

**In the Supreme Court of the United States**

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DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,  
*Applicants,*

v.

CALIFORNIA, *et al.*,  
*Respondents.*

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ALABAMA, *et al.*,  
*Applicants,*

v.

CALIFORNIA, *et al.*,  
*Respondents.*

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**CONSOLIDATED OPPOSITION TO APPLICATIONS**

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## INTRODUCTION

This Court has repeatedly warned about the dangers of altering election rules on the eve of an election. *See, e.g., Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (per curiam). That is exactly what a stay would do here. It would allow the federal government to rush out an unprecedented, legally indefensible voter-verification and ballot-interception program that would, among other things, give the U.S. Postal Service far-reaching new powers and responsibilities. Under this new program, USPS—a budget-strapped agency that has struggled to administer a variety of programs in recent years—would require state governments to assemble (and then upload to an untested online USPS “portal”) lists of voters registered to cast mail ballots. States would also be forced to redesign their ballot mail to adopt barcodes that USPS would scan to make voter-eligibility determinations. And USPS would refuse to deliver ballots for voters not identified in its database. The federal government wants to roll out this program “as soon as early to mid-August,” U.S. Appl. 4, mere weeks before States begin sending out mail and absentee ballots, and less than three months before the midterms.

The consequences of allowing such transformative changes to take effect so close to this fall’s elections would be extreme. Because of the high risk of errors and the limited window for correcting mistakes, many of the millions of voters who rely on mail voting—especially voters with disabilities and those in rural areas—would likely be denied mail ballots and, as a result, disenfranchised. Many more voters would be confused—either because they

wouldn't receive their mail ballots or would fear that USPS would fail to deliver their voted ballots to state officials for tabulation. And state and local elections administrators would be forced to divert time and resources away from critical election-preparation tasks to prepare and update the new USPS voter lists; train elections officials on USPS' ballot-interception program; reformat (and in many instances, reorder and repurchase) ballot envelopes to comply with USPS' new design standards; and attempt to educate voters on the federal government's last-minute effort to insert itself into state-run elections.

Faced with these extraordinary consequences, the district court issued a narrow injunction. The court blocked the federal government from implementing its new voter-verification and ballot-interception program for *this year's* elections with respect to the plaintiffs—23 States and the District of Columbia. But the court allowed the federal government to continue developing the program for future elections. As a result, the district court's injunction merely preserves the status quo in a limited number of jurisdictions ahead of the rapidly approaching midterms.

There is no basis for a stay. Neither the federal defendants nor intervenors make any effort to defend the legality of the executive order (EO) that adopted the sweeping changes enjoined by the district court. Nor could they. The Framers entrusted the States and Congress—not the President—with the responsibility to set rules for federal elections. And Congress has not authorized the EO's unprecedented directives. Section 3 of the EO gives USPS

the new powers and responsibilities discussed above. Section 2 threatens prosecution of state and local officials for failing to determine voter eligibility using “Citizenship Lists” compiled by the Department of Homeland Security from sources of data that contain well-documented flaws and omissions.

Defendants and intervenors argue that plaintiffs lack standing and that the challenge to the EO is unripe because the EO has not yet been fully implemented. But as every member of the panel below agreed, “the specificity of the EO’s stated timelines and the inescapable legal requirements and impending deadlines that States currently face in facilitating mail-in and absentee balloting for immediately upcoming elections together establish sufficient concrete injury.” App’x 18a (Dunlap, J., concurring in part). It is not credible for defendants to assert that the scope of any final implementation actions is “entirely speculative.” U.S. Appl. 3, 25. The EO imposes highly “specific directives,” App’x 80a, and defendants’ own papers have detailed the steps they are taking to finalize those directives in the coming weeks—steps that do not materially differ from the EO, *see, e.g.*, D. Ct. Dkt. 194-2 ¶¶ 7-8.

Because the EO’s directives are plainly unlawful, it would not be sensible to force plaintiffs to wait several more weeks to sue—or even longer, if final implementation is delayed, as federal rulemakings often are. As this Court recently recognized, justiciability doctrines should not be applied in ways that “channel . . . election disputes to shortly before election day.” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 80 (2026). If litigation challenging final

implementation of the EO *does not even begin* for several more weeks, it would be extremely difficult—if not impossible—to obtain a definitive judicial resolution with enough time remaining for States to redesign and reorder their ballot mail, train elections officials, and adequately educate the public before the November midterms. In the interim, voters would be confused about which rules govern, and responsible state and local elections officials would have no choice but to start preparing for the EO’s directives to take effect, requiring them to divert significant resources from the “massive coordinated effort” necessary to prepare for the approaching elections. *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring).

Below, Judge Dunlap agreed that the injunction should not be stayed as to the new USPS program established by Section 3 of the EO. But he voted to stay the injunction as applied to portions of Section 2. App’x 16a-19a. Such a limited stay is also unwarranted. Defendants and intervenors contend that Section 2 does not cause any immediate harm because States are not required to do anything with the “Citizenship Lists” compiled pursuant to Section 2. But that contention is “undermined by [the federal government’s] representations before the district court”—in particular, its refusal to give a straight answer when the district court asked “whether the Government would have probable cause to prosecute a state official merely for sending a ballot to someone not on the DHS Citizenship Lists.” App’x 13a. In its application before this Court, the federal government once again avoids providing a direct

answer to that question. If it is really true that States are not required to do anything with the lists, then it is difficult to understand why the federal government is fighting so hard to obtain a stay—or for that matter, how there could be any emergency warranting an immediate stay. Under the district court’s injunction, which is limited to the plaintiff States, States that wish to use the lists are free to do so. Defendants’ dissatisfaction with that narrow injunction does not meet the demanding “standards applicable for obtaining emergency relief from this Court.” *South Carolina v. Doe*, 146 S. Ct. 74 (2025).

## STATEMENT

### A. Legal Background

1. The Constitution entrusts power over federal elections to “state legislatures ‘primarily’ and [to] Congress ‘ultimately.’” *Watson v. Republican Nat’l Comm.*, 609 U.S. \_\_\_, 2026 WL 1855462, at \*3 (2026); *see* U.S. Const. art. I, § 4, cl. 1; *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8-9 (2013) (*ITCA*). This structure emerged from vigorous debate among the Framers, who considered lodging the elections power “wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former.” The Federalist No. 59, at 362 (C. Rossiter ed., 1961) (A. Hamilton); *see also* J. Madison, Speech at the Virginia Ratifying Convention (June 14, 1788), in 3 Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 408 (2d ed. 1836). Given their familiarity with the British system, where “the influence of the Crown on elections was most dangerously exerted,” 2 The Records of the Federal Convention of 1787, at 204

(M. Farrand ed., 1911) (J. Madison), the Framers did not consider vesting elections power in the Executive. *See, e.g. Trump v. United States*, 603 U.S. 593, 627-628 (2024) (recognizing that the Framers “excluded from service as electors ‘all those who from situation might be suspected of too great devotion to the president in office’”).

Consistent with this design, “elections in this country” have long been “administered at the state and local level.” H.R. Rep. No. 107-329, pt. 1, at 31 (2001). This “dispersal of responsibility for election administration has made it impossible for a single centrally controlled authority to dictate how elections will be run, and thereby be able to control the outcome.” *Id.* at 32. It has also allowed States to devise laws and policies that expand the franchise and make voting easier and more accessible.

2. One way that States have exercised their authority over elections is by allowing mail voting. *See, e.g., Watson*, 2026 WL 1855462, at \*4. Eight States plus the District of Columbia currently mail ballots to all registered, active voters. *See* Nat’l Conf. of State Legislatures, *Table 1: States with No-Excuse Absentee Voting* (updated July 17, 2026), <https://perma.cc/65CU-8UP3>. Twenty-nine States mail a ballot to any voter who requests one, and thirteen States mail ballots to voters with qualifying excuses. *Id.* As relevant here, the period to start mailing ballots to voters for the fall midterm elections in some States begins on September 4—just one month from today. *See, e.g., D. Ct.*

Dkt. 100-8 ¶ 37; D. Ct. Dkt. 194-2 ¶ 7. North Carolina is statutorily required to begin mailing ballots at that time. N.C. Gen. Stat. 163-227.10(a).

