

No. 25-1726

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

STATE OF CALIFORNIA; STATE OF NEVADA; COMMONWEALTH OF MASSACHUSETTS; STATE OF ARIZONA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WISCONSIN,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS U.S. PRESIDENT; PAMELA BONDI, IN HER OFFICIAL CAPACITY AS U.S. ATTORNEY GENERAL; U.S. ELECTION ASSISTANCE COMMISSION; DONALD L. PALMER, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE U.S. ELECTION ASSISTANCE COMMISSION; THOMAS HICKS, IN HIS OFFICIAL CAPACITY AS VICE CHAIR OF THE U.S. ELECTION ASSISTANCE COMMISSION; CHRISTY MCCORMICK, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE U.S. ELECTION ASSISTANCE COMMISSION; BENJAMIN W. HOVLAND, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE U.S. ELECTION ASSISTANCE COMMISSION; PETE HEGSETH, IN HIS OFFICIAL CAPACITY AS SECRETARY OF DEFENSE,

Defendants-Appellants.

On Appeal from the United States District Court for the District of Massachusetts

**BRIEF OF DEMOCRATIC GOVERNORS ASSOCIATION, DSCC, DCCC, HAKEEM S. JEFFRIES, AND CHARLES E. SCHUMER AS
AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES
AND AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amici Curiae* submit the following corporate disclosure statement:

Democratic Governors Association has no parent corporation and no publicly held corporation has any ownership interest in it.

DSCC, also known as the Democratic Senatorial Campaign Committee, has no parent corporation and no publicly held corporation has any ownership interest in it.

DCCC, also known as the Democratic Congressional Campaign Committee, has no parent corporation and no publicly held corporation has any ownership interest in it.

January 12, 2026

/s/ Lalitha D. Madduri
Lalitha D. Madduri

RULE 29 STATEMENT

All parties consent to the filing of this brief. No part of this brief was authored, in whole or in part, by counsel for any party, and no person other than *Amici* contributed any money to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(2), (a)(4).

January 12, 2026

/s/ Lalitha D. Madduri
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INTERESTS OF *AMICI CURIAE*

Amici curiae—Democratic Governors Association (DGA), Democratic Senatorial Campaign Committee (DSCC), Democratic Congressional Campaign Committee (DCCC), Charles E. Schumer, and Hakeem S. Jeffries—include national party organizations for the Democratic Party and the Party’s Leaders in the U.S. House of Representatives and the U.S. Senate.

DGA is a political organization dedicated to supporting Democratic governors and electing Democratic gubernatorial candidates across the United States. DGA works with candidates to educate Democratic voters and support voter registration and protection efforts. DGA also supports incumbent governors, including the governors of Plaintiff states, by serving as a clearinghouse for best practices in the administration of federal elections.

DSCC is the Democratic Party’s national senatorial committee, and its mission is to elect Democratic candidates to the U.S. Senate. DCCC is the Democratic Party’s national congressional committee, and its mission is to elect Democratic candidates to the U.S. House of Representatives. Like DGA, DSCC and DCCC each invest heavily in supporting their

candidates and the voters who support them in federal elections. *Amici* have members in all 50 states, and they will be competing in upcoming federal elections.

The Executive Order challenged in this case—described by the White House as the most far-reaching effort by a U.S. President to affect federal elections in the nation’s history¹—is plainly designed to harm *Amici*’s electoral prospects. The Executive Order, among other things, disproportionately threatens *Amici*’s voters’ access to the franchise and forces *Amici* to expend substantial resources counteracting such harm.

Shortly after the President signed the Executive Order last spring, *Amici* sued in the U.S. District Court for the District of Columbia, challenging several Executive Order provisions. The overlapping provisions at issue in this appeal are:

- Section 2(a), which directs the Election Assistance Commission (“EAC”) to impose a documentary proof-of-citizenship requirement on the national mail voter registration form;

¹ American Presidency Project, *Remarks at a Document Signing Ceremony and Meeting With United States Ambassadorial Nominees and an Exchange With Reporters* (March 25, 2025), <https://perma.cc/76RU-4N9B>.

- Section 3(d), which directs the Secretary of Defense to impose a similar requirement on the Federal Post Card Application used for military and overseas voters; and
- Section 7(a), which directs the Attorney General to take all available enforcement action against states that count ballots mailed by Election Day but received after Election Day.

In April 2025, the D.C. district court preliminarily enjoined similar defendants as named in this action (the “Government”) from enforcing Section 2(a). *League of United Latin Am. Citizens v. Exec. Off. of the President (LULAC I)*, 780 F. Supp. 3d 135 (D.D.C. 2025).² In the same order, the district court denied *Amici*’s motion for a preliminary injunction against Section 7(a), noting that *States* with ballot receipt deadlines after election day—as directly regulated parties—were best positioned to seek preliminary relief as to that provision. *Id.* at 214. No parties appealed.

In October, the district court granted *Amici*’s motion for partial final judgment and permanently enjoined enforcement of Section 2(a).

