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Submitted via www.regulations.gov

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Director, Product Classification
United States Postal Service
475 L'Enfant Plaza SW, Room 4446
Washington, DC 20260-5015
Via email to PCFederalRegister@usps.gov

Re: Comment on Notice of Proposed Rulemaking on Ballot Mail for Federal Elections (91 Fed. Reg. 32915)

Dear Director Kennedy:

The National Women's Law Center (NWLC) submits these comments in response to the United States Postal Service's ("USPS") Notice of Proposed Rulemaking concerning the transmission of mail-in and absentee ballots for federal elections [hereinafter, "Proposed Rule"].¹ We write in strong opposition to the Proposed Rule because it would erect an unlawful federal barrier to mail voting that will disenfranchise millions of eligible voters — with the burden falling disproportionately on women, LGBTQ+ people, people of color, and low-income people — while doing nothing to address the stated, though unsupported, concerns about election fraud. We urge USPS to withdraw the Proposed Rule in its entirety.

For over fifty years, the National Women's Law Center has fought for gender justice — in the courts, in public policy, and in our society — working across issues that are central to the lives of women and girls, with a particular focus on LGBTQ+ people, women of color, and women with low incomes and their families. Our work depends on a fair and functioning democracy and the ability of women to freely exercise their right to vote. Voter suppression efforts are never isolated — they are consistently part of a broader agenda to attack women's fundamental rights, including abortion access, workplace protections, and social programs. We are strongly opposed to any measures that would restrict voting rights and equal access to the democratic process.

¹ Ballot Mail for Federal Elections, 91 Fed. Reg. (proposed June 2, 2026) (to be codified at 39 C.F.R. pt. 111), FR Doc. 2026-10968, <https://www.federalregister.gov/documents/2026/06/02/2026-10968/ballot-mail-for-federal-elections>.

The Proposed Rule would require States to use a new Federal Ballot Mail Portal [hereinafter, “Ballot Portal” or “portal”] maintained by USPS. Within this portal, election officials submit the name, address, and a unique identifying barcode for each voter they intend on providing a mail-in ballot. The unique barcode is linked to the voter’s identifying information and will be placed on the outside of both the outbound and return ballot envelope. Each envelope will feature the “Election Mail Logo,” which is included to help increase the visibility of elections mail. Once an election official has provided what is required for mail-in voters, USPS compiles this information into what the rule calls a “Mail-In and Absentee Participation List.” This list will serve as a federal registry for every voter approved to receive a mail ballot from the State in a general federal election. Under the Proposed Rule’s verification provision, USPS will then review outbound mailings prior to acceptance and refuse to accept any election mail that does not comply with the proposed standard. This means that if a voter’s information within the Portal doesn’t match the information on the outbound envelope, USPS will reject the entire mailing and return it to the election official before it ever enters the mailstream. The Proposed Rule would also amend the Domestic Mail Manual to impose sweeping new requirements on the transmission of mail-in and absentee ballots for federal general elections.

This Proposed Rule was issued in direct response to Executive Order 14399, signed by President Trump on March 31, 2026, which ordered USPS to reshape federal vote-by-mail standards in ways that would limit access to mail voting for millions of eligible Americans.² The legal basis of the Proposed Rule has been collapsed by recent district court rulings. On June 25, 2026, the U.S. District Court for the District of Massachusetts declared Section 3 of Executive Order 14399 is beyond the President’s authority and unconstitutional, and enjoined USPS from initiating or completing the rulemaking at issue here, concerning the twenty-three States and the District of Columbia that challenged the Order.³ Furthermore, on July 1, the U.S. District Court for the District of Columbia enjoined the USPS from implementing the procedures described in this Proposed Rule.⁴ We nevertheless offer this comment in the interest of showing the harmful impact of this Proposed Rule on women, LGBTQ+ people, people of color, low-income people, and other affected groups.

This comment will first address how this rule negatively impacts millions of eligible voters, including the disproportionate impact on women, LGBTQ+ people, people of color, and low-income people. Secondly, it will analyze why the Proposed Rule cannot possibly be implemented within the timeline laid out, and how any attempt to do so would disenfranchise eligible voters. Lastly, it will explain why the Proposed Rule exceeds the scope of, and in fact conflicts with, USPS’s statutory authorization and undermines core constitutional principles.

² Exec. Order No. 14399, Ensuring Citizenship Verification and Integrity in Federal Elections, 91 Fed. Reg. 17125 (Mar. 31, 2026), <https://www.federalregister.gov/documents/2026/04/03/2026-06601/ensuring-citizenship-verification-and-integrity-in-federal-elections>.

