No. 26A305

In the Supreme Court of the United States

UNITED STATES POSTAL SERVICE, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

DONALD J. TRUMP, ET AL., APPLICANTS

v.

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR STAY

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

A. The Government Has A Strong Likelihood Of Succeeding On The Merits Of The Rule's Legality 4

B. The Serious Irreparable Harms The Government Is Suffering Warrant A Stay 16

RETRIEVED FROM DEMOCRACYDOCKET.COM

In the Supreme Court of the United States

No. 26A305

UNITED STATES POSTAL SERVICE, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

DONALD J. TRUMP, ET AL., APPLICANTS

v.

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, ET AL.

RETRIEVED FROM DEMOCRACYDOCKET.COM

REPLY IN SUPPORT OF APPLICATION FOR STAY

This Court should swiftly stay the district court's baseless injunction barring the Postal Service from fully enforcing the Rule's modest envelope-design and addressee-information requirements for federal-election ballot mail. Those requirements are a straightforward exercise of the Postal Service's ordinary authority to adopt mail-preparation rules designed to ensure that mail (especially sensitive mail) is properly delivered to the intended recipient. The intended recipient is determined entirely by the sender States, as the Rule's requirements do not in any way displace state law regarding voter eligibility or the manner of voting. Every day that the district court's injunction remains in place, more ballots are being sent through the U.S. Mail without the benefits that the Rule provides for election integrity. This is causing the precise irreparable injury that this Court already recognized when staying the district court's first baseless injunction to block implementation of such a rule, see

Trump v. *California,* No. 26A124, 2026 WL 2473573, at *4 (U.S. Aug. 4, 2026) (per curiam), and States are facing an increasingly tighter window to ensure that their envelopes comply with the Rule's requirements if a stay is ultimately granted.

The Rule is a lawful exercise of USPS's express statutory authority to regulate the design of envelopes and the information needed about addressees, and thus it is a constitutional implementation of Congress's power to regulate the use of the federal mails—or alternatively, its power to regulate the manner of federal elections. Respondents fail to meaningfully rebut that basic premise. Their emphasis on the fact that the postal statutes do not explicitly mention "election mail" is inconsistent with Congress's decision to grant the Postal Service general rulemaking powers with respect to the preparation and delivery of all types of mail, including election mail and other types of sensitive mail that present unique issues warranting specific preparation requirements. Likewise, respondents miss the mark in trying to distinguish the Postal Service's other exercises of analogous types of rulemaking authority over particular categories of mail, including election mail and other matter that is mailable but sensitive in various ways. Respondents offer a scattershot of factual and policy distinctions that have no grounding in the text of the rulemaking statutes.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Indeed, what animates much of respondents' arguments is an objection, not to the Rule's requirements per se, but rather to the application of the Rule *this year*. That approach erroneously conflates the merits with their equitable arguments. If the Rule were only taking effect in 2030, States had four years to obtain the requisite envelopes, and USPS had four years to test the portal and verification process, respondents could not seriously claim that the Postal Service was exceeding its statutory authority, much less unconstitutionally usurping state regulation of elections, merely by requiring barcodes on ballot envelopes and verification that those barcodes

match voters to whom the States themselves intended to send ballots. Respondents fear, however, that the process will not work when rolled out in a shorter period of time this year, and that some voters may thus lose the privilege of voting by mail. But critically, whether these envelope-design and addressee-information requirements fall within the Postal Service's statutory authority turns on the legal text of the rulemaking provisions, not the factual circumstances of how the Rule may be implemented.

Signaling the weakness of the district court's injunction, the state respondents offer two alternative grounds to support the injunction, including an arbitrary-and-capricious challenge to its implementation this year. But this Court should not deny a stay by trying to rehabilitate an injunction in an emergency posture by invoking distinct claims that no lower court has adopted; and regardless, those belated arguments are even more meritless (which perhaps explains why even the district court did not adopt them). Among other things, both arguments contravene Congress's express limitations on judicial review—first in exempting the Postal Service from the APA, and second in channeling review of certain procedural claims to the Postal Regulatory Commission and its administrative-review scheme.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Turning to the equities, respondents essentially contend that the government suffers no irreparable harm from the injunction because voter fraud is not sufficiently common to be important. That remarkable claim cannot be reconciled with either this Court's earlier stay of the district court's first injunction, or this Court's recognition that even the *threat* of voter fraud "can undermine public confidence in the fairness of elections" and that "fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight." *Brnovich* v. *Democratic Nat'l Comm.*, 594 U.S. 647, 672 (2021); see *Crawford* v. *Marion Cnty. Election Bd.*, 553 U.S. 181, 196-197 (2008).

