



MEMORANDUM

TO: David Steiner, Postmaster General
Doug Tulino, Deputy Postmaster General
Amber F. McReynolds, Chair, Board of Governors
Derek T. Kan, Vice Chair, Board of Governors
Ronald A. Stroman, Board of Governors
Daniel M. Tangherlini, Board of Governors
Director, Product Classification

FROM: Jonathan Diaz, Aseem Mulji, Renata O'Donnell & David Kronig
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005

Pooja Chaudhuri, Sofia Fernandez Gold, & Beauregard Patterson
Democracy Defenders Fund
600 Pennsylvania Ave. SE, Suite 15180
Washington, DC 20003

DATE: July 1, 2026

SUBJECT: Comment in response to Notice of Proposed Rulemaking on Ballot Mail for Federal Elections

The Postal Service is proposing to amend the Mailing Standards in its Domestic Mail Manual (DMM) regarding the transmission of mail ballots¹ for federal elections in response to an Executive Order that a federal district court has, since the rulemaking was first proposed, now held to be unconstitutional. *See infra* at 4-5. The Postal Service is presently enjoined from implementing the unconstitutional Executive Order, meaning that this rulemaking cannot proceed.

But even without that court order and injunction, the Proposed Rule still could not be lawfully implemented. The Proposed Rule, while cloaked in the language of merely implementing technical best practices, would in fact be a sweeping and unprecedented arrogation of power over

¹ This comment uses the term “mail ballot” to mean any absentee or other ballot delivered either to voters or to election administrators (or both) via the U.S. Mail.

elections from the States to the federal government, is unconstitutional and unlawful both in substance and in procedure, and would be ill-advised even if it were permitted by law.

Specifically, the Proposed Rule would require:

- (1) the Postal Service to create a new Federal Ballot Mail Portal (Ballot Portal) into which State and local election officials are required to submit voter information;
- (2) States to send the federal government a list of all registered voters to whom the States are sending mail-in and absentee ballots in federal general elections;
- (3) States to redesign their ballot carrier envelopes to meet new specifications and employ intelligent mail barcodes (IMBs) on both outgoing and return ballots;
- (4) the Postal Service to scan each of the millions of ballots transmitted by mail and verify that those voters appear on the list provided by the States, before any further processing;
- (5) the Postal Service to refuse to accept and deliver any ballot it deems out of compliance with these new requirements.

These requirements would compel the Postal Service to usurp the role of the States in administering elections in direct contravention to the Constitution and the election and postal statutes that Congress has enacted. The Proposed Rule would transform the Postal Service from a common carrier, as Congress intended, into a national gatekeeper for mail or absentee voting in federal elections, a role Congress has left to the States given their local knowledge of populations and institutional focus on administering elections.² And the Proposed Rule would give the Postal Service, an entity with *no* expertise or ability to administer elections, the power to *shut down* any State's mail ballot program for failure to satisfy federal voting conditions neither Congress nor any State has legislated. The Proposed Rulemaking is a shocking and unprecedented assertion of power the Postal Service is neither permitted nor equipped to wield.

On behalf of Campaign Legal Center³ (CLC) and Democracy Defenders Fund⁴ (DDF), we submit this public comment in opposition to the Proposed Rulemaking. CLC and DDF oppose this Proposed Rulemaking for at least three independent reasons. First, the Proposed Rule seeks to implement the President's unlawful executive order and cannot be used to circumvent the judicial process. Second, the Proposed Rule is unconstitutional and violates both federal election statutes

² Karen L. Stanton, Cong. Rsch. Serv., R45549, The State and Local Role in Election Administration: Duties and Structures (Mar. 4, 2019), https://www.congress.gov/crs_external_products/R/PDF/R45549/R45549.1.pdf.

³ Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis and development, and public education. Consistent with that mission, CLC advocates for transparent and accessible government processes that give all Americans a meaningful opportunity to participate in civic life and affect the systems that dictate how we choose our leaders.

⁴ Democracy Defenders Fund (DDF) is a nonprofit organization at the forefront of the battle to restore American democracy, purpose built to counter the authoritarian threats we face today. DDF brings together national, state, and local partners across the country to defend the foundations of our democracy in the court of law and in the court of public opinion.

and the statutes governing the Postal Service. And finally, even if the Proposed Rule were legally permissible, it would be an ill-advised intrusion into State election processes and could not be implemented without disenfranchising hundreds of thousands or even millions of voters.

I. A Federal Court Has Enjoined this Rulemaking Because It Implements an Unconstitutional Executive Order.

The Postal Service concedes that this Proposed Rulemaking was initiated to comply with President Trump’s March 31, 2026, Executive Order, titled “Ensuring Citizenship Verification and Integrity in Federal Elections.” Exec. Order No. 14399, 91 Fed. Reg. 17125 (Mar. 31, 2026) (“EO” or “Order”). Section 3 of that Order—which was recently declared unconstitutional by a federal court—directs the Postal Service to mandate certain ballot envelope design specifications and the use of intelligent mail barcodes (IMbs); maintain a database of citizens authorized to vote by mail in each State, known as the “Mail-In Absentee Participation List”; and treat certain ballots as ineligible for delivery via U.S. Mail if the recipient does not appear on this new, extra-statutory list. *See* Order § 3(b).