³ *California v. Trump*, No. 1:26-cv-11581-IT, Memorandum & Order (D. Mass. Jun. 25, 2026), https://storage.courtlistener.com/recap/gov.uscourts.mad.298518/gov.uscourts.mad.298518.191.0_2.pdf.

⁴ *National Association for the Advancement of Colored People v. U.S. Postal Service*, No. 20-cv-2295(EGS), Memorandum Opinion (D.D.C. Jun. 1, 2026), <https://www.citizen.org/wp-content/uploads/opinion.pdf>.

I. The Proposed Rule will disenfranchise millions of eligible voters, with the burden falling disproportionately on women, LGBTQ+ people, people of color, low-income people, and survivors of sexual and domestic violence.

Women comprise the majority of the American electorate, and they have voted at higher rates than men in every federal election since 1980. In 2024, 91.3 million women voted, compared to 82.6 million men.⁵ Women also vote by mail and use early voting options at higher rates than men. For example, in 2020, 71.2 percent of women used nontraditional voting methods compared to 67.4 percent of men.⁶ Due to women making up the majority of all voters, they cast the majority of the roughly 48 million mail ballots submitted in the 2024 general election. Any rule that disrupts the mail voting system therefore falls disproportionately on women, and that is before even accounting for specific populations of women that are disparately impacted. For example, for some populations of women vote-by-mail is the only realistic means of casting a ballot.

Access to Voting – Older Adults, Disabled, and Low-Income Women

Voters 65 and older vote by mail at the highest rate of any age group, with nearly 37 percent voting by mail in 2024, and older women are the single largest demographic bloc dependent on mail voting.⁷ For many older women, mobility limitations, lack of transportation, and health conditions make in-person voting genuinely inaccessible. A Ballot Portal error that rejects their ballot, produces no notice, and provides no path to correction before Election Day turns an administrative mistake into a complete loss of the right to vote. The same is true for voters with disabilities, who voted by mail at a rate roughly ten percentage points higher than other voters in 2020 and 2022.⁸ Notably, women have higher disability rates, particularly in older age cohorts. For these voters, mail voting is not a preference but essential; the alternatives of arranging accessible transportation, securing required care, and traveling to a polling place can serve as prohibitive barriers.⁹

Low-income women and single mothers face the same reality for different reasons. Mail voting allows caregivers and workers with inflexible schedules to participate without choosing between voting and their jobs or their children. For single mothers, who are disproportionately women of color and low-

⁵ League of Women Voters, Report: Women Voters by the Numbers (2024) (Mar. 24, 2026), <https://www.lwv.org/blog/report-women-voters-numbers-2024>.

⁶ U.S. Census Bureau, What Methods Did People Use to Vote in the 2020 Election? (Apr. 29, 2021), <https://www.census.gov/library/stories/2021/04/what-methods-did-people-use-to-vote-in-2020-election.html>.

⁷ USA Facts, How Many Voters Cast Ballots Early and by Mail? (Sept. 8, 2025), <https://usafacts.org/articles/how-many-voters-cast-ballots-early-and-by-mail/>; AARP, Voting by Mail This Election Season? Make Sure It Counts (May 2026), <https://www.aarp.org/government-elections/vote-by-mail-what-to-know/>.

⁸ MIT Election Data & Sci. Lab, Voting Accessibility, <https://electionlab.mit.edu/research/voting-accessibility>; Ctr. for Am. Progress, Enhancing Accessibility in U.S. Elections (Nov. 7, 2021), <https://www.americanprogress.org/article/enhancing-accessibility-u-s-elections/>.

⁹ ACLU, “Voting by Mail Is My Lifeline”: Voter With Disability Shares Importance of Mail-In Voting (June 2026), <https://www.aclu.org/news/voting-rights/voting-by-mail-is-my-lifeline-voter-with-disability-shares-importance-of-mail-in-voting>.

income, voting in person on a fixed Election Day is often not feasible.¹⁰ For these women, losing mail access risks putting a class-based barrier around the act of voting.¹¹

Name Discrepancies – Married Women, Trans Women, & Women of Color

The Proposed Rule poses a distinct and heightened risk to women and trans people whose legal names do not match across government records. The Ballot Portal matches each voter's name to a ballot barcode, and any inconsistency in identification documents risks a mismatch that can trigger rejection with no notice and no chance to cure. Approximately 84 percent of American women change their surname after marriage, and because they draw from differing sources and may not necessarily be kept up to date, names may vary across different State and federal administrative systems.¹² Trans women face compounding risk: under the current administration their ability to update legal documents has become significantly more difficult, and identity-document mismatches for this population are already a noted hindrance to voter participation.¹³ Women of color face a similar risk, as names are more likely to be recorded inconsistently across databases due to differing cultural naming conventions, and they rely heavily on the nontraditional voting methods this Proposed Rule would disrupt.¹⁴ The compounding effect across all of these populations is not coincidence. It is the predictable result of imposing a facially neutral administrative barrier on top of existing structural inequalities in document access and economic flexibility.

