APPENDIX

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APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 25-1644

BETTE EAKIN; DSCC; DCCC; AFT PENNSYLVANIA

v.

ADAMS COUNTY BOARD OF ELECTIONS; ALLEGHENY COUNTY BOARD OF ELECTIONS; BEAVER COUNTY BOARD OF ELECTIONS; BEDFORD COUNTY BOARD OF ELECTIONS; BERKS COUNTY BOARD OF ELECTIONS; BLAIR COUNTY BOARD OF ELECTIONS; BRADFORD COUNTY BOARD OF ELECTIONS; BUCKS COUNTY BOARD OF ELECTIONS; BUTLER COUNTY BOARD OF ELECTIONS; CAMBRIA COUNTY BOARD OF ELECTIONS; CAMERON COUNTY BOARD OF ELECTIONS; CARBON COUNTY BOARD OF ELECTIONS; CENTRE COUNTY BOARD OF ELECTIONS; CHESTER COUNTY BOARD OF ELECTIONS; CLARION COUNTY BOARD OF ELECTIONS; CLEARFIELD COUNTY BOARD OF ELECTIONS; CLINTON COUNTY BOARD OF ELECTIONS; COLUMBIA COUNTY BOARD OF ELECTIONS; CRAWFORD

COUNTY BOARD OF ELECTIONS; CUMBERLAND COUNTY BOARD OF ELECTIONS; DAUPHIN COUNTY BOARD OF ELECTIONS; DELAWARE COUNTY BOARD OF ELECTIONS; ELK COUNTY BOARD OF ELECTIONS; FAYETTE COUNTY BOARD OF ELECTIONS; FOREST COUNTY BOARD OF ELECTIONS; FRANKLIN COUNTY BOARD OF ELECTIONS; FULTON COUNTY BOARD OF ELECTIONS; HUNTINGDON COUNTY BOARD OF ELECTIONS; INDIANA COUNTY BOARD OF ELECTIONS; JEFFERSON COUNTY BOARD OF ELECTIONS; JUNIATA COUNTY BOARD OF ELECTIONS; LACKAWANNA COUNTY BOARD OF ELECTIONS; LANCASTER COUNTY BOARD OF ELECTIONS; LAWRENCE COUNTY BOARD OF ELECTIONS; LEBANON COUNTY BOARD OF ELECTIONS; LEHIGH COUNTY BOARD OF ELECTIONS; LUZERNE COUNTY BOARD OF ELECTIONS; LYCOMING COUNTY BOARD OF ELECTIONS; MCKEAN COUNTY BOARD OF ELECTIONS; MERCER COUNTY BOARD OF ELECTIONS; MIFFLIN COUNTY BOARD OF ELECTIONS; MONROE COUNTY BOARD OF ELECTIONS; MONTGOMERY COUNTY BOARD OF ELECTIONS; MONTOUR COUNTY BOARD OF ELECTIONS; NORTHAMPTON COUNTY BOARD OF ELECTIONS; NORTHUMBERLAND COUNTY BOARD OF ELECTIONS; PERRY COUNTY BOARD OF ELECTIONS; PIKE COUNTY BOARD OF ELECTIONS; POTTER COUNTY BOARD OF ELECTIONS; SNYDER COUNTY BOARD OF ELECTIONS; SOMERSET COUNTY BOARD OF ELECTIONS; SULLIVAN COUNTY BOARD OF

ELECTIONS; TIOGA COUNTY BOARD OF ELECTIONS; UNION COUNTY BOARD OF ELECTIONS; VENANGO COUNTY BOARD OF ELECTIONS; WARREN COUNTY BOARD OF ELECTIONS; WAYNE COUNTY BOARD OF ELECTIONS; WESTMORELAND COUNTY BOARD OF ELECTIONS; WYOMING COUNTY BOARD OF ELECTIONS; ERIE COUNTY BOARD OF ELECTIONS; GREENE COUNTY BOARD OF ELECTIONS; PHILADELPHIA COUNTY BOARD OF ELECTIONS; SCHUYLKILL COUNTY BOARD OF ELECTIONS; SUSQUEHANNA COUNTY BOARD OF ELECTIONS; YORK COUNTY BOARD OF ELECTIONS; ARMSTRONG COUNTY BOARD OF ELECTIONS; WASHINGTON COUNTY BOARD OF ELECTIONS

REPUBLICAN NATIONAL COMMITTEE; NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE; REPUBLICAN PARTY OF PENNSYLVANIA,
(Intervenors in District Court)

Appellants

On Appeal from the United States District Court
for the Western District of Pennsylvania
(District Court No. 1:22-cv-00340)
District Judge: Honorable Susan Paradise Baxter

Argued July 1, 2025

Before: SHWARTZ, FREEMAN, and SMITH, *Circuit Judges*

(Filed: August 26, 2025)

Brett Graham [ARGUED]
Office of Attorney General of Pennsylvania
1600 Arch Street
Suite 300
Philadelphia, PA 19103

Daniel B. Mullen
Office of Attorney General of Pennsylvania
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222

Counsel for Intervenor Appellant
Commonwealth of Pennsylvania

Louis J. Capozzi III
E. Stewart Crosland
Benjamin Daus
John M. Gore [ARGUED]
Jones Day
51 Louisiana Avenue NW
Washington, DC 20001

Thomas E. Breth
Thomas W. King, III
Dillon McCandless King Coulter & Graham
128 W. Cunningham Street
Butler, PA 16001

Kathleen A. Gallagher, Esq.
Gallagher Firm
436 Seventh Avenue

30th Floor
Pittsburgh, PA 15219

Counsel for Intervenor Defendant Appellants Republican National Committee, National Republican Congressional Committee, Republican Party of Pennsylvania

Zachary M. Wallen
Chalmers Adams Backer & Kaufman
301 S Hills Village Drive
Suite LL200-420
Pittsburgh, PA 15241

Counsel for Amicus Appellants Representative Jesse Topper, Kim Ward, Joe Pittman

Omeed Alerasool
Daniel J. Cohen
Richard A. Medina
Uzoma N. Nkwonta [ARGUED]
Jacob D. Shelly
Nicole E. Wittstein
Elias Law Group
250 Massachusetts Avenue NW
Suite 400
Washington, DC 20001

Adam C. Bonin
Suite 400
121 S. Broad Street
Philadelphia, PA 19107

Counsel for Plaintiff Appellees Bette Eakin, AFT Pennsylvania, Democratic Senatorial Campaign Committee, Democratic Congressional Campaign Committee

Molly R. Mudd
Adams County Office of Solicitor
117 Baltimore Street
Gettysburg, PA 17325