Accordingly, the district court's injunction imposes grave irreparable injury by restricting implementation of modest measures that will help prevent and restrain potential gross abuses of the mails to perpetrate a fraud on the Nation.

Conversely, respondents fail to justify the proposition that their asserted countervailing harms alone could support denying a stay. They cannot dispute that, if the Rule were concededly lawful, then they would have no equitable basis for protection from those asserted but lawful harms. After all, if the district court had simply issued a preliminary injunction based on those harms alone, while taking no position on the Rule's legality or even admitting the Rule was lawful, that would be clear reversible error. See *Starbucks* v. *McKinney*, 602 U.S. 339, 346-347 (2024); *Winter* v. *NRDC*, 555 U.S. 7, 20-22 (2008). The district court cannot avoid a stay of its injunction merely by further tacking on conclusory, and demonstrably wrong, assertions that the Rule exceeds the Postal Service's statutory and constitutional authority.

In short, this is not the kind of "close case[ ]" in which "balanc[ing] the equities" is decisive. See *National Republican Congressional Comm.* v. *Brown*, No. 26A274, 2026 WL 2618462, at *1 (Sept. 4, 2026) (per curiam). Rather, it is one where the government's "show[ing] that it is likely to succeed on the merits and that it is likely to suffer irreparable harm without a stay"—"the most critical" factors—is so clear that balancing is unwarranted. See *California*, 2026 WL 2473573, at *2. Accordingly, this Court should stay the injunction as soon as possible, so that all involved can immediately take the necessary steps for implementation of the Rule.

RETRIEVED FROM DEMOCRACYDOCKET.COM

A. The Government Has A Strong Likelihood Of Succeeding On The Merits Of The Rule's Legality

1. At the outset, respondents resist application of the ultra-vires standard for non-statutory judicial review of statutory claims that this Court most recently

applied in *NRC* v. *Texas*, under which they must demonstrate that the Postal Service took action "entirely in excess of its delegated powers and contrary to a specific prohibition in a statute." 605 U.S. 665, 681 (2025) (emphasis and quotation marks omitted); see *Leedom* v. *Kyne*, 358 U.S. 184, 188 (1958). Like the district court, they contend that this standard—which requires something like "a Hail Mary pass," *id.* at 681-682—applies only where a plaintiff "sued outside an otherwise available judicial review scheme," *California* Br. in Opp. 23; see *LWVMA* Br. in Opp. 17-18. That is incorrect. As the government explained, see Appl. 14-15, the *Leedom* v. *Kyne* standard applies to *all* attempts to "end-run … the limitations of judicial-review statutes." *NRC*, 605 U.S. at 681. Respondents offer no coherent rationale for their counterintuitive position that a statute that eliminates judicial review altogether somehow tolerates more sweeping non-statutory review than a statute that merely channels disputes to a particular forum. Rather, the heightened standard for ultra-vires claims applies equally where, as here, Congress has expressly eliminated judicial review under the APA. 39 U.S.C. 410(a); *Mittleman* v. *Postal Regulatory Comm'n*, 757 F.3d 300, 304-308 (D.C. Cir. 2014).

RETRIEVED FROM DEMOCRACYDOCKET.COM

By contrast, respondents' cited cases involving actions by the President are inapposite. See *California* Br. in Opp. 23-24; *LWVMA* Br. in Opp. 18. Congress has not purported to expressly eliminate judicial review of statutory claims against presidential actions, like those at issue in cases like *Trump* v. *Cook*, 146 S. Ct. 2234, 2246-2248 (2026), and *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579, 584 (1952). Rather, as the *California* respondents acknowledge, the relevant "limit on APA review" in those cases was merely "that the President is not an 'agency' subject to the APA." *California* Br. in Opp. 24. In other words, Congress in the APA simply did not speak to judicial review of the President's actions at all, see *Franklin* v. *Massachu-*

setts, 505 U.S. 788, 800 (1992) (noting "that textual silence"), and thus this Court held that a pre-APA implied cause of action in equity remains available, see *Cook*, 146 S. Ct. at 2251 n.2. Here, however, Congress *expressly* exempted the Postal Service from APA review, 39 U.S.C. 410(a), so respondents cannot "end-run" that exemption, *NRC*, 605 U.S. at 681, unless the *Leedom* v. *Kyne* standard is satisfied, see *Federal Express Corp.* v. *U.S. Dep't of Commerce*, 39 F.4th 756, 763-764 (D.C. Cir. 2022)

