



**NEW YORK CITY BAR ASSOCIATION
STATEMENT ON OPERATIONAL CHANGES AT THE
UNITED STATES POSTAL SERVICE**

TASK FORCE ON THE RULE OF LAW

I. INTRODUCTION

The New York City Bar Association is a voluntary association of over 25,000 members from all parts of our nation committed to improving the administration of justice and protecting the rule of law. Over the past eight months, we have called attention to a series of actions by President Trump and his administration that have undermined public confidence in the rule of law and have raised increasingly serious questions about the impartial administration of justice by the Trump Administration.¹ Those concerns now extend to apparent interference with operations of the United States Postal Service (USPS), which Congress established as “an independent establishment of . . . the Government.”² Since the founding of the nation, the USPS has been a non-partisan instrument of our federal government, dedicated to serving all Americans regardless of their political beliefs or places of residence.

Our focus here is not on the wisdom of reasonable or good faith management decisions by the USPS, but on the lawfulness of recent actions taken by the newly-appointed Postmaster General (PG) Louis DeJoy, actions that appear to violate the laws governing the USPS and to potentially threaten the Constitutional right of millions of Americans to cast their votes in the forthcoming Presidential and other elections this November. Indeed, both the operational changes and certain financial connections of the PG to competitors and contractors of the USPS³ have prompted an investigation of his actions by the USPS Office of the Inspector General (USPSOIG).⁴

These changes, as explained below, include personnel changes that have resulted in delays in mail delivery of up to a week;⁵ reduction of hours of operation of post offices;⁶ removal of mailboxes;⁷ deactivation and removal of letter sorting machines in critical hub locations;⁸ removal of trucks from service; and the removal and discarding of delivery bar code sorters of the type used for handling mail-in ballots.⁹ In addition, postal workers across the country report that they have been required to leave sorting facilities by specific times and to send trucks out at specific times, regardless of whether mail remains waiting for loading, reportedly resulting in mail being left in sorting facilities, in some cases for days or even weeks.¹⁰ Together, these changes have the potential, indeed the likelihood, of materially and adversely affecting postal service in large parts of the country.

While PG DeJoy has recently announced that he will suspend many, though not all, of these

organizational changes until after the election,¹¹ credible reports call into question whether that commitment is being honored in practice. Nor has the PG committed to ameliorate the damage caused by his prior actions, including the destruction of a large number of mail sorting machines that are critical to timely processing of envelopes, including mailed ballots.

As explained below, we believe the PG's unilateral changes to the USPS violate applicable statutory requirements and threaten fundamental Constitutional rights of voters. We therefore urge the Senate to pass the bill recently passed by the House of Representatives to mandate the full reversal of the PG's operational changes, while providing immediate additional funding for the USPS to meet its statutory obligations.¹² We also call upon the USPSOIG to promptly carry out its announced investigation into the USPS operational changes and any relevant misconduct on the part of the PG and to inform Congress and the public promptly of its findings. If the USPSOIG finds unlawful action, appropriate disciplinary actions should be taken, including referral for prosecution for any apparent criminal violations. In addition, we call upon the Board of Governors of the USPS to exercise its own fiduciary responsibility by taking such action, including dismissal, against PG DeJoy as the Inspector General's report indicates is warranted.

II. HISTORY AND FUNCTION OF POSTAL SERVICE

The USPS dates from Benjamin Franklin and the Second Continental Congress in 1775. Article 1, Section 8 of the U.S. Constitution vests Congress with the power to "establish Post Offices and Post Roads." In 1792, Congress passed and President George Washington signed the Postal Service Act, which established the U.S. Post Office Department.¹³

According to the Postal Service Act, the objectives of the USPS are to facilitate freedom of the press, the privacy of personal correspondence and expand the physical infrastructure of the nation.¹⁴ Its mission is: "to serve the American people and, through the universal service obligation, bind our nation together by maintaining and operating our unique, vital and resilient infrastructure."¹⁵ In addition, the USPS serves "to provide trusted, safe and secure communications and services between our Government and the American people, businesses and their customers, and the American people with each other."¹⁶