² The district court granted *Amici*’s motion to consolidate the action with two other cases challenging parts of the Executive Order that had been filed in the same district. *LULAC I*, 780 F. Supp. 3d at 169.

League of United Latin Am. Citizens v. Exec. Off. of President (LULAC II), --- F. Supp. 3d ----, No. 25-cv-0946, 2025 WL 3042704 (D.D.C. Oct. 31, 2025). The Government has docketed an appeal of that order. *Amici*'s separate motion for summary judgment on their claims against Sections 3(d) and 7(a) (among other provisions) remains pending.

Given the substantial overlap between the claims at issue in *Amici*'s case and this action, *Amici* have a direct interest in the Court's resolution of this appeal. *Amici* further seek to assist the Court by providing context regarding conflicting representations, highlighted in the parties' briefing, made by the Government in the district court proceedings below and in D.C.

INTRODUCTION

Executive Order 14,248 brazenly flouts statutory and constitutional law. As relevant here, Section 2(a) of the Executive Order commands the EAC to require voters to submit documentary proof of citizenship when they register with the national mail voter registration form, despite a law requiring the EAC to exercise its own judgment—in tandem with States—in setting the form’s requirements. Section 3(d) similarly commands the Secretary of Defense to require military and overseas voters to submit documentary proof of citizenship when they use the Federal Post Card Application to apply for a ballot, despite a law limiting the scope of the application to the post card itself. And Section 7(a) commands the Attorney General to take enforcement action against States that accept timely cast ballots after Election Day, despite the fact that ballot receipt deadlines are a “policy choice” that is fully entrusted to the States. *DNC v. Wis. State Legis.*, 141 S. Ct. 28, 34 (2020) (Kavanaugh, J., concurring). Courts across the country have properly enjoined the Government from enforcing any of these illegal mandates. *See* Addendum 45-46; *Washington v. Trump*, --- F. Supp. 3d ----, No. 2:25-cv-00602-JHC, 2026 WL 73866 (W.D. Wash. Jan. 9, 2026) (permanently

enjoining Sections 2(a), and 7(a)); *League of United Latin Am. Citizens v. Exec. Off. of President (LULAC II)*, No. 25-cv-0946, 2025 WL 3042704 (D.D.C. Oct. 31, 2025) (permanently enjoining Section 2(a)).

The Government defends the Executive Order by attempting to rewrite it. Projecting the Executive Order in soft focus, the Government challenges the ripeness of the States' claims by proposing that the Order hardly requires anything at all. In its telling, Section 2(a) merely invites a friendly "consultation" between the EAC and State officials, Appellants' Br. 14; Section 3(d) leaves "unclear" whether the Secretary of Defense will do as told, *id.* at 15; and Section 7(a) preserves the possibility that the Attorney General's enforcement efforts will go no further than anodyne correspondence, *see id.* at 36-37. Regrettably, however, the Executive Order's text is not so innocuous. In coldly certain terms, it dictates strict directives: the EAC and Secretary of Defense *shall require* documentary proof of citizenship with the respective forms, and the Attorney General *shall enforce* an Election Day ballot-receipt deadline. *See* EO §§ 2(a), 3(d), 7(a). Because States will be injured by any such actions, their claims are ripe.

Ever searching for a procedural escape hatch, the Government

concludes by proposing a modification of the injunction. It seeks permission to add instructions to the Federal Form and Federal Post Card Application requiring documentary proof of citizenship only from residents of States that are not plaintiffs in this action. *See* Appellants’ Br. 41-43. But that misperceives the fundamental nature of these documents. There is one Federal Form and one Federal Post Card Application, not bespoke versions for each State. The Government may not change those national forms to require unlawful instructions.

The Court should affirm the judgment below.

ARGUMENT

- I. The district court correctly held that the challenged Executive Order provisions are likely unlawful.**
 - A. The Executive Order’s proof-of-citizenship mandates violate the separation of powers and conflict with federal statutes.**

The Government does not attempt any argument that the directive in Section 2(a) requiring the EAC to add a proof-of-citizenship requirement to the Federal Form is itself lawful. As the States explain, that is for good reason: Neither the Constitution nor any statute allows the President to unilaterally “direct the EAC to change the content of the Federal Form.” Answering Br. 18; *see also LULAC II*, 2025 WL 3042704,

at *25-33 (“Because Section 2(a) cannot lawfully be implemented under our Constitution, Plaintiffs are entitled to judgment on the merits of their constitutional claims regarding that provision.”); *Washington*, 2026 WL 73866, at *25-*27.

The Government instead hangs its hat on regurgitated theories that (1) catch-all savings clauses insulate the provision from scrutiny, and (2) the district court erred in referencing Government counsel’s concession in *LULAC* that Section 2(a) does in fact, as the text says, require the EAC to add proof-of-citizenship to the Federal Form, regardless of the outcome of any consultation process. *See* Appellants’ Br. 17-24. Neither has merit.