Respondents' objection that applying the *Leedom* v. *Kyne* standard would allow USPS to "engage in hugely consequential actions" immune from judicial review, *California* Br. in Opp. 24, does little to advance their cause. The heightened ultra-vires standard applies only to statutory claims; accordingly, constitutional challenges remain available, while claims raising rights created by Congress are appropriately subject to limits on judicial review imposed by Congress.

Finally, the *California* respondents attempt to secure APA review by characterizing the Rule as a "proceeding[] concerning the mailability of matter." *California* Br. in Opp. 22 (quoting 39 U.S.C. 3001(m)). As explained, see Appl. 22-23; pp. 12-13, *infra*, the Rule does not render anything nonmailable, which alone forecloses the argument. Regardless, the rulemaking was not a mailability proceeding that would be subject to section 3001(m). Rather, Postal Service regulations provide a specific process for "[m]ailability proceedings," which "are initiated upon the filing of an appeal" with USPS, typically after USPS has detained a particular item as nonmailable. 39 C.F.R. 953.2; see 39 C.F.R. Pts. 952, 953. Congress addressed some procedures relevant to such proceedings in its statutes governing particular nonmailable matter, such as false representations or lotteries—including by specifying that APA review is available for orders issued in such proceedings. See 39 U.S.C. 3005, 3007, 3012.

2. In all events, respondents' claims fail under any standard. The state

RETRIEVED FROM DEMOCRACYDOCKET.COM

respondents largely retreat from their constitutional arguments, see *California* Br. in Opp. 4, 22, and the organizational respondents merely assert that the Postal Service "has unconstitutionally exercised control over the manner in which states conduct elections," *LWVMA* Br. in Opp. 30. They claim that because the Rule is motivated in part by the Postal Service's efforts to protect against voter fraud—in particular, to deter bad actors on the front end from using the federal mails to perpetrate voter fraud, and to facilitate law-enforcement efforts to discover such mail frauds on the back end—the Rule governs elections rather than mail. See *id.* at 30-31. That, however, is a basic category error. For example, States, not the federal government, have general police power to regulate both fraud against the elderly and the disposal of corpses. See *United States* v. *Morrison*, 529 U.S. 598, 618 (2000). But that in no way means that the Postal Service acts unconstitutionally when it adopts a special mail-preparation rule to prevent cremated remains from getting lost in the mail, see Appl. 16, or if it adopts a special mail-preparation rule to maintain better records of who is sending mail to senior centers that have been targeted for mail-fraud schemes, see Appl. 18. Rather, when parties choose to use the federal mails to deliver items, they subject themselves to the federal rules governing mail preparation that Congress has delegated the Postal Service general rulemaking authority to adopt. Respondents are thus left only with their statutory arguments, all of which fail.

RETRIEVED FROM DEMOCRACYDOCKET.COM

a. Respondents offer little response with respect to the actual text of the Postal Service's rulemaking authorities. Congress authorized USPS "to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions," 39 U.S.C. 401(2), and granted it "all other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers," 39 U.S.C. 401(10). The latter powers include

the power "to provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail, and for the disposition of undeliverable mail." 39 U.S.C. 404(a)(1). That authority plainly encompasses a rule requiring the use of Intelligent Mail barcodes on envelopes and a process to verify that envelopes are being sent to the addressees intended by the sender. If this Rule involved a category of mail other than election mail, no one would have batted an eye over the legality of such ordinary mail-preparation requirements—as, in fact, no one did when requirements that are not materially different legally were adopted in the past for other types of sensitive mail. See Appl. 16-17.