The paramount duty of the USPS is to "plan, develop, promote, and provide adequate and efficient postal services."¹⁷ Congress requires that the "Postal Service shall serve as nearly as practicable the entire population of the United States."¹⁸ To further this duty, in 2006, Congress enacted the Postal Accountability and Enhancement Act (PAEA) setting forth, among other things, the expected service standards of the USPS.¹⁹ These service standards "shall be designed to achieve" several "objectives," including "enhanc[ing] the value of postal services to both senders and recipients," "preserv[ing] regular and effective access to postal services in all communities, including those in rural areas," and "reasonably assur[ing] Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices."²⁰

To promote accountability, the PAEA gives postal customers who believe the USPS's service standards do not comply with the statutory objectives of the PAEA or that the USPS is failing to comply with its regulations, the right to sue to enforce the PAEA and/or its regulations.²¹ In addition, before the USPS can make changes to postal service that would generally affect service

on a substantially nationwide basis, it must request an advisory opinion from the Postal Regulatory Commission (PRC). When such an advisory opinion is required, 39 U.S.C. § 3661(c) provides that “[t]he Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under [the Administrative Procedure Act] has been accorded 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.”²²

As explained below, PG DeJoy apparently did not obtain a PRC advisory opinion in advance of implementing his sweeping operational changes, as required by law. Nor is there any publicly available evidence that the USPS held the statutorily mandated hearings, or allowed the public to have an opportunity to be heard, before the PG made substantial changes in the operations of the postal system.

III. OPERATIONAL CHANGES INSTITUTED BY PG DEJOY

Soon after his term began in June, PG DeJoy instituted broad operational changes. On July 10, 2020, PG DeJoy directed the USPS to implement operational changes on a nationwide basis without following statutorily mandated procedures. Largely because DeJoy failed to follow legally mandated procedures in announcing and publicly vetting his operational changes, the full scope of them remains unknown.²³ But, as reported - largely by USPS employees to public officials and various media outlets - the changes have included: the firing of executive staff members;²⁴ imposition of a hiring freeze; elimination of overtime pay for letter carriers necessary to follow USPS traditional procedures for completing delivery of all mail each day;²⁵ failure to mandate the delivery of mail on a regular daily basis, resulting in delays of up to a week;²⁶ reduction of hours of operation of post offices;²⁷ removal of mailboxes;²⁸ deactivation and removal of as many as 671 letter sorting machines in critical hub locations,²⁹ reducing their overall number by more than 10%;³⁰ consideration of an increase in postage rates for mail-in ballots;³¹ removal of trucks from service; and the removal and discarding of 500 delivery bar code sorters of the type used for handling mail-in ballots.³² In addition, postal workers across the country report that they have been required to leave sorting facilities by specific times and to send trucks out at specific times, regardless of whether any mail remains to be loaded, reportedly resulting in mail being left in sorting facilities, in some cases for days or even weeks.³³

IV. CONSEQUENCES OF PG DEJOY’S SERVICE CHANGES

PG DeJoy’s sweeping service changes have undermined the core functions of the postal service across the country. Postal workers have reported mail delays by five to six days,³⁴ postal workers in Maine have said they were forced to leave 80,000 letters behind rather than being allowed to wait 10 minutes for those letters to be processed,³⁵ and Milwaukee has seen dozens of trailers filled with packages that are left behind every day.³⁶ As the Washington Post has reported, “[b]ins of mail ready for delivery are sitting in post offices because of scheduling and route changes. And without the ability to work overtime, workers say the logjam is worsening without an end in sight.”³⁷ The impacts of these changes included nationwide delays in service affecting mail order medication, social security checks, bills, and other critical mail.³⁸

The service changes at the USPS have become a source of major concern for vulnerable

populations, including veterans and individuals with disabilities and chronic conditions who rely on the mail for their prescriptions and other critical materials.³⁹ These vulnerable populations include the nearly 850,000 seniors and disabled persons who continue to rely on the USPS for the delivery of social security benefit checks, as well as those who rely on the postal service for the delivery of critical Social Security and Medicare forms and notifications.⁴⁰ Those living in rural areas are most vulnerable given both limited broadband and the fact that private carriers often do not reach remote areas.⁴¹

PG DeJoy's actions also present a grave risk of disenfranchising millions of people in the upcoming elections. In many States, completed ballots that are not received by Election Day are invalidated. In other States, ballots must be postmarked by Election Day to be counted. A decrease in operational capability and delays in processing and delivery would disenfranchise many of those States' voters. A USPSOIG audit of the operations of processing facilities in Santa Clarita, CA; Portland, OR; Baltimore, MD; Charleston, SC; Indianapolis, IN; Brooklyn, NY; and Oklahoma City, OK operated during recent primaries, found that about 1.6 million mail pieces (or 8 percent) were not delivered on time between April and June for the seven facilities, blaming the processing gaps on a lack of management oversight.⁴²