¹⁰ Rock the Vote, Voting by Mail (Feb. 26, 2026), <https://www.rockthevote.org/explainers/voting-by-mail/>; Common Cause, SOTU Recap: More than Four Reasons for Expanding Vote By Mail (Feb. 25, 2026), <https://www.commoncause.org/articles/sotu-recap-more-than-four-reasons-for-expanding-vote-by-mail/>.

¹¹ The 19th, Many Caregivers and Single Moms Don't Vote. Will Election 2024 Change That? (Oct. 21, 2024), <https://19thnews.org/2024/10/caregivers-single-moms-non-voters-2024/>; see also Shengwei Sun, National Snapshot: Poverty Among Women & Families, Nat'l Women's Law Ctr. (Jan. 2023), https://nwlc.org/wp-content/uploads/2023/02/2023_nwlc_PovertySnapshot-converted.pdf.

¹² National Women's Law Center, Comment Opposing Proposed changes to the SAVE System to Verify U.S. Citizenship for Voter Registration (Dec. 1, 2025), <https://nwlc.org/wp-content/uploads/2025/12/NWLC-Comment-SAVE-System-Dec2025.pdf> (discussing, in part, inaccuracies in the SAVE database that would put at risk the ability to vote of people with inconsistent documentation); Greta Bedekovics & Sydney Bryant, The SAVE Act Would Disenfranchise Millions of Citizens, Ctr. for Am. Progress (Feb. 3, 2025), <https://www.americanprogress.org/article/the-save-act-would-disenfranchise-millions-of-citizens/>; Alison Gill, How the SAVE Act Could Disenfranchise Millions of Married Women and Trans Voters, National Women's Law Center (Mar. 27, 2025), <https://nwlc.org/how-the-save-act-could-disenfranchise-millions-of-married-women-and-trans-voters/> (discussing impact on people who have changed their names of the Safeguard American Voter Eligibility (SAVE) Act, which proposes to require documentary proof of citizenship for voter registration).

¹³ 2022 U.S. Trans Survey, Civic Engagement in the 2022 U.S. Transgender Survey (Aug. 2024) (finding that “[o]f the 18% of voting eligible respondents who were not registered for other reasons, 95% reported that they did not have an identification document (ID) and thought they needed one to register. Among the other reasons for not being registered to vote, respondents also reported reasons related to being transgender, including that their current name did not match their driver's license or Social Security card (3%), they wanted to avoid being harassed by election officials because they were transgender (2%), and they thought their State's voter identification law could stop them from voting (1%).”), https://transequality.org/sites/default/files/2024-08/USTS_2022CivicEngagementReport_Final.pdf.

¹⁴ See Pew Rsch. Ctr., Key Facts About Black Eligible Voters in 2024 (Apr. 24, 2025), <https://www.pewresearch.org/short-reads/2024/01/10/key-facts-about-black-eligible-voters-in-2024/>; KFF, Polling Insight: 4 Takeaways About Black Women Voters in the 2024 Election (Aug. 12, 2025), <https://www.kff.org/womens-health-policy/polling-insight-4-takeaways-about-black-women-voters-in-the-2024-election/>.

Unique Barriers – Survivors of Domestic Violence, Sexual Violence, and/or Stalking

The National Domestic Violence Hotline estimates that over one in three women and one in four men in the United States have experienced rape, physical violence, and/or stalking by an intimate partner,¹⁵ and the National Intimate Partner and Sexual Violence Survey for 2023–2024 reported that nearly half of women (45.1%) and more than one in six men (16.9%) in the United States experience some form of contact sexual violence in their lifetimes.¹⁶ The ability to vote by mail is essential for many survivors of domestic violence, sexual violence, and/or stalking because they face unique barriers to voting,¹⁷ two of which are relevant to the Proposed Rule. First, fear of being found by abusers and stalkers through public voter rolls keeps many survivors from registering to vote.¹⁸ Second, survivors escaping violence often relocate multiple times and/or postpone updating public records until adequate safety measures are in place. By failing to address existing State protections that survivors rely on to keep them safe, such as Address Confidentiality Programs, the Proposed Rule will increase the risk to survivors and chill many from exercising their right to vote. Moreover, the Proposed Rule’s deadline for States to “enroll” voters through the Ballot Portal will exclude many survivors—who are often forced to move or register on short notice, including immediately before elections.

