

In the Supreme Court of the United States

UNITED STATES POSTAL SERVICE, *et al.*,

Applicants,

v.

CALIFORNIA, *et al.*,

Respondents.

DONALD J. TRUMP, *et al.*,

Applicants,

v.

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, *et al.*,

Respondents.

OPPOSITION TO APPLICATION

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TABLE OF CONTENTS

	Page
Introduction	1
Statement	5
Argument	10
I. Defendants are unlikely to succeed on the merits.....	10
A. USPS lacks statutory and constitutional authority for its unprecedented interference with state elections administration on the eve of a major election.....	10
B. The USPS rule is also procedurally defective	24
II. Equitable considerations weigh heavily against a stay	30
Conclusion.....	41

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INTRODUCTION

Allowing the challenged USPS rule to take effect for this year's imminent November elections would "be an unmitigated disaster." Those were the words recently used by Utah's Lieutenant Governor and top elections official when raising alarm bells over the catastrophic harms threatened by USPS' new rule.¹ Officials in Florida and Ohio have voiced similar concerns.² And declarations in the record from over two dozen other senior elections officials, *see* Dkt. 4—including the Republican-appointed Chair of the Wisconsin Elections Commission, *see* Dkt. 100-1—confirm those fears.³ In some States, un rebutted evidence establishes that compliance with USPS' rule would be impossible ahead of the midterms, meaning that millions of voters would be unable to vote by mail and some would not be able to vote at all. In the remaining States, there would be chaos—and a significant risk that millions more voters would be denied the ability to vote.

¹ McKellar, *Utah Clerks Don't Expect Lawsuits Over Trump's Mail-In Voting Rule to Impact Elections This Year*, Utah News Dispatch (updated Aug. 28, 2026), <https://perma.cc/64E6-GYFU>.

² Griffin et al., *Trump's War on Mail-In Ballots Has Voters Baffled*, N.Y. Times (Sept. 6, 2026), <https://perma.cc/3HF3-EQVD>; Trau, *Ohio Election Officials Warn Against Trump's Mail-In Ballot Changes*, News 5 Cleveland (Aug. 28, 2026), <https://perma.cc/77D8-P6MV>; Rich, *It's Too Late to Implement the USPS Ballot-Mailing Rule for This Election*, NYU Law Democracy Project (Sept. 9, 2026), <https://perma.cc/R9G4-5RWS> (views of Ohio county elections official).

³ All citations to the docket are to the district court docket in the case filed by the plaintiff States, *California v. USPS*, No. 26-cv-13917 (D. Mass.).

There is nothing “modest” (*e.g.*, Appl. 2), equitable, or lawful about USPS’ new ballot-mail restrictions. Tens of millions of Americans will likely wish to vote by mail this year. Under the challenged rule, ballots will not be delivered to those voters unless each is registered in USPS’ new, not-yet-functional online portal; a voter-specific Intelligent Mail barcode (IMb) is printed on outgoing and return ballot envelopes; and those barcodes are accurately tied to each voter and uploaded to that same portal. The efforts that state and local elections officials would have to undertake to *even begin* an attempt at compliance are herculean. Among other things, officials would have to obtain USPS approval of new ballot-envelope designs on an unprecedented timetable; purchase new envelopes to replace those already ordered (if they can find vendors who can fulfill last-minute orders, which is doubtful); develop and upgrade technological systems to generate IMbs; upload voter-specific information to the portal; ensure that ballots have the proper IMb for each recipient; and train state and local officials on how to undertake these tasks.

Each step of this process is fraught with an extreme risk of error. And even if state and local officials were somehow able to implement the new rule perfectly, there is a high risk of technical breakdown, ineptitude, and delay on the part of USPS. Recent reports from a USPS whistleblower and others about the agency’s “sloppy and rushed” development of its new online portal and ballot-scanning process, *e.g.*, Dkt. 115 at 13, call to mind the disastrous rollout of Healthcare.gov in 2013. Similarly here, the federal government is relying

on “slapdash software development,” *id.* at 15; “insufficient internal testing,” *id.* at 16; and “‘siloed’ . . . teams of developers . . . working independently without any effort towards interoperability,” *id.* at 17. USPS also apparently plans to use a “batch” scanning protocol—called a “zero-percent failure policy,” *id.* at 19—whereby thousands or tens of thousands of ballots will be processed simultaneously, and “if even one bar code on one single ballot . . . fails to properly scan,” “the entire batch is rejected and sent back to the state,” *id.* at 10. Scanning failures “are predictable—and likely,” in light of the many “scanning problems” recently experienced by USPS. *Id.* at 20.

USPS’ unprecedented experiment with our Nation’s most cherished franchise—the right to vote—is unlawful. When an agency “‘claim[s] to discover in a long-extant statute an unheralded power’ representing a ‘transformative expansion in [its] regulatory authority’” on a matter of political significance, *West Virginia v. EPA*, 597 U.S. 697, 724 (2022), the Court “‘typically greet[s]’” such claims “with at least some ‘measure of skepticism,’” *Biden v. Nebraska*, 600 U.S. 477, 516 (2023) (Barrett, J., concurring). Skepticism is warranted here. Never before has USPS attempted to interfere with elections in this way, let alone a fast-approaching election. And nothing in federal law authorizes USPS to refuse to deliver ballots. To the contrary, Congress has exhaustively enumerated the types of materials that USPS can lawfully refuse to deliver. Ballots are not among them. Congress has also repeatedly enacted measures to facilitate delivery and return of mail ballots.

It has never tried to *make it harder* to vote by mail. And where Congress has not authorized federal control over the “Times, Places and Manner” of elections, U.S. Const., art. I, § 4, cl. 1, it is off limits to executive-branch bureaucrats. In our constitutional system, that task is left to the States.

USPS’ novel ballot-mail requirements are also procedurally defective. When unveiling new rules, agencies must acknowledge and take accountability for the consequences of their actions. *See, e.g., Encino Motorcars v. Navarro*, 579 U.S. 211, 222 (2016). Here, USPS said almost nothing about the States’ reliance on existing mail-voting systems or the disruptive consequences of rushing out a new set of requirements mere weeks before the November elections. Nor did USPS provide more than vague, conclusory assertions about its justification for this new measure. USPS also violated its duty to seek an opinion from the Postal Regulatory Commission before making major service changes. Had USPS complied, it is not difficult to imagine what the Commission would have said. One commissioner recently criticized USPS for failing to “run the tests to give us the validity that the damn thing will work.” Katz, *Postal Officials Say Trump’s Mail-Ballot Push Will Create Widespread Errors*, NOTUS (Aug. 27, 2026), <https://perma.cc/SFX9-BZBD>. “To do it in three weeks,” he emphasized, “my God, there’s no way.” *Id.*

Given the new rule’s serious legal defects and threatened interference with the ability of millions of people to vote, the request for a stay should be denied. Mail-voting laws have made voting easier for millions of Americans,

especially rural and disabled voters, as well as those traveling during the election season. Indeed, in November 2024, roughly one in three American voters cast mail ballots. States have also come to depend on mail voting. In some cases, they have virtually eliminated in-person voting and lack the infrastructure or resources to overhaul their systems by November. Whatever else may be said of USPS' new rule, it would wreak havoc on States and their voters if it takes effect at this late point—when some States, including North Carolina and Wisconsin, have already begun to mail out ballots. This Court has repeatedly refused to allow far less disruptive changes to take effect on the “the eve of an election.” *E.g., Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam). The Court should follow the same course here by denying the stay application.

STATEMENT

1. The Constitution entrusts States with responsibility for regulating federal elections unless Congress—not the Executive Branch—preempts their legislative choices. *E.g.*, U.S. Const. art. I, § 4, cl. 1. That was by design. The Framers were intimately familiar 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 wisdom of the Framers' decision has been validated over time. As members of Congress recognized when overwhelmingly voting to enact the Help America Vote Act of 2002, the Constitution's “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.” H.R. Rep. No. 107-329, pt. 1, at 32 (2001).