Furthermore, the USPS General Counsel recently sent letters to election officials in 46 States and the District of Columbia warning that mail-in ballots from those jurisdictions are at risk of late delivery and of not being counted because "certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service's delivery standards."⁴³

V. THE POLITICAL BACKDROP: PRESIDENT TRUMP'S OPPOSITION TO MAIL-IN-BALLOTS

President Trump has been attacking mail-in balloting for months,⁴⁴ asserting, without evidence, that mail ballots present "[t]remendous potential for voter fraud" and will "lead to the end of our great Republican party."⁴⁵ On July 30, 2020, he cited the expansion of mail voting in making an unconstitutional threat to attempt to delay the November election.⁴⁶ He is also reportedly considering issuing executive actions to prevent delivery and counting of mail-in ballots.⁴⁷ Furthermore, the President's re-election campaign has pursued an unprecedented litigation campaign in courts throughout the country seeking to prevent efforts to facilitate mail voting.⁴⁸

President Trump's attack on mail balloting has converged with his longstanding antagonism toward the postal system. He has opposed additional appropriations for the USPS during the pandemic, supported only a loan that gave the Treasury Department an enhanced role in USPS operations⁴⁹ and has likewise opposed the provision of aid to States to facilitate mail balloting.

The President has expressly linked his opposition to aiding States in administering the election during the pandemic, as well as his opposition to providing emergency funding to the USPS, with his opposition to the expansion of mail voting, despite the greatly increased demand for mail balloting capacity during the public health emergency. In an interview with Fox Business News, the President explained his opposition to providing \$25 billion in emergency funds for

USPS and \$3.5 billion in additional election funding proposed by the House of Representatives as follows:

[T]hey need that money in order to have the Post Office work so it can take all of these millions and millions of ballots But if they don't get those two items, that means you can't have universal mail-in voting because they're not equipped to have it Now, if we don't make a deal, that means they don't get the money. That means they can't have universal mail-in voting, they just can't have it.⁵⁰

VI. LEGAL VIOLATIONS CREATED BY POSTAL SERVICE CHANGES

A significant number of civil actions have been brought against President Trump and PG DeJoy, as well as the USPS.⁵¹ These actions have been filed in federal district courts across the country by the States of Washington, Colorado, Connecticut, Illinois, Maryland, Michigan, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Wisconsin and the Commonwealth of Virginia,⁵² the States of California, Delaware, Maine, and North Carolina, the District of Columbia, and the Commonwealths of Pennsylvania and Massachusetts,⁵³ by non-profit organizations, including the NAACP,⁵⁴ individuals running for office,⁵⁵ and by individual voters and vulnerable citizens.⁵⁶ The lawsuits allege that PG DeJoy acted in contravention of his statutory obligations. In addition, several of the actions contend that PG DeJoy's actions have unconstitutionally impaired citizens' rights to vote, as well as the authority of States to conduct elections.

A. Statutory Violations

The USPS has a non-discretionary duty to seek an advisory opinion from the Postal Regulatory Commission "prior to" implementing any "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis."⁵⁷ The statutory language is clear:

When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.⁵⁸

Many of the changes PG DeJoy has wrought plainly constitute "change[s] in the nature of postal services which will generally affect service on a nationwide basis," including by significantly slowing mail delivery.⁵⁹ Yet there is no publicly available evidence that PG DeJoy and the USPS formally sought the advice of the PRC before instituting those changes or that the PRC conducted the required public hearing before their implementation, as required by Section 3661(b) of the PAEA.

B. Violations of Constitutional Rights

In addition to the violation of Section 3661(b) of the PAEA, several of the State plaintiffs allege that they have been deprived of their Constitutionally assigned authority to effectively conduct elections, while also impairing the rights of citizens to exercise their franchise.