1. The Government argues that—in light of the Executive Order’s generic, boilerplate “savings” clauses—the Court should assume that the EAC will carry out the Order only to the extent it is lawful. Appellants’ Br. 20-21. In pressing this argument, the Government relies solely on the D.C. Circuit’s opinion in *Building and Construction Trades Department v. Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002). But *Allbaugh*’s reasoning supports the district court’s holding here.

In *Allbaugh*, the D.C. Circuit considered an executive order that

barred agencies from requiring or prohibiting contractors from entering into labor agreements “to the extent permitted by law.” 295 F.3d at 29. In concluding the order was not amenable to challenge, that court noted that the plaintiffs were not challenging a specific “command” but instead seeking to enjoin a broader provision based on a hypothetical way in which it could be enforced. *See id.* at 34 (reasoning that the “mere possibility that some agency might make a legally suspect decision” in implementation “does not justify an injunction against enforcement”).

The States’ challenge to Section 2(a) is entirely different, as it targets a specific “command” in the Executive Order that, if implemented, would violate federal law on its own terms. *LULAC I*, 780 F. Supp. 3d at 186. Thus, contrary to the Government’s argument, this Court need not “speculate” as to any aspect of the action being challenged because the directive in the Order itself specifies the mandate the States challenge. *Id.* In fact, the *LULAC* court—which is bound by *Allbaugh*—twice examined the same opinion and twice rejected the Government’s argument based on this reasoning. *LULAC I*, 780 F. Supp. 3d at 186; *LULAC II*, 2025 WL 3042704, at *21.

The other Circuits to have addressed the issue have reached the

same conclusion. *See City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1240 (9th Cir. 2018) (discussing *Allbaugh*); *Hias, Inc. v. Trump*, 985 F.3d 309, 325 (4th Cir. 2021) (“We reject the government’s attempt to immunize the Order from review through a savings clause which, if operational, would nullify the ‘clear and specific’ substantive provisions of the Order.”). This Court should do the same.

2. The Government also complains that the district court enjoined enforcement of Section 2(a) “on the basis of counsel’s” concession at a preliminary injunction hearing in the *LULAC* case that the provision requires the EAC to add a proof-of-citizenship requirement to the Federal Form. Appellants’ Br. 23 (citation omitted). Regardless of whether estoppel plays a role, *see* Answering Br. 26, the issue is of no moment. To be clear, neither the district court in this case nor the district court in *LULAC* based any holding that the Executive Order requires the EAC to implement a documentary proof of citizenship requirement on the representation of counsel. *LULAC II*, 2025 WL 3042704, at *30 & n.41; *see* Addendum 17-20. Instead, that holding flows directly from the provision’s text, and counsel in *LULAC* merely agreed with the Court upon questioning about what the words of the Order say. *LULAC II*, 2025

WL 3042704, at *30 & n.41.

B. The Fifth Circuit decision that the Government cites to justify the Executive Order’s ballot-receipt deadline was clearly wrong.

The Election Day Statutes, which specify “the day for the election,” 2 U.S.C. § 7, and provide that presidential electors must “be appointed . . . on election day,” 3 U.S.C. § 1, do not speak to when timely cast ballots must be received or tabulated by officials. Consistent with the Election Day Statutes, then, many states accept and count mail ballots received by election officials after Election Day as long as the marked ballots were mailed on or before Election Day. *See* Answering Br. 9. As the district court recognized, Section 7(a) intrudes on states’ prerogative to regulate elections in this way by commanding the Attorney General to punish states that fail to comply with the President’s preferred Election Day ballot-receipt deadline. *See* Appellants’ Addendum 5, 29-32.

The Government’s cursory defense of Section 7(a) rests entirely on a poorly reasoned, outlier Fifth Circuit decision that the Supreme Court will review this term. *See* Appellants’ Br. 38-41 (citing *Republican Nat’l Comm. v. Wetzel*, 120 F.4th 200 (5th Cir. 2024), *certiorari granted*, *Watson v. Republican Nat’l Comm.*, No. 24-1260, 2025 WL 3131802 (U.S.

Nov. 10, 2025)). In construing the Election Day Statutes to require mail ballots to be received by Election Day, the *Wetzel* panel’s logic is rife with error from top to bottom. *See Washington*, 2026 WL 73866, at *31-35 - (cataloguing errors in *Wetzel*’s analysis of the statutory text, legislative purpose, and historical practice); *Republican Nat’l Comm. v. Wetzel*, 132 F.4th 775, 779-89 (5th Cir. 2025) (Graves, J., dissenting from denial of rehearing en banc, similar); *see also id.*, at 789-90 (Higginson, J., similar).

