No. ___

IN THE

Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, REPUBLICAN PARTY OF PENNSYLVANIA,

Petitioners,

v.

BETTE EAKIN, DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 2019, the Pennsylvania General Assembly struck a historic bipartisan compromise that enacted the convenience of universal mail voting. As part of that compromise, the General Assembly extended to mail voting the same election integrity safeguards that have governed absentee voting for decades. One of those safeguards requires mail voters to fill out, sign, and date a declaration on the outer ballot-return envelope—and has already detected an instance of voter fraud.

Since 2019, the Pennsylvania Supreme Court and the Third Circuit have rejected an array of challenges to the date-requirement aspect of this safeguard. In this latest case, a Third Circuit panel agreed that the date requirement imposes at most a minimal burden and has helped detect voter fraud. The panel nonetheless declared it unconstitutional under the *Anderson-Burdick* balancing framework. The panel acknowledged that its decision deepens multiple circuit splits. The decision also departs from several precedents of this Court. A divided Third Circuit denied rehearing en banc on a 7–6 vote. The questions presented are:

1. Whether a non-discriminatory rule imposing the usual burdens of voting is constitutional;
2. Whether a mail-voting rule is subject only to rational-basis review when the State makes in-person voting available; and
3. Where *Anderson-Burdick* applies, whether a minimally burdensome voting rule is subject only to rational-basis review, and whether a rule's burden is measured by the cost of compliance or the consequence of noncompliance.

PARTIES TO THE PROCEEDING

Petitioners Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania were the defendants-intervenors in the Western District of Pennsylvania and the appellants in the Third Circuit.

The Commonwealth of Pennsylvania was an appellant-intervenor in the Third Circuit.

Plaintiffs-Respondents Bette Eakin, Democratic Senatorial Campaign Committee, Democratic Congressional Campaign Committee, and American Federation of Teachers Pennsylvania were the plaintiffs in the Western District of Pennsylvania and the appellees in the Third Circuit.

All 67 Pennsylvania county boards of elections were named as defendants in the Western District of Pennsylvania and appellees in the Third Circuit, and are respondents in this Court. A full list of the 67 Pennsylvania county boards of elections is reproduced in an addendum attached to the petition.

RULE 29.6 STATEMENT

The Republican National Committee has no parent corporation and is not publicly held, and no publicly held corporation owns 10% or more of its stock. The National Republican Congressional Committee has no parent corporation and is not publicly held, and no publicly held corporation owns 10% or more of its stock. The Republican Party of Pennsylvania has no parent corporation and is not publicly held, and no publicly held corporation owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Eakin v. Adams County Board of Elections*, No. 25-1644 (3d Cir.), judgment entered on August 26, 2025.
- *Eakin v. Adams County Board of Elections*, No. 1:22-CV-340 (W.D. Pa.), judgment entered on March 31, 2025.

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JURISDICTION

The Third Circuit entered judgment on August 26, 2025, and denied rehearing en banc on October 14, 2025. On December 12, 2025, Justice Alito granted Petitioners' application to extend the time to file this petition until February 11, 2026. *See* No. 25A691. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The constitutional and statutory provisions at issue are reproduced in the appendix. Pet.App.120a.

INTRODUCTION

The Third Circuit panel decision below departed from this Court's right-to-vote precedents and deepened *three* circuit splits. In so doing, the panel declared unconstitutional perhaps the least burdensome voting rule imaginable: Pennsylvania's requirement that voters who choose the convenience of mail voting write a date in a specified field on the ballot-return envelope. This decision continues the alarming trend of courts wielding the so-called *Anderson-Burdick* framework to anoint themselves, rather than state legislatures, as the "bear[ers] [of] primary responsibility for setting election rules." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurrence).

Jurists and legal academics have lamented that in too many federal judges' hands, "*Anderson-Burdick*'s hallmark" has become "standardless standards." *Daunt v. Benson* (*Daunt II*), 999 F.3d 299, 323 (6th Cir. 2021) (Readler, J., concurring in the judgment); Pet.App.73a–74a (Bove, J., dissental from denial of rehearing en banc). They have called upon this Court to rein in this judicial overreach and restore the Constitution's deliberate calibration of States' authority to regulate elections and voters' right to vote. If ever there were an ideal vehicle to do so, this case is it.

The Constitution vests States with vast authority to set election rules, *see* U.S. Const. art. I, § 4, cl. 1; *id.* at art. II, § 1, cl. 2, and recognizes that "States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder," *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). That grant of

authority operates alongside the Constitution's protection of the right to vote, which ensures a right to participate "on an equal basis with other qualified voters," *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 n.78 (1973), free from rules imposing "a severe and unjustified overall burden upon the right to vote," *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 208 (2008) (Scalia, J., concurring in the judgment). Thus, because "every voting rule imposes a burden of some sort," *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 669 (2021), the Constitution allows States to adopt whatever non-discriminatory, non-severely burdensome ballot-casting systems they believe may foreclose "'chaos [in] the democratic processes,'" *Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

Pennsylvania law mandates that voters who vote by mail fill out, date, and sign a declaration on the ballot-return envelope. This mandate has governed absentee voting for decades and now applies to universal mail voting, which the General Assembly enacted through a bipartisan compromise in 2019. Plaintiffs-Respondents challenge a single aspect of that mandate: the date requirement.

"For a voter with a functioning pen, sufficient ink, and average hand dexterity, this [task] should take less than five seconds." Pet.App.71a (Bove, J., dissental). The year is preprinted on the declaration, so the voter's only dating task is to fill in the two-digit month and day in boxes marked "Month" and "Day" under the instruction: "**Today's date here (REQUIRED)**." Approximately 99.77% of mail voters complied with the date requirement in the 2024 general election.

"At the headline level," Plaintiffs-Respondents' constitutional challenge to the date requirement "strains credulity and defies common sense." *Id.* There is no dispute that the requirement is non-discriminatory. Moreover, even the panel below agreed it is "easy to place a date" in the specified field and that any burden is "minimal." Pet.App.34a. The panel also acknowledged that the requirement has uncovered election fraud and, thus, "advance[s] the Commonwealth's [anti-fraud] interest." Pet.App.49a.

Accordingly, this should have been an easy case even under the *Anderson-Burdick* framework, which directs courts to weigh "the severity of the" challenged rule's "burden" against the "interests put forward by the State as justifications for th[at] burden." *Crawford*, 553 U.S. at 190 (plurality op.). Yet incredibly, the panel held that the date requirement "violates the First and Fourteenth Amendments." Pet.App.24a.

Even the panel acknowledged that its decision implicates multiple circuit splits. Pet.App.31a n.23, 43a n.35. It also departs from this Court's binding precedent: this Court has *never* held that a non-discriminatory ballot-casting regulation violates the right to vote. *Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9 (1983) (the Court "uph[olds] generally-applicable and even-handed [voting] restrictions"). In the hands of the panel, however, *Anderson-Burdick* became a roving federal judicial writ to declare unconstitutional even a State's most benign ballot-casting rules.