States have sovereign interests in the conduct of elections. States including Washington, Colorado, Connecticut, Illinois, Maryland, Michigan, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Vermont, Wisconsin, Delaware, Maine, and North Carolina, as well as the Commonwealths of Virginia, Pennsylvania and Massachusetts contend that PG DeJoy's impairment of mail-in-voting is a violation of Article I, section 4, clause 1 of the United States Constitution which provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing [sic] Senators."⁶⁰

In addition, individual plaintiffs, ranging from registered voters seeking to utilize by-mail voting for health reasons to the NAACP, have brought suits challenging the USPS's operational changes, including on Constitutional grounds.⁶¹

These plaintiffs allege, among other things, that the USPS changes threaten their ability to exercise their Constitutionally protected franchise. The United States Constitution guarantees that "all qualified voters have a Constitutionally protected right to vote . . . and to have their votes counted."⁶² This right arises from multiple Constitutional provisions, including (1) Article I, section 2, clause 1, which provides that members of the United States House of Representatives are "chosen . . . by the People of the several States"; (2) Article IV, section 2, clause 1, which provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States," and, therefore, the right to vote for national officers is a right and privilege of national citizenship that is protected by Article IV, section 2, clause 1; and (3) the Seventeenth Amendment which provides that United States Senators are "elected by the People of" each State.

In *State of Washington et al. v. Trump et al.*, plaintiff States and Commonwealths allege that the USPS's operational changes interfere with the ability of residents of the States to timely receive and return voter registration forms and ballots and have their votes counted, thereby unconstitutionally burdening their right to vote. These actions appear to lack any plausible justification, and furthermore appear calculated to advance the President's avowed, and impermissible, goal of seeking to suppress mail voting in the upcoming Presidential election.

On September 21, 2020, in *Jones et al. v. USPS, et al.*, the District Court in the Southern District of New York granted Plaintiffs' motion for a preliminary injunction requiring that the Postal Service take certain actions to ensure the timely delivery of their absentee ballots in the upcoming national elections being held November 3, 2020.⁶³ The Court held that plaintiffs demonstrated a substantial likelihood of success on both their Fifth Amendment equal protection and First Amendment claims. The Court found that plaintiffs were likely to succeed on the merits of their equal protection claim on the ground that an equal protection violation occurs when

arbitrary disparities in voting mechanisms make it less likely that voters in certain areas will cast votes that count.⁶⁴ In this context, the Court stated that plaintiffs have “identified a profound and troubling lack of standards and uniformity with regard to USPS’s handling of Election Mail.”⁶⁵ Finding that the USPS lacked a satisfactory explanation for failing to set clear, uniform policies for the handling of Election Mail, the Court held that USPS has “not satisf[ied] the minimum requirement for nonarbitrary treatment of voters necessary to secure the fundamental right.”⁶⁶ In the alternative, the Court held that potential delays in the Election Mail service imperiled plaintiffs’ First Amendment interest in the ability to “cast their vote effectively.”⁶⁷

Similarly, on September 17, 2020, Judge Stanley Bastian in Eastern Washington’s U.S. District Court issued an order temporarily enjoining the US Postal Service and PG DeJoy from changing USPS policies or protocols ahead of November’s election as harmful to voters’ ability to cast ballots.⁶⁸

VII. CONCLUSION

The recent changes to USPS operations threaten to jeopardize the rights of millions of voters to cast their ballots safely and securely, and additionally undermine the reliability of the mails on which the American people are entitled to depend. The USPS is duty-bound to give precedence to the fundamental needs of the nation in its establishment of operational policy. Instead, the very ability of the agency to operate is being undercut. When viewed in light of the President’s public efforts to discredit mail-in voting, public confidence in our elections is eroded, damaging our democratic system.

A. Recommendations

- We call upon the Senate to pass the Delivering for America Act, H.R. 8015, which recently passed in the House of Representatives and would reverse the PG’s operational changes and provide significant assistance to help the USPS carry out its Constitutional and statutory functions.⁶⁹
- We also call upon the USPSOIG to conduct its announced investigation into the USPS operational changes and any relevant conduct on the part of the PG with the greatest expedition and thoroughness and to inform Congress and the public appropriately of its findings.
- If the USPSOIG finds unlawful action, appropriate disciplinary actions should be taken by the members of the USPS Board of Governors in the exercise of their own fiduciary duties, including removal of PG DeJoy from his position as PG and referral for investigation for possible criminal violations.⁷⁰