The Proposed Rule would give effect to each of these unconstitutional directives. Consistent with Section 3(b)(i) of the Order, the Proposed Rule conditions delivery of a State’s mail ballots on certain mail envelope design elements and use of IMbs on both outgoing and return ballot envelopes—practices the Postal Service has to date encouraged rather than mandated. *See* Ballot Mail for Federal Elections, 91 Fed. Reg. 32915, 32917-18 (June 2, 2026) (to be codified at 39 C.F.R. pt. 111). Consistent with Section 3(b)(iv) of the Order, the Proposed Rule requires the Postal Service to maintain a “Mail-In Absentee Participation List” of individuals “enrolled” to vote by mail based on mandatory State data submissions. *See id.* at 32918. And consistent with the Order’s prohibition on transmitting ballots from individuals not enrolled on the list in Section 3(b)(iii), the Proposed Rule requires the Postal Service to refuse to accept or deliver any ballots to such individuals in the first place. *See id.* (requiring the Postal service to “review . . . Outbound Federal Ballot Mail prior to acceptance to evaluate whether the mailing . . . is being sent to individuals who have been enrolled with the Postal Service for inclusion on the State’s Mail-In and Absentee Participation List”). The Proposed Rule also appears to go one step further, permitting the Postal Service to refuse to deliver or delay an entire mailing of a State’s outgoing ballots if any one ballot is directed to a recipient not on the list or if the mailing in any other way fails to comply with the Postal Service’s new national mail voting requirements. *See id.* Indeed, in a hearing before the Senate Homeland Security and Government Affairs Committee, Postmaster General David Steiner confirmed that, under the Proposed Rule, the Postal Service would not deliver mail ballots in states that do not provide absentee voter data to the federal government.⁵

But the Postal Service has no legal authority to implement an executive order that is itself unconstitutional. The Order violates the Constitution’s separation of powers, the Elections Clause, numerous statutes governing federal elections and the postal service, as well as the Administrative Procedure Act—and States, pro-voter groups, and political parties have filed lawsuits across the

⁵ Finya Swai, *Postmaster general confirms plan to hold back mail ballots in states that won’t share voter data*, The Hill (June 24, 2026), <https://thehill.com/homenews/administration/5939636-trump-postal-service-voter-data/amp/>.

country challenging it. *See California v. Trump*, No. 1:26-cv-11581 (D. Mass.); *DSCC v. Trump*, No. 1:26-cv-01114 (D.D.C.).

And indeed, on June 25, 2026, the U.S. District Court for the District of Massachusetts in granted summary judgment to the Plaintiff States in *California v. Trump*, declaring Sections 2 and 3 of the EO “legally void as they are ultra vires and unconstitutionally violate the separation of powers” and enjoining their implementation, including by enjoining the Postal Service from pursuing the instant rulemaking. Order at 34, *California v. Trump*, No. 1:26-cv-11581 (D. Mass. June 25, 2026), Dkt. No. 191. Specifically, the court held that the President may not direct the Postal Service to compile lists of eligible voters and condition ballot delivery on those lists because the Constitution reserves the power to determine voter eligibility to the States alone. *Id.* at 30. The court further reasoned that “no law enacted by Congress delegates authority to control mail-in voting to USPS,” so “USPS lacks statutory authorization to promulgate any binding regulations on mail-in voting.” *Id.* at 31. The court enjoined defendants, including the Postal Service, “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.” *Id.* at 34. The Postal Service is also “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.” *Id.* at 35-36.⁶ In short, this rulemaking has been deemed unlawful and must be halted.

The Postal Service should not, in any event, accede to the President’s effort to impose his will and undermine the Postal Service’s longstanding independence from political pressures and ordinary executive supervision and control. *See Nat’l Ass’n of Greeting Card Publishers v. U.S. Postal Serv.*, 462 U.S. 810, 822 (1983) (providing history of USPS as a self-sustaining independent corporate entity existing within the U.S. government); *Mail Ord. Ass’n of Am. v. U.S. Postal Serv.*, 986 F.2d 509, 519 (D.C. Cir. 1993); *see also Post Office Act of 1792*, Smithsonian Nat’l Postal Museum, https://postalmuseum.si.edu/object/npm_1984.1127.8 (last visited June 25, 2026) (As early as 1792, Congress “codified the presumption that Congress would retain primary control over postal policy,” not the President.). The Postal Service has long guarded its congressionally mandated independence, and it must continue to do so now by abandoning this unlawful Proposed Rulemaking.

⁶ The district court in *DSCC v. Trump* also expressed doubt as to the EO’s constitutionality, noting at a recent hearing that the EO “assumes that the Postal Service will not follow the law” and “asks [the Postal Service] to think about things that actually aren’t lawful.” Tr. of Prelim. Inj. Hr’g at 31:8-24, *Democratic Senatorial Campaign Comm. v. Trump*, No. 1:26-cv-1114 (D.D.C. May 14, 2026). When the federal government was asked to identify *any* authority that would give USPS the power to implement the Rulemaking that the Order contemplates, it could not provide any source. *Id.* at 82:22-83:10, 100:12-18. That is because no such source exists, as the decision in *California v. Trump* has confirmed.

II. The Proposed Rule is Unconstitutional, Violates Federal Election and Postal Statutes, Lacks Statutory Authority, and is Procedurally Fatally Flawed.

The Postal Service has never taken the extreme measure of refusing to transmit mail ballots for entire categories of voters. Nor could it. Such a rule would violate the separation of powers, federalism principles, and the Postal Service’s own statutory mandates. USPS does not have any such power under either the Constitution or federal law. The Proposed Rule disregards the constitutional and statutory frameworks that assign States the authority to regulate federal election procedures and prohibit the Postal Service from the type of election administration the Rulemaking contemplates. And even if the Proposed Rule were not unconstitutional and substantively illegal, this Rulemaking is procedurally flawed because the Postal Service has failed to seek an advisory opinion from the Postal Regulatory Commission or engage in the required pre-filing conferences.