II. The Proposed Rule is inadministrable, particularly within the timeline and resources outlined, and it lacks basic safeguards to protect eligible voters.

This Proposed Rule would create harm that is structural and far-reaching, and it would potentially disenfranchise millions of voters. A data error, name mismatch, technical failure, or an administrative mistake at any point in the chain can result in a voter's mail ballot being rejected before it even reaches them. The voter receives no notice required by the Proposed Rule. There is no cure period outlined. There is no stated path to correction before Election Day. By the time a voter realizes they never received a mail ballot, or is informed that their ballot was not accepted, the election may have already occurred. This strips voters of their constitutional right to vote and places their access to voting in the hands of a faceless bureaucracy. In 2022, 1.5 percent of 36,683,450 mail-in ballots were rejected, meaning that 549,000 possible votes weren’t counted under the current state-by-state system—a system which operates under established processes, is run by experienced administrators, and has been tested over time.¹⁹ A hastily built, unfunded, incompatible, and untested federal portal will certainly create additional errors in

¹⁵ Domestic Violence Statistics, National Domestic Violence Hotline, <https://www.thehotline.org/stakeholders/domestic-violence-statistics/>.

¹⁶ Ruth W. Leemis et al., The National Intimate Partner and Sexual Violence Survey: 2023/2024 Sexual Violence Data Brief, U.S. Centers for Disease Control and Prevention, at 3 (Dec. 2025), <https://www.cdc.gov/nisvs/media/pdfs/sexualviolence-brief.pdf>. “Contact sexual violence is a combined measure that includes rape, being made to sexually penetrate someone else, sexual coercion, and/or unwanted sexual contact.” *Id.* at 2.

¹⁷ Danielle Root, Obstacles to Voting for Survivors of Intimate Partner Violence, Center for American Progress (Nov. 1, 2018), <https://perma.cc/39J3-VV8M>.

¹⁸ Scottie Andrew, For abuse victims, registering to vote brings a dangerous tradeoff, CNN (Oct. 27, 2020), <https://www.cnn.com/2020/10/27/us/domestic-violence-voting-election-privacy-trnd>.

¹⁹ See Ballotpedia, Election results, 2022: Analysis of Rejected Ballots in the 2022 General Election, https://ballotpedia.org/Election_results,_2022:_Analysis_of_rejected_ballots_in_the_2022_general_election.

numbers so large they are difficult to approximate. And for the voters whose ballots are rejected, there will be no clear recourse.

Regardless of the stated purpose for the Proposed Rule, a particularly harmful aspect for individual voters is the lack of clarity regarding mechanisms for notice and cure when there is a ballot rejection. In many States, when a mail voting system rejects a ballot for a technical reason (a missing signature, a date error, an envelope problem), there is a ballot cure process with the goal of providing notice to voters before their vote is lost.²⁰ For example, a majority of jurisdictions provide voters with the ability to track their ballot as a means of notice. If a ballot is rejected for an administrative or technical reason, voters are given the ability to remedy said issue if permitted by time.²¹ It is unclear how or whether the Proposed Rule interacts with those protections. Under the Proposed Rule, when there is an omission or technical error for an eligible voter, there is no way for them to become informed. The voter would receive no notice from USPS, no notice from the State, and no built-in opportunity to correct the record before the election has passed.²² This design choice is what turns basic administrative errors into the potential for mass disenfranchisement. A system that fails to include a mechanism for a voter to learn that her ballot was blocked, and no way to fix it if she does, does not safeguard elections. It guarantees that eligible voters will lose the ability to vote for reasons they never had the chance to address.

Beyond concerns with improper rejections and notice, the Proposed Rule creates serious privacy and data-security concerns. To participate, States must submit personally identifiable information through the Ballot Portal for every voter receiving a mail ballot, including their name, address, and unique ballot number. This would assemble, for the first time, a centralized federal registry of millions of Americans who vote by mail. The Proposed Rule contemplates that USPS will create a new system of records under the Privacy Act, but notice of that system is described only as forthcoming, and the Rule provides no details about how this sensitive information will be stored, who may access it, how long it will be retained, or what safeguards will protect it from breach or misuse. Compiling identifying information of this scale, linked to individual voting behavior, in a system that has not yet been built and for which USPS has received no dedicated funding, is an invitation to exactly the kind of data exposure that federal privacy law was enacted to prevent.²³

²⁰ Ashley Lopez, *In Many States, There's a Process to Fix an Error with Your Mail Ballot*, NPR (Sept. 27, 2022), <https://www.npr.org/2022/09/27/1125179062/voting-explainer-in-many-states-theres-a-process-to-fix-an-error-with-your-ballo>.

