

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED  
PEOPLE,

4805 Mount Hope Drive  
Baltimore, MD 21215,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,  
475 L'Enfant Plaza SW  
Room 4012  
Washington, DC 20260-2200,  
and

LOUIS DEJOY, in his official capacity  
as Postmaster General of the United  
States Postal Service,  
U.S. Postal Service Office  
475 L'Enfant Plaza SW  
Room 4012  
Washington, DC 20260-2200,

Defendants.

Case No. 20-2295

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. From the earliest days of the Republic, the United States Post Office, now known as the United States Postal Service (USPS), has been essential to our constitutional democracy. In the Pulitzer-winning words of Daniel Walker Howe, the early Post Office had a dual mission “as a service to the public and to national unification.”<sup>1</sup> It facilitated communication across our

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<sup>1</sup> Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (2009).

sprawling and diverse nation and encouraged civic engagement by subsidizing the distribution of newspapers.

2. Today, the United States Postal Service (USPS) is more important than ever to our democracy, as it is necessary for free and fair elections. Over three-quarters of Americans are potentially eligible to vote by mail in November 2020, and election officials are preparing for a surge in mail-in voting due to the COVID-19 pandemic. That pandemic has already cost 170,000 Americans their lives, with death rates particularly high for Black people due to disparities in access to health care and structural discrimination. Mail-in voting is essential to ensuring that all Americans have an opportunity to vote without risking their safety, and mail-in voting requires prompt and reliable postal service. Prompt mail delivery is also especially important during the pandemic and the economic crisis it has caused, as Americans rely on the mail for medications, for benefits, to receive legal notices, and for many other important communications.

3. At this moment, however, when prompt mail delivery matters more than ever, the Postal Service has made significant changes that have resulted in unreliable service and widespread delays. On May 6, 2020, Louis DeJoy was appointed as the new Postmaster General. Then, on July 10, DeJoy announced a major operational “Pivot,” which imposes significant new restrictions on the timing and nature of letter carrier routes. In so doing, he acknowledged that employees would “see mail left behind or on the workroom floor or docks” as a result. In the month since, there have been substantial delays in mail service across the nation, with entire towns in rural areas not receiving their mail on certain days and people in some cities going days or weeks without receiving any mail at all. These delays have caused Americans to go without medicines and benefits, and they have prevented eligible Americans from voting by mail in their primary elections.

4. In addition, on July 29, the Postal Service's General Counsel sent letters to 46 states warning them of a mismatch between their deadlines related to mail-in voting and the Postal Service's likely delivery times. In these letters, the Postal Service made clear that ballots sent by marketing mail would not be accorded first-class mail treatment, and thus take longer to deliver, even though the Postal Service had previously trained its employees to give first-class treatment to ballots and other election-related materials sent as marketing mail.

5. The National Association for the Advancement of Colored People (NAACP), the nation's largest and oldest civil rights grassroots organization, brings this suit to require the Postal Service to suspend these changes, to restore prompt and reliable mail delivery, and to ensure that mail-in ballots are accorded priority status, as they have been in past years. Congress has mandated that, before implementing changes that have a nationwide impact on mail delivery, the Postal Service must provide an opportunity for public comment and seek an opinion from the Postal Rate Commission. *See* 39 U.S.C. § 3661. The Postal Service failed to do so with respect to either the "Pivot" or the change in treatment of ballots sent by marketing mail. Its changes are therefore unlawful. Congress has also mandated that: "In determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail." 39 U.S.C. § 101(e). The Postal Service's reversal of its policy of according first-class service to ballots sent by marketing mail is inconsistent with that statutory mandate.

6. To preserve the integrity of the November 2020 election, and to ensure that every American has access to reliable mail service during the COVID-19 pandemic, the NAACP asks this Court to enjoin the Postal Service's unauthorized changes and to declare that the Postal Service

has acted arbitrarily, capriciously, and in violation of section 101(e) by failing to give highest consideration to the delivery of important letter mail, including ballots.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1361.

8. Venue is proper in this district because a substantial part of the acts or omissions giving rise to the claim occurred in this judicial district. 28 U.S.C. § 1391(c)(2), (e)(1).

### **PARTIES**

9. Plaintiff NAACP is the nation's largest and oldest civil rights grassroots organization. Since its founding in 1909, the mission of the NAACP has been to ensure the political, educational, social, and economic equality of all persons and to eliminate race-based discrimination. The NAACP has fought in the courts for decades to protect the constitutional guarantee of equal protection under law. To advance its mission, the NAACP has brought landmark civil rights cases over its 109-year history and continues to do so. The NAACP also has filed numerous amicus briefs in cases that significantly impact people of color.

10. The NAACP has state and local conferences or chapters in 48 states, and it has over 200,000 members nationwide. The NAACP and its members rely on mail service by the United States Postal Service for a variety of important purposes. Delays in mail delivery are of significant concern to the NAACP and to NAACP members, and NAACP members have been adversely impacted by recent delays in mail delivery. For example, in Houston, TX, NAACP National Board Member and veteran Mr. Howard Jefferson's mail-order medications recently took twice as long as expected to arrive due to mail delays. Similarly, over the past month, NAACP member Ms. Gwendolyn Forbes Towns has received her medications three or four days late, if at all, which her

prescription provider has told her is because of delays in postal service. The NAACP also has many members who intend to vote by mail in the November 2020 election.

11. The NAACP engages in educational initiatives targeted at its members. A significant aspect of this educational work involves informing members of accurate information about voting, including voting by mail.

12. Defendant United States Postal Service is an independent agency of the executive branch of the United States.

13. Defendant Louis DeJoy is the Postmaster General, the chief executive officer of the Postal Service. He is sued in his official capacity.

## **BACKGROUND**

### **Statutory and Regulatory Background**

14. “The U.S. Postal Service is established under the provisions of the Postal Reorganization Act (the Reorganization Act) of 1970, Public Law 91-375, 84 Stat. 719, as amended by the Postal Accountability and Enhancement Act of 2006 (PAEA), Public Law 109-435, 120 Stat. 3198, as an independent establishment of the executive branch of the Government of the United States, under the direction of a Board of Governors, with the Postmaster General as its chief executive officer.” 39 C.F.R. § 1.1.

