

FOR: Director, Product Classification, U.S. Postal Service
475 L'Enfant Plaza SW, Room 4446
Washington, DC 20260–5015

FROM: Kathy Boockvar
former Democratic Secretary of the Commonwealth of Pennsylvania
Mary Estill Buchanan
former Republican Secretary of State for the State of Colorado
John Gale
former Republican Secretary of State for the State of Nebraska
Joan Anderson Growe
former Democratic Secretary of State for the State of Minnesota
Phil Keisling
former Democratic Secretary of State for the State of Oregon
Miles Rapoport
former Democratic Secretary of State for the State of Connecticut
Sam Reed
former Republican Secretary of State for the State of Washington
Ben Ysursa
former Republican Secretary of State for the State of Idaho
Citizens for Responsibility and Ethics in Washington

DATE: July 1, 2026

SUBJECT: Comment to the U.S. Postal Service (“USPS”)
Proposed Rule: Ballot Mail for Federal Elections
91 Fed. Reg. 32,915

This comment is submitted on behalf of: (1) a bipartisan coalition of former state secretaries of state who faithfully oversaw elections across the “laboratories” of electoral democracy, the states; and (2) Citizens for Responsibility and Ethics in Washington, a non-partisan non-profit organization dedicated to protecting our democratic institutions; promoting ethics, transparency, and accountability in government; and upholding the rule of law. We share a common commitment to ensuring that elections are free and fair, and we are unified in our understanding of states’ primary role in enacting and executing election laws, as set forth in the U.S. Constitution. We have deep, insurmountable objections to the USPS’s *Proposed Rule: Ballot Mail for Federal Elections*, 91 Fed. Reg. 32,915 (the “Proposed Rule”), which we implore USPS not to adopt.

As a threshold matter, the Proposed Rule conflicts with the U.S. Constitution. The Executive Branch plays no role in making election policy or regulating election administration—the Constitution explicitly leaves those responsibilities to the states and Congress. Nonetheless, the Proposed Rule would inject USPS into this mix and have it directly regulate states’ management and administration of mail-in

ballots. Because no statute authorizes this intervention, the Proposed Rule exceeds the bounds of the federal executive’s constitutional power.

But even if the Proposed Rule was not unconstitutional, it is bad policy. The Proposed Rule will make it harder for election administrators to do their jobs, at a time when they are already underfunded and understaffed. At the same time, implementing the Proposed Rule runs the risk of potentially disenfranchising voters and increases the potential for catastrophic cyber attacks on critical election infrastructure. All without any clear justification for doing so.

For these reasons, and as laid out further below, we respectfully request that the USPS abandon the Proposed Rule.

I. The Proposed Rule violates the Constitution.

“Our Constitution entrusts Congress and the States—not the President—with the authority to regulate federal elections.” *League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 155 (D.D.C. 2025); *see also California v. Trump*, --- F. Supp. 3d ---, 2026 WL 1826490, at *2-3 (D. Mass. June 25, 2026). The Elections Clause lays this out in no uncertain terms: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations[.]” U.S. Const. art. I, § 4, cl. 1.¹ This framework grants no independent authority to the federal executive (including USPS) to regulate or administer elections. Rather, states are primarily responsible for regulating and administering elections, and “only Congress has the power to adjust state election rules.” *California v. Trump*, 786 F. Supp. 3d 359, 379 (D. Mass. 2025).

As election administrators, we witnessed firsthand the Framers’ wisdom in giving states the power to enact election laws and administer elections. As the Supreme Court recognized in reaffirming the states’ role under the Elections Clause, “deference to state lawmaking allows local policies more sensitive to the diverse needs of a heterogeneous society, permits innovation and experimentation, enables greater citizen involvement in democratic processes, and makes government more responsive by putting the States in competition for a mobile citizenry.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 817 (2015) (citation modified). And, unlike the federal government, states have “comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates.” *Storer v. Brown*, 415 U.S. 724, 730 (1974).

¹ Likewise, the Electors Clause vests the states with the primary authority for determining the process for selecting presidential electors. *See* U.S. Const. art. II, § 1, cl. 2.

The Proposed Rule turns the allocation of election authority on its head, upending the constitutional framework by intervening with states' management of ballots. No statute authorizes the federal executive's meddling in the way proposed. Thus, the Proposed Rule is unconstitutional.

