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RE: Service Standards for Market-Dominant Mail Products

The National Association for the Advancement of Colored People (NAACP), Public Citizen, and the NAACP Legal Defense and Educational Fund, Inc. (LDF) submit these comments on the Postal Service's proposed rule to amend 39 CFR part 121 to revise the current service standards for First-Class Mail. The three organizations, which have hundreds of thousands of members and supporters nationwide, urge the Postal Service not to adopt a rule that prolongs the time for delivery of First-Class mail. As discussed below, prompt mail delivery is vital to persons in this country. The Postal Service's proposed rule will delay the delivery of essential communications and packages to persons who depend on those materials, and it jeopardizes the prompt delivery of ballots at a time of increased use of voting by mail. These results would be contrary to the public interest and the Postal Service's mission.

The NAACP is the nation's largest and oldest civil rights grassroots organization. The NAACP has state and local conferences or chapters in 48 states, and it has over 200,000 members nationwide. Since its founding in 1909, the mission of the NAACP has been to ensure the political, educational, social, and economic equality of all persons and to eliminate race-based discrimination.

Founded in 1971, Public Citizen is a nonprofit consumer advocacy organization with approximately 500,000 members and supporters nationwide. Public Citizen works to educate the public and advocate before the courts, legislatures, and administrative agencies on issues concerning consumer product safety, corporate accountability, and openness in government decision making, among other topics.

LDF is the country's first and foremost civil rights law firm. Founded in 1940 under the leadership of Thurgood Marshall, LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society.¹ Through litigation, advocacy, and public education,

¹ LDF has been a separate organization from the NAACP since 1957.

LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans.

I. Prompt mail delivery has long been, and continues to be, vital to this country’s democracy.

A. Throughout history, the Postal Service has provided an essential public service that prioritizes timely mail delivery over cost.

In the early days of the Republic, the postal service was established to fulfill an essential role in facilitating communication throughout the country. The mail-delivery system was recognized as “a sovereign necessity,” for “[g]overnment without communication is impossible.”² Thus, when the U.S. Constitution was ratified, Article I section 8 provided Congress the power “[t]o establish post offices and post roads” and “[t]o make all Laws which shall be necessary and proper” to execute that task.

The Founders recognized a robust postal system as vital to the functioning of democracy. George Washington, for example, described the postal system as “instrumental[] in diffusing a knowledge of the laws and proceedings of the Government.”³ The postal service was intended to be “a pillar of the republic, binding together millions of Americans, urban and rural, for the common good.”⁴ The Founders conceived of a postal service that did not just carry letters for an elite few; rather, it also subsidized the delivery of newspapers throughout the Republic, “which created an informed electorate, spurred the fledgling market economy, and bound thirteen fractious erstwhile colonies into the *United States*.”⁵

The Postal Service Act of 1792 established a postal network that “facilitated the rise of a nationwide market, the invention of the mass political party and the proliferation of nationally oriented voluntary associations.”⁶ Indeed, the Postal Service was critical to the development of this country, as the U.S. Supreme Court has explained:

The Post Office played a vital yet largely unappreciated role in the development of our new Nation. Stagecoach trails which were

² TOWARDS POSTAL EXCELLENCE: THE REPORT OF THE PRESIDENT’S COMMISSION ON POSTAL ORGANIZATION at 46 (June 1968), *available at* <https://ufdc.ufl.edu/AA00024775/00001> [hereafter, “KAPPEL COMMISSION REPORT”].

³ George Washington, Third Annual Address to Congress (Oct. 25, 1791), *available at* <https://www.presidency.ucsb.edu/node/204464>.

⁴ Richard R. John, *The Founders never intended the U.S. Postal Service to be managed like a business*, *The Washington Post* (April 27, 2020), *available at* <https://www.washingtonpost.com/outlook/2020/04/27/founders-never-intended-postal-service-be-managed-like-business/>.

⁵ WINIFRED GALLAGHER, *HOW THE POST OFFICE CREATED AMERICA: A HISTORY* at 1 (2016) (emphasis in original).

