Donald J. Trump, President of the United States, et al., Applicants v. California, et al.

Docketed: July 27, 2026
Lower Ct: United States Court of Appeals for the First Circuit
Case Numbers: (26-1774)

Proceedings and Orders

[The documents below link externally to the originals on the Supreme Court docket.
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Application (26A124) for a stay, to Justice Jackson.

Consolidated Opposition

Amicus brief of The Society for The Rule of Law

Amicus brief of American Association of People with Disabilities

Amicus brief of Bipartisan Former Governors

Amicus brief of 56 Former Judges

Amicus brief of Harris County, Texas

Amicus brief of National Security Leaders for America

Amicus brief of The Bipartisan American Election Project

Amicus brief of DSCC, DCCC, Democratic National Committee, Democratic Governors Association, U.S. Senate Minority Leader Charles Schumer, U.S. House Minority Leader Hakeem Jeffries

Amicus brief of America's Future, Citizens United, Citizens United Foundation, The Presidential Coalition, LLC, Public Advocate of the U.S., Public Advocate Foundation, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Educ.

Amicus brief of Wisconsin Democracy Campaign, Inc., Expo of Wisconsin, Inc., Jaleyce Oraedu, Jasmine Oraedu, and Aharon Shelef

Amicus brief of State and Local Election Officials, Local Governments, and the Center for Election Innovation & Research

Amicus brief of Asian Law Caucus, Asian American Legal Defense & Education Fund, Asian Americans Advancing Justice - Atlanta, Missouri Voter Protection Coalition, South Asian American Justice Collaborative, Common Cause, et al

Amicus brief of Corey J. Biazzo, Esq.

Reply of applicant Donald J. Trump, et al.

Supplemental Brief in Support of Application for Stay of Donald J. Trump, et al. submitted

Response to Supplemental Brief of State of California, et al. submitted

No. 26A

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS AND REQUEST FOR ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Donald J. Trump, President of the United States; the United States Department of Justice; Todd Blanche, Acting Attorney General; the United States Department of Homeland Security; Markwayne Mullin, Secretary of Homeland Security; the United States Social Security Administration; Frank J. Bisignano, Commissioner of the Social Security Administration; the United States Postal Service; David Steiner, Postmaster General and Chief Executive Officer of the Postal Service; Douglas Tulino, Deputy Postmaster General, Chief Operating Officer, and Chief Human Resources Officer of the Postal Service, and Member of the Postal Service Board of Governors; Amber McReynolds, Chair of the Postal Service Board of Governors; Derek T. Kan, Vice Chairman of the Postal Service Board of Governors; Ronald Stroman, Member of the Postal Service Board of Governors; and Daniel Mark Tangherlini, Member of the Postal Service Board of Governors.

Respondents (plaintiffs-appellees below) are California; Massachusetts; Nevada; Washington; Arizona; Colorado; Connecticut; Delaware; the District of Columbia; Illinois; Maine; Maryland; Michigan; Minnesota; New Jersey; New Mexico; New York; North Carolina; Oregon; Rhode Island; Vermont; Virginia; Wisconsin; and Josh Shapiro, Governor of Pennsylvania.

Respondents (intervenor-defendants-appellants below) are Alabama; Florida; Indiana; Kansas; Louisiana; Missouri; Montana; Nebraska; Oklahoma; South Carolina; South Dakota; and Texas.

RELATED PROCEEDINGS

United States District Court (D. Mass.):

State of California v. *Trump*, No. 26-cv-11581 (June 18, 2026) (order granting

motion to dismiss in part)

State of California v. *Trump*, No. 26-cv-11581 (June 25, 2026) (order granting summary judgment and denying motion to dismiss)

State of California v. *Trump*, No. 26-cv-11581 (July 7, 2026) (order granting seven-day administrative stay but otherwise denying stay)

United States Court of Appeals (1st Cir.):

State of California v. *Trump*, No. 26-1774 (July 25, 2026) (order denying motion for stay pending appeal)

In the Supreme Court of the United States

No. 26A

DONALD J. TRUMP, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS AND REQUEST FOR ADMINISTRATIVE STAY

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants Donald J. Trump, President of the United States, et al.—respectfully requests that this Court stay the injunction issued by the United States District Court for the District of Massachusetts (App., *infra*, 61a-64a) pending appeal to the United States Court of Appeals for the First Circuit and, if the court of appeals affirms the order, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. The Solicitor General also respectfully requests an immediate administrative stay of the injunction to prevent the threat of irreparable injury while this application is pending.

The district court has issued an extraordinary injunction barring federal agencies from implementing an Executive Order promoting election integrity in the upcoming federal elections in November. The injunction is particularly remarkable because the Order merely sets forth general policy guidance, leaving substantial discre-

tion to agencies about how to implement the Order while admonishing them that they may do so only consistent with applicable law. And the injunction is especially indefensible because the agencies are still deliberating over how (if at all) to implement the Order, yet the district court preemptively decided that whatever the agencies may choose to do will necessarily be unlawful. That injunction flouts settled Article III standing and ripeness principles. This Court has repeatedly and recently recognized that courts cannot enjoin implementation of Executive Orders that leave open material issues that still need to be resolved by agencies, unless and until those agencies actually take concrete actions that injure the plaintiffs.

This premature injunction imposes serious irreparable harm on the federal government. Even if the agencies' implementation plans end up being entirely lawful, there is not enough time to obtain ordinary appellate relief from the injunction in order to carry them out before the November election, especially given that any such plans will need to be implemented well before November given the timing of election procedures concerning voter-roll verification and mail voting. Accordingly, this Court should grant a stay pending further review and an immediate administrative stay.

In March of this year, President Trump signed Executive Order 14,399, titled "Ensuring Citizenship Verification and Integrity in Federal Elections." 91 Fed. Reg. 17,125 (Mar. 31, 2026) (Executive Order or Order). The Executive Order is a directive from the President to several of his subordinates in the Executive Branch, aimed at "enhanc[ing] election integrity via the United States Mail," "reducing the risk of fraud," and "protecting the integrity of Federal elections." *Id.* § 1, 91 Fed. Reg. at 17,125. The Order is not self-executing. Rather, it contemplates that the relevant officials and agencies will, on specified timetables, consider and potentially take actions they deem lawful and appropriate in light of the President's policy objectives.

For example, the Order directs the United States Postal Service (USPS or Postal Service) "to initiate a proposed rulemaking" regarding mail-in and absentee ballots, "pursuant to * * * applicable authorit[ies]" and "[t]o ensure the faithful execution of Federal law." *Id.* § 3(b), 91 Fed. Reg. at 17,126. It also instructs the Department of Homeland Security (DHS) to compile and transmit State-specific lists of individuals who are citizens and will be 18 years of age or older at the time of an upcoming election, but only "[t]o the extent feasible and consistent with applicable law." *Id.* § 2(a), 91 Fed. Reg. at 17,125.

Those actions have not yet occurred. USPS has issued a notice of proposed rulemaking and sought comments, but it has not finalized a rule. DHS has begun the process of considering whether and to what extent it may compile the relevant lists consistent with applicable law, but it continues to deliberate as to the best approach. Accordingly, much remains uncertain as to what a final USPS rule might include or what the contents or uses of any DHS lists might be. Correspondingly, the respondent States have not suffered any cognizable injury caused by the Executive Order, because the Order itself does not affect their election processes at all, and it is entirely speculative whether and how any agency implementation may do so.

The States nonetheless sought and obtained an injunction that prevents the Executive Branch from implementing Sections 2 and 3 of the Executive Order with respect to the November 3, 2026, election. That injunction defies established principles of ripeness and standing, which dictate that the current dispute is not justiciable. See *Trump* v. *New York*, 592 U.S. 125, 131, 134 (2020) (per curiam). Indeed, the district court itself recognized that the States' challenge was *not* justiciable as to future elections, and thus dismissed their claims without prejudice as to those elections; yet even though the same exact uncertainty applies to the upcoming election, it pro-

ceeded to reach the merits, found that Sections 2 and 3 of the Executive Order are "legally void," and enjoined the federal defendants other than the President from following the President's policy directives and implementing the Order with respect to the November election. See App., *infra*, 61a-64a. That decision exceeded the court's authority under Article III, and conflicts with the correct conclusions of two courts that parallel challenges were not justiciable. See *NAACP* v. *USPS*, No. 26-5257 (D.C. Cir. July 17, 2026), slip op. 1-2 (staying injunction in parallel challenge to the Postal Service's proposed rule); *DSCC* v. *Trump*, Nos. 26-cv-1114, 26-cv-1132, and 26-cv-1151, 2026 WL 1487833, at *13 (D.D.C. May 28, 2026) (denying preliminary injunction in parallel challenge to the Executive Order). The district court's injunction also closely resembles one this Court stayed last year, after a district court improperly enjoined implementation of an Executive Order directing agencies to consider reductions-in-force, rather than waiting for agencies to actually take those actions and then considering whether they turned out to be unlawful. *Trump* v. *American Fed'n of Gov't Emps.*, 145 S. Ct. 2635, 2635 (2025).

The district court's injunction also imposes irreparable harm on the government. It impedes the President's ability to direct his subordinates and preempts the Executive's deliberative policymaking. Absent a stay, even if the agencies' implementation plans end up being entirely lawful, there will not be sufficient time to obtain appellate relief before the November election. That is especially true because implementation efforts for any USPS rule or DHS policy will need to begin well before November—indeed, as soon as early to mid-August—to be effective for the 2026 election, particularly given that absentee and mail-in voting begin (in some States) several weeks prior to Election Day. And for that reason, an immediate administrative stay while this application is pending is also warranted. Conversely, staying the in-

junction would impose no meaningful burden on the respondent States, for the same reasons they lack standing to pursue this premature suit. If and when the agencies take concrete actions that actually injure them, the States can pursue claims at that time, at which point courts can resolve any legal questions presented in a non-hypothetical posture. As the lower courts have declined to stay the injunction pending appeal, however, applicants seek a stay of the district court's order barring implementation of Executive Order 14,399 with respect to the November 3, 2026, federal election, along with an immediate administrative stay.

STATEMENT

1. Executive Order 14,399 does three things that are relevant here.

First, Section 2(a) directs the Secretary of Homeland Security to take "appropriate action" to compile from various federal record sources, and transmit to each State, a list of United States citizens above the age of 18 and residing in the State at the time of an upcoming federal election. See Order § 2(a), 91 Fed. Reg. at 17,125-17,126. The Order specifically contemplates that the Secretary will establish procedures for individuals to access, update, or correct their own records and for States to supplement or suggest modifications to the lists. Order § 2(a), 91 Fed. Reg. at 17,125. These "State Citizenship List[s]" are to "be updated and transmitted to State election officials no fewer than 60 days before each regularly scheduled Federal Election." *Ibid.* The Order does not purport to require States to use the lists at all, let alone in any particular way, once transmitted. See § 2(a), 91 Fed. Reg. at 17,125-17,126. Critically, the Order makes clear that DHS may compile and transmit the lists *only* "[t]o the extent feasible and consistent with applicable law, including but not limited to the Privacy Act of 1974 (5 U.S.C. 552a)." § 2(a), 91 Fed. Reg. at 17,125. This specific admonition is layered on top of a more general admonition that the entire "order shall

be implemented consistent with applicable law and subject to the availability of appropriations." *Id.* § 7(b), 91 Fed. Reg. at 17,127.

Second, Section 3 of the Order directs USPS "to initiate a proposed rulemaking" regarding certain design requirements for ballot mail for federal elections and to develop procedures for individuals to be enrolled on "State-specific Mail-In and Absentee Participation List[s]." Order § 3, 91 Fed. Reg. at 17,126. (Such lists are to be distinct from the State Citizenship Lists under Section 2.) The Order directs the Postal Service to begin the proposed rulemaking "within 60 days of" the Order with a final rule, if any, to be issued within 120 days. *Id.* § 3(b), (d), 91 Fed. Reg. 17,126-17,127. The Order identifies some provisions for inclusion in the notice of proposed rulemaking, *id.* § 3(b), but does not say anything about whether any or all of those provisions should also appear in any final rule, if the Postal Service chooses to issue one. Again, the Order makes clear that any rule should be promulgated "pursuant to 39 U.S.C. 401 and other applicable authority" and "ensure the faithful execution of Federal law." *Ibid.* On June 2, 2026, the Postal Service issued its notice of proposed rulemaking, and the comment period closed on July 2. See *Ballot Mail for Federal Elections*, 91 Fed. Reg. 32,915 (June 2, 2026). No final rule has issued.

Third, Section 5 of the Order tasks the Attorney General and the heads of executive departments to take "all lawful steps to deter and address noncompliance with Federal law" governing federal elections. Order § 5, 91 Fed. Reg. at 17,127. Section 2 also outlines some priorities for the "investigation and, as appropriate, the prosecution" of State and local officials or others involved in the administration of Federal elections who issue ballots to individuals not eligible to vote under several relevant statutes. *Id.* § 2(b), 91 Fed. Reg. at 17,126. But the Order nowhere says that States' failure to use any of the contemplated lists would be a crime or even

evidence of a crime, much less that the Attorney General should bring charges on such a theory.

2. On April 3, 2026—three days after the Executive Order was issued—the respondent States filed this suit. They challenged Sections 2, 3, and 5 of the Order, invoking various constitutional theories. See D. Ct. Doc. 1 at ¶¶ 116-127, 146-182 (Apr. 3, 2026). On June 18, 2026, the district court partially granted and partially denied the federal government's motion to dismiss the case on ripeness grounds. See App., *infra*, 65a-81a. The court explained that with respect to elections after November 3, 2026, "[t]here are clearly many uncertainties as to how the agencies will ultimately implement the EO including the source and accuracy of DHS' [State] Citizen[ship] Lists, and what final rule, if any, will be adopted by the USPS." *Id.* at 74a. Any challenge to the Executive Order for elections after November 2026 would be unripe, the court recognized, because "[t]he implementation of the EO may well result in the evolving and dynamic process described by Defendants, in which Plaintiffs may participate in a comment period that could result in their concerns being incorporated in agency decision making." *Ibid.* Even though all of that is equally true for the November 2026 election, the court nevertheless concluded that respondents' challenge to the legality of the Order as it relates to that election was ripe for adjudication, because the Order contemplates that certain actions will occur prior to that election. See *id.* at 75a-80a.

On June 25, 2026, the district court granted summary judgment for respondents and issued a permanent injunction. App., *infra*, 28a-64a. The court held that respondent States have standing because they have "statutory obligations" that "require immediate action" to prepare to respond to federal implementation of the Executive Order. *Id.* at 42a. As relevant here, the court declared Sections 2 and 3 of the

Executive Order "legally void." *Id.* at 61a. In doing so, the court rejected the government's argument that the Order's saving clauses directing implementing officials to comply with the law rendered the Order not facially unlawful. *Id.* at 50a-51a.

The district court held that Section 2(a) was unlawful, reasoning that the President lacked authority to compile voter lists for each State and to limit "voting eligibility in primary elections to citizens above the age of 18" through the lists. *Id.* at 54a (emphasis omitted). The court also concluded that no federal statute "authorize[s] the federal government to create their own voting database." *Id.* at 55a. Moreover, the court concluded that Section 2(b) impermissibly sought to "intimidate local election officials to use the necessarily incomplete [State Citizenship Lists] as a resource, lest they face criminal prosecution." *Id.* at 57a.

With respect to Section 3, the district court described the Order as directing the Postal Service "to compile its own Lists of individuals eligible to vote by mail and [to] probibit[] the transmission of a mail-in ballot completed by anyone not on [the Postal Service's] Lists." App., *infra*, 57a. The court held this directive interfered with the States' exclusive "power to determine voter eligibility." *Ibid.* The court also concluded that the Postal Service "lacks statutory authorization to promulgate any binding regulations on mail-in voting," and would not have time to seek advice from the Postal Regulatory Commission as required. *Id.* at 57a-58a. The court thus enjoined applicants, except for President Trump, "from implementing or giving effect to Sections 2 and 3 of the EO with respect to the November 3, 2026 or any earlier federal election in the Plaintiff States." *Id.* at 61a.

3. Applicants promptly appealed the district court's summary-judgment order and also sought a stay pending appeal of its injunction. D. Ct. Docs. 192, 193 (July 1, 2026). On July 7, 2026, the district court granted a seven-day administrative

stay of that injunction, but denied a stay pending appeal. See App., *infra*, 21a-27a.

4. The same day, applicants sought a stay in the court of appeals, asking the First Circuit to rule by the expiration of the administrative stay on July 14, 2026, and to extend the administrative stay, if it denied relief, to allow applicants to seek orderly relief from this Court. See C.A. Stay Br. 3 (July 7, 2026). But the First Circuit instead waited until July 25 to rule and denied relief. App., *infra*, 1a-20a.

In rejecting the government's stay request, the court of appeals first found an Article III case or controversy based on respondents' diversion of staff time to plan for potential future implementation of the Order. See App., *infra*, 7a-8a. The court suggested that the Order "targets the Plaintiff States explicitly and repeatedly" by imposing obligations to "coordinate with federal officials and comply with new voting procedures." *Id.* at 9a. It also opined that because some respondent States have "already purchased mail-ballot envelopes," and the Order directs the Postal Service to propose a rule that would require States to use different envelopes, respondents "faced certainly impending pocketbook injuries." *Id.* at 11a. It next agreed with the district court that respondents have standing because the Order "threatens [respondents] and their officials with criminal penalties if they do not comply with its directives." *Id.* at 12a. Finally, the court of appeals ruled that the Plaintiff States' sovereign interest in administering elections supported standing. *Id.* at 13a-14a.

As to the remaining stay factors, the court of appeals noted that the injunction does not prohibit the government from implementing the Executive Order as to non-respondent States or as to elections after November 2026. App., *infra*, 15a. It "assum[ed]" that barring implementation as to the Plaintiff States for 2026 elections "will lead to irreparable harm," but found that it was not sufficient given its analysis of the other factors, which it found favored respondents. *Ibid.*

Judge Dunlap concurred in part and dissented in part. App., *infra*, 16a-19a. In his view, the government is likely to succeed in challenging respondents' standing as to Section 2(a) of the Order, which pertains to the DHS State Citizenship Lists, because that provision "does not order States, including [respondents], to take any action based on the State Citizenship List[s]." *Id.* at 16a. He rejected the majority's broad reliance on "enforcement concerns" tied to Section 2(b), asserting that respondents would have standing to challenge any conflict with state laws allowing 17-year-olds to vote in federal primary elections, but not to challenge "enforcement of laws banning voting by noncitizens" based on speculative fears about how the State Citizenship Lists might be used to inform prosecutions. *Id.* at 17a-18a. With respect to Section 3, which concerns the Postal Service rulemaking, Judge Dunlap concurred in the denial of a stay, based on his view that state preparation for a potential Postal Service final rule sufficed to constitute concrete injury "in this unusual case." *Id.* at 18a. He found the government would suffer irreparable harm as to the State Citizenship Lists and enforcement priorities because "it would be prevented from taking steps that may provide States with further resources for purposes of the November 2026 election and from enforcing valid federal laws." *Id.* at 19a.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, to obtain a stay of an injunction pending review in the court of appeals and in this Court, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining a writ of certiorari, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," the Court balances the equities and weighs the relative harms. *Ibid.*

All of those factors strongly warrant a stay here. The government is likely to

succeed on the merits of its appeal. The district court lacked jurisdiction to resolve this premature dispute, and its contrary reasoning rested on fundamental misreadings of this Court's precedents and gross misinterpretations of the Executive Order. The court's incursion on the government's authority imposes irreparable harm on the government by impeding the President's efforts to secure election integrity—and doing so in a manner that will be effectively unreviewable as to the November election even if the government prevails on appeal. The injunction warrants the entry of interim relief pending this Court's review.

A. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS BECAUSE THIS SUIT IS PREMATURE

The district court lacked jurisdiction over this suit, which the respondent States initiated only three days after the President signed the Executive Order—long before any of the agency defendants had taken any concrete actions to implement the Order. The Order functions as an internal directive from the President to subordinate officials and agencies to engage in future policymaking. Respondents' real concern is not with the Order itself—which does not require anyone outside the government to do (or refrain from doing) anything—but with possible harms that may arise depending upon what specific actions the agencies ultimately decide to take in implementing the President's directives. Indeed, when dismissing respondents' claims as premature with respect to future elections, the district court was exactly right: "There are clearly many uncertainties as to how the agencies will ultimately implement the EO, including the source and accuracy of DHS' [State] Citizen[ship] Lists, and what final rule, if any will be adopted by the USPS," and "implementation of the EO may well result in the evolving and dynamic process described by [the government], in which [respondents] may participate in a comment period that could result

in their concerns being incorporated in agency decision making." App., *infra*, 74a. The same reasoning counsels in favor of a stay of the injunction against implementation of the Executive Order for the November 2026 election.

It is no less "uncertain[] * * * how the agencies will ultimately implement the EO" as to the November 2026 election. App., *infra*, 74a. As another district court recognized in rejecting parallel claims as premature, "the Executive Order does not command Plaintiffs to do anything," "no agency has yet acted pursuant to the Order in a way that could harm Plaintiffs," and the plaintiffs thus "ha[d] not suffered any harm at present, much less harm that is certain, great, and imminent." *DSCC* v. *Trump*, Nos. 26-cv-1114, 26-cv-1132, and 26-cv-1151, 2026 WL 1487833, at *13 (D.D.C. May 28, 2026) (quotation marks omitted). The district court here nonetheless allowed the challenge to the Executive Order to proceed as to its implementation for the November 2026 election—contrary to both law and logic.

1. Two "related doctrines of justiciability" that "each originat[e] in the case-or-controversy requirement of Article III"—standing and ripeness—render this suit premature. *Trump* v. *New York*, 592 U.S. 125, 131 (2020) (per curiam). To establish standing, a plaintiff must show (i) an injury in fact that is "concrete, particularized, and actual or imminent," (ii) that was "likely caused by the defendant," and (iii) that "would likely be redressed by judicial relief." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423 (2021). This Court has "repeatedly reiterated that 'threatened injury must be *certainly impending* to constitute injury in fact,' and that '[a]llegations of *possible* future injury' are not sufficient." *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Whitmore* v. *Arkansas*, 495 U.S. 149, 158 (1990)) (brackets in original).

"[R]ipeness doctrine is drawn both from Article III limitations on judicial power

and from prudential reasons for refusing to exercise jurisdiction." *Reno* v. *Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993). Ripeness "prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies," and it shields "agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *National Park Hospitality Ass'n* v. *Department of the Interior*, 538 U.S. 803, 807-808 (2003). "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas* v. *United States*, 523 U.S. 296, 300 (1998) (quotation marks omitted).

Whether viewed through the prism of standing or ripeness, respondents have failed to establish any present injury that a court could properly remedy. The Executive Order is an intra-Branch directive from the President to his subordinates—which, of its own force, does not change anything at all about elections in any State. It grants those subordinates a significant degree of latitude in deciding whether and how to implement the President's policies. It does not require the States to do (or refrain from doing) anything at all. And it expressly prohibits federal agencies from doing anything unlawful, mandating that the "order shall be implemented consistent with applicable law." Order § 7(b), 91 Fed. Reg. at 17,127. Thus, as the district court itself acknowledged, there remain "many uncertainties" about how the agencies will implement the Order. App., *infra*, 74a. Respondents therefore fear only potential future injury from action they speculate that agencies may eventually take—in other words, from "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas*, 523 U.S. at 300.

Consider Section 2(a). It does not alter the rules of any State's election pro-

cesses. It directs the Secretary of Homeland Security to "take appropriate action to compile," using existing federal records, "a list of individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State," and to "transmit" that list to each State's chief election official. Order § 2(a), 91 Fed. Reg. at 17,125. And it expressly directs that the Secretary should do so only "[t]o the extent feasible and consistent with applicable law"—thus contemplating that DHS must, in "tak[ing] appropriate action," assess whether the creation and transmission of those lists would ultimately be feasible and consistent with applicable law. *Ibid.* Indeed, a recent DHS statement regarding its proposed (but not finalized) approach has made clear that DHS remains engaged in ongoing discussions regarding how information may be shared consistent with the Privacy Act, 5 U.S.C. 552a, and other applicable laws. D. Ct. Doc. 188-1, at 5 (June 18, 2026); see App., *infra*, 53a-54a n.15. The Order does not mandate that the States take any particular action to use the Lists if and when they are transmitted. See § 2(a), 91 Fed. Reg. at 17,125. The Order does not deem it a crime, or even evidence of a crime, for States not to use the Lists when determining voter eligibility, and it does not direct the Attorney General to bring charges on such a theory. See *ibid.*

Section 3(b), likewise, does not itself affect the States in any concrete way. It simply directs USPS to "initiate a *proposed* rulemaking" regarding the acceptance and transmission of mail-in and absentee ballots through the federal mails. Order § 3(b), 91 Fed. Reg. at 17,126-17,127 (emphasis added). Although the Executive Order directs that USPS include certain terms in the proposed rule and sets forth a particular timetable for any rulemaking, it does not dictate the contents of any final rule—nor require that one issue at all. See § 3(b) and (d), 91 Fed. Reg. at 17,126.

Instead, as with all notice-and-comment rulemaking, any final rule (if USPS chooses to issue one) will be developed after USPS considers the public comments it received. See *Perez* v. *Mortgage Bankers Ass'n*, 575 U.S. 92, 96 (2015) (noting the potential for change between proposed rule and final rule); see also *Defenders of Wildlife* v. *Perciasepe*, 714 F.3d 1317, 1324-1325 (D.C. Cir. 2013) (observing that "Article III standing requires more than the possibility of potentially adverse regulation" and that plaintiffs are not injured "by the initiation of a rulemaking"); *In re Murray Energy Corp.*, 788 F.3d 330, 335 (D.C. Cir. 2015) (Kavanaugh, J.) (noting that "courts have never reviewed *proposed* rules"). For that reason, the D.C. Circuit recognized that the Postal Service's "proposed rule is likely neither constitutionally nor prudentially ripe for review." *NAACP* v. *USPS*, No. 26-5257 (D.C. Cir. July 17, 2026), slip op. 1. And again, the Order admonishes the USPS that the rulemaking should be initiated "pursuant to 39 U.S.C. 401 and other applicable authority" and should "ensure the faithful execution of Federal law." Order § 3(b), 91 Fed. Reg. at 17,126.

Plaintiffs cannot demonstrate they suffer any cognizable injury from ongoing policymaking deliberations within the Executive Branch. Instead, their concern is with possible "action that the [government] *might* take in the future." *Trump* v. *New York*, 592 U.S. at 133-134. This case thus presents the same defect as *Trump* v. *New York*—in which this Court dismissed the plaintiff States' suit as premature. There, President Trump issued a memorandum that "announced a policy of excluding from the apportionment base aliens who are not in a lawful immigration status" for the 2020 census. *Id.* at 129-130 (quotation marks omitted). The memorandum called for the policy's "implementation 'to the maximum extent feasible and consistent with the discretion delegated to the executive branch.'" *Id.* at 130. Several States challenged the memorandum before it was implemented, and this Court rejected the challenge,

holding that the "standing and ripeness inquiries both lead to the conclusion that judicial resolution of this dispute is premature." *Id.* at 134. Despite the memorandum identifying a preferred policy, this Court concluded that because "the President qualified his directive by providing that the Secretary should gather information to the extent practicable and that aliens should be excluded to the extent feasible," "[a]ny prediction how the Executive Branch might eventually implement" the President's "general statement of policy [wa]s no more than conjecture at th[at] time." *Id.* at 131 (quotation marks omitted). The Court noted that given the pre-implementation posture, the plaintiff States could not overcome the possibility that the President's "policy may not prove feasible to implement in any manner whatsoever, let alone in a manner substantially likely to harm" the plaintiffs. *Id.* at 132.

The same is true here. The Executive Order repeatedly stresses that the relevant agencies should take only lawful actions. Section 7(b) of the Order directs that all of its provisions "shall be implemented consistent with applicable law." 91 Fed. Reg. at 17,127. Section 2 and Section 3 specifically reiterate that the relevant agencies are to take only actions that are "feasible and consistent with applicable law, including but not limited to the Privacy Act," Order § 2(a), 91 Fed. Reg. at 17,125, or that "comply with the Privacy Act and all applicable use agreements," § 3(b)(iv), 91 Fed. Reg. at 17,126. And Section 3 separately admonishes that any USPS rule must be issued "pursuant to 39 U.S.C. 401 and other applicable authority" and must "ensure the faithful execution of Federal law." § 3(b), 91 Fed. Reg. at 17,126.

Further, the agencies' ongoing deliberative policymaking demonstrates that the agencies are able to follow the Order's commands to take only lawful action. For Section 3(b), "[s]ince the proposed rule [i]s simply a proposal, its presence mean[s] that the [Postal Service is] *considering* the matter; after that consideration the

[Postal Service] might choose to adopt the proposal or withdraw it." *Long Island Care at Home, Ltd.* v. *Coke*, 551 U.S. 158, 175 (2007). The same is true for Section 2, which instructs DHS to take only "appropriate action" to effectuate its policy directive. See *Michigan* v. *EPA*, 576 U.S. 743, 752 (2015) (explaining that "'appropriate' is 'the classic broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors'" and that "[n]o regulation is 'appropriate' if it does significantly more harm than good"). Any injury that respondents might possibly suffer will depend on whether and how the Executive Order's policy directives are implemented, consistent with its careful qualifications.

The district court tried to distinguish this case from *Trump v. New York* on the theory that this case involves "specific directives" about actions to take "at specified times" with "definite substantive outcomes," whereas that case involved a "request for the Commerce Secretary to implement a policy statement." App., *infra*, 80a (D. Ct. Doc. 190 at 16) (quotation marks omitted). But that attempted distinction misdescribes *both* cases. The memorandum at issue in *Trump* v. *New York* was far more specific than the court suggested—it directed a very specific policy (to exclude "from the apportionment base aliens who are not in a lawful immigration status") in the shadow of statutorily-defined timelines. 592 U.S. at 129-130 (quoting 85 Fed. Reg. 44,679, 44,680 (July 23, 2020)); see 2 U.S.C. 2a; 13 U.S.C. 141. This Court nonetheless held that the case was not ripe because it was unclear how the agencies would implement the Order's directives. *Trump* v. *New York*, 592 U.S. at 131. So too here. The Executive Order does not direct definitive substantive outcomes—instead, its repeated admonitions that the agencies must take only actions that are feasible and consistent with applicable law provide ample discretion for DHS and USPS not to pursue the Lists or rule if they determine that such actions would be inconsistent

with law or otherwise inappropriate. At a minimum, it is *uncertain* how they will implement the Order, so a merits adjudication is premature.

This case also resembles another one in which this Court stayed a district court's injunction last year. See *Trump* v. *American Fed'n of Gov't Emps.*, 145 S. Ct. 2635 (2025). The district court there had enjoined agency implementation "based on its view about the illegality of [an] Executive Order" regarding agency reductions-in-force and reorganizations, rather than waiting for the agencies to take concrete implementation actions and then enjoining those actions only if actually unlawful. *Id.* at 2635. "[T]he relevant Executive Order direct[ed] agencies" to undertake reorganizations "'consistent with applicable law.'" *Ibid.* (Sotomayor, J., concurring in the grant of stay). Because only the Executive Order (and not the agency actions it directed) was before the Court, the Court had "no occasion to consider whether [the directed agency actions] can and will be carried out consistent with the constraints of law." *Ibid.* So too here. The Executive Order directs specified agencies and officials to take "appropriate action," and to pursue a "proposed rulemaking," only if "feasible and consistent with applicable law." Order §§ 2(a), 3(b), 91 Fed. Reg. 17,125-17,126; see *id.* § 7(b), 91 Fed. Reg. at 17,127. Until the agencies take such actions, federal courts cannot "consider whether they can and will be carried out consistent with the constraints of law." *American Fed'n of Gov't Emps.*, 145 S. Ct. at 2635 (Sotomayor, J., concurring in the grant of stay). The government's "eventual action" pursuant to Executive Order 14,399 "will reflect both legal and practical constraints, making any prediction about future injury just that—a prediction." *Trump* v. *New York*, 592 U.S. at 133.

2. In nonetheless exercising jurisdiction and enjoining the Executive Order, the district court concluded (as respondents contend) that any implementation

would necessarily be unlawful, because it would be impossible to implement the Order lawfully. But that conclusion both contravenes this Court's decision in *Trump* v. *New York* and rests on a series of mischaracterizations of the Executive Order's directives. See App., *infra*, 50a-59a.

First, even a claim that a potential future policy will be impossible to implement lawfully must satisfy Article III's justiciability requirements. In *Trump* v. *New York*, the plaintiff States made just such a claim; they contended that the President's policy, if implemented, would result in "an invalid tabulation" that "would contravene the requirement * * * that the President state the 'whole number of persons in each State' for purposes of apportionment." 592 U.S. at 130. This Court nonetheless concluded that the dispute was not justiciable, because "how the Executive Branch might eventually implement" the President's directive was inherently speculative. *Id.* at 131; see *id.* at 131-132. Indeed, those sorts of concerns are generally true of rulemaking. It is common for an agency to propose a rule and interested parties to submit comments explaining their (sometimes correct) view that the proposed rule is facially invalid and cannot be lawfully applied. What those parties *cannot* do is challenge the notice of proposed rulemaking. Instead, they must wait for the final rule, because the agency might agree with their comments and decide not to proceed. The same logic applies here.

For the same reason, it is impossible for the government at this time to offer a merits defense of DHS's and USPS's as-yet-undetermined policy decisions—which only underscores why the dispute is not justiciable. But it is definitionally lawful for the President to direct his subordinates to pursue his policy priorities in a manner that is "consistent with applicable law." See *Building & Constr. Trades Dep't, AFL-CIO* v. *Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002) (rejecting a facial challenge to an

Executive Order that directed certain actions "to the extent permitted by law" because "if the agency is prohibited, by statute or other law, from implementing the Executive Order, then the Executive Order itself instructs the agency to follow the law") (brackets omitted).

Tellingly, the district court's speculation that any DHS lists and any USPS rule will *necessarily* be unlawful rests on an egregious misreading of the Executive Order. For example, the court concluded that creation of State Citizenship lists would be unlawful because "the President lack[s] any role regarding voter eligibility" and does not have "any authority to compile voter lists for each State." App., *infra*, 54a-55a. But the Executive Order does not direct DHS to create a federal voter database or "prescribe who should be included on State voter lists," as the court asserted. *Id.* at 55a. It instead directs DHS to transmit a list of "individuals confirmed to be United States citizens" of the relevant age and residency—while acknowledging that such lists would *not* serve as voter lists. Order § 2(a), 91 Fed. Reg. at 17,125. Indeed, omission from a State Citizenship List would not by itself *confirm* non-citizenship or ineligibility to vote under state or federal law, just as presence on the list would not "indicate that the individual has been properly registered to vote in the State." *Ibid.*

Likewise, the district court asserted that the Executive Order "direct[s] that USPS require all States to use a specific mail-in ballot." App., *infra*, 58a. Again, the Order contains no such directive. Instead, it directs the Postal Service "to initiate a *proposed* rulemaking" regarding standards for transmitting mail-in or absentee ballots, including requirements for envelope design (*not* ballot design), while noting that the ultimate implementation must be "consistent with applicable law." Order §§ 3(b) and 7(b), 91 Fed. Reg. at 17,126-17,127 (emphasis added).

In insisting that Executive Order 14,399 "is invalid in all possible applica-

tions," App., *infra*, 51a, the district court improperly discounted the Order's repeated instruction that the relevant agencies carry out its directives only to the extent "feasible," "appropriate," pursuant to "applicable authority," and "consistent with applicable law," Order §§ 2(a), 3(b) and 7(b), 91 Fed. Reg. at 17,126-17,127. That is precisely the erroneous approach that this Court rejected in *Trump* v. *New York*, 592 U.S. at 131; accord *Allbaugh*, 295 F.3d at 33. The President's command that his subordinates carefully assess the applicable law to determine whether and how they can take appropriate action is just as important to the Executive Order's application as the directives to implement particular policies. In other words, if it turns out that there is no lawful way to implement the Executive Order's directives, the Order itself instructs the agencies *not* to take action. The district court was wrong to read that command out of the Order.

The district court likewise erred in suggesting that the respondent States' diversion of resources to "analyze and develop a compliance plan for the EO" could render this case justiciable. See App., *infra*, 42a-43a. A party's bare assertion that it has spent time or energy evaluating how to comply with some potential future regulation has never formed an adequate basis to ground a case or controversy under Article III. To the contrary, this Court has been clear that plaintiffs may not expend resources to "manufacture standing * * * in anticipation of non-imminent harm" as a way to get around the absence of an actual or imminent injury. *Clapper*, 568 U.S. at 422; see *id.* at 410; *Food & Drug Admin.* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367, 394 (2024) (organizations "cannot spend [their] way into standing" by expending "considerable resources" on efforts like "public advocacy and public education" to "the detriment of other spending priorities"). The contrary conclusion would lead to absurd results. Virtually any party concerned about any

future government action—including proposed legislation being considered in Congress—could spend their way into standing, simply by insisting that they need to begin preparing now just in case the theoretical regulation becomes reality.

Accordingly, the respondent States' voluntary choices to divert resources in anticipation of how they speculate the relevant agencies might eventually implement Executive Order 14,399 cannot confer standing to challenge possible future agency action that (as they acknowledge) is uncertain. For example, the States complain that they may incur additional compliance costs if a final Postal Service rule ultimately requires them to redesign their ballot envelopes. See App., *infra*, 43a. But that possibility only underscores why this challenge is not yet ripe. The States could have chosen to raise their concern through the Postal Service's notice-and-comment rulemaking process, which may ultimately result in a final rule that would obviate any compliance costs. See *Ballot Mail for Federal Elections*, 91 Fed. Reg. 32,915, 32,917 (June 2, 2026) (noting that "the Postal Service * * * invites comments on any and all provisions of the proposed [rule]" and that "the Postal Service plans to work with stakeholder groups to discuss the proposed rule and its implementation").

Finally, the district court also mischaracterized the aspects of Executive Order 14,399 that concern prosecution priorities, suggesting that the Order created an imminent threat of criminal enforcement "against election officials who furnish ballots to voters excluded from the [State Citizenship] Lists or the USPS Lists." App., *infra*, 43a. The Executive Order contains no such directive. Instead, it directs the Attorney General to prioritize investigations into violations of certain existing federal laws by election officials who issue ballots to individuals "not eligible to vote in a Federal election." Order § 2(b), 91 Fed. Reg. at 17,125. It then defines who is "'eligible to vote in a Federal election'": an individual who "is a citizen of the United States, 18 years

of age or older by the date of the upcoming election, and otherwise qualified under the law of his or her State." *Ibid.* The Order does *not* suggest that the Attorney General should enforce the laws by reference to any list ultimately created by DHS or the Postal Service, and it certainly does not "create a new criminal offense." App., *infra*, 56a. Properly read, this aspect of the Executive Order involves the President's exercise of "the Executive Branch's traditional discretion over whether to take enforcement actions against violators of federal law." *United States* v. *Texas*, 599 U.S. 670, 684 (2023); see *id.* at 678-679 ("The Executive Branch—not the Judiciary—makes arrests and prosecutes offenses on behalf of the United States."). Absent a challenge to a particular prosecution, the Executive Branch may, without judicial interference, determine "how to prioritize and how aggressively to pursue legal actions against defendants who violate the law." *TransUnion*, 594 U.S. at 429.

Executive Order 14,399 plainly is not self-executing. It directs other agencies and officials to begin the policymaking process and to prioritize certain law-enforcement actions. As another district court explained in denying another set of plaintiffs' request for a preliminary injunction against the same provisions of the same Order, the Order "does not itself regulate voter registration or how mail-in or absentee ballots will be transmitted," and "whether the government's actions under the Order are lawful or unlawful will depend on how" the Postal Service and DHS "decide to implement the Order, not on the Order itself." *DSCC*, 2026 WL 1487833, at *11-*12. Applying these settled justiciability principles does not foreclose the possibility of future judicial review; the agencies may eventually take action that directly affects the respondent States, providing them with a concrete injury that could ground a ripe challenge. But "[a]t present, this case is riddled with contingencies and speculation that impede judicial review." *Trump* v. *New York*, 592 U.S. at 131. This Court should not

"abandon [its] usual reluctance to endorse standing theories that rest on speculation" about yet-unmade decisions. See *Clapper*, 568 U.S. at 414.

3. In denying a stay, the court of appeals likewise misconstrued the Executive Order's operation. First, the court read the Order to require respondent States to use State Citizenship Lists to verify voter eligibility. App., *infra*, 12a. But as explained, the Order contains no such directive. See *supra* p. 14. As Judge Dunlap and another district court have both correctly recognized, the Order "does not order States * * * to take any action based on the State Citizenship List[s]," so "any injury from the compilation and distribution of State Citizenship Lists" is "speculative and hypothetical." App., *infra*, 16a-17a; *DSCC*, 2026 WL 1487833, at *6.

Next, the court of appeals found standing based on a purported threat that state officials could be prosecuted if they did not use the State Citizenship Lists to verify voter eligibility. App., *infra*, 12a. But again, the Order does not direct federal officials to initiate prosecutions with any reference to the Lists—it directs officials to prioritize investigation and prosecution of certain existing federal crimes, and never says that state officials' use or nonuse of the Lists would provide a basis for such investigations or prosecutions. See Order § 2(b), 91 Fed. Reg. at 17,125. The States do not contend that they wish to give ballots to ineligible voters; the President's priorities for enforcing violations of existing federal law plainly cannot confer standing where no plaintiff contends that it intends to violate that law.

As to the Postal Service's ongoing rulemaking, the court of appeals characterized the Executive Order as requiring that the Postal Service issue a final rule—and one that contains at least some particular requirements, such as requiring barcodes on ballot envelopes. App., *infra*, 9a, 11a. That too misstates the effect of the Order. The Order does not "direct[] various changes to the voting-by-mail process," App.,

infra, 9a, such that respondents need to prepare now for predetermined changes—it directs the President's Executive Branch subordinates at the Postal Service to begin a deliberative policymaking process that *may* ultimately include some changes, Order § 3, 91 Fed. Reg. at 17,126. The court of appeals' suggestion that some respondents demonstrated an injury in fact based on *past* expenditures on ballot envelopes that would not comply with the policies outlined in the Order, App., *infra*, 11a, fails for the same reason. The Order does not itself impose any envelope requirements—only a Postal Service final rule can do that. And it is entirely speculative whether any final rule that issues will in fact impose requirements that the already-purchased envelopes do not meet.

Given those inaccuracies regarding the Order's effect, the court of appeals' attempt to distinguish this Court's decision in *Trump* v. *New York*, 592 U.S. 125, falls short. The court contrasted the *New York* States' lack of "present injury" and absence of a showing that "any future injury was imminent or would ever occur" with the present and future injuries to the Plaintiff States here under its misreading of the Order. App., *infra*, 9a-10a. But the harms alleged here are, for the reasons explained above, just as speculative as in *New York*. Like in that case, any injuries that the respondent States may ultimately suffer are dependent entirely on the way that DHS and the Postal Service choose to implement the Order—they do not flow from the Order itself.

Finally, the court of appeals emphasized that the government did not offer a defense of the Order's legality on the merits, arguing only that this dispute fails to present an Article III case or controversy. See App., *infra*, 6a. But as explained above, the government obviously cannot provide a hypothetical legal defense when the relevant agencies have not even yet decided on what their actual policies will be.

See *supra* pp. 14-15. If and when DHS and USPS take final agency action that concretely injures a plaintiff, the government will have a particular policy that it can and will defend on the merits—but that has not yet occurred. That only demonstrates why this dispute is not ripe for resolution at this time.

B. THE REMAINING FACTORS FAVOR A STAY

In deciding whether to grant emergency relief, this Court also considers whether the underlying issues warrant review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Those factors heavily favor a stay in this case.

If affirmed by the First Circuit, the district court's holding that the respondent States have presented a justiciable dispute would warrant this Court's review. The district court's decision directly conflicts with this Court's precedents regarding standing and ripeness. See *supra*, pp. 12-18. It also reaches the opposite result from the decision of other federal courts in parallel disputes regarding the same Executive Order, see *DSCC*, 2026 WL 1487833, at *13, and the Postal Service's proposed rule pursuant to that Executive Order, see *NAACP*, No. 26-5257, slip op. 1-2. Further, an injunction limiting the government's efforts to promote election integrity at the President's direction warrants this Court's review. Indeed, this Court frequently grants plenary review when a lower-court decision blocks a significant Executive Branch policy. *E.g.*, *Trump* v. *Miot*, 146 S. Ct. 1802 (2026) (granting a writ of certiorari before judgment to consider termination of Temporary Protected Status designation); *Noem* v. *Doe*, 146 S. Ct. 1803 (2026) (same); *Trump* v. *Slaughter*, 146 S. Ct. 18 (2025) (granting a writ of certiorari before judgment to review the President's removal of Executive Branch officer); *Trump* v. *Barbara*, 146 S. Ct. 879 (2025) (granting a writ of certiorari before judgment to consider the President's birthright citizenship Executive Order);

Trump v. *V.O.S. Selections, Inc.*, 146 S. Ct. 73 (2025) (granting a writ of certiorari to review the President's imposition of tariffs).

A stay—along with an immediate administrative stay—is also warranted because the injunction below imposes irreparable harm on the government. Absent a stay, the government will be unable to obtain appellate relief from an order that bars implementation of a presidential policy that seeks to ensure voter integrity in the upcoming November 2026 election. Accordingly, both the irreparable harm factor and the public interest favor the government. See *Nken* v. *Holder*, 556 U.S. 418, 435 (2009) (noting that harm to the government and public interest factors "merge" when the government is a party).

The injunction irreparably and impermissibly impedes the President's ability to oversee the Executive Branch. "[T]he Framers decided to vest '[t]he executive Power' in one person—'a President of the United States of America.'" *Trump* v. *Slaughter*, No. 25-332, 2026 WL 1855612, at *5 (June 29, 2026) (quoting U.S. Const., Art. II, § 1, Cl. 1) (brackets in original). The President therefore has the sole "constitutional obligation 'to take care that the laws be faithfully executed.'" *Ibid.*; see U.S. Const., Art. II, § 3. As explained, the Executive Order functions only to direct the President's subordinates to take appropriate and lawful action to implement the President's policy objectives. See *supra* 16-17. By stopping the relevant agencies and officials from implementing that Order with respect to the November 2026 federal election, the injunction operates as "an improper intrusion by a federal court into the workings of a coordinate branch of the Government." *INS* v. *Legalization Assistance Project*, 510 U.S. 1301, 1306 (1993) (O'Connor, J., in chambers). The Executive Branch "suffers a form of irreparable injury" from such an incursion, even when the injunction is based on "a threshold error." *Trump* v. *CASA, Inc.*, 606 U.S. 831, 860-

861 (2025); see *Trump* v. *Orr*, 146 S. Ct. 44, 46 (2025); *American Fed'n of Gov't Emps.*, 145 S. Ct. at 2635; *OPM* v. *American Fed'n of Gov't Emps.*, 145 S. Ct. 1914, 1914 (2025).

Further, even if the agencies' ultimate implementation decisions are entirely lawful, there is not enough time to obtain ordinary appellate relief from the injunction in order to carry them out before the November 3, 2026, election. That problem is even more acute because any such decisions will need to be implemented well before November—indeed, as soon as early to mid-August—given the timing of state election procedures concerning voter-roll verification and absentee or mail-in voting. As the agencies have attested, see D. Ct. Docs. 156-1 (May 7, 2026) (Declaration of Michael Mayhew (DHS)), 194-2 (July 1, 2026) (Declaration of Steven Monteith (USPS)), every day that the agencies are unable to take steps to carry out the Executive Order as to the November 2026 election makes it less likely that they will, as a practical matter, be able to implement any lists or rules that they ultimately finalize—even if they obtain appellate relief. That is because once the agencies finalize their decisions regarding implementation of the Order, it will still take time to carry out those policies with respect to the November election (an election for which mail-in and absentee voting begins, in some States, several weeks in advance). The D.C. Circuit accordingly stayed another injunction that would have rendered the Postal Service "unable to issue and implement a final rule in advance of the November 2026 general election," because "[i]n this context, there can be no do over once the election occurs." *NAACP*, No. 26-5257, slip op. 1 (quotation marks omitted). The district court brushed aside these concerns, noting that the injunction did not prevent the government from implementing the Executive Order with respect to elections after November 3, 2026. App., *infra*, 25a. But that misses the point: The irreparable harm is the government's

inability to implement the order as to the *November 2026* election in the respondent States. The harms to voter integrity in that election if the government's policy is not in place cannot be undone even if the government later prevails on the merits of its appeal. See *NAACP*, No. 26-5257, slip op. 1.

On the other side of the ledger, the respondent States face no irreparable harm for the same reasons they have failed to show any justiciable controversy. At least at this time, they merely seek to prevent *hypothesized* harm that rests on speculation as to how the agencies may implement the Executive Order. Because the States cannot demonstrate any "imminent" irreparable harm, the balance of the equities favors the government. *White* v. *Florida*, 458 U.S. 1301, 1302 (1982); see *Nken*, 556 U.S. at 434-435.

The court of appeals' analysis of the equitable stay factors offers little in response. Notably, the court did not dispute the government's assertion that its inability to enforce the Order in the respondent States for the November 2026 election would cause irreparable harm—the court simply found that it was insufficient to overcome the other stay factors. App., *infra*, 15a. Its analysis of the injury to respondents mirrored its erroneous standing analysis. *Ibid.* Finally, the court found that the public interest did not favor a stay because the government did not argue that "its actions were legal on the merits, and there is generally no public interest in the perpetuation of unlawful government action." *Id.* at 15a-16a (quotation marks omitted). As explained, the President's decision to direct his subordinates to consider appropriate action that is "consistent with applicable law" was entirely lawful. That the government has not tried in this posture to defend the merits of hypothetical agency action does not mean the public interest is served by precluding the Executive Branch from pursuing lawful action pursuant to a presidential directive.

CONCLUSION

This 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, and grant an immediate administrative stay.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

JULY 2026

APPENDIX

Court of appeals order denying stay (July 25, 2026) 1a

District court memorandum and order denying stay (July 7, 2026) 21a

District court memorandum and order granting summary judgment (June 25, 2026) 28a

District court memorandum and order granting motion to dismiss in part (June 18, 2026) 65a

United States Court of Appeals
For the First Circuit

Nos. 26-1774, 26-1779

STATE OF CALIFORNIA; COMMONWEALTH OF MASSACHUSETTS; STATE OF NEVADA; STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; COMMONWEALTH OF VIRGINIA; STATE OF WISCONSIN; JOSH SHAPIRO, in the official capacity as Governor of the Commonwealth of Pennsylvania,

Plaintiffs, Appellees,

v.

DONALD J. TRUMP, in the official capacity as President of the United States; UNITED STATES DEPARTMENT OF JUSTICE; TODD BLANCHE, in the official capacity as Acting United States Attorney General; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; MARKWAYNE MULLIN, in the official capacity as Secretary of the United Stated Department of Homeland Security; UNITED STATES SOCIAL SECURITY ADMINISTRATION; FRANK BISIGNANO, in the official capacity as Commissioner of the United States Social Security Administration; UNITED STATES POSTAL SERVICE; DAVID STEINER, in the official capacity as Postmaster General and Chief Executive Officer of the Postal Service; DOUG TULINO, in the official capacity as Deputy Postmaster General, Chief Operating Officer, and Chief Human Resources Officer of the Postal Service and Member of the Postal Service Board of Governors; AMBER MCREYNOLDS, in the official capacity as Chair of the Postal Service Board of Governors; DEREK T. KAN, in the official capacity as Vice Chairman of the Postal Service Board of Governors; RONALD STROMAN, in the official capacity as a Member of the Postal Service Board of Governors; DANIEL TANGHERLINI, in the official capacity as a Member of the Postal Service Board of Governors,

Defendants, Appellants,

STATE OF ALABAMA; STATE OF MISSOURI; STATE OF FLORIDA; STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF MONTANA; STATE

OF NEBRASKA; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF TEXAS,

Interested Parties, Appellants.

Before

Gelpí, Rikelman, and Dunlap,
Circuit Judges.

ORDER OF COURT
Entered: July 25, 2026

Under the Constitution, state and local officials are responsible for administering federal elections. In the spring of 2026, President Trump issued an executive order with nationwide effects on how state and local officials can administer federal elections, including the upcoming primary and general elections in September and November. In particular, the executive order directed substantial involvement by the United States Postal Service in deciding which ballots sent to and from voters would be delivered. The plaintiffs in this case -- 23 states and the District of Columbia (the "Plaintiff States") -- filed this lawsuit against the President, federal agencies, and agency heads, challenging the executive order as ultra vires and unconstitutional. The district court entered final judgment in favor of the Plaintiff States as to some of their claims and enjoined most of the defendants (but not the President) from implementing certain provisions of the executive order, but only as to federal elections on or before November 3, 2026, and only in the Plaintiff States. The federal defendants and 12 states that intervened in the case in support of the executive order have now filed separate motions seeking a stay of the district court's injunction pending appeal, arguing only that the Plaintiff States lack standing to bring their claims and that those claims are not ripe. We deny their motions.

I. BACKGROUND

On March 31, 2026, President Trump issued Executive Order 14399: "Ensuring Citizenship Verification and Integrity in Federal Elections" (the "EO"). 91 Fed. Reg. 17125 (Mar. 31, 2026). The EO targets voting by mail. In Section 1, titled "Purpose and Policy," the EO declares that "[t]o enhance election integrity via the United States Mail, additional measures are necessary." Id. at 17125. It then directs federal agencies and officials to take certain actions at specific times in the months leading up to "regularly scheduled Federal election[s]," including the November 3, 2026 election. Id.

This lawsuit focuses on Sections 2, 3, and 5 of the EO. Section 2 is titled "Establishment and Transmission of State Citizenship Lists and Prioritization of Investigations and Prosecutions

Related to Election Fraud." Id. Section 2(a) directs the Department of Homeland Security (DHS), along with other agencies, to compile lists of "individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State" ("DHS Citizenship Lists"). Id. Under Section 2(a), federal officials "shall . . . transmit" the DHS Citizenship Lists to state election officials "no fewer than 60 days before each regularly scheduled Federal election," meaning by September 4, 2026, for the November 3, 2026 general election. Id. Also, DHS "shall establish procedures" to permit individuals to "access" and "update" their records and states "to routinely supplement and provide suggested modifications or amendments" to these lists. Id. Section 2(b) orders the Attorney General to "prioritize the investigation and . . . prosecution" of two groups of individuals and entities: (1) "State and local officials or any others involved in" federal election administration who issue ballots to individuals not eligible to vote in federal elections and (2) "individuals and public or private entities engaged in . . . the printing, production, shipment, or distribution of ballots to individuals" not eligible to vote in federal elections. Id. at 17126.

Section 3 of the EO is titled "United States Postal Service Rulemaking on Mail-In and Absentee Ballots," and focuses on the United States Postal Service (USPS). Section 3(b) directs the Postmaster General to "initiate a proposed rulemaking" within 60 days of the EO's issuance to "protect the integrity of the mail" in federal elections. Id. The notice of proposed rulemaking "shall include, at minimum," various requirements for the design of envelopes used by state and local officials to enable voting by mail, including specific markings and unique barcodes for all such envelopes.[1] Id. Section 3(b) then requires that the proposed rule provide that "all outbound ballot mail" sent by states and localities to voters "must be mailed" in such envelopes and that USPS "shall not transmit mail-in or absentee ballots from any individual" voter unless the individual's name appears on a state-specific list. Id. Finally, Section 3(d) directs that "[a]ny final rule" adopted pursuant to Section 3 "shall be issued no later than 120 days from the date of" the EO, meaning by July 29, 2026. Id. at 17127.

Section 5, titled "Enforcement," orders the Attorney General and agency heads to "take all lawful steps to deter and address noncompliance with Federal law" by the two groups targeted by the order: "State or local election officials" and "public or private entities engaged in" ballot printing or distribution. Id. For example, it directs federal officials to "withhold[] Federal funds from noncompliant States and localities where such withholding is authorized by law." Id. It invites referral to the Department of Justice of "[e]vidence of violations" by these two groups for "consideration of investigation or charges." Id. Section 5 also requires states and localities to "preserve, for a 5-year period, all records and materials" related to voter participation in federal elections. Id.

In early April, the Plaintiff States brought this action against the President and the various agencies and agency heads identified in the EO. In their amended complaint, they challenged Sections 2, 3, and 5 of the EO as ultra vires and unconstitutional, in violation of the separation of

[1] USPS issued a proposed rule on June 2, 2026. See Ballot Mail for Federal Elections, 91 Fed. Reg. 32915 (proposed June 2, 2026) (to be codified at 39 C.F.R. pt. 111).

powers, the Elections and Electors Clauses, and the Tenth Amendment's anti-commandeering doctrine. See U.S. Const. art. I, § 4, cl. 1; id. art. II, § 1, cl. 2; id. amend. X.

The federal defendants and the intervenor states (collectively, the "Government") moved to dismiss the Plaintiff States' claims for lack of ripeness and Article III standing, as well as on the merits.[2] The district court ultimately granted the motion in part. In an initial ruling, the district court addressed the ripeness challenge and reserved on the other arguments.[3] It dismissed without prejudice the Plaintiff States' claims on prudential ripeness grounds as to federal elections occurring after November 3, 2026. It reasoned that postponing judicial review of the EO "as it relates to distant elections will pose little hardship." By contrast, the court concluded that the Plaintiff States' claims as to the November 2026 elections were ripe for review because the EO created a "direct and immediate dilemma" for the Plaintiff States. (Quoting Stern v. U.S. Dist. Ct. for the Dist. of Mass., 214 F.3d 4, 10 (1st Cir. 2000) (citation modified).)

One week later, the district court granted the Plaintiff States' motion for summary judgment. It concluded, given the undisputed facts in the summary judgment record, that the Plaintiff States had standing to sue based on both current and certainly impending injuries. Among these injuries, the court explained, were planning and compliance costs and the threat of criminal prosecution.

To start, the district court determined that the Plaintiff States are "experiencing injury now" because the EO disrupted their ongoing efforts to administer multiple elections in the coming months. As the court pointed out, it was uncontroverted that, at the time they filed their lawsuit, the Plaintiff States were "actively administering or preparing to administer federal primaries" -- some of which are scheduled for as early as September 2026 -- and "preparing to administer the November 2026 general election." And, by the time they filed their summary judgment motion, certain Plaintiff States "already had to pull elections staff from critical projects required by statute" to "develop a compliance plan for the EO," given that the EO directs multiple changes to the voting-by-mail process. The court also determined that, both for legal and practical reasons, the Plaintiff States could not delay these planning and compliance efforts. For example, in several of the Plaintiff States, statutes require officials to provide mail-in ballots to individuals eligible to vote by mail weeks in advance, and thus they "must plan to comply with the EO's directives on mail ballots" now. These state statutory obligations were "undisputed" by the Government. And as a practical matter, the court relied on record evidence that delays in planning would increase the "financial strain" on state election offices and threaten disenfranchisement of some of the Plaintiff States' citizens.

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[2] Because the federal defendants and the intervenor states raise largely overlapping arguments in their stay motions, we discuss those arguments together. The intervenor states do press a separate argument as well, which we identify and analyze below.

[3] In addition to the lawsuit by the Plaintiff States giving rise to this appeal, eight nonprofit organizations filed a separate lawsuit also challenging the EO. The district court consolidated the two cases pursuant to Federal Rule of Civil Procedure 42(a) but only for limited purposes. Its initial ruling on prudential ripeness applied to both cases. Its subsequent summary judgment ruling now on appeal to us, however, applied only to the Plaintiff States' claims.

Relatedly, the district court determined that the Plaintiff States faced certainly impending compliance costs from the EO's directives. For example, it noted that "[n]early half of [the] Plaintiff States have already purchased mail ballot envelopes for the 2026 federal election cycle that will not be in compliance with the requirements" listed in the EO, assuring that they will incur monetary costs from any change required by USPS. And the states would have no choice but to purchase new envelopes: The EO directs USPS to propose a rule that it will not "transmit" non-compliant mail-ballot envelopes. See 91 Fed. Reg. at 17125-26. Thus, it was "undisputed" by the Government that, absent an injunction, the Plaintiff States "will incur compliance costs" in the coming weeks or months.

Finally, the district court concluded that the Plaintiff States faced a credible threat of criminal prosecution under the EO. Reading the EO as a whole, the court determined that multiple sections of the EO "implicitly threaten[ed] enforcement" of federal criminal statutes against state and local officials who, for example, furnished ballots to voters who are not included on the DHS Citizenship Lists. And, the court pointed out, the Government conceded that any list it compiled under Section 2(a) would "necessarily be incomplete," based on the limitations of its own records, meaning that some citizens who were eligible to vote in a particular state nevertheless would be missing from the list. Reading the EO based on those undisputed facts, the court reasoned that the threat of criminal enforcement was "sufficiently imminent" as to the 2026 elections to create Article III injury. Thus, the court determined that the Plaintiff States had standing to challenge the EO.

The district court then turned to the merits. It ultimately concluded that the President lacked constitutional authority to order changes to how states and localities administer federal elections. The federal defendants and the intervenor states then filed separate notices of appeal and motions to stay in the district court. The court denied the stay motions.

On July 7, 2026, the district court entered its final judgment.[4] It declared that Sections 2 and 3 are "ultra vires and violate the separation of powers." Then, it enjoined the federal defendants, not including the President, from "implementing, giving effect to, or enforcing" Sections 2 and 3 of the EO "as to [the] Plaintiff States with respect to the November 3, 2026 or any earlier federal election." Notably, the court did not enjoin the federal defendants from taking any actions under Sections 2 and 3 in states other than the Plaintiff States for federal elections on or before November 3, 2026. Nor did it enjoin the federal defendants from taking such actions in any state for federal elections after November 3, 2026. Finally, the court dismissed with prejudice the Plaintiff States' challenge to the recordkeeping portion of Section 5 based on its ruling that this portion of the EO was merely "precatory."

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[4] Although the district court entered final judgment after the notices of appeal were filed, we have appellate jurisdiction under Federal Rule of Appellate Procedure 4(a)(2) because the district court's order "announce[d] a decision purporting to dispose of all of [the Plaintiff States'] claims." FirsTier Mortg. Co. v. Invs. Mortg. Ins., 498 U.S. 269, 277 (1991); see Fed. R. App. P. 4(a)(2) ("A notice of appeal filed after the court announces a decision or order -- but before the entry of the judgment or order -- is treated as filed on the date of and after the entry.").

That same day, the federal defendants filed this emergency motion to stay the district court's injunction pending appeal. The separate stay motion of the intervenor states followed.

II. LEGAL STANDARD

"'A stay is an intrusion into the ordinary processes of administration and judicial review' and is not granted as 'a matter of right.'" Washington v. HUD, 171 F.4th 473, 488 (1st Cir. 2026) (quoting Nken v. Holder, 556 U.S. 418, 427 (2009)). In seeking a stay, the Government bears the burden of showing that it is "entitled to this 'extraordinary remedy' under Nken's familiar four-factor test." Id. (quoting Nken, 556 U.S. at 437 (Kennedy, J., concurring)).

Under the Nken test, the Government must (1) make "a strong showing" that it is likely to succeed on the merits of its appeal and also show that (2) it "will be irreparably injured absent a stay"; (3) the issuance of the stay will not "substantially injure the other parties interested in the proceeding"; and (4) the public interest weighs in favor of a stay. Id. (quoting Nken, 556 U.S. at 434). The first two factors are the "most critical." Id. (quoting Nken, 556 U.S. at 434). When assessing the fourth factor, "we consider the interests of the public in general," including American voters, "not just the interests of the parties." Id.

Because "addressing interlocutory motions on a tight timeline is not always optimal for orderly judicial decisionmaking," in this posture we are "especially . . . rel[iant] on the parties to frame the issues for decision." New York v. Trump, 133 F.4th 51, 66 (1st Cir. 2025) (citation modified).

III. DISCUSSION

Before analyzing the Nken factors, we set out the scope of the issues presented to us in the stay motions. Although the district court held that the EO is unconstitutional, that question is not presently before us because the Government does not defend the legality of the EO in requesting a stay. Instead, it argues only that the Plaintiff States do not have standing to challenge the EO because their claims are premature. And its standing and ripeness arguments focus on a single claim: that the EO was not injuring the Plaintiff States at the time they filed their complaint, and that it would not injure them soon, because the federal defendants were still implementing it.

The Government also does not contest the district court's assessment of the summary judgment record that informed its final ruling.[5] Before the district court, the Government did not dispute the declarations and other factual submissions by the Plaintiff States. And in its request for a stay pending appeal, it contests only the legal implications of those undisputed facts.

Finally, the Government has conceded several points in the district court and in its motion to our court. For example, it concedes that the federal defendants have been moving ahead to implement the directives in the EO, including by "[e]stablishing infrastructure to" "compile, maintain, and transmit [the DHS] Citizenship Lists" and "taking steps to create a [USPS] portal" for collecting information about individuals who are eligible to vote by mail. The Government

[5] The intervenor states largely ignore the summary judgment record and cite instead to allegations in the Plaintiff States' complaint in their stay motion.

also has conceded that it seeks to enforce the EO nationwide for the November 2026 election and would do so but for the district court's injunction. And the Government has indicated that it may use the DHS Citizenship Lists to conduct investigations and potential criminal prosecutions of state and local officials. As we will explain, these concessions undermine its arguments that the Plaintiff States lack standing to challenge the EO because their claims are premature.

A. Likelihood of Success on the Merits

The parties' dispute centers on whether the Plaintiff States have suffered an injury in fact to establish their standing to sue and, relatedly, whether the Plaintiff States' claims are ripe for review. We conclude that the Government has not made a "strong showing" that it is likely to prevail on its standing and ripeness arguments on appeal. Washington, 171 F.4th at 488 (quoting Nken, 556 U.S. at 434).

1. Article III Injury

Article III of the Constitution grants federal courts jurisdiction to decide only those legal disputes that qualify as "Cases" or "Controversies." U.S. Const. art. III, § 2, cl. 1. To establish Article III standing, a party must meet a familiar three-part test and show that it has "suffered an injury in fact" that is caused by the "conduct complained of" and that will likely be "redressed by a favorable decision." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992) (citation modified). The asserted injury must be "concrete, particularized, and actual or imminent." TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021). The doctrines of standing and ripeness "originate from the same Article III limitation" and can "boil down to the same question": "whether the harm asserted has matured sufficiently to warrant judicial intervention." Jensen v. R.I. Cannabis Control Comm'n, 160 F.4th 18, 24 (1st Cir. 2025) (citation modified).

The Government focuses on the injury-in-fact requirement and contends that the Plaintiff States' alleged injuries are merely speculative. According to the Government, the Plaintiff States have not suffered any current or impending injuries from the EO itself and are basing their claims on "potential future actions agencies may take to implement it." In particular, the Government emphasizes that Section 2(a) imposes no obligations on the Plaintiff States and USPS has not finalized the details of its new rule.

The district court concluded that the Plaintiff States had suffered three current or certainly impending injuries that were sufficient to satisfy the requirements of Article III. In opposing the Government's stay motion, the Plaintiff States also point to a fourth injury: the EO's intrusion into their sovereign interests in administering state elections consistent with the Constitution and state statutes. To secure a stay, the Government would need to make a strong showing that it is likely to succeed on appeal in demonstrating that none of these injuries are sufficient to confer Article III standing. We conclude that it has not done so with the arguments presented in the stay motions.

First, the district court concluded that the EO imposed a present injury because it required Plaintiff States to begin planning now on how to comply with its directives, given that the September and November elections were just months away. As the Plaintiff States put it, the EO "require[s] [them] to expend time and resources now to prevent . . . chaos, confusion, and

disenfranchisement." See, e.g., Sierra Club v. U.S. Dep't of Transp., 125 F.4th 1170, 1181 (D.C. Cir. 2025) (holding states had standing to challenge suspended regulation that caused it to "undertake expenditures to mitigate and recover from harms that could have been prevented if that regulation had not been enacted" (citation modified)). For example, the summary judgment record reflects that the EO has forced Connecticut officials to take "immediate action," including by "coordinat[ing] with other state and local agencies" to develop a plan that would achieve the EO's stated goals "on the designated timeline and with no financial support." As part of that planning, officials worked to identify and develop the "technical specifications . . . necessary" to share "large volumes of confidential data" comprising state citizenship and voting information with the federal defendants, as contemplated under Sections 2 and 3 of the EO, and consistent with applicable privacy and disclosure laws. Further, given the truncated timing, including the fast-approaching deadline to prepare and review voter lists described in the EO, Connecticut and multiple other states have had to "plan for and begin" "providing training and guidance to elections officials" to comply with the EO's terms. And given their limited resources, the states' efforts have necessarily entailed a diversion of staff time and attention from other pressing election-related tasks -- such as preparing public-education materials for voters and rolling out new voting technology -- to coordinate the implementation of the changes articulated in the EO. All told, between the compressed timelines and anticipated changes to states' election processes, the summary judgment record indicates that the EO has already "produced an incredible strain" on state election officials and their teams.

In its stay motion, the Government does not dispute that the Plaintiff States have begun expending time and "divert[ing] resources" in reaction to the EO. Rather, it responds only that the EO does not mandate any immediate efforts on their part. Thus, in the Government's view, the Plaintiff States that have begun preparing for the EO's directives have done so "voluntarily" and based only on possible government conduct, which it maintains cannot support standing under the Supreme Court's decisions in Clapper v. Amnesty International USA, 568 U.S. 398 (2013), and Trump v. New York, 592 U.S. 125 (2020).

The Government's suggestion that the Plaintiff States' injuries here are akin to those held insufficient in Clapper is unpersuasive given the different facts of that case. Clapper involved a challenge to a new federal statute that, in some circumstances, authorized government surveillance without probable cause of communications by foreign citizens located outside the United States. See 568 U.S. at 404-05. The plaintiffs included individual attorneys, who were United States citizens, and advocacy organizations, all of which were located inside the United States. See id. at 401, 406. The Supreme Court explained that the statute in question did not target the plaintiffs, so their claims that their communications with foreign citizens would ever be surveilled under its terms, as opposed to other federal statutes, relied entirely on "the decisions of independent actors," id. at 414, and a series of additional "contingencies," id. at 410. See id. at 410-16. Thus, the Court concluded that the plaintiffs' various pocketbook costs and changes to their processes in response to the statute's enactment could not support standing because they were "incurred in response to a speculative threat." Id. at 416 (stating that litigants "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm").

But unlike the relationship between the plaintiffs and the statute they challenged in Clapper, the EO targets the Plaintiff States explicitly and repeatedly. Further, state and local officials are assigned primary responsibility for administering federal elections under the Constitution, and the EO directs various changes to the voting-by-mail process for these elections that will impact how those officials administer elections, regardless of the details of USPS's final rule. See U.S. Const. art. I, § 4, cl. 1; art. II, § 1, cl. 2.

As a result, the Government has failed to convince us that the impact of the EO on the Plaintiff States is "hypothetical" in the sense of the plaintiffs' alleged harms in Clapper. As the district court reasoned, the EO lays out a clear set of rapidly approaching deadlines by which states must coordinate with federal officials and comply with new voting procedures -- all while the states must also ensure that their officials and the public understand the evolving set of rules that would govern the upcoming September and November elections. The Plaintiff States have no practical choice but to respond to the EO now.[6] See Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (emphasizing that "state and local election officials need substantial time to plan for elections" because "[r]unning elections state-wide is extraordinarily complicated and difficult . . . and pose[s] significant logistical challenges").

Given the undisputed summary judgment record, we are also unpersuaded by the Government's contention that New York is "indistinguishable" from this case. New York concerned a presidential memorandum calling for the Secretary of Commerce to produce a report that might, in the future, allow the President to exclude undocumented immigrants from the official population counts that would be used to apportion congressional seats. See 592 U.S. at 129-30. Although the district court had concluded that the plaintiffs had standing based on the memorandum's chilling effect on census responses by immigrants, the plaintiffs conceded that this impact had dissipated by the time the case reached the Supreme Court. See id. at 130-31. The Court then concluded that the dispute was not ripe for review for several reasons: the Secretary of Commerce had already conducted the census using the normal procedures; the government conceded that it would not be possible to exclude all undocumented immigrants from the official population count the Secretary would transmit to the President; and it was not clear that a partial exclusion could have any impact on apportioning congressional seats or federal funding to the states, or that any such changes could be made before a looming deadline. See id. at 132-33. Thus, at the time of the Supreme Court's decision, it was speculative whether the presidential memorandum would have any impact at all on the plaintiffs. See id. at 131.

The Government has failed to explain how New York is controlling given the substantially different and undisputed facts of this case. In New York, there was no claim of present injury whatsoever, whereas the (far more specific) EO here, which is designed to affect elections just weeks away, has already forced the Plaintiff States into action. In New York, the plaintiffs failed to show that any future injury was imminent or would ever occur. By contrast, if the district court's

[6] The Government's reliance on FDA v. Alliance for Hippocratic Medicine, 602 U.S. 367, 394 (2024), is even further afield. The Plaintiff States' injuries in fact have nothing to do with "public advocacy." Id. Instead, they are taking actions necessary to administer fast-approaching elections as the Constitution, federal statutes, and state laws require.

injunction is lifted, the Plaintiff States will promptly be forced to divert staff resources and incur costs flowing from the EO in the coming days and weeks. In New York, there was "[n]othing in the record" showing that congressional apportionment would be affected by a "partial implementation of the memorandum," which the parties agreed was the only way it could be implemented at all. Id. at 133. Here, the Government does not dispute, as a factual matter, the EO's current and impending effects on the Plaintiff States, irrespective of how exactly USPS implements it. Thus, the nature, timing, and certainty of the Plaintiff States' injuries are all distinct from those in New York.

The Government next relies on Trump v. American Federation of Government Employees, 145 S. Ct. 2635 (2025), but that case also does not support its stay request. In a two-paragraph order, the Supreme Court stayed a preliminary injunction in a challenge to an executive order directing the Office of Management and Budget to submit plans to the President to reduce the size of the federal government's workforce. See id. at 2635. The Supreme Court's order did not address the plaintiffs' standing to sue or the ripeness of their claims, which were not at issue. To the contrary, the Court stayed the injunction because it determined that the defendants were likely to succeed on the merits of their argument that the executive order was lawful. See id. The Government points to Justice Sotomayor's one-paragraph concurrence, which observed that "[t]he plans themselves are not before this Court, at this stage," and thus the Court had "no occasion to consider whether they can and will be carried out consistent with the constraints of law." Id. (Sotomayor, J., concurring). But, again, that was a discussion of the merits of the plaintiffs' claims, and the Government has failed to explain how that discussion is relevant to the standing and ripeness issues on which its stay motion is based.[7]

[7] The Government discusses two other cases, filed outside this Circuit, related to the EO. In one, a private plaintiff moved to enforce USPS's compliance with a settlement agreement arising from a lawsuit related to the 2020 federal election, which had alleged claims under the Administrative Procedure Act. See NAACP v. USPS, No. 20-cv-2295, 2026 WL 1893762 (D.D.C. July 1, 2026). The district court granted the motion and enjoined USPS from implementing its proposed rule pursuant to Section 3 of the EO, reasoning that the proposed rule would violate the parties' settlement agreement. See id. at *4, *7. Subsequently, the U.S. Court of Appeals for the District of Columbia Circuit stayed that order. Order, NAACP v. USPS, No. 26-5257 (D.C. Cir. July 17, 2026). The D.C. Circuit indicated that it reached that decision based on the government's arguments that the plaintiff's claims were not ripe, the EO likely would not violate the settlement agreement, and the government would experience irreparable harm from an order that prohibited USPS from promulgating a final rule. The court did not provide its reasoning for those determinations. See id. In the other case, the district court held in part that the plaintiffs, private organizations representing individual voters and candidates, had not shown that the EO would affect particular voters' ability to vote or particular candidates' ability to win. See DSCC v. Trump, Nos. 26-cv-01114, 26-cv-01132, 26-cv-01151, 2026 WL 1487833, at *6-7, *9 (D.D.C. May 28, 2026). These decisions have limited bearing here given the substantial factual differences in the three cases. For example, only in this case are the plaintiffs the very states and state officials that the EO identifies and targets.

Second, the district court concluded that the Plaintiff States faced certainly impending pocketbook injuries from the EO's direction that USPS control the design of envelopes in all federal voting-by-mail processes. In doing so, it relied on the summary judgment record, which indicated that several states had already ordered mail-ballot envelopes for the 2026 federal election cycle around the time they filed their complaint. Indeed, as of April 2026, Massachusetts alone had already purchased $3 million-worth of envelopes for mail-in ballots. Yet Section 3(b) of the EO directs USPS to propose a rule that "shall include, at minimum," a requirement for all mail-ballot envelopes to "bear[] a unique Intelligent Mail barcode" and logo marking the envelope as "Official Election Mail." 91 Fed. Reg. at 17126. The court determined that redesigning mail-ballot envelopes to conform to the EO's express requirements would unquestionably impose financial costs on the Plaintiff States. As one Rhode Island official explained, because the state had already purchased mail-ballot envelopes, "[c]hanging [the state's] envelope order . . . would cost the state tens of thousands of dollars that was not budgeted." And even beyond ordering new envelopes and devoting staff time to coordinating with USPS about the new envelope design requirements, several states have indicated that they would incur significant other costs as a result of the EO, including to update training materials for local election officials and their staffs.

