth century" since they largely "restate[] the federal election statutes." *Id.* So the Fifth Circuit looked to other sources, such as precedent and history.

The DNC's contentless definition of "election" empties the election-day statutes of their preemptive force. But Congress "*necessarily* displaces some element of a pre-existing legal regime erected by the States" when enacting Elections Clause legislation. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 14 (2013). "[T]he power the Elections Clause confers is none other than the power to pre-empt." *Id.* So "the reasonable assumption is that the statutory text accurately

communicates the scope of Congress's pre-emptive intent." *Id.* In the election-day statutes, Congress exercised its Elections Clause power to "override state regulations by establishing uniform rules for federal elections, binding on the States." *Foster*, 522 U.S. at 69 (cleaned up).

2. Precedent confirms that the election-day statutes preempt post-election ballot-receipt laws.

"[P]recedent" confirms that the "'day for the election' is the day by which ballots must be both cast by voters and received by state officials." *Wetzel*, 120 F.4th at 203-04. The Supreme Court recognized the preemptive force of the federal election-day statutes as early as Reconstruction. Congress's "laws fixing the time of election" had the "the effect to supersede those made by the State, so far as the two are inconsistent." *Ex parte Siebold*, 100 U.S. 371, 384-86 (1880), *abrogated on other grounds by Glasgow v. Moyer*, 225 U.S. 420 (1912). "[T]o remedy more than one evil arising from the election of members of congress occurring at different times in the different states," Congress "required all the elections for such members to be held on the Tuesday after the first Monday in November." *Ex Parte Yarbrough*, 110 U.S. at 661. "Will it be denied that it is in the power of that body to provide laws for the proper conduct of those elections?" *Id.* "These questions answer themselves." *Id.* at 662.

The DNC argues that *Wetzel* is an outlier. DNC PI Mot. 41. But it's the only federal court decision to reach a final judgment on the merits of the post-election ballot receipt issue. The cases the DNC argues contradict *Wetzel* were either vacated, decided on standing, decided in an emergency posture, or didn't raise the issue. *See, e.g.*, *Bognet v. Sec'y of Pa.*, 980 F.3d 336 (3d Cir. 2020), *vacated*, 141 S. Ct. 2508 (2021); *Millsaps v. Thompson*, 259 F.3d 535, 536-37 (6th Cir. 2001) (concerned early voting, not post-election ballot receipt); *Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 736 (N.D. Ill. 2023) (decided on standing), *affirmed*, 114 F.4th 634 (7th Cir. 2024), *cert. granted*, No. 24-568 (S. Ct.); *RNC v. Burgess*, 2024 WL 3445254, at *2 (D. Nev.)

(decided on standing), *on appeal*, No. 24-5071 (9th Cir.); *Donald J. Trump for President v. Way*, 492 F. Supp. 3d 354, 372 (D.N.J. 2020) (preliminary injunction on eve of election); *Harris v. Fla. Elections Canvassing Comm'n*, 122 F. Supp. 2d 1317, 1325 (N.D. Fla. 2000) (concerned counting of votes, not the ballot-receipt deadline); *DNC v. Wis. State Legislature*, 141 S. Ct. 28, 34 (2020) (Kavanaugh, J., concurring) (*supporting* validity of state law establishing election-day deadline for mail-ballot receipt); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 368 n.23 (Pa. 2020) (single *dicta* footnote from a case applying the Pennsylvania Constitution's Free and Equal Elections Clause, not the federal election-day statutes). That the Fifth Circuit confronted and dismissed these inapplicable cases only underscores the dearth of authority for the DNC's position.