The panel ignored this Court's directive when it disregarded the threshold rule that requirements imposing "the usual burdens of voting" are constitutional. *Crawford*, 553 U.S. at 198 (plurality op.); *id.* at 206–

08 (Scalia, J., concurring in the judgment); *accord Brnovich*, 594 U.S. at 669. It again departed from the Court's directions—and deepened its first circuit split—when it declined to apply rational-basis scrutiny to the date requirement, which governs mail voting and is inapplicable to the Commonwealth's universal in-person voting regime. *See McDonald v. Bd. of Election Comm'rs of Chi.*, 394 U.S. 802, 807 (1969).

And even if the *Anderson-Burdick* framework governed here, the panel's application of it contravenes the Court's precedents and deepens two more circuit splits. The panel erred at every turn: when it applied heightened scrutiny to the "minimal[ly]" burdensome date requirement, Pet.App.34a, placed a burden on the requirement's defenders to prove the Commonwealth's interests, brushed aside the evidence those defenders *did* adduce, and measured the requirement's burden on voters not by the *difficulty* of complying with it, but instead by the *consequence* of not complying with it.

By dint of these errors, the panel sliced and diced the date requirement from Pennsylvania's entire "electoral scheme," *Burdick*, 504 U.S. at 441, the rest of the universal mail-voting scheme, and even the rest of the declaration mandate. It found a constitutional violation in a rule that is "easy" to comply with and carries a documented history of ferreting out fraud. Pet.App.34a. In other words, it found that the bipartisan General Assembly *violated the Constitution* when it enacted the convenience of universal voting that has made voting *easier* for millions of Pennsylvanians.

If that holding is left uncorrected, *no* voting or ballot-casting rule will be safe from open-ended, standardless federal judicial review—and even

invalidation. *No* burden on voters will be too minimal to escape the federal courts' notice, and *every* state interest must be supported by evidence sufficient to satisfy federal judges. State legislatures will have no latitude to innovate with new voting regimes, including those that make voting easier. In fact, the panel's finding of a constitutional violation here may have triggered a statutory non-severability clause and eliminated universal mail voting in the Commonwealth.

The panel's approach—and the troubling trend in the lower courts it reflects—thus upends the Constitution's careful balance between States' authority to regulate elections and the right to vote, doles out political victories to plaintiffs who lost in "the political arena," *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024), and erodes public confidence in the "integrity" of the Nation's "election process," *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

The *en banc* Third Circuit declined to rehear the case on a sharply divided 7–6 vote. In fairness to the Third Circuit, it could not have solved what has become a nationwide problem of judicial overreach under *Anderson-Burdick*. Only this Court can remedy that problem, resolve the multiple entrenched circuit splits implicated here, correct blatant departures from its precedent, and restore public confidence that elected legislatures, not unelected judges, decide the rules of elections.

This case presents the perfect opportunity to do so: it squarely presents these questions and arises on a fully developed record outside the frantic posture that has characterized voting litigation in recent years. The Court should grant certiorari and reverse.

STATEMENT OF THE CASE

A. A bipartisan majority of the General Assembly adopts universal mail voting.

1. Pennsylvania first enacted absentee voting in 1937. Pet.App.77a. Since at least 1945, Pennsylvania law has required that absentee-ballot submissions "shall be … dated." Act of Mar. 9, 1945, Pub. L. No. 29-17, 1945 Pa. Laws 29, 37. Initially, only certain members of the military were eligible to vote absentee. Pet.App.11a & n.2. The Commonwealth later expanded the categories of eligible voters, adding spouses of military servicemembers, civilian employees of the federal government working outside the United States, and others. *See* Act of Aug. 13, 1963, Pub. L. No. 707-379, 1963 Pa. Laws 707, 726–29.

2. The General Assembly struck a historic bipartisan compromise to overhaul the Commonwealth's election laws in a 2019 enactment known as Act 77. Among other reforms, Act 77 enacted universal mail voting for the first time in Pennsylvania history.[1] *See* Act of Oct. 31, 2019, Pub. L. No. 522-77; 25 Pa. Stat. § 3150.11(a). In a time of intense partisanship, particularly over the mechanics of voting, this Democratic-sponsored legislation received remarkably strong bipartisan support in both houses of the General Assembly. *See House Roll Call Vote Summary, Details for RCS No. 781*, Pa. House of Representatives (Oct. 29,

[1] Since 2019, Pennsylvania statutes have retained the term "absentee" voting for the categories of voters who could vote by mail prior to Act 77, 25 Pa. Stat. § 3146.6, and applied the term "mail-in" voting to voters who vote using the procedures added by Act 77, *id.* § 3150.16. For simplicity, Petitioners generally use "mail voting" to refer to both absentee and mail-in voting.

2019), https://perma.cc/EJ85-7H9C; *Senate Roll Call Vote Summary, Details for RCS No. 311*, Pa. State Senate (Oct. 29, 2019), https://perma.cc/P2BE-SHCA.

The General Assembly "included robust anti-fraud measures" in Act 77. Pet.App.14a. For example, Act 77 requires election officials to compare mail-voting applications with Pennsylvania's Statewide Uniform Registry of Electors (SURE) system—a database of the Commonwealth's registered voters—to confirm eligibility and detect attempts at double voting. Pet.App.15a–16a & n.9. Act 77 also extended to mail voting substantially all ballot-casting rules that governed absentee voting, including the declaration mandate. *See* 25 Pa. Stat. §§ 3146.6(a), 3150.16(a).

The General Assembly included a robust non-severability clause in Act 77: "If any provision of this act or its application to any person or circumstance is held invalid, the remaining provisions or applications of this act are void." Act of Oct. 31, 2019, Pub. L. No. 522-77 § 11. The General Assembly included this clause to protect its political compromise. 2019 Pa. Legislative Journal—*House* 1740–41 (Oct. 29, 2019).

3. Pennsylvania's adoption of universal mail voting has made voting easier for millions of voters. Due in part to the COVID-19 pandemic, mail-voting rates swelled from 4% of ballots cast in 2018 to 39% in 2020. U.S. Election Assistance Comm'n, *Election Administration and Voting Survey 2018 Comprehensive Report* 30 (2019), https://perma.cc/4SZ6-3V8A; Pa. Dep't of State, *Report on the 2020 General Election* 8–9 (2021), https://perma.cc/Y3G2-ED3P. And while post-pandemic, the majority of Pennsylvania voters continue to prefer in-person voting, approximately 27%

chose mail voting in the 2024 general election. *See* U.S. Election Assistance Comm'n, *Election Administration and Voting Survey 2024 Comprehensive Report* 35 (2025), https://perma.cc/G5HP-T2PM.

Under Act 77, eligible voters may apply to vote by mail any time up to fifteen days before an election. 25 Pa. Stat. § 3071. Election officials confirm the application against SURE and then mail the voter a packet containing a printed ballot, a "secrecy" envelope to enclose the completed ballot, and an outer envelope to hold the secrecy envelope. Pet.App.16a. A declaration attesting that the voter is qualified to vote and has not otherwise voted in that election is printed on the outer envelope. *Id.* Voters must date and sign the declaration and return the completed packet to election officials by 8 p.m. on election day. *Id.*; Pet.App.17a.

