No. _____

In the Supreme Court of the United States

INDIANA GREEN PARTY, ET AL.,

Petitioners,

v.

DIEGO MORALES,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

It is undisputed that a state may not condition participation in its elections on the payment of a fee. In this case, the uncontroverted evidence establishes that a minor political party or independent candidate for statewide office must spend substantial funds—hundreds of thousands of dollars—to comply with the requirements to appear on the general election ballot in Indiana.

The Questions Presented Are:

1. Whether a statutory scheme that compels candidates and political parties to spend substantial funds to qualify for the ballot violates the First and Fourteenth Amendments?

2. Whether a statutory scheme that compels candidates and political parties to spend substantial funds to qualify for the ballot imposes a "severe" burden under the *Anderson-Burdick* framework?

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiff-Appellants below

- Indiana Green Party
- Libertarian Party of Indiana
- John Shearer
- George Wolfe
- David Wetterer
- A.B. Brand
- Evan McMahon
- Mark Rutherford
- Andrew Horning
- Ken Tucker
- Adam Muehlhausen

Respondent and Defendant-Appellee below

- Diego Morales, in his official capacity as the Secretary of State of the State of Indiana

CORPORATE DISCLOSURE STATEMENT

Petitioners Indiana Green Party and Libertarian Party of Indiana do not have parent corporations and no publicly held corporation owns 10 percent or more of their stock.

Petitioners John Shearer, George Wolfe, David Wetterer, A.B. Brand, Evan McMahon, Mark Rutherford, Andrew Horning, Ken Tucker and Adam Muehlhausen are individuals.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Seventh Circuit

No. 23-2756

Published at 113 F.4th 739 (7th Cir. 2024)

Indiana Green Party, et al., Plaintiffs-Appellants
v. Diego Morales, Defendant-Appellee

Opinion: August 19, 2024

Rehearing Denied: September 23, 2024

U.S. District Court, S.D. Indiana, Indianapolis Div.

No. 1:22-cv-00518

Indiana Green Party, et al., Plaintiffs
v. Diego Morales, Defendant

Final Judgment: August 14, 2023

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The Opinion of the United States Court of Appeals for the Seventh Circuit (App.1a) is published at *Indiana Green Party v. Morales*, 113 F.4th 739 (7th Cir. 2024). The District Court's Opinion (App.23a) is published at *Indiana Green Party v. Morales*, No. 1:22-cv-00518, 2023 WL 5207924 (S.D. Ind. Aug. 14, 2023).

JURISDICTION

The judgment of the Court of Appeals was entered on August 19, 2024. App.1a, 22a. A timely filed petition for rehearing was denied on September 23, 2024. App.37a. On December 12, 2024, Justice Barrett extended the time within which to file a petition for certiorari by 30 days, to and including January 22, 2025. *See* No. 24A576. On January 10, 2025, Petitioners filed an Application to extend that time by an additional 30 days, such that the petition would be timely filed on or before February 21, 2025. *See id.*; Sup. Ct. R. 30.1. Nineteen days later, on January 29, 2025, Justice Barrett denied that Application, which had been filed at least 10 days in advance of the deadline. Petitioners therefore filed a Motion to Direct the Clerk to File Petition Out of Time contemporaneously with this Petition. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment of the United States Constitution provides in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment of the United States Constitution provides in pertinent part:

> No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

PETITION FOR A WRIT OF CERTIORARI

This case presents the same questions, based on materially indistinguishable facts, as *Miller v. Nelson*, No. 24-854, now pending before the Court on a petition for a writ of certiorari. In the decision below the Seventh Circuit upheld Indiana's ballot access requirements, finding Petitioners failed to demonstrate a severe burden on their First and Fourteenth Amendment rights, even though the uncontested evidence establishes that a minor political party ("Minor Party") or independent candidate ("Independent") for statewide office must spend hundreds of thousands of dollars to comply with those requirements. That decision, like the Fifth Circuit's decision in *Miller*, cannot be reconciled with this Court's long-standing precedent prohibiting states from making wealth a condition of participation in their

electoral processes. It also deepens a conflict among the lower courts as to whether state election laws that impose substantial costs are unconstitutional. Yet the Seventh Circuit treated its decision as if it were a straightforward application of settled precedent.

The Seventh Circuit's decision is undoubtedly wrong, but it exemplifies the lower courts' persistent difficulty in adjudicating claims that state election laws violate the fundamental rights of the voters, candidates and political parties subject to them. To resolve such claims, this Court has directed lower courts to apply a balancing test pursuant to which they must "must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). Under this *Anderson-Burdick* analysis, restrictions that impose "severe" burdens are subject to strict scrutiny, whereas lesser burdens are subject to less exacting review. *See Burdick*, 504 U.S. at 434.

But lower courts have struggled to apply the *Anderson-Burdick* analysis with consistency from its inception. *See, e.g.*, *Republican Party of Ark. v. Faulkner County, Ark.*, 49 F.3d 1289, 1296 (8th Cir. 1995) ("The Supreme Court has not spoken with unmistakable clarity on the proper standard of review for challenges to provisions of election codes"); *Hatten v. Rains*, 854 F.2d 687, 693 (5th Cir. 1988) ("The Supreme Court has never stated the level of scrutiny applicable to ballot

access restrictions with crystal clarity"). The problem, as the Seventh Circuit has observed, is that "much of the action takes place at the first stage" of the analysis—measuring the severity of the burden a state election law imposes—but this Court has never explained how that is to be done. *Stone v. Board of Election Com'rs for City of Chicago*, 750 F.3d 678, 681 (7th Cir. 2014). The Court has neither established a methodology nor identified a substantive standard to guide the inquiry.

