

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

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TERESA RICHARDSON, CHRISTOPHER CARROLL, :
GINA ARFI, and AIDA ZYGAS, :
: :
Plaintiffs, :
-against- :
: :
DONALD J. TRUMP, *in his official capacity as President of the* :
United States, :
: :
LOUIS DEJOY, *in his official capacity as Postmaster General of* :
the United States, and :
: :
UNITED STATES POSTAL SERVICE, :
: :
Defendants. :
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Case No. 20-cv-02262

PLAINTIFFS' FIRST AMENDED COMPLAINT

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NATURE OF THE ACTION

This action arises from a conspiracy between Defendants President Donald J. Trump (“Trump”), Postmaster General Louis DeJoy (“DeJoy”), and the United States Postal Service (“USPS” and, collectively, “Defendants”), and the individual acts of Trump and DeJoy, by purposely compromising the right to vote of Plaintiffs Teresa “Terri” Richardson (“Richardson”), Christopher Carroll (“Carroll”), Gina Arfi (“Arfi”), and Aida Zygas (“Zygas” and, collectively, “Plaintiffs”), and millions of other Americans, by making false statements about widespread mail-in voter fraud when such fraud is virtually non-existent (Trump) and by significantly slowing down mail delivery of flat mail like absentee and mail-in ballots (Trump and DeJoy), in an effort to suppress the vote during the pandemic, undermine faith in the election process and its results and lay the groundwork for Trump to challenge the results of the presidential election should he lose. Trump and DeJoy have not only violated the constitutionally protected right to vote but have also committed the federal crime of obstruction of mail.

PARTIES

1. Plaintiff Richardson is an individual who is registered to vote in and resides in the state of Texas.
2. Plaintiff Carroll is an individual who is registered to vote in and permanently resides in the state of Pennsylvania.
3. Plaintiff Arfi is an individual who is registered to vote in and resides in the state of New York.
4. Plaintiff Zygas is an individual who is registered to vote in and resided at the time of the August 11 primary in the state of Wisconsin and who currently resides in Indiana.

5. Defendant Trump is the President of the United States of America. He is being sued here in his official capacity as President.

6. Defendant DeJoy is the Postmaster General and Chief Executive Officer of USPS. He is being sued in his official capacity as Postmaster General and Chief Executive Officer of USPS.

7. Defendant USPS is an agency of the federal government of the United States and is headquartered in Washington, D.C.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1) because Defendants Trump and USPS reside in this District and because it is a judicial district in which a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred.

PRELIMINARY STATEMENT

Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

-- *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964)

10. This is a suit for injunctive relief to protect the Plaintiffs' right to vote by ensuring that the United States Postal Service delivers absentee and mail-in ballots in a timely fashion to them and then, delivers their executed ballots to election officials in time to be counted.

11. In brief, each of the Plaintiffs applied for, but never received, either a mail-in or absentee ballot and were either unable to vote during the primaries in their states or placed themselves at risk of coronavirus by voting in person. Of note, Plaintiff Richardson applied for,

but did not receive her absentee ballot, forcing her to either give up the right to vote or risk her health – she has a disability – by going to her polling place in Houston, an epicenter of the coronavirus pandemic.

12. Neither these Plaintiffs nor any other citizen should have to face the Hobson's choice of giving up their vote because the USPS failed to deliver their ballot or risk their health, indeed their lives, by doing what Richardson did and voting at their polling place during a pandemic. That is why Plaintiffs are in this Court, complaining of the undue burden Defendants have placed on the right to vote by engaging in outrageous tactics to slow down mail delivery even more than it was already slowed by the challenges posed by the pandemic, resulting in failure to deliver mail-in ballots on time or at all and the widespread cases where mail-in ballots were received by election officials too late to have them counted – and leaving unsuspecting voters disenfranchised.

13. Trump, who has elevated gaslighting to a fine art, capitalized on mail-in voting challenges, claiming repeatedly in recent months that there is widespread mail-in voter fraud, when every credible study on the subject has concluded that incidence of mail-in voter fraud is statistically insignificant – so inconsequential that there has never been an election, or at least none reported, whose outcome has been changed by fraudulent mail-in voting.

14. Trump is candid about his motive: he believes, and has stated publicly, that no Republicans will be elected if there is widespread mail-in voting – and mail-in voting has increased in virtually every election cycle since 2000 and constituted a quarter of all votes cast during the 2018 election cycle. Trump has explained that shutting down or seriously delaying mail delivery is one way to avoid mail-in voting fraud. What is ironic is that mail-in voting has

traditionally favored Republicans, so it seems more likely Trump's bogus claims are intended to set up grounds to contest the 2020 election if he loses. At least some people say that.

15. Trump gained a willing partner in his assault on the constitutional right to vote. In May 2020, the President's six appointees on the Postal Service Board of Governors appointed a longtime Republican fundraiser, huge Trump supporter and walking conflict of interest, DeJoy, as his Postmaster General. DeJoy has been allowed to keep XPO Logistics, his former company and major USPS contractor that processes mail for USPS.¹ Since his appointment, and perhaps even before, DeJoy and Trump have conspired with each other and have acted individually to undermine the legitimacy of the 2020 elections by crippling the ability of USPS to receive, process, sort and deliver applications for absentee and mail-in ballots, the ballots themselves, and the executed ballots in time, if at all, to state election officials to be counted.

16. Despite the devastating effects of the coronavirus on USPS' ability to deliver the mail during the Spring primaries and primary runoffs, and the thousands of USPS employees who were quarantined because they were exposed to and, in some cases, contracted, coronavirus, DeJoy has taken several steps calculated to slow down – and to undermine – the agency's ability to deliver the mail, all in the name of cost-cutting but at the expense of the right of citizens to vote.

17. In furtherance of that unmistakable end, DeJoy has gutted key efficiencies at USPS, removing high-speed mail sorting machines nationwide that sort flat mail like ballots, freezing additional hiring, cutting off overtime and prohibiting postal workers from making extra or later trips to complete deliveries. Although this is a civil lawsuit, this conduct, in violation of

¹ Marshall Cohen, *Financial disclosures reveal postmaster general's business entanglements and likely conflicts of interest, experts say*, CNN (Aug. 12, 2020; 6:33 PM), <https://www.cnn.com/2020/08/12/politics/postal-service-dejoy-conflicts-amazon-trades-xpo-stake/index.html>.

18 USC § 1701, Obstruction of Mail, is evidence of Trump's and DeJoy's states of mind and how far they are willing to go to unlawfully impede Plaintiffs' right to vote

18. In short, DeJoy, doing Trump's public bidding, has ensured even greater chaos in the Fall elections, putting his thumb on the electoral scales to help ensure Trump's reelection and/or provide grounds for an election contest – not to mention helping Trump sow doubt in the minds of Americans about the integrity of the electoral process and the outcome itself, a loathsome tactic once associated only with tin-horn dictators and banana republics.

19. All of which explains why Plaintiffs have come to this Court. In the remaining primary runoffs and more importantly, during the presidential election on November 3, voters who fail to receive their mail-in or absentee ballots are left with the choice of compromising their right to vote by not voting at all or risking their health, even their lives, by going to polling places and joining long lines where they risk infection with the coronavirus. It is this choice that is an irreparable injury to Plaintiffs (and the American public) for which there is no adequate legal remedy. And it is this choice that brings Plaintiffs to this court, asking this Court to shut down Defendants' assault on the right to vote, the unconscionable burden placed on the constitutional right to vote by the President of the United States and his cohort, DeJoy.

20. Plaintiffs' worst fears about the coming election were confirmed by a July 29, 2020 letter USPS' General Counsel, Thomas J. Marshall, sent to 46 Secretaries of State, itself a fit tribute to the incredibly quick conversion of the USPS to a weapon of political war. As the Washington Post reported, "The U.S. Postal Service is warning states coast to coast that it cannot guarantee all ballots cast by mail for the November election will arrive in time to be counted, even if mailed by state deadlines, raising the possibility that millions of voters could be

disenfranchised.”² This letter is ample evidence of just how successful Trump and DeJoy have been at tipping the electoral scale, tilting the balance in Trump’s favor. No matter the claims of cost cutting at USPS, the evidence is overwhelming in support of the issuance of a preliminary and permanent injunction shutting down Trump’s and DeJoy’s increasingly successful efforts to corrupt the 2020 elections.

21. The Plaintiffs’ cases provide highly personal, persuasive evidence of the difficulty ordinary citizens face when they cannot obtain their mail-in ballots. Richardson’s experience, mentioned briefly above, is a case in point. Before coronavirus was declared a pandemic, Richardson, a longtime Houston resident, went to her polling place at Precinct #33, an elementary school, to cast her vote in the March 3, 2020 Texas primary. Once she arrived, she was surprised by the length of the voting lines, which snaked around the block. It took her two hours just to get inside the schoolhouse, during which she balanced herself with the help of her cane. Once inside, a woman she was talking to in line, who was a teacher at the school, found a chair for her. Each time the line moved, Richardson stood up and the man behind her pushed the chair forward, which they repeated for the next hour until she reached the voting booth.

22. Richardson suffers from debilitating arthritis that has resulted in two hip replacements, a shoulder replacement, and an expected knee replacement. Moreover, with the emergence of COVID-19 shortly after the March 3 primary elections, Richardson was also concerned because she is in her fifth and final year of prophylactic treatment resulting from a breast cancer diagnosis. Given her disability and the fact that she is at high risk for COVID-19, she visited the website of the Secretary of State of the State of Texas, filled out an application for

² Erin Cox et al., *Postal Service warns 46 states their voters could be disenfranchised by delayed mail-in ballots*, WASH. POST, https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381_story.html?hpid=hp_hp-top-table-high_uspsstates-230pm%3Ahomepage%2Fstory-ans.

an absentee ballot for the primary run-off and general elections, included her home (mailing) address on the lines indicated, and, as Texas requires a reason for receiving an absentee ballot for all persons under age 65, checked the box indicating “disability.” Richardson signed and mailed the completed application to Early Voting Clerk, Post Office Box 1148, Houston, Texas 77251-1148 around April 24, 2020.

23. Despite having done all that was required of her, Richardson did not receive her absentee ballot prior to the July 14, 2020 primary run-off election. Consequently, with the USPS slowdown in full swing and coronavirus spreading through Houston, she returned to Precinct #33, where she found the lines shorter and waited only 45 minutes to cast her ballot this time, albeit in 92-degree Houston heat. However, the option she required, the option Texas law guaranteed her given her disability, enabling her to vote by mail from the safety of her home, was not available to her. With the presidential election less than ninety days away, Richardson still has not received her absentee ballot for the general election.

24. Carroll applied for an absentee ballot because he was unable to be in his home state of Pennsylvania on primary election day. He has never received his absentee ballot, and because he was out-of-state at the time of the primaries, was unable to vote in Pennsylvania’s June 9 primary election.

25. Arfi, a New York state resident, requested an absentee ballot that never arrived, and because she lives with her 85-year-old grandmother, could not vote in New York’s June 23 primary election as she could not risk exposing herself and her 85-year-old grandmother to COVID-19.

26. Zygas, at relevant times a Wisconsin resident, requested an absentee ballot for the August 11, 2020 Wisconsin primary, as she expected to be out of town on the date of the

election. To date, her absentee ballot has not arrived. Fortunately, she ended up being in Madison on election day after all, and was able to vote in person.

27. Zygas' experience in failing to receive an absentee ballot in Wisconsin and Carroll's experience in Pennsylvania were not unique. Nearly 700 voters in the cities of Milwaukee and Wauwatosa did not receive ballots they requested in late June for the Aug. 11 primary. Among the 13 postal districts serving key presidential battleground states, four failed to meet any on-time service goals handling first-class mail between April 1 and June 30, and six districts achieved only one. The laggards are in five battleground states — Pennsylvania, Michigan, Florida, Wisconsin and North Carolina — that may determine the presidential election. Indeed, three of the postal districts with the worst records represent the largest metropolitan areas in their respective states — Philadelphia (home to Carroll), Detroit and Milwaukee.