Task Force on the Rule of Law⁷¹
Stephen L. Kass, Chair

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¹ New York City Bar Association, *Request for Prompt Investigation into the Events of June 1, 2020 at Lafayette Square Park*, Washington, DC, June 9, 2020, <https://www.nycbar.org/media-listing/media/detail/lafayette-square-protests-city-bar-asks-congressional-leaders-to-investigate>; New York City Bar Association, *Protecting the Independence of the Federal Inspector General Offices: Call for Congressional Oversight and Hearings*, Apr. 25, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/protect-independence-of-federal-inspector-general-offices>; New York City Bar Association, *Prosecution of Roger Stone and Related Actions by the Department of Justice*, Feb. 12, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/prosecution-of-roger-stone-and-related-actions-by-the-department-of-justice>; New York City Bar Association, *Request for Formal Congressional Inquiries into Conduct of Attorney General William P. Barr*, Jan. 9, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/request-for-formal-congressional-inquiries-into-conduct-of-attorney-general-william-p-barr>; New York City Bar Association, *Attorney General Barr Should Recuse Himself from Department of Justice Review of Ukraine Matter*, Oct. 23, 2019, <https://www.nycbar.org/media-listing/media/detail/attorney-general-barr-should-recuse-himself-from-department-of-justice-review-of-ukraine-matter>; see also Brief of the New York City Bar Association as Amicus Curiae, *In re Michael T. Flynn*, No. 20-5143 (D.C. Cir.) (filed June 1, 2020), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/in-re-michael-t-flynn-amicus-brief> (opposing petition for writ of mandamus).

² 39 U.S.C. §201.

³ Heidi Przybyla, *Postal contracts awarded to DeJoy-run company were questioned in 2001 Postal Service audit*, NBC News (Sept. 14, 2020), <https://www.nbcnews.com/politics/politics-news/postal-contracts-awarded-dejoy-run-company-were-questioned-2001-postal-n1239990>.

⁴ Marshall Cohen and Kristen Holmes, *Exclusive: Postal service inspector general reviewing DeJoy's policy changes and potential ethics conflicts*, CNN (Aug. 15, 2020), <https://www.cnn.com/2020/08/14/politics/postal-service-inspector-general-reviewing-dejoy/index.html>.

⁵ Todd C. Frankel, *Postal problems could continue despite suspension of policies blamed for mail delays*, WASH. POST (Aug. 19, 2020), <https://www.washingtonpost.com/business/2020/08/19/postal-problems-could-continue-despite-suspension-policies-blamed-mail-delays/>.

⁶ Alison Durkee, *Sorting Equipment Removed, Absentee Ballot Signatures Barred: Here Are All The Postal Service Changes Raising Alarm*, FORBES (Aug. 17, 2020), <https://www.forbes.com/sites/alisondurkee/2020/08/17/sorting-equipment-removed-changes-to-election-mail-all-the-postal-service-usps-changes-raising-alarm-louis-dejoy/#300a1f3b106f>.

⁷ *Id.*

⁸ Phil McCausland et al., *U.S. Postal Service warns numerous states that mail-in ballots may be delivered too late*, NBC NEWS (Aug. 14, 2020), https://www.nbcnews.com/politics/2020-election/u-s-postal-service-warns-numerous-states-mail-ballots-may-n1236825?cid=sm_npd_nn_tw_ma.

⁹ Aaron Holmes, *The USPS is shutting down mail-sorting machines crucial for processing absentee ballots as the 2020 election looms*, BUSINESS INSIDER (Aug. 13, 2020), <https://www.businessinsider.com/usps-turning-off-mail-sorting-machines-ahead-of-the-election-2020-8>.

¹⁰ See also Daniel Villarreal, *Empty USPS Trucks Are Driving Across Country Without Mail*, NEWSWEEK (Aug. 24, 2020), <https://www.newsweek.com/empty-usps-trucks-are-driving-across-country-without-mail-1527297>.

¹¹ Amy Gardner & Erin Cox, *At least 21 states plan to sue the Postal Service over service delays, threat to election*, WASH. POST (Aug. 18, 2020), https://www.washingtonpost.com/politics/at-least-20-states-plan-to-sue-the-us-postal-service-over-service-delays-threat-to-election/2020/08/18/c6ca2dc6-e166-11ea-b69b-64f7b0477ed4_story.html.

¹² Jacob Pramuk, *House passes bill to put \$25 billion into USPS and reverse changes amid uproar*, CNBC, (Aug. 22, 2020), <https://www.cnbc.com/2020/08/22/usps-news-house-passes-postal-service-funding-bill.html>.

