



BEFORE THE UNITED STATES POSTAL SERVICE

PETITION FOR RULEMAKING

Pursuant to 5 U.S.C. § 553(e) and 39 U.S.C. § 3001(m)

IN THE MATTER OF:

**Proposed Amendments to Publication 52
(Hazardous, Restricted, and Perishable Mail)
and the Domestic Mail Manual
to Implement Security Standards
for Mail-In and Absentee Ballots in Federal Elections**

Submitted: April 20, 2026

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I. Introduction and Summary of Petition

1. This Petition for Rulemaking is submitted pursuant to 5 U.S.C. § 553(e) and 39 U.S.C. § 3001(m). The petitioners respectfully request that the United States Postal Service (“USPS” or the “Postal Service”) initiate a rulemaking proceeding to establish minimum security and verification standards applicable to all mail-in and absentee ballots transmitted in connection with federal elections by amending Publication 52 (Hazardous, Restricted, and Perishable Mail) to incorporate these standards. Petitioners also request rulemaking, as necessary, to the Domestic Mail Manual (“DMM”). Publication 52 and the DMM are regulations of the Postal Service.¹ This Petition further requests that USPS formally adopt a policy classifying mail-in and absentee ballots that fail to comply with these minimum standards as “suspected non-mailable matter,” subject to return to sender under Postal Operations Manual (“POM”) § 139.118.
2. On March 31, 2026, President Trump signed Executive Order 14399, titled “Ensuring Citizenship Verification and Integrity in Federal Elections” (“EO 14399”). The EO directed the Postmaster General to initiate a notice of proposed rulemaking within 60 days to establish procedures ensuring that: (1) all mail-in and absentee ballots bear Official Election Mail designation and a unique Intelligent Mail barcode (“IMb”); (2) USPS shall not transmit mail-in or absentee ballots to individuals not enrolled in a federal- and state-verified “Mail-In and Absentee Participation List”; and (3) states may submit such lists at least 60 days before a federal election. The EO’s ballot security objectives serve a compelling governmental interest in election integrity.
3. This Petition provides an independent statutory framework for the Postal Service to initiate those same procedures through its own rulemaking authority, independent of any executive direction. As courts have recognized in enjoining presidential election directives on separation-of-powers grounds, such injunctions do not restrain an agency

¹ 39 C.F.R. §§ 111.1, 211.2.

from independently exercising its own statutory authority to adopt similar regulatory measures through the appropriate notice-and-comment rulemaking process.² This Petition invokes precisely that independent authority.

4. The central legal thesis is straightforward: when a person mails, or causes to be mailed, a federal election ballot to a voter who is not lawfully permitted to vote in a federal election—whether because the voter is an alien, a fictitious person, or otherwise ineligible—the mailing itself constitutes part of a scheme or artifice to defraud the United States of a fair and lawful election. Such a mailing is an offense under 18 U.S.C. § 1341 (mail fraud) and/or 18 U.S.C. § 1342 (fictitious name or address), two of the predicate criminal statutes enumerated in 39 U.S.C. § 3001(a), which is the statute governing nonmailability. Matter deposited in violation of those statutes is thus nonmailable by operation of law. The Postal Service not only has authority, but an affirmative duty, to establish regulatory standards distinguishing compliant, mailable ballots from ballots that, on their face, cannot be verified as lawfully submitted.

² See, e.g., *LULAC v. Trump*, No. CV 25-0946 (CKK), 2025 WL 1187730, at *1 and *60 (D.D.C. Apr. 24, 2025) (“These consolidated cases are about the separation of powers.” And “[N]othing in this Memorandum Opinion or the Court’s preliminary injunction should be taken to restrain the EAC or its Members from independently de-termining whether or not documentary proof of citizenship is or is not ‘necessary to enable’ State election officials to assess voters’ eligibility or from re-vising the Federal Form with the assent of three Members and following the appropriate notice-and-comment rulemaking process. See 52 U.S.C. §§ 20508(b)(1), 20928, 20929. As the Court has explained, its holding here is limited to the conclusion that the President cannot unilaterally mandate that action by executive order.”); *California v. Trump*, No. 25-CV-10810-DJC, 2025 WL 1667949, at *7 (D. Mass. June 13, 2025) (expressly endorsing the separation of powers reasoning in *LULAC*).

5. The authority for this Petition and the duty to act flow from foundational principles of postal law. As the Supreme Court held in *Ex parte Jackson*, 96 U.S. 727, 732 (1878), the postal power “embraces the regulation of the entire postal system of the country,” and “[t]he right to designate what shall be carried necessarily involves the right to determine what shall be excluded.” Congress exercised that exclusion power in 39 U.S.C. § 3001(a), and *Public Clearing House v. Coyne*, 194 U.S. 497, 511 (1904), confirmed the complementary principle: the Postal Service may “refus[e] to extend the facilities of the Post[]office Department” for the delivery of fraudulent matter. This Petition requests that USPS exercise its lawful authority to give operational effect to those principles in the context of federal election mail.