28. These delays are expected to continue into November and the general election. “I believe it is highly likely that in the November General Election, the absentee ballots of at least tens of thousands of voters will arrive at election offices after Election Day and will not be counted unless the Ballot Receipt Deadline is extended,” wrote Ronald Stroman, the deputy postmaster general from 2011 until June 1, in a recent court filing challenging the Wisconsin deadline for ballot submission.

29. There is one more fact that should not be overlooked: as USPS employees and American Postal Workers Union officials began speaking out, making clear what was going on at USPS and challenging DeJoy's authority to make the radical changes he has made, DeJoy removed any obstacle to his strategy by reassigning or displacing 23 seasoned postal executives, centralizing decision-making power in himself.

30. For these reasons and those below, Plaintiffs have filed this suit asking this Court to enjoin the Defendants from engaging in any further attempt to deny them the right to mail in their vote and compelling Defendants to return postal operations and restore postal service to that in place on January 1, 2020, including, including but not limited to compelling them to: (1) replace or restore the high-speed sorting machines that have been taken out of service and put them back into operation; (2) restore overtime pay for all USPS employees; (3) lift the USPS hiring freeze so that USPS can hire additional employees when and where necessary to ensure the timely processing and delivery of mail-in ballots; (4) allow late deliveries instead of letting mail go undelivered and putting delivery even further behind and (5) restore the 23 seasoned employees to the jobs they held before being reassigned or displaced in the recent USPS reorganization. Otherwise, this election is in danger of being stolen.

PRELIMINARY STATEMENT

31. This action arises from a scheme orchestrated by Trump, the USPS and its Postmaster General and CEO, DeJoy, to infringe upon the fundamental right of Plaintiffs – and thousands of other Americans – to vote.

32. Trump has stated that he is against mail-in voting because it favors Democrats and “you’d never have a Republican elected in this country again” if universal mail-in voting were allowed, and recruited DeJoy to enact changes to USPS policies and procedures that have hampered USPS’ ability to receive, process, sort and deliver mail, with the predictable result, presaged by voters’ experience in the Spring 2020 primaries, that citizens will not receive their applications for absentee and mail-in ballots or if they do, that the ballots will not arrive in time to be counted – not because of voter negligence but because of purposeful impediments DeJoy

and USPS have engineered to suppress turnout and jeopardize the chance ballots will be counted.³

33. Trump previously referred to USPS as a “joke” and threatened to withhold a \$10 billion loan to USPS authorized by Congress in the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act unless USPS quadrupled package delivery prices.⁴ He only recently dropped his opposition to the loan when USPS agreed to provide the Treasury Department with copies of ten of its largest contracts with high-volume third-party shippers, including FedEx, UPS, and Amazon, led by longtime Trump adversary and target, Amazon founder Jeff Bezos.

34. Trump has also repeatedly made false claims that mail-in voting is rife with fraud and opposed coronavirus relief bills that contain provisions with increased funding for USPS and mail-in voting.

35. In fact, the United States has a long history of mail-in and absentee voting and none of it involves any widespread fraud and none that could change the outcome of the election. The first widespread use of absentee voting occurred during the Civil War in 1864, when 150,000 absentee ballots were cast by Union soldiers. By World War II, every state let soldiers vote remotely. The 3.2 million absentee ballots cast by soldiers amounted to nearly seven percent of the total electorate in the 1944 presidential election and contributed to Franklin Delano Roosevelt’s reelection. However, there are no proven instances of widespread fraud in either of those elections.

³ Aaron Blake, *Trump just comes out and says it: The GOP is hurt when it’s easier to vote*, WASH. POST (Mar. 30, 2020; 1:47 PM), <https://www.washingtonpost.com/politics/2020/03/30/trump-voting-republicans>.

⁴ Myah Ward, *Trump: Postal service is a 'joke' that must raise prices to get bailout money*, POLITICO (Apr. 24, 2020; 2:37 PM), <https://www.politico.com/news/2020/04/24/trump-us-postal-service-coronavirus-bailout-206851>.

36. Still today, there is no empirical evidence that mail-in voting fraud is widespread. In fact, multiple studies have found that *all* forms of voting fraud – including mail-in voting fraud – are extremely rare. Instead of acknowledging this reality, when a commission that he created to investigate fraud in the 2016 election found no such fraud, Trump disbanded it.⁵

37. The absence of evidence relating to voting fraud provides a striking contrast to the abundance of evidence of the impact that Defendants’ scheme and changes to USPS has had on recent primary elections, including but not limited to undelivered ballots, ballots delivered too late to be mailed in on time, and ballots not delivered to election officials.

38. All of these problems occurred because DeJoy and USPS intentionally took steps to turn Trump’s claims of a “rigged” 2020 presidential election into a self-fulfilling prophecy—and they are doing the rigging.

39. As a result of Defendants’ efforts, such as removing the sorting machines, freezing hiring, cutting off overtime and prohibiting mailmen and women from making extra trips ensuring that mail is delivered on time, Plaintiffs – like thousands of other Americans – were prevented from casting a ballot by mail in the 2020 presidential primary. Defendants’ scheme will inevitably have an even greater impact on the 2020 presidential election. In 2016, more than one in five Americans voted by mail. By 2018, that number had increased to one in four, and a significantly greater number are expected to vote by mail this year due to the COVID-19 pandemic.

40. Trump’s constant assertions that the 2020 presidential election will involve massive amounts of voter fraud are plainly intended to elevate what Republicans and Democrats

⁵ All Things Considered, *Member Of Disbanded Trump Voter Fraud Commission Speaks Out*, NPR (Aug. 4, 2018; 5:33 pm), <https://www.npr.org/2018/08/04/635668304/member-of-disbanded-trump-voter-fraud-commission-speaks-out>.

agree is a statically insignificant phenomenon into a basis to contest the 2020 election. Despite admitting that he had no evidence to back his claims, Attorney General William Barr claimed that he believed an election conducted by predominantly by mail would not be secure, undoubtedly laying the groundwork for future legal challenges by the Department of Justice, and the massive litigation assets at its disposal, not the least of which are the lawyers in the offices of the United States Attorneys nationwide, if the results do not favor Trump.⁶

FACTS COMMON TO ALL CLAIMS

Appointment Of DeJoy As Postmaster General

41. According to campaign finance reports published by the Federal Elections Commission, between August 2016 and February 2020, DeJoy donated more than \$1.2 million to Trump's campaign.⁷

42. In March 2017, DeJoy hosted a fundraiser for Trump at his home in Greensboro, North Carolina, with tickets costing \$15,000 per couple for preferential seating and a VIP reception.⁸

43. In May 2017, Trump appointed DeJoy's wife, Dr. Aldona Wos ("Wos"), to serve as Vice Chair of the President's Commission on White House Fellowships, which is responsible for interviewing candidates and recommending them to the President.⁹

⁶ Caroline Kelly, *Barr says, without citing evidence, that an election done predominantly by mail would not be secure*, CNN (June 25, 2020; 10:25 PM), <https://www.cnn.com/2020/06/25/politics/barr-mail-in-voting-election-fraud-npr/index.html>.

⁷ *Individual Contributions*, FED. ELECTION COMM'N, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=Louis+DeJoy (last visited Aug. 16, 2020).

⁸ Jacob Bogage, *Under fire from Trump, Postal Service braces for arrival of new postmaster general allied with White House*, WASH. POST (May 7, 2020; 7:12 PM), <https://www.washingtonpost.com/business/2020/05/07/postal-service-postmaster-dejoy-trump>.

⁹ *About Us*, DEJOY WOS FAMILY FOUND., <http://louisdejoyandaldonawosfamilyfoundation.com/about-us-louis-dejoy-aldona-wos-family-foundation> (last visited Aug. 16, 2020).

44. In February 2020, Trump nominated Was to be the United States' ambassador to Canada.¹⁰

45. According to financial disclosure forms, DeJoy and Was had \$115,000 to \$300,000 invested in the United Parcel Service, USPS' major competitor.¹¹

46. On May 6, 2020, the USPS Board of Governors – whose six members were all appointed by Trump – announced its unanimous selection of DeJoy to serve as Postmaster General and Chief Executive Officer.¹²

47. DeJoy began serving as Postmaster General on June 15, 2020.¹³

Changes to USPS Under DeJoy's Leadership

48. A leaked PowerPoint titled "PMGs [sic] expectations and plan" states, in part, "The new PMG is looking at COST. Making the USPS financially solvent which we are not at this time. Here are some of HIS expectations and they will be implemented in short order." The expectations include, among other things, that "POT [penalty overtime] will be eliminated" and

¹⁰ Press Release, Office of the White House, President Donald J. Trump Announces Intent to Nominate and Appoint Individuals to Key Administration Posts (Feb. 11, 2020), *available at* <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-appoint-individuals-key-administration-posts-29>.

¹¹ Michael D. Shear et al., *Mail Delays Fuel Concern Trump Is Undercutting Postal System Ahead of Voting*, N.Y. TIMES (Aug. 14, 2020), <https://www.nytimes.com/2020/07/31/us/politics/trump-usps-mail-delays.html>.

¹² Press Release, Board of Governors Announces Selection of Louis DeJoy to Serve as Nation's 75th Postmaster General (May 6, 2020), *available at* <https://about.usps.com/newsroom/national-releases/2020/0506-bog-announces-selection-of-louis-dejoy-to-serve-as-nations-75th-postmaster-general.htm>.

¹³ Press Release, Postmaster General Louis DeJoy's Opening Remarks for the USPS Board of Governors Aug. 7 Meeting (Aug. 7, 2020), *available at* <https://about.usps.com/newsroom/national-releases/2020/0807-pmg-bog-meeting-comments.htm>.

“[o]vertime will be eliminated” because “we are paying too much in OT and it is not cost effective.”¹⁴

49. The PowerPoint also states, “The USPS will no longer use excessive cost to get the basic job done. If the plants run late they will keep the mail for the next day” and that “if we cannot deliver all the mail due to call offs or shortage of people and you have no other help, the mail will not go out.”

50. By letter, dated June 17, 2020, the contract administrator for the American Postal Workers Union (“APWU”) informed APWU president Mark Diamondstein that the USPS was planning to remove 502 Delivery Bar Code Sorters, 87 Advanced Facer Canceler Systems, 55 Automated Flat Sorting Machine 100s and 27 Flat Sequencing Systems and stated that “[t]he subject reduction is anticipated to take place over the next subject week.”¹⁵

51. The removals of those machines have begun, and is expected to be complete in the first quarter of 2021.¹⁶

52. In an internal memo leaked by the Federal News Network, dated July 10, 2020, the USPS made several specific “transportation changes,” including that “late trips are no longer authorized or accepted” and “[e]xtra trips are no longer accepted.”¹⁷

¹⁴ *Leaked USPS PowerPoint indicates PMG DeJoy focus on getting operating costs under control*, ALLIANCE OF NONPROFIT MAILERS (July 14, 2020), <https://www.nonprofitmailers.org/leaked-usps-powerpoint-indicates-pmg-dejoy-focus-on-getting-operating-costs-under-control>.

¹⁵ *USPS Plans Nationwide Reduction in Mail Processing Equipment Due to Mail Volume Decline*, 21ST CENTURY POSTAL WORKER BLOG (June 23, 2020), <https://www.21cpw.com/usps-nationwide-reduction-in-mail-processing-equipment-due-to-mail-volume-decline>.

¹⁶ Letter from Rickey R. Dean, Manager of Contract Admin., Am. Postal Workers Union, to Mark Diamondstein, Pres., Am. Postal Workers Union (June 17, 2020), *available at* https://www.21cpw.com/wp-content/uploads/2020/06/mail-processing-equipment-reduction_6-17-2020.pdf.