Not surprisingly, lower courts are divided as to if and when a burden crosses the line into unconstitutionally severe. Several circuits have held ballot access requirements unconstitutional even though they are less restrictive and less expensive to comply with than Indiana's, while other circuits have held, consistent with the Seventh Circuit, that the substantial cost of complying with such requirements is not a severe burden. But the Seventh Circuit is itself divided: in a prior decision that directly contradicts the decision below, it concluded that ballot access requirements cannot be considered minimally burdensome if they impose substantial costs. The Sixth Circuit is similarly conflicted, holding in one case that such costs are a severe burden, and in another case that they are not.

In addition to reaching conflicting results, lower courts have also begun to fashion their own conflicting standards for analyzing the severity of burdens imposed by ballot access requirements. In the decision below, for instance, the Seventh Circuit concluded that the approximately $500,000 cost of complying with Indiana's ballot access requirements was not a severe burden because the case was not otherwise "a close one." App.20a; *but see Anderson*, 460 U.S. at 789 (rejecting

litmus test analyses) (citation omitted). Similarly, in *Miller*, the Fifth Circuit found that Texas's statutory scheme was not severely burdensome because the necessary cost of complying with it—also in the hundreds of thousands of dollars—was not a "*consequential* burden" to the plaintiffs. *See Miller v. Nelson*, 116 F.4th 373, 381 (5th Cir. 2024) (emphasis original). And the Sixth Circuit has concluded that the cost of complying with ballot access requirements is not a severe burden unless it amounts to "exclusion or virtual exclusion from the ballot." *Libertarian Party of Ky. v. Grimes*, 835 F.3d 570, 574 (6th Cir. 2016). The lower courts' reliance on such *sui generis* and inconsistent standards makes it all but certain that the divide between them will grow unless this Court intervenes.

Anderson-Burdick may be the standard by which lower courts must analyze the constitutionality of state election laws, but as one jurist recently opined, its "hallmark is standardless standards." *Daunt v. Benson*, 999 F.3d 299, 323 (6th Cir. 2021) (Readler, J., concurring); *see also* Kate Hardiman Rhodes, *Restoring the Proper Role of the Courts in Election Law: Toward Reinvigoration of the Political Question Doctrine*, 20 GEO. J.L. & PUB. POL. 755, 763 (2022) (observing that "*Anderson-Burdick* begins to resemble *Planned Parenthood v. Casey*'s 'inherently standardless' undue burden inquiry."). That cannot be the guiding principle on a question so pervasive and vitally important as the validity of our nation's election laws. The time has come for this Court to provide lower courts the guidance they so clearly need, by establishing workable standards to inform their *Anderson-Burdick* analysis. This case is the right vehicle for the Court to do that. The facts are undisputed, the evidence is uncontested

and, because this is a rare election law case that did not arise in an emergency posture, the record is robust and amply supports Petitioners' claims. The questions presented were also squarely raised and decided in the proceedings below. For the reasons set forth below, this Court should grant certiorari.

STATEMENT OF THE CASE

This case, like *Miller v. Nelson*, No. 24-854, raises a constitutional challenge to a state statutory scheme that effectively forecloses the general election ballot to non-wealthy Independents and Minor Parties. The case arises from Indiana rather than Texas, but as in *Miller*, the material facts are not in dispute, App.30a, and they are supported by a comprehensive evidentiary record that Petitioners developed, which spans several decades of Indiana's electoral history. App.31a. Those facts establish that no Independent or Minor Party has completed a successful statewide petition drive to qualify for Indiana's ballot since 2000—more than two decades—and that they cannot do so now unless they spend substantial funds to hire petition circulators and pay for the other necessary resources. App.31a. The facts also establish that the current cost of completing a statewide petition drive is in the hundreds of thousands of dollars. App.31a. Those astronomical costs are caused by Indiana's high signature requirement in combination with its laborious and inefficient 136-year-old petitioning procedures and other unique restrictions and requirements. Taken together, these provisions interpose a near-absolute barrier to non-wealthy Independents and Minor Parties.

A. Legal and Historical Background

Indiana began requiring that candidates collect signatures on nomination petitions to qualify for its ballot in 1889. In 1933, Indiana increased its original requirement—500 signatures for statewide office—to 0.5 percent of the total vote for Secretary of State in the previous election (except parties that polled more than 10 percent of that vote, which nominated by primary election). From 1933 until 1980—a period spanning 12 Presidential election cycles—Indiana's signature requirement fluctuated between 6,642 and 8,863.[1] SUMF ¶ 28. In all that time, Indiana never had an overcrowded ballot. *Id.*

Nevertheless, in 1980 Indiana quadrupled its signature requirement to 2 percent of the total vote for Secretary of State in the previous election. *Id.* ¶ 19. As applied to candidates for statewide office in 2024, that requirement translated to 36,943 valid signatures. *See* I.C. 3-8-6-3. That figure is substantially lower than it has been in recent years. In 2022, for example, the requirement was 44,935 valid signatures. But even the lower 2024 figure places Indiana's ballot access requirements among the most restrictive in the nation: as applied to presidential candidates, only three states imposed a higher requirement—California, Texas and New York—and they, unlike Indiana, are three of the four most populous states in the nation. *See* Winger Decl. (ECF No. 60-16), Ex. C. Additionally, Indiana's

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[1] Neither the District Court nor the Court of Appeals addressed many of the facts on which Petitioners' claims rely. Because those facts are undisputed, App.30a, Petitioners cite to their Statement of Undisputed Material Facts (ECF. No. 61 at PageID #: 539-545) ("SUMF") or directly to the record as necessary.

signature requirement is more restrictive than necessary—by several orders of magnitude—to protect against overcrowded ballots. SUMF ¶¶ 24-27.

There have been only eight successful statewide petition drives in the more than 40 years since Indiana enacted its 2 percent signature requirement, and there have been none since 2000. *Id.* ¶¶ 1, 3. The last successful statewide petition drive, Independent presidential candidate Pat Buchanan's in 2000, cost more than $350,000. *Id.* ¶¶ 6-7. Similarly, the Reform Party's successful effort in 1996 was possible only because its presidential candidate Ross Perot was a billionaire who spent $11-$12 million on his petition drives nationwide, a substantial portion of which funded his petition drive in Indiana. *See* Verney Decl. (ECF No. 60-14) ¶¶ 4, 15, 18. The market rate for a petition drive in 2022 ranged from $465,000 to $565,000. SUMF ¶ 11.