The legal authorities cited in the Proposed Rule do not alter this calculus. Executive Order 14399, *Ensuring Citizenship Verification and Integrity in Federal Elections*, 91 Fed. Reg. 17125 (Mar. 31, 2026), does not lawfully authorize USPS to intervene in the states' administration of elections. "Agencies are duty-bound to presidential directives only 'to the extent allowed by law.'" *Nat'l Parks Conservation Ass'n v. DOI*, --- F. Supp. 3d ---, 2026 WL 1706963, at *14 (D. Mass. June 12, 2026) (quoting *Bldg. & Constr. Trades Dep't, AFL-CIO v. Allbaugh*, 295 F.3d 28, 32-33 (D.C. Cir. 2002)). "An agency, after all, 'literally has no power to act' . . . unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022).²

Congress has not authorized the proposed intervention. Indeed, "no law enacted by Congress delegates authority to control mail-in voting to USPS," meaning that "USPS lacks statutory authorization to promulgate any binding regulations on mail-in voting." *California*, 2026 WL 1826490, at *15. The statutes identified in the Proposed Rule do not provide such authorization. Three of the cited statutes spell out USPS's powers and, tellingly, they do not mention elections or ballots. *See* 39 U.S.C. § 401 (listing "general powers" of USPS); 39 U.S.C. § 404 (listing "specific powers" of USPS); 18 U.S.C. § 3061 (detailing scope of USPS authority to "investigate criminal matters related to the Postal Service and the mails"). The other two statutes cited in the Proposed Rule describe specific prohibited acts and criminal penalties relating to voting and voter registration; they do not specifically mention USPS nor do they grant USPS or any other executive agency regulatory powers over elections or ballots. *See* 52 U.S.C. § 10307; 52 U.S.C. § 20511. Reading these two sets of statutes together, USPS may have authority to investigate voting/election crimes perpetrated via the mail. But they do not authorize USPS to regulate mail-in ballots. And they certainly do not authorize USPS to demand lists of mail-in and absentee voters from states, review and verify Ballot Mail, reject Ballot Mail that otherwise meets general mailing standards, or otherwise impose special obligations on states for sending/receiving Ballot Mail.

² Moreover, a federal district recently found that "the EO's directive that USPS [promulgate regulations on voting] constitutes ultra vires executive action" and held that Section 3 of the EO "unconstitutionally violate[s] the separation of powers" and declared it "legally void." *California*, 2026 WL 1826490, at *17. This decision also enjoined USPS from "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.*

The Proposed Rule claims that “[t]he regulations as proposed accord with [the cited statutes], because . . . they set forth . . . standards that can provide information regarding the sending of ballots through the mails that would be available for use by law enforcement.” This is beyond broad and is completely untethered from the text of the cited statutes. As explained, those statutes do not authorize USPS to regulate voting/elections generally or in the specific ways contemplated by the Proposed Rule. This remains true even if implementation of such regulations “can” result in the provision of “information” to law enforcement.³ And the fact that USPS has some statutory authority to “investigate” certain criminal matters, *see* 18 U.S.C. § 3061, is irrelevant to its claim of broad regulatory authority over mail-in ballots.

But even if the Proposed Rule’s claim of statutory authority were not completely atextual, the “lack of historical precedent” for the proposed intervention in the regulation and administration of elections, “coupled with the breadth of authority that [USPS] now claims, is a ‘telling indication’ that these actions ‘extend[] beyond the agency’s legitimate reach.’” *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.*, 595 U.S. 109, 119 (2022) (per curiam). The Proposed Rule does exactly what the Supreme Court has repeatedly forbidden: “claim[ing] to discover . . . in long-extant statute[s] ‘an unheralded power’ representing a ‘transformative expansion [of its] . . . authority,’” with no clear congressional authorization. *West Virginia v. EPA*, 597 U.S. 697, 724 (2022) (citation omitted).

In sum, the Proposed Rule is not authorized by law and therefore conflicts with the constitutional allocation of election authority. The executive branch, including USPS, plays no role in election regulation and administration absent Congressional approval. And here, where no such approval exists, the Proposed Rule must be rejected.

II. The Proposed Rule would burden and undermine election administrators and jeopardize voters’ exercise of their fundamental right to vote.