A. The Proposed Rule Violates the Constitution.

The Constitution bestows the power to regulate elections upon Congress and the States. The Postal Service has no power under the Constitution to refuse to deliver mail ballots based on States’ compliance with the Postal Service’s demand for sensitive voter information or its new envelope-design dictates.

The Constitution expressly delegates to the States the power to regulate the “Times, Places and Manner of holding [federal] Elections.” U.S. Const. art. I, § 4, cl. 1; *see also* U.S. Const. art. I, § 2, cl. 1 (States set the qualifications for electors to the U.S. House of Representatives); U.S. Const. amend. XVII (same for U.S. Senate). The Constitution also makes clear that all powers “not delegated to the United States by the Constitution, nor prohibited by it to the States” rest with the States. U.S. Const. amend. X. Thus, “the Constitution vests authority first in the States” to “regulate federal election procedures” and “determine who is qualified to vote.” *League of United Latin Am. Citizens v. Exec. Off. of the President*, 818 F. Supp. 3d 34, 59 (D.D.C. 2026) (“*LULAC III*”). As a result, registration, the manner of counting votes, and residency requirements for voting are largely defined by State law and can differ across States.⁷ *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

The Proposed Rule infringes on States’ authority to regulate federal election procedures. Under the Rulemaking, the Postal Service would refuse to transmit ballots from any individual who is not enrolled in the State’s “Mail-In and Absentee Participation List.” Ballot Mail for Federal Elections, 91 Fed. Reg. at 32918. Refusing to transmit ballots in this way usurps States’ power to set the time, places, and manner of federal elections by imposing new prerequisites to voting by mail that neither the States nor Congress have prescribed. This is no mere implementation of “best practices.” Rather, the Postal Service is claiming the authority to prohibit States from running vote-by-mail programs—dramatically usurping the States’ constitutional authority to regulate the

⁷ *State Voting Requirements & Information*, U.S. Vote Found., <https://www.usvotefoundation.org/state-voter-information> (last visited April 16, 2026) (listing States’ various residency requirements); *see also* 52 U.S.C. § 10502 (prohibiting States from residency requirement in excess of 30 days).

“manner” of elections. The Postal Service has no such power to prohibit States from allowing their citizens to vote by mail. *See LULAC III*, 818 F. Supp. 3d at 59.

B. The Proposed Rule Lacks Statutory Authority and Violates Postal Laws.

Congress has the exclusive and broad authority to regulate the Postal Service and has passed no statute permitting the Postal Service to refuse to “transmit mail-in or absentee ballots” for entire categories of voters. To the contrary, Congress has legislated to ensure that the Postal Service provides non-discriminatory postal services to all Americans and to ensure that States, not the federal government, administer elections.

The Constitution grants only Congress the authority to “establish Post Offices and post Roads.” U.S. Const. art. I, § 8, cl. 7. This is a “broad power” that Congress has exercised to “establish[] a detailed statutory and regulatory scheme to govern this country’s vast postal system,” *U.S. Postal Serv. v. Council of Greenburgh Civic Ass’ns*, 453 U.S. 114, 122, 126 (1981). That power “embraces the regulation of the entire postal system of the country.” *See Ex parte Jackson*, 96 U.S. 727, 732 (1877). Congress has repeatedly used this power to structure the Postal Service throughout its history, most recently through the Postal Reorganization Act of 1970 (PRA), 39 U.S.C. § 101 *et seq.* *See U.S. Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540 U.S. 736, 739 (2004).

“[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986). In the extensive statutory framework governing the Postal Service, Congress has conferred no power on it to administer elections in the manner contemplated by the Proposed Rule. To the contrary, the Proposed Rule expressly conflicts with Congress’s mandate that the Postal Service provide universal and non-discriminatory service in delivering the mail.

Under the comprehensive statutory framework provided by Congress, the Postal Service’s role is straightforward: it must collect and deliver the mail to whom it is addressed, providing universal and non-discriminatory service. *See generally* 39 U.S.C. § 101 *et seq.* Congress has not given the Postal Service authority to condition delivery of ballots on whether States send a list of intended mail voters to the Postal Service beforehand or on the Postal Service’s independent determination that a ballot recipient appears on such a list. Nor has Congress ever authorized the Postal Service to mandate a particular ballot envelope design and refuse to deliver ballots if States fail to comply in any way. To the contrary, the Postal Service’s principal duty is to “receive, transmit, and deliver” the mail, and it “shall serve as nearly as practicable the entire population of the United States.” *Id.* § 403(a); *see also id.* §§ 403(b), 404(a)(1). The Postal Service may not, in providing services, “make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user,” except as “specifically authorized” by Congress. *Id.* § 403(c). A postal official’s “right to exclude letters, or to refuse to permit their delivery to persons addressed, must depend upon some law of Congress, and if no such law exists, then he cannot exclude or refuse to deliver them.” *See Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 109 (1902). Because no such law exists here, the Proposed Rule cannot be adopted.

The Proposed Rule not only lacks statutory authority but also violates several statutory mandates. *First*, the Proposed Rule cannot be squared with the mandatory objectives Congress set

for the Postal Service. Congress directed the Postal Service to provide “prompt, reliable, and efficient services to patrons in all areas.” 39 U.S.C. § 101(a). The Proposed Rule does the opposite. The Postal Service already delivers ballot mail promptly to its intended recipients. The Proposed Rule would add layers of needless complexity, requiring States to submit voter lists in advance and forcing the Postal Service to screen every outgoing ballot against those lists and then refuse to accept or deliver any mailing from a State that includes ballots addressed to non-enrolled individuals. The Postal Service must also build and administer these procedures through a brand-new, untested Federal Ballot Mail Portal, adding further technical complexity. These conditions and procedures make ballot delivery slower, less reliable, and markedly more costly and complex, in direct contravention of 39 U.S.C. § 101(a).