One way that States have exercised their authority over federal elections is by allowing mail voting. Mail voting increases turnout across political parties and is especially helpful for rural and disabled voters.⁴ Today, “every State lets at least some residents vote” by mail. *Watson v. RNC*, 146 S. Ct. 2165, 2171 (2026). Of those, 29 States mail a ballot to any voter who requests one, while 8 States plus the District of Columbia mail a ballot to every registered, active voter. See Nat’l Conf. of State Legislatures, *Table 1: States with No-Excuse Absentee Voting* (updated July 17, 2026), <https://perma.cc/65CU-8UP3>. Some States, such as Washington and Oregon, have virtually eliminated in-person voting and use mail ballots for nearly all voters (98.5% and 99.3% respectively). See, e.g., Dkt. 4-4 ¶ 9; Dkt. 4-19 ¶ 4. And in many other States, large portions of the population vote by mail—for example, 91.5% in Utah, 74.7% in Arizona, and 53.7% in Indiana.⁵ In the 2024 general election, roughly 30% of voters nationwide cast their ballots by mail. See U.S. Election Assistance Comm’n, *Election Admin. and Voting Survey*, at ii (June 2025), <https://perma.cc/8J5Y-5TVN>.

⁴ 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>.

⁵ See Stevenson, *Map Shows States Most Affected by Trump’s Mail Ballot Rules*, Newsweek (Sept. 4, 2026), <https://perma.cc/HK5E-4BUX>.

2. In March 2026, President Trump issued Executive Order 14399. 91 Fed. Reg. 17125 (Mar. 31, 2026). Among other things, Section 3 of the EO required USPS to develop a new set of ballot delivery restrictions before the November midterm elections. EO § 3(b). Plaintiffs challenged the EO's directive to USPS as ultra vires because Congress had not authorized any such program. The district court agreed and enjoined USPS from implementing the EO as to plaintiff States for the November midterm elections. *See California v. Trump*, 2026 WL 1826490, at *15-18 (D. Mass. June 25, 2026). This Court stayed the injunction. *Trump v. California*, 609 U.S. ___, 2026 WL 2473573, *5 (2026) (per curiam). It deemed plaintiffs' challenge to the EO nonjusticiable, but made clear that they could challenge the final USPS rule and that nothing in the Court's decision suggested the rule "will necessarily be lawful." *Id.*

In late August, USPS issued its final rule. 91 Fed. Reg. 54966 (Aug. 26, 2026). It provides for USPS to refuse to deliver ballots unless state and local elections officials comply with multiple new requirements. Mail ballot envelopes must now meet design standards that include, among other things, full automation compatibility and a voter-specific IMb printed on outgoing and return envelopes. *Id.* at 54990-54991 (§ 705.24.3). After elections officials submit their designs for USPS review and obtain approval, *id.* at 54979, they must upload voter information, including IMbs, to a new online portal, *id.* at 54991 (§ 705.24.4). Elections officials must then bring their mail ballots to USPS for a "verification" process in which USPS will scan the IMbs before

accepting the ballots for delivery. *Id.* at 54991 (§ 705.24.5); *see id.* at 54981-54982. If the IMb on an envelope does not match the information in the portal, the ballot “will be returned” and not delivered. *Id.* at 54991 (§ 705.24.5.3).

The rule was finalized just weeks before the November elections and only days before ballots had to be sent in some States. *See, e.g.*, N.C. Gen. Stat. § 163-227.10(a) (September 4 deadline to begin mailing ballots). USPS nonetheless assigned the rule an “immediate effective date”—five days before its publication in the Federal Register—to facilitate “implementation of this rule in time for the 2026 general election.” 91 Fed. Reg. at 54966. The agency only briefly addressed its decision to apply the rule to the imminent elections. *Id.* at 54985. USPS noted “logistical or financial difficulties [that] states may face complying with the rule, including some claims that immediate implementation would prove impossible.” *Id.* But it brushed aside those concerns and concluded “there is no compelling reason for any delay.” *Id.*

3. Plaintiff States filed this lawsuit challenging the rule, *see* Dkt. 1, and moved for a temporary restraining order and preliminary injunction in light of the rapidly approaching November elections, *see* Dkt. 5. On August 27, the district court granted a TRO while the expedited preliminary injunction proceedings continued. Dkt. 31. Defendants and intervenors appealed the TRO and moved for a stay pending appeal. *See* Dkts. 58, 61. The district court denied those motions. Dkt. 72. Briefing on defendants’ and intervenors’ stay motions concluded in the court of appeals on September 2.

The district court held its preliminary injunction hearing on September 3 and indicated that it intended to rule promptly. A few hours later, defendants filed an application with this Court to stay the TRO. No. 26A297. The next day, the district court granted plaintiffs' motions for a preliminary injunction and dissolved the TRO. App'x 47a-49a. The court concluded that plaintiffs were likely to succeed on their claims that the rule exceeded USPS' constitutional and statutory authority, *id.* at 25a-31a; that plaintiffs were irreparably harmed by the rule, *id.* at 32a-43a; and that "immediate implementation . . . threatens disenfranchisement of millions of United States citizens," whereas "the record includes no evidence relating to fraudulent mail voting to support [USPS'] rushed implementation" of the rule, *id.* at 45a-46a. The court enjoined the rule's provisions only "to the extent [they are] mandatory." *Id.* at 48a. The court also limited the preliminary injunction to the November elections. *Id.* at 47a-48a.

In its decision, the district court denied defendants' request for a stay of the preliminary injunction. App'x 46a-47a. Defendants and intervenors appealed the injunction, Dkts. 158, 159, and moved for a stay before the court of appeals. Defendants then withdrew their earlier application for this Court to stay the (now-dissolved) TRO and filed this application to stay the preliminary injunction. Plaintiffs filed their response to the stay motions in the court of appeals on Monday of this week. As of the time of this filing, the court of appeals has not yet ruled on the stay requests.

ARGUMENT

Defendants bear “an ‘especially heavy burden’” in seeking emergency relief from this Court. *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 equitable considerations weigh in their favor. *Nken v. Holder*, 556 U.S. 418, 434 (2009). They cannot do so. Indeed, while defendants are exceedingly unlikely to prevail on the merits, the equitable considerations make the relief sought by defendants unthinkable: allowing USPS’ new rule to take effect would be virtually certain to prevent many millions of Americans from casting mail ballots in this fall’s elections.

I. DEFENDANTS ARE UNLIKELY TO SUCCEED ON THE MERITS

A. USPS Lacks Statutory and Constitutional Authority for Its Unprecedented Interference with State Elections Administration on the Eve of a Major Election

1. A federal agency “‘literally has no power to act’ . . . unless and until Congress authorizes it to do so.” *FEC v. Cruz*, 596 U.S. 289, 301 (2022). That principle is especially clear in the context of federal elections because the Constitution commits control to Congress and the States, not the Executive. *See* U.S. Const. art. I, § 4, cl. 1. Here, none of the statutes invoked by defendants even mention mail ballots. Nor do they confer on USPS authority to virtually eliminate mail voting on the eve of a major election in States where compliance with the rule’s requirements would be infeasible. *Infra* pp. 33-37. The relevant provisions instead use generic language to grant USPS authority

to adopt “rules and regulations . . . as may be necessary in the execution of its functions”; engage in “powers incidental, necessary, or appropriate to the carrying on of its functions”; and “provide for the collection, handling, transportation, [and] delivery” of mail. 39 U.S.C. § 401(2), (10); *id.* § 404(a)(1).

