No. 24-684

In the Supreme Court of the United States

CARLANDA D. MEADORS, ET AL.,
PETITIONERS,
v.
ERIE COUNTY BOARD OF ELECTIONS, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONERS' REPLY BRIEF

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REPLY BRIEF

This case bears all the hallmarks of a matter meriting review. The question presented is one on which every federal court of appeals—except for the Federal Circuit, which does not hear election disputes—has weighed in. The split implicates the right to vote, which is not just a "basic constitutional right[]," but "a fundamental political right that is preservative of all rights." *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983); *Williams v. Rhodes*, 393 U.S. 23, 38 (1968) (cleaned up). And this case is an ideal vehicle to resolve the split since the sole issue addressed by the Second Circuit is the issue on which courts are divided: the mootness exception's "capable of repetition" prong in election cases. The Second Circuit "express[ed] no view on the merits" of this matter or on other aspects of the mootness exception. App. 9a & n.1.

The brief in opposition disputes none of these points. On the split, Respondents say nothing at all, "tak[ing] no position on th[e] question," and declining to cite, much less discuss any of the cases in the split. BIO at 14. Nor do Respondents contest that the question presented is both recurring and important. In fact, they concede the former. *See id.* at 13 ("[T]his issue frequently recurs."). On the latter, they go so far as to suggest that the Second Circuit got it wrong on the question presented, as Respondents "previously agreed" in district court and before the court of appeals "that the case is not moot"; continue to believe it is in election officials' interests to "resolve the merits" of disputes "outside the context of emergency litigation"; and "would explain this position further" were the Court to grant review here. *Id.* & n.1. Rather than meaningfully answering Petitioners' reasons

for certiorari, then, Respondents offer arguments orthogonal to the question presented.

They urge the Court to deny this petition because the decision below was "unpublished," without an "acknowledged circuit split," and with "no adversity on th[e] threshold issue." *Id.* at 2. But that's a non-starter. Indeed, the Court will hear argument this month in a case that bears all of those characteristics, *see Martin v. United States*, 2025 WL 301915 (Jan. 27, 2025), and other examples abound. Respondents also advance arguments about the substantive legality of the challenged New York law. BIO at 15–19. But these falter too because questions over whether New York's candidate deadlines are unconstitutional go to the merits of the challenged law. Whether a court can reach that constitutional question, on the other hand, goes to mootness. And the Court has long cautioned against "confus[ing] mootness with the merits." *Chafin v. Chafin*, 568 U.S. 165, 174 (2013). Finally, Respondents ask this Court "to wait" for a "better vehicle." BIO at 15. But there is no reason to wait. Every circuit has already weighed in on the question presented. And this case squarely and narrowly presents that question for the Court's review.

I. RESPONDENTS' STRAWMAN ARGUMENTS LACK MERIT.

Respondents point to three facets of the decision below that, in their view, counsel against review: the opinion is unpublished and "has no precedential value," it "identifies no circuit split," and there is no "genuine adversity" on the question presented. BIO at 13, 15. None hold water.

To begin, this Court regularly reviews unpublished decisions from the courts of appeals. *See, e.g., Martin*, 2025 WL 301915; *Feliciano v. Dep't of Transp.*, 144 S. Ct. 2679 (2024); *Chiaverini v. City of Napoleon, Ohio*, 602 U.S. 556 (2024). Such cases in fact make up a seventh of the Court's docket. Merritt E. McAlister, *Rebuilding the Federal Circuit Courts*, 116 NW. U. L. REV. 1137, 1165 (2022). And review is particularly warranted here because the panel cited and followed its published decision in *Van Wie v. Pataki*, 267 F.3d 109 (2d Cir. 2001). App. 7a–8a. The panel did not, in short, have to establish precedent; it instead just applied the circuit precedent already in place. But *Van Wie* itself acknowledged a "tension" in the case law on the question presented, 267 F.3d at 114, and has since been characterized by both courts and commentators as falling on one side of a deep-rooted circuit split, *see, e.g.*, *Stop Reckless Econ. Instability Caused by Democrats v. Fed. Election Comm'n*, 814 F.3d 221, 230 (4th Cir. 2016) (citing *Van Wie* and noting that "courts have reached different results when considering arguments like the ones Appellants now raise"); *Circuit Approaches to Mootness in the Associational-Standing Context*, 136 HARV. L. REV. 1434, 1444 (2023).

Respondents' second contention, that the Second Circuit "identifie[d] no circuit split" in its decision, is equally unavailing. BIO at 13. Explicit recognition of a split has never been a prerequisite for this Court's review. Such a requirement would allow lower courts to evade review by simply omitting any mention of a circuit split. Unsurprisingly, then, the Court frequently grants certiorari when the decision below does not expressly identify a split. *See, e.g., MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288 (2023); *Unicolors,*

Inc. v. H&M Hennes & Mauritz, L.P., 595 U.S. 178 (2022).

