No. 20-1072

IN THE

Supreme Court of the United States

CHAD THOMPSON, WILLIAM T. SCHMITT, AND DON KEENEY,

Petitioners,

v.

RICHARD MICHAEL DEWINE, GOVERNOR OF OHIO; STEPHANIE MCCLOUD, DIRECTOR OF OHIO DEP'T OF HEALTH; AND FRANK LAROSE, OHIO SEC'Y OF STATE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR PETITIONERS

JEFFREY T. GREEN
NORTHWESTERN SUPREME COURT PRACTICUM
375 E. Chicago Avenue
Chicago, IL 60611

NAOMI A. IGRA
STEPHEN CHANG
JENNIFER H. LEE
TYLER WOLFE
SIDLEY AUSTIN LLP
555 California Street
San Francisco, CA 94101

MARK R. BROWN *
CAPITAL UNIVERSITY LAW SCHOOL
303 E. Broad Street
Columbus, OH 43215
(614) 236-6590
mbrown@law.capital.edu

OLIVER B. HALL
CENTER FOR COMPETITIVE DEMOCRACY
P.O. Box 20190
Washington, DC 20009

Counsel for Petitioners

* Counsel of Record

March 30, 2021

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
I. THIS CASE IS THE RIGHT VEHICLE AT THE RIGHT TIME TO RESOLVE AN ENTRENCHED CIRCUIT SPLIT	2
A. This Case is Not Moot	2
B. The Opinions Below Are Influential Precedential Opinions That Squarely Address the Well-Preserved Question Presented	4
II. PETITIONERS WIN UNDER ANY APPROPRIATE STANDARD OF REVIEW	6
A. Petitioners Win Under Strict Scrutiny	6
B. Petitioners Win Under the *Anderson-Burdick* Test	7
C. Petitioners Win Under the First Circuit's *O'Brien* Intermediate Scrutiny Test	10
D. Respondents' Preference on the Merits for the D.C. and Tenth Circuit's Approach Confirms the Strength of the Petition	10
CONCLUSION	12

TABLE OF AUTHORITIES

CASES Page

Angle v. *Miller*, 673 F.3d 1122 (9th Cir. 2012) 7
Beiersdorfer v. *LaRose*, No. 20-3557 (6th Cir. argument scheduled Apr. 21, 2021) 5
Bernbeck v. *Moore*, 126 F.3d 1114 (8th Cir. 1997) 7
Danville Christian Academy v. *Beshear*, 141 S. Ct. 527 (2020) 3
Davis v. *Fed. Election Comm'n*, 554 U.S. 724 (2008) 2
Eilenberg v. *City of Colton*, No. SA CV 20-00767-FMO (DFM), 2020 WL 5802377 (C.D. Cal. July 9, 2020) 5
Esshaki v. *Whitmer*, 813 F. App'x 170 (6th Cir. 2020) 8
Fair Maps Nevada v. *Cegavske*, 463 F. Supp. 3d 1123 (D. Nev. 2020) 5, 7, 9
Fed. Election Comm'n v. *Wisconsin Right to Life*, 551 U.S. 449 (2007) 3
Florida Democratic Party v. *Scott*, 215 F. Supp. 3d 1250 (N.D. Fla. 2016) 9, 10
Garbett v. *Herbert*, 458 F. Supp. 3d 1328 (D. Utah 2020) 9
Goldstein v. *Sec'y of Commonwealth*, 142 N.E.3d 560 (Mass. 2020) 8
Gottlieb v. *Lamont*, 465 F. Supp. 3d 41 (D. Conn. 2020) 5
Initiative & Referendum Inst. v. *Walker*, 450 F.3d 1082 (10th Cir. 2006).....10, 11
Kishore v. *Whitmer*, 972 F.3d 745 (6th Cir. 2020) 5