Respondents nonetheless contend that because the relevant statutes do not "mention mail ballots," the Rule is unauthorized. *California* Br. in Opp. 10. That gets the nature of a general grant of authority exactly backwards, and it fails to acknowledge that mail ballots are, by nature, a type of "mail"—precisely what the statutes address. On respondents' theory, *all* of applicants' examples of regulations governing particular types of mail—the use of election-mail-specific policies, the replica-explosives rule, the cremated-remains rule, and the hypothetical rule imposing preparation conditions on mailings to senior centers—would *all* be unlawful, since Congress did not confer specific authority to regulate those particular types of mail. While respondents assert superficial distinctions in an attempt to carve out those examples and claim that the Rule has "no historical precedent," *California* Br. in Opp. 12; see *LWVMA* Br. in Opp. 28, each distinction fails, as detailed below.

RETRIEVED FROM DEMOCRACYDOCKET.COM

b. Most importantly, Respondents cannot distinguish the Postal Service's other election-specific practices (for which they themselves have advocated, see Appl. 20). Under those practices, USPS has provided that absentee balloting materials "must not be detained or treated as unpaid mail" and must be "promptly dispatched

and delivered to the addressees" even if a mailer does not affix the necessary postage. USPS, *Postal Operations Manual* § 171.3, *available at* https://perma.cc/HY9N-TJ6Q. Similarly, it has adopted practices to accelerate the delivery of ballot mail, even when the sender has paid for a slower level of service. USPS, Kit 600: *Official Election Mail Guide*, https://about.usps.com/kits/kit600.pdf, at 4. Respondents dismiss those practices because they are "voluntary" and do not result in the rejection of election mail. *California* Br. in Opp. 13-14; *LWVMA* Br. in Opp. 24. But those distinctions are immaterial. As respondents fail to dispute, the text of Congress's general grant of rulemaking authority to USPS does not distinguish between mandatory and permissive rules (election-specific or otherwise), and there is no indication that Congress intended that USPS have only the power to issue parchment rules with which it could not mandate compliance.

For the same reason, respondents gain nothing by emphasizing that the Rule is different (and not "modest") because its "most significant feature" is that "USPS will *refuse to deliver ballots*" whose envelopes are non-compliant. *California* Br. in Opp. 14. Failure to follow any number of mail-preparation rules—*e.g.*, not including the address "only on the side of the piece bearing postage," *Domestic Mail Manual* § 602.1.2, https://pe.usps.com/text/dmm300/602.htm#1_0—can result in mail not being delivered. That does not mean that all rules governing the mail are converted into election regulations if the mailpiece is election-related. And in all events, for those who comply with its requirements, the Rule, like the Postal Service's other election-specific policies, "will help ensure proper handling, efficient processing, and timely delivery of [federal-election ballots] to and from voters." 91 Fed. Reg. 54,966, 54,974 (Aug. 26, 2026).

Respondents also suggest that Congress has generally authorized the Postal

RETRIEVED FROM DEMOCRACYDOCKET.COM

Service to adopt election-mail-specific practices that *facilitate* voting by mail, but not those that burden it. See *California* Br. in Opp. 14. Even setting aside the illusory nature of that distinction as applied to the Rule, see Appl. 21-22, respondents' characterization of the statutory framework is incorrect. While respondents invoke the National Voter Registration Act, the cited provision requires only that USPS offer favorable postage rates to voter *registration* materials, not ballots. See *California* Br. in Opp at 13 (citing 39 U.S.C. 3629). And they invoke the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), but the cited provision requires only that ballots mailed *pursuant to that statute* be mailed even without postage. See *ibid.* (citing 39 U.S.C. 3406(a)(1)). Indeed, if any implication were to be drawn from that provision, it would be that Congress intended for USPS to mail UOCAVA ballots, but *not* other ballots, without postage; yet in stark contrast to the flawed negative inference they draw from the statutory nonmailability provisions, see pp. 12-13, *infra*, respondents are perfectly fine with the Postal Service wielding its general rulemaking powers to excuse additional election mail from postage requirements. This gerrymandered position contravenes ordinary principles of statutory interpretation.

