

IN THE
Supreme Court of the United States

DONALD J. TRUMP, *in his official capacity as President
of the United States, et al.,*

Applicants,

v.

STATE OF CALIFORNIA, *et al.,*

Respondents.

**BRIEF OF DEMOCRATIC PARTY AMICI CURIAE IN OPPOSITION TO
THE APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE
DISTRICT OF MASSACHUSETTS**

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INTERESTS OF *AMICI CURIAE*

Amici curiae are the Democratic Senatorial Campaign Committee (DSCC), Democratic Congressional Campaign Committee (DCCC), Democratic National Committee (DNC), Democratic Governors Association (DGA) (together, the “Party Organizations”), U.S. Senate Minority Leader Charles E. Schumer, and U.S. House Minority Leader Hakeem S. Jeffries.¹

DSCC’s mission is to elect Democratic candidates to the U.S. Senate; DCCC’s mission is to elect Democratic candidates to the U.S. House of Representatives; and the DNC is dedicated to electing Democratic candidates up and down the ballot. DGA supports Democratic governors and works to elect Democratic gubernatorial candidates across the United States. Collectively, the Party Organizations’ membership includes Democratic candidates and voters in all 50 States and the District of Columbia. In addition, Leaders Schumer and Jeffries are themselves candidates and voters with individual interests in the electoral process and their voting and privacy rights.

With States set to begin distributing mail ballots in mere weeks for the 2026 general election, *Amici* are fully engaged in supporting their candidates and voters. They do so by helping candidates execute campaign strategies that were crafted according to each State’s election rules, including those governing voter qualifications and mail-voting eligibility. And *Amici* assist voters who seek to register and cast

¹ Pursuant to Supreme Court Rule 37.6, *Amici* state that no counsel for a party authored this brief in whole or in part, and no person other than *Amici* or their counsel made a monetary contribution to fund its preparation or submission.

ballots—by mail or otherwise—in support of Democratic candidates.

Amici's efforts are premised on a constitutional system of free and fair elections. See *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 77 (2026) (holding candidates' "interest in [political power] cannot be severed from their interest in the electoral process—a process 'of the most fundamental significance under our constitutional structure'" (quoting *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979))); see also *NRSC v. FEC*, No. 24-621, 2026 WL 1868932, at *7, *14 (U.S. June 30, 2026) (describing "unique," "intertwined relationship of parties and their candidates"); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586–88 (5th Cir. 2006) (holding political parties have "both direct and associational" interests in candidates' electoral efforts). To achieve their missions, *Amici* require clear, stable rules, especially at this late stage in the election calendar. They require postal services that provide seamless, universal ballot delivery—an issue particularly urgent for *Amici* given Democratic Party voters' disproportionate use of mail voting. And they require public confidence that private voter data will, in fact, remain private—particularly given that Defendants' efforts to "centraliz[e]" such data predictably "chill[] . . . voter registration." *United States v. Weber*, 816 F. Supp. 3d 1168, 1195–96 (C.D. Cal. 2026), *appeal docketed*, No. 26-1232 (9th Cir. argued May 19, 2026). All of this has been severely compromised by Executive Order 14,399 (the "E.O." or "Order").

Amici are presently challenging this E.O. in parallel litigation. On May 28, 2026, the District Court for the District of Columbia denied *Amici*'s motion for

preliminary injunction as unripe as applied to *Amici*, and the D.C. Circuit affirmed after declining to consider recent facts about Defendants' implementation. *See DSCC v. Trump*, No. 26-5693, 2026 WL 2168617, at *5 & n.3 (D.C. Cir. July 28, 2026). *Amici* thus have a strong interest in ensuring this Court adjudicates Defendants' application with a full understanding of the relevant facts and cognizant of the dire consequences the E.O. poses for voters and candidates across the country.

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INTRODUCTION AND SUMMARY OF ARGUMENT

To hear them tell it, Defendants have no idea how—or *if*—they are going to implement Executive Order 14,399. In fact, Defendants have not even determined whether they think the E.O.’s terms are lawful. Yet they now declare in an emergency filing that they suffer grave and irreparable harm every moment they are prevented from implementing the legally dubious E.O. that they might ignore entirely. These contortions and contradictions do not warrant a stay.

The E.O.’s unconstitutionality is flagrant. Section 3(b) orders the United States Postal Service (“USPS”) to initiate a rulemaking requiring it to refuse mail-ballot delivery for any voter who is not properly “enrolled” with USPS. Section 2(a) commands agencies to prepare “Citizen-Resident Lists” of every adult American citizen residing in each State and to share those lists with State election officials in advance of each election. The E.O. thus “involve[s] the President, whom the Constitution vests with no express authority over the conduct of elections, undertaking a substantial . . . overhaul of election procedures.” *DSCC*, 2026 WL 2168617, at *5. Defendants have made no attempt to explain how any of this is legal; as the First Circuit observed below, Defendants “do[] not defend the legality of the EO” and failed to challenge the district court’s determination that it is unconstitutional. *California v. Trump*, No. 26-1774, 2026 WL 2144084, at *5 (1st Cir. July 25, 2026).

