No. _____

In the
Supreme Court of the United States

EUGENE MAZO, et al.,

Petitioners,

v.

NEW JERSEY SECRETARY OF STATE, et al.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The decision below allows New Jersey to regulate core political speech at the election's critical moment, and to do so on the basis of content and viewpoint while insulating entrenched political machines from serious primary challenges. New Jersey allows candidates in primary elections to engage in political speech on the ballot via six-word slogans next to their names. New Jersey was not obligated to allow candidates to communicate directly with voters at the very moment they cast their ballots. But having done so for the express purpose of allowing candidates to distinguish themselves from their primary opponents, the state could not dictate content or skew the debate. Undeterred, the state prohibits candidates from referencing the name of any individual anywhere in the world (*e.g.*, "Never Trump" or "Evict Putin From Ukraine") or any New Jersey corporation (*e.g.*, "Higher Taxes for Merck & JnJ") absent written consent. Entrenched political machines have long exploited this law by using political associations incorporated in New Jersey to signal which candidates enjoy machine support in the primary. Tellingly, New Jersey drops the consent requirement altogether on the general-election ballot. The Third Circuit upheld this glaring free-speech violation only by bypassing traditional First Amendment scrutiny in favor of the amorphous *Anderson-Burdick* balancing test.

The question presented is:

Whether a state that permits political candidates to engage in core political speech on the ballot may restrict that speech on the basis of content and viewpoint without satisfying strict scrutiny.

PARTIES TO THE PROCEEDING

Petitioners (plaintiffs-appellants below) are Eugene Mazo and Lisa McCormick.

Respondents (defendants-appellees below) are Tahesha Way, in her official capacity as New Jersey Secretary of State; E. Junior Maldanado, in his official capacity as Hudson County Clerk; Joanne Rajoppi, in her official capacity as Union County Clerk; Paula Sollami Covello, in her official capacity as Mercer County Clerk; Elaine Flynn, in her official capacity as Middlesex County Clerk; Christopher Durkin, in his official capacity as Essex County Clerk; Steve Peter, in his official capacity as Somerset County Clerk.

CORPORATE DISCLOSURE STATEMENT

Petitioners Eugene Mazo and Lisa McCormick are individuals.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Mazo v. New Jersey Secretary of State*, No. 21-2630 (3d Cir.), judgment entered on November 23, 2022;
- *Mazo v. Way*, No. 3:20-cv-8174 (D.N.J.), judgment entered on July 30, 2021.

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PETITION FOR WRIT OF CERTIORARI

There are difficult cases about the role of the First Amendment in the election process. This is not one of them. New Jersey has opted to allow candidates to speak directly to voters at the very moment they cast their ballots. But New Jersey has regulated that core political speech via unmistakable content and viewpoint discrimination that directly favors the entrenched political machines. The Third Circuit approved this blatant First Amendment violation only by declining to apply this Court's precedents demanding strict scrutiny in favor of an inapposite and rights-diluting balancing test. But there is no support for applying anything but strict scrutiny when it comes to the core political speech of candidates. The decision below is dangerous and important and cries out for this Court's plenary review.

This case concerns New Jersey's so-called "slogan statutes." *See* N.J. Stat. Ann. §§19:23-17, -25.1. Under those statutes, New Jersey has authorized candidates in primary elections for any office to include a six-word slogan next to their names on the ballot. The state thus extends the candidate's ability to communicate directly to voters through to "the most crucial stage in the electoral process—the instant before the vote is cast." *Anderson v. Martin*, 375 U.S. 399, 402 (1964). But the state has added a highly significant and highly unconstitutional proviso regarding the content of a candidate's slogan: If a slogan references the name of any person in the world or any company incorporated in New Jersey, that slogan is impermissible absent written consent no matter how impractical obtaining consent would be—

e.g., "Evict Putin From Ukraine"—or how useful the slogan would be in achieving the state's avowed purpose of allowing candidates "to distinguish [themselves] as belonging to a particular faction or wing of [their] political party," N.J. Stat. Ann. §19:23-17—*e.g.*, "No Friend of Governor Murphy."

Petitioners are New Jersey citizens who previously sought the Democratic Party nomination for the U.S. House of Representatives in their respective congressional districts. Each requested personally chosen slogans, but the state denied those slogans because petitioners failed to obtain the required consent. Accordingly, after being forced to use slogans they viewed as less effective in conveying their views to voters, petitioners filed suit alleging that the slogan statutes violate the First Amendment.

The decision below rejected that challenge and gave a green light to the slogan statutes, despite their content- and viewpoint-based intrusion into what everyone but the Third Circuit recognizes as core political speech. Although the court acknowledged that efforts to regulate core political speech trigger strict scrutiny, it limited that category to speech that is "interactive" and that "occur[s] outside of the polling place." App.30. As to speech on the ballot, the Third Circuit invoked the "flexible *Anderson-Burdick* balancing test." App.2, 28; *see Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992). While even *Anderson-Burdick* subjects a "severe" burden on First Amendment rights to strict scrutiny, the Third Circuit deemed the burden here "minimal," in large part because it determined that the slogan statutes are not "content based" under *City*

of Austin v. Reagan National Advertising of Austin, LLC, 142 S.Ct. 1464 (2022). App.31-32, 35-36. Then, applying "quite deferential" review, the court held that New Jersey's interests in "election integrity" and "preventing voter confusion" far outweighed the supposedly minimal First Amendment burden. App.48-49.

The Third Circuit's decision is profoundly wrong and profoundly important. Although candidates do not have an absolute constitutional right to extend the political debate onto the ballot, states that allow such core political speech at the moment of decision must fully respect the First Amendment when it matters most. And this Court's cases interpreting the First Amendment are clear that candidate speech directly to voters is "core" political speech and that strict scrutiny "surely" applies "[w]hen a State seeks to restrict directly the offer of ideas by a candidate to the voters." *Brown v. Hartlage*, 456 U.S. 45, 52-54 (1982). Accordingly, instead of rights-diluting *Anderson-Burdick* balancing, this Court's precedents demand strict scrutiny, which the state obviously cannot satisfy. The failure to apply strict scrutiny creates a clear conflict with the Massachusetts Supreme Judicial Court's rejection of a comparable slogan statute under that demanding standard and with decisions from other circuits addressing state efforts to regulate ballot speech.