Second, the Rule would violate the PRA’s antidiscrimination mandate, which prohibits the Postal Service from “mak[ing] any undue or unreasonable discrimination among users of the mails” and from “grant[ing] any undue or unreasonable preferences to any such user” except as “specifically authorized in this title.” 39 U.S.C. § 403(c). In other words, the Postal Service cannot treat certain classes of mail differently unless it justifies that disparate treatment with good reasons or identifies specific statutory authorization. *See Nat’l Easter Seal Soc’y for Crippled Child. & Adults v. U.S. Postal Serv.*, 656 F.2d 754, 759-62 (D.C. Cir. 1981); *Direct Mail/Mktg. Ass’n, Inc. v. U.S. Postal Serv.*, 501 F.2d 717, 722 (D.C. Cir. 1974); *Anatol Zukerman & Charles Krause Reporting, LLC v. U.S. Postal Serv.*, 220 F. Supp. 3d 27, 31 (D.D.C. 2016).

But the Proposed Rule will grant unjustified preferential mail service to customers in multiple ways. It preferences customers in states and localities whose election officials are willing and able to comply with onerous new administrative requirements prior to mailing out ballots. No congressional enactment authorizes USPS to discriminate in this way among its ballot mail customers. And no reasonable justification exists for this disparate treatment. This “enrollment” distinction bears no relationship to Congress’s expressed will for USPS, *cf. Direct Mail/Mktg. Ass’n, Inc.*, 501 F.2d at 722, nor is it reasonably related to effectuating “pertinent objectives” of the PRA, *Ludewig v. Wolff*, 492 F. Supp. 1048, 1049 (S.D. Tex. 1980). Section 3(b) thus discriminates based only on the basis of criteria that Congress has never authorized USPS to apply, in violation of 39 U.S.C. § 403(c).

Third, the Rule would violate 39 U.S.C. § 404(e), which prohibits the Postal Service from providing any “nonpostal service” except those offered as of January 1, 2006. A “nonpostal service” is anything other than “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.” *Id.* §§ 404(e)(1), 102(5).

The Proposed Rule requires the provision of a slew of nonpostal services. It would require the Postal Service to: build and administer a Federal Ballot Mail Portal, solicit and compile Mail-In and Absentee Participation Lists on behalf of states and update them continuously on demand, scan every outgoing ballot to match it to an enrolled voter on the Mail-In and Absentee Participation List, and provide to each state’s chief election official a state-specific Mail-In and Absentee Participation List that contains the name and address of each individual who was enrolled and the unique IMbs for the inbound and return ballot envelopes sent to each such individual. These are non-postal election administration functions that Congress has never authorized the

Postal Service to perform. The Postal Service does not maintain a database of residential mail customers, let alone a registry of voters eligible to receive mail ballots.

Fourth, the Proposed Rule will violate the dictate of 39 U.S.C. § 412(a) that “no officer or employee of the Postal Service shall make available to the public by any means or for any purpose any mailing or other list of names or addresses (past or present) of postal patrons or other persons.” The statute provides only one exception: disclosure to the Secretary of Commerce for use by the Census Bureau. *Id.* § 412(b). The Rule would require the Postal Service to compile a list of authorized mail voters, and then to transmit the list to each state’s chief election official. This transmission likely violates § 412. In addition, although the Rule does not specify a procedure, the justification for the Rule states multiple times that the Mail-In and Absentee Participation Lists are intended to “facilitate law enforcement efforts” and that the Rule would “set forth . . . data reporting standards that can provide information regarding the sending of ballots through the mails that would be available for use by law enforcement.” Ballot Mail for Federal Elections, 91 Fed. Reg. at 32915, 32916. Moreover, in the pending D.D.C. litigation challenging the Executive Order, the federal defendants, including the Postal Service, notified the court that “DHS contemplates working with the United States Postal Service (USPS) to integrate USPS datasets from Mail-In and Absentee Ballot Participation Lists, once available . . . to monitor mail-in and absentee ballot flows, identify anomalies that may suggest voter fraud or misuse, and generate unauthorized investigative leads.” Federal Defs.’ Notice at 2, *DSCC v. Trump*, No. 26-cv-1114-CJN (D.D.C. June 5, 2026), Dkt. No. 149.⁸ This indicates that the Postal Service is already contemplating sharing customer information with other agencies for purposes and in ways that, absent a search warrant or other court order, would likely violate 39 U.S.C. § 412. The Postal Service should reject this breach of customer privacy.

C. The Proposed Rule Violates Federal Election Laws and Usurps Power Reserved to the States to Administer Elections.

Through a comprehensive statutory scheme, Congress has provided the States with both clear list maintenance and voter verification instructions and requirements, but has otherwise declined to displace the States’ constitutional authority over voter registration or place that responsibility in the hands of any federal entity, including the Postal Service. When Congress has had a specific role in mind for the Postal Service in administering federal elections, it has stated the role clearly. Two statutes are of particular relevance here: the National Voter Registration Act (“NVRA”) and the Help America Vote Act (“HAVA”).⁹ The NVRA and HAVA both recognize that

⁸ Three days later, the federal defendants submitted a further notice of case developments regarding a memorandum signed by DHS Secretary Markwayne Mullin, stating that DHS had been “authorized to continue preliminary conversations with USPS concerning potential data-sharing arrangements, and should USPS finalize its rulemaking process. Federal Defs.’ Notice at 2, *DSCC v. Trump*, No. 26-cv-1114-CJN (D.D.C. June 8, 2026), Dkt. No. 150.