Counsel for Defendant Appellee Adams County Board of Elections

Frances M. Liebenguth
Rosalyn Guy-McCorkle
Lisa G. Michel
Virginia S. Scott
Allegheny County Law Department
445 Fort Pitt Boulevard
3rd Floor
Pittsburgh, PA 15219

Counsel for Defendant Appellee Allegheny County Board of Elections

Dara Burns
Amy Fitzpatrick
Bucks County Law Department
55 E. Court Street
5th Floor
Doylestown, PA 18901

Jessica L. Vanderkam
Stuckert & Yates
2 N State Street
P.O. Box 70
Newtown, PA 18940

Counsel for Defendant Appellee
Bucks County Board of Elections

Faith Mattox-Baldini
Colleen M. Frens
Office of Solicitor of Chester County
313 W. Market Street
Suite 6702
West Chester, PA 19380

Timothy J. Ford
Dilworth Paxson
1650 Market Street
Suite 1200
Philadelphia, PA 19102

Counsel for Defendant Appellee
Chester County Board of Elections

Maureen E. Calder
John Marlatt
Montgomery County Office of Solicitor
One Montgomery Plaza, Suite 800
P.O. Box 311
Norristown, PA 19404

Counsel for Defendant Appellee
Montgomery County Board of Elections

Melissa A. Guiddy
Suite 103
2 N Main Street
Greensburg, PA 15601

Counsel for Defendant Appellee
Westmoreland County Board of Elections

Brian H. Benjet
Ilana H. Eisenstein
DLA Piper
1650 Market Street
One Liberty Place, Suite 5000
Philadelphia, PA 19103

Ben C. Fabens-Lassen
2000 Avenue of the Stars
Suite 400, North Tower
Los Angeles, CA 90067

Michael W. Pfautz
Alison L. Stohr
Zachary G. Strassburger
City of Philadelphia
Law Department
1515 Arch Street
15th Floor
Philadelphia, PA 19102

Counsel for Defendant Appellee
Philadelphia County Board of Elections

Jacob B. Boyer [ARGUED]
Office of Attorney General of Pennsylvania

Office of General Counsel
30 North Third Street
Suite 200
Harrisburg, PA 17101

Counsel for Amicus Appellee Pennsylvania Department of State, Al Schmidt

Ari J. Savitzky
American Civil Liberties Union
125 Broad Street
18th Floor
New York, NY 10004

Counsel for Amicus Appellees Black Political Empowerment Project, Common Cause Pennsylvania, League of Women Voters of Pennsylvania, Power Interfaith, Pennsylvania State Conference of the NAACP

OPINION OF THE COURT

SMITH, *Circuit Judge*

I. Introduction

The ballot is a building block of our democracy. Perhaps no civic act has greater importance—or consequences—than a citizen's casting of a ballot. Our Constitution calls upon the States to regulate the mechanics of how its citizens cast their ballots so that those citizens may meaningfully express their voices in what George Washington once called "the last great experiment [in] promoting human happiness."[1] But our Constitution also calls upon the Courts to scrutinize such regulations to ensure they do not unduly burden voters' voices. This inquiry is often a difficult one. It requires a court to balance the State's constitutionally mandated duty against its citizens' constitutionally protected right. But "there is 'no substitute for the hard judgments that must be made.'" *Anderson v. Celebrezze*, 460 U.S. 780, 789–90 (1983) (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

This appeal asks us to make one such hard judgment. We must determine if the Commonwealth of Pennsylvania's requirement that mail-in ballots that arrive in undated or misdated return envelopes be discarded complies with our Constitution. Weighing the burden that practice imposes on Pennsylvanians' constitutional right to vote against the State's interest in the practice, the balance of the

[1] Letter from George Washington to Catharine Sawbridge Macaulay Graham (Jan. 9, 1790) (on file with the National Archives).

scales leads us to hold that it does not comply with our Constitution. We therefore will affirm the judgment of the District Court.

II. Facts

a. History of Mail-in Voting in the Commonwealth of Pennsylvania

Voting by mail first became a component of Pennsylvania's electoral system when the General Assembly adopted the Commonwealth's Election Code in 1937. Act of June 3, 1937, Pub. L. 1333, No. 320. The Code permitted some members of the military to vote by absentee ballot. *Id.* §§ 1301, 1327–30.[2] Per the Code, military absentee ballots were timely so long as a voter completed his absentee ballot on or before Election Day, regardless of when a county board of elections ("county election board")[3] received the ballot.

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[2] Specifically, Pennsylvania provided for what were called "Detached Soldier's Ballots" for qualified Pennsylvanians serving in the military who were "members of companies of another state or territory" or were separated from their proper unit in such a manner "as shall render it probable that they will be unable to rejoin their proper unit or to be present at their proper place of election on or before the day of any election." *Id.* §§ 1327–28. A soldier would complete a Detached Soldier's Ballot and place it into an envelope printed with "the affidavit of the [voter], together with the jurat of the officer in whose presence the ballot is marked and before whom the affidavit is made." *Id.* § 1328. The Code did not require that either the affidavit or the jurat contain a date. *See id.* § 1329.

[3] The Act of June 3, 1937 required each county of the Commonwealth to establish a "county board of elections" that would "have jurisdiction over the conduct of primaries and elections in such county." *Id.* § 301(a) (codified today at 25 P.S. § 2641(a)). These boards remain responsible for administering many aspects of Pennsylvania's elections today, including

Id. § 1329.[4] To give county election boards a means to determine when a voter completed an absentee ballot, Pennsylvania amended the Election Code in 1945 to require that the return envelopes containing absentee ballots be dated upon completion. Act of Mar. 9, 1945, Pub. L. 29, No. 17, § 10 (amending § 1306).[5] A ballot was timely if its return envelope bore a date on or before Election Day, and untimely if the return envelope bore a date which fell after Election Day. *See id.* (amending § 1307). Consistent with that design, the Election Code directed county election boards to "set aside," i.e., not count, those ballots contained within return envelopes bearing a date later than that of the election. *Id.*

Absentee voting was extended to the broader public in certain enumerated circumstances in 1963. Act of

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accepting applications for mail-in and absentee ballots, sending mail-in and absentee ballots to voters, and receiving and canvassing mail-in and absentee ballots. *E.g.*, 25 P.S. §§ 3146.2(a), 3146.6(a), 3150.12a(a), 3150.15, 3150.16(a).

[4] If any member of the military voted in the election, Pennsylvania's Election Code required county election boards to delay final vote tallies until the third Friday after an election "within which period all returns of votes cast by electors of the county in military service . . . shall be added . . . and included." Act of June 3, 1937, Pub. L. 1333, No. 320, § 1317.

[5] From 1941 to 1945, county election boards relied on the postmark of return envelopes to determine timeliness. *See* Act of August 1, 1941, Pub. L. 672, No. 273, § 4 (requiring county election boards to examine return envelopes containing military ballots and "set aside unopened all such envelopes which bear a postmark later than the date of the particular election day involved") (amending § 1307).