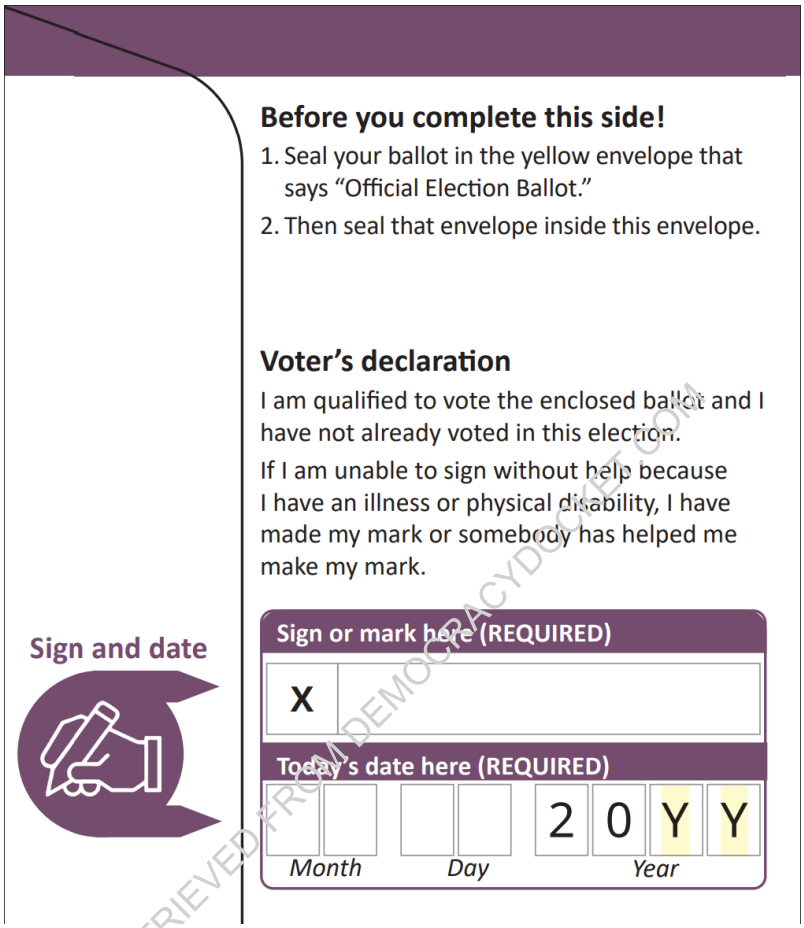
Pennsylvania law requires election officials to decline to count any mail ballot that does not comply with the secrecy-envelope requirement, *Pa. Democratic Party v. Boockvar*, 662 Pa. 39, 97 (2020), the signature requirement, *see In re Canvass of Provisional Ballots in 2024 Primary Election*, 322 A.3d 900, 907 (Pa. 2024), or the date requirement, *Ball v. Chapman*, 289 A.3d 1, 21–22 (Pa. 2023).

The vast majority of mail voters have complied with the date requirement. In the 2020 general election, the first election under Act 77's universal mail-voting regime, over 99% of mail voters dated their envelopes correctly. CA3.App.148. That compliance rate exceeded the compliance rate for other ballot-casting rules, such as the secrecy-envelope requirement, in that election. Daniel J. Hopkins et al., *How Many Naked Ballots Were Cast in Pennsylvania's 2020 General*

Election?, at fig. 1, MIT Election & Science Lab (Aug. 26, 2021), https://perma.cc/Y8QS-NPKW.

The rate of noncompliance with the date requirement has declined from there. It fell to 0.85% in the 2022 general election and 0.56% in the 2024 primary elections. *See Black Pol. Empowerment Project v. Schmidt*, 2024 WL 4002321, at *54–55 (Pa. Commw. Ct. Aug. 30, 2024) (McCullough, J., dissenting), *vacated* 322 A.3d 221 (Pa. 2024).

Dissatisfied with even those near-perfect compliance rates, Pennsylvania redesigned the outer envelope prior to the 2024 general election to make compliance with the date requirement even easier. The year is now preprinted, so mail voters' only dating task is to fill in "**Today's date here (REQUIRED)**" in boxes clearly labeled "Month" and "Day":



Pa. Dep't of State, *Directive Concerning the Form of Absentee and Mail-in Ballot Materials*, at app. A (July 1, 2024), https://perma.cc/Y8PV-A9KG.

Following this redesign, noncompliance rates have plummeted even further. In the 2024 general election, that rate was only *0.23%* of mail ballots, a *mere 0.064% of all votes cast*. *See* Commonwealth of Pa., *Shapiro Administration Announces 57% Decrease in Mail Ballots Rejected in 2024 General Election* (Jan. 24, 2025), https://perma.cc/K9BC-B33U; Commonwealth of Pa.,

2024 Presidential Election (Official Returns), https://perma.cc/4XMN-U6LS (last visited Jan. 30, 2026). So in the 2024 general election, 99.77% of mail voters complied with the date requirement, and 99.936% of all voters either complied with the requirement or were exempt from it because they voted in person.

B. Plaintiffs-Respondents challenge the date requirement.

1. The date requirement has been the target of repeated litigation ever since the General Assembly enacted Act 77. A group of plaintiffs first challenged the date requirement under the Materiality Provision of the Civil Rights Act of 1964. While the Third Circuit initially upheld that challenge, *see Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022), this Court vacated that decision, *see Ritter v. Migliori*, 143 S. Ct. 297 (2022), and three Justices explained during stay proceedings why the Third Circuit's decision was likely incorrect, *Ritter v. Migliori*, 142 S. Ct. 1824 (2022) (Alito, J., dissental). In a later case, the Third Circuit adopted the reasoning of those Justices, rejected a Materiality Provision challenge, and held that the date requirement does not "deny[] the right to vote." *Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, 97 F.4th 120, 133 (3d Cir. 2024). For its part, the Pennsylvania Supreme Court has rejected a state-law challenge to the date requirement, clarifying that the requirement is mandatory such that election officials are prohibited from counting noncompliant ballots. *Ball*, 289 A.3d at 28; *see also Ball v. Chapman*, 284 A.3d 1189, 1192 (Pa. 2022) (per curiam).

Yet another challenge to the date requirement—this one brought under the Pennsylvania Constitution—is now pending before the Pennsylvania Supreme Court. *See Baxter v. Phila. Bd. of Elections*, 332 A.3d 1183 (Pa. 2025) (per curiam). That case also presents the question whether judicial enjoining of the date requirement or its enforcement triggers Act 77's non-severability provision and thus eliminates universal mail voting in the Commonwealth. *Id.* at 1183.

2. This case has proceeded alongside these other challenges to the date requirement. Plaintiffs-Respondents filed their complaint on November 7, 2022, the day before the 2022 general election, claiming that the requirement violates the Materiality Provision and the First and Fourteenth Amendments. Pennsylvania initially declined to defend its law. Pet.App.112a n.7. Petitioners—the Republican National Committee, the National Republican Congressional Committee, and the Republican Party of Pennsylvania—intervened to defend it.

After the Third Circuit foreclosed Plaintiffs-Respondents' Materiality Provision claim, the case proceeded to summary judgment on their constitutional claim. The district court granted summary judgment in favor of Plaintiffs-Respondents, and Petitioners appealed. Pet.App.116a.

C. The Third Circuit strikes down the date requirement and narrowly declines en banc rehearing.

1. Pennsylvania's newly elected Attorney General then moved in the Third Circuit to intervene and defend the date requirement alongside Petitioners. The

Third Circuit granted that motion over Plaintiffs-Respondents' opposition. CA3.Dkt.60, 64.