Third, despite Respondents' claim, it is far from "unusual" for the Court to grant review and then appoint an amicus curiae to defend the decision below. BIO at 13. Indeed, the Court has done so in nearly half a dozen cases that have been argued or that shall be argued this Term. *See Parrish v. United States*, 2025 WL 311281 (Jan. 28, 2025); *Martin v. United States*, 2025 WL 311282 (Jan. 28, 2025); *Hewitt v. United States*, 145 S. Ct. 99 (2024); *Riley v. Garland*, 145 S. Ct. 610 (2024); *Glossip v. Oklahoma*, 144 S. Ct. 715 (2024). Were it otherwise, any party could defeat review by simply declining to contest the reasons presented for certiorari. That cannot be right.

II. RESPONDENTS' "ARGUABLY JURISDICTIONAL" AND MERITS ARGUMENTS ARE RED HERRINGS.

Respondents engage in a lengthy recitation of how New York's law works and why Petitioners' case, even if not moot, would not succeed on the merits. But that argument "confuses mootness with whether the plaintiff has established a right to recover, a question which it is inappropriate to treat at this stage of the litigation." *Chafin*, 568 U.S. at 174 (quoting *Powell v. McCormack*, 395 U.S. 486, 500 (1969)) (cleaned up).

1. Start with Respondents' claim that there's an "arguably jurisdictional" problem, since Petitioners have purportedly "not suffered from the supposed injury they identify." BIO at 15. Neither the Second Circuit nor the district court credited this quasi-standing argument, and it is unavailing here.

As the amended complaint makes clear, Petitioners are registered voters who "support[ed]" Byron Brown's "independent candidacy for Mayor of the City of Buffalo." App. 59a. They "signed Brown's independent nominating petition and want[ed] to vote for Brown on the general-election ballot." *Id.* But Brown's name did not appear on the 2021 general-election ballot. The reason it did not appear is because of N.Y. Elec. Law § 6-158.9, a law enacted in 2019, suspended in 2020 because of COVID orders, and applied for the first time during the 2021 election cycle. App. 62a. The effect of that law was to move up the petition deadline for independent candidates from mid-August to mid-May. And it is the law Petitioners challenge because Brown's nominating petition, which he sought to file on August 17, 2021, "would have been timely under all of New York's petition deadlines in force before 2019"—i.e., before N.Y. Elec. Law § 6-158.9's passage. App. 63a.

These circumstances plainly establish (1) injury (omitting Petitioners' preferred candidate from the general-election ballot); (2) causation (N.Y. Elec. Law § 6-158.9's petition deadline); and (3) redressability (reinstating the prior petition deadline).[1]

2. Shorn of this "arguably jurisdictional" claim, Respondents contend that Petitioners' theory of the case contravenes *Storer v. Brown*, 415 U.S. 724 (1974), in two ways.

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[1] That Brown eventually prevailed in the general election through a write-in campaign is of no consequence, since "[t]he realities of the electoral process . . . strongly suggest that 'access' via write-in votes falls far short of access in terms of having the name of the candidate on the ballot." *Lubin v. Panish*, 415 U.S. 709, 719 n.5 (1974); *accord Anderson*, 460 U.S. at 799 n.26.

First, Respondents say that, under *Storer*, if a candidate is "absolutely and validly barred from the ballot by one provision of the laws, he cannot challenge other provisions." BIO at 17 (quoting 415 U.S. at 724). True but irrelevant. Brown was barred from the ballot because he was an independent candidate who submitted a nominating petition that "was deemed untimely pursuant to Section 6-158.9." App. 18a. That is the only law Petitioners are challenging; they are not contesting any other provisions. App. 58a. Even Respondents admit this point: "The Complaint contained a single claim for relief: that enforcement of the deadline for independent candidates violates Petitioners' rights under the First and Fourteenth Amendment." BIO at 9.

Second, Respondents argue that "this case appears . . . to be an attempt to have this Court revisit its holding in *Storer*," which upheld a so-called "sore loser" law against a constitutional challenge. BIO at 18–19. To their credit, Respondents concede this claim goes to the merits of the case, *id.* at 18, rather than the question presented. That concession alone would be enough to set the argument aside.

But Respondents also concede that New York doesn't, even after N.Y. Elec. Law § 6-158.9's passage, have a "'sore loser' law forbidding primary losers from running as independents." *Id.* at 3. Consequently, Petitioners cannot be trying to re-litigate *Storer*'s holding about "sore loser" laws because—by Respondents' own admission—New York doesn't have a "sore loser" law.

Rather, what Petitioners challenge is the filing deadline for independent candidates, which was moved up twelve weeks by N.Y. Elec. Law § 6-158.9. This Court has recognized that this type of challenge is not moot even

after an election takes place. *Anderson*, 460 U.S. at 784 nn.2–3. After weighing the relevant costs and benefits, this Court held in *Anderson* that the specific "burden[]" imposed on "voters' freedom of choice and freedom of association" "unquestionably outweigh[ed] the State's minimal interest in imposing" an early filing deadline. *Id.* at 806. Were that holding not enough, multiple courts of appeals have invalidated early filing deadlines for independent candidates. *See, e.g., Nader v. Brewer*, 531 F.3d 1028, 1038–40 (9th Cir. 2008); *Council of Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 884 (3d Cir. 1997); *see also* Pet. at 30.