¹⁷ Jory Heckman, *USPS warns staff of temporary mail delays as it cuts ‘soaring’ delivery costs*, FED. NEWS NETWORK (July 15, 2020), <https://federalnewsnetwork.com/management/2020/07/usps-warns-staff-of-temporary-mail-delays-as-it-cuts-soaring-delivery-costs>.

53. The memo also notes that an “aspect of these changes that may be difficult for employees is that – temporarily – we may see mail left behind or mail on the workroom floor or docks (in P&DCs)” and that the changes have increased “delayed mail volumes.”

54. On July 16, 2020, USPS informed the National Association of Letter Carriers (“NALC”) that it would be implementing a new initiative called Expedited to Street/Afternoon Sortation (“ESAS”) on July 25, 2020 in 384 selected sites.

55. NALC expressed concern that “USPS chose to test [ESAS] unilaterally, without NALC participation” and that “[t]he ESAS Initiative, as described, does not appear to conform to the handbook provisions contained in the M-39 and M-41 [USPS handbooks] relating to [expedited preferential mail (‘EPM’)]” and has stated that it is expressing its concerns with USPS headquarters.¹⁸

56. Also in July 2020, the USPS issued an internal memo announcing its ESAS initiative. According to the memo, under ESAS, “[c]ity carriers will not sort any mail during the morning operation,” but will instead sort delivery in the afternoon “[u]pon return from street delivery.”

57. According to the memo, ESAS is designed to “reduce[] morning office time to allow carriers to leave for the street earlier.”¹⁹

58. However, postal workers are concerned that the practical impact of these changes will be to delay mail from getting to its final destination. Arthur Sackler, manager of the postal

¹⁸ *USPS announces new ESAS delivery initiative test*, NAT’L ASS’N OF LETTER CARRIERS (July 21, 2020), <https://www.nalc.org/news/nalc-updates/usps-announces-new-esas-delivery-initiative-test>.

¹⁹ Memorandum from USPS (July 2020), *available at* <http://www.nalc3825.com/SUT.ESAS.July.2020.pdf>.

industry advocacy group Coalition for a 21st Century Postal Service, stated if “there’s no real time to sort, and no overtime, then there could be a cumulative growing impact.”²⁰

59. On August 7, 2020, DeJoy released a reorganization memo reflecting that twenty-three postal executives, including several with decades of experience, were reassigned or displaced. According to the *Washington Post*, “[a]nalysts say the structure centralizes power around DeJoy . . . and de-emphasizes decades of institutional postal knowledge.”²¹

60. USPS also announced that it had implemented a “management hiring freeze and will be requesting future Voluntary Early Retirement Authority from the Office of Personnel Management for employees not represented by a collective bargaining agreement.”²²

61. Also in August 2020, the USPS began removing dozens of mailboxes in New York, Pennsylvania, Oregon and Montana. After an outcry erupted on social media, a USPS spokesman claimed that the boxes were being moved to areas with higher volumes of mail, and announced that no more boxes would be moved until after the election.²³

62. Although these USPS memos explain that these measures are intended to reduce costs and promoting efficiency, Article I, Section 8 of the United States Constitution provides Congress with the power to “establish post offices and post roads,” without regard to whether such offices are profitable.

²⁰ Rachel M. Cohen, *USPS Workers Concerned New Policies Will Pave the Way to Privatization* (July 29, 2020; 7:31 AM), <https://theintercept.com/2020/07/29/usps-postal-service-privatization>.

²¹ Jacob Bogage, *Postal Service overhauls leadership as Democrats press for investigation of mail delays*, WASH. POST Aug. 7, 2020; 7:10 PM), <https://www.washingtonpost.com/business/2020/08/07/postal-service-investigation-dejoy>.

²² Press Release, Postmaster General Louis DeJoy Modifies Organizational Structure to Support USPS Mission (Aug. 7, 2020), *available at* <https://about.usps.com/newsroom/national-releases/2020/0807-pmg-modifies-organizational-structure.htm>.

²³ Jacob Bogage, *Postal Service will stop removing mailboxes*, WASH. POST. (Aug. 14, 2020; 6:20 PM), <https://www.washingtonpost.com/business/2020/08/14/people-are-freaking-out-about-mailbox-removals-postal-service-says-its-routine>.

63. On August 18, 2020, USPS issued a statement from Defendant Louis DeJoy (“DeJoy”) which stated, in part, “[T]here are some longstanding operational initiatives — efforts that predate my arrival at the Postal Service — that have been raised as areas of concern as the nation prepares to hold an election in the midst of a devastating pandemic. To avoid even the appearance of any impact on election mail, I am suspending these initiatives until after the election is concluded.”²⁴

64. The same day, USPS Director of Maintenance Operations Kevin Couch sent an email stating, “Please message out to your respective Maintenance Managers tonight. They are not to reconnect/reinstall machines that have been previously disconnected without approval from HQ Maintenance, no matter what direction they are getting from their plant manager. Please have them flow that request through you then on to me for a decision.”²⁵

65. On August 19, 2020, House Speaker Nancy Pelosi issued a statement recounting a conversation that she had with DeJoy in which “the Postmaster General frankly admitted that he had no intention of replacing the sorting machines, blue mailboxes and other key mail infrastructure that have been removed and that plans for adequate overtime, which is critical for the timely delivery of mail, are not in the works.”²⁶

²⁴ Press Release, USPS, Postmaster General Louis DeJoy Statement (Aug. 18, 2020), <https://about.usps.com/newsroom/national-releases/2020/0818-postmaster-general-louis-dejoy-statement.htm>.

²⁵ Aaron Gordon, *USPS Headquarters Tells Managers Not to Reconnect Mail Sorting Machines, Emails Show*, VICE NEWS (Aug. 20, 2020; 11:36 AM), https://www.vice.com/en_us/article/xg8k4d/usps-emails-tell-managers-not-to-reinstall-mail-sorting-machines-postmaster-general-dejoy.

²⁶ Press Release, Speaker of the House, Pelosi Statement After Conversation with Postmaster General (Aug. 19, 2020), *available at* <https://www.speaker.gov/newsroom/81920>.

66. The “key mail infrastructure that have been removed” includes high-speed sorting machines. USPS recently revealed that 711 machines have been removed during USPS’ current fiscal year – more machines than all three prior fiscal years *combined*.²⁷

67. After Pelosi’s statement was released, USPS released information of its own designed to place the blame for any delay in the collection and delivery of mail-in and absentee ballots on states, rather than on USPS.

68. On August 21, 2020, USPS issued a press release announcing the launch of its “Election Mail” website, which stated, in part, “[t]he Postal Service recognizes that many states are choosing to expand mail-in voting options in the upcoming elections and that there will likely be a significant increase in demand among postal customers to participate in those elections by using the mail” and “[e]lection officials and voters are being asked to be mindful of the Postal Service’s established delivery standards and consider how the mail actually works, so that voters have adequate time to request, receive, complete and send their mail-in ballots.”²⁸

69. The new Election Mail website similarly explains:

Election officials should use First-Class Mail or a higher level of service for Election Mail. Using USPS Marketing Mail® service will result in slower delivery times and may increase the risk that voters will not receive their ballots in time to return them by mail. State deadlines may not be compatible with the Postal Service’s established delivery standards. Election officials must keep the Postal Service’s mailing timeframes in mind if they choose to use mail as part of the electoral process.²⁹

²⁷ Defs.’ Objections & Responses to Pls.’ First Set of Interrogatories and Requests for Production of Documents at 5, *Wash v. Trump et al.*, No. 20-cv-03127 (SAB) (E.D. Wash. Sept. 6, 2020) (“Interrogatory Resps.,” attached as Exhibit A).

²⁸ Press Release, USPS, U.S. Postal Service Launches New Election Mail Website (Aug. 21, 2020), *available at* <https://about.usps.com/newsroom/national-releases/2020/0821-usps-launches-new-election-mail-website.htm>.

²⁹ Election Mail, USPS, <https://about.usps.com/what/government-services/election-mail> (last visited Sept. 11, 2020).

70. The same day, USPS released a statement entitled “Just the Facts: Six Things to Know About the Postal Service,” which states, in part:

Currently, certain states have deadlines for requesting and casting mail in ballots that are incongruous with the Postal Service’s delivery standards. Many of these laws do not consider the new realities of increased vote-by-mail anticipated during the COVID-19 pandemic this year. . . . the Postal Service has asked election officials to take into account the realities of how long it takes to send and receive mail, which are the Postal Service’s delivery standards, when informing voters how to successfully participate in an election when they choose to use the mail.³⁰

71. The same day that USPS released its statement and launched its “Election Mail” website, Senator Gary Peters (“Peters”), the Ranking Member of the Senate Committee, released an Interim Report on Threat of Postmaster General DeJoy’s Postal Service Delays, which provided an update to his ongoing investigation into “Postal Service delays resulting from operational changes at the United States Postal Service (USPS) made by Postmaster General Louis DeJoy,” which found, among other things, that “these changes have slowed mail delivery and compromised service for veterans, small businesses, rural communities, seniors, and millions of Americans who rely on the mail for medicines, essential goods, voting, correspondence, and for their livelihoods.”³¹

72. On August 22, 2020, the United States House of Representatives Committee on Government and Oversight Reform (the “House Committee”) released a document that it had received from USPS entitled “Service Performance Measurement PMG Briefing,” dated August 12, 2020 (the “August 12 Briefing”), which included three charts showing that, overall, USPS’s

³⁰ *Just the Facts: Six Things to Know About the Postal Service*, USPS (Aug. 21, 2020), <https://about.usps.com/newsroom/statements/082120-just-the-facts-six-things-to-know-about-the-usps.htm>.

³¹ Gary Peters, Ranking Member, U.S. Senate Comm. on Homeland Security & Governmental Affairs 1 (Aug. 21, 2020), *available at* https://www.hsgac.senate.gov/imo/media/doc/200821_InterimReport_USPSDelays.pdf?_ga=2.249138052.2089923355.1599826269-1528367889.1597429461

on-time delivery was 8.10% below baseline for first-class mail, 8.42% below baseline for marketing mail, and 9.57% below baseline for periodicals.³²

73. On August 31, 2020, the House Committee received a second presentation from USPS (the “August 31 Briefing”), entitled “Congressional Briefing: Transportation & Service Performance Updates,” which showed that overall, on-time delivery was still below baseline for all types of mail analyzed – First-Class Mail, Marketing Mail, and Periodicals.³³

74. According to the August 31 Briefing, as of August 22, 2020, approximately 11% 14% of Presort First-Class Mail and 15% of Single Piece First-Class Mail was not being processed and delivered on time.³⁴ USPS processes and delivers 181.9 million pieces of First-Class Mail each day.³⁵ This means that approximately 25.5 million to 27.3 million pieces of First-Class Mail are not being delivered on time *each day*.

75. On August 24, 2020, News 5 in Nashville released the results of an investigation which found multiple USPS trucks were traveling from Nashville across the country completely empty. News 5 found that on August 21, 2020, a truck left Nashville for Illinois fourteen minutes ahead of schedule – but completely empty. The same day, another truck that left for Memphis was ten minutes early but also completely empty. Still another left for Bowling Green four minutes early – again, with its trailer empty. Don Eggers, Vice President of the local branch

³² USPS, Service Performance Measurement PMG Briefing (Aug. 12, 2020), *available at* https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/PMG%20Briefing_Service%20Performance%20Management_08_12_2020.pdf.

³³ USPS, Congressional Briefing: Transportation & Service Performance Updates (Aug. 31, 2020), <https://about.usps.com/newsroom/global/pdf/0831-congressional-service-briefing.pdf>.

³⁴ *Id.* at 9-10.