²¹ *Track Your Ballot or Ballot Application*, Vote.Org, <https://www.vote.org/ballot-tracker-tools/>.

²² See Ballot Mail for Federal Elections, supra note 1, § 705.24.4.3 (providing that USPS will furnish each State its final Mail-In and Absentee Participation List only "on or about the date of the federal election," and requiring enrollment submissions just "to the extent practicable"). The Proposed Rule sets no deadline for when a rejection must occur or be communicated, and its reliance on the discretionary "to the extent practicable" standard means a voter may never learn of a rejection or error in time to cure it before Election Day.

²³ We note that the U.S. District Court for the District of Columbia recently ordered the Department of Homeland Security to cease and reverse similar modifications to the Systematic Alien Verification for Entitlements (SAVE) database made in order to pool data and use the system as a tool to purge State voter rolls of allegedly ineligible voters, based in part on violation of the Privacy Act. *League of Women Voters v. U.S. Department of Homeland Security*, Case 1:25-cv-03501-SLS, Memorandum Opinion (D.D.C. Jun. 22, 2026), <https://www.lwv.org/sites/default/files/2026-06/LWV%20v.%20DHS%20Mem%20Op.pdf>.

The harm posed by this Proposed Rule is compounded by its sheer scale, cost, and infeasibility. Neither USPS nor States have received any funding to implement this Proposed Rule. States have already purchased and begun to print their 2026 ballot envelopes with numbers and information that do not align to the Proposed Rule. Elections administrators have designed their entire workflows around existing procedures. The general election is November 3, 2026, and some States send out mail-in ballots as early as 60 days before the election.²⁴ Even assuming sufficient funding, there is not enough time to build, test, and safely deploy a system of this scale before millions of voters cast their mail ballots. The rushed timeline all but guarantees the administrative errors will result in votes lost under this Proposed Rule.

III. The Proposed Rule is unlawful because it exceeds USPS's authority, conflicts with federal law, and violates the Constitution,

Except as provided within the Postal Reorganization Act²⁵ and the Postal Accountability and Enhancement Act,²⁶ USPS is exempt from the provisions of the Administrative Procedure Act (APA).²⁷ However, even where APA review is foreclosed, "judicial review is favored when an agency is charged with acting beyond its authority."²⁸ Courts have applied this principle to USPS in multiple contexts—including, in particular, when USPS implements nationwide service changes without following the procedural requirements laid out in 39 U.S.C. § 3661.²⁹ USPS is required to first submit the proposed change to the Postal Regulatory Commission (PRC), which must conduct a public hearing on the record that comports with the APA before issuing an advisory opinion.³⁰ Decisions of the PRC are also subject to appellate review by the U.S. Court of Appeals for the District of Columbia in accordance with APA standards.³¹

With regard to the Proposed Rule, USPS has failed to follow its required procedures, and as one court noted, the timeframe outlined in Executive Order 14399 "provides no allowance for Congress' mandated procedure regarding USPS rulemaking."³² These procedural failures are compounded by the blatant manner in which USPS is acting outside its statutory authority, and even in direct contravention of federal law. Finally, we note that the Proposed Rule raises severe underlying constitutional deficiencies rooted in federalism and separation of powers concerns as well as due process violations.

²⁴ Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options, Table 7, National Conference of State Legislatures (Aug. 1, 2025), <https://www.ncsl.org/elections-and-campaigns/table-7-when-states-mail-out-absentee-mail-ballots>.

²⁵ Postal Reorganization Act ("PRA"), Public Law 91-375, 84 Stat. 719 (Aug. 12, 1970), 39 U.S.C. § 410(a).

²⁶ Postal Accountability and Enhancement Act ("PAEA"), Pub. L. No. 109-435, 120 Stat. 3198 (Dec. 20, 2006) (codified at 39 U.S.C. § 3600 et seq.), § 3661(c).

²⁷ *National Association for the Advancement of Colored People v. U.S. Postal Service*, 496 F.Supp.3d 1 (D.D.C. Oct. 10, 2020), <https://www.citizen.org/wp-content/uploads/32-Memorandum-Opinion-on-PI-motion.pdf>.

²⁸ *Aid Ass'n for Lutherans v. U.S. Postal Serv.*, 321 F.3d 1166, 1175 (D.C. Cir. 2003).