The Proposed Rule is also bad policy. It will make it more difficult for election administrations to do their already difficult jobs. And it will create risks that lawfully registered voters may be disenfranchised.

To start, the Proposed Rule requires making significant changes to state election administration *in the middle of ongoing elections and without providing funding to*

³ The Proposed Rule’s law enforcement justification is all the more disturbing given that it would allow for broad regulation of an entire election infrastructure divorced from investigations of specific violations of law and based on the mere possibility that “information” (criminal or not) could be made “available” to law enforcement officials. Nothing in the cited statutes—or in our constitutional framework—contemplates such a widespread co-option of State authority.

do so. Election officials across the country are already making preparations to administer the November general election. The Proposed Rule makes no accommodation for this fact, forcing state election administrators to immediately begin compiling lists of every single mail-in and absentee voter in the state (the “mail voter list”), as well as “enrolling” all those mail voters with the USPS using a new “portal” and uploading information such as the voters’ name, address, and the unique intelligent mail barcode from their ballot envelope. That alone is a herculean task. But to make matters worse, the Proposed Rule does not make any allowances for training election administrators and their staff and does not provide resources for implementing these labor-intensive steps. It is the definition of an unfunded federal mandate on state and local officials.

Likewise, the Proposed Rule requires USPS to immediately begin evaluating the sufficiency of every single piece of election mail, to the tune of tens of millions of ballots, including whether each voter appears on a state’s mail voter list and whether the envelopes are rule-compliant. Again, the Proposed Rule does not describe how USPS staff will be prepared for this new and novel undertaking. As it stands, USPS does not have the skills, know-how, or experience to actually do what they propose.

Further, some jurisdictions will not be able to immediately comply with the Proposed Rule’s specific formatting requirements for federal election ballot mail. While this standardization may implement best practices—and indeed numerous jurisdictions already follow the format prescribed in the Proposed Rule—the Rule does not account for the fact that many of the places that do not already use the new ballot format are small and rural, with a single person in charge of all election procedures. As recently described by Tammy Patrick, chief programs officer at the Election Center, which is operated by the National Association of Election Officials: in many of these places, the proposed election mail challenges cannot easily be implemented because the most over-taxed local officials are “physically hand-writing these envelopes out or they’re using a rubber stamp with their address on it.”⁴ Obtaining the new technology to make the changes required by the Proposed Rule would cost thousands of dollars these officials do not have.⁵ And even if local election administrators could find the funds, they cannot just snap their fingers and change how they run elections overnight—making these changes will take time and careful effort.

⁴ Jonathan Shorman, *Local election officials reel over ‘logistical nightmare’ of Trump’s vote-by-mail order*, News From The States (June 16, 2026), <https://tinyurl.com/25fjrmwp>.

⁵ Dion Nissenbaum, *USPS proposal to carry out Trump’s executive order could create new barriers to mail voting*, Votebeat (May 29, 2026), <https://tinyurl.com/yc8yac4v>.

Creating the Proposed Rule’s mail voter list will also pose other practical challenges. In many states, local jurisdictions—like counties—administer mail-in and absentee balloting, processing applications and then mailing out and canvassing ballots. But the Proposed Rule requires *states*, not localities, to upload the names of all mail voters to the USPS’s new “portal.” Because states may not have the identities of every mail voter in the first instance, the Proposed Rule adds new steps that localities and states will have to comply with at a time when they are already juggling many other sensitive election-related tasks. Additionally, if USPS determines a mail ballot does not comply with the Proposed Rule’s requirements, the ballot is returned to the state, even though, as noted above, in many instances states are not responsible for sending mail ballots in the first place. And in such circumstances, it does not appear affected voters receive any notice that a ballot is in limbo—meaning voters may not even know that they are at risk, through no error of their own, of disenfranchisement. Every step that is added to the process is another potential opportunity for human error, slowdowns, or other complications. And in elections administration, deadlines are tight and there is already little if any margin for error.