⁹ Congress also enacted UOCAVA, 52 U.S.C. §§ 20301-20311, “to protect the voting rights of military members, their families, and other United States citizens living overseas.” *United States v. Alabama*, 998 F. Supp. 2d 1283, 1286 (M.D. Ala. 2014), *aff’d*, 778 F.3d 926 (11th Cir. 2015); *see also* H.R. Rep. No. 99-765, at 5 (1986). UOCAVA creates specific forms to facilitate their ability to do so and directs the Postal Service to ensure that all marked ballots from military and

States, and not the federal government, are responsible for developing and maintaining their own voter registration lists and administering elections.

First, Congress passed the NVRA, *see* Pub. L. No. 103-31, 107 Stat. 77 (1993) (codified as amended at 52 U.S.C. §§ 20501 *et seq.*), to “increase the number of eligible citizens who register to vote in elections for Federal office,” 52 U.S.C. § 20501(b)(1), while also recognizing the need to protect the “integrity of the electoral process.” *Id.* § 20501(b)(3). The NVRA thus reflects the balance Congress struck between its “two main objectives: increasing voter registration” while also “removing ineligible persons from the States’ voter registration rolls.” *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018); *see* 52 U.S.C. § 20501(b). In the NVRA, Congress enacted the particular citizenship confirmation measures that it wished to require the States to employ and placed limitations on the States’ ability to remove voters immediately prior to elections, when there is limited time to correct errors. 52 U.S.C. §§ 20503-20506.

The only role assigned to the Postal Service by Congress under the NVRA is to provide state and local election officials with information about whether an individual may have moved, 52 U.S.C. § 20507(c)(1), and to offer State and local election officials reduced rates for any mailings the NVRA requires or authorizes, 39 U.S.C. § 3629. These limited instructions in the NVRA certainly do not authorize the Proposed Rule’s wide-ranging role for the Postal Service in gatekeeping mail/absentee voting.

Second, in passing HAVA, Pub. L. No. 107-252, 116 Stat. 1666, 1726 (2002) (codified as amended at 52 U.S.C. §§ 20901 *et seq.*), Congress required “each State” to create a “centralized, interactive computerized statewide voter registration list,” 52 U.S.C. §§ 21083(a)(1)(A), (a)(1)(A)(i), and to “conduct[] a general program of list maintenance that makes a reasonable effort to remove voters who become ineligible because of a change of address [or death],” *Bellitto v. Snipes*, 935 F.3d 1192, 1203 (11th Cir. 2019); *see also* 52 U.S.C. § 21083(a)(2)(A)(ii). HAVA further sets general parameters for state and local officials and provides that “[t]he specific choices on the methods of complying with the [statute’s] requirements” regarding list maintenance and voter registration “shall be left to the discretion of the State.” 52 U.S.C. § 21085. Critically, Congress provided *no role* in HAVA for the Postal Service in managing voter lists or determining who may vote by mail.

overseas voters are duly delivered to state election authorities. 52 U.S.C. §§ 20301(b)(3), 20302(a), 20304(b)(2). The Proposed Rule purports not to apply to UOCAVA ballots, but this disclaimer cannot remedy the practical effects of the Rule. As a practical matter, time and staff resources are finite; for election administrators forced to comply with the Rule’s burdensome new requirements, this rule therefore risks significant delays to UOCAVA ballots. Moreover, UOCAVA is another example of the fact that when Congress intends the Postal Service to play a particular role in federal elections, it explicitly spells out that role.

D. None of Statutes Cited in the NPRM Authorize the Proposed Rulemaking.

The NPRM claims that the Proposed Rule is authorized by 39 U.S.C. §§ 401 and 404, as well as provisions of the Voting Rights Act and the NVRA. None of these statutes, however, authorize this Rulemaking.

52 U.S.C. § 10307, a provision of the Voting Rights Act, imposes criminal penalties for a number of prohibited actions, including: barring an authorized voter from voting or refusing to count their vote; intimidating, threatening, or coercing voters; willfully or knowingly providing false information to register to vote; and voting more than once in the same election. Similarly, 52 U.S.C. § 20511, a provision of the NVRA, also imposes criminal penalties for voter intimidation and voter fraud. Neither provision, however, contains any mention of the Postal Service nor assigns any responsibility to the Postal Service to enforce the statutes.

39 U.S.C. § 404 is similarly inapposite. The NPRM cites the power to “provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail, and for the disposition of undeliverable mail.” *Id.* § 404(a)(1). But the power to “provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail” refers to the power to carry the mail to the addressed recipient, not to condition the mail’s acceptance and delivery on a recipient’s enrollment in a federal registry and to refuse to deliver a recipient’s ballot if their information does not match or if their State declines to comply with the Postal Service’s demands. Nor does the Proposed Rule concern undeliverable mail. The DMM contains only eight conditions under which mail is considered undeliverable, *see* DMM § 507.1.1, none of which apply here.

Lastly, 39 U.S.C. § 401 only authorizes the Postal Service to adopt rules and regulations “as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title.” In other words, for a rulemaking to be authorized, it must be necessary *to execute a statutorily assigned function*. But, as described above, the Postal Service has never been authorized in any form to create and maintain nationwide lists of absentee voters, nor to determine which states are permitted to run vote-by-mail systems. So, contrary to the assertion in the NPRM, section 401 in fact explicitly prohibits this Rulemaking.

In short, none of the NPRM’s cited laws authorize the sweeping power the Proposed Rule seeks to exercise. Indeed, an assertion of power of such extraordinary magnitude and political significance—the power to refuse transmission of an entire State’s federal ballots—demands clear congressional authorization that no provision of Title 39 supplies. *See West Virginia v. EPA*, 597 U.S. 697, 721 (2022).

