No. 25-962

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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Plaintiffs-Respondents' brief in opposition only confirms the Court should grant review on these vitally important questions implicating multiple acknowledged circuit splits regarding the Court's right-to-vote precedents. For starters, Plaintiffs-Respondents wholly ignore the Third Circuit's acknowledgement that its decision deepens multiple circuit splits. Instead, they attempt to explain away those splits with mischaracterizations of the lower courts' decisions, Petitioners' arguments, and the questions presented here. Moreover, Plaintiffs-Respondents' various efforts to rehabilitate the panel's decision on the merits likewise misconstrue this Court's governing decisions and disregard what the panel itself said it was doing. And Plaintiffs-Respondents base their assertions of vehicle issues on faulty assumptions and severe misstatements of the scope of the pending *Baxter* case in the Pennsylvania Supreme Court.

In the end, Plaintiffs-Respondents offer nothing to refute the inescapable conclusion that, "[a]t the headline level," their constitutional challenge to Pennsylvania's mundane and minimally burdensome requirement that mail voters write four digits in preprinted, clearly marked boxes "strains credulity and defies common sense." Pet.App.71a (Bove, J., dissental). Plaintiffs-Respondents also do not even address—much less rebut—the widespread judicial and academic calls for this Court to remedy the dire state of affairs under which "*Anderson-Burdick*'s hallmark" has become "standardless standards" in the hands of federal judges superintending any state voting rule they disfavor. *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).

Only this Court can remedy the nationwide problem of judicial overreach under *Anderson-Burdick*, resolve the multiple entrenched circuit splits implicated here, correct blatant departures from this Court's precedent, and restore public confidence that elected legislatures, not unelected judges, decide the rules of elections. The Court should grant certiorari in this ideal vehicle and reverse.

I. PLAINTIFFS-RESPONDENTS FAIL TO EXPLAIN AWAY THE THREE CIRCUIT SPLITS DEEPENED BY THE DECISION BELOW.

Everyone but Plaintiffs-Respondents can see what is clear: The "standardless standards" of *Anderson-Burdick* balancing have produced confusion and disarray in the lower courts. On that at least, the judiciary, the academy, and amici all agree. Pet.33–36; *see also, e.g.*, Twenty-One.States.Amici.Br.8–10; AFL.Amicus.Br.3–6.

The Third Circuit 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). Indeed, the panel's decision exacerbates circuit splits on three questions regarding the Constitution's protections of the right to vote. Pet.18–24. Plaintiffs-Respondents' various arguments fail to explain away these circuit splits and provide no basis to deny review.

First, Plaintiffs-Respondents grossly mischaracterize Petitioners' position as an "argu[ment]" that *McDonald v. Board of Election Commissioners of*

Chicago, 394 U.S. 802 (1969), "immunizes all mail-voting regulations from constitutional scrutiny." Resp.20. Petitioners have *never* made that argument. Pet.18–20. Instead, Petitioners have shown that the circuits are split on whether rational-basis or some heightened scrutiny applies to a mail-voting rule where, as here, the challenger has not shown she is "absolutely prohibited from exercising the franchise" through all other methods not subject to the rule. *McDonald*, 394 U.S. at 809; *see* Pet.18–20, 27–30.

Plaintiffs-Respondents' other arguments regarding the *McDonald* split fare no better. For example, Petitioners *agree* that "once a state extends a benefit, it must do so consistent with the Constitution"—but that uncontroversial point merely *raises*, rather than *answers*, the question whether rational-basis or some other form of constitutional scrutiny applies here. *Compare* Resp.21, *with* Pet.18–20. Moreover, Plaintiffs-Respondents' proposed distinction "between claims seeking to *expand* mail-voting access versus those *regulating* existing procedures," Resp.23, is a distinction without a difference that fails on *McDonald* itself. After all, the *McDonald* plaintiffs' challenge to the rule not allowing inmates to vote absentee was a challenge to the eligibility "*regulati[on]* of existing procedures" for absentee voting. *Id.*; *see McDonald*, 394 U.S. at 807. Besides, Plaintiffs-Respondents' challenge to the date requirement *is* an effort to "*expand*" mail voting, Resp.23: They assert a "claimed right" to vote by mail using undated ballots, *McDonald*, 394 U.S. at 807, but the Commonwealth "ha[s] not authorized" that voting method, Resp.23.