The negative consequences of the decision below are difficult to overstate. The slogan statutes have long skewed political debate in New Jersey and entrenched political machines. Indeed, the slogan statutes' distinction between New Jersey and out-of-

state corporations makes no sense in terms of the state's avowed interests but is perfectly tailored to perpetuating New Jersey's local political machines' favored means of maintaining their grip on power—namely, using consent from local political associations incorporated in New Jersey to signal support and corner favorable ballot positions. Finally, this case is an ideal vehicle in which to assess not only the pernicious slogan statutes, but also the much-maligned *Anderson-Burdick* test more broadly, as this is the relatively rare election-related case that does not arise in an emergency posture.

OPINIONS BELOW

The Third Circuit's opinion is reported at 54 F.4th 124 and reproduced at App.1-50. The district court's opinion is reported at 551 F.Supp.3d 478 and reproduced at App.51-79.

JURISDICTION

The Third Circuit issued its opinion on November 23, 2022. On February 13, 2023, Justice Alito extended the time to file a petition for certiorari until March 23, 2023. On March 16, 2023, Justice Alito further extended the time to file a petition for certiorari until April 22, 2023. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment and New Jersey's slogan statutes are reproduced at App.98-99.

STATEMENT OF THE CASE

A. Legal & Historical Background

Under New Jersey law, a candidate who seeks to have his name included on the ballot in a primary election for a political party must file a petition that contains an assortment of information. N.J. Stat. Ann. §§19:23-5, -7; *see also id.* §§19:23-6, 19:23-8 to -11. New Jersey's Secretary of State oversees petitions for candidates seeking federal office, *see id.* §19:13-3, and among her various duties, she must "certify the names of the persons indorsed in the petitions … to the clerks of counties," *id.* §19:23-21, who then place those names on the primary ballots, *see id.* §19:23-22.4.

As relevant here, since 1930, New Jersey law has given candidates listed on the primary ballot the opportunity to communicate an up-to-six-word message to voters on the ballot: "Any person indorsed as a candidate for nomination for any public office … whose name is to be voted for on the primary ticket of any political party, may … request that there be printed opposite his name on the primary ticket a designation, in not more than six words, as named by him in such petition." *Id.* §19:23-17. The self-declared "purpose" of this provision is to allow the candidate to "indicat[e] either any official act or policy to which he is pledged or committed, or to distinguish him as belonging to a particular faction or wing of his political party"—*i.e.*, to include a political slogan. *Id.*

In 1944, however, New Jersey added a significant qualification to this provision. Specifically, the state amended the provision to provide that "no such designation or slogan shall include or refer to the

name of any person or any incorporated association of this State unless the written consent of such person or incorporated association of this State has been filed with the petition of nomination of such candidate or group of candidates." *Id.* That 1944 law immediately abridged core political speech and prompted a constitutional challenge from a primary candidate precluded from conveying his preferred message to voters. *See Jersey Candidate Sues for Listing With Dewey*, N.Y. Times, at 15 (Mar. 30, 1944), https://nyti.ms/3UKxvHA (explaining candidate Andrew Wittreich's desire to use the slogan "Draft Dewey for President—Regular Republican"). The candidate argued that the newly enacted law not only foreclosed his preferred message but also would produce the "unconstitutional and absurd" result that a candidate could not use the slogan "anti-Hitler" without written consent from Der Fuhrer. *Wittreich Loses in Ballot Appeal*, Trenton Evening Times, at 2 (Apr. 2, 1944). But the court rejected the challenge even though the state declined to present a defense. *See id.*

Accordingly, for the better part of a century, it has remained the law in New Jersey that, if a candidate's final pitch to voters references the name of *any* company incorporated in New Jersey (*e.g.*, "Rename the New York Jets") or *any* person anywhere in the world (*e.g.*, "Xi Jinping Will Destroy Taiwan")—or even anything that state officials construe as a name, *see* David Wildstein, *GOP House Candidate Told He Can Use 'Let's Go Brand*n' As His Slogan If He Drops 'FJB*,' N.J. Globe (Apr. 7, 2022), https://bit.ly/42Aiyvg (prohibiting "FJB" but not "Let's Go Brand*n," because state officials understood "JB" to refer to Joe

Biden, without perceiving that "Let's Go Brand*n" referred to Brandon Brown)—the candidate may not use the slogan absent written consent from the named person or corporation. The prohibition on including non-consensual references to New Jersey corporations includes references to incorporated political associations. For decades, that feature has proven particularly useful to local "party bosses and political machines" in squelching dissent and marginalizing would-be primary challengers.[1] Brett M. Pugach, *The County Line: The Law and Politics of Ballot Positioning in New Jersey*, 72 Rutgers U.L. Rev. 629, 630 (2020) ("Pugach"). In New Jersey, each political party has a powerful "county committee," *see* N.J. Stat. Ann. §19:49-2, and one of the committee's principal responsibilities is to endorse favored candidates, *see* Pugach 653-54. County committees routinely form or otherwise control New Jersey corporations with six-or-less-word names—*e.g.*, Essex County Democratic Committee, Inc.—and they authorize only their favored candidates to use that corporate name in a slogan. *See id.* at 654-55. "Political candidates who fail to secure the endorsement of these party bosses and political machines have virtually no chance of winning an election." *Id.* at 630.

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[1] The prohibition on including non-consensual references to New Jersey corporations has also led New Jersey's political insiders to form bogus corporations to chill the ballot speech of their rivals. *See, e.g.*, Joey Fox, *Off-the-Line Toms River Slates Descend Into Legal Battle Over Ballot Slogan*, N.J. Globe (Apr. 12, 2023), https://bit.ly/3mTNsPb.

New Jersey law then reinforces the power of the local machines in separate statutory provisions not at issue here, which provide that primary candidates with the "same designation or slogan" may appear on the "same line" of the ballot in a prominent location.[2] N.J. Stat. Ann. §19:49-2; *see id.* §19:23-18. That highly advantageous ballot position is known as the "County Line" or "Party Line," because state law "relegate[s]" other candidates to "obscure portions of the ballot where they are harder to find"—a.k.a., "Ballot Siberia." Pugach 631, 656, 701. As a result, obtaining the county committee's authorization to reference the committee's corporate name as a slogan has become "synonymous with winning the primary election." *Id.* at 656.