1. The Fifth Circuit’s textual analysis is grossly flawed.

In holding that the Election Day Statutes require an Election Day ballot-receipt deadline, *Wetzel* badly misread them. First, the panel effectively ignored the Election Day Statutes’ operative language, burying in a footnote the dictionary definition of the critical term “election.” 120 F.4th at 206 n.5. Contrast that cavalier disinterest with the Supreme Court’s decision in *Foster v. Love*, 522 U.S. 67 (1997), which looked to a dictionary contemporaneous with the Election Day Statutes’ enactment to construe an “election” as the “[t]he act of *choosing* a person to fill an office.” *Id.* at 71 (emphasis added) (citing N. Webster, *An American Dictionary of the English Language* 433 (C. Goodrich & N. Porter eds. 1869)); *see also New Prime Inc. v. Oliveira*, 586 U.S. 105, 113

(2019) (recognizing the “fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute” (citation modified)).³ Hence the Supreme Court’s conclusion in *Foster* that the Election Day Statutes impose only a date for “final selection” by voters, which is necessarily distinct from official receipt. 522 U.S. at 73; *see also U.S. v. Classic*, 313 U.S. 299, 318 (1941) (explaining “election” refers to “the expression by qualified electors of their choice of candidates”); *Newberry v. United States*, 256 U.S. 232, 250 (1921) (defining “election” as the “final choice of an officer by the duly qualified electors”).

The Fifth Circuit circularly concluded that because dictionary definitions of “election” do not make “mention of deadlines or ballot receipt,” those definitions must be irrelevant. *Wetzel*, 120 F.4th at 206

³ Other contemporaneous dictionaries are in accord. *See, e.g., New Dictionary of the English Language* 649 (Charles Richardson ed., 1846) (defining “elect” as “[t]o choose or pick out”); N. Webster, *An American Dictionary of the English Language* (1st ed. 1828) (“1. The act of choosing; choice; the act of selecting one or more from others. Hence appropriately, 2. The act of choosing a person to fill an office or employment by any manifestation of preference, as by ballot, uplifted hands, or viva voce; as the election of a king, of a president, or a mayor.”); *Black’s Law Dictionary* 608 (Rev. 4th ed. 1968) (“The selection of one person from a specified class to discharge certain duties in a state, corporation, or society.”).

n.5. Quite the opposite—the fact that definitions of “election” say nothing about ballot receipt only confirms that Congress did not intend to regulate that aspect of state’s election administration. *See Millsaps v. Thompson*, 259 F.3d 535, 548 (6th Cir. 2001) (recognizing Congress’s actual purposes in enacting the Election Day Statutes: “to prevent early elections in one State from influencing those in States voting later, to remove the burden of voting in multiple elections in a single year, and to minimize the opportunity for voters to cast ballots in elections held in more than one State”).

The Fifth Circuit also emphasized a distinction between “[a] voter’s *selection* of a candidate” and “the public’s *election* of a candidate.” *Wetzel*, 120 F.4th at 207. But it had no adequate explanation for why this distinction matters. Mississippi law—like the laws in Plaintiff States—requires *every* voter to complete and surrender their ballot by election day; whether the focus is on an individual voter or the whole electorate, the choice has been made. And while the identity of the candidate that the public has elected is not *known* until all ballots have been received, it also is not known until all ballots have been counted and the election has been certified. Despite the Fifth Circuit’s acknowledgement that

counting and certification could occur after Election Day, it had no adequate explanation for why receipt could not. *See id.*

More broadly, the Fifth Circuit seems to have thought that federal law must have *something* to say about ballot receipt deadlines, so it cast about for extra-textual clues about what the deadline might be. That was error. Election law—even for federal elections—is primarily state law, and federal law does not answer every election administration question. *See Moore v. Harper*, 600 U.S. 1, 10 (2023). And whether a state election law “conflicts” with a federal statute is a “straightforward textual question.” *Arizona v. Inter Tribal Council of Ariz., Inc. (ITCA)*, 570 U.S. 1, 9 (2013); *see also Kansas v. Garcia*, 589 U.S. 191, 208 (2020) (“[A]ll preemption arguments[] must be grounded ‘in the text and structure of the statute at issue.’” (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993))). Having found no basis for preemption in the text of the relevant statutes, the Fifth Circuit should have gone no further.

2. The Fifth Circuit’s reliance on a Montana state court decision is misplaced.

The *Wetzel* panel excessively relied on a single irrelevant decision—a 1944 Montana state court decision resolved under Montana law—for the proposition that, as a matter of federal law, a voter’s “final selection”

requires ballot receipt by election officials. *Wetzel*, 120 F.4th at 208 (citing *Maddox v. Bd. of State Canvassers*, 149 P.2d 112 (Mont. 1944)). But *Maddox* held only that mail ballots had to be received by Election Day “since the state law provides for voting by ballots deposited with the election officials” by that day. *Maddox*, 149 P.2d at 115; *see also id.* (further explaining that Montana law required that ballots be “delivered to the election officials and deposited in the ballot box before the closing of the polls on election day”). Nothing in *Maddox* suggested this rule was federalized through the Election Day Statutes. In fact, *Maddox* extensively discussed an earlier Montana decision—*Goodell v. Judith Basin County*, 224 P. 1110, 1112 (Mont. 1924)—recognizing that other states, like New Hampshire, prescribed different rules. In those states, “the elector parts with all control over his ballot and has in fact voted when the ballot is marked and deposited in the mail addressed to the proper election officer.” *Goodell*, 224 P. at 1113 (citing *In re Opinion of the Justices*, 113 A. 293 (N.H. 1921)); *see also Burke v. State Bd. of Canvassers*, 107 P.2d 773, 778 (Kan. 1940) (explaining that in Kansas a “vote is cast when the ballot is marked . . . [and] placed in envelopes and mailed on election day”). More telling still, *Maddox* is no longer good law

even within Montana because the legislature there has amended state law to permit post-election day receipt for overseas and military voters. See Mont. Code § 13-21-226(1).