Wetzel doesn't stand alone. It relies on the "teach[ing]" of *Foster*, which is binding precedent. *Wetzel*, 120 F.4th at 206-07. In *Foster v. Love*, the Supreme Court held that the election-day statutes preempted Louisiana's "open primary" law. 522 U.S. at 69-70. Under Louisiana's system, if a candidate received a straight majority in the open primary, the State didn't hold additional voting for the general election. *Id*. The Supreme Court held that closing the election before election day violates the statutes "establishing a particular day as 'the day' on which these actions must take place, … a matter on which the Constitution explicitly gives Congress the final say." *Id.* at 71-72. "*Foster* is instructive on the meaning of 'election.'" *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 775 (5th Cir. 2000). And it rejected the DNC's magic-words test. Even though the election-day statutes don't explicitly mention open primaries, Louisiana's law conflicted with the meaning of "the day for the election" because it "consummated" the election "prior to federal election day." *Foster*, 522 U.S. at 72 n.4.

Foster thus "teaches" that an "election" has "three definitional elements:" official action, finality, and consummation. *Wetzel*, 120 F.4th at 206. The DNC's individual-voter definition of

"election" contains none of those elements. DNC PI Mot. 42. Under *Foster*'s definition of "election," a voter's delivery of the ballot is just one half of the "combined actions of voters and officials." 522 U.S. at 71. Election officials' receipt is the other half.

The DNC also complains of the Fifth Circuit's reliance on a "1944 Montana state court decision" to conclude that a voter's "final selection" requires ballot receipt by election officials. DNC PI Mot. 42 (citing *Maddox v. Bd. of State Canvassers*, 149 P.2d 112 (1944)). That argument ignores the heart of the Fifth Circuit's opinion, which primarily relies on the "teach[ing]" of *Foster*. *Wetzel*, 120 F.4th at 206-07. In any event, *Maddox* is directly on point. The court confronted "unusual provisions" of state law that permitted a "seven weeks delay after the statutory election day for the depositing of military ballots with election officials." *Maddox*, 149 P.2d at 114. Because the law "extend[ed] beyond the election day the time within which voters' ballots may be received by the election officials for the election of presidential electors, it is in conflict with the constitutional congressional Act which requires the electing to be done on election day." *Id.* at 115. The court even noted that "[a] diligent search has disclosed no authorities nor precedents to the contrary." *Id.* And it rejected the same ballot-casting argument the DNC makes here, since "[n]othing short of the delivery of the ballot to the election officials for deposit in the ballot box constitutes casting the ballot." *Id.* Based on these elements, the "day for the election" must be "the day by which ballots must be both *cast* by voters and *received* by state officials." *Wetzel*, 120 F.4th at 204.

3. History shows that "the day for the election" means the day ballots are received by election officials.

In 1845, Congress shortened a "a 34-day period" for appointing presidential electors to a one-day period "on the Tuesday after the first Monday in November." *Id.* at 204 (cleaned up). In 1872, Congress extended the same "election day" to congressional elections. *Keisling*, 259 F.3d at 1173. In doing so, it rejected "an amendment to allow multi-day voting." *Id.* "[A]t the time"

Congress passed the election-day statutes, "voting and ballot receipt necessarily occurred at the same time." *Wetzel*, 120 F.4th at 209. This historical practice "[a]t the time of the Act's adoption" is primary evidence of the original public meaning of the statute. *Wis. Cent.*, 585 U.S. at 276-77. And "historical practice" is "particularly pertinent when it comes to the Elections and Electors Clauses." *Moore v. Harper*, 600 U.S. 1, 32 (2023).

When States introduced absentee voting during the Civil War, they continued to require ballots to be deposited with election officials by election day. During the war, States employed two methods to ensure that soldiers deployed across the nation could still exercise their right to vote. Josiah Henry Benton, *Voting in the Field* 5 (1915), perma.cc/QEY2-92FK. The first method was "voting in the field," where an election official took the ballot box to the soldiers to enable them to cast their ballots. *Id.* at 15. Through this method, the soldier's "connection with his vote ended when he put it in the box, precisely as it would have ended if he had put it into the box in his voting precinct, at home." *Id.* The second method, "proxy voting," enabled an authorized agent to take the soldier's ballot and cast it into the ballot box back home. *Id.* The soldier's agent would deliver his ballot, "[o]n the day of the election, between the opening and the closing of the polls." *Id.* at 145 (describing New York's procedure). Under both methods, all ballots were received by election officials no later than election day.