The exorbitant cost of conducting a petition drive in Indiana is primarily a function of its high signature requirement and 136-year-old petitioning procedures. *See* I.C. 3-8-6-6, 3-8-6-10(a). As in 1889, when Indiana first started regulating access to the ballot, Independents and Minor Party candidates must obtain voters' signatures in person, by hand, on paper nomination petitions, which must be separated by voters' county of residence and submitted to 92 different county boards of election. *See id.* That procedure may have been adequate as a means of demonstrating the requisite modicum of support in 1889, when Indiana's statewide signature requirement amounted to only 500 signatures, but it is grossly inadequate to the task in Indiana's recent election cycles, when nearly 45,000 signatures have been required.

Additionally, when petition circulators obtain a voter's signature, they have no way to verify that the voter is eligible to sign the petition and that the signature is valid. As a result, a substantial percentage of the total signatures obtained are invalidated due to technical defects such as incorrect or omitted information, information signed on the wrong line, mismatches between a voter's current and registered addresses, or simply because a voter's handwriting is illegible. *See* Kafoury Decl. (ECF No. 60-6) ¶ 8; Muehlhausen Decl. (ECF No. 60-9) ¶ 14; Tucker Decl. (ECF No. 60-13) ¶ 8; Verney Decl. (ECF No. 60-14) ¶ 7. To ensure compliance with the signature requirement, therefore, it is generally necessary to exceed it by at least 50 percent. *See* Kafoury Decl. (ECF No. 60-6) ¶ 8; Buchanan Decl. (ECF No. 60-3) ¶ 4; Redpath Decl. (ECF No. 60-10) ¶ 8; Tucker Decl. (ECF No. 60-13) ¶ 8; Verney Decl. (ECF No. 60-14) ¶ 7. The inadequacy of the petitioning procedure thus effectively raises the number of signatures required by half as much again.

Moreover, under the best of circumstances, collecting signatures by hand is inherently time-consuming, labor-intensive and expensive. *See* Muehlhausen Decl. (ECF No. 60-9) ¶ 14; Kafoury Decl. (ECF No. 60-6) ¶¶ 9-10; Redpath Decl. (ECF No. 60-10) ¶¶ 8-13; Tucker Decl. (ECF No. 60-13) ¶¶ 9-10. It is a physically challenging and mentally taxing activity that few people are able to do successfully. *See* Kafoury Decl. (ECF No. 60-6) ¶¶ 9-10. That is why volunteer-led petition drives cannot succeed in states with high signature requirements like Indiana. SUMF ¶ 14. No statewide petition drive—volunteer or paid—has succeeded in Indiana in more than two decades, and the last two successful efforts, in 2000 and 1996, cost hundreds of thousands

of dollars. SUMF ¶¶ 6-7; Verney Decl. (ECF No. 60-14) ¶¶ 4, 15, 18.

Petitioning is especially time-consuming and difficult in Indiana due to its unusual requirement that petitions be separated by voters' county of residence and submitted to 92 different county boards of voter registration. *See* Buchanan Decl. (ECF No. 60-3) ¶¶ 5-7; Verney Decl. (ECF No. 60-14) ¶ 13; Kafoury Decl. (ECF No. 60-6) ¶ 11. This dramatically increases the burden of petitioning in Indiana as compared to the great majority of states that impose no such requirement. *See* Buchanan Decl. (ECF No. 60-3) ¶ 8; Kafoury Decl. (ECF No. 60-6) ¶ 7; Redpath Decl. (ECF No. 60-10) ¶¶ 8-13; Verney Decl. (ECF No. 60-14) ¶ 13. To conduct a statewide petition drive in Indiana, Independents and Minor Party candidates must circulate multiple copies of the same petition—a different form for each county in which voters reside—throughout the state, then retrieve, separate by county and deliver thousands of pages of petitions to 92 different locations statewide. Such an effort strains the resources of the most well-funded campaigns, and it is a practical impossibility for non-wealthy grassroots campaigns that must rely on volunteers. SUMF ¶¶ 9-10, 14.

By contrast, Major Parties in Indiana—the Republicans and Democrats—select their nominees by means of taxpayer-funded primary elections. *See* I.C. 3-10-1-2; IC 3-11-6-1; IC 3-11-6-9; IC 3-11-6.5-2. Local elections officials prepare the Major Parties' primary election returns and transmit them electronically to state elections officials via a computerized system established by the state. *See* IC 3-10-1-33; *see also* IC 3-7-26.3 (establishing computerized statewide voter registration list). State officials then canvass the votes and tabulate

the results. *See* IC 3-10-1-34. The candidate of a political party receiving the highest vote total for each office is the party's nominee for that office, IC 3-8-7-1, and such nominees are placed on the general election ballot automatically. *See* IC 3-8-7-25(1). Neither the major party candidates nor the parties themselves incur any expense in connection with the candidates' placement on the general election ballot.

B. Facts and Procedural History

Petitioners Indiana Green Party, Libertarian Party of Indiana and several affiliated or independent voters and candidates, including John Shearer, George Wolfe, David Wetterer, A.B. Brand, Evan McMahon, Mark Rutherford, Andrew Horning, Ken Tucker and Adam Muehlhausen, commenced this action on March 17, 2022 against Respondent Diego Morales, who is named in his official capacity as Secretary of State of the State of Indiana. Petitioners filed suit pursuant to 42 U.S.C. § 1983 and alleged that several provisions of the Indiana Election Code are unconstitutional as applied separately and in combination with one another, including the 2 percent signature requirement, *see* I.C. 3-8-6-3, the petitioning procedures, *see* I.C. 3-8-6-6, 3-8-6-10(a), the filing deadline, *see* I.C. 3-8-6-10(b), and the 2 percent vote test for a Minor Party to retain ballot access. *See* I.C. 3-8-4-1.