3. Federal law permits post-election ballot-receipt deadlines.

The *Wetzel* panel also improperly disregarded related federal statutes that recognize and incorporate states' post-election ballot-receipt deadlines. Congress has repeatedly passed statutes, like UOCAVA, that directly acknowledge and incorporate into federal law state "deadline[s] for receipt of the State absentee ballot under State law." 52 U.S.C. § 20303(b)(3); see also *id.* § 20304(b)(1) (requiring officials to count overseas and military ballots for federal elections if received by "the date by which an absentee ballot must be received in order to be counted in the election."). The text of UOCAVA makes plain that Congress chose to incorporate preexisting "deadline[s] for receipt of the State absentee ballot under State law" as the default deadlines for UOCAVA voters. *Id.* § 20303(b)(3). Congress adopted this language knowing that, at the time, "[t]welve [States] ha[d] extended the deadline for the receipt of voted ballots to a specified number of days after the election." *Uniformed and Overseas Citizens Absentee Voting: Hearing on*

H.R. 4393, 99th Cong. 21 (Feb. 6, 1986) (Statement of Henry Valentino, Director, Federal Voting Assistance Program).

4. Post-election ballot-receipt deadlines are consistent with historical practice.

Finally, the *Wetzel* panel casually dismissed longstanding state practice—of which Congress was well aware—as nothing but a few “outliers.” *Wetzel*, 120 F.4th at 211 (quoting *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022)). In fact, the history “from around the adoption” of the Election Day Statutes further supports the conclusion that they do not preempt state ballot receipt deadlines. *Bruen*, 597 U.S. at 60.

During the Civil War, after adoption of 3 U.S.C. § 1 and before the adoption of 2 U.S.C. § 7, many States permitted soldiers in the field to cast their ballots on Election Day, such that they were later transmitted to election officials for tabulation after Election Day. See Josiah Henry Benton, *Voting in the Field: A Forgotten Chapter of the Civil War* 171-73, 186-87, 190 (1915). Over the following 150 years, States continued to exercise their authority to accept ballots received after Election Day; the Government identifies nothing from that period indicating any belief or concern from State legislatures or Congress that such laws might clash

with the Election Day Statutes.

The Fifth Circuit suggested that this form of “field voting involved soldiers directly placing their ballots into official custody with no carrier or intermediary,” such that the “act of voting simultaneously involved receipt by election officials.” *Wetzel*, 120 F.4th at 210. Not so. While some States deputized military officers as election officials, others did not. Nevada, Rhode Island, and Pennsylvania, for example, allowed ballots to be placed under the charge of high commanding officers without any such designation, meaning they were not *received* by election officials until after the election. 1866 Nev. Stat. at 215; *Benton* at 171-73, 186-87, 190. And either way, the Fifth Circuit did not explain why calling military officers “election officials” would change the analysis, when their role is the same as the Postal Service’s role today—to convey the ballots to the real election officials who will then count them. Congress enacted 2 U.S.C. § 7 just seven years after the Civil War, with this practice fresh in mind, but it said nothing to suggest disapproval of it. And Congress did not amend 3 U.S.C. § 1 to disturb the common understanding that presidential ballots completed and surrendered by voters on Election Day could be received and counted *after* Election Day.

The Fifth Circuit was further wrong to say World War I-era laws provided that “a ballot could be counted only if *received* by Election Day.” *Wetzel*, 120 F.4th at 210. And it was wrong to say that, by 1938, only a single State permitted post-election day ballot receipt because “it was almost impossible to count a ballot received after Election Day.” *Id.*⁴ In fact, in the early 20th century, States adopted a variety of models of non-military absentee voting, consistent with the States’ “constitutional duty to craft the rules governing federal elections” wherever Congress has not acted to displace them. *Moore*, 600 U.S. at 29. At least seven States permitted an absent voter to cast a ballot elsewhere within the State on Election Day and then have that ballot mailed back to election officials in the voter’s home precinct after Election Day to be added into the count. P. Orman Ray, *Absent Voters*, 8 Am. Pol. Sci. Rev. 442, 442-43 (1914) (Kansas, Missouri); P. Orman Ray, *Absent-Voting Laws, 1917*, 12 Am. Pol. Sci. Rev. 251, 253-54 (1918) (Washington, New Mexico, Oklahoma);

⁴ The Fifth Circuit’s own cited source contradicts that claim. See Paul G. Steinbicker, *Absentee Voting in the United States*, 32 Am. Pol. Sci. Rev. 898, 905-06 (1938) (stating that all but one of the 42 States with absentee voting laws at that time had express “limits within which the ballot must be received . . . to be counted,” “rang[ing] from six days before to *six days after the date of the election*”).