Aug. 13, 1963, Pub. L. 707, No. 379, § 20. [6] Pennsylvania then changed its criteria for determining an absentee ballot's timeliness in 1968, making an absentee ballot's timeliness hinge on whether a county election board *received* it by Election Day instead of whether a voter had *completed* it by Election Day. Act of Dec. 11, 1968 ("1968 Act"), Pub. L. 1183, No. 375, § 8 (amending § 1308(a)). The amended Election Code required that voters place their absentee ballots inside a return envelope which bore a declaration that included a date and signature field. *Id.* (amending § 1304). It further instructed that an "elector shall . . . fill out, date[,] and sign the declaration." *Id.* (amending § 1306). Notably, the General Assembly removed the explicit requirement that county election boards "set aside" ballots with missing or incorrect dates. *Compare* Act of Aug. 13, 1963, Pub. L. 707, No. 379, § 24 (including in § 1308(c) of Election Code the requirement that county election boards set aside envelopes bearing a date after an election); *with* 1968 Act § 8 (amending § 1308(c) to remove the requirement that county election boards set aside envelopes bearing a date after an election). Consistent with that amendment, county election boards counted absentee ballots with missing or

[6] Section 20 of the 1963 amendment established categories of "qualified absentee electors" who could vote by mail. This included any qualified elector who was absent from his or her state or county of residence and was a spouse or dependent of a person in the military, a qualified elector who was part of a religious or welfare group attached to the armed forces and was absent from his or her state or county of residence, or any qualified elector who was unable to make it to the polls due to illness or physical disability, to name a few examples. *Id.* (amending § 1301(a)–(l)).

incorrect dates for the next half-century. That practice changed, however, soon after the General Assembly passed the Act of Oct. 31, 2019, Pub. L. 552, No. 77, commonly referred to as "Act 77."

b. Act 77

Act 77 was the product of a bipartisan majority[7] that enacted universal mail-in voting for the first time in Pennsylvania's history. 25 P.S. § 3150.11(a). As part of the enactment, Act 77 included robust anti-fraud measures, prescribed a comprehensive process for Pennsylvanians to apply to vote by mail, and tasked the Secretary of State with designing a declaration form that would appear on all return envelopes. *E.g.*, 25 P.S. §§ 3150.12, 3150.14(b), 3150.15. Pennsylvania's election code maintained its provisions allowing certain individuals to vote by absentee ballot, which also contained anti-fraud measures, outlined a specific process for absentee voters to submit their ballots, and tasked the Secretary of State with designing the declaration form on return envelopes. *E.g.*, *id.* §§ 3146.2, 3146.4, 3146.5.[8]

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[7] *House Roll Call Vote Summary, Details for RCS No. 781*, PA. HOUSE OF REPRESENTATIVES (Oct. 29, 2019), https://www.palegis.us/house/roll-calls/summary?sessYr=2019&sessInd=0&rcNum=781 [https://perma.cc/D4QP-LB3V]; *Senate Roll Call Vote Summary, Details for RCS No. 311*, PA. STATE SENATE (Oct. 29, 2019), https://www.palegis.us/senate/roll-calls/summary?sessYr=2019&sessInd=0&rcNum=311 [https://perma.cc/8S6H-CHWA].

[8] For purposes of this opinion, we refer to absentee and mail-in ballots or voters collectively as "mail-in" ballots or voters.

Measures aimed at safeguarding the integrity of elections include verification of voter IDs that accompany mail-in ballot applications, 25 P.S. §§ 3146.2b(c), 3150.12b(c); criminal penalties for false registration, 25 P.S. § 3552; a challenge process to dispute a voter's qualifications to vote by mail, 25 PA. CONST. STAT. § 1329; voter roll maintenance procedures, 25 PA. CONST. STAT. § 1222; timely-return deadlines, 25 P.S. §§ 3146.6(a), 3150.16(a); a requirement that county election boards maintain and make public records concerning electors who apply for a mail-in ballot, 25 P.S. §§ 3146.9, 3150.17; and post-election audits, 25 P.S. § 3031.17.

Additionally, Act 77 established a comprehensive process for voting by mail. A voter must first apply to the county election board, submitting a copy of a photo ID together with his or her name, address, date of birth, and length of residency in the voting district, among other information. 25 P.S. §§ 3146.2, 3150.12(b). By law, the application for a mail-in ballot must inform voters that they may not vote in person if they have applied to vote by mail unless they bring with them to the polling place their mail-in ballots and remit them. 25 P.S. §§ 3146.2(i)(1), 3150.12(f).

Upon receipt, a county election board determines if the voter meets the four eligibility criteria to vote in Pennsylvania, requiring that the voter be: (1) at least 18 years old on Election Day; (2) a U.S. citizen for at least one month before Election Day; (3) a resident of his or her election district for at least 30 days; and (4) not currently incarcerated for a felony conviction. PA. CONST. ART. VII § 1; 25 P.S. § 2811. To determine eligibility, county election boards compare the application to vote by mail against the voter's

registration data in the Statewide Uniform Registry of Electors ("SURE") system—a database of registered voters.[9] 25 P.S. §§ 3146.2b, 3150.12b; 25 PA. CONS. STAT. § 1222.

If a mail-in voter application is approved, the county election board provides the applicant with a mail ballot, a secrecy envelope, and a larger, pre-addressed return envelope. 25 P.S. §§ 3146.4, 3150.14. The voter then marks the ballot, seals it within the secrecy envelope, and places the secrecy envelope within the return envelope. 25 P.S. §§ 3146.6(a), 3150.16(a). Each return envelope contains a SURE system barcode that is unique to each voter and each election year. Additionally, the return envelope includes a declaration that the voter is qualified to vote and has not already voted, along with spaces for the voter to sign and date the declaration. As a voter's final step before mailing in the completed ballot, the voter must sign and date the declaration on the spaces provided on the return envelope. The date should represent the date on which the voter actually completed the declaration. 25 P.S. §§ 3146.6(a), 3150.16(a).

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[9] More specifically, the SURE system is "[t]he integrated voter registration system of all registered electors in [the] Commonwealth." 25 P.S. § 3150.1. In addition to including a database of all registered voters, the SURE system permits the auditing of registered voters' registration records, identifies the district to which a voter should be assigned, identifies duplicate voter registrations on a countywide and Statewide basis, identifies voters who have been issued a mail-in ballot, identifies electors who voted and the means by which they voted, and allows election officials to obtain a copy of a wallet-sized identification card submitted by the voter. 25 PA. CONS. STAT. § 1222(c)(1), (11), (15), (17), (19)–(21).