New Jersey employs a markedly different approach in the general election. The candidates from the two major political parties list only their party affiliations, while candidates who are not affiliated with those parties are allowed a slogan for the purpose of designating "the party or principles which the candidates therein named represent." N.J. Stat. Ann. §19:13-4. While the length of the permissible slogan

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[2] "New Jersey primary ballots are unlike those of any other state. Other states organize their primary ballots around the electoral position being sought, such as Senator or Governor, with candidates listed beneath or immediately to the right of each electoral position. … In contrast, nineteen of New Jersey's twenty-one counties organize their primary ballots around a group of candidates endorsed by either the Democratic or Republican Party." Julia Sass Rubin, *Does the County Line Matter? An Analysis of New Jersey's 2020 Primary Election Results*, N.J. Policy Perspective (Aug. 13, 2020), https://bit.ly/42HXlQj ("Rubin").

shrinks from six words to three, the consent requirement for individuals and New Jersey corporations disappears on the general-election ballot entirely. Of course, the relative freedom to proclaim oneself a "Never Trumper" or "Anti-Phil-Murphy" is of no benefit to candidates who cannot survive the primary—as that is where most of the action is in New Jersey politics. *See, e.g.*, Suzi Ragheb, *How New Jersey Political Parties Rig the Ballot*, J. of Int'l & Pub. Affs. (June 23, 2021), https://bit.ly/40hR3F2 ("New Jersey has a robust Democratic machine. As such, the primary election often supersedes the importance of the general election because winning the primary usually guarantees success in the general election.").

B. Facts & Procedural History

1. Petitioners are Eugene Mazo and Lisa McCormick. In 2020, both sought the Democratic Party nomination for the U.S. House of Representatives in their respective congressional districts in New Jersey, and each requested slogans implicating the slogan statutes. *See* App.5-6. Mazo requested slogans that named certain New Jersey corporations to protest how the state's party insiders and political machines abuse the corporate form to stifle a challenger's ability to engage in criticism on the ballot—*i.e.*, "Essex County Democratic Committee, Inc."; "Hudson County Democratic Organization"; and "Regular Democratic Organization of Union County." App.6. State officials informed Mazo that he could reference those organizations only if he obtained their consent to do that—and that, if he failed to do that, the state would include the words "NO SLOGAN" next to his name. App.6. Mazo did not

obtain the required consent and thus had to settle for slogans for which he obtained consent from New Jersey corporations that he established himself. *See* App.6.

McCormick endured a similar experience. McCormick first requested the slogan "Not Me. Us." to signal her support for presidential candidate Bernie Sanders, but the state rejected that slogan after her rivals within the Progressive wing reserved a corporate entity of that name to chill her speech. App.6. She then requested the slogan "Bernie Sanders Betrayed the NJ Revolution" to criticize Sanders for failing to police the feuding camps among New Jersey's progressives. App.6. The state rejected that slogan too, however, as McCormick failed to obtain consent from Sanders, the target of her criticism. *See* App.6. In the end, she settled for a generic slogan at the bottom of her wishlist: "Democrats United for Progress." App.6.

2. In July 2020, shortly before the primary elections that year, petitioners filed suit against New Jersey's Secretary of State and other officials, alleging that the slogan statutes infringe their First Amendment rights and fail strict scrutiny. *See* App.7. One year later, in July 2021, the district court granted the state's motion to dismiss. *See* App.51-97.

In relevant part,[3] the district court observed that "[t]here is no dispute here that the Slogan Statutes burden … [petitioners'] First Amendment rights." App.76 n.9. The court next observed that the parties

[3] The district court first rejected the state's mootness and ripeness arguments. *See* App.58-73.

did very much dispute whether the court should analyze that burden under "the sliding scale test" of *Anderson-Burdick* or under "a more 'conventional and familiar' First Amendment standard of review"—*i.e.*, strict scrutiny. App.75, 81-82. Although the court lamented that "[t]he Supreme Court has never articulated a general rule or set of factors" for when *Anderson-Burdick* applies, it concluded that it would apply *Anderson-Burdick* here on the ground that there is "no fundamental right to … substantial declarations of political sentiment" on the ballot. App.81. The district court then explained that, under *Anderson-Burdick*, "if a regulation imposes only reasonable, nondiscriminatory restrictions," the state "must simply show that its legitimate interests sufficient[ly] … outweigh the limited burden." App.78.

Applying *Anderson-Burdick*, the district court acknowledged that the slogan statutes "may pose obstacles as a general matter" and "may chill speech if candidates suspect that they will never be able to obtain consent from someone they wish to name." App.85-86. And the court further acknowledged that the slogan statutes may force candidates "to change what they say altogether if a named entity withholds consent … or only consents if the message is sufficiently favorable to it." App.86. But the court deemed these burdens not "severe" because "[c]andidates may … say whatever they want about a person or group if they get consent, and whatever else if they avoid using certain names." App.88. The court then determined—applying "quite deferential" review—that the state's interests in "preserving the integrity of the nomination process, preventing voter deception, preventing voter confusion, and protecting

the associational rights of third parties who might be named in a slogan" outweigh the First Amendment burden. App.90.

3. The Third Circuit affirmed.[4] *See* App.1-50. Like the district court, the court explained that "[t]he problem we confront today is that the Supreme Court has never laid out a clear rule or set of criteria" to determine when *Anderson-Burdick* supplants "traditional First Amendment analysis." App.15. The court thus attempted to "clarif[y]" this Court's precedent, deducing that *Anderson-Burdick* applies when "the challenged law primarily regulates the mechanics of the electoral process" but that standard First Amendment analysis governs regulation of "core political speech." App.11-12, 26. Although the court repeatedly acknowledged that "the line separating core political speech from the mechanics of the electoral process has proven difficult to ascertain," App.3; *see* App.24, it determined that the slogan statutes fall on the mechanics-of-the-electoral-process side of the line. The court concluded that core political speech is not implicated here because a slogan "is confined to the ballot itself at the moment a vote is cast" (unlike core political speech, which purportedly occurs "nowhere near the ballot") and "cannot inspire any sort of meaningful conversation regarding political change" (unlike "the wearing of political clothing at the polling place," which has "the potential to spark direct interaction and conversation"). App.24, 26, 30.

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[4] The Third Circuit likewise rejected the state's mootness and ripeness arguments. *See* App.10-11.