Joseph P. Harris, *Election Administration in the United States* 287-88 (1934) (Oregon, Florida).

By 1942, at least eight States—California, Kansas, Maryland, Missouri, New York, Pennsylvania, Rhode Island, and Washington—had post-election receipt deadlines for civilians, World War II servicemembers, or both, according to an advisory memorandum prepared by the Office of War Information for soldiers in the field. See *Bill to Amend the Act of September 16, 1942: Hearing on H.R. 3436 Before the H. Comm. on Election of President, Vice President, and Representatives in Congress, 78th Cong.* 100-02 (Oct. 26, 1943) (reproducing publication inserted into record). Against this background, Congress passed the 1942 Soldier Voting Act, which allowed servicemembers to vote absentee in federal elections using a new federal “war ballot” instead of an ordinary state absentee ballot. The 1942 Act explicitly specified that “no official war ballot shall be valid” if received by election officials “after the hour of closing the polls on the date of the holding of the election.” Act of Sep. 16, 1942, ch. 561, § 9, 56 Stat. 753, 756. But it expressly did not displace existing state absentee voting laws—including in the many States that allowed post-election receipt. *Id.*

§ 12. Rather, it gave soldiers a choice: they could either vote absentee “in accordance with” state law, in which case state ballot receipt deadlines would apply, *or* they could use the alternative “federal war ballot,” in which case the new federal election-day receipt deadline would apply. *See* Molly Guptill Manning, *Fighting to Lose the Vote: How the Soldier Voting Acts of 1942 and 1944 Disenfranchised America’s Armed Forces*, 19 N.Y.U. J. Legis. & Pub. Pol’y 335, 342 (2016) (explaining that under the 1942 Act, if “the soldier was a qualified voter under the relevant state standards and the ballot was received by the deadline set by his home State, his vote would be counted”).

The 1942 Act is significant for three reasons. First, it shows that when Congress wishes to set Election Day as a categorical deadline for ballot receipt, it has done so expressly—by clearly specifying that deadline in the law itself. Yet Congress did so *only* for voters who used a federal war ballot. Courts “do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and [such] reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest.” *Jama v. Immigr. & Customs Enft*, 543 U.S. 335,

341 (2005).

Second, Congress's explicit specification of Election Day as the receipt deadline for federal war ballots shows that the federal laws setting a uniform Election Day did not already impose such a deadline on everyone. Otherwise, that provision of the 1942 Act would have been entirely superfluous. "[T]he canon against interpreting any statutory provision in a manner that would render another provision superfluous . . . of course, applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010).

Third, Congress's decision to leave intact state-law post-election ballot-receipt deadlines—and to reaffirm soldiers' rights to benefit from them if they voted by state ballot rather than federal war ballot—demonstrates that it had no intention of preempting state ballot receipt deadlines for other voters, and that it did not believe that it had already done so decades earlier.

* * *

In short, the Government lacks any persuasive authority to enforce its misreading of federal law against the States. By positing otherwise,

Section 7(a) violates prerogatives the Constitution commits firmly to the States themselves. *See* The Federalist No. 59 (Alexander Hamilton); *see also* U.S. Const. art. I, § 4, cl. 1; *id.* art II, § 1, cl. 2; *ITCA*, 570 U.S. at 1, 8.

II. The States' claims are ripe.

Because the Executive Order requires the Government to carry out policies that will injure Plaintiffs, the ripeness requirement is readily satisfied. In this pre-enforcement challenge to executive action, constitutional ripeness is subsumed into the Article III standing inquiry, which requires plaintiffs to show an imminent or certainly impending injury. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014) (citing *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129 n.8 (2007)). Where, as here, implementation “will injure Plaintiffs, there is no question the threatened injury is certainly impending.” *LULAC II*, 2025 WL 3042704, at *18-23 (citation omitted); *see also LULAC I*, 780 F. Supp. 3d at 175 (describing review of “executive orders that ‘dictate particular outcomes’” (quoting *Am. Fed’n of Gov’t Emps. v. Trump*, 318 F. Supp. 3d 370, 437-38 (D.D.C. 2018) (Jackson, J.))).

The Government does not meaningfully contest that proof-of-citizenship requirements and ballot-receipt deadline enforcement actions

would injure the States. Instead, it argues that the States’ challenges to Sections 2(a), 3(d), and 7(a)—which impose those requirements and compel those enforcement actions—are unripe because the Government might disregard the Executive Order’s plain text. *See* Appellants’ Br. 23-24, 33-37. But the Government may not recast the Executive Order as a mere Executive Suggestion. By its terms, the Executive Order imposes mandatory obligations on the Government, which qualifies the States for an injunction.