II. Statement of Interest

6. Petitioner America First Legal Foundation (“AFL”) is a national, 501(c)(3) nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

7. Among AFL’s core institutional priorities is the restoration of election integrity in the United States. AFL exists, in significant part, to ensure that every election reflects the will of the American people, that only eligible citizens participate in federal elections, that lawful votes are neither diluted nor nullified by unlawful or fraudulent ballots, and that the legal and administrative machinery governing elections complies with the Constitution and federal law. AFL has a direct, substantial, and ongoing interest in the outcome of this Petition because the regulations requested herein are indispensable to those objectives.

8. AFL’s interest in this Petition is grounded in its extensive and continuing record of work on election integrity. That work is multi-front and nationwide, encompassing extensive federal and state court litigation, administrative petitions for rulemaking, investigations of state and

local election officials, government accountability requests under federal and state transparency laws, and sustained public advocacy. These activities demonstrate both AFL's institutional competence in this subject matter and its direct, longstanding, and continuing interest in the outcome of this Petition.

9. The regulations requested herein, including requirements for an Official Election Mail designation, unique Intelligent Mail barcode traceability, and Mail-In and Absentee Participation List verification, go to the very heart of AFL's interest in election integrity. Without these minimum standards, the United States Postal Service remains, as a matter of operational reality, an unwitting instrument of mail-in election fraud and of the dilution of every lawful vote cast in federal elections. AFL has the institutional standing, legal expertise, and documented track record required to raise these issues before the Postal Service, and it respectfully petitions the Postal Service to act.

III. Jurisdiction and Authority to Petition

10. Section 553(e) of the Administrative Procedure Act ("APA"), 5 U.S.C. § 553(e), provides that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." While the Postal Service is ordinarily exempt from the APA by operation of 39 U.S.C. § 410(a), which excludes "chapters 5 and 7 of title 5" from application to USPS, Congress created a specific, targeted exception to that exemption for mailability proceedings. Section 3001(m) of Title 39 provides that "proceedings concerning the mailability of matter under this chapter [Chapter 30] ... shall be conducted in accordance with chapters 5 and 7 of title 5."
11. Because this Petition concerns the mailability of matter under Chapter 30 of Title 39, the APA's rulemaking petition requirements apply in full, notwithstanding the general exemption of § 410(a).
12. Section 3001(m) has been authoritatively construed as conferring the right to file rulemaking petitions. *In Humane Society of the United*

States v. United States Postal Service, 609 F. Supp. 2d 85, 94-97 (D.D.C. 2009), the court held that a non-mailer’s petition to USPS regarding nonmailability and the USPS’s response to that petition constituted a proceeding concerning the mailability of matter subject to APA review under 5 U.S.C. § 706, notwithstanding § 410(a). That holding is directly applicable here: this Petition requests a rulemaking proceeding concerning the mailability of election mail—squarely within § 3001(m)’s scope—and USPS is therefore obligated under § 553(e) to receive and consider it.

13. Any interested person has standing to petition under § 553(e). Every lawful voter possesses a legally cognizable interest in the integrity of federal elections and in ensuring that the mails are not used as an instrument of election fraud. *See Reynolds v. Sims*, 377 U.S. 533, 554–55 (1964) (right to have votes counted and not diluted is fundamental); *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 191, 204 (2008) (noting that a “State has a valid interest in participating in a nationwide effort to improve and modernize election procedures that have been criticized as antiquated and inefficient” and “in protecting the integrity and reliability of the electoral process” (cleaned up)).
14. USPS’s obligation to respond to this Petition, and ultimately to initiate the requested rulemaking if the Petition establishes a meritorious basis, is itself subject to APA review. In *Humane Society*, the court held that USPS’s refusal to act on a mailability petition was reviewable as a final agency action under the APA and that an arbitrary or capricious denial was subject to reversal and remand. 609 F. Supp. 2d at 94-97.

IV. Statutory Authority for the Requested Rulemaking

15. The Postal Service possesses ample independent statutory authority to promulgate the regulations requested herein.

A. General Rulemaking Authority: 39 U.S.C. §§ 401(2) and 401(10)

16. The Postal Service has the power “to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, 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.” 39 U.S.C. § 401(2). Section 401(10) further grants authority “to have all other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its specific powers.” These provisions together constitute broad, affirmative regulatory authority. Regulations establishing minimum security features—including Intelligent Mail barcode traceability and Official Election Mail designation requirements—fall plainly within the scope of rules “necessary in the execution of [USPS’s] functions.” USPS already imposes such requirements for other mail categories; extending them to election mail is a straightforward application of § 401(2).

B. Service Authority: 39 U.S.C. § 403(b)(2)

17. The Postal Service is required “to provide types of mail service to meet the needs of different categories of mail and mail users.” 39 U.S.C. § 403(b)(2). In the election mail context, the “users” whose needs must be served are, above all, the eligible voters whose ballots are being transmitted. The fundamental “need” of a legitimate voter is that his or her vote not be diluted or nullified by fraudulent ballots submitted through the same mail system, and the States that use the mail to transmit ballots have the same need. *See Crawford v. Marion County Election Bd.*, 553 U.S. 181, 196 (2008). A postal service that delivers fraudulent election ballots indiscriminately alongside legitimate ones does not “meet the needs” of the election mail users it is supposed to serve. Regulations ensuring the integrity of mailed ballots directly serve those users.

