

No. 26A305

In the Supreme Court of the United States

UNITED STATES POSTAL SERVICE, ET AL.,
Applicants,

v.

STATE OF CALIFORNIA, ET AL.,
Respondents.

DONALD J. TRUMP, ET AL.,
Applicants,

v.

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, ET AL.,
Respondents.

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 Order Issued by the United States District Court
for the District of Massachusetts

**BRIEF OF AMICI CURIAE CURRENT AND FORMER ELECTION
OFFICIALS IN SUPPORT OF NEITHER PARTY**

Brent W. Herrin
Counsel of Record
SMALL HERRIN, LLP
100 Galleria Parkway, Suite 350
Atlanta, Georgia 30339
Phone: (770) 857-1664
bherrin@smallherrin.com

C. Ryan Germany
FORTSON BLALOCK TURNER & GERMANY
675 Ponce de Leon Ave. NE, Suite 8500
Atlanta, Georgia 30308
Phone: (678) 672-9230
rgermany@fortsonblalock.com

Counsel for Amici Curiae Current and Former Election Officials

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INTEREST OF AMICI CURIAE

Amici curiae are thirty-eight current and former state and local election officials from ten States, the Missouri Association of County Clerks and Election Authorities, and Civic Right Action Fund, a 501(c)(4) organization that supports free, fair, and trusted elections. Many Amici are Republicans. Several were elected to their offices on the Republican line, and several serve in Republican majority jurisdictions.¹ A full list of Amici appears in Appendix A.

Amici take no position on whether the Postal Service had statutory authority to promulgate Ballot Mail for Federal Elections, 91 Fed. Reg. 54966 (Aug. 26, 2026) (the “Rule”), whether the Rule complies with the Administrative Procedure Act, or whether it intrudes on powers the Elections Clause commits to the States and to Congress. Amici take no position for purposes of this brief on the asserted policy goals behind the Rule. What unites Amici is their understanding of the practical impact of permitting the Rule to go into effect in advance of the 2026 midterm elections. As election officials and former election officials, Amici uniquely understand the preparation and execution necessary to administer a smooth election and the difficulties that late process changes cause.

Absentee ballots for the November 3, 2026 general election have already been mailed to voters in some states and other states will follow in the coming days. The Rule requires significant work from USPS and state and local election officials to

¹ Under this Court’s Rule 37.6, amici state that no party or party’s counsel authored this brief in whole or in part, and that no person other than amici and their counsel contributed money intended to fund its preparation or submission. A complete list of amici appears in Appendix A.

implement, including building and testing new systems, creating data imports and exports that are compatible with those new systems, and putting in place new processes for mailing ballots. Normally, these types of changes would go through significant end-to-end testing. Based on Amici's experiences and knowledge of the Rule, the work necessary to implement the Rule in a manner that ensures workability and does not disrupt other ongoing processes that are crucial to a smooth election (such as preparing and proofing ballots, testing equipment, finalizing voter rolls, and training poll workers) cannot be responsibly accomplished in the time that remains in a manner that ensures both that the Rule is implemented correctly and other crucial preparations do not fall by the wayside. Attempting to implement the Rule now will almost certainly lead to mistakes, delays, and confusion for both voters and election officials.

SUMMARY OF ARGUMENT

For election officials, elections are not something that simply happen on Election Day—preparations have been underway this entire year, and crucial preparations are occurring now. In many respects, the election is already underway. Ballots have been prepared and proofed. Poll workers and other election officials have been trained on processes. North Carolina has already mailed out its first ballots. N.C. Gen. Stat. § 163-227.10(a). Federal law requires every State and the District of Columbia to transmit ballots to military and overseas voters by September 19. 52 U.S.C. § 20302(a)(8)(A). Ballots then go out on a rolling basis in every State. Against that calendar, the Rule requires election offices to ensure that their ballot envelopes (which have already been ordered and delivered for this year) meet USPS design

requirements, redesign and reprint their ballot envelopes if they do not, register for and populate a federal ballot portal that does not yet exist, enroll every mail voter on a national participation list, and hand-deliver every outbound ballot mailing to a business mail entry unit for piece-by-piece verification. And to do each of those things while at the same time having to execute all existing tasks to ensure a smooth election. In short, election officials' plates are already full with the normal but crucial tasks of preparing for the election. Attempting to squeeze new processes without sufficient testing or the opportunity to allow election officials to obtain new resources onto these full plates will almost certainly cause problems in either the new processes or an existing process that was sacrificed to implement the Rule. Attempting to implement this rule now significantly increases the risks of problems to the election. Those problems could be different in each jurisdiction, but election officials know that late changes almost always lead to unforeseen consequences.