³⁵ *One Day in the Life of the Postal Service*, USPS, <https://facts.usps.com/one-day> (last visited Sept. 10, 2020).

of the American Postal Workers Union, told News 5, “We are seeing mail being delayed daily.”³⁶

76. Another postal worker explained that trucks are leaving empty and mail is being delayed because DeJoy’s policy will not allow a truck to wait even five minutes to be loaded with mail, and Express Mail and Priority Mail is often left on the docks as a result. The postal worker also noted that some of the mail being left behind “is very important mail – cremated remains, legal documents, things that must be delivered on time, guaranteed delivery – and we are not making that guarantee.”³⁷

77. On August 31, 2020, the Office of the Inspector General for USPS (“OIG”) released an audit report entitled “Processing Readiness of Election and Political Mail During the 2020 General Elections (the “August 2020 Audit Report”), which noted that OIG has “concerns surrounding integrating stakeholder processes with Postal Service processes to ensure timely delivery of Election and Political Mail,” including that “Election and Political Mail [is] likely to be mailed too close to the election, resulting in insufficient time for the Postal Service to process and deliver the mailpieces.”³⁸

78. OIG defines “Election Mail” as “any mailpiece that an authorized election official creates for voters participating in the election process,” including “ballots and voter registration materials.” OIG defines “Political Mail” as “any mailpiece created by a registered political

³⁶ Ben Hall & Kevin Wisniewski, NEWS CHANNEL 5 (Apr. 24, 2020; 7:53 PM), <https://www.newschannel5.com/news/newschannel-5-investigates/postal-trucks-sometimes-travel-across-country-with-no-mail-after-usps-cuts>.

³⁷ *Id.*

³⁸ OIG USPS, Audit Report: Processing Readiness of Election and Political Mail During the 2020 General 1-2 (Aug. 31, 2020), *available at* <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-225-R20.pdf>.

candidate, a campaign committee, or a committee of a political party for political campaign purposes.”³⁹

79. OIG’s audit found that “the amount of identifiable Election and Political Mail delivered on-time nationwide was 94.5 percent from April 2020 through June 2020, a decrease of 1.7 percentage points compared to the same time period in 2018.”⁴⁰

80. OIG further found that “ballots are not always being postmarked as required and it is a challenge for the Postal Service to ensure full compliance” and warned that “[w]ithout a postmark on return ballots mailed by voters, a ballot could be rejected and a vote not counted.”⁴¹

81. In conducting its audit, OIG reviewed seven Processing and Distribution Centers (“PD&Cs”) and found that none used USPS’ Operational Clean Sweep Search Checklist, which “provides a list of minimal areas to check within the mail processing facility” for Election and Political Mail.⁴²

82. Six of the seven PD&Cs audited “did not always complete daily self-audits of Election and Political Mail readiness” and “used their own variation of [USPS’s] Election and Political Mail log,” which were missing “key information such as mail class, dispatch location from/to, and the date/time it was cleared from the operation.”⁴³

83. Five of the PD&Cs did not complete, did not properly complete, or did not timely complete the required daily certification that they were clear of Election and Political Mail in the

³⁹ *Id.* at 1.

⁴⁰ *Id.* at 13.

⁴¹ *Id.* at 3; *see also id.* at 17.

⁴² *Id.* at 16.

⁴³ *Id.*

two weeks leading up to the election. The two PD&Cs that did complete the certification did not do so accurately, as they were not, in fact, clear of all Election and Political Mail every day – in one, 68,000 pieces of Political Mail were not processed, and in the other, 200 ballots were not processed.⁴⁴

84. An analysis of data for all seven PD&Cs estimated that the “total number of identifiable Election and Political Mail mailpieces not delivered on time from April 2020 through June 2020 for the seven PD&Cs was about 1.6 million of 20.2 million mailpieces, or 8 percent.”⁴⁵

85. OIG recommended that USPS “work toward creating a separate, simplified mail product exclusively for Election Mail that would support uniform mail processing, including mandatory mailpiece tracking and proper mailpiece design.” In response to OIG’s recommendation, David E. Williams, USPS’s Chief Logistics and Processing Operations Officer and Executive Vice President, “management disagreed with the recommendation to create a separate Election Mail product for the 2020 general election,” claiming that USPS “does not have sufficient time to develop a new product and complete necessary regulatory reviews prior to the 2020 general election” and that “undertaking such a significant change this close to the election would also likely cause unnecessary confusion.”⁴⁶

Recent Congressional Testimony

86. On August 20, 2020, David C. Williams, the former vice chairman of the USPS Board of Governors, testified before the Congressional Progressive Caucus. Williams stated that

⁴⁴ *Id.* at 14-15.

⁴⁵ *Id.* at 17.

⁴⁶ *Id.* at 28.

the Trump administration appeared to be trying to USPS as a “political tool” and the United States Treasury Department was using its lending authority to coerce USPS into adopting policies that would be “ruinous.”⁴⁷

87. Williams further testified no serious background investigation had been conducted into DeJoy, and that a brief review by USPS’s inspector general raised concerns about contract work that DeJoy’s company, XPO Logistics, had done for USPS.⁴⁸

88. On August 21, 2020, DeJoy testified in a hearing before the United States Senate Committee on Homeland Security and Governmental Affairs (the “Senate Committee”).⁴⁹

89. When asked if he had discussed the changes that he implemented at USPS with Treasury Secretary Steven Mnuchin (“Mnuchin”), DeJoy testified that he told Mnuchin that he was “working on a plan” to implement changes at USPS.⁵⁰

90. DeJoy was asked, “did you conduct specific analysis on how your changes would impact seniors? Yes or no, sir.” But DeJoy evaded the question, stating, “The policy changes that I embarked upon were not the ones that you identify[.]”⁵¹

91. Similarly, when questioned as to whether he performed “a specific analysis to see how veterans would be impacted,” DeJoy once again evaded the question, stating, “The only

⁴⁷ Nicholas Fandos et al., *Former Postal Governor Tells Congress Mnuchin Politicized Postal Service*, N.Y. TIMES (Aug. 20, 2020), <https://www.nytimes.com/2020/08/20/us/politics/former-postal-governor-tells-congress-mnuchin-politicized-postal-service.html>.

⁴⁸ *Id.*

⁴⁹ PBS NewsHour, *WATCH LIVE: Postmaster General Faces Senate Panel Over Mail-in Voting, COVID-19 Concerns*, YOUTUBE (Aug. 21, 2020), https://www.youtube.com/watch?v=XIP-R_Zu73Q&t=165s. [hereinafter “Senate Testimony”].

⁵⁰ *Id.* at 0:35:00.

⁵¹ *Id.* at 1:21:52.

change I made, ma'am, was that the trucks run on time. Theoretically everyone should have got [sic] their mail faster.”⁵²

92. When asked, “Prior to implementing the changes, did you discuss these changes or their impact on the election with any Trump campaign officials?” DeJoy responded, “No, sir.”⁵³

93. DeJoy further testified that the changes he directed be made to USPS’ transportation schedule were “an aligned schedule in theory on paper. And there’s lots of imbalances that we’re finding as we went through this process.”⁵⁴

94. DeJoy also testified, “certainly there was a slowdown in the mail when our production did not meet the schedule.” DeJoy further explained, “we have had some delays in the mail. And our recovery process in this should have been a few days and it’s mounted to be a few weeks.”⁵⁵

95. DeJoy told the Senate Committee that “we feel bad about what the dip in our service, the level has been.” He later explained, “we had maybe a 4 or 5% hit on our service level for delayed, all sorts of mail, marketing mail, everything because it got stuck on a dock.”⁵⁶

96. When asked by the Senate Committee if he would “bring[] back any mail sorting machines that have been removed since you’ve become Postmaster General,” DeJoy responded,

⁵² *Id.* at 1:22:36.

⁵³ *Id.* at 0:35:18.

⁵⁴ Senate Testimony at 1:55:20.

⁵⁵ *Id.* at 0:26:43, 0:32:00.

⁵⁶ *Id.* at 0:46:05, 1:57:23.

“There’s no intention to do that. They’re not needed, sir.” When asked if he would “bring back any processors,” DeJoy repeated, “They’re not needed, sir.”⁵⁷

97. On August 24, 2020, DeJoy testified before the United States House of Representatives Committee on Government Oversight and Reform (the “House Committee”).⁵⁸

98. During the hearing, House Committee Chairwoman Carolyn B. Maloney (“Maloney”) informed DeJoy that “over the weekend [the House Committee] obtained” the August 12 Briefing from a third party. She explained that the House Committee had requested documents from DeJoy on August 14, 2020, “two days after you received this document,” when it “must have been fresh on your mind,” but “unfortunately [the House] [C]ommittee received it from someone else.” Maloney continued:

There’s absolutely no excuse for concealing [the August 12 Briefing] and withholding this information from the [House] [C]ommittee or from your testimony before the Senate, when you were expressly asked questions about the information in the document. And unfortunately [the House] [C]ommittee received it from someone else. So Mr. DeJoy, you’re withholding information from us, concealing documents and downplaying the damage that you’re causing.⁵⁹

99. Later in the hearing, Maloney stated that the House Committee expected “a full and complete production of all the documents we requested no later than this coming Wednesday,” August 26.⁶⁰

100. During his testimony, DeJoy confirmed that he sent an email to USPS employees on August 13, 2020 that took credit for implementing changes at USPS but acknowledged “[t]his

⁵⁷ *Id.* at 0:34:09.

⁵⁸ PBS NewsHour, *WATCH: Postmaster General Testifies Before House Oversight Committee About Mail Service Changes*, YOUTUBE, at 5:24:44 (Aug. 24, 2020), <https://www.youtube.com/watch?v=u2sudQbtu4Y&t=1s> [hereinafter “House Testimony”].

⁵⁹ *Id.* at 0:53:55.

⁶⁰ House Testimony at 0:54:43.

transformative initiative has had unintended consequences that impacted our overall service levels.” DeJoy answered affirmatively when asked if “these changes were intended to have a meaningful impact” and testified that the changes have occurred in “[e]very state a truck moves in.”⁶¹

101. DeJoy later acknowledged that, as a result of those changes, USPS has had a “deterioration in service” and service levels are still not “back to where they were.”⁶²

102. DeJoy testified that the “mail delay,” one aspect of the service decline, was attributable, at least in part, to “the actions that we took with regards to transportation. DeJoy further explained, “the production schedules within the plants were not aligned with the transportation schedules . . . going between the plants. There’s about 10% of the mail was not aligned. The production plants were getting done late, and the trucks were leaving. . . . Judgments were made at each individual plant . . . that provided for transitional issues in doing it.”⁶³

103. DeJoy acknowledged that “[o]ur recovery process is taking too long. This should have been resolved in a few days and it’s not.”⁶⁴

104. When later asked, “Why have days turned into weeks?” DeJoy responded, “I’m trying to figure that out.”⁶⁵

⁶¹ *Id.* at 4:40:44; *see also* Memorandum from DeJoy to USPS employees (Aug. 13, 2020), *available at* <https://link.usps.com/2020/08/14> [hereinafter “DeJoy Memo”].

⁶² *Id.* at 0:49:00, 1:45:27.

⁶³ *Id.* at 1:52:02, 4:48:56.

⁶⁴ *Id.* at 1:13:35.

⁶⁵ *Id.* at 4:49:35.

105. DeJoy testified that he was “concerned about every delivery that is late,” but when asked if he could provide a “specified and detailed plan . . . on how you’re going to make sure that the ballots get delivered on time,” DeJoy responded, “I need to get back to you. . . . I can probably give you some type of summarized objectives that we’ll try to fulfill.”⁶⁶

106. Similarly, when asked if he could “commit . . . to the immediate issuance of a formal USPS policy in writing that will guarantee all delivery of election mail is treated as first-class or better for the 2020 general election,” DeJoy stated, “I have to get back to you on what I can give you in writing on that.”⁶⁷

107. To date, USPS has not issued any such formal policy, and USPS has stated that “if election officials choose to send election mail to voters as Marketing Mail, then it is not reclassified as First-Class Mail.”⁶⁸

108. Although USPS claims to have “longstanding practices to prioritize the expeditious processing and delivery of election mail,” several of the identified practices were ones that the OIG’s 2020 Audit Report found that PD&Cs often failed to comply with, such as using USPS’ Election and Political Mail logs, completing daily “all clear” certifications that PD&Cs are clear of Election and Political Mail.⁶⁹ USPS also claims that “it has been and is the Postal Services policy for several years to ‘cancel’ or ‘postmark’ all ballots returned by voters”

⁶⁶ *Id.* at 2:57:20, 3:12:54.