C. Policy Mandates: 39 U.S.C. §§ 101(a) and 101(f)

18. The Postal Service’s most basic statutory function is to “bind the Nation together” and provide “prompt, reliable, and efficient services to patrons in all areas.” 39 U.S.C. §§ 101(a). Section 101(f) also requires “reliable delivery of all mail in a manner that increases operational efficiency and reduces complexity.” These policy mandates directly support the requested rulemaking. The reliable delivery of election ballots is undermined—not enhanced—when the mail system is exploited to transmit fraudulent ballots that dilute legitimate votes. A system permitting any person to mail a ballot on behalf of an ineligible voter without any traceability feature is neither “reliable” nor “efficient.” More fundamentally, the nation is not “bound together” by an election system compromised by fraud; it is divided by it. As *Coyne* teaches, the right of the public to a postal system that refuses to become the instrument of fraud must, when directly implicated, overrule the rights of individuals who would exploit that system for criminal purposes. 194 U.S. at 509-11.

D. Investigative Authority: 39 U.S.C. § 404(a)(6)

19. Congress has specifically delegated to USPS the power “to investigate postal offenses and civil matters relating to the Postal Service.” 39 U.S.C. § 404(a)(6). The transmittal of fraudulent election ballots through the mail constitutes a postal offense implicating 18 U.S.C. §§ 1341 and 1342. Regulations requiring IMb tracking on all election mail directly serve this investigative function, enabling the United States Postal Inspection Service (“USPIS”) to identify, trace, and prosecute postal offenses involving fraudulent ballots. Without traceability requirements, USPS is practically unable to fulfill its investigative mandate under § 404(a)(6). The requested rulemaking serves not only election integrity, but the institutional mission of the Postal Service itself.

V. Background: The Mail-in Ballot Integrity Crisis

20. This Petition is not premised on speculation. Documented evidence establishes a persistent, nationwide pattern of fraudulent or unauthorized participation in mail-in voting. The following is a representative—not exhaustive—summary of that documented record:

- **North Carolina** (2014): A state audit found 1,454 registrants were not naturalized U.S. citizens before Election Day. Of these, 89 appeared to have voted.³
- **Texas** (2019–2024): Texas identified nearly 100,000 possible aliens on voter rolls, approximately 58,000 of whom may have voted in previous elections. Since 2021, Texas removed over 6,500 potential aliens; of those, 1,930 had actually voted.⁴
- **Virginia** (2022–2024): Governor Youngkin reported the removal of 6,303 aliens from voter rolls between January 2022 and July 2024. A 2024 audit identified 1,481 aliens, some of whom had voted since 2019.⁵
- **Alabama** (2024): Secretary of State Wes Allen identified and purged 3,251 aliens registered to vote between January 16 and August 13, 2024.⁶

³ *Motor Voter at 30: The Problem and the Hindrance to the Solution*, PUB. INT. LEGAL FOUND. at 19 (2023), <https://perma.cc/TU5M-DMW8>.

⁴ *Secretary Whitley Issues Advisory On Voter Registration List Maintenance Activity*, TEXAS SECRETARY OF STATE (Jan. 25, 2019), <https://perma.cc/3DJ7-AJ7W>; *Governor Abbott Announces Over 1 Million Ineligible Voters Removed From Voter Rolls*, OFFICE OF THE TEXAS GOVERNOR (Aug. 26, 2024), <https://perma.cc/SPG8-GWPB>.

⁵ Va. Exec. Order No. 35 at 2 (2024), available at <https://perma.cc/JU3V-J5UE>.

⁶ *Secretary of State Wes Allen Implements Process to Remove Noncitizens Registered to Vote in Alabama*, ALABAMA SECRETARY OF STATE'S OFFICE (Aug. 13, 2024), <https://perma.cc/SD8M-GNVR>.

- **Ohio (2024):** Secretary of State Frank LaRose identified 597 aliens registered to vote, of whom 138 had actually voted.⁷
- **Arizona (2025):** Approximately 40,000 persons were registered to vote only in federal elections, having failed to provide documentary proof of citizenship—nearly four times the 10,457-vote margin by which the 2020 presidential election was decided in that state.⁸
- **Pennsylvania (2018):** Over 100,000 aliens were reported on voter rolls; at least 90 were confirmed to have cast ballots in a Philadelphia election.⁹
- **Election Fraud Tracker Database:** The Heritage Foundation Election Fraud Database contains 1,499 proven instances of voter fraud with 1,275 criminal convictions.¹⁰
- **Close Election Margins:** The materiality of even small-scale fraud is demonstrated by history: Florida 2000 (margin: 537 votes); Minnesota 2008 U.S. Senate race (margin: 312 votes out of 2.4 million cast); New Hampshire 1974 U.S. Senate race (margin: 2 votes)

21. These documented instances establish that the use of the mails to transmit fraudulent election ballots is not a hypothetical risk, it is a recurring reality. The Postal Service currently delivers these ballots without any mechanism to distinguish them from lawful ballots. The absence of traceability requirements, security markings, or verification standards for election mail makes the postal system an unwitting

⁷ *Secretary LaRose Refers Evidence of Non-Citizen Voter Registrations to Ohio Attorney General for Potential Prosecution*, OHIO SECRETARY OF STATE'S OFFICE (Aug. 21, 2024), <https://perma.cc/H3TZ-YMVS>.