Again, the Government has failed to demonstrate any error in the district court's analysis, especially because, during the district court proceedings, it did not contest that several states had already purchased mail-ballot envelopes and even conceded "that making design changes to mail-ballot envelopes or adding Intelligent Mail barcodes would add costs to Plaintiff States." The Government nevertheless argues in its stay briefing that these anticipated pocketbook injuries cannot support standing because USPS has not yet issued a final rule implementing Section 3 of the EO.

As the district court determined, the summary judgment record reflects that any change to the kind of envelopes state and local officials must use for voting by mail will necessarily force the Plaintiff States to incur monetary and operational costs. The Government does not put forward any argument that USPS will not issue a final rule or will issue a final rule that provides no new design requirements for the envelopes used by the states in their voting-by-mail processes. Thus, we fail to see how it has made a strong showing that the Plaintiff States will incur no costs as a result of the EO. And the only question before us in assessing Article III standing is whether the Plaintiff States will incur any pocketbook injuries, not the magnitude of those injuries. See Czyzewski v. Jevic Holding Corp., 580 U.S. 451, 464 (2017) ("For standing purposes, a loss of even a small amount of money is ordinarily an 'injury.'").

In any event, as the Supreme Court held just last year, a litigant at "substantial risk [of] harm" from a government policy need not "wait and see" how exactly it will be implemented to bring suit. See Mahmoud v. Taylor, 606 U.S. 522, 559-60 (2025) (allowing pre-enforcement challenge to county's Board of Education policy of encouraging the use of certain education material without "specific allegations describing how the books are actually being used in classrooms" (citation modified)). With its arguments, the Government has failed to make a strong showing that the Plaintiff States do not face a "substantial risk" of incurring traditional pocketbook

injuries as a result of the EO and thus must "wait and see" the exact logo or barcode that USPS will require for mail-in ballots before filing suit. Id.

Third, the district court concluded that the EO threatens the Plaintiff States and their officials with criminal penalties if they do not comply with its directives and that the "threat is sufficiently imminent for Article III injury." For example, reading Section 2(a) and 2(b) of the EO together, the court determined that the Plaintiff States faced a credible threat of criminal prosecution if they failed to use the DHS Citizenship Lists to verify voter eligibility in upcoming elections, even though the undisputed record demonstrated that those lists would necessarily be underinclusive when transmitted to the states. The court also discussed that Section 2(b)'s definition of individuals who are "eligible to vote in a Federal election" as limited to U.S. citizens who are "18 years of age or older by the date of the upcoming election" conflicted with laws in some states permitting certain 17-year-old residents to vote in federal primary elections. As a result, the court highlighted that officials in those Plaintiff States credibly feared prosecution for delivering ballots to eligible 17-year-old voters in connection with federal primary elections.

For its part, the Government has not explained why the district court's interpretation of the EO's text as threatening the Plaintiff States with criminal prosecution if they violate its directives is incorrect, other than to suggest that the DHS Citizenship Lists do not expressly "require the [Plaintiff] States to do anything." In making this argument, the Government reads each section of the EO in isolation and all but ignores Section 2(b). At the same time, it does not point to any precedent undermining the court's determination that it was required to interpret the EO as a whole, just as it would any statute.[8] Cf. Otero-Burgos v. Inter Am. Univ., 558 F.3d 1, 8 (1st Cir. 2009) ("Instead of culling selected words from a statute's text and inspecting them in an antiseptic laboratory setting, a court engaged in the task of statutory interpretation must examine the statute as a whole . . . ." (citation modified)). And other precedent supports the court's conclusion that the Plaintiff States face an imminent and credible threat of penalties if they do not use USPS-designed envelopes or permit voters who are not on the DHS-provided Citizenship Lists to vote in any federal election. See N.H. Lottery Comm'n v. Rosen, 986 F.3d 38, 50 (1st Cir. 2021) (explaining that "the threatened enforcement of a law may suffice" for standing even without "an actual arrest, prosecution, or other enforcement action" (citation modified)).

Importantly, in challenging the district court's interpretation of the EO, the Government overlooks that the EO expressly targets state and local officials, both overall and in numerous

[8] Our dissenting colleague would grant the stay as to the portions of the district court's judgment concerning Section 2(a) and, in part, 2(b), on the ground that those specific provisions of the EO do not inflict any injury on the Plaintiff States. The district court, however, read Section 2(b) as enforcing Section 2(a), based on both the EO's text and the Government's concessions. And in its stay motion to our court, the Government never argued or explained why it would be likely to succeed in showing that the Plaintiff States could not challenge Section 2(a) and part of 2(b) even if they had standing to challenge the rest of the EO. See American Federation of Government Employees Local 2305 v. U.S. Dep't of Veterans Affs., 177 F.4th 1, 11 n.2 (1st Cir. 2026) (noting that we do not rule on jurisdictional arguments that are not raised when "considering whether to stay an order's operation" (citation modified)).

subsections. See 91 Fed. Reg. at 17125-27 (Sections 2, 3, and 5). The EO also expressly directs "the investigation and, as appropriate, the prosecution of State and local officials" who violate federal law, invites referral to the Attorney General of any such violations by "State or local election officials" or "States or localities, including any instrumentalities thereof," and threatens the withholding of funding. Id. at 17126-27 (Sections 2(b) and 5). The Government does not explain why the district court's reading of the EO is incorrect given these provisions.

The Government's stay arguments on this issue are further undermined by its representations before the district court. In fact, the Government repeatedly indicated below that the DHS Citizenship Lists could be used to "facilitate . . . post-election law-enforcement activity," including prosecuting violations of laws that "explicitly prohibit non-citizens from registering to vote." (Quoting 91 Fed. Reg. at 17125.) And when the district court asked whether the Government would have probable cause to prosecute a state official merely for sending a ballot to someone not on the DHS Citizenship Lists, the Government's counsel equivocated, stating: "I don't know the answer to that question, Your Honor." State and local officials are no exception to the commonsense rule that "[p]eople do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them if they do not come around." Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 68 (1963); see also Dep't of Com. v. New York, 588 U.S. 752, 785 (2019) (explaining that, in their legal rulings, courts "are 'not required to exhibit a naiveté from which ordinary citizens are free'" (quoting United States v. Stanchich, 550 F.2d 1294, 1300 (2d Cir. 1977))). Thus, the Government has not met its burden to show that it is likely to succeed on appeal in demonstrating that none of the injuries to the Plaintiff States credited by the district court were sufficient to establish an Article III controversy.

Finally, the Plaintiff States oppose the Government's request for a stay by arguing that the EO "burdens [their] sovereign interests by interfering with their ability to carry out state laws regarding mail voting and voter eligibility." Although the district court did not address the Plaintiff States' sovereign interests in its standing analysis, it did recognize throughout its ruling that states have a unique and primary role in administering elections, including federal elections. See U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 805 (1995) (observing that the Constitution "express[ly] delegat[es] . . . power to the [s]tates to act with respect to federal elections").

The EO directs unprecedented levels of involvement by federal officials in how states administer elections. In doing so, the EO plainly affects the Plaintiff States' "sovereign power . . . to create and enforce a legal code" for elections. Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592, 601 (1982). Regardless of the details of how federal officials implement the EO, at its core, the EO contemplates that states will have to coordinate with DHS and USPS to ensure that various lists, whether maintained by the agencies or the states, reflect current mail-voter information (which can change daily up until Election Day), or else risk disenfranchisement for certain voters and penalties for states and their officials. The Supreme Court has held that political candidates have standing to challenge mail-voting rules because of their "interest in a fair process." Bost v. Ill. State Bd. of Elections, 607 U.S. 71, 77 (2026). In Bost, it noted that the "untenable" and "undemocratic" consequences of waiting to hear "election disputes . . . shortly before election day" weighed in favor of adjudication even before the rules'

effects on the plaintiffs had come into full view. See id. at 79-80. We see no reason to treat the Plaintiff States' similar interests, which the EO will impact well before Election Day, any differently. Thus, these considerations further undermine the Government's ability to make a strong showing that it will likely succeed on its standing arguments on appeal.

2. Prudential Ripeness

We turn next to the intervenor states' separate prudential ripeness argument. Although the federal defendants address standing and ripeness together, focusing on the injury-in-fact requirement, the intervenor states contend that we should grant a stay because the "prudential ripeness doctrine[]" bars our review of the Plaintiff States' claims about the 2026 primary and general elections. But the intervenor states fail to develop any argument why, if they are wrong on the injury-in-fact analysis, they can nevertheless make a "strong showing" that they will succeed on their prudential ripeness contentions on appeal. Washington, 171 F.4th at 488 (quoting Nken, 556 U.S. at 434).

The "prudential component[s]" of the ripeness doctrine are twofold: (1) "whether resolution of the case turns on 'legal issues not likely to be significantly affected by further factual development'" and (2) "whether the challenged action creates a 'direct and immediate' dilemma for the parties." Algonquin Gas Transmission, LLC v. Weymouth, 919 F.3d 54, 62 (1st Cir. 2019) (first quoting Ernst & Young v. Depositors Econ. Prot. Corp., 45 F.3d 530, 536 (1st Cir. 1995); and then quoting W.R. Grace & Co.--Conn. v. EPA, 959 F.2d 360, 364 (1st Cir. 1992)). We note that the Supreme Court has left uncertain the doctrine's "continuing vitality." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 167 (2014).

Turning to the contentions in the stay motion, the intervenor states make no argument that the EO does not create a "direct and immediate dilemma for" the Plaintiff States. Algonquin Gas Transmission, LLC, 919 F.3d at 62 (citation modified). Instead, they contend that the Plaintiff States' "theories of injury turn on speculation about future events." They do not clarify, however, how that argument differs, if at all, from their standing argument, which we addressed above. Otherwise, the intervenor states point to factual uncertainties having to do with the precise contents of USPS's final rule. But the Plaintiff States do not challenge the final (or any) rule; instead, they challenge the EO as exceeding the President's authority under the Constitution. The intervenor states fail to identify which of the "legal issues" comprising that decision require further factual development. For example, they fail to explain why the President's power to issue the EO is not a "purely legal question[]." Sidak v. U.S. Int'l Trade Comm'n, 174 F.4th 151, 158 (D.C. Cir. 2026). And any implication that this case lacks "final agency action," which is a prerequisite for judicial review under the Administrative Procedure Act (APA), is not dispositive when the Plaintiff States have not brought an APA action and "rel[y] on an implied constitutional right of action in equity" that has "no finality requirement." Id.

Thus, the intervenor states have not made a strong showing that they are likely to prevail on their prudential ripeness arguments on appeal.

B. Remaining Stay Factors

Because the federal defendants and the intervenor states have failed to make a strong showing on their likelihood of success on the merits of their appeals, we briefly address the remaining three Nken factors and conclude that they also do not favor a stay.

To start, the irreparable injury arguments offered by the federal defendants and the intervenor states do not persuade us that a stay is warranted. For their part, the federal defendants argue that the injunction will hinder their efforts to comply with the EO's deadlines in time for the upcoming 2026 elections. Relatedly, the intervenor states contend that the injunction will compromise their ability to ensure that their voters' mail-in ballots are securely delivered and counted. But the district court's injunction does not prevent the federal defendants from implementing the EO for the 2026 federal elections in states other than the Plaintiff States, including in the intervenor states. And, of course, the district court's injunction does nothing to prevent the federal defendants from taking steps today to implement the EO for federal elections in all states after November 3, 2026. The federal defendants do maintain that a "two-tiered system" of mail-ballot rules poses "operational confusion" for USPS, but the only statement in the record supporting this claim is entirely conclusory. They do not explain why an online USPS portal cannot be used by some states and not others or why, in a regional post office system, it is impossible to direct changes to how election mail is handled in certain states. See New York, 133 F.4th at 72 (concluding that the defendants' "speculative and conclusory statements" failed to meet their burden of showing irreparable injury); cf. Nken, 556 U.S. at 434-35 ("Simply showing some possibility of irreparable injury fails to satisfy the second factor." (citation modified)). To be sure, the injunction prevents the federal defendants from enforcing the EO in the Plaintiff States' upcoming primary and general federal elections in September and November. But even assuming that restriction will lead to irreparable harm, it does not overcome the federal defendants' failure to meet their burden on the other Nken factors.

Turning to the substantial injury to the other interested parties, neither the federal defendants nor the intervenor states grapple with the numerous "'immediate, predictable' harms" that the Plaintiff States would face absent the injunction. Washington, 171 F.4th at 493 (quoting R.I. State Council of Churches v. Rollins, 158 F.4th 304, 316 (1st Cir. 2025)). As we have detailed above, the record reflects that the Plaintiff States would suffer multiple harms if the EO were enforced, including diversion of staff time to comply with the EO, pocketbook injuries, potential funding cuts and criminal prosecution of their officials, and sovereignty harms.

Finally, neither the federal defendants nor the intervenor states presented any argument on the fourth stay factor, the public interest, thus waiving any argument on that aspect of the Nken analysis. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990). In any event, eligible voters have a "strong interest in exercising the fundamental political right to vote." Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (citation modified). The undisputed summary judgment record indicates that, were the EO to take effect for the elections taking place in September and November, it would sow confusion and threaten disenfranchisement of many eligible voters. And given that the Government "make[s] no argument that [its] actions were legal on the merits," and "there is generally no public interest in the perpetuation of unlawful [government] action," the public

interest does not favor a stay. Rhode Island v. Trump, 155 F.4th 35, 50 (1st Cir. 2025) (citation modified).

IV. CONCLUSION

For all these reasons, we **deny** the motions to stay.[9]

DUNLAP, Circuit Judge, concurring in part and dissenting in part. I conclude that the Government and the Intervenor States have shown that Plaintiff States likely lack standing to challenge certain, though not all, aspects of Executive Order 14399 (the "EO"). 91 Fed. Reg. 17125 (Mar. 31, 2026); see TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021) (to establish standing, a party must demonstrate injury that is "concrete, particularized, and actual or imminent," that is "likely caused by the defendant," and that "would likely be redressed by judicial relief"); see also Town of Chester v. Laroe Ests., Inc., 581 U.S. 433, 439 (2017) ("Our standing decisions make clear that 'standing is not dispensed in gross.'") (quoting Davis v. Fed. Election Comm'n, 554 U.S. 724, 734 (2008)). For the following reasons, I would grant in part and deny in part the motions to stay, staying the injunction insofar as it pertains to Section 2(a) and, in part, Section 2(b) of the EO. See Nken v. Holder, 556 U.S. 418, 425-26 (2009) (describing factors for granting a stay).[10]

The Government and Intervenor States are likely to succeed in challenging Plaintiff States' standing insofar as it relates to Plaintiff States' request for an injunction barring implementation of Section 2(a). That provision directs the Secretary of Homeland Security to "compile and transmit" to state election officials a list of United States citizens who will be eighteen years or older at the time of an upcoming federal election and who maintain a residence in the subject State (the "State Citizenship List"). Exec. Order § 2(a). Section 2(a) thus merely orders the provision of information to States; it does not order States, including Plaintiffs, to take any action based on the State Citizenship List. As one court has correctly noted, "nothing in Section 2(a) (or any other

[9] There are two pending motions for leave to file amici briefs in relation to the stay motions. We **grant** the motions, and the amici briefs are accepted for filing as of this date.

[10] There is no bar to granting the motions in part as the majority suggests. Although the Government and Intervenor States did not request a partial stay, they addressed the asserted injuries to Plaintiff States from the various provisions of the EO (as they did below) and sought a stay based on the argument that Plaintiff States failed to identify actual or imminent injury from each provision. Cf. Am. Fed'n of Gov't Emps. Loc. 2305 v. U.S. Dep't of Veterans Affs., 177 F.4th 1, 11 n.2 (1st Cir. 2026) (declining to reach an argument not raised in a party's primary brief in this court or below). Disagreement with some arguments raised by the parties does not mandate rejection of the arguments in their entirety; we can grant less than the requested relief. See, e.g., Nat'l Insts. of Health v. Am. Pub. Health Ass'n, 145 S. Ct. 2658, 2658 (2025) (granting in part and denying in part an application for stay, notwithstanding the government's request for a stay in entirety).

part of the [EO]) purports to require any State to do anything with the State Citizenship List it is provided, let alone to remove otherwise eligible individuals on State voter registration lists." DSCC v. Trump, 26-cv-01114, 2026 WL 1487833, at *6 (D.D.C. June 4, 2026). Provision of a State Citizenship List for informative purposes, allowing (but not requiring) States to use the list as a resource to check their own voter registration rolls, would cause Plaintiff States no injury. Because any injury from the compilation and distribution of State Citizenship Lists is thus speculative and hypothetical, Plaintiff States can show no harm stemming from that provision and lack standing to challenge Section 2(a). See Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409 (2013) (noting that "threatened injury must be certainly impending to constitute injury in fact" (quoting Whitmore v. Arkansas, 495 U.S. 149, 158 (1990))); see generally Katz v. Pershing, LLC, 672 F.3d 64, 79 (1st Cir. 2012) (standing absent where harm was "purely theoretical" and "d[id] not rise to the level of a reasonably impending threat").

My colleagues raise enforcement concerns, citing Section 2(b), as the basis for concluding that the Government and the Intervenor States have failed to show a likelihood of success as to their challenge to Plaintiff States' standing regarding Section 2 generally. That provision directs the Attorney General to prioritize investigation and prosecution of State and local officials "who issue Federal ballots to individuals not eligible to vote in a Federal election." Exec. Order § 2(b).[11] "[E]ligible to vote in a Federal election" is in turn defined to include "citizen[s] of the United States, 18 years of age or older by the date of the upcoming election, and otherwise qualified" to vote under state law. Id. I agree that imminent enforcement of a voting-age requirement (not established by federal statute) that conflicts with certain States' laws permitting voting by certain 17-year-olds in primaries suggests that those States would have standing to challenge that aspect of Section 2(b). See Susan B. Anthony List v. Driehaus, 573 U.S. 149, 159 (2014) (explaining that the injury-in-fact component of standing exists where "threatened enforcement" of a law is "sufficiently imminent"). But that does not mean that all Plaintiff States have standing to challenge Section 2(b) insofar as it relates to enforcement of laws banning voting by noncitizens. There is no question under federal law that noncitizens are not allowed to vote, see 18 U.S.C. § 611, and States have no standing to challenge the Executive Branch's discretionary decision to prioritize enforcement of such laws, see generally United States v. Texas, 599 U.S. 670, 678 (2023) ("[T]he Executive Branch possesses authority to decide 'how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.'" (quoting TransUnion LLC, 594 U.S. at 429)). Nor does it mean that the potential use of State Citizenship Lists in enforcement actions gives rise to actual or imminent injury under Section 2(a). There are no immediate deadlines that require States to do anything in relation to the State Citizenship Lists; and the opportunity for

[11] It is not clear what is meant by "Federal election." Arguably, it may be limited to general elections. See generally Exec. Order § 2(b) (referencing "the date of the upcoming election"); 2 U.S.C. § 7 (establishing the Tuesday after the first Monday in November in even numbered years "as the day for the election"). Another reading is also possible, however; at least in the context of campaign finance, "election" refers not only to general elections but also primaries for federal offices. See 52 U.S.C. § 30101(1)(A). The government has not urged a narrowed definition in response to the Plaintiff States' arguments regarding the potential scope and application of the EO to primaries, so I will assume that Section 2(b) applies to primary elections.

States to supplement those lists, see Exec. Order § 2(a), means that the prospect of any use of the lists to wrongfully prosecute state or local officials for allowing eligible voters to exercise their right to vote is purely speculative. See Clapper, 568 U.S. at 409.

The contrast between Sections 2(a) and 3 of the EO reinforces this conclusion, while also leading to the conclusion that the Government and Intervenor States failed to establish likelihood of success regarding Plaintiff States' standing as to Section 3. Section 3 requires the Postmaster General to initiate rulemaking that would include provisions (1) requiring States to use specified mail-in ballot envelopes, Exec. Order § 3(b)(i), and (2) precluding the United States Postal Service from transmitting mail-in or absentee ballots that are not included in "State-specific Mail-In and Absentee Participation List[s]" (which are separate and distinct from the State Citizenship Lists to be compiled by the federal government under Section 2), id. § 3(b)(ii)-(v). In turn, the proposed rules promulgated by the Postmaster General provide new standards for ballot envelope design, allow States to submit State-specific Mail-In and Absentee Participation Lists, and would limit the distribution of mail-in ballots to individuals included in such lists. 91 Fed. Reg. 32915, 32915-16. Generally, possible future injury based on proposed rulemaking cannot establish standing. See generally Trump v. New York, 592 U.S. 125, 129-131, 134 (2020) (holding that where President issued a memorandum to the Secretary of Commerce that "announced a policy of excluding 'from the apportionment base aliens who are not in a lawful immigration status'" for the 2020 census, challenges to that memorandum were "premature" because "[a]ny prediction how the Executive Branch might eventually implement th[at] general statement of policy [wa]s 'no more than conjecture' at th[at] time" (quoting Los Angeles v. Lyons, 461 U.S. 95, 108 (1983))). But the proposed changes set forth in the EO have more than speculative future effect. As explained by my colleagues, Plaintiff States are already preparing for the impending November 2026 elections and preceding primaries -- as they must. See generally Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). Because many Plaintiff States have already ordered mail-in ballot envelopes that would have to be quickly replaced and would have to promptly provide the federal government with State-specific Mail-In and Absentee Ballot Lists to avoid disruptions in the mail-in balloting process for the November 2026 elections and any prior elections, the uncontested record suggests that Plaintiff States must necessarily take initial steps to comply with these proposed rules as framed by the EO even prior to the promulgation of the anticipated regulations. Thus, although final regulations must normally exist before standing can arise, the specificity of the EO's stated timelines and the inescapable legal requirements and impending deadlines that States currently face in facilitating mail-in and absentee balloting for immediately upcoming elections together establish sufficient concrete injury from the EO in this unusual case. Unlike Section 2(a), therefore, the Government and Intervenor States have failed to show a substantial likelihood of success as to their argument that Plaintiff States will not suffer actual or imminent harm sufficient to establish standing to challenge Section 3.[12] See Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992).

[12] Because the Government and Intervenor States mount no substantive defense of Section 3, they have no other basis to demonstrate likelihood of success as to the injunction barring implementation of that provision.

The remaining stay factors -- irreparable harm, harm to interested parties, and the public interest, Nken, 556 U.S. at 434 -- largely flow from the assessment of likelihood of success on the merits. Where Section 2(a) of the EO does not command Plaintiff States to do anything, they have suffered no certain harm at present, much less irreparable harm. See DSCC, 2026 WL 1487833, at *13; see generally Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008) (requiring plaintiffs to "demonstrate that irreparable injury is likely in the absence of an injunction"). The Government, however, would be harmed absent a stay of the injunction of Section 2(a) and, in part, Section 2(b) because it would be prevented from taking steps that may provide States with further resources for purposes of the November 2026 election and from enforcing valid federal laws. See League of Women Voters of U.S. v. Newby, 838 F.3d 1, 9 (D.C. Cir. 2016) (noting that there can be "no do over" once the registration deadlines from an election have passed (quoting League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 247 (4th Cir. 2014))); Dist. 4 Lodge of the Int'l Ass'n of Machinists & Aerospace Workers Loc. Lodge 207 v. Raimondo, 18 F.4th 38, 47 (1st Cir. 2021) ("[A]ny time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." (quoting Maryland v. King, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)) (alterations in original)). The contrary is true as to Section 3, as well as Section 2(b) insofar as it affects States permitting certain 17-year-olds to vote in primaries; Plaintiff States would suffer irreparable harm, for instance, if they were unable to timely comply with various mail-in ballot deadlines. See Merrill, 142 S. Ct. at 880 (Kavanaugh, J., concurring). This harm outweighs the Government's countervailing interests. The public interest factor largely reflects the same balancing of harms and does not separately counsel a different result.

With respect, I concur in part and dissent in part.

By the Court:

Anastasia Dubrovsky, Clerk

cc: Hon. Indira Talwani, Robert Farrell, Clerk, United States District Court for the District of Massachusetts, Ian D. Prior, Alexander Barrett Bowdre, Louis Joseph Capozzi III, Graham Miller, John Michael Patton, Benjamin S. Gilberg, David M.S. Dewhirst, James A. Barta, James R. Rodriguez, Kelsey L. Smith, Christian B. Corrigan, Cody S. Barnett, Garry M. Gaskins II, Joseph David Spate, Grant Michael Flynn, Monroe David Bryant Jr., Donald Campbell Lockhart, Rayford A. Farquhar, Abraham R. George, Laura Myron, David C. Kravitz, Michael Patrick Moore Jr., Jared B. Cohen, Vanessa Arslanian, Jennifer Utrecht, Heidi Parry Stern, Kiel Ireland, Ian Fein, Thomas Patterson, Aaron Daniel Pennekamp, Anne P. Bellows, Kevin Lee Quade, Lisa Catherine Ehrlich, Malcolm Andreas Brudigam, Michael Surren Cohen, Samuel Thomas Harbourt, Robert William Setrakian, Jane Reilley, Nicholas W. Brown, Cristina Sepe, Syreeta Tyrell, Karen J. Hartman-Tellez, Shannon Wells Stevenson, Peter Baumann, William M. Tong, Maura Bridget Murphy, Vanessa L. Kassab, Ian R. Liston, Caroline S. Van Zile, Alex Hemmer, Katherine Thompson, Virginia Anne Williamson, Neil Giovanatti, Erik Grill, Angela Behrens, Allen Barr, Joshua Paul Bohn, Meghan Musso, Jonathan B. Mangel, James Grayson, Bailey Colfax, Barbara D. Underwood, Rabia Muqaddam, Judith N. Vale, Daniel Paul Mosteller, Robert A. Koch, Daniel A. Rayfield, James J. Arguin, Kyla Duffy, Ryan P. Kane, Tillman J. Breckenridge, Lynn Kristine

Lodahl, Michael J. Fischer, Inga S. Bernstein, Richard D. Bernstein, Jonathan Benjamin Miller, Raphael Kalikstein, Carey Dunne, Mónica Pilar Folch, Charanya Krishnaswami, Jason J. Muehlhoff, J. Benjamin Aguiñaga, Stephen Michael Pezzi, Esam Al-Shareffi, Jak Kundl, Robert Bonta, Seth Goldstein, L. Nicole Allan, Aaron D. Ford, Karl D. Smith, Tera M. Heintz, Kristin K. Mayes, Joshua M. Whitaker, Kara M. Karlson, Philip J. Weiser, Kathleen Jennings, Brian L. Schwalb, Eliza Simon, Kwame Raoul, Holly F.B. Berlin, Jane Elinor Notz, Vikas Didwania, Aaron M. Frey, Anthony G. Brown, Dana Nessel, Keith Ellison, Lindsey E. Middlecamp, Jennifer Davenport, Raul Torrez, Letitia James, Colleen K. Faherty, Jeffrey N. Jackson, Laura Howard, Thomas H. Castelli, Charity R. Clark, Jay Jones, Joshua L. Kaul, Charlotte Gibson, Jacob Boyer, Alex Goldstein, Matthew James O'Brien, Stephen S. Cha-Kim, Andrew James Rising, Emily Kirby, Allegra Chapman, Carlos Guevara, Inbar Pe'er, Julia Spiegel, Kevin Trowel, Zack Goldberg, Martha Reiser

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STATE OF CALIFORNIA, et al.,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	
	*	
DONALD J. TRUMP, in his official capacity as President of the United States, et al.,	*	Civil Action No. 1:26-cv-11581-IT
	*	
Defendants,	*	
	*	
and	*	
	*	
STATE OF MISSOURI, et al.,	*	
	*	
Intervenor-Defendants.	*	

MEMORANDUM & ORDER

July 7, 2026

TALWANI, D.J.

Before the court are motions to stay pending appeal filed by Defendants[1] and Intervenor-Defendants.[2] On June 18, 2026, the court granted in part and denied in part Defendants' motion

[1] Defendants are Donald J. Trump, in his official capacity as President of the United States; United States Department of Justice; Todd Blanche, in his official capacity as Acting U.S. Attorney General; United States Department of Homeland Security; Markwayne Mullin, in his official capacity as Secretary for the Department of Homeland Security; United States Social Security Administration; Frank Bisignano, in his official capacity as Commissioner of the U.S. Social Security Administration; United States Postal Service; David Steiner, in his official capacity as Postmaster General and Chief Executive Officer of the Postal Service; Doug Tolino, in his official capacity as Deputy Postmaster General, Chief Operating Officer and Chief Human Resources Officer of the Postal Service and Member of the Postal Service Board of Governors; Amber McReynolds, in her official capacity as Chair of the Postal Service Board of Governors; Derek T. Kan, in his official capacity as Vice Chairman of the Postal Service Board of Governors; Ronald Stroman, in his official capacity as a Member of the Postal Service Board of Governors; and Daniel Tangherlini, in his official capacity as a Member of the Postal Service Board of Governors.

[2] Intervenor-Defendants are Alabama, Florida, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, and Texas.

to dismiss, dismissing without prejudice on prudential ripeness grounds the Amended Complaint filed by Plaintiff States,[3] as to claims regarding Executive Order 14399, Ensuring Citizenship Verification and Integrity in Federal Elections (the "EO"), 91 Fed. Reg. 17125 (Mar. 31, 2026), and its implementation with regard to elections occurring after November 3, 2026, denying Defendants' motion to dismiss on prudential ripeness grounds as to the November 3, 2026 and any earlier elections, and reserving on remaining arguments. Mem. & Order [Doc. No. 190]. On June 25, 2026, the court denied the balance of the motion and granted Plaintiffs summary judgment in part, holding that Sections 2 and 3 of the EO are unconstitutional and ultra vires, and enjoining any implementation of those sections by Defendant agencies as to Plaintiff States with respect to elections occurring on or before November 3, 2026. Mem. & Order [Doc. No. 191]. Defendants and Intervenor-Defendants appealed, see California v. Trump, No. 26-01774 (1st Cir. July 2, 2026); California v. Trump, No. 26-01779 (July 6, 2026), and have moved to stay the court's injunction, pending appeal before the United States Court of Appeals for the First Circuit. See Defs.' Mot. to Stay [Doc. No. 193]; Intervenors' Mot. to Stay [Doc. No. 202]. The court thereafter entered Final Judgment [Doc. No. 207] and treats the motions to stay as directed to that Final Judgment as well.

I. Standard of Review

A district court may stay an injunction while an appeal is pending. Fed. R. Civ. P. 62(d). "A stay pending appeal is an 'intrusion into the ordinary processes of administration and judicial review' and relief is not granted as 'a matter of right.'" Rhode Island v. Trump, 155 F.4th 35, 41

[3] Plaintiff States are Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and Josh Shapiro in his official capacity as Governor of Pennsylvania.

(1st Cir. 2025) (quoting New York v. Trump, 133 F.4th 51, 65 (1st Cir. 2025)). The movants "bear the burden of demonstrating that they are entitled to the 'extraordinary' relief that they seek." Id. (quoting Somerville Pub. Schs. v. McMahon, 139 F.4th 63, 68 (1st Cir. 2025)).

The Supreme Court has explained that movants must (1) make a strong showing that they are likely to succeed on the merits on appeal; (2) show that they will be irreparably injured absent a stay; (3) show that a stay will not substantially injure the other parties interested in the proceeding; and (4) show that the stay would be in the public interest. Nken v. Holder, 556 U.S. 418, 426 (2009). Likelihood of success and irreparable injury are "the most critical" factors. Id. at 434. "It is not enough that the [movant's] chance of success on the merits be better than negligible." Id. (internal quotations and citation omitted). Similarly, "simply showing some possibility of irreparable injury fails to satisfy the second factor." Id. at 434–35 (internal quotations and citation omitted). Courts assess the harm to other interested parties and weigh the public interest "[o]nce an applicant satisfies the first two factors." Id. at 435.

II. Discussion

A. Merits

For the reasons discussed in its June 18, 2026 Memorandum and Order [Doc. No. 190] and June 25, 2026 Memorandum and Order [Doc. No. 191], the court finds that as to the November 3, 2026 and earlier elections, Plaintiff States' claims are ripe, Plaintiffs have Article III standing, and Sections 2 and 3 of the EO are unconstitutional and ultra vires. Accordingly, Defendants and Intervenor-Defendants are unlikely to succeed on the merits of their appeal.

Defendants and Intervenor-Defendants assert that the court's June 18, 2026 Memorandum and Order [Doc. No. 190], dismissing Plaintiff States' claims concerning elections after November 3, 2026, supports their argument that Plaintiff States lack Article III standing and that

their claims are not ripe for adjudication. Defs.' Mem. ISO Mot. to Stay ("Defs.' Mem.") 7–15 [Doc. No. 195]; Intervenors' Mem. ISO Mot. to Stay ("Intervenors' Mem.") 4–10 [Doc. No. 203].

While "originat[ing] from the same Article III limitation," prudential ripeness is both related to yet distinct from standing. Jensen v. R.I. Cannabis Control Comm'n, 160 F.4th 18, 24 (1st Cir. 2025) (citation omitted); see Mem. & Order 9–10 [Doc. No. 190] and cases cited therein. In dismissing Plaintiffs' claims on ripeness grounds only as to elections after November 3, 2026, the court acknowledged the reality with which neither Defendants nor Intervenor-Defendants are willing to engage: while claims as to distant elections may not yet be ripe, the claims as to the upcoming elections are ripe because States are actively planning to and currently administering such elections. The "possibility of future judicial review" is neither practicable nor feasible where the EO directs that specific agency action be taken in a constricted timeframe, thereby interfering with Plaintiffs' present efforts to administer elections. Defs.' Mem. 10 [Doc. No. 195]. Therefore, Plaintiffs' claims as to elections on and before November 3, 2026, are logically fit for judicial review and denying review on prudential ripeness grounds until some point in the future, e.g., even closer to the midterms for which they are currently preparing, would impose needless hardship to Plaintiffs. See Abbott Labs. v. Gardner, 387 U.S. 136, 148–49 (1967).

B. Irreparable Injury

As a threshold matter, the court's injunction is clearly limited to Plaintiff States alone. Final J. [Doc. No. 207]. Accordingly, nothing in the court's order prevents Defendant agencies from endeavoring to implement the EO with respect to non-Plaintiff States.

Defendants argue that the court's injunction causes irreparable harm because Defendant agencies are unable to implement the directives required by the EO on the EO's prescribed timeline. Defs.' Mem. 18–19 [Doc. No. 195]. A USCIS official speculates that "in the event the Court's order is stayed or vacated at some future date, USCIS will be required to expend additional resources and perform work under potentially tight timelines to fully implement the E.O. at that time." Mayhew Supp. Decl. ¶ 10. [Doc. No. 194-1]. But the injunction does not prevent any steps to implement the EO, on the exact timeline prescribed by the President, to prepare for elections that will occur after November 3, 2026.

Agency officials' concern with their ability to timely implement the EO for the November 3, 2026 election does nothing more than highlight the current ripeness of Plaintiffs' claims. Just as Plaintiff States are diligently working to plan for and administer elections, agency officials are working hard to implement the EO's directives pursuant to the EO's short deadlines. See Exec. Order 14399 § 4(c) (USCIS must have already established infrastructure relevant to the Confirmed Citizen Lists). Defendants have and will continue to take action that renders Plaintiffs' claims ripe for future elections. That Defendants may have to work harder later, in the event that this court's order is reversed, does not rise to the level of irreparable injury contemplated by the Supreme Court in Nken. 556 U.S. at 435 (even wrongful removal of a noncitizen is not "categorically irreparable").

A USPS official similarly explains that the court's order prevents USPS from implementing the EO for non-Plaintiff States because USPS would be unable to promulgate regulations as to only certain states prior to the November 3, 2026 elections. Monteith Decl. ¶ 4 [Doc. No. 194-2] (describing feasibility limitations with respect to a "two-tiered system"). This argument is not persuasive. First, USPS has now been enjoined from implementing the

provisions in the Notice of Proposed Rulemaking as directed by the EO in any state. See NAACP v. USPS, No. 1:20-cv-02295-EGS (D.D.C. July 1, 2026), Dkt. No. 181. Second, USPS' acknowledgment that the anticipated final rule will apply to ballot mail received in association with the November 3, 2026 elections only serves to demonstrate that Plaintiffs' claims as to those and earlier elections are ripe for judicial review. Monteith Decl. ¶ 8 [Doc. No. 194-2] ("For states to be ready to [engage with USPS in creating the absentee and mail-in lists], [USPS] need[s] enough time prior the November 2026 to train [their] employees . . . and to coordinate with mailers."). Third, the court finds that Defendants have made no showing that "delay" of the EO's deadlines for USPS' implementation constitutes irreparable injury. Nken, 556 U.S. at 435.

C. Other and Public Interests

Plaintiff States oppose a stay, arguing it would require Plaintiffs to immediately "develop[] procedures for reviewing and correcting the Confirmed Citizenship List, redesign[] ballot envelopes to comply with the requirements, and rush-order[] the new envelopes," all at significant effort and cost while Plaintiffs are actively administering primaries and special elections, as well as preparing to administer the November 3, 2026 midterms. Pls.' Mem. in Opp'n to Defs.' Mot. to Stay ("Pls.' Opp'n") 7 [Doc. No. 200].

Intervenor-Defendants argue that they will be injured by Defendant agencies' inability to fully implement the EO prior to the November 3, 2026 elections and that the "security of their elections" is "irreparably harmed by the [court's] injunction." Intervenors' Mem. 10–11 [Doc. No. 203]. However, the EO's directives are not aligned with its stated purpose of reducing voter fraud and enhancing election integrity. See Exec. Order 14399 § 1. Instead, the EO directs DHS and USCIS to create incomplete lists of confirmed citizens for each state. Id. § 2. A state could do nothing more with the list than rely upon it as additional proof of citizenship, but not as proof

of noncitizenship. June 2, 2026 H'rg Tr. 24:6–17 [Doc. No. 181]. Indeed, in conceding that the lists are necessarily incomplete, Defendants have acknowledged that a voter's absence from the lists required by the EO does not signify that voter's ineligibility.

Having weighed the interests of Plaintiff and Intervenor-Defendants and the remaining public, the court finds these factors weigh against granting a stay. See New Jersey v. Trump, 131 F.4th 27, 34 (1st Cir. 2025).

III. Conclusion

Having failed to meet their burden to show that circumstances justify a stay pending appeal, Defendants' and Intervenor-Defendants' Motions [Doc. Nos. 193, 202] for a stay pending appeal are therefore DENIED. The court permits a 7-day administrative stay to permit time for Defendants and Intervenor-Defendants to renew their stay request before the First Circuit.

IT IS SO ORDERED.

July 7, 2026

/s/ Indira Talwani
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STATE OF CALIFORNIA, et al.,	*	
Plaintiffs,	*	
v.	*	
DONALD J. TRUMP, in his official capacity as President of the United States, et al.,	*	Civil Action No. 1:26-cv-11581-IT
Defendants,	*	
and	*	
STATE OF MISSOURI, et al.,	*	
Intervenor-Defendants.	*	

MEMORANDUM & ORDER

June 25, 2026

TALWANI, D.J.

Twenty-three States[1] and the District of Columbia (collectively, "Plaintiff States") challenge Sections 2, 3, and 5 of Executive Order 14399, Ensuring Citizenship Verification and Integrity in Federal Elections (the "EO"), 91 Fed. Reg. 17125 (Mar. 31, 2026), as ultra vires and unconstitutional, arguing that the provisions violate the separation of powers, the Elections and Electors Clauses, and the Tenth Amendment's anti-commandeering doctrine. Am. Compl. ¶¶ 150–189 [Doc. No. 65]. Plaintiff States assert these claims against the President, and the various agencies and agency heads listed in the EO. Id.[2]

[1] The Plaintiff States are Arizona, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and Josh Shapiro in his official capacity as Governor of Pennsylvania.

[2] Count I, challenging Section 2 of the EO, is brought against President Donald J. Trump; the U.S. Department of Justice and the Acting Attorney General (collectively, "DOJ Defendants");

Defendants, joined by Intervenor States,[3] seek dismissal of Plaintiff States' Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Defs.' Mot. to Dismiss [Doc. No. 154]; Intervenors' Opp'n to Pls.' Mot. for Summ. J. ("Intervenors' Opp'n") 2–7, 13–17 [Doc. No. 153]. Plaintiff States have moved for summary judgment and request that the court declare Sections 2, 3, and 5 of the EO as unconstitutionally void and permanently enjoin Defendant agencies and agency heads from implementing or enforcing those provisions. Pls.' Mot. for Summ. J. [Doc. No. 97].

I. Background

A. The Executive Order

The EO asserts "an unavoidable duty under Article II of the Constitution of the United States to enforce Federal law, which includes preventing violations of Federal criminal law and maintaining public confidence in election outcomes." Exec. Order 14399 § 1. The EO notes that several executive agencies maintain records that "can assist in verifying identity and Federal election voter eligibility" and finds that "additional measures are necessary[]" to "enhance election integrity via the United States Mail[.]" Id.

The EO directs agency heads to take certain actions. Pls.' Statement of Undisputed Material Facts ("Pls.' SUMF") ¶ 4 [Doc. No. 105]; Defs.' Statement of Undisputed Material

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the U.S. Department of Commerce and its Secretary (collectively, "Commerce Defendants"); the U.S. Department of Homeland Security and its Secretary; U.S. Citizenship and Immigration Services and its Director; and the Social Security Administration and its Commissioner. Am. Compl. ¶¶ 150–66 [Doc. No. 65]. Count II, challenging Section 3 of the EO, is brought against the President; the Acting Attorney General; and the U.S. Postal Service, Postmaster General, Deputy Postmaster General, U.S. Postal Service Board of Governors Chairwoman, Board of Governors Vice Chairman, and Board of Governor Members. Id. ¶¶ 167–78. Count III, challenging Section 5 of the EO, is brought against the President and DOJ Defendants. Id. ¶¶ 179–189.

[3] The Intervenor States are Alabama, Florida, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, and Texas.

Facts ("Defs.' SUMF") ¶ 4 [Doc. No. 155]. Section 2 of the EO directs the Director of the U.S. States Citizenship and Immigration Services ("USCIS"), a component within the Department of Homeland Security ("DHS"), in coordination with the Commissioner of the Social Security Administration ("SSA"), to compile lists of citizens eligible to vote in a specific state (the "Confirmed Citizen Lists"[4]) "[t]o the extent feasible and consistent with applicable law[.]" Exec. Order 14399 § 2(a). The EO defines the Confirmed Citizen Lists as limited to "individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State[.]" Id.

The EO requires DHS to "establish the infrastructure necessary to compile, maintain, and transmit" the Confirmed Citizen Lists by **June 29, 2026**. Id. § 4(c) (emphasis added). Also by **June 29, 2026**, DHS must designate a point of contact regarding List-related inquiries from individuals and State election officials. Id. The EO requires that DHS update and transmit the Confirmed Citizen List for each State to State election officials at least 60 days before each regularly scheduled Federal election, or upon request regarding a special Federal election. Id. § 2(a). Accordingly, for the November 3, 2026 general election, the EO requires DHS to provide the Confirmed Citizen Lists to State election officials by **September 4, 2026**.

Section 3 of the EO directs the Postmaster General of the U.S. Postal Service ("USPS") to initiate a proposed rulemaking to ensure the integrity of mail voting and requires that a final rule be published by **July 29, 2026**. Id. § 3(a); USPS Notice of Proposed Rulemaking, Ballot Mail for Federal Elections, 91 Fed. Reg. 32915 (June 2, 2026). The EO requires the proposed rule to (1) include requirements regarding election mail design; and (2) specify that USPS, after receiving State-furnished lists of voters approved to vote by mail, shall provide each State with a

[4] The EO refers to these federally created lists as "State Citizenship Lists." Exec. Order 14399 § 2(a).

list of individuals who are "enrolled with the USPS" pursuant to a process specified in the rule, and shall not transmit the ballot of any voter unless the individual has been so "enrolled." Exec. Order 14399 § 3(b). The EO requires the proposed rule to specify that States may choose to notify USPS of their intent to use mail ballots no fewer than 90 days prior to a Federal election, and States may submit to USPS, no fewer than 60 days before the election, a list of voters to whom the State intends to provide mail ballots. Id. § 3(b)(ii). Accordingly, for the November 3, 2026 general election, States may notify USPS by **August 5, 2026**, of their intent to use mail ballots, and by **September 4, 2026**, of their mail-ballot voter lists. Id.

In Sections 2 and 5, the EO describes several criminal offenses, both directly and indirectly relating to voter fraud, and requires the Attorney General to prioritize the investigation and prosecution of State and local officials who issue ballots to individuals not eligible to vote. Id. §§ 2(b), 5. The EO also provides that "[s]tates and localities should preserve, for a 5-year period, all records and materials—excluding ballots cast—evidencing voter participation in any Federal election (e.g., ballot envelopes, regardless of carrier)." Id. § 5 (emphases added).

B. Federal Election Law

1. Constitutional Framework

a. The State's Role in Federal Elections

The U.S. Constitution empowers the States to determine voter eligibility in federal elections.

Under the Voter Qualifications Clause, Members of the U.S. House of Representatives must be elected by voters who "have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." U.S. CONST. art. I, § 2, cl. 1. The Seventeenth Amendment likewise prescribes that voters for U.S. Senators "shall have the qualifications requisite for electors of the most numerous branch of the State legislatures." U.S. CONST. amend.

XVII. Therefore, because the States determine who is eligible to vote for their state legislators, the Constitution indirectly grants the States authority to determine who is eligible to vote for federal legislators.

Article I of the Constitution also empowers the States to prescribe the "Times, Places, and Manner of holding" congressional elections. U.S. CONST. art. I, § 4, cl. 1. "[T]hese comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes" among other issues. Smiley v. Holm, 285 U.S. 355, 366 (1932).

The President is elected by vote of the Electoral College. See U.S. CONST. amend. XII. The Electors Clause empowers each State to appoint electors to the Electoral College "in such Manner as the Legislature thereof may direct." U.S. CONST. art. II, § 1, cl. 2. The States require their electors be appointed by popular vote of qualified voters. See Chiafalo v. Washington, 591 U.S. 578, 584 (2020). Accordingly, the States alone determine voter-eligibility requirements, subject only to the outer limits of the Constitution. See, e.g., U.S. CONST. amend. XIX ("The right of citizens of the United States to vote shall not be denied or abridged . . . on account of sex."); U.S. CONST. amend. XXVI ("The right of citizens of the United States, who are eighteen years of age or older, to vote, shall not be denied or abridged . . . on account of age."). For presidential elections, the Electors Clause gives States the primary authority to decide how electors are chosen. U.S. CONST. art. II, § 1, cl. 2.

b. Congress's Role in Federal Elections

The Elections Clause empowers Congress to "make or alter" State election laws "at any time[.]" U.S. CONST. art. I, § 4, cl. 1. "In practice, the Clause functions as 'a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far

as Congress declines to pre-empt state legislative choices.'" Arizona v. Inter Tribal Council of Arizona, Inc., 570 U.S. 1, 9 (2013) (quoting Foster v. Love, 522 U.S. 67, 69 (1997)).

While the Electors Clause does not explicitly reserve supervisory authority to Congress for presidential electors, the Supreme Court has extended "the broad power given to Congress over congressional elections . . . to presidential elections." Voting Rts. Coal. v. Wilson, 60 F.3d 1411, 1414 (9th Cir. 1995) (citing Burroughs v. United States, 290 U.S. 534, 545 (1934)); see Arizona, 570 U.S. at 14–15 ("Because the power the Elections Clause confers is none other than the power to pre-empt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress's preemptive intent . . . . Unlike the States' historic police powers, the States' role in regulating congressional elections . . . has always existed subject to the express qualification that it terminates according to federal law.").

Accordingly, the Elections Clause "grants Congress 'the power to override state regulations' by establishing uniform rules for federal elections, binding on the States." Foster, 522 U.S. at 69 (quoting U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 833 (1995)).

c. President's Limited Role in Federal Elections

The Constitution does not grant the President any specific powers over elections.[5] Broadly, the Constitution vests the President with "executive Power" and commands him to "take Care that the Laws be faithfully executed." U.S. CONST. art. II, §§ 1, 3. The President "plays no direct role in the process" of appointing electors, "nor does he have authority to control the state officials who do." Trump v. United States, 603 U.S. 593, 627 (2024). As the Supreme

[5] Regarding the allocation of election-related authority across the States and Congress, the Framers explained: "[T]here were only three ways in which this power could have been reasonably modified and disposed: that it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former." THE FEDERALIST NO. 59 (Alexander Hamilton). Notably, the Framers excluded the Executive Branch from any allocation formulation.

Court has observed, "the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker." Medellín v. Texas, 552 U.S. 491, 526–27 (2008) (quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1952)).

2. Statutory Landscape

Pursuant to its Elections Clause power, see U.S. CONST. art. I, § 4, cl. 1, Congress has enacted several laws regulating voting and elections. For example, the Voting Rights Act, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified at 52 U.S.C. §§ 10101), prohibits discriminatory voting or election practices. The Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), Pub. L. No. 99-410, 100 Stat. 924 (1986) (codified at 52 U.S.C. §§ 20301–11) requires States (as well as U.S. territories and the District of Columbia) to permit otherwise-qualified voters residing or stationed overseas to vote in the last place they were domiciled prior to leaving the United States. 52 U.S.C. §§ 20302, 20310. UOCAVA guarantees military and overseas voters the right "to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office[.]" 52 U.S.C. § 20302(a)(1); see 52 U.S.C. § 20302(a)(8)(A) (requiring States to transmit absentee ballots to UOCAVA voters at least 45 days before an election for federal office to provide voters sufficient time to receive, mark, and return absentee ballots).

The National Voter Registration Act of 1993 (the "NVRA") sets forth certain voter registration requirements with respect to elections for federal office. 52 U.S.C. §§ 20501–20511.[6] Section 5 of the NVRA requires that States offer voter registration opportunities at State

[6] Legislation has been introduced in earlier sessions and in the current session of Congress to amend the NVRA to require individuals to provide documentary proof of citizenship when registering to vote, see Safeguard American Voter Eligibility (SAVE) Act, H.R. 8281, 118th Cong. (2024); Safeguard American Voter Eligibility (SAVE) Act, H.R. 22, 119th Cong. (2025), but has not been enacted into law.

motor vehicle agencies. Section 6 of the NVRA requires that States offer voter registration opportunities by mail-in application and limits registration to using a prescribed federal form.

The Help America Vote Act of 2002 ("HAVA"), Pub. L. No. 107-252, 116 Stat. 1666, was passed after the 2000 Presidential election and "aimed 'to alleviate a significant problem voters experience'—eligible voters being turned away at the polls because their names were missing from voter registration lists." United States v. Benson, ___ F.4th ___, 2026 WL 1815425, *3 (6th Cir. June 24, 2026) (quoting Sandusky Cnty. Democratic Party v. Blackwell, 387 F.3d 565, 569 (6th Cir. 2004) (per curiam)). HAVA requires states to maintain an electronic statewide voter registration list.[7] 52 U.S.C. § 21083.

C. The Plaintiff States and the Administration of Federal Elections

Plaintiff States and their localities administer elections for federal office. Pls.' SUMF ¶ 6 [Doc. No. 105]; Defs.' SUMF ¶ 6 [Doc. No. 155]. Plaintiff States and their localities are responsible for, inter alia, carrying out voter registration, maintaining and updating voter rolls, issuing ballots to registered voters, tabulating votes, and certifying results in all elections for federal office. Pls.' SUMF ¶ 7 [Doc. No. 105]; Defs.' SUMF ¶ 7 [Doc. No. 155].

[7] In 2025, officials in DOJ's Civil Rights Division began sending letters to the Secretaries of various States, requesting access to State's electronic voter registration lists, and the federal government has sued the Secretaries of States who have denied access. The United States' lawsuits have been consistently dismissed and the government's requests held by courts to be facially deficient. See, e.g., Benson, ___ F.4th ___, 2026 WL 1815425; United States v. DeMarinis, 2026 WL 1780586, *5 (D. Md. June 18, 2026); United States v. Wis. Elections Comm'n, __ F. Supp. 3d __ , 2026 WL 1430354 (W.D. Wis. May 21, 2026); United States v. Bellows, ___ F. Supp. 3d ___, 2026 WL 1430481 (D. Me. May 21, 2026); United States v. Fontes, ___ F. Supp. 3d ___, 2026 WL 1177244 (D. Ariz. Apr. 28, 2026); United States v. Amore, ___ F. Supp. 3d ___, 2026 WL 1040637 (D.R.I. Apr. 17, 2026); United States v. Galvin, ___ F. Supp. 3d,___, 2026 WL 972129 (D. Mass. Apr. 9, 2026); United States v. Oregon, ___ F. Supp. 3d ___, 2026 WL 318402 (D. Or. Feb. 5, 2026); United States v. Weber, 816 F. Supp. 3d 1168 (C.D. Cal. 2026).

Plaintiff States are currently in the process of preparing to administer the November 2026 general election, and many are also actively administering or preparing to administer federal primaries. Pls.' SUMF ¶ 8 [Doc. No. 105]; Defs.' SUMF ¶ 8 [Doc. No. 155]. As part of this process, Plaintiff States and their localities conduct programs to remove from their lists of eligible voters those who have died and those who are no longer eligible to vote for various reasons, including a change in residence, or other State law grounds for ineligibility. Pls.' SUMF ¶ 9 [Doc. No. 105]; Defs.' SUMF ¶ 9 [Doc. No. 155].

In accordance with federal law, Plaintiff States do not systematically remove voters from voter rolls during the 90 days prior to a federal election, except as permitted by the NVRA. See 52 U.S.C. § 20507(c)(2)(A); Pls.' SUMF ¶ 10 [Doc. No. 105]; Defs.' SUMF ¶ 10 [Doc. No. 155].[8] For the November 2026 general election, the NVRA 90-day quiet period begins on August 5, 2026. Pls.' SUMF ¶ 10 [Doc. No. 105]; Defs.' SUMF ¶ 10 [Doc. No. 155].

Plaintiff States and their localities require verification of eligibility to register voters, including by attestation, reporting identifying information, or other means, for federal elections. Pls.' SUMF ¶ 11 [Doc. No. 105] (citing the statutory requirements for each Plaintiff state).[9]

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[8] Plaintiff States' assertion is supported by declarations from state officials. See Lean (CA) Decl. ¶ 14 [Doc. No. 100-1]; Tassinari (MA) Decl. ¶ 29 [Doc. No. 100-2]; Wlaschin (NV) Decl. ¶ 17 [Doc. No. 100-3]; Holmes (WA) Decl. ¶ 27 [Doc. No. 100-4]; Varvel (AZ) Decl. ¶ 13 [Doc. No. 100-5]; Rudy (CO) Decl. ¶ 17 [Doc. No. 100-6]; Rosenberg (CT) Decl. ¶ 16 [Doc. No. 100-7]; Albence (DE) Decl. ¶ 19 [Doc. No. 100-8]; Miller (DC) Decl. ¶ 10 [Doc. No. 100-9]; Berry (MD) Decl. ¶ 39 [Doc. No. 100-11]; Flynn (ME) Decl. ¶ 14 [Doc. No. 100-10]; Brater (MI) Decl. ¶ 16 [Doc. No. 100-12]; Barber (NJ) Decl. ¶ 18 [Doc. No. 100-15]; Vigil (NM) Decl. ¶ 18, [Doc. No. 100-16]; Stavisky (NY) Decl. ¶ 16 [Doc. No. 100-17]; Brunton (NC) Decl. ¶ 9 [Doc. No. 100-18]; Dawson (OR) Decl. ¶ 15 [Doc. No. 100-19]; Marks (PA) Decl. ¶ 14 [Doc. No. 100-20]; Rock (RI) Decl. ¶ 19 [Doc. No. 100-21]; Koski (VA) Decl. ¶ 18 [Doc. No. 100-23]; Hanzas (VT) Decl. ¶ 14 [Doc. No. 100-22]; Michalowski (Cook County, IL) Decl. ¶ 11 [Doc. No. 100-24]; Wise (King County, WA) Decl. ¶ 27 [Doc. No. 100-25]. Defendants' response that they "lack knowledge" as to Plaintiffs' compliance, see Defs.' SUMF ¶ 10 [Doc. No. 155], is not sufficient on summary judgment to rebut Plaintiffs' showing.

[9] Defendants claim that Plaintiffs' assertion that "Plaintiff States and their localities require verification of eligibility (by attestation, reporting identifying information, or other means) to

Plaintiff States also allow individuals to register to vote up to at least 30 days before a federal election, and in some States, individuals may register closer to or on Election Day. Pls.' SUMF ¶ 12 [Doc. No. 105] (citing Lean (CA) Decl. ¶ 12 [Doc. No. 100-1] (registration up to 15 days before election; conditional registration "up to and on Election Day," citing Cal. Elec. Code § 2102(a)); see also Cal. Elec. Code § 2119.5; Cal. Code Regs. 2 § 20020, et seq.); Tassinari (MA) Decl. ¶ 28, [Doc. No. 100-2] (10 days before Election Day, citing Mass. Gen. Laws ch. 51, § 26); Wlaschin (NV) Decl. ¶ 14 [Doc. No. 100-3] (Election Day registration, citing Nev. Rev. Stat. § 293.5847); Holmes (WA) Decl. ¶ 15 [Doc. No. 100-4] (Election Day registration, citing Wash. Rev. Code § 29A.08.140); Varvel (AZ) Decl. ¶ 11 [Doc. No. 100-5] (29 days before Election Day, citing Ariz. Rev. Stat. §§ 16-101(A)(3), 16-134(C)); Rudy (CO) Decl. ¶ 15 [Doc. No. 100-6] (8 days before election to receive a mail ballot, or up to and including Election day in person, citing Colo. Rev. Stat. § 1-2-508); Rosenberg (CT) Decl. ¶ 14 [Doc. No. 100-7] (voters can register by mail up to 18 days before Election Day, in person during early voting, and on Election Day, if they satisfy applicable requirements, citing Conn. Gen. Stat. § 9-23g); Albence (DE) Decl. ¶ 17 [Doc. No. 100-8] (registration up to the third Monday before Election Day, citing Del. Code. Tit. 15 § 1902(c)); Miller (DC) Decl. ¶ 11 [Doc. No. 100-9] (Election Day registration, citing D.C. Code § 1-1001.07(g)); Berry (MD) Decl. ¶ 37 [Doc. No. 100-11] (registration up to 21 days before Election Day, at early voting centers during early voting period, and on Election Day itself, citing Md. Elec. Law § 3-302); Flynn (ME) Decl. ¶ 12 [Doc. No. 100-10] (Election Day Registration, citing Me. Stat. tit. 21, § 121-A); Brater (MI) Decl. ¶ 14

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register voters for federal elections" does not require Defendants' response on the grounds that "[the assertion] is a legal conclusion[.]" Defs.' SUMF ¶ 10 [Doc. No. 155]. The court finds Defendants' statement to be nonresponsive and finds Plaintiff States' showing that they and their localities require eligibility verification to register voters for federal elections undisputed for purposes of the pending motions.

[Doc. No. 100-12] (registration up to and including Election Day if certain requirements are met, citing Mich. Comp. Laws § 168.497); Linnell (MN) Decl. ¶ 13 [Doc. No. 100-14] (registration up to 20 days before an election, citing Minn. Stat. § 201.061); Barber (NJ) Decl. ¶ 16 [Doc. No. 100-15] (registration up to 21 days before an election, citing N.J. Rev. Stat. § 19:31-6); Vigil (NM) Decl. ¶ 16 [Doc. No. 100-16] (New Mexico allows qualified individuals to register in person on Election Day, citing N.M. Stat. § 1-4-5.7); Stavisky (NY) Decl. ¶ 14 [Doc. No. 100-17] (qualified individuals permitted to register up to ten days before election day, citing N.Y. Elec. Law § 5-210(3)); Brunton (NC) Decl. ¶ 7 [Doc. No. 100-18] (25 days before election and during early voting, citing N.C. Gen. Stat. §§ 163-82.6(d), 163-82.6B); Dawson (OR) Decl. ¶ 11 [Doc. No. 100-19] (21 days before election, citing Or. Rev. Stat. § 247.025); Marks (PA) Decl. ¶ 12 [Doc. No. 100-20] (15 days before election, citing Pa. Cons. Stat. § 3071); Rock (RI) Decl. ¶¶ 15–17 [Doc. No. 100-21] (30 days before Election Day; registration on Election Day to vote for president and vice–president, citing R.I. Gen. Laws § 17-9.1-1); Koski (VA) Decl. ¶ 17 [Doc. No. 100-23] (electronic and mail applications to register up to 11 days before Election day, citing VA. Code 24.2–416; 24.2–416.4); Hanzas (VT) Decl. ¶ 12 [Doc. No. 100-22] (registration up to and including election day, citing Vt. Stat. tit. 17, § 2144a); Michalowski (Cook County, IL) Decl. ¶ 9 [Doc. No. 100-24] (16 days before election and in person during early voting and on Election Day, citing 10 Ill. Comp. Stat. 5/5-50); Wise (King County, WA) Decl. ¶¶ 24, 26 [Doc. No. 100-25] (Election Day registration, citing Wash. Rev. Code § 29A.08.140); Hilby (Sun Prairie, WI) Decl. ¶ 8 [Doc. No. 100-26] (Election Day registration, see Wisc. Stat. § 6.15)).[10]

[10] Defendants do not rebut Plaintiffs' assertion that Plaintiff States also allow individuals to register to vote up to at least 30 days before a federal election, and in some States, individuals may register closer to or on Election Day, contending instead that Plaintiffs' assertion "is a legal conclusion" that does not require a response. Defs.' SUMF ¶ 10 [Doc. No. 155]. The court finds Defendants' statement to be nonresponsive and finds the assertion that Plaintiff States and their

In some of the Plaintiff States, 17-year-old citizens who will be 18 years old by the next federal general election are eligible to register to vote in federal primary elections. Pl. SUMF ¶ 14 [Doc. No. 105] (citing Holmes (WA) Decl. ¶ 48 [Doc. No. 100-4] (citing Wash. Rev. Code §§ 29A.04.061, 29A.08.170); Rosenberg (CT) Decl. ¶ 36 [Doc. No. 100-7] (citing Conn. Gen. Stat. § 9-12(b)); Albence (DE) Decl. ¶ 41 [Doc. No. 100-8] (citing 15 Del. Code § 1701(a)); Miller (DC) Decl. ¶ 22 [Doc. No. 100-9] (citing D.C. Code § 1-1001.07(a-2)); Berry (MD) Decl. ¶ 61 [Doc. No. 100-11] (citing Md. Elec. Law § 3-102(a)(2)(i)); Flynn (ME) Decl. ¶ 33 [Doc. No. 100-10] (citing Me. Rev. Stat. tit. 21-A,§ 111-A); Barber (NJ) Decl. ¶ 41 [Doc. No. 100-15] (citing N.J. Stat. §§ 19:31-5, 19:4-1.2); Vigil (NM) Decl. ¶ 37 [Doc. No. 100-16] (citing N.M. Stat. § 1-4-2(B)(3)); Brunton (NC) Decl. ¶ 8 [Doc. No. 100-18] (citing N.C. Gen. Stat. § 163-59); Rock (RI) Decl. ¶ 38 [Doc. No. 100-21] (citing R.I. Gen. Laws § 17-1-3(b)); Koski (VA) Decl. ¶ 34 [Doc. No. 100-23] (citing Va. Code § 24.2-403); Hanzas (VT) Decl. ¶ 33 [Doc. No. 100-22] (citing Vt. Stat. tit. 17, § 2121); Michalowski (Cook County, IL) Decl. ¶ 28 [Doc. No. 100-24] (citing 10 Ill. Comp. Stat. 5/3-6); Wise (King County, WA) Decl. ¶ 44 [Doc. No. 100-25] (citing Wash. Rev. Code § 29A.08.170)); see Minn. Stat. § 201.071 (allowing voter registration, but not voting, for 16-year-olds).[11]

localities require eligibility to register voters for federal elections undisputed for purposes of the pending motions.

[11] Defendants do not rebut Plaintiffs' assertion that in some Plaintiff States, 17-year-old citizens who will be 18 years old by the next federal general election are eligible to register to vote in federal primary elections, contending instead that Plaintiffs' statement does not require a response on the grounds that "[it] is a legal conclusion[.]" Defs.' SUMF ¶ 10 [Doc. No. 155]. The court finds Defendants' statement to be nonresponsive and finds the assertion that some Plaintiff States and their localities allow 17-year-old citizens who will be 18 years old by the next federal general election to register to vote in federal primary elections undisputed for purposes of the pending motions.

II. Defendants' Motion to Dismiss for Lack of Subject-Matter Jurisdiction

A. Ripeness

Defendants and Intervenor States contend that judicial review will be appropriate later, after implementation actions have been taken, because Defendant agencies are still considering and deliberating future action. Defs.' Mem. ISO Mot. to Dismiss and Opp'n ("Defs.' Mem.") 9 [Doc. No. 157]; Intervenors' Opp'n 7, 15 [Doc. No. 153]. The court has accepted this argument in part and dismissed without prejudice Plaintiffs States' amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds as to their claims regarding the EO and its implementation with regard to elections occurring after November 3, 2026. Mem. & Order [Doc. No. 190]. The court denied dismissal pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds with regard to the November 3, 2026 election, and all earlier elections. Id.

B. Standing

Defendants and Intervenor States contest this court's subject matter jurisdiction in this case, arguing that Plaintiff States lack standing to challenge the EO. See Defs.' Mem. 7–12 [Doc. No. 157]; Intervenors' Opp'n 2, 13 [Doc. No. 153]. "Article III confines the federal judicial power to the resolution of 'Cases' and 'Controversies.'" TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021). "Such a case or controversy exists only when the plaintiff demonstrates such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends." Gustavsen v. Alcon Labs., Inc., 903 F.3d 1, 6–7 (1st Cir. 2018) (citations omitted). "For there to be a case or controversy under Article III, the plaintiff must have a 'personal stake' in the case – in other words, standing." Ramirez, 594 U.S. at 423 (citation omitted). To establish standing, "a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or

imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." Id. "If the plaintiff does not claim to have suffered an injury . . . there is no case or controversy for the federal court to resolve." Id. (citation and internal quotation marks omitted).

Defendants characterize the EO as an "intra-Executive Branch directive" that "of its own force[] does not change anything at all about elections in any State." Defs.' Mem. 8 [Doc. No. 157]. They argue that the EO merely directs possible future agency action that is insufficiently imminent for an Article III injury. Id. at 9–11. Intervenor States similarly contend that the EO, on its face, does not require any action of Plaintiff States and that any injury claimed by Plaintiff States will be too speculative for this court's review until the EO is implemented. Intervenors' Opp'n 2–7 [Doc. No. 153].

Plaintiff States assert that the EO's directives require them to immediately prepare to comply with the EO and respond to federal implementation of the EO in anticipation of the November 2026 general election. Pls.' Opp'n to Defs.' Mot. to Dismiss and Reply ("Pls.' Reply") 2–9 [Doc. No. 163]. Many Plaintiff States "are actively administering or preparing to administer federal primaries" and all Plaintiff States are presently preparing to administer the November 2026 general election. Pls.' SUMF ¶ 4 [Doc. No. 105]; see, e.g., Tassinari Decl. ¶ 36 [Doc. No. 100-2] (Massachusetts has already "begun preparing training materials, guidance documents and communications to local election officials for the upcoming election cycle and have planned training sessions already scheduled."); Rosenberg Decl. ¶ 26 [Doc. No. 100-7] (Connecticut election officials are busy with endorsements and primary preparations in May and June, conducting primaries in September, processing absentee ballots in late September and October, and conducting the general election in November 2026). Defendants do not dispute these presently ongoing efforts. Defs.' SUMF ¶ 8 [Doc. No. 155].

Plaintiff States' statutory obligations—undisputed by Defendants, see Defs.' SUMF ¶ 43 [Doc. No. 155]—require immediate action from Plaintiffs. For example, Connecticut has already had to pull elections staff from critical projects required by statute, e.g., translating election materials, as required by the Voting Rights Act, to analyze and develop a compliance plan for the EO. See Rosenberg Decl. ¶ 12 [Doc. No. 100-7].

Additionally, because state law requires Plaintiff States to provide mail ballots to voters entitled to vote by mail,[12] Plaintiff States must plan to comply with the EO's directives on mail ballots. Nearly half of Plaintiff States have already purchased mail ballot envelopes for the 2026 federal election cycle that will not be in compliance with the requirements the EO has directed USPS to adopt by rulemaking. Pls.' SUMF ¶ 62 [Doc. No. 105]; see also USPS Notice of Proposed Rulemaking, Ballot Mail for Federal Elections, 91 Fed. Reg. 32915 (June 2, 2026) (requiring new envelope and design standards, including Intelligent Mail Barcodes, for election mail). For example, Massachusetts has already spent approximately $3 million on its mail ballot envelopes, see Tassarini Decl. ¶ 81 [Doc. No. 100-2], and both Maine and Rhode Island have already spent over $50,000 on ballot envelopes and return envelopes that lack Intelligent Mail barcodes. Flynn (ME) Decl. ¶¶ 67–68 [Doc. No. 100-10]; Rock (RI) Decl. ¶¶ 72–73 [Doc. No. 100-21]. And Delaware has already purchased envelopes, received approval from USPS on the design, and "does not have funds budgeted" for purchasing new envelopes that would be compliant with the proposed rule. Albence Decl. ¶¶ 75–76 [Doc. No. 100-8].

Defendants and Intervenors dispute that these monetary expenditures qualify as Article III injury, because the EO does not force Plaintiff States to redesign their ballots, but rather

[12] See, e.g., Ariz. Rev. Stat. § 16-541; Cal. Elec. Code § 3000.5; Con. Gen. Stat. Ch. 145, § 9; Me. Stat. tit. 21-A, ch. 9, § 753-B; Mass. Gen. Laws ch. 54, §§ 25B(a)(2), 89; Nev. Rev. Stat. § 293.269911; Or. Rev. Stat. § 254.470.

merely directs USPS to issue an NPRM that requires Plaintiff States to redesign their ballots. See Defs.' SUMF ¶ 62 [Doc. No. 155]. Accordingly, they argue that any fiscal injury incurred by Plaintiff States is insufficiently traceable to the EO. See Intervenors' Opp'n 13–14 [Doc. No. 153]. Further, Defendants dispute that the EO threatens Plaintiff States' election officials with criminal enforcement, sufficient to comprise an imminent Article III injury-in-fact. See Defs.' Mem. 11–12 [Doc. No. 157] (citing Susan B. Anthony List v. Driehaus, 573 U.S. 149, 157–58 (2014)).

Defendants and Intervenors are incorrect. Plaintiff States are actively working to conduct primary, special, and general elections. The EO has ordered administrative agencies to take action in the coming months that has already required Plaintiff States to respond given the practical nature of an election cycle. A list of several federal criminal offenses relating to voter fraud appears multiple times in the EO: first as supporting the purpose of the EO, i.e., to reduce voter fraud, see Exec. Order 14399 § 1, and then again in describing an enforcement plan as to both Section 2 specifically, see id. § 2(b), and the EO as a whole, see id. § 5. The EO's prescriptive and proscriptive language, in conjunction with multiple references to criminal penalties, implicitly threatens enforcement of those enumerated laws against election officials who furnish ballots to voters excluded from the Confirmed Citizen Lists or the USPS Lists, and that threat is sufficiently imminent for Article III injury. See N.H. Lottery Comm'n v. Rosen, 986 F.3d 38, 49–51 (1st Cir. 2021) (Courts "do not require a plaintiff to expose [themselves] to liability before bringing suit to challenge the basis for the threat.") (quotation omitted).

Moreover, not only are Plaintiff States experiencing injury now with respect to planning, but it is undisputed that, should the EO's directives go into effect, Plaintiff States will incur compliance costs. Defs.' SUMF ¶ 63 [Doc. No. 155]. An order declaring the EO as unlawful and enjoining its implementation for the November 2026 or earlier elections would redress Plaintiff

States' immediate injuries because they would no longer have to plan to comply or actually comply with the EO prior to those elections, and Plaintiff States' election officials would no longer be threatened with criminal prosecution. Accordingly, Plaintiff States have standing to challenge the EO as unconstitutional. See California v. Trump, 786 F. Supp. 3d 359, 377 (D. Mass. 2025) (states have standing to challenge Executive Order No. 14248, Preserving and Protecting the Integrity of American Elections); Washington v. Trump, 814 F. Supp. 1173, 1198–98 (W.D. Wash. 2026) (same).

Therefore, the court DENIES Defendants' motion, joined by the Intervenor States, to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of standing with regard to the November 3, 2026 (and all earlier) elections.

III. Defendants' Motion to Dismiss for Failure to State a Claim

A. Standard of Review

In assessing a complaint under Federal Rule of Civil Procedure 12(b)(6), the court assumes "the truth of all well-pleaded facts" and draws "all reasonable inferences in the plaintiff's favor." Nisselson v. Lernout, 469 F.3d 143, 150 (1st Cir. 2006). To survive dismissal, a complaint must contain sufficient factual material to "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations . . . [f]actual allegations must be enough to raise a right to relief above the speculative level[.]" Id. at 555 (citations omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

B. Cause of Action

Defendants argue that Plaintiff States lack a statutory cause of action to challenge the EO and that ultra vires review is unavailable because Plaintiffs fail to plead a specific statutory violation. Defs.' Mem. 23–25 [Doc. No. 157]. Defendants argue that Plaintiffs must wait until the EO is implemented and then sue the implementing agencies under the Administrative Procedure Act ("APA"). Id.; see also Intervenors' Opp'n 16 [Doc. No. 153].

A claim in federal court requires a valid cause of action. See Davis v. Passman, 442 U.S. 228, 236–41 (1979). While a party challenging executive action typically brings suit under the APA, the APA is unavailable to challenge an executive order because "the President is not an agency within the meaning of" the APA, and the issuance of an executive order is not a final agency action. Franklin v. Massachusetts, 505 U.S. 788, 796 (1992).

In the absence of a statute authorizing suit, parties "are entitled to bring a non-statutory cause of action questioning the legality of [an] Executive Order.'" Chamber of Commerce v. Reich, 74 F.3d 1322, 1327 (D.C. Cir. 1996)); see New York v. McMahon, 784 F. Supp. 3d 311, 352 (D. Mass. 2025) (noting that "[a] claim alleging that the President acted in excess of his statutory authority is judicially reviewable even absent an applicable statutory review provision") (quoting Am. Forest Res. Council v. United States, 77 F.4th 787, 796 (D.C. Cir. 2023)); New Hampshire Indonesian Cmty. Support, 765 F. Supp. 3d 102, 112 (D.N.H. 2025) (vacated on other grounds) ("[T]he plaintiffs have a cause of action to seek injunctive relief to redress certain governmental actions that contravene the Constitution or a federal statute.") (citing Youngstown, 343 U.S. at 582). "To act ultra vires a government official is either acting in a way that is impermissible under the Constitution or acting outside of the confines of his statutory authority." New York, 784 F. Supp. 3d 311, 352 (D. Mass. 2025) (quotation omitted). "The nonstatutory review action finds its jurisdictional toehold in the general grant of federal-question jurisdiction

of 28 U.S.C. § 1331." Rhode Island Dep't of Env't Mgmt. v. United States, 304 F.3d 31, 42 (1st Cir. 2002) (citation omitted).

This cause of action is subject to certain limitations, however. Judicial review is available only if the Executive Branch has "taken action entirely 'in excess of its delegated powers and contrary to a specific prohibition' in a statute." Nuclear Regul. Comm'n v. Texas, 605 U.S. 665, 681 (2025) (quoting Ry. Clerks v. Ass'n for Benefit of Non-contract Emps., 380 U.S. 650, 660 (1965)). Further, judicial review is unavailable if an existing "statutory review scheme [1] provides aggrieved persons 'with a meaningful and adequate opportunity for judicial review[;]'" or "[2] forecloses all other forms of judicial review." Id. (quoting Bd. of Governors, FRS v. MCorp Fin., Inc., 502 U.S. 32, 43–44 (1991)).

Here, Plaintiffs have a cause of action, sounding in equity, to seek injunctive and declaratory relief to redress governmental action that allegedly contravenes the Constitution. See Youngstown, 343 U.S. at 585. Defendants admit that no statutory review scheme would provide Plaintiffs with a "meaningful and adequate opportunity for judicial review" at this time. Nuclear Regul. Comm'n, 605 U.S. at 681. Having found Plaintiffs sufficiently injured due to the short timeframe required by the EO's directives prior to the November 3, 2026, and earlier elections, the court will review Plaintiffs' facial challenge to the constitutionality of the EO, sounding in equity, and Defendants' Motion to Dismiss [Doc. No. 154] based on a failure to plead a cause of action is DENIED.