By Reconstruction, the election-day statutes' preemptive force was well established. That pre-enactment history is generally the best source of fixed public meaning. *See N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1, 60-62 (2022). But the DNC relies exclusively on *post*-enactment history, all but conceding that for "over a century" after Congress established a uniform federal election-day, "it was almost impossible to count a ballot received after Election Day." *Wetzel*, 120 F.4th at 209-10. And the post-enactment evidence the DNC offers is weak. As even the DNC

acknowledges, as late as 1986 only twelve States permitted post-election receipt of ballots. *See* DNC PI Mot. 28-29 (citing *Uniformed and Overseas Citizens Absentee Voting: Hearing on H.R. 4393*, 99th Cong. 21 (Feb. 6, 1986)). Those few "late-in-time outliers" say nothing about the original public meaning of the election-day statutes. *Cf. Bruen*, 597 U.S. at 70. History then supports the conclusion that when Congress passed the statutes establishing a uniform "day for the election," election day in America was ballot receipt day. "By necessity, early American voting occurred contemporaneously with receipt of votes." *Wetzel*, 120 F.4th at 209.

4. The President can enforce the election-day statutes.

The DNC argues that even if the federal election-day statutes preempt post-election ballot receipt, those laws "contain no provision empowering the Attorney General to 'enforce' them against the States." DNC Compl. 54. But even if "there exists no statute authorizing" the President to enforce a federal law, he can carry out "the enforcement of acts of congress." *Cunningham*, 135 U.S. at 58, 64. That power is "implied by the nature of the government under the constitution." *Id.* at 64. The "incidental powers" belonging to the President include "the power to perform" his constitutional duty to take care that the laws are faithfully executed by exercising the "supervisory and policy" authority necessary for the "enforcement of federal law." *Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982) (cleaned up). And the President's "completion power" gives him "authority to prescribe incidental details needed to carry into execution a legislative scheme, even in the absence of any congressional authorization to complete that scheme." Jack Goldsmith & John F. Manning, *The President's Completion Power*, 115 Yale L.J. 2280, 2282 (2006). The President's constitutional authority to ensure the faithful execution of the laws allows him, acting through his Attorney General, to provide protection for federal elections to ensure they are conducted in accordance with the federal election-day statutes. This power is "necessarily implied from the nature of the

functions" confided to the President by Article II, as "[a]mong these, must necessarily be included the power to perform them." *Nixon*, 457 U.S. at 749 (quoting Justice Story).

If the President cannot enforce federal election laws, it would be impossible for the federal government to vindicate the "uniquely important national interest" in the proper structuring of federal elections. *Anderson*, 460 U.S. at 794-95. "The 'patchwork'" of State ballot receipt deadlines that will inevitably result from depriving the President of the authority to enforce the federal election-day statutes "could dramatically change the behavior of voters, parties, and States across the country, in different ways and at different times." *Cf. Trump v. Anderson*, 601 U.S. 100, 116-17 (2024). States could circumvent Congress's laws with impunity and "sever the direct link that the Framers found so critical between the National Government and the people of the United States." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 822 (1995). "Nothing in the Constitution requires that we endure such chaos." *Trump*, 601 U.S. at 117.

Moreover, the President's Take Care Clause responsibilities oblige him to use the executive power to enforce the Constitution. *Cf.* Arthur S. Miller, *The President and Faithful Execution of the Laws*, 40 Vand. L. Rev. 389, 402 (1987) ("In *Cooper v. Aaron* the [Supreme] Court unanimously rejected an argument that the President's take-care duty did not permit the use of troops to enforce *Brown v. Board of Education* because, so the argument went, only statutes are to be included in the term 'laws' in the faithful execution clause."). And the Constitution's protection extends not only to the act of voting itself but also to ensuring that votes "are protected from the diluting effect of illegal ballots." *Gray v. Sanders*, 372 U.S. 368, 380 (1963); *accord Baker v. Carr*, 369 U.S. 186, 208 (1962). That's because "the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." *Burdick*

v. Takushi, 504 U.S. 428, 441 (1992). Section 7(a) is thus an exercise of the President's constitutional duty to ensure that the integrity of the right to vote is protected against unlawful votes.