⁶ John, *supra* note 4.

improved by the Government to become post roads quickly became arteries of commerce. Mail contracts were of great assistance to the early development of new means of transportation such as canals, railroads, and eventually airlines. During this developing stage, the Post Office was to many citizens situated across the country the most visible symbol of national unity.⁷

The development of the Postal Service, as historian Richard R. John put it, was “a communications revolution that was as profound in its consequences for American public life as the subsequent revolutions that have come to be associated with the telegraph, the telephone, and the computer.”⁸

Throughout history, Congress has refused to compromise mail service when faced with declining revenues. For example, as early as 1851, Congress passed an act providing “[t]hat no post-office now in existence shall be discontinued, nor shall the mail service on any mail route in any of the States or Territories be discontinued or diminished, in consequence of any diminution of the revenues that may result from this act”⁹ In 1854, a journalist explained that “[t]he Postal Service’s ‘benefit to mankind’ far outweighed the ‘pecuniary consideration’ of any financial shortfall.”¹⁰ Because the Postal Service was recognized as “a public service, whose rationale was civic rather than commercial,” “[f]rom the 1850s until the 1960s, Congress routinely covered whatever deficits the Postal Service incurred—no matter how large—and with little controversy, partisanship or debate.”¹¹

In the Postal Policy Act of 1958, Congress formally declared “that the post office is a public service” and that the Postal Service “clearly is not a business enterprise conducted for profit or for raising general funds.”¹² Congress codified the Postal Service’s mission and function in the Postal Reorganization Act of 1970, emphasizing the Postal Service’s mission to “bind the Nation together” through “prompt, reliable, and efficient” mail service:

The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function the obligation to provide postal services to

⁷ *U.S. Postal Serv. v. Council of Greenburgh Civic Ass’ns*, 453 U.S. 114, 121–22 (1981) (citing KAPPEL COMMISSION REPORT).

⁸ RICHARD R. JOHN, *SPREADING THE NEWS: THE AMERICAN POSTAL SYSTEM FROM FRANKLIN TO MORSE* at vii (1995).

⁹ Act of March 3, 1851, ch. 20, available at <https://www.loc.gov/law/help/statutes-at-large/31st-congress/session-2/c31s2ch20.pdf>.

¹⁰ John, *supra* note 4.

¹¹ *Id.*

¹² Postal Policy Act of 1958, 72 Stat. 134, 135 (1958), available at <https://www.govinfo.gov/content/pkg/STATUTE-72/pdf/STATUTE-72-Pg134.pdf>.

bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

39 U.S.C. § 101(a). The 1970 Act further provided, “In determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.” *Id.* § 101(e).

B. The proposed rule would be inconsistent with the Postal Service’s core mission of prompt and reliable mail delivery.

Today, throughout the United States, people depend on prompt mail delivery to receive essential communications, such as medications, bills, ballots, and benefits checks. In a 2010 report, the nonprofit research organization Urban Institute identified eight categories of benefits provided by the Postal Service, including among others: consumer benefits, by providing access to goods and services; the delivery of governmental services, such as voting by mail and voter registration, submitting information for the census, and applying for and receiving absentee ballots and passports; and news and information exchange.¹³ The Postal Service itself has recognized the importance of its mail delivery: “Postal Service employees accept, process, transport, and deliver vital mail and packages like medicine, products that sustain us, benefits checks, and important information, in every community, to every home and residence,” said the then-Postmaster General Megan J. Brennan in an April 10, 2020, statement.¹⁴

The current proposal to implement longer service standards, if adopted, would have serious ramifications. For instance, many people receive their medicines by mail, including critical and life-saving drugs for the treatment of chronic infections and chronic conditions like diabetes, heart disease, asthma, and high blood pressure.¹⁵ According to the author of a study published in December 2020, “[m]illions of Americans—including those with serious chronic illnesses as well as major disabilities—rely on the U.S. Postal Service for timely delivery of their vital

¹³ Nancy Pindus et al., *A Framework for Considering the Social Value of Postal Services*, The Urban Institute (Feb. 2, 2010), <https://www.urban.org/sites/default/files/publication/28656/412097-a-framework-for-considering-the-social-value-of-postal-services.pdf>.

¹⁴ Megan J. Brennan, *Postmaster General statement on U.S. Postal Service stimulus needs* (Apr. 10, 2020), <https://about.usps.com/newsroom/statements/041020-pmg-statement-on-usps-stimulus-needs.htm>.

¹⁵ See, e.g., Reed Abelson, *U.S. Mail Delays Slow Delivery of Medicines*, N.Y. Times (Aug. 20, 2020), <https://www.nytimes.com/2020/08/20/health/Covid-us-mail-prescription-drugs.html>; see also Rosalind Adams, et al., *USPS Delays Are Causing People to Get their Prescriptions Late*, BuzzFeed News (Aug. 17, 2020), <https://www.buzzfeednews.com/article/rosalindadams/post-office-delay-prescription-medicine>.

medications.”¹⁶ A national poll of people aged 50 to 80 found that “[n]early one in four people in this age group said they receive at least one medication by mail, but that percentage rises to 29% when the poll results are limited to people who take at least one prescription medication,” and that “[n]early 17% of people in this group say they receive all their medications via mail.”¹⁷ The Postal Service “handles 1.2 billion prescription drug shipments a year—that’s nearly 4 million each and every day, six days a week,” and it also “delivers hundreds of millions of lab tests and medical supply shipments—from blood testing strips and insulin needles to contact lenses.”¹⁸ Given the significant numbers of prescription medications that are delivered by mail,¹⁹ “delays in mail deliveries may compromise access to important medications for millions of medically vulnerable Americans,” said the author of the December 2020 study.²⁰ “With so many Americans relying on timely delivery of medications, slower wait times may have a real impact on their health and health outcomes.”²¹