⁸ *Federal Only Registrants as of January 2nd, 2025*, ARIZONA SECRETARY OF STATE'S OFFICE, <https://perma.cc/GH53-BBN9>; *State of Arizona Official Canvas*, ARIZONA SECRETARY OF STATE'S OFFICE (Nov. 24, 2020), <https://perma.cc/7KP3-5NMV>.

⁹ *PILF Sues Pennsylvania to Release Data on '100k' Noncitizen Voter Registrants*, PUB. INT. LEGAL FOUND. (Feb. 26, 2018), <https://perma.cc/2UVG-YFV8>.

¹⁰ *Election Fraud Map: A Sampling of Proven Instances of Election Fraud*, HERITAGE FOUND., <https://perma.cc/TZT4-CUSZ>.

instrument of election fraud—precisely the role the Supreme Court held in *Coyne*, 194 U.S. at 511, that the postal system must never be permitted to play.

VI. Noncompliant Mail Ballots Are Nonmailable Under 39 U.S.C. § 3001(a)

22. The federal nonmailability statute states that matter whose deposit in the mail constitutes a federal crime under any of several specifically listed statutes is nonmailable as a matter of law, without further agency adjudication: “[m]atter the deposit of which in the mails is punishable under section ... 1341, 1342 ... of title 18 ... is nonmailable.” 39 U.S.C. § 3001(a).

A. Constitutional Foundation: *Ex parte Jackson* and the Scope of the Exclusion Power

23. The Supreme Court’s foundational postal law decision, *Ex parte Jackson*, 96 U.S. 727 (1878), established the relevant constitutional and institutional framework for the nonmailability statute. The Court held that the constitutional “power vested in Congress to establish post-offices and post-roads... embraces the regulation of the entire postal system of the country. The right to designate what shall be carried necessarily involves the right to determine what shall be excluded.” *Id.* at 728 (cleaned up). Congress exercised that exclusion power by enacting 39 U.S.C. § 3001(a), and the Postal Service’s regulatory role is to give that exclusion operational effect.

24. *Jackson* also resolved the critical Fourth Amendment question that might otherwise attend a program of election mail screening. The Court drew a sharp distinction between sealed letters and packages—which may be opened only with a warrant—and the exterior of mail pieces, which postal officers may inspect on their own initiative. The Court held that postal officers “can act upon their own inspection, and, from the nature of the case, must act without other proof; as where ...

the object is exposed, and shows unmistakably that it is prohibited.” *Id.* at 735–36. That principle applies directly here: the presence or absence of required exterior markings—the Official Election Mail designation and the IMb—is visible on the exterior of the ballot envelope. The absence of required markings “shows unmistakably” that the ballot has not been certified as compliant Federal Election Mail and may be segregated by postal officers acting on their own inspection, without any opening of sealed envelopes and therefore without any Fourth Amendment concern.

B. The Postal Power Prohibits Use of the Mails as an Instrument of Fraud: *Public Clearing House v. Coyne*

25. In *Coyne*, the Supreme Court confirmed that the postal power encompasses the affirmative right—and duty—to refuse to deliver fraudulent matter. 194 U.S. at 511. The Court upheld the Postmaster General's authority to issue a fraud order seizing and returning all mail of an enterprise engaged in a prohibited scheme, without requiring a prior judicial proceeding. The Court held that such an order does not constitute confiscation of property because the Postmaster General's action amounted to no more than “a refusal to extend the facilities of the Postoffice Department to the final delivery of the letter,” *id.*, a power that “attends [the letter] at every step, from its first deposit in the mail to its final delivery to the addressee.” *Id.* The Court further held that “the rights of the public must, in these particulars, override the rights of individuals, provided there be reserved to them an ultimate recourse to the judiciary.” *Id.* at 516.

26. *Coyne* further established that mailability determinations do not require prior judicial adjudication of the underlying illegality—a prima facie determination based on the nature and exterior markings of the mailed matter is constitutionally sufficient. The Court held that “where a person is engaged in an enterprise of this kind ... it is not too much to assume that, prima facie, at least, all such letters are identified with such business.” *Id.* at 509-10. Applied to the election mail

context: when a ballot lacks the exterior indicia of a lawfully issued federal election mail piece, it is appropriate for USPS to treat it, *prima facie*, as noncompliant matter subject to return, with full due process provided through the USPS's established administrative review mechanisms.

27. *Coyne* also confirms the constitutional sufficiency of return-to-sender as the appropriate disposition for suspected nonmailable election mail. Because the return is merely a refusal to extend postal facilities and not a confiscation, the due process concern is fully satisfied by provision of the *Monart* administrative appeal mechanism described below. The sender retains possession of the returned ballot; USPS retains evidence for investigative purposes; and the election authority receives notice to take corrective action. No constitutional rights are impaired.