15. By statute, the Postal Service is required to “operate[] as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people.” 39 U.S.C. § 101(a). It has “as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide

prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.” *Id.*

16. Congress has directed that, “[i]n determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.” *Id.* § 101(e).

17. The PAEA in 2006 established the Postal Regulatory Commission as “an independent establishment of the executive branch.” *Id.* § 501. “The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act.” *Id.* § 502(a). “No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.” *Id.* § 502(b).

#### **Process for Changes to the Provision of Postal Services**

18. The Postal Service is tasked with “develop[ing] and promot[ing] adequate and efficient postal services.” *Id.* § 3661(a).

19. “When the Postal Service determines that there should be a change in the nature of postal services [that] will generally affect service on a nationwide or substantially nationwide basis,” it must “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.” *Id.* § 3661(b).

20. Before issuing its opinion, the Commission must provide “an opportunity for hearing on the record under sections 556 and 557 of [the Administrative Procedure Act] . . . to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public. The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under this title.” *Id.* § 3661(c).

21. The Commission’s Rules of Practice and Procedure require the Postal Service to file its request “not less than 90 days before the proposed effective date of the change in the nature of postal services involved.” 39 C.F.R. § 3020.112.

22. The Commission’s rules permit two forms of voluntary participation in Commission proceedings: (1) A person may file a notice of intervention pursuant to 39 C.F.R. § 3010.142(a) and, as a party, participate in discovery and motions practice, file testimony, and submit briefs, among other rights and responsibilities. (2) A person may participate by submitting comments in proceedings before the Commission except those involving an appeal of a Postal Service determination to close or consolidate a post office, pursuant to 39 C.F.R. § 3010.140.

23. Through section 3661, Congress provided the public a right to comment and an opportunity to provide input on any proposals to make meaningful changes in the delivery of the post nationwide. Consistent with the requirements of section 3661, the Postal Service has, in the past, submitted proposed changes regarding the nature of postal services to the Commission within a reasonable time prior to the effective date of the proposal and requested an advisory opinion from the Commission.

24. For example, in 2014, the Postal Service sought an advisory opinion on a proposal to change the manner by which it processes and dispatches mail that qualifies for a discounted

price. For certain mail entered on Fridays or Saturdays, the Postal Service proposed to change the delivery expectation or delivery service standard from 3 days to 4 days. The Commission's advisory opinion recommended that the proposal required more study. After receiving comments and briefs from intervenors, the Commission found, among other things, that the Postal Service's proposal was based on limited test information and sometimes anecdotal accounts, and it noted concern that the proposal did not have sufficient "support within the mailing community."<sup>2</sup>

25. Similarly, in 2012, the Postal Service sought an advisory opinion under section 3661 on a proposal to reduce the hours of operation at more than 13,000 post offices nationwide by 6, 4, or 2 hours per weekday, and to increase hours at approximately 73 locations. The Postal Service stated that its proposed plan was intended "to achieve cost savings with limited reductions in access and service," and included provisions for soliciting community input with respect to the changes in hourly operations at specific offices. After soliciting public comment, the Commission made recommendations concerning access, community input, revenue, and staffing.<sup>3</sup>

### **Election Mail**

26. Prior to the current election year, the Postal Service "treat[ed] Election and Political Mail as First-Class Mail," regardless of whether the election authority paid for First-Class service or the less expensive Nonprofit Marketing service.<sup>4</sup>

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<sup>2</sup> PRC, Advisory Op. on Service Changes Associated with Standard Mail Load Levels, N2014-1 at 1, Mar. 26, 2014, [https://www.prc.gov/docs/89/89493/docket%20no.%20n2014-1\\_advisory%20opinion.pdf](https://www.prc.gov/docs/89/89493/docket%20no.%20n2014-1_advisory%20opinion.pdf); *id.* at 5 (noting comments).

<sup>3</sup> PRC, Advisory Op. on Post Office Structure, N2012-2, at 1–2, Aug. 23, 2012, [https://www.prc.gov/docs/85/85013/n2012-2\\_adv\\_op\\_082312.pdf](https://www.prc.gov/docs/85/85013/n2012-2_adv_op_082312.pdf).

<sup>4</sup> USPS Office of the Inspector General, Audit Report, a Service Performance of Election and Political Mail During the 2018 Midterm and Special Elections at 7 (Nov. 4, 2019), <https://www.uspsoig.gov/sites/default/files/document-library-files/2019/19XG010NO000.pdf> (OIG 2019 Report).



27. The Postal Service Office of the Inspector General “concluded that this was how [election mail] was generally handled.” *Id.*

28. To facilitate this First-Class treatment and to “provide greater visibility to Election Mail as it is processed, the Postal Service encourages election officials to use” a specialized tag identifying it as Election Mail. OIR 2019 Report, Appendix B (letter from USPS Acting Vice President, Processing and Maintenance to OIG). In addition, some Postal Service facilities “had personnel identify and separate Election and Political from other mail at the facility to improve processing in accordance with standard operating procedures.” OIG 2019 Report, at 6.

29. First Class mail has a delivery standard of 1–3 days. By contrast, Nonprofit Marketing Mail has a delivery standard of 3–10 days. *Id.* at 4.

30. In accord with this Postal Service policy for the treatment of Election and Political Mail, the Office of the Inspector General found that 96 percent of Election and Political Mail met the 1–3-day delivery standard for First Class mail for the 2018 mid-term and special elections. *Id.* at 5.

## **The Rise in Mail-In Voting Due to the COVID-19 Pandemic**

### **The COVID-19 Pandemic**

31. On March 11, 2020, the World Health Organization declared a global pandemic resulting from the spread of COVID-19.<sup>5</sup> Two days later, President Trump announced that the outbreak of COVID-19 in the United States constituted a national emergency.<sup>6</sup>

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<sup>5</sup> Dr. Tedros Adhanom, WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>6</sup> Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 18, 2020), <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak>.