Plaintiffs-Respondents' quibbles with the decisions applying rational-basis scrutiny under *McDonald*

make no difference. *Common Cause Indiana v. Lawson*, 977 F.3d 663 (7th Cir. 2020), both remains good law in the Seventh Circuit and did not turn on whether mail voters received notice of some defect in their ballot. Resp.23–24. Moreover, that merits panels in the Fifth and Seventh Circuits did not apply *McDonald* like earlier panels, *id.* 22, is of no moment because the merits panels rejected the plaintiffs' constitutional claims on other grounds, *see Tex. Democratic Party v. Abbott*, 978 F.3d 168, 194 (5th Cir. 2020) ("To be clear, we are not stating, even as *dicta*, that rational basis scrutiny is incorrect"); *Tully v. Olekson*, 78 F.4th 377, 387–88 (7th Cir. 2023) (finding "no abridgement" of the right to vote without addressing standard of scrutiny).

Second, Plaintiffs-Respondents' assertion that the Fourth, Fifth, Sixth, Eighth, and Eleventh Circuits do not apply rational-basis scrutiny to minimally burdensome voting laws under *Anderson-Burdick*, *see* Resp.27–30, is erroneous, Pet.21–22. That Plaintiffs-Respondents believe the Eighth Circuit's decision in *Organization for Black Struggle v. Ashcroft* "suffers a fatal flaw" on the merits, Resp.30 n.6, is irrelevant to whether it contributes to a circuit split. There is, moreover, no intra-circuit split in the Sixth or Eighth Circuits because neither *Obama for America v. Husted*, 697 F.3d 423 (6th Cir. 2012), nor *SD Voice v. Noem*, 60 F.4th 1071 (8th Cir. 2023), involved a voting rule imposing only a "minimal" burden—a term that does not appear in either opinion.

Contrary to Plaintiffs-Respondents' suggestion, the Fourth, Fifth, Eighth, and Eleventh Circuits' use of "generalized descriptors like 'rational' or 'reasonable' to describe the state's interest," Resp.28, underscores

that they engaged in rational-basis scrutiny. If more were needed, those courts employ rational-basis scrutiny in substance, crediting the asserted state interests *without* requiring the rule's defenders to adduce *any* evidence that those interests animated the rule's adoption or that the rule actually advances them. *See Libertarian Party of Va. v. Alcorn*, 826 F.3d 708, 719 (4th Cir. 2016) (upholding rule on motion to dismiss); *Vote.Org v. Callanen*, 39 F.4th 297, 307–08 (5th Cir. 2022); *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 608 (8th Cir. 2020); *Polelle v. Fla. Sec'y of State*, 131 F.4th 1201 (11th Cir. 2025) (affirming grant of motion to dismiss). That is rational-basis scrutiny under the case Plaintiffs-Respondents cite. *FCC v. Beach Comms., Inc.*, 508 U.S. 307 (1993) (Resp.25); *see also Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997) (Resp.26).

Third, Plaintiffs-Respondents are correct that several of the cases contributing to the final circuit split arose in the context of assessing whether a burden is "severe," Resp.32–33—a frequently litigated *Anderson-Burdick* issue that determines whether strict scrutiny is triggered. But that does not alter the fact that the Fifth, Eighth, Ninth, and Eleventh Circuits have all refused to consider the consequences of noncompliance in assessing the relevant burden. Pet.22–23. If the rule were otherwise, "'every voting prerequisite would impose the same burden'" (having one's vote discarded), even though the *Anderson-Burdick* framework "'necessarily contemplates that election laws can impose varying burdens.'" *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1188–89 (9th Cir. 2021).

Finally, Plaintiffs-Respondents attempt to change the subject by arguing that no cited case "holds that

courts must ignore a law's impact when assessing whether, and to what extent, the law burdens voters." Resp.32. Plaintiffs-Respondents do not specify what "impact" they are referring to. To the extent they are suggesting that the *rate* of noncompliance with the date requirement demonstrates that compliance imposes an unconstitutional burden, *id.* 32–33, they are wrong: *More than 99%* of all mail voters have complied with the requirement in recent elections, Pet.9–11; *see also Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 680 (2021) ("A policy that appears to work for 98% or more of voters to whom it applies" is "unlikely" to violate the right to vote). To the extent they are suggesting that courts may conflate the *consequence* of noncompliance with the *burden* of complying with the challenged rule, they run headlong into the third circuit split, highlight the Third Circuit's exacerbation of that split, and thereby confirm that the Court should grant review. Pet.22–24.