TABLE OF AUTHORITIES—continued

Page

League of Women Voters of Ohio v. *LaRose*, No. 2:20-cv-3843, 2020 WL 5757453 (S.D. Ohio Sept. 27, 2020) 5
Libertarian Party of Illinois v. *Cadigan*, 824 F. App'x 415 (7th Cir. 2020) 8
Little v. *Reclaim Idaho*, 140 S. Ct. 2616 (2020) 1, 5
Marijuana Policy Project v. *United States*, 304 F.3d 82 (D.C. Cir. 2002) 10, 11
Meyer v. *Grant*, 486 U.S. 414 (1988) 2, 6, 7
Miller v. *Thurston*, 967 F.3d 727 (8th Cir. 2020) 11
Perez-Guzman v. *Garcia*, 346 F.3d 229 (1st Cir. 2003) 10
Roman Catholic Diocese of Brooklyn v. *Cuomo*, 141 S. Ct. 63 (2020) (per curiam order) 2
SawariMedia LLC v. *Whitmer*, 466 F. Supp. 3d 758 (E.D. Mich. 2020) 5
SawariMedia LLC v. *Whitmer*, 963 F.3d 595 (6th Cir. 2020) 8
SawariMedia LLC v. *Whitmer*, No. 20-cv-112456, 2020 WL 6580461 (E.D. Mich. Oct. 19, 2020) 8
Schmitt v. *LaRose*, 933 F.3d 628 (6th Cir. 2019) 6
Storer v. *Brown*, 415 U.S. 724 (1974) 3
Taxpayers United for Assessment Cuts v. *Austin*, 994 F.2d 291 (6th Cir. 1993) 7
United States v. *O'Brien*, 391 U.S. 367 (1968) 10
Wirzburger v. *Galvin*, 412 F.3d 271 (1st Cir. 2005 10

TABLE OF AUTHORITIES—continued

Page

Wyman v. *Sec'y of State*, 625 A.2d 307 (Me. 1993) 7
Yes on Term Limits v. *Savage*, 550 F.3d 1023 (10th Cir. 2008) 7

COURT DOCUMENTS

Br. in Opp., *Schmitt* v. *LaRose*, No. 19-974 (S. Ct. Apr. 27, 2020) 6
Br. of Appellees, *Thompson* v. *DeWine*, No. 20-3525 (6th Cir. Aug. 26, 2020) 3
Defendants-Appellants' Reply Br., *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. Sept. 3, 2020) 2
Emergency Application to Vacate Stay, *Thompson* v. *DeWine*, No. 19A1054 (S. Ct. June 17, 2020) 4
Emergency Mot. to Reconsider and Vacate Stay, *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. May 30, 2020) 4
Mot. to Vacate Stay, *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. May 26, 2020) 4
Opening Br. of Plaintiffs-Appellants, *Beiersdorfer* v. *LaRose*, No. 20-3557 (6th Cir. Oct. 7, 2020) 6
Order Denying Mot., *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. June 16, 2020) 4
Order Denying Second Emergency Mot., *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. July 8, 2020) 4
Order, *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. July 13, 2020) 4

INTRODUCTION

Respondents agree that Petitioners have presented an "important question" that is "the subject of an entrenched circuit split." Br. in Opposition ("Opp.") 1. Nevertheless, Respondents contend that the Court should deny certiorari because the case "is at least arguably moot," and because Petitioners would "lose on the merits" under any standard. *Id.* Respondents are wrong on both counts.

First, this case is not moot. Petitioners are actively seeking to place initiatives on ballots for future elections while the pandemic persists. And like other election law cases, the petition presents an issue that is capable of repetition but could evade review if not addressed now.

Second, Petitioners can win on the merits under any appropriate standard of review if the First Amendment applies. Petitioners' challenge can succeed under strict scrutiny for core political speech, under *Anderson-Burdick*'s severe burden standard, or even under *O'Brien* intermediate scrutiny. Respondents suggest otherwise only by making merits arguments, choosing a side in the circuit split, and ignoring the circuits that apply the First Amendment.

Because this case is a clean vehicle for the Court to issue "clear and administrable guidelines," see *Little* v. *Reclaim Idaho,* 140 S. Ct. 2616, 2616 (2020) (Roberts, C.J., concurring in the grant of stay), the Court should grant the Petition.