32. By April 2020, the United States became the epicenter of the COVID-19 pandemic with the highest number of confirmed COVID-19 cases in the world.<sup>7</sup> As of August 2020, there have been over 5,400,000 COVID-19 cases reported in the United States, including nearly 170,000 deaths.<sup>8</sup> Given a combination of shortages in testing, false negatives, and asymptomatic carriers, the actual number of cases and deaths is likely higher than officially reported.<sup>9</sup> Globally, there have been over 21,700,000 confirmed cases of COVID-19, with over 770,000 deaths.<sup>10</sup>

33. COVID-19 is a respiratory infection caused by the novel coronavirus SARS-CoV-2. It spreads via respiratory droplets, particularly through close in-person contacts.<sup>11</sup> The virus can be spread by asymptomatic, pre-symptomatic, and symptomatic individuals.<sup>12</sup> Understanding of the full range of effects of COVID-19 infection continues to develop. Symptoms may be severe, including fever, difficulty breathing, and loss of taste or smell.<sup>13</sup> Individuals hospitalized with

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<sup>7</sup> David Smith, *US Surpasses China for Highest Number of Confirmed COVID-19 Cases in the World*, The Guardian (Mar. 27, 2020), <https://www.theguardian.com/world/2020/mar/26/coronavirus-outbreak-us-latest-trump>.

<sup>8</sup> CDC, *Coronavirus Disease 2019 (COVID-19): Cases in the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited Aug. 18, 2020).

<sup>9</sup> Apoorva Mandavilli, *Coronavirus Infections Much Higher Than Reported Cases in Parts of the U.S., Study Shows*, NY Times (July 21, 2020), <https://www.nytimes.com/2020/07/21/health/coronavirus-infections-us.html>; Andrew Joseph, *Actual Covid-19 Case Count Could be 6 to 24 Times Higher than Official Estimates, CDC Study Shows*, STAT (July 21, 2020), <https://www.statnews.com/2020/07/21/cdc-study-actual-covid-19-cases/>.

<sup>10</sup> WHO, *WHO Coronavirus Disease (COVID-19) Dashboard*, <https://covid19.who.int/> (last visited Aug. 18, 2020).

<sup>11</sup> CDC, *Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last updated July 31, 2020).

<sup>12</sup> Nathan W. Furukawa, et al., *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic*, 26 CDC Emerging Infectious Diseases (July 2020), [https://wwwnc.cdc.gov/eid/article/26/7/20-1595\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article).

<sup>13</sup> CDC, *Symptoms of Coronavirus*, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last updated May 13, 2020).

COVID-19 may continue to experience persistent symptoms for months.<sup>14</sup> Lethal at its worst, COVID-19 infection can lead to long-term damage to the lungs, heart, brain, kidneys, or liver.<sup>15</sup> It is uncertain whether people who recover from COVID-19 can subsequently be re-infected.<sup>16</sup>

34. The CDC and the World Health Organization have estimated that approximately one out of five people infected with COVID-19 will require hospitalization.<sup>17</sup> People of all ages have contracted and died from COVID-19.<sup>18</sup> Several preexisting medical conditions can increase the risk of serious complications from COVID-19, regardless of age, including kidney disease,

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<sup>14</sup> Victoria Foster, *80% Of People Hospitalized With Coronavirus Still Had Symptoms Two Months Later, Says New Study*, Forbes (July 11, 2020), <https://www.forbes.com/sites/victoriaforster/2020/07/11/80-of-people-hospitalized-with-coronavirus-still-had-symptoms-two-months-later-says-new-study/#37aedd2b1e93>.

<sup>15</sup> Jacqueline Howard, *COVID-19's Impact on the Heart: Two New Studies Suggest 'the Plot Thickening'*, CNN (July 28, 2020), <https://www.cnn.com/2020/07/28/health/covid-heart-damage-two-studies/index.html>; CDC, *Coronavirus Disease 2019 (COVID-19): Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last updated June 30, 2020); Zoe Cormier, *How Covid-19 can damage the brain*, BBC (June 22, 2020), <https://www.bbc.com/future/article/20200622-the-long-term-effects-of-covid-19-infection>.

<sup>16</sup> CDC, *Coronavirus Disease 2019 (COVID-19): Duration of Isolation & Precautions for Adults* (last updated Aug. 16, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html>.

<sup>17</sup> WHO, *Q&A on Coronaviruses (COVID-19)*, <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited Aug. 18, 2020); DC, *Coronavirus Disease 2019 (COVID-19): Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last updated June 30, 2020).

<sup>18</sup> CDC, *COVID-19 Guidance for Older Adults*, <https://www.cdc.gov/aging/covid19-guidance.html> (last updated Aug. 17, 2020). See also CDC, *Hospitalization Rates and Characteristics of Children Aged <18 Years Hospitalized with Laboratory-Confirmed COVID-19* (Aug. 14, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932e3.htm> (“Children are at risk for severe COVID-19. Public health authorities and clinicians should continue to track pediatric SARS-CoV-2 infections.”).

heart disease, asthma, hypertension, and diabetes.<sup>19</sup> The pandemic has had a particularly devastating impact on Black people in the United States. As a result of disparities in access to health care and structural discrimination that leads to higher rates of co-morbidities, Black people comprise a disproportionate number of both cases of infection and deaths caused by the virus.<sup>20</sup>

35. There is no approved medication to cure COVID-19,<sup>21</sup> and there is currently no vaccine to prevent it.<sup>22</sup> There is consensus among medical experts and government agencies that a COVID-19 vaccine will not be available to the public in 2020.<sup>23</sup>

36. Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases and White House coronavirus advisor, has stated that U.S. health officials cannot see “an end in sight” to the pandemic.<sup>24</sup> According to the CDC, as of August 2020, COVID-19 is the third

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<sup>19</sup> CDC, *Coronavirus Disease 2019 (COVID-19): Groups at Higher Risk of Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last updated Aug. 14, 2020).

<sup>20</sup> See Richard A. Oppel, Jr., et al., *The Fullest Look Yet at the Racial Inequity of Coronavirus*, NY Times, July 5, 2020, <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>; see also The COVID Tracking Project, *The COVID Racial Data Tracker*, <https://covidtracking.com/race> (last visited Aug. 18, 2020).

<sup>21</sup> WHO, *Coronavirus Disease (COVID-19) Advice for the Public: Mythbusters*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/mythbusters> (last visited Aug. 18, 2020).