C. Dismissal of President Trump

Defendants argue next that President Trump should be dismissed as a defendant because the court lacks jurisdiction to issue injunctive or declaratory relief as to the President in the performance of his official duties. See Defs.' Mem. 30–31 [Doc. No. 157], id. at 46–47 (citing Mississippi v. Johnson, 71 U.S. 475 (1866) and Franklin, 505 U.S. at 827 (Scalia, J.,

concurring)). Plaintiff States seek a declaration that the EO is unlawful but do not seek an injunction against the President. Am. Compl. at ECF 44 [Doc. No. 65].

Contrary to Defendants' assertions, Presidential action is not inherently unreviewable. Franklin, 505 U.S. at 828 (Scalia, J., concurring) (citing Youngstown, 343 U.S. 579); Nixon v. Fitzgerald, 457 U.S. 731, 753–54 (1982) ("separation-of-powers doctrine does not bar every exercise of jurisdiction over the President of the United States"). Rather, "the President is subject to judicial process in appropriate circumstances[,]" Clinton v. Jones, 520 U.S. 681, 703 (1997), and the Supreme Court has expressly rejected the notion of "an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances," id. at 704 (quoting United States v. Nixon, 418 U.S. 683, 706 (1974)).

Defendants primarily rely on Justice Scalia's concurrence in Franklin, in which he stated, "I think we cannot issue a declaratory judgment against the President. It is incompatible with his constitutional position that he be compelled personally to defend his executive actions before a court." Franklin, 505 U.S. at 827 (Scalia, J., concurring). However, six years after Franklin, the Supreme Court expressly stated in Clinton v. City of New York, 524 U.S. 417, 433 n.22 (1998), that a declaratory judgment against the President could redress the plaintiff's injuries. Ultimately, the case law does not support a firm prohibition on a declaratory judgment against the President. See Kingdom v. Trump, No. 25-cv-691-RCL, 2025 WL 1568238, at *16 (D.D.C. June 3, 2025) (declining to dismiss declaratory judgment claim against President); Missouri v. Biden, 662 F. Supp. 3d 626, 682 (W.D. La. 2023) (same); Stone v. Trump, 400 F. Supp. 3d 317, 359 (D. Md. 2019) (same). Therefore, where Plaintiffs seek only declaratory and not injunctive relief as to the President, the court DENIES Defendants' Motion [Doc. No. 154] to dismiss the President from this action.

D. Dismissal of Commerce Defendants

Defendants argue that the Department of Commerce and Commerce Secretary Lutnick should be dismissed as Defendants because the EO includes no express role for the Commerce Defendants, only minimal "coordinat[ion]" regarding implementation. See Defs.' Mem. 30–31 [Doc. No. 157]. Plaintiffs assert only Count I of the Amended Complaint [Doc. No. 65] against the Commerce Defendants, id. ¶¶ 150–66. Plaintiff States argue that both the President and Commerce Defendants "play a critical role in the EO's issuance and implementation[.]" See Pls.' Reply 30 [Doc. No. 163].

The EO features the Commerce Secretary minimally in its directives. The Commerce Secretary is mentioned only in Section 4 of the EO, which requires that "[t]he Secretary of Homeland Security, the Commissioner of SSA, and the Postmaster General shall coordinate with the Secretary of Commerce in effectuating all relevant aspects of the implementation of this order." Exec. Order 14399 § 4(a). But while the specifics of the Commerce Secretary's role are not yet clear, where the court is considering a facial attack against the EO, and the EO explicitly charges the Commerce Secretary with implementation of the EO, the court DENIES Defendants' Motion [Doc. No. 154] to dismiss the Department of Commerce and the Secretary of Commerce.

IV. Plaintiffs' Motion for Summary Judgment

Plaintiffs ask the court to declare Sections 2, 3, and 5 of the EO facially unconstitutional and enjoin all agency heads from implementing the EO's directives. See Pls.' Proposed Order [Doc. No. 97-1].

A. Standard of Review

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material when, under

the governing substantive law, it could affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Baker v. St. Paul Travelers Ins. Co., 670 F.3d 119, 125 (1st Cir. 2012). A dispute is genuine if a reasonable jury could return a verdict for the non-moving party. Anderson, 477 U.S. at 248.

The moving party bears the initial burden of establishing the absence of a genuine dispute of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once established, the burden shifts to the non-moving party to set forth facts demonstrating that a genuine dispute of material fact remains. Id. at 322. The non-moving party cannot oppose a properly supported summary judgment motion by "rest[ing] upon mere allegations or denials of [the] pleadings." Anderson, 477 U.S. at 256. Rather, the non-moving party must "go beyond the pleadings and by [his or] her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Celotex Corp., 477 U.S. at 324 (quotations omitted). Disputes over facts "that are irrelevant or unnecessary" will not preclude summary judgment. Anderson, 477 U.S. at 248.

Generally, such a motion is brought after the parties have completed discovery. See Celotex Corp., 477 U.S. at 322. Nonetheless, unless a local rule or court order provides otherwise, the movant may file a summary judgment motion before discovery is complete or before it has even commenced. See Fed. R. Civ. P. 56(b) ("[A] party may file a motion for summary judgment at any time until 30 days after the close of all discovery."). However, "the party opposing the motion for summary judgment bears the burden of responding only after the moving party has met its burden of coming forward with proof of the absence of any genuine issues of material fact." Celotex Corp., 477 U.S. at 322 (citation omitted).

When reviewing a motion for summary judgment, the court must take all properly supported evidence in the light most favorable to the non-movant and draw all reasonable

inferences in the non-movant's favor. Griggs-Ryan v. Smith, 904 F.2d 112, 115 (1st Cir. 1990). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . ruling on a motion for summary judgment[.]" Anderson, 477 U.S. at 255.

Here, as set forth above, see supra Section I, there is no genuine dispute of material facts for purposes of the pending motion.

B. Saving Language

As a threshold issue, much of Defendants' opposition is based on the EO's qualifying language, directing executive agencies to act "[t]o the extent feasible and consistent with applicable law[.]" Exec. Order 14399 § 2(a). Defendants argue that the EO cannot be facially unlawful, because the EO explicitly requires that its directives comply with the law. Defs.' Mem. 44 [Doc. No. 157]; see also Intervenors' Opp'n 7 [Doc. No. 153].

"The mere possibility that some agency might make a legally suspect decision" and disregard a saving clause's command to follow the law when implementing an executive order "does not justify an injunction against enforcement" of that order. Bldg. and Constr. Trades Dep't, AFL-CIO v. Allbaugh, 295 F.3d 28, 33 (D.C. Cir. 2002). Accordingly, if an executive order containing a saving clause directs a subordinate to achieve a goal that could be achieved in multiple—both legal and illegal—ways, a reviewing court will interpret the order in light of the saving clause to direct only permissible action. Common Cause v. Trump, 506 F. Supp. 3d 39, 49–50, 53 n.8 (D.D.C. 2020); see also Trump v. New York, 592 U.S. 125, 131 (2020).

"If 'consistent with law' precludes a court from examining whether the Executive Order is consistent with law," however, "judicial review is a meaningless exercise, precluding resolution of the critical legal issues." City & Cnty. of San Francisco v. Trump, 897 F.3d 1225,

1240 (9th Cir. 2018). Accordingly, where, as here, the parties' dispute whether certain action required by an order is permissible, review is not precluded by a saving clause.

Moreover, executive orders, "cannot be held to destroy themselves through saving clauses." Common Cause, 506 F. Supp. 3d at 53 n.8 (quoting FTC v. Credit Bureau Ctr., LLC, 937 F.3d 765, 755 (7th Cir. 2019)). If an executive order unambiguously "command[s] . . . action that a saving[ ] clause purports to negate," a reviewing court must interpret the order's operative provision as written, even if that requires disregard of the saving language. Id. Where a plaintiff argues that an executive order is invalid in all possible applications, the saving clause itself cannot preclude review. See Allbaugh, 295 F.3d at 33 (citing Reno v. Flores, 507 U.S. 292, 301 (1993)). If implementation consistent with applicable law is impossible, an executive order's saving clause or otherwise qualifying language "is meaningless." League of United Latin Am. Citizens v. Exec. Off. of President, 780 F. Supp. 3d 135, 176 (D.D.C. 2025). Therefore, the court declines to interpret the EO as nullifying its meaning through saving language and considers whether the President has the authority to issue the EO regardless of the qualifying language. Id.

C. Section 2 of the EO

Section 2 directs the USCIS director to compile a Confirmed Citizen List for each State, including individuals who could be eligible to vote in an upcoming election based on citizenship, age, and State residency. Exec. Order 14399 § 2(a). The EO requires USCIS to compile these Lists, "[t]o the extent feasible and consistent with applicable law," from various federal records/databases (including DHS naturalization and citizenship records, SSA records, and the SAVE database) and to send the Lists to State election officials 60 days before a federal election, after which the State will have an opportunity to review and send in suggested

corrections/modifications. Id. Section 2 then identifies several federal criminal offenses[13] and, citing those offenses, directs DOJ to prioritize the investigation and prosecution of federal election officials or administrators "who issue Federal ballots to individuals not eligible to vote in a Federal election[.]" Id. § 2(b).

1. Section 2(a): Establishment of Confirmed Citizen Lists

Plaintiff States argue the President lacks authority to establish Confirmed Citizen Lists. Pls.' Mem. 8–12 [Doc. No. 106]. Consistent with Constitutional principles of State control over elections, all States already maintain registered voter databases, subject to some general structural requirements imposed by Congress. HAVA requires each State to implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list," 52 U.S.C. § 21083(a)(1), and to maintain that list regularly by adding newly eligible voters and removing ineligible voters. Id. §§ 21083(a)(2)(A)(iii), (a)(2)(B). HAVA provides only a minimum set of requirements for categories of information included on voter registration lists. 52 U.S.C. § 21083(a)(1)(A)(ii)–(iii) (requiring that voters' name and registration information be included in the list and that each voter be assigned a unique identifier). Further, state election officials retain discretion under HAVA to determine the appropriate method for creating, storing, and maintaining their State's voter registration list as well as to establish procedures for registering to vote. Id. § 21085 ("The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State."); id. § 20503 ("[E]ach State shall establish procedures to register to vote in elections for Federal office[.]").

[13] Namely, 18 U.S.C. § 2(a) (Aiding and Abetting Liability); 18 U.S.C. § 241 (Conspiracy Against Rights); 18 U.S.C. § 371 (Conspiracy or Offense to Defraud the United States); 18 U.S.C. § 611(a) (Voting by Aliens); 18 U.S.C. § 1001 (Criminalizing False Statements); 18 U.S.C. 1015 (Criminalizing False Statements re: Citizenship); 52 U.S.C. § 10307 (False Information in Voting); and 52 U.S.C. § 20511 (Criminal Penalties for Election Officials who, inter alia, procure false ballots).

Defendants do not defend the establishment of the Lists directly, arguing that "it is not even clear whether or when these [Confirmed Citizen L]ists will be created—much less in what form, based on what data, or how they might be used." Defs.' Mem. 18 [Doc. No. 157]; but see Defs.' Notice [Doc. No. 188] (notifying the court that, on June 8, 2026, DHS Secretary approved USCIS' plan to build infrastructure necessary to establish the Confirmed Citizen Lists). Intervenor States do defend the Lists, characterizing Section 2 as "organiz[ing] information already within the Executive Branch's possession" and asserting that the compilation of the Confirmed Citizen Lists supports "the President's duty to 'take Care that the Laws be faithfully executed[.]'" Intervenors' Opp'n at 8–9 [Doc. No. 153] (citing U.S. CONST. art. II, § 3).

It is clear that the federal agencies charged with compiling Confirmed Citizen Lists lack the ability to create complete and accurate lists of the U.S. citizens residing in every State. The EO provides that the Confirmed Citizen Lists "shall be derived from Federal citizenship and naturalization records, SSA records, SAVE [Systematic Alien Verification for Entitlements] data,[14] and other relevant Federal databases." Exec. Order 14399, § 2(a); see also id. § 4(c) (the SSA Commissioner must "provide all . . . citizenship and identity data [necessary]" to compile the Confirmed Citizen Lists for the DHS secretary, "consistent with applicable law[.]").[15] But

[14] SAVE is a system administered by DHS that is "designed to help federal, state, tribal, and local government agencies confirm citizenship and immigration status prior to granting benefits and licenses, as well as for other lawful purposes." DHS, Privacy Impact Assessment for the Systematic Alien Verification for Entitlements Program, DHS Ref. No. DHS/USCIS/PIA-006(c), at 2 (2020), https://perma.cc/HU2M-NTL8 (2020 PIA). SAVE users "formalize the purpose and use in which they use SAVE through a Memorandum of Agreement (MOA) or Computer Matching Agreement" establishing "the terms and conditions for the user agency's participation in SAVE." Id. at 2–3. One purpose for which States can enter into an agreement to use SAVE is to verify the citizenship of registered voters. Privacy Act of 1974, 5 U.S.C. § 552a; Notice of Modified System of Records, 90 Fed. Reg. 48948, 48952 (Oct. 31, 2025) (2025 SORN). DHS does not dispute that the SAVE system has erroneously flagged citizens as noncitizens. See Pls.' SUMF ¶¶ 15–16 [Doc. No. 105]; Defs.' SUMF ¶¶ 15–16 [Doc. No. 155].

[15] Defendants deny that USCIS has made "any final decisions about what, if any, information will be included in any [Confirmed Citizenship Lists] that may ultimately be created" and, in

where a list of citizens will only be created "[t]o the extent feasible and consistent with applicable law," individual information may only be shared within the limitations of the Privacy Act.[16] More than that, while the EO provides that the Confirmed Citizen Lists "shall be derived from" certain federal records, id. § 2(a), those records do not necessarily track name changes (such as when a woman changes her name at marriage) or residence changes when citizens move from State to State. Accordingly, these Confirmed Citizen Lists will necessarily be incomplete.

Further, while Section 2 labels these Lists as "Citizenship Lists," the EO does not order the creation of a national database comprised exclusively of U.S. citizenship information. Instead, Section 2 directs the compilation of "Lists" for each State limited to "individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State[.]" Id. § 2(a) (emphasis added). However, the EO includes no relevant statutory or constitutional authority for the compilation of "Lists" that include individuals who meet the States' additional and particular criteria for residence. Similarly, the EO points to no authority to limit voting eligibility in primary elections to citizens above the age of 18. Neither Defendants nor Intervenors maintain that any such authority exists. The Constitution provides that only the States determine voter-eligibility requirements, subject, of course, to Constitutional restraints. U.S. CONST. art. I, § 2, cl. 1; art. II, § 1, cl. 2; amend. XVII; amend. XXVI. Both Congress and the President lack any role regarding voter eligibility.

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response to Plaintiffs' showing that the SAVE system has erroneously flagged citizens as noncitizens, contend that EO § 2(a) "lists 'SAVE data' as a potential source of data[.]" Defs.' SUMF ¶ 15 [Doc. No. 155] (citing Mayhew Decl. ¶¶ 5–10 [Doc. No. 156-1]). As of June 8, 2026, DHS has not confirmed whether or in what capacity SAVE data will be used. See Defs.' Notice 2 [Doc. No. 188].

[16] The Privacy Act strictly limits government agencies from disclosing records about an individual. See 5 U.S.C. § 552a(a)(4) (defining "record"); id. § 552a(b) (limiting disclosure).

Notably, nowhere in HAVA does Congress prescribe who should be included on State voter lists. Further, neither in HAVA nor any other federal statute does Congress authorize the federal government to create their own voting database. Instead, Congress, consistent with the Constitution, has left that authority to the States alone. Accordingly, the creation of the Confirmed Citizen Lists is ultra vires because the President lacks any authority to compile voter lists for each State. See Youngstown, 343 U.S. at 582.

2. Section 2(b): List Enforcement

After describing the requirements surrounding the compilation and transmission of the Confirmed Citizens Lists, Section 2 then requires that DOJ prioritize the investigation and prosecution of election officials and administrators "who issue Federal ballots to individuals not eligible to vote in a Federal election," including specific criminal offenses, largely relating to voter-fraud. Exec. Order 14399 § 2(b). Plaintiffs argue that Section 2 threatens criminal investigation and prosecution "on a legally baseless theory" to "improperly conscript Plaintiff States and their elections officials to carry out a presidential policy." Pls.' Reply at 16 [Doc. No. 163]. Defendants characterize Section 2(b) as a matter of prosecutorial discretion, exempt from judicial review. Defs.' Reply at 23 [Doc. No. 167]. Intervenor States also dispute that the EO does anything more than direct DOJ to enforce existing federal election laws. Intervenors' Opp'n 11 [Doc. No. 153].

Certainly, the President may direct DOJ to prioritize the investigation and prosecution of certain criminal offenses. See Trump v. United States, 603 U.S. 593, 620 (2024) ("[T]he Executive Branch has 'exclusive authority and absolute discretion' to decide which crimes to investigate and prosecute, including with respect to allegations of election crime.") (citing United States v. Nixon, 418 U.S. 683, 693 (1974)). And, the Constitution empowers the President to "take care that [18 U.S.C. §§ 2(a), 241, 371, 611(a), 1001, 1015; 52 U.S.C. §§ 10307, and 20511

are] faithfully executed" and prioritize the enforcement of violators accordingly. U.S. CONST. art. II, § 3. However, criminal offenses are defined by Congress and neither the Take Care nor Guarantee Clause empowers the President to create a new criminal offense. See U.S. CONST. art. I, § 8 ("Congress shall have the power . . . [t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.").

Congress may explicitly delegate the power to define a criminal offense to the President. See United States v. Grimaud, 220 U.S. 506, 517 (1911) ("[W]hen Congress had legislated and indicated its will, it could give to those who were to act under such general provisions 'power to fill up the details' by the establishment of administrative rules and regulations, the violation of which could be punished by fine or imprisonment fixed by Congress, or by penalties fixed by Congress, or measured by the injury done."). But neither the EO, nor the parties' briefing references a statute that delegates such authority from Congress to the President in this voting-related context. Cf. Touby v. United States, 500 U.S. 160 (1991) (upholding a delegation of power to the Attorney General to bypass (for a limited time) several of the requirements for permanent drug scheduling and expedite the designation of a substance as "controlled").

Defendants argue that no legal significance, criminal or otherwise, attaches to a State's decision to utilize or disregard DHS' Confirmed Citizens List. Defs.' Mem. at 36 [Doc. No. 157]. Defendants describe the Lists as "optional resource[s] that states can use or ignore[.]" Id. (citation omitted). Intervenor States also assert that the "use of the Lists by the States is optional[,]" Intervenors' Opp'n 5 [Doc. No. 153] (emphasis in original), but then point to the law enforcement implications of the EO, see id. at 9 (citing U.S. CONST. art. II, § 3 and arguing that the compilation of the Lists supports "the President's duty to 'take Care that the Laws be faithfully executed[.]'"). Where the President seeks to have the Attorney General and DOJ rely on the Confirmed Citizens Lists to support the President's stated mission to reduce voter fraud,

see Exec. Order 14399 § 1 ("Purpose and Policy"), the Lists are being used as an enforcement mechanism that has some type of legal consequence, or at minimum, as a threatened enforcement mechanism that will chill local election officials from complying with legal obligations to ensure that all eligible citizens may vote. Accordingly, to the extent the EO attempts to intimidate local election officials to use the necessarily incomplete Confirmed Citizenship Lists as a resource, lest they face criminal prosecution, such efforts fall outside the Presidents' Article II and otherwise-delegated authority.

D. Section 3 of the EO

Plaintiff States argue that Section 3 of the EO, which directs USPS to engage in rulemaking regarding regulating absentee and mail-in ballots, unconstitutionally interferes with "States' and Congress's authority to regulate elections and Congress's power to regulate USPS." Pls.' Mem. 14 [Doc. No. 106]. Defendants argue that the merits are impossible to argue because the ultimate agency action that USPS will take is still unknown. Defs.' Mem. 31–37 (Doc. No. 157]. Intervenor States assert that the President, vested with all the power of the Executive Branch, inherently has the authority to direct USPS. Intervenors' Opp'n 17–20 [Doc. No. 153].

Section 3 of the EO directs USPS to compile its own Lists of individuals eligible to vote by mail and prohibits the transmission of a mail-in ballot completed by anyone not on USPS' Lists. See Exec. Order 14399 § 3(b); see also USPS Notice of Proposed Rulemaking, Ballot Mail for Federal Elections, 91 Fed. Reg. 32915, 32918 (June 2, 2026) (Mail ballots "that do not comply with [standards required by the EO] will not be accepted and will be returned to the authorized ballot mailer."). But the Constitution reserves the power to determine voter eligibility to the States alone. U.S. CONST. art. I, § 2, cl. 1; amend. XII; amend. XVII. Neither the Executive Branch nor Congress may interfere with this power.

Additionally, Congress has empowered 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). However, no law enacted by Congress delegates authority to control mail-in voting to USPS. The voting-related guidance currently issued by USPS is not binding on the States, merely recommended. See USPS Pub. 631, Official Election Mail – Graphic Guidelines and Logos (https://about.usps.com/publications/pub631.pdf) (Feb. 2026); USPS Kit 600, Official Election Mail Guide (https://about.usps.com/kits/kit600.pdf) (Feb. 2026).[17] Accordingly, USPS lacks statutory authorization to promulgate any binding regulations on mail-in voting.

Finally, the EO's directive that USPS require all States to use a specific mail-in ballot is inconsistent with USPS rulemaking procedure. If seeking to make a "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis," USPS must submit a proposal to the Postal Regulatory Commission ("PRC"), for an advisory opinion. 39 U.S.C. § 3661(b). The PRC then has 90 days to issue its advisory opinion. 39 C.F.R. § 3020.102(a). The EO requires USPS to issue an NPRM by May 30, 2026, and then a final rule by July 29, 2026. This timeframe provides no allowance for Congress' mandated procedure regarding USPS rulemaking. 39 U.S.C. § 3661(b). Therefore, USPS lacks authority to

[17] USPS created and published these election mail guidance documents pursuant to a 2021 settlement agreement between USPS and the NAACP, arising out of litigation regarding USPS' announcement and implementation of policy changes to reduce mail pick-up in advance of the 2020 general election. See Stip. of Settlement, Ex. A at 2, NAACP v. USPS, No. 1:20-cv-02295-EGS (D.D.C. Dec. 17, 2021), Dkt. No. 170. The 2021 settlement agreement required USPS, inter alia, to prioritize the timely delivery of election mail for every national election through 2028. Id. The NAACP has filed a motion to enforce that settlement agreement, arguing that the EO directs USPS to violate the settlement agreement. See Pls.' Mot. to Enforce Compliance, NAACP v. USPS, No. 1:20-cv-02295-EGS (D.D.C. June 3, 2021), Dkt. No. 171.

promulgate regulations on voting and the EO's directive that USPS do so constitutes ultra vires executive action.

E. Section 5 of the EO

Section 5 requires DOJ and all other executive agencies "with relevant authority" to "take all lawful steps to deter and address noncompliance with Federal law." Exec. Order 14399 § 5. Section 5 also states that "[e]vidence of violations of existing Federal laws by State or local election officials . . . may be referred to [DOJ] for consideration of investigation or charges under," 18 U.S.C. §§ 2(a), 241, 371, 611(a), 1001, 1015, as well as under 52 U.S.C. §§ 10307 and 20511 (the same criminal provisions listed in Sections 1, 2(b), and 3(a) of the EO). Id. (emphasis added). Finally, Section 5 provides that "States and localities should preserve, for a 5-year-period, all records and materials–excluding ballots cast–evidencing participation in any Federal election (e.g., ballot envelopes, regardless of carriers)." Id. (emphasis added).

Plaintiff States argue that Section 5 is unconstitutional because it regulates States' election record retention processes without authority to do so. Pls.' Mem. at 19–20 [Doc. No. 106]. Defendants argue that Section 5 merely sets out the President's view on record retention policies and that the EO does not establish any "legal consequences" for State and local officials who decline to retain all election materials for five years. Defs.' Mem. at 11–12 [Doc. No. 157]. In response, Plaintiff States request the court to "expressly find that [Section 5] does not impose any requirements on Plaintiff States" if the court agrees with Defendants' characterization of Section 5 as strictly precatory. Pls.' Reply at 27 [Doc. No. 163]. Intervenor States make no argument regarding Section 5. Intervenors' Opp'n [Doc. No. 153].

The Civil Rights Act of 1960 establishes record retention rules on election materials. Title III provides that "[e]very officer of election shall retain and preserve, for a period of twenty-two months from the date of any [federal] election . . . all records and papers which come into his

possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election," and makes the failure to do so punishable by up to one year of imprisonment. 52 U.S.C. § 20701. Title III also provides that "[a]ny record or paper" subject to that preservation requirement "shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying[.]" Id. § 20703.[18]

Congress, pursuant to its Elections Clause power, has set a maximum record retention period of twenty-two months for election materials. U.S. CONST. art. I, § 4, cl. 1.; 52 U.S.C. § 20701. Congress has also expressly provided a role for the Executive Branch, permitting DOJ to investigate and execute the law by obtaining access to those papers pursuant to a specific process. 52 U.S.C. § 20703. Nowhere in Title III of the Civil Rights Act, or any other federal law, does Congress delegate to the President the power to set additional record retention requirements. Accordingly, the EO's 5-year record retention statement must be precatory, because the President lacks any authority to impose such a requirement. Cf. Libertarian Party of Ind. v. Packard, 741 F.2d 981, 988 (7th Cir. 1984) (Where the government lacks the authority to "compel [action], it should not be able to coerce.").

In interpreting the gloss of "should" in other contexts, courts have found that "use of the terms 'should' . . . indicate[s] that the statute is merely precatory." Monahan v. Dorchester Counseling Ctr., Inc., 961 F.2d 987, 994–95 (1st Cir. 1992) (analyzing 42 U.S.C. § 10841, titled the "Restatement of Bill of Rights for Mental Health Patients"). The verb "should" is precatory rather than mandatory because it "neither requires nor prohibits any action on the part of the

[18] It is upon this statutory basis that DOJ has recently claimed authority to demand access to States' electronic voter registration lists, a claim routinely dismissed by courts across the country. See supra Note 6.

states or any other party." Id. at 995 (quoting Brooks v. Johnson & Johnson, Inc., 685 F. Supp. 107, 108 (E.D. Pa. 1988)).

Therefore, in light of the President's lack of constitutional or statutory authority to impose an election materials record retention requirement, already expressly limited role in the Civil Rights Act record retention scheme, and a plain-meaning interpretation of the EO's language, Section 5 does not and cannot require the States to retain records of all election materials for five years.

V. Conclusion

The court has previously dismissed without prejudice Plaintiffs States' amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds with regard to elections occurring after November 3, 2026. Mem. & Order [Doc. No. 190]. For the foregoing reasons, as to the November 3, 2026 election, and all earlier elections, Defendants' Motion to Dismiss [Doc. No. 154] pursuant to Federal Rules of Procedure 12(b)(1) and 12(b)(6) is DENIED and Plaintiffs' Motion for Summary Judgment [Doc. No. 97] pursuant to Rule 56 is GRANTED.

Accordingly, it is hereby ORDERED and DECLARED that Sections 2 and 3 of the EO are legally void as they are ultra vires and unconstitutionally violate the separation of powers, and that Section 5 of the EO is merely precatory.

In addition, other than the President, Defendants and their officers, agents, servants, and employees are hereby ENJOINED from implementing or giving effect to Sections 2 and 3 of the EO with respect to the November 3, 2026 or any earlier federal election in the Plaintiff States as follows:

a. Defendants United States Department of Justice, Acting Attorney General Todd Blanche, United States Department of Homeland Security, Secretary Markwayne Mullin, United

States Citizenship and Immigration Services, Director Joseph B. Edlow, United States Social Security Administration, Commissioner Frank Bisignano, United States Department of Commerce, and Secretary Howard Lutnick, including their officers, agents, servants, and employees, are enjoined from implementing, giving effect to, or enforcing Section 2 of the EO as to Plaintiff States with respect to the November 3, 2026 or any earlier federal election, including taking any steps to create a new federal program to superintend and control Plaintiff States' maintenance of their voter rolls; or initiating any investigation or prosecution of Plaintiff States, their officials, local officials, or agents of such state or local officials involved in the administration of federal elections within Plaintiff States, stemming from the unconstitutional provisions in Section 2 of the EO. This injunction does not bar the federal government from providing assistance with verifying the citizenship or eligibility of any voter if the assistance is provided at the request of any State and within the framework provided by Congress.

b. Defendants United States Department of Justice, Acting Attorney General Todd Blanche, United States Postal Service, Postmaster General David Steiner, Deputy Postmaster General Doug Tolino, Chair Amber McReynolds, Vice Chair Derek T. Kan, and Members Ronald Stroman and Daniel Tangherlini, including their officers, agents, servants, and employees, are enjoined from implementing, giving effect to, or enforcing Section 3(b)(i)–(v) or (d) of the EO as to elections mail for elections administered by Plaintiff States and ballot envelopes used by Plaintiff States with respect to the November 3, 2026 or any earlier federal election, including refusing to transmit mail-in or absentee ballots from voters registered in Plaintiff States to elections officials in Plaintiff States, regardless of the voters' location; or otherwise initiating or completing rulemaking to promulgate the specific regulations outlined in Section 3(b)(i)–(v) or (d) of the EO as to

elections mail for elections administered by Plaintiff States and ballot envelopes used by Plaintiff States for the November 3, 2026 election, or any earlier election. This injunction does not bar the federal government from providing non-binding USPS guidance on ballot mail envelopes or from providing assistance with verifying citizenship or eligibility of any voter if the assistance is provided at the request of any Plaintiff State and within the framework provided by Congress.

c. Defendants United States Department of Justice and Acting Attorney General Todd Blanche, including their officers, agents, servants, and employees, are enjoined from initiating any investigation or prosecution of Plaintiff States, their officials, local officials, or agents of such state or local officials involved in the administration of federal elections within Plaintiff States, with respect to the November 3, 2026 or any earlier federal election, stemming from the unconstitutional provisions in Sections 2 and 3 of the EO.

d. Defendants, other than the President, are hereby ORDERED that they must, in good faith, take such steps as are necessary to prevent explicit or implicit implementation of Sections 2, 3 and 5 of the EO, and to cease and reverse any implementation of those provisions, as to Plaintiff States, with respect to the November 3, 2026 or any earlier federal election.

Further, Defendants, other than the President, are hereby ORDERED to:

(a) Within seven (7) calendar days of entry of this Order, provide written notice of this Order to all Defendants and their employees, and to further notify them that Sections 2 and 3 of the EO are unlawful, null, and void and Section 5 is merely precatory, as to Plaintiff States with respect to the November 3, 2026 or any earlier federal election;

(b) Notify all recipients that they are required to comply with this Order, under penalty of contempt; and

(c) Provide counsel for Plaintiff States with a copy of the notice and/or communications referred to in (a)–(b) on the docket, within seven (7) days of issuance of such notice and/or communications.

Defendants are hereby ORDERED to file a status report with the court within seven (7) days of entry of this Order describing steps taken to ensure compliance with it. The court retains jurisdiction to enforce the injunction and judgment and to award other such relief as may be appropriate.

Plaintiff States are directed to file a proposed Judgment for entry in this matter within seven (7) days of entry of this Order.

IT IS SO ORDERED.

June 25, 2026

/s/ Indira Talwani
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, et al.,

Plaintiffs,

v.

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

Defendants,

and

STATE OF MISSOURI, et al.,

Intervenor-Defendants.

Civil Action No. 1:26-cv-11549-IT

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

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

Defendants,

and

STATE OF MISSOURI, et al.,

Intervenor-Defendants.

Civil Action No. 1:26-cv-11581-IT

MEMORANDUM & ORDER

June 18, 2026

TALWANI, D.J.

Following the publication of President Donald J. Trump's Executive Order 14399, Ensuring Citizenship Verification and Integrity in Federal Elections, 91 Fed. Reg. 17125 (Mar. 31, 2026) (the "EO"), two groups of plaintiffs challenged the EO in the United States District Court for the District of Massachusetts. In the first action, eight non-profit organizations involved with voter education (collectively, "Plaintiff Organizations"),[1] assert that their U.S. citizen members will be excluded from voting if the EO is implemented.[2] In the second action, 23 states and the District of Columbia (collectively, "Plaintiff States"),[3] challenge the EO "to safeguard their constitutional authority to administer state and federal elections."[4] A group of twelve states[5] moved to intervene in each case, asserting their "concrete interest in receiving the

[1] The Plaintiff Organizations are the League of Women Voters of Massachusetts, League of Women Voters Lotte E. Scharfman Memorial Education Fund, League of Women Voters of the United States, League of Women Voters Education Fund, Association of Americans Resident Overseas, U.S. Vote Foundation, OCA-Asian Pacific American Advocates, and Delta Sigma Theta Sorority.

[2] See League of Women Voters of Massachusetts, et al. v. Trump, et al. ("LWVM"), No. 1:26-cv-11549, Compl. ¶ 1 [Doc. No. 1].

[3] The Plaintiff States are Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and Josh Shapiro in his official capacity as Governor of Pennsylvania.

[4] State of California, et al. v. Trump, et al. ("California"), No. 1:26-cv-11581, Am. Compl. ¶ 1 [Doc. No. 65].

[5] The Intervening States are Alabama, Florida, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, and Texas.

resources ordered in [the EO] and in seeing increased security for mail ballots cast in their elections[,]"[6] and the court has granted permissive intervention in both cases.[7]

Defendants, joined by Intervenors, seek dismissal of both suits under Federal Rules of Civil Procedure 12(b)(1) and (6).[8] The court consolidated the two cases for a hearing on these and other pending motions.[9]

In this consolidated Order, the court addresses Defendants' and Intervenor States' ripeness challenge, which raises issues common to both actions, and GRANTS dismissal without prejudice as to claims regarding the EO and its implementation for elections occurring after November 3, 2026, otherwise DENIES the ripeness challenge, and reserves on other issues raised in the motions to dismiss.

I. BACKGROUND

A. The Executive Order

The EO asserts "an unavoidable duty under Article II of the Constitution of the United States to enforce Federal law, which includes preventing violations of Federal criminal law and

[6] California, No. 1:26-cv-11581, Mot. to Intervene 2 [Doc. No. 73]; LWVM, No. 1:26-cv-11549, Mot. to Intervene 2 [Doc. No. 44].

[7] See California, No. 1:26-cv-11581, Elec. Order [Doc. No. 179]; LWVM, No. 1:26-cv-11549, Elec. Order [Doc. No. 106].

[8] See LWVM, No. 1:26-cv-11549, Defs.' Mot. to Dismiss [Doc. No. 126], Intervenors' Mot. to Dismiss [Doc. No. 124]; California, No. 1:26-cv-11581, Defs.' Mot. to Dismiss [Doc. No. 154], Intervenors' Brief [Doc. No. 153] (opposing Plaintiff States' dispositive motion on ripeness grounds).

[9] See California, No. 1:26-cv-11581, Order [Doc. No. 88]; LWVM, No. 1:26-cv-11549, Order [Doc. No. 57]. The other motions are Plaintiff Organizations' motion to preliminarily enjoin implementation of Section 3 of the EO, see LWVM, No. 1:26-cv-11549, Mot. for Prelim. Inj. [Doc. No. 73], and Plaintiff States' motion for summary judgment on their claims, see California, No. 1:26-cv-11581, Mot. for Summ. J. [Doc. No. 97].

maintaining public confidence in election outcomes." Exec. Order 14399 § 1. The EO notes that several executive agencies maintain records that "can assist in verifying identity and Federal election voter eligibility" and finds that "additional measures are necessary[]" to "enhance election integrity via the United States Mail[.]" Id.

Section 2 of the EO directs the Director of the United States Citizenship and Immigration Services ("USCIS"), a component within the Department of Homeland Security ("DHS"), in coordination with the Commissioner of the Social Security Administration ("SSA"), "[t]o the extent feasible and consistent with applicable law," to compile lists of citizens eligible to vote in a specific state (the "Confirmed Citizen Lists"[10]). Id. § 2(a). The EO provides that the Confirmed Citizen Lists "shall be derived from Federal citizenship and naturalization records, SSA records, SAVE [Systematic Alien Verification for Entitlements] data,[11] and other relevant Federal databases." Id.; see also id. § 4(c) (the SSA Commissioner must "provide all . . . citizenship and identity data [necessary]" to compile the Confirmed Citizen Lists for the DHS secretary, "consistent with applicable law[.]").[12] The EO defines the Confirmed Citizen Lists as limited to

[10] The EO refers to these federally created lists as "State Citizenship Lists." Id. § 2(a)

[11] SAVE is a system administered by DHS that is "designed to help federal, state, tribal, and local government agencies confirm citizenship and immigration status prior to granting benefits and licenses, as well as for other lawful purposes." DHS, Privacy Impact Assessment for the Systematic Alien Verification for Entitlements Program, DHS Ref. No. DHS/USCIS/PIA-006(c), at 2 (2020), https://perma.cc/HU2M-NTL8 (2020 PIA). SAVE users "formalize the purpose and use in which they use SAVE through a Memorandum of Agreement (MOA) or Computer Matching Agreement" establishing "the terms and conditions for the user agency's participation in SAVE." Id. at 2–3. One purpose for which states can enter into an agreement to use SAVE is to verify the citizenship of registered voters. Privacy Act of 1974, 5 U.S.C. § 552a; Notice of Modified System of Records, 90 Fed. Reg. 48948, 48952 (Oct. 31, 2025) (2025 SORN). DHS does not dispute that the SAVE system has erroneously flagged citizens as noncitizens. See California, No. 1:26-cv-11581, Pls.' Statement of Material Facts ¶¶ 15–16 [Doc. No. 105]; Defs.' Statement of Material Facts ¶¶ 15–16 [Doc. No. 155].

[12] Defendants deny that USCIS has made "any final decision about what, if any, information will be included in any [Confirmed Citizenship Lists] that may ultimately be created," and contend that EO § 2(a) "lists 'SAVE data' as a potential source of data[.]" See California, No. 1:26-cv-

"individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State[.]" Id. § 2(a).

The EO requires DHS to "establish the infrastructure necessary to compile, maintain, and transmit" the Confirmed Citizen Lists by **June 29, 2026**. Id. § 4(c) (emphasis added). Also by **June 29, 2026**, DHS must designate a point of contact regarding List-related inquiries from individuals and State election officials. Id. The EO requires that DHS update and transmit the Confirmed Citizen List for each State to State election officials at least 60 days before each regularly scheduled Federal election, or upon request regarding a special Federal election. Id. § 2(a). Accordingly, for the November 3, 2026 general election, the EO requires DHS to provide the Confirmed Citizen Lists to State election officials by **September 4, 2026**.

Section 3 of the EO directs the Postmaster General of the United States Postal Service ("USPS") to initiate a proposed rulemaking to ensure the integrity of mail voting, see id. § 3(a); Notice of Proposed Rulemaking, 91 Fed. Reg. 32915 (June 2, 2026), and requires that a final rule be published by **July 29, 2026**. The EO requires that the proposed rule (1) include requirements regarding election mail design; and (2) specify that USPS, after receiving State-furnished lists of voters approved to vote by mail, shall provide each State with a list of individuals who are "enrolled with the USPS" pursuant to a process specified in the rule, and shall not transmit the ballot of any voter unless the individual has been so "enrolled." Exec. Order 14399 § 3(b). The EO requires that the proposed rule specify that States may choose to notify USPS of their intent to use mail ballots no fewer than 90 days prior to a Federal election, and may submit to the

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11581, Defs.' Statement of Material Facts ¶ 15 [Doc. No. 155] (citing Mayhew Decl. ¶¶ 5–10 [Doc. No. 156-1]). As of June 8, 2026, DHS has not confirmed whether or in what capacity SAVE data will be used. See California, No. 1:26-cv-11581, Defs.' Notice 2 [Doc. No. 188]; LVWM, No. 1:26-cv-11549, Defs.' Notice 2 [Doc. No. 164].

USPS, no fewer than 60 days before the election, a list of voters to whom the State intends to provide mail ballots. Id. § 3(b)(ii). Accordingly, for the November 3, 2026 general election, States may notify USPS by August 5, 2026, of their intent to use mail ballots, and by September 4, 2026, of their voter lists. Id.

In Sections 2 and 5, the EO describes several criminal offenses, both directly and indirectly relating to election fraud, and requires the Attorney General to prioritize the investigation and prosecution of State and local officials who issue ballots to non-eligible voters. Id. §§ 2(b), 5. The EO also provides that "[s]tates and localities should preserve, for a 5-year period, all records and materials – excluding ballots cast – evidencing voter participation in any Federal election (e.g., ballot envelopes, regardless of carrier)." Id. § 5 (emphasis added).

B. Overview of the Causes of Action in the two Complaints

Plaintiff Organizations assert six counts in their Complaint [Doc. No. 1], with four of these brought against the President and USPS Defendants.[13] Plaintiff Organizations assert that Section 3 of the EO violates the Separation of Powers doctrine (Count I), is ultra vires (Count II), violates principles of Federalism (Count III), and violates their member's right to vote (Count IV). LWVM, No. 1:26-cv-11549, Compl. ¶¶ 120–168 [Doc. No. 1]. Plaintiff Organizations also assert a violation of the Voting Rights Act by the USPS Defendants (Count V), id. ¶¶ 181–184,

[13] The USPS Defendants in both cases are the USPS, the Postmaster General, the Deputy Postmaster General, and the Chairwoman, Vice Chairman, and other members of the USPS Board of Governors. LWVM, No. 1:26-cv-11549, Compl. ¶¶ 41–48 [Doc. No. 1]; California, No. 1:26-cv-11581, Am. Compl. ¶¶ 47–54 [Doc. No. 65].

and violations of the Privacy Act and Administrative Procedure Act by DHS Defendants[14] and SSA Defendants[15] (Count VI), id. ¶¶ 185–205.

Plaintiff States bring three counts in their Amended Complaint. Plaintiff States assert that Section 2 of the EO is unconstitutional, bringing a claim against the President, the Department of Justice ("DOJ"), and the acting Attorney General,[16] the DHS Defendants, the SSA Defendants, and the Department of Commerce ("DOC") Defendants.[17] California, No. 1:26-cv-11581, Am. Compl. ¶¶ 150–166 [Doc. No. 65]. Against the President, acting Attorney General, and USPS Defendants, Plaintiff States assert that Section 3 of the EO is unconstitutional. Id. ¶¶ 167–178. Finally, Plaintiff States allege, against the President, Department of Justice, and acting Attorney General, that Section 5 is unconstitutional. Id. ¶¶ 179–189.

II. PRUDENTIAL RIPENESS

Defendants maintain that the EO is merely an "intra-Executive Branch directive" that directs future agency action and that "of its own force[] does not change anything at all about elections in any State."[18] They assert that judicial review will be appropriate later, after implementation actions have been taken, because Defendant agencies are still considering and

[14] The DHS Defendants in both cases are DHS, the Secretary of DHS, USCIS, and the Director of USCIS. LWVM, No. 1:26-cv-11549, Compl. ¶¶ 50–51, 54–55 [Doc. No. 1]; California, No. 1:26-cv-11581, Am. Compl. ¶¶ 41–44 [Doc. No. 65].

[15] The SSA Defendants in both cases are SSA and the Commissioner of SSA. LWVM, No. 1:26-cv-11549, Compl ¶¶ 52–53 [Doc. No. 1]; California, No. 1:26-cv-11549, Am. Compl. ¶¶ 52-53 [Doc. No. 65].

[16] California, No. 1:26-cv-11581, Am. Compl. ¶¶ 39–40 [Doc. No. 65].

[17] The DOC Defendants are DOC and the Commerce Secretary. California, No. 1:26-cv-11581, Am. Compl. ¶¶ 55–56 [Doc. No. 65].

[18] California, No. 1:26-cv-11581, Defs.' Mem. 8 [Doc. No. 157]; LWVM, No. 1:26-cv-11549, Defs.' Mem. 8 [Doc. No. 128].

deliberating future action.[19] They argue further that no active case or controversy will exist until the agencies implement the EO, particularly given the EO's saving clause and express limitations that agencies shall only act pursuant to their legal authority. California, No. 1:26-cv-11581, Defs.' Mem. 12–16 [Doc. No. 157]. Similarly, Intervenor States argue that "[t]he prudential ripeness doctrine . . . strongly counsels against considering Plaintiffs' constitutional arguments before final agency actions exist." LWVM, No. 1:26-cv-11549, Intervenors' Mem. 1 [Doc. No. 125].

Plaintiffs assert that their claims are ripe for judicial review because the 2026 federal elections are imminent and the EO has caused significant uncertainty and confusion regarding planning. Plaintiff States have asserted, and Defendants do not dispute, that preparation for the election is currently underway. See California, No. 1:26-cv-11581, Pls.' Statement of Material Facts ¶ 8 [Doc. No. 105]; id., Defs.' Statement of Material Facts ¶ 8 [Doc. No. 155]. Plaintiff States have further asserted that their election officials fear criminal prosecution if they issue ballots to voters who are not on the Confirmed Citizen List or if they issue ballots to eligible 17-year-old voters in connection with federal primary elections. See id. Pls.' Statement of Material

[19] California, No. 1:26-cv-11581, Defs.' Mem. 9 [Doc. No. 157] (citing Monteith Decl. ¶ 3 [Doc. No. 156-3]; Mayhew Decl. ¶ 5 [Doc. No. 156-1]; MacBride Decl. ¶ 5 [Doc. No. 156-2]); LWVM, No. 1:26-cv-11549, Defs.' Mem. 9 [Doc. No. 128] (citing Monteith Decl. ¶ 3 [Doc. No. 127-3]; Mayhew Decl. ¶ 5 [Doc. No. 127-1]; MacBride Decl. ¶ 5 [Doc. No. 127-2]). But see California, No. 1:26-cv-11581, Defs.' Notice [Doc. No. 188-1] (On June 8, 2026, DHS Secretary approved a "technological approach" toward implementing the infrastructure, where "USCIS, in coordination with SSA and [the Department of State ('DOS')], would deliver by June 30, 2026, a mechanism for State use that provides . . . access to citizenship-related information from each agency[,]" "endors[ed] a phase plan under which citizen-facing portal capabilities would be developed and implemented later in 2026[,]" and approved DHS "continu[ing] preliminary conversations with USPS concerning potential data-sharing arrangements[.]"); LWVM, No. 1:26-cv-11549, Defs.' Notice [Doc. No. 164-1].

Facts ¶¶ 36–37 [Doc. No. 105].[20] Similarly, Plaintiff Organizations have alleged that they are currently wrestling with the impact of the EO on their members and on their voter education programming. See, e.g., LWVM, No. 1:26-cv-11549, Canavan Decl. ¶ 28 [Doc. No. 75-2] ("LWVMA has stopped actively disseminating any new voter-education materials about mail voting because of [the EO]."). All Plaintiffs assert substantial confusion regarding the EO's impact on the 2026 elections and on elections in general. See California, No. 1:26-cv-11581, Pls.' Statement of Material Facts ¶¶ 37, 39 [Doc. No. 105]; LWVM, No. 1:26-cv-11549, Pls.' Mem. 22 [Doc. No. 74].

A. Relevant Law

"Ripeness is a justiciability doctrine designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." Nat'l Park Hosp. Ass'n v. Dep't of Interior, 538 U.S. 803, 807–08 (2003) (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148–49 (1967)). "[T]he question of ripeness turns on 'the fitness of the issues for judicial decision' and 'the hardship to the parties of withholding court consideration.'" Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 201 (1983) (quoting Abbott Labs., 387 U.S. at 149). As to the

[20] Defendants contend that Plaintiff States' assertions "assume[] without basis that it is 'feasible' and 'consistent with applicable law' to compile and transmit a [Confirmed Citizen List] and further assume[] without basis that states will be required to use any such list." California, No. 1:26-cv-11581, Defs.' Statement of Material Facts ¶¶ 36–37 [Doc. No. 155]. Defendants further deny that failure to comply with the EO in and of itself is a criminal offense. See California, No. 1:26-cv-11581, Defs.' Reply 24 [Doc. No. 167] ("[Plaintiff States'] assertion that the Order imposes both duties, under the threat of criminal prosecution no less, is without basis in the text of the Order."); LVWM, No. 1:26-cv-11549, Defs.' Reply 24 [Doc. No. 147]. Defendants do not address election officials' fear of such prosecution.

former, "[a] claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" Texas v. United States, 523 U.S. 296, 299 (1998) (quoting Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580–01 (1985)). The fitness for review prong is more easily satisfied when it "presents an issue that is 'purely legal, and will not be clarified by further factual development.'" Susan B. Anthony List v. Driehaus, 573 U.S. 149, 167 (2014) (quoting Thomas, 473 U.S. at 581). On the second prong, "it is necessary to evaluate the extent to which withholding judgment will impose hardship—an inquiry that typically 'turns upon whether the challenged action creates a 'direct and immediate' dilemma for the parties." Stern v. U.S. Dist. Court for Dist. of Mass., 214 F.3d 4, 10 (1st Cir. 2000) (internal citations omitted). Hardship to the plaintiffs may be "easily satisfied" where the challenged actions "forc[es] them to choose between [constitutionally protected activity] on the one hand, or engaging in [that activity] and risking costly . . . proceedings and criminal prosecution on the other." Susan B. Anthony List, 573 U.S. at 167–68. "Both prongs of the test ordinarily must be satisfied, although a very strong showing on one axis may compensate for a relatively weak showing on the other." Stern, 214 F.3d at 10.

B. Analysis

1. *Future Elections (after the November 3, 2026 Midterm Election)*

There are clearly many uncertainties as to how the agencies will ultimately implement the EO, including the source and accuracy of DHS' Confirmed Citizen Lists, and what final rule, if any, will be adopted by the USPS. The implementation of the EO may well result in the evolving and dynamic process described by Defendants, in which Plaintiffs may participate in a comment period that could result in their concerns being incorporated in agency decision making. See California, No. 1:26-cv-11581, Defs.' Mem. 18–19 [Doc. No. 157]; see also DSCC v. Trump, __ F.Supp.3 ___, 2026 WL 1487833, *1 (D.D.C. May 28, 2026) ("[T]he issuance of a notice of

proposed rulemaking, or other preliminary proceedings undertaken to promote a proposed rule, often will not be ripe for review because the rule may or may not be adopted or enforced.'" (quoting Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin., 710 F.2d 842, 846 (D.C. Cir. 1983))). And where some issues may be addressed in part or narrowed well before more distant elections, withholding court consideration of the EO as it relates to distant elections will pose little hardship where there will be sufficient time for legal challenges to the EO after implementation.

Accordingly, the challenge to the EO's implementation as it impacts elections after the November 3, 2026 election is dismissed without prejudice on prudential ripeness grounds.

2. *The November 3, 2026 Midterm Election (and Earlier Elections)*

Plaintiffs' challenge to the EO as it impacts the November 3, 2026 election itself and the multiple primaries and special elections that are scheduled to occur prior to that date, however, is different. The November 3, 2026 election will occur in less than five months and the EO explicitly requires that certain actions be taken before then. See Exec. Order 14399 § 3(b) (requiring that USPS issue a Notice of Proposed Rule Making regarding new election integrity requirements within 60 days of the EO–i.e., by **May 31, 2026**); id. § 4(c) (requiring DHS to establish the infrastructure necessary to compile Confirmed Citizen Lists within 90 days of the EO–i.e., by **June 29, 2026**); id. § 3(d) (requiring that USPS issue a final rule no later than 120 days from the date of the EO–i.e., by **July 29, 2026**); id. § 3(b)(ii) (requiring the Notice of Proposed Rulemaking to include provisions specifying that 90 days prior to a federal election–i.e., by **August 5, 2026**, for the November 3, 2026 election, a State may choose to notify the USPS if it intends to allow ballots to be transmitted by the USPS, and advising the States to notify the USPS if the State intends to allow Mail Ballots and to submit a list of voters to whom ballots will be sent by sixty days before a federal election–i.e., by **September 4, 2026**, for the

November 3, 2026); id. § 2(a) (requiring DHS, in coordination with SSA, to compile and transmit to State officials, to the extent feasible and consistent with applicable law, including the Privacy Act, Confirmed Citizen Lists to the States no later than 60 days before each regularly scheduled Federal election–i.e., by **September 4, 2026**, for the November 3, 2026 election).

In light of the EO's specific deadlines over the next three months, and the reality that elections will be occurring throughout this period with the November 3, 2026 midterm occurring in just five months, postponing judicial review is impracticable and may inflict significant hardship on Plaintiffs. The EO has "create[d] a 'direct and immediate' dilemma for" Plaintiffs, Stern, 214 F.3d at 10 (quoting W.R. Grace & Co. v. EPA, 959 F.2d 360, 364 (1st Cir. 1992)), because the EO requires State elections officials and voters to reckon today with both the likelihood that the executive branch agencies will follow the EO's multiple directed actions and simultaneously with the uncertainty that exists as the details are slowly rolled out over the next few months. Both sets of Plaintiffs have offered unrebutted evidentiary support for their allegations that significant preparation and planning underpin and facilitate elections and that such efforts are already underway. See California, No. 1:26-cv-11581, Rosenberg Decl. ¶ 26 [Doc. No. 100-7] (Connecticut election official explaining that "major changes to the election process . . . are typically planned for a year or more preceding an election[.]"); Linnell Decl. ¶ 11 [Doc. No. 100-14] ("Preparation for the 2026 midterm elections already consumes all of [Minnesota election official's] team's time."); LVWM, No. 1:26-cv-11549, Canavan Decl. ¶¶ 28–29 [Doc. No. 75-2] (describing presently ongoing voter education efforts of LVWM); Nguyen Decl. ¶¶ 15–21 [Doc. No. 75-7] (describing efforts to translate election materials into other languages by Plaintiff Organization OCA-Asian Pacific American Advocates).

For example, Plaintiff State of California mails every registered voter a ballot, as required by state law. See California, No. 1:26-cv-11581, Lean Decl. ¶¶ 28, 37 [Doc. No. 100-1]; Cal. Elec. Code § 3000.5 ("[F]or each election, the elections official shall, no later than 29 days before the day of the election, begin mailing [ballots and return mail] to every registered voter."). Even without a USPS Final Rule on mail ballot procedures, California election officials "must prepare now for how to align California's administration of mail voting with the EO." California, No. 1:26-cv-11581, Lean Decl. ¶ 40 [Doc. No. 100-1]. The Plaintiff States cannot wait for the Final Rule where the practical realities of running an election require Plaintiffs to take actions for the upcoming election now. See Abbott Labs., 387 U.S. at 149 (in analyzing ripeness, courts must assess the hardship that would result from delaying review); see also LWVM, No. 1:26-cv-11549, Amicus Br. of. State and Loc. Elections Offs. 12 [Doc. No. 136] (explaining that "[A]s a purely practical matter, implementing this EO—particularly with so little time remaining before the rapidly approaching November 2026 midterm elections—would wreak havoc on electoral processes nationwide.").

The compilation of a Confirmed Citizen List also vividly illustrates the problem. During the June 2, 2026 hearing, the government admitted that compliance with federal privacy law would necessarily render any Confirmed Citizen List underinclusive.[21] Moreover, the list will also be underinclusive as a result of feasibility issues, where the federal government may be unaware of name changes (such as when a woman changes her name at marriage) or residence changes (where a citizen moves from state to state). But the EO does not require feasibility of an accurate, complete list of United States citizens. Instead, it orders preparation and delivery to the

[21] See California, No. 1:26-cv-11581, June 2, 2026 H'rg Tr. 24:6–17 [Doc. No. 181]; LVWM, No. 1:26-cv-11549, June 2, 2026 H'rg Tr. 24:6–17 [Doc. No. 155].

states of a list of individuals confirmed as citizens "to the extent feasible and consistent with applicable law"—in other words, the EO orders preparation and delivery of a list of United States citizens residing in each state that will necessarily be incomplete. Exec. Order 14399 § 2(a). Accordingly, even assuming that implementing agencies will comply with all legal requirements set out in the EO and will only create lists to the extent feasible, incomplete Confirmed Citizen Lists will still be compiled, thereby creating a "direct and immediate dilemma for Plaintiffs." Stern, 214 F.3d at 10 (citation omitted).

Further, despite Defendants' assertions that agencies are merely "deliberating" as to plans to implement the EO, Defendants have recently updated the court that, on June 8, 2026, the DHS Secretary approved a plan to comply with § 4(a) of the EO, requiring that DHS implement necessary infrastructure by June 29, 2026.[22]

With an ever-narrowing window of time in which review is appropriate and practicable, and where that review may well require timely involvement by the Court of Appeals or Supreme Court prior to the November 3, 2026 election in order to "maintain[] public confidence in election outcomes[,]" see Exec. Order 14399 § 1, the court finds that the legality of the EO as to the November 3, 2026 election (and earlier elections) is both ripe and fit for review. See Abbott Labs., 387 U.S. at 149.

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[22] See California, No. 1:26-cv-11581, Defs.' Notice [Doc. No. 188]; LWVM, No. 1:26-cv-11549, Defs.' Notice [Doc. No. 164]; see also id., Pls.' Sur-Reply 1 [Doc. No. 160] (Defendants' Notice "demonstrate[s] that agency implementation of the [EO's] directives is underway [and] that agency action follows directly from the [EO]."). Defendants' Notice also indicated that DHS and USPS are continuing to consider data-sharing across agencies, including with the USPS, in implementing the EO. California, No. 1:26-cv-11581, Defs.' Notice [Doc. No. 188] (On June 8, 2026, DHS Secretary authorized "DHS [to] continue preliminary conversations with USPS concerning potential data-sharing arrangements," but stating further that "allow[ing] DHS to leverage USPS data related to mail-in and absentee ballot participation lists . . . is neither contemplated nor required by EO 14399."); LWVM, No. 1:26-cv-11549, Defs.' Notice [Doc. No. 164].

Defendants and Intervenor States' reliance on a recent Supreme Court decision merits additional discussion. In Trump v. New York, a coalition of States and non-profit organizations challenged a Presidential memorandum announcing a policy of excluding noncitizens from the decennial census for the purposes of congressional apportionment and then directing the Secretary of Commerce to advise the President on how to implement that policy "to the maximum extent feasible and consistent with the discretion delegated to the executive branch." 592 U.S. 125, 129–30 (2020) (quoting 85 Fed. Reg. 44680 (2020)). The impact of any apportionment policy change would not be experienced until the States first received an apportionment report from Congress and then subsequently both implemented redistricting and held elections, potentially years after the Commerce Secretary's report pursuant 13 U.S.C. § 141(b). See 2 U.S.C. § 2a. The Supreme Court found that the plaintiffs lacked standing to challenge the memorandum and that the challenge was not ripe because the "case [was] riddled with contingencies and speculation that impede judicial review. . . . Any prediction how the Executive Branch might eventually implement this general statement of policy is 'no more than conjecture' at this time." Trump, 592 U.S. at 131 (quoting Los Angeles v. Lyons, 461 U.S. 95, 108 (1983)). The Court based its decision on the uncertainty regarding implementation of the memorandum and the President's qualifying language regarding feasibility and legality requirements. Id. [23]

[23] Defendants also point to Justice Sotomayor's concurrence in Trump v. Am. Fed'n of Gov't Emps., 606 U.S. _, 145 S.Ct. 2635 (2025). In a two-paragraph unsigned opinion, the Supreme Court granted an application for a stay of a district court's preliminary injunction order while the Ninth Circuit considered the government's appeal. The Court granted the stay "because the Government is likely to succeed on its [merits] argument," without making any findings as to justiciability. Id. In her concurrence in the grant of the stay, Justice Sotomayor noted that the Executive Order "direct[ed] agencies to plan reorganizations and reductions in force 'consistent with applicable law[,' and t]he plans themselves are not before this Court, at this stage, and [the Court] thus ha[s] no occasion to consider whether they can and will be carried out consistent

Unlike the President's request for the Commerce Secretary to implement a policy statement in Trump v. New York, the EO here both includes multiple specific directives as to certain actions that federal agencies must take at specified times and requires that definite "substantive outcomes" be implemented that will affect the upcoming election. League of United Latin American Citizens ("LULAC") v. Executive Office of the President (LULAC II), 818 F. Supp. 3d 34, 78 (D.D.C. 2026) (citing Trump v. New York, 592 U.S. 125 (2020)). And, unlike in Trump v. New York, it is neither speculation nor "conjecture" that DHS will compile Confirmed Citizen Lists where directed to compile those lists by the President, that States will have to grapple with preparing for mail ballots for the November 3, 2026 election, while USPS is simultaneously engaged in rulemaking, and that elections officials will have to respond to the impact of both the Confirmed Citizen Lists and to whatever USPS rule may be enacted before the November 3, 2026 election.

Where Plaintiffs have raised constitutional challenges that may be addressed without further development of the Confirmed Citizen Lists or the Proposed Rule and in light of imminently impending elections, prudential considerations do not warrant deferring consideration of Plaintiffs' challenges with respect to the 2026 elections. See Wesberry v. Sanders, 376 U.S. 1, 17 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.").

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with the constraints of law." Id. (Sotomayor, J., concurring). Here, in contrast, the limitation that the Confirmed Citizen List will be created "to the extent feasible and consistent with applicable law," does not mean a list will not be created, but only that it will by definition be incomplete. Exec. Order 14399 § 2(a).

III. CONCLUSION

For all of the above reasons, the court GRANTS Defendants' and Intervenor States' motions to dismiss Plaintiff Organizations' complaint and Plaintiff States' amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds as to their claims regarding the EO and its implementation with regard to elections occurring after November 3, 2026, and dismisses such claims without prejudice. The court DENIES Defendants' and Intervenor States' motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds as to Plaintiff Organizations' complaint and Plaintiff States' amended complaint with regard to the November 3, 2026 election, and all earlier elections.[24]

IT IS SO ORDERED.

June 18, 2026

/s/ Indira Talwani
United States District Judge

[24] Defendants' and Defendant Intervenors' Article III challenges pose different issues as to the two different groups of Plaintiffs. These challenges will be addressed in case specific orders, together with the Plaintiffs' pending motion in each case.

Nos. 26A124, 26A139

In the Supreme Court of the United States

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

v.

CALIFORNIA, *et al.*,
Respondents.

ALABAMA, *et al.*,
Applicants,

v.

CALIFORNIA, *et al.*,
Respondents.

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August 3, 2026

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INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

STATEMENT

A. Legal Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Procedural History

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[3] Intervenors emphasize that the proposed rule gives States "control" by allowing them to submit voter lists to USPS. Intervenors' Appl. 20. But that does not resolve the fundamental problem that Congress has not authorized anything resembling USPS' voter-verification and ballot-interception program.

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

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

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

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

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

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

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

B. Plaintiffs' Claims Are Justiciable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. EQUITABLE CONSIDERATIONS WEIGH HEAVILY AGAINST A STAY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

The applications for a stay should be denied.

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IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Applicants,
v.
CALIFORNIA, ET AL.,
Respondents.

STATE OF ALABAMA, ET AL.,
Applicants,
v.
CALIFORNIA, ET AL.,
Respondents.

On Application for Stay of the Injunction Issued by the United States District Court for the District of Massachusetts and Request for Adminnistrative Stay

BRIEF OF ASIAN LAW CAUCUS, ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, ASIAN AMERICANS ADVANCING JUSTICE – ATLANTA, MISSOURI VOTER PROTECTION COALITION, SOUTH ASIAN AMERICAN JUSTICE COLLABORATIVE, COMMON CAUSE, ET AL. AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Asian American Legal Defense and Education Fund ("AALDEF") is a national legal organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF focuses on critical issues affecting Asian Americans, including the right to access and cast an effective ballot and receive fair representation. AALDEF has litigated cases seeking to protect the ability of Asian Americans to elect candidates of their choice, *e.g., NewYork Cmtys. for Change v. County of Nassau*, No. 602316/2024 (Sup. Ct. Nassau Cnty. Feb. 7, 2024); *League of United Latin Am. Citizens v. Abbott*, No. 3:21-cv-00259 (W.D. Tex. Oct. 18, 2021); *Favors v. Cuomo*, 881 F. Supp. 2d 356 (E.D.N.Y. 2012), and to ensure that limited English proficiency Asian American voters have an equal opportunity to participate in our democracy, *e.g., OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017); *Detroit Action v. City of Hamtramck*, No. 2:21-cv-11315 (E.D. Mich. June 3, 2021); *Alliance of South Asian Am. Labor v. Board of Elections in the City of N.Y.*, No. 1:13-cv-03732 (E.D.N.Y. July 2, 2013). Each year, AALDEF also monitors elections alongside local community partners across multiple states, ensuring compliance with state and federal law and documenting obstacles Asian American voters face in the voting process.

Asian Law Caucus ("ALC") is the nation's first legal and civil rights organization serving low-income, immigrant, and underserved Asian American and

[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, their members, or counsel made such a monetary contribution.

Pacific Islander communities. ALC brings together impact litigation, direct legal services, community empowerment, and policy advocacy to fight for immigrant justice, economic security, and a stronger, multiracial democracy. In the voting rights context, ALC advocates to advance voting for AAPI voters and other historically disenfranchised groups. Before major elections, ALC conducts Know Your Voting Rights workshops for community partners and their members and creates translated voting related factsheets. ALC also has one of the largest nonpartisan poll observation projects in California to ensure eligible voters are not turned away from the polls. During the November 2025 election, ALC observed polls in 26 counties across northern and central California. ALC has also co-sponsored election-related bills (*See, e.g.* , Assemb. B. 453, 2023-2024 Leg., Reg. Sess. (Cal. 2024) and Assemb. B. 884, 2023-2024 Leg., Reg. Sess. (Cal. 2024) (vetoed Sept. 2024)) and regularly litigates voting rights cases. (*See*, *e.g.*, *In re Georgia Senate Bill 202*, No. 1:21-MI-55555 (N.D. Ga. 2021)); *Asian Americans Advancing Justice - Los Angeles v. Padilla*, 41 Cal. App. 5th 850 (2019). ALC is applying to appear as co-counsel for Plaintiffs on *NAACP v. Trump*, No. 1:26-cv-01151 (D.D.C. 2026), challenging Executive Order 14399.

Asian Americans Advancing Justice – Atlanta ("Advancing Justice - Atlanta") is the first nonprofit legal advocacy organization dedicated to advancing the civil rights of Asian Americans, Native Hawaiian, Pacific Islander ("AANHPI"), Arab, Middle Eastern, Muslim, and South Asian ("AMEMSA"), and immigrant communities in Georgia and the Southeast. Advancing Justice – Atlanta builds power

within communities through direct services, impact litigation, policy advocacy, and community engagement. Advancing Justice - Atlanta's nonpartisan voting rights work includes litigation to protect access to the ballot and combat voter disenfranchisement, and robust civic engagement programs, such as voter registration, get out the vote ("GOTV"), and election protection activities.

Missouri Voter Protection Coalition (MOVPC) is a nonpartisan statewide coalition dedicated to advancing free, fair, and accessible voting and strengthening democratic participation through voter engagement, policy advocacy, strategic litigation and running Missouri's nonpartisan Election Protection program. A core focus of MOVPC's work is safeguarding all available voting options for Missouri voters, including the right to cast a ballot by mail. MOVPC's work is focused on eliminating voting barriers for marginalized and unrepresented communities, particularly communities of color, low-wage workers, young voters, seniors, voters with disabilities, new American citizens and language minorities.

South Asian American Justice Collaborative (SAAJCO) is a national nonprofit organization that fights for the civil and human rights of the South Asian diaspora in the United States through legal advocacy, community engagement, and narrative power. South Asian communities include substantial numbers of naturalized citizens and voters with limited English proficiency who may be particularly affected by unreliable citizenship data, confusion regarding documentation requirements, and restrictions on voting by mail. SAAJCO has a strong interest in ensuring that eligible voters are not disenfranchised or deterred

from participating in the democratic process by the requirements of Executive Order 14399.

Common Cause is a nonpartisan, grassroots organization dedicated to fair elections, due process, and ensuring that government at all levels is more democratic and responsive to the interests of the people. Founded by John Gardner in 1970 as a "citizens' lobby," Common Cause has nearly 1 million members nationwide and staff in 22 states plus in the District of Columbia. Common Cause has assisted with voter registration, encouraged voting, and advocated for policies at the federal, state, and local levels that would make participation in our democracy more accessible and convenient.

Additional amici curiae are diverse civil rights organizations, direct service providers, civic engagement groups, policy advocacy and legal organizations that work with and among underserved and underrepresented communities, and advocate for the rights and empowerment of individuals and their communities. Many have worked for decades to increase civic participation among their constituents, including by conducting voter outreach and education to promote voter registration and voter turn-out. Many provide assistance to help voters overcome barriers to voting, such as inadequate language access, disability access challenges, and trouble navigating elections systems. See Appendix for full list.

CORPORATE DISCLOSURE STATEMENT

None of the amici have a direct financial interest in the outcome of the case. No amicus has a parent corporation, and no publicly held corporation owns 10% or more of the stock of any amicus.

INTRODUCTION AND SUMMARY OF ARGUMENT

The right to vote is a "fundamental political right, because [it is] preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Executive Order 14399 (the "EO") interferes with that sacrosanct right for millions of Americans across the nation.[2] Amici write to underscore the direct harms Sections 2 and 3 of the EO pose to voters, which pertain to the balance of equities this Court should consider in evaluating the requested stay. *Little v. Reclaim Idaho*, 591 U.S. 1060, 1061-63 (2020). These harms to non-parties—here, American voters at-large and identifiable groups—are relevant in weighing the equities and the public interest, a factor in considering a stay under *Nken v. Holder*, 556 U.S. 418, 426 (2009).[3]

Specifically, as the Federal Government itself has acknowledged, the citizenship data on which the lists contemplated by Section 2 of the EO rely, is necessarily incomplete and inaccurate. Those structural gaps and inaccuracies jeopardize the franchise of all eligible voters, particularly new voters (naturalized citizens), voters with limited English proficiency, those with non-Anglo or unconventional names, and historically disenfranchised groups.

The restrictions set out in Section 3 of the EO also threaten to disenfranchise millions of eligible voters who rely on mail-in ballots—among them naturalized

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[2] State United Democracy Center, *Nearly 1 in 3 Americans Voted by Mail in 2024*, WWW.STATESUNITED.ORG, (updated April 13, 2026), https://statesunited.org/resources/americans-vote-by-mail-2024/, (estimating more than 48 million were cast by mail in 2024); California Secretary of State, *Historical Vote-By-Mail (Absentee) Ballot Use in California*, WWW.SOS.CA.GOV, (last visited August 1, 2026) https://www.sos.ca.gov/elections/historical-absentee. (showing in 2024 7.7 million mail ballot voters in California alone.

[3] The First Circuit noted, "[w]hen assessing the fourth factor, we consider the interests of the public in general, including American voters, not just the interests of the parties." *California v. Trump*, --- F.4th ---, 2026 WL 2144084, at *4 (1st Cir. July 25, 2026) (cleaned up).

citizens, voters with limited English proficiency, elderly voters, and voters with disabilities.

Additionally, the EO's threat to disenfranchise millions of voters has already created confusion and challenges for communities seeking to exercise their most essential right to vote. The uncertainty surrounding the EO's implementation compounds the upheaval and fear communities feel and chills democratic participation.

Given these concrete harms, the balance of equities clearly weighs against a stay of the injunction on the EO. "The right to vote freely for the candidate of one's choice is of the essence of a democratic society," and the Constitution protects that right in the face of attempts to deny or restrict it. *Reynolds v. Sims,* 377 U.S. 533, 554-55 (1964). The civil rights leader John Lewis reaffirmed this principle: "To make it hard, to make it difficult almost impossible for people to cast a vote is not in keeping with the democratic process."[4] We urge the Court to take heed and reject the stay.

[4] Andrew Cohen, *Rep. John Lewis: 'Make Some Noise' on New Voting Restrictions*, THE ATLANTIC, (Aug. 26. 2012), https://www.theatlantic.com/politics/archive/2012/08/rep-john-lewis-make-some-noise-on-new-voting-restrictions/261549/.

ARGUMENT

I. FEDERALLY-COMPILED "STATE CITIZENSHIP LISTS" WILL ERRONEOUSLY OMIT AND MISCLASSIFY SUBSTANTIAL NUMBERS OF ELIGIBLE VOTERS FROM MULTIPLE IDENTIFIABLE COMMUNITIES.

Section 2 of the Executive Order directs the Department of Homeland Security to compile, from existing federal records, "State Citizenship List[s]" of individuals confirmed to be United States citizens, for use by state election officials in assessing voter eligibility. The premise animating this exercise—that DHS's records can accurately sort the populace into confirmed citizens and everyone else—does not comport with the Federal Government's own record here, or with the operational history of the very data infrastructure on which the EO relies.

As the First Circuit noted, and the Federal Government did not dispute, "any list [DHS] compiled under Section 2(a) would 'necessarily be incomplete,' based on the limitations of its own records, meaning that some citizens who were eligible to vote in a particular state nevertheless would be missing from the list."[5] That is not a hypothetical risk to be sorted out later in the deliberative process the Solicitor General describes.[6] It is a conceded, structural shortcoming of the lists themselves, that will fall hardest on identifiable groups of eligible voters—not at random.

This asymmetry matters to the equities. An administrative stay would not preserve the status quo while the courts sort out the EO's legality; it would authorize the government to begin transmitting and acting on lists that DHS itself has

[5] *California v. Trump*, 2026 WL 2144084 (1st Cir. Jul. 25, 2026), at *3.

[6] Application for Stay (consider adding case name, no., date).

acknowledged will be incomplete, with no established process to ensure that affected voters can timely correct errors, if needed.[7]

DHS's October 2025 Privacy Impact Assessment for the Systematic Alien Verification Entitlements (SAVE) system—the database infrastructure DHS uses to compile citizenship information for exactly this kind of list among other purposes — acknowledges that "due to misspelling of names, transposed numbers, or incomplete information," the system "may produce inaccurate" results, a risk the agency states it can only partially mitigate.[8]

A. The EO relies on flawed and incomplete databases that have a track record of misclassifying naturalized citizens as non-citizens.

Naturalized citizens are impacted by the EO because the federal agency data on which the State Citizenship Lists would be based are incomplete and inaccurate. The SSA itself has acknowledged it does not maintain citizenship data for all citizens.[9] The SSA records typically capture a person's citizenship status or residence at the time they applied for a Social Security number, and records are not

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[7] *California v. Trump*, No. 26-1774, 2026 WL 2144084, at *3 (1st Cir. Jul. 25, 2026) ("the Government conceded that any list it compiled under Section 2(a) would 'necessarily be incomplete,' based on the limitations of its own records").

[8] U.S. Dep't of Homeland Sec., *Privacy Impact Assessment for the Systematic Alien Verification for Entitlements "SAVE" Program* at 19 (Oct. 31, 2025), https://www.dhs.gov/sites/default/files/2025-10/privacy-pia-dhsuscis006d-save-october2025%20%28002%29.pdf.

[9] Computer Matching Agreement Between the Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., & the Soc. Sec. Admin. for Determining Enrollment or Eligibility for Insurance Affordability Programs Under the Patient Protection and Affordable Care Act, CMS No. 2021-12, HHS No. 2008, SSA No. 1097, at 16 (Mar. 9, 2021), https://www.ssa.gov/privacy/cma/CMS%20SSA%20CMA%20Re-establishment.ACA%202008.Final.Signed%20by%20DIBs%209.29.20%20(002).pdf.

automatically updated to reflect naturalization.[10] In August 2020, the SSA estimated that approximately one-quarter of its records lack information on citizenship.[11] As for the citizenship information it does have, the SSA has acknowledged that those records only represent a snapshot in time.[12] As a result, SSA records for such individuals may not reflect their current, updated citizenship status, but a prior immigration status.[13]

Moreover, because Section 2(a) directs DHS to transmit State Citizenship Lists to each State no fewer than sixty days before the election—that is, by early September for the November 2026 election—any citizen naturalized after the list is compiled will, by the EO's own terms, be categorically excluded from it. Hundreds of thousands14 of individuals who naturalize nationwide each year are likely to be missing from the federally-compiled lists and subjected to voting barriers.

This is not merely a historical concern. The SAVE infrastructure draws on SSA data.[15] A February 2026 investigation by ProPublica and *The Texas Tribune*

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[10] SSA did not consistently retain citizenship data until 1981. Center on Budget and Policy Priorities, *Trump Administration's Legally Dubious Misuse of Social Security Data Risks Disenfranchising Eligible Voters,* WWW.CBPP.ORG, (Dec. 9, 2025), https://www.cbpp.org/blog/trump-administrations-legally-dubious-misuse-of-social-security-data-risks-disenfranchising; Letter from SSA Off. Of Gen. Counsel to Fair Elections Ctr. (July 13, 2023), https://perma.cc/KS2N-U2US.