⁶⁷ *Id.* at 3:34:51.

⁶⁸ Interrogatory Resps. at 12; *see also id.* at 16 (“[E]lection mail sent by state and local election officials to voters as Marketing Mail is not upgraded to or reclassified as First-Class Mail”).

⁶⁹ *Id.* at 12-13; *supra* ¶¶ 82-83.

but, as noted above, the 2020 Audit Report found that “ballots are not always being postmarked as required and it is a challenge for the Postal Service to ensure full compliance.”⁷⁰

109. Additionally, USPS claims that its practices include “[d]evoting excess First-Class Mail processing capacity to election mail,” but given DeJoy’s testimony that USPS has removed processing machines and will not replace them, it is unlikely that USPS will have any “excess First-Class Mail processing capacity.”⁷¹

110. Other practices that USPS claims to have followed historically are not being followed at present. For instance, USPS claims that it has historically “ensur[ed] that election mail, including ballots, are not left behind.” But, as noted above, an internal USPS memo reflects that USPS has told its workers that they “may see mail left behind” at PD&Cs as a result of the changes implemented during DeJoy’s tenure, and DeJoy himself testified that mail was recently delayed because it “got stuck on a dock.”⁷²

111. When asked if he would “put the high-speed [mail sorting] machines back,” DeJoy flatly responded, “No, I will not.”⁷³

112. USPS later confirmed that “[t]here is no current plan to return all reduced machines to service, and many such machines cannot be physically returned to service” because “[w]hen machines are removed from a facility, they are generally disassembled [sic] for their usable parts.”⁷⁴

⁷⁰ Interrogatory Resp. at 14; *supra* ¶ 80.

⁷¹ Interrogatory Resps. at 14; *supra* ¶ 96; *see also infra* ¶ 111.

⁷² Interrogatory Resps. at 14; *supra* ¶¶ 53, 95.

⁷³ House Testimony at 1:22:04.

⁷⁴ Interrogatory Resps. at 6.

113. When informed there were communications “that show senior managers [telling USPS employees] not to even plug in the previously disconnected machines without approval from headquarters,” DeJoy claimed to be “unaware of the directive that you’re speaking about.” DeJoy also claimed to be unaware of whether any “plant managers across the country in the USPS requested mail sorting machines be reconnected.”⁷⁵

114. USPS later confirmed that seven “request[s] of local managers” to reconnect disconnected machines had “received final approval from the Chief Logistics Operations Officer and Executive Vice President,” David E. Williams, and USPS also received “additional requests it ha[d] not yet acted upon” as of September 6, 2020.⁷⁶

115. DeJoy testified that USPS has a “management team that is responsible for making decisions as to what machines are used and not used.” When asked, “Yes or no, will you let them decide that locally?” DeJoy responded, “No.”⁷⁷

116. On September 6, 2020, USPS asserted that “the machine removal process takes place at the local level” and that “Defendants do not collect, at the Headquarters level, information on the specific date that specific machines were moved, or the specific status of any individual machine.”⁷⁸

117. DeJoy testified that it would cost less than a billion dollars to restore decommissioned and/or removed mail sorting machines. When pressed to identify the harm that

⁷⁵ House Testimony at 2:45:25, 3:22:33.

⁷⁶ Interrogatory Resps. at 6-7.

⁷⁷ House Testimony at 3:25:04.

⁷⁸ Interrogatory Resps. at 3, 5.

would occur if the machines were restored, DeJoy stated, “[t]o me, it makes none.” When asked why, he responded, “Because they’re not needed, that’s why.”⁷⁹

118. When asked if he “read and independently analyzed” USPS’ plans for various operational changes, including the “unplugging and destroying of machines, changing of employee procedures and locking of collection boxes,” DeJoy attempted to avoid responsibility by claiming “[t]he items you identify were not directed by me.” When asked who had directed the changes, DeJoy stated, “I do not know.” When pressed as to whether he “analyze[d] these plans before they went into effect,” DeJoy deflected again, claiming, “the plans were in effect and being implemented before I arrived.” When asked if he would “commit to reversing these changes,” DeJoy responded, “No.”⁸⁰

119. USPS later confirmed that “Postal Service Headquarters has no plans to reinstall collection boxes that were removed after June 16, 2020.”⁸¹

120. When asked to “provide [the House] [C]ommittee with a complete list of the people you did consult with about the changes, people inside the Postal Service, at other agencies, and any outside parties in the government or in the private sector,” DeJoy declined to do so. He then testified that he had discussed the changes with “all the vice presidents and the COO of the existing management team . . . , and the VPs around the area” and “had an OIG audit that was delivered to me, that you have access to. It’ll show you the damage that was being done to the organization by not running truck trips on time.”⁸² DeJoy further testified that he “asked

⁷⁹ House Testimony at 2:55:11, 2:56:43.

⁸⁰ *Id.* at 5:15:10.

⁸¹ Interrogatory Resps. at 9.

⁸² House Testimony at 5:38:04.

the management team probably, 10 vice presidents, to put together a plan to run trucks on time. About three weeks later, they came, they said, ‘We’re ready to go,’ and [USPS] went.”⁸³

121. DeJoy’s mention of “an OIG audit” appears to be a reference to a June 16, 2020 OIG Audit Report entitled “U.S. Postal Service’s Processing Network Optimization and Service Impacts” which found, among other things, that “[i]n FY 2019, the Postal Service spent \$1.1 billion in mail processing overtime and penalty overtime, \$280 million in late and extra transportation, and \$2.9 billion in delivery overtime and penalty overtime costs.” Although the OIG recommended that USPS undertake certain specific changes to “increase operational efficiency and management oversight nationwide,” OIG did not recommend that USPS change its overall transportation schedule.⁸⁴

122. DeJoy testified that “[t]here was no directive to reduce overtime” but admitted that he did not know whether USPS managers were doing so.⁸⁵

123. In his testimony, DeJoy confirmed that, “at [DeJoy’s] direction, the Postal Service is currently under a management hiring freeze” and is “seeking to push early retirement.”⁸⁶

124. When House Committee member Gerald Connolly (“Connolly”) asked DeJoy whether his “statement before the Senate . . . you’ve had no contact with the Trump campaign,” the following exchange occurred:

DEJOY: I’ve had no contact with the Trump campaign. I have not, I mean, I have spoken to the President. I have spoken to Steve Mnuchin. I have spoken to

⁸³ House Testimony at 5:38:04.

⁸⁴ OIG USPS, U.S. Postal Service’s Processing Network Optimization and Service Impacts 8, 15, 18 (June 16, 2020), *available at* <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/19XG013NO000-R20.pdf>.

⁸⁵ House Testimony at 5:23:09.

⁸⁶ *Id.* at 4:57:01.

other people. But I have not, I've had no contact. I've not spoken to anyone about the Postal Service.

CONNOLLY: Did you not tell the Board of Governors, this month in August, that in fact you had had contact with the Trump campaign, to ask them to stop their attacks on the Postal Service and voting by mail?

DEJOY: I have put word around to different people that please—that this is not helpful to—

CONNOLLY: So, you did have contact with the Trump campaign? For a good purpose?

DEJOY: I'm trying to think of where—if the Trump—when you say the Trump campaign, I've not spoken to Trump campaign, uh, leadership in that regard. I've spoken to people that are friends of mine that are associated with the campaign, yes.⁸⁷

125. DeJoy also confirmed that since 2016, he has donated \$3.2 million to Republican campaigns and committees, that he contributed \$1.2 million to the Trump Victory Fund, that he donated \$650,000 to various Republican committees from January through April 2020, and that he was the Chairman of the Republican National Convention Fundraising Committee from November 2019 to June 12, 2020. DeJoy summarized, “Let this go for the record, I give a lot of money to Republicans.”⁸⁸

126. When asked by the House Committee about the conversation with Mnuchin mentioned in his testimony before the Senate Committee, DeJoy testified that his discussion with Mnuchin was “in generalities where that I think that we have some opportunities here, looking to try and grow revenue, improve service, and get some costs out.”⁸⁹

⁸⁷ *Id.* at 1:55:10.

⁸⁸ *Id.* at 3:44:39.

⁸⁹ *Id.* at 5:24:44.

127. The current Chairman of the USPS Board of Governors, Robert M. Duncan (“Duncan”) also testified before the House Committee, and stated that although an outside research firm, Russell Reynolds Associates (“Russell Reynolds”) was contracted to find the “best person for the job of Postmaster General,” DeJoy was not among the 53 finalists identified by Russell Reynolds.⁹⁰

128. While Duncan was not asked about it during his testimony, the *New York Times* has reported that Duncan suggested DeJoy as a potential candidate for postmaster general a few weeks after a February 6, 2020 meeting with Mnuchin, who had made clear prior to the meeting that he wanted the postmaster general to be someone willing to push through the cost-cutting measures and price increases that Trump had called for and that a 2019 USPS OIG report recommended.⁹¹

129. On August 26, 2020, Connolly wrote a letter to DeJoy regarding his testimony about his communications with the Trump campaign (the “August 26 Letter”). Connolly noted that DeJoy “did not disclose to the Senate – or initially even to [the House] Committee – that you in fact did communicate with the Trump campaign” and that “[t]his omission, combined with your efforts to conceal other documents [the House] Committee has requested, raises grave concerns about the veracity of your testimony.”⁹²

⁹⁰ *Id.* at 2:04:39.

⁹¹ Kenneth P. Vogel et al., *Mnuchin Paved Way for Postal Service Shake-Up*, N.Y. TIMES (Aug. 22, 2020), <https://www.nytimes.com/2020/08/22/business/economy/dejoy-postmaster-general-trump-mnuchin.html>; *see also* Letter from Robert M. Duncan, Chairman, USPS Board of Governors, to Steven T. Mnuchin, Secretary of the Treasury (Mar. 31, 2020), *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2020/08/19160346/COVID-19-VIP-Duncan-USPS-Board-Chairman-on.pdf>.

⁹² Letter from Gerald E. Connolly, Chairman, U.S. House of Representatives Subcommittee on Gov’t Operations, to DeJoy 2 (Sept. 8, 2020), *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-09-06.GEC%20to%20DeJoy-USPS%20re%20Campaign%20Contacts%20FINAL.pdf>.

130. In light of his concerns, Connolly requested that DeJoy provide certain “documents and information by September 2, 2020” including, among other things, a “list of all individuals you have communicated with in person, over the telephone, or through emails, texts, and all other forms of communications since June 15, 2020, whether through official or personal technology platforms, who were associated in any way with the Trump campaign” and “[t]he dates on which these communications occurred and a detailed description of the content of each conversation.”

131. On August 28, 2020 – two days after the August 26 deadline Maloney set for DeJoy to produce documents – DeJoy sent a letter to Maloney stating, in part, “I trust my August 24 testimony before the Committee on Oversight and Reform clarified any outstanding questions you had regarding operational changes that I have implemented since assuming the position of Postmaster General and the Postal Service’s plan to successfully deliver election mail during the 2020 elections.”⁹³

132. On August 31, 2020, DeJoy sent a letter to Maloney, Ron Johnson, Chairman of the Senate Committee, James Comer, and Gary Peters, the Ranking Members of the House and Senate Committees, respectively, enclosing the August 31 Briefing. In the letter, DeJoy stated that he could not “provide performance data for Election Mail,” because “this data cannot be provided in a representatively accurate fashion as a subset of First-Class or Marketing Mail.”⁹⁴

⁹³ Letter from Louis DeJoy, Postmaster Gen., USPS, to Hon. Carolyn B. Maloney, Chairwoman, U.S. House of Representatives on Oversight & Reform (August 28, 2020), *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/USPS%20to%20COR%2008-28-20.pdf>.