Turning to the application of *Anderson-Burdick*, the Third Circuit first agreed with the district court that the burden on First Amendment rights in this context is not "severe." App.32. In doing so, the court articulated its view that the slogan statutes are "non-discriminatory" because they "appl[y] to all primary candidates and to any slogans mentioning a person or a New Jersey incorporated association," are not "content based" under *City of Austin*, and are "viewpoint neutral" because a candidate who seeks to "criticize a public figure widely despised in New Jersey would be required to get the same consent as a candidate who wishes to criticize Bruce Springsteen." App.33-42. The court emphasized that the slogan statutes leave open "other possible avenue[s]" for candidates "to criticize or align themselves with individuals and groups." App.42-44. Then, applying "quite deferential" review, the court determined that the "minimal" First Amendment interest at issue is outweighed by the state's asserted interests, such as "preventing voter confusion." App.48-49.

REASONS FOR GRANTING THE PETITION

New Jersey had no obligation to open its ballot to candidate speech. This Court has recognized that the last minutes before a voter makes her final decision are so important that the state can reserve a final interval of unfettered reflection. But if a state allows candidates to communicate directly to voters at that decisive moment, the last thing a state can do is restrict that core political speech on the basis of content and viewpoint in ways that systematically favor entrenched politicians. Yet that is precisely what New Jersey does: Its slogan statutes grant

candidates six final words with voters, but not necessarily the six words they want. The statutes plainly restrict the core political speech of candidates on the basis of content, and they operate to discriminate on the basis of viewpoint and in favor of entrenched political machines. The Third Circuit upheld the laws nonetheless only by eschewing strict scrutiny in favor of an amorphous test that balanced away critical First Amendment rights at the moment they matter most. That decision is as misguided as it sounds, squarely conflicts with decisions from other lower courts, and has dangerous implications for candidates and voters alike.

This Court's precedents are crystal clear that a political candidate's speech lies at the absolute core of the First Amendment. And whenever the Court has confronted state efforts to directly regulate the content of such speech, it has required the state to overcome strict scrutiny. Those principles should have resolved this case. New Jersey's decision to allow a candidate to post a six-word campaign slogan on the primary ballot transforms the slogan into the most important words of his entire campaign. They are the final six words that candidates can relay before a ballot is cast and the only political speech that actual—as opposed to likely—voters are guaranteed to see. Given that New Jersey could not regulate the content of less critical, *off*-ballot political speech without facing strict scrutiny, it follows *a fortiori* that strict scrutiny governs New Jersey's effort to regulate the content of *on*-ballot political speech.

The Third Circuit excused New Jersey from the rigors of standard First Amendment analysis by

applying *Anderson-Burdick* on the theory that core political speech can never occur on the ballot because it must involve direct one-on-one interaction and precede election day. That curious theory defies this Court's cases and common sense. Regardless, even under *Anderson-Burdick*, severe burdens on First Amendment rights trigger strict scrutiny, and content- and viewpoint-discriminatory laws like the slogan statutes impose severe burdens.

Unsurprisingly, the Third Circuit's fatally flawed decision has opened a split in the lower courts. While "slogan statutes" are not widespread, Massachusetts had one for its general elections and deemed certain speech off-limits. The Supreme Judicial Court had little trouble applying strict scrutiny and condemning a content-based restriction on the candidate's last words to the voters. And although other courts of appeals have applied *Anderson-Burdick* to ballot speech, they have acknowledged that core political speech can occur on the ballot and that regulations hindering such speech trigger strict scrutiny.

The stakes here are critical. The New Jersey slogan statutes are not just unconstitutional, but pernicious. They restrict political speech when it matters most, and do so in a way that skews the debate and entrenches political machines. That reality is underscored by the differential treatment that New Jersey affords to slogans in the general election, which also eviscerates any claim that legitimate state interests—as opposed to the interests of entrenched politicians—justify the restrictions in the primary-election slogan statutes. Simply put, New Jersey has targeted the most important form of

speech for the worst of reasons. The threat to the democratic process and First Amendment values is palpable. The need for this Court's plenary review is equally obvious.

I. The Third Circuit's Conclusion That New Jersey May Directly Regulate The Content Of Political Speech At The Decisive Stage Of The Electoral Process Defies The First Amendment And This Court's Precedents.

A. New Jersey's Slogan Statutes Are Plainly Unconstitutional Under Traditional First Amendment Analysis.

1. The First Amendment provides that "Congress shall make no law … abridging the freedom of speech." U.S. Const. amend. I. While the First Amendment provides protection for all manner of speech, "there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). And "if it be conceded that the First Amendment was fashioned to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people, then it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application *precisely* to the conduct of campaigns for political office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 271-72 (1971) (emphasis added) (citation omitted). After all, "the political campaign" is "the heart of American constitutional democracy." *Brown*, 456 U.S. at 53. Accordingly, to ensure that "the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues"

when making a choice "on election day," candidates must have "the unfettered opportunity to make their views known" to voters. *Buckley v. Valeo*, 424 U.S. 1, 52-53 (1976); *see also, e.g.*, *Citizens United v. FEC*, 558 U.S. 310, 349 (2010) ("Political speech is 'indispensable to decisionmaking in a democracy[.]'").

Precisely because "[i]t is simply not the function of government to select which issues are worth discussing or debating in the course of a political campaign," *Republican Party of Minn. v. White*, 536 U.S. 765, 782 (2002), this Court's cases require states bold enough to attempt such regulation to overcome "the most demanding test known to constitutional law," *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). Specifically, "[w]hen a State seeks to restrict directly the offer of ideas by a candidate to the voters," strict scrutiny "surely" applies—*i.e.*, "the restriction [must] be demonstrably supported by not only a legitimate state interest, but a compelling one, and … the restriction [must] operate without unnecessarily circumscribing protected expression." *Brown*, 456 U.S. at 53-54; *accord Republican Party of Minn.*, 536 U.S. at 774-75 (applying strict scrutiny to restriction on candidate speech); *see also Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 207 (1999) (Thomas, J., concurring in the judgment) ("When a State's election law directly regulates core political speech, we have always subjected the challenged restriction to strict scrutiny and required that the legislation be narrowly tailored to serve a compelling governmental interest."). *But cf. Republican Party of Minn.*, 536 U.S. at 793 (Kennedy, J., concurring) (advocating for a more categorical approach—"without inquiry into narrow tailoring or compelling government

interests"—because "[t]he political speech of candidates is at the heart of the First Amendment, and direct restrictions on the content of candidate speech are simply beyond the power of government to impose").