Defendants’ ripeness defense—which is their only defense—depends entirely on their assertion that “agencies are still deliberating how (if at all) to implement the Order.” App. 2. But their in-court representations contradict that strategic

obfuscation. Defendants have dutifully published the very notice of proposed rulemaking that Section 3(b) of the E.O. requires, initiating the rule that would now be published in final form but for the district court's injunction. And Defendants shared (without any subsequent retraction) that the "portal" for State election officials to obtain the "citizenship information" contemplated in Section 2(a) would be operational by June 30. *See* D. Ct. Doc. 188-1 at 1–2 (June 18, 2026) ("DHS Memo"). Such imminent disruptions of election processes injure not only States, but also candidates, campaigns, and their supporters.

Defendants have little to say on the remaining stay factors, and what they do say makes little sense. They claim irreparable harm from an injunction that orders them not to take illegal actions that they disclaim any intention of taking. They claim the crisis is "acute" because agency decisions must be implemented "as soon as early to mid-August"—that is, *now*—while maintaining that any harm is not "imminent" because those decisions cannot presently be anticipated. App. 28–29. They claim their policies must be rubberstamped because "there is not enough time to obtain ordinary appellate relief from the injunction . . . before the November 3, 2026, election," but omit that this is a problem of their own making. When the President launches an unconstitutional seizure of sensitive election powers during an election year, he may not avoid an injunction by insisting he is in a rush.

The Application for a Stay should be denied.

ARGUMENT

I. The E.O. is legally indefensible.

The Elections Clause allocates power to regulate federal elections to States in the first instance, subject to override only by Congress. *See* U.S. Const. art. I, § 4, cl. 1; *see also* *Watson v. Republican Nat’l Comm.*, No. 24-1260, 2026 WL 1855462, at *3 (U.S. June 29, 2026) (“As Alexander Hamilton put it, the Constitution lodges power over congressional elections in state legislatures ‘primarily’ and in Congress ‘ultimately.’” (quoting *The Federalist* No. 59, at 362 (C. Rossiter ed., 1961))). Notably, even Congress may not decide who is eligible to vote—that power is reserved for the States. *Arizona v. Inter Tribal Council of Ariz., Inc. (“ITCA”)*, 570 U.S. 1, 8, 16 (2013); *see also* *South Carolina v. Katzenbach*, 383 U.S. 301, 333–34 (1966) (explaining that Congress may suspend qualifications to enforce the Reconstruction Amendments). Where Congress has enacted statutes that regulate voting, including the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20501, *et seq.*, and Help America Vote Act (“HAVA”), 52 U.S.C. § 20509, *et seq.*, it has consistently confirmed that States enjoy primary responsibility for election administration.

The Constitution vests the President “with no express authority over the conduct of elections.” *DSCC*, 2026 WL 2168617, at *5. And “in the field of election administration, Congress [also] appears to have granted the president vanishingly little power to exercise unilateral control.” Lisa Marshall Manheim, *Presidential Control of Elections*, 74 Vand. L. Rev. 385, 435 (2021). By trespassing into this domain, the E.O. purports to seize for the President the very power that the Constitution’s Framers explicitly assigned to others.

A. Section 3(b) unlawfully transforms mail voting.

Section 3(b) calls for a transformation of mail voting nationwide. It directs USPS to initiate a proposed rulemaking to “enroll[]” individuals who may use “mail-in or absentee ballots.” E.O. § 3(b)(iv). It also directs USPS to not transmit ballots for voters who do not appear on one of these “Mail-In and Absentee Participation Lists” of “enrolled” voters. *Id.* § 3(b)(iii). Thus, Section 3(b) would categorically prohibit delivery of mail ballots for voters who are not included in a novel federal registry.

Time and again, Defendants have been given the opportunity to explain how Section 3(b) is lawful—either on its face or in any possible implementation. They have never done so. In *Amici*’s parallel litigation against the E.O., the district court requested Defendants’ “best argument as to why a rule [consistent with Section 3(b)] is within the U.S. Postal Service’s authority.” *See* Tr. of Prelim. Inj. H’ring at 83:1–15, *DSCC v. Trump*, No. 26-1114 (D.D.C. May 14, 2026). Defendants’ attorney said only that he was “very hesitant to just sort of canvas the U.S. Code for how . . . the Postal Service could do such a thing.” *Id.* The next month, Postmaster General David Steiner testified before the Senate Homeland Security Committee, where he was asked, “under what legal authority can the Postal Service regulate who and how people can vote by mail?” Steiner demurred. “I used to be a lawyer,” he said, later adding that “I don’t remember my constitutional law class that well.”²

² *Reforming the U.S. Postal Service’s Broken Business Model: Hearing Before the S. Comm. on Homeland Sec. & Gov’t Affs.*, 119th Cong. (2026), at 40:25–42:01, 1:59:00–1:59:15, <https://www.hsgac.senate.gov/hearings/reforming-the-u-s-postal-services-broken-business-model>.