⁹⁴ Letter from DeJoy to Hon. Ron Johnson, Chairman, Senate Committee, et al. (Aug. 31, 2020), *available at* <https://about.usps.com/newsroom/global/pdf/0831-honorable-carolyn-maloney-congressional-briefing-trans-serv-perf-updates.pdf>.

133. The same day, Maloney wrote a memo to “provide Committee Members of my intent to issue a subpoena to Postmaster General Louis DeJoy for documents related to nationwide delays caused by changes to postal operations, policies, and practices, as well as other matters.” After describing her prior communications with DeJoy and relevant portions of his testimony, Maloney concluded:

Despite urgent requests from Members of the House and Senate for Mr. DeJoy to produce documents regarding the nature, scope, and effects of his sweeping changes, as well as other matters, it is clear that a subpoena has become necessary to further the Committee’s investigation and help inform potential legislative actions.⁹⁵

134. On September 2, 2020, the House Committee issued a subpoena to DeJoy.⁹⁶

135. The document requests attached to the subpoena sought, among other things:

All documents and communications, including but not limited to memoranda, reports, emails, texts, analyses, estimates, proposals, or assessments, conducted by Postal Service staff or external individuals, drafted, sent, or received after June 15, 2020, referring or relating to proposed or actual changes to operations, policies, practices, or standards, or to adherence to existing operations, policies, practices, or standards, including but not limited to [several listed items].

The items listed included, among others, (1) “the number of trips to deliver the mail”; (2) “the use of overtime”; (3) “the number of sorting or processing machines”; (4) “the number of collection boxes”; and (5) “potential impacts on the timely delivery of election mail.”⁹⁷

136. The deadline to respond to the subpoena is noon on September 16, 2020.⁹⁸

⁹⁵ Memorandum from Carolyn B. Maloney, Chairwoman, House Committee, to Members of the House Committee at 1, 5-6 (Aug. 31, 2020), *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Subpoena%20Memo%20for%20Postal%20Service.pdf>.

⁹⁶ Oversight Committee (@OversightDems), TWITTER (Sept. 2, 2020; 2:18 PM), <https://twitter.com/OversightDems/status/1301223109702422534> (Tweet with copy of subpoena) [hereinafter “Subpoena Tweet”].

⁹⁷ Schedule to Subpoena, *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Subpoena%20Schedule%20for%20Postal%20Service.pdf>.

⁹⁸ Subpoena Tweet.

137. On the same day that the subpoena was issued, DeJoy wrote a letter responding to Connolly's August 26 Letter which stated, among other things, that DeJoy did "not consider the communications I had with certain personal friends of mine regarding the President's statements about the Postal Service to be with the 'Trump campaign.'" DeJoy further explained that he had "many personal friends who . . . are associated in some way with Republican political organizations, including potentially the Trump campaign," that "[o]n a number of occasions [he] relayed to these individuals . . . [DeJoy's] view that the President's statements regarding the Postal Service and Election Mail were incorrect, and not helpful to the Postal Service" and that he had "noted to the [USPS Board of] Governors during conversations at one of our meetings that I had conveyed this message to my friends."⁹⁹

138. On September 8, 2020, Connolly wrote a letter further responding to DeJoy, which reminded DeJoy of his obligation to comply with the House Committee's subpoena and, among other things, warned DeJoy that he "may not withhold information from Congress about official Postal Service matters by cloaking them in the guise of personal relationships" and noting that "[r]ecent reports have raised additional serious concerns about [DeJoy's] participation in political fundraising."¹⁰⁰

Trump's Comments Show The True Motivation Behind Defendants' Scheme

⁹⁹ Letter from DeJoy to Hon. Gerald E. Connolly, Chairman, House Subcommittee on Gov't Operations (Sept. 2, 2020), *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020%2009%2002%20DeJoy%20to%20Connolly%20re%20Response%20to%20August%2026%20letter.pdf>

¹⁰⁰ Letter from Gerald E. Connolly, Chairman, House Subcommittee on Gov't Operations, to DeJoy (Sept. 8, 2020), *available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-09-06.GEC%20to%20DeJoy-USPS%20re%20Campaign%20Contacts%20FINAL.pdf>

139. Although he has not provided testimony, Trump has made numerous public comments that make clear the cost-cutting and efficiency explanations are pretextual, and that Defendants' true intent in orchestrating these changes is to hamper Americans' ability to vote by mail in the 2020 presidential election.

140. Trump has repeatedly suggested that voting by mail is rife with fraud.

141. On June 22, 2020, Trump tweeted, "This will be the Election disaster of our time. Mail-In Ballots will lead to a RIGGED ELECTION!"¹⁰¹

142. On July 30, 2020, Trump tweeted, "With Universal Mail-In Voting (not Absentee Voting, which is good), 2020 will be the most INACCURATE & FRAUDULENT Election in history. It will be a great embarrassment to the USA. Delay the Election until people can properly, securely and safely vote???"¹⁰²

143. On August 13, 2020, Trump tweeted, "Nevada has ZERO infrastructure for Mail-In Voting. It will be a corrupt disaster if not ended by the Courts. It will take months, or years, to figure out."¹⁰³

144. On August 23, 2020 Trump tweeted, "So now the Democrats are using Mail Drop Boxes, which are a voter security disaster. Among other things, they make it possible for a person to vote multiple times. Also, who controls them, are they placed in Republican or Democrat areas? They are not Covid sanitized. A big fraud!"¹⁰⁴

¹⁰¹ Donald J. Trump (@realDonaldTrump), TWITTER (June 22, 2020; 7:10 AM), <https://twitter.com/realDonaldTrump/status/1275023295755190272>.

¹⁰² Donald J. Trump (@realDonaldTrump), TWITTER (July 30, 2020; 8:46 AM), <https://twitter.com/realDonaldTrump/status/1288818160389558273>.

¹⁰³ Cox, *supra* note 2.

¹⁰⁴ Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 23, 2020; 7:25 AM), <https://twitter.com/realDonaldTrump/status/1297495295266357248>.

145. Twitter posted a warning on the tweet, which reads: “This Tweet violated the Twitter Rules about civic and election integrity. However, Twitter has determined that it may be in the public’s interest for the Tweet to remain accessible.”

146. On September 2, 2020, in an interview with Jon Evans of WECT News (the “WECT Interview”), when Jon Evans stated, “600,000 people could vote by absentee,” Trump responded, “Yeah. I don’t like that. Well, they’ll go out and they’ll vote and they’re going to have to go and check their vote by going to the poll [sic] and voting that way, because . . . if it tabulates then they won’t be able to do that. So, let them send it in and let them go vote, and if their system’s as good as they say it is, then obviously they won’t be able to vote. If it isn’t tabulated, they’ll be able to vote, so that’s the way it is, and that’s what they should do.”¹⁰⁵

147. On September 3, 2020, Trump sent out a series of three tweets suggesting that voters both vote by mail and in person. The first tweet stated:

Based on the massive number of Unsolicited & Solicited Ballots that will be sent to potential Voters for the upcoming 2020 Election, & in order for you to MAKE SURE YOUR VOTE COUNTS & IS COUNTED, SIGN & MAIL IN your Ballot as EARLY as possible. On Election Day, or Early Voting,..¹⁰⁶

148. His second tweet continued:

....go to your Polling Place to see whether or not your Mail In Vote has been Tabulated (Counted). If it has you will not be able to Vote & the Mail In System worked properly. If it has not been Counted, VOTE (which is a citizen’s right to do). If your Mail In Ballot arrives....¹⁰⁷

¹⁰⁵ Ashlea Kosikowski et al., *President Suggests Voters Should Attempt to Cast Ballot Twice in Interview with WCET’s John Evans*, WCET NEWS 6, at 1:44 (Sept. 2, 2020; 3:42 PM), <https://www.wect.com/2020/09/02/wects-jon-evans-interview-with-president-trump-he-arrives-ilm>.

¹⁰⁶ Donald J. Trump (@realDonaldTrump), TWITTER (Sept. 3, 2020; 10:32 AM), <https://twitter.com/realDonaldTrump/status/1301528521026744322>.

¹⁰⁷ Donald J. Trump (@realDonaldTrump), TWITTER (Sept. 3, 2020; 10:32 AM), <https://twitter.com/realDonaldTrump/status/1301528521752354816>.

149. His third tweet concluded:

....after you Vote, which it should not, that Ballot will not be used or counted in that your vote has already been cast & tabulated. YOU ARE NOW ASSURED THAT YOUR PRECIOUS VOTE HAS BEEN COUNTED, it hasn't been "lost, thrown out, or in any way destroyed". GOD BLESS AMERICA!!!¹⁰⁸

150. Twitter posted a warning all three tweets identical to the one placed on the August 23, 2020 tweet.

151. The fact that Twitter posted such warnings is unsurprising, because there is no credible study nor any empirical evidence supporting Trump's self-serving claims. To the contrary, studies have found that, although there has been a significant increase in voting by mail in recent years, the incidence of all forms of voter fraud – including fraud associated with mail-in voting – is extremely rare.

152. According to the United States Election Assistance Commission, the percentage of people who voted by mail or absentee ballot increased from 12.1% in 2004 to 23.6% in 2016.¹⁰⁹

153. According to the Brennan Center for Justice, "Since 2000 more than 250 million votes have been cast via mailed-out ballots, in all 50 states, according to the Vote at Home Institute. In 2018, more than 31 million Americans cast their ballots by mail, about 25.8 percent of election participants."

154. Despite this dramatic increase in mail-in voting over time, fraud rates remain infinitesimally small, which Trump has escalated by his false statements into a tsunami of voter

¹⁰⁸ Donald J. Trump (@realDonaldTrump), TWITTER (Sept. 3, 2020; 10:32 AM), <https://twitter.com/realDonaldTrump/status/1301528522582786049>.

¹⁰⁹ *EAVS Deep Dive: Early, Absentee, and Mail Voting*, U.S. ELECTION ASSISTANCE COMM'N (Oct. 17, 2017), <https://www.eac.gov/documents/2017/10/17/eavs-deep-dive-early-absentee-and-mail-voting-data-statutory-overview>.

fraud. As the *New York Times* editorial board has explained, “states that use vote-by-mail have encountered essentially zero fraud: Oregon, the pioneer in this area, has sent out more than 100 million mail-in ballots since 2000, and has documented only about a dozen cases of proven fraud.”¹¹⁰ Statistically, that’s 0.00001 percent of all votes cast.

155. An exhaustive study of known voting fraud cases by national investigative reporting project News21 identified only 491 cases of absentee ballot fraud since 2000 – a number that the authors of the study described as “infinitesimal.”¹¹¹

156. A commission created by Trump to study voting fraud in the 2016 election was disbanded after finding no substantiated evidence of voting fraud. One of the panel’s members, Matthew Dunlap, stated in an interview with National Public Radio that “even though the idea was to investigate voter fraud, it is pretty clear that the purpose of the commission was to actually affirm and validate the president's claims whether or not we had any evidence of any such voter misconduct.”¹¹²

157. On August 3, 2020, during a press briefing at the White House, Trump claimed to have the authority to issue an executive order relating to mail-in voting in the 2020 election. Although Article I, Section 4 of the United States Constitution gives states the authority to

¹¹⁰ Wendy R. Weiser & Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud> (quoting N.Y. Times Editorial Bd., *The 2020 Election Won’t Look Like Any We’ve Seen Before*, N.Y. TIMES (Mar. 21, 2020), <https://www.nytimes.com/2020/03/21/opinion/sunday/coronavirus-vote-mail.html>).