RETRIEVED FROM DEMOCRACYDOCKET.COM

c. Respondents next attempt to distinguish the Postal Service's replica-explosives and cremated-remains rules, suggesting that those rules are merely applications of 18 U.S.C. 1716(a), which renders "all explosives, hazardous materials, * * * and all other natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property," to be "nonmailable matter." See *California* Br. in Opp. 18-20; *LWVMA* Br. in Opp. 22-23. But the salient point about *replica* explosives is that they are *not* explosives and thus not expressly defined as nonmailable material under 18 U.S.C. 1716(a). And cremated remains are not "hazardous" in any sense that is material to the special rule adopted for them. Nor

can respondents shoehorn those examples into section 1716(a) by suggesting that replica explosives and cremated remains "threaten to 'injure'" USPS workers or the mails. *California* Br. in Opp. 19; see *LWVMA* Br. in Opp. 22. Replica explosives plainly pose no threat of injury on their own, which is why USPS has addressed them using its general rulemaking authority, rather than refusing to mail them outright. See, *e.g.*, *Restricting the Mailing of Replica or Inert Explosives*, 75 Fed. Reg. 282, 283 (Jan. 5, 2010). And the potential injury from cremated remains—*i.e.*, that they might leak out of standard packaging and damage postal machinery—is separately addressed by USPS's general rule that powdered substances must be packaged in sift-proof containers. See U.S. Postal Serv., *Publication 52* § 451.2(b) (Aug. 2026), https://pe.usps.com/cpim/ftp/pubs/Pub52/pub52.pdf. Among powdered substances, cremated remains in particular pose no additional threat to USPS workers or machinery—instead, it is the unique concerns presented by *the risk of losing* the cremated remains of a loved one that justify the requirement that senders use special packaging and a *trackable* shipping product. See 90 Fed. Reg. 9843, 9843 (Feb. 19, 2025) (explaining that the cremated-remains rule will "improve visibility and enhance handling methods through processing and transportation"). That concern in no way implicates section 1716's nonmailability bars, but it falls well with the ordinary mail-preparation issues that Congress delegated the Postal Service general rulemaking authority to address.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Moreover, if respondents were correct that section 1716 authorizes regulation of *any* article that might "injure the mails" in the capacious sense that they portray the term, that would only support the Rule here. If the risk that the Postal Service may lose track of a loved one's ashes somehow counts as "injuring the mails," then the risk that fraudulent ballots may be transmitted for a federal election surely also

"injures the mails," by implicating that federal instrumentality in a practice that "undermine[s] public confidence in the fairness of elections," *Brnovich*, 594 U.S. at 672.

d. As for the government's hypothetical mail-preparation rules dealing with elder-abuse mail scams targeting retirement communities, see Appl. 18, respondents suggest that such rules "could" be authorized by specific statutes other than the Postal Service's general rulemaking powers, see *LWVMA* Br. in Opp. 23; *California* Br. in Opp. 20. But that too is incorrect. As the government already explained, the statutes respondents identify—39 U.S.C. 3001(d), (h)-(j), and 3005—do not cover the hypothetical regulation. They prohibit certain forms of scam mail, such as solicitations disguised as bills, 39 U.S.C. 3001(d); solicitations "implying any Federal Government connection, approval, or endorsement," 39 U.S.C. 3001(h)-(i); solicitations for the purchase of services provided for free by the federal government, 39 U.S.C. 3001(j); or advertisements for certain lotteries, 39 U.S.C. 3005. They thus do not authorize prophylactic design and registration requirements for all envelopes used to send solicitations to particular retirement communities that have been targeted for mail-fraud scams. Again, though, merely maintaining better records about such mailings would fall within the heartland of the Postal Service's general rulemaking powers.

RETRIEVED FROM DEMOCRACYDOCKET.COM

3. Respondents are likewise wrong that the Rule creates a new category of "nonmailable" matter. *California* Br. in Opp. 17-18; *LWVMA* Br. in Opp. 18-24. As the government has explained, see Appl. 22-23, the Rule does not render anything nonmailable—it merely requires that federal-election ballot mail be sent in envelopes designed in a certain manner and with addressee information provided ahead of time. Nor have respondents cured the basic logical fallacy in emphasizing that some of the nonmailability provisions adopted by Congress impose conditions rather than out-

right bans on mailing. See *California* Br. in Opp. 17-18; *LWVMA* Br. in Opp. 21-22. To repeat, the fact that Congress deemed some mailpieces "nonmailable" in general, but then permitted them to be mailed if certain conditions were met, does not imply that any additional condition imposed on any mailable material by USPS, pursuant to its general rulemaking authority, somehow violates the nonmailability provisions. Again, that approach would render the Postal Service powerless to address matters like replica explosives or cremated remains, which are mailable matter that nevertheless may be mailed only on certain conditions. As for the Postal Service's requirement that envelopes be addressed solely on the postage-bearing side of the envelope, see p. 9, *supra*, respondents baldly assert that "basic postage formatting requirements have always been treated as different in kind from restrictions concerning the mailability of specific materials." *California* Br. in Opp. 21. Once more, that *ipse dixit* assertion has no basis in the text of the Postal Service's rulemaking authorities.