After briefing and argument, a Third Circuit panel affirmed. The panel did not even mention, much less apply, the threshold rule that neutral rules imposing only "the usual burdens of voting" are constitutional and thus do not trigger federal judicial scrutiny, let alone *Anderson-Burdick* review. *See Crawford*, 553 U.S. at 198 (plurality op.); *accord id.* at 204–09 (Scalia, J., concurring in the judgment); *Brnovich*, 594 U.S. at 669.

The panel also departed from this Court's instruction—and deepened its first circuit split—when it refused to apply only rational-basis review to the mail-voting date requirement inapplicable to the in-person voting the Commonwealth has made available to Plaintiffs. *See McDonald*, 394 U.S. at 808–09; Pet.App.30a–32a & n.23.

The panel chose instead to invoke the *Anderson-Burdick* framework. Its application of that framework deepened two more circuit splits. The panel agreed that it is "easy to place a date on a return envelope." Pet.App.34a. It nonetheless thought that the requirement is burdensome because noncompliance results in a ballot not being counted. Pet.App.36a–39a. It thus ran afoul of this Court's precedent and split from the decisions of other circuits when it measured the requirement's burden not by the *difficulty* of compliance, but by the *consequence* of noncompliance. *Infra* I.C.2. It then split again from other circuits by invoking a form of heightened scrutiny and by erroneously demanding the requirement's defenders prove the requirement advances legitimate State interests.

Pet.App.40a–44a & n.36; Pet.App.90a–91a (Bove, J., dissental).

In any event, Petitioners already had proven as much in the district court. There, they adduced evidence that the requirement advances several of the Commonwealth's interests, including most notably its interest in combating election fraud. In 2022, the Commonwealth used the date requirement to detect voter fraud when an individual completed and submitted a mail ballot belonging to her deceased mother. *See Commonwealth v. Mihaliak*, No. MJ-2202-CR-126-22 (Lancaster County). Pet.App.47a–51a. Because Pennsylvania law prohibits county boards of elections from comparing the signature on the outer envelope with one in the official record, *see In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 595 (Pa. 2020), the handwritten date—which was twelve days *after* the decedent's date of death—was the only evidence of third-party fraud on the face of the outer envelope. CA3.App.227. It therefore served as a key piece of evidence in the investigation, prosecution, and ultimate conviction of the fraudster. *See* CA3.App.220, 227; CA3.Op.Br.56–57, 61.

The panel acknowledged *Mihaliak* and even that the date requirement "can narrowly advance the Commonwealth's interest in fraud detection and deterrence." Pet.App.49a. It concluded, however, that was insufficient to justify the requirement because *Mihaliak* was just one case. In the panel's view, because "*Anderson-Burdick* is a weighing test," even "where the law imposes a minimal burden" on voters, one instance "of the date requirement helping the Commonwealth prosecute a criminal case of voter

fraud … cannot justify" the consequence of not counting noncompliant ballots. Pet.App.50a.

The panel thought its decision was not disruptive of the Commonwealth's legitimate interests because the district court's order enjoined only enforcement of the date requirement—not the printing of a date field on the outer envelope. *Id.* The panel did not elaborate on how rendering the General Assembly's mandatory rule non-mandatory saved its reasoning. Pet.App.50a–51a.

2. A key premise of the panel's reasoning was its assertion that Pennsylvania law does not require "notice" of and an opportunity "to cure" a dating error. Pet.App.18a; Pet.App.35a ("voter who fails to comply with the date requirement potentially has no means to correct the deficiency and cast a valid ballot"). The Pennsylvania Supreme Court corrected that mistaken premise while Petitioners' and the Pennsylvania Attorney General's petitions for rehearing en banc were pending. In *Center for Coalfield Justice v. Washington County Board of Elections*, 343 A.3d 1178 (Pa. 2025), the Pennsylvania Supreme Court held that election officials must notify voters of any dating error on their outer envelopes, grant such voters a second opportunity to vote by casting a provisional ballot, and count any valid provisional ballots cast by such voters.

Thus, in future elections, the only mail voters who will not have a ballot counted due to the date requirement are those who commit a dating error and do not take the opportunity to cure. *See id.*; Pet.App.69a (Phipps, J., dissental from denial of rehearing en banc). Therefore, the number of mail voters who will not ultimately cast a valid ballot due to the date

requirement is likely to decline even further in future elections. *Coalfield Just.*, 343 A.3d 1178; Pet.App.69a (Phipps, J., dissental).

The Third Circuit denied en banc review by a 7–6 vote. Pet.App.66a–67a & nn.*, 1. All six dissenting judges joined two dissentals. The first, authored by Judge Phipps, highlighted the intervening change in Pennsylvania law under *Coalfield Justice*. Pet.App.68a–69a. The second, authored by Judge Bove, explained that the panel's decision "raised significant federalism concerns, misapplied binding precedent from the Supreme Court and [the Third Circuit], deepened a Circuit split regarding the appropriate level of scrutiny, and conflicted with a subsequent decision of Pennsylvania's Supreme Court." Pet.App.72a. It further noted that "Pennsylvania must now look to the Supreme Court for assistance in restoring the state-federal equilibrium contemplated by the Elections Clause." Pet.App.92a.

REASONS FOR GRANTING THE WRIT

This case checks every box for certiorari. *First*, the panel's decision deepens three circuit splits regarding this Court's right-to-vote precedents.

Second, the panel's decision is plainly wrong. The panel contravened this Court's directions and the governing law to declare unconstitutional a neutral mail-voting ballot-casting rule that is easy to comply with, has a documented history of detecting fraud, and can be avoided by voting in person.

Third, the questions presented are extremely important. The panel's decision invalidates a state statute. It also continues a lower-court pattern of misapplying the *Anderson-Burdick* framework. As jurists

and commentators alike have acknowledged, that pattern imperils innumerable ballot-casting rules enacted by state legislatures and upends the Constitution's deliberate calibration of States' authority to regulate, and voters' right to participate in, elections.

Finally, this case is an ideal vehicle for reviewing the questions presented. It arises after final judgment and is free of the frantic, eve-of-election posture that has characterized voting litigation in recent years. The Court should grant review.

I. THE DECISION BELOW DEEPENS THREE CIRCUIT SPLITS.

Lower courts are in disarray: they have struggled to implement this Court's right-to-vote precedents and are split on three questions regarding the Constitution's protections of the right to vote. The panel itself recognized that it was deepening multiple circuit splits. Pet.App.31a n.23 (acknowledging split); Pet.App.43a (choosing to split); *see also* Pet.App.83a–86a (Bove, J., dissental) (explaining split). Each of these three splits independently warrants certiorari—and the combination of all three underscores the need for this Court's review.

A. *McDonald* and rational-basis review of mail-voting rules

The Constitution's protections of the "right to vote" do not encompass "a claimed right to receive absentee ballots." *McDonald*, 394 U.S. at 807. Accordingly, a plaintiff may challenge a mail-voting regulation as a violation of the right to vote only by first showing she is "absolutely prohibited from exercising the franchise" through any other method—including in-person voting. *Id.* at 809.