II. PLAINTIFFS-RESPONDENTS FAIL TO REHABILITATE THE PANEL'S DECISION.

The date requirement provides all mail voters 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), imposes only "the usual burdens of voting," *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (plurality op.), and passes rational-basis scrutiny with flying colors, Pet. 24–33. The requirement is therefore a constitutional exercise of the General Assembly's authority to enact whatever non-discriminatory, non-severely burdensome ballot-casting systems it believes may foreclose "'chaos [in] the democratic processes.'" *Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

Plaintiffs-Respondents' defense of the panel's contrary conclusion fails. *First*, Plaintiffs-Respondents' contention that there is no "threshold rule" holding that regulations involving only the usual burdens of voting do not violate the right to vote, Resp.17–20, fails on *Crawford* and *Brnovich*, *see* Pet.25–27. That Plaintiffs-Respondents see a need to flesh out what constitutes "the usual burdens of voting," Resp.19, is all the more reason for this Court to grant review and further define this standard.

Second, Plaintiffs-Respondents do not even *attempt* to argue the requirement fails rational-basis scrutiny, positing instead that "rational basis review is *never* the appropriate standard when *Anderson-Burdick*'s balancing test is triggered." Resp.24. This postulation leads them to the erroneous suggestion that the panel was correct to impose on the requirement's defenders a burden of proof with respect to the Commonwealth's interests in the requirement. *Compare id.* 24–26, *with* Pet.27–30.

They thus further err in asserting that the panel could credit opinions of some county election officials—who do not speak for the Commonwealth—that the requirement does not advance the Commonwealth's interests. *Compare* Resp.26, *with* Pet.27–30. Indeed, Plaintiffs-Respondents offer no explanation as to how the panel could credit those officials' opinions when it *agreed* the requirement "advance[s] the Commonwealth's interest in fraud detection and deterrence." Pet.App.49a. In truth, the Third Circuit should not have conducted *any* evidentiary inquiry into the Commonwealth's interests after it concluded that the requirement imposes only a "minimal" burden. *See* Pet.27–30. Under the very terms of *Anderson-Burdick*

balancing, the slightest burdens need only the most minimal justifications, Pet.21,30–31, *not* "evidence … in support of … state interest[s]," Resp.12. And in any event, the panel could not credit Plaintiffs-Respondents' preferred evidence over the evidence of fraud deterrence and other interests the requirement's defenders *did* adduce, and which is now bolstered by the Attorney General speaking on behalf of the Commonwealth. *See* Pet.27–30.

Third, Plaintiffs-Respondents try their hand at misdirection when they point out that the *Mihaliak* ballot would not have been counted even in the absence of the suspicious date on the outer envelope. Resp.13. But the ballot's *invalidity* due to the decedent's passing, *see id.*, does not establish its *fraudulence*. The suspicious date was the *only* evidence on the face of the ballot or envelope that it might be fraudulent, Pet.28–29, which is why even the panel had to agree that the requirement "advance[s] the Commonwealth's interest in fraud detection and deterrence," Pet.App.49a.

Finally, Plaintiffs-Respondents do not explain how the requirement's anti-fraud function can "remain[] intact" under a regime that "prevents county boards from disqualifying … mail ballots for noncompliant dates." Resp.14. Indeed, under Plaintiffs-Respondents' preferred regime, shrewd fraudsters can simply omit a date because such an omission would not disqualify the ballot or raise a suspicion of fraud. Plaintiffs-Respondents offer no basis to conclude that the Third Circuit was correct—*as a matter of the Constitution*—to override the General Assembly's decision to adopt the minimally burdensome date requirement as a mandatory rule for mail voting. And a regime where the Commonwealth can "instruct[]" voters on ballot

requirements but cannot enforce those requirements, Resp.2,15, will promote voting anarchy, not solemnity, Pet.30.

III. THE QUESTIONS PRESENTED ARE EXCEPTIONALLY IMPORTANT.

The questions presented are exceptionally important and carry vast implications for American democracy. The panel's decision invalidates a state statute, and the questions 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. Pet.33–36.

Plaintiffs-Respondents' contrary arguments largely turn on the premise that the date requirement itself is not of national significance. *See* Resp.10–15. But the Court's standard does not ask whether the challenged *state* law is important nationwide; rather, it asks whether the "federal question" is. Sup.Ct.R.10(a). Jurists and commentators from across the spectrum have called upon this Court to rein in the current judicial overreach under *Anderson-Burdick*, restore States' vast authority over elections under the Constitution, and end standardless judicial "review" of state voting laws federal judges disfavor. Pet.33–36. Plaintiffs-Respondents do not even *mention* these deafening judicial and academic calls for the Court's intervention on the precise questions presented here, much less offer anything to silence them.