C. Broad Nonmailability Construction: *McCrossen v. United States and Monart, Inc. v. Christenberry*

28. The Tenth Circuit's decision in *McCrossen v. United States*, 339 F.2d 810 (10th Cir. 1965), demonstrates that the nonmailability statutes are to be construed broadly to prevent use of the mails in furtherance of illegal conduct, and that nonmailability can be established from inspection of the exterior of a mail piece alone. In *McCrossen*, the court upheld convictions for depositing nonmailable matter—envelopes bearing defamatory language visible on their exterior—based solely on what was visible on the outside of the envelope, without any inspection of contents. That holding reinforces the *Jackson* principle: postal officers' authority to identify and segregate nonmailable matter from exterior inspection is well established, and the regulations proposed here do no more than operationalize that authority for the election mail context.

29. *Monart, Inc. v. Christenberry*, 168 F. Supp. 654 (S.D.N.Y. 1958), further confirms both the affirmative duty of the Postmaster to exclude nonmailable matter and the categorical nature of that obligation once a class of mail has been determined noncompliant. In *Monart*, the plaintiff was a purveyor of nude photographs who deposited advertising circulars in the mail that the New York Postmaster forwarded to the Post Office Department’s General Counsel for a nonmailability determination. Following a formal hearing before the Judicial Officer of the Post Office Department, the Department issued an administrative order finding the circulars nonmailable under 18 U.S.C. § 1461, applicable to obscene matter, which, like §§ 1341 and 1342 here, is a predicate statute under the nonmailability framework. The plaintiff sought a preliminary injunction to compel delivery and to stop destruction of the mail.
30. The court denied the injunction in full, holding that the nonmailability statute is “not only penal in nature but also operates to close the mail” to the proscribed matter, and that “[t]he Post Office Department is not required to sit idly by and lend itself as an instrument for the commission of a crime.” 168 F. Supp. at 656. Critically, the court held that “[t]here is an obligation imposed on the Postmaster not to permit such matter to be conveyed through the mails once it has been determined to be non-mailable,” thus framing the exclusion not as a discretionary option but as an affirmative, mandatory duty. *Id.* The court further confirmed that the Post Office’s regulatory process—a notice of hearing, an administrative determination, and a brief cure period for the mailer to withdraw the matter—fully satisfied due process without any judicial pre-clearance. *Id.*
31. This case is directly instructive here: once USPS promulgates the requested rule establishing that Federal Election Mail lacking required exterior markings is noncompliant as a class, the Postmaster bears an affirmative obligation—not a mere option—to decline to convey it, precisely as the *Monart* court held. Individual ballot-by-ballot adjudication is not required; the categorical determination is made at

the rulemaking stage. Furthermore, regulations proposed here give individual voters the right to ensure their names are properly listed as validly registered to vote in federal elections. Additionally, local election agencies will have available to them the standard administrative appellate process to challenge any determinations of nonmailability for their ballot envelopes. Thus, the Postal Service's duty to exclude will follow automatically from the regulatory classification, subject to administrative cure procedures, just as in *Monart*.

D. The APA Mailability Petition Framework and the Precedent of Humane Society

32. As discussed above, *Humane Society of the United States* establishes the precise procedural template for this Petition. In *Humane Society*, a third-party organization petitioned USPS to declare a specific periodical nonmailable under 39 U.S.C. § 3001, invoking the APA exception of § 3001(m). 609 F. Supp. 2d 85. The court held that USPS's denial of the petition constituted a final agency action subject to judicial review, and that USPS's determination was arbitrary and capricious in failing adequately to consider the statutory mailability question. The court's reasoning establishes three propositions applicable here: (1) any interested party may invoke § 3001(m) to petition USPS to make a mailability determination for a class of mail; (2) USPS's response is subject to APA review; and (3) refusal to engage seriously with a facially meritorious mailability petition is itself arbitrary and capricious action subject to judicial reversal.

E. The Regulatory Gap and the Need for Prospective Standards

33. The critical regulatory gap is this: while the law clearly renders certain election mail nonmailable by operation of § 3001(a), the Postal Service currently has no regulatory mechanism to distinguish compliant from noncompliant election mail at the point of deposit or in the mailstream. Individual adjudicatory proceedings are adequate for discrete, case-by-case determinations, but wholly inadequate to address

a nationwide pattern involving potentially millions of individual ballot mailings in a single election cycle. A rulemaking is necessary to establish prospective, categorical standards enabling USPS to fulfill at operational scale its existing statutory obligation under § 3001(a).

34. The requested rulemaking is entirely consistent with the categorical framework USPS already uses for other classes of potentially non-mailable matter. Publication 52 imposes mandatory, categorical exterior marking and labeling requirements across numerous analogous mail categories, and conditions mailability upon compliance with those exterior requirements as a matter of routine regulatory operation.
35. For hazardous materials, Publication 52 § 221.1 requires that all hazardous, restricted, or perishable items “must be clearly marked and labeled on the address side of the mailpiece,” and Section 221.3 requires that all such packages display an Intelligent Mail package barcode (“IMpb”) and an Intelligent Mail matrix barcode
36. For toxic substances, biological agents, and infectious substances, Publication 52 imposes DOT-standard diamond-shaped hazard labels, UN identification numbers, and return-address requirements as categorical conditions of mailability—all determined by inspection of the exterior of the mailpiece, without opening sealed contents. *See* Pub. 52 §§ 325.1, 346.22, 346.32.
37. In every instance, the operative principle is identical to the one this Petition invokes: an entire class of mail that presents a statutory concern is rendered conditionally nonmailable absent required exterior markings, enabling postal acceptance personnel to identify and segregate noncompliant pieces from the exterior alone, consistent with *Ex parte Jackson's* authorization of exterior inspection. The proposed Federal Election Mail standards in this Petition simply apply this well-established Publication 52 model to a new category of restricted mail—one where the statutory concern is election integrity rather

than physical hazard—using the same tools of exterior marking, bar-coding, and return-address requirements that USPS already employs across dozens of analogous mail categories.