Defendants' stay application is also silent on Section 3(b)'s substantive legality. Nowhere do Defendants attempt to explain how the President can order USPS to alter the rules for mail voting without congressional approval. *But see Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 188–89 (1999) (reaffirming that all presidential action “must stem either from an act of Congress or from the Constitution itself” (citation omitted)). Nor do Defendants identify any statute that authorizes USPS to undertake any of the actions described in Section 3(b). *But see La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986) (“[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.”).

Instead, Defendants cite a handful of cases that they contend provide grounds for a stay. But in each, the circumstances were fundamentally different, and none support Defendants' position in the case of *this* E.O. In *Trump v. New York*, 592 U.S. 125 (2020), the challenged “order” was an instruction to the Secretary of Commerce to provide an alternative tabulation of the 2020 census that excluded undocumented immigrants. *Id.* at 130. The plaintiffs challenging the instruction did not allege that the contested tabulation *itself* violated their rights, or that the President or any executive agency had concrete plans to use the tabulation for any specific purpose—only that the tabulation *could be used* for an unlawful purpose in the future. *Id.* at 132–33. Here, in contrast, Section 3(b)'s *specific instructions* to USPS are themselves unlawful.

Defendants' reliance on *Trump v. American Federation of Government Employees*, 145 S. Ct. 2635 (2025), is also misplaced. There, the parties contested

whether an executive order reducing the federal workforce exercised existing executive-branch authority to make staffing decisions. *See* Application for Stay at 5–6, *Trump v. Am. Fed’n of Gov’t Emps.*, No. 24A1174 (U.S. June 2, 2025). Justice Sotomayor’s acknowledgment in a four-sentence concurrence in the grant of a stay that such authority might exist there settles nothing about the legality of the E.O. challenged here—where neither the Constitution nor any act of Congress has conferred relevant authority to regulate elections to the executive branch. *See Trump*, 145 S. Ct. at 2635 (Sotomayor, J., concurring).

Defendants’ argument that the Executive Order is “an intra-Branch directive from the President to his subordinates,” App. 13, fares no better. Because “the President speaks and acts through lower government officials” in most instances, “suits challenging the legality of the President’s acts” can be brought to enjoin the action of a “subordinate executive official.” *Nat’l Treasury Emps. Union v. Nixon*, 492 F.2d 587, 613 (D.C. Cir. 1974). In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the paradigmatic challenge to an executive order, President Truman “issued an order directing the Secretary of Commerce to take possession of” certain steel mills. *Id.* at 582. Under Defendants’ theory, this order would be a mere “intra-Branch directive . . . which, of its own force, does not change anything at all about” the ownership of steel mills, and would thus be immune from challenge until the Secretary of Commerce had actually seized the mills. App. 13. But that is not the law—as this Court confirmed when it held that President Truman lacked authority to issue the order. *Youngstown*, 343 U.S. at 585–89.

Considering the E.O.'s commands in an analogous context confirms its illegality. If President Trump issued an executive order directing the Bureau of Alcohol, Tobacco, Firearms, and Explosives to engage in rulemaking to confiscate every firearm in America, for example, the order itself would be unlawful—not because it required the Bureau to engage in rulemaking, nor because it constituted an instruction to the President's subordinates in the Executive Branch, but because the President would be ordering an executive agency to violate the law. So too here: Section 3(b) requires USPS to take action that it can never lawfully take—a fact Defendants never contest. *See generally* 39 U.S.C. § 404(c)(2) (prohibiting USPS from offering “nonpostal services”); *id.* § 403(c) (prohibiting USPS from making “undue or unreasonable discrimination among users of the mails”); *id.* §§ 3001–3018 (defining categories of “nonmailable matter,” which do not include ballot mail from “unenrolled” voters). The district court's order enjoining Section 3(b), and the First Circuit's decision not to stay the injunction, were both proper.

B. Section 2(a) unlawfully exploits protected federal records to aggrandize Defendants' role in voter registration.

Section 2(a) likewise violates the Constitution by rewriting Defendants' role in federal elections. This Section requires DHS to compile “Citizen-Resident Lists” of every adult American citizen residing in each State and to share those lists with State election officials. Section 2(a) specifies that the Lists “shall be derived from Federal citizenship and naturalization records, SSA records, SAVE data, and other relevant Federal databases.” E.O. § 2(a). The Lists must be “transmitted to State election officials no fewer than 60 days before each regularly scheduled Federal election,” or

upon request. *Id.* The stated purpose of the Lists is to “assist in verifying identity and Federal election voter eligibility.” *Id.* § 1.