Many people also rely on prompt mail delivery to exercise their right to vote. All fifty States allow voters to use some sort of mail-in voting, and millions of voters vote by mail each year. Mail-in voting allows voters to cast their ballots without facing burdensome in-person voting

¹⁶ Alan Mozes, *USPS Cuts Could Pose Harm If Mail-Order Meds Delayed: Study*, HealthDay (Dec. 16, 2020), <https://consumer.healthday.com/12-16-many-americans-get-rx-meds-by-mail-now-so-postal-cuts-could-cause-harm-2649441757.html> (quoting Adam Gaffney).

The Gaffney study found that in 2016, mail-order deliveries accounted for nearly 6% of the roughly 4 billion prescriptions issued annually, and that according to an analysis of a nationally representative sample pool of prescription orders in 2018, approximately 56% of mail-order users had hypertension, 29% had heart disease, and 24% had diabetes. See Adam W. Gaffney et al., *Health Needs and Functional Disability Among Mail-Order Pharmacy Users in the US*, JAMA Internal Medicine (Dec. 14, 2020), <https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2774124>.

¹⁷ Kara Gavin, *Mail Delays May Affect Medication Supply for Nearly 1 in 4 Americans Over 50*, M Blog (Aug. 24, 2020), MICHIGAN HEALTH LAB AT THE UNIVERSITY OF MICHIGAN, <https://labblog.uofmhealth.org/lab-notes/mail-delays-may-affect-medication-supply-for-nearly-1-4-americans-over-50>.

¹⁸ *Statement by NALC President Fredric Rolando: The Postal Service is vital in this crisis*, NATIONAL ASSOCIATION OF LETTER CARRIERS (Mar. 27, 2020), <https://www.nalc.org/news/nalc-updates/statement-by-nalc-president-fredric-rolando-the-postal-service-is-vital-in-this-crisis>.

¹⁹ For example, the VA delivers approximately 80% of all of its prescriptions by mail. See *Pharmacy Benefits Management Services*, U.S. Department of Veterans Affairs, https://www.pbm.va.gov/PBM/CMOP/VA_Mail_Order_Pharmacy.asp (“The VA Mail Order Pharmacy processes 470,000 prescriptions daily and every work day over 330,000 Veterans receive a package of prescriptions in the mail.”).

²⁰ Gaffney, *supra* note 16.

²¹ Mozes, *supra* note 16 (quoting Julie Schmittiel, a research scientist with Kaiser Permanente Northern California’s Division of Research).

conditions, which can include hours-long lines (especially in communities of color), and polling sites that are inaccessible to disabled voters or that are geographically remote and require voters to travel long distances even if they lack transportation. As the Postal Service itself recognized in January 2020, one-quarter of the voters who participated in the 2018 election voted by mail.²² Forty-six percent of those who participated in the 2020 election voted by mail.²³ Delaying mail delivery risks significant numbers of completed ballots that might not be counted because they are delivered after states' deadlines for receipt of mail-in ballots.

The importance of prompt mail delivery has been heightened throughout the pendency of the COVID-19 pandemic. As Congressman Gerry Connolly stated during a hearing conducted by the House of Representatives Oversight and Reform Committee: "During this pandemic, the Postal Service is a lifeline to the delivery of lifesaving prescription medications, food and pantry staples, stimulus checks to pay rent and utilities bills, Census forms, and even simply coupons that allow those struggling in poverty to afford their weekly groceries."²⁴ For some, and particularly while the pandemic is ongoing, "delivery delayed is delivery denied, as it could force individuals to forego delivery in the future or receive medications or goods too late to use for critical needs."²⁵

Without prompt mail delivery, the people who depend on mail for their essential communications and packages would face serious risks of harm. Even a delay by one or two additional days could disadvantage people who depend on mail for their prescription medications and other essential materials.

II. The proposed rule fails to give proper consideration to factors that the law requires the Postal Service to consider in revising service standards.

The Postal Service proposal to extend service standards, and thus delivery time, for certain First-Class mail, *see* 86 Fed. Reg. 21675, fails to further the objectives of the governing law and fails to give proper consideration to the factors that Congress requires the Postal Service to consider. The Postal Reorganization Act requires the Postal Service to "provide prompt, reliable, and efficient services." 39 U.S.C. § 101(a). For obvious reasons, the proposed rule's delay of mail

²² United States Postal Service, *2020 Election Mail Kit* at 3 (Jan. 2020), <https://about.usps.com/kits/kit600.pdf>.