4. Respondents' invocation of the major-questions doctrine similarly falls flat. As the government has explained, Appl. 23-24, the Rule in no way regulates voter eligibility, the States' authority to regulate elections, or any other potentially "economic[ally] or political[ly] significan[t]" matter that might trigger the doctrine. *Learning Resources, Inc.* v. *Trump,* 607 U.S. 229, 246 (2026) (plurality opinion). Respondents' attempt to invoke the doctrine thus appears to rest on the premise that *any* election-specific regulation that has effects on elections is so "politically significant" that Congress must expressly authorize it. See *California* Br. in Opp. 14-16; *LWVMA* Br. in Opp. 26-29. Again, however, that sweeping premise would doom all manner of ordinary election-specific mail policies—including measures that respondents themselves have advocated. See *Washington* v. *Trump*, 487 F. Supp. 3d 976, 980, 984 (E.D. Wash. 2020). Indeed, adopting design and tracking rules for the enve-

RETRIEVED FROM DEMOCRACYDOCKET.COM

lopes containing federal ballot mail lies squarely within the Postal Service's wheelhouse.

At times, respondents seem to suggest that the Rule implicates the major-questions doctrine because the purported difficulties they will face in complying for the 2026 elections create a risk of disenfranchisement, even if that risk would dissipate for future elections. See *LWVMA* Br. in Opp. 28-29; *California* Br. in Opp. 14. But that makes no sense. The Rule's envelope-design and addressee-information requirements either fall within the text of the Postal Service's rulemaking powers or they do not—their coverage does not shift over time depending on the relative burdens of compliance. Since the major-questions doctrine is ultimately a tool for construing the scope of powers delegated to the Executive by Congress, *e.g.*, *Learning Resources*, 607 U.S. at 242; *Biden* v. *Nebraska*, 600 U.S. 477, 504 (2023), it likewise cannot turn on and off based on such factors. Instead, a challenge to the reasonableness of a rule's effective date based on potential compliance difficulties is a paradigmatic arbitrary-and-capricious claim under the APA, see *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), but Congress expressly exempted the Postal Service's rulemaking from APA review. See 39 U.S.C. 410.

RETRIEVED FROM DEMOCRACYDOCKET.COM

5. Finally, the *California* respondents raise several entirely distinct claims not considered by the district court. *California* Br. in Opp. 24-30. Given that this Court is "a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005), it would be imprudent to consider claims that no lower court has addressed as an alternative basis for denying an emergency stay here. In addition, even when reviewing a preliminary injunction on direct appeal, the D.C. Circuit has explained that, because "the decision whether to grant a preliminary injunction is a matter of discretion, not a question of right," "it is for the district court to determine, in the first

instance, whether the plaintiffs' showing on a particular claim warrants preliminary injunctive relief." *Sherley* v. *Sebelius*, 644 F.3d 388, 397-398 (D.C. Cir. 2011). For example, a purely procedural claim—such as one of the claims that respondents try to raise here—could present very different issues when determining whether the balance of equities supports a preliminary injunction. See *Winter*, 555 U.S. at 23.

In any event, respondents' alternative claims fare no better. As for their claim that the Rule is arbitrary and capricious under the APA, see *California* Br. in Opp. 25-28, that claim fails because, again, the APA does not govern the Postal Service. Accordingly, respondents' invocation (*id.* at 25) of *Encino Motorcars, LLC* v. *Navarro*, 579 U.S. 211, 221 (2016)—which held, in an APA case, that "an agency must give adequate reasons for its decisions"—is inapplicable. And respondents' assertion that arbitrary-and-capricious review is nonetheless available when Congress has exempted an agency from the APA, see *California* Br. in Opp. 28 n.9, is irreconcilable with *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 557-558 (1978), where this Court made clear that courts may not impose extra procedural requirements on agencies beyond those required by statute.