<sup>22</sup> CDC, *Coronavirus Disease 2019 (COVID-19), How to Protect Yourself and Others* (last updated July 31, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

<sup>23</sup> HHS, *Fact Sheet Explaining Operation Warp Speed*, (June 16, 2020), <https://www.hhs.gov/about/news/2020/06/16/fact-sheet-explaining-operation-warp-speed.html>; Gisela Crespo, *US gets Reality Checks on COVID-19 Vaccine, Duration of Symptoms*, CNN (July 24, 2020), <https://www.cnn.com/2020/07/24/health/us-coronavirus-friday/index.html>.

<sup>24</sup> Berkeley Lovelace, Jr., *Dr. Anthony Fauci Warns the Coronavirus Won't Ever be Eradicated*, CNBC (July 22, 2020), <https://www.cnbc.com/2020/07/22/dr-anthony-fauci-warns-the-coronavirus-wont-ever-be-totally-eradicated.html>.

leading cause of death in the United States, and the rate of deaths from COVID-19 remains significantly higher in the United States than in other countries.<sup>25</sup>

37. In the interim, experts have identified techniques that are effective in decreasing transmission of COVID-19, including practicing social distancing by avoiding close in-person contacts, avoiding large gatherings, wearing masks in public, and practicing frequent and thorough handwashing.<sup>26</sup>

### **The Anticipated Surge in Mail-in Voting Resulting from the Pandemic**

38. Mail-in voting has existed for decades in the United States. All fifty States allow voters to use some sort of mail-in voting, and millions of voters vote by mail each year. Members of the United States military stationed on bases away from home in other states and outside the country rely on mail-in voting to participate in elections. Disabled voters, those who are hospitalized and voters in nursing homes also often vote by mail. In November 2000, Oregon became an all vote-by-mail state.<sup>27</sup>

39. The CDC has provided guidance regarding safe voting practices during the COVID-19 pandemic, encouraging states to adopt voting procedures that allow voters to maintain social distancing and thereby decrease the spread of the virus. Specifically, the CDC has warned of the significant possibility of person-to-person COVID-19 transmission at polling sites and has

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<sup>25</sup> Lauren Mascarenhas, et al., *Birx Says She Wishes US Lockdown had Resembled the one in Italy*, CNN (Aug. 17, 2020), <https://www.cnn.com/2020/08/17/health/us-coronavirus-monday/index.html>.

<sup>26</sup> Lisa Lockerd Maragakis, M.D., M.P.H., *Coronavirus, Social and Physical Distancing and Self-Quarantine*, Johns Hopkins Medicine, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social%20distancing-and-self-quarantine> (last updated July 15, 2020).

<sup>27</sup> Oregon Sec. of State, *Oregon Vote-By-Mail*, <https://sos.oregon.gov/elections/Documents/statistics/vote-by-mail-timeline.pdf>.

urged the use of “voting methods that minimize direct contact and reduce crowd size at polling locations,” such as mail-in voting.<sup>28</sup>

40. Consistent with the CDC’s guidance, states have expanded mail-in voting access to ensure that eligible voters can vote both safely and securely during the 2020 primary and general election cycle.<sup>29</sup>

41. For example, Alabama,<sup>30</sup> Massachusetts,<sup>31</sup> New Hampshire,<sup>32</sup> and West Virginia<sup>33</sup> have expanded the scope of existing state election laws establishing absentee ballot eligibility for illness, injury, or disability to include all eligible voters concerned about, or taking preventative measures because of, COVID-19.

42. As a result of these changes, a record 76 percent of American voters will be eligible to receive a ballot in the mail for the November 2020 election.<sup>34</sup>

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<sup>28</sup> See CDC, *Coronavirus Disease 2019 (COVID-19): Recommendations for Election Polling Locations*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last updated June 22, 2020).

<sup>29</sup> COVID-19 and Elections, National Conference of State Legislatures <https://www.ncsl.org/research/elections-and-campaigns/state-action-on-covid-19-and-elections.aspx> (last updated July 2, 2020) (cataloguing legislative actions—enacted and pending—and executive actions taken by states to expand voting options for eligible voters in response to COVID-19).

<sup>30</sup> Ala. Legis. Servs. Agency, *Absentee Voting During State of Emergency-General Election 2020, 17-11-3(e)* (July 17, 2020), <https://www.sos.alabama.gov/sites/default/files/proposedRules/820-2-3-.06-.04ER.pdf>.

<sup>31</sup> An Act Relative to Voting Options in Response to COVID-19, 191st General Court of the Commonwealth of Mass., ch. 115 (2020), <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter115>.

<sup>32</sup> Memorandum from the Sec’y of State and Att’y General to New Hampshire Election Officials re: Elections Operations During the State of Emergency at 2 (Apr. 10, 2020) [https://www.nhpr.org/sites/nhpr/files/202004/covid-19\\_elections\\_guidance.pdf](https://www.nhpr.org/sites/nhpr/files/202004/covid-19_elections_guidance.pdf).

<sup>33</sup> W. Va. Sec’y of State Mac Warner, Admin. Law Div., Notice Of An Emergency Rule (Mar. 20, 2020), <http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=53039&Format=PDF>.

<sup>34</sup> Alan Yuhas, *How Mail-in Voting Works*, NY Times (Aug. 18, 2020), <https://www.nytimes.com/article/Vote-by-mail.html>.

43. States have also passed legislation to expand vote-by-mail procedures and mail-in voting—for example, affirmatively mailing all eligible voters an absentee ballot without a request for either the primary, general, or both elections.<sup>35</sup>

44. These changes have been enacted to protect voters' health, to reduce community spread of the COVID-19, and to safeguard the right to vote.