¹¹¹ Natasha Khan & Corbin Carson, *Comprehensive Database of U.S. Voter Fraud Uncovers No Evidence That Photo ID Is Needed*, NEWS21 (Aug. 12, 2012), <https://votingrights.news21.com/article/election-fraud>.

¹¹² All Things Considered, *Member Of Disbanded Trump Voter Fraud Commission Speaks Out*, NPR (Aug. 4, 2018; 5:33 pm), <https://www.npr.org/2018/08/04/635668304/member-of-disbanded-trump-voter-fraud-commission-speaks-out>.

regulate the time, place and manner of elections, Trump stated, “I have the right to do it. We haven’t got [sic] there yet, but we’ll see what happens.”¹¹³

158. Other Trump administration officials have also adopted Trump’s false narrative. On June 25, 2020, in an interview with National Public Radio, despite admitting he had no evidence to back his claims, Attorney General William Barr (“Barr”) has claimed that he believed an election conducted by predominantly by mail would not be secure, laying the groundwork for future legal challenges if the results do not favor Trump.¹¹⁴

159. On September 2, 2020, in an interview on CNN discussing Trump’s comments in the WCET Interview, Wolf Blitzer (“Blitzer”) told Attorney General William Barr (“Barr”), “If somebody mailed in a ballot, and then actually showed up, in person, that would be illegal.” Barr responded, “I don’t know what the law in the particular state says.” When Blitzer asked, “Is there any state that says you can vote twice?” Barr responded, “Well, if there’s some, you know, maybe you can change your vote up to a particular time, I don’t know what the law is.”¹¹⁵

160. Later in the interview, when Blitzer stated, “There are several states that only have mail-in voting, including—” Barr interrupted, “Wolf, this is playing with fire. This is playing with fire. We’re a very closely divided country here. And if people have to have confidence in the results of the election and the legitimacy of the government, and people [are] trying to change the rules to this, to this methodology, which – as a matter of logic – is very open to fraud and coercion is reckless and people are playing with fire.”¹¹⁶

¹¹³ Caitlin Oprysko, *Trump claims right to issue executive order on vote-by-mail*, POLITICO, <https://www.politico.com/news/2020/08/03/trump-mail-in-voting-order-391066>.

¹¹⁴ Kelly, *supra* note 6.

¹¹⁵ Katelyn Polantz & Caroline Kelly, *Barr Says Voting by Mail is ‘Playing with Fire,’* CNN, at 1:06 (Sept. 2, 2020; 7:52 PM)

¹¹⁶ *Id.* at 3:40.

161. Unsurprisingly, Trump has made other comments that plainly demonstrate that his professed concerns about voter fraud are pretextual and that, in fact, he is opposed to voting by mail because he believes it favors Democrats and is therefore contrary to his interest as a Republican presidential candidate.

162. On March 30, 2020, in an appearance on “Fox & Friends,” Trump stated that he opposed Democratic proposals for coronavirus relief that included increased funding for absentee voting and voting by mail “[t]hey had things – levels of voting that, if you ever agreed to it, you’d never have a Republican elected in this country again.”¹¹⁷

163. On April 8, 2020, Trump tweeted, “Republicans should fight very hard when it comes to statewide mail-in voting. Democrats are clamoring for it. Tremendous potential for voter fraud, and for whatever reason, doesn’t work out well for Republicans.”¹¹⁸ Adding to the irony and ignorance of what he said, that statement is factually incorrect. Republicans have traditionally come out ahead in mail-in voting.

164. More recently, Trump made clear that his opposition to proposed increases in funding for the USPS are fueled by his desire to limit mail-in voting, which he hopes will improve his chances of reelection.

165. At a news conference on August 12, 2020, Trump stated, “So they want \$25 billion for the Post Office. They want . . . \$3.5 billion for universal mail-in [voting] . . . [T]hey don’t have the money to do the universal mail-in voting. So therefore, they can’t do it, I guess.” Trump went on to explain that if universal mail-in voting does occur, “[i]t’ll be the greatest

¹¹⁷ Blake, *supra* note 3.

¹¹⁸ Donald J. Trump (@realDonaldTrump), TWITTER (Apr. 8, 2020), <https://twitter.com/realDonaldTrump/status/1247861952736526336>.

rigged election in history. It'll be the greatest fraud ever perpetrated, other than perhaps what they did to my [2016] campaign, where they spied on my campaign – President Obama, Biden, and everybody else.”¹¹⁹

166. On August 13, 2020, in an appearance on the Fox Business Network, Trump similarly explained:

[T]hey want \$3.5 billion for the mail-in votes, OK. Universal mail-in ballots. They want \$25 billion for the post office. Now they need that money in order to have the post office work, so it can take all of these millions and millions of ballots. Now in the meantime they aren't getting there. By the way, those are just two items, 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.¹²⁰

167. Although Trump recently dropped his opposition to a \$10 billion Treasury Department loan to USPS authorized by Congress in the CARES Act, he had previously referred to USPS as a “joke” and threatened to withhold the authorized funding unless USPS quadrupled package delivery prices.¹²¹ He only recently dropped his opposition to the loan when USPS agreed to provide the Treasury Department with copies of ten of its largest contracts with high-volume third-party shippers, including FedEx, UPS, and Amazon, led by longtime Trump adversary Jeff Bezos.¹²²

¹¹⁹ Jacob Bogage, *Trump says Postal Service needs money for mail-in voting, but he'll keep blocking funding*, WASH. POST (Aug. 12, 2020; 8:43 PM), <https://www.washingtonpost.com/business/2020/08/12/postal-service-ballots-dejoy/>.

¹²⁰ *Trump: Coronavirus stimulus negotiations sticking point is mail-in voting*, FOX BUSINESS (Aug. 13, 2020), https://video.foxbusiness.com/v/6180774889001/?playlist_id=3166411554001#sp=show-clips.

¹²¹ Lisa Rein & Jacob Bogage, *Trump says he will block coronavirus aid for U.S. Postal Service if it doesn't hike prices immediately*, WASH. POST (Apr. 24, 2020; 7:22 PM), <https://www.washingtonpost.com/us-policy/2020/04/24/trump-postal-service-loan-treasury/>.

¹²² Jacob Bogage, *Treasury agrees to lend Postal Service \$10 billion in trade for rivals' shipping contracts*, WASH. POST (July 29, 2020; 12:36 PM), <https://www.washingtonpost.com/business/2020/07/29/postal-service-treasury-loan/>.

168. There is evidence that Trump's opposition to voting has reached its intended audience and had its intended effect. In early May, when asked in a Monmouth University poll if they intended to vote by mail, about half of Americans indicated that they would do so. About 4 in 10 Democrats stated that they were very likely vote by mail, compared with about half as many Republicans. This month, Monmouth released the results of a new poll that showed while the overall percentage of Americans who intended to vote by mail was the roughly the same, the percentage of Republicans fell to 22%.¹²³

Defendants' Scheme Has Impaired Americans' Voting Rights

169. In states that have recently held presidential primaries, it is clear that these changes are having exactly the effect that Defendants intended.

170. Richardson's, Carroll's, Arfi's and Zygas' inability to vote is not unique. Tens of thousands of voters who requested absentee ballots in presidential primaries did not receive them in time to vote – and, in some cases, did not receive them at all.¹²⁴

171. In California, 70,330 ballots were not mailed in time to be counted.¹²⁵

172. In Florida, more than 18,500 ballots were not counted because they arrived by mail after the deadline.¹²⁶

¹²³ Philip Bump, *Only 1 in 5 Republicans say they're likely to vote by mail*, WASH. POST (Aug. 11, 2020; 4:18 PM), <https://www.washingtonpost.com/politics/2020/08/11/only-1-in-5-republicans-say-theyre-likely-vote-by-mail>.

¹²⁴ Marshall Cohen & Kelly Mena, *States failed to get absentee ballots to thousands of voters in recent primary elections, signaling problems for November*, CNN (June 22, 2020; 1:28 PM), <https://www.cnn.com/2020/06/20/politics/absentee-voting-election-problems/index.html>.

¹²⁵ Jane C. Timm, *States reject tens of thousands of mail ballots in this year's primaries, setting off alarm bells for November*, NBC NEWS (July 18, 2020; 4:30 AM), <https://www.nbcnews.com/politics/2020-election/states-reject-tens-thousands-mail-ballots-year-s-primaries-setting-n1233833>.

¹²⁶ Elise Viebeck & Michelle Ye Hee Lee, (July 16, 2020; 10:26 AM), *Tens of thousands of mail ballots have been tossed out in this year's primaries. What will happen in November?*, WASH. POST, https://www.washingtonpost.com/politics/tens-of-thousands-of-mail-ballots-have-been-tossed-out-in-this-years-primaries-what-will-happen-in-november/2020/07/16/fa5d7e96-c527-11ea-b037-f9711f89ee46_story.html.

173. In Maryland, 160,000 absentee ballots – roughly 5% of those sent out, were not delivered.¹²⁷

174. In New York, many voters did not receive their election until the day before the primary, making it all but impossible for the ballots to be returned in time to be counted.¹²⁸ More than one in five mail-in ballots was rejected because they were not received on time or had other minor errors.¹²⁹

175. In Wisconsin, 14,000 absentee voters did not receive their ballots.¹³⁰ Nearly 700 voters in the cities of Milwaukee and Wauwatosa did not receive ballots they requested in late June for the Aug. 11 primary.¹³¹ Among the 13 postal districts serving key presidential battleground states, four failed to meet any on-time service goals handling first-class mail between April 1 and June 30, and six districts achieved only one.¹³² The laggards are in five battleground states — Pennsylvania, Michigan, Florida, Wisconsin and North Carolina — that may determine the presidential election.¹³³ Indeed, three of the postal districts with the worst

¹²⁷ Cohen & Mena, *supra* note 124.

¹²⁸ Jesse McKinley, *Why the Botched N.Y.C. Primary Has Become the November Nightmare*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/03/nyregion/nyc-mail-ballots-voting.html>.

¹²⁹ Jane C. Timm, *1 in 5 mail ballots rejected in botched NYC primary*, NBC NEWS (Aug. 7, 2020; 1:57 PM), <https://www.nbcnews.com/politics/elections/one-five-mail-ballots-rejected-botched-nyc-primary-n1236143>.

¹³⁰ Cohen & Mena, *supra* note 124.

¹³¹ Pam Fessler & Elena Moore, *Signed, Sealed, Undelivered: Thousands Of Mail-In Ballots Rejected For Tardiness*, NPR (July 13, 2020; 5:00 AM), <https://www.npr.org/2020/07/13/889751095/signed-sealed-undelivered-thousands-of-mail-in-ballots-rejected-for-tardiness>.

¹³² Tom Scheck et al., *Postal Delays, Errors in Swing States Loom Over Election*, NPR (Aug. 16, 2020), <https://www.npr.org/2020/08/16/902604303/postal-delays-errors-in-swing-states-loom-over-election?ft=nprml&f>.

¹³³ *Id.*

records represent the largest metropolitan areas in their respective states — Philadelphia (home to Plaintiff Carroll), Detroit and Milwaukee.¹³⁴

176. These delays are expected to continue into November and the general election. "I believe it is highly likely that in the November General Election, the absentee ballots of at least tens of thousands of voters will arrive at election offices after Election Day and will not be counted unless the Ballot Receipt Deadline is extended," wrote Ronald Stroman, the deputy postmaster general from 2011 until June 1, as noted above, in a recent court filing challenging the Wisconsin deadline for ballot submission."¹³⁵

177. In Virginia, more than 5% of ballots were not counted because they arrived too late, and 1% of ballots in Nevada and Pennsylvania were rejected for the same reason.¹³⁶

178. With even more voters expected to participate in mail-in voting during the presidential election, absent court intervention, these problems will undoubtedly increase.