²⁹ *National Association for Advancement of Colored People v. United States Postal Service*, 496 F.Supp.3d 1 (D.D.C. 2020); *New York v. Trump*, 490 F.Supp.3d 225 (D.D.C. 2022); 39 U.S.C. § 3661(b)-(c) (stating that "[w]hen the Postal Service determines that there should be a change ... which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change." "The Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded [...].")

³⁰ 39 U.S.C. § 3661(b)-(c).

³¹ 39 U.S.C. § 3663.

³² *California v. Trump* at 31.

A. The Proposed Rule is unlawful because it exceeds the authority Congress granted USPS and conflicts with statutory prohibition of discrimination in postal service.

An agency possesses only the authority Congress granted it and the courts are directed to “hold unlawful and set aside” agency action that is “in excess of statutory jurisdiction, authority, or limitations.”³³ The core duty of USPS, codified at 39 U.S.C. § 403, is to receive, transmit, and deliver mail, serving as nearly as practicable the entire population of the United States. Congress also prohibited USPS from making undue or unreasonable discrimination among users of the mails except as specifically authorized by Congress in Title 39 – Postal Service.³⁴

USPS’s rulemaking power is not freestanding; it cannot be exercised in ways inconsistent with USPS’s statutory mandate or in ways that exceed the authority granted by Congress. Congress addressed USPS’s role in elections in the National Voter Registration Act of 1993 (NVRA). The NVRA assigned USPS the narrow task of providing State election officials with address change information and offering reduced postage rates for required mailings.³⁵ It does not give USPS any gatekeeping role over ballot delivery. The Proposed Rule expands USPS’s role far beyond what the NVRA intended, conditioning ballot delivery on a federal enrollment regime.

Similarly, the Help America Vote Act of 2002 (HAVA) assigns each state the responsibility of maintaining its own voter registration list and conducting list maintenance, explicitly leaving to the states the matter of how to comply.³⁶ HAVA provides that “[t]he specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State.”³⁷ The Proposed Rule creates a federal list that supersedes the State list for ballot-delivery purposes, and it hands USPS an unauthorized gatekeeping role. Neither statute permits USPS to condition the delivery of ballots on compliance with a federal standard. An executive order cannot substitute for or supersede the authorization only Congress can provide.³⁸

The District Court of Massachusetts analyzed this very issue in *California v. Trump*, which looked at whether the President had authority to issue Executive Order 14399.³⁹ Analyzing the statutory provisions that the President outlined in the Executive Order, which USPS subsequently claimed authorized the Proposed Rule, the court determined that none authorized the sweeping power over mail ballots that he claimed.⁴⁰ In fact, the court determined that no Act of Congress delegates authority over mail-in voting to USPS and that the agency “lacks statutory authorization to promulgate any binding regulations on mail-in voting.”⁴¹ The court further explained that USPS’s existing election-mail guidance is not binding on the

³³ 5 U.S.C. § 706(2).

³⁴ 39 U.S.C. § 403(a)–(c).

³⁵ National Voter Registration Act of 1993, 52 U.S.C. §§ 20501–20511; 39 U.S.C. § 3629.

³⁶ Help America Vote Act of 2002, 52 U.S.C. § 21083.

³⁷ *Id.* at § 21085.

³⁸ *Chamber of Commerce v. Reich*, 74 F.3d 1322 (D.C. Cir. 1996) (holding that an executive order is unlawful where it attempts to accomplish through unilateral presidential action what Congress has reserved to itself or declined to authorize).

³⁹ *California v. Trump* at 2.

⁴⁰ *Id.* at 2-3.

⁴¹ *Id.* at 31.

States but merely recommended and held the Order's directive that USPS regulate mail voting to be an *ultra vires* executive action.⁴² Just as the President did not have statutory authority to issue the Executive Order, so the USPS lacks authority to implement it.

The Proposed Rule would also conflict with the service obligations Congress set for USPS in Title 39. Congress did not leave USPS's mission to the agency's discretion. It directed that the Postal Service "shall provide prompt, reliable, and efficient services to patrons in all areas," serve "as nearly as practicable the entire population of the United States," and reduce the "complexity" of postal operations.⁴³ The Proposed Rule cannot be squared with these statutory duties. Instead of delivering ballots reliably to all patrons, it would let USPS refuse to deliver ballots whenever a State has not met a new federal enrollment standard. A voter whose State declines to participate, or whose information is misrepresented within or omitted from the federal list, would receive no ballot at all. This is the opposite of the universal, reliable service Congress prescribed as USPS's base function. The Rule also conflicts with Congress's prohibition on discriminatory service. USPS may not "make any undue or unreasonable discrimination among users of the mails except as "specifically authorized" by Congress in Title 39.⁴⁴ By conditioning the delivery of ballots to eligible voters on State compliance, the Proposed Rule would be result in exactly the kind of discriminatory service barred by Congress.