Attempting to implement this new process on the eve of an election is what *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), exists to prevent. The principle rests on incontestable facts about voters and about the people who run elections: that late changes breed confusion, that confusion keeps eligible voters from voting, and that a chaotic election erodes confidence in the result. Amici therefore suggest only this: that the November 3, 2026 general election be conducted under the rules that were in place when the election's administration began. That result can, and in Amici's view should, be reached without deciding anything about the merits of the Rule.

ARGUMENT

I. THE RULE CANNOT BE IMPLEMENTED BEFORE THE NOVEMBER 2026 ELECTION.

A. BALLOTS ARE ALREADY GOING INTO THE MAIL.

Election administration runs on a fixed calendar that no official can move. North Carolina mails its first ballots to voters on September 4, 2026. N.C. Gen. Stat. § 163-227.10(a). The Uniformed and Overseas Citizens Absentee Voting Act requires every State and the District of Columbia to transmit ballots to military and overseas voters no later than September 19. *See* 52 U.S.C. § 20302(a)(8)(A). Other States' initial mailing dates fall between September 4 and October 16, and ballots continue to go out on a rolling basis, as applications arrive, until nearly Election Day in some states. Twenty-four States allow a voter to request a mail ballot within a week of the election, and two set no published deadline at all. Expert Declaration of Tammy Patrick, CERA, *DSCC v. Trump*, No. 1:26-cv-01114 (D.D.C. Aug. 28, 2026), ECF No. 171-3, ¶¶ 40, 105 (“Patrick Decl.”).

The Rule was released in final form on the evening of Friday, August 21, 2026, with an immediate effective date, leaving roughly nine and a half weeks—48 working days—before November 3. *Id.* ¶ 36. By then, budgets and staffing levels for the cycle had been set, in most places a year or more earlier; state training and certification programs were complete or well underway; procedures, manuals, and directives were finalized; and the Postal Service had already trained its own workforce on the pre-Rule protocols. *Id.* ¶¶ 33–35.

The Rule funds none of what it requires. Election administration in this country is paid for at a ratio of roughly 85% local, 10% state, and 5% federal, and the average county election office operates on about half a percent of the county budget. *Id.* ¶ 29. More than a third of local election offices have no full-time employee dedicated to election work at all. *Id.* ¶ 27. No election office, at any level of government, has budgeted for the work the Rule requires. And none have the time or the means to fully train or test on this Rule. That simply cannot be done midstream of this election.

B. THE ENVELOPE REQUIREMENTS CANNOT BE MET.

Section 705.24.3 requires that outbound and return federal ballot envelopes carry the Election Mail logo, be automation compatible, bear an Intelligent Mail barcode unique to the individual voter, and be submitted to the Postal Service for Mailpiece Design Analyst review. 91 Fed. Reg. at 54990. Compliance is a precondition to mailing: a noncompliant mailing “will not be accepted.” *Id.* at 54991 (§ 705.24.5.3).

Most local election offices do not currently satisfy these requirements, and the reasons have little to do with willingness. Many have already designed, approved, ordered, and printed their 2026 general election envelopes. Patrick Decl. ¶¶ 53, 87. Envelope vendors quote four-to-eight-week turnarounds in ordinary times; if a substantial share of the nation’s jurisdictions reorders at once, that stretches to twelve-to-sixteen weeks. *Id.* ¶ 86. Thousands of offices have no capacity to print a unique barcode; some handwrite the voter’s address on the envelope and apply the return address with a rubber stamp. *Id.* ¶ 56. In several States, including Wisconsin, envelope design is fixed by state law or by the state election authority, and local

officials cannot change it even if they wished to. *Id.* ¶ 84. And some ballots cannot be made automation compatible at all: Braille and large-print ballots for voters with vision impairments are mailed as flats, with binding that postal equipment cannot process. *Id.* ¶¶ 68–70.