Such “humdrum” provisions, *Biden v. Nebraska*, 600 U.S. 477, 499 (2023), cannot support USPS’ exercise of sweeping power over elections. Defendants’ interpretation of those provisions would grant USPS “virtually unlimited power,” *id.* at 502, to severely restrict mail voting—not just for this year’s upcoming elections (when compliance is impossible or virtually impossible in many States, *infra* pp. 33-37), but in all future elections. Under USPS’ novel understanding of the postal statutes, its authority would allow it to impose any conditions on mail voting, up to and including conditions that would effectively abolish voting by mail. Cf. Dkt. i ¶ 4 (President Trump commenting that he wants to “get rid of MAIL-IN BALLOTS”). For instance, USPS could require a notarized signature on the ballot envelope; require voters to deliver their ballots to a mail-processing facility in person; or accept mail ballots only during a short period, perhaps just a single day. And under USPS’ theory, it could take any of these steps mere days before mail voting begins in any election cycle—without even being subject to basic arbitrary-and-capricious review under the APA. Compare, e.g., Appl. 33, with *infra* p. 22. Such sweeping power would enable USPS to effectively enact a nationwide policy against mail voting that “Congress has chosen not to enact itself.” *Biden*, 600 U.S. at 503.

Congress has hardly been silent on the subject of mail voting. It has addressed the issue multiple times—but only by requiring USPS to make mail voting *easier* for States and voters. The National Voter Registration Act (NVRA) requires USPS to afford favorable postage rates to certain election mail. 39 U.S.C. § 3629. And the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires USPS to deliver ballots “expeditiously and free of postage.” *Id.* § 3406(a)(1). At the same time, Congress has declined to enact legislation that would allow USPS to treat ballots as “nonmailable” if they do not have barcodes like those required by the rule here. *See, e.g.*, Vote by Mail Tracking Act, H.R. 5658, 118th Cong. (2023), <https://perma.cc/9PXA-A4TS>.⁶ And when Congress has made major changes to voting laws, it has been careful to provide sufficient lead time to prevent interference with elections. *See, e.g.*, 107 Stat. 77, 89 (1993) (NVRA enacted 1993, but effective 1995).

There is no “historical precedent” for “the breadth of authority that the [USPS] now claims,” “a telling indication that the [challenged rule] extends beyond the agency’s legitimate reach.” *NFIB v. OSHA*, 595 U.S. 109, 119 (2022) (per curiam) (internal quotation marks omitted); *see, e.g.*, Dkt. 119-1 ¶ 17. USPS’ prior exercises of statutory authority have involved mundane topics like making sure “[a] clear space [is] available on all mail for the address,” *Domestic*

⁶ Under the “Vote by Mail Tracking Act”—a legislative proposal introduced in several recent congressional sessions—States would be required to add barcodes to mail ballots to enable voters to track their own ballots upon submission. That legislative proposal does *not* provide for a portal or data-matching scheme akin to what the challenged USPS rule requires.

Mail Manual, 602.1.1; setting special “[p]eriodicals prices” for “publisher[s] or registered news agent[s],” *id.* at 207.1.1; and allowing customers to “file an indemnity claim for insured mail,” *id.* at 609.1.1. Even the examples of election-specific policies discussed by defendants—such as optional “design elements,” “prioritization” of ballot mail, and delivery of “absentee balloting materials” if a mailer does not “affix the necessary postage,” Appl. 20 (internal quotation marks omitted)—lack the sweeping features and disruptive consequences of the rule challenged here. Indeed, none of those examples allow USPS to refuse to deliver ballots. To the contrary, they make it *easier* for ballots to be delivered and returned. That is consistent with Congress’ judgment and the bipartisan judgment of many States, that mail voting should be encouraged. *See, e.g., supra* pp. 6, 12.

Defendants assert that plaintiffs draw an “illusory distinction” between “rules that facilitate voting and rules that burden voting.” Appl. 21. But as discussed above, it is *Congress* that has historically drawn that distinction. In any case, plaintiffs can certainly conceive of “rules that facilitate voting” in far-reaching ways that would exceed USPS’ powers. For example, without express congressional authorization, USPS would not enjoy authority to mandate, as a condition of delivering ballots, that States significantly expand the time available for mail voting. Nor could USPS direct States to allow all of their voters to cast ballots by mail, on a no-excuse basis, as a condition of accepting ballots for delivery. It is not difficult to imagine a future presidential

administration wanting to adopt such policies. Under defendants’ limitless theory, those policies would presumably be valid. Under plaintiffs’ narrower, more constrained view of USPS’ power, they would not.

Defendants also try to depict the USPS rule as “modest.” *E.g.*, Appl. 2. They assert that the rule “regulates only how States must prepare, design, and present [ballot] envelopes,” *id.* at 18, and “requires States to upload . . . information,” *id.* at 3. But “[l]abeling” the rule as modest “does not lessen [its] effect.” *Biden*, 600 U.S. at 496. And USPS’ focus on “envelope-design and addressee-information requirements” (*e.g.*, Appl. 19) omits the rule’s most significant feature: USPS will *refuse to deliver ballots* that do not satisfy its untested protocol for matching ballot mail with information in its new, not-yet-functional portal. Defendants likewise ignore the overwhelming record evidence that the rule risks denying mail ballots to millions of voters. *Infra* pp. 33-40. In light of that evidence, USPS *has* effectively “seize[d] control of States’ administration of elections,” *contra* Appl. 3, at least for purposes of the upcoming elections. Giving USPS the power to interfere with imminent elections in this way would represent “‘a transformative expansion in [its] regulatory authority.’” *West Virginia v. EPA*, 597 U.S. 697, 724 (2022).

For similar reasons, defendants are wrong to deny that this case poses a “major question” of “political significance.” 91 Fed. Reg. at 54973; *see* Appl. 23-24. The rule challenged here arguably has greater political significance than the subject of any of the Court’s prior major-questions cases. Roughly one in

three voters cast ballots by mail in the November 2024 election. *Supra* p. 6. Because USPS’ new requirements will likely make mail voting impossible in some States while depriving many voters of mail ballots in others, *infra* pp. 33-40, the rule threatens to have a profound, calamitous impact on voting rights and elections administration. If that does not make this case one of “political significance,” *Biden*, 600 U.S. at 502, it is hard to see what would. *Cf. Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 77 (2026) (“electoral process” is “of the most fundamental significance under our constitutional structure”).

Yet another “telltale sign” that USPS has “transgressed its statutory authority” is that it is regulating well “outside its wheelhouse.” *Biden*, 600 U.S. at 518 (Barrett, J., concurring). USPS’ “day-in, day-out work,” *id.* at 519, of ensuring “efficient postal services at fair and reasonable rates and fees,” 39 U.S.C. § 403(a), hardly qualifies it to make complex judgments about election administration. *Compare* 52 U.S.C. § 20921 (establishing Election Assistance Commission). Yet in the final rule’s text, USPS repeatedly invokes policy concerns about “protect[ing] the integrity of federal elections.” *E.g.*, 91 Fed. Reg. at 54969. USPS’ application likewise portrays the rule as a “significant federal election-integrity measure.” Appl. 13. In fact, that is the *only asserted basis* USPS has ever provided for the rule. Plaintiffs now contend that the rule is best understood as “regulat[ing] the U.S. mail” rather than “regulat[ing] elections.” *Id.* at 19. But given the rule’s undeniable impacts on the availability of mail voting in the upcoming election—and the rule’s origins in

an elections-focused executive order, *supra* p. 7—it is difficult to see how anyone could conceive of the rule as anything other than an elections regulation, which has always been its sole purported policy justification.