I. THIS CASE IS THE RIGHT VEHICLE AT THE RIGHT TIME TO RESOLVE AN ENTRENCHED CIRCUIT SPLIT

A. This Case is Not Moot.

a. Respondents contend that the November 3, 2020 election "ended months ago" so "the case is at least arguably moot."[1] Opp. 11. But like other challenges to election procedures, this case raises issues that are "capable of repetition, yet evading review." See, *e.g.*, *Davis* v. *Fed. Election Comm'n*, 554 U.S. 724, 735 (2008) (the exception "applies where (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again"); *Meyer* v. *Grant*, 486 U.S. 414, 417 n.2 (1988).

b. This case illustrates why this mootness exception applies in election cases. The next election date for local initiatives is May 4, 2021, and, after that, November 2, 2021. See Pet. 29. Petitioners must certify local initiatives several weeks before each election. There is no indication that the pandemic will be over by either deadline, nor any indication that Ohio will lift its Shutdown Orders, which continue to ban large gatherings and require social distancing.[2]

---

[1] Respondents maintained the opposite stance on mootness in prior briefing. *See* Defendants-Appellants' Reply Br. at 36, *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. Sept. 3, 2020) ("To be clear, the State is not arguing that the case is moot.")

[2] Recent changes to Ohio's Shutdown Orders, *see* Opp. 5, do not support mootness. *See Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam order) ("It is clear that this matter is not moot. . . . And injunctive relief is still called for because the applicants remain under a constant threat that the area in question will be reclassified as red or orange.");

c. Respondents halfheartedly suggest that the Court's jurisdiction "is at least debatable" because Petitioners "allege[d] that the signature-gathering requirements were too burdensome *as applied to* the November 3, 2020 election," instead of all elections occurring during the pandemic. See Opp. 12, 14 (emphasis in original). This argument misses the mark.

First, Petitioners have consistently emphasized the recurring nature of the Question Presented. See*, e.g.*, Pet. 25–28; Br. of Appellees at 38, *Thompson* v. *DeWine*, No. 20-3525 (6th Cir. Aug. 26, 2020) ("This severe burden is ongoing . . . the next election for local initiatives is [] May 4, 2021 . . . there is no indication that the COVID-19 crisis will be over by that time, and no indication that Ohio will have relaxed its emergency orders.").

Second, the mootness exception applies equally to facial and as-applied challenges. See *Fed. Election Comm'n* v. *Wisconsin Right to Life*, 551 U.S. 449, 463 (2007) (doctrine is "appropriate when there are 'as applied' challenges as well as in the more typical case involving only facial attacks"). Accordingly, the fact that the challenge is directed at an election that has since passed does not matter. See*, e.g.*, *Storer* v. *Brown*, 415 U.S. 724, 737 n.8 (1974) ("The 1972 election is long over . . . but this case is not moot," since issues would "persist as the California statutes are applied in future elections.").

Third, Respondents' contention that Petitioners "could have sought review in this Court in the month and a half between the Sixth Circuit's decision and election day," Opp. 14, ignores both Petitioners' ex-

---

Danville Christian Academy v. *Beshear*, 141 S. Ct. 527, 528–30 (2020) (Gorsuch, J., dissenting from denial of application to vacate stay).

tensive attempts to expedite this case and the reality of Ohio's ballot initiative process. Petitioners acted immediately to vacate the Sixth Circuit's stay. *Compare* Pet. App. 14a, *with* Mot. to Vacate Stay, *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. May 26, 2020), Emergency Mot. to Reconsider and Vacate Stay, *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. May 30, 2020), *and* Emergency Application to Vacate Stay, *Thompson* v. *DeWine*, No. 19A1054 (S. Ct. June 17, 2020). The Sixth Circuit and this Court declined to lift the stay shortly before the July 16, 2021 deadline to submit signatures. See Order Denying Mot., *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. June 16, 2020) and Pet. App. 13a. The Sixth Circuit denied a second emergency motion to vacate the stay. See Order Denying Second Emergency Mot., *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. July 8, 2020) and Order, *Thompson* v. *DeWine*, No. 20-3526 (6th Cir. July 13, 2020). With the deadline to submit signatures three days away, there was no practical way to qualify the initiatives and no remaining reason for Petitioners to seek expedition.