²³ Charles Stewart III, *How We Voted in 2020: A First Look at the Survey of the Performance of American Elections*, MIT Election Data and Science Lab (Dec. 15, 2020), <http://electionlab.mit.edu/sites/default/files/2020-12/How-we-voted-in-2020-v01.pdf>.

²⁴ Opening Statement of Subcommittee on Government Operations Chairman Gerald E. Connolly, Hearing on "Protecting the Timely Delivery of Mail, Medicine, and Mail-in Ballots" (Aug. 24, 2020), [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/GEC%20Opening%20State ment.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/GEC%20Opening%20Statement.pdf).

²⁵ Letter from Ken Thomas, National Active and Retired Federal Employees Ass'n (Aug. 18, 2020), <https://docs.house.gov/meetings/GO/GO00/20200824/110969/HHRG-116-GO00-20200824-SD016.pdf>.

delivery by one to two additional days undermines Congress’s mandate for the Postal Service to provide “prompt” service. *See id.*

The Act also requires the Postal Service to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining” and to ensure “effective postal services ... to residents of both urban and rural communications.” *Id.* § 101(b). Rural communities, however, are particularly impacted by lengthier mail delivery times. For example, because many people in rural communities lack effective internet service, they depend on U.S. mail to pay their bills and receive prescription medications.²⁶ The importance of mail-in voting described above is especially important in small towns that lack polling places and therefore rely on mail-in ballots to vote.²⁷ Yet the proposed rule fails to address the impact that delaying mail delivery would have on rural areas.

In revising service standards, the Postal Service is required to consider certain enumerated factors, including “the needs of Postal Service customers, including those with physical impairments.” 39 U.S.C. § 3691(c)(3). Particularly for persons who receive medications by mail, timely mail delivery is critical, and a delay in the delivery of medication could have serious consequences for a person’s health. Lengthening service standards also risks that mail-in ballots might not be counted and that important legal documents might not be timely received.²⁸ Yet although slowing mail delivery would pose serious harm to people who rely on the Postal Service for the delivery of important mail, the proposal does not address these issues.

The Postal Service’s asserted justification for delaying service standards is that a slower standard would “result in significant cost savings” and “keep[] costs at reasonable levels and help[] to ensure affordable rates.” *See* 86 Fed. Reg. at 21676; *see also id.* at 21677 (“The addition of one or two days to current service standards for First-Class Mail would ... achiev[e] a better balance of cost-effectiveness and on-time reliability.”). Although the Postal Service may consider “the current and projected future cost of serving Postal Service customers” in revising service standards, 39 U.S.C. § 3691(c)(6), Congress made clear that cost savings is not an appropriate reason to undermine service. *See id.* § 101(a) (“The costs of ... maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.”). Moreover, where important mail is concerned, “the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery” of that mail. *Id.* § 101(e). The Postal Service, however, proposes to adopt a rule that puts costs above the “expeditious” delivery of mail.

²⁶ Catherine Kim, *If the US Postal Service fails, rural America will suffer the most*, Vox (Apr. 16, 2020), <https://www.vox.com/identities/2020/4/16/21219067/us-postal-service-shutting-down-rural-america-native-communities>.

²⁷ *Id.*

²⁸ For example, the Federal Rules of Civil Procedure provide for three additional days for service by mail when calculating deadlines in a court proceeding. *See* Fed. R. Civ. P. 6(d). Prolonging service standards risks that legal mail will be delivered after the time period allotted for service by mail.

Furthermore, the Postal Service’s contention that the proposed service standards for First-Class mail will result in cost savings may not be accurate. Thus, in 2012, the Postal Regulatory Commission *rejected* the Postal Service’s cost-savings argument made in support of a proposed reduction in service standards for First-Class mail.²⁹ In evaluating a proposal by the Postal Service to eliminate overnight delivery of First-Class mail and extend a two-day service standard by an additional day, the Postal Regulatory Commission opined that it “cannot conclude that the benefits of” the Postal Service’s proposal “outweigh the risks of exacerbating declining volume trends or harm to the Postal Service brand.”³⁰ By potentially decreasing mail volumes or harming the Postal Service brand, the proposed rule may not result in cost savings for the Postal Service.

Thank you for considering these comments.

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²⁹ Postal Regulatory Commission, Advisory Opinion on Mail Processing Network Rationalization Service Changes, Docket No. N2012-1 (Sept. 28, 2012), https://www.prc.gov/Docs/85/85269/Advisory_Opinion_%20PDF%20_09282012.pdf.

³⁰ *Id.* at 46.