Mandatory design review is its own bottleneck. There are 40 Mailpiece Design Analysts nationwide, none dedicated to election mail, serving roughly 8,000 election jurisdictions. *Id.* ¶¶ 75, 78. The Postal Service estimates a two-business-day turnaround. Officials and vendors budget a week, and often two. *Id.* ¶ 79. Whichever estimate is closer to the mark, a review process built for routine commercial mail is unlikely to absorb a nationwide wave of submissions in the weeks that remain. The Rule also answers none of the basic questions the Postal Service’s own state-official counterparts have asked: what the turnaround guarantee is, how an office proves review occurred, and how conflicting analyst determinations are resolved. *Id.* ¶ 75.

C. THE FEDERAL BALLOT PORTAL HAS NOT BEEN SUFFICIENTLY TESTED.

Section 705.24.4 conditions every mail ballot on advance enrollment of the voter—name, address, and the unique barcodes on both envelopes—through a new Federal Mail Ballot Portal. 91 Fed. Reg. at 54991. As of the beginning of September, USPS has said that it is “now finalizing the portal and will soon make it available to election officials who wish to voluntarily familiarize themselves with this platform.” USPS Statement on Development of U.S. Federal Mail Ballot Portal, Sept. 1, 2026. As election officials, Amici know that new systems are usually rolled out only after rigorous end-to-end testing, including end-user testing. That has not been the case

with this portal. Patrick Decl. ¶¶ 38, 107. Rigorous testing is necessary because that is how mistakes are located and necessary corrections are made. Rolling out a system that has not been subject to that rigorous testing will almost certainly have negative effects on voter experience in the upcoming election.

Even a working portal would not solve the underlying problem: the data the Rule demands does not always exist in the form the Rule assumes. Mail ballot administration is local. Applications go to county and municipal offices, not to the Secretary of State, and many States maintain no real-time statewide list of who has requested a mail ballot. Some small offices track requests in spreadsheets. *Id.* ¶¶ 95–97, 100. The Rule further makes each State’s chief election official responsible for deciding which local officials may use the portal. In Arizona and Texas, for example, responsibility for mail balloting is divided among several county offices, and the division differs from one county to the next. Local election officials in most States do not report to the chief State election official, and many hold independently elected office. Before a single voter can be enrolled, then, the chief State election official must determine how each county has allocated these duties and grant portal access to the right individuals in every jurisdiction in the State. *Id.* ¶¶ 101–102.

The enrollment requirement bears most heavily on two groups of voters: those who need a ballot sent somewhere other than their registered address, such as college students, retirees who spend part of the year elsewhere, and workers who travel; and those who request a ballot late in the cycle. For each of them, an election office must now process the application, assemble the data the portal requires, enroll the voter

on the participation list, and resolve whatever error the portal returns before any ballot can be mailed. *Id.* ¶ 104. Given those required steps, the enrollment requirement also affects election officials, creating a new data entry task (and a new opportunity for mistakes) in an already complicated logistical process where election officials take great care to minimize mistakes. In a State that allows a voter to request a ballot as late as the Friday or Monday before Election Day, those steps can consume the very time the voter needed in order to receive the ballot, mark it, and return it. Those challenges cannot be met on the fly.

D. THE VERIFICATION REQUIREMENTS CANNOT BE IMPLEMENTED.

Section 705.24.5 requires that every outbound ballot mailing be presented at a business mail entry unit or a retail counter and verified piece by piece against the participation list before acceptance. 91 Fed. Reg. at 54991. For rural offices, which typically operate with the fewest staff, that requirement means sending an employee to a postal facility that may be a considerable distance away. Those offices may no longer hand a small mailing to a carrier. Patrick Decl. ¶¶ 109–111.

Large offices face a different difficulty. Verification under the Rule is not a spot check of the mailing as a whole. Section 705.24.5.1 directs Postal Service employees to review the mailing against the envelope design standards of Section 705.24.3.1, and Section 705.24.5.2 requires that the outbound pieces be verified against the participation list before the mailing is accepted. 91 Fed. Reg. at 54991. In practice, that means reading the unique barcode (which is not even present on many envelopes currently in use) on each mailpiece and matching it to an enrolled voter. Patrick Decl.