B. The Opinions Below Are Influential Precedential Opinions That Squarely Address the Well-Preserved Question Presented.

Respondents suggest that this Court should "await a better vehicle for deciding the important question presented." Opp. 1. But this case is an excellent vehicle and even Respondents acknowledge the circuit split is ready for resolution.

a. The question presented is both squarely addressed in the published decisions below and well-preserved in the parties' briefs. See Pet. App. 4a ("[Ohio] also argues that '[l]aws regulating ballot access for state initiatives do not implicate the First

Amendment at all.' . . . But as Ohio admits, that's not the law in this Circuit."); *id.* at 103a ("The Sixth Circuit is on the Correct Side of an Emerging Circuit Split"); *id.* at 45a ("[T]his Court is bound by the Sixth Circuit, which . . . applie[s] the *Anderson-Burdick* framework to First Amendment challenges to Ohio's statutory requirements for initiative petitions.").

b. The decisions below have already proven precedentially important.[3] See*, e.g.*, *SawariMedia LLC* v. *Whitmer*, 466 F. Supp. 3d 758, 767, 769–70 (E.D. Mich. 2020) (citing *Thompson* v. *DeWine*, 959 F.3d 804, 808 (6th Cir. 2020)); *Eilenberg* v. *City of Colton*, No. SA CV 20-00767-FMO (DFM), 2020 WL 5802377, at *5 (C.D. Cal. July 9, 2020) (citing *Thompson* v. *DeWine*, 2020 WL 2557064 (S.D. Ohio May 19, 2020)). And this Court has already recognized that this case presents a question the Court must address. See *Little,* 140 S. Ct. at 2616 (Roberts, C.J., concurring in the grant of stay) ("[T]he Court is reasonably likely to grant certiorari to resolve [this] split on an important issue of election administration.") (citing *Thompson* v. *DeWine*, 959 F.3d 804, 808 (6th Cir. 2020) (per curiam)).

c. *Beiersdorfer* v. *LaRose*, No. 20-3557 (6th Cir. argument scheduled Apr. 21, 2021) is not a better vehicle. The Sixth Circuit has not even issued a decision in that case. *Beiersdorfer* also raises a litany of other issues, including challenges under the Ninth Amendment and substantive due process. Moreover,

---

[3] Many courts have also relied on the decision below in deciding analogous issues. *See, e.g.*, *Kishore* v. *Whitmer*, 972 F.3d 745, 749–51 (6th Cir. 2020); *League of Women Voters of Ohio* v. *LaRose*, No. 2:20-cv-3843, 2020 WL 5757453, at *7 (S.D. Ohio Sept. 27, 2020); *Fair Maps Nevada* v. *Cegavske*, 463 F. Supp. 3d 1123, 1143 (D. Nev. 2020); *Gottlieb* v. *Lamont*, 465 F. Supp. 3d 41, 50 (D. Conn. 2020).

Beiersdorfer's First Amendment arguments are substantially similar to those made in *Schmitt* v. *LaRose*, 933 F.3d 628, 639 (6th Cir. 2019), which Respondents have previously contended were "frivolous" and unworthy of this Court's review. *Compare* Opening Br. of Plaintiffs-Appellants at 11, *Beiersdorfer* v. *LaRose*, No. 20-3557 (6th Cir. Oct. 7, 2020), *with* Br. in Opp. at 24, *Schmitt* v. *LaRose*, No. 19-974 (S. Ct. Apr. 27, 2020).

II. PETITIONERS WIN UNDER ANY APPROPRIATE STANDARD OF REVIEW

Petitioners do not lose "under every conceivable approach." Opp. 15. Instead, Petitioners win under any standard that applies the First Amendment. Respondents attempt to argue otherwise by making merits arguments that side with the D.C. and Tenth Circuits against all others. This tactic does not diminish the strength of the petition as a vehicle for resolving the question presented.

A. Petitioners Win Under Strict Scrutiny.

a. Respondents lose if *Meyer* strict scrutiny applies; they do not argue otherwise. This high standard is appropriate because petition circulation is "core political speech" that is "subject to exacting scrutiny." *Meyer,* 486 U.S at 420–21.

b. Respondents attempt to distinguish *Meyer* on the grounds that *Meyer* dealt with laws that "go beyond ballot access and actually restrict communicative conduct during the initiative process." Opp. 32. But *Meyer* itself makes no such distinction. See *Meyer*, 486 U.S. at 420–21. And even if this were relevant, the combined effect of the pandemic, Ohio's Shutdown Orders, and strict enforcement of the In-Person Collection Laws *did* restrict communicative conduct. See *id.* at 422–23 (regulation impacting circulators

restricts political expression where it "limits the number of voices who will convey appellees' message," "limits the size of the audience they can reach," or "makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion").