VII. Ballots Violating 52 U.S.C. §§ 10307 and 20511 Necessarily Violate 18 U.S.C. §§ 1341 and 1342

A. The Mail Fraud Statute: 18 U.S.C. § 1341

38. It is a federal crime for any person who, “having devised or intending to devise any scheme or artifice to defraud,” uses the mails or causes the mails to be used in furtherance of that scheme. The elements are: (1) the existence of a scheme or artifice to defraud; (2) use of the United States mails to execute the scheme; and (3) specific intent to defraud. *United States v. Schmuck*, 489 U.S. 705, 710 (1989) (“[T]he federal mail fraud statute does not purport to reach all frauds, but only those limited instances in which the use of the mails is a part of the execution of the fraud.”). The statute does not require proof that the scheme succeeded; intent and use of the mails are sufficient. Moreover, as the Supreme Court recognized in *Coyne*, 194 U.S. at 497, “the misrepresentation of existing facts is not necessary” under the statute—the statute reaches schemes operating through concealment and omission as well as affirmative misrepresentation, including the concealed submission of an unauthorized ballot.

B. Application of § 1341 to Fraudulent Election Mail

39. The submission of a ballot by or on behalf of a person who is not a U.S. citizen, or in the name of a fictitious person, as part of a scheme to affect the outcome of a federal election involves all three elements of § 1341: (1) a scheme to defraud—the fraudulent deprivation of eligible voters of their right to elect representatives of their choice through illegal vote dilution; (2) use of the mails—the physical mailing of the fraudulent ballot through USPS; and (3) specific intent—the deliberate submission of a ballot by or on behalf of an ineligible voter. The mailing is not incidental to the fraud—it is the mechanism of the fraud, and the ballot is its instrument.

40. The relationship between mail fraud and the postal exclusion power was established in *Ex parte Jackson* itself, which upheld the exclusion of lottery circulars transmitted in furtherance of a scheme to deceive and defraud the public for the purpose of obtaining money under false pretenses. 96 U.S. at 728. *Monart* further confirms that USPS may establish categorical rules identifying entire classes of potentially fraudulent mail as noncompliant, rather than requiring individual proof of fraudulent intent in each specific mailing.
41. The Department of Justice’s own Federal Election Fraud Fact Sheet confirms that “[q]ualifying fictitious individuals to vote in federal elections by placing fictitious names on voter registration rolls” violates 52 U.S.C. §§ 10307 and 20511, and that “causing the submission ... of ballots in federal elections, that are materially defective under applicable state law” violates § 20511.¹¹ When such defective ballots are transmitted through the mail, the transmission constitutes a predicate mailing in furtherance of the fraudulent scheme, bringing the conduct within § 1341.

C. The Fictitious Name Statute: 18 U.S.C. § 1342

42. It is a federal crime to, while using the Postal Service, to “use[] or assume[] ... any fictitious, false, or assumed title, name, or address or name other than his own proper name” for the purpose of conducting any scheme or device mentioned in § 1341, or any other unlawful business. 18 U.S.C. § 1342. The application to election fraud ballots is textually precise: when a ballot is mailed in the name of a fictitious or deceased person, or to an address at which no eligible voter resides, the mailing is accomplished under a fictitious name or address in furtherance of an unlawful scheme, satisfying every element of § 1342. As *McCrossen* confirmed, nonmailability under such provisions can be

¹¹ *Fed. Election Fraud Fact Sheet*, U.S. DEP’T OF JUSTICE, U.S. ATT’Y’S OFFICE, DIST. OF N.H. (updated Feb. 2, 2016), <https://www.justice.gov/usao-nh/pr/federal-election-fraud-fact-sheet>.

established from exterior inspection of the mail piece alone—a principle that directly supports treating ballots lacking required exterior identification as suspected nonmailable matter.