Petitioners primarily challenged the foregoing provisions on the ground that the cost of complying with them is an impermissible financial barrier to participation in Indiana's electoral process.[2] The District

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[2] Petitioners also asserted that certain aspects of Indiana's statutory scheme are unconstitutional on independent grounds. For example, they asserted that Indiana's failure to establish a

Court acknowledged that such cost now approaches "something like $500,000" but nonetheless determined that "precedent compels this Court to conclude that the burden imposed is not unconstitutional." App.32a. It did so with only a passing reference to the undisputed facts and uncontested evidence in the record. App.31a. In fact, the District Court expressly declined to conduct the "fact-intensive" analysis this Court requires under the *Anderson-Burdick* framework and held that Indiana's requirements are constitutional because they are "within the acceptable bounds" established by this Court's precedent. App.32a-33a. It entered its Order and Judgment granting summary judgment for the Secretary on August 14, 2023.

Petitioners timely appealed to the Seventh Circuit, which affirmed. It concluded that Indiana's requirements "cannot be fairly characterized as imposing severe burdens" because other cases have upheld higher signature requirements and earlier filing deadlines. App.9a-10, 20a-21a. The Seventh Circuit therefore found it "clear" that the challenged provisions "do not severely burden the plaintiffs' First and Fourteenth Amendment rights and excused the District Court's failure to conduct the *Anderson-Burdick* analysis because "this case . . . is not a close one." App.20a. The Seventh Circuit did not acknowledge that it costs hundreds of thousands of dollars to comply with

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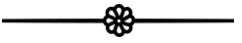
vote test for Minor Parties to retain ballot access in Presidential election cycles, when the Secretary of State is not up for election, is unconstitutional because it is impossible to form a new political party and retain ballot access in those election cycles. Similarly, Petitioners asserted that Indiana's failure to establish any standard by which Independents may retain ballot access is unconstitutional.

Indiana's requirements, or that such cost is sufficient to exclude non-wealthy candidates and parties and has done so for more than two decades. It simply determined that the unspecified cost "does not render Indiana's otherwise eminently reasonable requirements severely burdensome." App.12a. Because it found the burdens imposed were not severe, the Seventh Circuit applied "less exacting review" and concluded Indiana's asserted interest in "avoiding the voter confusion that could result from an overcrowded ballot" justified Indiana's requirements. App.13a-14a.



REASONS FOR GRANTING THE PETITION

I. The Seventh Circuit's Opinion Violates This Court's Precedent Prohibiting States From Conditioning Participation in Elections on Wealth and Deepens a Conflict Among Courts of Appeals as to Whether State Election Laws That Impose Substantial Costs Are Unconstitutional.

It has been settled law for at least half a century that states may not measure a citizen's qualification or entitlement to participate in their electoral processes on the basis of wealth. *See Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) (striking down poll tax of $1.50); *Bullock v. Carter*, 405 U.S. 134 (1972) (striking down "patently exclusionary" candidate filing fees); *Lubin v. Panish*, 415 U.S. 709 (1974) (striking down "moderate" candidate filing fees in the absence of a non-monetary alternative). "To introduce wealth or payment of a fee as a measure of a voter's qualifications

is to introduce a capricious or irrelevant factor," because "[w]ealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process." *Harper*, 383 U.S. at 668. Similarly, "[f]iling fees, however large, do not, in and of themselves, test the genuineness of a candidacy or the extent of the voter support of an aspirant for public office." *Lubin*, 415 U.S. at 717. Wealth, in short, is "extraordinarily ill-fitted" as a criterion for regulating access to the ballot. *Bullock*, 405 U.S. at 146.

It is also well-settled that "a constitutional prohibition cannot be transgressed indirectly . . . any more than it can be violated by direct enactment." *Speiser v. Randall*, 357 U.S. 513, 526 (1958) (quoting *Bailey v. Alabama*, 219 U.S. 219, 239 (1911)). "In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action." *NAACP v. Alabama*, 357 U.S. 449, 461 (1958). A state therefore may not take action that "produce[s] a result which the State could not command directly." *Speiser*, 357 U.S. at 526.

Against these settled principles, the unconstitutionality of Indiana's ballot access scheme is manifest. The uncontroverted record establishes that an Independent or Minor Party candidate for statewide office must spend hundreds of thousands of dollars to comply with that scheme. App.31a. But just as the Constitution forbids Indiana from imposing such a cost by direct enactment, *see Harper*, 383 U.S. at 668-670; *Bullock*, 405 U.S. at 149; *Lubin*, 415 U.S. at 718, it also forbids Indiana from doing so indirectly, as Indiana has done here by adopting a statutory scheme so burdensome,

laborious and inefficient that the exorbitant cost of complying with it "inevitably follow[s]" from the state's legislative choice. *NAACP*, 357 U.S. at 461. In so doing Indiana has impermissibly made wealth a necessary condition of an Independent's or Minor Party's participation in its electoral processes.

Because wealth has "no relation" to a citizen's qualification to participate in a state's electoral processes, this Court has unfailingly applied strict scrutiny to election laws that infringe First Amendment rights or discriminate on the basis of wealth. *See Harper*, 383 U.S. at 670; *Bullock*, 145 U.S. at 144; *Lubin*, 415 U.S. at 719 (Douglas, J., concurring). "This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct . . . . " *Elrod v. Burns*, 427 U.S. 347, 362 (1976) (citations omitted). In either case, "exacting scrutiny" is required. *Id.*

A. The Seventh Circuit's Opinion Upholding Indiana's Statutory Scheme Under Deferential Review Conflicts With This Court's Precedent.