179. In a letter dated May 29, 2020, USPS General Counsel and Executive Vice President Thomas Marshall acknowledged that "[d]ue to the impacts of the COVID-19 pandemic, the Postal Service anticipates that many voters will choose to use the mail to participate in upcoming elections, including the 2020 General Election in November," and warned that "if a state law requires completed ballots to be received by election officials by a specified date (such as Election Day) in order to be counted, voters should be aware of the possibility that completed ballots mailed less than a week before that date may not, in fact, arrive

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Fessler & Moore, *supra* note 131.

by the state's deadline." Marshall also emphasized that "*the Postal Service cannot guarantee a specific delivery date or alter standards to comport with individual state election laws.*"¹³⁷

180. A recent analysis by the *New York Times* found that 76% of American voters will be eligible to vote by mail in the 2020 presidential election, and that if current trends hold and turnout increases as predicted, roughly 80 million people will vote by mail this fall, more than double the number who did so in 2016.¹³⁸

181. It is clear that USPS has failed to take adequate steps to prepare for this anticipated surge in mail-in and absentee voting. In July 2020, USPS sent a second round of letters to 46 states and the District of Columbia warning that it cannot guarantee that all ballots cast by mail for the 2020 presidential election will arrive in time to be counted.¹³⁹

FIRST CAUSE OF ACTION
(Violation of the Right to Vote Guaranteed Under the Fourteenth Amendment to the United States Constitution)

182. Paragraphs 1 – 180 above are repeated and re-alleged as if set forth in full.

183. The right to vote is a fundamental right secured by the Constitution and laws of the United States, including but not limited to the Fourteenth, Fifteenth and Nineteenth Amendments.

184. Defendants are persons acting as officials of the United States government and under color of laws of the States and Territories thereof, including but not limited to the District of Columbia.

¹³⁷ Letter from Thomas J. Marshall, Gen. Counsel & Exec. Vice. Pres., USPS (May 29, 2020), *available at* <https://about.usps.com/newsroom/national-releases/2020/2020-05-29-marshall-to-election-officials-re-election-mail.pdf>.

¹³⁸ Juliette Lowe et al., *A Record 76% of Americans Can Vote by Mail in 2020*, N.Y. TIMES (Aug. 14, 2020), <https://www.nytimes.com/interactive/2020/08/11/us/politics/vote-by-mail-us-states.html>.

¹³⁹ See Cox, *supra* note 2.

185. By virtue of the conduct described above, Defendants, individually and collectively, have taken actions that were intended to and did deprive Plaintiff and thousands of other Americans of their fundamental right to vote.

186. Defendants have also violated the Equal Protection Clause of the Fourteenth Amendment by intentionally treating Plaintiffs – and other Americans who vote by mail – differently from Americans so vote in person, without any rational basis for doing so.

187. As a direct and proximate result of Defendants’ conduct, Plaintiffs. have suffered and will continue to suffer harm that is irreparable and have no adequate remedy at law, including but not limited to the loss of the right to vote in the state primaries and the 2020 presidential election.

188. The equities weigh heavily in Plaintiffs’ favor because Defendants will suffer no direct harm if Plaintiffs are given the opportunity to vote – indeed, Plaintiffs and other Americans may vote by mail in Trump’s favor. By contrast, Plaintiffs will suffer incalculable harm if not permitted to vote by mail, because they will face a Hobson’s choice of putting their health at risk by voting in person in the midst of the COVID-19 pandemic or forsaking a once-in-a-lifetime opportunity to vote in the 2020 presidential election.

SECOND CAUSE OF ACTION

(Civil Conspiracy to Violate Plaintiffs Constitutionally Protected Right to Vote)

189. Paragraphs 1 – 180 above are repeated and re-alleged as if set forth in full.

190. Trump and DeJoy, using USPS, have acted in concert to impede the distribution of absentee and mail-in ballots, discourage mail-in voting and sow distrust in the results of the 2020 general election, in violation of American citizens’ constitutionally protected right to vote.

191. That conduct is inextricably linked with Trump’s false statements, inter alia, about mail in voter fraud and “rigged elections” and amount to a campaign of intimidation

designed to discourage Plaintiffs and other American from exercising their constitutional right to vote in state primary and runoff elections and the 2020 presidential election.

192. As a direct and proximate result of this conspiracy, Plaintiffs have suffered and will continue to suffer harm that is irreparable and for which there is no adequate remedy at law, including but not limited to the loss of the opportunity to vote by mail in state primaries and the 2020 presidential election.

THIRD CAUSE OF ACTION¹⁴⁰
(Ultra Vires Agency Action)

193. Paragraphs 1 – 180 above are repeated and re-alleged as if set forth in full.

194. Plaintiffs have a right to review of official actions by DeJoy and USPS that are ultra vires and beyond USPS's and DeJoy's constitutional and statutory authority.

195. Under the Postal Reorganization Act of 1970 ("PRA"), USPS 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" and must "provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities." 39 U.S.C. § 101(a). In addition, "[i]n determining all policies for postal services," USPS must "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).

¹⁴⁰ Plaintiffs' amended Third Cause of Action ("Ultra Vires Agency Action") is the same cause of action asserted in complaints in two other cases involving common issues of fact filed in this Court, *see* Compl. for Injunctive & Declaratory Relief ¶¶ 189-99, *New York v. Trump*, No. 20-cv-02340 (EGS) (D.D.C. Aug. 25, 2020), ECF No. 1; Compl. for Injunctive & Declaratory Relief ¶¶ 159-172, *Vote Forward v. DeJoy*, No. 20-cv-02405 (EGS) (D.D.C. Aug. 28, 2020), ECF No. 1, and another case filed in the Eastern District of Washington. *Washington v. Trump*, No. 20-cv-03127 (SAB) (E.D. Wash. Aug. 18, 2020), ECF No. 1. It is substantially similar to the causes of action asserted in other cases filed around the country, including one in this Court. *See* Compl. for Injunctive and Declaratory Relief ¶¶ 74-81, *NAACP v. USPS*, No. 20-cv-02295 (EGS) (D.D.C. Aug. 20, 2020) Compl. ¶¶ 105-12, *Nat'l Urban League v. DeJoy*, No. 20-cv-02391 (GLR) (D. Md. Aug. 18, 2020), ECF No. 1; Compl. for Declaratory Judgment, Mandamus, and Injunctive Relief ¶¶ 316-20.; Compl. for Declaratory & Injunctive Relief ¶¶ 228-36, *Pennsylvania v. DeJoy*, No. 20-cv-04096 (GAM) (E.D. Pa. Aug. 21, 2020), ECF No. 1.

196. The PRA also provides that, to fulfill these duties and responsibilities, USPS must “plan, develop, promote, and provide adequate and efficient postal services.” 39 U.S.C. § 403(a).

197. The PRA further provides that “[i]t shall be the responsibility of [USPS]” to “maintain an efficient system of collection, sorting, and delivery of the mail nationwide, . . . provide types of mail service to meet the needs of different mail users” and “establish and maintain postal facilities of such character and in such locations that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.” 39 U.S.C. § 403(b).

198. The PRA enumerates both general, *see* 39 U.S.C. § 401, and specific powers that USPS may employ to fulfill its statutory responsibilities. *See* 39 U.S.C. § 404.

199. In addition to describing USPS’ powers and duties, the PRA provides:

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 [(‘PRC’)] requesting an advisory opinion on the change.

39 U.S.C. § 3661(b).

200. The PRA further provides that prior to issuing an opinion, the PRC must provide an “opportunity for hearing on the record . . . 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.” 39 U.S.C. § 3661(c).

201. Defendants, individually and/or collectively, directed, implemented, and facilitated changes in USPS’s organizational structure, policies, and procedures described in the Original Complaint (the “Changes”), including but not limited to: (1) the changes reflected in

the leaked PowerPoint discussed in paragraphs 48-49, (2) the removal, decommissioning and/or destruction of mail equipment, including the high-speed mail processing and sorting equipment discussed in paragraphs 50-51, 66, 95, 110-117, and 134, (3) the changes reflected in the July 10, 2020 memo, including but not limited to changes to USPS' transportation schedule, discussed in paragraphs 52-53, 92-93, and 101; (4) the Expedited to Street/Afternoon Sortation initiative discussed in paragraphs 54-58, (5) the reorganization memo discussed in paragraph 59, (5) the hiring freeze discussed in paragraphs 60 and 112, and (6) the removal and/or locking of Collection Boxes discussed in paragraphs 61, 65, 117-118, and 134.

202. The Changes implemented by USPS and DeJoy, individually and/or at the direction of or in agreement with Trump, exceeded USPS's and DeJoy's enumerated powers in 39 U.S.C. § 401 and § 404 and were in violation of USPS's and DeJoy's duties and responsibilities under 39 U.S.C. § 101 and § 403.

203. Specifically, in implementing the Changes, USPS and DeJoy have ignored their basic statutory duties of providing postal services that bind the nation together, providing prompt, reliable and efficient services to patrons in all areas and communities, and planning, developing, promoting and providing adequate and efficient postal services.

204. Additionally, in implementing the changes, USPS and DeJoy have abdicated their statutory responsibilities of maintaining an efficient system of collecting, sorting, and delivering the mail nationwide, providing the types of mail service sufficient to meet users' needs – in particular, users who wish to send and receive mail relating to the 2020 state and federal elections – and providing ready access to essential postal services.

205. Further, in implementing the Changes, USPS and DeJoy have flouted 39 U.S.C. § 101(e)'s mandate to give the "highest consideration to the requirement for the most expeditious

collection, transportation and delivery of important letter mail,” including but not limited to mail relating to the 2020 state and federal elections, such as mail-in and absentee voter applications and ballots.

206. Because the Changes, individually and collectively, are changes in the nature of postal services which have affected and, if not enjoined, will continue to affect, service on a nationwide or substantially nationwide basis, USPS was required to submit a proposal to the PRC requesting an advisory opinion on the Changes within a reasonable time prior to their effective date.

207. By failing to submit a proposal to the PRC prior to implementing the Changes, USPS and DeJoy violated 39 U.S.C. § 3661’s statutory mandate.

208. Additionally, by failing to submit a proposal to the PRC, USPS and DeJoy deprived Plaintiffs and other users of the mail and the general public of the opportunity to be heard before the Changes were implemented.

209. Because the Changes are in excess of USPS’s and DeJoy’s statutory authority, unlawful, and ultra vires, the Changes must be declared unlawful and enjoined.

210. If the Changes are not enjoined, Plaintiffs will suffer irreparable injury, including but not limited to the infringement of their constitutional right to vote.

211. Plaintiffs have no adequate remedy at law.

212. The balance of the equities and the public interest weigh decidedly in Plaintiffs’ favor, because the public has a strong interest in protecting the fundamental right to vote, and the Government suffers no harm when its unlawful conduct is enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter an order:

- a. Directing USPS to return postal operations and restore postal service to that in place on January 1, 2020, including, but not limited to:
- b. Directing USPS to replace or restore the removed the high-speed sorting machines and mailboxes that have been taken out of service and put them back into operation;
- c. Directing USPS to restore overtime pay and lift its hiring freeze so that USPS can hire additional employees when and where necessary to ensure the timely processing and delivery of mail-in ballots;
- d. Directing USPS to make all late mail deliveries instead of letting mail be delayed or go undelivered;
- e. Directing USPS to restore seasoned employees to their former positions, including the 23 employees who were reassigned or displaced in the recent USPS reorganization;
- f. Enjoining all Defendants from continuing to engage in conduct that is intended to interfere and/or interferes with Plaintiffs' fundamental right to vote in United States elections, including but not limited to the 2020 presidential election; and
- g. Granting such other and further relief as this Court deems just and proper.

DATED: Washington, D.C.
September 11, 2020

Respectfully submitted,

BERG & ANDROPHY

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