E. The Proposed Rule is Procedurally Improper.

The Proposed Rule is also fatally flawed because the Postal Service has failed to seek an advisory opinion from the Postal Regulatory Commission and has not conducted the necessary prefilings conferences required by the PRA.

The U.S. Postal Service must obtain an advisory opinion from the Postal Regulatory Commission (PRC) before it proposes any change to the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis. 39 U.S.C. § 3661(b). Although the PRC's opinion is advisory rather than binding, it is a mandatory procedural step that the Postal Service must undergo before implementing the types of sweeping, nationwide changes that will go into effect under this proposed rule.

The advisory-opinion process is an essential requirement, because as stated by the PRC:

Obtaining the views of Postal Service customers is vitally important where the Postal Service's monopoly First-Class Mail product is concerned. The privilege of a governmentally established monopoly status includes the responsibility to hear and consider the needs of the constituency that must function under the constraints of that monopoly. Actions that are, or are perceived to be unilateral in nature may disenfranchise users to the ultimate detriment of the monopoly product.

Commission Report: Complaint on Sunday and Holiday Collections, Docket No. C2001-1 at 2 (Postal Rate Comm'n Nov. 5, 2002), <https://prc.gov/docs/35/35714/CommissionReport.pdf>.

The Proposed Rule includes changes that will cause delays and disruptions to millions of Postal Service customers nationwide, and thus, are precisely the type of changes that must be reviewed by the PRC.

When evaluating whether the Postal Service must seek an advisory opinion prior to implementing a large-scale change to mail service, courts look to three factors:

1. "First, there must be a 'change.'" *New York v. Trump*, 490 F. Supp. 3d 225, 241 (D.D.C. 2020) (citing *Buchanan v. U.S. Postal Serv.*, 508 F.2d 259, 263 (5th Cir. 1975)). The proposal must make some meaningful impact on service. *See id.*; *New York v. Biden*, 636 F. Supp. 3d 1, 21 (D.D.C. 2022); *NAACP v. U.S. Postal Serv.*, 496 F. Supp. 3d 1, 16-17 (D.D.C. 2020) ("Minor alterations which have a minimal effect on the general class of postal users do not fall within 3661.").
2. "Second, the change must be 'in the nature of postal services,'" meaning the change alters the manner in which postal services are available to users. *Id.* at 17.
3. "Third, the change must affect service 'on a nationwide or substantially nationwide basis.' A broad geographical area must be involved." *Id.*

"These three factors combine to demonstrate that Congress intended the safeguards of 3661 to apply only when changes of significance were contemplated." *Id.* The Postal Service's proposed rule change would effect sweeping, nationwide changes, easily meeting this standard, and therefore must be preceded by an advisory opinion before implementation.

First, the Proposed Rule is a substantial change in postal services that will have a significant, measurable impact on local election officials, mail-service vendors, state election officials, postal service employees, and voters. The Proposed Rule fundamentally changes the way the Postal Service has functioned since its founding. It creates mandatory standards for absentee and mail-in ballot envelopes, requires states to submit detailed information (including two unique Intelligent Mail Barcodes for each voter) related to any voter that intends to receive mail ballots. Not only that, under the proposed rule the Postal Service will not deliver mail ballots to voters who are not included on a state's enrollment list. The rule also instructs Postal Service employees to accept only those ballots that satisfy the rule's stringent, technical envelope requirements. As a direct result, some postal users who previously received their mail ballots without incident will now have their ballots withheld by the Postal Service and will not receive them in time to vote, if at all.

In 2024, the Postal Service delivered at least 99.22 million ballots to or from voters—a significant percentage of all Postal Service customers.¹⁰ Therefore, the proposed rule will result in a meaningful impact on service. Because of the penalties imposed if elections officials fail to comply with this proposed rule by the November election, tens of millions of Postal Service users are at risk of having their ballot withheld or suffering mail delays to their ballot. The penalties imposed by the Proposed Rule risk disenfranchising postal users en masse due to errors by election officials or the Postal Service and not through any fault of their own.

Second, these changes are “in the nature of the postal services.” The PRC “has stated that in determining whether an initiative involves a change in the nature of postal services ‘[i]t is the *experience of the individual postal consumer*, the recipient of the complex of services provided by the Postal Service and *the intended beneficiary of the policies* incorporated by § 3661, that must be assayed.’” *Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833, 885 (E.D. Pa. 2020) (emphasis in original). “[S]how[ing] that individual postal customers have experienced an alteration in the availability of postal services as a result of the changes” strongly supports that a change is “in the nature of the postal services.” *Id.* And, indeed, changes that risk systemic delays in the delivery of ballots to postal users are considered “in the nature of postal services.” *See NAACP*, 496 F. Supp. 3d at 17 (holding nationwide delays caused by Postal Service changes were “in the nature of postal services”) (citations omitted); *New York v. Trump*, 490 F. Supp. 3d at 242 (same); *New York v. Biden*, 636 F. Supp. 3d at 22 (same). Therefore, it is common for the Postal Service to seek advisory opinions before instituting policy changes that would result in service delays systemwide or to specific types and/or classes of mail.¹¹

¹⁰ *See* U.S. Postal Serv., 2024 Post-Election Analysis Report 1 (Dec. 2, 2024), <https://about.usps.com/what/government-services/election-mail/pdf/usps-post-election-report-2024-12-02.pdf>; *see also* *Nearly 1 in 3 Americans Voted by Mail in 2024*, States United Democracy Ctr. (updated Apr. 13, 2026), <https://statesunited.org/resources/americans-vote-by-mail-2024/>.

