



U.S. Department of Justice
Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

October 30, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: *Zukerman v. U.S. Postal Service*, 961 F.3d 431 (D.C. Cir. 2020)

Dear Madam Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you concerning the above-referenced decision of the United States Court of Appeals for the District of Columbia Circuit. A copy of the decision is enclosed.

This litigation arises from the U.S. Postal Service’s operation of a customized postage program, since discontinued, that allowed members of the public to purchase indicia of pre-payment of postage (which function like postage stamps) bearing images supplied by the customers. Plaintiffs challenge a Postal Service regulation, 39 C.F.R. § 501.21(b), that governs the content that may be included in customized postage. Among other limitations, that provision makes “political” matter categorically ineligible for inclusion in customized postage. *Id.* § 501.21(b)(2)(iii). Analogizing that limitation to the state statute barring “political” apparel at polling places found unconstitutional in *Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018), a unanimous panel of the court of appeals concluded that Section 501.21(b)(2)(iii) facially violates the First Amendment. Op. 25-34.


Prior to the decision of the court of appeals, however, the Postal Service had already made a policy determination that the customized postage program should be terminated. Op. 22-23. The Postal Service has taken affirmative steps to wind down the program and to secure necessary approval from the Postal Regulatory Commission. The customized postage program ceased to operate on June 16, 2020 (one week after the panel’s ruling), and the Postal Service has repealed Section 501.21—the regulatory provision—in its entirety, with an effective date of August 1, 2020. *See* 85 Fed. Reg. 41,394 (July 10, 2020).

The Department of Justice does not agree with the decision of the court of appeals, and we remain committed to defending the ability of policymakers to adopt administrable restrictions in non-public forums. However, in light of the Postal Service’s policy determination to end the customized postage program, we do not intend to seek any further review of the panel’s decision.

Under the Supreme Court's present order providing 150 days to file a petition for a writ of certiorari, such a petition would be due on November 6, 2020.

Please let me know if we can be of further assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey B. Wall".

Jeffrey B. Wall
Acting Solicitor General

Enclosure