By Pennsylvania law, a ballot is timely only if the county election board receives it before 8 p.m. on Election Day. 25 P.S. §§ 3146.6(c), 3150.16(c). Hence, the Election Code requires county election boards to record the date and time they receive each mail-in ballot. 25 P.S. §§ 3146.9(b)(5), 3150.17(b)(5). Upon receipt, county election boards date stamp or otherwise physically notate the time of receipt on the return envelope provided by the county election board. County election boards then scan the barcode on the return envelope, thereby entering the time it was received into the SURE system. Appellees Phila., Allegheny, Bucks, Chester, and Montg. Cnty. Election Bds. Br. ("Counties Br.") at 6. Additionally, county election boards often physically segregate timely ballots from untimely ballots.

c. The Date Requirement

Act 77 retained language from the Election Code which required that voters shall "fill out, date and sign" the declaration on return envelopes. 25 P.S. §§ 3146.6(a); 3150.16(a). Construing this language as a matter of statutory interpretation, the Supreme Court of Pennsylvania has determined that it requires county election boards to discard return envelopes (and the ballots contained therein) with a missing or incorrect date. *In re Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election* ("*2020 General Election*"), 241 A.3d 1058, 1079, 1090 (Pa. 2020); *Ball v. Chapman*, 289 A.3d 1, 21–22 (Pa. 2023).[10] Pursuant to this "date requirement," if a

[10] The Supreme Court of Pennsylvania has seven justices. In *2020 General Election*, the three-justice Opinion Announcing the Judgment of the Court stated that county election boards could

return envelope's date field contains a mistaken additional digit, a stray pen mark, or missing information (including a year) then the ballot contained within that envelope may not be counted. *Ball*, 289 A.3d at 21–23; *see, e.g.*, Supp. App. 175–84; Amicus Pa. State Conf. of the NAACP et al. Br., at 9, 17–21 (providing examples of ballots rejected due to the date requirement).

Additionally, the Supreme Court of Pennsylvania has held that county election boards need not provide notice to a mail-in voter that her ballot has been rejected because it did not conform to the date requirement. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020). Nor is that voter entitled to cure the date deficiency. *Id.* Some, but not all, of Pennsylvania's county election boards provide no notice to voters if their ballots have been rejected due to having failed to meet the date requirement. *E.g.*, Supp. App. 73–74; Eakin Br. at 36. This inconsistent practice of notifying voters when they have submitted a noncompliant envelope results in some voters being

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count ballots contained in return envelopes that lacked dates. 241 A.3d at 1076, 1078. Nevertheless, four justices filed or joined concurring and dissenting opinions stating that county election boards could not count ballots contained in return envelopes with missing dates. *Id.* at 1079 (Wecht, J., concurring in part and dissenting in part), 1090 (Dougherty, J., concurring in part and dissenting in part). In *Chapman*, the Supreme Court of Pennsylvania determined that "an undeniable majority" of the court in *2020 General Election* had determined "that undated ballots would *not* be counted." 289 A.3d at 21. *Chapman* also held that ballots in incorrectly dated return envelopes could not be counted, either. *Id.* at 23.

able to resubmit a ballot, while others do not have their votes counted due to this technicality.

d. Ramifications of the Date Requirement

Failure to conform with the date requirement caused over 10,000 ballots to be discarded in the 2022 General Election. Responding to that more-than-negligible figure, Governor Josh Shapiro's administration redesigned the return envelope format. *Shapiro Administration Announces* 57% *Decrease in Mail Ballots Rejected in 2024 General Election* ("*Shapiro Administration*"), COMMONWEALTH OF PENNSYLVANIA (Jan. 24, 2025), https://www.pa.gov/agencies/dos/newsroom/shapiro-administration-announces-57–decrease-in-mail-ballots-re[perma.cc/QV2Q-NXVL]. The redesigned return envelope was used for the first time in 2024 with notable results. *Id.* It culminated in a 57% drop in the rejection of mail ballots. *Id.* Overall, only 23% of rejected mail-in ballots, or 0.064% of total votes cast, were rejected due to some failure to meet the date requirement. *Id.* That still means that roughly 4,500 eligible Pennsylvania voters who made the effort to vote by mail in 2024 had their ballots discarded due to a missing or incorrect date. *Id.*

e. Procedural History

Plaintiff-appellee Bette Eakin is a Pennsylvania resident who had her mail-in ballot rejected during the 2022 general election after she failed to write a date on her return envelope. Joined by various entities

affiliated with the Democratic party[11] and a federation of teachers, [12] Eakin filed suit against the county election boards of all 67 Pennsylvania counties, alleging the date requirement violated the Materiality Provision of the Civil Rights Act[13] and the First and Fourteenth Amendments of the Constitution. The lawsuit was filed in the U.S. District Court for the Western District of Pennsylvania.

The District Court granted leave to intervene to a group of Republican party entities: the Republican National Committee, the National Republican Congressional Committee, and the Republican Party of Pennsylvania (collectively the "RNC"). Dist. Ct. Dkt., ECF 165 (Jan. 6, 2023). The District Court also notified the Commonwealth of Pennsylvania of the lawsuit in June of 2024, but the Pennsylvania Office of the Attorney General opted not to intervene. Dist. Ct. Dkt., ECF No. 383 (June 18, 2024). Although Plaintiffs initiated this lawsuit by naming as defendants the county election boards of all 67

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[11] Those entities included the Democratic Senatorial Campaign Committee ("DSCC") and the Democratic Congressional Campaign Committee ("DCCC").

[12] AFT Pennsylvania "is the Pennsylvania affiliate of the American Federation of Teachers and a union of professionals representing approximately 25,117 members in 55 local affiliates across Pennsylvania." Supp. App. 7.

[13] Codified at 52 U.S.C. § 10101(a)(2)(B), the "Materiality Provision" of the Civil Rights Act of 1964 prohibits any person acting under color of law from denying another's right to vote because of an "error or omission" on paperwork that relates "to any application, registration, or other act requisite to voting" if the error or omission is "not material in determining whether [an] individual is qualified" to vote.

counties that comprise the Commonwealth, only two defendant county election boards defended the date requirement: Berks County and Lancaster County. The case proceeded to discovery, producing voluminous pages of interrogatories, depositions, and other documents. The parties then filed cross motions for summary judgment.

Addressing the dispositive motions, the District Court first determined that Eakin's argument under the Materiality Provision was foreclosed by our decision in *Pennsylvania State Conference of NAACP Branches v. Secretary of the Commonwealth of Pennsylvania* ("*NAACP*"), 97 F.4th 120 (3d Cir. 2024). There, we determined that the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B), "is triggered when conduct or laws restrict *who* may vote" but leaves "to the States to decide *how* qualified voters must cast a valid ballot." *NAACP*, 97 F.4th at 130. Because the date requirement is embedded in the act of casting a ballot, we determined that it falls outside the Materiality Provision's scope. *Id.* at 135.