The USPS’s “portal” for enrolling mail voters and uploading mail voter lists is also problematic for several more reasons. To start, it is a likely choke point for election administration. Because every state is required to upload its mail voter list to the portal, if anything goes wrong with the portal it would bring mail voting across the country to a complete stop. And, after every state’s mail voter list is submitted, the portal presents an especially ripe target for hackers trying to access millions of Americans’ data or compromise elections, all in one fell swoop. Previously, there has never been a central repository of voter data, because states administer elections independent of one another. By centralizing voter information from across the country in the USPS portal, the Proposed Rule is creating a bullseye for election saboteurs. It is hard to overstate the seriousness of this threat: the Department of Homeland Security (“DHS”) already identifies election infrastructure as “critical” and “of such vital importance to the American way of life that its incapacitation or destruction would have a devastating effect on the country.”⁶ In making that designation, DHS “cited cyberattacks on American systems as potentially more sophisticated and dangerous than ever, and elections as a primary target of cyber criminals.”⁷ The USPS portal will immediately become precisely such a primary target.

The Proposed Rule would also impose an extraordinarily punitive regime that could disenfranchise countless qualified voters and subject hardworking public servants

⁶ Cybersecurity & Infrastructure Security Agency, *Election Security*, <https://perma.cc/U6MC-F3C3> (last visited Nov. 18, 2025).

⁷ PCC Technology Inc., *Securing Elections Critical Infrastructure* 3 (2020), <https://perma.cc/48MC-C49D>.

to criminal investigation. The Proposed Rule's changes are all mandatory, presenting states with a classic Hobson's choice: comply with the federal government's preferred policies for mail-in and absentee voting or have no mail-in and absentee voting *at all*. Plus, because of the Proposed Rule's "take-it or leave-it" regime, it appears that if states even inadvertently omit a *single* voter from the mail voter list the Rule requires states to provide, USPS could refuse to deliver *all* the state's mail ballots. Additionally, because the Proposed Rule requires state election officials to certify their compliance with the Proposed Rule's mail voter list mandate, it is possible that even an innocent mistake—such as accidentally forgetting to include a voter on the list or including a wrong address—could trigger investigation of or even prosecution based on the inaccurate certification.

If the myriad issues above were not enough reason to reconsider the Proposed Rule, it is also striking that the Proposed Rule lacks any justification and responds to no need. For example, the Proposed Rule does not explain *why* USPS is suddenly being tasked with reviewing every state's list of mail voters—something that local election administrators have already been doing on their own without issue for many decades. Mail-in and absentee voting are safe and secure.⁸ They are a crucial tool to help ensure every American can exercise their fundamental right to vote—regardless of where you live, whether you have a car, or whether you are elderly or disabled. Indeed, if the Proposed Rule was anything other than a naked power grab, it would surely apply equally to primary and general elections. There is no material distinction between primary and general elections when it comes to mail-in and absentee voting. To the extent the Administration is truly concerned with "facilitate[ing] enforcement of federal law, reducing[ing] the risk of fraud, and help[ing] protect the integrity of federal elections," those concerns apply equally to both primary and general elections: the same federal laws govern and the same mail voting procedures are available in each. So by distinguishing between primary and general elections, the Proposed Rule seriously implies the Administration is pursuing some other, unidentified and potentially unscrupulous, purpose.

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In conclusion, we implore USPS to jettison the Proposed Rule, which is legally indefensible and practically unsound.

The President has no power to make election administration policy, and that fact alone means that adopting this Proposed Rule would be unlawful. But now more than ever, election administration must remain a nonpartisan and independent endeavor that prioritizes effective, efficient, and reliable procedures. As a bipartisan

⁸ Brennan Center for Justice, *Mail Voting Accuracy* (April 23, 2024), <https://tinyurl.com/2vak2s28>; Wendy R. Weiser & Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, Brennan Center for Justice (April 10, 2020), <https://tinyurl.com/3sjw8378>.

group of former secretaries of state who faithfully oversaw elections across the “laboratories” of American democracy, we intimately understand the wisdom of the Framers’ vesting of election authority in the states. That constitutional structure laid the foundation for a healthy and flexible democracy that is responsive to the diverse needs and circumstances of our great country. *See Ariz. State Legislature*, 576 U.S. at 817. The perils of departing from this constitutional framework are grave. Yet, the Proposed Rule does exactly that. Its promulgation would seriously jeopardize election administrators’ ability to fulfill their critical role of ensuring that Americans can exercise their most fundamental right to vote. Neither precedent nor prudence allows such a result.