The Seventh Circuit's Opinion upholding Indiana's statutory scheme under deferential review, despite the hundreds of thousands of dollars in costs it imposes, defies the entire corpus of this Court's ballot access jurisprudence. Time and again, this Court has reaffirmed that courts must not employ "litmus-paper test[s]" to decide ballot access cases. *Anderson*, 460 U.S. at 789 (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1983)). As the Seventh Circuit itself has recognized, "precedent requires courts to conduct fact-intensive

analyses when evaluating state electoral regulations." *Gill v. Scholz*, 962 F.3d 360, 365 (7th Cir. 2020). In the decision below, however, the Seventh Circuit purported to carve out an exception to this bedrock principle. "[W]e certainly agree . . . that courts must pay careful attention to the specifics of each case when evaluating the constitutionality of ballot access restrictions," the Seventh Circuit opined, but it concluded that such a fact-intensive analysis was not required here because "[t]his case . . . is not a close one." App.20a.

This reasoning turns the *Anderson-Burdick* framework upside down. The Seventh Circuit expressly relied on an improper litmus-test analysis by finding it "clear" that Indiana's requirements are not severely burdensome simply because they are "far lower" or "no greater" than those at issue in other cases. App.20a-21a. Then the Seventh Circuit justified its failure to address the very facts that establish a severe burden by concluding that this case is not on its face a "close" one. App.20a. But this Court has never suggested that courts may forego the *Anderson-Burdick* analysis in cases that may seem easy to decide—and with good reason, as the decision below demonstrates.

Had the Seventh Circuit expressly concluded that Indiana's statutory scheme is constitutional even though it imposes hundreds of thousands of dollars in costs on the candidates and parties subject to it, its error would be self-evident. *Harper*, *Bullock* and *Lubin* squarely foreclose that conclusion. *Anderson* likewise makes clear that an election law cannot be considered a minor burden if it imposes substantial costs. *See Anderson*, 460 U.S. at 793 ("As our cases have held, it is especially difficult for the State to justify a restriction that limits political participation by an identifiable

political group whose members share a particular viewpoint, associational preference, or economic status."). Because the Seventh Circuit disregarded the undisputed facts establishing the exorbitant costs Indiana's requirements impose, SUMF ¶¶ 6-7, 9-10, 14, however, it acknowledged only that Petitioners submitted unspecified "evidence" relating to those costs. App.11a. The Seventh Circuit then concluded that "such expenses" did not render "otherwise reasonable ballot access requirements unduly burdensome." App.12a (citing *American Party of Texas v. White*, 415 U.S. 767, 793-94 (1974)). But this Court reached the *opposite* conclusion in *White*. It recognized that the cost of complying with the challenged requirements would be unconstitutional if that cost operated as an "'exclusionary mechanism' which 'tends to deny some voters the opportunity to vote for a candidate of their choosing' or has 'a real and appreciable impact on the exercise of the franchise.'" *White*, 415 U.S. at 794 (quoting *Bullock*, 405 U.S. at 144). Here, unlike *White*, the uncontroverted record proves Indiana's requirements do just that. *Compare White*, 415 U.S. at 792 n.24, 794 *with* App.31a; SUMF ¶¶ 1-3, 6-11, 29.

The Seventh Circuit's decision below is plainly erroneous. It employed an improper analysis to reach a result that cannot be reconciled with this Court's long-standing precedent. As explained *infra* at Part II, however, the Seventh Circuit committed these errors because lower courts lack guidance as to how to measure the severity of a burden on constitutional rights. This Court's intervention is therefore urgently needed not only to bring the Seventh Circuit into conformity with this Court's precedent, but also to provide lower courts

the necessary guidance with respect to this fundamental issue of national importance.

B. The Seventh Circuit's Opinion Deepens a Conflict Among Courts of Appeals as to Whether State Election Laws That Impose Substantial Costs Are Unconstitutional.

The Seventh Circuit's conclusion that the staggering cost of complying with Indiana's statutory scheme does not constitute an unconstitutional burden directly conflicts with the decisions of two other federal courts of appeals—the Sixth Circuit and Eleventh Circuit—each of which struck down laws that imposed substantially lower costs of complying than do the laws of Indiana, and it conflicts with a prior decision of the Seventh Circuit itself. It also conflicts with the decisions of four more federal courts of appeals—the Third Circuit, Fourth Circuit, Eighth Circuit and Eleventh Circuit—which have relied on *Harper*, *Bullock* and *Lubin* to strike down election laws that imposed other financial burdens without providing a non-monetary alternative. But while the Seventh Circuit's decision violates that line of precedent, it is no outlier. The Fifth Circuit recently concluded that the cost of complying with Texas's ballot access requirements—also amounting to hundreds of thousands of dollars—is not an unconstitutional burden. Additionally, notwithstanding its decision that conflicts with the decision below, the Sixth Circuit has also squarely held—consistent with that decision—that the substantial cost of completing a petition drive does *not* constitute an impermissible burden. That the Sixth Circuit and Seventh Circuit are both internally divided and stand on each side of this conflict underscores the lack of meaningful

standards under which lower courts presently labor when reviewing the constitutionality of state election laws.

1. In a challenge to Michigan's 30,000-signature requirement for independent candidates for statewide office, the Sixth Circuit found a severe burden and held the requirement unconstitutional even though it amounted to 0.72 percent of the actual voters in the previous general election—a less stringent requirement than Indiana's. *See Graveline v. Benson*, 992 F.3d 524, 539-42, 548 (6th Cir. 2021); *see also id.* at 548 (Griffin, J., dissenting). Like Petitioners, the *Graveline* plaintiffs challenged Michigan's signature requirement as applied in combination with other provisions —most notably, the July 19 filing deadline—but even so, Michigan required fewer signatures and imposed a later filing deadline than Indiana. *See id.* at 528-529. Additionally, the record in *Graveline*, like the record below, disclosed that "most all-volunteer efforts fail and professionals are used to augment signature gathering efforts." *Id.* at 540 (quotation marks omitted). The plaintiff candidate's petition drive thus required "the expenditure of $38,000" in addition to "1,000 hours of volunteer time," *id.* at 530, while the total cost of a statewide petition drive came to $120,000. *See Graveline v. Benson*, 430 F. Supp. 3d 297, 303 (E.D. Mich. 2019). Even though this was a fraction of the cost of a statewide petition drive in Indiana, the Sixth Circuit, unlike the Seventh Circuit below, concluded it supported a finding of a severe burden. *See Graveline*, 992 F.3d at 543-546, 548.