c. Respondents assert that "[n]o circuit or state court applies strict scrutiny to all laws regulating ballot access for initiatives." Opp. 32. But the Ninth, Eighth, and Tenth Circuits, and the Supreme Judicial Court of Maine have relied on *Meyer* in applying strict scrutiny to laws regulating ballot initiatives. See *Angle* v. *Miller*, 673 F.3d 1122 (9th Cir. 2012); *Fair Maps Nevada* v. *Cegavske*, 463 F. Supp. 3d 1123 (D. Nev. 2020) (characterizing *Angle* as a different framework from *Anderson-Burdick* and applying strict scrutiny); *Bernbeck* v. *Moore*, 126 F.3d 1114 (8th Cir. 1997); *Yes on Term Limits* v. *Savage*, 550 F.3d 1023 (10th Cir. 2008); *Wyman* v. *Sec'y of State*, 625 A.2d 307 (Me. 1993).

B. Petitioners Win Under the *Anderson-Burdick* Test.

a. Respondents argue that the commonly utilized *Anderson-Burdick* test should not apply because "there is no constitutional tension to resolve." Opp. 20. This is wrong. See *Meyer*, 486 U.S. at 424 ("[State] contends that because the power of the initiative is a state-created right, it is free to impose limitations on the exercise of that right. That reliance is misplaced."); *Taxpayers United for Assessment Cuts* v. *Austin*, 994 F.2d 291, 295 (6th Cir. 1993) ("[A]lthough the Constitution does not require a state to create an initiative procedure, if it creates such a procedure, the state cannot place restrictions on its use that violate the federal Constitution.").

b. Respondents incorrectly assert that circuits have "uniformly held" that in person signature rules and strict adherence to deadlines do not constitute a severe burden under *Anderson-Burdick*. Opp. 29. This ignores the many courts that have found the circumstances of the pandemic to be a severe burden warranting strict scrutiny. See *Esshaki* v. *Whitmer*, 813 F. App'x 170 (6th Cir. 2020) (holding that the State's strict enforcement of statutory signature gathering requirements with the Governor's Stay-at-Home Order was severe burden)[4]; *SawariMedia LLC* v. *Whitmer*, 963 F.3d 595 (6th Cir. 2020) (holding that the combination of a Stay-at-Home order and a signature requirement "violates the First Amendment by creating a severe restriction on their access to the ballot")[5]; *Libertarian Party of Illinois* v. *Cadigan*, 824 F. App'x 415, 416 (7th Cir. 2020) (affirming the district court's assessment that the "combination of restrictions on public gatherings imposed by Governor Pritzker, which started at nearly the same time as the window for gathering signatures, and the statutory in-person signature requirements presents 'a nearly insurmountable hurdle'" for ballot access); *Goldstein* v. *Sec'y of Commonwealth*, 142 N.E.3d 560, 571 (Mass. 2020) ("[T]he minimum signature requirements, which may impose only a modest burden . . . in ordinary times, now impose a severe burden on, or

[4] There is no material distinction between Ohio's and Michigan's Shutdown Orders. *Cf.* Pet. App. 90a. Both responded to the same pandemic and both included a vague First Amendment exception individuals could not have been expected to interpret as allowing for petition circulation.

[5] The *SawariMedia* district court decision was vacated by joint request of the parties. *SawariMedia LLC* v. *Whitmer*, No. 20-cv-112456, 2020 WL 6580461, at *1 (E.D. Mich. Oct. 19, 2020). That decision did not affect the Sixth Circuit decision in *SawariMedia*, which is still good law.

significant interference with" ballot access.); *Fair Maps Nevada,* 463 F. Supp. 3d at 1142 (observing that *Angle* lays out a "test for when to apply strict scrutiny to restrictions on Nevada ballot initiatives"); *Garbett* v. *Herbert*, 458 F. Supp. 3d 1328, 1344–45 (D. Utah 2020) ("On balance, considering the current pandemic and the totality of the State's emergency measures to combat it, Utah's ballot access framework as applied this year imposed a severe burden on [plaintiff's] First Amendment rights. In light of nearly all public events being canceled, orders for people to stay six feet apart and to stay home, and the extraordinary impact on nearly all aspects of everyday life, it is difficult to imagine a confluence of events that would make it more difficult . . . to collect signatures."); Pet. App. 26a (district court decision below finding severe burden).