Because the Proposed Rule exceeds the authority Congress granted USPS and compels prohibited discrimination among mail users in direct contravention of federal law, it is *ultra vires* and cannot stand.

B. The Proposed Rule is unconstitutional because it transfers election-administration authority from the States to USPS without the action by Congress the Elections Clause requires.

The Elections Clause, Article I, Section 4, imposes on the States the duty to prescribe the "Times, Places and Manner" of holding federal elections, while giving Congress the discretion to set superseding general regulations.⁴⁵ The Supreme Court has confirmed the State's "weighty" interest in protecting the integrity of elections while stating its reluctance to upset "the usual constitutional balance of federal and state powers," particularly regarding a State's authority over its own governmental functions.⁴⁶ The President has no role in this structure; the Constitution divides authority over federal elections between the States and Congress, and no provision authorizes the executive to alter the rules governing how elections are conducted. In *Inter Tribal Council*, the Court explained that the Clause "imposes on States the duty to prescribe the time, place, and manner of electing Representatives and Senators, but . . . confers on Congress the power to alter those regulations or supplant them altogether."⁴⁷ The mechanics of voter registration and ballot handling fall squarely within the "manner" of elections that this structure governs.⁴⁸ The District Court of the District of Columbia applied this same principle in *LULAC v.*

⁴² *Id.* at 30-32.

⁴³ 39 U.S.C. §§ 101(a), 101(f).

⁴⁴ *Id.* at § 403(c).

⁴⁵ U.S. Const. art. I, § 4, cl. 1.

⁴⁶ *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991); *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 760-61 (2018)

⁴⁷ *Arizona v. Inter Tribal Council of Ariz.*, 570 U.S. 1, 8 (2013).

⁴⁸ *Id.* at 8-9.

Executive Office of the President, holding that the President lacked authority to unilaterally mandate changes to the federal voter registration form, because altering the rules of federal elections is not a power the executive possesses.⁴⁹

The administration of mail balloting, including who is sent a ballot, how it is packaged, and how it is delivered are elements of the "manner" of federal elections that the Elections Clause vests to the States. The Proposed Rule strips that authority away by conditioning each State's ability to conduct mail voting on compliance with the new federal Ballot Portal system and effectively transferring control over mail-ballot administration to USPS. The power to alter the manner of federal elections to this extent would belong to Congress, not the President, and as explained above, Congress did not grant any such power.

Moreover, the Constitution grants to the States alone the power to determine voter eligibility in federal elections.⁵⁰ Although it is framed as a set of technical mailing standards, the Proposed Rule's practical effect is to determine who may cast or have a mail ballot counted in a federal election. By conditioning delivery of a ballot on a voter's appearance on a federally maintained enrollment list and directing that USPS "shall not transmit the ballot of any voter" who is not enrolled, the Rule effectively allows the federal government to decide which voters can and cannot participate by mail. That is a determination of voter eligibility in all but name. A voter who is eligible under State law but who is omitted from the federal list, whether through error or delay, is effectively rendered ineligible to vote by mail. The Constitution does not permit the federal government to assume that power granted exclusively to the States.

In *California v. Trump*, the District Court of Massachusetts examined whether the President has authority under the Constitution to issue Executive Order 14399, regulating mail ballots.⁵¹ The court found that Sections 2 and 3 of the Executive Order were unconstitutional violations of the separation of powers.⁵² In fact, the court enjoined USPS from completing this very rulemaking as to the challenging States.⁵³ In granting summary judgment for the plaintiff States, the court found that the President exceeded his authority by interfering with the time, place, and manner rules set by federal and state law and with voter eligibility determinations made by States alone. Similarly, the Proposed Rule interferes with Congress's and the State's authority over election administration and eligibility and cannot stand.

C. The Proposed Rule violates the due process guarantee of the Fifth and Fourteenth Amendments because it eliminates a voter's ability to receive or mail ballots without ever notifying her and without affording any opportunity to correct the error before the finality of her vote being lost.

The Due Process Clause of the Fifth and Fourteenth Amendments forbids the government from depriving any person of a protected interest without due process of law. The Supreme Court held in *Mathews v. Eldridge* that "[t]he fundamental requirement of due process is the opportunity to be heard 'at a

⁴⁹ *LULAC v. Exec. Off. of the President*, No. 25-0946 (D.D.C. 2025).