The Court should thus be especially hesitant to conclude that Congress intended to “delegate[] [the] ‘highly consequential power’” that USPS now claims. *Learning Res., Inc. v. Trump*, 607 U.S. 229, 243 (2026) (plurality op.). As discussed above, *supra* p. 5, the Framers deliberately entrusted power over elections to Congress and the States, not the Executive. And where a case involves a “core congressional power,” *Learning Res.*, 607 U.S. at 243, or threatens to “significantly alter the balance between federal and state power,” the Court generally “require[s] Congress to enact exceedingly clear language,” *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 764 (2021) (per curiam). That is the case here: the “policy of Congress for so great a part of our constitutional life has been, and now is, to leave the conduct of the election of its members to state laws, administered by state officers.” *United States v. Gradwell*, 243 U.S. 476, 485 (1917). “[W]henever [Congress] has assumed to regulate such elections it has done so by positive and clear statutes.” *Id.* Defendants identify nothing “positive and clear” in support of USPS’ ballot-verification and non-delivery rule—certainly nothing authorizing USPS to adopt such a rule on the eve of a major election.

2. There is a second, independent statutory basis to invalidate USPS’ new rule. As USPS has acknowledged, only Congress has “authority to create

new categories of ‘nonmailable matter.’” 91 Fed. Reg. at 54974; *see Ex parte Jackson*, 96 U.S. 727, 732 (1877). That is because Congress has exhaustively delineated the categories of materials that USPS can lawfully refuse to deliver. *See, e.g.*, 39 U.S.C. §§ 3001-3018; *see also id.* § 3001(a). And when Congress enumerates an “‘established series,’” “any ‘omission’ from that series necessarily ‘bespeaks a negative implication.’” *Esteras v. United States*, 606 U.S. 185, 195 (2024); *see id.* (“expressio unius est exclusio alterius”). Consistent with that principle, the Court long ago held that USPS “cannot exclude or refuse to deliver” mail unless authorized by “some law of Congress.” *Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 109 (1902). “[P]ostal laws make a clear-cut division between mailable and nonmailable material,” *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 152 (1946), and the power to define new categories of nonmailable material “has been zealously watched and strictly confined” by Congress, *id.* at 156 n.18. Critically here, Congress has not authorized USPS to treat ballots as nonmailable.

Defendants respond that the new data-matching and non-delivery requirements do not qualify as “mailability” restrictions because they impose “conditions on the acceptance of mailable matter” without “prohibit[ing] [anything] from being mailed altogether.” 91 Fed. Reg. at 54973-54974; *see* Appl. 22. But the same could be said of many restrictions expressly treated as “mailability” rules by Congress. *See, e.g.*, 39 U.S.C. § 3001(n)(1) (“hazardous material is nonmailable” unless “authorized by” conditions imposed by USPS);

id. § 3001(g) (fragrance ad samples nonmailable unless sealed in certain way); *id.* § 3010 (conditions on mailing of sexually oriented ads). USPS cannot invent a definition of “mailability” that ignores the way Congress has used the term. And it is telling that, when members of Congress recently proposed legislation conditioning the delivery of ballot mail on States’ use of trackable barcodes, they did so by proposing to amend Title 39’s central mailability provision and designating noncompliant ballots as “nonmailable.” Vote by Mail Tracking Act, H.R. 5658, 118th Cong. (2023), <https://perma.cc/9PXA-A4TS>.

Defendants argue that, if the new ballot-mail restrictions are treated as unlawful mailability regulations, then USPS would lack the ability to address several other issues, ranging from the dangers of replica explosives to the failure of senders to affix proper postage. *See* Appl. 17-23. Defendants are wrong. Their examples only illustrate ways in which Congress has—unlike here—given USPS express authority to adopt limits on mailability. Take, for example, the two restrictions most heavily featured in defendants’ application: restrictions governing replica explosives and cremated remains. *E.g., id.* at 16-17. In 18 U.S.C. § 1716, Congress provided that all “mechanical, chemical, or other devices or compositions . . . and all other natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property” “are nonmailable,” *id.* § 1716(a), unless mailed “in accordance with the rules . . . prescribed by the Postal Service,” *id.* § 1716(j)(1). Congress also provided that USPS can impose conditions on the mailing of “any

such articles” that “are not outwardly or of their own force dangerous or injurious.” *Id.* § 1716(b); *see also* 39 U.S.C. § 3001(a).

USPS has long taken the position that Section 1716 authorizes its restrictions on replica explosives and cremated remains.⁷ That longstanding position—which defendants apparently now disavow, *see* Appl. 17—was plainly correct. Replica explosives are “devices or compositions” that threaten to “injure” USPS workers or “injure the mails or other property,” 18 U.S.C. § 1716(a), because “postal operations have been disrupted and facilities have been evacuated when replica or inert explosive devices have been discovered in the mail,” 75 Fed. Reg. 30300, 30300 (June 1, 2010). Cremated remains, like other “[p]owders” subject to USPS mailability restrictions, threaten to “cause soiling, damage, discomfort or destruction, upon escape (leakage).” 90 Fed. Reg. 9843, 9843 (Feb. 19, 2025). They therefore qualify as “compositions” or “material” which may “injure the mails or other property.” 18 U.S.C. § 1716(a); *see* 83 Fed. Reg. 1189, 1190 (Jan. 10, 2018) (explaining that these and other related rules mitigate “the potential for serious injury to Postal Service employees and the general public, as well as the potential for damage to USPS equipment”). To say that ballot mail “does not present the same operational

⁷ The cremated-remains and replica-explosives rules are USPS regulations on “Restricted Matter,” defined to include materials “restricted by 18 U.S.C. § 1716(a).” USPS, Publication 52, ch. 1, § 122, <https://perma.cc/R95W-BAXS>; *see id.*, ch. 2, § 211, <https://perma.cc/2J4D-GJQ3> (invoking 18 U.S.C. § 1716); *id.*, ch. 4, § 434 (Replica or Inert Explosive Devices), <https://perma.cc/YMA6-GHQY>; *id.*, ch. 4, § 451.22 (Cremated Remains), <https://perma.cc/RK6T-ET8B>.

issues” (Appl. 17) as materials that threaten panic, evacuations, massive postal-service disruptions, and property damage is “a delicately put understatement.” *Watson v. RNC*, 146 S. Ct. 2165, 2175 (2026).

Congress has also given USPS ample authority to address other examples discussed in the application—for example, restrictions on delivery of “unstamped” mail or “a heavy package if the customer failed to pay sufficient postage.” Appl. 22. Under 39 U.S.C. § 404(a)(2), USPS may “prescribe . . . the amount of postage and the manner in which it is to be paid.” That express grant of authority plainly encompasses the power not to deliver mail lacking proper postage. And under 39 U.S.C. § 3001(c)(1)(A), “[m]atter which . . . exceeds [USPS-devised] size and weight limits . . . is nonmailable.” USPS likewise has congressionally authorized tools to address “elder-abuse mail scams.” Appl. 18; *see, e.g.*, 39 U.S.C. § 3001(d); *id.* § 3005(a)(1).⁸

The only other specific restriction discussed in the application reveals just how far defendants have to stretch in their attempt to identify an analogue for USPS’ new ballot-mail policy. Defendants analogize to a rule requiring that mail include a “visible and legible” delivery address. Appl. 21. They assert that “there does not appear to be any specific statutory authority” for that policy. *Id.* Of course, an identifiable delivery address is necessary for USPS

⁸ The “election-specific mail-preparation policies” described by defendants (Appl. 19) are not restrictions on mailability. As defendants acknowledge, many such policies are recommended, not mandatory. *Id.* at 3, 20. And none bars USPS from delivering ballot mail. *See, e.g., id.* at 20 (discussing policies designed to “prioritize” ballot mail and ensure delivery).