c. Respondents also argue that initiative proponents could have come up with "contactless" ways to circulate petitions. Opp. 25. That argument ignores that Ohio—unlike other states—refused to modify its process in light of the pandemic. See Br. of Direct Democracy Scholars, Initiative & Referendum Institute, and Citizens in Charge as *Amici Curiae* at 13–16 (describing Montana, Utah, and New Jersey executive orders permitting mail-in and online signature collection during the pandemic). Moreover, the reality is that the public was and remains wary that COVID-19 can be transmitted through surfaces and prolonged exposure in public places.

d. Finally, Respondents assert "in measuring the severity of the burden, States are accountable only for burdens *they* impose." Opp. 24. That assertion is incorrect. Courts applying *Anderson-Burdick* have found severe burdens without reference to a state's role in causing the underlying burden. See*, e.g., Flor-*

ida Democratic Party v. *Scott*, 215 F. Supp. 3d 1250, 1257 (N.D. Fla. 2016) (finding a severe burden as to a Florida voting statute that did not permit extension of a registration deadline for emergencies when hundreds of thousands of voters could not timely register following a hurricane evacuation).

C. Petitioners Win Under the First Circuit's *O'Brien* Intermediate Scrutiny Test.

In *Wirzburger* v. *Galvin*, 412 F.3d 271, 279 (1st Cir. 2005), the First Circuit—in assessing a subject matter restriction on ballot initiatives for public funding of private religious schools—crafted a novel intermediate scrutiny standard based on *United States* v. *O'Brien,* 391 U.S. 367 (1968).[6] Even under this test, Petitioners would win because the severe burden presented by the pandemic, the Shutdown Orders, and Ohio's strict enforcement of its In-Person Collection Laws was greater than essential to further its interests. See *supra* Section II.B.

D. Respondents' Preference on the Merits for the D.C. and Tenth Circuit's Approach Confirms the Strength of the Petition.

Respondents attempt to paint this case as a poor vehicle by making merits-stage arguments highlighting their preferred side of the split. See Opp. 15–19 (discussing rational basis review in *Initiative & Referendum Inst.* v. *Walker*, 450 F.3d 1082, 1099 (10th Cir. 2006) and *Marijuana Policy Project* v. *United*

---

[6] The First Circuit itself is confused over what test applies to ballot initiative regulations. *See Perez-Guzman* v. *Garcia*, 346 F.3d 229, 239 (1st Cir. 2003) (applying "exacting scrutiny to severe restrictions on ballot access").

States, 304 F.3d 82, 85 (D.C. Cir. 2002), which do not apply the First Amendment). Respondents' arguments are predicated on the view that the First Amendment does not apply because of an arbitrary distinction they draw between regulations that make the initiative process more difficult[7] and those that "restrict the communicative conduct of persons advocating a position." *Walker*, 450 F.3d at 1100. This distinction has no basis in this Court's precedents in *Meyer* and *Buckley*. See Pet. 15–16. In all events, Respondents' argument reduces to a preference for the approach applied in the D.C. and Tenth Circuits over those applied by the circuits on the other side of the split. This tactic only serves to illustrate the need for the Court to grant certiorari and does nothing to diminish the case as an appropriate vehicle to resolve the split.

---

[7] Even under this flawed framework, the First Amendment and heightened scrutiny should apply here. *See Miller* v. *Thurston*, 967 F.3d 727, 738 (8th Cir. 2020) (First Amendment applied to in-person signature requirement because "[a]n individual expresses a view on a political matter when he signs a petition," and strict enforcement of signature laws can "affect[] the number of people a canvasser [] can solicit.").

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

JEFFREY T. GREEN
NORTHWESTERN SUPREME COURT PRACTICUM
375 E. Chicago Avenue
Chicago, IL 60611

NAOMI A. IGRA
STEPHEN CHANG
JENNIFER H. LEE
TYLER WOLFE
SIDLEY AUSTIN LLP
555 California Street
San Francisco, CA 94101

MARK R. BROWN *
CAPITAL UNIVERSITY LAW SCHOOL
303 E. Broad Street
Columbus, OH 43215
(614) 236-6590
mbrown@law.capital.edu

OLIVER B. HALL
CENTER FOR COMPETITIVE DEMOCRACY
P.O. Box 20190
Washington, DC 20009

Counsel for Petitioners

* Counsel of Record

March 30, 2021