45. State and local elected officials have likewise encouraged people to rely on mail-in voting for primary and general elections to vote safely and reduce the spread of the COVID-19 virus.<sup>36</sup> Indeed, even with added precautions, public health officials have warned that in-person voting poses a significant health risk, especially for groups at an increased risk of severe illness from COVID-19.<sup>37</sup>

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<sup>35</sup> *Governor Newsom Issues Executive Order to Protect Health by Mailing Every Registered Voter a Ballot Ahead of the November General Election*, Cal. Gov. (May 8, 2020), <https://www.gov.ca.gov/2020/05/08/governor-newsom-issues-executive-order-to-protect-public-health-by-mailing-every-registered-voter-a-ballot-ahead-of-the-november-general-election/>; *Governor Murphy Signs Executive Order to Protect Public Health by Mailing Every Active Registered Voter a VBM Ballot Ahead of the General Election*, N.J Gov. (Aug. 16, 2020), <https://covid19.nj.gov/faqs/announcements/all-announcements/governor-murphy-signs-executive-order-to-protect-public-health-by-mailing-every-active-registered-voter-a-vbm-ballot-ahead-of-the-general-election>.

<sup>36</sup> *See, e.g.*, Alan Yuhas, *How Mail-in Voting Works*, NY Times (Aug. 18, 2020), <https://www.nytimes.com/article/Vote-by-mail.html>; Don Walton, *Ricketts Encourages Vote by Mail, Eyes Gradual Easing of COVID-19 Restrictions Possibly in May*, Lincoln Journal Star (May 14, 2020) [https://journalstar.com/news/state-and-regional/govt-and-politics/ricketts-encourages-vote-by-mail-eyes-gradual-easing-of-covid-19-restrictions-possibly-in-may/article\\_2770d931-fa51-591f-b04b-d5e516a72888.html](https://journalstar.com/news/state-and-regional/govt-and-politics/ricketts-encourages-vote-by-mail-eyes-gradual-easing-of-covid-19-restrictions-possibly-in-may/article_2770d931-fa51-591f-b04b-d5e516a72888.html); Ed Kilgore, *New Hampshire Says COVID-19 is a 'Disability' Justifying Voting by Mail*, The New Yorker (Apr. 10, 2020), <https://nymag.com/intelligencer/2020/04/in-nh-covid-ruled-a-disability-justifying-voting-by-mail.html>.

<sup>37</sup> *Public Health Officials and Voting Experts Release First-Ever Healthy Voting Guides*, American Public Health Ass'n (May 28, 2020), <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2020/healthy-voting-guides>.



46. States witnessed surges in applications for vote-by-mail ballots for 2020 primary elections,<sup>38</sup> and historical levels of mail-in voting during primaries in 2020. For example, Pennsylvania saw an 18-fold increase in mail-in voting for the June 2020 primary compared to the June 2016 primary.<sup>39</sup> Likewise, Florida saw a record number of mail-in votes, with 2.1 million mail-in ballots cast (as of August 16) for the August 18, 2020 primary as compared to 1.35 million for the August 2016 primary.<sup>40</sup>

47. Many states likewise expect a record-breaking volume of mail-in voting for the November 2020 election.<sup>41</sup> States are already are experiencing surges in vote-by-mail ballot requests.<sup>42</sup> Many state and local election officials are anticipating an increase in both mail-in voting and other election-related mailing.<sup>43</sup>

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<sup>38</sup> See, e.g., Beth LeBlanc, *In Michigan, There's a Surge in Absentee Ballot Requests During the Pandemic*, The Detroit News (July 2, 2020) <https://www.detroitnews.com/story/news/politics/2020/07/02/michigan-absentee-ballot-requests-rise-1-million-ahead-august-primary/5365799002/>.

<sup>39</sup> Andree Hsu and Mary Louise Kelly, *'Swing County, USA' Prepares for Unprecedented Influx of Ballots by Mail*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/893115504/swing-county-u-s-a-prepares-for-unprecedented-influx-of-ballots-by-mail>.

<sup>40</sup> Steve Patrick, *Amid Pandemic, Record Number of Florida Voters Use Mail-in Ballots*, News 4 Jax (Aug. 17, 2020) <https://www.news4jax.com/election-2020/2020/08/11/amid-pandemic-mail-in-ballots-smash-primary-records/>.

<sup>41</sup> Jason Lange, *U.S. States See Major Challenge in Delivering Record Mail Ballots in November*, Reuters (June 4, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-election-insig/u-s-states-see-major-challenge-in-delivering-record-mail-ballots-in-november-idUSKBN23B1NT>; see also Erin Cox, et al., *Postal Service Warns 46 States Their Voters Could be Disenfranchised by Delayed Mail-in Ballots*, Wash. Post (Aug. 14, 2020), [https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381\\_story.html](https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381_story.html).

<sup>42</sup> See, e.g., Jim Morrill, *Coronavirus Gears Spark 'Striking Surge' of Mail-in Ballot Requests*, Charlotte Observer (July 13, 2020), <https://www.charlotteobserver.com/news/politics-government/article244187737.html>.

<sup>43</sup> See, e.g., Letter from the National Ass'n of Secretaries of State to Louis DeJoy, United States Postmaster General (Aug. 7, 2020), available at <https://www.npr.org/2020/08/14/902545891/amid-fears-about-mail-in-ballots-election-officials-havent-met-with-new-postmast>.



## **The Postal Service Implements Changes in Its Nationwide Postal Services, Including with Respect to the Treatment of Election Mail**

### **A “Pivot” Affecting Nationwide Service**

48. On May 6, 2020, Louis DeJoy was appointed Postmaster General of the United States.

49. Two months later, Postmaster DeJoy directed the Postal Service to implement significant operational changes on a nationwide basis. Internal Postal Service documents acknowledged that those changes would impact the Postal Service’s provision of postal services to the public, including by resulting in delays in mail delivery.

50. Specifically, on or about July 10, 2020, the Postal Service circulated to employees a document entitled “PMGs expectations and plan,” which outlined the significant nationwide changes Postmaster DeJoy was implementing. In that document, Postmaster DeJoy announced that overtime would be eliminated, that letter carriers would have to make changes limiting the timeframe and affecting the scope of their delivery routes, and that certain customer service windows would be closed during lunchtime.<sup>44</sup> Postmaster DeJoy directed employees to leave mail behind at distribution centers if it delayed letter carriers from their routes. These represented significant departures from prior practices, as postal workers had been trained not to leave letters behind and to make multiple trips to ensure timely distribution of letters and parcels.