Second, the District Court held that the date requirement violated the First and Fourteenth Amendments. Relying on our decision in *Mazo v. New Jersey Secretary of State*, 54 F.4th 124 (3d Cir. 2022), the District Court reasoned that the *Anderson-Burdick* framework ("*Anderson-Burdick*") applied because the date requirement burdened the right to vote and primarily regulated the mechanics of the electoral process. The District Court next proceeded to weigh the burden imposed by the date requirement against the justifications for it advanced by the RNC

and Berks County.[14] In applying *Anderson-Burdick*, the District Court concluded that the date requirement imposed a minimal burden on Pennsylvanians' right to vote, reasoning that it is easy to date an envelope and that the requirement is non-discriminatory. Yet the District Court concluded that none of the proffered State interests advanced to support the date requirement—enhancing election efficiency, promoting solemnity, or preventing voter fraud—justified the burden the date requirement imposed. The District Court highlighted that the RNC and Berks County had failed to adduce any evidence in support of the asserted interests in enhancing election efficiency or promoting solemnity.

The District Court also emphasized that the RNC had produced only a single criminal case of voting fraud which involved a mail-in ballot: *Commonwealth v. Mihaliak*, No. MJ-2202-CR-126-22 (Pa. Mag. Dist. Ct. 2022). In that criminal prosecution, a woman was convicted on charges relating to her having completed and mailed her recently deceased mother's ballot to the county election board of Lancaster County. The fraud was easily detected because, by the time the county received the ballot, it had already removed the decedent from the voter rolls. The county election board discounted the ballot after scanning the barcode on the return envelope, causing the SURE system to flag the ballot as invalid because the registered voter was deceased. Thus, the District Court determined

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[14] Although the Lancaster County Election Board opposed Plaintiffs' lawsuit, its motion for summary judgment did not identify interests that purported to justify the date requirement. ECF No. 280 (Apr. 21, 2023).

that *Mihaliak* did not support the RNC's position. Notably, the SURE system, and not the date on the return envelope, is what alerted the County to the fraud. The District Court then highlighted that the Lancaster County Board of Election's Chief Clerk, Christa Miller, had admitted in a deposition that "an outer envelope that is missing a hand-written date is no reason to suspect voter fraud."

Concluding that none of the proffered State interests justified the burden the date requirement imposed, the District Court granted summary judgment in favor of Eakin and enjoined Pennsylvania's county election boards from discarding ballots contained in return envelopes with missing or incorrect dates. Important to a full understanding of this case, nothing in the District Court's order prevents the Commonwealth or county election boards from including a date field in the declaration on return envelopes. The order merely prevents county election boards from discarding mail-in ballots based on how a voter fills in the date field on the return envelope's declaration.

The RNC timely appealed the District Court's order granting Eakin's motion for summary judgment. No county election board has joined this appeal on the side of the RNC. After the RNC appealed, the Attorney General of the Commonwealth sought to intervene to defend the date requirement.[15] We granted that motion.

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[15] Pennsylvania voters elected a new attorney general in November of 2024. Angela Couloumbis, *Republican Dave Sunday Wins Attorney General Race in Pennsylvania, Beating Eugene DePasquale*, SPOTLIGHT PA (Nov. 6, 2024).

III. Standard of Review

We review the grant of summary judgment *de novo*. *N.J. Bankers Ass'n v. Att'y Gen. N.J.*, 49 F.4th 849, 854 (3d Cir. 2022). Summary judgment "is appropriate where 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)).

IV. Jurisdiction

The District Court had federal question jurisdiction under 28 U.S.C. § 1331 because Eakin's claim arose out of a federal statute and the U.S. Constitution. We have appellate jurisdiction under 28 U.S.C. § 1291 over the District Court's final judgment.

V. Discussion

This appeal asks us to determine whether Pennsylvania's requirement that county election boards discard mail-in ballots sent to them in return envelopes with missing or incorrect dates violates the First and Fourteenth Amendments. We agree with the District Court that it does, and we will affirm.

a. An Overview of *Anderson-Burdick*

Voting rights cases sit at the juncture of two competing interests. First, "voting is of the most fundamental significance under our constitutional structure." *Ill. State Bd. Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). The general right to vote is "implicit in our constitutional system." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 n.78 (1973). And the courts afford special protections for this "precious" and "fundamental" right. *Harper v. Va. State Bd. Elections*, 383 U.S. 663, 670 (1966).

Yet secondly, the right to vote in any manner is not absolute. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). The Constitution establishes the States' prerogative to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. Art. I, § 4, cl. 1. Furthermore, "[c]ommon sense, as well as constitutional law, compels the conclusion that . . . 'as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.'" *Burdick*, 504 U.S. at 433 (quoting *Storer*, 415 U.S. at 730).

Because of these important—yet sometimes conflicting—interests at stake in voting rights cases, the Supreme Court developed the *Anderson-Burdick* framework (also called the *Anderson-Burdick* balancing test or simply "*Anderson-Burdick*"), which derives from the cases *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992). The test requires a weighing of the burden imposed on a voter's constitutional rights by a voting law or regulation against the State's legitimate interest in the law, thereby allowing a court to factor in both interests before reaching a final determination. *Burdick*, 504 U.S. at 434.

The test proceeds in two steps. At step one, a court determines the nature and extent of the burden that a challenged voting law imposes on a constitutional right, weighing "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate." *Anderson*, 460 U.S. at 789. *Burdick* acknowledges that an election law "invariably" places some burden on the right to vote. *Burdick*, 504 U.S. at

433. And precedent clarifies several factors that we consider in assessing a law's burden.[16]

At step two, a court weighs the burden against "the precise interests put forward by the State as justifications for the burden imposed by its rule." *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). A court applying *Anderson-Burdick* "must not only determine the legitimacy and strength of [the State's] interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson*, 460 U.S. at 789.

The touchstone of this analysis "is its flexibility in weighing competing interests." *Ohio Democratic Party v. Husted*, 834 F.3d 620, 627 (6th Cir. 2016). A more burdensome law invites a proportionally more searching scrutiny.[17] But *Anderson-Burdick* is not without clear guideposts. A law that imposes a "severe" burden on voting rights must meet strict scrutiny. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). "Lesser burdens, however, trigger less exacting review, and a State's 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" *Id.* (quoting *Burdick*, 504 U.S. at 434).

Our precedent instructs that we apply *Anderson-Burdick* to evaluate voting laws that both burden a "relevant constitutional right" and "primarily regulate

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[16] *See infra* Pt. V(c).