Mail voting increases turnout across political parties and is especially helpful for rural and disabled voters. *See, e.g.,* Angel et al., *Mail Voting in the US: Data Points to Very Low Fraud and Significant Benefits to Voters*, Brookings (Nov. 6, 2025), <https://perma.cc/E3WD-8AN7>. “Disabled voters are more likely to experience barriers to voting, such as inaccessible polling places, lack of reliable [and] accessible transportation, restrictions on voter assistance, and more.” Press Release, Am. Ass’n of People with Disabilities, *Association of People with Disabilities Applauds Supreme Court Protecting Mail Ballot Grace Periods* (June 29, 2026), <https://perma.cc/2QGV-4JV2>. “As a result of these barriers, people with disabilities vote by mail at higher rates than people without disabilities, and for many, it is their only option to cast a ballot.” *Id.*

As mail voting has become commonplace, States have heavily relied on USPS to deliver and collect ballots. USPS was created by early American lawmakers “for the delivery of materials from all sources equally.” Desai, *The Transformation of Statutes into Constitutional Law: How Early Post Office Policy Shaped Modern First Amendment Doctrine*, 58 Hastings L.J. 671, 727 (2007). With very few exceptions, USPS is legally obligated to deliver the mail. *See, e.g.,* 39 U.S.C. §§ 101(a), 403; *USPS v. Council of Greenburgh Civic Ass’ns*, 453 U.S. 114, 127 (1981). As long as a package is “properly packaged and marked” and does not fall into an enumerated category of “[n]onmailable”

material, USPS must deliver it. U.S. Postal Serv., Domestic Mail Manual, §§ 601.1.4, 601.8.0-9.12 (July 12, 2026); *see* 39 U.S.C. § 3001. In total, USPS delivered nearly 100 million mail ballots to or from voters in 2024, *see* D. Ct. Dkt. 103-8 at 3, with roughly 30 percent of all voters nationwide casting ballots by mail, *see* U.S. Election Assistance Comm’n, *Election Admin. and Voting Survey*, at ii (June 2025), <https://perma.cc/8J5Y-5TVN>.

3. In recent decades, Congress has exercised its elections power sparingly, imposing baseline requirements to reduce barriers to voting while leaving implementation mostly to the States. For example, in “the first significant federal regulation of voter registration enacted under the Elections Clause since Reconstruction,” Congress passed the National Voter Registration Act (NVRA) in 1993. *ITCA*, 570 U.S. at 40 (Alito, J., dissenting). The NVRA sought to “increase the number of eligible citizens who register to vote” and to help officials at all levels of government “enhance[] the participation of eligible citizens as voters in [federal] elections.” 52 U.S.C. § 20501(b)(1)-(2).

The NVRA requires States to allow voters to register by mail or when applying for a driver’s license, 52 U.S.C. § 20503(a), and to allow use of a federal registration form, *id.* § 20505(a)(1). This form requires applicants to attest to their citizenship. *Id.* § 20508(b)(2). Under the NVRA, States retain control over voter rolls, though they must make reasonable efforts to remove the names of voters who have become ineligible due to death or a change in residence. *Id.* § 20507(a)(4). The NVRA also imposes a “quiet period” that

prohibits States from systematically removing ineligible voters fewer than 90 days before a federal election, to avoid the prospect of erroneous disenfranchisement. *See id.* § 20507(c)(2)(A).<sup>1</sup>

In 2002, Congress enacted the Help America Vote Act (HAVA) to ensure that States upgraded their voting infrastructure. *See* Pub. L. No. 107-252, 116 Stat. 1666. HAVA requires States to maintain accurate, centralized databases of registered voters, 52 U.S.C. § 21083(a), and to use specified procedures to verify the identity of those voters, *id.* § 21083(a)(5). HAVA leaves implementation of these standards “to the discretion of the State.” *Id.* § 21085.

Consistent with HAVA and the NVRA, States have adopted voter-list databases and mechanisms to enforce voter eligibility requirements. California, for example, cross-checks the attestation forms required by the NVRA against records from its Department of Motor Vehicles to verify eligibility to vote, and requires cancellation of registration “[u]pon proof that the person is otherwise ineligible to vote.” Cal. Elec. Code § 2201(a)(8); *see also* Cal. Veh. Code. § 12801.5; Cal. Code Regs. tit. 2, § 19073. Other States employ similar verification processes. *See* D. Ct. Dkt. 105 ¶ 11.

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<sup>1</sup> Congress imposed additional voting-access requirements for servicemembers and U.S. citizens living abroad in the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). UOCAVA requires States to allow these voters to register and vote absentee in all federal elections. 52 U.S.C. § 20302(a)(1). States must process valid registration and absentee-ballot applications received at least 30 days before an election, *id.* § 20302(a)(2), and must transmit timely and validly requested absentee ballots to UOCAVA voters no later than 45 days before the election, *id.* § 20302(a)(8)(A).

4. In recent months, President Trump has repeatedly urged Congress to enact the Safeguard American Voter Eligibility Act (“SAVE America Act”). That bill would require the removal of suspected noncitizens from States’ voter rolls using citizenship information in federal databases. S. 1383, 119th Cong. § 2(f)(3) (2026). It would also require in-person (rather than online or mail) voter registration. *Id.* § 2(d)(4). The President told Republican lawmakers that the bill would “guarantee the midterms.” Remarks of Pres. Trump, PBS News, 49:53-57 (Mar. 9, 2026), <https://perma.cc/5FZS-KSRA>. So far, however, it has not garnered sufficient support to pass.

Shortly after the bill stalled in the Senate, President Trump issued the EO challenged here. Exec. Order 14399, 91 Fed. Reg. 17125 (Mar. 31, 2026). Section 2(a) of the EO directs DHS to create “Citizenship Lists” of every adult U.S. citizen residing in each State and to transmit those lists to States “no fewer than 60 days before each regularly scheduled Federal election.” Section 2(b) threatens “prosecution of State and local officials . . . who issue Federal ballots to individuals not eligible to vote in a Federal election.” Read together, Sections 2(a) and 2(b) threaten prosecution of officials who do not use the DHS lists to verify citizenship. *See, e.g.*, D. Ct. Dkt. 103-2 (“fact sheet” from the White House explaining that the EO “order[s] citizenship verification”).

Under Section 3 of the EO, if States wish “to allow for mail-in or absentee ballots to be transmitted by the USPS,” they must “notify the USPS” and submit to a new enrollment and verification procedure. EO § 3(b)(ii). Because

every State relies on USPS to “transmit[]” mail ballots, *id.*, Section 3 effectively requires States to seek permission from USPS to maintain their mail and absentee voting laws. “[N]o fewer than 60 days before [an] election,” States wishing to allow their voters to cast ballots by mail must furnish USPS with “a list of voters eligible to vote in a Federal election in such State to whom the State intends to provide a mail-in or absentee ballot.” *Id.* Because many States allow for voter registration and mail-ballot requests within 60 days of an election, the EO contemplates that States will need to “routinely supplement and provide suggested modifications or amendments to the State’s Mail-In and Absentee Participation List in advance of any Federal election.” *Id.* § 3(b)(v). USPS must then use this State-reported information to create lists of individuals “enrolled” with USPS for mail voting—lists that will then be “provide[d] [to] each State.” *Id.* § 3(b)(iii)-(iv).

USPS must also refuse to transmit mail ballots for any voters not on those lists. EO § 3(b)(iii). To facilitate USPS’ ability to intercept ballots and prevent their delivery, Section 3 directs USPS to adopt design requirements for mail-ballot envelopes. *Id.* § 3(b)(i). Specifically, USPS must require each ballot envelope to: “[be] marked as Official Election Mail, including through designated markings provided by USPS for this purpose, such as the Official Election Mail logo”; “[be] automation-compatible and bear[] a unique Intelligent Mail barcode, or successor USPS technology, that facilitates tracking”; and “undergo[] a mail envelope design review by the USPS to ensure

compliance with USPS mailing standards, including barcode placement.” *Id.* “Any final rule” adopted pursuant to Section 3 “shall be issued no later than 120 days from the date of th[e]” EO. *Id.* § 3(d).