D. The Federal Election Fraud Statutes: 52 U.S.C. §§ 10307 and 20511

43. It is a crime for any person to “vote more than once” in any federal election. 52 U.S.C. §§ 10307(e). Furthermore, it is a federal crime for any person to “knowingly and willfully” deprive or defraud “the residents of a State of a fair and impartially conducted election process by ... the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held.” 52 U.S.C. § 20511(2)(B).
44. The nexus between Sections 10307 and 20511 and the mail fraud statutes is direct: where a fraudulent ballot is transmitted through the mail, every element of § 1341 is present. The violation of Sections 10307 and 20511 establishes the predicate scheme to defraud; the mailing of the fraudulent ballot establishes the mail-use element. A ballot mailed in violation of Section 10307 or 20511 is simultaneously a mailing in violation of § 1341, and the matter deposited in the mail is nonmailable under 39 U.S.C. § 3001(a). Where such a ballot is additionally mailed in a fictitious name or to a fictitious address, it independently violates Section 1342. There is thus a convergence of four separate criminal statutes—Sections 1341, 1342, 10307, and 20511—establishing both the illegality of the conduct and the nonmailability of the ballot under § 3001(a). The Postal Service’s obligation to refuse to serve as the delivery mechanism for such conduct follows directly from *Coyne’s* and *Monart’s* foundational principle: the postal service shall not be made the instrument of crime. 194 U.S. at 511; 168 F.Supp. at 656.

VIII. Proposed Regulatory Amendments

45. Accordingly, Petitioners request that USPS amend Publication 52 and, as necessary, the DMM (incorporated at 39 C.F.R. §§ 111.1, 211.2), through the notice-and-comment procedures specified in 39 C.F.R. § 111.3(b), to add a new chapter governing Federal Election Mail as a specific category of Restricted Mail. The following proposed regulatory text is submitted for USPS consideration.

PROPOSED PUBLICATION 52 AMENDMENT — NEW CHAPTER: FEDERAL ELECTION MAIL

[X].1 Purpose and Scope

This chapter establishes minimum requirements for the mailability of mail-in and absentee ballots in connection with federal elections, as defined by 52 U.S.C. § 20511 and 39 U.S.C. § 3001. These requirements are adopted pursuant to 39 U.S.C. §§ 101(a), 101(f), 401(2), 401(10), 403(b)(2), and 404(a)(6).

[X].2 Definitions

(a) “Federal Election Mail” means any mail-in or absentee ballot, blank ballot, or completed ballot envelope transmitted through USPS in connection with any election for President, Vice President, presidential elector, U.S. Senator, or U.S. Representative and that has undergone a mail envelope design review by the USPS to ensure compliance with USPS mailing standards, including barcode placement. No fewer than 90 days prior to a Federal election, any State may choose to notify the USPS if it intends to allow for mail-in or absentee ballots to be transmitted by the USPS. As part of that notification, any notifying State should further indicate whether it intends to submit to the USPS, no fewer than 60 days before the election, a list of voters eligible to vote in a Federal election in such State to whom the State intends to provide a mail-in or absentee ballot to be transmitted via the USPS.

(b) “Intelligent Mail Barcode” or “IMb” means the USPS-defined barcode providing a unique identification number enabling end-to-end tracking of individual mail pieces.

(c) “Mail-In and Absentee Participation List” means a list provided by the USPS to each State of individuals taken from the State Mail-In and Absentee Participation List who are enrolled with the USPS for mail-in or absentee ballots provided by such State, along with unique ballot envelope identifiers, such as bar codes, for mail-in or absentee ballots provided to such individuals. The Mail-In and Absentee Participation List shall only include individuals confirmed by the federal government to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State. The preparation and transmission of each State-specific Mail-In and Absentee Participation List shall comply with the Privacy Act and all applicable use agreements.

(d) “Noncompliant Election Mail” means Federal Election Mail that lacks the required Official Election Mail Designation or IMb, or that is addressed to a person not on the Mail-In and Absentee Participation List or that does not list that person in the return address.

(e) “Official Election Mail Designation” means the Official Election Mail logo, notation, and markings prescribed by USPS pursuant to the Domestic Mail Manual.

(f) “State Mail-In and Absentee Participation List” means the list submitted by a state chief election official to USPS identifying voters eligible to vote in a Federal election in such State to whom the State intends to provide a mail-in or absentee ballot to be transmitted via the USPS. States may routinely supplement and provide suggested modifications or amendments to the State’s Mail-In and Absentee Participation List in advance of any Federal election, consistent with applicable State law.

[X].3 Mailability Requirements for Federal Election Mail

(a) Federal Election Mail deposited on or after [effective date] is mailable only if it:

(1) bears the Official Election Mail designation as prescribed by the DMM;

- (2) is automation-compatible and bears a unique Intelligent Mail barcode, or successor USPS technology enabling individual piece tracking, that facilitates tracking, and is consistent with the other requirements of this section; and
- (3) a return address corresponding to the issuing election authority and an addressee matching an individual listed in the Mail-In and Absentee Participation List for the applicable election or a return address matching an individual listed in the Mail-In and Absentee Participation List for the applicable election.
- (b) Federal Election Mail bearing all three required elements shall be presumed compliant with 18 U.S.C. §§ 1341 and 1342 for purposes of mailability under 39 U.S.C. § 3001(a), and shall be processed and delivered in the ordinary course.
- (c) Federal Election Mail lacking any of the three required elements shall be deemed to be suspected nonmailable and returned to sender in conformity with POM 139.118.

[X].4 State Mail-In Participation Lists (Optional)

Any state chief election official may submit to USPS a State Mail-In Participation List no fewer than 60 days before a federal election.