[17] *See Fish v. Schwab*, 957 F.3d 1105, 1124 (10th Cir. 2020); *Ariz. Green Party v. Reagan*, 838 F.3d 983, 988 (9th Cir. 2016); *Ne. Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580, 592 (6th Cir. 2012).

the mechanics of the electoral process."[18] *Mazo*, 54 F.4th at 138; *see also Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 204 (2008) (Scalia, J., concurring) (plurality opinion) (stating that we use *Anderson-Burdick* to evaluate laws respecting the right to vote, "whether it governs voter qualifications, candidate selection, or the voting process").[19] The relevant burden need not be severe. Numerous cases analyzing election laws—including *Mazo*—have applied *Anderson-Burdick* to voting laws that imposed

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[18] The Commonwealth, as Intervenor, alleges that *Anderson-Burdick* does not apply to claims that do not implicate "the ability to express oneself nor the ability to associate." Commonwealth Opening Br. at 13. *Mazo* forecloses this argument. 54 F.4th at 140 (recognizing that *Anderson-Burdick* applies broadly to claims implicating many different constitutional rights and "is not limited to laws that burden free association").

[19] Here, the date requirement meets the two elements identified in *Mazo*. First, *Mazo* squarely holds that the "right to vote" is a "relevant constitutional right" to which *Anderson-Burdick* applies. *Mazo*, 54 F.4th at 138. The date requirement burdens this right by requiring county election boards to discard ballots in envelopes with missing dates or those containing even minor errors in the handwritten date. *See, e.g.*, *Ne. Ohio Coal. for the Homeless v. Husted* ("*NEOH*"), 837 F.3d 612, 632 (6th Cir. 2016) (applying *Anderson-Burdick* to evaluate law mandating "technical precision in the address and birthdate fields of the absentee-ballot identification envelope"), *abrogated on other grounds recognized by Tenn. Conf. of Nat'l Ass'n for Advancement of Colored People v. Lee*, 139 F.4th 557, 563 (6th Cir. 2025); *Democratic Exec. Comm. of Fla. v. Lee* ("*Lee*"), 915 F.3d 1312, 1319 (11th Cir. 2019) (applying *Anderson-Burdick* to evaluate policy of rejecting ballots based on how a voter wrote his or her signature). Second, the date requirement primarily regulates "mechanics of the electoral process," by requiring voters to include certain information with their ballots for their votes to be counted. *See Mazo*, 54 F.4th at 140–41.

only a minimal burden on voting rights. *See, e.g.*, *Crawford*, 553 U.S. at 209 (Scalia, J., concurring) (concluding that a law was constitutional because the State's interests were "sufficient to sustain [the law's] *minimal burden*" (emphasis added)); *Mazo*, 54 F.4th at 153 (determining a law's burden was minimal and proceeding to step two of *Anderson-Burdick*). Moreover, a plurality of the Supreme Court in *Crawford* instructed that "*[h]owever slight* [a] burden may appear . . ., it must be justified by relevant and legitimate state interests." *Crawford*, 553 U.S. at 191 (emphasis added). Nevertheless, as *Mazo* instructed, *Anderson-Burdick* does not apply to voting laws that impose only a *de minimis* burden on constitutional rights. 54 F.4th at 138–39.

With this background in mind, we first address Appellants' argument that *Anderson-Burdick* does not apply to the matter at hand.

b. *Anderson-Burdick* Can Apply to Regulations of Mail-in Voting

Appellants argue that *Anderson-Burdick* is inapplicable to this case because the right to vote does not extend to voting by mail. Their argument relies heavily on the Supreme Court's decision in *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969). There, the Supreme Court denied a claim by pre-trial detainees that the State's refusal to grant them absentee ballots violated the Equal Protection Clause of the Fourteenth Amendment.[20] *Id.*

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[20] Prior to *Anderson-Burdick*, courts addressed voting rights claims under the Equal Protection Clause. If a litigant could show that an election law either invidiously discriminated or infringed the fundamental right to vote, then strict scrutiny

at 803, 811. The Court reasoned that the detainees had not introduced evidence showing that the State would not bring them to the polls on Election Day, leading the Court to comment that "[i]t is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots." *Id.* at 807–08.[21] Relying on *McDonald*, Appellants argue that a State does not deny the right to vote by limiting or regulating mail-in voting so long as a State preserves the right to vote in person.[22] Because Pennsylvanians who fail to comply

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applied. *Harper v. Va. State Bd. Elections*, 383 U.S. 663, 666– 67, 670 (1966) (determining a law invidiously discriminated and applying strict scrutiny); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) ("[A]ny alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."); *see also Anderson*, 460 U.S. at 786 n.7 (discussing the "fundamental rights" strand of equal protection analysis). Otherwise, rational basis review applied. *McDonald*, 394 U.S. at 807–09. Some courts continue to apply *Anderson-Burdick* to challenges to state laws on Equal Protection grounds. *E.g.*, *Obama for Am. v. Husted*, 697 F.3d 423, 430 (6th Cir. 2012) (applying *Anderson-Burdick* in Equal Protection Clause lawsuit, noting, "when a state regulation is found to treat voters differently in a way that burdens the fundamental right to vote, the *Anderson–Burdick* standard applies").

[21] Later Supreme Court cases construed *McDonald* as "rest[ing] on failure of proof." *O'Brien v. Skinner*, 414 U.S. 524, 529 (1974). In another case with facts similar to those in *McDonald*, the Court determined that a State's failure to provide pre-trial detainees absentee ballots did violate the Constitution because the inmates showed the State would not provide them alternative means of voting. *Goosby v. Osser*, 409 U.S. 512, 521–22 (1973).

[22] At one point in its brief, the RNC argues that "a rule cannot impose a severe burden on the right to vote where the State makes available another method of voting exempt from the rule." RNC Opening Br. at 43. We decline here to summon up the range of hypothetical regulations that might severely burden the mail-

with the date requirement may vote in person, they argue, the date requirement cannot operate to deny the right to vote. Accordingly, they contend, *Anderson-Burdick* does not apply here. We reject that argument.