[11] *Id.*

[12] *Id.*

[13] Letter from Nancy Morales Gonzalez, Assoc. Gen. Counsel for Gen. Law, Div. 1, Soc. Sec. Admin., to Jon Sherman, Litig. Dir. & Senior Counsel, Fair Elections Ctr. (July 13, 2023), https://fairelectionscenter.org/wp-content/uploads/2025/07/SSA-Touhy-Decision-letter.July-13-2023-signed.pdf.

[14] In 2025, over 840,000 individuals were approved for naturalization. USCIS, *Immigration and Citizenship Data*, Application Processing Data reports, https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?topic_id%5B%5D=33692&ddt_mon=&ddt_yr=&query=&items_per_page=50

[15] U.S. Dep't of Homeland Sec., *supra note 8, at 19.*

documented the real-world performance of the very SAVE infrastructure DHS uses to generate citizenship determinations, after several states began using it to screen voter rolls in late 2025. The investigation found that SAVE has made persistent, well-documented errors, primarily affecting naturalized citizens—precisely the population most likely to be impacted by erroneous citizenship determinations on the State Citizenship Lists at issue here.[16]

In Denton County, Texas, for example, at least 14% of voters flagged by SAVE as potential non-citizens were in fact citizens. County officials believed the true percentage of misidentified citizens was actually higher, given that some flagged voters may not have managed to respond to the proof-of-citizenship demand before the applicable deadline.[17] Similarly, in Boone County, Missouri, more than half of the voters SAVE identified as non-citizens turned out to be citizens—including a man flagged despite having naturalized at a ceremony where a member of the county clerk's own staff helped him register.[18] And when Utah ran roughly 71,000 voter records through SAVE as part of a comprehensive citizenship review, the system initially failed to confirm citizenship for nearly 9,000 individuals; but after manual review, county officials confirmed that more than 5,600 of those "unconfirmed"

[16] Jen Fifield & Zach Despart, *A Federal Tool to Check Voter Citizenship Keeps Making Mistakes. It led to confusion in Texas*, Tex. Trib. (Feb. 13, 2026), https://www.texastribune.org/2026/02/13/save-voter-citizenship-tool-mistakes-confusion/.

[17] *Id.*

[18] *Id.*

individuals were, in fact, citizens, while only 27 records were ultimately confirmed as non-citizens.[19]

None of this is new. Texas abandoned a similar citizenship-verification initiative in 2019 after its methodology misidentified thousands of citizens, many of them naturalized, as ineligible to vote.[20] The EO now asks the same fatally flawed verification architecture to perform the same task, but worse, on a compressed timeline, for a nationwide list transmitted to every State "no fewer than sixty days" before a federal election. Thus, the Federal Government cannot credibly argue that the harm here is speculative. The Federal Government's own data establishes that erroneous omissions and misclassifications are a predictable, near-certain byproduct of the EO's implementation, not a remote contingency.

B. Identifiable groups of voters face compounding vulnerabilities due to systemic problems in the federal data used to produce the "State Citizenship Lists."

1. *Outdated and missing data in the SAVE system will harm naturalized citizen voters, many Asian Americans and Latino-Americans.*

Naturalized citizens who would be directly impacted by the unreliable citizenship data in the SAVE system are concentrated in certain immigrant communities. Asian and Latin American immigrants make up the vast majority of naturalized U.S. citizens. Asian American communities constitute the largest share

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[19] Nicholas Kerr & Elise Spenner, *System that DHS is Urging States to Use to Assess Voter Rolls Known to Return Faulty Results: Reports*, ABC News (Jul. 19, 2026), https://abcnews.com/Politics/system-dhs-urging-states-assess-voter-rolls-return/story?id=134863557.

[20] Alexa Ura, *Texas Will End Its Botched Voter Citizenship Review and rescind its list of flagged voters*, Tex. Trib. (April 26, 2019), https://www.texastribune.org/2019/04/26/texas-voting-rights-groups-win-settlement-secretary-of-state/.

of naturalized citizens.[21] The majority of eligible Asian American voters are naturalized citizens -- 56% are naturalized citizens, compared with 44% who are U.S.-born.[22] A 2024 report found more than 8.1 million adult naturalized citizens are Hispanic, a large share of the immigrant eligible voter population.[23]

2. *Voters with names that fall outside common naming conventions are vulnerable to exclusion resulting from database name-matching inaccuracies.*

Accurate name-matching in the federal database system is another predictable problem. People who have names originating in a non-Latin alphabet (i.e., Arabic, Cyrillic, Chinese, and South Asian scripts such as Devanagari) or who have dual-surnames (i.e., Spanish and Portuguese naming conventions), or other non-Anglo names, are familiar with the quotidian challenges of name recognition. Database-matching presents a similar challenge. For example, misidentifications or inaccuracies may result for voters with very common names (e.g., Grace Lee, Maria Garcia), or voters whose first, last and middle names are easily confused (e.g., Young Woo Park, Lee Bong Ahn). Additionally, the system may have difficulty matching transliterated or non-Anglicized names against federal databases built around different naming conventions. Database name-matching has a documented history of disparate failure rates correlated with race. The Brennan Center found significant

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[21] Karthick Ramakrishnan et al., *By the Numbers: Immigration, AAPI Data Guide on Timely Policy Issues,* AAPI Data, (Jan. 9, 2025), https://aapidata.com/featured/by-the-numbers-immigration/#naturalizations.

[22] Abby Budiman, Jeffrey S. Passel & Carolyne Im, *Key Facts About Asian American Eligible Voters in 2024*, Pew Rsch. Ctr. (Jan. 10, 2024), https://www.pewresearch.org/short-reads/2024/01/10/key-facts-about-asian-american-eligible-voters-in-2024/.

[23] Katherine Schaeffer, *1 in 10 Eligible Voters in the U.S. are Naturalized Citizens*, Pew Rsch Ctr. (Sept. 19, 2024), https://www.pewresearch.org/short-reads/2024/09/19/1-in-10-eligible-voters-in-the-u-s-are-naturalized-citizens/.

racial disparities in match-failure rates in litigation challenging "no match, no vote" database-matching policies, and more recent analysis of voter-purge data found that minority voters are more likely than white voters to share common names—exposing them to a materially greater risk of erroneous purge or flagging under any matching-based verification regime.[24]

Where a State Citizenship List is generated by matching federal records under a citizen's current legal name against SSA and other records that may still reflect a prior name, that mismatch will produce exactly the kind of erroneous non-match the government's own SAVE Privacy Impact Assessment warns of—not because the individual is not a citizen, but because the government's records have not caught up to a lawful, common life event. Further, correcting or changing one's name takes time and effort. For instance, in order to change the spelling of his name with the SSA, a voter in Hawaii, who is a member of the NAACP, had to petition the Office of the Hawaii Lieutenant Governor for a name change. He paid over $320 in various fees, which included a $50 filing fee, a $1 archive fee, a $5 service fee, a publication fee of $204.19, a $41 fee for filing the name change order with the state Bureau of Conveyances, and about $20 to have various documents notarized. The process took approximately two months to complete. If he had not had his birth certificate, he would have had to bear the additional time and expense of obtaining it from the East

[24] Wendy R. Weiser, *Testimony Before Congress Regarding the EAC*, Brennan Ctr. for Justice (Feb. 27, 2008), https://www.brennancenter.org/our-work/research-reports/testimony-congress-regarding-eacl; Kevin T. Morris, V*oter Purge Rates Remain High, Analysis Finds* (Aug. 1, 2019), https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds.

Coast county in which he was born.[25] Given the hardships of the process, it would not be uncommon for many to encounter mismatched database records.

Database-matching verification is also known to burden individuals whose legal names do not match across government records—overwhelmingly women who have married or divorced.[26] Transgender individuals who have legally changed their name may also be impacted. Of the 825,100 trans people eligible to vote in the 2024 election, over 200,000 lacked identification reflecting their correct name and/or gender, an indication of name changes likely not to be reflected accurately in the EO's data systems.[27]

3. *Voters who lack ready access to identity or citizenship documentation are vulnerable to added burden.*

Discrepancies in the SSA and SAVE systems also subject eligible voters to additional burden and scrutiny if their records are incomplete or inaccurate. Data errors or omissions require voters to take steps to correct their records and prove or re-prove their identities or citizenship to maintain their voter eligibility. Many eligible voters may face hardships in doing so. An estimated 21.3 million American citizens of voting age lack readily available documents to prove citizenship, and a greater proportion of these are U.S. citizens of color.[28] Historically, anti-Black

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[25] Decl. of Alphonso Braggs, *DSCC v. Trump*, No. 1:26-cv-01114 (D.D.C. 2026), ECF No. 54-2.

[26] Gréta Bedekovics & Sydney Bryant, *The SAVE Act: Overview and Facts*, Ctr. for Am. Progress (Jan. 31, 2025, last updated Feb 3. 2026), https://www.americanprogress.org/article/the-save-act-overview-and-facts/ (stating 84 percent of women who marry change their surname).

[27] *The Potential Impact of Voter Identification Laws on Transgender Voters in the 2024 General Election*, Williams Inst. (Sept. 2024), https://williamsinstitute.law.ucla.edu/publications/trans-voter-id-impact/.

[28] Kevin T. Morris & Cora Henry, *Millions of Americans Don't Have Documents Proving Their Citizenship Readily Available*, Brennan Ctr. (June 11, 2024), https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily.

segregation and Jim Crow discrimination, and hospitals systemically denying access to Black families, left many newborns without a birth certificate.[29] The NAACP, the oldest and largest civil rights organization in the nation, has noted that many of its members and individuals in the communities they serve, disproportionately lack birth certificates, passports, and other documentary proof of U.S. citizenship necessary to correct an erroneous exclusion from DHS's citizenship list.[30] An estimated 1 in 4 Black voters lack an acceptable government issued photo ID.[31] The EO thus creates an access barrier that falls disproportionately on Black Americans, particularly those who are elderly, who may be unaware of their ineligibility or may struggle to rectify it.[32] For many, these impacts echo a recurring pattern of attempted Black voter suppression throughout U.S. history, from poll taxes to literacy tests to gerrymandering to strict voter ID requirements and other voting restrictions.[33]

* * *

Taken together, these are not scattered anecdotes; they describe a predictable pattern in which the government's own chosen verification infrastructure systematically under-counts and misclassifies specific, identifiable categories of

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[29] Devon Hesano, *How ID Requirements Harm Marginalized Communities and Their Right to Vote*, Democracy Docket (Nov. 16, 2023), https://www.democracydocket.com/analysis/how-id-requirements-harm-marginalized-communities-and-their-right-to-vote/.

[30] Decl. of Tyler Sterling on Behalf of the National Association for the Advancement of Colored People (NAACP), *DSCC v. Trump,* No. 1:26-cv-01114 (D.D.C. 2026), ECF No. 54-2.

[31] Brennan Ctr. for Just., *New State Voting Laws: Barriers to the Ballot?*, (Sept. 8, 2011), https://www.brennancenter.org/our-work/research-reports/new-state-voting-laws-barriers-ballot.

[32] Congressional Black Caucus Foundation, *Ensuring Citizenship Verification and Integrity in Federal Elections*, at 4 (Mar. 31, 2026), https://www.cbcfinc.org/wp-content/uploads/2026/04/Ensuring-Citizenship-Verification-and-Integrity-in-Federal-Elections-.pdf

[33] Derek Hill, Madison Coleman & Erica Bassett, *Disenfranchisement and Suppression of Black Voters in the United States*, Ballard Ctr. (Summer 2021), https://ballardbrief.byu.edu/issue-briefs/disenfranchisement-and-suppression-of-black-voters-in-the-united-states.

eligible voters—naturalized citizens, racial and ethnic minorities, and women and others who have changed their legal name. An administrative stay that permits implementation of the EO before these questions are resolved authorizes concrete, foreseeable, and, in practical terms, irreversible harm to identifiable voters in the weeks before a federal election, with no realistic mechanism for correction once ballots are mailed. That reality belongs in this Court's assessment of where the equities and the public interest actually lie.

II. THE EO USPS POLICY CHANGES WOULD DISENFRANCHISE CITIZENS BY UPENDING MAIL-IN VOTING, A METHOD OF VOTING ON WHICH MILLIONS OF AMERICANS NATIONWIDE RELY IN ORDER TO EXERCISE THEIR RIGHT TO VOTE.

Tens of millions of Americans—from all backgrounds and regions of the country—use mail voting to participate in our democracy.[34] Two-thirds of all states, plus Washington, D.C., have "no-excuse absentee" voting, whereby any eligible voter may choose to vote by mail, or automatically send mail ballots--indicating prevalent use of this method of voting.[35] Universal access to mailed ballots has been found to increase turnout by 3 to 4 percentage points.[36] Another report gathering data from the U.S. Election Assistance Commission (EAC)'s 2024 Election Administration and Voting Survey showed that nearly one in three voters cast a ballot by mail in the last

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[34] State United Democracy Center, *Nearly 1 in 3 Americans Voted by Mail in 2024*, WWW.STATESUNITED.ORG, (updated April 13, 2026), https://statesunited.org/resources/americans-vote-by-mail-2024/, (estimating more than 48 million were cast by mail in 2024).

[35] *Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options*, Nat'l Conf. of State Legislatures (updated Aug. 1, 2025), https://www.ncsl.org/elections-and-campaigns/voting-outside-the-polling-place.

[36] R. Michael Alvarez & Yimeng Li, *Universal Mail Ballot Delivery Boosts Turnout: The Causal Effects of Sending Mail Ballots to All Registered Voters*, 88 J. Pol. https://www.journals.uchicago.edu/doi/epdf/10.1086/736867.

federal election.[37] Eight states and Washington, D.C. currently conduct all elections by mail,[38] covering 44.8 million U.S. citizens or 19% of the American electorate.[39] Nationally, 47% of Asian American and 34% of Latine voters cast their ballots by mail in the November 2024 election.[40]

Section 3 of the EO imposes extra USPS procedures on all states that intend to use mail-in voting. States are required to submit to the USPS, in advance of elections, lists of eligible mail ballot voters. Then the USPS, pursuant to the EO, provides each state with a list of individuals enrolled for mail-in voting; only voters on the USPS's list may be mailed a ballot. The USPS process for determining voter eligibility and generating such an enrollment list is unspecified but suspect. As a federal agency, SAVE is implicated, and the USPS is ill-equipped to determine eligibility and address inaccuracies. Discrepancies will certainly arise between a USPS list that is used to limit who gets a mailed ballot and the state's list of intended vote-by-mail voters. The same voters improperly flagged as non-citizens by the SAVE system in the creation of State Citizenship lists would likely be rejected by the USPS process. Prevented by the USPS from receiving their ballots in the mail, these voters will be effectively disenfranchised.

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[37] Nearly 1 in 3 Americans Voted by Mail in 2024, supra note 2.

[38] *Table 18: States With Mostly Mail Elections*, Nat'l Conf. of State Legislatures (Apr. 6, 2026), https://www.ncsl.org/elections-and-campaigns/table-18-states-with-all-mail-elections.

[39] U.S. Census Bureau, 2024 Current Population Survey, Voting and Registration Supplement, "Table 4a: Reported Voting and Registration of the Total Voting-Age Population, for States: November 2024," https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-587.html.

[40] U.S. Census Bureau, *Voting and Registration in the Election of November* 2024, Table 14: Method of Voting, by Selected Characteristics: November 2024 (Apr. 2025), https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-587.html.

This USPS policy acts as an unlawful hurdle for all voters, but one that particularly harms voter groups who have historically and consistently voted by mail in high percentages -- groups including naturalized citizens, elderly voters, transient voters, voters with limited English proficiency, voters with disabilities, and lower-income voters. Many of these voters rely on voting by mail not out of preference, but because they do not have the ease or ability to physically go to a polling location, or they need additional assistance (for example, translation).

A. Naturalized citizens vote by mail more than native-born citizens.

Thirty-six percent of naturalized U.S. citizens cast their ballots by mail in November 2024, compared to 28% of native-born citizens.[41] New citizens often need family, friends, or community organizations to help them navigate the ballot, and, therefore, they particularly benefit from having ballots available by mail. Additionally, a significant portion of naturalized citizens reside in states where vote-by-mail is the primary method of voting. For example, 23% of all naturalized citizens reside in California,[42] where nearly 82%[43] of all voters vote with the ballot they receive in the mail—casting it by either returning it by mail, at a drop box, or at a drop off location.

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[41] *Id.*

[42] Katherine Schaeffer, *supra,* note 23.

[43] USC Price Ctr. for Inclusive Democracy, *California's 2024 General Election: Voting Methods and Early Voting*, at 9 (July 2025), https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/688dbdfd4a08101ae3691d8f/1754119684629/USC_CID_VotingMethods_Report_Final.pdf.

B. Eligible voters who have limited English proficiency often need additional time or support when voting and opt to vote by mail.

Over 37% of immigrant eligible voters have limited English proficiency ("LEP").[44] Many LEP voters, including significant numbers of elderly citizens, rely on mail voting because it allows them to take their time to understand their ballot or obtain assistance. An analysis by UCLA's Voting Rights Project found that 89.9% of minority language voters in California cast a mail ballot in the November 2020 election, which was slightly higher than the vote-by-mail rate among English language voters.[45] Last year, amicus Asian Law Caucus conducted a large survey of California voters with either a Spanish or Chinese language preference in their voter file. Roughly two-thirds of respondents said they voted by mail or used a drop box to vote in the November 2024 general election.[46] Language accessibility was the third most common reason that respondents cited for the specific method of voting they chose.[47] Many said they preferred to vote by mail because it allowed them time to read their ballot, understand the various propositions, and use a dictionary or a family member for translation help.[48] These options are especially necessary because many

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[44] Katherine Schaeffer, *supra,* note 23.

[45] Matt Barreto et al., *California Voter's Choice Act: Language Access During the November 2020 General Election*, UCLA Voting Rights Project, at 3 (May 2022), https://elections.cdn.sos.ca.gov/vca/2020-vca-report/appendix-b2-ucla-general.pdf

[46] Asian Law Caucus, California Common Cause, & PANA, *Forging Ahead: Community Voices and the Impact of Language Access in the Electoral Process*, at 33-34. https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/Programs/Voting-Rights/Forging-Ahead-Community-Voices-and-the-Impact-of-Language-Access-in-the-Electoral-Process.pdf

[47] Forging Ahead, supra note 46, at 34.

[48] Forging Ahead, supra note 46, at 34.

states do not provide language access to those who need it. Notably, LEP voters make up 28% of the Asian American eligible voting population.[49]

C. Many voters with disabilities rely on vote-by-mail and would be harmed by the EO's mail-in ballot process changes.

Voting by mail is crucial among voters with a disability.[50] Even among states that limit who can access a ballot by mail, all allow voters with a disability or illness to use this method of voting.[51] Nationally, in 2020, 53% of voters with disabilities voted by mail, compared to 42% of voters without disabilities.[52]

According to a report by the EAC and Rutgers University regarding the 2022 elections, 15.8 million citizens with disabilities reported voting in the November 2022 elections.[53] Most importantly, the states that provide easier access to voting by mail in 2022 as compared to 2018 had significantly higher turnout rates among voters with disabilities. States that switched from excuse-required to a no-excuse system saw an increase of 6.9 points, and states that switched from no-excuse to all vote-by-mail saw an increase of 5.3 points.[54]

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[49] U.S. Census Bureau, American Community Survey 2024 (5-Year Estimates), Public Use Microdata Sample, https://data.census.gov/app/mdat.

[50] Jess Davidson, American Association of People with Disabilities Responds to Executive Order Threatening Vote by Mail, AAPD (Apr. 2, 2026), https://www.aapd.com/trump-vote-by-mail-eo-statement/.

[51] Nat'l Conf. of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options*, Table 2: Excuses to Vote Absentee (June 3, 2026). https://www.ncsl.org/elections-and-campaigns/table-2-excuses-to-vote-absentee.

[52] Lisa Schur & Douglas Kruse, *Disability and Voter Turnout in the 2020 Elections*, Rutgers Disability Vote Summit (2021), www.ndrn.org/wp-content/uploads/2021/09/Rutgers-Disability-Vote-Summit-Slides.pdf.

[53] U.S. Vote Found., *Closing the Gap on Voters with Disabilities - Updated for 2024*, https://www.usvotefoundation.org/closing-gap-voters-disabilities-updated-2024 (last visited Aug. 1, 2026).

[54] Lisa Schur, Douglas Kruse, and Mason Ameri, *Disability and Voter Turnout in the 2022 Elections (Supplemental Analysis of Census Voter Turnout Data)*, Election Assistance Commission and Rutgers (...continued)

Voters with mobility issues often must secure transportation and navigation help in order to vote in person. A Georgia voter with cerebral palsy described his one-time experience voting in person as costly, laborious and a multi-step process. He described vote-by-mail as a "lifeline to make [his] voice heard, express satisfaction or dissent, and remain part of a system that often overlooks people like [him]."[55]

D. Older voters vote by mail more frequently than their younger counterparts.

Similar to voters with disabilities, 37% of voters aged 65 or over cast ballots by mail, compared to 26% of voters aged 18-44.[56] Eight states that limit who can access a ballot by mail allow voters of a certain age to vote by mail even if they do not necessarily have a mobility issue. These states recognize that elderly voters may have mobility issues that prevent easy access to a polling location or prevent them from standing in long lines at the polls, and thus may need to vote by mail in order to exercise their franchise.

E. Voters who move or change addresses, and low-income voters will be challenged by barriers to mail-in voting.

The USPS policy restricts mail-in ballot usage for voters whose address has changed or may not match the lists used pursuant to the EO. Address instability is concentrated among low-income Americans. In 2022, 12.1 million renting households were severely cost-burdened, and in 2023 more than one million evictions were filed,

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University, pp. 5-6 (2023), www.eac.gov/sites/default/files/2023-07/EAC_2023_Rutgers_Report_Supplement_FINAL.pdf

[55] Nick Papadopoulos, *Voting By Mail is My Lifeline: Voter With Disability Shares Importance of Mail-in Voting*, ACLU (June 3, 2026). www.aclu.org/news/voting-rights/voting-by-mail-is-my-lifeline-voter-with-disability-shares-importance-of-mail-in-voting.

[56] U.S. Census Bureau, *supra* note 40, at Table 14.

and more than 650,000 people experienced homelessness.[57] Rental residential mobility, in turn, depresses voter turnout, an effect attributed to the need to re-register after moving and particularly so when the move follows eviction or foreclosure.[58] A bipartisan group of ten state and local election officials warned the USPS that voters "who have completed all required steps to receive mail ballots" may still fail to reach the list, and that a voter who does not receive an expected ballot "may not have another opportunity to vote."[59] The voters least able to absorb that error are those whose addresses change most often. According to the U.S. Census Bureau, about 12% of Americans move each year.[60]

III. THE EO HAS ALREADY CAUSED UNCERTAINTY AND CONFUSION AMONG VOTERS, THREATENING TO CHILL DEMOCRATIC PARTICIPATION.

The EO and actions of the federal agencies have caused uncertainty and confusion among eligible voters across communities, undermining confidence in and understanding of their ability to participate in upcoming elections, all creating a chilling effect on voter participation.[61] Voters are concerned they will be improperly

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[57] Simrun Singh & Katherine Fallon, *Housing Instability Is a Critical Barrier to Voting Access,* Urb. Inst.: Hous. Matters (Oct. 23, 2024), https://housingmatters.urban.org/articles/housing-instability-critical-barrier-voting-access.

[58] *Id.*

[59] Bipartisan Policy Ctr., *BPC Public Comment on USPS Proposed Rule on Ballot Mail for Federal Elections* (July 2, 2026), https://bipartisanpolicy.org/wp-content/uploads/2026/07/BPC-Ballot-Mail-for-Federal-Elections-Public-Comment.pdf.

[60] U.S. Census Bureau, *United States Migration/Geographic Mobility at a Glance: American Community Survey 1-Year Estimates* (Sept. 16, 2025), https://www.census.gov/topics/population/migration/guidance/acs-1yr.html.

[61] American Postal Workers Union Comments on Proposed Rule: Ballot Mail for Federal Election (Jun. 29, 2026) ("Already the public is confused and concerned; the damage this rule will do to service and the Postal Service's reputation is truly unprecedented.") https://www.savethepostoffice.com/wp-content/uploads/2026/07/Comments-on-USPS-ballot-mail-proposal.pdf.

excluded from the citizenship list, will not know if they are on any list, or will have difficulty fixing an improper exclusion.[62] The executive director of Black Voters Matter Fund and VBM Capacity Building Institute, Inc.[63] has stated the EO undermines their attempts to assure voters that the elections will be fairly administered and that their data will be protected. They have already received voter and partner inquiries related to voter eligibility, the ability to continue to vote by mail, and concerns about data privacy. Amicus Common Cause expects to confront confusion and inform voters how to correct any errors if they are excluded from the USPS or DHS lists.[64] Secure Families Initiative, a nonprofit organization whose military families and veterans rely heavily on mail-in voting, is preparing to monitor impacts on their members related to the state citizenship lists and state participation lists.[65] Many other organizations are similarly responding to attacks on democratic norms and preparing to protect voters harmed by the EO.[66]

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[62] *See* Decl. of Jill Howard, *DSCC v. Trump,* No. 1:26-cv-01114 (D.D.C. 2026), ECF No. 54-6; Decl. of Brian James Freeman, *DSCC v. Trump,* No. 1:26-cv-01114 (D.D.C. 2026), ECF No. 54-8; *see also* Decl. of Carolyn Betensky, *DSCC v. Trump,* No. 1:26-cv-01114 (D.D.C. 2026), ECF No. 55-10.

[63] Decl. of Clifford Albright. *DSCC v. Trump*, No. 1:26-cv-01114 (D.D.C. 2026), ECF No. 54-9.

[64] Decl. of Elena Nunez on Behalf of Common Cause, *DSCC v. Trump DSCC v. Trump*, No. 1:26-cv-01114 (D.D.C. 2026), ECF No. 54-3; s*ee also* Decl. of Kyle Giddings, *DSCC v. Trump*, No. 1:26-cv-01114 (D.D.C. 2026), ECF No. 54-4.

[65] Decl. of Sarh Streyder, Executive Director, Secure Families Initiative, *DSCC v. Trump,* 1:26-cv-01114 (D.D.C. 2026), ECF No. 53-12.

[66] *See* PRRI, *Survey: As the Nation Marks 250th Birthday, Seven in Ten Americans Believe Democratic Freedoms Are in Danger* (June 17, 2026), https://prri.org/press-release/survey-as-the-nation-marks-250th-birthday-seven-in-ten-americans-believe-democratic-freedoms-are-in-danger/; Bright Line Watch, *The Persistence of Diminished Democracy in a Second Trump Presidency*, https://brightlinewatch.org/the-persistence-of-diminished-democracy-in-a-second-trump-presidency/ (last visited July 31, 2026) (finding expert assessments of U.S. democracy fell to the lowest recorded levels in spring 2025, comparable to 1965); Delano Massey, *Exclusive: New poll finds most Americans fear civil war and democratic decline*, Axios (Nov. 18, 2025), https://www.axios.com/2025/11/18/americans-fear-civil-war-poll.

CONCLUSION

The harms of the EO and the Federal Government's actions in furtherance of it impact vast numbers of voters and community-serving groups and would culminate in widespread disenfranchisement. Amici urge the Court, in weighing the traditional factors applicable to considering a stay, to recognize the grave harm this EO is causing and will further cause to so many voters. The public interest here lies with tens of millions of American voters and their right to vote, without unnecessary and harmful barriers.

For these reasons, the Court should deny the application for a stay.

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Statements of Interest of Additional Amici Curiae

AAPI Equity Alliance is a coalition of 50 organizations serving AAPI communities in Los Angeles County.

Arizona Asian American Native Hawaiian and Pacific Islander for Equity (AZ AANHPI for Equity) is a state-wide organization striving for equity and justice by building power through community directed organizing, increasing civic engagement, and empowering young leaders.

Asian Americans Advancing Justice of Southern California (AJSOCAL) is a leading civil rights advocate for the Asian American and Pacific Islander community.

Asian Americans and Pacific Islanders of New Jersey (AAPI NJ) is a state-level Asian American advocacy organization based in New Jersey.

Asian Law Alliance is a legal services organization working for justice dignity and equality for low-income Santa Clara County Residents.

Asian and Pacific Islander American Vote (APIAVote) is a leading national nonpartisan nonprofit dedicated to engaging, educating, and empowering Asian American and Pacific Islander communities to strengthen and sustain a culture of civic engagement.

Asian Refugees United (ARU) is an Art, Healing, and social Justice Leadership Center whose mission is to cultivate and restore wholeness in communities impacted by displacement.

Chinese for Affirmative Action (CAA) is a progressive voice in and on behalf of AAPI communities, and CAA advocates for systemic change that protects immigrant rights, promotes language diversity, and remedies racial and social injustice.

Coalition for Humane Immigrant Rights (CHIRLA) was founded in 1986 to advance the human and civil rights of immigrants and refugees and become a place

for organizations and people who support human rights to work together for policies that advance justice and full inclusion for all immigrants.

Council on American-Islamic Relations (CAIR) and its 25 affiliated chapters work to enhance the public's understanding of Islam, protect civil rights, empower American Muslims, and promote justice for all.

Equal Justice Society is a national civil rights organization building an inclusive and multiracial democracy.

Hands United is a national nonprofit serving Deaf and hard of hearing immigrants and their families.

LEAD Filipino is a multi-state organization that advances Filipino American and Asian American Pacific Islander cultural and civic power.

Mekong NYC uplifts and organizes the Southeast Asian refugee and immigrant community in the Bronx and throughout New York City.

Miami Valley Immigration Coalition is a Southwest Ohio coalition committed to immigrant justice.

OneAmerica is a power building organization that works to advance democracy and justice by building power within immigrant and refugee communities in Washington State.

Parent-Child Relationship Association is a nonprofit organization that empowers immigrant families through education, community services, and civic engagement.

Public Counsel, based in Los Angeles, California, is a nonprofit public interest law firm dedicated to advancing civil rights and racial and economic justice, as well as amplifying the power of its clients through comprehensive legal advocacy.

SAATH is mobilizing the future of South Asian politics.

SAAVETX EF is the largest South Asian outreach organization in Texas.

Services, Immigrant Rights and Education Network (SIREN) is an immigrant rights organization whose mission is to empower low-income immigrants and refugees through community education and organizing, leadership development, policy advocacy, civic engagement and legal services.

Sikh American Legal Defense and Education Fund (SALDEF) is the nation's oldest Sikh organization focused on building leadership and capacity in the Sikh American community.

Stop AAPI Hate is dedicated to exposing and combating racism and discrimination against Asian Americans and Pacific Islander (AAPI) people in the U.S.

The Workers Circle is a national, secular Jewish social justice organization working to strengthen voting rights, demand democracy, and build a better and more beautiful world for all.

No. 26A124

IN THE

Supreme Court of the United States

DONALD J. TRUMP, *et al.*,

Applicants,

v.

STATE OF CALIFORNIA, *et al.*,

Respondents.

BRIEF OF *AMICI CURIAE* STATE AND LOCAL ELECTION OFFICIALS, LOCAL GOVERNMENTS, AND THE CENTER FOR ELECTION INNOVATION AND RESEARCH IN OPPOSITION TO APPLICATION FOR A STAY OF INJUNCTION ISSUED BY UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

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STATEMENT OF INTEREST

Amici Curiae ("*Amici*") include a bipartisan group of 118 current and former state and local election officials who are or were charged with the responsibility for administering elections, including federal elections, within their jurisdictions. *Amici* hail from a diverse range of states and localities, including 29 states. *Amici* also include several local governments that administer elections, as well as election experts from the Center for Election Innovation and Research ("CEIR") who support election officials' work.[1] *Amici* are authorized to sign this brief in their individual capacities or as local governments in opposition to the pending application to stay the injunction issued by the United States District Court for the District of Massachusetts against the unconstitutional executive order entitled "Ensuring Citizenship Verification and Integrity in Federal Elections," Exec. Order No. 14399, 91 Fed. Reg. 17125 (Mar. 31, 2026), https://perma.cc/LVY4-3ATL (the "EO").

Given their roles and responsibilities, *Amici* have a strong interest in the fair and efficient administration of elections, in avoiding threats of baseless prosecutions, and in protecting the Constitutionally derived authority of states and localities to regulate elections within their borders. To carry out their duties, election officials develop policies and procedures for their offices, train staff and poll workers, educate

[1] Pursuant to Supreme Court Rule 37.6, *Amici* state that no party or party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money intended to fund preparation or submission of this brief. A list of all *Amici* is provided at Appendix A. *Amici* include election officials who serve within the Plaintiff States covered by the district court's injunction, as well as officials from other states. Regardless of the specific jurisdiction they serve, *Amici* share a commitment to protecting the rights of all eligible voters to cast a ballot.

voters, and respond to real-time constituent needs within their respective jurisdictions. *Amici* election officials are also duty bound under the National Voter Registration Act ("NVRA") to "promote the exercise of" the "fundamental right" to vote. 52 U.S.C. § 20501(a). *Amici* are unified in their commitment to ensuring that elections operate in accordance with state and federal law and that every eligible voter has an opportunity to cast a ballot.

As the front-line workers of election administration and election administration experts, *Amici* understand the practicalities of administering elections and are well-positioned to explain the significant administrative problems and confusion introduced by the challenged EO and its implementing provisions, including the U.S. Postal Service's ("USPS") proposed rule, titled "Ballot Mail for Federal Elections," 91 Fed. Reg. 32915 (proposed June 2, 2026) (the "Proposed Rule"). *Amici* write to offer the Court their first-hand perspective on the on-the-ground impact of the EO, including the clear and immediate harms that the EO will continue to impose on election officials and their ongoing preparations for the upcoming midterm elections, if the district court's injunction is not maintained.

SUMMARY OF ARGUMENT

The challenged EO represents an unprecedented and plainly unlawful intrusion by the Executive Branch into electoral matters reserved to the states and Congress. Not only is the EO unconstitutional and contrary to statutory requirements, Applicants issued the EO and began its implementation weeks *after* primary elections were in full swing in many states. The federal government's ongoing efforts to implement the EO have thus already placed *Amici* in the untenable position of having

to help carry out the EO's directives—on pain of threats of criminal prosecution—with primary elections already underway. Moreover, the upcoming general midterm elections are now mere months away, with election officials across the country already preparing in earnest to administer them.

Against this backdrop, the district court's injunction against implementation of Sections 2 and 3 of the EO was appropriate and should be maintained. The injunction is limited to preserving the status quo for the rapidly approaching November 3, 2026 midterm elections, as well as any other elections held before that date. And the injunction was appropriately supported by the district court's findings of the EO's insuperable conflicts with both the Constitution and multiple federal statutes. *See* App. 56a–59a.

Throughout this litigation, Applicants have offered no serious defense of the EO on its merits, instead relying on the refrain that judicial review of the EO is premature. But the district court and the First Circuit correctly addressed and rejected those standing and ripeness arguments, in light of the unique electoral context and timelines at play here. *See* App. 8a ("All told, between the compressed timelines and anticipated changes to states' election processes, the summary judgment record indicates that the EO has already produced an incredible strain on state election officials and their teams." (internal citation and quotation marks omitted)); *see also* App. 78a ("With an ever-narrowing window of time in which review is appropriate and practicable, and where that review may well require timely involvement by the Court of Appeals or Supreme Court prior to the November 3, 2026 election . . . the legality of the EO as to the November 3, 2026 election (and earlier

elections) is both ripe and fit for review." (internal citations omitted)). Indeed, as the First Circuit held, immediate judicial intervention is both necessary and appropriate because "the record reflects that the Plaintiff States would suffer multiple harms if the EO were enforced, including diversion of staff time to comply with the EO, pocketbook injuries, potential funding cuts and criminal prosecution of their officials, and sovereignty harms." App. 15a.

From their perspective as the election officials charged with administering the upcoming midterm elections in practice, *Amici* urge this Court not to lose sight of that critical context. This Court has repeatedly cautioned against "channel[ing] . . . election disputes to shortly before election day." *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 80 (2026). Accepting Applicants' invitation to stay the existing injunction, under the mistaken view that the Plaintiff States do not yet have standing or the dispute is not yet ripe for review, would do exactly that. And it would almost certainly render any later judicial involvement too little, too late—not just because of the tight timelines and ongoing election preparations, but also because the federal government has never disclaimed the possibility that it may later attempt to rely on *Purcell v. Gonzalez*, 549 U.S. 1 (2006), in an effort to preclude any later judicial review of the EO. Applicants should not be permitted to evade scrutiny of their unlawful actions by claiming that review now is too soon, while arguing in the next breath that review later will be too late.

Should this Court approve the requested stay, thereby allowing the EO to take effect within the Plaintiff States fewer than 100 days before a major federal election where well over 100 million voters are likely to cast ballots, the result will be chaos.

And that will be entirely attributable to Applicants' own choices: the Executive Branch waited until fewer than eight months before the November 2026 general elections to promulgate the EO. USPS then published its Proposed Rule two months later, providing incomplete details regarding the extensive changes to election procedures that the EO would require for all election officials in every state—even while primary elections were already ongoing in many states. And now, although the EO mandated that USPS issue its final rule by July 29, 2026, at the latest, the agency did not do so—despite Applicants apparently having done everything else to finalize that rule short of publishing it in the Federal Register.

In short, all publicly available evidence indicates that if Applicants prevail on this stay application, they will then publish a final USPS rule sometime in August 2026 at the very earliest—leaving under three months before the general elections. The rules governing those elections will remain entirely unclear, and election officials nationwide will be required to grapple with that uncertainty as they prepare to administer the November 3, 2026 elections in accordance with their respective states' own laws and procedures. This all underscores the current ripeness of the Plaintiff States' claims, as well as the necessity of the district court's existing—and appropriately limited—injunction.

For all of these reasons, and because election preparations are already well underway, with the EO's unlawful provisions causing immediate harm to election administration *right now*—including impacting recruitment and retention of election workers and volunteers—this Court should deny the requested stay.

ARGUMENT

I. If the Injunction Is Not Maintained, the EO Will Continue to Cause Irreparable Harm to Ongoing Preparations for the Upcoming 2026 Midterm Elections.

A. Preparation for the 2026 midterm elections is already well underway.

The demands of implementing the EO, and the EO's resulting impacts, will be felt most acutely at the state and local levels, where elections are administered. State and local election officials must coordinate with election workers, establish guidance and rules for election administration, engage in voter education, send ballots to registered voters, work with third-party contractors, and rely on election workers' experience and expertise in each jurisdiction to ensure the orderly operation of elections. These steps all take time, and *Amici* are thus already undertaking efforts to recruit and train election workers for the upcoming midterm elections.[2] *See Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (acknowledging that "state and local election officials need substantial time to plan for elections" because "[r]unning elections state-wide is extraordinarily complicated and difficult. . . . and pose[s] significant logistical challenges"). But those efforts are proving difficult in the current climate.[3] Safety concerns among local election officials are

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[2] *See, e.g.*, Wendy Wright, *Primary Election Day preparations underway across upstate New York*, Spectrum News 1 (June 4, 2026), https://perma.cc/SAF8-9KGU.

[3] *See* McKenzie Muskett, *Charleston County program gets creative to recruit new poll workers*, Spectrum News (Apr. 29, 2026), https://perma.cc/AE3H-AUE6; Susana Canales Barrón, *LA Officials race to recruit bilingual election workers ahead of primary elections*, L.A. Pub. Press (Apr. 3, 2026), https://perma.cc/PEB9-N9BE; Adrian Ashford, *House approves tax break for poll workers as SC struggles to recruit enough of them*, S.C. Daily Gazette (Feb. 5, 2026), https://perma.cc/7U8C-YX5A.

high.[4] Now, the uncertainty injected by the EO into election administration, along with threatened prosecution of election workers, as described further below, has further depressed recruitment.

In addition to recruitment efforts, other preparations have already begun for the midterm elections in many jurisdictions. As the First Circuit recognized, "it [i]s uncontroverted that, at the time they filed their lawsuit, the Plaintiff States were actively administering or preparing to administer federal primaries . . . and preparing to administer the November 2026 general election." App. 4a (internal citations and quotation marks omitted). These ongoing preparations include such matters as voter education, ballot design, and "purchas[ing] mail ballot envelopes for [voting by mail in] the 2026 federal election cycle." *Id.*

The challenged EO imposes specific deadlines over the next several months, and elections will occur throughout this period, with the November 3, 2026 midterm elections now occurring in just three months. *See* App. 75a. Given that compressed timeline, the district court correctly found that "postponing judicial review is impracticable" and would "inflict significant hardship" on the Plaintiff States and others—including election officials like *Amici*—who must prepare right now for the upcoming elections. App. 76a. The First Circuit agreed. *See* App. 9a ("The Plaintiff States have no practical choice but to respond to the EO now." (citations omitted)).

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[4] *Local Election Officials Survey* 3, Brennan Ctr. for Just. (Apr. 13, 2026), https://perma.cc/C49K-EC2S (noting that 32 percent of local election officials surveyed reported experiencing threats, harassment, or abuse because of their job, while 52 percent reported concern for the safety of their colleagues).

B. The EO has already placed state and local election officials in an untenable position.

"The Court's precedents recognize a basic tenet of election law: When an election is close at hand, the rules of the road should be clear and settled." *Democratic Nat'l Comm. v. Wis. State Legislatures*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay). "[R]unning a statewide election is a complicated endeavor," requiring "thousands of state and local officials and volunteers [to] participate in a massive coordinated effort to implement the lawmakers' policy choices on the ground before and during the election," and requiring "at every step, state and local officials [to] communicate to voters how, when, and where they may cast their ballots through in-person voting on election day, absentee voting, or early voting." *Id*. But, absent a continued injunction, this unconstitutional EO would place election officials like *Amici* in the untenable situation of having to prepare to implement an unlawful and confusing order, while facing threats of criminal sanctions, and without knowing what rules will govern the midterm elections that are only months away.

As both the First Circuit and the district court have explained, the EO has already imposed "numerous immediate, predictable harms" on states and their electoral preparations. App. 15a (internal quotation marks omitted). That is because the EO requires states, election officials, and voters alike to "reckon today with both the likelihood that the executive branch agencies will follow the EO's multiple directed actions and simultaneously with the uncertainty that exists as the details are slowly rolled out over the next few months." App. 76a; *see also* App. 9a (First

Circuit finding sufficiently immediate, non-hypothetical harm because "the EO lays out a clear set of rapidly approaching deadlines by which states must coordinate with federal officials and comply with new voting procedures—all while the states must also ensure that their officials and the public understand the evolving set of rules that would govern the upcoming September and November elections"). Indeed, it is notable that even while the district court's injunction has been in place, the federal government has continued to take steps toward implementation of the EO's directives, such as the changes to the procedures for voting by mail mandated in section 3 of the EO.[5] These considerations amply supported the lower courts' assessment of the Plaintiff States' standing and this matter's ripeness for judicial review, as well as the necessity for immediate injunctive relief.

By contrast, Applicants' preferred wait-and-see approach would only

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[5] For example, on June 18, 2026, USPS provided advance notice of a proposed new General Privacy Act System of Records Notice ("SORN") to coincide with its proposal to amend the Mailing Standards of USPS's Domestic Mail Manual (DMM), regarding the transmission of mail-in or absentee ballots for federal elections. Notice at 1, *California v. Trump*, 2026 WL 1826490, Dkt. No. 210. On July 17, 2026, formal publication of that SORN took place. *Id.* at 2. The SORN expressly acknowledges that USPS's proposed changes to the procedures governing voting by mail are the subject of active litigation, and thus states that no final rule or new System of Record will take effect until the government obtains relief from all relevant injunctions. However, the fact that the SORN was issued is further evidence that Applicants are proceeding with efforts to implement the EO, including under the expectation that the new changes will apply to the upcoming midterm elections. In addition, the website for the Office of Management and Budget's Office of Information and Regulatory Affairs, which houses information for federal regulations, currently shows that, as of July 30, 2026, the "Conditions on the Preparation of Ballot Mail for Federal Elections" rule is in "pending" status and in the "Final Rule" stage. *Pending EO 12866 Regulatory Review*, Off. of Mgmt. & Budget, https://perma.cc/4ASQ-X72R. This suggests that USPS is preparing to publish a final rule once litigation is resolved.

compound the administrative burdens imposed by the EO, leaving no time for judicial intervention to halt the EO's obviously unlawful mandates until the final months or even weeks immediately preceding the upcoming midterm elections—by which point irreparable damage will already have been done. For example, the EO directs that the "State Citizenship List[s]" that federal agencies must compile under Section 2 of the EO "shall be updated and transmitted to State election officials no fewer than 60 days before each regularly scheduled Federal election." EO § 2(a). In the case of the upcoming November 3, 2026 elections, this means that those lists may not be finalized until September 4, 2026.

State and local election officials, as well as the voters whom they serve, deserve better. *Amici* deserve to know the rules and procedures that will apply to elections sufficiently far in advance to enable the orderly administration of elections—including such time-intensive matters as preparing, printing, mailing, and receiving ballots; training election workers and volunteers; educating voters about how to cast a ballot; and responding to voters' inevitable questions and concerns. The balance of equities and the public interest thus strongly favor maintaining the district court's existing injunction against the EO.

C. The "State Citizenship Lists" mandated in the EO will inevitably contain errors and place substantial burdens on *Amici*.

The "State Citizenship Lists," which the EO mandates be "compile[d]" by federal agencies and then "transmit[ted] to the chief election official of each State," EO § 2(a), will inevitably conflict with states' and localities' own voter rolls, contain significant errors, and thus impose substantial costs and harms on states, election officials, and

voters alike. Consistent with existing federal law, states and localities already maintain their own lists of eligible voters in their jurisdictions, pursuant to the Help America Vote Act ("HAVA") and NVRA.[6] The direction to the federal government to create and disseminate so-called "State Citizenship Lists," however, would upend this carefully calibrated scheme, amounting to federal maintenance of these lists, in contravention of HAVA and NVRA. *See Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 624–29 (6th Cir. 2025).

Section 2 of the EO also imposes direct and immediate harms by threatening election workers and officials like *Amici* with criminal and other sanctions if they provide ballots to individuals who do not appear on the federal government's "State Citizenship Lists," *see* EO § 2(b)—even if those individuals are in fact eligible voters, as confirmed by states' own voting rolls. As the First Circuit noted, "the EO expressly targets state and local officials" with criminal investigation and prosecution. App. 12a–13a. Moreover, throughout this litigation, "the Government repeatedly indicated . . . that the DHS Citizenship Lists" mandated by Section 2 "could be used to 'facilitate . . . post-election law enforcement activity,' including prosecuting [alleged] violations of laws that 'explicitly prohibit non-citizens from registering to vote.'" *Id.*

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[6] For example, the HAVA directs that "*the appropriate State or local election official shall perform list maintenance* with respect to" such lists on a "regular basis," including to remove ineligible voters, 52 U.S.C. § 21083(a)(2)(A)(i) (emphasis added), but such maintenance must be conducted "in a manner that ensures that . . . only voters who are not registered or who are not eligible to vote are removed from the computerized list[s]." *Id.* § 21083(a)(2)(B)(ii). And NVRA mandates that each state "conduct a general program that makes a reasonable effort to remove the names of ineligible voters." 52 U.S.C. § 20507(a).

13a (quoting EO § 1).

But, problematically, the federal databases from which the EO directs that the federal "State Citizenship Lists" be derived are not designed for this task and thus are almost certain to contain errors that improperly exclude many eligible citizen voters. *See, e.g.*, *Pub. Int. Legal Found, Inc. v. N.C. State Bd. of Elections*, 996 F.3d 257, 261 (4th Cir. 2021) (noting a "high rate of inaccuracy" in the federal SAVE database's information on voter eligibility).[7] Furthermore, the federal government's "list[s] will also be underinclusive as a result of feasibility issues, where the federal government may be unaware of name changes (such as when a woman changes her name at marriage) or residence changes (where a citizen moves from state to state)." App. 77a. Election officials like *Amici* will thus bear the burdens of determining how to reconcile their voting rolls with the federal "State Citizenship Lists," all while lacking sufficient information and time to cross-check their rolls with those lists while being threatened with potential criminal prosecution anytime the lists conflict.[8]

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[7] The Department of Homeland Security itself has acknowledged that "due to misspelling of names, transposed numbers, or incomplete information, the SAVE Program may produce inaccurate results" regarding citizenship. Dep't of Homeland Sec., DHS Ref. No. DHS/USCIS/PIA-006(d), Privacy Impact Assessment for the Systematic Alien Verification Entitlements "SAVE" Program 19 (Oct. 31, 2025), https://perma.cc/G92ULYPM.

[8] The federal government's June 8 notice pertaining to implementation of Section 2 of the EO, *see* Memorandum, *California v. Trump*, 2026 WL 1826490, Dkt. No. 188-1, provides no meaningful clarification and risks imposing more burdens on *Amici*. The steps outlined in that notice—which aim to corner election officials into consulting flawed federal databases, all while under threat of potential criminal prosecution—needlessly burden election officials who are already operating under time and resource constraints. And the notice solves none of the problems resulting from the significant errors inevitably contained in the federal databases.

The First Circuit appropriately concluded that, given the context of the EO as a whole and the federal government's repeated threats of criminal enforcement, the challenged provisions of Section 2 are imposing "immediate, predictable harms" that warrant injunctive relief with respect to the upcoming November 2026 elections. App. 15a (internal quotations and citations omitted); *see also* App. 78a (describing the "direct and immediate dilemma for Plaintiffs" that would result from implementation of Section 2 of the EO, even if the implementing federal agencies only create and disseminate the mandated lists "to the extent feasible"). Because no other pending litigation has yet resulted in an injunction against the EO's "Citizenship List" provisions, election officials in the Plaintiff States would immediately be subject to the burdensome implementation requirements in Section 2 of the EO for the upcoming midterm elections, absent a continuation of the district court's injunction. Moreover, as the First Circuit observed, the mandates in Section 2(a) of the EO must be read together with the threats of prosecution in Section 2(b), and "[s]tate and local officials are no exception to the commonsense rule that '[p]eople do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them.'" App. 13a (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 68 (1963)); *see also id.* for the proposition that "in their legal rulings, courts 'are not required to exhibit a naiveté from which ordinary citizens are free'" (quoting *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019)).

Accordingly, the district court's injunction against Section 2 of the EO was an appropriate response to the immediate, here-and-now harms imposed by those provisions.

D. Substantial burdens and irreparable harms will also result from the EO's changes to procedures governing voting by mail.

Similarly, the significant changes mandated in Section 3 of the EO also impose additional problematic requirements for mail-in and absentee ballots, again relying on election officials to perform the majority of the labor associated with the changes. Among other things, Section 3 of the EO directs that USPS adopt new rules requiring "all outbound ballot mail" to be sent in envelopes that "ha[ve] undergone a mail envelope design review by the USPS," including for compliance with the EO's mandated requirements for "designated [envelope] markings" and "unique Intelligent Mail barcode[s]." EO § 3(b)(i). The EO further directs that USPS must adopt rules under which it "shall not transmit mail-in or absentee ballots from any individual unless those individuals have been enrolled on a State-specific list" of eligible voters maintained by USPS, which the EO describes as the State's "Mail-In and Absentee Participation List." *Id.* § 3(b)(iii)–(iv).

The First Circuit correctly refused to stay the district court's injunction against these challenged provisions of the EO, as well, finding that "precedent supports the [district] court's conclusion that the Plaintiff States face an imminent and credible threat of penalties if they do not use USPS-designed envelopes," as mandated in Section 3, or if they attempt to provide absentee or mail-in ballots to individuals not included on USPS's "Mail-In and Absentee Participation Lists." App. 12a. Throughout this litigation, the federal government has attempted to shield Section 3 of the EO from judicial review by the simple expedient of hiding behind the lack of a final USPS-issued rule. But as the First Circuit found, Section 3 of the EO phrases

its directives to USPS as mandatory, not optional, and it "directs various changes to the voting-by-mail process for . . . elections that will impact how [election] officials administer elections, regardless of the details of USPS's final rule." *Id.* at *7.

At any rate, on June 2, 2026, USPS published its Proposed Rule describing how it plans to implement the EO's directives in Section 3. 91 Fed. Reg. 32915. This Proposed Rule only bolsters the First Circuit's conclusion that, as the federal government itself has "concede[d]," "the federal defendants have been moving ahead to implement the directives in the EO," including the directives in Section 3 relating to voting by mail. App, 6a; *see also id.* (describing the federal government's concession that it has been "taking steps to create a [USPS] portal for collecting information about individuals who are eligible to vote by mail" (internal quotation marks omitted)).[9]

Without a continued injunction, the burdens imposed by Section 3 of the EO will inescapably fall on election officials like *Amici*. For example, under USPS's Proposed Rule, the chief election official of each state will be responsible for authorizing users within their state to access a new USPS "Federal Ballot Mail Portal." 91 Fed. Reg. 32916. Local election officials like *Amici* will then be required

[9] Although the EO directed that USPS promulgate its final rule by July 29, 2026, *see* EO § 3(d) (directing that the final rule "be issued no later than 120 days from the date of this order," dated March 31, 2026), the agency has since stated in this litigation that "a final rule will not be published unless and until the government obtains relief from all relevant injunctions." Notice at 2, *California v. Trump*, 2026 WL 1826490, Dkt. No. 210. Nonetheless, as described above, *see supra* note 5, the federal government has still been undertaking all other necessary steps in the meantime to ready the Proposed Rule for final publication.

to use that portal to notify USPS of individuals to whom they plan to mail a ballot, including the unique barcode associated with the outbound and return ballot assigned to each voter. *Id*. at 32916–18. State and local election officials will thus be required to stand up wholly new procedures to input information into USPS's portal to form the basis of the state-specific Mail-In and Absentee Participation Lists mandated by the EO. But the portal's specifications have not been released, and the portal itself may not be ready for intake until the final months or even weeks before Election Day. This places election officials like *Amici* in an impossible position, and—absent a continued injunction—would require them to begin expending and diverting resources already to prepare to comply with these new mandates.

The EO, along with USPS's Proposed Rule implementing it, also imposes burdens on state and local election officials to re-design and even re-print ballot envelopes. Most states do not have a single design for mail ballot envelopes. Counties and localities in a single state may use different voting machines and different types and sizes of ballots, requiring different ballot and envelope designs. Changing these processes to comply with the EO's mandates would be a major undertaking, requiring both significant time and monetary resources—burdens which would also inevitably fall on state and local election officials. Similarly, under USPS's Proposed Rule, local election officials would be "responsible for barcode creation" "as well as envelope design and printing for all ballot mail." *Id*. at 32918. The EO's requirement that every jurisdiction use Intelligent Mail barcodes on each outbound and return envelope creates onerous, new obligations that will be costly and difficult—if not impossible—for election officials to follow. And this will especially be the case in rural communities

that do not currently have the technology to produce these barcodes.[10]

As the First Circuit also noted, "the 'untenable' and 'undemocratic' consequences of waiting to hear 'election disputes . . . shortly before election day' weighed in favor of [the district court's] adjudication" of this issue now, "even before [USPS's proposed] rules' effects on the plaintiffs have come into full view." App. 13a–14a (quoting *Bost*, 607 U.S. at 79–80). The significant changes mandated in Section 3 of the EO have already imposed substantial costs and placed states and election officials "at 'substantial risk [of] harm." App. 11a (alterations in original) (citing *Mahmoud v. Taylor*, 606 U.S. 552, 559–60 (2025)). Accordingly, the injunction against those provisions should be maintained.

II. The EO Imposes Significant Legal Risks for Election Officials, Causing Downstream Harms to Election Administration *Right Now*.

As the First Circuit also correctly concluded, the EO exacerbates its substantive and administrative burdens on states and election officials by "expressly target[ing] state and local officials, both overall and in numerous subsections" of the EO. App. 12a–13a. Indeed, the EO threatens election officials like *Amici* with federal criminal charges for issuing ballots to individuals whom the federal government—relying on its flawed and extra-statutory lists—deems ineligible. *See id.* These legal threats have already harmed ongoing election preparations, including by deterring staff, volunteers, and contractors from agreeing to assist in election administration.

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[10] *See* Dion Nissenbaum et al., *USPS proposal to carry out Trump's Executive Order could create new barriers to mail voting*, VOTEBEAT (May 29, 2026), https://perma.cc/8TV4-MW5K.

Maintaining the existing district court injunction against the EO is therefore necessary to continue to prevent these immediate and irreparable harms.

A. The threat of prosecution of state and local election officials functions as the EO's enforcement mechanism.

The EO puts state and local election officials, like *Amici*, in baseless legal peril. Election officials carefully follow state and federal law, adopting strict processes to ensure only eligible voters can vote. As a result, noncitizen voting is vanishingly rare.[11] Regardless, the EO highlights that "[f]ederal statutes explicitly prohibit non-citizens from registering to vote or voting in Federal elections and impose criminal penalties for violations," citing various criminal statutes. EO § 1. It directs the Attorney General to "prioritize the investigation and, as appropriate, the prosecution of" both "*State and local officials* or any others involved in the administration of Federal elections who issue Federal ballots to individuals not eligible to vote in a Federal election" and of "*individuals and public or private entities engaged in, or aiding and abetting*, the printing, production, shipment, or distribution of ballots to individuals who are not eligible to vote in a Federal election." *Id.* § 2(b) (emphases added). The EO specifies that "the unlawful use of the mail in connection with elections is prohibited by various Federal statutes" and directs agencies to coordinate "for investigation of suspected unlawful use of the mail involving Federal election materials." *Id.* § 3(a), (c). Furthermore, it prioritizes referral of "[e]vidence of violations of existing Federal laws *by State or local election officials* [and] *States or*

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[11] *See Update: Review of Claims of Noncitizen Registrants and Voters*, Ctr. for Election Innovation & Rsch. (July 2, 2026), https://perma.cc/5893-J5YS.

localities, including any instrumentalities thereof . . ." for investigation and potential charges under various federal criminal statutes. *Id.* § 5 (emphases added).

Under the EO, criminal prosecution is an option of *first* resort, creating an atmosphere of fear and making clear that even small mistakes resulting from confusion related to the EO's new mandates could result in investigations, indictments, and prison time. The EO's prosecute-first mandate does not exist in a vacuum. While the federal government has long been a partner to state and local governments in the effort to administer free and fair elections, over the past year the federal government has repeatedly undermined that relationship. On July 17, 2026, the Secretary of the Department of Homeland Security ("DHS") explicitly warned that election officials could face jail time if their states do not cooperate with the Executive Branch in investigating non-citizens on their voter rolls.[12] The federal government has also seized or attempted to gain access to election materials in multiple jurisdictions,[13] and the Department of Justice has filed dozens of lawsuits against states that refused to comply with the federal government's demand for voter registration lists.[14] The FBI has increased its presence in Fulton County, Georgia to

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[12] Ali Swenson, *DHS Secretary Mullin says he'll chase voter fraud after Trump revives election claims*, Associated Press (July 17, 2026), https://perma.cc/7LS3-WGNA.

[13] *See, e.g.*, Stephen Fowler, *The FBI executes a search warrant for 2020 election ballots in Georgia's Fulton County*, NPR (Jan. 29, 2026), https://perma.cc/9JH3-A3LH; Patrick Marley, *DOJ demands Detroit-area 2024 ballots, escalating election scrutiny*, Wash. Post (Apr. 19, 2026), https://perma.cc/A774-BA7C.

[14] *See, e.g.*, *United States v. Weber*, 816 F.Supp.3d 1168 (C.D. Cal. 2026); *United States v. Oregon*, 828 F.Supp.3d 1092 (D. Or. 2026); *United States v. Benson*, 819 F.Supp.3d 753 (W.D. Mich. 2026).

investigate 2020 presidential election issues, and FBI Director Kash Patel recently announced plans to initiate arrests related to the 2020 election[15]—despite the fact that the five-year statute of limitations for election crimes has passed and without any proof of wrongdoing. These efforts are not aimed at improving election administration; they are focused on attempting to revive disproven conspiracy theories. Under these conditions, election officials reasonably fear that the EO's threat of prosecution is genuine.

And yet, because the EO's terms "are not clearly defined," the EO fails to provide *Amici* with a "reasonable opportunity to know what is prohibited." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). For example, as described above, Section 2 directs the creation of "State Citizenship Lists" to determine voter eligibility, but fails to explain how these lists interact with already existing (and almost certainly *more* accurate) state voter rolls. The EO similarly does not explain how the federally maintained "Citizenship Lists" will interact with USPS's "Mail-In and Absentee Participation Lists." And it fails to "provide explicit standards" of enforcement, *Grayned*, 408 U.S. at 108, threatening prosecution of a potentially wide range of actors and broad scope of conduct, *see* EO § 2(b) (threatening prosecution of those "*engaged in, or aiding and abetting*, the printing, production, shipment, or distribution of ballots." (emphasis added)). The practical consequences of this risk of

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[15] *See* Jacob Wendler, *Trump DOJ redoubling election scrutiny efforts*, Politico (Apr. 19, 2026), https://perma.cc/5RTU-UA5B; Kate Brumback, Alanna Durkin Richer & Eric Tucker, *The FBI is directing hundreds of analysts to its probe of Georgia's 2020 presidential election*, Associated Press (July 2, 2026), https://perma.cc/MBD6-UDEH.

arbitrary enforcement are severe and present another reason that the district court's injunction to preserve the status quo should be maintained. *See Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 733 (D.C. Cir. 2022) (clarifying the status quo is the last "uncontested status" that preceded the pending controversy—here, the state of affairs prior to the implementation of the EO).

B. The EO's threats of prosecution are already harming *Amici*'s ability to adequately staff for upcoming elections.

State and local election officials like *Amici* operate under challenging conditions. They manage our nation's consequential elections within a short time frame and rely on recruiting temporary workers and volunteers. Many of their colleagues have resigned in large numbers in recent years, due in part to a rise in threats and harassment against election workers.[16] A 2024 survey found that 38% of election workers reported experiencing threats, harassment, or abuse for doing their jobs.[17] Now, as local election officials are struggling to retain talent, the EO imposes new burdens that are inevitably resulting in further attrition.

Because the EO's reach is so broad, threatening "public or private entities" who are "engaged in, or aiding and abetting," activities that include "the printing, production, shipment, or distribution of ballots," EO § 2(b), it carries downstream chilling effects throughout the electoral apparatus. The EO is already making it more

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[16] Andrew Howard, *Election officials grapple with a brain drain as threats rise*, Politico (Feb. 3, 2026), https://perma.cc/45E6-VSME.

[17] Ruby Edlin & Lawrence Norden, *Poll of Election Officials Finds Concerns About Safety, Political Interference*, Brennan Ctr. for Just. (May 1, 2024), https://perma.cc/93M9-JWS4.

difficult for election officials to recruit poll workers and other volunteers, who fear they could be subject to severe criminal penalties simply for giving a ballot to someone they understand to be an eligible voter. Similarly, the EO may make it more difficult for election officials to work with contractors, instill fear in other actors involved in the preparation and delivery of ballots, and discourage a broad range of activities needed to administer a federal election. *Amici* and other officials like them cannot effectively do their jobs under such conditions. The district court's injunction therefore stands as a critical safeguard of effective preparations for the upcoming November 2026 midterm elections.

C. The EO runs headlong into existing voting rights laws and risks undermining confidence in elections.

Beyond the threats of prosecution under the EO itself, the EO puts election officials in legal jeopardy by potentially forcing them to violate statutes governing voting rights. This places officials like *Amici* in an impossible position: They risk federal prosecution if they send ballots to individuals who appear on state voter rolls but not on the federal government's lists (which, as already explained, necessarily rely on unreliable citizenship-verification mechanisms). But if they fail to provide ballots to eligible voters, election officials place themselves in potential legal jeopardy under state and federal criminal law. *See, e.g.*, 52 U.S.C. § 10307(a) (prohibiting refusing to permit an eligible voter to vote). Indeed, local election officials have a responsibility to promote the fundamental right to vote. 52 U.S.C. § 20501(a). And even if they do not face criminal prosecution, process failures from the rushed implementation of this ill-conceived EO will require that election officials field an

overwhelming number of calls when eligible voters do not receive the mail-in ballots they are expecting, manage long lines at polling places as voters seek to vote in-person instead, and attempt to help rural voters who have limited options to cast ballots in-person.

Election officials also play an important role in promoting voter confidence and increasing voter participation. Because the EO and the accompanying USPS Proposed Rule impose significant changes immediately preceding an election and do not clearly delineate the functionality or uses of the various lists or legal threats contemplated, election officials are unable to counter and respond to the uncertainty and fear sowed by the EO. Similarly, without clarity on how the federal government seeks to operationalize the EO, election officials are unable to prepare communications and trainings for election workers and the public to assuage confusion or concerns about, for example, how the federally maintained "State Citizenship Lists" and "Mail-in and Absentee Participation Lists" will be used or how registered voters can assure that they receive their mail-in or absentee ballot and can then confidently return it.

In short, the First Circuit was correct to find that "neither the federal defendants nor the intervenor states [have] grapple[d] with the numerous immediate, predictable harms" that the EO would inevitably impose on states, election officials, and voters absent a continued injunction. App. 15a (internal citations and quotation marks omitted). Applicants cannot come close to defending the constitutionality or lawfulness of the EO on its merits. And in the meantime, as the First Circuit correctly held, "[t]he undisputed summary judgment record indicates that, were the EO to take

effect for the elections taking place in September and November [2026], it would sow confusion and threaten disenfranchisement of many eligible voters." *Id.*

CONCLUSION

For the foregoing reasons, the Court should deny the application for a stay of the district court's injunction.

Respectfully submitted,

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August 3, 2026

APPENDIX A: LIST OF *AMICI CURIAE*

Amici include the Center for Election Innovation and Research ("CEIR"), a nonpartisan nonprofit whose core mission is to work with election officials and build confidence in elections that voters should trust and do trust. *Amici* also include the following local governments, and the following current or former election officials, listed alphabetically by last name, along with their titles and jurisdictions:

LOCAL GOVERNMENTS AND ORGANIZATIONS

County of Alameda, California

City of Albany, New York

Allegheny County, Pennsylvania

City of Beaverton, Oregon

City of Boston, Massachusetts

Bucks County, Pennsylvania

Chester County, Pennsylvania

Hennepin County, Minnesota

County of Los Angeles, California

Milwaukee County, Wisconsin

City of Minneapolis, Minnesota

City of New Haven, Connecticut

Pierce County, Washington

City and County of San Francisco, California

City of San Jose, California

County of Santa Clara, California

County of Sonoma, California

Texas Association of County Election Officials

Travis County, Texas

City of Tucson, Arizona

Vermont Municipal Clerks' and Treasurers' Association

STATE AND LOCAL ELECTION OFFICIALS

Natalie Adona
Registrar of Voters, Marin County, California

Laura Anna
Director of Elections, County of Venango, Pennsylvania

Kristin Mae Atwood
Clerk & Treasurer, Town of Barton, Vermont

Mildred Barry
Clerk, Town of Westminster, Vermont

Patricia A. Bennett
Commissioner of County Board of Elections, Monmouth County, New Jersey

Seth Bluestein
Commissioner, City of Philadelphia, Pennsylvania

Tracy L. Borst
Clerk & Presiding Officer, Town of Thetford, Vermont

Bobbi Brimblecombe
Clerk, Town of Marshfield, Vermont

Cherilyn Brown
Clerk & Treasurer, Town of Moretown, Vermont

Lisa Brown
Clerk & Register of Deeds, Oakland County, Michigan

Brande Buchanan
Chief Deputy Clerk, Borden County, Texas

Bill Burgess
Clerk, Marion County, Oregon

Barb Byrum
Clerk, Ingham County, Michigan

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Clerk, Town of Delta Charter, Michigan

John Clark
Mayor, Town of Ridgway, Colorado

Katharine Clark
Clerk, Santa Fe County, New Mexico

Belinda Harris Clegg
Clerk, Town of Wolcott, Vermont

Domonique Clemons
Clerk & Register of Deeds, Genesee County, Michigan

Becky Close
Clerk & Recorder, Eagle County, Colorado

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Clerk-Recorder & Registrar of Voters, San Benito County, California

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Clerk, City of West Bend, Wisconsin

Justin Douglas
Commissioner, Dauphin County, Pennsylvania

Teegan Dykeman-Brown
Clerk, Town of Calais, Vermont

Daniel Adams Eaton
Moderator, Town of Stoddard, New Hampshire

Susan Esmond
Elections Specialist, Summit County, Colorado

Michael Estergren
Principle Clerk, Atlantic County, New Jersey

Gail Fallar
Clerk & Treasurer, Town of Tinmouth, Vermont

Giselle Feliciano
Registrar of Voters, City of Hartford, Connecticut

Rebecca L. Fielder
Clerk, Town of Pomfret, Vermont

Hilary Francis
Clerk, Town of Brattleboro, Vermont

Diana Fuentes
Clerk, City of San Diego, California

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No. 26A124

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Applicants,
v.
STATE OF CALIFORNIA, ET AL.,
Respondents.

ON APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS AND REQUEST FOR ADMINISTRATIVE STAY

BRIEF OF WISCONSIN DEMOCRACY CAMPAIGN, INC., EXPO OF WISCONSIN, INC., JALEYCE ORAEDU, JASMINE ORAEDU, AND AHARON SHELEF AS *AMICI CURIAE* IN OPPOSITION TO THE APPLICATION

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INTEREST OF *AMICI CURIAE*[1]

Wisconsin Democracy Campaign, Inc. (WDC) is a Wisconsin nonstock corporation recognized as nonpartisan and tax exempt under Section 501(c)(3) of the Internal Revenue Code. WDC functions as a watchdog, advocating for and educating about government transparency and accountability to create a just democracy. WDC engages in many activities designed to encourage Wisconsinites to vote, including voter registration and get-out-the-vote campaigns. WDC advocates for secure, broadly accessible voting rules and litigates to protect Wisconsinites' voting rights.

EXPO of Wisconsin, Inc. (EXPO) is a Wisconsin nonstock corporation recognized as nonpartisan and tax exempt under Section 501(c)(3) of the IRC. EXPO supports people affected by the criminal legal system and encourages civic engagement across Wisconsin. EXPO conducts voter education, registration, and advocacy efforts, including focused efforts to educate individuals with past or current involvement in the criminal legal system about their voting rights, enabling them to exercise those rights where eligible under Wisconsin law. Because eligibility to vote in Wisconsin depends on the status of an individual's criminal sentence, EXPO works with populations for whom voting eligibility is complicated and often misunderstood and advocates for the rights of Wisconsin voters in related litigation. Executive Order (EO) 14399 threatens to exacerbate confusion and create additional barriers to

[1] No party's counsel authored this brief in whole or in part; no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than *Amici*, their members, or their counsel made such a monetary contribution.

voting, especially for voters who may already face heightened scrutiny and administrative obstacles, thereby undermining WDC's and EXPO's advocacy work.

Individual *Amici* Jaleyce Oraedu, Jasmine Oraedu, and Aharon Shelef are current or prospective Wisconsin voters who will rely on absentee voting in Wisconsin's November 2026 general election while attending college outside the state. Ms. Jaleyce Oraedu and Ms. Jasmine Oraedu are students at the University of Minnesota–Twin Cities in Minneapolis, Minnesota, and are residents of Germantown, Wisconsin. They are not yet registered to vote in Wisconsin but will be eligible, and intend to, register to vote and to vote for the first time in the August 2026 partisan primary and to vote in the November 2026 general election. Mr. Shelef is a student at Yale University in New Haven, Connecticut, and a resident of Madison, Wisconsin. He is a registered Wisconsin voter who previously voted absentee by mail in the April 2026 spring election and who attempted to vote by absentee ballot in the February 2026 primary but did not receive his ballot.

Because they reside out of state for school, the individual *Amici* will vote absentee in the future. As less experienced voters, they are particularly vulnerable to confusion and barriers arising from changes to election procedures. Mr. Shelef's recent experience demonstrates the real challenge that voters may face in receiving and returning their ballots in time to be counted. EO 14399's requirements, including those affecting absentee ballot transmission, voter verification, and coordination with federal systems, complicate the absentee voting process and increase the risk that ballots will be delayed or not counted. These risks are especially acute for Wisconsin

student voters residing outside Wisconsin, who depend on the consistent, efficient, and reliable functioning of Wisconsin's absentee voting systems to exercise their constitutional right to vote.

Together, the organizational and individual *Amici* have a strong interest in ensuring that they and other eligible Wisconsin voters are able to exercise their constitutional right to vote through Wisconsin's existing election administration system; that elections in Wisconsin continue to be administered in ways that are accessible, reliable, and consistent with *Amici*'s rights under existing state constitutional, statutory, and administrative law; and that eligible voters—particularly those who rely on absentee voting or who face additional barriers to participation—are not disenfranchised by the implementation of EO 14399.

SUMMARY OF ARGUMENT

The district court's opinion imposing the injunction sought to be stayed here held that the Plaintiff States' request for injunctive relief below was ripe for decision because EO 14399 "create[s] a 'direct and immediate dilemma'" for the states' administration of their elections. App. 76a (quoting *Stern v. U.S. Dist. Court for Dist. of Mass.*, 214 F.3d 4, 10 (1st Cir. 2000) (internal citations omitted)). The First Circuit's opinion denying the federal Defendants' and intervening State Defendants' motions to stay the district court's injunction cited the same legal standards governing ripeness and found a stay unwarranted. App. 14a. *Amici* submit this brief in support of the district court's and First Circuit's rulings with respect to ripeness, and in opposition to the Application.

In sum, neither the federal executive branch broadly, nor the Office of the President or any federal agency specifically, has the authority to unilaterally seize control of and dictate the regulation of elections. Yet, EO 14399 seeks to do just that, with particularly alarming and immediate potential consequences for Wisconsin's system of election administration and voters. *Amici* submit this brief in opposition to the Application to stay the district court's injunction to provide the Court with an explanation of Wisconsin's unique and complex election administration system that is relevant to this Court's ripeness analysis but not already brought to the Court's attention by the parties. In particular, *Amici* highlight for the Court several ways in which EO 14399, and the recently published United States Postal Service (USPS) proposed rule contravene broad swaths of Wisconsin election law and would impose substantial changes to Wisconsin election procedures, affecting Wisconsin's electoral process and harming Wisconsin voters. Namely, EO 14399 establishes procedures that:

- threaten unlawful disenfranchisement of Wisconsin voters;
- conflict with Wisconsin election laws and practices, creating procedural confusion and compromising Wisconsin voter confidence; and
- imperil the privacy interests and expectations of Wisconsin voters.

Not only is there no basis for making such changes to state election law by executive order, but also doing so in a rushed, haphazard fashion in the middle of an ongoing Wisconsin election—as EO 14399 requires—is both legally improper and practically imprudent. If the Application is granted, the district court's injunction is stayed, and consequently EO 14399 is implemented as written, it will disenfranchise lawful Wisconsin voters, create unnecessary confusion among election officials and

voters alike, invite conflict over the validity of absentee ballots properly cast under Wisconsin law, violate voter privacy laws, and damage public faith in Wisconsin elections. That implementation would be an affront to federalism, to election administration, and to the most fundamental principles of our democracy. It cannot be countenanced, and the practical consequences in Wisconsin illustrate why Plaintiff States' request for an injunction was ripe for decision and why the district court correctly enjoined implementation of EO 14399.

For these reasons, in addition to those set forth in the district court's opinion and in other responses to the Application, *Amici* urge the Court to deny the Application to stay the district court's injunction and to enter an administrative stay.

ARGUMENT

I. Wisconsin has a uniquely decentralized system of election administration that inevitably and immediately would be impacted by implementation of EO 14399.

Wisconsin has a uniquely decentralized election system. *State ex rel. Zignego v. Wis. Elections Comm'n*, 2021 WI 32, ¶13, 396 Wis. 2d 391, 957 N.W.2d 208.[2] Unlike many states, rather than place responsibility for overseeing and administering elections in a single official, such as a secretary of state, Wisconsin administers elections using a multi-tiered system. *See Priorities USA v. Wis. Elections Comm'n*, 2024 WI 32, ¶27, 412 Wis. 2d 594, 608, 8 N.W.3d 429, 436; *Zignego*, 2021 WI 32, ¶13. Election administration in Wisconsin occurs primarily at the local level, where

[2] *See Wisconsin,* MIT ELECTION DATA + SCIENCE LAB, https://electionlab.mit.edu/landscapes/wisconsin ("Wisconsin is notable for having perhaps the most decentralized system of election administration in the nation.") (last visited Aug. 1, 2026).

approximately 1,850 municipal clerks supervise election officials, verify voter registrations, accept requests for absentee ballots, send and receive absentee ballots, select and establish polling places, review and count ballots, complete the local canvass, and conduct any recount that candidates request. *See* Wis. Stat. §§ 6.27–6.57, 6.84–6.89; *id.* §§ 7.15–7.22, 7.51–7.53, 9.01.