¹³ 39 U.S.C. 101(a).

¹⁴ USPS Mission Statement, April 1, 2020 (Mission statement), <https://about.usps.com/who/profile> (last visited Sept. 11, 2020).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 39 U.S.C. § 403(a).

¹⁸ *Id.*

¹⁹ Pub. L. N. 109-435 (Dec. 20, 2006). The PAEA converted the former Postal Rate Commission into the independent Postal Regulatory Commission (PRC), and assigned the PRC a host of new duties and powers related to rate-setting, service standards, and oversight of the USPS. The PAEA directs the Postal Service to develop a set of service standards, in consultation with the PRC, for postal services. 39 U.S.C. § 3691(a).

²⁰ 39 U.S.C. § 3691(b).

²¹ 39 U.S.C. § 3691(d); 39 U.S.C. § 3662.

²² 39 U.S.C. § 3661(c). Although the USPS is not under the direct control of the executive branch, nor is it an Executive Department for purposes of the Administrative Procedure Act, 5 U.S.C. § 101, it operates under a universal service obligation and certain procedural provisions of the APA are made applicable to it by the PAEA which, in § 3661(c), incorporates APA §§ 556 & 557.

²³ Alison Durkee, *Sorting Equipment Removed, Absentee Ballot Signatures Barred: Here Are All The Postal Service Changes Raising Alarm*, FORBES (Aug. 17, 2020), <https://www.forbes.com/sites/alisondurkee/2020/08/17/sorting-equipment-removed-changes-to-election-mail-all-the-postal-service-usps-changes-raising-alarm-louis-dejoy/#300a1f3b106f>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Todd C. Frankel, *Postal problems could continue despite suspension of policies blamed for mail delays*, WASH. POST (Aug. 19, 2020), <https://www.washingtonpost.com/business/2020/08/19/postal-problems-could-continue-despite-suspension-policies-blamed-mail-delays/>.

²⁷ Alison Durkee, *Sorting Equipment Removed, Absentee Ballot Signatures Barred: Here Are All The Postal Service Changes Raising Alarm*, FORBES (Aug. 17, 2020), <https://www.forbes.com/sites/alisondurkee/2020/08/17/sorting-equipment-removed-changes-to-election-mail-all-the-postal-service-usps-changes-raising-alarm-louis-dejoy/#300a1f3b106f>.

²⁸ *Id.*

²⁹ Phil McCausland et al., *U.S. Postal Service warns numerous states that mail-in ballots may be delivered too late*, NBC NEWS (Aug. 14, 2020), https://www.nbcnews.com/politics/2020-election/u-s-postal-service-warns-numerous-states-mail-ballots-may-n1236825?cid=sm_npd_nn_tw_ma.

³⁰ Jacob Bogage, Christopher Ingraham, “Here’s why the Postal Service wanted to remove hundreds of mail-sorting machines,” *The Washington Post*, Aug. 20, 2020, <https://www.washingtonpost.com/business/2020/08/20/postal-service-mail-sorters-removals/>.

³¹ Alison Durkee, *Sorting Equipment Removed, Absentee Ballot Signatures Barred: Here Are All The Postal Service Changes Raising Alarm*, FORBES (Aug. 17, 2020), <https://www.forbes.com/sites/alisondurkee/2020/08/17/sorting-equipment-removed-changes-to-election-mail-all-the-postal-service-usps-changes-raising-alarm-louis-dejoy/#300a1f3b106f>.

³² Aaron Holmes, *The USPS is shutting down mail-sorting machines crucial for processing absentee ballots as the 2020 election looms*, BUSINESS INSIDER (Aug. 13, 2020), <https://www.businessinsider.com/usps-turning-off-mail-sorting-machines-ahead-of-the-election-2020-8>.

³³ See also Daniel Villarreal, *Empty USPS Trucks Are Driving Across Country Without Mail*, NEWSWEEK (Aug. 24, 2020), <https://www.newsweek.com/empty-usps-trucks-are-driving-across-country-without-mail-1527297>.

³⁴ Clodagh McGowan, *Some Mail Is Delayed Five to Six Days in NYC, Postal Workers’ Union Says*, NY1.COM (Aug. 13, 2020), <https://bit.ly/2DYylxw>.