¹¹ *See, e.g., Advisory Op. on the Delivering for Am. Transp. Optimization and Network Changes*, Docket No. N2024-1 (Postal Regul. Comm’n Jan. 31, 2025), <https://www.prc.gov/sites/default/files/Advisory-Opinion.pdf>; *Advisory Op. on Serv. Changes Associated with First-Class Mail and Periodicals*, Docket No. N2021-1 (Postal Regul. Comm’n July 20, 2021), <https://prc.arkcase.com/api/prc->

The changes likely to result if the proposed rule is finalized and implemented are exactly the kind of alterations courts recognize as affecting the nature of postal services. As a result, voters nationwide face a substantial risk of delays in both receiving and returning their mail-in ballots. And some voters may never receive their mail-in ballot if their local election jurisdiction lacks the resources to comply with the Postal Service’s new proposed requirements for ballot mail. The delays that will be caused by the Postal Service’s proposed changes will dramatically impact voters’ experience using the mail to vote. Ballot delivery is an essential service provided by the Postal Service. Without this service millions of Americans who are not otherwise able to vote at the polls will be denied their fundamental right to vote.

Furthermore, the scale of these changes—new processes for thousands of jurisdictions and tens of millions of absentee voters—is far more sweeping than the cases in which courts found that the Postal Service failed to obtain a PRC advisory opinion before implementing changes with a significant impact on the delivery of election mail. For example, when the Postal Service implemented a new transportation policy in July 2020 that reduced the number of extra and late trips taken by postal workers for delivering mail and reduced the total number of mail sorting machines without seeking an advisory opinion, federal courts across the country held that the Postal Service had acted *ultra vires* and enjoined the changes to postal service pending an advisory opinion. *See New York v. Trump*, 490 F. Supp. 3d at 242; *NAACP*, 496 F. Supp. 3d at 17; *DeJoy*, 490 F. Supp. 3d at 893; *Washington v. Trump*, 487 F. Supp. 3d 976, 979 (E.D. Wash. 2020). By comparison, the changes in this Proposed Rule are likely to be far more disruptive and pose an even greater risk of disenfranchisement than the mail delays in 2020 that impacted only certain jurisdictions.

Third, the proposed change will have nationwide impact. According to the Postal Service, “[t]he proposed rule would apply uniform standards for the mailing of absentee ballots to and from voters.” Ballot Mail for Federal Elections, 91 Fed. Reg. at 32915. The rule is one of general application and thus will have nationwide impact because it will determine when or if a postal user receives their mail ballot. *See* U.S. Postal Serv., 2024 Post-Election Analysis Report 1 (Dec. 2, 2024). A change is nationwide or substantially nationwide when the change effects “multiple locations in different areas throughout the country” or when “a significant number of postal customers experience the requisite change in service in their local areas, and these local areas cover a ‘broad geographical area’ then the change is substantially nationwide ‘regardless of whether the local changes produce an aggregate change in the level of postal services provided by the Postal service.’” *DeJoy*, 490 F. Supp. 3d at 886. Changes that are expressly national in nature such as this proposed rulemaking are unquestionably nationwide where every state will be required to choose whether to comply or risk their entire vote-by-mail program.

For context, during the 2024 general election period of September 1 through November 15, the Postal Service delivered at least 99.22 million ballots to or from voters. *See* U.S. Postal Serv.,

[dockets/filing/downloadFile?fileId=154736&inline=true](#); *Advisory Op. on the Serv. Standard Changes Associated with First-Class Package Serv.*, Docket No. N2021-2 (Postal Regul. Comm’n Sep. 29, 2021), <https://prc.arkcase.com/api/prc-dockets/filing/downloadFile?fileId=129284&inline=true>.

2024 Post-Election Analysis Report 1 (Dec. 2, 2024), <https://about.usps.com/what/government-services/election-mail/pdf/usps-post-election-report-2024-12-02.pdf>. Therefore, changes that impact the delivery of mail-in ballots have national impact—not only because the impact is felt by tens of millions of users in states across the nation, but also because mail delays during an election can disenfranchise voters, which in turn can consequentially impact those users’ political representation.

Therefore, in addition to the injunction currently in place, and the additional substantive illegalities of the proposal, this rulemaking furthermore should not move forward until the PRC has had the opportunity to issue an advisory opinion.

III. Even if the Proposed Rule Were Lawful, It Would Be Bad Policy and Logistically Impossible to Implement Prior to the November 2026 Elections Without Disenfranchising Voters.

Even if the Proposed Rule were lawful—and it is not—it would be ill-advised and threaten to undermine both election administration and the Postal Service itself and could not be implemented prior to the November 2026 elections without risking enormous chaos and disruption that could disenfranchise millions of voters.

First, the creation of the Federal Ballot Mail Portal and requirement that State and local election administrators upload massive lists of authorized mail/absentee voters into that system introduces opportunities for data transfer errors that risk disenfranchising voters. Each State has its own voter registration system that requires different data fields, uses different unique identifiers for voters, and tracks voter participation differently. States have adapted these systems to meet their own unique needs, given varying state laws around voter eligibility, registration, and participation, and the particular needs of the State. Any time different data systems are forced to interact, there are issues of interoperability that must be rigorously tested and worked out, or they run the risk of transfer errors and mismatches—which, in this case, could disenfranchise voters if the Federal Ballot Mail Portal misidentifies them as an ineligible voter. Neither the Postal Service nor the States have the time or resources to do the careful testing that would be required to effectively implement this Proposed Rule in time for the November 2026 general election. Furthermore, neither the Postal Service nor the election administrators who will be responsible for uploading lists have the staffing capacity to address the questions and technical issues that accompany the creation of this massive new system. Indeed, there are more than 10,000 election jurisdictions in the United States¹²—if each jurisdiction had just a single question, the call volume would easily overwhelm the Postal Service. And unanswered questions in this context are not a mere inconvenience—they risk disenfranchising voters.