51. The Postal Service also circulated a document on July 10, 2020, entitled “Mandatory Stand-Up Talk: All Employees,” with a subtitle “Pivoting For Our Future” (herein “Pivot Instructions”). The Pivot Instructions described significant changes that the Postal Service

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<sup>44</sup> See, e.g., Jacob Bogage, *Postal Service Memos Detail ‘Difficult’ Changes, Including Slower Mailer Delivery*, Wash Post (Aug. 14, 2020) <https://www.washingtonpost.com/business/2020/07/14/postal-service-trump-dejoy-delay-mail/>.

was immediately implementing on a nationwide basis and acknowledged that these changes would impact the delivery of mail.<sup>45</sup>

52. The Pivot Instructions state that the Postal Service “must make immediate, lasting, and impactful changes in our operations and in our culture,” and stress that “[e]very single employee will receive this information” because every employee was “integral” to the success of those changes.

53. The Pivot Instructions further state that the “initial step in our pivot is targeted on transportation” which will involve “challenging” changes “as we seek to change our culture and move away from past practices previously used.” The Pivot Instructions then provide numerous specific examples of “transportation changes being implemented immediately (today),” including limiting the timeframe when employees are permitted to make mail delivery trips. The Pivot Instructions acknowledge that, as a result of these changes, employees “may see mail left behind or on the workroom floor or docks,” which is “not typical” and “may be difficult for employees.”

54. The Pivot Instructions appear to contemplate that “delayed mail volumes” would result from the first phase of this pivot; the Instructions state that the transportation pivot is part of an “ongoing pivot” that would include additional phases, and that “operations will begin to run more efficiently and that delayed mail volumes will soon shrink significantly.” The Pivot Instructions do not, however, explain what those additional phases will be, when they will be implemented, or how they will reduce delayed mail volume.

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<sup>45</sup> Available at <https://federalnewsnetwork.com/wp-content/uploads/2020/07/071020-stand-up-talk.pdf>.

55. There is no discussion of prioritizing the delivery of ballots, election-related mail, or other important letter mail in either the “PMGs expectations and plan,” or in the Pivot Instructions.

56. Despite the significant changes in the postal service operations, and their impact on the public, the Postal Service did not follow the procedures set forth in 39 U.S.C. § 3661 before implementing them. Specifically, the Postal Service did not submit a proposal to the Postal Regulatory Commission requesting an advisory opinion on those changes prior to implementing them.

### **The “Pivot” Leads to Delays in Postal Service**

57. In the wake of the Postal Service’s “Pivot,” there have been widespread reports of mail piling up in regional distribution centers and post offices around the country, and of customers experiencing substantial delays and disruptions in mail service.<sup>46</sup>

58. For example, in Philadelphia, Pennsylvania, residents reportedly experienced delays of up to three weeks in receiving mail, leading to missed worker’s compensation checks and paychecks.<sup>47</sup> Baltimore County, Maryland, residents who had not received mail in two weeks waited in line for hours at the post office to try and collect their mail. Those residents reported that they were still unable to pick up their most important mail, including

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<sup>46</sup> Luke Broadwater, *Crisis Ripples Across Nation as Election Looms*, NY Times (Aug. 18, 2020), <https://www.nytimes.com/2020/08/15/us/post-office-vote-by-mail.html>.

<sup>47</sup> Ellie Rushing, *Mail Delays are Frustrating Philly Residents, and A Short-Staffed Postal Service is Struggling to Keep Up*, Philadelphia Inquirer (Aug. 2, 2020), <https://www.inquirer.com/news/philadelphia/usps-tracking-in-transit-late-mail-delivery-philadelphia-packages-postal-service-20200802.html>.

checks and an unemployment benefit debit card needed to pay their bills.<sup>48</sup> Similarly, in Southeast Washington, DC, hundreds of residents went two weeks without receiving any mail.<sup>49</sup>

59. Mail has been arriving late across Western New York: the president of a local chapter of the American Postal Workers Union reported that, as a result of the changes in service, “we’ve had entire towns that didn’t get their mail that day,” including “some of the bigger ones— East Aurora, Lancaster.”<sup>50</sup> Similar delays have occurred across central Alabama.<sup>51</sup> In Maine, postal workers reported leaving 80,000 letters behind because they were not permitted to wait 10 minutes for them to be processed.<sup>52</sup>

60. There have been similar reports of delays in mail service throughout the country, including in California, Colorado, Connecticut, Illinois, Maryland, Michigan, Minnesota,

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<sup>48</sup> Kim Dacey, *People Who Haven’t Received Mail in Weeks Line Up at Post Office*, WBALTV (Aug. 6, 2020), <https://www.wbaltv.com/article/baltimore-mail-delays-continue-no-mail-in-weeks/33535355>.

<sup>49</sup> Kolbie Satterfield, *Southwest DC Residents Go Weeks Without Mail Being Delivered*, WUSA9 (Aug. 13, 2020), <https://www.wusa9.com/article/news/local/dc/two-weeks-no-mail-in-southeast-dc-neighborhood/65-31535798-3c83-45f8-b0e4-775ce6d6e8f8>.

<sup>50</sup> See Jerry Zremski, *Mail Delays, Days With No Delivery Prompt Rising Concern in NY*, Buffalo Times (Aug. 13, 2020), [https://buffalonews.com/news/national/govt-and-politics/mail-delays-days-with-no-delivery-prompt-rising-concern-in-wny/article\\_d9944036-dd92-11ea-8f15-778f24015679.html](https://buffalonews.com/news/national/govt-and-politics/mail-delays-days-with-no-delivery-prompt-rising-concern-in-wny/article_d9944036-dd92-11ea-8f15-778f24015679.html).

<sup>51</sup> See Lauren Walsh, *Central Alabama Experiences Some Mail, Package Delays as USPS, UPS Feel COVID-19 Impact*, ABC33/40 News (Aug. 12, 2020), <https://abc3340.com/news/local/central-alabama-experiences-some-mail-package-delays-as-usps-ups-feel-covid-19-impact>.