Where no such showing is made, the challenged rule is subject only to rational-basis review. *See id.* ("[A] challenged statute must bear some rational relationship to a legitimate state end."). Thus, in *McDonald*, the Court upheld an Illinois law that did not extend absentee voting to pretrial detainees because the detainees failed to show that they had been "absolutely prohibited from exercising the franchise" through any method. *Id.*

The Seventh Circuit has adhered to *McDonald* and held that a mail-voting rule is subject only to rational-basis review where the State makes in-person voting available and exempt from the rule. *See Tully v. Okeson*, 977 F.3d 608, 615–16 (7th Cir. 2020) (rejecting claim that Constitution requires universal absentee voting); *Common Cause Ind. v. Lawson*, 977 F.3d 663, 664 (7th Cir. 2020) (Easterbrook, J.) (rejecting constitutional challenge to absentee-ballot receipt deadline). Thus, "[a]s long as it is possible to vote in person, the rules for absentee ballots are constitutionally valid if they are supported by a rational basis and do not discriminate based on a forbidden characteristic such as race or sex." *Common Cause Ind.*, 977 F.3d at 664.

A Fifth Circuit stay panel has agreed that *McDonald* mandates rational-basis review of mail-voting ballot-casting rules. *See Tex. Democratic Party v. Abbott*, 961 F.3d 389, 403–06 (5th Cir. 2020). The merits panel later withdrew that holding because it concluded that "no denial or abridgment of the right to vote" occurred in that case, but declined to state that "rational basis scrutiny is incorrect" or that some heightened *Anderson-Burdick* scrutiny would have applied. *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 194 (5th Cir. 2020). Later Fifth Circuit stay panels have cited the

original stay decision favorably, including for the point that "[w]e have held voting by mail is a privilege that can be limited without infringing the right to vote." Order at 5, Dkt. 80, *United States v. Paxton*, No. 23-50885 (5th Cir. Dec. 15, 2020) (per curiam, joined by Engelhardt and Oldham, JJ.); *see also Tex. League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136, 144 n.6, 146 n.8 (5th Cir. 2020).

The Second Circuit has explicitly rejected this reading of *McDonald*. *See Price v. N.Y. State Bd. of Elections*, 540 F.3d 101 (2d Cir. 2008). The panel also noted that the Sixth, Eighth, Ninth, and Eleventh Circuits have "applied *Anderson-Burdick* to mail-voting regulations." Pet.App.31a n.23 (citing *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612 (6th Cir. 2016) (*NEOH*); *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603 (8th Cir. 2020); *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1186 (9th Cir. 2021); *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019)). The panel aligned with that position, deepening a circuit split. *See* Pet.App.28a–32a.

B. *Anderson-Burdick* Framework

Even assuming the *Anderson-Burdick* framework applies, the circuits are split on how to conduct the weighing of "the severity of the" challenged law's "burden" against the "interests put forward by the State as justifications for th[at] burden." *Crawford*, 553 U.S. at 190. In particular, the circuits are split on whether (i) rational-basis scrutiny applies to rules that impose only a "minimal" burden; and (ii) a rule's burden is measured as the cost of compliance or consequence of noncompliance.

1. Rational-basis review and State's burden of proof

Rational-basis review is deferential: the legislature's judgment "is not subject to courtroom fact-finding," and a court may uphold a challenged law "based on rational speculation unsupported by evidence or empirical data." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993). Consistent with that rule, this Court has held that *Anderson-Burdick* does not "require elaborate, empirical verification of the weightiness of the State's asserted justifications." *Timmons*, 520 U.S. at 364.

In *Burdick*, the Court examined Hawaii's ban on write-in voting as part of the State's entire "electoral scheme." 504 U.S. at 441. It concluded that the ban imposed a "very limited" burden on voters' rights and upheld it because Hawaii had chosen "a reasonable" means of accomplishing its "legitimate interests." *Id.* at 437, 439–40.

Consistent with *Burdick*, the Fourth, Fifth, Sixth, Eighth, and Eleventh Circuits' version of the *Anderson-Burdick* framework applies rational-basis scrutiny, rather than heightened scrutiny, to laws imposing a "minimal" burden on voters. *See Libertarian Party of Va. v. Alcorn*, 826 F.3d 708, 719 (4th Cir. 2016); *Vote.Org v. Callanen*, 39 F.4th 297, 307–08 (5th Cir. 2022); *Mays v. LaRose*, 951 F.3d 775, 784, 786 (6th Cir. 2020); *Org. for Black Struggle*, 978 F.3d at 608 ("rational basis" review); *Polelle v. Fla. Sec'y of State*, 131 F.4th 1201, 1236, 1239 (11th Cir. 2025) (State could "rationally find" and "reasonably believe" "minimal[ly]" burdensome law furthered "legitimate interests"); *Libertarian Party of Ala. v. Merrill*, 2021 WL

5407456, at *10 (11th Cir. Nov. 19, 2021) (cited by panel at Pet.App.43a n.35).

Those five circuits, therefore, do not require the State to adduce evidence to support its interests in a minimally burdensome law. "[R]ational speculation" in support of those interests suffices. *Beach Commc'ns*, 508 U.S. at 315.

The panel below departed from these decisions, deepening a second circuit split. The panel held that *Anderson-Burdick* review necessarily requires some form of scrutiny more demanding than rational-basis review. Pet.App.40a–44a. The Ninth Circuit likewise has held that "the burdening of the right to vote *always* triggers a higher level of scrutiny than rational basis review." *Tedards v. Ducey*, 951 F.3d 1041, 1066 (9th Cir. 2020); Pet.App.41a n.34. The panel also said it was aligning with a decision of the Fourth Circuit. *See* Pet.App.41a n.34 (citing *Pisano v. Strach*, 743 F.3d 927 (4th Cir. 2014) (involving law imposing "modest" burden)); *but see Libertarian Party of Va.*, 826 F.3d at 719 (Fourth Circuit applying rational-basis scrutiny to law imposing "minimal" burden).

2. Burden imposed by the law

Crawford clarifies that to determine "the severity of the burden" the challenged law imposes, courts assess the cost of complying with the law. 553 U.S. at 190 (plurality op.). Thus, *Crawford* described the challenged photo-ID law's burdens as "the inconvenience of making a trip to the [Bureau of Motor Vehicles], gathering the required documents, and posing for a photograph." *Id.* at 198.

Following *Crawford*, the Fifth, Eighth, Ninth, and Eleventh Circuits have refused to consider the

consequence of noncompliance when determining the challenged rule's burden on voters. They thus have eschewed the argument that a rule is burdensome because noncompliance results in a ballot not being counted.

The Fifth Circuit has reasoned "[i]f we were to find that a burden is severe based solely on a plaintiff's assertion that he or she might be disenfranchised, our Fourteenth Amendment analysis of voting laws would risk collapsing into standing analysis: So long as a plaintiff could prove an injury, that plaintiff would also be able to prove a severe burden under *Anderson/Burdick*." *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 236 n.33 (5th Cir. 2020). The Ninth Circuit has concluded "[i]f the burden imposed by a challenged law were measured by the consequence of noncompliance, then every voting prerequisite would impose the same burden and therefore would be subject to the same degree of scrutiny (presumably strict if the burden is disenfranchisement)." *Ariz. Democratic Party*, 18 F.4th at 1188.