Following the EO’s issuance in March, federal officials began implementing its directives. In early June, USPS published a proposed rule to implement Section 3. *See* 91 Fed. Reg. 32915 (June 2, 2026); D. Ct. Dkt. 169. The proposed rule requires the same envelope-design standards listed in the EO. 91 Fed. Reg. at 32915-32916. It also provides a “process” (EO § 3(b)(iv)) for USPS to compile “Mail-In and Absentee Participation List[s]” through a new online “Federal Ballot Mail Portal,” which States must use to submit the names of all individuals receiving a mail or absentee ballot, along with a unique barcode for each such voter. 91 Fed. Reg. at 32916. USPS will also—as specified in the EO—send the States “a final State-Specific Mail-In and Absentee Participation List.” *Id.* at 32916. And the proposed rule would establish a “verification procedure for compliance with” the envelope-design and voter-list requirements whereby USPS would “confirm that a state submitted a list consistent with the conditions laid out in the proposed rule” and check the barcodes on outbound ballots to ensure those ballots are “destined to individuals on the list.” *Id.* Ballot mail that does not comply with these requirements “will not be accepted.” *Id.* at 32918.

Since issuing the proposed rule, the “Postal Service has been taking steps to create” the new online portal for States to submit their voter lists. D. Ct.

Dkt. 194-2 ¶ 7. Federal officials have explained that “[b]y the time that the first mail-in ballot is ready to mail,” state election officials must “have access to the system, be registered as a user, and understand how to use it, so that they can provide names of voters they are sending mail-in or absentee ballots to, as well as the barcodes for the outgoing and return mail access.” *Id.* USPS has also pointed out that it must “train [its own] employees on use of the Portal.” *Id.* ¶ 8. And it must “coordinate with” “mailers”—the federal government’s term for States that allow mail voting—“on the use of envelopes that meet certain design requirements,” “the inclusion of trackable barcodes,” “and the Election Mail logo needed to transmit ballots for Federal elections, with barcode information being submitted to the Portal.” *Id.* Separately, DHS has approved plans to compile, maintain, and transmit the Citizenship Lists prescribed by Section 2. D. Ct. Dkts. 183, 188.

## **B. Procedural History**

Plaintiffs filed suit shortly after issuance of the EO, challenging Sections 2 and 3. D. Ct. Dkt. 1 at 36-42; D. Ct. Dkt. 65 at 36-43. The district court “dismissed without prejudice the Plaintiff States’ claims on prudential ripeness grounds as to federal elections occurring after November 3, 2026,” reasoning that “postponing judicial review of the EO ‘as it relates to distant elections will pose little hardship’” to the States. App’x 4a (emphasis omitted). But the court “concluded that the Plaintiff States’ claims as to the November 2026 elections were ripe for review because the EO created a ‘direct and immediate dilemma’ for the Plaintiff States.” *Id.* As the court explained, plaintiffs “offered

unrebutted evidentiary support for their allegations that significant preparation and planning underpin and facilitate elections and that such efforts are already underway.” *Id.* at 76a.

The court then granted summary judgment, declaring Sections 2 and 3 ultra vires and enjoining defendants from implementing them for federal elections on or before November 3, 2026, in the plaintiff States. App’x 61a-63a. The court made clear that the declaratory aspect of its order is likewise limited to this fall’s elections. D. Ct. Dkt. 207 at 2. The district court later denied motions to stay the injunction, though it granted a seven-day administrative stay. App’x 27a. On July 14, that stay expired, allowing the injunction to take effect. U.S. Appl. 9. It has remained in effect since then.

The court of appeals also denied a stay. App’x 2a. At the outset, the court stressed that defendants and intervenors have “not defend[ed] the legality of the EO.” *Id.* at 6a. The court also rejected defendants’ and intervenors’ standing and ripeness arguments. As the court recognized, “the EO targets the Plaintiff States explicitly and repeatedly.” *Id.* at 9a. And given that “the EO lays out a clear set of rapidly approaching deadlines by which states must coordinate with federal officials and comply with new voting procedures—all while the states must also ensure that their officials and the public understand the evolving set of rules that would govern the upcoming” elections— “[t]he Plaintiff States have no practical choice but to respond to the EO now.” *Id.*

The court of appeals also concluded that the equities weigh heavily in favor of the plaintiff States. There is limited, if any, harm to the federal government because “the district court’s injunction does not prevent the federal defendants from implementing the EO for the 2026 federal elections in states other than the Plaintiff States, including in the intervenor states.” App’x 15a. The injunction also “does nothing to prevent the federal defendants from taking steps today to implement the EO for federal elections in all states after November 3, 2026.” *Id.* A stay, by contrast, would cause “numerous immediate, predictable harms” to plaintiffs, “sow confusion,” and “threaten disenfranchisement.” *Id.* (internal quotation marks omitted).

Judge Dunlap concurred in large part—though he would have granted a limited stay with regard to Section 2 of the EO, “insofar as it relates to enforcement of laws banning voting by noncitizens.” App’x 17a; *see id.* at 16a. As for the remainder of the injunction, Judge Dunlap agreed with the majority that the “changes set forth in” Section 3 were ripe for review because they “have more than speculative future effect.” *Id.* at 18a. “[T]he uncontested record suggests” that—absent the injunction—plaintiff States “would have to . . . quickly replace[]” mail-in ballot envelopes that they have already ordered and “promptly provide the federal government with State-specific Mail-In and Absentee Ballot Lists to avoid disruptions in the mail-in balloting process for the November 2026 elections and any prior elections.” *Id.* Considered together, “the specificity of the EO’s stated timelines”

and “inescapable legal requirements,” as well as the “impending deadlines that States currently face in facilitating mail-in and absentee balloting for immediately upcoming elections,” established “sufficient concrete injury from the EO in this unusual case.” *Id.*

## ARGUMENT

Applicants seeking an emergency stay from this Court bear “an ‘especially heavy burden.’” *Little v. Reclaim Idaho*, 591 U.S. 1060, 1063 (2020) (Roberts, C.J., concurring in grant of a stay); *see, e.g., Trump v. Illinois*, 146 S. Ct. 432 (2025). They must make “‘a strong showing that [they are] likely to succeed on the merits’” and that the remaining equitable considerations support relief. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Indeed, even if applicants “demonstrate[] that [they are] likely to succeed on the merits,” a stay will be denied if “the balance of harms and equities” disfavor relief. *NetChoice, LLC v. Fitch*, 145 S. Ct. 2658, 2658 (2025) (Kavanaugh, J., concurring). And in cases like this one, where the court of appeals has already “denied [a] motion for a stay,” this Court will grant relief “only upon the weightiest considerations.” *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers) (internal quotation marks omitted).

### **I. DEFENDANTS AND INTERVENORS ARE UNLIKELY TO SUCCEED ON THE MERITS**

#### **A. The Challenged Provisions of the Executive Order Are Ultra Vires and Unconstitutional**

1. The President has no constitutional authority to regulate elections. Only the States and Congress have that power. *See* U.S. Const. art. I, § 4, cl. 1.

Nowhere, however, has Congress authorized the President or USPS to take the steps directed by Section 3 of the EO, which requires USPS to impose design requirements for state ballot envelopes; compile voter-eligibility lists; monitor mail ballots for compliance with those lists; and refuse to deliver ballots of voters not on those lists. At no point in our history has USPS engaged in these (or any other) forms of election regulation. Accordingly, the EO “risks turning USPS, a public service institution, into a partisan instrument” for the first time.<sup>2</sup> As USPS itself explained as recently as 2025, its traditional “role [in the electoral process] is clear—we deliver the mail.” Dkt. 103-8 at 2.

The challenged EO’s transformation of USPS’ role would not only depart markedly from our Nation’s tradition of decentralizing the administration of elections, *supra* pp. 5-9, but also pose extraordinary threats to our democracy. Voters would likely be disenfranchised, as officials inevitably make mistakes in rushing to formulate new voter lists and roll out untested technologies to scan ballots for eligibility determinations. *See* D. Ct. Dkt. 105 ¶¶ 45-47, 58-59, 64-65; Br. of State & Local Elections Officials & Elections Experts, D. Ct. Dkt. 175 at 17-24; Br. of Bipartisan Former Governors, C.A. Dkt. at 16-18. And States may not learn that individuals have been denied ballots in time to send them replacements before the election or inform them that they will need to vote in person. Rural and disabled voters—who depend on mail voting, *supra*

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<sup>2</sup> Angel & Katz, *Trump’s New Elections Executive Order & What It Would Mean for Voters*, Brookings (May 14, 2026), <https://perma.cc/ZDD6-AWKT>.

p. 7—would be disproportionately harmed. *See* D. Ct. Dkt. 105 ¶ 59; D. Ct. Dkt. 100-4 ¶¶ 28-30; D. Ct. Dkt. 100-10 ¶¶ 56-57. And if federal officials get into the business of intercepting ballots sent by States to voters, many voters would begin to question whether USPS will refuse to deliver completed ballots sent *by* voters *to* state officials for tabulation. There would also be a temptation on the part of the federal government to abuse this new authority for partisan ends. Even the appearance of such abuse could have a devastating impact on voters’ confidence in the integrity of elections.