Nor can respondents pursue here their claim that the Rule is invalid because USPS failed to follow the procedures for seeking an advisory opinion from the Postal Regulatory Commission pursuant to 39 U.S.C. 3661. See *California* Br. in Opp. 28-30. To begin, a plaintiff seeking to invoke that provision must present its objection to the Commission—federal district courts lack jurisdiction to consider it. 39 U.S.C. 3662(a), 3663; *New York* v. *Trump*, 181 F.4th 132, 138 (D.C. Cir. 2026) ("The Postal Commission review scheme contains all the hallmarks of a statutory scheme that precludes district court jurisdiction."); see *ibid.* (citing three other court of appeals cases in "unanimous agreement"). Respondents cannot end-run that jurisdictional

RETRIEVED FROM DEMOCRACYDOCKET.COM

bar by invoking *Axon Enterprises, Inc.* v. *FTC*, 598 U.S. 175, 191 (2023), and asserting a "here-and-now injur[y]," see *California* Br. in Opp. 30 (quotation marks omitted). In *Axon*, it was the allegedly unconstitutional administrative process *itself* that imposed the injury on the plaintiff. See 598 U.S. at 182, 191. Here, by contrast, it is the Rule that imposes the alleged injuries, not the administrative-review process to challenge the Rule. Because bringing this claim before the Commission as the statute requires would cause respondents no independent harm, *Axon* is inapposite.

In any event, the claim also fails on the merits. The Postal Service was not required to seek an advisory opinion, because the Rule does not make changes "in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis," as 39 U.S.C. 3661(b) requires. See 91 Fed. Reg. at 54,976. Respondents suggest that the Rule "will generally affect service" nationwide because its "operational changes to how USPS processes mail ballots will have a meaningful impact on USPS' delivery of ballots nationwide." *California* Br. in Opp. 28. But a Rule affecting less than "0.1%" of total mail volume, 91 Fed. Reg. at 54,976, does not have a "meaningful impact" from a quantitative perspective. See *Buchanan* v. *USPS*, 508 F.2d 259, 262 (5th Cir. 1975). Nor does the Rule qualitatively change "the nature of postal service" on a "nationwide basis," *ibid.*—rather, as explained, it adopts modest envelope-design and addressee-information requirements for a narrow subset of mail.

RETRIEVED FROM DEMOCRACYDOCKET.COM

B. The Serious Irreparable Harms That The Government Is Suffering Warrant A Stay

1. Contrary to respondents' assertions, see *California* Br. in Opp. 30; *LWVMA* Br. in Opp. 38-40, the district court's order imposes serious irreparable harm on the government. Indeed, this Court already so concluded when it stayed the dis-

trict court's prior injunction barring USPS from enforcing the President's Executive Order by implementing any final rule for the 2026 elections: "The Government is likely to suffer irreparable harm without a stay" "[b]ecause reversal of the District Court's judgment" against "a rule applicable to [respondent] States" "would come too late for the 2026 midterms." *California,* 2026 WL 2473573, at *4. Given that enjoining implementation of a hypothetical future regulation "deal[t] 'a serious setback' to the Executive's 'goals' while this litigation unfolds," *ibid.*, it necessarily follows that enjoining implementation of the actual final Rule is an even more serious setback. And that harm is worsening daily: Ballots are already being mailed in at least three States, with more to begin in the coming days. See Appl. 29-30.

The government plainly has a strong interest in the prevention of voter fraud, which "can affect the outcome of a close election" and "undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome." *Brnovich*, 594 U.S. at 672. The Postal Service's Rule serves that interest in two ways: It makes election fraud harder to commit and easier to catch. First, by requiring state officials to submit a list of all of the recipients to whom they intend to send ballots, it deters bad actors from mailing ballots to unauthorized voters; and second, by creating a record of individuals to whom ballots were mailed, it facilitates investigation of any irregularities after the fact by relevant authorities. See 91 Fed. Reg. at 54,969.