In fact, that the case involves a requirement as mundane as the date requirement only *proves* that the panel's decision "threaten[s] states' ability to administer elections." Resp.15. After all, if the panel's

invalidation of the requirement is allowed to stand, *no* ballot-casting rule, regardless of how minimally burdensome, will be safe from open-ended, standardless federal judicial review and rejection. *No* burden on voters will be too minimal to escape the federal courts' notice, and *every* state interest will be rejected unless it is supported by evidence sufficient to satisfy whichever federal judges draw the case.

State legislatures will have no latitude to innovate new voting regimes—including those like Pennsylvania's universal mail-voting system that make voting *easier*. And federal courts will be free to continue doling out political victories to plaintiffs who lost "in the political arena," *Alexander v. S.C. State Conf. of NAACP*, 602 U.S. 1, 11 (2024), thus maintaining the alarming trend that is eroding public confidence in the "integrity" of the Nation's "election process," *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). *See* Pet.33–36. Plaintiffs-Respondents' argument that the questions presented are anything less than exceptionally important strains both credulity and credibility.

IV. THIS CASE PRESENTS AN IDEAL VEHICLE.

This case is an ideal vehicle for considering these important issues because it arises on a fully developed record, does not occupy an emergency posture, and suffers from no jurisdictional or issue-preservation defects. Pet.36–37.

As anticipated, *id.* 37, Plaintiffs-Respondents' principal vehicle argument prognosticates that the Pennsylvania Supreme Court "is poised to enjoin the date requirement on state constitutional grounds" under Pennsylvania's Free and Equal Elections Clause in the *Baxter* case. Resp.36. That prognostication is baffling,

since the Pennsylvania Supreme Court has *repeatedly* upheld the requirement as mandatory and enforceable under state law, including in cases in which Free and Equal Elections arguments were advanced. *See, e.g.*, *Ball v. Chapman*, 289 A.3d 1, 21–22 (Pa. 2023); *Ball v. Chapman*, 284 A.3d 1189, 1192 (Pa. 2022) (per curiam); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 372–74 (Pa. 2020). In fact, the Pennsylvania Supreme Court stayed the lower court decision invalidating the date requirement in *Baxter*. *See Baxter v. Phila. Bd. of Elections*, 325 A.3d 645 (Pa. Nov. 1, 2024) (per curiam) ; *Baxter v. Phila. Bd. of Elections*, 332 A.3d 1183 (Pa. 2025) (per curiam). That stay order followed a prior order vacating a lower court decision that likewise had invalidated the date requirement under the Free and Equal Elections Clause. *See Black Pol. Empow. Project v. Schmidt*, 322 A.3d 221 (Pa. Sept. 4, 2024) (Mem.) ("*BPEP*"). Thus, the better prediction is that the Pennsylvania Supreme Court will (continue to) uphold the date requirement as a matter of state law.

Regardless, it is unclear how *Baxter* could result in "enjoin[ing] the date requirement," much less provide any relief to Plaintiffs-Respondents. Resp.36. The lower courts' (stayed) remedial order in *Baxter* did not enjoin anything. Instead, it granted only retrospective relief requiring the Philadelphia Board of Elections to include ballots in the vote total for a single past election. *See Baxter v. Phila. Bd. of Elections*, 329 A.3d 483 (Pa. Commw. Ct. 2024) (Table), *stayed, Baxter*, 325 A.3d 645, *and allowance to appeal granted*, *Baxter*, 332 A.3d 1183. It is also unclear whether any relief in *Baxter* will benefit Bette Eakin, who votes in Erie County and is the only individual voter-plaintiff in this case. *See* D.Ct.Dkt.438, at 1; *Baxter*, 325 A.3d 645

(Philadelphia Board of Elections is the only respondent in *Baxter*); *BPEP*, 322 A.3d 221 (holding that a county board of elections is an indispensable party in a case seeking to enjoin that board from enforcing the date requirement). Thus, *Baxter* will not necessarily moot this case no matter which way it comes out. If any mootness concerns arise, counsel will of course promptly notify the Court. *Bd. of License Comm'rs of Tiverton v. Pastore*, 469 U.S. 238, 240 (1985).

Finally, one county board's suggestion that the Court should deny review under *Purcell*, *see* Luzerne.Resp.3–7, is mistaken. *Purcell* addresses only whether a lower federal court may "*enjoin* a state's election laws in the period close to an election," not whether this Court may *grant certiorari* in a voting or elections case. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurrence) (emphasis added). Pennsylvanians need clarity on the issues presented in this case. *See* Berks.Resp.5–6. So do other States. *See* Twenty-One.States.Amici.Br. The Court should provide it.

CONCLUSION

This Court should grant the petition.

June 8, 2026

Respectfully submitted,

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