The Eleventh Circuit has similarly held a ballot access scheme unconstitutional even though it was facially less stringent and less financially burdensome

than Indiana's. *See Green Party of Ga. v. Kemp*, 171 F. Supp. 3d 1340 (N.D. Ga. 2016), *aff'd*, 674 Fed. Appx. 974 (11th Cir. 2017) (unpublished). In *Green Party of Ga.*, the plaintiffs challenged Georgia's one-percent signature requirement as applied to minor party presidential candidates. *See Green Party of Ga.*, 171 F. Supp. 3d at 1344. That requirement translated to 50,334 signatures—more than Indiana's two-percent signature requirement, *see id.* at 1347, but the evidence showed a statewide petition drive could cost as much as $350,000—somewhat less than the cost in Indiana. *See id.* at 1350. The District Court nonetheless relied on that cost, *inter alia*, to find Georgia's requirement imposed "a severe burden on associational and voting rights" and strike it down. *Id.* at 1363. The 11th Circuit "affirmed based on the district court's well-reasoned opinion." *Green Party of Ga.*, 674 Fed. Appx. 974 (per curiam) (unpublished).

Notwithstanding its conflicting decision below, the Seventh Circuit has also relied on the cost of complying with a ballot access scheme to support the conclusion that it "substantially burdened" the plaintiff candidates' rights. *See Krislov v. Rednour*, 226 F.3d 851, 860 (7th Cir. 2000). *Krislov* primarily concerned a challenge to restrictions on petition circulators under *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), but prior to reaching that issue, the Court expressly rejected the state's argument that Illinois's ballot access scheme was "only minimally burdensome" because it imposed relatively low signature requirements. *Id.* at 859 (5,000 signatures were required for statewide office). "[T]he number of signatures a candidate is required to obtain is just one of several important considerations"

contributing to the burden, the Court observed. *Id.* at 860 (citations omitted). "The uncontested record indicates that [the candidates'] ballot access took a lot of time, money and people, which cannot be characterized as minimally burdensome." *Id.*

Because each of the foregoing decisions involved ballot access requirements less restrictive or roughly commensurate with Indiana's and costs of complying that were substantially lower, the conflict between these decisions and the Seventh Circuit's decision below cannot be attributed to factual distinctions. Where the Seventh Circuit concluded that the cost of complying with Indiana's statutory scheme did not establish a severe burden, its sister circuits reached the opposite conclusion—that the *lower* costs of complying with other states' restrictions did.

Courts including the Third Circuit, Fourth Circuit, Eighth Circuit and Eleventh Circuit have also relied on *Harper*, *Bullock* and *Lubin* to strike down state election laws that imposed other financial burdens without providing a non-monetary alternative. *See Constitution Party of Pa. v. Cortes*, 116 F. Supp. 3d 486, 502 (E.D. Pa. 2015) (striking down statutory scheme that required candidates to assume risk of incurring up to $130,000 in costs if they defended nomination petitions they were required by law to submit), *aff'd*, 824 F.3d 386 (3rd Cir. 2016); *Belitskus v. Pizzingrilli*, 343 F.3d 632 (3rd Cir. 2003) (enjoining enforcement of Pennsylvania's filing fees against candidates unable to pay them); *Republican Party of Arkansas*, 49 F.3d 1289 (holding that Arkansas cannot require political parties to hold and pay for primary elections); *Fulani v. Krivanek*, 973 F.2d 1539 (11th Cir. 1992) (declaring unduly burdensome nomination petition signature

verification fees unconstitutional); *Dixon v. Maryland State Bd. of Elections*, 878 F.2d 776 (4th Cir. 1989) (declaring mandatory filing fee of $150 for non-indigent write-in candidates unconstitutional); *McLaughlin v. North Carolina Board of Elections*, 850 F. Supp. 373 (M.D. N.C. 1994) (declaring five-cent per signature verification fee unconstitutional); *Clean-Up '84 v. Heinrich*, 590 F. Supp. 928 (M.D. Fl. 1984) (declaring ten-cent per signature verification fee unconstitutional). The Eighth Circuit aptly summarized the rule of law governing these cases in *Republican Party of Arkansas*, wherein it emphasized that Arkansas was neither "constitutionally required to fund primary elections" nor to "drop its mandatory party primary." *Republican Party of Ark.*, 49 F.3d at 1291. What the state could not do, however, was require political parties *both* to conduct *and* pay for primary elections. *See id.* That rule—like the decisions in *Graveline*, *Green Party of Ga.* and *Krislov*, *supra*—cannot be reconciled with the Seventh Circuit's conclusion that the necessary cost of complying with Indiana's statutory scheme does not constitute a severe burden.

2. But the Seventh Circuit does not stand alone. The Fifth Circuit recently concluded, under materially indistinguishable circumstances from the decision below, that the cost of completing a statewide petition drive in Texas—also in the hundreds of thousands of dollars—is not an unconstitutional burden. *See Miller*, 116 F.4th 373 (petition for writ of certiorari filed February 7, 2025). As in the instant case, the factual record in *Miller*—including the cost of a petition drive—is undisputed. *See Miller v. Hughs*, 634 F. Supp. 3d 340, 346 (W.D. Tex. 2022). And like the Seventh Circuit below, the Fifth Circuit skirted the

issue by referencing this cost only obliquely, without acknowledging its enormity or that it was sufficient to exclude the non-wealthy. *See Miller*, 116 F.4th at 381. The Fifth Circuit simply concluded that this cost did not impose a "*consequential* burden" because the plaintiffs did not allege that they were actively incurring the costs of complying with Texas's statutory scheme—*i.e.*, that they were conducting a petition drive—during the pendency of the proceedings below. *Id.* (emphasis original).