Wisconsin's 72 county clerks also play a role. They print ballots and absentee ballot return envelopes, which they distribute to municipal clerks, and conduct the county-wide canvass for all votes within their jurisdiction. *Id.* §§ 7.10, 7.60.[3]

Finally, the Wisconsin Elections Commission (WEC) provides statewide election oversight. WEC is a six-member, bipartisan body established by statute in 2015. WEC comprises three Republican and three Democratic appointees,[4] with a nonpartisan Administrator, nominated by the Commission and subject to Senate confirmation, who runs the Commission on a day-to-day basis and serves as Wisconsin's "chief election officer." Wis. Stat. §§ 5.05(3d), (3g), (4) ("All employees of the commission shall be nonpartisan."), 15.61. WEC administers Wisconsin's election code. Wis. Stat. § 5.05 (1), (2w). WEC trains and supports the municipal and county clerks who conduct elections throughout the state, *see, e.g.*, *id.* § 5.05(5t)–(7), designs

[3] Because of the size of its population, one Wisconsin municipality—the City of Milwaukee—and one Wisconsin county—Milwaukee County—are statutorily required to have their elections conducted by special commissions, the Milwaukee Election Commission and the Milwaukee County Election Commission, respectively. Wis. Stat. § 7.20. The Milwaukee Election Commission generally fulfills the duties under state law for the City of Milwaukee that are fulfilled by municipal clerks in other cities. *Id.* §§ 7.21–7.22. Likewise, the Milwaukee County Election Commission generally fulfills the duties under state law for Milwaukee County that are fulfilled by county clerks in other counties. *Id.* § 7.21.

[4] WEC membership can be expanded to include representatives from other political parties if any were to qualify for ballot status under Wisconsin law and receive at least 10 percent of the vote in a gubernatorial election. Wis. Stat. § 15.61(1)(a)6.

and approves ballot forms and absentee ballot envelopes and return certificates, *id.* § 7.08(1), and develops and maintains online tools to inform Wisconsin voters about election eligibility requirements, the registration process, polling locations, and how to request absentee ballots, *id.* § 5.05(12)–(13). WEC's primary voter-facing tool is MyVote, an online portal through which voters can, among other things, request that absentee ballots be mailed to them. Although WEC operates MyVote, a voter's absentee ballot request is routed to their local clerk, who reviews their request and sends out their ballot. *Id.* § 6.86.

To administer this complex election administration system, the Wisconsin Legislature has—over many years—enacted a comprehensive set of statutes that (along with regulations and guidance promulgated by WEC and its predecessor agencies) provide the framework for Wisconsin's elections. *See generally id.* chs. 5–10, 12; Wis. Admin. Code chs. EL-2–EL-20.[5] Wisconsin provides no-excuse absentee voting, including both in-person absentee voting in the days leading up to an election and absentee voting by mail. Wis. Stat. §§ 6.20, 6.85, 6.86(1)(a). The statutes and regulations governing absentee voting by mail are summarized briefly below.

Wisconsin courts have also, over a period of many years, interpreted and applied Wisconsin's election statutes, in the context of our state's constitution and the federal constitution. This body of law is substantial and growing.[6]

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[5] Wisconsin's campaign finance rules are codified in Wis. Stat. ch. 11 and Wis. Admin. Code chs. ETH-1–ETH-26, which are administered by the Wisconsin Ethics Commission, a separate six-member, bipartisan body established by statute in 2015.

[6] *See, e.g.*, *Brown v. Wis. Elections Comm'n*, 2025 WI 5, 414 Wis. 2d 601, 16 N.W.3d 619 (limiting standing to appeal a WEC administrative decision to parties aggrieved by the decision); *Priorities USA*, 2024 WI 32 (allowing use of drop boxes to return absentee ballots); *Teigen v. Wis. Elections*

Collectively, Wisconsin's enacted statutes governing absentee voting and the court decisions interpreting and applying those laws (and implicated state constitutional provisions) encourage voter participation by ensuring that absentee voting by mail is convenient and secure. In recent years, the number of absentee ballots returned by mail by Wisconsin's approximately 3.6 million registered voters[7] has risen from 565,591 in 2018[8] to more than 1.5 million in 2024.[9]

A. Eligibility to vote in Wisconsin.

To vote in Wisconsin, a person must be a United States citizen who is at least 18 years old by election day, and have resided in the city, village, or town in which the person wishes to vote for at least 28 days before election day. Wis. Stat. § 6.02. If convicted of a felony, the person must have fully completed their applicable sentence, including any probation, parole, or extended supervision. *Id.* § 6.03(1)(b).

Comm'n, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519 (barring use of drop boxes and ballot return assistance for absentee ballots); *Sewell v. Racine Unified Sch. Dist. Bd. of Canvassers*, 2022 WI 18, 401 Wis. 2d 58, 972 N.W.2d 155 (electors do not have independent right to have ballots opened and re-examined); *Zignego*, 2021 WI 32 (requiring municipal clerks and local boards of elections commissioners, not WEC, to change the voter registration of electors who move out of the applicable jurisdiction); *Jefferson v. Dane Cnty.*, 2020 WI 90, 394 Wis. 2d 602, 951 N.W.2d 556 (photo identification required to obtain absentee ballot during declared health emergency unless voter's own age, physical illness or infirmity renders the voter indefinitely confined); *Rise, Inc. v. Wis. Elections Comm'n*, 2024 WI App 48, 413 Wis. 2d 366, 11 N.W.3d 241 (requiring municipal clerks to count absentee ballots with immaterial omissions from the ballot return envelope).

[7] According to WEC, Wisconsin had 3,601,785 active registered voters as of February 1, 2026. *February 1, 2026 Voter Registration Statistics*, WIS. ELECTIONS COMM'N (Feb. 2, 2026), https://elections.wi.gov/resources/statistics/february-1-2026-voter-registration-statistics.

[8] Lawrence Andrea, *Absentee voting numbers in Wisconsin soar over the 2018 midterms*, MILWAUKEE J. SENTINEL (Nov. 8, 2022), available at https://www.jsonline.com/story/news/politics/elections/2022/11/08/absentee-voting-numbers-in-wisconsin-soar-over-the-2018-midterms/69627990007/.

[9] Rich Kremer, *More than 1.5M Wisconsin absentee ballots cast in presidential election*, WIS. PUBLIC RADIO (Nov. 4, 2024), updated Jan. 14, 2025, available at https://www.wpr.org/news/more-than-one-million-absentee-ballots-cast-wisconsin-presidential-election-2024-nov-4.

B. Registering to vote.

Wisconsin permits eligible electors to register to vote in person at the municipal or county clerk's office, by US mail delivered to the municipal clerk's office, or online by the third Wednesday preceding an election (up to 20 days before the election). *Id*. § 6.28. Beyond that date, eligible electors may register in person at the applicable municipal clerk's office by 5:00 p.m. or the close of business, whichever is later, on the Friday before election day. *Id.* § 6.29. And eligible electors may register and vote at in-person absentee voting locations, if permitted by the applicable municipal clerk, *Id*. § 6.28(a), or in person at the polling location on election day. *Id*. § 6.55. Because Wisconsin permits same-day voter registration at the polls, and has done so since before 1994, Wisconsin is exempt from provisions of the National Voter Registration Act. 52 U.S.C. § 20503(b)(2).

C. Requesting an absentee ballot.

Wisconsin provides qualified voters with a range of options to request to vote absentee; most frequently, this is accomplished by mail, in person at the municipal clerk's office, by electronic mail, or through MyVote. Wis. Stat. § 6.86.[10]

A qualified Wisconsin voter may request an absentee ballot for one election or may register to automatically receive absentee ballots "for every election that is held within the same calendar year in which the application is filed." Wis. Stat. § 6.86(2m)(a). The latter option means a voter may submit one request that absentee ballots for up to four elections (spring primary, spring election, partisan primary,

[10] *See also*, *Vote Absentee by Mail*, MYVOTE WISCONSIN, available at https://archive.ph/fiux0 (last visited Aug. 1, 2026).

general election) in a calendar year be automatically sent to them. If a voter moves during the year that they made such a request, they must notify their municipal clerk of the move. *Id*. The notified clerk "shall forward" the elector's request for an absentee ballot to the voter's new municipal clerk, and "that municipal clerk shall honor the request." *Id*. § 6.86(2m)(b).

A Wisconsin voter who is indefinitely confined due to age, physical illness, permanent disability or other infirmity may request "that an absentee ballot be sent to the elector automatically for every election." *Id*. § 6.86(2)(a). When such a voter does not return their absentee ballot for an election, the municipal clerk stops mailing ballots to that voter until and unless another request is made. *Id*. § 6.86(2)(b).

Requests for absentee ballots made by mail must generally be received no later than 5:00 p.m. on the Thursday (the fifth day) before election day. *Id*. § 6.86(1)(b). Requests made in person must be made no earlier than 14 days before the election and no later than the Sunday before the election. *Id*.

In response to a proper absentee ballot request, the municipal clerk shall initial an absentee ballot, *id*. § 6.87(1), "verify that the name or proof of identification" matches that found on the absentee ballot request form, and place the absentee ballot in an unsealed envelope, *id*. § 6.87(2). On one side of the envelope, a certificate must be printed for the voter and the voter's witness to fill out. *Id*. Through that certificate, the voter certifies, under state penalties for false statements, that they are qualified to vote absentee, and further certifies that they marked their ballot in the presence of a witness. *Id*. The same certification provides space for the witness to certify, under

state penalties for false statements, that they (the witness) are a United States citizen and that the relevant absentee ballot was properly executed, as described on the certificate. *Id.* The ballot and certificate envelope are then mailed by the municipal clerk to the voter's residence or may be delivered "personally" to the voter at the clerk's office or at an alternate site that has, in accordance with Wis. Stat. § 6.855, been properly designated in advance of the election. *Id.* § 6.87(3).

Military and overseas voters have additional options for voting absentee. They are permitted not only to request absentee ballots by email or fax, but also to receive absentee ballots from the municipal clerk by email or fax or, if eligible, by direct download from MyVote.[11] *Id.* § 6.22(1)(b). They are also permitted to request an absentee ballot using a federal absentee ballot request form. *Id.* §§ 6.24(4)(b), 6.865. Requests for non-military overseas voters must be submitted and received by the clerk by 5:00 p.m. on the Thursday (fifth day) before the election. *Id.* § 6.86(1)(b). Requests for military voters must generally be submitted and received by the clerk by 5:00 p.m. on the Friday before election day, *id.* §§ 6.22(4)(b), 6.86(1)(c), except that for elections involving a federal office, active military voters may request an absentee ballot up until 5:00 p.m. on election day, *id.* §§ 6.34(1), 6.86(1)(b).

D. Marking an absentee ballot.

Upon receipt of their absentee ballot (contained in the certificate envelope) the voter marks the ballot in the presence of a witness and places the ballot in the certificate envelope. The voter must then seal, sign, date, and put their residential

[11] *See also, Military and Overseas Voters*, WIS. ELECTIONS COMM'N at https://myvote.wi.gov/Military-Overseas-Voters (last visited Aug. 1, 2026).

address on the envelope. The witness must also sign, date, and put their printed name and residential address on the envelope. *Id.* § 6.87(4).

E. Returning an absentee ballot.

Wisconsin does not currently allow electronic return of absentee ballots. Rather, they must be returned by mail or delivered in person to the municipal clerk. *Id.* § 6.87(4)(b)1. State law has been interpreted to allow an elector to also return their absentee ballot to their polling location on election day. *See Luedtke v. Yunker*, No. 25CV1277, Order (Waukesha Cnty. Cir. Ct. Feb. 13, 2026) (dismissing challenge to WEC guidance permitting return of absentee ballots to polling place on election day).[12] Municipal clerks may, but are not required to, provide secure drop boxes for absentee voters to return their completed ballots. *Priorities USA*, 2024 WI 32, ¶34. In general, each voter must personally return an absentee ballot, but voters with disabilities may use assistance to return their ballots. *Carey v. Wis. Elections Comm'n,* 624 F. Supp. 3d 1020, 1033 (W.D. Wis. 2022). In all circumstances, absentee ballots must be delivered to the polling place or, in municipalities that use a central-count procedure to canvass absentee ballots, to the municipal clerk by 8:00 p.m. on election day. Wis. Stat. §§ 6.87(6), 7.52(1)(a).

F. Wisconsin's elections schedule and absentee ballot distribution deadlines from now through the November 2026 midterm elections.

Wisconsin holds as many as four regularly scheduled elections in a calendar year. Nonpartisan elections occur every year in a spring election held during the first

[12] Order available at https://www.lawforward.org/wp-content/uploads/2026/02/11048018.pdf.

week of April, with the primary for that election occurring in February. *Id*. § 5.02(21), (22). Partisan elections are held in November of even-numbered years, with the partisan primary occurring during the second week of August. *Id*. § 5.02(5), (12s). Wisconsin already has held two elections in 2026: the spring election for nonpartisan offices on April 7, following the primary for the spring election on February 17. The general election, which includes elections for partisan state and federal offices (such as congressional elections), will be held on November 3, 2026, following the partisan primary on August 11, 2026.

Municipal clerks were required to send absentee ballots for the partisan primary to Wisconsin voters with absentee ballot requests already on file by June 25, 2026, and will continue to send absentee ballots to non-military voters[13] who submit requests by August 6, 2026.[14] Absentee ballots for the November 3, 2026, general election will begin being distributed by September 17, 2026 to voters with requests on file, and local clerks will continue to send absentee ballots to non-military voters who submit requests by October 29, 2026.[15]

II. EO 14399 threatens to unlawfully disenfranchise Wisconsin voters.

To date, Congress has considered and declined to enact several bills that would impose documentary proof of citizenship requirements for voter registration and

[13] The deadlines for overseas military voters to request an absentee ballot are extended. *See* Part I.C., *supra*.

[14] *Deadlines for the August 11, 2026 Partisan Primary*, WIS. ELECTIONS COMM'N at https://myvote.wi.gov/en-us/Voter-Deadlines (last visited Aug. 1, 2026).

[15] *Deadlines for the November 3, 2026 General Election*, WIS. ELECTIONS COMM'N at https://myvote.wi.gov/en-us/Voter-Deadlines (last visited Aug. 1, 2026).

participation in federal elections and would restrict the use of mail-in absentee votes. *See* SAVE Act, H.R. 22, 119th Congress (2025–2026); SAVE America Act, H.R. 7296, 119th Congress (2025–2026); Make Elections Great Again Act, H.R. 7300, 119th Congress (2025–2026). EO 14399 attempts an executive end-run around Congress, threatening to disenfranchise Wisconsin voters in at least two ways.

A. Verifying voter citizenship with inaccurate federal data will disenfranchise eligible Wisconsin voters.

The order contains several provisions requiring the Department of Homeland Security and the Social Security Administration to compile lists of eligible voters and to investigate and prosecute state and local officials who participate in printing, producing, shipping, or distributing ballots to ineligible voters. EO 14399, § 2. This is plainly a threat against state and local election officials to coerce compliance with the federal government's current desire that states use the federal SAVE System to verify voter citizenship and vet the accuracy of state voter registration lists.

But Wisconsin already has appropriate mechanisms in place to continuously verify the accuracy of its voter registration list. The task is a shared responsibility, shouldered primarily by municipal clerks with support from WEC. *See Zignego*, 2021 WI 32, ¶13. By law, Wisconsin is enrolled in the Electronic Registration Information Center, Wis. Stat. § 6.36(1)(ae), a nonprofit, nonpartisan membership organization created by and comprised of state election officials. Currently, 26 states and the District of Columbia participate in ERIC.[16] At least every 60 days, members securely

[16] *What is ERIC?,* ELECTRONIC REGISTRATION INFORMATION CENTER, https://ericstates.org/about/ (last visited Aug. 1, 2026).

submit certain voter registration, motor vehicle licensing, and identification data to ERIC. In turn, ERIC's technical staff compare the data received from all states to create list maintenance reports that identify voters who appear to have moved to other states or within the same state, who have duplicate registrations within the same state, and who have died. Wisconsin and other member states use these reports to keep their voter registration lists up to date.[17]

The SAVE System was not designed to verify the accuracy of voter registration lists and has significant limitations that threaten to disenfranchise eligible voters.[18] App. 53a–54a at nn.14–15. Its use most threatens naturalized citizens. Wisconsin is home to over 140,000 naturalized citizens, of whom nearly 21,000 were naturalized between 2016 and 2020.[19] In a state where the results of presidential elections are often decided by fewer than 30,000 votes, unlawfully disenfranchising voters can have significant effects, including changing the outcome.[20]

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[17] *How ERIC Works*, ELECTRONIC REGISTRATION INFORMATION CENTER, https: //ericstates.org/how-does-it-work/ (last visited Aug. 1, 2026).

[18] *See also Eligible Voters at Risk: Examining Changes to USCIS's SAVE System,* FAIR ELECTIONS CENTER https://fairelectionscenter.org/wp-content/uploads/2025/07/Examining-Changes-to-USCISs-SAVE-System.pdf (last visited Aug. 1, 2026).

[19] *New American Voters in Wisconsin: Building the Electoral Power of Naturalized Citizens*, NATIONAL PARTNERSHIP FOR NEW AMERICANS, 5 (Sept. 2022) available at https://partnershipfornewamericans.org/wp-content/uploads/2022/09/WI-NAV-State-Report-Final-2.pdf#:~:text=There%20are%20more%20than%20140.

[20] Donald Trump won Wisconsin in the 2016 presidential election by 22,748 votes and the 2024 presidential election by 29,397 votes; Joe Biden won Wisconsin in the 2020 presidential election by 20,682 votes. This not a new development in Wisconsin; Al Gore won Wisconsin in the 2000 presidential election by 5,708 votes. *Wisconsin vote in presidential elections since 1848*, WISCONSIN BLUE BOOK 2025–2026, 495, available at https://legis.wisconsin.gov/lrb/media/10uewg3p/2025200-elections-and-political-parties.pdf.

B. Burdening USPS with election duties outside its expertise and without additional resources will further delay mailed absentee ballots and increase the risk of disenfranchising Wisconsin voters.

EO 14399 puts significant responsibility to take a proactive role in mail-in voting on the USPS, an agency with no role in elections other than to deliver mailed ballots. The EO requires that, within 60 days of the date of the order (by May 30, 2026), the Postmaster General must initiate proposed rulemaking, with final rules issued no later than 120 days after the order's issuance (by July 29, 2026). EO 14399, § 3. The Postmaster General has largely complied with this requirement, publishing the proposed rule on June 2, 2026. Ballot Mail for Federal Elections, 91 Fed. Reg. 105, 32915 (June 2, 2026) (to be codified at 39 C.F.R. 111). Although the EO identifies a number of express requirements that the rule must contain, it provides no details about how USPS is to implement it, leaving it to USPS to fill the logical gaps with procedures currently in development on an extremely compressed timeline.[21]

The duties imposed on USPS present problems. Notably, the agency is underfunded and overburdened and implementing EO 14399 in light of this would significantly affect Wisconsin voters.[22] USPS already delivers absentee ballots

[21] Nor does the order clarify how states in the midst of election cycles when USPS completes its rulemaking are to implement the new rule. Wisconsin's 2026 partisan primary will be held on August 11, 2026—a mere 13 days after the initially established July 29 rulemaking deadline. Absentee ballots have been distributed, and in-person absentee voting has commenced, all before USPS's rulemaking is complete. If allowed to proceed, will the rule go into effect immediately? Or will it apply only to elections not already underway? EO 14399 does not answer these questions.

[22] Hansi Lo Wang, *The Postal Service may be out of cash in 2027 without Congress' help, postmaster says*, NATIONAL PUBLIC RADIO (Mar. 17, 2026), available at https://www.npr.org/2026/03/17/nx-s1-5750419/usps-running-out-of-money-postal-service-david-steiner; Richelle Wilson, *Wisconsin village faces mail delivery delays amid financial crisis for US Postal Service*, WIS. PUBLIC RADIO (Apr. 16, 2026), available at https://www.wpr.org/news/wisconsin-village-brown-deer-usps-postal-service-crisis.

postmarked before election day after election day. In Wisconsin, absentee ballots received after election day are not counted. Wis. Stat. § 6.87(6). For example, in April of this year, 269 absentee ballots cast by City of Milwaukee voters in Wisconsin's spring election were received the day after election day and could not be counted.[23] Wisconsin has only two major USPS sorting facilities, located in Milwaukee and Green Bay. Most mail in Wisconsin, even when sent from one address to another in the same municipality, is routed to Milwaukee or Green Bay, sorted, and then transmitted back to the local post office before delivery. A smaller portion of Wisconsin mail is sent to the Twin Cities in Minnesota for sorting and then returned to Wisconsin for delivery.[24] All of this takes time and resources.

The order provides no funding to USPS either to fulfill the initial mandate or to comply with its ongoing obligations. This unfunded additional work is likely to further delay the delivery of mailed ballots, disenfranchising every Wisconsin voter whose ballot is delivered after election day.

The order also ignores entirely that Wisconsin law:

- makes county and municipal clerks responsible for printing and distributing ballots, Wis. Stat. § 5.66(1);
- specifies the format for absentee ballot return envelopes, requiring that one side of the envelope include statutorily prescribed certifications for the absentee voter and witness, *id.* § 6.87(2); and

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[23] Mariana La Roche, *Milwaukee Election Commission reports late delivery of absentee ballots*, WISN 12 (Apr. 9, 2026), available at https://www.wisn.com/article/milwaukee-election-commission-reports-late-delivery-of-absentee-ballots/70977867.

[24] *61 Regions with RPDCs*, RESEARCH HUB, available at https://www.randymajors.org/customgmap?x=89.4641473&y=44.2557563&cx=98.2092645&cy=37.5562624&zoom=5&mapbuildertrue&areatype=zips&sheetid=1pN41Qgq4thAjpFnqX7j74TNSVE1bcQDbABvb8Lx0LIs&markertyp=sheet&arkers=1eW0lrO6425MJDEvu4LrKOGWjp5jSa6831aiSx0wRro&title=61+Regions+with+RDCs&hidelegend=hide (last visited Aug. 1, 2026).

- permits clerks to return incorrectly completed absentee ballots to voters for correction, *id*. § 6.87(9).

EO 14399 provides no guidance for whether or how USPS is to take state-specific rules into account. In short, the order threatens significant confusion and logistical hurdles that will disrupt, rather than protect, Wisconsin's elections.

C. USPS's proposed rules are unnecessary and create more problems than they purport to solve.

As USPS recognizes in its proposed rule, it already publishes ballot mail preparation recommendations that include use of an "Election Mail Logo." Ballot Mail for Federal Elections, 91 Fed. Reg. at 32916. States may print the logo on their absentee ballot return envelopes to ensure postal employees can readily identify and expedite the processing and delivery of election mail. *Id*. USPS's recommended best practices for ballot envelope design also include automation compatibility and mailpiece design review. *Id*.

Wisconsin has already adopted these recommendations. In 2023, for example, WEC redesigned and adopted new absentee ballot envelopes and return certificates that include prominent display of the USPS Election Mail Logo. WEC, Minutes of the Meeting of Aug. 4, 2023, at 2; *see also*, WEC, Open Session Materials – August 4, 2023, at 12–27.[25] available at. And USPS was consulted as the new designs were developed. WEC, Open Session Materials – August 4, 2023, at 3, 7–8.

[25] Available at https://elections.wi.gov/sites/default/files/documents/August%204%2C%202023%20Open%20Session%20Minutes%20APPROVED.pdf and https://elections.wi.gov/sites/default/files/documents/Open%20Session%20Materials%20-%20August%204%202023.pdf, respectively.

The proposed rule, in alignment with EO 14399, makes USPS review and approval of state designed absentee ballot envelopes mandatory, but does not specify any further details. Must USPS review and approve envelopes for every state before every election? What is the timeline for approval? What happens if USPS rejects a proposed ballot design? The proposed rule is clear that USPS will not accept ballots that do not comply with mandatory design standards and that USPS "assumes no responsibility for any outbound ballot mailing until it is accepted into the mail," that mail that does not comply with the design standards "will not be accepted," and that USPS "is not responsible for service delays" when "the applicable preparation or entry standards are not met." Ballot Mail for Federal Elections, 91 Fed. Reg. at 32918. Thus, the federal government seeks to further insert itself into state and local election procedures, while disclaiming any responsibility for delays caused by its involvement.

The proposed rule also threatens delay and confusion in the following ways:

- The rule will not apply to absentee ballots distributed to eligible overseas voters under UOCAVA nor to absentee ballots distributed for primary elections. Different standards for different voters and different elections increase the risk of confusion, mistake, and delay.

- The mandatory unique barcodes to be printed on absentee ballot envelopes can be read only by USPS locations with the necessary equipment. For Wisconsin voters, the only locations currently equipped to read such bar codes are located in Milwaukee and Minneapolis, meaning that absentee ballots must be routed exclusively through those locations.[26] As noted above, most of Wisconsin's mail is routed through Milwaukee and Green Bay with some on the Western part of the state routed through Minneapolis. Cutting out Green Bay as a processing facility would especially harm rural voters whose ballots *already* face delay under the current

[26] Molly Beck, *Proposed Postal Service rule could risk ballot delivery in Wisconsin*, Milwaukee J. Sentinel (June 11, 2026), available at https://www.jsonline.com/story/news/politics/2026/06/11/ballot-delivery-at-risk-if-wisconsin-doesnt-hand-over-voter-info/90501373007/.

process. Mandating that their ballots be routed through far more distant postal outlets will, again, only compound delay.

The USPS proposed rule, developed in a rush to comply with EO 14399 is unnecessary and will further burden Wisconsin's ability to administer elections quickly and efficiently, and with further harms consequently felt by Wisconsin absentee voters.

III. EO 14399's conflicts with Wisconsin election laws and practices will cause confusion and undermine voter confidence and participation.

EO 14399's sweeping language makes no effort to accommodate Wisconsin's unique voting rules, with particularly significant consequences for Wisconsin voters.

A. EO 14399 conflicts with Wisconsin and federal elections records requirements.

Under Wisconsin law, consistent with federal statutory requirements, *see* 52 U.S.C. § 20701, poll lists, ballots, absentee ballot applications, registration forms, and other records and papers "requisite to voting at any federal election, other than registration cards, may be destroyed after 22 months." Wis. Stat. § 7.23(1)(e)–(g). EO 14399 declares that "States and localities should preserve, for a ***5-year period***, all records and materials—excluding ballots cast—evidencing voter participation in any Federal election (e.g., ballot envelopes, regardless of carrier)." EO 14399, § 5 (emphasis added). Yet, it provides states and local governments with no practical support or guidance to navigate these direct conflicts (let alone, with any funding to do so). At bottom, it appears EO 14399 is designed to conflict with—and perhaps supersede—these state and federal laws, a facially unlawful proposition in this

instance where the U.S. Constitution vests the authority to regulate elections in Congress and the states, not the executive branch. *See* U.S. Const. art. I, § 4, cl. 1.

Moreover, five years of document retention—nearly triple the window created by the Congress and adopted by the Wisconsin Legislature, *see* 52 U.S.C. § 20701; Wis. Stat. § 7.23(1)(e)–(g)—would do little more than burden elections officials and risk the finality of elections. The longer the retention period, the more time for challenges to election results, though dilatory challenges, even if meritorious, cannot be remedied. Such dilatory challenges serve little purpose but to erode public confidence in the election process.

B. EO 14399 may prohibit certain Wisconsinites from voting by mail.

Qualified Wisconsinites have the right to vote in Wisconsin upon 28 days of residency. Wis. Stat. § 6.02. And Wisconsin permits residents to register to vote and to obtain absentee ballots until a few days before the election. *See* Background, *supra*. But the order prohibits USPS from transmitting ballots for individuals not enrolled on the USPS mail-in and absentee participation list, which must be prepared, finalized, and transmitted ***at least 60 days*** before election day. A person who moves to Wisconsin fewer than 60 days but more than 28 days before election day presumably would not appear on the USPS list, even if they are otherwise eligible to vote under state law, including by mail-in absentee ballot. The order could therefore foreclose eligible voters from voting by mail, thwarting their right to vote, and at the very least, creating an equal protection problem under the Wisconsin Constitution which prescribes equal protection and recognizes and protects the fundamental right

to vote. Wis. Const. art. I, § 1; Wis. Const. art. III; *State ex rel. McGrael v. Phelps*, 144 Wis. 1, 14–15, 128 N.W. 1041, 1046 (1910) (the right to vote is "guaranteed by the declaration of rights and by sec. 1, art. III, of the [Wisconsin] [C]onstitution").

C. EO 14399 may interfere with Wisconsin's in-person absentee voting and increase election day challenges to absentee ballots.

Wisconsin's absentee voters may return their ballots in several ways, including through the mail and "in-person absentee voting." *See* Wis. Stat. §§ 6.855, 6.87. As noted above, Wisconsin currently provides its absentee voters with different envelopes and ballot certificate and application forms for in-person absentee voting, voting absentee through a special voting deputy, and voting absentee by mail. *See* WEC, Open Session Materials – August 4, 2023, *supra*, at 12–27. Whereas these ballots, absentee ballot envelopes, and certificate and application forms are currently used for all elections in Wisconsin, EO 14399's form and its return-procedure requirements purport to apply only to ballots returned via US mail in federal elections. Using one ballot form for absentee ballots returned in state elections and another for federal elections would be confusing to voters and may invite frivolous challenges to absentee ballots, exacerbating suspicion about election integrity. This will force Wisconsin to either adopt the EO's form and return requirements for all elections or risk potential voter confusion, complaints, and litigation.

The executive order could otherwise cause chaos in Wisconsin's absentee voting program, as well. Wisconsin formally processes and counts all absentee ballots on election day. *Id.* § 6.88(1). Once the ballots have been returned and are sorted for counting, they are not segregated by the method of their transmittal. Once the ballots

are intermixed, there is often no way to tell how any particular ballot was returned to the clerk's office. And, were the EO's provisions to take effect, this itself could lead to confusion, as some election observers may seek to challenge absentee ballots from voters who are not registered with USPS for voting purposes, though often it will not be apparent from the returned absentee ballot whether that voter returned their absentee ballot through the mail. This is likely despite the fact that Wisconsin law recognizes only seven legitimate bases for challenging a voter, none of which contemplates the provisions of EO 14399, *see* Wis. Admin. Code § EL 9.02(d), and, as clearly articulated by the district court, "Both Congress and the President lack any role regarding voter eligibility." App. 54a.

IV. EO 14399 threatens the privacy of all Wisconsinites.

Wisconsin law protects the privacy of personally identifiable information, including with respect to matching programs. As defined, a matching program is "the computerized comparison of information in one records series to information in another records series for use by an authority or a federal agency to establish or verify an individual's eligibility for any right, privilege or benefit or to recoup payments or delinquent debts under programs of an authority or federal agency." Wis. Stat. § 19.62(3). The state may not "use or allow the use of personally identifiable information maintained by the state authority in a match under a matching program, or provide personally identifiable information for use in a match under a matching program unless the authority has" put the following things in writing and submitted the written materials to the state Public Records Board:

- The "purpose and legal authority for the matching program"; and
- The "justification for the program and the anticipated results, including an estimate of any savings."

Wis. Stat. § 19.69(1)–(2).

Here, EO 14399 encourages states to provide USPS with lists of voters who will vote by mail. At the same time, USPS must create its own list of individuals who have enrolled with USPS as intended mail-in voters and must not transmit ballots from any individual who is not on the list. EO 14399, § 3. Likewise, the EO requires the federal creation of state citizenship lists, the sharing of those lists with state election officials, and the creation of a procedure pursuant to which states may suggest updates and amendments to the state citizenship lists. *Id*., § 2. This mutual sharing of personally identifiable voter information is arguably a matching program under Wisconsin law, for which the necessary written materials have neither been prepared nor filed with the Public Records Board. Any person who violates Wisconsin's matching program requirements may be subject to penalties, including discharge or suspension without pay for individuals employed by Wisconsin governmental entities or financial forfeitures. Wis. Stat. § 19.80.

CONCLUSION

Executive Order 14399 seeks to evade Congress, overtakes state authority to administer elections, and contravenes vast portions of Wisconsin election law, promising confusion, conflict, and a loss of confidence. The district court's injunction preventing implementation of EO 14399 was firmly grounded in both law and fact—including in its ripeness analysis—and the First Circuit correctly refused to stay that injunction. *Amici* respectfully urge the Court to deny the Application to stay the

district court's injunction or to enter an administrative stay of that injunction, and respectfully request that the Court allow the injunction entered below to remain in effect to prevent Executive Order 14399 from being implemented in Wisconsin.

Dated: August 3, 2026

Respectfully submitted,

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IN THE
Supreme Court of the United States

No. 26A124

DONALD J. TRUMP, et al.,
Applicants,

v.

STATE OF CALIFORNIA, et al.,
Respondents.

On Application for a Stay of the Injunction Issued by the United States District Court for the District of Massachusetts and Request for Administrative Stay

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INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae America's Future, Citizens United, Citizens United Foundation, Public Advocate of the United States, Public Advocate Foundation, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under either section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. The Presidential Coalition, LLC is a political committee. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Some of these *amici* filed an *amicus* brief in the U.S. District Court for the District of Columbia in a parallel case challenging the Executive Order at issue here. *See DSCC v. Trump*, D.D.C. No. 1:26-cv-01114, Brief *Amicus Curiae* of America's Future, et al. (May 1, 2026).

Some of these *amici* filed an *amicus* brief in an earlier challenge to President Trump's 2025 Executive Order[2] relating to elections. *See California v. Trump*, 1st Cir. No. 25-1726, Brief *Amicus Curiae* of Citizens United, et al. (Oct. 14, 2025).

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[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] Challenge to Executive Order No. 14,248, "Preserving and Protecting the Integrity of American Elections" (Mar. 25, 2025).

Lastly, *amicus* America's Future filed comments in the U.S. Postal Service rulemaking on Ballot Mail for Federal Elections. *See* America's Future Comments to U.S. Postal Service (July 2, 2026).

STATEMENT OF THE CASE

On March 31, 2026, President Trump signed Executive Order 14,399, "Ensuring Citizenship Verification and Integrity in Federal Elections" (the "EO"). The EO contains a variety of provisions relating to federal elections, laying the foundation to help the states enforce the federal law limiting voting in federal elections to U.S. citizens.

Of relevance to this litigation, Section 2 of the EO directs the Department of Homeland Security ("DHS") to create lists of "individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State." That section also requires the DHS to establish procedures related to the same. Section 3 requires the U.S. Postal Service ("USPS") to initiate a rulemaking regarding markings and barcodes for ballot mail, with the goal of adopting a final rule by July 29, 2026.

Before the DHS and the Postal Service had taken any final actions, the Respondent States filed a complaint and sought a preliminary injunction against future actions by those agencies. On June 25, 2026, the district judge issued a preliminary injunction against the federal government from implementing Sections 2 and 3 of the EO with respect to the November 2026 midterm elections. *See* App. 61a-63a, *California v. Trump*, 2026 U.S. Dist. LEXIS 141140 (D. Mass. June 25,

2026) ("*California I*"). On July 25, 2026, the First Circuit denied the federal government's motion for stay pending appeal.[3] *See* App. 1a, *et seq*. The same day, the Government filed its Application for a Stay.

Three days later, July 28, 2026, in a parallel challenge to the Trump EO in which some of these *amici* filed an *amicus* brief,[4] the D.C. Circuit upheld the district court's denial of a preliminary injunction. The Circuit Court took the position that "this case likely is unripe for review in its present posture.... On the present record, the district court did not abuse its discretion in denying a preliminary injunction due to the unripeness of Plaintiffs' claims." *DSCC v. Trump*, 2026 U.S. App. LEXIS 22325 at *7-8, 13 (D.C. Cir. July 28, 2026).

SUMMARY OF ARGUMENT

The District of Massachusetts issued an extraordinary injunction ordering two federal agencies in the Executive Branch of government to disregard directives from President Trump to take preliminary actions which violate no federal law. The only way the district court could enjoin DHS from creating a "State Citizenship List" was to mischaracterize it as a "state voter list." The district court's injunction against the Postal Service is the first time these *amici* are aware that a district court has enjoined an agency's Notice of Proposed Rulemaking ("NPRM") — ever. A

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[3] *California v. Trump*, 2026 U.S. App. LEXIS 22115 (1st Cir. July 25, 2026) ("*California II*").

[4] *See DSCC v. Trump*, D.D.C. No. 1:26-cv-01114, Brief *Amicus Curiae* of America's Future, et al. (May 1, 2026).

NPRM is the very definition of an agency action which is not a final agency action. The district court had no authority as there was no case or controversy presented to it. However, this lawless injunction has already done great damage to the nation, as it has frozen efforts to enforce the federal ban on voting by noncitizens in federal elections. This delay accomplishes the Respondents' political objectives, but neither court below should have permitted this abuse of the judicial process.

The problem of noncitizens registering to vote, and voting, has been demonstrated, in Respondent State of New Jersey, and others, which should be quite embarrassing as New Jersey is apparently taking the position that it already enforces the ban on noncitizen voting.

Both to better enforce existing law, 18 U.S.C. section 611 (and other statutes), and the Safeguard American Voter Eligibility Act should it be passed by the Senate, the type of list that DHS is being prevented from creating is needed. The President has the duty to "take care" that federal laws are enforced, and the courts below erred badly in delaying the important effort to have the Congressionally enacted ban on voting by noncitizens. These *amici* urge this Court to quickly stay the district court's injunction.

ARGUMENT

I. THE DISTRICT COURT INJUNCTION FALSELY CONCLUDED THAT THE PRESIDENT'S EXECUTIVE ORDER HARMED THE STATES.

Whether based on either of the related doctrines of standing or ripeness, the district court clearly had no authority to issue its injunction, as there has been no

final agency action. The President has every right to order executive branch agencies to take the actions directed in Sections 2 and 3 of the EO.

EO Section 2(a) contains a directive to DHS to develop a list of U.S. citizens meeting certain criteria required by federal law to vote in federal elections, while EO Section 3 directs USPS to conduct a proposed rulemaking about how to handle mail-in ballots. Both of these directives come with the condition that they must be done consistent with applicable law. Therefore, the President has not directed these agencies to do anything in violation of any law. The President's EO is an exercise of his constitutional authority to take care that the nation's election laws be faithfully executed, which itself harms no one. The district court's entire basis for a finding of harm or injury is based on nothing but speculation about what might occur in the future, making any challenge at this point, at best, premature.

In addition, the central logical flaw in the district court opinion was its use of a technique which might be termed "distinction crushing" by incorrectly describing the list that DHS was directed to develop with the official "state voter list" of the respondent states. The EO directs DHS and other executive branch agencies to compile:

> a list of individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State (**State Citizenship List**). [EO Section 2 (emphasis added).]

This list was designed to be "transmit[ted] to the chief election official of each State." The district court acknowledges in a footnote early in its opinion that these

lists are described in the EO as "State Citizenship Lists," but then switches to describing these lists as "**state voter lists**." The district court contends the President has no authority to create a State Citizenship List because "nowhere in HAVA does Congress prescribe who should be included on **State voter lists.**" *California I* at *41 (emphasis added). It concludes: "the President lacks any authority to compile **voter lists** for each state." *Id*. (emphasis added). Thus, the district court's principle finding about the lists is wholly irrelevant to deciding the issue here. The President can have full authority to create a State Citizenship List, while lacking the authority to compile "state voter lists."

With respect to the Postal Service, the district court must have assumed that the USPS Notice of Proposed Rulemaking, requesting comments from the public, will inevitably lead to the issuance of an unlawful rule. However, the court is not authorized to base an injunction on speculation and assumptions. Until this district court ruling, these *amici* cannot recall any prior federal court which has treated the issuance of a Notice of Proposed Rulemaking ("NPRM") as if it were final agency action under the Administrative Procedure Act. Indeed, this district court's impeding the NPRM would seem to be the very definition of a premature judicial act.

Neither of these agencies has taken a final action that a court would have authority to review to determine whether either has exceeded the bounds of applicable federal law.

II. CERTAIN RESPONDENT STATES ARE REPORTED TO HAVE ALLOWED NONCITIZENS TO REGISTER AND VOTE IN VIOLATION OF FEDERAL LAW.

The respondent states have convinced the district court to issue an injunction simply based on the fear of what **might** happen if the role of states in conducting federal elections was impaired. Although not at the center of the legal issue required to be resolved by this application for stay, it should be understood that if the injunction is allowed to stand, there is something quite bad that likely will happen. The voter rolls used in federal elections might not be cleaned up as reasonably required, and noncitizens who are ineligible voters — including illegal aliens — might remain on those voter rolls, thereby diluting the vote of every American citizen. Through their premature action to stop the President's effort to clean up the voter rolls, the Respondent states reveal their concern that if only U.S. citizens vote in a federal election, it could alter the results of the election, and that would create an existential threat to the power of officeholders in those states. This is not a theoretical problem in these "blue states."[5]

The Executive Order explains that it was issued for the stated purpose of protecting the "right to vote in Federal elections ... reserved exclusively for citizens

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[5] The other challenge to the EO was brought by national Democrat Party organizations and certain officials serving in some of the Respondent blue states herein, who alleged in Paragraph 7 of their Complaint that they will be "severely harmed" if mail-in voting is restricted to American citizens. That claim could be read to assert that the DSCC plaintiffs would be "severely harmed" politically if voting is restricted to those lawfully entitled to vote under federal law. *See DSCC v. Trump*, D.D.C. No. 1:26-cv-01114, DSCC Complaint (Doc #1).

of the United States" and of "preventing violations of Federal criminal law and maintaining public confidence in election outcomes." EO Section 1. Neither the district nor circuit court considered the President's duty to "take care" that this law be executed sufficient for it to outweigh other factors relevant to issuance of a preliminary injunction. App. 15a. The district court's only references to the key statute making it unlawful for any noncitizen to vote in any federal election — 18 U.S.C. § 611 — were in passing. However, certain information only recently has become publicly available, which demonstrates that the President's concerns regarding the registration of and voting by noncitizens are well-founded, as they are in fact both on the registered voter rolls of certain states, and some have been voting in federal elections.

Respondent New Jersey recently disclosed that a "serious system error ... led to an improper voter registration of thousands of individuals" in that state. *See* Letter of New Jersey Governor to the U.S. Department of Justice (July 28, 2026). In fact, **6,600 "noncitizens" were registered to vote between June 2023 and June 2024, and 400 of those actually voted**. *See* Letter of U.S. Department of Justice to the New Jersey Governor (July 21, 2026).

Pennsylvania (whose Governor is one of the Respondents) permitted "as many as 14,576 non-citizens" to be registered to vote, and some have voted in multiple elections.[6]

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[6] *See* Letter from Secretary of Homeland Security Mullin to Pennsylvania Secretary of State (July 16, 2026); *see also* "ICE Arrests Criminal Illegal Alien who

Respondent Arizona has allowed about 40,000-50,000 voters to be registered as "Federal only" and are not permitted to participate in state elections because they have not provided proof of citizenship or proof of residency as required by that state's laws for state elections.[7]

Meanwhile, on June 29, 2026, this Court granted certiorari to determine whether states can require documentary proof of citizenship to register to vote. *See Republican National Committee v. Mi Familia Vota* (translation "My Family Votes"), No. 25-1017.

Additionally, recently declassified documents are reported to show that, even before the 2020 U.S. elections, China had hacked more than 220 million U.S. voter files (more than the total of 174 million voters registered in 2024[8]). China had access to "personal and sensitive information" about America's voters.[9] While China apparently has this information, certain Respondent states are refusing to

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Voted in Seven Federal Elections Since 2008," *Department of Homeland Security* (Mar. 9, 2026) and Carter Walker, "Why Pennsylvania's secretary of the commonwealth has a unique understanding of noncitizen voting," *Votebeat Pennsylvania* (Apr. 9, 2026) ("168 noncitizens registering to vote [by PennDOT's motor voter system] in Philadelphia alone and ... an additional 52 registered by other means [had] cast 227 votes.").

[7] *See* Michael Lee, "Arizona to verify up to 50K people from voter rolls who failed to prove citizenship," *Fox News* (Apr. 13, 2025).

[8] "2024 Presidential Election Voting and Registration Tables Now Available," *U.S. Census Bureau* (Apr. 30, 2026).

[9] *See* Rebecca Terrell, "Trump Highlights Election-security Concerns," *The New American* (July 28, 2026).

provide voter information to the Department of Justice, claiming that the federal government should not have such "sensitive" information. *See United States v. Benson*, 179 F.4th 470 (6th Cir. 2026) and *U.S. v. Oregon / Weber*, 9th Cir. Nos. 26-1231 & 26-1232.[10]

III. THE CREATION OF A NATIONAL CITIZENS ELIGIBLE VOTER LIST IS ESSENTIAL TO THE IMPLEMENTATION OF EXISTING FEDERAL STATUTES AS WELL AS LEGISLATION PENDING IN THE U.S. SENATE.

The EO's directing the preparation of the list in question would appear to be squarely within the authority of the President to "take care" that 18 U.S.C. §§ 241, 611, and 1015, 28 U.S.C. § 547, and 52 U.S.C. § 20511 are faithfully executed. *See* sec. V, *infra*. Additionally, such a list would be essential in the event of the passage of a bill currently pending in the U.S. Senate that could be enacted at any time.[11] The SAVE America Act (short for "Safeguard American Voter Eligibility Act"), H.R. 7296 (119th Congress), was introduced on January 30, 2026. This bill amends the "National Voter Registration Act of 1993" (also known as the "Motor Voter" law), and was passed by the House on February 11, 2026, by a vote of 218-213 (with one

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[10] Some of these *amici* filed *amicus* briefs in cases where the DOJ is seeking orders directing the states to make the voter lists available to the federal government. *See U.S. v. Oregon*, 9th Cir. No. 26-1231 and *U.S. v. Weber*, 9th Cir. No. 26-1232, Brief *Amicus Curiae* of America's Future, et al. (Mar. 25, 2026) and *U.S. v. Benson*, 6th Cir. No. 26-1225, Brief *Amicus Curiae* of America's Future, et al. (Mar. 30, 2026).

[11] The SAVE America Act is a refinement on H.R. 22, the SAVE Act (short for "Safeguard American Voter Eligibility Act"), which also was introduced by Congressman Chip Roy. It passed the House on April 10, 2025 by a vote of 220 to 208, with four Democrats voting yes.

Democrat voting yes), as an amendment to a Senate bill, S. 1383. It is now back in the Senate.

Under this bill, states would be prohibited from accepting or processing voter registration applications for federal elections unless the applicant provides documentary proof of U.S. citizenship at the time of application. Additionally, voters would be required to show a valid photo ID to vote.

For purposes relevant here, states would be required to take ongoing affirmative steps to ensure that only citizens are registered to vote, including using Department of Homeland Security and Social Security Administration data to identify and remove noncitizens. The Congressional Research Service summary of S. 1383 explains:

> Within 30 days of the bill's enactment, each state must take affirmative steps on an ongoing basis to ensure that only U.S. citizens are registered to vote, which shall include establishing a program to identify individuals who are not U.S. citizens using information supplied by certain sources. Further, each state must submit its complete official list of eligible voters to the Department of Homeland Security for comparison with the Systematic Alien Verification for Entitlements system, which is used to verify immigration status. Individuals who are identified as noncitizens must be given the opportunity to provide documentary proof of U.S. citizenship. Additionally, states must remove noncitizens from their official lists of eligible voters.[12]

If the President is barred from developing a list of eligible voters until after the SAVE America Act is enacted, and if that enactment is delayed until the weeks before the midterm elections this November, it would become practically impossible

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[12] Bill Summary, "Passed House (02/11/2026)," *Congress.gov*.

to give effect to the new legislation before the election. That may well explain why this and the obviously premature *DSCC* challenges were filed. In a carefully selected district court, reporting to a carefully selected circuit, sufficient delay can be achieved to prevent the preparation of an eligible voter list until it is too late to protect the integrity of the November 2026 elections.

IV. THE POSTAL SERVICE HAS AUTHORITY TO ISSUE ITS NOTICE OF PROPOSED RULEMAKING.

The challenge to the USPS Notice of Proposed Rulemaking is clearly premature. However, the district court curiously asserted that the EO's directive to the USPS is unlawful because "no law enacted by Congress delegates authority to control mail-in voting to USPS." *California I* at *45. Again, the district court misstates the issue. Here, it characterizes the issue as USPS's controlling mail-in voting, when it is Congress which already has banned voting by noncitizens. It is Respondents who want to deprive the federal government of any means to ensure federal law is followed. Viewed differently, Respondents appear to want to have the USPS, as an agency of the federal government, to be required to facilitate unlawful, fraudulent voting by noncitizens if registered by states.

Respondent states actually deny that there is any problem whatsoever with noncitizens voting in their states. The Governor of lead-Respondent California, Gavin Newsom, has tweeted, "California law is clear: You MUST be a U.S. citizen to vote [in] state and federal elections ... Voter fraud is EXTREMELY RARE — and

almost always committed by U.S. citizens."[13] Even if only rare, it should be non-existent. Yet California and the other Respondent states travel to a Massachusetts district court to deny to the federal government any role in ensuring that these particular federal laws are followed by the states, especially when there is considerable evidence that they are not being followed. *See* sec. II, *infra*.

In any event, the USPS has the authority pursuant to 39 U.S.C. § 401(2) and (10) to promulgate the Rule it proposes. The stated purposes of the Proposed Rule are "to facilitate enforcement of federal law, reduce the risk of fraud, and help protect the integrity of federal elections." 91 *Fed. Reg.* 32915. This Proposed Rule would be a much-needed and long-overdue effort to address the acknowledged concern about the risks associated with mail-in and absentee voting. The Commission on Federal Election Reform, in its Report on "Building Confidence in U.S. Elections" at 46 (Sept. 2005), concluded the following about voting by mail:

> [T]here is no evidence that it significantly expands participation in federal elections.... Moreover, it raises concern about privacy, as citizen voting at home may come under pressure to vote for certain candidates, and it **increases the risk of fraud**. [*Id.* at 35.]

The right to vote in federal elections is restricted to "citizens of the United States under the Constitution and Federal law." 18 U.S.C. § 241. Noncitizens are prohibited from registering to vote or voting in federal elections. *Id.*, 18 U.S.C. §§ 611, 1015; 52 U.S.C. § 20516. States that have enacted laws authorizing mail-in

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[13] *See* https://x.com/govpressoffice/status/2077900078371528983?s=46.

and absentee voting have chosen to implement those laws by using an agency of the federal government — the USPS — and certainly the USPS must follow federal law.

The Proposed Rule states that it is intended to "facilitate the process for states to enroll individuals with the Postal Service for inclusion on state-specific lists for mail-in and absentee ballot participation." 91 *Fed. Reg.* 32916. Under the NPRM, States will continue to make the determination of which individuals will receive ballots, provided the determination does not violate applicable federal law. States notify the USPS of the individuals to whom they intend to send mail-in or absentee ballots.

The Proposed Rule includes the introduction of a unique barcode to be applied to the outbound and return ballot mail envelopes for the individuals identified by the states. Those individuals will be included on a Mail-In and Absentee Ballot Participation List. This new feature would contribute to improved efficiency and effectiveness of the process. Under the previously cited federal statutes, noncitizens may not be allowed to participate in federal elections and, therefore, may not be included in the Mail-In and Absentee Ballot Participation List. The Proposed Rule "will help determine adherence to federal law and facilitate law enforcement efforts." 91 *Fed. Reg.* 32916.

V. MULTIPLE SUPREME COURT DECISIONS CONFIRM THE PRESIDENT HAS POWER UNDER THE "TAKE CARE CLAUSE" TO ORDER THIS RULE.

As the Supreme Court recognized 100 years ago, the Constitution vests in the President alone both the responsibility and the authority to "take care that the laws be faithfully executed." In *Myers v. United States*, the Court noted:

> Mr. Madison … dwelt at length upon the necessity there was for construing Article II to give the President the sole power of removal in his responsibility for the conduct of the executive branch, and enforced this by emphasizing his duty expressly declared in the third section of the Article to "take care that the laws be faithfully executed." Madison, 1 Annals of Congress, 496, 497. **The vesting of the executive power in the President was essentially a grant of the power to execute the laws**. [*Myers v. United States*, 272 U.S. 52, 1176 (1926) (emphasis added).]

Six years ago, this Court reiterated the exclusive vesting of the executive power in the President. "Article II of the Constitution vests '[t]he executive Power' in the 'President of the United States of America,' §1, cl. 1, and directs that he shall 'take Care that the Laws be faithfully executed'…." *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 239 (2020). This Court added:

> Under our Constitution, the "executive Power" — all of it — is "vested in a President," who must "take Care that the Laws be faithfully executed." … The President's power to remove — and thus supervise — those who wield executive power on his behalf follows from the text of Article II, was settled by the First Congress, and was confirmed in the landmark decision *Myers v. United States*." [*Id*. at 203-04 (cleaned up).]

Recently, the Court again stressed the complete commitment of the execution of the laws to the President. "To vest 'the whole executive power' in just one person was … to establish a hierarchy — a Chief Magistrate with whom the buck stops,

and below him various assistants or deputies who derive their offices from his appointment and remain subject to his superintendence." *Trump v. Slaughter*, 2026 U.S. LEXIS 2877, at *18 (2026).

This Court noted that, as the Framers settled the question of the independent executive:

> Madison led the charge. "I conceive that if any power whatsoever is in its nature **Executive**," and thus vested in the President, "it is the power of appointing, overseeing, and **controlling** those who execute the laws." *Id.* at *24 (quoting 1 Annals of Cong. 463 (J. Madison) (emphasis added). "[M]ore than 200 years have passed since we recognized" that the Constitution "vests the whole executive power in the President" alone. *Osborn v. Bank of United States*, 22 U.S. 738, 819 (1824) (Marshall, C.J., for the Court). [*Id.* at *37.]

The Court in *Slaughter* rejected congressional efforts to usurp the President's executive authority.

> "As a practical matter, successful insulation of administration from the President — even if accomplished in the name of 'independence' — will tend to enhance Congress's own authority over the insulated activities." Placing the power to administer laws in officers who enjoy "freedom from Presidential oversight (and protection)," in other words, does not deliver us to a promised land of technocratic governance — it often results only in an "increased subservience to congressional direction." … No branch may rely on adverse possession to claim power that the Constitution vests elsewhere. [*Id.* at *40.]

As Professors Steven G. Calabresi and Saikrishna B. Prakash argue, "[b]ecause the President alone has the constitutional power to execute federal law, it would seem to follow that … the President must be able to execute [a] statute

interpreting it and applying it in concrete circumstances."[14] Providing numerous historical examples, they note that at the Founding, "everyone recognized that the President would administer federal law. Philadelphia and state convention delegates, Hamilton and Madison, other Federalists, and numerous Anti-Federalists understood this simple truth.... [S]peakers and essayists repeatedly proclaimed that the Constitution already granted the President the authority to execute federal law." *Id*. at 622.

Indeed, this Court has endorsed inherent authority for the President to enforce federal law where the governing statute does not prohibit it. This Court explained that:

> if the President or the Postmaster General is advised that the mails of the United States, possibly carrying treasure, are liable to be robbed and the mail carriers assaulted and murdered in any particular region of country, who can doubt the authority of the President or of one of the executive departments under him to make an order for the protection of the mail and of the persons and lives of its carriers. [*In re Neagle*, 135 U.S. 1, 65 (1890).]

The Court viewed this authority as inherent in the responsibility to "take care that the laws be faithfully executed." Likewise, if the President is advised that the mails of the United States are being used to transport illegal ballots, he has the inherent authority to instruct "the executive departments under him" to take steps to ensure that no such ballots are transported and illegally inserted to pollute election results.

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[14] Steven Calabresi & Saikrishna Prakash, "The President's Power To Execute the Laws," 104 Yale L.J. 541, 595 (1994).

In fact, while the "Take Care Clause" has primarily been litigated in the context of removal of executive officers, it is noteworthy that in the seminal case delineating the removal power, the Court found that power to exist even where only implicit, since removal is not explicitly mentioned in Article II:

> As he is charged specifically to take care that they be faithfully executed**, the reasonable implication, even in the absence of express words**, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, **in the absence of any express limitation respecting removals**, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he can not continue to be responsible. [*Myers v. United States*, 272 U.S. 52, 117 (1926) (emphasis added).]

Likewise, criminal prosecution is the domain of the executive. "Under the authority of Art. II, § 2, Congress has vested in the Attorney General the power to conduct the criminal litigation of the United States Government. 28 U.S.C. § 516." *United States v. Nixon*, 418 U.S. 683, 694 (1974). Preventing the use of the U.S. Postal Service to convey illegal documents is well within the purview of an executive order.

The President's order involves the investigation and prosecution of federal crimes. 28 U.S.C. § 547 provides, "Except as otherwise provided by law, each United States attorney, within his district, shall ... prosecute for all offenses against the United States." There is no provision for states to undertake such prosecutions. Federal election law violations, such as criminal voting by aliens, are the peculiar province of the executive:

> "[I]t is to the President, and not to the Congress, that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.'" *Buckley v. Valeo*, 424 U.S. 1, 138 (1976). The Court has further made clear that it cannot remove the enforcement power from the President and transfer it elsewhere. In striking down the Brady Bill's "conscription" of state law enforcement agencies to enforce the law, the Court noted that "the power of the President would be subject to reduction, if Congress could act as effectively without the President as with him, by simply requiring state officers to execute its laws." [*Printz v. United States*, 521 U.S. 898, 922 (1997).]

VI. THIS DISTRICT COURT INJUNCTION WAS THE END RESULT OF CAREFUL FORUM SHOPPING.

It is reasonable for the public to wonder why the Respondent State of California decided not to file its complaint in the Southern, Central, Eastern, or even the Northern District of California, but rather chose to cross the country to file its complaint in the Massachusetts district court. The public understands that an appeal or request for stay from the Massachusetts district court goes to the First Circuit which, until late last year, had no Republican President-appointed judges.

Here, California followed the legal strategy established by Respondent State of New Jersey when it chose to challenge President Trump's Birthright Citizenship EO and decided not to file in the District of New Jersey (Third Circuit), but rather in the same court as here — the District of Massachusetts (First Circuit). *See New Jersey v. Trump*, No. 1:25-cv-10139-LTS (D. Mass.).[15]

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[15] Anti-Trump forum shopping continues even after cases are filed, for after a challenge to the Birthright Citizenship EO was filed in the District of Columbia, it was dropped by plaintiffs when the case was randomly assigned to a Republican-appointed judge. *See OCA-Asian Pacific American Advocates v. Rubio*, 1:25-cv-00287-TJK (D.D.C.).

CONCLUSION

For the foregoing reasons, this Court should stay the district court injunction pending appeal.

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No. 26A124

IN THE
Supreme Court of the United States

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

Applicants,

v.

STATE OF CALIFORNIA, *et al.*,

Respondents.

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

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INTERESTS OF *AMICI CURIAE*

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

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

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

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

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

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

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

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

INTRODUCTION AND SUMMARY OF ARGUMENT

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

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

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

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

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

The Application for a Stay should be denied.

ARGUMENT

I. The E.O. is legally indefensible.

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

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

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

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

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

[2] *Reforming the U.S. Postal Service's Broken Business Model: Hearing Before the S. Comm. on Homeland Sec. & Govt'l Affs.*, 119th Cong. (2026), at 40:25–42:01, 1:59:00–1:59:15, https://www.hsgac.senate.gov/hearings/reforming-the-u-s-postal-services-broken-business-model.

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

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

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

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

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

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

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

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

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

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

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

§ II.A.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

The Application should be denied.

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Respectfully submitted,

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No. 26A124

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, President of the United States, *et al.*

Applicants,

v.

CALIFORNIA, *et al.*,

Respondents.

On Application for a Stay of the Order Issued by the United States District Court for the District of Massachusetts

BRIEF OF THE BIPARTISAN AMERICAN ELECTION PROJECT AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTERESTS OF AMICUS CURIAE

Lawyers affiliated with both the Democratic and Republican parties have formed *amicus curiae* The Bipartisan American Election Project (BAEP).[1] BAEP is led by Bob Bauer and Ben Ginsberg, veteran election lawyers and the former co-chairs of the bipartisan Presidential Commission on Election Administration. BAEP is committed to reinforcing principled constitutional positions, defending democratic norms, and countering efforts to obstruct the lawful casting and tallying of votes or to undermine public confidence in election outcomes. BAEP's efforts and goals are supported by attorneys from both major parties, including Michael Carvin, who has represented conservative and Republican Party organizations in election-law litigation, including voting rights, recount, and redistricting matters; Daniel Troy, whose background includes appellate litigation in private practice and service as Chief Counsel to the Food and Drug Administration in the George W. Bush Administration; Donald Verrilli, former Solicitor General of the United States in the Obama Administration and a senior litigation adviser to the Obama–Biden and Harris–Walz presidential campaigns; John Devaney, who has tried election-law cases on behalf of Democratic presidential campaigns and the Democratic National Committee; and Dana Remus, who served as White House Counsel in the Biden Administration. Mr. Verrilli, Mr. Devaney, and Ms. Remus are also members of the BAEP Board of Directors.

[1] No counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than BAEP, its members, or its counsel made such a monetary contribution.

Our country is experiencing extraordinary conflict over the administration of elections and the acceptance of election outcomes. The foundational principles on which free and fair elections have been based are now the subject of a flood of litigation in federal and state courts, intense regulatory battles, and polarizing rhetoric about the reliability of elections. The major political parties have long brought sharply differing perspectives on how best to administer a fair electoral process. Yet the intensity of the current partisan conflict threatens to undermine the lawful conduct of elections and weaken public trust in our voting systems.

The line between legitimate disagreements over election laws and anti-democratic challenges to longstanding constitutional principles and norms has too often been lost in these conflicts. To assist the judiciary in drawing and upholding that line, BAEP focuses exclusively on frontal challenges to constitutional protections and democratic norms. As a bipartisan group of veteran attorneys, BAEP seeks to highlight for the Court paths to a principled resolution of the legal issues that these partisan conflicts are now generating. This case involves just such an effort.

SUMMARY OF ARGUMENT

Executive Order 14399 directs the Department of Homeland Security and the United States Postal Service to take certain actions with immediate and substantial effect to shape the rules for the 2026 elections. *See* Exec. Order 14399, Ensuring Citizenship Verification and Integrity in Federal Elections, 91 Fed. Reg. 17125 (Mar. 31, 2026). More specifically, the EO directs the Department of Homeland Security to compile and transmit to the States a citizenship list that would determine eligibility to receive and cast a mail ballot. It further commands the Postal Service to issue—and

specifies the content for—a proposed rulemaking to establish requirements for the Postal Service's delivery of election materials, including mail ballots.

The stay applicants assert that this case is not justiciable because any harm is conjectural at this stage. This is wrong: it fails to account for the realities of election administration. Unlike in *DSCC v. Trump*, No. 26-5193, 2026 WL 2168617 (D.C. Cir. July 28, 2026)—where the D.C. Circuit found that national-party plaintiffs were not "directly regulated" by the EO—Plaintiff States here are directly affected by the EO, right now. The EO sets forth specific, fixed requirements that election officials across the country have no choice but to prepare for now given the country's fixed election-year timetable, with voting only a few months away. Under federal law, States have until September 19, less than two months from now, to begin mailing Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) ballots. Some States must begin mailing all absentee and mail-in ballots by September, as required by state laws. *See* Dist. Ct. Doc. 100-14 ¶ 60 (September 18 in Minnesota); *id.* 100-24 ¶ 62 (September 24 in Illinois). But the States have had to divert personnel and resources from the work necessary to comply with these and other legal obligations in now preparing to carry out the EO's election mandates.

The record shows, without contradiction, the immediate, concrete harms associated with these mandates. For example:

- Given that the EO directs the Postal Service to consider specific ballot-design requirements, States must anticipate that they will be included in a final rule. States that have *already* finalized or printed their election

ballots differently face "certainly impending pocketbook injuries." *California v. Trump*, Nos. 26-1774, 26-1779, 2026 WL 2144084, __ F.4th __, at *8 (1st Cir. July 25, 2026). With Election Day only 92 days away and the deadline for mailing UOCAVA ballots only 47 days away, States cannot risk waiting to plan for the potential of meeting these requirements. Several States have determined they must expend funds now for both the planning and possible implementation of the rulemaking.

- Consistent with the EO, the rulemaking also will likely require States to redesign ballot envelopes to include Intelligent Mail barcodes. Again, States that have already finalized their ballot envelopes in accordance with the different requirements of state law face the significant costs of creating new envelopes and, for many States, the costs of purchasing barcode technology they do not currently have.
- These likely ballot- and envelope-design requirements and other potential requirements that the EO directs the Postal Service to consider would conflict with state law, leaving States with the difficult choice *now* of planning for meeting those requirements, preparing for legal challenges weeks before the election, or both.

The "wait and see" approach urged by the stay applicants is not an answer to these harms but instead would compound them. With just three months until Election Day and, in some States, less than 60 days until all absentee ballots must be sent to voters, election officials in thousands of jurisdictions would be asked to plan now

for two different election-law regimes: the one now in place under their States' laws, and a radically different one directed by the federal government that would require reprinting election materials, violating state laws, and scrambling to comply with a first-ever national citizenship list for determining voter eligibility. And they would do so under the pressures of potential criminal prosecution or the withholding of vital federal funds, both threatened by the EO.

This Court has recognized the irreparable harms that follow from sudden changes in election law as the days of voting, including early voting, fast approach. These harms include voter confusion and "the possibility that qualified voters might be turned away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). These probable harms are irreparable because they "erode[] public confidence that the election results reflect the people's will" and "undermine the winner's legitimacy." *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 78 (2026).

Adding to the propriety of equitable relief now, the EO entails a clearly unconstitutional assertion of executive power. The President has no power to issue election regulations. His authority "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). Yet none of the constitutional powers or statutes upon which the EO purports to rely provides this authorization. Whether the EO reflects this President's stated desire to "nationalize" elections and "take over" voting procedures from the States,[2]

[2] *See* Reid J. Epstein & Nick Corasaniti, *Trump, in An Escalation, Calls for Republicans to 'Nationalize' Elections*, N.Y. Times (Feb. 2, 2026), https://www.nytimes.com/2026/02/02/us/politics/trump-nationalize-elections.html.

or is a misconceived exercise in law enforcement, it cannot be reconciled with the Constitution's federalist design.

For these reasons, the Court should deny the stay applications.

ARGUMENT

I. The EO is already compelling state election officials to take expensive, disruptive steps and to divert limited resources from work that must be done to prepare for the November election.

The EO commands the Postal Service to consider a rule that would require all the States' "outbound ballot mail" to (A) bear an "Official Election Mail" logo, (B) bear "a unique Intelligent Mail barcode, or successor USPS technology," and (C) pass a "mail envelope design review by USPS." EO § 3(b)(i). Under such a rule, States would have to notify the Postal Service, at least ninety days before an election, if they intend for their "mail-in or absentee ballots to be transmitted by the USPS." *Id.* § 3(b)(ii). And the Postal Service would have to "provide each State with a list of individuals" eligible to receive a ballot by mail—named the "Mail-In and Absentee Participation List"—and "not transmit mail-in or absentee ballots from any individual unless those individuals have been enrolled on" that list. *Id.* § 3(b)(iii)–(iv). Ninety days before the upcoming November 3, 2026 Election Day is Wednesday, August 5, 2026.

These rules are aimed squarely at the States and their administration of elections, not at third parties one step removed from these potential requirements. The D.C. Circuit specifically noted the difference between national-party plaintiffs that are not "directly regulated by the [EO]" and "the States charged with administering elections and adapting their procedures to the requirements contemplated by the [EO]." *DSCC*, 2026 WL 2168617, at *5. Plaintiff States here are those States. The

reality of preparing for the upcoming election leaves them no choice but to prepare now for the requirements the EO directs the Postal Service to consider—a textbook concrete, particularized injury in fact.

The record evidence supporting each of these harms—diverted resources, pocketbook injury, expenditure of government personnel's time, and the threat of prosecution—is substantial and unrefuted. *See California*, 2026 WL 2144084, at *6–10.

First, copious evidence shows that Plaintiff States are already making changes to meet the EO's new election requirements. For instance, Connecticut officials took multiple "steps in response to the issuance of the EO," including planning a redesign of Connecticut ballot envelopes to include an Intelligent Mail barcode, Dist. Ct. Doc. 100-7 ¶ 10; Minnesota officials devoted many hours to assessing and preparing for "the impact the EO would have on Minnesota voter registration requirements and Minnesota's statewide voter registration system," *id.* 100-14 ¶ 9; and New York officials diverted staff to "work on funding and legislative/partner initiatives to address the" EO's requirements, *id.* 100-17 ¶ 10. Pennsylvania plans to "allocate additional resources to responding to the queries of county election officials regarding compliance with the EO, particularly given the threat of criminal prosecution." *Id.* 100-20 ¶ 23.

Second, Plaintiff States have demonstrated the imminent pocketbook injuries that all jurisdictions across the country will suffer by having to redesign and reprint ballot envelopes to comply with the potential, even likely, Postal Service requirement that all ballots bear an Intelligent Mail barcode. *See id.* 100-14 ¶ 66 ("Intelligent Mail

barcodes are not required nor . . . used by most Minnesota counties and municipalities for absentee or mail ballots."); *id.* 100-20 ¶ 66 ("More than two dozen Pennsylvania counties, many of them small, rural counties, fulfill ballot requests in-house and do not currently use Intelligent Mail barcodes on ballot mail."); *id.* 100-6 ¶¶ 69–70 (stating that while Colorado counties "have already ordered mail ballot envelopes for the 2026 federal election cycle," about a quarter of them "do not currently use Intelligent Mail barcodes on ballot mail"); *id.* 100-17 ¶ 65 (averring that in New York "[m]any boards of elections who send out ballots are not currently using Intelligent Mail barcodes on ballot mail").

For some States, obtaining and paying for compliant ballot envelopes in time for November, let alone the start of early and absentee voting in 60 days or less, is likely impossible. *See id.* 100-12 ¶¶ 75–76 (explaining that because "1,521 separate envelope design styles" are used throughout Michigan, it is "likely too late . . . to order additional [envelopes] for the November election"); *id.* 100-21 ¶¶ 11, 73 (expressing the "pressing concern" that Rhode Island election officials may not be able to afford reprinting ballot envelopes).

Third, the States are faced now with planning for an unworkable voter list-screening process directed by the federal government only weeks before the election. The process contemplated by the rulemaking, at the direction of the President, assumes that States' voter rolls freeze at some fixed point before Election Day. The opposite is true—nearly every State allows voters to request mail ballots thirty days or less before an election. For example, New Hampshire accepts requests up to the

day before the election, N.H. Rev. Stat. § 657:15(I), Georgia allows requests up to eleven days out, Ga. Code § 21-2-381(a)(1)(A), and most States fall somewhere in between.[3] Any such screening requirements cannot work: most States have no final list of mail-in voters until shortly before Election Day.

These requirements are similarly unworkable for the States that administer elections entirely by mail: California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, Washington, and the District of Columbia.[4] These "all-mail" States are required by state law to send a ballot to every registered voter, and in most cases, election officials must send the ballots at least a month or two before Election Day. Because voters in these jurisdictions do not need to request a mail ballot, there would be no list of potential mail voters to submit to the Postal Service—these States would have to give the Postal Service a complete copy of their active voter rolls at some fixed point in time. But state voter rolls are not static. They change daily as Election Day approaches, with every new and updated registration. *See, e.g.*, Dist. Ct. Doc. 100-1 ¶ 15 ("California's statewide voter registration list changes up to and on election day."); *id.* 100-26 ¶ 10 ("Wisconsin's statewide voter registration list is dynamic and continues to change throughout the election cycle, including through Election Day via Election Day registration."). If a State were required to give the Postal Service a final

[3] *See, e.g.*, *Absentee Ballot Deadlines*, Vote.Org, https://www.vote.org/absentee-ballot-deadlines/ (collecting absentee-ballot registration deadlines for all States) (last visited July 31, 2026).

[4] *See Table 18: States With Mostly Mail Elections*, Nat'l Conference of State Legislatures (Apr. 6, 2026), https://www.ncsl.org/elections-and-campaigns/table-18-states-with-all-mail-elections.

copy of its voter list, then any new voters who registered for mail voting would necessarily be barred from voting by mail. And state officials would potentially be subject to criminal prosecution if they allowed those voters to cast ballots.

II. The States are planning now for a federal government-directed change in election rules that would violate state laws.

The EO and the rules it calls on the Postal Service to consider would also conflict with numerous state laws regulating envelope design by requiring that ballot envelopes be marked with an Official Election Mail logo and an Intelligent Mail barcode. EO § 3(b)(i)(A)–(C). Many States have laws prescribing exact, static requirements for ballot envelopes. *See, e.g.*, Ariz. Rev. Stat. § 16-547(A) (requiring the "name, official title and post office address" of the local election officer, and a lengthy printed affidavit); Cal. Elec. Code § 3011(a) (listing ten pieces of information that must be on the envelope); Colo. Rev. Stat. § 1-7.5-107(3)(b) (requiring an affidavit, and no barcode); Conn. Gen. Stat. § 9-139a(a) (delegating envelope design to the Secretary of State, who does not require barcodes); Ga. Code § 21-2-384(b) (numerous envelope requirements); Fla. Stat. § 101.64 (same); Mo. Rev. Stat. § 115.283 (same); Minn. R. § 8210.0710 (specifying the design of ballot envelopes); N.Y. Elec. Law § 7-122 (prescribing specific design elements for New York ballot envelopes); 25 Pa. Stat. § 3150.14 (delegating design authority to the Secretary of the Commonwealth); Tex. Elec. Code § 86.013 (multiple envelope requirements); Va. Code § 24.2-706(C) (same). And for at least some States, a requirement that every envelope bear a Postal Service-approved barcode and specific logo will conflict with state law. Maryland, for instance, allows voters to print mail-in ballots at home, but those ballots are not marked with

a unique Intelligent Mail barcode. Dist. Ct. Doc. 100-11 ¶ 102. Under a final rule that effectuates the requirements the EO commands it to consider, the Postal Service would not deliver those ballots, even though they are authorized by Maryland's laws.

Because of conflicts like this, state election administrators throughout the country must now determine how to respond, planning for both compliance and legal challenges. They cannot "wait and see" with early voting less than two months away and Election Day only three months away. The urgency and complexity of the task are all the greater given the EO's command that the Attorney General prosecute anyone who helps send federal ballots to any recipient the federal government believes ineligible to vote, regardless whether such recipient was lawfully registered under state laws. EO §§ 2(b), 5. State and local election administrators must now manage the risk of federal prosecution, in a time when they are already experiencing "threats, accusations of crime and leaked private information (doxing) at much higher rates than usual."[5]

III. The harms associated with legally flawed, federal government-directed rule changes so close to the election are irreparable and justify the district court's equitable relief.

As this Court has held, there are special "considerations specific to election cases" that caution against late-hour changes to election rules that, in themselves, increase "the possibility that qualified voters might be turned away from the polls." *Purcell*, 549 U.S. at 4. These election-specific considerations—namely, voter

[5] *See State Laws Providing Protection for Election Officials and Staff*, Nat'l Conference of State Legislatures (July 16, 2025), https://www.ncsl.org/elections-and-campaigns/state-laws-providing-protection-for-election-officials-and-staff.

confusion and disenfranchisement—are irreparable harms because they "erode[] public confidence that the election results reflect the people's will" and "undermine the winner's legitimacy." *Bost*, 607 U.S. at 78. This is precisely the kind of harm this Court's equitable practice treats as irreparable—not because *Purcell* itself bars the EO, but because the same considerations that counsel courts against changing election rules close to an election are appropriately considered and given great weight in assessing the likelihood of irreparable harm.

"When an election is close at hand, the rules of the road must be clear and settled." *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (mem.) (Kavanaugh, J., concurring). The portion of the November election that the EO targets—mail-in and absentee voting—is "close at hand." By the time the Postal Service issues its final rule, many States will have already conducted their primaries, and all States are presently working to finalize election materials for November's general election. *See California v. Trump*, No. 1:26-cv-11581-IT, 2026 WL 1826490, at *7 (D. Mass. June 25, 2026) (finding that "all Plaintiff States are presently preparing to administer the November 2026 general election"). All States must begin mailing ballots to overseas and uniformed voters in less than two months. *See, e.g.*, Dist. Ct. Doc. 100-5 ¶ 57 (Arizona); *id.* 100-12 ¶ 70 (Michigan); *id.* 100-15 ¶ 68 (New Jersey). And some States will begin mailing all absentee and mail-in ballots in that period. *See, e.g.*, *id.* 100-14 ¶ 60 (Minnesota on September 18); *id.* 100-24 ¶ 62 (Illinois on September 24).

Moreover, no less relevant to the assessment of the propriety of equitable relief is the absence of any statute that authorizes the President to direct the Postal

Service, or the Postal Service to issue a rule, to screen ballots by citizenship status or withhold delivery on that basis. The EO claims authority from the Help America Vote Act of 2002 (HAVA), the National Voter Registration Act (NVRA), and the Guarantee Clause. *See* EO pmbl. None authorizes the EO's regulations.