“to provide for the . . . delivery . . . of mail.” 39 U.S.C. § 404(a)(1). And basic postage formatting requirements have always been treated as different in kind from restrictions concerning the mailability of specific materials. Otherwise, USPS would have unlimited power to devise any new mailability restriction it wishes without explicit statutory authority. It is “a basic logical fallacy” (Appl. 22) for USPS to assume that, just because it has authority to prescribe unexceptional postage formatting requirements, it necessarily also has the power to adopt any nonmailability restrictions under the sun. That has not been the law for over a century, *see McAnnulty*, 187 U.S. at 109, and as discussed above, USPS has already acknowledged that it lacks such power, *see* 91 Fed. Reg. at 54974 (describing “*Congress’s authority* to create new categories of ‘nonmailable matter’” (emphasis added)).

Finally, defendants point to 18 U.S.C. § 1341 as support for the challenged rule. *See* Appl. 17. But read alongside 39 U.S.C. §§ 3001(d) and 3005(a)(1), Section 1341 merely authorizes USPS to refuse to transmit materials that serve a “scheme or artifice to defraud.” Construing similar language, the Court long ago held that the postal service may refuse to deliver mail on grounds of fraud only in “cases of actual fraud in fact.” *McAnnulty*, 187 U.S. at 106. State officials sending ballots to voters pursuant to state law are obviously not engaging in fraud. To the extent USPS wants to obtain more expansive power to address purported fraud in the mail-voting context, *cf.* 91 Fed. Reg. at 54969, it should direct its concerns to “the people’s elected

representatives in Congress,” *NFIB*, 595 U.S. at 121 (Gorsuch, J., concurring). As a “creature[] of statute,” *id.* at 117 (majority op.), USPS has no power to act without congressional authority. And without such authority, the Executive Branch cannot wield power over federal elections. Our constitutional system commits that power exclusively to Congress and the States. *Supra* p. 5.

3. Defendants do not dispute that plaintiffs may bring the foregoing challenge to USPS’ authority, but argue that judicial review of the claim must be “narrowly circumscribed” because the agency is “exempted . . . from ordinary APA review.” Appl. 14 (citing 39 U.S.C. § 410(a)). Even if that were true as a general matter, *but cf. Air Courier Conf. of Am. v. Am. Postal Workers Union*, 498 U.S. 517, 522-523 (1991) (reserving the question), it is not the case here. Review under the APA is plainly available for “proceedings concerning the mailability of matter.” 39 U.S.C. § 3001(m). And as USPS has repeatedly acknowledged, *e.g.*, 91 Fed. Reg. at 54967-59468, this rulemaking is a “proceeding,” *cf.* 5 U.S.C. § 551(5), (12) (“agency proceeding” includes “rule making”). The rulemaking also concerned “the mailability of matter” because the rule imposes restrictions on whether ballots can be mailed and delivered. *Supra* pp. 16-18; *see* App’x 31a (holding plaintiffs are likely to succeed on their claim that the challenged rule is contrary to law under 5 U.S.C. § 706(2)(A)).

Regardless of the APA’s applicability here, USPS’ authority to issue the challenged rule would still be subject to review. This Court has repeatedly held that “plaintiffs may sue ‘in equity’ without a congressionally-provided

cause of action ‘to prevent an injurious action by a public officer.’” *Trump v. Cook*, 146 S. Ct. 2234, 2251 n.2 (2026) (quoting *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015)). The decision in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), provides a classic illustration: plaintiffs argued that the President’s seizure of steel mills was ultra vires because it was “not authorized by an act of Congress or by any constitutional provisions.” *Id.* at 583. Plaintiffs’ argument here—that USPS lacks any statutory or constitutional basis for its rule—is materially indistinguishable.

According to USPS, plaintiffs can succeed on an ultra vires claim only by showing that the rule is “entirely in excess of [USPS] delegated powers and contrary to a specific prohibition.” Appl. 14 (quoting *NRC v. Texas*, 605 U.S. 665, 681 (2025)). If that standard actually applied, plaintiffs would satisfy it: the rule against adopting mailability restrictions without congressional authorization has been clear and settled for over a century. *Supra* pp. 16-22. But the *NRC* standard does not apply. This Court has applied it only in cases where plaintiffs sued outside an otherwise available judicial review scheme. *See NRC*, 605 U.S. at 680-682 (Hobbs Act); *Leedom v. Kyne*, 358 U.S. 184, 187-188 (1958) (Wagner Act). In *NRC*, for example, Congress had provided for judicial review of certain agency orders under the Hobbs Act. 605 U.S. at 674. But the challengers could not satisfy the Hobbs Act’s requirements, so they sought to make an “end-run around [its] limitations” by pursuing “ultra vires review.” *Id.* at 681. By contrast, where no alternative statutory review scheme

is available, the Court has addressed statutory and constitutional claims without applying the *NRC* standard. See, e.g., *Cook*, 146 S. Ct. at 2246-2251 & n.2; *Learning Res.*, 607 U.S. at 248-255; *Trump v. Illinois*, 146 S. Ct. at 434.

In those cases, the limit on APA review was the reasoning of *Franklin v. Massachusetts*, 505 U.S. 788 (1992), which held that the President is not an “agency” subject to the APA. Here, if the APA were unavailable, *but see supra* p. 22, the relevant limitation would be 39 U.S.C. § 410(a). But USPS identifies no sensible reason why that should make any difference. It would be highly anomalous for actions of the *President* to be subject to greater judicial scrutiny than those of the *U.S. Postal Service*. Cf. *Franklin*, 505 U.S. at 800 (discussing the “unique constitutional position of the President”). Defendants’ contrary view—that Congress effectively “*eliminated* judicial review” of USPS actions, Appl. 15—would also mean that USPS could engage in hugely consequential actions, and the judiciary—including this Court—would be virtually powerless to stop them. It would not be enough for the Court to hold that an agency acted “*entirely* in excess of [its] delegated powers”; it would also have to conclude that the agency acted “contrary to a *specific* prohibition.” *NRC*, 605 U.S. at 681 (emphases added). The Court should reject that remarkable contention.

B. The USPS Rule Is Also Procedurally Defective

Serious procedural flaws provide additional reasons to enjoin the new rule—in particular for this year’s impending midterm elections. Defendants overlook these arguments when they assert that plaintiffs raise “no claim” that the rule is unlawful based on its rushed implementation for the imminent

elections. Appl. 7. As discussed below, that is the core of plaintiffs’ procedural challenges. And although the district court did not reach these arguments, *e.g.*, App’x 31a n.36, they nonetheless offer alternative grounds to deny the stay. This Court “‘revie[ws] judgments, not statements in opinions,” and so—even when considering an application to stay a preliminary injunction pending appeal—it does not limit its review to only “the *reasons* given by the lower courts.” *Cook*, 146 S. Ct. at 2251 n.3. The Court considers “any argument presented below that supports the judgment of the lower court.” *Hankerson v. North Carolina*, 432 U.S. 233, 240 n.6 (1977).

1. “One of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). An agency’s decision must be both “reasonable and reasonably explained.” *Ohio v. EPA*, 603 U.S. 279, 292 (2024). USPS flouted that requirement here by saying “almost nothing” about its consequential decision to apply the rule to the imminent November elections. *Encino Motorcars*, 579 U.S. at 223. Although the agency briefly noted the “logistical or financial difficulties [that] states may face complying with the rule,” 91 Fed. Reg. at 54985, the agency nowhere acknowledged the *consequences* of States’ inability to comply in time for the November elections: namely, that millions of Americans will be deprived of their ability to vote by mail and, in many cases, their ability to vote at all. *Infra* pp. 33-40. “[A]n agency cannot simply ignore” such “an important aspect of

the problem’ before it.” *Ohio*, 603 U.S. at 293, 294. USPS had an obligation to address that problem and take “‘accountability’” for the consequences of its decision. *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22 (2020).