Here, too, Defendants have declined to defend the E.O. on the merits, and it is easy to see why. Neither the Constitution nor any statute authorizes the President to disclose private data for use in election administration. Defendants respond to privacy concerns that have been raised solely by relying on Section 2(a)’s limited savings clause, which includes *pro forma* language stating that agencies must comply with the Privacy Act of 1974 and other applicable law. App. 20–21. Yet Defendants’ own arguments betray a misunderstanding of what that Act requires and demonstrate why they are plainly *not* complying with the privacy protections Congress required.

The Privacy Act specifically prohibits federal officers from disclosing “any” record contained in “system[s] of records” by “any means of communication to . . . another agency,” with few exceptions that do not apply here. 5 U.S.C. § 552a(b) (emphasis added); *see also* Pub. L. No. 100-503, § 9, 102 Stat. 2507, 2514 (1988) (codified at 5 U.S.C. § 552a note) (providing that “[n]othing in [subsequent] amendments [to the] Act shall be construed to authorize . . . the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by *other Federal agencies*” (emphasis added)). And it further prohibits sharing such “record[s]” *externally*—*i.e.*, to the States. 5 U.S.C. § 552a(b). Yet according to Defendants’ own representations, both types of records disclosures are *already occurring*. *See infra*

§ II.A.2.

II. The E.O. has created a severe disruption of election administration that is inflicting harm across the country.

The district court and First Circuit were correct: plaintiffs' claims are ripe. Recent steps by Defendants to implement the President's *ultra vires* usurpation of regulatory power are injuring electoral participants across the country, with the district court's limited injunction providing the only respite.

A. The E.O. is a directive to violate the law.

The E.O. was actionable the day it was signed. *See Washington v. Trump*, 814 F. Supp. 3d 1173, 1213 (W.D. Wash. 2026) ("If the President lacks a statutory or constitutional basis for issuing an executive order (or any provision in it), the act is unlawful, and a federal court may use its equitable powers to enjoin its implementation." (citing *Youngstown*, 343 U.S. at 587)). But the propriety of a pre-implementation injunction is now academic; Defendants *have* implemented the E.O.'s unlawful provisions to the precipice of disaster. Indeed, according to Defendants, the violations commanded by Section 2(a) have been fully implemented for over a month, and the only thing holding Defendants back from fully implementing Section 3(b)'s unlawful command is the injunction at issue here.

1. USPS is on the cusp of implementing a catastrophic rule if Section 3(b) is not enjoined.

Defendants have carried out Section 3(b) exactly as written. On June 2, 2026, USPS issued the notice of proposed rulemaking ordered by the E.O. *See* Ballot Mail for Federal Elections, 91 Fed. Reg. 32915 (June 2, 2026) (the "NPRM"). "[C]onsistent with Section 3 of Executive Order 14399," the NPRM proposes amending U.S. Postal

Standards “regarding the transmission of mail-in or absentee ballots for federal elections through the mail.” *Id.* The NPRM includes every element Section 3(b) requires, including creation of “Mail-In and Absentee Participation Lists” for each State and the prohibition against transmitting ballots of individuals who are not “enrolled” with USPS. NPRM §§ 24.4.2, 24.5.1, 24.5.3; *DSCC*, 2026 WL 2168617, at *2 n.3. Moreover, the Order instructed USPS to adopt any final rule implementing Section 3(b) “no later than 120 days from the date of this order”—*i.e.*, July 29, 2026. E.O. § 3(d). The district court’s injunction is the only thing stopping USPS from finalizing this rule and throwing the 2026 elections into pandemonium.

The only defense Defendants offer of Section 3(b) is that USPS might not issue a final rule due to purported savings-clause language in the Order that “stresses that the relevant agencies should take only lawful actions.” App. 16. Section 3(b), however, *contains no savings clause*. The E.O. provides merely that USPS’s implementation of Section 3(b) must “comply with the Privacy Act and all applicable use agreements,” *id.* (quoting E.O. § 3(b)(iv)); but Section 3(b)’s illegality does not turn on the Privacy Act or “use agreements”—its fatal deficiency is the complete lack of statutory authorization. And while Defendants say that “Section 3 separately admonishes that any USPS rule must be issued ‘pursuant to 39 U.S.C. 401 and other applicable authority,’” *id.* (quoting E.O. § 3(b)), that is no admonishment at all; 39 U.S.C. § 401 is simply the statute that permits USPS to engage in limited rulemaking. This boilerplate neither saves Section 3(b) nor avoids a ripe controversy.