For multiple reasons, any congressional authorization for Section 3 would need to be exceedingly clear—and even then, would pose serious constitutional concerns. Section 3’s new ballot-verification program would effect “an enormous and transformative expansion” of an agency’s authority, *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014), on a question of vast “‘political significance,’” *West Virginia v. EPA*, 597 U.S. 697, 721 (2022), “upset[ting] the usual constitutional balance of federal and state powers,” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). It has long been settled that USPS “cannot exclude or refuse to deliver” mail unless specifically authorized by “some law of Congress.” *Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 109 (1902); *see Hannegan v. Esquire, Inc.*, 327 U.S. 146, 155-156 (1946). And giving USPS the power to intercept ballots would have a number of troubling constitutional implications. *See, e.g., Norman v. Reed*, 502 U.S. 279, 288-289 (1992) (discussing First and Fourteenth Amendment rights of “voters to

express their own political preferences”); *USPS v. Council of Greenburgh Civic Ass’ns*, 453 U.S. 114, 126-127 (1981) (discussing First Amendment implications of restricting mail delivery).

The principal authority cited by the EO—39 U.S.C. § 401—includes nothing authorizing Section 3’s ballot-interception and design requirements. It merely empowers USPS “to adopt . . . rules and regulations . . . as may be necessary in the execution of its functions.” Elsewhere, Congress has exhaustively cataloged the materials that USPS can refuse to deliver, making no mention of ballots. 39 U.S.C. § 3001. Congress has also barred USPS from engaging in any new nonpostal services—services other than “delivery of letters, printed matter, or mailable packages,” *id.* § 102(5)—unless specifically authorized by statute, *id.* § 404(e). And under UOCAVA and the NVRA, Congress has carefully delineated the limited role that USPS plays in federal elections. *See, e.g.*, 52 U.S.C. § 20304(b)(2); *id.* § 20507(c)(1). Those provisions show that when Congress wished to authorize USPS not to deliver mail or engage in nonpostal services—or when Congress wished to give USPS a role in elections—“it knew how to do so and did so expressly.” *FS Credit Opportunities v. Saba Cap. Master Fund*, 146 S. Ct. 1546, 1555 (2026).

Section 2 of the EO is also ultra vires. Nearly two centuries ago, Congress authorized certain federal officials to create and maintain lists of eligible voters. *See* Second Enforcement Act, 16 Stat. 433, §§ 2, 4, 13 (1871); Sweren-Becker et al., *The Meaning, History, and Importance of the Elections Clause*, 96 Wash. L.

Rev. 997, 1035, 1040 (2021). But Congress soon repealed those laws and has entrusted States with responsibility for maintaining lists of eligible voters ever since. *See, e.g., United States v. Gradwell*, 243 U.S. 476, 483-484 (1917). Today, the NVRA and HAVA expressly recognize that States have responsibility for maintaining voter rolls and verifying eligibility. *Supra* pp. 8-9. And neither statute grants *any* authority to DHS, the agency that the EO charges with compiling its new voter-eligibility lists. EO § 2(a). Although President Trump has urged Congress to adopt legislation with provisions akin to Section 2, *supra* p. 10, his efforts have not been successful. He cannot use an executive order to bypass “the people’s elected representatives in Congress.” *NFIB v. Dep’t of Lab.*, 595 U.S. 109, 121 (2022) (Gorsuch, J., concurring); *cf. West Virginia*, 597 U.S. at 724 (executive cannot “adopt a regulatory program that Congress ha[s] conspicuously and repeatedly declined to enact itself”).

2. As in the proceedings below, defendants and intervenors do “not defend the legality of the EO in requesting a stay.” App’x 6a; *see* U.S. Appl. 19, 25-26. Nor do they identify any statutory or constitutional authority for Sections 2 or 3 of the EO. Instead, they contend that “it is *impossible* . . . at this time to offer a merits defense” because the EO has not yet been fully implemented, U.S. Appl. 19 (emphasis added); *see* Intervenors’ Appl. 13-14, and contains boilerplate language directing “that the relevant agencies should take only lawful actions,” U.S. Appl. 16; *see* Intervenors’ Appl. 18-19.

As the legal analysis above makes clear, however, it is not “impossible” to evaluate the legality of the federal government’s unprecedented new elections programs. *Supra* pp. 16-20. With respect to Section 3, the EO “directs . . . USPS [to] include certain terms,” U.S. Appl. 14, and defendants have detailed the steps that the federal government is taking to finalize the EO—steps that do not differ from the EO’s text in any material way. *Supra* pp. 12-13. Defendants have never explained how a final USPS rule could cure Section 3’s constitutional infirmities—let alone in a manner that would avoid the threats of error, abuse, and disenfranchisement discussed above. *Supra* pp. 17-18. Because Congress has not authorized any form of mail-voting enrollment or USPS ballot interception, the only lawful option would be to abandon implementation altogether—something that defendants are plainly unwilling to do. Indeed, their desire to “carry out [the EO’s policies] with respect to the November election” is the very basis for the requested stay. U.S. Appl. 28.<sup>3</sup>

As to Section 2 of the EO, it is true that Section 2(a) “does not mandate that the States take any particular action to use the [State Citizenship] Lists.” U.S. Appl. 14; *see* Intervenor’s Appl. 10-11. Section 2(b), however, takes the unprecedented step of directing “[t]he Attorney General” to “prioritize the investigation and, as appropriate, the prosecution of State and local officials.”

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<sup>3</sup> Intervenor’s emphasize that the proposed rule gives States “control” by allowing them to submit voter lists to USPS. Intervenor’s Appl. 20. But that does not resolve the fundamental problem that Congress has not authorized anything resembling USPS’ voter-verification and ballot-interception program.

To plaintiffs' knowledge, the federal government has never before threatened state and local elections officials with criminal prosecution for failing to carry out their elections-administration responsibilities in the way that federal officials prefer. In light of defendants' "representations before the district court," including their refusal to say whether "the Government would have probable cause to prosecute" state and local officials for merely failing to use the new federally compiled "Citizenship Lists," Section 2(b) operates as a "thinly veiled threat[] to institute criminal proceedings" for failing to use the lists. App'x 13a (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 68 (1963)). The carefully worded language in defendants' stay application (e.g., U.S. Appl. 22-23) does nothing to ease plaintiffs' fears of prosecution.

Nor can defendants insulate an otherwise unconstitutional action from judicial review by inserting a generic savings clause. The boilerplate language invoked by defendants (e.g., U.S. Appl. 16) constitutes "nothing more than window dressing on an unconstitutional directive." *New York v. Trump*, 133 F.4th 51, 69 (1st Cir. 2025) (internal quotation marks omitted).<sup>4</sup> And it is materially indistinguishable from language in other executive orders and presidential proclamations that the Court has reviewed on the merits—including in multiple cases heard this Term. See, e.g., *Trump v. Barbara*, 609

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<sup>4</sup> See also *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1239 (9th Cir. 2018) ("Savings clauses are read in their context, and they cannot be given effect when the Court, by rescuing the constitutionality of a measure, would override clear and specific language."); *HIAS, Inc. v. Trump*, 985 F.3d 309, 324-325 (4th Cir. 2021) (similar).