These protections for core political speech by candidates apply with full force as the election approaches. It could hardly be otherwise. "It is well known that the public begins to concentrate on elections only in the weeks immediately before they are held," meaning that "[t]here are short timeframes in which speech can have influence." *Citizens United*, 558 U.S. at 334. And there is no place where a government effort to skew the debate would be more problematic than "[t]he ballot," which is "the *only* document that all voters are guaranteed to see, and it is 'the last thing the voter sees before he makes his choice.'" *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 465 (2008) (Scalia, J., dissenting) (emphasis added) (quoting *Cook v. Gralike,* 531 U.S. 510, 532 (2001) (Rehnquist, C.J., concurring in the judgment)).

To be sure, certain government interests may also increase as the election nears, and this Court has held that the government can neutrally limit speech to preserve a moment for quiet reflection in the final moments before casting a ballot. *See Burson v. Freeman*, 504 U.S. 191 (1992). But the government must observe the strictest neutrality at "the most crucial stage in the electoral process—the moment before the vote is case," *Martin*, 375 U.S. at 402—particularly when it comes to the candidate's own speech. In this area, any governmental effort to skew

the debate or regulate the content must be subjected to the strictest scrutiny. *See, e.g.*, *Republican Party of Minn.*, 536 U.S. at 781-82 ("We have never allowed the government to prohibit candidates from communicating relevant information to voters during an election."); *id.* at 794 (Kennedy, J., concurring) ("What [the state] may not do … is censor what the people hear as they undertake to decide for themselves which candidate is most likely to be an exemplary [public official].").

2. Against those principles, the unconstitutionality of New Jersey's slogan statutes is self-evident. Although New Jersey could preserve strict neutrality by maintaining the ballot as a non-public forum, *cf. Minn. Voters All. v. Mansky*, 138 S.Ct. 1876, 1887-88 (2018), it cannot open the ballot to slogans that are the last six words the candidate can communicate to voters and then regulate that speech by content in ways that lead directly to viewpoint discrimination and the entrenchment of incumbent political machines. New Jersey cannot pretend that the six words it regulates do not have enormous communicative power and political significance. Indeed, the stated rationale for allowing a candidate in a primary election to include a six-word slogan next to her name on the ballot is "for the purpose of indicating either any official act or policy to which he is pledged or committed, or to distinguish him as belonging to a particular faction or wing of his political party." N.J. Stat. Ann. §19:23-17. This "offer of ideas by a candidate to the voters" is as "core" as political speech comes. *Brown*, 456 U.S. at 52-53. Nevertheless, the state prohibits a subset of that core political speech that is particularly useful in

identifying a candidate's "particular faction or wing" by reason of its content: All messages containing the nonconsensual use of the "name" of "any person" or "any incorporated association" of New Jersey are categorically off-limits. *See* N.J. Stat. Ann. §19:23-17, -25.1. That restriction is content-based on its face—references to New Jersey corporations, but not out-of-state corporations, are restricted—and viewpoint-discriminatory and machine-protecting in effect. The consent requirement gives third parties a veto and in practical operation discriminates on the basis of viewpoint, allowing endorsements ("Bernie-Approved") but not disparagement ("Bernie Betrayed Us" or "Anti-Murphy Democrat"). *See Iancu v. Brunetti*, 139 S.Ct. 2294, 2301 (2019) ("[A] law disfavoring 'ideas that offend' discriminates based on viewpoint[.]"); *see also Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) ("Viewpoint discrimination is … an egregious form of content discrimination."). Worse still, the otherwise-inexplicable restriction to New Jersey corporations reflects the reality that political associations incorporated in New Jersey are the traditional means by which local political machines unite their own under a single flag.

New Jersey's slogan statutes thus trigger strict scrutiny several times over. And the state cannot begin to overcome that "well-nigh insurmountable" obstacle here. *Meyer v. Grant*, 486 U.S. 414, 425 (1988). While no one doubts that New Jersey has compelling interests in "ensuring election integrity and preventing voter confusion," App.4, the slogan statutes are not even remotely narrowly tailored to further those interests.

That much is evident from the slogan statutes themselves, which expressly do not apply when a slogan references the name of a corporation incorporated *outside* New Jersey. *See* N.J. Stat. Ann. §19:23-17. If the state truly designed the slogan statutes to prevent voter confusion from the non-consensual use of corporate names, it is not clear why that restriction would stop on the far shore of the Hudson or Delaware Rivers. Whether a candidate claims a false endorsement by (or criticizes) the New York Times, rather than the Newark Star-Ledger, makes no difference to the government's claimed interests, yet the slogan statutes prohibit only the latter. Furthermore, to the extent that the state is concerned that candidates will falsely claim an endorsement in the primaries, it is hard to see why a prohibition on false-endorsement claims would not be far more tailored or why prohibiting slogans like "Never Trumper" or "FJB" achieves the stated purpose, especially when such slogans can be particularly useful in achieving the state's avowed purpose of allowing candidates to "distinguish [themselves] as belonging to a particular faction or wing of [their] political party." N.J. Stat. Ann. §19:23-17.

Moreover, any pretense to narrow tailoring is eliminated by the state's approach to slogans on the general-election ballot, where the consent requirement is dropped altogether. *See* N.J. Stat. Ann. §19:13-4. Thus, the same candidate prohibited from telling voters that "Menendez Is Corrupt" in the primaries is free to communicate that exact same message to the voters in the general election in the unlikely event that she survived the primaries.

In fact, while the differential treatment of in-state versus out-of-state corporations and primaries versus general elections is poorly tailored to achieving the state's proclaimed interests, it is perfectly tailored to protecting entrenched machines that use New Jersey corporations to fend off challengers in the primary elections, *i.e.*, the only elections that can threaten the machine in its strongholds. That is not "mere happenstance": "The first instinct of power is the retention of power, and, under a Constitution that requires periodic elections, that is best achieved by the suppression of election-time speech." *McConnell v. FEC*, 540 U.S. 93, 249, 263 (2003) (Scalia, J., concurring in part and dissenting in part).