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- ³⁵ Reuben Schafir, *Postal workers' union says up to 80,000 letters were held back Monday in southern Maine*, SUN JOURNAL, <https://bit.ly/3h2Y99T>.
- ³⁶ Luke Broadwater, Jack Healy, Michael D. Shear & Hailey Fuchs, *Postal Crisis Ripples Across Nation as Election Looms*, N.Y. TIMES (Aug. 15, 2020), <https://nyti.ms/311VNTd>.
- ³⁷ Michelle Ye Hee Lee et al., *Postal Service Backlog Sparks Worries that Ballot Delivery Could Be Delayed in November*, WASH. POST (July 30, 2020), https://www.washingtonpost.com/politics/postal-service-backlog-sparks-worries-that-ballot-delivery-could-be-delayed-in-november/2020/07/30/cb19f1f4-d1d0-11ea-8d32-1ebf4e9d8e0d_story.html.
- ³⁸ See, e.g., *State of Washington v. Trump*, No. 1:20-cv-03127 (E.D. Wash. 2020), available at 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-servicechanges/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>.
- ³⁹ Millions of veterans rely on the Postal Service for timely deliveries of prescription medications from the Department of Veterans Affairs (VA). The VA fills 80 percent of veteran prescriptions by mail through the Consolidated Mail Outpatient Pharmacy. The VA Mail Order Pharmacy fills almost 120 million prescriptions a year. Every working day, it processes 470,000 prescriptions and over 330,000 veterans receive their prescriptions in the mail. The VA states that prescriptions usually arrive within 3 to 5 days. But veterans and VA staff have expressed concern that recently, medications are taking weeks to be delivered, causing veterans to miss doses of their vital medications. Letter from 31 Senators to Louis DeJoy (Aug. 13, 2020), <https://bit.ly/345AaDj>.
- ⁴⁰ Mark Miller, *Is Social Security Becoming a Pawn in the Postal Service Crisis?*, N.Y. TIMES (Aug. 27, 2020) <https://www.nytimes.com/2020/08/27/business/post-office-social-security-checks-mail.html>.
- ⁴¹ Sheridan Hendrix, *He delivers where Amazon and FedEx won't: USPS worker covers 'the last mile' to rural America*, USA TODAY, (Aug. 18, 2020), The Columbus Dispatch, <https://www.usatoday.com/story/news/nation/2020/08/18/usps-rural-americans-depend-mail-carriers-medical-items/3382677001/>.
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- ⁴⁴ Amy Gardner & Josh Dawsey, *As Trump leans into attacks on mail voting, GOP officials confront signs of Republican turnout crisis*, WASH. POST (Aug. 3, 2020), <https://wapo.st/31WozE5>.
- ⁴⁵ Donald J. Trump (@realDonaldTrump), Twitter (Apr. 8, 2020, 8:20 AM), <https://twitter.com/realDonaldTrump/status/1247861952736526336>; Donald J. Trump (@realDonaldTrump), Twitter (May 28, 2020, 9:00 PM), <https://twitter.com/realDonaldTrump/status/1266172570983940101>.
- ⁴⁶ Donald J. Trump (@realDonaldTrump), Twitter (July 30, 2020, 8:46 AM), <https://twitter.com/realDonaldTrump/status/1288818160389558273>.
- ⁴⁷ *Trump Aides Exploring Executive Actions to Curb Voting by Mail*, POLITICO, (Aug. 8, 2020), <https://www.politico.com/news/2020/08/08/trump-wants-to-cut-mail-in-voting-the-republican-machine-is-helping-him-392428>.

⁴⁸ Jacqueline Alemany, *Power Up: Trump's admission on mail voting could complicate Republican efforts to curtail it*, WASH. POST (Aug. 14, 2020), <https://www.washingtonpost.com/politics/2020/08/14/power-up-trumps-admission-mail-voting-could-complicate-republican-efforts-curtail-it/>. The President's reelection campaign has filed suits interfering with vote by mail in states including New Jersey, Nevada, and Pennsylvania among other states. Kate Grise, *Trump campaign sues New Jersey over mail-in voting plans*, CNN (Aug. 19, 2020), <https://www.cnn.com/2020/08/19/politics/trump-campaign-new-jersey-mail-in-ballots/index.html>. In Pennsylvania, the President's reelection campaign and the RNC sued the state government and election boards in all 67 counties to ban the use of secure drop boxes for submitting take-home ballots and to eliminate the requirement that poll watchers can only serve in the county where they live. Katelyn Polantz, *Pennsylvania high court asked to provide 'extraordinary' help in vote-by-mail cases*, CNN (Aug. 18, 2020), <https://www.cnn.com/2020/08/18/politics/pennsylvania-supreme-court-vote-by-mail/index.html>.