First, neither HAVA nor the NVRA authorizes the EO's election regulations. HAVA sets standards for state voting systems and voter registration lists, and it provides federal funding for any States that implement its standards. *See* 52 U.S.C. §§ 20901–21145. The NVRA establishes list-maintenance requirements for federal elections, to be implemented by the States. *See* 52 U.S.C. §§ 20501–20511. Both statutes provide federal funding for States that comply with their requirements—neither lets the executive branch withhold funds to punish noncompliance with a process it has no authority to impose. Nor does either statute grant the President wide-ranging powers to create new federal election rules.

Nor can the EO derive authority from the Constitution's Guarantee Clause. *See* EO pmbl. (citing "the Federal Government's constitutional obligation to guarantee a republican form of Government to every State in the Union"); U.S. Const. art. IV, § 4. This Court has long held that the power "to determine when a state has ceased to be republican in form, and to enforce the guaranty of the Constitution," is "solely committed by the Constitution to the judgment of Congress." *Pac. States Tel. & Tel. Co. v. Oregon,* 223 U.S. 118, 133 (1912); *Luther v. Borden*, 48 U.S. 1, 42 (1849) (holding that Congress's admission of a State's senators and representatives "recognized" the State's republican character and that this determination "could not be questioned in

a judicial tribunal"). The Court has rejected a President's attempt to invoke the Clause unilaterally, explaining that "the power to carry into effect the clause of guaranty is primarily a legislative power, and resides in Congress." *Texas v. White*, 74 U.S. 700, 730 (1868). Because Congress, not the President, holds whatever authority the Guarantee Clause confers, the Clause supplies no basis for the EO's election mandates.

Just as "federal courts should not impose changes close to an election," *Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026), the potential changes by executive action at issue in this case, lacking constitutional or statutory foundation, violate to this principle in a manner that supports equitable relief.

CONCLUSION

For the reasons above, the Court should deny the applicants' requests to stay the district court's injunction.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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

Plaintiffs,

v.

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

Defendants.

Case No. 1:26-cv-11549-IT

REPLY IN SUPPORT OF PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Defendants and Intervenors largely reprise arguments this Court has already rejected in holding that Plaintiffs have standing and ripe claims, and that the Order is unconstitutional, notwithstanding its savings clauses. Mem. & Order, Dkt. No. 166; Mem. & Order, Dkt. No. 175; *California v. Trump*, No. 1:26-cv-11581-IT, 2026 WL 1826490 (D. Mass. June 25, 2026) (*California*). The factual support for those rulings has only increased: USPS is carrying out the Order in every meaningful respect. Plaintiffs' motion should be granted.

ARGUMENT

I. Plaintiffs Have Standing and Their Claims Are Ripe.

Defendants (at 3–10) and Intervenors (at 4–11) continue to contend that Plaintiffs lack standing and, relatedly, that their claims are unripe. But this Court has already rejected these exact arguments, finding the Order causes direct harm to Plaintiffs' core business activities and to their members. Dkt. No. 175 at 8–9. Those holdings accord with the settled principle that executive orders may be challenged where they have immediate practical consequences. *E.g.*, *Chamber of Com. of U.S. v. Reich*, 57 F.3d 1099, 1100–01 (D.C. Cir. 1995) (finding challenge ripe because order's "mere existence" altered the parties' incentives and conduct).

Defendants (at 4–5) and Intervenors (at 5) rely on cases holding that courts ordinarily may not review proposed rules. But Plaintiffs do not challenge USPS's proposed rule; they challenge the President's command to USPS to carry out the unlawful Order, including by adopting an unlawful rule. That distinction is dispositive. In *Defenders of Wildlife v. Perciasepe*, 714 F.3d 1317 (D.C. Cir. 2013), trade organizations lacked standing to challenge a consent decree requiring EPA to conduct a rulemaking, because the decree neither required EPA to promulgate a final rule nor dictated its substance. *Id*. at 1324–25. As this Court and the First Circuit have recognized here, the Order "lays out a clear set of rapidly approaching deadlines by which states must coordinate with

federal officials and comply with new voting procedures." *California v. Trump*, Nos. 26-1774 & 26-1779, 2026 WL 2144084, at *7 (1st Cir. July 25, 2026); *accord* Dkt. No. 175 at 4. Plaintiffs therefore face not the "possibility of potentially adverse regulation," *Perciasepe*, 714 F.3d at 1324–25, but the certainty that the President's directive will culminate in unlawful government actions.

In re Murray Energy Corp., 788 F.3d 330 (D.C. Cir. 2015), does not help Defendants either. There, the D.C. Circuit rejected a challenge to a proposed rule in part because its delayed implementation schedule ensured that the plaintiffs could "challenge [the final] rule in a pre-enforcement suit." *Id*. at 334–35. Here, by contrast, Plaintiffs challenge an executive order, not a proposed rule; and, in any event, USPS's final rule will take effect immediately upon promulgation, eliminating any comparable opportunity for pre-enforcement review before the rule further alters the mail voting process nationwide. *See California v. Trump*, 2026 WL 2144084, at *5.

Nor does the presumption of regularity insulate the Order from review. Though agencies like USPS are generally presumed to act lawfully, this presumption does not "shield agency action from a thorough, probing, in-depth review." *New York v. Trump*, 133 F.4th 51, 73 (1st Cir. 2025) (citation modified). Just as the Order's perfunctory savings language does not salvage it, *see California*, 2026 WL 1826490, at *11–12, neither does the presumption of regularity: Because the Order lacks any constitutional or statutory basis and directs USPS to violate its organic statute, USPS's implementation of the Order is inherently and unavoidably unlawful.

The D.C. Circuit's recent decision in *DSCC v. Trump* does not alter that conclusion. Like Defendants, the panel relied on *Trump v. New York*, 592 U.S. 125 (2020), to find a challenge to the Order unripe, calling it "a dispute in a similar posture." *DSCC v. Trump*, No. 26-5193, 2026 WL 2168617, at *3 (D.C. Cir. July 28, 2026). Yet this Court has noted the Order "both includes multiple specific directives as to certain actions that federal agencies must take at specified times

and requires that definite substantive outcomes be implemented"—fundamentally distinguishing *Trump v. New York*. Dkt. No. 166 at 16 (quotation marks omitted); *see also* Dkt. No. 139 at 3–7. Unlike here, the order in *Trump v. New York* did not direct rulemaking with a specific implementation timeline to "include, at a minimum" specific provisions changing election mail, Order § 3(b). There, the order only directed that the Commerce Secretary "provide information permitting the President, to the extent practicable," to equip the President to exercise his "discretion to carry out the policy." *Trump*, 592 U.S. at 130. In *DSSC*, the D.C. Circuit reasoned it could not assume USPS would ultimately adopt a final rule, but acknowledged that, unlike here, neither USPS's proposed rule nor evidence about events post-dating the Order were "part of the record" there. *DSCC*, 2026 WL 2168617, at *3. Without that in the record, the panel overlooked what this Court and the First Circuit have correctly held on a more robust record: The Order leaves USPS no choice whether to promulgate the rule. *See* Dkt. No. 175 at 4; *California v. Trump*, 2026 WL 2144084, at *6, 11. Recent developments make clear that USPS is proceeding with the rule, notwithstanding counsel's arguments that promulgation of a final rule is uncertain: USPS's proposed rule is now in "Final Rule" status, per the Office of Information and Regulatory Affairs. *See* Off. of Info. & Regul. Affs., Conditions on the Preparation of Ballot Mail for Federal Elections, https://www.reginfo.gov/public/do/eoDetails?rrid=1485175 [https://perma.cc/KBN2-KF2U]. And postal union workers are building the portal contemplated in that rule.[1]

Ultimately, Defendants cannot have it both ways. In seeking a stay, they argue that an injunction irreparably harms the Government because it prevents the President from directing USPS to implement the Order before the November 2026 election. Stay Appl. at 2, *Trump v.*

[1] Nicholas Riccardi, *Court Panel Declines to Block Trump's Mail Ballot Order, but Its Status for Midterms Remains Unclear*, AP (June 28, 2026), https://apnews.com/article/trump-election-executive-order-mail-voting-5ed040e5055c82cf84545eba36a859d8.

California, No. 26A124 (U.S. July 27, 2026). Yet here they insist (at 9) that Plaintiffs' injuries are speculative because USPS might never implement the Order. Those positions are irreconcilable. The record confirms what the Order requires, and what Defendants repeatedly represent: That the President's directive leaves USPS with no discretion whether to promulgate the rule.

II. Plaintiffs Have Shown Irreparable Harm.

Plaintiffs have already shown they are more than "likely to suffer irreparable harm in the absence of preliminary relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see* Dkt. No. 171 at 13–19 (detailing Plaintiffs' ongoing, irreparable harm). Rather than address this showing, Defendants and Intervenors suggest a level of uncertainty regarding the Order's implementation belied by the factual record, and collapse arguments against irreparable harm with their inapt conception of standing already rejected by this Court, Dkt. No. 175 at 5–12.

Defendants (at 6) contend that the Order's implementation "does not require *voters* to do anything differently in requesting a ballot so as to necessitate a change in voter educational materials." Perhaps so, if Plaintiffs were content with USPS screening and refusing delivery of ballots of eligible citizens not "enrolled on a State-specific list." Order § 3(b)(iii); *see* 91 Fed. Reg. 32915, 32917–18 (June 2, 2026). But Plaintiffs are not, and such actions would directly undermine Plaintiffs' work to ensure eligible citizens can vote, including by mail. *See* Dkt. No. 171 at 16–17. That the Order's text itself does not regulate Plaintiffs is beside the point. *See* Dkt. No. 176 at 13–14. The Order and its implementation interfere with Plaintiffs' core missions and threaten disenfranchisement of their members, constituting irreparable harm. *See, e.g.*, *League of United Latin Am. Citizens v. Exec. Off. of President* (*LULAC*), 780 F. Supp. 3d 135, 201 (D.D.C. 2025).

Nor does this Court's injunction in the *California* case ameliorate Plaintiffs' irreparable harm, *contra* Dkt. No. 176 at 14. Defendants' litigation position today is that they "likely" cannot implement the Order in any state under this Court's extant injunction. *See id*. (quotation omitted).

This Court should not take their word for it. Regardless, Plaintiffs educate voters and have members who vote by mail in the 27 states not covered by the existing injunction. *See* Dkt. No. 171 at 14. Neither the Government's non-binding assurances nor the prior injunction obviates the Order's harms to Plaintiffs—only equitable relief enforceable by Plaintiffs can. *See California v. Trump*, 786 F. Supp. 3d 359, 396–97 (D. Mass. 2025) (preliminarily enjoining executive order already subject to another injunction); *Am. Encore v. Fontes*, 152 F.4th 1097, 1121 (9th Cir. 2025) ("[D]istrict courts frequently issue overlapping preliminary injunctions."). Relief is necessary to stem Plaintiffs' current and imminent irreparable harm from the Order.

III. The Scope of Plaintiffs' Requested Relief Is Proper.

Defendants argue (at 15–16) that equitable relief must be limited. But Plaintiffs request narrow relief: an injunction barring the USPS Defendants, not the President, "from implementing or giving effect to Section 3 of the Executive Order . . . and any other portion of the Executive Order in which the President issues commands to USPS," Proposed Order, Dkt. No. 170-1, at 2. And that relief is closely tailored to the violation that the Order causes by "insert[ing] . . . the USPS[] as a regulator of state mail-ballot programs where neither the Constitution nor USPS's enabling act allow for that role." Dkt. No. 175 at 14.

Finally, this Court should exercise its substantial discretion to decline Defendants' request (at 18) for an injunction bond. *See Pineda v. Skinner Servs., Inc.*, 22 F.4th 47, 57 (1st Cir. 2021). They have failed to show how they would be harmed without a bond, *id*., and a bond would be particularly inappropriate because "requiring a bond as a condition of obtaining an injunction against unlawful executive action . . . would risk deterring other litigants from pursuing their right to judicial review of unlawful executive action." *LULAC*, 780 F. Supp. 3d at 225.

CONCLUSION

The Court should grant Plaintiffs' requested preliminary injunction.

Dated: August 3, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2026, a true copy of the above document was filed via the Court's CM/ECF system and that a copy will be sent automatically to all counsel of record.

August 3, 2026

/s/ *Sophia Lin Lakin*
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Nos. 26A124, 26A139

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL.,

Applicants,

v.

STATE OF CALIFORNIA, ET AL.,

Respondents.

STATE OF ALABAMA, ET AL.,

Applicants,

v.

STATE OF CALIFORNIA, ET AL.,

Respondents.

ON APPLICATIONS FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS PENDING APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF NATIONAL SECURITY LEADERS FOR AMERICA AS *AMICUS CURIAE* IN OPPOSITION TO APPLICATIONS FOR STAY

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INTEREST OF *AMICUS CURIAE*[1]

National Security Leaders for America ("NSL4A") is a non-partisan network of over 1,500 former senior military and civilian leaders possessing broad experience in national security issues and sharing viewpoints and affiliations from across the political spectrum. Over 800 of NSL4A's members are retired Generals, Admirals, or other senior officers from one of the uniformed services of the United States. Approximately 200 of its members served as ambassadors of the United States in foreign countries, while many more served in senior diplomatic posts around the world.

This extensive service to our country has afforded many NSL4A members first-hand experience with the difficulties military and diplomatic personnel encounter in casting ballots when on assignment abroad or in the United States away from their legal residence. NSL4A can speak knowledgeably about the deleterious and prejudicial impact that will be inflicted upon the voting rights of uniformed military members, diplomats, and their families by the restrictive policies propounded in Executive Order 14399. NSL4A and its members also are familiar with the conflict between Executive Order 14399 and the specific protections Congress afforded to voters in federal service under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA").

[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part, and that no person other than *amicus* or its counsel made any monetary contributions intended to fund the preparation or submission of this brief.

Consequently, the tabulating of ballots, mailed or otherwise timely dispatched, by citizens away from their legal voting residence is a matter of significant concern to NSL4A members. NSL4A is positioned to provide a unique and meaningful perspective to ensure that American military and diplomatic personnel and their family members who are qualified voters can exercise their fundamental right to access the ballot box and have their votes counted. NSL4A is not aware of any other party having briefed these issues in the instant litigation.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted UOCAVA to ensure that military members, diplomats, and other Americans serving or living away from their voting residence can cast absentee ballots despite the delays and practical barriers inherent in voting from abroad. Section 3 of Executive Order 14399 interferes with that framework by imposing a new barcode-and-enrollment regime for ballot mail, implemented on a compressed election-year timeline, without accounting for the protections Congress guaranteed UOCAVA voters.

This Court should deny the Government's and State Applicants' requests to stay the District Court's injunction for multiple reasons, including two of particular significance to UOCAVA voters.[2] First, Section 3 cannot be lawfully implemented because it conflicts with the States' express responsibility under UOCAVA not to reject covered ballots based on envelope-type restrictions; the Respondent States

[2] In this brief, "Government" refers to Applicants in No. 26A124 (defendants-appellants below). "State Applicants" refers to Applicants in No. 26A139 (intervenor defendants-appellants below) (collectively, "Applicants"). "Respondent States" refers to the Respondents that oppose a stay of the injunction (plaintiffs-appellees below).

(including the District of Columbia) therefore have standing to seek removal of the obstacles Section 3 erects to their fulfillment of State responsibilities to UOCAVA voters in the November 2026 federal elections. Second, issuing the requested stay would inject confusion and operational disruption into military and diplomatic and other overseas voting during the very time period when State officials must distribute, receive, and count UOCAVA ballots. The processes prescribed to protect UOCAVA voters preclude any realistic conclusion that there will be adequate time to resolve the conflicts and uncertainties associated with the Section 3 ballot procedures before the November 3, 2026, general election. Accordingly, granting the requested stay would create an imminent risk that eligible voters serving their country abroad will lose votes that cannot later be restored.

BACKGROUND

A. The Unique Challenges Military and Diplomatic Families Confront When Voting

For as long as the United States has sent her citizens to serve at geographically dispersed domestic and overseas military installations and diplomatic postings, military members and diplomatic personnel, along with their family members, have confronted unique challenges in casting their ballots. Stationed hundreds or thousands of miles from home, military members often serve in remote areas with slow or sporadic mail service. They may also be away from their posts for days or weeks at a time. For this group, voting by absentee ballot is frequently the only feasible way to exercise their democratic right. As Congress has acknowledged, "When overseas voters fail to receive their absentee ballots in time to vote and return

them, they are clearly and effectively disenfranchised." H.R. Rep. No. 99-765, at 12 (1986).

These issues are not abstract. Many of the estimated 1.31 million active-duty members and roughly 549,000 military spouses and voting-age dependents are assigned to areas away from their legal voting residence. U.S. Election Assistance Comm'n, *Election Administration and Voting Survey 2024 Comprehensive Report* 194–95 (2025) ("2024 Report"), https://perma.cc/SE86-6WBP. Thousands of diplomatic personnel staff hundreds of foreign U.S. posts. *See* U.S. Gov't Accountability Off., GAO-25-107098 Highlights, *State Department: Spending on Pay, Benefits, and Allowances for Overseas Employees* (Dec. 19, 2024), https://perma.cc/ZF5F-EPPH. In practice, most of these voters use the postal system to cast their ballots. In the 2024 general election, 65.8 percent of absentee ballots returned and submitted by military and overseas voters arrived via postal mail. 2024 Report at 204.

Yet even with the hundreds of thousands of military and diplomatic ballots mailed out each year, these voters continue to face particular challenges. In 2024, 15 percent of military voters reported they did not receive their ballot in time or that their ballot never arrived. Fed. Voter Assistance Prog. ("FVAP"), *State of the Military Voter*, https://perma.cc/DRT6-2X8U (last visited July 29, 2026).

As mail ballots are first sent to the voter and then returned to election officials, delays and other issues arise for two principal reasons. First, due to the distance some of these ballots must travel, military and diplomatic voters often confront

condensed timelines to receive and return their ballots. For example, military families stationed in Japan have stated that mail can take six to eight weeks to arrive. *Why the Wait? Unpacking California's Untimely Election Counting Process*: *Hearing Before the Comm. on H. Admin.*, 119th Cong. 26–27 (2025) (statement of Rebecca Nowatchik, Dir. of External P'ships, Secure Families Initiative), https://perma.cc/JSZ6-485C. In an apparent acknowledgment of mail delays, UOCAVA voters are advised to return their ballots as early as 30 or 35 calendar days before Election Day. *See* FVAP, *2026–27 Voting Assistance Guide* 10 (Oct. 2025), https://perma.cc/KG45-TMBD.

Second, military members and diplomats may have transient posts, further complicating ballot delivery. A 2025 media report highlighted the case of a Navy sailor stationed in Japan, whose post was "essentially his ship." Camilla Rodriguez Guzman, *Serving in the Military Shouldn't Mean It's Harder to Vote*, Nat'l Conf. of State Legis. (Aug. 26, 2025), https://perma.cc/G7FB-4MU8. The sailor requested an absentee ballot for the 2024 presidential election, but the ballot "never made it through the mail" due to processing problems, preventing him from voting. *Id.*

These hurdles underscore the elevated barriers military members and diplomatic personnel commonly face while voting. Faithful implementation of protective laws like UOCAVA is critical to ensuring these individuals can successfully cast their ballots.

B. UOCAVA's Framework for Absentee Voting

Generally, UOCAVA requires States to permit covered voters "to use absentee registration procedures and to vote by absentee ballot in general, special, primary,

and runoff elections for Federal office." 52 U.S.C. § 20302(a)(1). As amended through the Military and Overseas Voter Empowerment Act (MOVE Act), Pub. L. No. 111-84, Subtitle H, §§ 575–89, 123 Stat. 2190, 2318–35 (2009), UOCAVA requires that (absent a hardship exemption) when the request for an absentee ballot is received at least 45 days before the election, States must "transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter . . . not later than 45 days before the election." 52 U.S.C. § 20302(a)(8). In practical effect, therefore, UOCAVA requires State procedures for absentee voting to be established and operational significantly in advance of 45 days before the election.

As to registration and application, UOCAVA requires States to accept any valid voter registration application and absentee ballot application received at least 30 days before any election. *Id.* § 20302(a)(2). In addition to any method of registering to vote or applying for an absentee ballot prescribed by the States, UOCAVA requires States to accept and process "an official post card form, containing both an absentee voter registration application and an absentee ballot application" prescribed by federal authorities. *Id.* §§ 20301(b)(2), 20302(a)(4). UOCAVA also provides for a "Federal write-in absentee ballot . . . for use in general, special, primary, and runoff elections for Federal office by . . . voters who make timely application for, and do not receive, States[‘] absentee ballots." *Id.* § 20303(a)(1). Among other requirements, UOCAVA requires the States to establish procedures to enable covered voters to request and receive voter registration and absentee ballot applications by mail or electronically, *id.* § 20302(a)(6)(A)–(B), and to transmit "blank

absentee ballots" to eligible voters "by mail and electronically," *id.* § 20302(a)(7).

As to ballot collection and delivery of marked ballots, UOCAVA requires federal authorities to implement procedures for collecting and facilitating the delivery of marked absentee ballots "to the appropriate election officials" "not later than the date by which an absentee ballot must be received in order to be counted in the election." *Id.* § 20304(a)–(b). For these purposes, UOCAVA directs federal authorities to "cooperat[e] and coordinat[e] with the United States Postal Service" to "provide expedited mail delivery service for all such marked absentee ballots . . . that are collected on or before the [prescribed] deadline . . . and then transferred to the United States Postal Service." *Id.* § 20304(b). Absent an applicable exception, the prescribed collection deadline "is noon (in the location in which the ballot is collected) on the seventh day preceding the date of the regularly scheduled general election for Federal office." *Id.*

ARGUMENT

The Respondent States collectively include within their populations hundreds of thousands of UOCAVA voters. For example, in 2024 California reported having 165,341 UOCAVA voters, Virginia reported 174,315 such voters, and Washington State reported 124,410 such voters. 2024 Report at 210–11. Thousands more reside in other Respondent States. *See id.* As explained below, implementation of Section 3 of Executive Order 14399 would directly, immediately, and irrevocably interfere with the States' fulfillment of their obligations to these UOCAVA voters. The District Court properly found that the Respondent States established standing and grounds for an injunction, and the applications for stay should be denied.

I. The Requirements of Section 3 of Executive Order 14399 Conflict with UOCAVA's Mandates to the States.

Section 3 of the Executive Order is irreconcilable with UOCAVA's specific commands governing military and overseas ballots. Section 3 was immediately effective upon issuance of the Executive Order and, unlike Section 2(a), is not conditioned on any further agency determination of feasibility or legality. It directs that the United States Postal Service ("USPS") "shall" specify "that all outbound ballot mail must be mailed" in an envelope that must, among other requirements, be "marked as Official Election Mail" and "bear[] a unique Intelligent Mail barcode ["IMb"] or successor USPS technology." Exec. Order No. 14399, § 3(b)(i)(A)–(B), 91 Fed. Reg. 17,125, 17,126 (Mar. 31, 2026). That command admits no exceptions for ballots governed by UOCAVA.

The USPS's Proposed Rule implementing Section 3 confirms this inescapable conflict. *See* Ballot Mail for Federal Elections, 91 Fed. Reg. 32,915, 32,918 (proposed June 2, 2026) (to be codified at 39 C.F.R. pt. 111). To implement Section 3's command, USPS proposes to require that "[o]utbound Federal Ballot Mail must be mailed in an envelope that . . . [b]ears a unique IMb with the Delivery Point ZIP Code embedded and a Federal Ballot Mail Service Type Identifier." *Id.* at 32,918 (amending Mailing Standards of the USPS, Domestic Mail Manual ("DMM") 705.24.3.1.c). The States' return ballot mail must meet similar requirements. *Id.* (DMM 705.24.3.2 (Return Federal Ballot Mail Envelope Standards) & DMM 705.24.4.2.f (requiring certification of compliance with standards for return ballots)). USPS "will review mailings identified as Outbound Federal Ballot Mail prior to acceptance to evaluate whether

the mailing meets the standards in 24.3.1 and is being sent to individuals who have been enrolled . . . on the state's Mail-In and Absentee Participation List," *id.* (DMM 705.24.5.1)—a review USPS elsewhere describes as "checking the barcodes," *id.* at 32,916. Any mailing that does not pass this review "will not be accepted and will be returned to the authorized ballot mailer." *Id.* at 32,918 (DMM 705.24.5.3.a). Likewise, "[m]ailings . . . for any state that has not submitted a certification [of compliance with the return mail requirements] will not be accepted and will be returned to the authorized ballot mailer." *Id.* (DMM 705.24.5.3.b).

UOCAVA, however, commands a very different outcome. States "shall not refuse to accept and process" an otherwise valid marked absentee ballot "solely on the basis of" "[r]estrictions on . . . envelope type," 52 U.S.C. § 20302(i), (i)(3), leaving no room for a verification standard that conditions a ballot's acceptance on the presence of a particular barcode. A ballot Congress has specifically directed the States to accept regardless of its envelope type is, under Section 3 and proposed DMM 705.24.3.1.c and 705.24.5.1, precisely the kind of mailing that the Executive Order's verification and rejection provisions target for rejection. If it were allowed to be implemented, Section 3 thus would prevent the States from satisfying their obligations under UOCAVA.

USPS has attempted to whitewash this defect by proposing that the conditions in its Proposed Rule "do not apply to ballots covered under the Uniformed and Overseas Citizens Absentee Voting Act." 91 Fed. Reg. at 32,915–32,916. The Executive Order, though, supplies no such exception. It directs, without qualification,

that all outbound ballot mail bear the required barcode, Exec. Order § 3(b)(i), 91 Fed. Reg. at 17,126, and a proposed rule cannot rewrite the Order it purports to implement. Nor is Section 3 saved by the general "consistent with applicable law" language in Section 7(b). Such boilerplate does not immunize specific provisions of a governing text that are unlawful. *See Atl. Richfield Co. v. Christian*¸ 590 U.S. 1, 23 (2020) ("[W]e have long rejected interpretations of sweeping saving clauses that prove 'absolutely inconsistent with the provisions of the act' in which they are found."); *HIAS, Inc. v. Trump*, 985 F.3d 309, 325 (4th Cir. 2021) (rejecting use of "a purely theoretical savings clause, with no method or standard for invoking it, the application of which would undermine" the substance of the order*).*

This Court's recent decision in *Watson v. Republican National Committee*, 609 U.S. ___, 2026 WL 1855462 (June 29, 2026), is consistent with the above analysis. There, the Court refused to read a general federal ballot-timing statute to override UOCAVA's specific accommodations for military and overseas voters, explaining that UOCAVA "repeatedly presupposes" that its own commands govern these voters' ballots and that a contrary reading "would make little sense" alongside UOCAVA's text. *Id.* at *6. This Court accordingly construed the general statute to avoid any conflict with UOCAVA. *Id.* But no such harmonizing construction of a general statute with a specific statute is available here. Executive Orders must be consistent with enacted laws, and Section 3 of Executive Order 14399 fails this basic test. *See Cole v. Young*, 351 U.S. 536, 557 (1956) (invalidating operative provision of Executive Order 10450 because "the standard prescribed by the Executive Order . . . is not in

conformity with the Act").

Here, the Executive's unqualified bar on transmitting an unenrolled voter's ballot, and the barcode-dependent verification standard USPS has proposed to enforce it, cannot be harmonized with UOCAVA's superior command that States must accept a ballot regardless of envelope type. Section 3(b), in short, directly interferes with the States' fulfillment of their UOCAVA obligation to accept and count ballots.

II. A Stay Is Likely to Produce Chaos in Military and Diplomatic Voting That Prevents the States from Counting Ballots of Eligible Voters.

Even apart from Section 3's conflict with UOCAVA's text, a stay of the injunction would inflict immediate, concrete, and irreversible harm on the States' voting processes for military and diplomatic voters in the November 3, 2026, elections. UOCAVA's statutory deadlines leave no slack to absorb the untested enrollment-and-barcode regime Section 3 would impose. The harms from the resulting election-administration disruption would fall hardest on the voters least equipped to bear it—service members and diplomatic personnel who cannot appear at a polling place or easily correct an erroneous voter record from their domestic or overseas assignment, and who have no practical opportunity to recast or otherwise remedy a ballot rejected because of the Executive Order. Indeed, it is the Applicants' claimed injuries from the District Court's injunction that are speculative, whereas a stay would visit upon UOCAVA voting harms that are concrete, imminent, and beyond later remedy.

A. A stay will precipitate a nationwide rollout of Section 3's untested enrollment-and-barcode regime while UOCAVA's firm deadlines are running.

UOCAVA's timeline leaves no room for the States to accommodate the change in ballot-mail procedure Section 3 contemplates. As explained above, UOCAVA requires States to transmit ballots to covered voters no later than September 19, 2026 (45 days before the election, 52 U.S.C. § 20302(a)(8)), while continuing to accept valid registration forms and ballot requests submitted as late as 30 days before that election, *id.* § 20302(a)(2), and further to ensure that completed ballots reach election officials by the deadline generally applicable under State law, *id.* § 20304(b)(1). Once a ballot is transmitted by State election officials, military and overseas voters must return it—often across international mail systems—in sufficient time for it to arrive by Election Day; the Federal Voting Assistance Program accordingly instructs voters to mail their ballots back 30 to 35 days before Election Day. FVAP, *2026–27 Voting Assistance Guide* 10. These statutory and practical deadlines will run through the fall regardless of the outcome of this litigation.

Section 3's architecture wreaks havoc on that timeline. The Executive Order provides that a State choosing to submit a list of voters eligible to vote by mail can do so up to 60 days before the election. Exec. Order § 3(b)(ii), 91 Fed. Reg. at 17,126. Significantly, earlier submission, although technically permitted, will compound the risk of an incomplete or inaccurate list. The Proposed Rule separately requires the State officials enrolling individual voters with USPS to submit that voter-specific enrollment data "at least 30 days before the date of the federal election, to the extent practicable, or by the date on which mail-in or absentee ballots may begin to be mailed

under state law," with supplemental submissions permitted only "until the last day that ballots may be mailed out . . . under state law." 91 Fed. Reg. at 32,918 (DMM 705.24.4.2.d). The table below illustrates the inconsistent schedules imposed on the States by UOCAVA and the Proposed Rule.

Days Before Election (Date in 2026)	**UOCAVA**	**Section 3 / Proposed Rule**
90 days (Aug. 5, 2026)		State *may* notify USPS of intent to use the mail for federal ballots. Exec. Order § 3(b)(ii), 91 Fed. Reg. at 17,126; 91 Fed. Reg. at 32,917 (DMM 705.24.2).
60 days (Sept. 4, 2026)		States choosing to submit an eligible-voter list to USPS must do so. Exec. Order § 3(b)(ii), 91 Fed. Reg. at 17,126.
45 days (Sept. 19, 2026)	States **must transmit** ballots to UOCAVA voters by this date. 52 U.S.C. § 20302(a)(8).	The Proposed Rule's voter-specific enrollment deadline (30 days) has **not yet arrived** — meaning a ballot UOCAVA requires be mailed *today* may not yet carry the enrollment data or barcode Section 3 will require for acceptance. 91 Fed. Reg. at 32,918 (DMM 705.24.4.2.d).
30 days (Oct. 4, 2026)	States must accept UOCAVA registration forms and ballot requests submitted this late. 52 U.S.C. § 20302(a)(2). FVAP instructs voters to mail back **completed ballots** by this date. FVAP, *2026–27 Voting Assistance Guide* 10.	Proposed Rule's deadline for USPS enrollment-data submission. 91 Fed. Reg. at 32,918 (DMM 705.24.4.2.d). USPS will also verify barcode/ enrollment before accepting Return Federal Ballot Mail. *Id.* (DMM 705.24.5.1).

Accordingly, allowing implementation of Section 3 for the upcoming November 2026 elections through a grant of the requested stay would oblige the States, along

with USPS and thousands of local election offices, to race to assemble and implement this enrollment-and-barcode system for the first time during precisely the weeks in which the States already must be printing, addressing, and transmitting UOCAVA ballots to voters at duty stations and diplomatic posts around the country and the globe. *Cf.* Exec. Order § 3(d), 91 Fed. Reg. at 17,127 (setting a July 29, 2026, deadline for any final rule).

Even the Government does not claim this rollout can be done without disruption. Instead, the Government contradictorily argues (at 2, 11–12) that implementation remains evolving (if it happens "at all") but also (at 27–29) that the injunction must be stayed because implementation cannot wait. If the Government itself is seized with uncertainty regarding whether, when, or how it will implement Section 3, then the District Court's injunction plainly is not causing irreparable harm. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

B. Any errors in a rushed rollout of Section 3 will impact those voters least able to correct them.

A stay would leave USPS free to finalize a rule on a timeline that affords no meaningful opportunity for the States to educate UOCAVA voters on new procedures or to address the resulting issues these voters will face. As explained above, nearly two million active-duty members, military spouses, and voting-age dependents are stationed away from their legal voting residence, and this population moves with a frequency uncommon to civilian voters domiciled in the United States, often relocating under orders that provide little notice and no latitude in execution. Even under existing procedures, UOCAVA voters are encouraged to submit a new Federal

Post Card Application ("FPCA") every January and every time they move to reduce the possibilities of error and delay. If Section 3 is precipitously implemented for the November 2026 elections, the States will have little practical ability to educate their military and diplomatic voters stationed outside the jurisdiction about whether UOCAVA procedures still apply, to help these voters navigate an unfamiliar enrollment process that will be layered atop their existing FPCA obligations, or to correct registration errors before the relevant cutoff date. These difficulties are exacerbated by the undisputed reality that most election jurisdictions design and print their mail ballot envelopes well in advance of an election, leaving little or no time to accommodate a late-breaking change in USPS's treatment of UOCAVA mail.

Compounding these problems, a stay would sow confusion for the mail handlers charged with applying it. Even if UOCAVA ballots could be exempted by regulation, postal employees will be tasked, for the first time and on a compressed timeline, with distinguishing UOCAVA-covered mail from the general mail-in and absentee ballots subject to the new barcode-and-enrollment verification standard. *See* 91 Fed. Reg. at 32,918 (DMM 705.24.5.1–705.24.5.3). That confusion will arise and intensify as UOCAVA's 45-day transmission deadline and 30-day registration and ballot-request deadlines approach, leaving no room for course correction once the rollout begins. A rushed, bifurcated system administered nationwide across thousands of postal facilities during the run-up to a federal election is sure to cause grave operational disruption to State voting procedures.

The State Applicants argue (at 3) that any disruption is illusory because the Proposed Rule leaves States in "control over who would (or would not) be able to vote by mail," since "states would control enrollment with the Postal Service for inclusion on the state's Mail-In and Absentee Participation List." 91 Fed. Reg. at 32,916. State control over a general mail-ballot enrollment list, though, says nothing about whether USPS will retain its proposed UOCAVA carve-out in any final rule, and nothing prevents USPS from revising that carve-out—consistent with the Executive Order's unqualified text—once the 120-day rulemaking clock the Government invokes (at 27–29) as a source of urgency runs its course. If the purported exemption is narrowed or eliminated in compliance with the Executive Order, then State-side enrollment authority will not prevent USPS from rejecting UOCAVA-compliant envelopes for failure to have the newly required barcode. And if the exemption survives, then State and postal officials alike will have to administer, for the first time and under expedited deadlines, a bifurcated system whose lines the Proposed Rule does not yet clearly draw. Either way, the "control" the State Applicants describe fails to eliminate the disruption Section 3 threatens to inflict on military and diplomatic voting.

C. *Purcell*'s anti-disruption principle applies with particular force to military and overseas voters, who have no opportunity to try again.

This Court has long cautioned that federal courts should not permit last-minute changes to election rules that risk voter confusion and disenfranchisement. *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam); *see also Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424–25 (2020) (per curiam) (staying

order that altered election procedures shortly before an election). This principle counsels denying the stay the Applicants seek: The District Court's injunction preserves the ballot-mail procedures under which States, USPS, and voters have operated for decades, while a stay would introduce the very kind of late-breaking change *Purcell* warns against on a nationwide scale, shortly before the November election.

Purcell's concern has particular force for military and diplomatic personnel and their families. A domestic voter whose mail ballot is rejected retains some recourse: She may vote in person, seek a provisional ballot, or return to her local election office to resolve a registration problem before Election Day. A UOCAVA voter may have none of these options. She cannot appear at a polling place thousands of miles away, and once her ballot is transmitted under the schedule UOCAVA requires, *see* 52 U.S.C. § 20302(a)(8), there is ordinarily no time left in the calendar to receive a rejection notice, obtain a compliant envelope or enrollment, and return a replacement ballot before it is due. As the courts of appeals have recognized in analogous contexts, once a ballot deadline has passed, there is "no do-over." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014)); *see also Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (emphasizing that election officials and voters alike need stability, not last-minute change, as an election approaches). For a UOCAVA voter, a mid-cycle change to the rules governing ballot acceptance is not an inconvenience to be managed. It is the loss of a vote that cannot be recovered.

D. The equities that govern stay requests overwhelmingly favor denial.

Applicants bear the burden of a "strong showing" that they are likely to succeed and that they will be irreparably injured absent a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Yet neither has defended Section 3's legality on the merits at any stage of this litigation. The court of appeals expressly noted that "the Government does not defend the legality of the EO in requesting a stay," GovtApp.6a, and the State Applicants likewise rest entirely on standing and ripeness (at 9–20) rather than any defense of Section 3's lawfulness. Both press the contention that the injunction is premature due to future uncertainties—a contention in tension with their simultaneous insistence that implementation of Section 3 cannot wait. All three First Circuit judges below agreed that neither the Government's nor the State Applicants' asserted harm justified a stay as to the November 2026 elections. Even Judge Dunlap, who would have stayed the injunction as to Section 2(a), concluded that "the Government and Intervenor States have failed to show a substantial likelihood of success" as to Section 3, because they "mount no substantive defense" of that provision at all. GovtApp.18a.

That unanimity reflects the asymmetry of harm in this matter. Denying the stay request leaves the existing ballot-mail system in place while the merits proceed on the ordinary appellate timeline; nothing about that outcome forecloses the Government from defending Section 3 or, if it prevails, implementing a lawful version of it for future elections. Granting the stay, by contrast, risks precisely the harm UOCAVA was enacted to prevent: States failing to count the votes of military

members and diplomatic personnel serving their country at distant posts, as well as the votes of their family members, due to mailing obstacles. *See* H.R. Rep. No. 99-765, at 12 (overseas voters who fail to receive or return their ballots in time are "clearly and effectively disenfranchised"). Because that harm is concrete, imminent, and beyond any court's power to undo after the fact, the applications for a stay of Section 3 should be denied.

CONCLUSION

The applications should be denied.

Respectfully submitted,

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No. 26A124

In the Supreme Court of the United States

DONALD J. TRUMP, *ET AL.*,

Applicants,

v.

STATE OF CALIFORNIA, *ET AL.*,

Respondent.

To the Honorable Ketanji Brown Jackson, Associate Justice of the United States Supreme Court and Circuit Justice for the First Circuit

On Application for a Stay of the Injunction Issued by the United States District Court for the District of Massachusetts and Request for Administrative Stay

BRIEF OF HARRIS COUNTY, TEXAS AS *AMICUS CURIAE* OPPOSING APPLICATION FOR A STAY OF INJUNCTION AND REQUEST FOR ADMINISTRATIVE STAY

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INTERESTS OF *AMICUS CURIAE*

Harris County is the nation's third most populous county, with over 5 million residents, or over one in every six residents of the State of Texas. If Harris County were a state, it would be the 25th largest state in the country. As of July 29, 2026, the County has 2,748,714 registered voters. It is home to the most diverse population and electorate in Texas. More than 145 languages are spoken in Harris County. The size and scope of the County make the smooth operations of elections challenging even in the most ideal of circumstances.

The Harris County Tax Assessor-Collector and the Harris County Clerk are responsible for voter registration and administering and managing elections in Harris County, respectively. The Assessor maintains the voter rolls as well as district and precinct lists, but the actual mailing of mail ballots is handled by the Clerk.

Given the size and scope of administering an election in Harris County, the County has intense interest in a continued stay of the Executive Order. *See* Executive Order 14,399, "Ensuring Citizenship Verification and Integrity in Federal Elections," 91 Fed. Reg. 17,125 (Mar. 31, 2026) ("Executive Order"). Disruption at this late stage would cause havoc in election administration, especially given the sheer number of possible mail ballots and unpredictability of who will request one.

SUMMARY OF ARGUMENT

The Court should deny the President's application for a stay, which would dangerously upend the November 2026 election and allow haphazard implementation of an Executive Order that violates the Constitution, federal statutes and Texas law.

The public interest strongly favors denying a stay. It is wholly unworkable for Harris County—and likely most any other jurisdiction—to comply with the regulatory scheme envisioned by the Executive Order in time to administer the November 2026 election. Preparation for administering mail balloting for the upcoming election is afoot. Not only is it too late for the Executive Order to take effect, Texas law and election procedures make it impossible for it to take effect as written.

Public interest aside, the Executive Order is blatantly unconstitutional and violates numerous federal and state laws. States and Congress, not the President, have the constitutional power to regulate federal elections. While the President can sign or veto federal legislation passed by Congress that regulates federal elections, he cannot bypass Congress and usurp states' Elections Clause power by fiat. The district court's injunction should not be disturbed.

ARGUMENT

I. The public interest favors avoiding the electoral chaos a stay of the injunction would cause.

The public interest favors denying the application for a stay because granting it would cause electoral chaos in the administration of the November 2026 election—which is now just three months away. "Last-minute changes to longstanding election rules . . . invit[e] confusion and chaos and erod[e] public confidence in electoral outcomes." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 30 (2020) (Mem.) (Gorsuch, J., concurring). While this principle ordinarily is applied in the context of federal *court* intervention in state election laws, it stems from broader federalism principles because, as this Court has recently recognized, "[s]tates are free

to decide for themselves whether last-minute changes to an election are in their best interests." *Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026) (per curiam). Here, the *states* have not opted to rewrite their election laws, the *President* has. That violates the Constitution and federal laws, *see infra*, but it also should begin and end the Court's consideration of whether a stay helps or harms the public interest. The President's disregard for federalism and constitutional boundaries is bad enough. But the chaotic disruption that disregard could cause to the November election would be intolerably damaging to the public interest.

A. It is impossible to implement the Executive Order for the November 2026 Election.

It is difficult to exaggerate the extent of the chaos that will ensue if the Executive Order is permitted to take effect now. Consider Section 3, which directs the Postmaster General to propose regulations that (1) mandate the contents of mail ballot envelopes, (2) require states to notify USPS no fewer than 90 days before an election if they intend to utilize the postal service for mail ballot delivery, (3) require states to identify for USPS no fewer than 60 days before the election which of its voters will be casting a mail ballot, and (4) prohibit USPS for transmitting a ballot to any voter not on that list.

The President says (at Application page 4) he would like these regulations implemented by "as soon as early to mid-August."[1] Harris County cannot implement these policies this year because it is already August—it is not physically or legally possible. To start, the 90-day notice deadline will have already come and gone by

[1] This puts to bed any doubt that this controversy is ripe. Early August is upon us.

"early to mid-August." Does that effectively prohibit mail voting this year, contrary to state law?

Section 3's requirement that the State's list of mail voters be transmitted 60 days prior to the election cannot be squared with federal and state laws Harris County is obligated to follow. The National Voter Registration Act ("NVRA") compels states to accept voter registrations up to *30 days* prior to an election. *See* 52 U.S.C. § 20507(a)(1). And under Texas law, voters have until *11 days* before the election (October 23, 2026) to request a mail ballot. *See* Tex. Elec. Code § 84.007. Harris County's statutory obligations are incompatible with the Executive Order's deadlines, which would seemingly freeze eligibility to vote by mail to only those voters requesting that method 60, rather than 11, days prior to the election.

B. It is impossible under Texas Law to compile and maintain a list of voters eligible to vote by mail.

Texas law allows only limited categories of people to vote by mail. In addition to voters over age 65, Tex. Election Code § 82.003, voters who (1) will be absent from their county of residence on election day and for in person early voting, Tex. Election Code § 82.001, (2) have a sickness or physical condition preventing them from voting in person, Tex. Election Code § 82.002, (3) are expecting to give birth within three weeks of Election Day, *id.*, or (4) are confined in jail, Tex. Election Code § 82.004, are eligible to vote by mail. It is not possible for Harris County or the Texas Secretary of State to compile a list of such voters. In some cases, the voters themselves do not yet know they will be eligible to vote by mail at the time the list of eligible mail voters must be transmitted to the federal government.

It is no help that Section 3 provides that USPS should allow for states to "routinely supplement and provide suggested modifications or amendments" to the list of USPS-approved mail voters. Executive Order § 3(b)(vi). That would require the Texas Secretary of State to gather information from 254 county election offices and update USPS on, for example, the 11th day prior to the election. Not only is that impractical and impossibly burdensome, but there is also little to no chance that USPS could implement those updates in time to ensure eligible voters' ballots were not affected. In Harris County's experience, mail delivery and processing times have considerably deteriorated, while the frequency of USPS errors has considerably increased. As one example, when *amicus* recently mailed voter registration cards to registered voters, approximately 130,000 were returned as "undeliverable." Upon investigation, many of those "undeliverable" determinations were erroneous—the voters in fact reside at the residences to which they were mailed.

C. The Executive Order provides no mechanism for notice and opportunity to cure.

Section 3(b)(iii) of the Executive Order provides that USPS shall not transmit mail ballots sent from voters whose names are not on the list submitted by the State 60 days prior to the election. Those voters, relying on Texas state law permitting them to vote by mail, will request a mail ballot, receive it, mark it with their choices, and place it in the mail only for the USPS to *intercept it* and refuse to deliver it to the county election officials to be counted.[2] That is illegal. *See* 52 U.S.C. § 10307(a) ("No

[2] Notably, the Executive Order does not direct USPS to implement regulations prohibiting the transmission of mail ballots *to* voters, only from voters to election offices after the ballot has been marked. *See* Executive Order § 3(b)(iii) ("Proposed

person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote . . . ."). In that regard, the Executive Order actually directs USPS to violate federal criminal law. *See* 52 U.S.C. § 10308(a) ("Whoever . . . shall violate section 10307(a) of this title, shall be fined not more than $5,000, or imprisoned not more than five years, or both."); *see also* 52 U.S.C. § 10308(c) ("Whoever conspires to . . . interfere[] with any right secured by section . . . 10307(a) of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.").

The Executive Order provides no mechanism to inform voters that their mail ballot will not be delivered. Without notice, how will the voter know that USPS has seized their ballot and is refusing to deliver it? State law guaranteed their right to vote by mail, State officials sent them the ballot, and they returned it by mail, all as permitted by law. The Executive Order makes no provision for a pre-deprivation notice and hearing for voters whose ballots have been intercepted, violating the Constitution's guarantee of due process. *See, e.g.*, *Self Advocacy Solutions N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1054 (D.N.D. 2020) (concluding that failure of state to provide notice and opportunity to cure perceived signature mismatch on absentee ballot violated procedural due process rights). So, voters will just not be told their ballot was seized and not delivered?[3]

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provisions specifying that the USPS shall not transmit mail-in or absentee ballots *from* any individual unless those individuals have been enrolled on a State-specific list . . . ." (emphasis added)).

[3] Texas provides a ballot tracking system for voters, but it will not notify voters that USPS has *seized* their ballots.

If voters whose ballots have been intercepted by USPS do somehow manage to learn that the postal service refuses to deliver their ballot to county officials, what are they to do? Federal law makes it a felony punishable by up to five years in prison and a $10,000 fine to "vote more than once" in a federal election. 52 U.S.C. § 10307(e)(1). Does that law preclude these voters from voting in person on election day because they already cast an (ill-fated) mail ballot? That section does not apply when "all prior ballots of that voter were invalidated," but the Executive Order does not *invalidate* the ballot, it just directs USPS to refuse to deliver it. What possible authority does the *postal service* have to "invalidate" a ballot? What are county election officials supposed to tell voters, or permit them to do, if they learn their ballots were seized by USPS? If they inform the eligible voter they can vote in person given USPS's interception of their mail ballot, is that a conspiracy to permit a person to vote twice? The Executive Order threatens to prosecute election officials under a litany of federal statutes, including conspiracy to violate federal law. *See* Executive Order § 5.

For the November 2022 election, 64,171 mail ballots were returned (to the then Elections Administrator's Office). For the November 2024 Presidential Election, 66,085 ballots were returned. As of July 29, 32,398 eligible voters have requested mail ballots for the November 2026 Election. If as expected at least 30,000+ additional voters request mail ballots prior to the October 23 deadline, tens of

thousands could see their ability to vote jeopardized.[4] Voters will not know whether they can vote by mail. County election officials will not know either. And voters (and also election officials) will be at risk of criminal prosecution merely for attempting to vote.

D. The Executive Order's requirement of new ballot envelopes with USPS applied barcodes is unworkable.

The Executive Order's provisions regulating the format and bar codes on the ballot envelope are unworkable and especially so within the next three months. *See* Executive Order § 3(b)(i). Texas law provides detailed and extensive requirements for the format and content of official election envelopes. *See, e.g.*, Tex. Election Code §§ 86.013; 86.015. That includes a requirement for a barcode unique to each voter to permit online tracking of a ballot's status, *id.* § 86.015(c)(2). The dueling envelope barcodes required by Texas law and the Executive Order could create difficulties and errors in ballot processing. The USPS list and barcode, without carefully considered implementation rules, could also jeopardize the secrecy of each voted ballot.

E. There is Not Time to Implement the Executive Order.

It is August 3. The Texas Secretary of State has issued no guidance on how counties could feasibly comply with the Executive Order were a stay to be granted by this Court. It is operationally impossible for the Executive Order to govern this election. Indeed, even the *threat* of rulemaking of this kind in advance of the

[4] Because Texas law does not provide for drop boxes (as other states do) but rather allows only mail, common carrier, or in-person delivery of the ballot to a single location in the county only on election day, *see* Tex. Election Code § 86.006, the vast majority of the ballots at issue will in fact be placed in the mail.

November election would seriously disrupt the election process.[5] The deadline to send mail ballots to military and overseas voters is September 19, 2026. *See* Tex. Election Code § 86.004(b); Tex. Sec'y of State, November 3, 2026 Election Law Calendar, https://www.sos.state.tx.us/elections/laws/advisory2026-21-november-3-election-law-calendar.shtml. For a jurisdiction the size of Harris County (with 1,224 voting precincts), meeting this deadline takes time. Logic and accuracy testing must be undertaken in advance to ensure that the ballot style—*i.e.*, listing the correct election contests for a particular voter's registration address—appears for each voter. Harris County is required to produce ballots in four different languages. *See* 52 U.S.C. § 10503. The work to provide mail ballots to Harris County voters is underway. It is much too late for the process to be as radically transformed as the Executive Order envisions.

The public interest factor weighs decidedly against granting the President's application for a stay.

II. The Executive Order unlawfully usurps state power in violation of the Elections Clause.

Regardless of how an executive agency may implement the Executive Order, any application of the Order is an unconstitutional usurpation of State power in violation of the Elections Clause and the Tenth Amendment of the United States Constitution.

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[5] Given that the President applies for a stay on ripeness grounds and contends (at Application page 4) that the correct time for litigation to commence is "early to mid-August," the period of uncertainty a stay would cause would alone cause the electoral process to be thrown into chaos and confusion.

A. The Executive Order facially violates the Elections Clause and the Tenth Amendment.

The Executive Order is a facially unconstitutional act by the President and the Executive Branch to rewrite Texas election laws and impose a new election regime on *amicus* absent any congressional mandate to do so.

The United States Constitution confers broad authority on the States to regulate the conduct of state and federal elections and the eligibility of voters. U.S. CONST. art. I, § 4, cl. 1; *see* U.S. CONST. art. I, § 2, cl. 1; *Storer v. Brown,* 415 U.S. 724, 729–30 (1974); *Marston v. Lewis,* 410 U.S. 679 (1973) (per curiam); *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8 (2013). Under the Voter Qualifications Clause, the States have the power to determine who is eligible to vote in state and federal elections. *See* U.S. CONST. art. I, § 2, cl. 1; *League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 156-57 (D.D.C. 2025) ("*LULAC I*").

The Elections Clause provides "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations." U.S. CONST. art. I, § 4, cl. 1. Without explicit directives from Congress regarding the times, places, and manner of federal elections, the States retain exclusive power over their election systems. *See Inter Tribal Council of Arizona, Inc.*, 570 U.S. at 9 ("In practice, the Clause functions as 'a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices.' *Foster v. Love,* 522 U.S. 67, 69, 118 S.Ct. 464, 139 L.Ed.2d 369 (1997)").

The "Elections Clause grants [only] Congress 'the power to override state regulations' by establishing uniform rules for federal elections, binding on the States." *Foster v. Love*, 522 U.S. 67, 69 (1997) (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 832–33 (1995)). The Constitution does not grant the President the authority to regulate federal elections. *See Washington v. Trump*, 814 F. Supp. 3d 1173, 1214 (W.D. Wash. 2026); *Watson v. Republican Nat'l Comm.*, No. 24-1260, 2026 WL 1855462, at *3 (U.S. June 29, 2026) ("[T]he Constitution lodges power over congressional elections in state legislature 'primarily' and in Congress 'ultimately.'") (quoting The Federalist No. 59).

The Executive Order, however, expressly attempts to regulate federal elections. In instructing that USPS not "transmit mail-in or absentee ballots from any individual" unless that individual is "enrolled" on the USPS's state-specific "Mail-In and Absentee Participation List," the Executive Branch is *de facto* imposing both federal voter qualifications and election regulations not enacted by Congress. 40 Fed. Reg. at 17126, § 3(b)(iii)-(iv). Indeed, a search of the United States Code would leave one wanting to find any law that delegates to the Executive Branch or, for that matter, the Postal Service, the ability to regulate mail voting in such a manner.

Thus, the Order improperly seizes for the President a power the Constitution commits primarily to the States and in part to Congress, transgressing federalism and violating the Elections Clause.

The Framers recognized that empowering the federal government to have complete control over elections would be an "unwarrantable transposition of power"

and "a premeditated engine for the destruction of the State governments[.]" *See* The Federalist No. 59. The Executive Order attempts precisely what the Framers rejected.

B. The Executive Order violates Texas's power to regulate elections.

The Executive Order violates Texas' power to regulate elections and conflicts with the requirements Texas has enacted through its Legislature. In doing so, the Executive Order forces *amicus* and other Texas jurisdictions to choose between defying state law or risking prosecution by the Department of Justice.

The Tenth Amendment prohibits the commandeering of state power, providing that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X. "Art. I, § 4, empowers the States to regulate" the mechanics of federal elections absent congressional action. *Roudebush v. Hartke*, 405 U.S. 15, 24–25 (1972). The States' power to regulate is comprehensive and wide-ranging: the Elections Clause gives the States the authority to

> provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.

Id. at 24–25 quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

Section 2 of the Executive Order commandeers Texas's authority to regulate the manner of its elections. This is because the Executive Order uses the threat of

investigation and prosecution of State and local officials, such as *amicus*, "who issue Federal ballots to individuals not eligible to vote in a Federal election" to coerce States into using the DHS-generated "State Citizenship List" to verify a voter's citizenship. *See* 40 Fed. Reg. at 17126, § 2(b). But by using such information to determine who is eligible to vote, Texas election officials would violate state law. Texas Election Code § 18.061(c) makes county voter registrars, not outside sources such as the federal government, the exclusive source for the Texas Secretary of State's voter registration list. With respect to citizenship verification, the Texas Election Code makes clear that only information from the Texas Department of Public Safety may be used to verify the accuracy of citizenship status for purposes of voter registration. Tex. Elec. Code § 16.0332(a-1).

Section 3 of the Executive Order is similarly unlawful. The Order requires that states submit to USPS "no fewer than 60 days before the election, a list of voters eligible to vote in a Federal election in such State to whom the State intends to provide a mail-in or absentee ballot to be transmitted via the USPS." 40 Fed. Reg. at 17126, § 3(b)(ii). The Order then states that "the USPS shall not transmit mail-in or absentee ballots from any individual unless those individuals have been enrolled on a State-specific list." *Id.* at § 3(b)(iii). But under Texas law, a voter may register to vote as late as 30 days before an election. *See* Tex. Elec. Code § 13.143. That is the maximum length permitted by *federal* law. *See* 52 U.S.C. § 20507(a)(1). A Texas voter may request a mail-in or absentee ballot as late as 11 days before election day. Tex. Elec. Code § 84.007. Thus, a voter whom Texas has determined to be qualified to vote,

who is eligible to vote by mail, and who has lawfully requested an absentee ballot would nonetheless be disenfranchised, because the request would come too late for enrollment on the federal list. Additionally, a voter wrongly omitted from the federal list would learn of the problem only after the window to fix it had closed. Section 3 further burdens election officials, who must either violate state law by refusing a mail ballot to a voter who requests one outside the 30-day period, or provide the ballot and risk investigation or prosecution by the DOJ, as stated *supra*.

There is also no Texas election official who could produce the list the Executive Order demands. Mail balloting in Texas is administered county by county by the early voting clerk. *See* Tex. Elec. Code chs. 84, 86. The Secretary of State is not the custodian of mail-ballot applications, and no provision of the Election Code authorizes transmitting a statewide roster of intended mail voters to a federal agency. As such, Texas election officials could not lawfully comply with the Order even if the Order itself were lawful.

Moreover, the Executive Order's requirement that States comply with the USPS mail-ballot design provisions is impermissible. Section 3(b)(i)(A)–(C) require the Postmaster General, "at minimum," to include in the proposed rulemaking a directive that outbound mail ballots be mailed in envelopes that are "marked as Official Election Mail, including through designated marking provided by USPS," "bear[] a unique Intelligent Mail barcode," and have "undergone a mail envelope

design review by the USPS to ensure compliance with USPS mailing standards.[6]" But no federal law authorizes the USPS to dictate the design of mail-ballot envelopes; that power is reserved exclusively to the States. Texas law already prescribes the only lawful layout for an official carrier envelope for mail ballots. Tex. Elec. Code §§ 86.013, 101.056. There is no discretion to permit the USPS barcode, and § 86.002(g)'s concealed-field requirement constrains where a barcode may be placed without exposing voter identification data.

With respect to military and overseas voters, Texas mandates a different label and a different postage requirement than that in the Executive Order. Texas Election Code §§ 101.056(a) and 101.058 require the envelope to read "Official Election Balloting Material – via Airmail" and to be mailable free of United States postage under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). *See* 52 U.S.C. § 20301, et seq. Section 3(b)(i)(A) of the Executive Order by contrast requires marking as "Official Election Mail" with USPS-designated logos. The two labels are not interchangeable. Even if Texas election officials wished to satisfy the USPS's demands, they could not do so absent a federal rule expressly preserving the UOCAVA labeling, which the Executive Order does not direct the USPS to include.

Furthermore, the USPS rulemaking undertaken to effectuate the Executive Order demonstrates that the "Mail-In and Absentee Participation List" could violate

[6] On June 2, 2026, USPS proposed a Federal Ballot Mail Program, which requires mail ballot envelopes to have designated markings, unique barcodes, voter-level information, and a rule that mailings that were not compliant would not be accepted. 91 Fed. Reg. 32915, 32916–18 (June 2, 2026).

Texas voters' right to a secret ballot. Under the proposed rule, the USPS "would establish a process by which (1) states (including authorized election officials and their mail service providers) will notify the Postal Service of the individuals to whom they are mailing a mail-in or absentee ballot, along with the unique barcode applied to the outbound and return ballot mail envelope for such individuals such that the name and barcode of the voter will be included on a Mail-In and Absentee Participation List." 91 Fed. Reg. 32915 (June 2, 2026). Under Tex. Elec. Code § 86.002(i), "[n]o record associating an individual voter with a ballot may be created." The USPS-assigned identifier which is linked to an individual voter and provided to USPS is creating a record that associates individual voters with a ballot in violation of Tex. Elec. Code § 86.002(i).

At bottom, the Executive Order imposes unauthorized federal prerequisites on the very postal services that election clerks and voters must use, and in doing so it compels state action. Such compulsion is unconstitutional.

CONCLUSION

For the foregoing reasons, the application for a stay should be denied.

August 3, 2026

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Nos. 26A124, 26A139

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Applicants,

v.

STATE OF CALIFORNIA, ET AL.,
Respondents.

STATE OF ALABAMA, ET AL.,
Applicants,

v.

STATE OF CALIFORNIA, ET AL.,
Respondents.

On Emergency Application for a Stay of the Injunction
Entered by the United States District Court
for the District of Massachusetts

BRIEF OF 56 FORMER JUDGES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST AND IDENTITY OF *AMICI CURIAE*[1]

Amici curiae are 56 former judges, including federal and state judges appointed by Presidents and governors of both major political parties. The majority of *amici*—33 of 56—were appointed by Republican Presidents or governors or ran for their positions as Republicans. *Amici* served on trial courts and appellate courts on both the state and federal benches throughout the country. As former judges, *amici* have a deep and abiding appreciation for the judiciary, the lower courts, and the unique and essential role that courts at all levels play in protecting constitutional and statutory rights, maintaining public confidence in government, and protecting the rule of law.

This matter concerns the President and federal executive branch's attempt to unilaterally upend long-settled rules on state administration of elections, not only raising questions of the utmost constitutional significance, but also posing practical challenges for state officials and lower court judges. *Amici* contribute their insights into the role of the lower courts in factfinding based on the record established by the parties. Moreover, *amici*'s prior positions as both state and federal court judges give them a unique vantage point on the grave federalism problems underlying this case, where Respondents have presented, and the lower courts have found, serious violations of state sovereignty under multiple constitutional provisions. They also offer particularly salient perspectives on the impact that the Applicants' requested

[1] No counsel for a party authored this brief in whole or in part, and no person other than amici or their counsel made a monetary contribution to its preparation or submission.

relief would have on the public interest, in particular risks to harming public confidence in elections and burdens on court operations if the challenged Executive Order were to go into effect.

A list of the individual *amici* and the courts on which they most recently served can be found in the Appendix to this brief. This brief reflects the views of *amici* as individuals only.

INTRODUCTION AND SUMMARY OF ARGUMENT

This emergency application should be denied. The District Court found on an uncontroverted factual record that the Respondents are suffering injury now because Executive Order 14399's ("EO 14399" or "the EO") extraordinary decree has already forced them to incur costs, disrupt election preparations, and endure ongoing intrusions on their sovereign authority over election administration. The First Circuit denied a stay on that same record, emphasizing that Applicants do not contest the District Court's assessment of the summary judgment evidence and do not defend the legality of the contents of the EO in seeking emergency relief. In this posture, respect for orderly judicial review and for the institutional role of lower courts, and the constitutionally-prescribed role of States in administering elections, strongly counsels against emergency relief.

That Applicants do not contest the merits is dispositive. This case is about serious invasions of state sovereignty. The Respondents have shown, and the lower courts have found, that the EO intrudes on authority the Constitution assigns to the States through the Elections and Electors Clauses. The EO compounds that intrusion

by commanding state officials to implement a new federal election program, created by the Executive Branch out of whole cloth with no authorization from Congress, in violation of basic anti-commandeering principles under the Tenth Amendment. The injury is not abstract. It is the current displacement of the States' power to create, enforce, and administer their own election rules—including overhauling entire mail-ballot systems—as they conduct imminent federal elections.

A stay would also harm the public interest in practical and immediate ways. This Court has repeatedly warned against judicially-sanctioned changes to election rules on the eve of an election because such changes breed confusion, disrupt orderly administration, risk disenfranchising eligible voters, and invite emergency litigation. Here, granting a stay would inject new federal requirements into state election systems just months before the November election, after state and local officials have already begun preparing under existing rules. Emergency relief from this Court would impose these burdensome new requirements on state and local election officials simply because the President wishes to impose them, notwithstanding his lack of any role in administering elections under the Constitution, and even as Applicants have repeatedly declined to defend the legality of the commands in the EO on the merits. That is a recipe for confusion among voters, strain on election administrators, and unnecessary burdens on lower courts asked to resolve last-minute disputes. Denying the applications avoids these needless harms.

Because Applicants have not carried their burden on the stay factors, and because the public interest weighs strongly against disruption of imminent elections, the applications should be denied.

ARGUMENT

I. In Evaluating These Applications, Deference To The Record Established By The Lower Court Is Appropriate.

Applicants litigated the facts of this case in the District Court and lost. The District Court, applying Fed. R. Civ. P. 56, determined that any asserted factual disputes were neither genuine nor material to the questions before it and entered judgment accordingly. Applicants ignored those factual determinations in their stay motions and on appeal. U.S.App.6a & n.5. They did not dispute the declarations and other factual submissions by the Respondents, nor did they contest the District Court's assessment of the summary judgment record. *Id.*

The factual premises of the judgment are therefore settled for purposes of these applications. A party that declines to contest a ruling on appeal may not resurrect it in this Court, which only reviews questions "pressed or passed upon below," *United States v. Williams*, 504 U.S. 36, 41 (1992), and which confines itself to the questions the applicant has actually presented, *see* Sup. Ct. R. 14.1(a). Nor is the compressed schedule of an emergency application the occasion to revisit settled facts, especially in a Court that sits as "a court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

The findings of fact reached by the District Court below—and uncontested by the Applicants on appeal—strongly support the Respondents' position that this case

is justiciable. *First*, the Applicants do not contest the lower court's findings on imminent injury. In particular, the District Court found that the Respondents must begin planning *now* on how to comply with the EO's directives given the proximity of imminent federal elections. Indeed, failing to plan for the EO's dramatic directives against pressing election deadlines would be exceedingly irresponsible. For example, the First Circuit credited the unchallenged summary judgment record reflecting that the EO has forced Connecticut officials—among others—to take "immediate action," including by "coordinat[ing] with other state and local agencies" to develop a plan that would achieve the EO's stated goals "on the designated timeline and with no financial support." U.S.App.8a. The Circuit affirmed that between the compressed timelines and anticipated changes to the Respondents' election processes, the summary judgment record indicated that the EO has already "produced an incredible strain" on state election officials and their teams. U.S.App.7a-8a, 41a-43a. And contrary to the Intervening States' argument, Respondents cannot "wait . . . until a final policy exists" to assert their injuries. Intervenors.App.19 (citing *Alliance for Hippocratic Medicine*, 602 U.S. at 394). Unlike the plaintiffs in *Alliance*, who the Court held could have avoided their claimed injury by simply declining to act—state and federal law compel Respondents to print and distribute ballots on fixed statutory timelines, U.S.App.36a-39a, leaving no way to avoid incurring compliance costs before a final rule issues.

Second, the uncontested summary judgment record supports the District Court's conclusion that the Respondents are incurring present pocketbook injury

from the EO's direction that USPS control the design of envelopes in all federal vote-by-mail processes. The First Circuit relied on the summary judgment record, which showed that several states had already ordered mail-ballot envelopes for the 2026 federal election cycle. U.S.App.11a, 42a-44a. Massachusetts alone already purchased $3 million worth of envelopes for mail-in ballots, but USPS has proposed a rule pursuant to the EO that would render those envelopes unusable. U.S.App.11a, 42a. Applicants did not contest that the Respondents had already purchased mail-ballot envelopes and conceded that design changes would force the Respondents to incur monetary and operational costs. U.S.App.11a, 43a-44a; *see also* USPS Notice of Proposed Rulemaking, Ballot Mail for Federal Elections, 91 Fed. Reg. 32,915 (June 2, 2026).

Third, the uncontested record supports the Respondents' position that the EO threatens them and their officials with criminal penalties if they do not comply with its directives. For example, the record establishes that the DHS Citizenship Lists would necessarily be underinclusive when transmitted to the Respondents. U.S.App.12a, 53a, 77a. The District Court rightly concluded that this under-inclusivity would subject the Respondents to a credible threat of criminal prosecution. U.S.App.12a, 53a-54a, 77a-78a. Applicants repeatedly indicated below that the Lists could be used to "facilitate . . . post-election law-enforcement activity," including prosecuting violations of laws that "explicitly prohibit non-citizens from registering to vote." U.S.App.13a, 55a-57a. And when asked whether the Government would have probable cause to prosecute a state official for simply sending a ballot to someone not

on the Lists, Applicants' counsel would not disclaim that approach. U.S.App.13a; *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 165 (2014) (finding threat of future enforcement was "substantial" in part because "respondents have not disavowed enforcement if petitioners make similar statements in the future").

The factfinding in our court system depends on the adversarial process, which Applicants failed to take advantage of in this posture. This Court should not depart from the well-settled rules of judicial review by relitigating those facts now, on an emergency motion.

II. The First Two Stay Factors Decidedly Favor The Respondents.

A. Applicants Make No Merits Showing.

A stay pending appeal is an "intrusion into the ordinary processes of administration and judicial review," not "a matter of right." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quoting *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)). Applicants therefore bear the burden under *Nken* to make a "strong showing" of likely success on the merits and to show irreparable injury absent a stay, and those two factors "are the most critical." *Id.* at 434. Applicants cannot satisfy either requirement here.

That Applicants do not defend, and have never even attempted to defend, "the legality of the EO in requesting a stay," is telling. U.S.App.6a; Dist.Ct.ECF.195 at 11-26; Dist.Ct.ECF.157 at 31-37. As with the stay proceedings before the First Circuit, the question of the EO's constitutionality is not before this Court. U.S.App.6a. Rather, Applicants press only threshold objections—standing and ripeness—which fail, considering the "uncontroverted" facts furnished by the Respondents before the

District Court. U.S.App.4a. Thus, Applicants cannot clear the likelihood of success requirement because they do not contest the District Court's merits ruling that the EO unlawfully intrudes on constitutional limits, and because the uncontested factual record shows that the EO is burdening the Respondents *now*. *See* U.S.App.61a; *see also id.* at 18a, n.12.

Applicants' cited cases are inapposite. For example, *Trump v. New York*, 592 U.S. 125, 133-34 (2020), differs from this case because there, the Court held that a challenge to a presidential memorandum was unripe where it was merely a "general statement of policy" that the Government acknowledged could not feasibly be implemented as written, and thus any injury depended on uncertain future executive action. *Id.* at 131, 133–34. By contrast, EO 14399 is no mere "general statement of policy," and Applicants notably do not suggest that it cannot be "feasibly implemented" as written. *Id.* at 132–33. Rather than announcing an abstract policy, EO 14399 directs specific agency action on a compressed timetable, forcing state election officials to act now. *See* U.S.App.9-10. Indeed, the Government already "has taken steps," including initiating USPS rulemaking, to develop the EO's ballot-verification program and maintains the stated goal of "implement[ing] a final rule applicable to the November 2026 election," which would require its program to be fully operational "[b]y the time that the first mail-in ballot is ready to mail" Dist.Ct.ECF.194-2 ¶ 7. Thus, unlike in *Trump v. New York*, if a stay is granted in this case, the Respondent States will certainly suffer an imminent Article III injury.

Nor does Justice Sotomayor's concurrence in *Trump v. American Federation of Government Employees*, 145 S. Ct. 2635 (2025), support Applicants' position. There, Justice Sotomayor found the savings clause in the EO at issue in that case—requiring that the EO be implemented "consistent with applicable law"—sufficient to defer judicial review because the authority it invoked was lawful in at least some applications, leaving questions regarding its future implementation for the District Court to resolve once concrete plans emerged. As the District Court held below, a savings clause does not cure an EO's legal infirmities where, as here, a plaintiff demonstrates the order is invalid in *all* possible applications. U.S.App.51a (citing *Bldg. & Constr. Trades Dep't, AFL-CIO v. Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002)). No statute delegates to the Executive Branch any authority to bind States to disruptive new election rules, making EO 14399's own savings clause "meaningless" since it is impossible for it to be implemented "consistent with applicable law." U.S.App.51a (citing *League of United Latin Am. Citizens v. Exec. Off. of President*, 780 F. Supp. 3d 135, 176 (D.D.C. 2025)).

Applicants press for emergency relief to implement the Order now while postponing any defense of why the Order is lawful. That would flip *Nken* on its head. *Nken* made clear that the burden is on Applicants *seeking the stay* to justify interim relief. Applying that framework here means that the burden is not on the Respondents to disprove a merits defense Applicants have not advanced before this Court or the First Circuit. Applicants point to no case where an emergency stay was granted on ripeness grounds alone without the government advancing any merits

defense of the underlying challenged government policy. And for good reason. At the stay stage, a government bears a heavy burden to merit extraordinary relief: it is certainly novel to demand such extraordinary relief while offering no defense of the legality of the enjoined actions.

B. The Executive Order's Ongoing Intrusions Into State Sovereignty Create Present Injury And Irreparable Harm.

In deciding these applications, the Court should focus on the fact that the constitutional violation Applicants decline to oppose on the merits before the Court is also the Respondents' *present* Article III injury to their sovereign interests and a source of irreparable harm. The Court has recognized that a State's sovereign interests include "the exercise of sovereign power over individuals and entities within the relevant jurisdiction" which "involves the power to create and enforce a legal code, both civil and criminal." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982); *see also Maine v. Taylor*, 477 U.S. 131, 137 (1986) ("[A] State clearly has a legitimate interest in the continued enforceability of its own statutes."). The sovereign interest is not free-floating—it is part of what this Court has described as our "system of 'dual sovereignty'." *Printz v. United States*, 521 U.S. 898, 918 (1997) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991)). And under that system, "[a]lthough the States surrendered many of their powers to the new Federal Government, they retained a residuary and inviolable sovereignty that is reflected throughout the Constitution's text." *Id.*

This balance of power is reflected throughout the Constitution's text, particularly the Tenth Amendment's command that "the powers not delegated to the

United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X; *see also Carter v. Carter Coal Co.*, 298 U.S. 238, 294 (1936) (the Framers "meant to carve from the general mass of legislative powers, then possessed by the states, only such portions as it was thought wise to confer upon the federal government"). In subsequent cases involving the Tenth Amendment, the Court has made clear that the federal government may not issue commands that conscript state officials "into administer[ing] a federal regulatory program." *Printz*, 521 U.S. at 926; *see also New York v. United States*, 505 U.S. 144, 155 (1992). Under the Tenth Amendment, states are not only entitled to have their own legal codes, but they are also entitled to administer those codes free from federal executive control.

Because state sovereignty is central to our system of federalism, courts, including this Court, have recognized that states suffer a cognizable injury for purposes of constitutional standing when the federal government intrudes on powers "reserved" to the states, whether by direct interference or by substantial pressure to change state laws. *Colorado v. Toll*, 268 U.S. 228, 229 (1925) (holding that a state could challenge federal regulations that the state alleged "interfer[ed] with the sovereign rights of the State"); *Missouri v. Holland*, 252 U.S. 416, 431 (1920) (same); *Texas v. EEOC*, 933 F.3d 433, 446 (5th Cir. 2019) ("[B]eing pressured to change state law constitutes an injury because states have a sovereign interest in the power to create and enforce a legal code.") (cleaned up).

That is especially true in the elections context. There, the Respondents' sovereign interest is at its apex because the Constitution itself assigns authority over elections to the States unless Congress provides otherwise. The Elections Clause gives states authority over the times, places, and manner of federal elections, subject to Congress's power to alter those rules, U.S. Const. art. I, § 4, cl. 1, and the Electors Clause likewise assigns to the States the manner of appointing presidential electors, *id.* art. II, § 1, cl. 2. As this Court explained in *Smiley v. Holm*, the Elections Clause's "comprehensive words" embrace authority to provide a complete code for congressional elections, including notices, registration, supervision of voting, protection of voters, prevention of fraud, counting of votes, and related safeguards. 285 U.S. 355, 366 (1932); *see also Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8–9 (2013) (reaffirming the breadth of that authority). And the Constitution does not confer any equivalent authority over elections to the President. While it is the President's general duty to "take Care that the Laws be faithfully executed," U.S. Const. art. II, § 3, this general grant of authority does not authorize the President to create novel election procedures or programs out of whole cloth. Rather, the President's authority "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). That authority is lacking.[2]

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[2] Moreover, federal election statutes specifically allocate authority to the States, not federal agencies. Neither the National Voter Registration Act ("NVRA") nor the Help America Vote Act ("HAVA") authorizes DHS, USPS, or any other federal agency to create federal voter eligibility lists; instead, those statutes assign States responsibility for maintaining voter rolls while imposing very specific federal

Against that constitutional backdrop, the "EO's intrusion into [the Respondents'] sovereign interests in administering state elections consistent with the Constitution and state statutes" constitutes Article III injury-in-fact. U.S.App.13a-14a. Contrary to Applicants' characterization of the harms as speculative, this case concerns concrete harms to the ability of the Respondents to regulate their elections, which this Court has found to be central to State prerogatives. Being forced to change mail-ballot systems contrary to existing state law, alter voter-eligibility administration under threat of investigation and funding consequences, and conduct elections under a presidentially-imposed regime is not a mere policy disagreement. It is a concrete injury to the Respondents' "sovereign power . . . to create and enforce a legal code" for elections. *Alfred L. Snapp & Son, Inc.*, 458 U.S. at 601; *see also Cameron v. EMW Women's Surgical Center, P.S.C.*, 595 U.S. 267, 277 (2022) (stating that a State "clearly has a legitimate interest in the continued enforceability of its own statutes" and "a federal court must respect the place of the States in our federal system") (cleaned up).