In short, this Court's precedents demand strict scrutiny of New Jersey's effort to regulate candidate speech when it matters most, and the slogan statutes cannot even begin to withstand such scrutiny. As this Court has repeatedly emphasized, when a statute is both "seriously underinclusive" and "seriously overinclusive" vis-à-vis the state's asserted interests, the law "cannot survive strict scrutiny." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 802, 805 (2011); *see id.* at 802; *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 547 (1993).

B. The Third Circuit Erred in Invoking and Applying *Anderson-Burdick*.

The Third Circuit arrived at a different conclusion only by dispensing with traditional First Amendment analysis completely. In that court's view, the slogan statutes reflect just another mine-run effort to "regulate a mechanic of the electoral process" and pass muster under the "flexible *Anderson-Burdick*

balancing test." App.2, 28. That conclusion is doubly flawed. *Anderson-Burdick* does not apply to this avowed effort to regulate candidate speech, and New Jersey's ham-handed effort could not survive *Anderson-Burdick* in all events.

1. The Third Circuit started off on the wrong foot in applying *Anderson-Burdick* to the slogan statutes at all. As this Court has repeatedly explained, *Anderson-Burdick* is *not* applicable when core political speech is at issue. For example, in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), the Court addressed "an Ohio statute that prohibit[ed] the distribution of anonymous campaign literature." *Id.* at 336. In defending that law, the state "place[d] its principal reliance" on the *Anderson-Burdick* line of cases, but the Court found those cases irrelevant because the law at issue amounted to "a direct regulation of the content of speech"—and not just any speech, but speech at the absolute "core" of the First Amendment. *Id.* at 344-46. And "[w]hen a law burdens core political speech," the Court declared, "we uphold the restriction only if it is narrowly tailored to serve an overriding state interest." *Id.* at 347; *see also, e.g.*, *Meyer*, 486 U.S. at 420 (explaining that "a limitation on political expression" is "subject to exacting scrutiny").

The Third Circuit conceded that "traditional" and "quite stringent" First Amendment analysis applies when a state law "implicate[s] core political speech." App.2. And the court also acknowledged that the *raison d'être* of New Jersey's slogan statutes is to allow candidates to make political statements directly to voters so that candidates can "distinguish themselves

from others on the ballot." App.2, 30. Even so, the court reached the baffling conclusion that the final political statements that political candidates make to voters at the culmination of a political campaign is *not* "core political speech" for two reasons: (1) core political speech supposedly occurs only "outside of the polling place and over a long period of time leading up to Election Day," whereas the slogan statutes regulate speech that is "confined to the ballot itself at the moment a vote is cast," and (2) "[b]allot slogans, unlike leafletting, petition circulating, or even the wearing of political clothing at the polling place," supposedly "cannot inspire any sort of meaningful conversation regarding political change" because they are a "one-way communication." App.30. Each of those theories is profoundly flawed.

First, the notion that core political speech ceases on election day is absurd and irreconcilable with this Court's precedent, which recognizes that core political speech only intensifies until the moment the vote is cast. No Justice in *Burson v. Freeman* upheld a buffer zone for polling places on the ground that political speech stops on election eve and loses its core status in the polling place. To the contrary, a majority of the Court concluded that an election-day restriction on speech within 100 feet of a polling place on election day triggers the "fullest and most urgent application" of the First Amendment—*i.e.*, strict scrutiny, not *Anderson-Burdick* balancing. 504 U.S. at 196-98 (plurality op.); *see id.* at 217 (Stevens, J., dissenting). Moreover, while Justice Scalia upheld the law based on the government's ability to treat the polling place as a non-public forum, *see id.* at 214 (Scalia, J., concurring in the judgment), not one word of his

concurrence suggests that the government could open that forum up for candidate speech "for the purpose of indicating either any official act or policy to which he is pledged or committed, or to distinguish him as belonging to a particular faction or wing of his political party," N.J. Stat. Ann. §19:23-17, and yet restrict that speech by content or viewpoint without triggering strict scrutiny. To the contrary, he well understood that incumbent politicians, who understand the power of political speech better than anyone, are tempted to skew the debate as the election nears, *see McConnell*, 540 U.S. at 263 (Scalia, J., concurring in part and dissenting in part), and that "[t]he ballot comes into play 'at the most crucial stage in the electoral process'" and is "the only document that all voters are guaranteed to see," *Wash. State Grange*, 552 U.S. at 465 (Scalia, J., dissenting).

The notion that core political speech does not include any "one-way communication" and is strictly limited to "interactive, one-on-one communication," is, if possible, even more misguided. App.26, 30. Indeed, if one-way communication were not core political speech, then a host of this Court's precedents would have been decided differently. In *Citizens United*, for example, this Court concluded that a documentary film that urged viewers to "vote against Senator Clinton for President" is core political speech—even though it obviously did not involve interactive one-on-one communication—and that placing a burden on that speech triggered strict scrutiny. 558 U.S. at 325, 339-40; *see also id.* at 393 (Scalia, J., concurring) ("A documentary film critical of a potential Presidential candidate is core political speech[.]"). Numerous other cases treat comparable one-way communication as

core political speech, *see, e.g.*, *FEC v. Wis. Right To Life, Inc.*, 551 U.S. 449 (2007); *Brown*, 456 U.S. 45; *Mills*, 384 U.S. 214, and the notion that laws prohibiting such speech on election day—let alone allowing films endorsed by the candidates but not unauthorized biopics—would escape strict scrutiny beggars belief and defies a wall of precedent.

In short, the Third Circuit never should have applied *Anderson-Burdick*. While some ballot cases may implicate *Anderson-Burdick*, that is only because many states treat the ballot like a non-public forum. But once a state allows core political speech of the candidate's choosing onto the ballot, its efforts to restrict that core political speech trigger the strictest scrutiny and *Anderson-Burdick* has no role to play.

2. In all events, even under *Anderson-Burdick*, "[s]trict scrutiny is appropriate" when the law imposes a "severe" burden on First Amendment rights. App.31. The Third Circuit dismissed the burden based on the misguided view that the slogan statutes are content-neutral under *City of Austin*. *See* App.35-40. But nothing in *City of Austin* suggests that the slogan statutes are content-neutral.