And even if there *were* an instruction for USPS to implement Section 3(b) only

to the extent feasible and lawful, USPS cannot do so—a fact that Defendants do not dispute, failing to offer any substantive merits defense of the E.O. *Supra* § I.A. There is thus no way for USPS to lawfully implement the order, and no reason to wait and see whether USPS reaches that conclusion on its own.

2. Defendants are already exchanging highly sensitive information among agencies and with State election officials pursuant to Section 2(a).

Defendants have also carried out Section 2(a) precisely as it is written. On June 8, DHS indicated in a memorandum executed by the DHS Secretary that DHS, SSA, and the State Department confirmed that sharing of “citizenship list information with the States” would commence by June 30, 2026. DHS Memo.³ Defendants were ordered to file status updates in *Amici*’s case regarding the E.O.’s implementation, and Defendants have at no point indicated that this directive was changed or ignored. Rather, DHS and the President himself have publicly touted Defendants’ efforts to provide States with information about purported non-citizens, and threatened to investigate States and prosecute officials that do not act on the information.⁴

³ To share this sensitive data with States, federal agencies must first exchange it among federal agencies; DHS cannot “verify” someone’s citizenship status without doing so, *see, e.g.*, 90 Fed. Reg. 48948–50 (Oct. 31, 2025) (explaining that “verifying” “citizenship status” requires cross-referencing identifying information—*i.e.*, Social Security numbers, driver’s license numbers, passport numbers, and birth dates—against another agency’s records), and Defendants have never suggested otherwise.

⁴ *See* Jude Joffe-Block & Miles Parks, *Trump’s Claims of 250,000 Non-U.S. Citizens on Voter Rolls Leave Some States Baffled*, NPR (July 31, 2026), <https://www.npr.org/2026/07/31/nx-s1-5906708/trump-claim-noncitizens-midterms-election-interference-voter-rolls> (reporting that the DHS Secretary at press conferences and in letters “threatened prison time for state election officials who ‘choose not to participate in securing the elections’” by using information provided by the agency, echoing the President’s own statements).

Defendants’ half-hearted suggestion that they have made no “policy decisions” and taken no concrete steps that could harm plaintiffs or the public is directly belied by Defendants’ contradictory statements before other federal courts and to the public. App. 19–20.

B. The E.O. inflicts harms that are present and concrete.

As the district court and First Circuit correctly recognized, the E.O. inflicts ripe injuries on plaintiff States across the country. *Amici* write to further emphasize the dire, immediate injuries that the E.O. inflicts on their members, individual voters on whose behalf the plaintiff States may litigate as *parens patriae*. See, e.g., *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 600–08 (1982).

1. Section 3(b) has an ongoing *in terrorem* effect on voters.

Section 3(b)’s impact on voters has been immediate and severe. All 50 States have mail-voting programs,⁵ and all of these programs rely on USPS to transmit ballot mail; there is no realistic alternative carrier.⁶ While Section 3(b) is in effect, *no* voter can be confident that their mail ballot will reach election officials in time to be counted. For example, voters may find themselves unable to “enroll[]” with USPS—the Order gives USPS total leeway regarding how to enroll voters and which voters to enroll. Even voters who are “enrolled” may find their mail ballots rejected by USPS, including due to administrative errors—any implementation of Section 3(b) leaves

⁵ *Table 2: Excuses to Vote Absentee*, Nat’l Conf. of State Legs. (June 3, 2026), <https://www.ncsl.org/elections-and-campaigns/table-2-excuses-to-vote-absentee>.

⁶ See Lisa Baertlein, *UPS, FedEx Warn They Cannot Carry Ballots Like U.S. Postal Service*, Reuters (Aug. 14, 2020), <https://www.reuters.com/article/world/exclusive-ups-fedex-warn-they-cannot-carry-ballots-like-us-postal-service-idUSKCN25B00H>.

ultimate discretion to USPS to review ballot mail to determine whether the sender or recipient is on a “Mail-In and Absentee Participation List.” And even if USPS properly transmits a voter’s ballot, the process mandated by Section 3(b) may delay the transmission until after their State’s mailing deadline. Indeed, USPS is already beset by delays in ballot-mail processing. In the June 2026 California primary election, nearly 150,000 mail ballots were rejected, many due to USPS delays.⁷ For the same reason, other States’ officials have advised voters to avoid the mail altogether and drop off absentee ballots in person.⁸ Requiring USPS to scrutinize individual ballot mail would multiply the complexity of its already multifaceted mail-delivery processes, guaranteeing delay and administrative errors—and worst of all, disenfranchising voters.⁹

⁷ Michael R. Blood, *Nearly 150,000 Mail Ballots Rejected in California’s Primary Despite Efforts to Count Every Vote*, Associated Press (July 24, 2026), <https://www.ap.org/news-highlights/elections/2026/nearly-150000-mail-ballots-rejected-in-californias-primary-despite-efforts-to-count-every-vote>.