¶ 109. Most retail locations have never had that capability, because for more than a decade mail has gone to processing plants for scanning; counter locations will now need hand-held scanners at a minimum, and the smallest offices will do the work by hand. *Id.* ¶¶ 115, 119. The Postal Service estimates that scanning a barcode “generally takes less than a minute per mailpiece.” 91 Fed. Reg. at 54981. Maricopa County, Arizona expects to mail 2.6 million ballot packets on the first day of early voting. At that rate, verifying that single mailing would take roughly 4.9 years. Even at one second per piece the mailing would take 30 days to clear, and at one-tenth of a second more than 72 hours—for a mailing that must go out on a date fixed by state law. Patrick Decl. ¶ 117. This simply cannot be done.

The Rule also operates on the mailing as a whole rather than on the individual mailpiece: “[m]ailings that do not comply . . . will not be accepted and will be returned to the authorized ballot mailer.” 91 Fed. Reg. at 54991 (§ 705.24.5.3). Commercial mailings have a noncompliance threshold. Ballot mailings do not. Patrick Decl. ¶ 114. Amici do not suggest that an all-or-nothing acceptance standard is unreasonable in principle; a standard of that kind may well prove workable once offices have had a full cycle in which to prepare for it. The difficulty is what it would mean in the weeks now remaining. This is especially true given that the portal at issue here will not have gone through rigorous testing, so it is entirely possible that technical or data formatting issues will lead to rejections of entire mailings. A single error would return the entire mailing to the election office. And because verification halts at the first error identified, a second error would not surface until the mailing was presented

again, and a third only on the attempt after that. *Id.* ¶ 120. The Rule separately requires offices to segregate federal ballot mail from primary, UOCAVA, and state and local ballot mail—a change to longstanding practice, arriving days before the September 19 UOCAVA deadline. *Id.* ¶ 122.

II. LATE CHANGES OF THIS KIND ARE WHAT *PURCELL* FORBIDS.

This Court has said for twenty years that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls,” and that “[a]s an election draws closer, that risk will increase.” *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam). Thus, “[w]hen 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) (Kavanaugh, J., concurring in grant of applications for stays). And “[l]ast-minute changes to longstanding election rules risk other problems too, inviting confusion and chaos and eroding public confidence in electoral outcomes.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 592 U.S. 1039, 1042 (2020) (Gorsuch, J., concurring in denial of application to vacate stay).

The *Purcell* doctrine thus counsels against permitting the Rule to go into effect before this midterm election. The Rule itself supplies clear evidence that it is too late. Section 705.24.2 contemplates a runway of at least 90 days for election officials to notify the Postal Service of their intent to send ballots by mail. 91 Fed. Reg. at 54990. For the November 3 election, that date was August 3, 2026. But the Rule took effect on August 21. Patrick Decl. ¶ 41. The Postal Service adopted an immediate effective date so that the Rule would govern this election, but it did not exempt this election from a timeline its own text treats as the minimum. Nor does the calendar of federal

elections require that choice. The next general election is two years away, and every requirement in the Rule could be implemented in an odd-numbered year—which is when election officials ordinarily redesign ballot envelopes and roll out other system changes, precisely to avoid this problem. *Id.* ¶ 85.

These burdens are not distributed evenly. They fall most heavily on the three-quarters of election offices that are small and rural—offices without an information-technology department, sometimes without a full-time employee. *Id.* ¶ 27. And they fall, in turn, on the voters those offices serve.

Amici’s concern is not a partisan one. A mail ballot that is never delivered disadvantages no party in particular; it simply denies the franchise to an eligible voter who has followed state law in every respect. And an election conducted under requirements that many offices could not satisfy invites a challenge to the margin in every close race in the country, brought by whichever side comes up short. Amici, who will be asked to canvass and certify those results, have a strong interest in avoiding that prospect and no stake in which party it would favor.

III. THE COURT CAN AVOID THE POTENTIAL FOR VOTER CONFUSION AND TECHNICAL ERRORS DUE TO INSUFFICIENTLY TESTED SYSTEMS WITHOUT RESOLVING THE MERITS.