The Eighth Circuit held in *Organization for Black Struggle* that the burden of Missouri's receipt deadline for mail ballots was the need to "make arrangements to put completed ballots in the mail" in time to meet the deadline. 978 F.3d at 608. It further held that the State's rejection of late-arriving ballots did not bear on the burden analysis. *See id.* The Eleventh Circuit similarly has held that a receipt deadline's burden is the cost of meeting the deadline, and is unaffected by the State's declination to count late-arriving ballots. *See New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1280 (11th Cir. 2020).

The panel below split from these decisions—deepening a *third* circuit split—when it considered Pennsylvania's choice not to count ballots with dating errors as part of the burden analysis. Pet.App.33a–39a. The panel instead aligned itself with decisions of the Sixth, Tenth, and Eleventh Circuits, which on the panel's reading "have weighed the impacts of a voting law in assessing how a law burdens constitutionally protected rights." Pet.App.39a n.33 (citing *Obama for Am. v. Husted*, 697 F.3d 423, 431 (6th Cir. 2012); *Fish v. Schwab*, 957 F.3d 1105, 1127–28 (10th Cir. 2020); *NEOH*, 837 F.3d at 630–35; *Lee*, 915 F.3d at 1319–21).

II. THE PANEL'S DECISION IS CLEARLY WRONG.

The date requirement provides all mail voters a right to participate "on an equal basis with other qualified voters," *Rodriguez*, 411 U.S. at 35 n.78, and does not impose "a severe … burden upon the right to vote," *Crawford*, 553 U.S. at 208 (Scalia, J., concurring in the judgment). For this reason alone, the panel's holding that the date requirement violates the Constitution is clearly wrong.

But that was just the beginning of the panel's errors. Pennsylvania's date requirement does not impose "a severe and unjustified *overall* burden upon the right to vote." *Id.* (emphasis added). After all, the date requirement is inapplicable to in-person voting—the most popular method of voting among Pennsylvania voters—and can thus be avoided simply by voting in person. *See Burdick*, 504 U.S. at 441–42 (courts must consider challenged rule as "part of" State's entire "electoral scheme"). Even the date-requirement aspect of Pennsylvania's universal mail voting regime does not impose "a severe and unjustified overall burden,"

Crawford, 553 U.S. at 208 (Scalia, J., concurring in the judgment), because it is a convenience that makes voting *easier*, *see McDonald*, 394 U.S. at 811 (no constitutional right to "a more convenient method of exercising the franchise").

The panel reached its erroneous holding only by slicing and dicing the date requirement from the rest of Pennsylvania's Election Code, disregarding the Court's directions, and aligning itself with the wrong side of all three circuit splits.

A. The panel ignored the threshold rule that requirements imposing only the usual burdens of voting are constitutional.

States do not *violate* the Constitution when they exercise their constitutional *authority* to adopt rules that impose "the usual burdens of voting." *Crawford*, 553 U.S. at 198; *accord Brnovich*, 594 U.S. at 669. In fact, the Court made clear in *Crawford* that rules imposing only "the usual burdens of voting" do not even *implicate* the Constitution's protections of the right to vote.

Three concurring Justices concluded that only severe burdens implicate that right. *See* 553 U.S. at 206–8 (Scalia, J., concurring in the judgment). Likewise, the plurality found the challenged photo-ID provision's burdens did not "represent a significant increase over the usual burdens of voting," and thus confirmed that such usual burdens do not implicate the right to vote. *Id.* at 198.

The Court reiterated this rule in *Brnovich*, a case arising under Section 2 of the Voting Rights Act. There—citing *Crawford*—it reaffirmed that because "every voting rule imposes a burden of some sort," the

"usual burdens of voting" do not violate any right to vote. 594 U.S. at 669.

The Fifth Circuit, too, has noted this rule, concluding that "'[n]o citizen has a Fourteenth … Amendment right to be free from the usual burdens of voting.'" *Richardson*, 978 F.3d at 237. Thus, the Fifth Circuit recently dismissed on standing grounds a challenge to a Texas requirement that voters' assistors complete a form, reasoning that "[w]aiting a few minutes while an assistor completes a simple form is not a cognizable injury because it merely involves the 'usual burdens of voting.'" *La Union del Pueblo Entero v. Abbott*, 151 F.4th 273, 287 (5th Cir. 2025) (quoting *Crawford*, 553 U.S. at 198 (plurality op.)).

The panel below did not so much as mention this threshold rule, even though Petitioners raised it. CA3.Op.Br.22–40. Had the panel applied that rule, it would have dismissed, rather than upheld, Plaintiffs-Respondents' constitutional claim. Indeed, if "[w]aiting a few minutes while an assistor completes a simple form … merely involves the usual burdens of voting," *La Union del Pueblo Entero*, 151 F.4th at 287 (cleaned up), spending "less than five seconds" to complete the month and day boxes in a specified *field of a form* involves at most "the usual burdens of voting" and, in fact, far *less*, Pet.App.71a (Bove, J., dissental).

All across the country, completing paperwork is a commonplace feature of registering to vote, confirming one's identity to vote, and casting a ballot. *See* Nat'l Conf. of State Legislatures, *How States Verify Voted Absentee/Mail Ballots* (last updated Oct. 21, 2025), https://perma.cc/84HL-8CJF; *see also, e.g.*, Pa. Voter Registration Application & Mail-in Ballot Request,

https://perma.cc/2XCB-EYBK; N.J. Voter Registration Application, https://perma.cc/D7S6-8C2D. Such requirements are thus a usual burden of voting, so completing a *single field* on such paperwork, as the date requirement mandates, is something *less* than, or at most, a usual burden of voting.

And if there is any doubt on this score, taking a few seconds to fill in the date field is not as difficult as complying with other requirements this Court has described as involving the usual burdens of voting. Those include "[h]aving to identify one's own polling place and then travel there to vote" in person, "making a trip to the department of motor vehicles" to obtain a photo-ID, or "going to a mailbox, a post office, an early ballot drop box, or an authorized election official's office" to return a mail ballot. *Brnovich*, 594 U.S. at 678, 683.

B. The panel erred in failing to apply rational-basis scrutiny.

The panel also erred when it declined to apply rational-basis review to the mail-voting date requirement, as required by *McDonald*. *McDonald*, 394 U.S. at 809. The panel attempted to limit *McDonald* on the assertion that later cases from this Court "construed *McDonald* as resting on failure of proof." Pet.App.29a n.21 (cleaned up) (quoting *O'Brien v. Skinner*, 414 U.S. 524, 529 (1974)). But the failure of proof noted by this Court was the *McDonald* plaintiffs' failure to show that the challenged rule "absolutely prohibited" them from voting. *Compare McDonald*, 394 U.S. at 809, *and O'Brien*, 414 U.S. at 529, *with Goosby v. Osser*, 409 U.S. 512 (1973) (involving showing by pretrial detainees that State had prohibited them from voting by any means).

That same failure of proof is present here. Pet.App.85a (Bove, J., dissental). Pennsylvania makes in-person voting universally available and exempts it from the date requirement. The requirement accordingly has not "absolutely prohibited" Plaintiffs-Respondents "from exercising the franchise," so it is subject only to rational-basis review. *McDonald*, 394 U.S. at 809; *Tully*, 977 F.3d at 615–16; *Common Cause Ind.*, 977 F.3d at 664.