Instead, USPS gave only passing mention to States’ “claims that immediate implementation would prove impossible.” 91 Fed. Reg. at 54985. Nothing in the final rulemaking suggests that the agency made any effort to evaluate the plausibility of those serious claims. Rather, the rulemaking’s reference to “*potential*[] . . . new costs,” *id.* (emphasis added), suggests that USPS failed to actually evaluate States’ arguments about the threatened consequences for elections administration and voting rights. *See Ohio*, 603 U.S. at 295 (“awareness” of a concern “is not itself [a sufficient] explanation”).

USPS’ failure to address the impact on mail voting in this fall’s elections “alone renders” its decision “arbitrary and capricious.” *Regents*, 591 U.S. at 30. “But it is not the only defect.” *Id.* The agency also failed to address “serious reliance interests” upended by its decision. *Encino Motorcars*, 579 U.S. at 224. For example, because States “have long organized their election systems around existing mail ballot procedures” and relied on USPS to deliver their ballots, those that are unable to comply with the rule this fall will face “substantial financial and administrative burdens” in trying to quickly return to in-person voting. Dkt. 1-1 at 22. In States that “no longer ha[ve] the infrastructure to accommodate a last-minute reversion to in-person voting,” immediate implementation of the rule would be “catastrophic.” *E.g.*, Dkt. 4-4

¶ 42; *see also infra* p. 39. USPS “offered no reasoned response” to these important concerns. *Ohio*, 603 U.S. at 293.

USPS’ only explanation for applying the rule to the November elections was its assertion that “the visibility and law-enforcement benefits of the rule” justified immediate implementation. 91 Fed. Reg. at 54985. But “conclusory statements do not suffice to explain” an agency’s decision. *Encino Motorcars*, 579 U.S. at 224. And elsewhere in the rulemaking, USPS expressly declined to make any findings about “the incidence of [mail] voter fraud.” 91 Fed. Reg. at 54969. The agency’s explanation for immediate implementation therefore does not provide “a rational connection between the facts found and the choice made.” *Ohio*, 603 U.S. at 292. And that is particularly so because USPS did not account for the fact that the purported “visibility and law-enforcement benefits” will not—and cannot—materialize in States that are unable to comply with the rule for the fall elections. 91 Fed. Reg. at 59485. “Perhaps there is some explanation why the number and identity of participating States” would not change USPS’ calculus about the respective benefits and costs of immediate implementation, “[b]ut if there is,” “it does not appear in the final rule.” *Ohio*, 603 U.S. at 293-294. Plaintiffs are thus “likely to prevail” on the

claim that USPS “failed to supply ‘a satisfactory explanation’” for its decision to apply the new rule to the November elections. *Id.* at 294.⁹

2. USPS also failed to seek an advisory opinion from the Postal Regulatory Commission before making “a change in the nature of postal services” that will “generally affect service on a nationwide or substantially nationwide basis.” 39 U.S.C. § 3661(b). In the final rule, USPS asserted that it had no obligation to consult with the Commission because the rule will not have a “meaningful impact” on—or change the nature of—postal services. 91 Fed. Reg. at 54976 (quoting *Buchanan v. USPS*, 508 F.2d 259, 262 (5th Cir. 1975)). But the rule’s operational changes to how USPS processes mail ballots will have a meaningful impact on USPS’ delivery of ballots nationwide. *See, e.g.*, Dkt. 119-1 ¶¶ 108-121 (rule is “incredibly time-consuming,” “burdensome” on “USPS employees,” and “exacerbate[s] existing [USPS] challenges”). That such ballots are a “subset” of the mailstream is irrelevant. 91 Fed. Reg. at 54976. USPS has previously requested advisory opinions for proposed changes that affected only a subset of mail. *See, e.g.*, 87 Fed. Reg. 18044 (Mar. 29, 2022)

⁹ Even if the Court concluded that the APA is inapplicable here, *but see supra* p. 22, it would not make a difference to this claim. The arbitrary-and-capricious standard predates the APA, which merely “restate[d] the present law as to the scope of judicial review.” U.S. Dep’t of Just., Att’y Gen. Manual on Admin. Proc. Act 108 (1947). Courts “have always exercised the power in appropriate cases to set aside agency action which they found to be . . . arbitrary [or] capricious.” *Id.* So even in contexts where courts have treated USPS as exempt from Section 706(2)(A), they have subjected the agency to a “reasoned decision-making” requirement. *Sears, Roebuck & Co. v. USPS*, 844 F.3d 260, 265 (D.C. Cir. 2016); *see also Nat’l Ass’n of Postal Supervisors v. USPS*, 26 F.4th 960, 975-976 (D.C. Cir. 2022).

(requesting advisory opinion on changes to retail ground and parcel select ground mail). And the changes at issue in the rule challenged here are of far greater “significance” than those. *Buchanan*, 508 F.2d at 263.

The rule will also change the “nature” of USPS services because the agency has never before embarked on a ballot-scanning and verification program or refused to deliver mail ballots to voters. 39 U.S.C. § 3661(b); *supra* pp. 12-13. USPS’ conclusory assertion that the rule would not affect the “experience of the individual postal consumer,” 91 Fed. Reg. at 54976 (quoting *Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833, 885 (E.D. Pa. 2020)), ignores that compliance will be impossible for many States this fall. For that reason, and because of USPS’ own technological feasibility challenges, *infra* pp. 33-40, millions of voters across the Nation likely will not receive the mail ballots to which they are entitled under state law and by which they exercise their right to vote—thereby unquestionably affecting the “experience” of those “individual postal consumer[s].” Had USPS consulted with the Commission, as Congress intended, the agency would have had to address the technological and feasibility challenges that are likely to result in an implementation “disaster.” Katz, *Postal Officials Say Trump’s Mail-Ballot Push Will Create Widespread Errors*, NOTUS (Aug. 27, 2026), <https://perma.cc/SFX9-BZBD>; *see also* Stmt. of Comm’r Day, Dkt. C2026-27 (Postal Regul. Comm’n Sept. 3, 2026), <https://perma.cc/YG9P-TDEK> (reiterating concerns about USPS’ inadequate “advance testing and validation”).

USPS argued below that plaintiffs were required to exhaust this claim with the Commission and then bring it in the D.C. Circuit. *See* Dkt. 17 at 12 (citing 39 U.S.C. §§ 3662, 3663). That is incorrect. *See Washington v. Trump*, 487 F. Supp. 3d 976, 981 n.1 (E.D. Wash. 2020); *Pennsylvania*, 490 F. Supp. 3d at 856-857 (rejecting similar contention and noting the “irony” of USPS “bypassing the Commission” and then arguing that it is “Plaintiffs who must resort to the Commission in order to obtain relief”). Indeed, that argument is especially flawed in the circumstances here because plaintiffs’ “‘here-and-now injur[ies]’” ahead of the imminent November elections would be “impossible to remedy” through the Commission’s administrative review process. *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 191 (2023); *see New York v. Trump*, 181 F.4th 132, 140 n.3 (D.C. Cir. 2026).

II. EQUITABLE CONSIDERATIONS WEIGH HEAVILY AGAINST A STAY

Defendants fail to show irreparable harm from the preliminary injunction—certainly nothing comparable to the catastrophic harm that plaintiffs and the public would suffer if the challenged rule took effect before this year’s midterms. Defendants’ principal argument is that none of plaintiffs’ evidence of harm—and none of the district court’s extensive findings about infeasibility—make any difference. “[T]here is no basis,” defendants assert, “to hold that an otherwise-valid rule . . . becomes invalid simply because it is adopted sufficiently close to an election,” such that compliance becomes difficult or infeasible. Appl. 32-33. That assertion is contrary to both settled law, *see, e.g., NetChoice, LLC v. Fitch*, 145 S. Ct. 2658, 2658 (2025) (Kavanaugh,

J., concurring), and common sense: it would mean that the federal government could rush out any election-related policy on the eve of an election, and no matter how disastrous the consequences for voting rights and elections administration, no one would have a remedy in court. The Court should reject that astonishing proposition.