A. The challenges to the proof-of-citizenship mandates are ripe.

To start, the Government’s characterization of Section 2(a) as merely a “consult[ation]” requirement, Appellants’ Br. 14, cannot be squared with the text of that provision. Section 2(a) states:

(i) Within 30 days of the date of this order, the Election Assistance Commission **shall** take appropriate action to **require**, in its national mail voter registration form issued under 52 U.S.C. 20508:

(A) documentary proof of United States citizenship, consistent with 52 U.S.C. 20508(b)(3)

EO § 2(a) (emphasis added). This text “mandate[s]” that the EAC take action to require documentary proof-of-citizenship on the national voter registration form, and it does so “in no uncertain terms.” *LULAC I*, 780

F. Supp. 3d at 175. Section 2(a) imposed a rigid deadline, and further dictates the content of the new requirement, defining the specific forms of proof that will be acceptable. *See id.*; *see also Washington*, 2026 WL 73866, at *19-.

The Government argues that Section 2(a) merely requires “begin[ning]” a “process” without dictating an outcome, Appellants’ Br. 18-24, but the words themselves leave “no mystery about what Section 2(a) purports to require or whether Section 2(a) purports to require it.” *LULAC I*, 780 F. Supp. 3d at 185. Indeed, every time a court has considered a challenge to Section 2(a), it has rejected the Government’s atextual spin. *See Addendum 16-17* (citing *LULAC I*, 780 F. Supp. 3d at 185); *see also California v. Trump*, No. 25-cv-10810-DJC, 2025 WL 2663106, at *4 (D. Mass. Sept. 17, 2025); *LULAC II*, 2025 WL 3042704, at *20-21; *Washington*, 2026 WL 73866, at *12-13, 19.

Further, the “letter to the chief election officers of the States” that the Government seeks to disregard further confirms that the Executive Order obligates the EAC to implement Section 2(a)’s directive as written. Appellants’ Br. 24 (citing Addendum 17). The letter shows that—despite having previously represented to *Amici* and the *LULAC* court that the

Government was not taking any action to implement Section 2(a)—the EAC had by the time of the preliminary injunction hearing in that case already begun to implement the provision. 780 F. Supp. 3d at 187. The letter further confirms “the EAC [itself] reads Section 2(a) as an ‘instruction’ to adopt the precise documentary-proof-of-citizenship requirement outlined in the Executive Order.” *Id.* at 187-88 (quoting letter). The Government does not even bother to address these aspects of the letter. *See* Appellants’ Br. 24.

For essentially the same reasons, the challenge to Section 3(d) of the EO is also ripe. Just like Section 2(a), Section 3(d) “prescrib[es] the substance of [a] documentary-proof-of-citizenship requirement it purports to mandate.” *LULAC I*, 780 F. Supp. 3d at 185. The provision even borrows the same definition of documentary proof from Section 2(a) and thereby “dictates [the] particular outcome” the Government must reach. *Id.* By prescribing the substance of the documentary-proof-of-citizenship requirement it purports to mandate, the provision eliminates any ambiguity. *See id.* at 185 (citing *Am. Fed’n*, 318 F. Supp. 3d at 437). And, as with Section 2(a), the Government fails to explain how any particulars of the implementation of this command might inform or alter

the Court’s inquiry on the merits. *See id.*; *Washington*, 2026 WL 73866, at *15; *see also Abbott Lab’s v. Gardner*, 387 U.S. 136, 148-49 (1967).

B. The challenge to the ballot-receipt deadline is ripe.

The Government likewise fails to provide any reason to conclude the States’ challenge to Section 7 of the EO is unripe. That provision provides that, “[t]o achieve full compliance with the Federal laws that set the uniform day for appointing Presidential electors and electing members of Congress,” the Attorney General

shall take all necessary action to enforce 2 U.S.C. 7 and 3 U.S.C. 1 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.

EO § 7(a) (emphasis added). By requiring the Attorney General to take “all necessary action,” this provision necessarily requires her to pursue “all” available enforcement mechanisms until compliance is achieved. *Id.* Section 7(a)’s unambiguous command “dictate[s] [a] particular outcome[]” against States with post-election ballot receipt deadlines in contravention of the Executive Order’s instruction. *Am. Fed’n*, 318 F. Supp. 3d at 437-38; *Washington*, 2026 WL 73866, at *18, *20. Thus, as the district court recognized, the plain terms of the Order reflect “a

credible threat of present or future prosecution” that renders a legal controversy ripe, *N.H. Right to Life Pol. Action Comm. v. Gardner*, 99 F.3d 8, 13 (1st Cir. 1996), especially where that threat is currently being leveraged to “coerce[]” States to alter their ballot receipt rules, *MedImmune*, 549 U.S. at 129; *see infra* note 5; Addendum 28-29.