The Sixth Circuit has likewise rejected the argument that the cost of a petition drive may constitute a severe burden, thus contradicting its decision reaching the opposite conclusion in *Graveline*, *supra*. *See Grimes*, 835 F.3d at 574. In *Grimes*, Kentucky did not permit an unqualified party to become ballot-qualified by means of a single nomination petition for its entire slate of candidates; instead, each candidate was required to submit a separate petition. *See id.* at 572-573. Two such parties challenged Kentucky's scheme on the ground that it required them to "incur high costs of gathering and filing petitions in order to field a slate of candidates," whereas qualified parties were entitled to "blanket ballot access without the need for petitioning . . . . " *Id.* at 573. The Sixth Circuit rejected the challenge. The "hallmark of a severe burden is exclusion or virtual exclusion from the ballot," it concluded, *id.* at 574 (citations omitted), and while Kentucky's scheme "may impose some financial costs on the [plaintiff parties] . . . those costs certainly do not constitute exclusion or virtual exclusion from the ballot." *Id.* at 575. The Court therefore upheld Kentucky's scheme, finding it imposed a burden "in

between minimal and severe." *Id.* at 577 (citations omitted).

A functionally identical burden on First and Fourteenth Amendment rights cannot be constitutional in some states but unconstitutional in others—particularly where, as here, that burden may be measured with precision in dollars and cents. But that is the scenario Independents and Minor Parties face under the present legal landscape. In other electoral contexts —those that impact major party candidates—this Court has consistently found such a "patchwork" scheme intolerable. *See Trump v. Anderson*, 601 U.S. 100, 116-17 (2024) (quoting *U.S. Term Limits v. Thornton*, 514 U.S. 779, 822 (1995)). It is equally intolerable here. Certiorari is warranted to resolve this conflict among the lower courts.

II. The *Anderson-Burdick* Framework Fails to Provide Lower Courts With Meaningful Standards for Analyzing the Constitutionality of State Election Laws.

The importance of the *Anderson-Burdick* framework cannot be overstated. It is the standard by which lower courts analyze both First Amendment and Equal Protection challenges to state election laws. *See Rogers v. Corbett*, 468 F.3d 188, 194-195 (3rd Cir. 2006). As the preceding discussion demonstrates, however, it fails to establish meaningful standards that lower courts can apply to reach consistent and uniform results in this critical area of the law. As a result, lower courts are left to fashion their own *ad hoc* standards, as the Seventh Circuit did below, or to ground their analysis in nothing more than subjective opinion. That cannot be the operative test by which state election laws stand or fall.

A. This Court Has Not Established a Methodology or Substantive Standard For Measuring the Severity of a Burden on Constitutional Rights.

This Court most recently revisited *Anderson-Burdick* in *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008). As Justice Stevens acknowledged in his opinion announcing the Court's judgment in that case, this Court has not "identif[ied] any litmus test for measuring the severity of a burden that a state [election] law imposes . . . . " *Crawford*, 553 U.S. at 190-91 (Stevens, J.). But that is an understatement. In fact, this Court has provided almost no guidance as to how lower courts should measure the severity of a burden, nor has it identified any substantive standard as to what constitutes a severe burden. The Court has only suggested that state laws are *not* severely burdensome if they "do not operate to freeze the political status quo," *Jenness v. Fortson*, 403 U.S. 431, 438 (1971), or if they impose requirements that do "not appear to be . . . impossible." *Storer*, 415 U.S. at 740. The only objective standard, it appears, is that states may not require a showing of support greater than 5 percent of the eligible pool of voters, which is the most restrictive requirement this Court has upheld. *See id.* at 739. Within that range, seemingly, anything goes—including, if the Seventh Circuit is not corrected, a statutory scheme that imposes a cost of hundreds of thousands of dollars. But that is inconsistent with this Court's precedent. *See Anderson*, 460 U.S. at 793; *see also Harper*, 383 U.S. 663; *Bullock*, 405 U.S. 134; *Lubin*, 415 U.S. 709.

The Court has not been so reticent when it comes to the other side of the *Anderson-Burdick* scales—the

state interests asserted to justify the burdens an election law imposes. More than 50 years ago, the Court recognized that there "is surely an important state interest" in requiring candidates and political parties to demonstrate "a significant modicum of support" before placing them on the ballot—the interest in "avoiding confusion, deception and even frustration of the democratic process . . . . " *Jenness*, 403 U.S. at 442. Since then, lower courts have routinely found such interests sufficient to justify state election laws, frequently without inquiring whether the interests are even implicated. But lower courts need not bother with such details because this Court has "never required a State to make a particularized showing of the existence of voter confusion, ballot over-crowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access." *Munro v. Socialist Workers Party*, 479 U.S. 189, 194-95 (1984). As a result, states are free to defend, and courts to uphold, state election laws without the slightest evidence they further any legitimate interest at all, much less that they are sufficiently tailored to that end.

This asymmetry leaves those seeking to vindicate constitutional rights under the *Anderson-Burdick* framework at a decided disadvantage. *See* Richard L. Hasen, *The Democracy Canon*, 62 STAN. L. REV. 69, 100 (2009) ("the relevant balancing tests . . . leave[ ] plaintiffs facing an uphill battle . . . without clear constitutional rules from the Supreme Court."). Unless a burden is deemed "severe," the state interests this Court has identified are generally sufficient to uphold a statute, even without evidence they are implicated. *See Stone*, 750 F.3d at 681 (citing *Burdick*, 504 U.S. at 434). Therefore,

despite its lack of methodology or substantive standards, the first step of *Anderson-Burdick* is not just where "the action takes place"—it is outcome-determinative in virtually every case. *Stone*, 750 F.3d at 681.