⁵⁰ U.S. Const. art. I, § 2, cl. 1; U.S. Const. amend. XVII.

⁵¹ *California v. Trump* at 30.

⁵² *Id.* at 28.

⁵³ *Id.* at 34-35.

meaningful time and in a meaningful manner."⁵⁴ This guarantees that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it."⁵⁵ In the decision, *Reynolds v. Sims*, the Court clarified that the right to vote is among the most fundamental rights the Constitution protects, "preservative of other basic civil and political rights."⁵⁶ In determining what process is due, courts weigh three factors: the private interest affected, the risk of an erroneous deprivation through the procedures used and the probable value of additional safeguards, and the government's interest, including the administrative burden additional procedures would impose.⁵⁷ The central concern here is the risk of error: where the procedures an agency adopts carry a high risk of mistakenly depriving a person of a protected interest and where additional safeguards such as notice and an opportunity to cure would meaningfully reduce that risk, their absence renders the process unconstitutional.⁵⁸ Due process is not satisfied by a remedy that arrives only after the deprivation has become irreversible; the opportunity to be heard must come at "a meaningful time," before the loss is final.⁵⁹

Each *Mathews* factor confirms that the Proposed Rule denies voters the process they are due. First, the private interest at stake should be seen as extremely weighty because it concerns the fundamental right to vote. Once the opportunity to vote is lost in a given election, it can never be restored or remedied. Second, the risk of erroneous deprivation here is severe, and there is value in additional safeguards. As Sections I and II demonstrate, the Ballot Portal's name-matching mechanism and other processes outlined in the Proposed Rule will generate errors at scale, particularly for the identified categories of voters whose records are more likely to produce mismatches. This is demonstrated by the fact that the existing mail ballot systems already rejects hundreds of thousands of ballots even with established practices and procedures. Even so, the Proposed Rule provides no notice to the affected voter, no cure period, and no avenue to challenge a rejection. A voter whose name does not appear on the portal list will not be told by USPS; she will have no opportunity to appear, present documentation, or correct the record. The complete absence of safeguards here compounds the deficiencies *Mathews* was meant to guard against.

Lastly, the government's stated interest cannot justify ignoring these safeguards. The fraud-prevention rationale is unsupported by evidence, and the administrative burden of a notice-and-cure process is minimal, as it is already a standard practice in many States. As written, the Proposed Rule risks that by the time a rejection becomes discoverable, the election will have passed, and the voter's ballot will have been permanently lost. That is the opposite of an opportunity to be heard "at a meaningful time and in a meaningful manner." Because the Proposed Rule deprives voters of a fundamental right through an error-prone process that provides no notice, no opportunity to cure, and no remedy until after the deprivation is irreversible, it fails every factor of the *Mathews* test and violates constitutional due process requirements.

⁵⁴ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

⁵⁵ *Mathews v. Eldridge* at 348–49 (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 171–72 (1951) (Frankfurter, J., concurring)).

⁵⁶ *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

⁵⁷ *Mathews v. Eldridge* at 335.

⁵⁸ *Id.*

⁵⁹ *Mathews v. Eldridge* at 333; see *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

Conclusion

The right to vote is fundamental to American democracy and preservative of every other right. For many Americans, including disproportionately women, LGBTQ+ people, people of color, and low-income people, access to mail voting can sometimes be the only practical means of exercising that right. Therefore, the disruption of mail voting is not merely a procedural inconvenience but may be an irreversible deprivation.

The Proposed Rule has significant legal deficiencies: it would construct a new federal barrier to mail voting that exceeds and directly conflicts with USPS's statutory authority, violates constitutional principles of federalism and separation of powers, and denies due process to the voters it burdens. The fact that it is being hastily pushed forward to address a supposed problem of fraud of which the agency provides no evidence, on a timeline that makes effective and accurate implementation impossible, and with no mechanism for the voters it harms to seek any remedy before Election Day, compounds the harm this egregiously unlawful Proposed Rule would cause. Multiple federal courts have now held as much, enjoining USPS from completing this very rulemaking.⁶⁰ USPS should withdraw the Proposed Rule in its entirety rather than finalize a Proposed Rule that courts have already declared beyond its authority.

Should you have any questions about this comment, please contact me at agill@nwlc.org. Thank you for your consideration.

Very truly yours,



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⁶⁰ *California v. Trump; National Association for the Advancement of Colored People v. U.S. Postal Service*, No. 20-cv-2295(EGS), Memorandum Opinion (D.D.C. Jun. 1, 2026).