3. Respondents offer a handful of other merits-related claims. All miss the mark.

They claim that "the record is clear that a later deadline for an independent nominating petition would not have benefitted them unless the date of the primary election was also moved." BIO at 16. Not so. Again, Petitioners challenge the independent candidate petition deadline, moved earlier because of a change in law. Had the law set a later deadline—as New York law did before 2019—Brown's August 17, 2021 petition would have been timely. App. 63a. The party primary date is irrelevant to that question.

Next, Respondents suggest Petitioners have "no realistic prospect of success on the merits." BIO at 17. That's wrong on both the law and the facts. On the law, a court "may dismiss" a case as moot "only if it is impossible for a court to grant any effectual relief whatever" to a plaintiff. *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 377 (2019) (cleaned up). That obviously isn't the case here, because a federal court could find the challenged law unconstitutional and return the petition

deadline to the status quo ante. That is indeed exactly what happened in *Anderson* and a litany of other cases. *See* Pet. at 30.

Respondents' reliance on the result in a separate case brought by Brown in state court, where the New York Appellate Division "upheld the challenged schedule on the merits," does not change this calculus. BIO at 18. As Respondents themselves concede, this state-court determination doesn't foreclose review here because "a federal court is not bound by a state court's decision on federal constitutional law." *Id.* (citing *Indus. Consultants, Inc. v. H.S. Equities*, 646 F.2d 746, 749 (2d Cir. 1981)). Furthermore, the district court here initially granted Petitioners' motion for a preliminary injunction and ordered Respondents to add Browns' name to the ballot. App. 56a. That order undercuts the suggestion that Petitioners' claims here clearly lack merit (which, again, is a separate question from whether their claims are moot).

Finally, Respondents assert that Petitioners are not the "right" voters and Brown is not the "right" candidate "to litigate the issue of the constitutionality of New York's petition deadline" because Brown is a "sore loser." BIO at 16. This assertion lacks any citation to case law or statutory authority. It should be dismissed on that ground alone. Moreover, it doesn't matter whether Brown is a "sore loser" because (1) New York doesn't have a "sore loser" law, *id.* at 3, and so (2) Petitioners aren't bringing a "sore loser" challenge, App. 62a–63a. And it's even further afield to try to identify the "right" and "wrong" plaintiff to challenge a potentially unconstitutional election law. The proper plaintiff is one who has standing. Petitioners check that box—the only

court to consider the issue has said so. App. 26a–28a. The sole remaining question for this Court to decide is whether Petitioners can maintain that challenge after an election takes place. In eight of the courts of appeals, that answer is yes. In the Second Circuit and three others, it is no. That is a split ripe for the Court's consideration.

III. THIS CASE IS AN EXCELLENT VEHICLE.

This case presents the Court with an ideal opportunity to resolve a deep and persistent circuit split regarding the "capable of repetition" prong in election cases. The effect of this split is clear. Had Petitioners brought their case in one of the eight circuits that takes a flexible approach to the "capable of repetition" prong, the courts would have reached a different decision on mootness and examined the merits of Petitioners' constitutional claims.

Respondents contest none of this. They nevertheless ask the Court to wait for "a better vehicle" to "come" along. BIO at 15. That isn't credible. There is no reason to wait for this split to percolate, because every circuit with jurisdiction over election disputes has weighed in. Moreover, Respondents' offhand suggestion that the Court should stand by for a case where it can weigh in on both mootness and "reach the merits" of a dispute gets things exactly backward. *Id.* This case is an ideal vehicle because it squarely presents the core constitutional question, unburdened by factual or legal rulings on other issues.

In contrast, prior petitions seeking review of the question presented have been saddled by such complications. In *Stop Reckless Economic Instability*, for instance, the Fourth Circuit determined that two claims

were moot but that a third related claim was not. *See* 814 F.3d at 229–32. The panel adjudicated this third claim on the merits, *id.* at 232; employed reasoning suggesting that the plaintiffs would have lost on all claims regardless of mootness, *id.* at 235; and the subsequent petition for a writ of certiorari presented two questions—one on mootness, the other on merits—for review, *see* Pet. for Cert. at i, *Stop Reckless Economic Instability Caused by Democrats v. Fed. Election Comm'n* (16-109). Similarly, in *Hall v. Secretary, State of Alabama*, 902 F.3d 1294, 1298 & n.3 (11th Cir. 2018), the Eleventh Circuit stressed the unique nature of the "special election" at issue, noting that "the frequency of special elections in Alabama House seats is such that it will likely be a long time before the next one." In other words, it was uncertain whether the specific type of election was even "capable of repetition," much less whether the constitutional question would in fact recur.

No such concerns exist here. Because the Second Circuit's decision rested only on mootness, concerned a regularly recurring election, and did not reach any other issues, App. 9a, this petition presents a single, cleanly distilled question: whether the "capable of repetition" standard requires specific allegations of future electoral participation when the challenged law will continue to affect elections. The Court should grant review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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