⁸ John Hanna, *Trump’s Attacks on Mail Balloting and Concerns Over Delays Turn Midterms Spotlight on Postal Service*, Associated Press (July 30, 2026), <https://www.ap.org/news-highlights/elections/2026/trumps-attacks-on-mail-balloting-and-concerns-over-delays-turn-midterms-spotlight-on-postal-service>.

⁹ Just as voters cannot ignore this uncertainty, neither can political parties or candidates like *Amici*. The Party Organizations dedicate substantial resources and effort to encouraging their constituents to vote by mail, as well as educating them on how best to do so. These programs require significant planning and are already well underway for the 2026 general election. Section 3(b) serves as a sword of Damocles, forcing these organizations and candidates to update their vote-by-mail programs *now* or risk being unable to compete effectively if the sword drops. For instance, the Party Organizations and the candidates and campaigns they represent must develop programming to ensure that their voters are aware of the need to “enroll” with USPS before casting a mail ballot, and align on messaging regarding whether to encourage voters to continue voting by mail in light of the risk that their ballots will not be effectively transmitted. As this Court recently explained, political actors like *Amici*

Despite insisting an emergency stay is required now so Defendants may complete implementation of the E.O. imminently, Defendants simultaneously argue that USPS might defy the President's mandate and decline to pass a rule at all. App. 14–15. Putting aside the incoherency of that argument, “the value of a sword of Damocles is that it hangs—not that it drops.” *First Choice Women's Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1127 (2026) (citation and alteration omitted). Beyond the clear impact on States and election officials who must administer elections, Section 3(b) exerts an ongoing *in terrorem* effect on those who will participate in the 2026 elections. *See Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 164 n.5 (2016) (noting that the risk of a trademark infringement suit was a “Damocles’ sword” that “underpinned [a party’s] standing”); *Cardinal Chem. Co. v. Morton Int’l, Inc.*, 508 U.S. 83, 96 (1993) (noting the “*in terrorem*” effect of a future event can give rise to a “case or controversy”).

This reality unravels both Defendants’ ripeness arguments and their suggestion that a stay will serve the public interest. If Section 3(b) does not remain enjoined, it will cause, at best, widespread voter confusion and, at worst, massive and stochastic disenfranchisement. Either would be disastrous for the public interest. *See First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 788–89 (1978) (“Preserving the integrity of the electoral process” and “the individual citizen’s confidence in government” are “interests of the highest importance.”).

“have an obvious personal stake in how the result [of an election] is determined and regarded,” and unlawful “[d]epartures from the preordained rules cause them particularized and concrete harm.” *Bost*, 607 U.S. at 79.

2. Section 2(a) is inflicting ongoing harm to privacy rights and depressing political engagement.

Defendants' actions to implement Section 2(a) have already had—and continue to have—a devastating impact on the privacy rights of the American people. The injury was imminent when the E.O. issued; it began when DHS officials gained access to highly sensitive information contained in SSA and DOS databases to compile the State Citizenship Lists; and it is now continuously being aggravated by further disclosures of sensitive “citizenship list information” outside of the federal government to State officials.

Defendants suggest that no harm can occur from the exchange of private information within the federal government, but the Privacy Act—and this Court's precedent construing it—explicitly says otherwise. *See* 5 U.S.C. § 552a(b); *id.* § 552a(o), (q); *FAA v. Cooper*, 566 U.S. 284, 294–95 (2012). Indeed, the Act's safeguards exist to protect Americans from precisely the kind of national registry Defendants have implemented. *See, e.g.*, 102 Stat. at 2514 (codified at 5 U.S.C. § 552a note) (providing that “[n]othing” in the Act “shall be construed” to permit “establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained” by “*other Federal agencies*” (emphasis added)); H.R. Rep. No. 100-802, at 4–8, 19–22 (1988) (authoring committee noting that nearly 80% of Americans viewed the prospect of “central data files” within the federal government as a threat).

As soon as the agencies began disclosing information from federal records protected by the Act, they infringed privacy interests that Congress already

determined were necessary to protect in the “modern garb” of federal law. *Pileggi v. Wash. Newspaper Publ’g Co.*, 146 F.4th 1219, 1229 (D.C. Cir. 2025); *see also, e.g., Cooper*, 566 U.S. at 295 (recognizing the Privacy Act was written to track common-law privacy torts). And Defendants have no prerogative to disrupt the “policy judgments” reflected in federal privacy statutes. *Pileggi*, 146 F.4th at 1226–27, 1229 (discussing *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021)); *accord Gadelhak v. AT&T Servs.*, 950 F.3d 458, 462 (7th Cir. 2020) (Barrett, J.) (discussing *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016)).