II. Plaintiffs' *ultra vires* claims fail as a matter of law.

Plaintiffs' *ultra vires* claims fail because the Executive Order doesn't disregard any specific and unambiguous statutory directive. Rather, the Executive Order is a valid exercise of the President's executive, investigative, and prosecutorial powers under Article II. And it doesn't unlawfully intrude upon congressional authority.

First, the Executive Order doesn't contravene any clear statutory command. To state an *ultra vires* claim, Plaintiffs must show that the challenged provisions violate "a specific command of a statute." *Fed. Express Corp. v. U.S. Dep't of Com.*, 39 F.4th 756, 764 (D.C. Cir. 2022) (cleaned up). The overstep must be "plain on the record and on the face of the statute." *Id.* This "demanding standard is necessary because *ultra vires* review seeks the intervention of an equity court" on "the assumption that Congress has not barred judicial comparison of [Executive] action with plain statutory commands." *Id.* Each of Plaintiffs' *ultra vires* claims fail because they have not shown that the provisions they challenge contravene any "specific prohibition" that is "clear and mandatory." *Changji Esquel Textile Co. v. Raimondo*, 40 F.4th 716, 722 (D.C. Cir. 2022) (cleaned up); *see also*, *New York v. Trump*, 767 F. Supp. 3d 44, 82 (S.D.N.Y. 2025) ("the language" of the statutes invoked by Plaintiffs "does not so clearly prohibit the DOGE Team's access to these systems that it rises to the extraordinary level of an *ultra vires* violation"). As Section I explains, nothing in the Executive Order contradicts the NVRA, the APA, or any other federal law. Plaintiffs' *ultra vires* claims thus fail.

Second, enforcing the uniform national election day doesn't violate the Constitution. Plaintiffs maintain that under the federal election-day statutes, "State election laws may be pre-empted only by Congress, not presidential directive." LULAC Compl. 46. But Congress *has* pre-empted

State election laws by requiring a uniform "day for the election." 2 U.S.C. §§1, 7; 3 U.S.C. §1. Congress passed those laws under its authority in the Elections and Electors Clauses, which confer "none other than the power to pre-empt." *Inter Tribal Council*, 570 U.S. at 14. Congress thus "*necessarily* displace[d] some element of a pre-existing legal regime erected by the States" when it established the uniform national election day. *Cf. id*. The Executive Order implements Congress's preemptive law, but the Executive Order itself isn't doing the preempting. That's why before the President had even promulgated the order, the Fifth Circuit held that "federal law does not permit" States to accept ballots after the federal election day. *Wetzel*, 120 F.4th at 215. Congress has already preempted state laws accepting ballots received after the federal election day. *See supra* Section I.C.1-3. The Executive Order enforces Congress's statutes, so Plaintiffs' *ultra vires* claim fail.

CONCLUSION

For these reasons, the Court should grant the RNC's summary judgment motion.

Dated: August 20, 2025

Respectfully submitted,

/s/ Thomas R. McCarthy

Lee E. Goodman (D.C. Bar 435493)
Michael Columbo (D.C. Bar 476738)
DHILLON LAW GROUP
2121 Eisenhower Ave., Ste. 608
Alexandria, VA 22314
(415) 433-1700
lgoodman@dhillonlaw.com
mcolumbo@dhillonlaw.com

*Admitted *pro hac vice*

Thomas R. McCarthy (D.C. Bar 489651)
Gilbert C. Dickey (D.C. Bar 1645164)
Conor D. Woodfin (D.C. Bar 1780807)
William Bock IV* (Ohio Bar 0105262)
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, Virginia 22209
(703) 243-9423
tom@consovoymccarthy.com
gilbert@consovoymccarthy.com
conor@consovoymccarthy.com
wbock@consovoymccarthy.com

Counsel for Intervenor-Defendant
The Republican National Committee