Even if, contra the text, the Executive Order’s command could be satisfied by mere invitations from the Attorney General asking States to voluntarily restrict post-election ballot receipt, the Government has conspicuously declined to commit to that reading. *See, e.g., Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 302 (1979) (recognizing actionable controversy where “State has not disavowed any intention of” prosecuting plaintiffs). Far from disavowal, the Government has maintained in *Amici*’s case that it *could* “enforce” Section 7(a) by instituting civil or criminal actions. *See* Addendum 28. The Government attempts to dismiss the district court’s observation about the Government’s position in *LULAC* as a “stray sentence” from separate litigation, Appellants’ Br. 34, but it has not withdrawn the representation, and it is plainly relevant to the credibility of the enforcement threat. In fact, the Government *has* already made exactly

this type of threat against at least one state, leading it to change its ballot-receipt deadline in response.⁵ Accordingly, the Government’s argument that the district court’s holding was “error” based on “speculation that the Attorney General might implement the Order in an unlawful way” cannot be squared with the Government’s own actions.

Finally, the mere fact that the *LULAC* court did not grant *Amici*’s request last spring for a preliminary injunction against enforcement of Section 7(a), Appellants’ Br. 37 (citing *LULAC I*, 780 F. Supp. 3d at 213-14), does not help the Government here. In suggesting otherwise, the Government fails to acknowledge that the *LULAC* court expressly stated that *States—i.e.*, the Plaintiffs in *this* action—are the parties most directly regulated by Section 7(a) and likely *could* seek immediate relief from threatened enforcement. *See* 780 F. Supp. 3d at 214 (“Section 7(a)

⁵ As the Court may judicially notice, *see Gent v. CUNA Mut. Ins. Soc’y*, 611 F.3d 79, 84 n.5 (1st Cir. 2010), Ohio’s Secretary of State testified to the state legislature that Assistant AG Harmeet Dhillon, in a September 29 letter, “implored Ohio to take immediate action (legislative or otherwise) to” change its receipt deadline to “*avoid costly litigation in federal court*,” Frank LaRose, Ohio Sec’y of State, *Substitute Senate Bill 153 Proponent Testimony* (Oct. 28, 2025) (emphasis added), available at https://ohiosenate.gov/committees/general-government/meetings/cmte_s_gen_govt_1_2025-10-28-0200_852. Ohio subsequently adopted an Election Day ballot-receipt deadline; *see* S.B. 293, 136th Gen. Assemb. (Ohio 2025).

directs enforcement ‘against’ States.”). The court’s reasoning in *LULAC* therefore supports the district court’s holding that the States’ claims are actionable.

There is no basis to disturb the district court’s conclusions that the States’ claims against Sections 2(a), 3(d), and 7 are ripe.

III. The scope of the district court’s injunction is proper.

Finally, the Government is wrong to propose that the district court’s injunction is overbroad with respect to Sections 2(a) and 3(d). As the States explain, the Government is precluded from raising this argument for the first time on appeal. *See* Answering Br. 36-37. Additionally, the Government fails to meaningfully address the district court’s determination that limiting the injunction against implementation of these sections “would undermine the national uniformity central to the NVRA, the HAVA, and the UOCAVA.” Addendum 45 n.20.

The Government responds merely to argue that the injunction need not have prohibited the EAC and Secretary of Defense from selectively adding proof-of-citizenship requirements to the Federal Form and Federal Post Card Application “in the state-specific instructions for the

remaining 31 [non-plaintiff] States (plus the District of Columbia).” Appellants’ Br. 42. But those state-specific instructions are not an opportunity for the Government to impose additional federal requirements. The state instructions on the Federal Form exclusively reflect varying features of *state law and practice*, such as each state’s registration deadline, the pertinent forms of state-issued identification, whether the state tracks party affiliation or racial identity, state voter qualifications, and the relevant state mailing address.⁶ Because Section 2(a) “concern[s] a single (and national) Federal Form, . . . Plaintiffs cannot receive complete relief unless the [Government] is enjoined from implementing or giving effect to [this provision] in full.” *Washington*, 2026 WL 73866, at *38. The Federal Postcard Application, in turn, does not include any state-specific requirements.⁷ While the form references state guidelines available at fvap.gov, that website merely collects each state’s upcoming election deadlines and links to state resources.⁸ The

⁶ See Nat’l Voter Registration Application Form for U.S. Citizens (ENG), <https://perma.cc/8A5V-RQAS>.

⁷ See Fed. Post Card Application Form, <https://perma.cc/FSM5-4J3D>.

⁸ See, e.g., Voting Assistance for Service Members, Their Families and Overseas Citizens in Alabama, Fed. Voting Assistance Program, <https://perma.cc/E2DS-3RED>.

Government's suggestion that the Federal Form or Federal Post Card Application are subject to substantive federal state-by-state customization is simply unfounded.

CONCLUSION

This Court should affirm the district court's preliminary injunction.

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Respectfully submitted,

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This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7) because it contains 6,495 words, excluding the parts that may be excluded.

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January 12, 2026

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This motion has been filed by CM/ECF and served via CM/ECF on all counsel of record.

January 12, 2026

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