The date requirement passes such deferential review with flying colors. Even the panel agreed that it is "easy to place a date on a return envelope" and that the requirement's burden is at most minimal. Pet.App.34a.

On the other side of the scale, the date requirement "bear[s] some rational relationship to a legitimate state end." *McDonald*, 394 U.S. at 809. Most obviously—*as even the panel agreed*—the date requirement "advance[s] the Commonwealth's interest in fraud detection and deterrence." Pet.App.49a. Under rational-basis scrutiny, a law's defenders need not adduce evidence to prove the State's interests. *See Beach Commc'ns*, 508 U.S. at 315. In addition, "a State may take action to prevent election fraud without waiting for it to occur and be detected." *Brnovich*, 594 U.S. at 686.

Nonetheless, Petitioners *did* adduce evidence that the requirement has ferreted out fraud. As noted, in 2022, the Commonwealth used the date requirement to detect voter fraud in *Mihaliak*. *Supra* at 13–14. To be sure, the ballot was *invalid* and election officials would not have counted it in any event because the decedent passed away prior to election day. Pet.App.22a.

But there would have been no reason to suspect that the ballot was *fraudulent* and that a third-party fraudster, rather than the decedent, had completed and submitted it if the date on the outer envelope had not postdated the decedent's death. The date requirement thus served as critical evidence in investigating, prosecuting, and ultimately convicting the fraudster. *See* CA3.App.220, 227; CA3.Op.Br.56–57, 61.

Simply offering "rational speculation" that the date requirement advances Pennsylvania's anti-fraud interest would have sufficed to satisfy rational-basis scrutiny. *Beach Commc'ns*, 508 U.S. at 315. Petitioners did *more* because they *proved* it—as even the panel was forced to admit. The date requirement thus is constitutional. *See id.*; *see also Brnovich*, 594 U.S. at 686.

The panel's attempt to brush aside this proof on the view that *Mihaliak* presented an "extremely rare instance" fails. Pet.App.49a. The panel's reasoning would require a State to endure some undefined quantum of election fraud within its borders—and the concomitant loss of public trust in the integrity of its elections—before it could convince federal judges to permit it to take action to prevent election fraud. *Contra Brnovich*, 594 U.S. at 686. That requirement would effect "a wholesale transfer of the authority to set voting rules from the States to the federal courts," *id.* at 678, in contravention of the "guiding principle" that judicial review must "'preserve to the legislative branch its rightful independence and its ability to function,'" *Beach Commc'ns*, 508 U.S. at 315.

The date requirement advances other State interests as well. It promotes Pennsylvania's interest in "orderly administration" of elections by providing proof of

when the voter completed the ballot and declaration. *Crawford*, 553 U.S. at 196 (plurality op.). It also promotes solemnity because—as part of the declaration mandate and alongside the signature requirement—it helps to ensure that voters "contemplate their choices" and "reach considered decisions about their government and laws." *Minn. Voters All. v. Mansky*, 585 U.S. 1, 15 (2018). Indeed, the date requirement is integral to the declaration, which requires the voter to attest that as of that date, she is "qualified to vote and ha[s] not already voted in this election." *Supra* at 8. If Pennsylvania can require a signature and date for other declarations and legally consequential acts, *see Black Pol. Empowerment Project*, 2024 WL 4002321, at *53 ("The requirement to sign and date documents is deeply rooted in legal traditions that prioritize clear and consensual agreements") (McCullough, J., dissenting), it surely can do so for voting.

C. The panel applied the wrong level of scrutiny and misconstrued the burden element under *Anderson-Burdick*.

Even assuming the *Anderson-Burdick* framework governs, the panel's application of it was erroneous. The panel erred when it declined to apply rational-basis review to the "minimal[ly]" burdensome date requirement. Pet.App.34a; *supra* I.B.1. As explained, this error was dispositive because the requirement easily satisfies such review. *Supra* II.B.

The panel again erred when it demanded the requirement's defenders adduce evidence to support the State's interests. The panel thus split with those circuits applying rational-basis scrutiny to minimally burdensome laws. *Supra* I.B.1. It also parted ways

with the Ninth Circuit: even though the Ninth Circuit "*always*" applies some form of heightened scrutiny under *Anderson-Burdick*, it has rejected the argument that the State must adduce evidence in support of its interests in every *Anderson-Burdick* case. *Tedards*, 951 F.3d at 1066–67 (emphasis added). It therefore has dismissed *Anderson-Burdick* claims based on the State's proffered interests without conducting "an evidentiary hearing." *Id.*

Indeed, if the panel's position were correct, courts could only rarely, if ever, dismiss *Anderson-Burdick* claims without convening an evidentiary hearing to probe the State's interests in the challenged rule. *See id.* The panel erred when it read the *Anderson-Burdick* caselaw to require that result. *See id.* And, as explained, the panel then compounded this error when it brushed aside the date requirement's documented history of detecting fraud that Petitioners *did* adduce. *Supra* II.B.

Finally, the panel erred when it treated the consequence of noncompliance with the requirement—the ballot not being counted—as the requirement's burden. That error violated *Crawford*, *see* 553 U.S. at 198 (plurality op.), and collapsed the burden analysis into an injury inquiry, *see Richardson*, 978 F.3d at 236 n.33. The panel's approach also would mean that *every* mandatory voting rule, no matter how trivial its burden, would be subject to *Anderson-Burdick* scrutiny. *Ariz. Democratic Party*, 18 F.4th at 1188.

The panel pointed to this Court's decision in *Anderson* as support for its approach, Pet.App.38a, but *Anderson* provides none. *Anderson* was not a ballot-casting case, but instead a challenge to a discriminatory

law that set earlier ballot-access deadlines for independent candidates than for major-party candidates. 460 U.S. at 793–94. The Court was not concerned with the consequence to independent candidates of *not* complying with the deadline. *See id.* at 786, 790–91. Instead, it reasoned that being forced to *comply* with the discriminatory deadline was the burden because the deadline weighed "unequally on new or small political parties" and, thus, "impinge[d], by its very nature, on associational choices protected by the First Amendment." *Id.* at 793–94 (emphasis added).

Moreover, even if the panel's hypothesis that there are "potentially … no means to correct [a dating error] and cast a valid ballot" were relevant to the constitutional analysis, Pet.App.35a, the Pennsylvania Supreme Court has corrected it, *see Coalfield Just.*, 343 A.3d 1178. Only 0.23% of all voters who cast mail ballots in the 2024 general election did not have their ballots counted due to dating errors. In future elections, the only voters who will not have a ballot counted due to the date requirement are those who commit a dating error *and* do not exercise the opportunity to cure. *See id.*; Pet.App.69a (Phipps, J., dissental).

Even the Sixth, Tenth, and Eleventh Circuit decisions the panel relied upon, *see* Pet.App.39a n.33, are easily distinguishable. Each of those cases involved a rule the reviewing courts determined was *impossible for certain voters to comply with* and, thus, burdensome. *See Obama for Am.*, 697 F.3d at 431 (change in early voting hours); *Fish*, 957 F.3d at 1127–28 (documentary registration requirement); *NEOH*, 837 F.3d at 630–35 (arbitrary information-matching regime); *Lee*, 915 F.3d at 1319–21 (arbitrary signature-matching regime); *see also Jacobson v. Fla. Sec'y of State*, 974

F.3d 1236, 1255-56 (11th Cir. 2020) (questioning *Lee*'s precedential value).