The equities and the public interest are part of the stay inquiry, *Nken v. Holder*, 556 U.S. 418, 434 (2009), and here they point one way for reasons that have nothing to do with who is right about the Postal Service’s authority. Whatever the Court concludes about the merits, the November 3, 2026 general election should be conducted under the rules that were in place when its administration began. The Court can secure that result by declining to disturb the status quo for this election

cycle or by limiting any relief so that the Rule does not govern elections held on or before November 3, 2026. The merits of the Rule can then easily be placed on a schedule that resolves the Rule's validity well before the 2028 election.

It is not for Amici to opine on whether the Rule itself is good or bad. What Amici can say is that neither election officials across the country nor USPS are equipped to successfully implement this Rule for the 2026 midterms. Accordingly, this Court should resolve the Application in a way that leaves in place the current rules for mail-in ballots for the immediate upcoming election.

CONCLUSION

Amici respectfully urge the Court, in resolving the application, to ensure that the Rule does not govern the November 3, 2026 general election.

Respectfully submitted,

Brent W. Herrin
Counsel of Record
Supreme Court Bar No. 311299
Georgia Bar No. 614753
SMALL HERRIN, LLP
100 Galleria Parkway, Suite 350
Atlanta, Georgia 30339
Phone: (770) 857-1664
bherrin@smallherrin.com

C. Ryan Germany
FORTSON BLALOCK TURNER & GERMANY
675 Ponce de Leon Ave. NE, Suite 8500
Atlanta, Georgia 30308
Phone: (678) 672-9230
rgermany@fortsonblalock.com

September 9, 2026

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APPENDIX A

LIST OF AMICI CURIAE

Amici are listed below. Titles are provided for identification only; amici who currently hold office join this brief in their individual capacities and not on behalf of their jurisdictions.

Current Statewide Election Officials

Deidre Henderson, Lieutenant Governor of Utah
Michael Adams, Secretary of State of Kentucky
Michael Howe, Secretary of State of North Dakota
Monae Johnson, Secretary of State of South Dakota
Brad Raffensperger, Secretary of State of Georgia
David Scanlan, Secretary of State of New Hampshire
Scott Schwab, Secretary of State of Kansas

Current Local Election Officials

Charles Tonnie Adams, Election Supervisor, Heard County, Georgia
Bryson Behm, County Clerk, Cache County, Utah
Nancy Boren, Elections Director, Muscogee County, Georgia
Ethan Compton, Election Supervisor, Irwin County, Georgia
Deb Cox, Supervisor of Elections, Lowndes County, Georgia
Jennifer Doran, Elections Director, Morgan County, Georgia
Anne Dover, Elections Director, Cherokee County, Georgia
Kathryn Encardes, Absentee Ballot Clerk, Whitfield County, Georgia
Sabrina German, Director of Voter Registration, Chatham County, Georgia
Ricky Hatch, County Clerk/Auditor, Weber County, Utah
Will Hobson, Election and Registration Manager, Carroll County, Georgia
Deidre Holden, Elections Director, Paulding County, Georgia
Leslie Hyde, County Clerk/Auditor, Morgan County, Utah
Joseph Kirk, Election Supervisor, Bartow County, Georgia
Amanda Massey, Director of Elections and Registration, Evans County, Georgia
Brian McKenzie, County Clerk, Davis County, Utah
Ginger McMullin, County Clerk/Auditor, Beaver County, Utah
Kylee Orton, Deputy Auditor/Clerk, Garfield County, Utah
U.D. Roberts, Chairperson, Board of Elections, Muscogee County, Georgia
Marki Rowley, County Clerk, Millard County, Utah
Tracy Shaw, County Clerk, Tooele County, Utah
Felicia Snow, County Clerk/Auditor, Wayne County, Utah
Malena Stevens, County Clerk, Summit County, Utah

Chris Walker, County Clerk, Jackson County, Oregon
Mike Wilkins, County Clerk, Uintah County, Utah
Marla Young, County Clerk, Box Elder County, Utah

Former Election Officials

Lynn Bailey, Former Elections Director, Richmond County, Georgia
Matt Mashburn, former Member and Acting Chair, Georgia State Election Board
Pam Anderson, former Clerk and Recorder, Jefferson County, Colorado
Helen Purcell, former Recorder, Maricopa County, Arizona
Peggy McGaugh, former Clerk, Carroll County, Missouri

Organizations

Missouri Association of County Clerks and Election Authorities
Civic Right Action Fund