The fact that Pennsylvanians may not have a constitutional right to vote by mail is not dispositive of whether the date requirement violates the Constitution. Supreme Court precedent has recognized that, even if its citizens did not have a right to a franchise in the first place, a State may not grant a franchise in such a way that violates the Constitution. For example, there is no First Amendment right to vote for members of a school board, so a state entity may appoint school board members without an election. *Sailors v. Bd. of Ed. of Kent Cnty.*, 387 U.S. 105, 110–11 (1967). Nevertheless, a State violates the right to vote by providing for popular election of school board members while at the same time providing that some "bona fide residents" may vote while others may not. *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 627 (1969). There is likewise no First Amendment right to a ballot initiative. *Meyer v. Grant*, 486 U.S. 414, 424 (1988). Yet a State violates the First Amendment by permitting ballot initiatives to be held but only in a manner that unduly burdens associational rights. *Id.* at 424–25, 428 (striking down a law prohibiting citizens from paying someone to circulate a ballot initiative and rejecting the argument that "because the power of the initiative is a state-created right, it is

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in voter were courts to indulge States in the broad exercise of discretion that Appellants seem willing to grant them.

free to impose [any] limitations on the exercise of that right"); *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 186, 204–05 (1999) (striking down several conditions a State placed on the ballot-initiative process); *Molinari v. Bloomberg*, 564 F.3d 587, 597 (2d Cir. 2009) (noting that, "as the Supreme Court has recognized, if a [S]tate chooses to confer the right of referendum to its citizens, it is 'obligated to do so in a manner consistent with the Constitution'" (quoting *Meyer*, 486 U.S. at 420)).

So too here. Even if no First Amendment right to vote by mail exists, we still must scrutinize Pennsylvania's mail-in voting regime to ensure that it complies with the Constitution. As the Supreme Court has instructed in the Equal Protection context, "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the . . . Fourteenth Amendment." *Harper*, 383 U.S. at 665.

Any other rule would have severe ramifications for the democratic process. A State could induce its citizens to vote by mail, yet proceed to discard countless ballots for any number of reasons unrelated to a voter's qualifications or the State's legitimate interests. Especially as mail-in voting becomes increasingly popular throughout our nation, *see, e.g.*, *Arizona Democratic Party v. Hobbs*, 18 F.4th 1179, 1181 (9th Cir. 2021), we do not think the Constitution countenances such an outcome.[23]

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[23] This conclusion finds support in the Second, Sixth, Ninth, and Eleventh Circuits, which have all applied *Anderson-Burdick* to mail-voting regulations. *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318–19 (11th Cir. 2019); *Hobbs*, 18 F.4th at 1186–87 (9th Cir.); *NEOH*, 837 F.3d at 631–34; *Price v. New York*

Constitutional scrutiny applies for the independent reason that a Pennsylvanian who fails to comply with the date requirement cannot vote in person. Pennsylvania law provides that a voter who receives a mail-in ballot may not vote at the polls unless he or she brings the mail-in ballot to the polls and remits it. 25 P.S. §§ 3146.2(i)(1), 3150.12(f). A voter loses that option once that voter mails in a ballot. It is false to claim, then, that a Pennsylvanian who has chosen to vote by mail may simply vote in person if he or she fails to comply with the date requirement. Instead, that person's ballot will be discounted—potentially without notice or any opportunity to correct the ballot. *See Boockvar*, 238 A.3d at 374.

We will, therefore, apply *Anderson-Burdick* and must look to its first step by assessing the character and extent of the burden that the date requirement imposes on a Pennsylvania voter's constitutional rights.

c. The Date Requirement Imposes a Minimal Burden on Voting Rights

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State Bd. of Elections, 540 F.3d 101, 107–09 (2d Cir. 2008). The Eighth Circuit noted that the right to vote does not extend to voting by mail but still proceeded to apply *Anderson-Burdick* to a challenge concerning a mail-voting regulation. *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 607–09 (8th Cir. 2020). And the Fifth Circuit expressly disavowed whether it was deciding if *Anderson-Burdick* should apply to a challenge concerning mail-in voting based on the Twenty-Sixth Amendment. *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 194 (5th Cir. 2020). The Seventh Circuit held that *Anderson-Burdick* did not apply to a challenge to a law imposing a deadline to receive absentee ballots. *Common Cause Indiana v. Lawson*, 977 F.3d 663, 664 (7th Cir. 2020) (applying rational basis review).

At *Anderson-Burdick*'s first step, we examine the nature and extent of the burden the date requirement imposes on First and Fourteenth Amendment protected rights. Precedent has delineated several, non-exhaustive considerations that bear on this inquiry. They include: (1) can voters comply with a voting law with ease; [24] (2) does the law disproportionately limit political participation "by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status";[25] (3) are there alternative means for affected voters to vindicate the interest burdened by a challenged law;[26] (4) have the challengers provided evidence of specific unconstitutional applications of

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[24] *Hobbs*, 18 F.4th at 1189 (defining the burden of signing an affidavit that accompanies a mail-in ballot as "the small burden of signing the affidavit or, if the voter fails to sign, of correcting the missing signature by election day").

[25] *Anderson*, 460 U.S. at 793; *see id.* at 793–94 ("A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and—of particular importance—against those voters whose political preferences lie outside the existing political parties.").

[26] *Timmons*, 520 U.S. at 363 (holding that a law that prevented independent parties from listing a major party candidate as their candidate reduced an independent party's ability to convey support for major candidates, but that the burden was reduced because the "party retains great latitude in its ability to communicate ideas to voters and candidates through its participation in the campaign" process); *see also Burdick*, 504 U.S. at 435–36 (reasoning that a Hawaii law prohibiting write-in ballots was less burdensome because Hawaii provided multiple mechanisms for candidates to appear on the ballot).

the law, including data of voters affected by a law;[27] and (5) what are the impacts of the voting law?[28]

Weighing these factors, we hold that the date requirement imposes a minimal burden on voting rights. Although it may seem easy to place a date on a return envelope—and there is no evidence that the date requirement disproportionately limits political participation by a defined political group—the date requirement caused county election boards to discard over 10,000 ballots in the 2022 general election. Appellants highlight that this number dropped in the 2024 election after the Shapiro Administration revised the declaration form that appears on return envelopes, and that "only 0.064% percent [sic] of all ballots cast were rejected under the date requirement [in 2024]." RNC Opening Br. at 34. But that still amounts to 4,500 ballots rejected due to some failure to meet the date requirement. *See Shapiro Administration*, *supra*; *Presidential Election (Official Returns)*, COMMONWEALTH OF PENNSYLVANIA (Nov. 5, 2024), https://www.electionreturns.pa.gov/General/VoteByMethod?officeId=1&districtId=1&ElectionID=105&ElectionType=G&IsActive=0&isRetention=0 [https://perma.cc/3M66-UGCA].

Moreover, in its Motion to Expedite, the RNC contended that a district court's enjoining county election boards from discarding ballots contained in

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[27] *Mazo*, 54 F.4th at 152 ("Evidence is key to the balancing of interests at the heart of the *Anderson-Burdick* framework.").

[28] *Anderson*, 460 U.S. at 790 (looking at impact of law in assessing its burden); *Fish*, 957 F.3d at 1127–28 (considering the number of applicants that were prevented from registering to vote when assessing burden).

return envelopes that did not comply with the date requirement in 2022 caused "a Republican incumbent [to lose] his office because undated mail ballots were counted."[29] Hence, despite its argument that a low percentage of ballots were rejected due to the date requirement, the RNC itself acknowledges that the date requirement can result in the rejection of a number of ballots sufficient to affect the composition of elected governing bodies.