Thus, Article III standing exists because harm to the Respondents—including intrusion on their sovereignty—is happening *now*. And the practical effects of that encroachment are plain. The EO has disrupted the Respondents' administration of

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standards governing that responsibility. 52 U.S.C. §§ 20503(a), 20507(a), 21083(a), 21085. And nothing in Title 39 authorizes USPS to determine voter eligibility or regulate state election procedures. Instead, Congress limited USPS's authority to postal services and required USPS to provide reliable service to all communities without unreasonable discrimination. 39 U.S.C. §§ 101(a), 102(5), 401(2), 403(a)–(c), 404(e).

upcoming elections, forced them to divert personnel, required immediate compliance planning, imposed imminent impending costs, and created a credible threat of enforcement. *See generally* Dist.Ct.ECF.105. Recognizing these disruptions, the First Circuit expressly rejected the Government's characterization that the Respondents have prepared for EO 14399's directives "voluntarily," U.S.App.8a, explaining that the Respondents "have no practical choice but to respond to the EO now," U.S.App.9a; *see Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (noting "state and local election officials need substantial time to plan for elections" because "[r]unning elections state-wide is extraordinarily complicated and difficult" and "pose significant logistical challenges").

Applicants are wrong to argue that these harms are not concrete because Section 3 of the EO contemplates rulemaking and USPS has not yet completed the process. U.S.App.20; Intervenors.App.17-20. That argument is hard to square with the Applicants' own position. The Government has admitted that it intends to implement the Executive Order and seeks to do so before the November 2026 election. U.S.App.28 ("[O]nce the agencies finalize their decisions regarding implementation of the Order, it will still take time to carry out those policies with respect to the November election (an election for which mail-in and absentee voting begins, in some States, several weeks in advance)"); *see also* Privacy Act of 1974; System of Records, 91 Fed. Reg. 44,880 (U.S. Postal Serv. July 17, 2026) (proposing new System of Records to go into effect simultaneously with "any final rule in connection with that rulemaking" should the government obtain relief from injunctions). Those

implementation efforts undermine the Government's assertion that Respondents face no imminent harm, instead underscoring why the Respondents' injuries are certain if the injunction is stayed.

The loss of sovereignty is also a basis for finding irreparable harm. Damage to states' sovereign authority during a live election cycle cannot be repaired after the fact. If a stay is granted, the Respondents will be forced to administer the 2026 election cycle under a federal regime the District Court found "legally void." U.S.App.61a. By the time appellate review is complete, the Respondents will already have been compelled to alter procedures, retrain officials, redesign election materials, and conduct elections under federal command. That harm cannot be unwound. *See Bost v. Ill. State Bd. of Elections*, 607 U.S. 71 (2026) ("The democratic consequences [are]. . . dire if courts intervene only after votes have been counted."). Thus, the Hobson's choice imposed on the Respondents—submit to an unconstitutional presidential decree or face prosecution and loss of federal funding—constitutes an irreparable injury. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (blocking states from "effectuating statutes" thus constitutes irreparable injury); *Doe v. Trump*, 157 F.4th 36, 79 (1st Cir. 2025) (recognizing that when States are compelled to change their systems, processes, and guidance in response to an executive order, the irreparable harm takes the form of "unrecoverable costs").

The Government, by contrast, asserts only the burden of impeding the President's "ability to direct his subordinates" and preemption of "the Executive's deliberative policymaking" in the Respondent States before the midterm election.

U.S.App.4-5. But the Government cannot simultaneously cast the EO as merely "general policy guidance," U.S.App.2, *and* claim that a temporary injunction within the Respondent States for the purposes of the November 2026 election would cause irreparable harm. Nor can it claim that any intrusion into the President's Take-Care Clause powers has occurred, U.S.App.27, since there is no Congressional directive to execute. Rather, denying the application would preserve the preexisting system under which the Respondents administer elections under state law and federal statutes actually enacted by Congress, a system that has existed since the Constitution's enactment. Granting a stay would seriously upset the status quo, imposing a new federal regime first and leaving the courts to sort out legality only after the Respondents have already been forced to comply. *See Nken*, 556 U.S. at 434 ("The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.").

The undisturbed merits ruling below is that the EO unlawfully intrudes on state sovereignty and separation of powers.[3] That unlawful intrusion is itself a present Article III injury to the Respondents—an injury that is significant and imminent. And because it forces the Respondents to surrender control over a live

[3] The separation-of-powers doctrine is a critical structural safeguard that preserves the Constitution's allocation of authority among the branches of government, the States, and the people. *See Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 239 (1995) (explaining that separation of powers is "a structural safeguard rather than a remedy to be applied only when specific harm, or risk of specific harm, can be identified" and serves as "a prophylactic device, establishing high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of interbranch conflict"). The EO threatens this essential constitutional safeguard.

election cycle, it is irreparable harm as well. On Applicants' own chosen posture, the first two *Nken* factors weigh decisively against a stay. As discussed below, the equities point the same way.

III. The Third And Fourth Stay Factors Also Weigh In The Respondents' Favor.

A stay of the injunction is not in the public's interest and would undermine confidence in elections and the court system. The public's interest in fair, open, and orderly elections is best served by clear, settled rules that let voters, candidates, and administrators plan and act with confidence and accuracy. Last-minute changes and disruptions to election rules breed confusion, chill turnout, increase the risk of erroneous disenfranchisement of eligible voters, and invite the kind of emergency litigation that undermines the stable and effective administration of elections. This Court has repeatedly warned against precisely these harms. It is by now black letter law that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam); *see also Bost*, 607 U.S. at 80. As Justice Kavanaugh has explained, "[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays). The Court has repeatedly been clear that last minute changes to long-standing election rules invite "confusion and chaos" and "erod[e] public confidence in electoral outcomes," *Democratic Nat'l Comm. v. Wis.*

State Legislature, 141 S. Ct. 28, 31 (2020) (Gorsuch, J., joined by Kavanaugh, J., concurring in denial of application to vacate stay).

Reinstating EO 14399 roughly 100 days before the November 3, 2026, general election—and sooner still before Uniformed and Overseas Citizens Absentee Voting Act mailed ballot deadlines, early voting, and federal primaries that are just weeks away—would make timely compliance practically impossible. As the Government has acknowledged, "at least some states will be preparing to mail their first mail-in ballots by the end of August." Dist.Ct.ECF.194-2 ¶ 7. And given the illegality of the EO's substance—which Applicants do not bother to contest—it is highly likely that further litigation and injunctions will follow. In short, granting the Government's request here will likely not result in any final implementation of the EO (which the Government has failed to defend on the merits) but the yo-yoing of rules will certainly confuse voters and election administrators alike as to which individuals remain eligible to receive and cast a ballot and how mail ballots are to be sent out, transmitted, and received. That confusion would discourage otherwise-eligible voters from going to the polls. It will also almost certainly generate a wave of lawsuits brought by voters who find themselves wrongly excluded. *See* U.S.App.15a ("The undisputed summary judgment record indicates that, were the EO to take effect for the elections taking place in September and November, it would sow confusion and threaten disenfranchisement of many eligible voters.")

Indeed, the disruption that would be caused by any implementation of EO 14399 would be significantly more severe than the "tinkering" this Court's precedents

caution against. For example, EO 14399 calls for a wholesale alteration of the mechanisms States use to determine voter eligibility and administer mail balloting, displacing state voter-roll systems that have operated—in some cases for decades—with error-prone federal lists and a compressed rulemaking timeline that affords no opportunity for orderly transition. *See* U.S.App.51a-54a (describing Section 2's Confirmed Citizen List requirements); *id.* at 57a–59a (describing Section 3's USPS enrollment-list requirements).

The record below establishes that EO 14399's implementation would place the voting eligibility of large numbers of otherwise-qualified voters into doubt. It also reveals specific, undisputed gaps in EO 14399's design that would predictably generate countless individual eligibility disputes, and several illustrative examples show how those gaps would play out in practice. Take, for example, voters who have already requested a mail ballot under their state's vote-by-mail rules. A voter who receives a ballot that is already in transit will possess an envelope that lacks the USPS Intelligent Mail Barcode that Section 3 requires. Several Respondents have already spent significant sums on now-noncompliant envelope stock—including approximately $3 million in Massachusetts alone, and more than $50,000 each in Maine and Rhode Island—with no budgeted funds to replace it. U.S.App.42a-43a. As a result, that voter's ballot would be at risk of rejection or delay through no fault of her own. A related timing gap threatens overseas military voters, who rely on the Uniformed and Overseas Citizens Absentee Voting Act's guarantee of absentee voting rights and its 45-day ballot-transmission window to cast their ballot. 52 U.S.C.

§ 20302(a)(1), (a)(8)(A); U.S.App.34a-35a. Should USPS's new enrollment-list mechanism fail to reconcile with a state's enrollment list in time, an otherwise eligible servicemember's ballot could be rejected as "not enrolled," despite eligibility under a federal law that predates the EO. And the same timing problem impacts voters who register close to or on the registration deadlines, which in many states are close in time to Election Day. *See id.* at 36a–39a (cataloguing state registration deadlines). Such a voter would be fully eligible under state law yet would necessarily be absent from federal lists transmitted on the EO's 60- and 90-day pre-election schedule. *Id.* at 30a–31a.

Multiplied across the electorates in the Respondent States, disputes like these would require judges around the country to resolve large numbers of individual voter-eligibility challenges in the weeks surrounding the upcoming elections, a scenario that is not only inefficient and burdensome, but also risks creating the public impression that courts, rather than voters, are deciding the outcome of elections. While courts must adjudicate properly presented disputes, placing the judiciary in the position of resolving mass eligibility disputes on a compressed timeline imposes needless strain on judicial resources and on public confidence in the courts themselves.

Maintaining the status quo—the injunction that has governed since June 25, 2026—avoids each of these predictable harms and prevents the courts from being burdened by the wave of emergency litigation that reinstating EO 14399 would invite. It preserves the settled rules under which voters, candidates, and election officials

around the country have long been operating and planning for the upcoming election cycle, and it is that stability, not a last-minute reinstatement of EO 14399, that would best protect voter confidence in the electoral process and ensure that eligible voters are not disenfranchised.

CONCLUSION

For the foregoing reasons, the Court should deny the applications for a stay.

Respectfully Submitted,

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August 3, 2026

APPENDIX

TABLE OF APPENDIX

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APPENDIX: List of Amici Curiae 1a

APPENDIX

36 Federal Judges

Judge Nancy Gertner, U.S. District Judge, District of Massachusetts (Ret.)

Judge Michael Luttig, U.S. Circuit Judge, U.S. Court of Appeals for the Fourth Circuit (Ret.)

Judge Nancy F. Atlas, U.S. District Judge, Southern District of Texas (Ret.)

Chief Judge John W. Bissell, U.S. District Judge, District of New Jersey (Ret.)

Chief Judge Rubén Castillo, U.S. District Judge, Northern District of Illinois (Ret.)

Judge Robert J. Cindrich, U.S. District Judge, Western District of Pennsylvania (Ret.)

Chief Judge U.W. Clemon, U.S. District Judge, Northern District of Alabama (Ret.)

Chief Judge William F. Downes, U.S. District Judge, District of Wyoming (Ret.)

Judge Gary A. Feess, U.S. District Judge, Central District of California (Ret.)

Judge Jeremy Fogel, U.S. District Judge, Northern District of California (Ret.)

Judge Royal Furgeson Jr., U.S. District Judge, Western District of Texas (Ret.)

Judge Paul W. Grimm, U.S. District Judge, District of Maryland (Ret.)

Judge Thelton Henderson, U.S. District Judge, Northern District of California (Ret.)

Chief Judge Robert Harlan Henry, U.S. Circuit Judge, U.S. Court of Appeals for the Tenth Circuit (Ret.)

Judge Richard J. Holwell, U.S. District Judge, Southern District of New York (Ret.)

Judge John E. Jones III, U.S. District Judge, Middle District of Pennsylvania (Ret.)

Judge Barbara M. G. Lynn, U.S. District Judge, Northern District of Texas (Ret.)

Judge John S. Martin Jr., U.S. District Judge, Southern District of New York (Ret.)

Judge A. Howard Matz, U.S. District Judge, Central District of California (Ret.)

Chief Judge Paul Michel, U.S. Circuit Judge, U.S. Court of Appeals for the Federal Circuit (Ret.)

Judge Margaret Morrow, U.S. District Judge, Central District of California (Ret.)

Judge Liam O'Grady, U.S. District Judge, Eastern District of Virginia (Ret.)

Judge Kathleen O'Malley, U.S. Circuit Judge, U.S. Court of Appeals for the Federal Circuit (Ret.)

Judge Philip M. Pro, U.S. District Judge, District of Nevada (Ret.)

Judge Victoria A. Roberts, U.S. District Judge, Eastern District of Michigan (Ret.)

Judge Shira A. Scheindlin, U.S. District Judge, Southern District of New York (Ret.)

Judge Fern M. Smith, U.S. District Judge, Northern District of California (Ret.)

Chief Judge Lawrence F. Stengel, U.S. District Judge, Eastern District of Pennsylvania (Ret.)

Chief Judge Deanell Reece Tacha, U.S. Circuit Judge, U.S. Court of Appeals for the Tenth Circuit (Ret.)

Judge John D. Tinder, U.S. Circuit Judge, U.S. Court of Appeals for the Seventh Circuit (Ret.)

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Nos. 26A124 & 26A139

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, President of the United States, *et al.*,

Applicants,

v.

STATE OF CALIFORNIA, *et al.*,

Respondents.

STATE OF ALABAMA, et al.,

Applicants,

v.

STATE OF CALIFORNIA, et al.

Respondents.

On Application for Stay of the Injunction Issued by The United States District Court for The District of Massachusetts and Requests for Administrative Stay

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BRIEF *AMICUS CURIAE* OF THE SOCIETY FOR THE RULE OF LAW IN SUPPORT OF RESPONDENTS

August 3, 2026

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INTEREST OF *AMICUS CURIAE*

Amicus The Society for the Rule of Law and Democracy, Inc., doing business as The Society for the Rule of Law ("SRL") is a national non-profit, non-partisan membership organization of conservative, libertarian, and right-of-center-lawyers, and others, who are dedicated to defending the constitutional principles of the rule of law, limited government, separation of powers, federalism, and other checks and balances.[1] SRL has an interest in seeing that Executive Order ("EO") 14399 does not violate these principles by directing the USPS to violate the Constitution and federal statutes.

INTRODUCTION AND SUMMARY OF ARGUMENT

This single brief opposes both applications and focuses on Section 3(b), (d) of EO 14399 ("Section 3(b)"). Part I shows that under recent precedents, there is already sufficient harm for standing, ripeness, and irreparable harm, particularly as the federal Applicants have stated that they may later argue that it would then be too close to the election to enjoin their illegal rules. *A.A.R.P. v. Trump*, 605 U.S. 91, 93-94 (2025), recognizes that irreparable harm has occurred when the federal government, as here, has stated that it may argue that courts cannot order relief later when the government takes additional steps. Independently, *Bost v. Illinois State Board of Elections*, 607 U.S. 71, 80 (2026), precludes imposing standing or ripeness requirements that "channel . . . election disputes" towards election day.

[1] *Amicus* states that no counsel for any party authored this brief in whole or in part, and that no entity, aside from *amicus* and its counsel, made any monetary contribution toward the preparation or submission of this brief. The views of SRL do not necessarily represent the views of all individual members.

Parts II through IV confirm ripeness exists here by showing that Section 3(b) illegally directs the USPS to exercise rulemaking powers that the Constitution and Congress have withheld from the USPS. Contrary to Applicants, the complete, facial invalidity of Section 3(b) does not turn on any future facts and cannot be avoided by anything the USPS might do. Section 3(b)'s indefensible facial illegality also shows the public interest favors denying a stay.

Part II shows that the Constitution and the National Voter Registration Act of 1993 ("NVRA"), the Help America Vote Act of 2002 ("HAVA"), and the Voting Rights Act Amendments of 1970 deny the USPS *any* rulemaking role concerning any voter list, any voting system, or any absentee balloting restriction.

Part III shows that, in addition, provisions of Title 39 deny the USPS *any* rulemaking role concerning any voter list or any voting system, much less any power to refuse to deliver absentee ballots. Congress has withheld from the USPS any rulemaking authority to create a new category of nonmailable items. Further, none of providing or administering voter lists, modifying voter systems, or restricting absentee balloting is a postal service or a function of the USPS.

Part IV discusses how constitutional and statutory design, structure, and history confirm that any rulemaking authority here was withheld from the USPS. The Constitution and applicable statutes deliberately render it impossible for any centralized federal authority to have power to manipulate federal election results. This Court should preserve those time-tested principles, rather than embolden every administration every two years to try to orchestrate favorable election results.

ARGUMENT

I. Recent Supreme Court Cases Establish Standing and Ripeness.

A. *A.A.R.P.* And *Bost*.

Under *A.A.R.P. v. Trump*, it would be error to rule that standing or ripeness, or irreparable harm, is absent until the USPS issues a final rule. This is because Applicants have stated they may argue that under *Purcell v. Gonzales*, 549 U.S. 1 (2006) (*per curiam*), it would then be too late to enjoin their final rule. *A.A.R.P.* issued an injunction because the putative plaintiff class was "facing an imminent threat of severe, irreparable harm." 605 U.S. at 94. This was because the government might argue, after it transferred detainees, that another legal principle rendered it too late for a federal court to order relief. *See id.* at 95; *see also id.* at 93 (after transfer, "the Government *may* have argued, as it had previously argued [in a different case], that no U.S. court had jurisdiction to order relief") (emphasis added). The possibility that the government might later argue that it was too late defeated the government's arguments in *A.A.R.P.* that now was too soon.

Just so here. The Applicants argue here that this litigation is too soon. But federal Applicants have stated that, "of course [they] can't and won't take off the table" the argument that after USPS issues the final rule, *Purcell* would make it too late for a federal court injunction before the 2026 elections. *DSCC v. Trump*, No. 26-5193 (D.C. Cir.), Joint Appendix at 641 (filed June 17, 2026). This statement makes this case different from a normal EO in a non-election context. Even in a

non-election context, an EO with savings language is reviewable when there is a "reason to think that the usual mechanisms for seeking expedited review [of a final rule] would be inadequate." *Bldg. & Const. Trades Dept., AFL-CIO v. Allbaugh*, 295 F.3d 28, 33-34 (D.C. Cir. 2002) (quotations omitted). In contrast, in *Trump v. New York*, the government and all Justices stated timely adjudication was available later. 592 U.S. 125, 134 (2020); *id.* at 135 (Breyer, J., dissenting).

Even if Applicants bindingly waived *Purcell*, *Bost v. Illinois State Board of Elections*, 607 U.S. 71 (2026), independently establishes standing and ripeness. *Bost* instructed courts not to "channel . . . election disputes" over vote-counting towards election day. *Id.* at 80. *Bost* would be neutered if it did not apply to ripeness. This Court has equated the imminence component of standing and ripeness. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007).

Under *Bost*, plaintiffs who "have an interest in a fair process"—as the states surely do—"suffer [harm] *when* the process departs from the law." 607 U.S. at 77 (emphasis added). Accordingly, relief should be granted promptly when government officials announce illegal rulemaking that would "govern the counting of votes," including by the possibility of "discarding of lawful ones." *Id.* at 77-78, 82. Here, already "the process [has] depart[ed] from the law." *Id.* at 77. *Infra*, Parts II-IV.

Section 3(b)(iv) requires that the USPS rule "*shall* include" that the "USPS *shall provide* each State with a list of individuals (Mail-In and Absentee Participation List) who are *enrolled* with the USPS . . . for mail-in and absentee ballots provided by such state …." (Emphases added.) Section 3(b)(iii) further

mandates that "the USPS *shall not transmit* mail-in or absentee ballots from any individual unless those individuals have been *enrolled* on a State-specific [Mail-In and Absentee Ballot Participation List]" (emphasis added) with the USPS. Section 3(b)(i) and (iv) also bar mailing ballots between state officials and voters when envelopes lack a unique bar code. Section 1 of EO 14399 states that these "measures are necessary" to fulfill the "unavoidable duty" of the executive branch. All this would preclude "the counting of [potential] votes." *Bost*, 607 U.S. at 82.

The savings language in EO 14399 does not make this case unripe. This is because Section 3(b) directs rulemaking where USPS has *no* rulemaking authority. *See* Parts II-IV, *infra*. *Trump v. New York* is distinguishable because there the Secretary of Commerce indisputably had statutory authority to issue a report with census information. 592 U.S. at 129. The apt comparison is *Trump v. Barbara*, slip op. (U.S. June 30, 2026), where this Court invalidated the entirety of the birthright citizenship executive order, even though that order said it would be implemented only "consistent with applicable law." 84 Fed. Reg, 8449, §5(b) (Jan. 20, 2025). Federal Applicants correctly have admitted that savings language does not exempt from judicial review an EO that "'is without any valid application.'" ECF 195, at 17 (quoting *Allbaugh*, 295 F.3d at 33). The Applicants do not rebut facial invalidity here. Indeed, they have *never* identified in any court any circumstance, or action by the USPS, that might make any restriction set forth in Section 3(b) legal.

Perhaps to hide the ball, the government has deliberately delayed the issuance of the final USPS rule. The District Court's injunction expressly allows

the USPS to issue the final USPS rule, both for potential use in the 2028 election for all voters *and* in 2026 for voters registered in 27 non-respondent states, ECF 207, at 4. (All ECF references are to the District Court record in this case.) Yet, the federal Applicants have misused that injunction as the reason for delaying the USPS final rule. ECF 210, at 2.

If a stay were granted, a USPS rule that mimics Section 3(b) will imminently follow. Federal Applicants state that the "irreparable harm is the government's inability to *implement the order* as to the *November 2026* election in the respondent States." Fed. App'n 28-29 (first emphasis added). And despite their own delay, they complain that after the USPS rule, "there is not enough time to obtain ordinary appellate relief from the [district court's] injunction in order to carry [the rule] out before the November 3, 2026, election." Fed. App'n 28. They further state that they need to able to carry out the rule "well before November—indeed, as soon as early to mid-August." Fed. App'n. 27. As this Court held in reversing a no-standing decision: "When as here a government seeks to justify its regulatory actions by, on the one hand, touting the consequences … while, on the other, maintaining that those same regulations are unreviewable because there are no consequences, courts can appropriately be skeptical." *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 122 (2025). The courts below properly did not "exhibit a naivete from which ordinary citizens are free," *id.* (quotations omitted), especially as the President has asserted control over the USPS under unitary executive principles. The USPS's NPRM confirms this control by parroting the restrictions of Section 3(b)

quoted above. *See* 91 Fed. Reg. 32,915, 32,917-18 (June 2, 2026).

Delaying injunctive relief would encourage *every* administration, every two years, to announce invalid election rules early enough to induce some states and localities to pre-comply, but delay the formality of agency finality to forestall judicial review. "[I]n the law, what is sauce for the goose is normally sauce for the gander." *Heffernan v. City of Paterson*, 578 U.S. 266, 272 (2016). In our tit-for-tat world, a future Democratic President could, for example, order a USPS rulemaking for restricting delivery of mail-in ballots to and from rural counties because they have higher USPS costs and mail theft rates. And so on. Fortunately, *Bost* requires relief "when the process departs from the law," 607 U.S. at 77, which already has occurred here. *Infra*, Parts II-IV.

B. *If* There Were A Stay, The Court Should Rule That *Purcell* Would Not Apply.

Assuming for argument's sake, that this Court were to stay the decision below, like the D.C. Circuit, this Court should rule that *Purcell* would not apply to a final rule and this Court will never allow any federal administration belatedly to impose new election rules without judicial review. *See DSCC v. Trump*, No. 26-5193, at 7-8 (D.C. Cir. July 28, 2026). First, the usual application of *Purcell* occurs when a federal court is asked to enjoin a state executive official's election rule for violation of federal law. In that situation, *Purcell* does not mean the state official can violate its own state's law. *State courts* remain free to enjoin that state official based on *state constitutional or statutory law*. The equivalent is equally true here. *Purcell* could not mean that anything goes under federal law for belated federal

executive branch election rules. *Purcell* in no way precludes federal courts from judicial review in response to a prompt challenge of a federal agency's late-issued election rule for compliance with *federal constitutional and statutory law*.

Second, *Purcell* is based on equity and it is inequitable for a rule's proponents to have their cake and eat it too. The movants cannot be permitted to argue that now is too soon and later is too late. For similar reasons, the Virginia Supreme Court recently held that merits review was fully available to invalidate a state constitutional amendment on redistricting after voters approved it, because the amendment's proponents had successfully opposed judicial review as unripe before the vote. *Scott v. McDougle*, 930 S.E.2d 332, 337-38 & nn. 13-14 (2026).

Even when this Court stays or vacates a lower court's injunctive relief, this Court has power, including under the All Writs Act, 28 U.S.C. §1651(a), "to act responsibly." *Nken v. Holder*, 556 U.S. 418, 426-27 (2009). In particular, whether a court's appellate review of preliminary relief should address potential issues in further proceedings is "ultimately a matter of prudence," including the interest of "the public" and protecting the Nation's "institutions" from "doubt." *Trump v. Cook*, slip op. at 23-24 (U.S. June 29, 2026); *see also id.* at 2 (Kavanaugh, J., concurring) (preventing "temporary uncertainty" that "could spark political upheaval"). *Trump v. J.G.G.*, 604 U.S. 670 (2025) (*per curiam*), also illustrates this. The Court vacated injunctive relief. But the Court also ruled that the losing parties must receive reasonable notice and be heard by the federal courts at a later stage on their constitutional, statutory, and factual challenges. *Id.* at 672-73. *A.A.R.P.*

subsequently fulfilled the Court's promise. So too here. *Assuming* judicial review is too soon now, the Court should rule now that *Purcell* will not bar subsequent challenges to agency implementation of EO 14399.

II. The Constitution And Federal Voting Statutes Deny The USPS Any Rulemaking Authority Here.

Applicants have implied vaguely that the case is unripe because some unnamed subsequent development may render some aspect of Section 3(b) legal. This is wrong because the Constitution and federal statutes deny the USPS *any* rulemaking role concerning voter lists, voting systems, or restricting absentee balloting. Section 3(b)'s indefensible, facial illegality also shows the public interest factor favors denying a stay.

The Elections and Electors Clauses constitute a rare area where the Constitution confers all powers on the states, unless Congress by statute provides differently. Thus, where as here a federal election statute expressly leaves a rulemaking power with the states, the Constitution and Congress necessarily withhold that power from the executive branch. *See Watson v. RNC*, slip op. at 21-22 (U.S. June 29, 2026) (federal election statute extends federal law "so far as it is exercised, and no farther") (quotations omitted). This means that unless Congress confers an election-related rulemaking power on a federal agency, only a state legislature—never a federal agency—may prescribe "everything from the date[s] on which voters go to the polls to the dimensions and font of individual ballots . . ., including regulations relating to . . . registration, supervision of voting, . . . prevention of fraud and corrupt practices, counting of votes, [and] duties of

inspectors." *Moore v. Harper*, 600 U.S. 1, 29 (2023) (quotations omitted).

The federal government has admitted that it lacks authority for its new mail-in ballot delivery restrictions to apply to "ballots covered under the Uniformed and Overseas Citizens Absentee Voting Act" because "UOCAVA is a separate federal statutory scheme with its own requirements." 91 Fed. Reg. at 32915-16. But UOCAVA is actually part of a broader, integrated "federal statutory scheme with its own requirements" that also includes UOCAVA, NVRA, HAVA, and the Voting Rights Act ("VRA"). Indeed, HAVA expressly integrates all of HAVA, UOCAVA, NVRA, and the VRA. *See* 52 U.S.C. §21145(a); *infra*, at11-12. This integrated scheme covers all federal ballots in all federal elections, often as here by allocating regulatory authority exclusively to the states. As Part II.A-C demonstrates, in the texts and overall structure of the NVRA, HAVA, and the Voting Rights Act Amendments of 1970, Congress specifically withheld from the USPS any rulemaking role concerning any voter list or voting system or absentee ballot restriction.

A. NVRA.

As "enrolled" and "Participation List" in Section 3(b) indicate, each USPS Mail-In and Absentee Participation List would be a new voter list that the USPS would administer to block the counting of potential mail-in votes. Indeed, "enrolled" and "registered" are synonyms. *Enrolled*, Merriam-Webster, www.merriam-webster.com/dictionary/enrolled (last visited April 10, 2026); *Registered*, Merriam-Webster, https://www.merriam-webster.com/dictionary/registered (last visited April

10, 2026). NVRA, HAVA, and the Court describe voter lists as "voter *rolls*." 52 U.S.C. §§20507(d), 20984(a)(1)(B)(ii) (emphasis added); *Husted v. A. Philip Randolph Institute*, 584 U.S. 756, 781 (2018) (emphasis added).

But NVRA charges *state* agencies with "the registration of voters in elections for Federal office" and "the *administration* of voter registration for elections for federal office." 52 U.S.C. §§20506(a)(1), 20507(a) (emphasis added). 52 U.S.C. §20508(a)(1)-(3) limits the federal authority to issue "regulations" to the Election Assistance Commission, and one subject – "a mail voter registration application form."

In particular, NVRA withheld all rulemaking authority from USPS concerning voter lists. 52 U.S.C. §20507(a)(4), (c)(1) merely permits a *state* to use "change-of-address information supplied by the Postal Service" in meeting the state's obligations to make a "reasonable effort" to remove voters who changed residence from the state's voter list. And 39 U.S.C. §3629 mandates that the USPS make available nonprofit rates to state and local officials for the mailings required or authorized by NVRA. That's all.

B. HAVA.

52 U.S.C. §21084 provides that "a *State*" may "establish[] election technology and administration requirements that are more strict than the requirements under this subchapter" provided that the stricter "State requirements" are not inconsistent with the "Federal requirements" of HAVA "or any law described in section 21145 of this title." (Emphasis added.) 52 U.S.C. §21145(a) not only lists

those federal laws, it also limits *any* government entity—federal or state—from using other *unlisted* federal statutes to impose stricter requirements. Section 21145(a) specifies that HAVA does not "supersede, restrict, or limit the application of" only "the following laws." The "following laws" are six specified federal statutes—four voting statutes, including UOCAVA, the VRA, and NVRA, and two primarily non-election statutes. *Id.*

Unlike these six specified statutes, §21145(a) *omits* Title 39 from the series of statutes that §21145(a) saves from HAVA's superseding and restrictions and limits. Under the "well established canon of statutory interpretation: *expressio unius est exclusio alterius*," *Esteras v. United States*, 606 U.S. 185, 195 (2025), 52 U.S.C. §§21084 and 21145(a) prevent the federal executive branch from using Title 29 to establish stricter requirements on HAVA topics. "Indeed, the *expressio unius* canon has particular force here because the" six preserved federal statutes in §21145(a) "constitute an 'established series,' such that any 'omission' from that series necessarily 'bespeaks a negative implication.'" *Esteras*, 606 U.S. at 195 (citation omitted). Congress here "exclude[d] another [provision] left unmentioned." *Id.* (quotations omitted).

Section 3(b)'s ordering USPS to use the excluded Title 39 to establish stricter election technology and administration rules violated both HAVA's text and its purpose that state and local administration of federal elections "must be preserved" so that it remains "*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 31-32 (2001) ("HAVA Report") (emphasis added). First, HAVA directs that the "*single*, . . . official . . . statewide voter registration list" for each state be "defined, maintained, and administered at the State level." 52 U.S.C. §21083(a)(1)(A) (emphasis added). This "computerized list shall serve as *the single system* for storing and managing *the official list* of registered voters throughout the State" and "shall serve as *the official voter registration list* for the conduct of all elections for Federal office in the State." *Id.* §21083(a)(1)(A)(i), (viii) (emphasis added). But Section 3(b), and consequently the USPS's NPRM, illegally use Title 39 to impose a second federally mandated statewide voter list for each state, *i.e.*, a list of those registered to vote by mail. As the NPRM confirms, a state cannot have *any* mail-in voting unless the "state submitted a list" of those voters through a USPS portal, and "States would provide" the USPS with the "information" for "compiling the [USPS] lists." 91 Fed. Reg. at 32,916. This confirms that Section 3(b) illegally directed the USPS to violate HAVA by establishing stricter election technology and administration requirements concerning voter lists.

Second, 52 U.S.C. §21081(a) establishes "requirements" for "[e]ach voting system used in an election for Federal office." The term "voting system" includes "the practices and associated documentation used . . . to make available any materials to the voter (such as notices, instructions, forms, or paper ballots)." 52 U.S.C. §21081(b)(2)(E). Every method used for "paper balloting" is a "voting system" under HAVA. *United States v. Town of Thornapple*, 143 F.4th 793, 798-99

(7th Cir. 2025).

Certainly, the documentation and practices used for delivering paper ballots to mail-in voters, including mailing and envelopes, constitute a "voting system." Here, under Section 3(b), the barcoded Outbound Federal Ballot Mail Envelopes, portal information, and Mail-in and Absentee Participation List, singly and combined, constitute a stricter "voting system" because they are documentation and practices used to make notices, instructions, forms, and mail-in paper ballots available to *fewer* voters. Federal Applicants admitted that Section 3(b) "would be imposing a new requirement with respect to election mail." ECF 181, at 65-66. Therefore, Section 3(b) illegally directed the USPS to promulgate rules that establish stricter election technology and administration requirements concerning voting systems.

C. VRA.

The Voting Rights Act Amendments of 1970 confirm that, as in NVRA and HAVA, although Congress sometimes permits states to vary from federal statutory baseline requirements regarding a voting process, Congress never permits federal agencies to add requirements. 52 U.S.C. §10502(b)-(f) set forth federal standards that require states to make available "absentee balloting in presidential elections." Most important, 52 U.S.C. §10502(g) allows "any *State* or political subdivision" to "adopt[] *less restrictive* voting practices than those that are described herein." (Emphasis added.) Unlike subsections (b)-(f) of §10502, subsection (g) does not refer to presidential elections and thus reflects that the absentee balloting authority

allocated to the states is *not* limited to presidential elections. The executive branch is not allowed to adopt more restrictive practices, nor even less restrictive practices. As Section 3(b) directs USPS rulemaking to adopt more restrictive practices for absentee balloting, it is illegal.

III. Title 39 Provisions Also Deny The USPS Any Rulemaking Authority Concerning Voter Lists, Voting System, And Restricting Absentee Balloting.

Section 3(b) orders rulemaking where Title 39 prohibits it. First, the USPS cannot by rule create a new nonmailable category. 39 U.S.C. §§3001-18 specify all the items that are "nonmailable." "The postal laws make a clear-cut division between mailable and nonmailable material." *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 152 (1946). The "power" to make nonmailability rules "has been zealously watched and *strictly confined*" by Congress. *Id.* at 156 n.18 (emphasis added). Title 39 renders nonmailable items deposited in violation of *only 12 specified* criminal-law sections of other Titles by expressly cross-referencing in 39 U.S.C. §§3001(a), 3003(a), and 3014(a)(2) that series of 12 criminal-law sections. Under the *expressio unius* canon, *supra*, at 12, violations of other criminal-law sections that are *omitted* from these Title 39 nonmailable sections are excluded from USPS's authority to block delivery of mail. The nonmailable provisions of 39 U.S.C. §§3001-18 omit any reference to the six sections from Titles 18 and 52 that EO 14399 and the NPRM cite as the basis for "prohibit[ing] non-citizens from registering to vote or voting." These six omitted sections are 18 U.S.C. §§241, 611, 1015, 3061(b), and 52 U.S.C. §§10307, 20511. These six omissions confirm that Title 39 bars the USPS

rulemaking directed by Section 3(b).

Second, the providing and administering of voter lists, modifying a voting system, and restricting absentee balloting are each a "nonpostal service" and thus barred by 39 U.S.C. §404(e)(2). NAVA, HVRA, and the VRA establish that providing and administering voter lists is exclusively done by states, and modifying a voting system or restricting absentee balloting is the exclusive domain of a state legislature or Congress. *Supra*, Part II.A-C. *See Watson*, slip op. at 7-8, 15 n. 8 (applying the "most rudimentary rule" of "the related-statute canon" to federal election law) (quotations omitted).

Third, 39 U.S.C. §401(2) bars the USPS from promulgating regulations that are "inconsistent with this title" or not "necessary in the execution of its functions under this title [or] such other functions as may be assigned to the Postal Service under any provisions of law outside of this title." To start, as described in the prior two paragraphs, Section 3(b) illegally directs the USPS to provide regulations "inconsistent" with 39 U.S.C. §§3001-18 and 39 U.S.C. §404(e)(2). In addition, Section 3(b) violates the bar in 39 U.S.C. §401(2) because no federal statute assigns the USPS any "function" concerning voter lists or a voting system or restricting absentee balloting. Nothing the USPS might do could evade the many, complete, independent statutory bars against USPS rulemaking in federal election statutes, *see* Part II.A-C *supra*, and Title 39.

IV. Constitutional And Statutory Design, Structure, And History Confirm That USPS Has No Rulemaking Powers Concerning Voter Lists, Voting Systems, And Restricting Absentee Balloting.

Start with constitutional design. *See Watson v. RNC*, slip op. at 8 (making "th[e] interpretation of the election-day statutes . . . consistent with the way the Constitution treats elections"). The Constitution excluded the federal executive branch both from making election rules and administering such rules without statutory authorization. This was deliberate. The founding generation was well aware of the lessons of the Glorious Revolution and the English Bill of Rights of 1689. A critical reason for both was that King James II and his agents attempted to subvert elections for Parliament by exercising control concerning election practices and voting. *See Harper v. Hall*, 866 S.E.3d 393, 434-37 (N.C. 2023) (reviewing history). This Court has relied on the history of the Glorious Revolution and the English Bill of Rights in interpreting both our Constitution and limits on federal executive power. *See, e.g., United States v. Rahimi*, 602 U.S. 680, 694 (2024); *Trump v. Barbara*, slip op. at 26 (U.S. June 30, 2026); *Learning Resources, Inc. v. Trump*, 607 U.S. 229, 298 (2026) (Gorsuch, J., concurring).

As Justice Gorsuch recently explained, all Presidents have a "desire for more power." *Id.* at 270. The Constitution gave power over election rules to legislatures, rather than the federal executive branch, to give opportunity for "deliberation [to] temper[] impulse, and compromise hammer[] disagreements into workable solutions" that "tend to endure." *Id.* at 300. Giving power to "one man"– any President –to make the rules for *elections* "is no recipe for a republic." *Id.* at 271.

As the HAVA Report stated, *supra*, at 12-13, our federalist election structure, designed by the Elections and Electors Clauses, fosters both the reality

and appearance of election integrity by decentralizing election rules and their administration. Stealing control of either a house of Congress or the Presidency would be easier if a centralized federal administration controlling all federal agencies (as EO 14399 asserts control over the USPS) had power concerning voter lists, voting systems, and absentee balloting in federal elections *in all 50 states*.

If the Court lifted the lid even a sliver, every two years every administration will scour the gargantuan U.S. Code—including non-election statutes such as postal statutes—to find any potential hook to tilt or control every biennial federal election. The inevitable legal challenges each election cycle would drag this Court "over and over again" into "one of the most intensely partisan aspects of American political life." *Rucho v. Common Cause*, 584 U.S. 718-19 (2019). Rather than creating "such an extraordinary and unprecedented" departure, *id.* at 719, for both the federal executive and judicial branches, the Court should keep those evils sealed in the box in which the Elections and Electors Clauses put them 238 years ago by empowering only legislatures to make election rules.

Turn to statutory structure. Federal statutes have regulated aspects of federal elections since 1791, *see* 1 Stat. 239 (1792), voter lists and voting practices since 1871, *see infra*, at 19, and voting by mail since at least 1942, ch. 561, §9, 56 Stat. 753, 756 (1942). Congress has not been shy about exercising power concerning federal elections. Not only is there the voluminous Title 52, there are also extensive provisions for federal elections in Titles 2, 3, and 18. *See* 2 U.S.C. §§1-9, 381-96; 3

U.S.C. §§1-22; 18 U.S.C. §§592-611. The elephant of any USPS rulemaking authority concerning voter lists, voting systems, or absentee balloting would never have been hidden for decades in a mousehole in Title 39—which is not even an elections statute and is omitted from the statutes preserved by 52 U.S.C. §21145(a). *See supra*, at 11-12.

Statutory history provides the final proof of Congress's deliberate denial of authority here to the USPS. When Congress twice gave limited power over a voter list or a voting system to federal nonjudicial officials, both times Congress later repealed that authority. In 1871, the Second Enforcement Act gave federal "supervisors of election" in larger cities and towns in House elections authority related to "verify[ing]" and sometimes making voter "lists" and inspecting and scrutinizing "the manner in which voting is done." 16 Stat. 433, 434-35, 438 (1871). However, in 1894, Congress repealed *all* these statutory provisions. 28 Stat. 36, 36-37 (1894).

There is a second repeal. In 1965, Sections 6 and 7 of the original VRA authorized, in certified jurisdictions, the federal Civil Service Commission (CSC) to appoint examiners to place an eligible voter "on a list of eligible voters" and "transmit" that partial list to state officials. 79 Stat. 437, 440 (1965). Section 9(b) gave the CSC authority to "prescribe[] . . . regulations" concerning the partial "eligibility lists." *Id.* at 441. In 2006, however, Congress *repealed* Sections 6, 7, and 9 of the original VRA. 120 Stat. 577, 580 (2006).

The Court relied on "the history" of the 1894 repeal to reject shoehorning

into a non-election federal statute the kind of federal authority that had been withheld by Congress by repealing the prior federal statutes. *See United States v. Gradwell*, 243 U.S. 476, 479-85 (1917). Yet that is what Section 3(b) attempts to do through its illegal direction of Title 39 rulemaking.

Finally, the Applicants are wrong that the injunctions transgressed executive powers. Fed App'n 27. Especially in the election context, it is "obvious from the Constitution and elementary American history" that *none* of the President's constitutional powers "supersede representative government of internal affairs" through statutes. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 644 (1952) (Jackson, J., concurring). Likewise, for nearly two centuries, and consistent with unitary executive principles, the law has been that a President exceeds his constitutional power by directing postal officials, his executive branch subordinates, to violate valid federal statutory limitations. *See Kendall v. United States*, 37 U.S. 524, 610, 612-13 (1837); *see also Chamber of Commerce of the United States v. Reich*, 74 F.3d 1322, 1332 (D.C. Cir. 1996) (per Silberman, J.) (executive order may not "bypass" constitutional or "statutory limitations on governmental authority").

CONCLUSION

The Court should deny both applications.

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No. 26A124

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

On Application for Stay of the Injunction Issued by the United States District Court for the District of Massachusetts and Request for Administrative Stay

BRIEF OF THE AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES, AS *AMICUS CURIAE*, IN OPPOSITION TO A STAY

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STATEMENT OF THE INTEREST OF *AMICUS CURIAE*[1]

The American Association of People with Disabilities (AAPD) is a national organization led by people with disabilities. It advocates for the civil rights of over 70 million disabled Americans. AAPD works to build civic engagement in the disability community and improve election access to its members. AAPD has disability vote coalitions in 22 states, including states that permit voting by mail. In *Watson* v. *Republican National Committee*, 609 U.S. — (2026), AAPD co-authored an amicus brief led by the League of Women Voters that, in relevant part, emphasized how voters with disabilities lean heavily on mail voting to participate in the political process.

AAPD is equally concerned about the Application in this case. With an election three months away, AAPD has an interest in ensuring that its members have a fair opportunity to cast effective ballots through existing, lawful methods.

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[1] No party or its counsel authored this brief in whole or in part. Neither did any party or its counsel make a monetary contribution intended to fund the preparation or submission of this brief. No one besides the AAPD, its members, and its counsel made any such monetary contribution. Rule 38.6.

SUMMARY OF THE ARGUMENT

The application should be denied. The Court should reach that conclusion based on the public interest alone.

States have accommodated the unique needs of sick and disabled voters for more than a century. In many states, that accommodation is mail voting. It allows voters to make their choices at home, using the tools and technology familiar to them, and to have their selection securely delivered to voting officials through the postal service. The alternative is physical attendance at polling places—many of which are not set up to accommodate any disabilities, let alone the diverse range of disabilities that require a variety of different types of access and accommodations. Some disabled voters, particularly older adults, are physically unable to drive or walk to the polls.

By enjoining the Executive Order at issue here, the district court merely maintained a decades-old status quo so that everyone—including voters with disabilities—can vote using the lawful methods on which they have come to rely. Regardless of the Court's view of the merits, undoing the injunction will (at best) sow confusion about how AAPD's members can vote. At worst, it will nullify their vote entirely by imposing new and chaotic layers of bureaucracy that cannot be untangled in time for disabled voters to return a mail ballot. The prudent course is to maintain the status quo for the 2026 election, while the government promulgates the rules it says are forthcoming. The stay should be denied.

ARGUMENT

Voters with disabilities rely heavily on the postal service to cast their ballots. Many of them, of necessity, must do so in the upcoming election. And the extended process of requesting and returning a mail ballot, in light of each person's specific disability, means clarity on the governing rules is essential well in advance of the election.

The question before the Court is whether it will allow the President and the postal service to rush through changes to those rules three months before an election. The district court enjoined those changes and maintained the status quo with which all voters are currently familiar. Granting a stay of that injunction, at best, will sow confusion about how people with disabilities can vote. At worst, it will deny them the ability to vote entirely. The Solicitor General concedes that nothing in the district court's order applies to future elections—i.e., ones other than the election scheduled to take place three months from now. (App. 7.) The prudent course is to leave the injunction in place (applicable, as it is, only to the 2026 election). The postal service can promulgate its rules, people with disabilities can comment on them, and the postal service can react to those comments, without disrupting an election already in full swing.

I. The States have long protected the ability of people with disabilities to vote by mail.

People with disabilities make up 13% of the non-institutionalized population, a percentage that only increases with age. U.S. Census Bureau, *Table S1810, 2023: ACS 5-Year Estimates Subject Tables*.[2] Nearly 25% of the national population is over the

[2] https://perma.cc/K9K5-AHMCA.

age of sixty. U.S. Census Bureau, *Table S0101, 2023: American Community Survey ("ACS") 5-Year Estimates Subject Tables*.[3] Accordingly, the States have shaped their election laws to accommodate the needs of that sizeable population.

More than a century ago, states enacted absentee voting laws "making express provision for sick and disabled voters." P. Orman Ray, *Absent-voting Laws*, 18 Am. Pol. Sci. Rev. 321, 321 (1924). By 1928, fourteen states had extended absentee voting specifically to such voters. Helen M. Rocca, *A Brief Digest of Laws Relating to Absentee Voting and Regulation* 7, Nat'l League of Women Voters (1928).[4] California, for instance, quickly extended absentee voting to voters "who because of injury or disability [were] absent from their precincts or unable to go to the polling place." 1923 Cal. Stat. ch. 283 (as amended by Supplement to the Codes and General Laws of the State of California of 1923 §§ 1357, 1360 (1927)).

Numerous laws recognize that voters with disabilities are entitled to accommodations in the voting process, including the ability to vote absentee and by mail. *See, e.g.*, Miss. Code 23-15-713(d) (extending absentee voting to those with "a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship"); *id.* §23-15-629(1)-(2) (allowing voters with permanent disabilities to automatically receive absentee ballots without reapplying).

All fourteen states that require an excuse to vote absentee include illness or disability as permissible excuses. *See* Ala. Code 17-11-3; Ark. Code 7-5-402; Conn. Gen.

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[3] https://perma.cc/F9WK-3MTH

[4] https://perma.cc/9AJV-VDZA.

Stat. 9-135; Del. Code tit. 15, §5502; Ind. Code 3-11-10-24; Ky. Rev. Stat. 117.085(1)(a), 117.077; La. Stat. 18:1303; Miss. Code 23-15-713; Mo. Rev. Stat. 115.277; N.H. Rev. Stat. 657:1; S.C. Code 7-15-320; Tenn. Code 2-6-201; Tex. Elec. Code 82.002; W. Va. Code 3-3-1. Eight of those states include age. *See* Ind. Code 3-11-10-24; Ky. Rev. Stat. 117.085(1)(a); La. Stat. 18:1303; Miss. Code 23-15-713; S.C. Code 7-15-320; Tenn. Code 2-6-201; Tex. Elec. Code 82.003; W. Va. Code 3-3-1.

These protections are critical because voters with disabilities often face substantial barriers during elections. These include bedbound or hospitalized voters who must vote by mail if they are to vote at all. Even those who can physically attend the polls consistently report higher incidences of voting difficulties because not all precincts have the funds or expertise to accommodate their disability. Dr. Lisa Schur et al., *Disability and Voting Accessibility in the 2022 Elections: Final Report on Survey Results Submitted to the Election Assistance Commission* 9 (July 2023).[5] In 2022, fourteen percent of voters with disabilities reported difficulties voting—more than three times the rate of other voters. *Id.* In Virginia's 2024 general election, for example, only 69% of polling places had both properly set-up accessible voting machines and staff who knew how to operate them, among other barriers. Press Release, The disAbility Law Ctr. of Va., *Accessibility Gaps Found at Virginia Polling Places During 2024 Election* (May 21, 2025).[6]

[5] https://perma.cc/5AEN-48KB.

[6] https://perma.cc/BN3Z-UVWH.

Transportation challenges also affect older voters and voters with disabilities. S. Li, *Characteristics of Zero-Vehicle Households Among Older Americans and Their Travel Implications*, 91 J. Am. Planning Ass'n 430 (2025); Bureau of Transp. Stats., U.S. Dep't of Transp., *Travel Patterns of American Adults with Disabilities* (Nov. 22, 2024).[7] National data from the Election Assistance Commission show that only 70.8% of people with disabilities can drive their own or a family vehicle, compared to 90.5% of people without disabilities. Schur et al., at 58. And because rural voters are more likely to have disabilities, the inability to drive can be an insurmountable obstacle to voting in person. *See* Ctrs. for Disease Control, *Prevalence of Disability and Disability Types by Urban-Rural County Classification* (Apr. 8, 2025).[8]

Voters with disabilities are therefore more likely to return their ballots by mail or need assistance to ensure their ballot is returned. Schur, et al., at 8, 25, 38. Mail delays compound these challenges. *See, e.g.*, Letter from Thomas J. Marshall, Gen. Couns., U.S. Postal Serv., to Jocelyn Benson, Mich. Sec'y of State 2 (July 29, 2020)[9] (warning that in conveying ballots by mail "there is a significant risk that . . . ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted"). So does limited mail service

[7] https://perma.cc/7AAW-HD72.

[8] https://perma.cc/AYJ7-YNFK.

[9] https://perma.cc/L7Z4-ZF8E

and USPS budget cuts in rural areas,[10] particularly in acutely rural areas of states like Alaska "where mail service is limited." Alaska Div. of Elections, *Alaska Absentee Ballot Application*.[11]

Voters who rely on assistance to request, cast, or return their absentee ballot need additional time. For example, even where states fund support services to Deaf-Blind individuals, some service providers (like in Ohio and New Jersey) cap the amount at sixteen hours a month,[12] generally meaning one visit per week. This leads to time lags between when a ballot is received, cast, and returned. A voter might complete their ballot but lack access to an assistor for another week. The ability to rely on USPS to return the ballot is thus a crucial lifeline for those voters.

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[10] U.S. Postal Serv., *Changes in Service Standards–FAQs* 6-9 (Dec. 17, 2025), https://perma.cc/N925-QUU6; Aspen Inst., *Supporting Ballot Access in Rural Communities* (Sept. 3, 2025), https://perma.cc/5QE7-2A6W; U.S. Postal Regul. Comm'n, *Advisory Opinion on the Operational and Service Standard Changes Related to the Delivering for America Plan* (Jan. 31, 2025), https://perma.cc/K792-G4YA; *see also, e.g.*, Nick Loomis, *Privatize or downsize the USPS? Rural customers worry either option will hurt them*, Neb. Pub. Media (July 16, 2025), https://perma.cc/32XA-V64U (describing threats to rural mail service and detailing how "[c]utting services to rural communities as a means of pulling the Postal Service out of the red has already started").

[11] https://perma.cc/M3M8-HJ8S.

[12] Helen Keller Nat'l Ctr. for DeafBlind Youths and Adults, *Active Support Service Provider (SSP) and CoNavigator (CN) Programs* (Mar. 2024), https://perma.cc/AR4S-58FE.

II. The Court should deny the application in the public interest alone, due to the effect the Executive Order will have on the ability of people with disabilities to exercise their right to vote.

The Executive Order, on its face, calls for substantial new changes to election administration. (2a-3a.) The most significant are the mandates that (1) the Department of Homeland Security create "citizenship lists," and (2) that the postal service "shall not transmit mail-in or absentee ballots from any individual" unless the voter's name is on those lists. (3a.) Neither DHS nor the postal service has ever performed this function before. AAPD believes that these actions are both unlawful and unwise in general. However, the Court should deny the application based on the acute public interest in stability created by the specific posture of the case here.

For people with disabilities, voting is not as simple as waking up on election day and going to a voting booth. It often requires weeks of planning, anticipating and accounting for delays and other hurdles, and executing those plans without the physical capabilities of able-bodied voters. It is therefore critical that the applicable rules be clear well in advance of an election. It is difficult, and often impossible, for voters with disabilities to pivot voting plans when the rules change. Doing so, even a few months before an election, throws a wrench in that process that is not easily remedied.

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken* v. *Holder*, 556 U.S. 418, 433 (2009) (quotations omitted). Instead, it is "an exercise in judicial discretion, and the propriety of its issue is dependent on the circumstances of the case." *Id.* (cleaned up). Among other things, this Court considers "the

relative harms to applicant and respondent, as well as the interests of the public at large." *Trump* v. *Int'l Refugee Assistance Project*, 582 U.S. 571, 580 (2017) (cleaned up).

The public interest is a particularly compelling concern where a stay would impair the rights of millions of people not officially before the Court. Thus, for example, the Court held that a stay pending appeal was not warranted where the government imposed an eviction moratorium at the tail end of the pandemic. *Ala. Ass'n of Realtors* v. *U.S. Dep't of Health and Hum. Servs.*, 594 U.S. 758, 765-66 (2021). It reasoned that the equities "do not justify depriving the applicants of the district court's judgment in their favor," because "the moratorium has put the applicants, along with millions of landlords across the country, at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery." *Id.* at 766.

Likewise, the Court has repeatedly emphasized the need for restraint when courts are asked to intervene in election procedures. *O'Brien* v. *Brown*, 409 U.S. 1, 4-5 (1972); *Purcell* v. *Gonzalez*, 549 U.S. 1, 5-6 (2006). "When an election is close at hand, the rules of the road should be clear and settled." *Democratic Nat'l Committee* v. *Wis. State Legislature*, 141 S. Ct. 28, 30-31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay). "That is because running a statewide election is a complicated endeavor." *Id.* "And at every step, state and local officials must communicate to voters how, when, and where they may cast their ballots through in-person voting on election day, absentee voting, or early voting." *Id.* Preventing changes to those rules "not only prevents voter confusion but also prevents election administrator confusion—and thereby protects the State's interest in running an orderly, efficient election and

in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election." *Id.*

These principles apply with full force here. The district court merely blocked a last-minute attempt by federal agencies—who, like federal courts, have no expertise in running elections—from "rewriting state election laws so close to an election." *Id.* at 32. In that sense, the district court only prevented federal agencies from committing the same errors this Court has condemned in the district courts themselves.

The Solicitor General denies that any change in election administration is really in the offing, but reality belies that assertion. If the postal service is going to use "citizenship lists" to impound ballots, as the EO contemplates (3a), then the States will be compelled to ensure that their lists match up with the federal government's. Otherwise, the states risk providing mail-in ballots to people whom DHS later concludes are ineligible to vote, having to contact those voters to collect further documentation in order to cure the issue, and recalling ballots if the eligibility dispute cannot be resolved informally or through litigation.

The suggestion that the States' challenge is premature also founders on this principle. The Solicitor General would have the Court grant the stay until the agencies do precisely what the President has ordered, with any review (presumably) to occur at that time. (App. 11-12.) But at that point, the federally imposed alterations to the election process will become effective in September or October—within the timeframe where this Court has found last-minute alterations to be problematic. *Democratic Nat'l Committee*, 141 S. Ct. at 31 (Kavanaugh, J., concurring in denial of application to

vacate stay) (six weeks); *Merrill* v. *Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh & Alito, JJ., concurring in the grant of applications for stays) (nine weeks). It would also do precisely what this Court has warned against as a prudential matter: "channel [an] election dispute to shortly before election day." *Bost* v. *Ill. State Bd. of Elections*, 607 U.S. 71, 80 (2026).

Moreover, now that most agencies are beholden to the President's will alone, it is unlikely that any of them (let alone the post office) will do anything but comply with the terms the Executive Order sets out. *Trump* v. *Slaughter*, 609 U.S. — , 2026 WL 1855612, *11-12 (2026). Indeed, *Slaughter* cited President Wilson's firing of a postmaster as the "landmark" decision supporting the President's ability to fire appointees at will, something the Postmaster General will bear in mind when implementing the Executive Order. *Id.*; *Myers* v. *United States*, 272 U.S. 52 (1926). The injury to the States and their disabled citizens is "certainly impending" now. *Clapper* v. *Amnesty Int'l USA,* 658 U.S. 398, 409 (2013) (quotations omitted).

All of this is particularly troublesome to voters who live with disabilities. They already must comply with existing state rules on registration, proof of citizenship, and on requesting and returning a mail-in or absentee ballot. If DHS and the postal service have the power to block their only avenue of voting until they are satisfied that the voter is eligible, then they must take the additional step of locating and mailing to someone (presumably local election officials, DHS, the postal service, or all three) any

additional documentation.[13] If one link in this chain fails—either because officials are confused, the mail with proof of eligibility is delayed, plain human error, or the second envelope with their actual ballot is delayed—the result is not to go wait in line on Election Day. It is a total loss of their right to vote.

That injury is, of course, irreparable. And even if the right is not totally abridged, adding additional layers of bureaucracy only makes it more difficult for people with disabilities to be sure that their vote will be counted. Matching up 50 different states' lists with ones "approved" by the federal government will not be an easy or error-free task. Particularly as applied to voters with disabilities—who rarely see their ballot physically enter a box under the watchful eye of voting officials—federal agencies' interference now will have the effect of undermining their "confidence in the fairness of the election." *Democratic Nat'l Committee*, 141 S. Ct. at 30-31 (Kavanaugh, J., concurring in denial of application to vacate stay).

The equities, as well as the public interest, therefore "do not justify depriving [the States] of the district court's judgment in their favor." *Ala. Ass'n of Realtors*, 594 U.S. at 766. As a result, the Court should leave it in place. The federal agencies will suffer no perceptible harm from this course of action. As the Solicitor General concedes, the order only applies to actions taken in the context of the 2026 election. (App. 7.) The agencies are therefore free to propose rules, solicit comments from the public (including people with disabilities), and finalize rules in time for an ordinary challenge to resolve

[13] The post office has suggested that some portion of this process could be done online. This assumes, of course, the question of reliable internet access, which is far from universal in rural areas.

itself in due course leading up to the 2028 or 2030 elections. There is no reason for the Court to force that discussion onto a rocket docket—and confuse or disenfranchise millions of voters in the process.

CONCLUSION

The Court should deny the application.

Respectfully submitted,

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No. 26A124

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., Applicants
v.
STATE OF CALIFORNIA, ET AL., Respondents.

ON APPLICATION TO STAY THE INJUNCTION ISSUED BY THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

BRIEF OF COREY J. BIAZZO, ESQ. AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-RESPONDENTS AND IN OPPOSITION TO THE APPLICATION

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INTEREST OF AMICUS CURIAE

Corey J. Biazzo is an appellate advocate, civil litigator, author, and United States Navy veteran. He has a professional and civic interest in the separation of powers, federalism, and the evenhanded application of constitutional limits across administrations. Amicus submits this brief in his individual capacity to identify a narrow issue of emergency-relief methodology that warrants independent attention: Applicants rely on mutually incompatible accounts of how concrete Executive Order No. 14,399 is. That contradiction matters both to Article III and to the Government's claim of irreparable injury.[1]

SUMMARY OF ARGUMENT

The application rests on a premise that changes when the legal question changes. To defeat standing and ripeness, Applicants describe implementation of the Executive Order as uncertain, discretionary, and perhaps never forthcoming. To establish emergency irreparable harm, they say the injunction is presently preventing implementation steps that must occur soon if they are to affect the November 3 election. Both accounts cannot supply the governing facts. If implementation remains genuinely contingent, the Government has no concrete emergency injury. If implementation is sufficiently fixed and imminent to be

[1] No counsel for a party authored this brief in whole or in part. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus made such a contribution.

irreparably impaired now, the Plaintiff-Respondents' compliance costs and disruption are not speculative either.

The text and chronology favor the latter understanding. Section 2(a) says the Secretary of Homeland Security "shall" compile and transmit State Citizenship Lists. Section 3 directs a Postal Service rulemaking and says that any final rule "shall be issued" within 120 days—July 29, 2026. Section 4(c) required DHS infrastructure within 90 days. USPS has already proposed the architecture contemplated by the Order: standardized envelopes, unique barcodes, State submissions of voter information, and nonacceptance of outbound ballot mail that does not comply. Those are concrete governmental steps directed at the 2026 election, not an unformed policy idea.

The application also understates the statutory problem. Sections 401 and 404 of Title 39 grant broad powers to operate a nationwide postal system. They do not clearly authorize USPS to construct voter-specific participation lists, condition a State's access to ordinary ballot-mail service on transfer of voter data, or make the Postal Service an auxiliary election administrator. In an area where the Constitution assigns primary election administration to the States subject to congressional regulation, such a consequential transfer of authority requires a clear congressional instruction. General operational language is not enough.

Finally, the equities favor preserving the rules under which States, voters, and election vendors are already preparing. Denying a stay maintains the familiar postal and election system while ordinary appellate review proceeds. Granting a stay invites

a new nationwide ballot-mail regime on the eve of a federal election. Purcell's anti-disruption principle points in the same direction. The application should be denied. At minimum, any relief should preserve the injunction against Section 3's ballot-mail conditions and against treating omission from a federal list, or nonparticipation in the proposed postal program, as a basis for coercive enforcement.

ARGUMENT

I. APPLICANTS CANNOT TREAT IMPLEMENTATION AS SPECULATIVE FOR ARTICLE III AND CERTAIN FOR IRREPARABLE HARM.

A stay is an exercise of judicial discretion, not a matter of right. *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). The applicant must make a strong showing that it is likely to succeed on the merits and demonstrate that irreparable injury is likely absent a stay. *Id.* at 434-35. For relief extending through proceedings in this Court, the applicant must also demonstrate a reasonable probability that certiorari will be granted. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Those inquiries address different legal elements, but they cannot proceed from contradictory factual premises.

Applicants' merits theory is that the challenged directives are not concrete enough for adjudication. The application repeatedly characterizes agency action as unresolved: agencies are "still deliberating"; the Order leaves "substantial discretion"; and implementation may occur only "if at all." Appl. 2, 11–12. On that account, any future burden on the States depends on choices agencies have not yet made. Applicants invoke *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), and related cases to insist that the courts may not anticipate those choices.

But the asserted emergency injury depends on the opposite proposition. Applicants say the injunction is causing irreparable harm now because ordinary appellate review will come too late to implement the Order for the November election. Appl. 2, 26–29. That contention presupposes an identifiable implementation project, a present timetable, and concrete work that the injunction prevents. A merely abstract policy preference does not become irreparably injured because an agency might someday select a lawful means of pursuing it.

Nken makes the problem especially clear. Irreparable harm must be likely, not merely possible. 556 U.S. at 434–35. If the agencies remain free to decide whether to adopt material provisions, whether to issue a final postal rule, whether States must respond to citizenship lists, and whether any program can lawfully operate in 2026, then Applicants identify no nonconjectural injury from maintaining the injunction during expedited appellate review. They identify only lost time to pursue a plan whose content and legality supposedly remain unknown.

If, by contrast, implementation is developed enough that each passing day irreparably frustrates the federal project, then the States' injuries are equally concrete. State election officials must design envelopes, contract with printers, prepare voter files, train local officials, test systems, and explain procedures to voters before ballots are mailed. The First Circuit record reflects that this work is already underway. App. 11a–15a. A nationwide postal rule that conditions acceptance of ballot mail on new designs, barcodes, enrollment procedures, and data transmissions necessarily changes those tasks before Election Day.

This is not a rule that Article III standing and irreparable injury always rise or fall together. It is a narrower point: when the same predicted agency conduct supplies both the plaintiff's injury and the Government's emergency injury, a court should not accept diametrically opposed levels of factual certainty without explanation. The Government may contest causation, redressability, or the legality of particular implementation choices. What it may not do is make the underlying implementation simultaneously nonexistent and urgent.

The Court can therefore deny a stay without resolving every issue in the merits appeal. If implementation is truly unsettled, Applicants have not carried their burden on irreparable harm. If it is imminent and sufficiently specified to create emergency harm, the application's threshold premise—that this litigation concerns only hypothetical future conduct—loses its force. Either way, the extraordinary relief requested is unwarranted.

II. THE ORDER'S COMMANDS, THE PROPOSED RULE, AND THE IMMINENT FINAL-RULE DEADLINE MAKE THIS CASE CONCRETE.

The Executive Order's operative language is not merely aspirational. Section 2(a) provides that, to the extent feasible and lawful, DHS "shall take appropriate action to compile and transmit" a citizenship list to each State, drawn from enumerated federal databases. It directs transmission no fewer than 60 days before each regularly scheduled federal election. Section 4(c) likewise says DHS "shall" establish the necessary infrastructure within 90 days and that SSA "shall provide all necessary citizenship and identity data." Exec. Order No. 14,399 §§ 2(a), 4(c), 91 Fed. Reg.

17,125, 17,127 (Mar. 31, 2026). The lawfulness provisos limit the means available; they do not convert the commanded project into a suggestion.

Section 3 is even more specific. It directed USPS to initiate a rulemaking within 60 days and prescribed what the proposal must include "at minimum." Those required subjects included standardized ballot envelopes; unique Intelligent Mail barcodes; advance notice by States; State transmission of voter lists; enrollment on a USPS participation list; and a provision that USPS "shall not transmit" ballots from individuals outside that list. Id. § 3(b). Section 3(d) adds that any final rule pursuant to that section "shall be issued no later than 120 days" after the Order—July 29, 2026.

USPS complied with the first deadline. Its June 2 proposal did not merely announce that it would study ballot mail. It proposed a Federal Ballot Mail Program incorporating envelope reviews, designated markings, unique barcodes, voter-level information, and a rule that noncompliant outbound ballot mail would not be accepted. Ballot Mail for Federal Elections, 91 Fed. Reg. 32,915, 32,916–18 (June 2, 2026). The comment period closed July 2. Id. at 32,915. Section 3(d) sets July 29, 2026, as the deadline for any final rule issued pursuant to that section. Applicants emphasize that the phrase "any final rule" does not necessarily compel USPS to issue one. But that qualification does not erase the concrete steps already taken: the Order prescribed the proposal's minimum contents, USPS issued the contemplated proposal, the comment period closed, and the specified deadline is imminent.

That record distinguishes *Trump v. New York*, 592 U.S. 125 (2020), where no final policy had been selected and the challenged memorandum left open whether and how the Secretary would transmit information to the President. Id. at 131–33. It also distinguishes the brief order in *Trump v. American Federation of Government Employees*, 145 S. Ct. 2635, 2635 (2025), which stayed an injunction directed at an executive order while expressly declining to address agency plans that were "not before this Court." Here, by contrast, the States challenge specified list and postal mechanisms; USPS has proposed those mechanisms; and the calendar is doing the work Applicants say ordinary review cannot do.

The application's position also creates an unstable remedial cycle. Before a final rule, the Government says review is premature. After a final rule, it may say election preparations are too advanced for meaningful relief or that courts should not alter election rules near Election Day. Article III does not require States to wait until federal and state deadlines collide, especially when the Government seeks emergency relief precisely because implementation must occur now.

The Court need not decide that every clause of the Order is equally concrete. Section 2(a)'s transmission of a federal citizenship list may present a narrower injury if it imposes no obligation on a State to use the list. But Section 3 is different in kind. A postal rule refusing to accept outbound ballot mail unless a State satisfies federal prerequisites acts directly on the service the State must use. That practical compulsion is present even if the Order labels a State's advance notice or submission of information a "choice."

III. GENERAL POSTAL POWERS DO NOT CLEARLY AUTHORIZE A VOTER-SPECIFIC FEDERAL ELECTION REGIME.

The Order identifies 39 U.S.C. § 401 and "other applicable authority" as the basis for the postal rulemaking. Exec. Order No. 14,399 § 3(b). Section 401 grants USPS operational powers: to sue and be sued, acquire property, enter contracts, determine internal organization, and adopt regulations necessary to execute Title 39. Section 404 authorizes postal services, facilities, rates, and related operational decisions. Those provisions are broad enough to support mail design standards and tracking technology. They do not clearly assign USPS the separate role of creating voter-specific eligibility or participation infrastructure for federal elections.

That distinction matters. The proposed program does not stop at ordinary mailability standards. It would require States wishing to use USPS for federal ballots to provide voter-level information; would create State-specific participation lists; would associate listed individuals with unique ballot identifiers; and would direct USPS not to accept outbound ballots that fail the program's prerequisites. 91 Fed. Reg. at 32,916–18. Those features use postal operations to regulate who may receive the instrument of voting and on what conditions a State may send it.

This Court does not lightly read general statutory language to confer transformative regulatory authority. See *West Virginia v. EPA*, 597 U.S. 697, 721–24 (2022); *Biden v. Nebraska*, 600 U.S. 477, 502–07 (2023); *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014).

Whether or not the major-questions doctrine independently resolves this case, those decisions reinforce a more modest proposition: general operational provisions

should not be read to transfer authority over election administration to an agency that Congress charged with operating the mail.

Watson v. Republican National Committee, 609 U.S. ___ (2026), sharpens this point. *Watson* recognized that Congress possesses ultimate authority to make or alter regulations governing congressional elections, while explaining that, "[b]y default" . . . responsibility for the mechanics of those elections belongs to the States. *Id.* at ___ (slip op., at 1). The Court also emphasized that its decision was statutory and did not consider the scope of Congress's constitutional authority to regulate federal elections. *Id.* at ___ (slip op., at 5). Its method is nevertheless directly relevant: because the election-day statutes said nothing about ballot receipt, the Court refused to create a national rule, explaining that "we cannot add to the words Congress chose." *Id.* at ___ (slip op., at 22).

Here, too, Congress may enact a nationwide voter-data or ballot-mail regime. But 39 U.S.C. §§ 401 and 404 say nothing about voter eligibility, State voter files, or participation lists that condition the transmission of ballots. Those requirements cannot be supplied by a general postal delegation or a presidential directive. *See Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8–15 (2013). *Arizona* confirms that Congress may supersede state rules governing federal elections, but the asserted federal rule must derive from an enactment of Congress. General postal provisions that do not address voter eligibility, state voter files, or ballot-participation lists do not themselves supply that election-specific command.

Gonzales v. Oregon is instructive. There the Court rejected an Attorney General's effort to use a general registration statute to declare the medical legitimacy of a state-regulated practice. 546 U.S. 243, 267–75 (2006). An agency's authority over one instrumentality does not silently confer authority over the substantive regulatory domain in which that instrumentality is used. USPS may regulate envelopes, barcodes, processing, and delivery. It does not follow that it may condition ballot-mail service on a federal voter-information regime.

The Postal Reorganization Act's structure points the same way. USPS exercises powers granted by Congress through its Board of Governors and Postmaster General; a presidential order cannot enlarge those powers. Title 39 also contains specific procedures for postal changes with nationwide service effects. See, e.g., 39 U.S.C. § 3661. Whether those procedures independently apply can be resolved in the merits litigation. For present purposes, their existence confirms that §§ 401 and 404 are not blank checks for any policy that can be implemented through the mail.

Youngstown supplies the structural baseline. Presidential power must stem from an act of Congress or from the Constitution itself. 343 U.S. 579, 585 (1952). When Congress has assigned operational authority to an independent postal establishment but has not authorized voter-specific election regulation, the President cannot supply the missing delegation by command. *See id*. at 637–38 (Jackson, J., concurring). The Take Care Clause is a duty to execute law; it is not a source of power to create a new election code.

Applicants may ultimately show that portions of the proposed rule are ordinary postal standards severable from the voter-list and nonacceptance provisions. But that possibility supports narrower merits adjudication, not a wholesale stay. The provisions that convert mail operations into electoral conditions present the clearest statutory and constitutional difficulty and the greatest immediate risk to the States.

IV. THE EQUITIES FAVOR THE EXISTING ELECTION RULES, NOT A LATE FEDERAL EXPERIMENT.

The remaining stay factors merge when the Government is a party, but they still require a concrete comparison of harms. *Nken*, 556 U.S. at 435. Here the injunction preserves the postal and election practices in effect before March 31. Denying a stay does not alter ballot eligibility, cancel a postal service, or require any voter to take a new step. It leaves the parties free to litigate the appeal without changing election machinery midstream.

Granting a stay has the opposite practical effect. It would permit implementation of a program designed to affect the November 3 election after election administrators have begun procurement, programming, training, voter education, and mailing preparations. The proposed rule itself calls for State notice 90 days before an election and voter-list submissions 60 days before it. 91 Fed. Reg. at 32,917. Those dates demonstrate that the program cannot be turned on at the last moment without immediate state action.

Purcell v. Gonzalez cautions federal courts against changing election rules close to an election because such changes can create voter confusion and administrative difficulty. 549 U.S. 1, 4–5 (2006) (per curiam). That principle is not a one-way ratchet

favoring whichever sovereign requests emergency relief. The relevant status quo is the established system under which States prepare and USPS carries election mail—not a not-yet-final federal program announced during the election cycle.

Republican National Committee v. Democratic National Committee illustrates the concern. The Court acted to prevent a lower court from changing election procedures at the eleventh hour. 589 U.S. 423, 424–25 (2020) (per curiam). Here it is Applicants who seek permission to introduce new nationwide requirements after the election calendar is underway. The asserted federal interest in election integrity is weighty. So is the States' interest in orderly elections. The injunction does not diminish either interest; it prevents an untested postal program from displacing established safeguards before appellate review.

The familiar proposition that a government suffers injury when prevented from enforcing a valid law cannot carry Applicants' burden. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). The premise is validity. An executive order is not an Act of Congress, and the disputed postal conditions have not been shown to fall within Congress's delegation. Nor does that generalized interest establish irreparable injury when the Government simultaneously insists it may never adopt the measures enjoined.

The asymmetry of risk is decisive. If the stay is denied and Applicants prevail on appeal, lawful measures can be adopted for future elections after orderly rulemaking. If the stay is granted and the program proves unlawful, States and voters cannot reconstruct a completed election or undo confusion, rejected mailings, exposed voter

data, or altered deadlines. There is no do-over for an election administered under invalid rules.

V. AT MINIMUM, ANY RELIEF SHOULD BE NARROW AND PRESERVE THE INJUNCTION AGAINST COERCIVE ENFORCEMENT.

The application seeks a stay of the injunction as a whole, but its own arguments identify differences among the Order's provisions. If the Court concludes that merely compiling and transmitting a Section 2(a) citizenship list does not presently injure States because they remain free to disregard it, that conclusion does not justify allowing USPS to refuse ballot mail or allowing federal officials to convert nonparticipation into an enforcement trigger.

Any partial relief should therefore preserve the injunction as to Section 3(b)(iii), the proposed nontransmission or nonacceptance requirement, and as to voter-specific participation lists that condition access to ballot-mail service. Those are the provisions that operate directly on States' election machinery and that lack a clear statutory foundation. Preserving that relief would still permit USPS to study and propose conventional envelope, barcode, tracking, and design standards within its ordinary authority.

Any partial relief should also preserve the injunction to the extent it prevents federal officials from treating omission from a federal citizenship or participation list, standing alone, as an enforcement predicate. The Order identifies serious criminal statutes, including 18 U.S.C. §§ 2, 241, 371, 611, 1001, and 1015 and 52 U.S.C. §§ 10307 and 20511. But those statutes contain their own elements and mens rea

requirements. An executive order cannot add a list-based presumption or create an offense for declining to use a federal database.

That limiting principle respects both federal enforcement authority and state election administration. Federal officials remain free to investigate actual evidence of violations and to prosecute conduct that satisfies every statutory element. States remain responsible for eligibility determinations under governing law. What neither side may do is treat the incompleteness or nonuse of a newly created federal list as a substitute for law.