This error, too, was dispositive. The panel agreed that it is "easy to place a date on a return envelope." Pet.App.34a. It therefore reasoned that the cost of compliance was not enough to create a cognizable burden, and invoked the consequence of noncompliance to inflate the date requirement's burden to even a "minimal" level. Pet.App.34a–36a. This error was therefore essential to the panel's conclusion that the requirement is unconstitutional. Pet.App.40a.

III. THE QUESTIONS PRESENTED ARE EXCEPTIONALLY IMPORTANT.

When a federal court invalidates a "state statute[]," that alone is sufficient to warrant this Court's review, "even without regard to the existence of a conflict" among circuits (multiple of which, as shown, exist here). Shapiro et al., *Supreme Court Practice* 480 (9th ed. 2013).

Moreover, the questions presented carry vast implications for American democracy. They go directly to the Constitution's deliberate calibration of States' authority to regulate elections and the right to vote—as well as its limits on the Judiciary's power to review and invalidate duly enacted State election laws.

Jurists have acknowledged that *Anderson-Burdick* has led to chaos in the lower courts and have called on this Court to remedy it. *See, e.g.*, *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 208 (1999) (Thomas, J., concurring in the judgment) ("I am not at all sure that a coherent distinction between severe and lesser burdens can be culled from" the Court's *Anderson-Burdick* cases); Pet.App.73a–74a (Bove, J., dissental). So, too,

have legal scholars. *See, e.g.*, Kate Hardiman Rhodes, Note, *Restoring the Proper Role of the Courts in Election Law: Toward a Reinvigoration of the Political Question Doctrine*, 20 Geo. J.L. & Pub. Pol'y 755, 757, 763 (2022) (describing *Anderson-Burdick* as "extremely subjective" and "anything but judicially manageable"); Derek T. Muller, *The fundamental weakness of flabby balancing tests in federal election law litigation*, Excess of Democracy (April 20, 2020), https://perma.cc/8N5G-P3TG (describing *Anderson-Burdick* as a "flabby … ad hoc totality-of-the-circumstances examination" and as a "last-best-hope kind of claim for litigants tossing a claim into federal court"); Vikram David Amar & Jason Mazzone, *Wisconsin's Decision to Have an Election This Month Was Unjust, But Was It Also Unconstitutional? Why the Plaintiffs (Rightly) Lost in the Supreme Court*, Verdict (Apr. 20, 2020), https://perma.cc/8HYF-QQUJ (describing *Anderson-Burdick* as a "very open-ended balancing test"); Edward B. Foley, *Voting Rules and Constitutional Law*, 81 Geo. Wash. L. Rev. 1836, 1859 (2013) ("*Anderson-Burdick* balancing is such an imprecise instrument that it is easy for the balance to come out one way in the hands of one judge, yet come out in the exact opposite way in the hands of another."); Christopher S. Elmendorf, *Structuring Judicial Review of Electoral Mechanics: Explanations and Opportunities*, 156 U. Penn. L. Rev. 313, 330 (2007) ("The Supreme Court has not done much to resolve [*Anderson-Burdick*'s] ambiguity").

At bottom, the *Anderson-Burdick* framework permits federal courts to engage in freewheeling judicial balancing and arrive at whatever conclusion they prefer when adjudicating a challenge to a State's voting

rule. *See Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 561 (6th Cir. 2021) (Readler, J., concurring) ("*Anderson-Burdick* does little to constrain a court's decisionmaking process, and instead leaves federal judges to weigh standards entirely crafted by the judges themselves."). If the lower courts' construction is left uncorrected, the *Anderson-Burdick* framework risks subjecting *every* state election law to unbounded federal judicial scrutiny. Indeed, if the five-second burden of complying with a mail-voting requirement to complete *a single field* on a form that has detected voter fraud violates the Constitution, no voting rule is safe from review—or even *invalidation*—by federal judges operating under the banner of *Anderson-Burdick*.

This state of affairs "affords far too much discretion to judges" and is a "dangerous tool" in "sensitive policy-oriented cases." *Daunt v. Benson* (*Daunt I*), 956 F.3d 396, 424 (6th Cir. 2020) (Readler, J., concurring in the judgment); *see also Graveline v. Benson*, 992 F.3d 524, 553 (6th Cir. 2021) (Griffin, J., dissenting). It "leaves much to a judge's subjective determination," results in a lack of uniformity, and provides States inadequate guidance to "govern accordingly." *Daunt I*, 956 F.3d at 424–25 (Readler, J., concurring in the judgment).

This open-ended judicial superintendence over States' authority to adopt voting rules wreaks havoc on our Nation's electoral machinery. At the peril of a finding of a constitutional violation, States face an untenable choice between adopting election-security measures—including measures facilitating the convenience of mail voting—and forgoing efforts to make voting easier. To put it mildly, decisions like the one

below "raise[] significant federalism concerns." Pet.App.72a (Bove, J., dissental).

They also throw open the federal courthouse doors to plaintiffs looking "to transform federal courts into 'weapons of political warfare' that will deliver victories that eluded them 'in the political arena.'" *Alexander*, 602 U.S. at 11. They thus further contribute to the erosion of public confidence in the "integrity" of the Nation's "election process." *Purcell*, 549 U.S. at 4.

This Court alone can remedy these ills, resolve the fundamental splits among the circuits, and prevent federal courts from supplanting the States as the "bear[ers] [of] primary responsibility for setting election rules." *Democratic Nat'l Comm.*, 141 S. Ct. at 29 (Gorsuch, J., concurrence).

IV. THIS CASE PRESENTS AN IDEAL VEHICLE.

This case is an ideal vehicle for considering these important issues.

Most importantly, this is the rare election-law case that comes to the Court with a fully developed record and not in an emergency posture. *See, e.g.*, *Democratic Nat'l Comm.*, 141 S. Ct. 28; *Andino v. Middleton*, 141 S. Ct. 9 (2020). Rather, this Court can consider these important issues "in an orderly fashion" with the benefit of full briefing and argument. *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurrence). With no end to election litigation in sight, this Court can take this unique opportunity to bring much-needed clarity to this area.

There are no jurisdictional barriers to the Court's review, the questions are squarely presented, and Petitioners have preserved them all. *See* CA3.Op.Br.11–31; CA3.En.Banc.Pet.4–7.

Nor does the Pennsylvania Supreme Court's pending consideration of the date requirement under the Pennsylvania Constitution currently present a vehicle problem. *See Baxter*, 332 A.3d 1183. A vehicle problem might arise, if at all, only if the Pennsylvania Supreme Court holds the requirement violates state law. *See Hall v. Beals*, 396 U.S. 45, 48 (1969). In that scenario, the Court should at a minimum grant certiorari, vacate the decision below, and remand with instructions to dismiss the case as moot. *See United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). If that scenario does not occur, the Court should proceed to the merits of this case and reverse. And if the Court is concerned now about a later ruling in *Baxter*, it can hold this case in abeyance.

CONCLUSION

This Court should grant the petition.

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