1. Defendants' assertions of harm are in substantial tension with the narrow scope of the preliminary injunction. Because the injunction is inapplicable to "elections *after* the November 2026 election," App'x 46a (emphasis added), it merely preserves the status quo ahead of elections that are now only 55 days away. For that reason, defendants are mistaken that "the injunction bars USPS from training its employees to conduct the verification process." Appl. 30; *see id.* at 12. There is nothing blocking USPS from training employees on the scanning, data-matching, and verification protocol prescribed by the rule, so long as such training is geared toward future elections (or even voluntary participation in this year's elections). App'x 46a.

The injunction is also limited to "the Final Rule's *mandatory* provisions" and thus does not "preclude[] States from *voluntarily* complying with the Final Rule." App'x 46a (emphases added). USPS remains free to continue to develop the portal, train its employees, and work with States on the design of their mail ballots on a voluntary basis. States may also choose to seek approval of their envelopes and upload voter data into the portal whenever it becomes operational. *Cf.* App'x 38a (portal "is not . . . operational" as of September 4).

That period of voluntary compliance could prove valuable to USPS, as it would offer the agency a trial run of its untested technology and data-matching features and help the agency address serious concerns raised by USPS officials and postal experts. *See, e.g.*, Dkt. 115 at 15-16 (warning about “slapdash software development” and “insufficient internal testing”); App’x 41a (noting “the unproven nature of the [portal’s] new technology”); *supra* pp. 2-3 (similar).

Defendants’ fears of harms to “election integrity” (Appl. 29) while the court’s order is in place are wholly unfounded. USPS expressly declined to resolve “[w]hether or not voter fraud is common or uncommon” when it adopted the final rule, 91 Fed. Reg. at 54969, and “the record includes no evidence relating to fraudulent mail voting,” App’x 45a-46a. USPS thus cannot show that the rule’s immediate implementation is necessary to “address the risk that the federal mails will be used to perpetrate voter fraud.” Appl. 5. No similar USPS rule has ever existed. Yet States have long employed protocols to protect against mail-ballot fraud. *See, e.g.*, Nat’l Conf. of State Legislatures, *How States Verify Voted Absentee/Mail Ballots* (updated May 20, 2026), <https://perma.cc/RVF3-9KAL>. And studies have repeatedly demonstrated that fraud related to mail voting is extraordinarily rare, undercutting any claim of irreparable harm. *See, e.g.*, Dkt. 1-1 at 19 & n.12 (collecting examples).

Nor is the injunction causing irreparable harms akin to those described in *California*, 2026 WL 2473573, at *4. *Contra* Appl. 29. There, the Court determined that an earlier, related injunction harmed the government because

it prevented it “from even trying to lawfully implement” the President’s EO. *California*, 2026 WL 2473573, at *5. But USPS has now promulgated its final rule, and as this Court recognized, “[i]f the Postal Service’s final rule harms the States, they may challenge that rule.” *Id.* at *4. Plaintiffs have demonstrated that the rule is both extraordinarily harmful and contrary to statute and the Constitution. *See supra* pp. 10-22. USPS plainly cannot suffer irreparable harm from an injunction that merely prevents it from forcing States to comply with an unlawful rule.¹⁰

2. Granting emergency relief would threaten catastrophic harms for plaintiff States and the public. After considering the un rebutted declarations in the record, the district court concluded that it would be impossible for plaintiffs “to pivot this late in the election cycle” to come into compliance with the rule. App’x 32a; *see also* Dkt. 119-1 ¶ 18 (expert concluding that “[n]one of the Rule’s requirements can feasibly be implemented before the November 3, 2026 General Election”). As the district court explained, “[m]ost Plaintiff

¹⁰ Defendants’ request to limit the scope of relief to “the *California* respondents” (Appl. 34) is perplexing. In *Trump v. CASA, Inc.*, 606 U.S. 831, 859 n.18 (2025), the Solicitor General assured the Court that the federal government would “respect both [its] judgments and [its] opinions.” If the Court holds that plaintiffs have shown a likelihood of success on the merits, *supra* pp. 10-30, respect for that opinion would surely require USPS to refrain from executing the rule on a nationwide basis while this litigation proceeds. In any event, a nationwide remedy is warranted because plaintiffs have shown that the USPS rule violates the APA, *see, e.g., supra* p. 22, and Section 705 of the APA grants courts discretion to award universal interim relief, *see, e.g., Woonasquatucket River Watershed Council v. USDA*, 2026 WL 2279789, at *20 (1st Cir. Aug. 7, 2026) (collecting cases).

States have already ordered their mail ballots” and “have neither time nor funds to design new mail ballots, seek approval of the new designs, order production of mail ballots, update their own election management systems, train election officials to use the USPS portal, and upload citizen data to the portal, all before the midterms.” Dkt. 31 at 8, 9; *see also* App’x 32a-43a; *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985) (“review of factual findings under the clearly-erroneous standard—with its deference to the trier of fact—is the rule, not the exception”).

Wisconsin’s experience is illustrative. As the Wisconsin Elections Commission chair has explained, “[i]t would be virtually impossible for Wisconsin to comply with the Rule.” Dkt. 100-1 ¶ 21. Municipal clerks are required to mail absentee ballots to all requests on file no later than September 17, and county clerks lack sufficient time (and funds) to reprint the ballot envelopes they have already printed for the November elections. *See id.* ¶¶ 6, 13, 15, 29. Wisconsin’s envelopes could only become mailable under the new USPS rule if the State’s elections officers could “print and hand-affix stickers with the Rule-compliant IMb codes on” each envelope. *Id.* ¶ 29. But that labor-intensive solution invites errors that risk disenfranchising voters. *See id.* ¶¶ 32-34. “[A] clerk could easily place the sticker on the wrong envelope by mistake,” for example, “or mix-up which stickers belong to which voter.” *Id.* ¶ 32. In any event, completing that work in time for the midterms would be “impossib[le] for many jurisdictions”—particularly “rural municipalities,”

which may not even “have the required label printing capability” and “often have a single employee performing all elections-related work.” *Id.* ¶ 30.

Like many States, Wisconsin relies on thousands of municipal employees, rather than centralized state officials, to make changes to voter databases. *See* Dkt. 100-1 ¶ 5. To enroll voters with USPS’ new portal, then, those thousands of employees “would need to be trained in how to use the new technology, become authorized users, and then enter the data” required by the rule—all by September 17. *Id.* ¶ 26. But that is wildly unrealistic. Many of the employees responsible for completing these tasks “hold the[ir] positions on a part-time basis, have other full-time jobs, and . . . have little to no administrative support.” *Id.* Given these challenges, “full and accurate compliance [with the rule] is extremely unlikely” in advance of the midterms. *Id.* The rule thus risks “disenfranchisement for . . . eligible voter[s]” in Wisconsin—including “populations that are particularly dependent on absentee voting, such as voters in rural areas, voters with disabilities, and voters that lack reliable means of transportation.” *Id.* ¶ 34.