In the absence of substantive standards for identifying a severe burden, lower courts have developed their own. The Sixth Circuit, for example, has inferred from cases like *Jenness* and *Storer* that burdens are not severe unless they are practically impossible to overcome. *See Grimes*, 835 F.3d at 574 ("The hallmark of a severe burden is exclusion or virtual exclusion from the ballot.") (citations omitted). In *Miller*, the Fifth Circuit relied on its novel "*consequential* burden" standard to justify its disregard for the cost of complying with Texas's statutory scheme. *Miller*, 116 F.4th at 381 (emphasis original). And in the decision below the Seventh Circuit justified its disregard for the financial burden imposed by Indiana's statutory scheme on the ground that the case was "not a close one." App.20a. Because Indiana's signature requirement was "far lower than the 5 percent requirements" this Court has upheld, the Seventh Circuit found it "clear" that Indiana's statutory scheme is not severely burdensome. *Id.*; *but see Anderson*, 460 U.S. at 789 (rejecting litmus test analyses).

A balancing test that permits the Fifth Circuit to deem the burdens imposed by Texas's statutory scheme as less than severe, or the Seventh Circuit to conclude the same with respect to Indiana's statutory scheme, despite the hundreds of thousands of dollars it costs to comply with each one, is badly in need of recalibration. Only this Court can provide that critical correction and make *Anderson-Burdick* a functional framework to guide lower courts' review.

B. Courts and Commentators Are Increasingly Clamoring for This Court to Clarify the *Anderson-Burdick* Framework.

Petitioners are not alone in their belief that *Anderson-Burdick* is in dire need of revisitation. Far from it. In the four decades since *Anderson* was decided, the analytic framework it established has met with an unrelenting torrent of criticism. Initially, lower courts expressed confusion as to the standard of review it prescribes. *See*, *e.g.*, *Hatten*, 854 F.2d at 693; *Republican Party of Ark.*, 49 F.3d at 1296. One noted commentator was more blunt: "as a pronouncement of doctrine," Professor Tribe observed, this Court's ballot access jurisprudence "is positively Delphic." Tribe, *American Constitutional Law* § 1320 (2d Ed.1988).

This Court attempted to provide the requisite clarity in *Burdick*, by specifying that election laws that impose "severe" burdens are subject to strict scrutiny, whereas those that impose "only 'reasonable, nondiscriminatory restrictions'" are generally justified by "the State's important regulatory interests." *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788). Justice Scalia, joined by Justice Thomas and Justice Alito, concluded that *Burdick* succeeded in "forg[ing] *Anderson's* amorphous 'flexible standard' into something resembling an administrable rule." *Crawford*, 553 U.S. at 205 (citation omitted) (Scalia, J., concurring). But as the Seventh Circuit has observed, "this rule can only take us so far . . . for there is no 'litmus test for measuring the severity of a burden that a state law imposes.'" *Stone*, 750 F. 3d at 681 (quoting *Crawford*, 553 U.S. at 191).

Burdick thus failed to resolve lower courts' confusion or to stanch criticism of the *Anderson-Burdick*

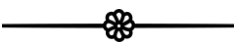
framework. *See*, *e.g.*, Derek T. Muller, *The Fundamental Weakness of Flabby Balancing Tests in Federal Election Law Litigation*, Excess of Democracy (Apr. 20, 2020), available at https://excessofdemocracy.com/blog/2020/4/the-fundamental-weakness-of-flabby-balancing-tests-in-federal-election-law-litigation (*Anderson-Burdick* is a "flabby . . . ad hoc totality-of-the-circumstances" 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."). And the lower courts' criticism has become even more pointed: *Anderson-Burdick* "seemingly is little more than a grand balancing test in which unweighted factors mysteriously are weighed"—a "rampant[ly] subjectiv[e]" exercise akin "to the hopeless task of assessing whether a particular line is longer than a particular rock is heavy" —and it allows a judge to "put[] . . . inherent policy preferences front-and-center when deciding critical matters of public and political interest." *Daunt*, 999 F.3d at 323, 325-27 (Readler, J., concurring) (citations omitted).

Crawford likewise did little to clarify matters, as a splintered Court produced four separate opinions but no majority. *See Crawford*, 553 U.S. 181. As a result, lower courts must continue to apply the "standardless" *Anderson-Burdick* analysis to state election laws, even as the volume of election law litigation has surged in recent election cycles with no sign of abatement. *See* Miriam Seifter & Adam Sopko, *Election-Litigation Data: 2018, 2020, 2022 State and Federal Court Filings*, State Democracy Research Initiative (March 21, 2023),

available at https://statedemocracy.law.wisc.edu/research/2023/election-litigation-database-2018-2020-2022-state-and-federal-court-filings/. The time has come for this Court to rectify the matter.

III. This Case Is an Ideal Vehicle For Resolving the Questions Presented.

This is a rare election law case that was not litigated in an emergency posture. As a result, it comes to this Court on the basis of a robust evidentiary record that conclusively establishes the increasing burden Indiana's statutory scheme has imposed over the last four decades. Perhaps even rarer, that record is genuinely uncontroverted. As the District Court observed, the material facts are not in dispute, App.30a —indeed, Respondent expressly conceded the truth of every fact Petitioners asserted. (ECF No. 65 at PageID #: 614.) Therefore, the only issue to be resolved is a question of law: whether the Constitution permits states to condition ballot access for Independents and Minor Parties on their ability to pay substantial costs. That question was directly presented to the courts below and the Seventh Circuit squarely addressed it. The Seventh Circuit held, incorrectly, that the exorbitant cost of complying with Indiana's statutory scheme does not impose an unconstitutional burden on Petitioners' First and Fourteenth Amendment rights. This case is an ideal vehicle to breathe new life into the moribund *Anderson-Burdick* framework by correcting the Seventh Circuit's error and reaffirming what this Court has long held: states may not make money a necessary condition of citizens' participation in their electoral processes.



CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

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