<sup>52</sup> See Alison Durkee, *Postmaster General Acknowledges ‘Unintended Consequences’ of USPS Changes Causing Mail Delays*, Forbes (Aug. 14, 2020), <https://www.forbes.com/sites/alisondurkee/2020/08/14/postmaster-general-louis-dejoy-acknowledges-unintended-consequences-of-usps-postal-service-changes-mail-delays/#764bdfd46052>.

Missouri, Nevada, New Mexico, Ohio, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington, Wisconsin, and Virginia.<sup>53</sup>

61. These disruptions and delays in postal service have caused Americans to go without their life sustaining medication and medical supplies, including medications to treat diabetes, asthma, hypertension, among other serious chronic conditions.<sup>54</sup> Veterans, who overwhelmingly receive their medications through the mail, have reported delays of weeks to receive medication.<sup>55</sup> Veterans have also reported that delayed bills and payments have caused them to incur late fees.<sup>56</sup>

62. Delays in mail delivery have already affected elections. For example, in St. Louis, Missouri, mail delays contributed to ballots arriving too late to be completed or mailed back in time to be counted in the state's August 4, 2020 primary election.<sup>57</sup>

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<sup>53</sup> See, e.g., *State of Washington v. Trump*, No. 1:20-cv-03127 (E.D. Wash.), available at [https://agportal-s3bucket.s3.amazonaws.com/001\\_ComplaintUSPS.pdf](https://agportal-s3bucket.s3.amazonaws.com/001_ComplaintUSPS.pdf); Andrew Brown & Andrew Miller, *Some SC Businesses Say They are Experiencing Delays Because of US Postal Service Changes*, The Post and Courier, (Aug. 14, 2020), [https://www.postandcourier.com/business/some-sc-businesses-say-they-are-experiencing-delays-because-of-us-postal-service-changes/article\\_e8716d38-dd6d-11ea-9c9e-a79f1c82a446.html](https://www.postandcourier.com/business/some-sc-businesses-say-they-are-experiencing-delays-because-of-us-postal-service-changes/article_e8716d38-dd6d-11ea-9c9e-a79f1c82a446.html); Ron Trevino, *USPS Delivery Delays Leave 82-year-old Texas Man Without Heart Medication for a Week*, WBNS (Aug. 17, 2020), <https://www.10tv.com/article/news/nation-world/usps-delays-leave-humble-man-without-heart-medication/285-49815193-bf3d-4b45-a1a5-b0afe16236f7>; David Manoucheri, *People Wait Weeks, Months for Packages to be Delivered*, KCRA, (Aug. 15, 2020), <https://www.kcra.com/article/people-wait-weeks-months-for-packages-to-be-delivered/33606613>; Ginna Roe, *Utah Diabetic Waiting for More Than a Week For Supplies By Mail*, KUTV, (Aug. 17, 2020); <https://kutv.com/news/local/utah-diabetic-waiting-more-than-a-week-for-supplies-by-mail>.

<sup>54</sup> Rosalind Adams, et al., *USPS Delays Are Causing People to Get their Prescriptions Late*, BuzzFeed News (Aug. 17, 2020) <https://www.buzzfeednews.com/article/rosalindadams/post-office-delay-prescription-medicine>.

<sup>55</sup> See Letter from 31 Senators to Louis DeJoy (Aug. 13, 2020), <https://bit.ly/345AaDj>; James Clark, *How the battle over the US Postal Service is costing veterans dearly*, Task & Purpose (Aug. 18, 2020), <https://taskandpurpose.com/news/postal-service-veteran-medication-delays>.

<sup>56</sup> Letter from Senator Gary Peters to Hal. J. Roesch II (Aug. 13, 2020), <https://bit.ly/311tQe5>.

<sup>57</sup> Robert Patrick, *Postal Delays, Greater Demand for Ballots Leading to Spike in Complaints, Groups Say*, St. Louis Post-Dispatch, (Aug. 1, 2020), <https://www.stltoday.com/lifestyles/health-med-fit/coronavirus/postal-delays-greater-demand-for-ballots-leading-to-spike-in-complaints->

63. In a memo circulated to Postal Service employees the week of August 10, Postmaster DeJoy acknowledged that the Pivot has “impacted our overall service levels.”

64. Following widespread complaint and media reports regarding the delays, the House of Representatives sent a notice requesting Mr. DeJoy appear for a hearing on August 21, 2020.

65. On August 18, 2020, Postmaster DeJoy disseminated a public statement that he was suspending certain changes that had been implemented pursuant to “longstanding operational initiatives” that “predate my arrival at the Postal Service.”<sup>58</sup> That statement does not, however, purport to suspend key changes announced in the July 10 Pivot directing reductions in service. It also does not address the changes discussed in the “PMGs expectations and plan” document, other than to say that “overtime has, and will continue to be, approved as needed.”

#### **The Postal Service Changes Its Treatment of Ballots Sent by Marketing Mail**

66. On July 29, 2020, the Postal Service announced a change to its treatment of election mail, including vote-by-mail ballots through letters it sent election officials in 46 states and the District of Columbia. In those letters, the Postal Service warned that “there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.”<sup>59</sup>

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groups-say/article\_4b65cb38-7cac-51dd-9c46-62c46ef5d7b8.html; Erin Richey, *Delays at the Post Office Could Force Missouri Absentee Voters to the Polls*, KSDK (Aug. 3, 2020), <https://www.ksdk.com/article/news/politics/elections/absentee-ballot-delays-force-voters-polls-in-person/63-cbfd42b1-4df3-49f8-8845-68305c778074>.

<sup>58</sup> See, Phil Mattingly (@Phil\_Mattingly), TWITTER, [https://twitter.com/Phil\\_Mattingly/status/1295776474751012867/photo/1](https://twitter.com/Phil_Mattingly/status/1295776474751012867/photo/1) (Aug. 18, 2020).

<sup>59</sup> Letters from Thomas Marshall, Gen. Counsel, U.S. Postal Service, to Forty-Seven Secretary of States (July 29, 2020), [https://www.washingtonpost.com/context/u-s-postal-service-letters-to-states/b50799f2-25ad-40ed-ba1e-9d648b1814ad/?itid=lk\\_interstitial\\_manual\\_6](https://www.washingtonpost.com/context/u-s-postal-service-letters-to-states/b50799f2-25ad-40ed-ba1e-9d648b1814ad/?itid=lk_interstitial_manual_6).