[X].5 Domestic Mail Manual Conforming Amendment

The DMM shall be amended to incorporate by reference the requirements of this chapter as applicable standards for Election Mail (DMM Section 703.x et seq.), and to specify that Federal Election Mail not bearing the required Official Election Mail designation and IMb or not containing the name of an individual listed on the State Mail-In Participation List is not eligible for Election Mail processing and shall be treated as Suspected Nonmailable Matter pursuant to POM § 139.118.

IX. Implementation: Suspected Nonmailable Matter—Return to Sender

46. Publication 52 and the Postal Operations Manual distinguish between matter presenting an immediate threat to persons or property

(held and referred to USPIIS under POM § 139.117) and suspected non-mailable matter presenting no immediate threat (returned to sender under POM § 139.118). Petitioners request that Noncompliant Election Mail—as defined in proposed § [X].2(e)—be treated as suspected nonmailable matter under POM § 139.118, triggering return to the election authority identified as the sender on the exterior of the envelope.

47. The legal framework for this disposition is anchored in *Ex parte Jackson*, *Coyne*, and 39 U.S.C. § 3001(b). Under § 3001(b), “nonmailable matter which reaches the office of delivery, or which may be seized or detained for violation of law, shall be disposed of as the Postal Service shall direct.” Return to sender is the standard disposition for suspected nonmailable matter. Because Noncompliant Election Mail lacks the required exterior markings distinguishing it as lawfully issued Federal Election Mail, USPS personnel can make the nonmailability determination from the exterior of the piece alone, consistent with the *Jackson* rule that postal officers may act on their own inspection “where the object is exposed, and shows unmistakably that it is prohibited.” 96 U.S. at 735–36. This determination requires no opening of sealed envelopes and therefore presents no Fourth Amendment concern.
48. The return-to-sender disposition is compelled by *Coyne*’s constitutional analysis. Return is merely a refusal to extend postal delivery facilities—not a confiscation of property—and does not implicate due process concerns, provided that judicial recourse is available to contest the determination. 194 U.S. at 497–98, 509–10. That recourse is fully preserved here: any election authority or individual voter whose ballot is returned as Noncompliant Election Mail may seek review under 39 C.F.R. Part 953.
49. Returning Noncompliant Election Mail to the issuing election authority, rather than destroying it, serves multiple purposes: (1) it preserves evidence for USPIIS to investigate potential violations of 18

U.S.C. §§ 1341 and 1342, and 52 U.S.C. §§ 10307 and 20511; (2) it provides the election authority with notice that a ballot from its jurisdiction failed to meet federal mailability standards; and (3) it avoids permanent disenfranchisement of voters whose ballots were submitted without proper marking due to administrative error by the issuing authority rather than voter fraud, by providing a cure opportunity prior to applicable state deadlines.

50. USPS should promulgate, as part of the requested rulemaking, specific procedures under POM § 139.118 for: (1) identification of Non-compliant Election Mail by postal employees at the point of deposit and in the mailstream; (2) documentation of each returned piece; (3) notification procedures to state election authorities; and (4) a cure period during which election authorities may resubmit compliant ballots prior to applicable state deadlines.

X. Conclusion

51. For the foregoing reasons, petitioners respectfully request that the United States Postal Service:
 1. Accept this Petition pursuant to 5 U.S.C. § 553(e) and 39 U.S.C. § 3001(m);
 2. Initiate a formal notice of proposed rulemaking proceeding to amend Publication 52 and, as necessary, the Domestic Mail Manual, to establish minimum security and verification requirements for all Federal Election Mail as described in Section VII of this Petition;
 3. Invite public comment on the proposed regulations pursuant to 39 C.F.R. § 111.3(b) and 5 U.S.C. § 553;
 4. Adopt a final rule establishing that Noncompliant Election Mail—mail-in or absentee ballots that lack the required Official Election Mail designation and Intelligent Mail Barcode and that do not involve an individual on the Mail-In and Absentee Participation List—is suspected nonmailable matter subject to return to sender under POM § 139.118;

5. Adopt a final rule establishing that Federal Election Mail addressed to persons not enrolled on a submitted Mail-In and Absentee Participation List is treated as Noncompliant Election Mail;
6. Promulgate specific procedures for the identification, documentation, notification, and cure of Noncompliant Election Mail to protect the rights of eligible voters whose ballots may have been submitted without proper authorization; and
7. Issue the final rule on an expedited basis to ensure implementation before the November 3, 2026 federal elections.

52. The integrity of federal elections depends on the integrity of the mechanisms by which votes are cast. The Postal Service occupies a uniquely consequential role in the modern election system. The regulations requested herein would not restrict the right of any eligible voter to cast a mail-in ballot; they would ensure that every ballot delivered by USPS was deposited in the mail by a lawfully authorized sender, is traceable to its origin, and is not part of a scheme to defraud eligible voters of their fundamental right to a fair election. As the Supreme Court held in *Ex parte Jackson*, 96 U.S. at 732, the postal power necessarily includes the right to determine what shall be excluded from the mails. As *Coyne*, 194 U.S. at 511, confirmed, the Postal Service has both the authority and the affirmative duty to ensure that it does not become the instrument of crime. The regulations requested herein are the operational implementation of those foundational principles. Petitioners respectfully request that USPS act expeditiously to initiate the requested rulemaking.

Respectfully submitted,

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