U.S. \_\_\_, 2026 WL 1870543 (2026) (savings clause at 90 Fed. Reg. 8449, § 5(b) (Jan. 20, 2025)); *Learning Res., Inc. v. Trump*, 607 U.S. 229 (2026) (savings clause at, e.g., 90 Fed. Reg. 9113, § 6(b) (Feb. 1, 2025) & 90 Fed. Reg. 15041, § 7(b) (Apr. 2, 2025)).<sup>5</sup>

Defendants and intervenors are also wrong in suggesting that “the President’s ability to oversee the Executive Branch” gives him carte blanche to direct executive officials to engage in any form of rulemaking, no matter how plainly unconstitutional. U.S. Appl. 27; *see also* Intervenors’ Appl. 5, 21-22. The duty to “take Care that the Laws be faithfully executed” allows the President to administer laws duly enacted by Congress, *see Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587-588 (1952), not to usurp powers exclusively entrusted to States and Congress, *supra* pp. 5-6. Imagine, for example, that President Truman had ordered the Secretary of Commerce to undertake a rulemaking to seize the Nation’s steel mills during the Korean War. That would have sown tremendous uncertainty for the Nation’s steel industry, disrupting investment decisions and making it impossible to plan for the future. It is hard to believe that this Court would have refrained from

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<sup>5</sup> None of the cases defendants invoke (U.S. Appl. 15-20) held that a generic savings clause suffices, on its own, to insulate an executive order from judicial review. *See, e.g., Trump v. New York*, 592 U.S. 125, 130-134 (2020) (per curiam) (invoking savings clause as one of many considerations in treating challenge as unripe). To the contrary, in one case cited by defendants, *see Bldg. & Constr. Trades Dep’t v. Allbaugh*, 295 F.3d 28 (D.C. Cir. 2002), the D.C. Circuit reached the merits and extensively reviewed the legality of an executive order on preemption grounds, *see id.* at 34-36.

invalidating such an executive order merely because the Commerce Department’s rulemaking was not yet complete. The constitutional invalidity of that order, like the EO here, would have been clear at the time it was issued.

### **B. Plaintiffs’ Claims Are Justiciable**

Plaintiffs have standing, and their challenge is ripe. “[T]he EO targets the Plaintiff States explicitly and repeatedly.” App’x 9a. And the EO has injured plaintiffs because it forces them to take immediate steps to comply with its directives for the imminent November elections. Requiring instead that plaintiffs wait to challenge the EO’s implementing actions would cause them significant hardship and, as a practical matter, threaten to insulate the EO’s unlawful directives from judicial review before the upcoming elections. This Court recently cautioned against applying justiciability doctrines in ways that “could channel . . . election disputes to shortly before election day.” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 80 (2026). The district court properly heeded that instruction.

1. Standing and ripeness originate from the same Article III case-or-controversy requirement and often “boil down to the same question.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014). Courts inquire whether plaintiffs’ asserted harms are “actual or imminent” and caused by defendants’ challenged conduct, *id.* at 158, or instead depend on “contingent future events,” *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985). In other words, standing and ripeness both ask whether plaintiffs face “threatened or actual injury” from the challenged conduct that “has matured

sufficiently to warrant judicial intervention.” *Warth v. Seldin*, 422 U.S. 490, 499 & n.10 (1975).

As the court of appeals recognized, the challenged provisions of the EO inflict multiple “current or certainly impending injuries” on plaintiffs that “satisfy the requirements of Article III.” App’x 7a. Most fundamentally, the EO intrudes on plaintiffs’ sovereign interests by interfering with their ability to administer elections pursuant to their own state laws regarding mail voting and voter eligibility. *See, e.g.*, D. Ct. Dkt. 105 ¶¶ 40-46. States have “primary responsibility for administering federal elections under the Constitution,” App’x 9a, yet the EO imposes “unprecedented levels of involvement by federal officials in how states administer elections,” *id.* at 13a. For example, the EO “directs various changes to the voting-by-mail process,” *id.* at 9a, and effectively requires States to seek USPS’ approval if they “intend[] to allow for mail-in or absentee ballots,” EO § 3(b)(ii); *see supra* pp. 10-11.

States suffer substantial injury when they must “beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own.” *Shelby County v. Holder*, 570 U.S. 529, 544 (2013). And because the EO “expressly targets state and local [elections] officials, both overall and in numerous subsections,” App’x 12a-13a, they are “objects of the government action at issue,” *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 115 (2025). There “should [thus] be little question” that they have standing to challenge the EO. *Id.* at 113; *see Mirabelli v. Bonta*, 607

U.S. 492, 498 (2026) (per curiam) (plaintiffs “very likely have standing because they are objects of the challenged . . . policies”).

The EO also imposes a “present injury” on plaintiffs because it “require[s] [them] to expend time and resources *now* to prevent”—to the extent possible—“chaos, confusion, and disenfranchisement” when defendants rush to implement untested election protocols for the rapidly approaching November midterms. App’x 7a-8a. Plaintiffs are already actively preparing for those elections—“as they must,” *id.* at 18a (Dunlap, J., concurring in part)—given that administering statewide elections “require[s] enormous advance preparations by state and local officials,” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring); *see* App’x 41a. Absent injunctive relief, plaintiffs would be forced to divert resources from this important election-preparation work to compile and convert voluminous data for submission to USPS, train elections officials, educate voters, and change their ballot envelopes. *See, e.g.*, D. Ct. Dkt. 105 ¶¶ 22-30, 47-57, 60-63; D. Ct. Dkt. 100-4 ¶¶ 32-41; D. Ct. Dkt. 100-7 ¶ 12; D. Ct. Dkt. 100-12 ¶ 12.

Each of those tasks would be challenging and costly—especially with so little time before the impending midterms. To transmit data to USPS, for example, plaintiffs would need to compile lists of voters registered for mail ballots and determine how to upload them to USPS’ new online portal in ways that both meet USPS’ “technical specifications” and comply with state privacy laws that govern the sharing of “large volumes of confidential data.”

App'x 8a; *see* D. Ct. Dkt. 105 ¶¶ 44, 47. That would require “compiling data, converting or preparing data into an acceptable format for USPS, [and] removing information prohibited from disclosure under state law (e.g., driver’s license numbers and social security numbers).” D. Ct. Dkt. 105 ¶ 47. Because States must submit those lists to USPS before the deadline in many jurisdictions for registering to vote or requesting mail ballots, States would need to “supplement and provide suggested modifications” on a rolling basis. *Id.* ¶ 49; *see id.* ¶ 46. And when USPS later “provide[s] each State with a list of individuals . . . who are enrolled with the USPS,” EO § 3(b)(iv), States would have to undertake the “technically challenging task” of reviewing that list for accuracy to ensure that no individuals have been mistakenly omitted, D. Ct. Dkt. 105 ¶ 50; *see id.* ¶ 52 (discussing “high risk of errors” in this process).

As the courts below recognized, plaintiffs also face “certainly impending pocketbook injuries” from the EO’s design requirements for mail ballot envelopes. App’x 11a; *see id.* at 42a. Many plaintiffs have already purchased envelopes that depart from the requirements that the EO directs USPS to adopt. D. Ct. Dkt. 105 ¶ 62. Although defendants assert that it is “entirely speculative” what the specifics of those new requirements will be, U.S. Appl. 25, the “record reflects that *any* change to the kind of envelopes [plaintiffs] must use” for mail voting will “necessarily” result in additional “monetary and operational costs,” App’x 11a; *see id.* at 18a (Dunlap, J., concurring in part).

Each of these tasks—along with the many necessary responses to Section 2 of the EO—additionally require plaintiffs to provide new “training and guidance to elections officials” at the state and local levels. App’x 8a; *see, e.g.*, D. Ct. Dkt. 105 ¶¶ 27, 54. “[R]unning a statewide election” requires “a massive coordinated effort” of “thousands of state and local officials.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). The necessary statewide training to carry out that effort is no small endeavor. As one California official explained, “[w]hen we need to train county elections officials in all 58 counties, the state is split into five regions and the trainings require coordination with all the county elections officials in each region,” as well as “written advisories, and constant follow-up and iterations in these materials based on feedback.” D. Ct. Dkt. 100-1 ¶ 22; *see also, e.g.*, D. Ct. Dkt. 100-4 ¶¶ 37-38; D. Ct. Dkt. 100-12 ¶¶ 7, 31-32; D. Ct. Dkt. 100-17 ¶¶ 23-24. Some plaintiffs already “have had to divert time from the[ir] planned trainings” on other important legal issues in order to create new “guidance on this EO.” D. Ct. Dkt. 100-7 ¶ 23; *see id.* ¶¶ 24-26.