67. To account for that risk, the Postal Service “recommend[ed] that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters.” It warned that “[u]sing Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.” *Id.*

68. The letters state that “the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law.” The letters do not acknowledge the Postal Service’s longstanding policy of according first-class treatment to ballots or other election-related materials sent by Marketing Mail, or the change in policy reflected in the letters.

69. The letters also do not acknowledge the Postal Service’s statutory obligation to provide highest consideration for the delivery of important letter mail, *see* 39 U.S.C. § 101(e), or the Postal Service’s statutory duty to seek an advisory opinion from the Postal Regulatory Commission before making any changes that have a nationwide impact on postal services, *see id.* § 3661(a).

70. This change in how the Postal Service treats election mail will impose financial burdens on state election authorities which, to ensure timely delivery, will have to pay 55 cents per piece for First-Class service rather than the 20 cents per piece they previously could pay. This increase in per-piece cost, combined with an anticipated 10-fold increase in vote-by-mail volume, will compound states’ unprecedented financial strain in the midst of a global pandemic.

71. The slower delivery of election mail, including ballots, under the new Postal Service policy compresses the time voters have to return their completed ballot. As the Postal Service recognized in the July 29 letters, “the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline.” The delay in the delivery of election mail,

including ballots, that no longer receive First-Class treatment may thereby cause significant numbers of completed ballots not to be counted because they are delivered after states' deadlines.

72. The Postal Service implemented this change in the treatment of election mail on a nationwide basis, expressly warning 46 states of the new policy's potential harmful effects.

73. Although this change in the nature of postal services will have a nationwide effect, the Postal Service failed to submit a proposal for the change to the Postal Regulatory Commission, as required by federal law. 39 U.S.C. § 3661(b).

### **FIRST CAUSE OF ACTION**

(Non-statutory review of unlawful agency action  
for failure to follow statutorily required procedures)

74. Plaintiff has a non-statutory right of action to enjoin and declare unlawful official action that is ultra vires and unlawful.

75. Through the changes announced in the "Pivot" Instructions and changes to the treatment of election mail, the Postal Service has implemented changes in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis, without following the procedures required by 39 U.S.C. § 3661.

76. The Postal Service's failure to follow required procedures has deprived Plaintiff NAACP and its members of the opportunity to comment on the changes in postal service, has impacted the timely delivery of mail to its members, and will impact the timely receipt of mail-in ballots by its members.

77. Plaintiff and its members will suffer irreparable injury if the changes are not declared unlawful, and Plaintiff and its members have no adequate remedy at law.



78. The public interest favors entry of a declaration that the changes are unlawful and invalid because they were issued and adopted without observance of the mandatory procedures required by 39 U.S.C. § 3661.

**SECOND CAUSE OF ACTION**

(Non-statutory review of unlawful agency action  
that is arbitrary, capricious, and not in accordance with statutory requirements)

79. Plaintiff NAACP has a non-statutory right of action to enjoin and declare unlawful official action that is ultra vires and unlawful.

80. Through the changes announced in the “Pivot” Instructions and changes to the treatment of election mail, the Postal Service has failed to give the “highest consideration” to the “delivery of important letter mail,” including election mail and mail containing veterans’ benefits, as required by 39 U.S.C. § 101(e).

81. In light of the mandate of section 101(e), the coronavirus pandemic, and the significant increase in voting by mail, the changes announced in the “Pivot” Instructions and changes to the treatment of election mail are arbitrary, capricious, or in violation of law.

**THIRD CAUSE OF ACTION**

(Mandamus to enforce 39 U.S.C. § 3661)

82. Plaintiff NAACP has a statutory right under 39 U.S.C. § 3661 to notice and an opportunity to comment on changes in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis.

83. Defendants have a nondiscretionary duty under 39 U.S.C. § 3661 to seek an advisory opinion from the Postal Regulatory Commission, in order that members of the public, such as plaintiff NAACP, will have notice and an opportunity to comment on changes in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis.

84. Defendants' failure to follow the procedures required by 39 U.S.C. § 3661 warrants relief in the nature of mandamus pursuant to 28 U.S.C. § 1361 if no other adequate remedy is available to Plaintiff NAACP to enjoin Defendants' unlawful action and compel action required of defendants by law.

85. Plaintiff NAACP has been and will continue to be harmed by Defendants' unlawful actions because delays to mail to its members as a result of these actions are ongoing.

**FOURTH CAUSE OF ACTION**  
(Mandamus to enforce 39 U.S.C. § 101(e))

86. Plaintiff NAACP and its members have a statutory right under 39 U.S.C. § 101(e) to have the Postal Service provide "highest consideration" to the "requirement for the most expeditious collection, transportation, and delivery of" their "important letter mail."

87. Defendants have a nondiscretionary duty under 39 U.S.C. § 101(e) to provide "highest consideration" to the delivery of "important letter mail" to the members of the public, including Plaintiffs.

88. Defendants' failure to follow the procedures required by 39 U.S.C. § 101(e) warrants relief in the nature of mandamus pursuant to 28 U.S.C. § 1361 if no other adequate remedy is available to plaintiff NAACP to enjoin Defendants' unlawful action and compel action required of Defendants by law.

89. Plaintiff NAACP has been and will continue to be harmed by Defendants' unlawful actions because delays to mail to its members as a result of these actions are ongoing.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff NAACP prays that this Court:

(A) Declare the changes announced in the Pivot Instructions and the changes to the treatment of election mail invalid for failure to follow required procedures;

(B) Declare the changes announced in the Pivot Instructions and the changes to the treatment of election mail invalid as arbitrary, capricious, or in violation of law;

(C) Enjoin Defendants from continuing to implement the changes to postal service announced on July 10;

(D) Enjoin Defendants to continue the Postal Service's prior policy of treating election mail sent as Marketing Mail as First-Class mail, until such time as the Postal Service has sought an advisory opinion from the Commission on these proposed changes and the public has been provided a reasonable opportunity for comment; and

(D) Grant such other relief as this Court may deem just and proper.

Dated: August 20, 2020

Respectfully submitted,

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