Second, the Proposed Rule would require Postal Service employees to scan every ballot in every batch of outgoing ballots submitted by every state and then determine whether every ballot in the batch is addressed to an individual on the Mail-In and Absentee Participation List. This must

¹² *Most Election Jurisdictions Have Small Populations*, The Pew Charitable Trs. (Apr. 4, 2013), <https://www.pew.org/en/research-and-analysis/articles/2013/04/04/most-election-jurisdictions-have-small-populations>.

happen at the time of acceptance at a facility that performs business mail acceptance functions, and if any ballot fails to comply, the mailing will not be accepted and will be returned to the state. In 2024, the Postal Service delivered more than 99 million ballots to or from voters.¹³ The Postal Service is in no condition to absorb a verification and return-to-sender obligation of such massive scale. This would require the Postal Service to create both new hardware and new software, neither of which currently exist, and deploy them nationwide—a process that would be impossible to complete prior to the 2026 midterm elections in a rigorous way. And inadequate testing would lead to errors that, again, could disenfranchise voters. Moreover, the Postal Service’s financial difficulties are well documented: it has operated at a loss each year since 2007, totaling billions of dollars and reached its statutory borrowing limit.¹⁴ Nor is the ballot gatekeeping role a revenue-generating postal service—it is a non-postal election administration function that USPS would have to staff out to the same workforce responsible for delivering the rest of the nation’s mail. The Postal Service cannot possibly add the enormous undertaking of verifying nearly 50 million ballots without causing catastrophic service failures that will disenfranchise tens of millions of voters and disrupt countless other critical Postal Service functions.

Third, complying with this Rule will present a significant hardship on state and local election administrators, who already are underfunded and overworked. On the state level, redesigning electronic voter registration systems to be able to interact with the Federal Mail Ballot Portal and be able to generate IMbs for both outbound and return ballot mail would require significant development time and resources, neither of which states have. Moreover, redesigning mail ballot carrier envelopes is an involved process that requires usability testing for various voter groups, election administrators, the Postal Service, and legal review to ensure compliance with state law. This process can take up to a year to complete. And on the local level, requiring administrators to upload each absentee voter’s information and unique IMbs to the Federal Mail Ballot Portal will be onerous and time-consuming, delaying the processing and mailing of ballots during the period when time is of the essence to ensure that voters are not wrongfully disenfranchised. In addition, local election jurisdictions have already expended money to order mail ballot carrier envelopes for the upcoming elections, and ballot envelopes are specialized items that require significant lead time to purchase; requiring localities to reorder redesigned ballot envelopes at this late stage would be financially ruinous and, in many cases, a practical impossibility. The burden on state and local election administrators is only underscored by the fact that pre-submitting *lists* of authorized mail ballot recipients is entirely unnecessary because the intended recipient and their address is already printed on each outgoing ballot placed in the mail.

¹³ U.S. Postal Serv., 2024 Post-Election Analysis Report 1 (Dec. 2, 2024), <https://about.usps.com/what/government-services/election-mail/pdf/usps-post-election-report-2024-12-02.pdf>.

¹⁴ Elena Patel, *The US Postal Service’s Fiscal Crisis*, The Brookings Inst. (Mar. 13, 2026), <https://www.brookings.edu/articles/the-us-postal-services-fiscal-crisis/>.

And each state has already developed sophisticated systems to ensure the integrity and accuracy of their election systems and voter rolls.¹⁵

Fourth, the Proposed Rule is an unprecedented departure from how election mail delivery has always worked. Even for other sensitive mail, the conditions the Postal Service places on acceptance usually turn on features of the mailpiece itself—sufficient postage, proper preparation, etc. Nowhere else does the DMM appear to condition acceptance of a mailing on whether the intended recipients are on a pre-submitted electronic registry. Under the Proposed Rule, an outgoing ballot envelope that is postage paid and correctly addressed would be nonetheless refused if its addressee is absent from the sending state’s Mail and Absentee Participation List. Congress designed the Postal Service as a common carrier tasked with delivering properly addressed and prepared mail to whom it is addressed, not deciding who is entitled to receive it.

Lastly, requiring states to change their complicated voting systems this close to an election would cause chaos. Many states have a policy of freezing any changes within the last few months leading up to an election, because to make and implement any changes to the software or databases they use too close to an election would run the risk of having insufficient time to test for bugs and insufficient time to retrain election administrators on any new features or requirements.

* * *

For the foregoing reasons, the Postal Service must abandon this Proposed Rulemaking, which would adopt a rule that is unconstitutional, unlawful, and an ill-advised insertion of the Postal Service into the role of nationwide election administrator that risks disenfranchising millions of voters.

¹⁵ See, e.g., Samara Angel, Jonathan Katz & Randi Wright, *Mail voting in the US: Data points to very low fraud and significant benefits to voters*, The Brookings Inst. (Nov. 6, 2025), <https://www.brookings.edu/articles/mail-voting-in-the-us-data-points-to-very-low-fraud-and-significant-benefits-to-voters/> (noting that an analysis of Heritage’s database “found that only about 0.00006% of total votes cast were fraudulent mail votes over the preceding 20 years,” that universal vote-by-mail states have “essentially zero fraud,” and that the American Statistical Association found “no evidence that voting by mail increases the risk of voter fraud overall”); Wendy R. Weiser & Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, Brennan Ctr. for Just. (Apr. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.