Public education is also critical when there are last-minute changes to election laws. Absent the injunction here, for example, States would need to warn voters about the new USPS verification program and “how [it] may impact a citizen’s ability to vote by mail,” particularly in those States where voters are accustomed to “automatically receiving mail ballots and being able to vote by mail.” D. Ct. Dkt. 100-3 ¶ 54; *see* D. Ct. Dkt. 105 ¶ 55. State elections

officials estimate that public education efforts in response to the EO will cost at least hundreds of thousands of dollars. *See* D. Ct. Dkt. 100-3 ¶¶ 54-55; D. Ct. Dkt. 100-11 ¶¶ 87-88; D. Ct. Dkt. 100-20 ¶¶ 52-53. Concerned voters have already flooded state and local officials with calls and emails. *See, e.g.*, D. Ct. Dkt. 100-19 ¶ 9; D. Ct. Dkt. 100-4 ¶ 43. And “given their limited resources,” plaintiffs have no choice but to divert “staff time and attention [away] from other pressing election-related tasks” to engage in this public outreach in response to the EO. App’x 8a. After all, “state and local officials must communicate to voters how, when, and where they may cast their ballots.” *Democratic Nat’l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring).

The final category of injury identified by the courts below is the threatened prosecution of state and local elections officials under Section 2 of the EO. App’x 12a-13a; *id.* at 43a. “[W]here threatened action by *government* is concerned,” plaintiffs need not wait and expose themselves to prosecution “before bringing suit to challenge the basis for the threat.” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-129 (2007). And as discussed above, *supra* p. 22, plaintiffs’ officials “face[] a credible threat of criminal prosecution if they fail[] to use the DHS Citizenship Lists to verify voter eligibility in upcoming elections, even though the undisputed record demonstrate[s] that those lists would necessarily be underinclusive when transmitted to the states.” App’x 12a. At a minimum, plaintiffs “credibly fear[] prosecution for delivering ballots to eligible 17-year-old voters in connection with federal primary elections.” *Id.*

Section 2(b) of the EO expressly threatens prosecution for “issu[ing] Federal ballots” to individuals under the age of 18, EO § 2(b), even though “some states permit[] certain 17-year-old residents to vote in federal primary elections,” App’x 12a; *see id.* at 17a (Dunlap, J., concurring in part) (agreeing with the majority that plaintiffs had standing to challenge Section 2(b) on this basis).

2. a. In the courts below, defendants and intervenors “did not dispute [plaintiffs’] declarations and other factual submissions” about these many injuries. App’x 6a. Instead, they “contest[ed] only the legal implications of those undisputed facts.” *Id.* They argued—and once again argue before this Court—that plaintiffs’ injuries cannot support standing or ripeness because, in their view, plaintiffs’ “real concern is not with the [EO] itself,” but with “possible harms that may arise depending upon what specific actions the agencies ultimately decide to take in implementing the President’s directives.” U.S. Appl. 11; *see* Intervenors’ Appl. 10-20. That argument fails because, “[r]egardless of the details of how federal officials implement the EO,” the EO “at its core” requires that States “coordinate with DHS and USPS . . . or else risk disenfranchisement for certain voters and penalties for states and their officials.” App’x 13a. Given the “considerable advance planning” required to administer the upcoming November elections, plaintiffs would—absent the injunction—have to act “‘now’” to ensure compliance. *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 201 (1983).

Defendants' own "concessions" about their plans for implementing the EO—as well as the text of the EO itself—"undermine" any contentions that plaintiffs' injuries are speculative or that their legal challenge is "premature." App'x 7a. The EO sets forth "multiple specific directives" requiring agencies to take certain actions "at specified times," and it further requires that "definite 'substantive outcomes' be implemented" in the immediate term. *Id.* at 80a. Defendants emphasize that the EO directed USPS to "initiate a *proposed* rulemaking." U.S. Appl. 14. But it also ordered that USPS issue "[a]ny final rule" within 120 days. EO § 3(d). And defendants' submissions leave no room for doubt that they intend to implement a final rule "[c]onsistent with the Proposed Rule" and the President's directives. D. Ct. Dkt. 194-2 ¶ 7; *see also* D. Ct. Dkt. 103-2 at 1 (White House fact sheet explaining that the EO "*requires* the USPS to transmit ballots only to individuals enrolled on a [USPS] List" (emphasis added)).

There is no sensible reason to force plaintiffs to wait to challenge those implementing actions just weeks before the November elections, given that defendants have not identified any way in which the details of those actions would alter plaintiffs' constitutional challenge. For example, because Congress has not authorized anything resembling Section 3's voter-verification and ballot-interception program, *supra* p. 19, there is no way defendants can lawfully implement that directive "regardless of the details of USPS's final rule," App'x 9a; *see supra* p. 21. And where, as here, plaintiffs face a

“substantial risk [of] harm” from a government policy or action, they need not “wait and see” exactly how it will be implemented before bringing suit. App’x 11a (quoting *Mahmoud v. Taylor*, 606 U.S. 522, 560 (2025)). The Court applied that principle just this Term to allow plaintiffs to challenge a “non-self-executing” subpoena, even though it “impose[d] no obligations of [its] own.” *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1127 (2026). It is thus irrelevant whether or not the EO is “self-executing.” U.S. Appl. 23. What matters is that it “induce[s]” changes in behavior by “objectively reasonable” individuals, *First Choice*, 146 S. Ct. at 1127—here, state and local elections administrators. *Cf. id.* (“[T]he value of a sword of Damocles is that it hangs—not that it drops.”).<sup>6</sup>

b. Defendants and intervenors invoke a series of cases in support of their justiciability arguments, but each is highly distinguishable. For example, this case is nothing like *Clapper v. Amnesty International USA*, 568 U.S. 398, 402 (2013), where plaintiffs sought to “manufacture standing by choosing to make expenditures” in anticipation of a highly speculative future injury. *See* U.S. Appl. 21-22; Intervenors’ Appl. 12. There is nothing speculative about the EO’s directives or the threatened harms detailed above. And it is preposterous to suggest that, absent injunctive relief, plaintiffs would be making a “voluntary

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<sup>6</sup> Intervenors assert that courts are too often enjoining “non-self-executing” executive orders, Intervenors Appl. 23-24, but of course, many of the intervenor States have sought and received such relief themselves in recent years, *e.g.*, *Louisiana v. Biden*, 55 F.4th 1017, 1033 & n.50, 1035 (5th Cir. 2022).

choice[]” to divert resources from their ordinary pre-election responsibilities to prepare for the EO’s rollout. U.S. Appl. 22. Given the stakes, responsible state and local officials “have no practical choice but to respond to the EO now.” App’x 9a; *see* D. Ct. Dkt. 105 ¶¶ 22, 36-37, 49. Otherwise, the threats of error, disenfranchisement, and voter confusion due to defendants’ experimentation with USPS ballot interception and other novel programs would be far too great.

Defendants and intervenors also rely heavily on *Trump v. New York*, 592 U.S. 125 (2020) (per curiam), which treated as unripe a challenge to a presidential memorandum announcing a policy of excluding certain noncitizens from the census apportionment base. But in *Trump*, the federal government *conceded* that it could not “feasibly implement the memorandum” as written. *Id.* at 133. Here, there is no such concession. Defendants have instead “conceded that [they] seek[] to enforce the EO nationwide for the November 2026 election and would do so but for the district court’s injunction.” App’x 7a. And their submissions in the district court and other public filings confirm that, absent the injunction, they intend to finalize the USPS ballot-verification program “[b]y the time that the first mail-in ballot is ready to mail” for this fall’s elections. D. Ct. Dkt. 194-2 ¶ 7; *see* 91 Fed. Reg. 44880 (July 17, 2026) (publishing system of records notification under the Privacy Act so USPS can finalize its new program for the November elections).