Indeed, *City of Austin* reaffirmed that "regulations that discriminate based on 'the topic discussed or the idea or message expressed … are content based" and therefore necessitate the application of strict scrutiny. 142 S.Ct. at 1473. New Jersey's slogan statutes obviously *do* discriminate against "messages," "ideas," and "topics" in just the way that *City of Austin* deems content-based: Every political slogan (which is a "message" or "idea") concerning a particular "topic" (any individual or New

Jersey corporation) is verboten in the absence of written permission, while all other political slogans are acceptable. This effort to "single[] out" a particular category of speech for "differential treatment" is "about as content-based as it gets." *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S.Ct. 2335, 2346 (2020) (plurality op.).

Nonetheless, the Third Circuit deemed the slogan statutes content-neutral under a different "category" purportedly recognized in *City of Austin*, which allegedly authorizes "line-drawing that distinguishes between speech based on extrinsic features." App.39. According to the court below, the slogan statutes are content-neutral under this category because "the communicative content of the slogan—*i.e.*, whether the slogan names an individual or a New Jersey incorporated association—only matters to determine whether the consent requirement applies at all," and "[o]nce a regulator has read a slogan to determine whether the consent requirement applies, the communicative content of the slogan ceases to be relevant." App.39. But that is just another way of saying that the restriction on speech—*viz.*, its prohibition absent consent—is triggered by the content of the speech. How that law can be described as anything other than content-based is baffling. *See, e.g.*, *Barr*, 140 S.Ct. at 2347 (plurality op.) (explaining that a law "focus[ing] on whether the [person] is *speaking* about a particular topic" is "content-based"); *Republican Party of Minn.*, 536 U.S. at 770, 774 (explaining that a law prohibiting candidates from "announc[ing] his or her views on … political issues" "prohibits speech on the basis of its content").

Indeed, in their "practical operation," the slogan statutes "go[] even beyond mere content discrimination, to actual viewpoint discrimination," *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565 (2011), because they effectively preclude all slogans that disparage or criticize named persons, who have no incentive to consent to the insult (*e.g.*, McCormick's slogan "Bernie Sanders Betrayed the NJ Revolution"). The only response that the court below could muster is that the slogan statutes are viewpoint-neutral because "a candidate who wishes to criticize a public figure widely despised in New Jersey" would experience the same difficulties "as a candidate who wishes to criticize Bruce Springsteen." App.42. But even accepting the dubious premise that those are the same viewpoints, that example only underscores that the slogan statutes systematically discriminate against *all* viewpoints that are critical of persons covered by the slogan statutes. *See Matal v. Tam*, 582 U.S. 218, 243 (2017) (opinion of Alito, J.) ("Giving offense is a viewpoint.").

Moreover, the viewpoint discrimination baked into the statute is magnified in light of the slogan statutes' avowed purpose. There may be no more concise or better way for a candidate to "distinguish [herself] as belonging to a particular faction or wing of [her] political party" than to proclaim herself a "Never Trumper" or "The People's Antidote to Nancy Pelosi." But by preventing those types of slogans, and affording a heckler's veto to anyone uninterested in being criticized by name, the consent requirement makes it far more difficult for someone challenging the status quo to signal her core political belief than for machine-endorsed insiders to do so. After all, it is

crystal clear that the political insiders and machines know how to grant and withhold consent and use six-word slogans to their advantage, having learned long ago how to use the slogan statutes to weaponize the ballot to their own advantage.[5]

3. As the foregoing underscores, the Third Circuit should never have wandered into *Anderson-Burdick* territory, and a proper application of that test would doom the slogan statutes anyway. But if *Anderson-Burdick* truly permits states to impose direct restrictions on the content of political speech, as the court below concluded, the Court should abandon the *Anderson-Burdick* project.

As jurists and commentators have observed, "*Anderson-Burdick* is a dangerous tool." *Daunt v. Benson* (*Daunt I*), 956 F.3d 396, 424 (6th Cir. 2020) (Readler, J., concurring in the judgment). Indeed, *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

[5] The Third Circuit also observed that New Jersey "leave[s] open ample alternative channels for communication of the information" that the slogan statutes preclude. App.44. This Court has already rejected such arguments when the government restricts speech based on its content. *See Meyer*, 486 U.S. at 424 ("That appellees remain free to employ other means to disseminate their ideas does not take their speech through petition circulators outside the bounds of First Amendment protection."); *accord Reno v. ACLU*, 521 U.S. 844, 880 (1997).

interest." *Daunt v. Benson* (*Daunt II*), 999 F.3d 299, 323, 325-27 (6th Cir. 2021) (Readler, J., concurring in the judgment) (quoting *Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 897 (1988) (Scalia, J., concurring in judgment)); *see also, e.g.*, Derek T. Muller, *The Fundamental Weakness of Flabby Balancing Tests in Federal Election Law Litigation*, Excess of Democracy (Apr. 20, 2020), https://bit.ly/3mIZf2T (describing *Anderson-Burdick* as 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.").

This Court has never found a way to resolve this problem, and that is not for lack of trying. Indeed, the Court attempted to clarify *Anderson-Burdick* most recently in *Crawford v. Marion County Election Board,* 553 U.S. 181 (2008), but that case produced a fractured opinion with no majority decision. As a result, there is now a worsening "judicial morass" in the lower courts, which are left to grapple with a "frustratingly vague" framework. Note, *"As the Legislature Has Prescribed": Removing Presidential Elections from the* Anderson-Burdick *Framework*, 135 Harv. L. Rev. 1082, 1085, 1099 (2022). And perhaps because *Anderson-Burdick* is so "amorphous," *Crawford*, 553 U.S. at 205 (Scalia, J., concurring in the judgment), there is always a "temptation" for courts to "overindulge" in it, *Daunt I*, 956 F.3d at 423 (Readler, J., concurring in the judgment). One way to limit that

temptation is to cabin the doctrine and make clear that it has zero application when it comes to political speech. Another option is to make clear that *Anderson-Burdick* provides no cover for content-based discrimination. But failing that, this Court should consider interring a test that calls for balancing and deference where the Constitution demands scrutiny.

II. The Decision Below Conflicts With Decisions From Other Lower Courts.

The Third Circuit's decision conflicts not only with decisions of this Court, but with decisions of other courts confronting comparable state efforts. In *Bachrach v. Secretary of the Commonwealth*, 415 N.E.2d 832 (Mass. 1981), for example, the Massachusetts Supreme Judicial Court addressed a law that allowed candidates not nominated by political parties to include a three-word "political designation" on the ballot. *Id.* at 833. The state initially allowed "any word or words" to be used—*e.g.*, "Against Politician's Raise"—but it later amended the law to prohibit any candidate from using the term "Independent." *Id.* at 833-34. After a candidate "insisted that he be designated Independent on the election ballot" because that term "best expressed his political views," the state refused. *Id.* at 834.