⁴⁹ Jacob Bogage, *White House rejects bailout for U.S. Postal Service battered by coronavirus*, WASH. POST (Apr. 11, 2020), <https://www.washingtonpost.com/business/2020/04/11/post-office-bailout-trump/>.

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⁵¹ See e.g., *Wash. et al. v. Trump et. al*, No. 20 CIV 03217 (SAB) (E.D.WA 2020); *NAACP v. USPS et al.*, No. 20-cv-02295 (TSC)(D.D.C.)(8-20-20); *Jones et. al. v. USPS et al.*, No. 20 CIV 06516 (VM) (S.D.N.Y. 2020).

⁵² *Wash. et al. v. Trump et. al*, No. 20 CIV 03217 (SAB) (E.D.WA 2020).

⁵³ *Pa. et al. v. DeJoy*, 20 CIV 04096 (GAM) (E.D. PA 2020).

⁵⁴ *NAACP v. USPS et al.*, No. 20-cv-02295 (TSC) (D.D.C. 2020).

⁵⁵ *Jones et. al. v. USPS et al.*, No. 20 CIV 06516 (VM) (S.D.N.Y. 2020).

⁵⁶ See, e.g., *Id.*

⁵⁷ 39 U.S.C. § 3661(b).

⁵⁸ *Id.*

⁵⁹ See *Buchanan v. U.S. Postal Serv.*, 508 F.2d 259, 262–63 (5th Cir. 1975) (holding that there is a “change in the nature of postal services” under 39 U.S.C. § 3661(b) when “the manner in which postal services available to the user will be altered”).

⁶⁰ U.S. Const., art. I, § 4; art. II, § 1; and amend. XVII.

⁶¹ Matt Stevens & Hailey Fuchs, *States file a joint lawsuit over changes to post office operations*, N.Y. TIMES (Aug. 21, 2020), <https://www.nytimes.com/2020/08/21/us/elections/states-file-a-joint-lawsuit-over-changes-to-post-office-operations.html>.

⁶² *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).

⁶³ The Court ordered the parties to settle an Order providing Plaintiffs appropriate relief consistent with its opinion and notify the Court of such settlement by September 25, 2020, providing a set of specific requirements in the event the parties fail to file such notice by that date. (Op. at 83-87).

⁶⁴ See *id.*

⁶⁵ Op. at 64.

⁶⁶ Op. at 67 citing *Bush v. Gore*, 531 U.S. at 106.

⁶⁷ Op. at 69.

⁶⁸ *Washington v Trump*, --FSupp3d--, 2020 WL 5568557 (EDWA Sept. 17, 2020); see Paul P. Murphy, “Federal judge temporarily blocks USPS policy changes nationwide,” CNN, Sept. 17, 2020, <https://www.cnn.com/2020/09/17/politics/usps-policy-changes-injunction/index.html>.

⁶⁹ Jacob Pramuk, *House passes bill to put \$25 billion into USPS and reverse changes amid uproar*, CNBC, (Aug. 22, 2020), <https://www.cnbc.com/2020/08/22/usps-news-house-passes-postal-service-funding-bill.html>.

⁷⁰ Based on the events disclosed to date, possible criminal violations include a provision imposing felony liability on a USPS “officer or employee” for “unlawfully secret[ing], destroy[ing], detain[ing], delay[ing], or open[ing]” mail, 18 U.S.C. § 1703, as well as a provision imposing misdemeanor liability for “knowingly and willfully obstruct[ing] or retard[ing] the passage of the mail,” 18 U.S.C. § 1701. If evidence establishes that PG DeJoy or other members of the USPS’s senior management knowingly and intentionally caused the delay of mail deliveries, especially for the purpose of interfering with an election, they could likewise bear potential criminal liability, whether as primary or secondary violators. 18 U.S.C. § 595 (criminalizing, among other things, interference by federal government employees in elections for federal office).

⁷¹ The Task Force expresses its appreciation to Rachel Godsil and Marcy Kahn, members of the Task Force, and to Nilima Singh, an associate at Carter Ledyard & Milburn LLP, for their assistance in preparing this Statement.