The Lists—which are expressly intended to inform voter-eligibility, *see* E.O. §§ 1, 2; DHS Memo at 2—also jeopardize fundamental voting rights, including for *Amici*’s millions of members throughout the country, including in the plaintiff States. Because the purported “citizenship” information being provided to the States is deeply and undisputedly flawed, every State that uses it for voter list maintenance as Defendants intend is sure to remove eligible voters from the voter rolls. For one, the E.O. requires DHS to provide the Lists to States “no fewer” than 60 days before each election, which will result in omitted or inaccurate data for anyone who moves or attains citizenship after the Lists are transmitted. For another, the databases the E.O. requires Defendants to use have known deficiencies that ensure they cannot accurately reflect the adult-citizen residents of each State. *See, e.g., League of Women Voters v. DHS*, No. 25-cv-3501, 2026 WL 1784297, at *6, *16 (D.D.C. June 22, 2026) (describing reasons SAVE and SSA databases are incomplete, out-of-date, and riddled with inaccurate citizenship data and setting aside expansion of SAVE to include SSA

data), *appeal docketed*, No. 24-5243 (D.C. Cir. June 29, 2026). Indeed, when States have attempted to use these databases for voter-eligibility purposes, citizens have been frequently flagged as noncitizens, with error rates as high as 80%. *See* Jen Fifield, *A Federal Tool to Check Voter Citizenship Keeps Making Mistakes. It Led to Confusion in Texas*, Tex. Trib. (Feb. 13, 2026)¹⁰; *see also California v. Trump*, No. 1:26-cv-11581, 2026 WL 1826490, at *13 n.14 (D. Mass. June 25, 2026) (“DHS does not dispute that the SAVE system has erroneously flagged citizens as noncitizens.”). None of these federal databases have consistent current residential information for most Americans, nor do they have updated information on surname changes due to marriage or divorce. The idea that these databases could be used to create accurate lists of citizen-residents in each State is simply preposterous.

Nonetheless, a number of States have intervened here and in *Amici*’s case to defend the President’s Order—and in doing so, they have asserted specifically that they will use the Lists to “modify” their own voter rolls. *See* ECF No. 77-1 at 11, *DSCC v. Trump*, No. 26-cv-1114 (D.D.C. Apr. 20, 2026); ECF No. 74 at 12, *California v. Trump*, No. 26-cv-11581 (D. Mass. Apr. 21, 2026). One of those States has already been found to have illegally removed eligible voters from the voter rolls in the past year based on flawed data provided by DHS from the same existing databases. *League of Women Voters*, 2026 WL 1784297, at *15–16 (finding Texas improperly cancelled registrations because of information obtained from SAVE).

¹⁰ Available at <https://www.texastribune.org/2026/02/13/save-voter-citizenship-tool-mistakes-confusion>.

III. Defendants' irreparable harm argument is incompatible with their ripeness argument.

Defendants claim the district court's injunction "imposes irreparable harm on the government . . . [b]y stopping the relevant agencies and officials from implementing th[e] Order with respect to the November 2026 federal election." App. 27. But Defendants "do[] not defend the legality of the EO" and leave unchallenged the district court's holding "that the EO is unconstitutional." *California*, 2026 WL 2144084, at *5. Defendants suggest only that they are unprepared to offer a "hypothetical legal defense." App. 25–26. This is no defense for the E.O.'s detailed mandates. Thus, this Court must assume that Sections 3(b) and 2(a) are unconstitutional. *Cf. Prudence Co. v. Fid. & Deposit Co. of Md.*, 297 U.S. 198, 208 (1936) ("What was ruled by the Court of Appeals . . . was not specified as error in the petition for the writ, and will be assumed to be correct.").

That means Defendants are arguing that they are irreparably harmed because they cannot implement mandates *they do not defend as lawful*. This is a breathtaking claim, one that flies in the face of centuries of precedent. "All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it." *United States v. Lee*, 106 U.S. 196, 220 (1882). Being the President or an executive officer is not a license to violate the law. Just the opposite: "every man who by accepting office participates in [the government's] functions is only the more strongly bound to submit to [the law], and to observe the limitations which it imposes upon the exercise of the authority which it gives." *Id.* Thus, courts throughout the country have recognized the unremarkable proposition that "neither the Government

nor the public generally can claim an interest in the enforcement of an unconstitutional [rule].” *ACLU v. Ashcroft*, 322 F.3d 240, 250, 251 n.11 (3d Cir. 2003), *aff’d*, 542 U.S. 656 (2004).¹¹

None of the cases Defendants cite contradict this basic principle. In *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), the Court held that universal injunctions can harm the government by preventing it from enforcing the law as to non-parties. *Id.* at 860–61. Here, the district court did not enter a universal injunction; it cabined its order to only the plaintiff States, *California*, 2026 WL 2144084, at *4, and thus did not interfere with Defendants’ conduct vis-à-vis non-parties. In other cases Defendants