Narrow relief is particularly appropriate in the emergency posture. It avoids deciding abstract questions about every possible use of federal data, while preventing the specific forms of practical compulsion that threaten the ongoing election. But because Applicants have not shown a likelihood of success or irreparable harm sufficient to justify any stay, the better course is to deny the application in full.

VI. CONCLUSION

The application for a stay and request for an administrative stay should be denied. In the alternative, any relief should preserve the injunction against voter-specific ballot-mail conditions, nonacceptance of ballot mail, and coercive enforcement based solely on omission from—or nonparticipation in—a federal list.

Respectfully submitted,

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Dated: July 29, 2026

No. 26A124

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR STAY

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In the Supreme Court of the United States

No. 26A124

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR STAY

This Court should swiftly stay the district court's extraordinary and unwarranted injunction barring federal agencies from implementing an Executive Order before those agencies have even decided whether and how the Order can be implemented consistent with federal law, as the Order itself requires. Every day that the district court's injunction remains in place, it blocks the government's ability to finalize and implement the President's proposed policies to promote election integrity for the upcoming federal elections in November. And every day that it remains in place irreparably harms the government, as the start of mail-in and absentee voting in some States is now just one month away.

After the government filed its stay application, the United States Court of Appeals for the District of Columbia Circuit, in a per curiam opinion joined by Judges Millett, Wilkins, and Katsas, affirmed the denial of a preliminary injunction in a parallel challenge to Executive Order 14,399. *DSCC* v. *Trump*, No. 26-5193, 2026 WL 2168617 (July 28, 2026) (per curiam). The court explained the contingency that bars such challenges: The plaintiffs' "request for preliminary relief 'is premised on the threatened impact' of the Executive Order *after* it is implemented and *if* in violation

of federal law." *Id.* at *1 (quoting *Trump* v. *New York*, 592 U.S. 125, 131 (2020) (per curiam)). That is particularly problematic because the Executive Order "is not self-executing" and "directs the agencies to act only to 'the extent feasible and consistent with applicable law,'" which means that it "requires compliance with the very legal limitations about which Plaintiffs are concerned." *Ibid.*

The same analysis applies here. Like the *DSCC* plaintiffs, the respondent States rest their challenge on speculation about what impact the Executive Order would have if it were ultimately implemented in violation of federal law. The here-and-now injuries they assert stem from actions they have elected to take in preparation for agency actions that may or may not occur. As the D.C. Circuit explained, the Order by its very terms requires the relevant agencies to comply with all legal requirements in forming their plans, contrary to respondents' repeated suggestion that the contours of future agency action are irrelevant or preordained.

Respondents nonetheless assert that this dispute is justiciable, and that the Executive Order was unlawful. But their arguments mischaracterize the Order and misread the law. The Executive Order is an internal directive from the President to his subordinates, and it does not direct the States to do (or refrain from doing) anything. Instead, it identifies proposed policies and directs executive agencies to implement those policies *if* implementation would be appropriate and lawful. Because significant "'legal and practical constraints'" impede judicial review in those circumstances, Article III justiciability principles "prevent[] courts from 'entangling themselves in abstract disagreements over administrative policies' by delaying review 'until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *DSCC*, 2026 WL 2168617, at *3, *5 (quoting *Abbott Labs.* v. *Gardner*, 387 U.S. 136, 148-149 (1967), and *New York*, 592 U.S. at 133).

The federal government is considering taking modest and commonsense steps, consistent with federal law, to help States ensure that only U.S. citizens vote in federal elections and to facilitate the enforcement of federal law, including laws involving election fraud. Respondents suffer no imminent concrete injury from hypothetical future actions that federal agencies may or may not take, and so Article III bars jurisdiction. This Court should stay the injunction, and it should do so as soon as possible given preparations for the upcoming election.

A. The Government Is Likely To Succeed On The Merits Because This Suit Is Premature

In contending that this dispute is ripe for resolution, Respondents' opposition mischaracterizes the Executive Order and misreads the governing law. When correctly read, the Executive Order is not subject to this pre-enforcement challenge to an as-yet-unimplemented directive from the President to his subordinates to formulate and execute certain policies consistent with law. Nor does respondents' desire to forestall potential future litigation over the agencies' implementation of that directive move the needle. The government is likely to succeed in demonstrating that the district court lacked Article III jurisdiction to enter the preliminary injunction.

1. Respondents repeatedly suggest that the Executive Order "intrudes on [their] sovereign interests by interfering with their ability to administer elections pursuant to their own state laws regarding mail voting and voter eligibility." Opp. 25. The Order does no such thing. To start, the Order does not independently require the States to do anything; instead, it directs executive branch agencies to engage in policymaking that may, at some future date, affect respondents. Equally important, the Order respects States' role in administering elections and verifying voter eligibility and registration. It simply directs executive branch agencies to take a modest,

commonsense approach to election integrity by providing States and the federal government with tools to combat fraud in federal elections.

The President's instruction for DHS to provide State Citizenship Lists would simply give States a valuable tool that can help in vetting their own lists of registered voters if they wish to use it. Respondent New Jersey, for example, recently admitted that, due to a "software error," roughly 6600 aliens were registered to vote in the State, including at least 400 who had already voted. See Governor Mikie Sherrill @GovSherrillNJ, *X* (July 21, 2026, 4:22 p.m.), https://x.com/GovSherrillNJ/status/2079602942722662725?s=20. Yet New Jersey and the other respondents inexplicably object that it would be an affront to their sovereignty for DHS to provide them with a list of individuals who meet the criteria for voting in federal elections (a list they admit they are not required to use, see Opp. 21). They similarly object to the proposed terms for a Postal Service rule that would deliver every properly prepared ballot to the voters the States themselves identify, thus providing the States with an additional tool to ensure that their mail ballots are received and used only by State-authorized voters.

With respect to Section 2, while respondents describe the State Citizenship Lists contemplated by Section 2(a) as authoritative "lists of eligible voters" or "voter rolls," see Opp. 20, that cannot be squared with the Order, which specifies that "[a]n individual's identification on the State Citizenship List does not indicate that the individual has been properly registered to vote in the State." Order § 2(a), 91 Fed. Reg. at 17,125. And critically, respondents themselves concede that "Section 2(a) does not mandate that the States take any particular action to use the State Citizenship Lists," Opp. 21 (brackets and quotation marks omitted), and thus do not identify any cognizable injury from transmission of the Lists alone.

Respondents therefore focus on Section 2(b), which they erroneously suggest "threaten[s] prosecution of officials who do not use the DHS lists to verify citizenship"—precisely what they admit Section 2(a) does not require—when it is "[r]ead together" with Section 2(a). Opp. 10. But such a threat is completely absent from Section 2(b), which merely directs the Attorney General to "prioritize the investigation and, as appropriate, the prosecution of State and local officials or any others involved in the administration of Federal elections who issue Federal ballots to individuals not eligible to vote in a Federal election" under specified federal statutes, or who engage in or assist with "the printing, production, shipment, or distribution of ballots to individuals who are not eligible to vote in a Federal election." Order § 2(b), 91 Fed. Reg. at 17,126. What role, if any, a State's future decision to disregard its Citizenship List may play in a future investigation and prosecution is wholly unknown and unknowable at this time.

Respondents thus resort to fearmongering, hypothesizing that Section 2(b) constitutes an implicit threat of criminal prosecution for elections officials who do not "carry out their elections-administration responsibilities in the way that federal officials prefer." Opp. 22. But that speculation—which rests on assumptions about both how DHS will implement any State Citizenship Lists and how the Attorney General will enforce federal law—does not create a ripe dispute. The same is true of respondents' contrived controversy regarding 17-year-olds validly voting in primary elections. Opp. 29-30. The Order does not expressly address primary elections at all, much less direct the Attorney General to prosecute election officials for allowing 17-year-olds who will be 18 before the general election to vote in primary elections in States allowing that practice. To the contrary, such prosecutions would not be "appropriate," Order § 2(b), 91 Fed. Reg. at 17,126, and thus would be *inconsistent* with Section 2(b).

Respondents also mischaracterize Section 3 of the Order. They assert, for example, that Section 3 "requires States to seek permission from USPS to maintain their mail and absentee voting laws" and to "furnish USPS with a list of voters" to whom they wish to send mail-in or absentee ballots, and that it compels the Postal Service to "require each ballot envelope to" meet certain "design requirements" and to use the state-provided information "to create lists of individuals 'enrolled' with USPS for mail voting." Opp. 11 (quotation marks omitted). But Section 3 does none of those things. As the government explained in its application, Section 3 merely directs the Postal Service "to initiate a *proposed* rulemaking" regarding certain standards for transmission of election mail. Order § 3(b), 91 Fed. Reg. at 17,126 (emphasis added); see Appl. 14-15, 20. It neither dictates the contents of any final rule nor even requires that one issue at all. See Order § 3(b) and (d), 91 Fed. Reg. at 17,126. Indeed, when respondents quote the government's application on this point, suggesting that Section 3 "'directs . . . USPS [to] include certain terms,'" Opp. 21 (quoting Appl. 14) (brackets and ellipsis in original), they notably omit the critical point: though the Order directs USPS to include certain terms in the *proposed* rule, it contains no such directive with respect to any *final* rule. See Appl. 14-15.

Moreover, even if the Postal Service *were* required to adopt the precise terms of the proposal laid out in Section 3—which it is not—many of respondents' descriptions still miss the mark. They suggest that under Section 3's "new ballot-verification program," Opp. 18, States must "seek permission from USPS to maintain their mail and absentee voting laws," Opp. 10, and the Postal Service is empowered to "intercept ballots," Opp. 18. But the Order does not contemplate a "ballot-verification program," a permission process, or interception of ballots. The only "verification" that could possibly occur is matching data provided by the States through the portal against

data provided by the States on ballot envelopes, see Order § 3(b), 91 Fed. Reg. at 17,126—far from the comprehensive verification of voter eligibility that respondents posit. Nor would States be required to seek "permission" from the Postal Service to allow voting by mail; to the contrary, the Order contemplates only "notification" that a State plans to transmit ballots via U.S. Mail. See *id.* § 3(b)(ii), 91 Fed. Reg. at 17,126. And the Order would not "facilitate USPS' ability to intercept ballots." Opp. 11. Rather, the text of the Order contemplates only the use of the Postal Service's authority to place commonsense restrictions on the labeling of sensitive types of mail as a condition of mailing those items.

Further, the facts on the ground belie respondents' suggestion that there is no need to wait for a final rule because the Postal Service is blindly carrying out every provision in Section 3. See Opp. 21 (suggesting that "the steps that the federal government is taking to finalize the EO * * * do not differ from the EO's text in any material way"). While respondents note that "'[a]ny final rule' adopted pursuant to Section 3 'shall be issued no later than 120 days from the date of'" the Order, Opp. 12, they fail to mention that the 120-day mark passed last Wednesday, on July 29, 2026, without issuance of any rule, much less a carbon copy of the Order's proposed rule. As they themselves elsewhere acknowledge, "federal rulemakings often are" "delayed," Opp. 3, as agencies work through how to lawfully craft proposed policies in light of the comments received. That illustrates the impropriety of prejudging a final rule before it has issued.

2. A proper understanding of the Order's operation demonstrates that this challenge simply is not ripe. As explained above, the Order does not mandate that DHS or the Postal Service take any particular action. Instead, the manner in which they may implement the Order is, as the district court itself conceded, subject to

"many uncertainties." Appl. App. 74a; see *DSCC*, 2026 WL 2168617, at *5. That is doubly true because the Order specifically and repeatedly directs that any action taken must be appropriate and consistent with all applicable law. In those circumstances, this Court has been clear that Article III renders the suit nonjusticiable. See *New York*, 592 U.S. at 131.

Respondents nonetheless attempt to distinguish *New York* on the theory that, there, only partial implementation appeared feasible at the time the case was decided, while here, full implementation is still possible. Opp. 33. But that purported distinction makes no sense, because the Order leaves to the agencies' discretion in the first instance what the actual policies will be, if any. As explained, the Executive Order tasks DHS and the Postal Service with exercising their policymaking judgment as to the best ways to implement the Order's instructions consistent with both "legal and practical constraints." *New York*, 592 U.S. at 133. Until the agencies exercise that judgment "in a concrete manner that will predictably" cause respondents some injury, their challenge is not ripe. *Id.* at 132. Accordingly, just as in *New York*, Article III requires that the courts "[l]et[] the Executive Branch's decisionmaking process run its course." *Id.* at 134.

Respondents would also set aside *New York* because it "did not involve the extraordinary pressures and legal responsibilities that States face in preparing for rapidly approaching elections," noting that the *New York* challengers would only have suffered concrete harm if "executive officials took future actions not specified in the memorandum." Opp. 33-34. But the same is true here. As in *New York*, "the plaintiffs suffer no concrete harm from the challenged policy itself, which does not require them to do anything or to refrain from doing anything." 592 U.S. at 134 (quotation marks omitted). Respondents cannot seriously contend that the federal government

has imposed *any* obligation on them "unless and until" DHS or USPS take further action. Opp. 34.

Contrary to respondents' view, Opp. 34-35, the D.C. Circuit's decisions in *DSCC*, *supra*, and *NAACP* v. *USPS*, No. 26-5257, 2026 WL 2168004 (D.C. Cir. July 17, 2026) (per curiam), demonstrate why this dispute, like those parallel challenges to the Executive Order and the USPS proposed rule, are not justiciable. The *DSCC* panel applied *New York* in holding that the plaintiffs' challenge to the Executive Order was not justiciable, emphasizing that "legal and practical constraints" like those in *New York* would impede judicial review and that the Order directs action that is consistent with applicable law. 2026 WL 2168617, at *5. It explained that critical "uncertainty" regarding "which databases DHS might tap to compile State Citizenship Lists or whether DHS would even do so at all" hindered judicial review of Section 2, while "[t]he completed rulemaking process—not the 'proposed provisions' for a notice of proposed rulemaking—will determine" what the Postal Service may require before carrying mail ballots. *Ibid.* (brackets omitted); see also *NAACP*, 2026 WL 2168004, at *1 (the "proposed rule is likely neither constitutionally nor prudentially ripe for review"). It is immaterial to that legal analysis in this case that the plaintiffs are States, rather than political or non-profit organizations.

Next, respondents dismiss this Court's decision in *Trump* v. *American Federation of Government Employees*, 145 S. Ct. 2635 (2025) (*AFGE*), suggesting that it is irrelevant because the Court held that the "government was 'likely to succeed on its argument that the [challenged] Executive Order [was] lawful.'" Opp. 35 (quoting *AFGE*, 145 S. Ct. at 2635) (brackets in original). But that only underscores the problem with respondents' suit—they challenge an Executive Order that merely directs the President's subordinates to take lawful action. Just as in *AFGE*, the Executive

Order *is* necessarily lawful because it operates only as an intra-Executive Branch directive to adopt lawful policies. A challenge aimed at the agencies' actions *implementing* that directive is not properly presented and is not ripe for resolution. See *AFGE*, 145 S. Ct. at 2635 (Sotomayor, J., concurring in grant of application for stay) (implementing actions "[we]re not before this Court, at this stage, and we thus have no occasion to consider whether they can and will be carried out consistent with the constraints of law").

Indeed, *AFGE* is particularly relevant given the position that respondents have taken in their brief. To circumvent the wall of precedent holding that it is improper to challenge a "proposed rule," they claim that they "do not challenge" USPS's future action, but "instead" only "challenge the EO as exceeding the President's authority under the Constitution." Opp. 34 n.7. As *AFGE* demonstrates, however, the President cannot exceed his authority merely by directing executive agencies to take actions consistent with law, regardless of challengers' speculative predictions that the implementation will inevitably be unlawful. Moreover, respondents' proposed distinction is incoherent even on its own terms: if a challenge to a proposed rule that USPS had unilaterally promulgated would be unripe due to the fatal uncertainty about the contents of any final rule, that uncertainty is no less present and no less fatal where USPS proposed the rule at the President's behest.

The same flaws undermine respondents' analogy to a hypothetical Executive Order by President Truman directing the Secretary of Commerce to undertake a rulemaking to seize the Nation's steel mills during the Korean war. They suggest that this Court surely would have invalidated such an Executive Order, even before the rulemaking was complete, because it "would have sown tremendous uncertainty for the Nation's steel industry, disrupting investment decisions and making it impossible

to plan for the future." Opp. 23-24. But most major rulemakings have similar effects on regulated parties, and yet it is black-letter law that proposed rules cannot be challenged until finalized, no matter how facially invalid regulated parties claim the final rule will inevitably be. See *In re Murray Energy Corp.*, 788 F.3d 330, 335 (D.C. Cir. 2015) (Kavanaugh, J.) ("courts have never reviewed *proposed* rules"); see also *Long Island Care at Home, Ltd.* v. *Coke*, 551 U.S. 158, 175 (2007) (a "proposed rule [i]s simply a proposal"). Indeed, respondents' own hypothetical proves the wisdom of that rule, given that the Secretary of Commerce may well not have adopted any rule at all, if that Executive Order likewise required compliance with applicable law and the Secretary interpreted the Constitution the same way this Court did in *Youngstown*. In addition, whether this Court could have reviewed that hypothetical proposed rule under Article III surely would not have turned on whether it was issued at the President's direction or unilaterally by the Secretary, as respondents contend.

3. Respondents are thus wrong to contend that the government refuses to defend the Executive Order's legality. See Opp. 2, 20, 35-36. To the contrary, the government has explained that although the government cannot provide a hypothetical legal defense for the *agencies*' still-undecided policies, it is "definitionally lawful for the President to direct his subordinates to pursue his policy priorities in a manner that is 'consistent with applicable law.'" Appl. 19. Broadly speaking, the Executive Order contemplates two possibilities. The first is that the agencies implement the Order's directives in a manner that is lawful; in that case, no injunction would be warranted, because the agencies' implementation is lawful. The second is that the agencies determine that the Order's policy objectives cannot be implemented "consistent with applicable law," in which case the Order itself directs the agencies *not* to implement its policies. There again, no injunction would be warranted, because the

agencies have taken no action at all.

Respondents' theory assumes a third path—one unsanctioned by the Order—in which implementing the Order is unlawful, but the agencies do it anyway. They thus seek to invalidate a Presidential directive based on speculation that the agencies to whom it was directed will not follow its express terms. That approach erroneously ignores the Order's repeated admonitions that the relevant agencies are to implement its directives only to the extent such implementation is "consistent with applicable law." Order § 7(b), 91 Fed. Reg. at 17,127; see *id.* §§ 2(a), 3(b), 91 Fed. Reg. at 17,125-17,126; Appl. 16.

Respondents' invocation of cases in which this Court reviewed Executive Orders that contained savings clauses is unavailing. In *Trump* v. *Barbara*, 146 S. Ct. 2438 (2026), the order itself instructed agencies about the President's interpretation of the Fourteenth Amendment and a related statute and directed agencies to implement that interpretation. See Exec. Order No. 14,160, §§ 1, 3, 90 Fed. Reg. 8449, 8449-8450 (Jan. 29, 2025). That the order also directed agencies to comply with applicable law in implementing that interpretation did not allow agencies to second-guess the interpretation and refuse to implement the order at all. *Learning Resources, Inc.* v. *Trump*, 607 U.S. 229 (2026), is even further afield—it was not a pre-enforcement challenge, but arose *after* tariffs had been imposed. The savings clause obviously could not defeat ripeness in challenging actions that had already occurred.

Even setting aside that the Order itself mandates only lawful implementation, respondents are wrong that the Order on its face necessarily directs unlawful conduct. The Order contemplates modest, commonsense actions by executive agencies aimed at securing federal elections within those agencies' spheres of authority; and it is thus both possible and quite likely that those agencies will be able to identify

ways to implement the Order that are consistent with applicable legal requirements.

For example, the dissemination of State Citizenship Lists under Section 2(a) is authorized by a federal statute addressing the sharing of citizenship information between the federal government and the States, see 8 U.S.C. 1373, and the Privacy Act's restrictions on information sharing are subject to various limitations and exceptions, see, *e.g.*, 5 U.S.C. 552a(b); 8 U.S.C. 1373 ("[n]otwithstanding any other provision of Federal, State, or local law"). In addition, while a State's refusal to consider the List would not itself be a federal crime, it could conceivably, depending on the circumstances, be relevant evidence of an intent to violate, or to facilitate the violation of, the federal laws prohibiting non-citizen voting that the Attorney General is directed to prioritize for enforcement under Section 2(b).

As for Section 3, the Postal Service's general rulemaking powers plainly give it at least some authority to impose reasonable requirements for envelope addressing and labeling and require mailers to provide additional information regarding particularly sensitive items. See 39 U.S.C. 401-404. Respondents cannot seriously contend that the Postal Service is disabled from adopting any election-specific rules, since they themselves have long benefited from the use of Official Election Mail designations and the prioritization of such mail. See *NAACP* v. *USPS*, 2026 WL 1893762, at *1 (D.D.C. July 1, 2026); U.S. Postal Service, Kit 600: 2026-2027 Official Election Mail 4, https://about.usps.com/kits/kit600.pdf. Nor can they seriously contend that the Postal Service must turn a blind eye to the use of the mails to facilitate fraud. Consider a scenario in which retirement communities are targeted for elder-abuse mail scams: there is no evident reason why the Postal Service could not impose special design and registration rules for envelopes used to send solicitations to such locations. All that said, of course, whether whatever policies that the agencies ultimately adopt

comply with legal requirements can only be adjudicated once the agencies have determined what their policies will actually be.

4. Finally, respondents suggest that this dispute must be ripe for resolution because review of any final rules or agency actions would occur too close to Election Day and because they would take various costly actions to prepare for the Order's ultimate implementation absent the injunction. See Opp. 24-32. But Article III's fundamental constraints do not disappear because an indeterminate future dispute may occur close to an election.

Courts have never regarded parties' assertions that they have spent time and energy taking anticipatory steps to comply with possible future regulation as rendering otherwise-nonjusticiable controversies ripe. If those preparatory steps could support standing, then plaintiffs could challenge virtually any proposed rule (or even proposed legislation) they expected might cause them harm. That has never been the law. See *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 402, 410 (2013); *FDA* v. *Alliance for Hippocratic Med.*, 602 U.S. 367, 394 (2024). Accordingly, respondents' assertions that without an injunction, they "would need to warn voters about the" yet-unimplemented "USPS verification program," Opp. 28, or "act 'now' to ensure compliance" with unpromulgated rules, Opp. 30, do not render their challenge justiciable.

Further, respondents err in invoking the *Purcell* principle. See Opp. 38. That principle dictates that when changes are no longer "feasible before [an] election without significant cost, confusion, or hardship," *federal courts* should be reticent to interfere with the election process. *Merrill* v. *Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of stays); see *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam). Because the political branches "enjoy far greater resources for research and factfinding," can "bring to bear the collective wisdom of the whole people," and

are "accountable by the people for the rules they write or fail to write," *DNC* v. *Wisconsin State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay), they are much better suited to the "host of difficult decisions" inherent in choosing "how best to structure and conduct [an] election," *id.* at 31 (Kavanaugh, J., concurring in denial of application to vacate stay); see also *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays) (contrasting impermissible late-breaking action by a federal court with permissible actions by state legislature); *Allen* v. *Caster*, 146 S. Ct. 1196, 1196 (2026) (vacating district court judgment over objection that the State had violated the *Purcell* principle). Accordingly, action by the Executive Branch does not implicate *Purcell*.

B. The Equities Support Granting A Stay

The district court's injunction irreparably harms the federal government by precluding the President from directing his subordinates and by barring implementation of a federal policy aimed at securing election integrity. The government plainly has a strong interest in ensuring that ineligible voters do not vote in federal elections and that the U.S. Mail—a federal instrumentality—is not used to facilitate fraud of any kind, particularly election fraud.

Respondents suggest that the harm to the government is minimal, because "[t]he injunction prevents implementation of the EO only as to the fall elections and only in the plaintiff States." Opp. 40. But that is precisely the harm that the government invokes—an impaired ability to secure voting by mail or to investigate fraud in any State risks significant harms to election integrity, and "'there can be no do over' once the [November 2026] election occurs." *NAACP*, 2026 WL 2168004, at *1. Any additional harm resulting from practical difficulties in implementing a two-tiered system—an issue that USPS is considering as part of its ongoing rulemaking pro-

cess—only exacerbates the problem.

To the extent that respondents assert real practical concerns about their ability to implement a potential Postal Service rule, if one issues and is effective for the November 2026 election, see Opp. 42-44, those questions must be adjudicated in the context of a justiciable dispute. Indeed, the way for courts to deal with this issue, if it arises in a justiciable controversy at all, is by determining in an appropriate suit whether the Postal Service's final rule adequately responded to the States' concerns in selecting an effective date—which, to repeat, USPS has not yet finally done. At bottom, respondents have not suffered concrete injuries from the Executive Order itself, and they can only speculate that the practical concerns they identify will come to pass if USPS or DHS implements the Order in the manner they anticipate. Such speculative harms are not entitled to weight in balancing the equities.

Finally, respondents ask that if this Court stays the district court's injunction, it should opine that "neither *Purcell* nor any other restriction on judicial review," such as an administrative-exhaustion requirement, "would preclude injunctive relief against" future agency action. Opp. 38. This Court should not grant that request for an improper advisory opinion. Just as Article III barred the district court from prejudging the legality of any future implementation on the merits, this Court should not prejudge certain non-merits issues that may be raised in future litigation.

* * * * *

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

AUGUST 2026

In the Supreme Court of the United States

No. 26A124

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR STAY

Applicants submit this supplemental brief to inform the Court of a recent order in a parallel case that is relevant to the application pending here.

Yesterday, the same district court that entered the permanent injunction in this case entered an overlapping preliminary injunction in a different case. See *League of Women Voters of Mass.* v. *Trump*, No. 1:26-cv-11549, Doc. 183 (D. Mass. Aug. 11, 2026) (App., *infra*). Like the permanent injunction in this case, the new preliminary injunction bars the federal government from implementing Section 3 of Executive Order No. 14399 with respect to the upcoming November elections, including by promulgating the proposed regulations outlined in Section 3 for those elections. Compare App., *infra*, 26-27, with Appl. App. 62a-63a. Moreover, unlike the permanent injunction in this case—which is limited to the Respondent States, *ibid.*—the new preliminary injunction extends nationwide on behalf of the membership associations who are plaintiffs in that case. App., *infra*, 27; see *id.* at 7, 22-24.

The district court's new order confirms the urgent need for this Court to grant the stay of the permanent injunction and to explain its rationale for doing so. The district court's new order violates well-established Article III standing and ripeness

requirements for all the same reasons as its prior order: Courts cannot enjoin implementation of an Executive Order that merely instructs agencies to pursue a proposed policy in a manner that is consistent with law, while leaving open material issues for them to resolve, unless and until those agencies actually take concrete actions that injure the plaintiffs. See App. 11-26; Reply 3-15. Indeed, the court rejected the government's standing and ripeness objections on the same grounds that it adopted in the earlier order that is under review here, without suggesting any way in which the new order could be compliant with Article III if the earlier order was not. Compare App., *infra*, 17-20, *with* Appl. App. 40a-44a.

Accordingly, a stay of the permanent injunction in this case *should* cause the district court or the First Circuit to stay the new preliminary injunction too. See *Trump* v. *Boyle*, 145 S. Ct. 2653, 2654 (2025) ("Although our interim orders are not conclusive as to the merits, they inform how a court should exercise its equitable discretion in like cases."). That said, to avoid any risk of yet another instance where multiple emergency applications are needed due to contrived doubts about the scope of this Court's stay orders, see, *e.g.*, *Dep't of Homeland Security* v. *D.V.D.*, 145 S. Ct. 2627, 2629-2630 (2025); *National Institutes of Health* v. *American Public Health Ass'n*, 145 S. Ct. 2658, 2663-2665 (2025) (Gorsuch, J., concurring in part and dissenting in part), it would be prudent for this Court to make clear that the Article III problem warranting a stay is based on the uncertainty concerning the government's future actions, not anything specific to the individual plaintiffs—in fact, the government's briefing in this Court did not even make any such plaintiff-specific arguments. See App. 11-26; Reply 3-15.

In all events, it is critical that the Court act promptly on the pending stay. Otherwise, the district court's erroneous orders will effectively run out the clock on

the government's ability to implement Section 3 of the Executive Order for the federal elections in November, thereby causing irreparable harm to the federal government, the public, and election integrity. See App. 26-29; Reply 15-16.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

AUGUST 2026

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LEAGUE OF WOMEN VOTERS OF OF MASSACHUSETTS, et al.,	*	
Plaintiffs,	*	
v.	*	
DONALD J. TRUMP, in his official capacity as President of the United States, et al.,	*	Civil Action No. 1:26-cv-11549-IT
Defendants,	*	
and	*	
STATE OF MISSOURI, et al.,	*	
Intervenor-Defendants.	*	

MEMORANDUM & ORDER

August 11, 2026

TALWANI, D.J.

On March 31, 2026, President Trump issued Executive Order 14399: "Ensuring Citizenship Verification and Integrity in Federal Elections" (the "EO"), ordering, inter alia, the United States Postal Service ("USPS") to refuse to transmit mail-ballots either not compliant with new design and technology requirements and/or to individuals whose names do not appear on lists provided to the USPS. 91 Fed. Reg. 17125 (Mar. 31, 2026). Much litigation has ensued in response to this unprecedented directive. Throughout the multiple actions before district courts, courts of appeal, and the Supreme Court of the United States, the federal government has declined to defend the constitutionality of the EO's directives. Instead, the federal government has asked this court and others to postpone judicial review on standing and ripeness grounds,

arguing that no party may challenge the EO's constitutionality until the USPS promulgates a Final Rule.

As discussed in its prior decisions and expanded upon below, the court finds it prudent to review the EO now, where less than 90 days pend before the midterms and the millions of citizens who rely on mail voting require clarity as to how or whether they will vote in November. As to those elections occurring before or on November 3, 2026, the court preserves the current electoral status quo, GRANTS the Plaintiffs' Renewed Motion for a Preliminary Injunction [Doc. No. 170], and ENJOINS the USPS's implementation of Section 3 of the EO.

I. Background

A. Legal Background

1. The Post Office

After the American Revolution, both the Articles of Confederation and the Constitution explicitly empowered the federal government to provide and regulate postal services. ARTICLES OF CONFEDERATION of 1781, art. IX, para. 4; U.S. CONST., art. I, § 8. Since its establishment, the national postal service has been reorganized or restructured several times. See U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns, 453 U.S. 114, 120–126 (1981).

The Postal Reorganization Act of 1970 ("PRA"), 39 U.S.C. § 101 et seq., was directed in part toward reducing political influences on its operations. Postal Serv., 453 U.S. at 122–26. The PRA removed the postal service from the Cabinet to make it "an independent establishment of the executive branch of the Government of the United States[.]" 39 U.S.C. § 201. An eleven-member Board of Governors superintends the USPS. Id. § 202. With the advice and consent of the Senate, the President appoints nine governors and may only remove the governors for cause. Id. The nine then appoint the Postmaster General, who also serves as the chief executive officer

of the USPS. Id. §§ 202–03. The nine Governors and the Postmaster General appoint the Deputy Postmaster General. Id. § 202.

The PRA also established the Postal Rate Commission, now called the Postal Regulatory Commission ("PRC"). Id. § 3601 (repealed 2006). The USPS must submit any "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis" to the PRC for an advisory opinion. Id. U.S.C. § 3661. Upon receiving a proposal from the USPS, the PRC has 90 days to issue its advisory opinion. Id. § 3662. The PRC may, at its discretion, evaluate any "alternatives or related issues of significant importance" that may have been raised during the course of its proceedings. 39 C.F.R. § 3020.102.

The USPS has issued several non-binding pieces of subregulatory guidance regarding election mail. In that guidance, the USPS has recommended but not required both the use of the official "election mail logo" and the use of various forms of tracking technology (including Serialized Intelligent Mail barcodes and specific three-digit Service Type Identifiers) on all election mail. See USPS, Publication 631: Official Election Mail — Graphic Guidelines and Logos (Feb. 2026), https://about.usps.com/publications/pub631.pdf; see USPS, New IMb Political Mail Service Type IDs For Letters & Flats Effective July 7, 2020 (Apr. 17, 2020), https://postalpro.usps.com/IMb_PoliticalMail_SvcTypeIDs_July2020. Additionally, the USPS recommends that election officials consult with certain postal employees to ensure that election envelopes are compatible with automated sorting equipment. See USPS, 2026–2027 Official Election Mail Guide (Kit 600) (Feb. 2026), https://about.usps.com/kits/kit600.pdf.

In enacting the PRA, Congress delegated many express powers to the USPS, including eminent domain, promulgating postal regulations, entering international postal agreements subject to the supervision of the Secretary of State, contracting, acquiring property, and settling

claims. 39 U.S.C. §§ 401, 407. The PRA does not delegate to the USPS any specific authority regarding treatment of election mail. And under the PRA, the USPS retains the obligation to provide universal service to all parts of the country. Id. §§ 101, 403.

2. Legal Background on Elections

The Constitution entrusts power over federal elections to "[S]tate legislatures 'primarily' and [to] Congress 'ultimately.'" Watson v. Republican Nat'l Comm., 609 U.S. __, 146 S.Ct. 2165, 2170 (June 29, 2026) (citing The Federalist No. 59, at 362 (Alexander Hamilton) (Clinton Rossiter ed., 1961)); see U.S. CONST. art. I, § 4, cl. 1. Under the Elections Clause, the States hold the "responsibility" of administering "the mechanics of congressional elections," Foster v. Love, 522 U.S. 67, 69 (1997), and Congress has "the power to override" States' regulations by establishing unform rules for federal elections. U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 832–33 (1995).

A "consistent line of decisions" by the Supreme Court in cases involving attempts to deny or restrict the right of suffrage has made "indelibly clear" that "the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections." Reynolds v. Sims, 377 U.S. 533, 554 (1964) (citations omitted). Indeed, "[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." Id. at 555.

Pursuant to its Elections Clause power, Congress has enacted several laws to support voting by mail and increase citizen participation in voting. In 1986, Congress enacted comprehensive voting-access requirements for U.S. citizen servicemembers and other U.S. citizens living abroad in the Uniformed and Overseas Citizens Absentee Voting Act

("UOCAVA"), which requires States to allow such citizens to register and vote absentee in federal elections. 52 U.S.C. § 20302(a)(1).

In 1993, Congress passed the National Voter Registration Act ("NVRA"), "the first significant federal regulation of voter registration enacted under the Elections Clause since Reconstruction." Arizona v. Inter Tribal Council of Ariz., Inc., 570 U.S. 1, 40 (2013) (Alito, J., dissenting). In passing the NVRA, Congress sought to "increase the number of eligible citizens who register to vote" and to help government officials "enhance[] the participation of eligible citizens as voters in [federal] elections." 52 U.S.C. § 20501(b)(1)–(2).

Through the NVRA, Congress requires States to allow citizens to register by mail or when applying for a driver's license, id. § 20503(a), and to attest to their citizenship through the use of a federal registration form, id. §§ 20505(a)(1), 20508(b)(2). Under the NVRA, States retain control over compiling rolls of citizens eligible to vote and maintaining those voter rolls. Id. § 20507(a)(4). To avoid potentially erroneous disenfranchisement, the NVRA also prohibits States from systematically removing ineligible individuals from voter rolls fewer than 90 days before a federal election. Id. § 20507(c)(2)(A).

In 2002, Congress enacted the Help America Vote Act ("HAVA") to ensure that States upgraded their voting infrastructure. See Pub. L. No. 107-252, 116 Stat. 1666. HAVA requires States to maintain accurate, centralized databases of registered voters. 52 U.S.C. § 21083(a). While HAVA requires States to use specific procedures to verify citizens' identities, id. § 21083(a)(5), Congress left the details regarding implementation of HAVA's requirements "to the discretion of the State," id. § 21085.

States have permitted absentee ballots and voting by mail since the Civil War. See Watson, 146 S.Ct. at 2175. The current State law landscape reflects significant variety. Eight

States and the District of Columbia allow all elections to be conducted entirely by mail. See Cal. Elec. Code § 3000.5; Colo. Rev. Stat. § 1-5-401; D.C. Code § 1–1001.05; Haw. Rev. Stat. § 11-101; Nev. Rev. Stat. § 293.269911; Or. Rev. Stat. § 254.465; Utah Code § 20A-3a-202; Vt. Stat. tit. 17, § 2537a; Wash. Rev. Code § 29A.40.010.

Two States permit counties to opt into conducting elections by mail and allow all eligible citizens to vote by mail. See Neb. Rev. Stat. §§ 32-908, 32-952-63; N.D. Cent. Code §§ 16.1-11.1-01, 16.1-07-01.

Twenty-seven States allow any citizen to request a mail ballot without asserting a need or "excuse" to vote by mail, often referred to as no-excuse absentee voting. See Alaska Stat. § 15.20.010; Ariz. Rev. Stat. § 16-541; Conn. Gen. Stat. § 9-135; Fla. Stat. § 101.62; Ga. Code § 21-2-380; Idaho Code § 34-1001; 10 Ill. Comp. Stat. § 5/19-1; Iowa Code § 53.1; Kan. Stat. § 25-1119(a); Me. Rev. Stat. tit. 21-A § 751; Md. Elec. Law § 9-304; Mass. Gen. Laws. ch. 54 § 25B; Mich. Comp. Laws § 168.759; Minn. Stat. § 203B.02; Mont. Code § 13-13-201; N.J. Rev. Stat. § 19:63-3; N.M. Stat. § 1-6-3; N.Y. Elec. Law § 8-700; N.C. Gen. Stat. § 163-226; Ohio Rev. Code § 3509.02; Okla. Stat. tit. 26, § 14-105; Or. Rev. Stat. § 254.465; 25 Pa. Stat. § 3150.11; R.I. Gen. Laws § 17-20-2; S.D. Codified Laws § 12-19-1; Va. Code § 24.2-700; Wis. Stat. § 6.86 (1)(ac); Wyo. Stat. § 22-9-102.

Thirteen States require that citizens provide a reason as to why they need to vote by mail, with different States deeming different "excuses" justifiable. See Ala. Code § 17-11-3; Ark. Code § 7-5-402; Del. Code tit. 15, § 5502; Ind. Code § 3-11-10-24; Ky. Rev. Stat. § 117.085(1)(a), § 117.077; La. Stat. § 18:1303; Miss. Code § 23-15-715; Mo. Rev. Stat. § 115.277; N.H. Rev. Stat. § 657:1; S.C. Code § 7-15-320; Tenn. Code § 2-6-201; Tex. Elec.

Code § 82.001 et seq.; W. Va. Code, § 3-3-1. In all States, absence, illness, and disability are permitted "excuses" for which a citizen may request a mail ballot.

The fifty States and the District of Columbia have different rules as to when citizens need to request mail ballots. For example, Florida citizens must apply for absentee status by October 22, 2026, for the midterms, Fla. Stat. § 101.62(3)(c), while Connecticut citizens may request their mail ballots the day before Election Day, or November 3, for this year's midterm election. Conn. Gen. Stat. § 9-140.

B. The Undisputed Factual Record

Millions of U.S. citizens rely on mail voting each election. Stewart Supp. Decl. ¶ 22 [Doc. No. 172-1]. The Plaintiff Organizations[1] are all long-operating, nonpartisan, and nonprofit groups dedicated to voter education and increasing voter participation. All Organizations educate their members on and assist their members with absentee and mail-in voting. Compl. ¶¶ 22, 27–28, 30, 32, 34, 38 [Doc. No. 1].

For example, Plaintiff LWV runs an educational website, VOTE411.org, which provides voting resources, including substantial information on each State's specific absentee voting rules. Stewart Supp. Decl. ¶ 8 [Doc. No. 172-1].

"As a nonpartisan organization with a focus on Black and disenfranchised individuals and communities, [Plaintiff] Delta Sigma Theta's aim is to ensure that all voters have a full, meaningful, and non-burdensome access . . . to the ballot box." Washington Supp. Decl. ¶ 18 [Doc. No. 172-5]. In pursuit of that goal, Plaintiff Delta Sigma Theta has "organiz[ed] and

[1] Plaintiff Organizations are the League of Women Voters of Massachusetts ("LWVM"), League of Women Voters Lotte E. Scharfman Memorial Education Fund, League of Women Voters of the United States ("LWV"), League of Women Voters Education Fund, Association of Americans Resident Overseas, U.S. Vote Foundation, OCA-Asian Pacific American Advocates ("OCA"), and Delta Sigma Theta Sorority, Inc. ("Delta Sigma Theta").

facilitat[ed] voter registration drives; host[ed] voter education forums on local issues; develop[ed] and distribut[ed] 'Know Before You Go' voting literature that helps promote early voting dates, how to find [a citizen's] polling location and how to request an absentee or mail-ballot . . . ." Id. ¶ 21.

Plaintiff OCA serves the Asian American, Native Hawaiians, and Pacific Islanders community, which has a high limited English proficiency ("LEP") rate, and many States do not provide voting resources/instructions in OCA members' native languages. Nguyen Supp. Decl. ¶ 16 [Doc. No. 172-6]. OCA translates election materials for its members. Id. ¶ 17. In Texas, OCA-Greater Houston, "hands out in-language instructions on how to request a mail-in ballot." Id. ¶ 20. In Ohio, OCA-Greater Cleveland "prepar[es] written in-language voter guides and translations of election-related materials, including specifically those related for mail-in voting, such as social media graphics, e-mails, and paper flyers to be distributed at local businesses and left at residences." Id. ¶ 22.

Plaintiff Organizations have also demonstrated—and Defendants and Intervenor-Defendants do not dispute—that many of their members rely on and are limited to voting by mail. For example, LVW members in Arkansas "rely on absentee voting, particularly in rural areas where they live far from polling locations and lack access to public transportation." Stewart Supp. Decl. ¶ 27 [Doc. No. 172-1]. LVW members in Louisiana include a high population of elderly and disabled citizens. Id. ¶ 28. LVW members in North Dakota rely on mail voting, "including rural, elderly, and Indigenous voters." Id. ¶ 29. Many LVW members in Ohio "rely on mail voting, including seniors, people with disabilities, people who serve as poll workers on election day, and college students." Id. ¶ 31. Many Delta Sigma Theta members in Texas "rely on vote by mail, particularly those in rural communities (such as those outside the Dallas County

area, as one example), those with transportation issues, and homebound citizens." Washington Supp. Decl. ¶ 73 [Doc. No. 172-5].

Further, "mail voting is the primary method of voting in Utah. Most of [LVW members in Utah] rely on mail voting." Stewart Supp. Decl. ¶ 33 [Doc. No. 172-1]. OCA has chapters in States including Arizona, Florida, Missouri, Ohio, and Texas, and "[m]any OCA members rely on mail-in voting, especially LEP, youth, and elderly members, and members with disabilities because it allows them to vote with the autonomy and privacy that many of them would not have at the polling place due to a disability or language assistance needs." Nguyen Supp. Decl. ¶¶ 7, 12 [Doc. No. 172-6].

In sum, for the college student unable to return to their home state by election day, the individual with limited English proficiency, and for those unable to travel to the polls—due to age, disability, or rural residence—absentee and mail-in voting allows eligible citizens to vote. Stewart Supp. Decl. ¶ 11 [Doc. No. 172-1] ("LWV's members include registered voters who are eligible to vote by mail in their states, have voted by mail in the past, and plan to vote by mail in the future. This includes members who are older than 65, have health concerns or disabilities that make it difficult to vote in person, live overseas, and other reasons that require them to vote by mail."); Canavan Supp. Decl. ¶¶ 24–25, 47 [Doc. No. 172-2] ("LWVMA's roughly 3,000 members include a significant number of members who are registered to vote and rely on vote-by-mail. I am personally aware of almost 200 members who plan to vote by mail in the 2026 federal elections. And I am aware that many of these individuals were born before 1978. . . . This includes members who vote by mail because it would be difficult, if not impossible, to vote in-person, such as members with disabilities or who live overseas. This also includes members who rely on vote-by-mail because of how convenient it is."); Washington Supp. Decl. ¶ 64 [Doc. No.

172-5] ("Delta Sigma Theta members and members of their community . . . rely on mail voting due to being away from where they are registered to vote on Election Day because of school, work, military, or other obligations, physical disabilities, health issues, and mobility challenges, among other reasons like living in rural areas where transportation is limited and difficult to access."); Nguyen Supp. Decl. ¶ 16 [Doc. No. 172-6] ("Mail-in voting enables more LEP voters to complete their ballot because it allows them flexibility and a multitude of options in seeking assistance with translation when needed, including but not limited to having expanded time frames to obtain translations, ability to seek out more than one translator, and in certain cases, getting translations over the telephone. These options are especially necessary as many states do not provide translated ballots in languages spoken by our communities and members. Without mail/absentee ballots, LEP voters are limited to finding translators who are available at the polling location, requiring them to coordinate with assistors who may [have] limited availability and who may only assist one voter at a time, and often denying them an assistor of their choice."); Nguyen Supp. Decl. ¶ 32 [Doc. No. 172-6] ("OCA members who go away for college often rely on mail/absentee voting to vote at their permanent address. For example, Member A is an OCA youth member and qualified voter residing in Colorado who needs to vote by mail while at college in Massachusetts. Member B is an OCA youth member and qualified voter residing in Hawai'i who needs to vote by mail while at college in California.").

The record is devoid of any declarations or other proffered evidence to suggest that mail-in voting has resulted in voting by non-citizens.

C. The Executive Order

On March 31, 2026, President Trump issued the EO. 91 Fed. Reg. at 17125. The EO makes no reference to any noncitizens actually registering to vote or voting in Federal elections,

but nonetheless asserts that "[t]o enhance election integrity via the United States Mail, additional measures are necessary." Id.

Relevant here, Section 3 of the EO, titled "United States Postal Service Rulemaking on Mail-In and Absentee Ballots," directs the Postmaster General to "initiate a proposed rulemaking" within 60 days of the EO's issuance to "protect the integrity of the mail" in federal elections. Id. at 17126. The notice of proposed rulemaking "shall include, at minimum," various requirements for the design of envelopes used by state and local officials to enable voting by mail, including specific markings and unique barcodes for all such envelopes. Id. Section 3(b) requires further that the proposed rule provide that "all outbound ballot mail" sent by States and localities to voters "must be mailed" in such envelopes and that the USPS "shall not transmit mail-in or absentee ballots from any individual" voter unless the individual's name appears on a State-specific list, pursuant to a process specified by the rule. Id.

Section 3(d) directs that "[a]ny final rule" adopted pursuant to Section 3 "shall be issued no later than 120 days from the date of" the EO, i.e., by July 29, 2026. Id. at 17127.

D. Notice of Proposed Rulemaking

On June 2, 2026, the USPS issued a proposed rule to implement Section 3. See USPS Notice of Proposed Rulemaking, Ballot Mail for Federal Elections ("NPRM"), 91 Fed. Reg. 32915 (June 2, 2026). Despite a "Background" section and a section entitled "Legal Authority and Rationale," the NPRM includes no factual background to support the Executive Order's claims, citing instead only to the Executive Order itself and the USPS's "understand[ing]" that the proposed rule would "facilitate the faithful execution of federal law." Id.

The proposed rule requires the envelope-design standards listed in the EO. Id. at 32915–32916. To effectuate the compilation of the "Mail-In and Absentee Participation Lists," the

proposed rule provides a "process," Exec. Order 14339 § 3(b)(iv), for the USPS to establish a new online "Federal Ballot Mail Portal," which States must use to submit the names of all individuals receiving a mail or absentee ballot, along with a unique barcode for each such voter. NPRM, 91 Fed. Reg. at 32916. The proposed rule, consistent with the EO, commits the USPS to sending the States "a final State-Specific Mail-In and Absentee Participation List." Id. at 32916. Finally, the proposed rule describes a "verification procedure for compliance with" the envelope-design and voter-list requirements whereby the USPS would "confirm that a state submitted a list consistent with the conditions laid out in the proposed rule" and verify the barcodes on outbound ballots to ensure they are "destined to individuals on the list." Id. Ballot mail that does not comply with these requirements "will not be accepted and will be returned" to the State. Id. at 32918.

As discussed further below, despite the EO's directive to the Post Office to issue a rule by July 29, 2026, no final rule has been announced.

II. Procedural History

A. Litigation Challenging the EO is Commenced in this District

On April 2, 2026, Plaintiff Organizations initiated this litigation against President Trump, the agencies principally charged with implementing the EO, and those agencies' officers.[2] Compl. [Doc. No. 1]. On April 3, 2026, twenty-three States and the District of Columbia (the "State Plaintiffs") challenged the same EO, in a related case assigned to this session. See California v. Trump, No. 1:26-cv-11581 (D. Mass. Apr. 3, 2026). On May 1, 2026, the court

[2] In addition to President Trump, Plaintiff Organizations sued the U.S. Postal Service ("USPS"), Postmaster General, Deputy Postmaster General, Chairwoman and members of the USPS Board of Governors (collectively, the "USPS Defendants"), Department of Homeland Security and its Secretary; U.S. Citizenship and Immigration Services and its Director; and Social Security Administration and its Commissioner.

allowed permissive intervention by Alabama, Florida, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, and Texas (collectively, the "Intervenor-Defendants"), pursuant to Federal Rule of Civil Procedure 24(b). Elec. Order [Doc. No. 106].

B. The Consolidated Proceedings

The court consolidated the two cases pursuant to Federal Rule of Civil Procedure 42(a) for the limited purpose of a joint briefing and hearing schedule on certain anticipated motions. See Order [Doc. No. 57].

On May 7, 2026, Defendants and Intervenor-Defendants moved to dismiss Plaintiff Organizations' and the Plaintiff States' complaints. Intervenors' Mot. to Dismiss [Doc. No. 124]; Defs.' Mot. to Dismiss [Doc. No. 126].

On June 18, 2026, the court granted in part Defendants' and Intervenor-Defendants' motions and dismissed without prejudice pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds Plaintiff Organizations' and Plaintiff States' claims regarding the EO and its implementation with regard to elections occurring after November 3, 2026. Mem. & Order [Doc. No. 190].[3] The court denied dismissal pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds with regard to the November 3, 2026 election, and all earlier elections. Id. The court reserved on Defendants' and Intervenor-Defendants' further arguments. Id.

[3] In light of this dismissal, neither this court's injunction in State of California (discussed below) nor the injunction sought by Plaintiff Organizations bars the Defendants from adopting a proposed rule for elections after November 3, 2026, in all 50 States and the District of Columbia. If Defendants issued a rule for later elections only, judicial review could proceed in an orderly fashion rather than through requests for expedited review on the Supreme Court's emergency docket.

C. Further Proceedings in State of California

On June 25, 2026, the court denied the remainder of Defendants' and Intervenor-Defendants' motion to dismiss the Plaintiff States' complaint and granted summary judgment in favor of the plaintiff States. See California v. Trump, No. 1:26-cv-11581, 2026 WL 1826490 (D. Mass. June 25, 2026). The court's judgment enjoined implementation of Sections 2 and 3 of the EO, but only as to the twenty-three plaintiff States and D.C. and only with respect to elections occurring before or on November 3, 2026. Final Judgment, California v. Trump, No. 1:26-cv-11581 (D. Mass. July 7, 2026) [Doc. No. 207]. The court denied the federal defendants' and intervenor States' requests to stay the injunction pending appeal, except as to a seven-day administrative stay. See Mem. & Order, California v. Trump, No. 1:26-cv-11581 (D. Mass. July 7, 2026) [Doc. No. 208].

In the First Circuit, the federal defendants and intervenor States sought a stay pending appeal, arguing solely on the basis of standing and ripeness. See California v. Trump, __ F.4th __, 2026 WL 2144084 (1st Cir. July 25, 2026). The First Circuit denied the stay request, finding Article III standing where the EO threatened the Plaintiff States with criminal prosecution, pecuniary injury, and harm to their sovereign interests. Id. at *9–10. The First Circuit noted both that the federal defendants had declined to defend the legality of the EO and that "[t]he EO directs unprecedented levels of involvement by federal officials in how states administer elections." Id. at *10.

The federal defendants and intervenor States filed emergency applications for a stay with the Supreme Court of the United States. See Trump v. California, No. 26A124 (U.S. July 27, 2026); Alabama v. California, No. 26A139 (U.S. July 29, 2026). Before the Supreme Court, defendants and intervenor-States again declined to contest the merits of this court's final

judgment finding the EO unconstitutional. See Appl., Trump v. California, No. 26A124 (U.S. July 27, 2026); Appl., Alabama v. California, No. 26A139 (U.S. July 29, 2026).[4] The applications are pending.

D. Further Proceedings in the Action Before this Court

On July 13, 2026, the court denied without prejudice Plaintiff Organizations' first preliminary injunction motion, finding that another court's nationwide preliminary injunction of Section 3 of the EO obviated Plaintiff Organizations' alleged irreparable harm. Mem. & Order [Doc. No. 167].[5] On July 20, 2026, after that preliminary injunction was stayed,[6] Plaintiff Organizations renewed their preliminary injunction motion. Pls.' Mot. for Prelim. Inj. [Doc. No. 170].

On July 22, 2026, the court granted Defendants' and Intervenor-Defendants' motions to dismiss in part, dismissing Count VI of Plaintiff Organizations' complaint without prejudice, where Plaintiff Organizations had failed to allege any final agency action sufficient for a claim

[4] Federal defendants claim that this court's injunction in State of California makes implementing the EO infeasible as to the twenty-seven states where the injunction is not in place. See Reply, at 15–16, Trump v. California, No. 26A124 (U.S. Aug. 4, 2026). This inaction, without further explanation, undermines their "election integrity" concerns. See 91 Fed. Reg. at 17125.

[5] In NAACP v. USPS, a plaintiff advocacy organization moved to enforce the USPS's compliance with a settlement agreement arising from a lawsuit which had alleged claims under the Administrative Procedure Act related to the 2020 federal election. See No. 20-cv-2295, 2026 WL 1893762 (D.D.C. July 1, 2026), appeal pending, NAACP v. USPS, No. 26-5257 (D.C.C. July 9, 2026). The D.C. district court found that the proposed rule would violate the parties' settlement agreement. Id. at *4. At the time of this court's denial of the Plaintiff Organization's first motion for a preliminary injunction, the D.C. district court's order enjoining the USPS from implementing its proposed rule pursuant to Section 3 of the EO, see id. at *7, was in effect.

[6] In a one-paragraph order, the D.C. Circuit stayed the D.C. district court's order, determining that the appellants had made a strong showing that they would succeed in showing that their proposed rule is not ripe for review where no final rule had yet issued and that the EO likely would not violate the settlement agreement. See NAACP v. USPS, No. 26-5257, 2026 WL 2168004 (D.C. Cir. July 17, 2026). The court also found that the government would experience irreparable harm from an order that prohibited the USPS from promulgating a final rule. Id. The panel did not elaborate further as to its reasoning. See id.

under the Administrative Procedure Act. Mem. & Order [Doc. No. 175]. The court denied the remainder of the motions to dismiss, finding that Plaintiff Organizations had both organizational and associational standing to challenge the EO as to elections occurring on or before November 3, 2026, and that Plaintiffs had plausibly alleged constitutional claims and a claim under the Voting Rights Act. Id.

Defendants and Intervenors thereafter opposed the renewed motion for a preliminary injunction. Defs.' Opp'n [Doc. No. 176]; Intervenors' Opp'n [Doc. No. 177]. The court heard argument on the renewed motion on August 7, 2026.

III. Standard of Review

The issuance of a preliminary injunction before a trial on the merits can be held is an "extraordinary remedy" that shall enter only if a plaintiff makes a clear showing of entitlement to such relief. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). The purpose of a preliminary injunction is "merely to preserve the relative positions of the parties until a trial on the merits can be held." Starbucks Corp. v. McKinney, 602 U.S. 339, 346 (2024) (quoting Univ. of Texas v. Camenisch, 451 U.S. 390, 395 (1981)). In evaluating a motion for a preliminary injunction, the court considers four factors:

> (1) the likelihood of success on the merits; (2) the potential for irreparable harm [to the movants] if the injunction is denied; (3) the balance of relevant impositions, i.e., the hardship to the nonmovant if enjoined as contrasted with the hardship to the movant if no injunction issues; and (4) the effect (if any) of the court's ruling on the public interest.

Esso Standard Oil Co. v. Monroig-Zayas, 445 F.3d 13, 17–18 (1st Cir. 2006) (quoting Bl(a)ck Tea Soc'y v. City of Boston, 378 F.3d 8, 11 (1st Cir. 2004)). The balancing of hardships and the analysis of the public interest merge when, as here, the government is the opposing party. Does 1–6 v. Mills, 16 F.4th 20, 37 (1st Cir. 2021) (citing Nken v. Holder, 556 U.S. 418, 435 (2009)).

IV. Discussion

Plaintiff Organizations seek a preliminary injunction on Counts I and II of their complaint against the USPS Defendants,[7] prohibiting them from implementing Section 3 of the EO, on the basis that the EO's directive violates the separation of powers and is ultra vires. Pls.' Mot. for Prelim. Inj., Ex. A (Proposed Order) [Doc. No. 170-1]. Defendants and Defendant-Intervenors argue again that Plaintiffs lack standing to assert their claims, that the claims remain unripe until the USPS issues a final rule, and that this court lacks jurisdiction to enjoin the President. Defs.' Opp'n [Doc. No. 176]; Intervenors' Opp'n [Doc. No. 177].

A. Likelihood of Success on the Merits

As explained by prior decisions of this court, Plaintiff Organizations are likely to succeed on the merits of Counts I and II of their complaint, claiming that Section 3 of the EO violates the separation of powers and is ultra vires. Compl. ¶¶ 120–155. [Doc. No. 1]; see Mem. & Order 12–14 [Doc. No. 175]; California v. Trump, __ F. Supp. 3d __, 2026 WL 1826490, at *15 (D. Mass. June 25, 2026), appeal docketed, No. 26-1779 (1st Cir. July 3, 2026); see also California v. Trump, __ F.4th __, 2026 WL 2144084, at *7 (1st Cir. July 25, 2026) (explaining that "state and local officials are assigned primary responsibility for administering federal elections under the Constitution, and the EO directs various changes to the voting-by-mail process for these elections . . . ." (citing U.S. CONST. art. I, § 4, cl. 1; art. II, § 1, cl. 2)).

1. Standing

Defendants and Intervenor-Defendants assert that Plaintiff Organizations' lack standing to assert their claims, and that the court, deprived of subject matter jurisdiction, is therefore

[7] Plaintiff Organizations do not seek injunctive relief applicable to the President. See Proposed Order [Doc. No. 170-1]. Accordingly, the court considers Defendants' argument regarding the unavailability of injunctive relief against the president moot.

unable to consider the merits. Defs.' Opp'n 3–7 [Doc. No. 176]; Intervenors' Opp'n 4–8 [Doc. No. 177]. However, the court has already found that Plaintiff Organizations have both organizational and associational standing because the EO has interfered with the Organizations' core business activities of supporting voter education, and the EO threatens Plaintiffs' members' ability to vote. See Mem. & Order 5–12 [Doc. No. 175]. Plaintiff Organizations' imminent injuries both to their educational work and their members' enfranchisement, directly flowing from the EO's clear directives and redressable by injunction, provide this court with subject matter jurisdiction. See id.; infra Part III.B (the court's following discussion of irreparable harm). Given the intertwined nature of injury-in-fact and irreparable harm in this case, see, e.g., Doe v. Trump, 157 F.4th 36, 78–80 (1st Cir. 2025), the court addresses Intervenor-Defendants' argument as to lack of standing further below with respect to the second preliminary injunction factor.

2. Prudential Ripeness

Defendants and Intervenor-Defendants challenge the ripeness of Plaintiff Organizations' claims. Defs.' Opp'n 7–9 [Doc. No. 176]; Intervenors' Opp'n 9–11 [Doc. No. 177]. As discussed by this court previously, Plaintiff Organizations' claims regarding implementation of the EO as to elections occurring before or on November 3, 2026, are prudentially ripe because of the EO's prescriptive language, the imminence of the EO's deadlines, and the onerous hardship to be borne by Plaintiff Organizations and their members if the court postpones judicial review. See Mem. & Order 7–16 [Doc. No. 166].

Defendants and Intervenor-Defendants argue that Plaintiff Organizations' claims will not be ripe at least until the USPS issues a final rule. Defs.' Opp'n 5–7 [Doc. No. 176]; Intervenors'

Opp'n 6 [Doc. No. 177].[8] But the Plaintiff Organizations do not seek to preliminarily enjoin a final rule pursuant to the Administrative Procedure Act.[9] Instead, Plaintiff Organizations bring a facial challenge to the constitutionality of Section 3 of the EO, text that—by directing the USPS to issue a rule—is currently causing confusion for Plaintiff Organizations' members who undisputedly have historically relied on mail-in voting and seek to vote by mail in the future. See Stewart Supp. Decl. ¶¶ 5, 23 [Doc. No. 172-1]; Washington Supp. Decl. ¶¶ 50, 64, 71 [Doc. No. 172-5]; Nguyen Supp. Decl. ¶¶ 13, 32, 44 [Doc. No. 172-6]. Additionally, the EO's directed timetable significantly impairs Plaintiff Organizations' voter education work where Plaintiffs have increasingly dwindling time to teach members how the EO will affect their ability to vote by mail before the November 3, 2026 elections. See Stewart Supp. Decl. ¶¶ 12, 20 [Doc. No. 172-1] ("It is much less useful and contrary to our mission to educate voters at the last minute or on Election Day. We must provide information well in advance of absentee voting request and ballot receipt deadlines, and each day that passes we lose opportunities to engage voters in the democratic process through mail voting."); Washington Supp. Decl. ¶¶ 69–70, 72 [Doc. No. 172-5]; Nguyen Supp. Decl. ¶¶ 17, 22, 24 [Doc. No. 172-6]. Therefore, the court finds that withholding a decision at this time would cause undue hardship to Plaintiff Organizations. Roman Catholic Bishop of Springfield v. City of Springfield, 724 F.3d 78, 90 (1st Cir. 2013) (quoting Mangual v. Rotger–Sabat, 317 F.3d 45, 59 (1st Cir. 2003)).

[8] Neither Defendants nor Intervenor-Defendants makes any argument that the EO could be implemented lawfully. See California, 2026 WL 1826490, at *11–12 (explaining that executive orders cannot be construed to destroy themselves through saving clauses).

[9] The absence of an APA challenge differentiates this case from NAACP v. USPS, where the court found an APA claim unripe. No. 26-5257, 2026 WL 2168004, at *1 (D.C. Cir. July 17, 2026)

Defendants point the court's attention to the D.C. Circuit's recent decision regarding the same EO. See DSCC v. Trump, No. 26-5193, 2026 WL 2168617 (July 28, 2026). There, in a *per curiam*, unpublished decision, the United States Court of Appeals for the District of Columbia Circuit found that a district court did not abuse its discretion, when it denied on May 28, 2026, a preliminary injunction sought by political candidates and other plaintiff organizations representing individual voters and political candidates, finding that the "case likely is unripe for review in its present posture." Id. at *1. The D.C. Circuit expressly declined to consider developments, such as the NPRM, occurring after the district court's May 28, 2026 decision. Id. at *3–4. However, unlike the record before that court of appeals, this court must consider the NPRM—published June 2, 2026—and the additional steps taken toward implementation by the USPS, such as sending the proposed rule to the Office of Information and Regulatory Affairs on July 27, 2026, for review prior to final publication. See OIRA, Conditions on the Preparation of Ballot Mail for Federal Elections, https://www.reginfo.gov/public/do/eoDetails?rrid=1485175 (last visited Aug. 11, 2026). Moreover, while there were still more than five months before the November 3, 2026, election when the D.C. district court denied a nationwide injunction, the midterms are now less than three months away.

In light of the NPRM's reiteration of the EO's directives, USPS's constraints under the logical outgrowth doctrine (which requires that a final rule must be a logical extension of the proposed rule), and the immediacy of the upcoming election, the record before the court reflects a case ripe for adjudication. See Nat. Res. Def. Council, Inc. v. EPA, 824 F.2d 1258, 1283 (1st Cir. 1987).

3. Constitutionality of Section 3 of the EO

Defendants and Intervenor-Defendants' sole attempts to grapple with the actual merits of Plaintiff Organizations' constitutional challenge are their briefly presented unitary executive arguments. Defs.' Opp'n 11–13 [Doc. No. 176]; Intervenors' Opp'n 11–13 [Doc. No. 177]. However, contrary to Defendants and Intervenor-Defendants' characterization, Plaintiff Organizations do not challenge the President's ability to direct his subordinates generally, and the court need not answer the extraneous question of whether the President has authority to direct the USPS specifically. Instead, the court need only determine whether the EO is facially unconstitutional based on the substance of the text's directives.

The court has already answered and will again resolve the question clearly and affirmatively. See Mem. & Order 12–14 [Doc. No. 175]; California v. Trump, __ F. Supp. 3d __, 2026 WL 1826490, at *15 (D. Mass. June 25, 2026), appeal docketed, No. 26-1779 (1st Cir. July 3, 2026). The executive branch has no authority to regulate elections. U.S. CONST., art. I, § 4, cl. 1; id., art. II.

B. Irreparable Harm

Defendants and Intervenor-Defendants argue that Plaintiff Organizations are unable to demonstrate irreparable harm because the USPS has not yet issued a final rule. Defs.' Opp'n 13–15 [Doc. No. 176]; Intervenors' Opp'n 13 [Doc. No. 177]. They assert that Plaintiff Organizations' allegation of harm is too speculative because the USPS must publish a final rule and then implement the rule before disenfranchisement is imminent. Defs.' Opp'n 13–15 [Doc. No. 176]; Intervenors' Opp'n 13 [Doc. No. 177]. Additionally, Defendants contend that the USPS has been unable to publish a final rule because of this court's injunction in California v. Trump, No. 1:26-cv-11581, 2026 WL 1826490 (D. Mass. June 25, 2026), and the USPS's

inability to implement a rule only applicable to half of the States. Defs.' Opp'n 14 [Doc. No. 176]. The court finds that Plaintiff Organizations are currently suffering irreparable harm both as to themselves as organizations and as to their members.

1. Harm to Organizations

Plaintiff Organizations have demonstrated that (1) they are nonpartisan organizations, dedicated to increasing voter participation through education and assistance; (2) they engage in significant educational efforts and trainings leading up to federal elections; and (3) those activities are currently being disrupted by the EO. For example, visits to Plaintiff LWV's educational website, VOTE411.org, "increase[] dramatically in the months prior to the election." Stewart Supp. Decl. ¶ 20 [Doc. No. 172-1]. Plaintiff LWV is currently unable to update its website to educate voters on mail-in voting because of the confusion and uncertainty caused by the EO. Id.

Similarly, Plaintiff Delta Sigma Theta's "mail voting education and facilitation has been impeded by the [EO]." Washington Supp. Decl. ¶ 70 [Doc. No. 172-5]. The organization is "unable to provide updated information to members" living in States not covered by the California, No. 1:26-cv-11581 injunction because Delta Sigma Theta does "not know who is subject to which rules, or exactly what those rules are." Id. Specifically, Plaintiff Delta Sigma Theta chapters in Texas have prepared for and planned mail voting trainings to take place in September and October of 2026. Id. ¶ 72. The Texas chapters will have to revise their materials "at significant cost if the [EO] stands. They also will have to develop and execute additional volunteer trainings." Id.

For OCA, "[i]f the [EO] takes effect, [the organization] will have little to no time to create and translate state-specific materials that explain how to vote by mail and how to ensure a

voter is on the various lists mandated by the [EO] so that they are able to cast a mail/absentee ballot." Nguyen Supp. Decl. ¶ 26 [Doc. No. 172-6].

Intervenor-Defendants again contend that Plaintiff Organizations' expenditure of resources is insufficient for Article III injury. Intervenors' Opp'n at 7–8 [Doc. No. 177] (citing FDA v. All. for Hippocratic Med., 602 U.S. 367, 394 (2024). However, unlike the physicians in All. for Hippocratic Med., Plaintiff Organizations do not merely disagree with the EO. 602 U.S. at 390–93. Instead, Plaintiff Organizations' core missions to educate citizens and maximize electoral participation are irreparably harmed not only by the EO's unlawful directives, but, importantly by the timeframe imposed, i.e., the November 3, 2026 midterm elections.

2. Harm to Members

Additionally, Plaintiff Organizations have demonstrated—and Defendants and Intervenor-Defendants do not dispute—that many of their members rely on and are limited to voting by mail, including members who live in States not covered by the California, No. 1:26-cv-11581 injunction. Stewart Supp. Decl. ¶ 25 [Doc. No. 172-1] (LVW has members residing and eligible to vote in Intervenor States and Alaska, Arkansas, Georgia, Hawaii, Idaho, Iowa, Kentucky, Mississippi, New Hampshire, North Dakota, Ohio, Tennessee, Utah, and Wyoming); Washington Supp. Decl. ¶ 70 [Doc. No. 172-5] ("Delta Sigma Theta has active chapters in 22 [S]tates not covered by [the California, No. 1:26-cv-11581] injunction."); Nguyen Supp. Decl. ¶¶ 6–7 [Doc. No. 172-6] (OCA has chapters in 45 States, including Florida, Missouri, Ohio, and Texas).

Accordingly, Plaintiff Organizations' members need to vote by mail. These members have been deprived of their typical sources of assistance and support in navigating their States' widely varying requirements for mail-in voting. See supra Part I.A.2. Even if the USPS's final

rule is never published, the EO's directives have left Plaintiff Organizations' members without confidence as to whether they will or will not be permitted to participate in mail-in voting, while deadlines for requesting ballots are looming. The EO—even in the absence of a final rule—is thus causing irreparable harm to Plaintiff Organizations' members through the confusion it has engendered as to how they may vote in the fast-approaching midterm elections.

C. Balance of the Equities and the Public Interest

Defendants argue that the balance of the equities and public interest factors tip in their favor because an injunction would undermine the Constitution's clause mandating that the President take care that laws be faithfully executed and the clause vesting executive power in the executive branch. Defs.' Opp'n 15 [Doc. No. 176] (citing U.S. CONST., art. II, § 1, cl. 1; id., § 3). Similarly, Intervenor-Defendants argue that "the federal government has a strong interest in getting a chance to implement executive orders lawfully." Intervenors' Opp'n 14 [Doc. No. 177]. The sincerity of these arguments is belied by Defendants' choice to neither issue a Final Rule that applies only after the November 3, 2026 election, nor to issue a Final Rule that applies in the twenty-seven States that are not subject to the pending injunction in State of California.

With respect to the public interest, Defendants and Intervenor-Defendants have notably declined to argue that enjoining implementation of the EO will jeopardize the integrity of mail-in voting. The record is devoid of any evidentiary support of illegal or fraudulent absentee voting. See League of United Latin Am. Citizens v. Exec. Off. of the President, et. al., 780 F. Supp. 135, 211–12 (D.D.C. 2025) ("[A]lthough there is a strong public interest in preserving the integrity of the election process, the present record does not show that an injunction . . . would disserve that interest." (cleaned up)). This void sits starkly against Plaintiff Organizations' undisputed showing that its members rely on and are eligible to vote by mail.

Further, Defendants and Intervenor-Defendants have made little effort to defend the EO on its merits. Accordingly, the court lacks any support for the assertion that preliminarily enjoining the USPS from implementing Section 3 of the EO will harm the public. Indeed, if Section 3 is unlawful, as the court has determined, no harm will ensue from the issuance of injunctive relief. See Rhode Island v. Trump, 155 F.4th 35, 50 (1st Cir. 2025) (explaining that where "there is generally no public interest in the perpetuation of unlawful [government] action," the public interest does not favor a stay).

Finally, the court countenances the public's "strong interest in exercising the fundamental political right to vote [where eligible]." Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (citation modified); League of Women Voters of the United States v. Newby, 838 F.3d 1, 12 (D.C. Cir. 2016) (in the context of awarding injunctive relief, where plaintiffs demonstrate a "substantial risk" that, "absent an injunction, . . . citizens will be disenfranchised in the present federal election cycle[,] . . . [t]he public interest . . . favors permitting as many qualified voters to vote as possible[.]"). Where the EO is presently causing confusion and threatening both increasing chaos and an erosion of trust in our democracy, the court finds that enfranchisement heavily outweighs the executive's attempt to unconstitutionally insert itself into the domain of election regulation. That it is now less than 90 days before the November 3, 2026 midterm elections underscores the critical need for an injunction to prevent Defendants from changing election rules on the eve of the election.

D. Bond

Defendants request that Plaintiffs be required to post an injunction bond or any other security as a condition of obtaining the injunction described in this Memorandum or the accompanying Order. Defs.' Opp'n 18 [Doc. No. 176].

Federal Rule of Civil Procedure 65(c) provides in relevant part:

> The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

The First Circuit has noted the "ample authority for the proposition that the provisions of Rule 65(c) are not mandatory and that a district court retains substantial discretion to dictate the terms of an injunction bond." Int'l Ass'n of Machinists & Aerospace Workers v. Eastern Airlines, Inc., 925 F.2d 6, 9 (1st Cir. 1991).

Here, Defendants make no showing of any costs and damages that they would sustain if they were wrongfully enjoined. See Liu v. Noem, 780 F. Supp. 3d 386, 405 (D.N.H. 2025) (waiving bond requirement where defendants requested that plaintiff post bond but did not "request a specific amount," "explain any costs they will incur by complying with the preliminary injunction," or describe "any damages they will have sustained" if the preliminary injunction was later found to be erroneous).

Accordingly, the court finds only a $100 nominal bond appropriate, which Plaintiffs shall deposit with the court no later than August 18, 2026.

V. Order

For the foregoing reasons, the court GRANTS Plaintiff Organizations' Renewed Motion for a Preliminary Injunction [Doc. No. 170].

The Defendants the United States Postal Service, the Board of Governors of the USPS, Amber F. McReynolds (in her official capacity as Chair of the Board of Governors of the USPS), Derek T. Kan (in his official capacity as Vice Chairman of the Board of Governors of the USPS), Ronald A. Stroman (in his official capacity as a Member of the Board of Governors of the USPS), Daniel M. Tangherlini (in his official capacity as a Member of the Board of Governors of

the USPS), Douglas A. Tulino (in his official capacity as United States Deputy Postmaster General), and David P. Steiner (in his official capacity as United States Postmaster General), including their officers, agents, servants, and employees, are preliminarily enjoined from implementing, giving effect to, or enforcing Section 3 of Executive Order No. 14399, with respect to the November 3, 2026 or any earlier federal election, including refusing to transmit mail-in or absentee ballots; or otherwise initiating or completing rulemaking to promulgate the specific regulations outlined in Section 3(b)(i)(v) or (d) of the EO for the November 3, 2026 or any earlier election. This injunction does not bar the federal government from providing non-binding USPS guidance on ballot mail envelopes.

Plaintiff Organizations shall post a nominal $100 bond with the court no later than August 18, 2026.

IT IS SO ORDERED.

August 11, 2026

/s/ Indira Talwani
United States District Judge

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August 12, 2026

By Electronic Filing
Hon. Scott S. Harris
Supreme Court of the United States
1 First Street, NE
Washington DC 20543

RE: *Donald J. Trump, President of the United States, et al. v. California, et al.*, No. 26A124
Response to Supplemental Brief

Dear Mr. Harris:

Plaintiff States submit this response to the supplemental brief filed by defendants. The district court's preliminary injunction in a separate lawsuit challenging Executive Order No. 14399 does not support the application for a stay in this case. Defendants cite an "urgent need for this Court to grant the stay" in this case on the theory that a stay here "*should* cause the district court or the First Circuit to stay the new preliminary injunction too." Supp. Br. 1, 2. But if defendants believe a stay of that preliminary injunction is warranted, the proper course is to seek a stay in that case and to give those plaintiffs an opportunity to respond.

That is especially true in light of the distinct legal issues involved in the different cases. Here, the district court granted a narrow injunction limited to the plaintiff States (and to elections on or before November 3, 2026), based on the concrete harms suffered by the plaintiff States. App'x 41a-44a. As the lower courts recognized, States are the "targets" of the EO and would be forced, without an injunction, to take immediate steps to comply with the EO given their "primary responsibility" for administering the rapidly approaching November elections. *Id.* at 9a; *id.* at 18a (Dunlap, J., concurring in part). Cases involving private plaintiffs "have limited bearing here" because "only in this case are the plaintiffs the very states and state officials that the EO identifies and targets." App'x 10a n.7; *see* Consolidated Opp. to Appls. 34-35. And although defendants suggest that the injunction in this case prevents them from "implement[ing] Section 3 of the Executive Order for the federal elections in November," Suppl. Br. 3, that is incorrect. The injunction here allows the U.S. Postal Service to issue a final rule and to implement Section 3 in non-plaintiff States, while preventing disruptive changes to election rules ahead of the midterms in the plaintiff States. The application for a stay should be denied.

Plaintiff States would appreciate it if you could circulate this letter to members of the Court.

Sincerely,

/s/ Ian Fein

Ian Fein
Deputy Solicitor General

For ROB BONTA
Attorney General

cc: D. John Sauer, Counsel for Applicants