Other States offer similar accounts. Washington has already printed millions of voter ballot packets. Dkt. 4-4 ¶ 42. Two of its three printing vendors have said that they cannot reprint ballot envelopes, and it is “very unlikely” that the third vendor could reprint envelopes for the entire State. *Id.* Oregon has “neither the time nor the money to design, review, and reorder envelopes before ballots begin to be mailed to [the State’s approximately 3 million] voters

in mid-September.” Dkt. 4-19 ¶ 37; *see id.* ¶ 35. In Colorado, nearly 1.3 million existing ballot return envelopes will have to be discarded, and re-printing these envelopes “may not even be possible.” Dkt. 4-6 ¶ 42. And Hawai‘i reports it “may not be possible to get new . . . envelopes delivered to [Hawai‘i] from the continent on such short notice.” Dkt. 4-10 ¶ 43; *see also* App’x 34a-36a (surveying printing problems and concluding that the rule’s “ballot design requirements . . . will cause Plaintiff States irreparable harm”); Dkt. 119-1 ¶ 52 (expert concluding that the rule’s IMb envelope requirements are not feasible for many jurisdictions before the 2026 election).

The record also reveals other types of serious compliance challenges. For example, California’s statewide voter-registration system “is not currently equipped to receive IMb information for individual voters from county election management systems,” and those county systems are not prepared “to store and transmit” this IMb information. Dkt. 4-1 ¶ 19. The systems in California’s 58 counties would need to be updated before the State could begin mailing compliant ballots. *Id.* Similar modifications to California’s statewide system, however, have historically “take[n] more than a year to develop, test, . . . and deploy.” *Id.* Other States face similar obstacles. *See, e.g.*, App’x 39a-40a & nn.51-52; Dkt. 4-15 ¶ 24; Dkt. 4-21 ¶ 27; *see also* Dkt. 4-16 ¶ 52.

According to defendants, these “difficulties are overblown.” Appl. 31; *see id.* (characterizing harms to States as “ordinary compliance costs”). Defendants point out that the intervenor States “support the Rule and contend

that they will be able to comply.” *Id.* But in contrast to plaintiff States, who submitted some 700 pages of declarations from over two dozen senior elections officials detailing the costs and challenges of compliance, *see* Dkt. 4, intervenors submitted a single declaration, which says without detail or explanation: “[a]lthough my staff are still figuring out some details of implementation, I believe it is possible to implement this rule for the 2026 General Election,” Dkt. 64-1 ¶ 5. Plaintiffs’ voluminous evidentiary submissions have also been corroborated by officials in non-plaintiff States—Utah, in particular, which heavily relies on mail voting. *Supra* pp. 1, 6. And given every opportunity to introduce responsive evidence on this point, defendants made no effort to do so.

Even if plaintiffs could theoretically comply with the new rule, doing so would present serious risks of errors and disenfranchisement. In Massachusetts, for example, compliance would require the State’s “351 local election offices” to “*manually* capture[] and update[]” the IMb information “for each voter’s ballot envelopes.” Dkt. 4-2 ¶ 33 (emphasis added). Where Massachusetts election officials are slated to “mail approximately 1 million ballots to voters during the 2026 general election,” *id.* ¶ 43, this kind of manual data entry creates a risk of errors that could “prevent voters from receiving absentee or mail-in ballots,” *id.* ¶ 51; *see also* Dkt. 119-1 ¶ 112 (expert explaining that “even a single data error would jeopardize an entire mailing containing thousands, potentially millions, of individual ballots”). Many other

States have expressed similar concerns.¹¹ And in Rhode Island—where state law requires that ballots be placed into an internal certifying envelope enclosed in an external envelope—the State’s vendor would have to print IMbs for the two envelopes on separate machines and then later “compile the ballot mail package by matching the two envelopes.” Dkt. 129 ¶ 6; *see id.* ¶ 4. The vendor hopes that it could “perfect[ly] match” the two envelopes, but “this process is outside [its] established procedure” and “create[s] unnecessary risks for Rhode Island in its election administration.” *Id.* ¶ 6.

USPS’ untested new technologies and processes only compound these substantial risks of error and resulting disenfranchisement. *See* App’x 41a & n.53. No one knows, for example, if USPS’ online portal for enrolling voters or its ballot-scanning technology will actually function as intended—or at all. *E.g.*, Dkt. 4-1 ¶¶ 28-29. The portal “does not yet exist.” App’x 45a. And recent revelations from a USPS whistleblower raise significant concerns that USPS’ new systems will not work, *see* Dkt. 115, as do comments from an alarmed member of the Postal Regulatory Commission, *supra* pp. 4, 29. Nor is it clear that USPS can competently administer a ballot-scanning, data-matching, and non-delivery program that is unlike anything it has ever undertaken. Its recent performance has not been encouraging. *See, e.g.*, Dkt. 4-2 ¶ 18 (discussing recent USPS problems with handling ballot mail); Dkt. 4-

¹¹ *See, e.g.*, Dkt. 4-6 ¶¶ 28, 32-33 (Colorado); Dkt. 4-11 ¶¶ 22, 25-26 (Maine); Dkt. 4-14 ¶¶ 24, 27-28 (Minnesota); Dkt. 4-15 ¶¶ 24, 26-27 (New Jersey); Dkt. 4-19 ¶¶ 25, 27-28 (Oregon); Dkt. 4-20 ¶¶ 23, 26-27 (Pennsylvania).

4 ¶ 22 (same); Dkt. 4-5 ¶ 18 (same); *see also* 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>.

For many voters, the unavailability of mail voting would make it impossible to vote at all. Disabled voters, for example, face so many barriers to voting in person that mail voting is often “their only option to cast a ballot.” Davidson, *American Association of People with Disabilities Applauds Supreme Court Protecting Mail Ballot Grace Periods* (June 29, 2026), <https://perma.cc/2QGV-4JV2>. And in some States, a return to the prior era of in-person voting is not an option. For example, Washington is an entirely vote-by-mail State; it “no longer has the infrastructure to accommodate a last-minute reversion to in-person voting.” Dkt. 4-4 ¶ 42. In Hawai‘i, there is “insufficient time to coordinate the necessary polling places, volunteers, and logistical framework that would be necessary to emulate the prior polling place model that existed prior to the advent of elections by mail.” Dkt. 4-10 ¶ 24; *see also* Dkt. 4-19 ¶ 18 (similar with respect to Oregon).

USPS acknowledges that this kind of disenfranchisement would harm the public interest. *See* Appl. 5-6, 31. In fact, it has argued for a stay on the grounds that if injunctive relief is later “vacated on appeal,” States may not have “time to comply with [the rule’s] requirements, which could well end up depriving their voters of the ability to vote by mail.” Appl. 26, *USPS v.*

California, No. 26A297; *see also* Appl. 5-6. But that is already the case. As the district court found based on its extensive review of the record, it is impossible for plaintiff States to comply with the rule *now*, which jeopardizes their voters' ability to vote by mail *now*. *See* App'x 44a. And plaintiff States are not alone: Utah's top elections official has warned that the USPS rule's rollout would be an "unmitigated disaster." Officials in Ohio and Florida have raised similar concerns. *Supra* p. 1 & nn.1-2. And a bipartisan coalition of elections officials has urged USPS to give States at least one year to comply, explaining that "changes made less than 90 days before an election risk administrative mistakes and voter confusion." Bipartisan Policy Ctr., *Comment on USPS Proposed Rule on Ballot Mail* (July 6, 2026), <https://perma.cc/DX2Y-GA3B>.

At this late point, the November election is already underway. At least two States have already begun to mail out ballots under their ordinary state laws and processes. Dkt. 100-1 ¶ 14 (Wisconsin); Appl. 29-30 (North Carolina). There is no good reason to deny other States the same opportunity. "When an election is close at hand, the rules of the road should be clear and settled." *Democratic Nat'l Comm. v. Wis. State Legislature*, 592 U.S. 1039, 1043 (2020) (Kavanaugh, J., concurring). Here, the governing rules should be those that States long ago adopted for mail voting in this year's election—rules that have vastly expanded the opportunities for Americans to take part in our democracy.

CONCLUSION

The application for a stay should be denied.

Respectfully submitted,

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