Both of those mechanisms serve an important interest in "orderly administration and accurate recordkeeping," and they help to prevent and restrain fraud and to safeguard "public confidence in the integrity of the electoral process." *Crawford*, 553 U.S. at 196-197. Protecting against voter fraud is critically important to ensure that "fraudulent votes" do not "dilute the right of citizens to cast ballots that carry appro-

RETRIEVED FROM DEMOCRACYDOCKET.COM

priate weight." *Brnovich*, 594 U.S. at 672. Moreover, "public confidence in the integrity of the election process has independent significance," and "the electoral system cannot inspire public confidence if [insufficient] safeguards exist to deter or detect fraud or to confirm the identity of voters." See *Crawford*, 553 U.S. at 197 (quotation marks omitted). Thus, regardless of whether voter fraud is common or uncommon, it is critically important that the government enact such safeguards, which "encourage[] citizen participation in the democratic process" by fostering confidence in election outcomes. *Ibid.* Respondents' contention to the contrary—that the Rule is not necessary to safeguard election integrity because USPS found it served important interests even if voter fraud is uncommon, 91 Fed. Reg. at 54,969; see *California* Br. in Opp. 32—cannot be squared with this Court's repeated recognition that the government can and should take steps to protect against both fraud itself and the *perception* of fraud, which undermines confidence in elections.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Respondents nonetheless suggest that because the injunction allows States to voluntarily comply with the Rule, that somehow eliminates any harm to the government. See *California* Br. in Opp. 31. That is wrong. The injunction still prohibits the Postal Service from *requiring* compliance with its envelope-design requirements and from performing any *verification* to ensure that it does not mail non-compliant envelopes. Severely watering down the efficacy of the Rule is "a serious setback." *California,* 2026 WL 2473573, at *4.

2. While respondents heavily emphasize the countervailing harms that they purportedly will suffer if the Rule takes effect, see *California* Br. in Opp. 33-40; *LWVMA* Br. in Opp. 31-38, they provide no meaningful response to the government's argument that countervailing equities matter only in cases where the merits and irreparable-injury factors are close, see Appl. 30-33. They contend that the government

argues that it "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." *California* Br. in Opp. 30-31 (emphasis added). That attacks a straw man. The government has not made a *Purcell*-style argument that election-proximity *alone* entitles it to a stay, wholly apart from the strength of its position on the merits and on irreparable injury. If the government in some hypothetical case could not show even a sufficient "likelihood" of satisfying those "most critical" factors, then it would not be entitled to a stay. See *California*, 2026 WL 2473573, at *2. And even if it were a "close case[ ]" on those factors—*e.g.*, if the merits were a toss-up, or if it was debatable whether the harms could be mitigated—then "balanc[ing] the equities" would be appropriate in making the ultimate judgment whether a stay were warranted. See *Brown*, 2026 WL 2618462, at *1; cf. *Winter*, 555 U.S. at 22-23 (denying preliminary injunction based on balancing of equities in case where it was "unclear" whether the plaintiffs were likely to suffer irreparable harm and where the court of appeals at times had suggested a mere "'possibility'" of irreparable harm).

RETRIEVED FROM DEMOCRACYDOCKET.COM

In the actual case here, by contrast, the government has made an overwhelming showing on both factors: This Court has already found serious irreparable harm warranting a stay (and those harms are now even more serious), and the district court's reasons for enjoining the Rule (and respondents' defense of that injunction) are divorced from the statutory text of the Postal Service's rulemaking power and contrary to the Postal Service's existing practice of adopting analogous types of mail-preparation policies for sensitive categories of mail, including election mail. So if this Court agrees with that assessment, then the question becomes whether respondents' alleged countervailing harms from implementation of the Rule on the eve of the elec-

tions can *alone* defeat a stay of the injunction. And respondents offer no coherent justification for that type of "reverse *Purcell*" principle, under which members of the public get to violate a valid regulation for one last election courtesy of an improper injunction. After all, the purported harms they face are *lawful* burdens of complying with a *lawful* rule. Just as those harms alone could not have justified issuance of the injunction in the first place, see *Starbucks*, 602 U.S. at 346-347; *Winter*, 555 U.S. at 20-22, they cannot justify shielding that injunction from a stay pending appeal now.

* * * * *

For the foregoing reasons and those stated in the government's application, the Court should stay the injunction of the United States District Court for the District of Massachusetts pending the resolution of the government's appeal to the United States Court of Appeals for the First Circuit and any proceedings in this Court.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

SEPTEMBER 2026

RETRIEVED FROM DEMOCRACYDOCKET.COM