This case also differs from *Trump* because *Trump* did not involve the extraordinary pressures and legal responsibilities that States face in preparing

for rapidly approaching elections. The challengers in *Trump* would have “suffer[ed] no concrete harm from the challenged policy” unless and until executive officials took future actions not specified in the memorandum. 592 U.S. at 134. Even then, those actions might not “have [had] any impact [on the challengers] *at all*.” App’x 9a. Here, by contrast, the district court found that “Plaintiff States [are] experiencing injury *now*” from the EO because of the ongoing work required to administer the upcoming midterms. *Id.* at 43a (emphasis added). And absent the injunction against Section 3, plaintiffs would suffer injuries “irrespective of how exactly USPS implements it.” *Id.* at 10a; *see id.* at 18a (Dunlap, J., concurring in part) (agreeing that *Trump* is distinguishable because plaintiffs “must necessarily take initial steps to comply with . . . the EO” in light of the “impending deadlines that States currently face . . . for immediately upcoming elections”).<sup>7</sup>

Plaintiffs’ responsibility to administer elections—and the fact that the EO repeatedly targets state and local elections officials, *see* App’x 9a, 10a n.7—

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<sup>7</sup> As Judge Dunlap recognized, App’x 18a, this case is also unlike those cited in the applications for the principle that courts do not “‘review[] *proposed* rules.’” Appl. 15; *see* Intervenor’s Appl. 17-18. None of those cases involved the unique considerations that come into play for state and local officials when the federal government threatens last-minute changes to election rules. And it would be far too categorical to assume that, merely because the government has “not yet promulgated final rules,” that necessarily “mean[s] that [their] eventual promulgation [is] an uncertain or contingent event.” *Jensen v. R.I. Cannabis Control Comm’n*, 160 F.4th 18, 24-25 (1st Cir. 2025). In any event, plaintiffs “do not challenge” USPS’ proposed rule; “instead, they challenge the EO as exceeding the President’s authority under the Constitution.” App’x 14a.

distinguishes this case from *DSCC v. Trump*, 2026 WL 1487833 (D.D.C. May 28, 2026) (*DSCC I*), *aff'd*, 2026 WL 2168617 (D.C. Cir. July 28, 2026) (per curiam) (*DSCC II*), and *NAACP v. USPS*, 2026 WL 2168004 (D.C. Cir. July 17, 2026) (per curiam). The courts in those cases denied or stayed injunctions against implementation of the EO because they concluded that *private* plaintiffs' challenges were likely non-justiciable. But "[d]ifferent types of plaintiffs may, of course, have Article III standing for different reasons," *DSCC I*, 2026 WL 1487833, at \*5, and the private plaintiffs in those cases were not "the States charged with administering elections and adapting their procedures to the requirements contemplated by the [EO]," *DSCC II*, 2026 WL 2168617, at \*5. "[O]nly in this case are the plaintiffs the very states and state officials that the EO identifies and targets." App'x 10a n.7. And because elections require enormous advance preparations by state and local officials, *see, e.g., supra* p. 26, plaintiffs would suffer imminent harm preparing for the EO's rollout with the fall elections so quickly approaching.

The final cases invoked by defendants and intervenors (*e.g.*, U.S. Appl. 18) are even further afield. In *Trump v. American Federation of Government Employees*, 145 S. Ct. 2635 (2025), the Court "did not address the plaintiffs' standing to sue or the ripeness of their claims." App'x 10a. The Court stayed an injunction on the ground that the federal government was "likely to succeed on its argument that the [challenged] Executive Order [was] lawful." 145 S. Ct. at 2635. Here, defendants and intervenors make no effort to defend the

challenged EO's legality. *Supra* p. 20.<sup>8</sup> The decision in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 394 (2024), likewise has little relevance because plaintiffs are not seeking to “spend [their] way into standing” by “engaging in public advocacy” against the challenged government action. *Contra* U.S. Appl. 21. They are “taking actions necessary to administer fast-approaching elections as the Constitution, federal statutes, and state laws require.” App’x 9a n.6; *see supra* pp. 25-29.

3. While the district court concluded that plaintiffs had standing and that their claims were ripe as to elections on or before November 3, 2026, App’x 75a-80a, it partially dismissed their claims as to later elections “on prudential ripeness grounds,” *id.* at 74a-75a, 81a. Defendants contend that it was “contrary to both law and logic” for the district court to treat imminent and future elections differently and that the “same [justiciability] reasoning” should have applied to both sets of elections. U.S. Appl. 12. But the district court’s partial dismissal did not rest “on grounds that are . . . constitutional.” *Susan B. Anthony List*, 573 U.S. at 167. Rather, the court clarified that its ruling reflected differing levels of hardship from withholding judicial review, *see* App’x 4a, 24a—a “prudential, rather than constitutional,” consideration. *Susan B. Anthony List*, 573 U.S. at 167; *see N.H. Lottery Comm’n v. Rosen*, 986

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<sup>8</sup> Nor did Justice Sotomayor’s concurring opinion in *American Federation of Government Employees* address justiciability. Instead, she emphasized that— notwithstanding the Court’s stay—the district court still could consider whether any subsequent agency actions “will be carried out consistent with the constraints of law.” 145 S. Ct. at 2635 (Sotomayor, J., concurring).

F.3d 38, 52 n.8 (1st Cir. 2021). The district court’s partial dismissal on that basis *benefitted* defendants by limiting the scope of the injunction.

Prudential ripeness turns, in significant part, on “whether delayed review would cause hardship to the plaintiffs.” *Ohio Forestry Ass’n v. Sierra Club*, 523 U.S. 726, 733 (1998). The district court reasoned that withholding judicial review “of the EO *as it relates to distant elections* will pose little hardship where there will be sufficient time for legal challenges” to future implementing actions. App’x 75a (emphasis in original). As to the rapidly approaching November elections, however, the court concluded that “postponing judicial review is impracticable” and would “inflict significant hardship” on plaintiffs, given that the “practical realities of running an election” require that they “take actions for the upcoming election now.” *Id.* at 76a-77a; *see id.* at 24a (“claims as to the upcoming elections are ripe because States are actively planning” and “currently administering such elections”).

The district court also expressed concern that, if plaintiffs were forced to wait to bring suit, defendants might altogether avoid judicial review before the November elections, given the “ever-narrowing window of time in which review is appropriate and practicable.” App’x 78a. Defendants dismiss those concerns, asserting that their justiciability arguments “do[] not foreclose the *possibility* of future judicial review.” U.S. Appl. 23 (emphasis added). But they never concede that relief would actually be available ahead of the fall elections. If defendants succeed in avoiding review now on ripeness grounds, nothing

would stop them from turning around and trying to invoke the “*Purcell* principle” to avoid meaningful review as the election approaches. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam).<sup>9</sup> Despite several opportunities to disclaim that strategy, defendants have repeatedly declined to do so. *E.g.*, Joint App’x at 641, *DSCC II*, No. 26-5193 (D.C. Cir. June 17, 2026), ECF No. 2179334 (defendants’ counsel stating “of course [they] can’t and won’t take . . . off the table” the argument that *Purcell* would disallow enjoining a USPS final rule prior to this year’s elections).

The appropriate judicial response to these serious concerns is to recognize plaintiffs’ challenge as ripe and prevent disruptive changes to election rules ahead of the rapidly approaching midterms—just as the district court did. *Supra* pp. 13-14. But in the event that the Court disagrees and opts to grant a stay, it would be imperative for the Court to make clear in its order that neither *Purcell* nor any other restriction on judicial review, *supra* n.9, would preclude injunctive relief against defendants’ unconstitutional interference with state elections laws before the November elections. *Cf. In re United States*, 139 S. Ct. 452, 453 (2018) (clarifying, in the course of resolving a stay

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<sup>9</sup> Defendants also might seek to insulate a USPS final rule from judicial review before the November elections by arguing that plaintiffs must follow a 90-day administrative review process before filing suit. *See New York v. Trump*, 2026 WL 2023744, at \*3-6 (D.C. Cir. July 14, 2026); *but see id.* at \*4 n.3 (reserving question “whether the statutory review scheme would . . . foreclose[]” emergency judicial review to address “‘here-and-now’ injuries that are ‘impossible to remedy’ if judicial review is deferred”—such as injuries from rolling out changes to election rules “only months before . . . [an] election”).

application, that an alternative form of relief was available). As the D.C. Circuit recently explained, *Purcell* vindicates a “federalism interest” against “a federal court . . . swoop[ing] in and re-do[ing] a State’s election laws in the period close to an election.” *DSCC II*, 2026 WL 2168617, at \*5. Defendants would get “the *Purcell* principle backwards” if they invoked it to impose “massive changes on the States’ voting systems on the threshold of the upcoming election.” *Id.* at \*6. Those actions “could be enjoined without implicating any federalism or reliance interests because the injunction would preserve the States’ existing electoral status quo.” *Id.* The far better course, however, would be to prevent needless uncertainty, litigation, and confusion ahead of the upcoming elections by denying the stay applications outright.