¹¹ See also *New York v. Trump*, 171 F.4th 1, 26 (1st Cir. 2026) (inability to take actions that likely “violate the APA” was not a substantial harm to the government); *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 489 (2d Cir. 2013) (“[T]he Government does not have an interest in the enforcement of an unconstitutional law.” (alteration in original) (citation omitted)); *Leaders of a Beautiful Struggle v. Balt. Police Dep’t*, 2 F.4th 330, 346 (4th Cir. 2021) (the government “is in no way harmed by [the] issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be found unconstitutional” (quotation omitted)); *All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, 78 F.4th 210, 251 (5th Cir. 2023) (“[N]either [a government agency] nor the public has any interest in enforcing a regulation that violates federal law.”), *rev’d on other grounds*, 602 U.S. 367 (2024); *EMW Women’s Surgical Ctr., P.S.C. v. Beshear*, No. 17-6151, 2017 WL 11920191, at *4 (6th Cir. Dec. 8, 2017) (“There is no irreparable harm to a government, however, when it is enjoined from enforcing an unconstitutional statute.”); *Am. C.L. Union of Ill. v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012) (the government has no legitimate interest in enforcing a law “that is probably unconstitutional”); *Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) (“[T]he government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented.” (internal quotation marks and citation omitted)); *Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1254 (10th Cir. 2024) (“A governmental interest in upholding a mandate that is likely unconstitutional does not outweigh a movant’s interest in protecting his constitutional rights.”); *Honeyfund.com Inc. v. Governor*, 94 F.4th 1272, 1283 (11th Cir. 2024) (“[T]he government has no legitimate interest in enforcing an unconstitutional law.” (internal quotation marks and citation omitted)).

cite, this Court made a threshold determination that the party seeking injunctive relief was unlikely to show the enjoined activity was illegal—unlike here, where Defendants have tacitly conceded that the E.O. cannot be lawfully implemented. *See Trump v. Orr*, 146 S. Ct. 44, 46 (2025) (staying universal injunctive relief only *after* determining challenger was unlikely to prove challenged policy was unlawful). And several say nothing about harm to the government whatsoever. *See Am. Fed’n of Gov’t Emps.*, 145 S. Ct. at 2635; *Off. of Pers. Mgmt. v. Am. Fed’n of Gov’t Emps.*, 145 S. Ct. 1914 (2025). Because Defendants have no legitimate interest in breaking the law, an injunction to stop it from breaking the law *cannot* cause irreparable harm.

Even setting these determinative flaws aside, Defendants’ discussion of irreparable harm is flagrantly inconsistent with their argument that this case does not present a ripe controversy. Defendants claim that “agencies’ ultimate implementation decisions . . . will need to be implemented well before November—indeed, as soon as early to mid-August—given the timing of state election procedures concerning voter-roll verification and absentee or mail-in voting.” App. 28. It is precisely the ongoing implementation of the Order that threatens *imminent* irreparable harm, thus giving rise to a ripe controversy. *See TransUnion*, 594 U.S. at 435 (“[A] person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial.”).

And, just as Defendants must prepare for implementation of the E.O., so too must the States who are charged with implementing the election, and the voters who

will participate in it. Defendants’ argument that it “will still take time to carry out [the implementation] policies [for the E.O.] with respect to the November election (an election for which mail-in and absentee voting begins, in some States, several weeks in advance),” App. 28, applies with equal force to the plaintiff States and to *Amici*. That mutuality is again fatal to Defendants’ ripeness arguments.

Defendants’ timing concerns handicap their public interest arguments, too. As this Court has repeatedly recognized, late-breaking federal interference in State election laws can implicate federalism principles. *See Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of stay) (recognizing that a State has an “extraordinarily strong interest” in “avoiding late . . . changes to its election laws and procedures” imposed by the federal government); *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring in grant of stay) (recognizing last-minute changes to election law can be disruptive because “candidates, election officials, and voters have relied on the rules in place” before the changes). Thus, it is the plaintiff *States* that have a powerful interest in maintaining the existing election regimes; consistent with the federalism principles this Court has articulated, the federal government can have no legitimate interest in eleventh-hour interference with those processes. *See DSCC v. Trump*, No. 26-5193, 2026 WL 2168617, at *6 (D.C. Cir. July 28, 2026) (“If the federal agencies . . . were to attempt to impose [the E.O.’s massive changes on the States’ voting systems on the threshold of the upcoming election,” an injunction would uphold “federalism and reliance interests because the injunction would preserve the States’ existing electoral status quo.”).

In sum, Defendants' equitable arguments either confirm that Defendants are unlikely to succeed on their ripeness defense, or confirm that the equities weigh against a stay, or both.

CONCLUSION

The Application should be denied.

August 3, 2026

Respectfully submitted,

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