Massachusetts' high court applied strict scrutiny and rejected the state's effort to give the candidate three final words, but not the one he wanted. The court acknowledged that the state likely could have foreclosed the ballot speech altogether, "[b]ut as soon as the State admits a particular subject to the ballot, and commences to manipulate the content, to legislate what shall and shall not appear, it must take account

of the provisions of the" First Amendment. *Id.* The court further explained that "[e]xpression in the electoral context is 'at the heart of the First Amendment's protection'" and that "[t]he ballot itself partakes of this protection," as it is a forum where "candidates" can "express themselves" at "the culmination of the electoral process" and at "the climactic moment of choice." *Id.* at 834 & n.9. Applying those principles, the court held that Massachusetts' effort to "regulat[e] … the very content" of a candidate's core political speech on the ballot is "inherently suspect" in "much the same" way that the state could not "forbid political candidates in their campaigning to discuss a given subject." *Id.* at 835-37; *see also id.* at 839 (describing the law as "censoring pure speech"). Because the law thus imposed a "substantial restriction" on "political expression," the court subjected it to "strict scrutiny"—and held that it "fail[ed] such inspection." *Id.* at 836-37.

The Third Circuit's decision below is impossible to square with *Bachrach*. Whereas the court below held that engaging in political speech on the ballot at the state's invitation is "not … core political speech," App.30-31, *Bachrach* held the opposite, *see* 415 N.E.2d at 834 & n.9. Whereas the court below held that directly regulating the content of political speech on the ballot is not "content based," *see* App.35-40, *Bachrach* held the opposite, *see* 415 N.E.2d at 835-36. And whereas the court below held that strict scrutiny is inapplicable when the state regulates speech in this way, *see* App.47, *Bachrach* held the opposite, *see* 415 N.E.2d at 836-37.

But the lower-court conflict runs deeper and implicates even those courts that apply the *Anderson-Burdick* framework in the ballot-speech context. Indeed, even those courts have recognized that "core political speech" *can* occur on the ballot and that strict scrutiny applies when a state hinders that speech. *See Rubin v. City of Santa Monica*, 308 F.3d 1008, 1015 (9th Cir. 2002) (citing *Rosen v. Brown*, 970 F.2d 169 (6th Cir. 1992)). In stark contrast, the Third Circuit's understanding of all the "case law to date" is that speech that occurs on the ballot can *never* qualify as core political speech—precisely because it is "confined to the ballot itself at the moment a vote is cast" and is not "interactive." App.30. Thus, whether approached from a traditional First Amendment angle or through the lens of *Anderson-Burdick*, there is no denying that the Third Circuit's decision is an outlier.

III. The Question Presented Is Exceptionally Important.

The case is profoundly important on multiple levels. The restrictions here target core political speech "at an absolutely critical point" in the election, *Cook*, 531 U.S. at 532 (Rehnquist, C.J., concurring in the judgment), and sweep broadly. The slogan statutes are not limited to high political office, but apply to candidates in New Jersey running for "*any public office*." N.J. Stat. Ann. §19:23-17 (emphasis added). As this Court has repeatedly explained, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63, 67 (2020) (per curiam). And here, that irreparable injury is especially severe, as

"[t]he First Amendment 'has its fullest and most urgent application precisely to the conduct of campaigns for political office.'" *FEC v. Cruz*, 142 S.Ct. 1638, 1650 (2022).

Unfortunately, the problems do not end there. As noted, while the contours of the slogan statutes make little sense in terms of either the goals the statutes purport to accomplish or the concerns that drive the consent requirement, their design works perfectly to allow New Jersey's political insiders to stifle their rivals. The limitation of the consent requirement to New Jersey corporations becomes coherent only when one appreciates that having an incorporated business entity in New Jersey is the model of choice for the state's political machines to protect their own. As studies have revealed, if a county committee endorses a particular candidate and authorizes the candidate to use the committee's corporate name as a slogan, the candidate receives a boost of upwards of "35 percentage points." Rubin, *supra*. To be clear, New Jersey's First-Amendment-defying slogan statutes are not some quaint relic from the World War II era; rather, they function as the cornerstone of "a system that is antithetical to democracy and the ability of citizens to control their government." Pugach 631.

All of that would be reason enough to intervene and rescue New Jerseyans from a law that entrenches machines and incumbents with no incentive to revisit this convenient, albeit unconstitutional, law. But the repercussions of the decision below are hardly limited to New Jersey. Throughout the Third Circuit, the murky contours of *Anderson-Burdick* have now replaced the clear teaching of the First Amendment

when it comes to anything that can be labeled "ballot-speech." And outside the Third Circuit, the decision below will be used as a justification for the judge-empowering and rights-diluting balancing that comes with that framework. As the Third Circuit explained below, "[c]ourts have applied *Anderson-Burdick* to a wide range of state election laws covering nearly every aspect of the electoral process." App.14. Yet despite the ubiquity of the test, there is tremendous "confusion" about it. Kate Hardiman Rhodes, *Restoring the Proper Role of the Courts in Election Law: Toward A Reinvigoration of the Political Question Doctrine*, 20 Geo. J.L. & Pub. Pol'y 755, 763 (2022).

This case is an ideal vehicle to resolve these issues. As the Third Circuit acknowledged, "the issues in this case are purely legal." App.10. Moreover, both courts below thoroughly addressed those issues. And unlike so many other election-related cases, especially those implicating the *Anderson-Burdick* framework, this case does not arise in an emergency posture. *See, e.g.*, *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S.Ct. 28 (2020); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S.Ct. 1205 (2020); *Andino v. Middleton*, 141 S.Ct. 9 (2020). Thus, this case would allow the Court to provide much-needed guidance after "full briefing and argument," not on the Court's emergency docket. *Merrill v. Milligan*, 142 S.Ct. 879, 889 (2022) (Kagan, J., dissenting from grant of application for stay). The Court should seize that opportunity and grant plenary review.

CONCLUSION

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

Respectfully submitted,

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