## II. EQUITABLE CONSIDERATIONS WEIGH HEAVILY AGAINST A STAY

The “balance of harms and equities” strongly counsel in favor of denying the stay applications. *E.g.*, *NetChoice*, 145 S. Ct. at 2658 (Kavanaugh, J., concurring). A stay is an equitable remedy, and “relief may be inequitable if it is issued shortly before an election, when candidates, election officials, and voters have relied on the rules in place at that time.” *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring). Indeed, the “imminence of [an] election” can sometimes require courts “of necessity” to allow “election[s] to proceed” under existing rules—regardless of merits-related considerations, *Purcell*, 549 U.S. at 5-6—particularly where, as here, pre-election changes would impose “significant cost, confusion, or hardship,” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring); *see also id.* at 882 (“practical considerations

sometimes require courts to allow elections to proceed” under existing rules (internal quotation marks omitted)).

The relief requested by defendants and intervenors is incompatible with those principles. They contend that absent a stay, there is “not enough time” as “a practical matter” to implement the EO nationwide for the November 2026 elections “given the timing of state election procedures” governing mail voting. U.S. Appl. 28. That argument turns the equitable analysis on its head. The “timing of state election procedures,” with many state elections officials poised to mail out ballots mere weeks from today, *supra* pp. 6-7, is precisely why allowing sweeping changes to States’ election procedures would be “inequitable” *now*. *Malliotakis*, 146 S. Ct. at 811 (Alito, J., concurring). Accordingly, even if the Court has doubts about the lower courts’ likelihood of success analysis, *but see supra* pp. 16-39, the equitable course would be to leave the injunction in place, thereby preserving existing elections rules for the time being.

Defendants’ and intervenors’ assertions of harm (*e.g.*, U.S. Appl. 27-29) are also greatly overstated. The injunction prevents implementation of the EO only as to the fall elections and only in the plaintiff States. *See* App’x 15a. It “does not prevent any steps to implement the EO . . . for elections that will occur after November 3, 2026.” *Id.* at 25a. And it allows implementation as soon as November 2026 in over two dozen non-plaintiff States. *Id.* at 15a. Intervenors contend the district court’s order “prevent[s] the federal government from developing Section 2(a)’s [DHS] Citizenship Lists and

providing” the lists to them. Intervenor’s Appl. 20-21. But in fact, defendants themselves have said the lists “will be available to the non-Plaintiff states [for] the November 3, 2026 election.” D. Ct. Dkt. 194-1 ¶ 8.

As to Section 3, defendants argued below that “it would not be possible for [USPS] to put a two-tiered system in place” for this fall’s elections—that is, “one set of rules [for] the ballot mail of the [p]laintiff States, and another [for] the remaining States.” D. Ct. Dkt. 194-2 ¶ 5. But as the court of appeals observed, defendants have never explained *why* that is so. App’x 15a. It is doubtful that the new USPS online portal—assuming that USPS can get it up and running for anyone—would be incapable of being “used by some states and not others.” *Id.* And it is unclear why the new ballot-mail “design requirements” could not apply only to non-plaintiff States for this year’s elections, and to all States for future elections. D. Ct. Dkt. 194-2 ¶ 8. If anything, the injunction would make USPS’ rollout easier and less costly, by allowing USPS to process ballots as usual for the plaintiff States while unveiling its ballot-monitoring and interception plan for other States.

Defendants’ assertions about “harms to voter integrity” are likewise unconvincing. U.S. Appl. 29. If it is really true, as defendants contend, that Section 2 “does not . . . require [the plaintiff] States to use the [DHS Citizenship Lists] at all,” *id.* at 5, then the injunction would pose little, if any, harm. And defendants and intervenors present no reason to think that Section 3’s immediate implementation is necessary to “ensur[e] that mail in ballots cast . . .

are securely delivered and counted” during this year’s elections. Intervenor’s Appl. 21. No similar USPS rule has ever existed, and States have their own protocols to verify voter eligibility and protect against mail-ballot fraud.<sup>10</sup> Studies have also repeatedly demonstrated that noncitizen voting and fraud related to mail voting are extraordinarily rare. *See, e.g.*, Br. of State & Local Elections Officials & Elections Experts, D. Ct. Dkt. 175 at 16-17.<sup>11</sup> Neither defendants nor intervenors identify any evidence to the contrary.

By contrast, a stay of the district court’s injunction would significantly harm the plaintiff States. The costs and hardships for state and local elections officials are well-documented. *See supra* pp. 26-29. They would be forced to divert their time and resources from active preparations for the rapidly approaching midterms and resume burdensome efforts to comply with the EO on a compressed timeline. *Id.* Voter confusion would also predictably follow from shifting guidance about mail voting so close in time to the election. App’x 15a. If a stay were issued, and defendants were to finalize USPS’ proposed rule in the coming weeks and announce its application in plaintiff States, litigation over that rule would be inevitable. In the meantime, voters would be

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<sup>10</sup> *See, e.g.*, Nat’l Conf. of State Legislatures, *Table 14: How States Verify Voted Absentee/Mail Ballots* (updated May 20, 2026), <https://perma.cc/RVF3-9KAL>.

<sup>11</sup> *See also* Angel et al., *Mail Voting in the US: Data Points to Very Low Fraud and Significant Benefits to Voters*, Brookings (Nov. 6, 2025), <https://perma.cc/E3WD-8AN7>; Barreto et al., *Debunking the Myth of Voter Fraud in Mail Ballots*, UCLA Voting Rights Project (Apr. 14, 2020), <https://perma.cc/MS8G-VM9M>.

left to wonder what rules govern their mail ballots. “When an election is close at hand,” however, “the rules of the road should be clear and settled.” *Democratic Nat’l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring).

Beyond voter confusion, changes to mail voting infrastructure on the eve of an election threaten the sort of errors that would deprive individuals of their right to vote. Even with “heroic efforts” by state and local officials in the coming weeks, *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring), the EO’s rollout would be “disastrous from a practical perspective,” Br. of State & Local Elections Officials & Elections Experts, D. Ct. Dkt. 175 at 2. The new USPS mail voter lists, which USPS will use to withhold ballots, will inevitably contain omissions due to the inherently dynamic nature of voter rolls. D. Ct. Dkt. 105 ¶¶ 47-52. And as discussed above, *supra* p. 17, there is high potential for mistakes to be made in compiling new lists of voters enrolled for mail voting, especially on the rushed timeline contemplated by defendants. Section 2’s citizenship lists will also contain omissions due to flawed federal citizenship data, D. Ct. Dkt. 105 ¶¶ 16-17, changes in voter residency and the lack of reliable federal address data, *id.* ¶¶ 19-20, and the addition of naturalized citizens to voter rolls in the 60 days before an election, *id.* ¶ 21.

No one knows, moreover, if USPS’ new online portal for enrolling mail voters or its ballot-scanning technology will actually function as intended. Nor is it clear that USPS—an agency facing significant funding pressures and related operational challenges—can competently administer a ballot-

verification program that is unlike anything it has ever undertaken. Defendants' submissions before the district court detail how complicated the rollout would be. *See* D. Ct. Dkt. 194-2 ¶¶ 7-8. And USPS' recent performance in other areas is not encouraging. *See, e.g.,* U.S. Gov't Accountability Off., GAO-26-109008, *U.S. Postal Service: Urgent Action Needed to Fix Unsustainable Business Model and Improve Service Performance* (Mar. 17, 2026), <https://perma.cc/97XZ-RVW3>; Office of Sen. Hawley, *Hawley Expands Postal Service Investigation* (July 16, 2026), <https://perma.cc/LAY3-2PRA> (describing Senator Hawley's investigation "into the ongoing mail service failures plaguing Missouri").

These implementation concerns, along with voter confusion caused by shifting mail voting rules, threaten significant interference with mail voting—particularly among rural and disabled voters, who rely heavily on mail ballots. *See* D. Ct. Dkt. 105 ¶¶ 58-59; *supra* p. 7. Mail voting is now commonplace: in 2024, nearly a third of all voters submitted ballots by mail. *Supra* p. 8. Mail voting increases voter turnout across the board; it “does not appear to affect either party's . . . share of turnout” or “increase either party's vote share.” Angel et al., *supra* (internal quotation marks omitted). And for some voters—like disabled voters, who often lack access to polling places or reliable transportation—mail voting may be the only practical way of casting a ballot. *Supra* p. 7. Defendants' rushed effort to change the rules of mail voting on the

eve of the November midterms risks disenfranchising a substantial number of voters—an intolerable risk that weighs heavily against a stay.

### CONCLUSION

The applications for a stay should be denied.

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