Additionally, an individual Pennsylvania voter who fails to comply with the date requirement potentially has no means to correct the deficiency and cast a valid ballot. Pennsylvania county election boards have no obligation under the Election Code to notify voters if their ballots are rejected for failure to comply with the date requirement. *Boockvar*, 238 A.3d at 374. Pennsylvania law provides that a voter who received a mail-in ballot cannot vote in person unless the voter brings his or her mail-in ballot to the polling place and remits it. 25 P.S. §§ 3146.2(i)(1), 3150.12(f). Millions of Pennsylvania voters since 2019 have taken the time to apply for and receive mail-in ballots.[30] In submitting them to county election boards, they surely believed they had completed those ballots correctly. But despite these voters' best efforts, their ballots may

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[29] App. Dkt., No. 35 (Apr. 17, 2025), RNC Mot. to Expedite at 2; *see id.* ("Indeed, three Republican candidates since 2020 have lost elections solely because undated mail ballots were counted."). The RNC has not clarified which offices its candidates lost due to undated ballots being counted.

[30] *See, e.g.*, *Presidential Election (Official Returns)*, *supra* (showing that almost two million people voted by mail in Pennsylvania during the 2024 election alone).

be rejected for something as trivial as a stray mark on the date field. *See Chapman*, 289 A.3d at 28. Voters who do not know that their mail-in ballots have been rejected can hardly be expected to find a way to cure a deficiency on the return envelope. And they cannot vote in person because they cannot remit a mail-in ballot they already mailed to county offices. 25 P.S. §§ 3146.2(i)(1), 3150.12(f).

Because the date requirement causes thousands of ballots to be discarded and can leave voters without a means to cast a valid ballot, we conclude that the date requirement imposes a minimal burden on Pennsylvania voters' rights protected by the First and Fourteenth Amendments.

Appellants marshal two arguments challenging this conclusion. The first is that the date requirement imposes only a *de minimis* burden—not a minimal burden—and hence escapes *Anderson-Burdick* entirely, per *Mazo*. *See Mazo*, 54 F.4th at 138–39 (commenting that *Anderson-Burdick* "does not apply . . . where the burden on a constitutional right is no more than *de minimis*"). This argument fails because a *de minimis* burden is one that has merely a speculative impact on and connection to voting rights.[31] The date requirement does not impose a *de*

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[31] *Mazo* cited three cases for the proposition that a voting law that imposes only a *de minimis* burden is not subject to *Anderson-Burdick*, 54 F.4th at 139 n.10 (citing *Molinari v. Bloomberg*, 564 F.3d 587, 606 (2d Cir. 2009), *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 12 (1982), and *Clingman v. Beaver*, 544 U.S. 581, 584 (2005)). *Molinari* and *Rodriguez* both involved a speculative impact on constitutionally protected rights. In *Molinari v. Bloomberg*, the Second Circuit highlighted that litigants challenging a law permitting the City Council and

minimis burden because its impact on and connection to voting rights is not speculative: A Pennsylvania mail-in voter who fails to comply with the date requirement will not have his or her vote counted. Period.

Second, Appellants argue that our burden analysis may not consider the impacts of the date requirement or the consequences of a voter's failure to comply with the date requirement. Our focus should be on the "*burden* of compliance" and not, they contend, "the *consequence* of noncompliance." RNC Reply Br. at 16. We disagree.

The Supreme Court's First Amendment jurisprudence regularly looks to a law's downstream consequences in assessing its constitutionality. For example, an easy-to-comply-with law faces heightened scrutiny if it has a "chilling effect" on conduct protected by the First Amendment. *NAACP v. State of*

Mayor of New York City to enact laws amending the City Charter and extending term limits "are not in any way restricted from engaging in First Amendment activity" by the challenged law. 564 F.3d at 599. In *Rodriguez v. Popular Democratic Party*, a case decided before *Anderson-Burdick*, the Supreme Court upheld a law permitting the Governor of Puerto Rico to make interim appointments to Puerto Rico's legislature. 457 U.S. at 3. Crucially, no law provided a right to vote for interim appointees, hence Puerto Rico's decision to select interim appointees without an election had only a speculative impact on a constitutionally protected right. *Id.* at 8–9, 12. *Mazo*'s cite to *Clingman* may have been in error because—as *Mazo* itself recognized, 54 F.4th at 138—*Clingman* applied *Anderson-Burdick*. *See Clingman*, 544 U.S. at 590, 593–94 (determining that a semi-closed primary system imposed a minimal burden and rejecting a challenge to that system because the State's interests in the system justified its burden).

Ala. ex rel. Patterson, 357 U.S. 449, 451, 460–62, 466 (1958) (invalidating a $100,000 fine against the NAACP for failing to comply with an Alabama law requiring it to disclose its members and agents because the law abridged associational rights); *see id.* at 460–61 ("[S]tate action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny."). *Anderson-Burdick* is no different and requires a court to look to a law's consequences and downstream impacts in assessing a law's burden. In *Anderson*, for example, the Supreme Court determined that an Ohio law imposing a March deadline for independents to declare their candidacy for the presidency imposed a substantial burden on associational rights. 460 U.S. at 786, 790–95. Crucial to that conclusion, the Supreme Court highlighted that the deadline "may have a substantial *impact* on independent-minded voters," *id.* at 790 (emphasis added), and would prevent independent-minded voters from rallying around a newly emerged independent candidate later in the campaign season, *id.* at 791; *see also Bullock v. Carter*, 405 U.S. 134, 143 (1972) ("In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.").

Lastly, limiting our burden analysis to consider only the burden of complying with a law's requirements would lead us to under-scrutinize laws that—while seemingly easy to adhere to—nevertheless severely burden constitutional rights because of their downstream effects.[32] We thus reject Appellants'

[32] Consider, for example, a law specifying that in any petition to appear on a ballot there be no typos and that the presence of a

argument that at *Anderson-Burdick*'s first step we may consider only the burden of complying with a law. We hold that a court applying the first step of *Anderson-Burdick* may look to a law's impacts, including the consequences of noncompliance with a voting law or regulation.[33]

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typo in a petition bars a candidate from appearing on a ballot for two years. *Anderson-Burdick* would apply in a lawsuit challenging the law. *Cf. Belitskus v. Pizzingrilli*, 343 F.3d 632, 643–47 (3d Cir. 2003) (applying *Anderson-Burdick* in challenge to ballot access law). If a court applying *Anderson-Burdick*'s first step could consider only the burden of compliance, it could conclude that the law imposed a minimal burden because it is easy to avoid typos. Nevertheless, barring a candidate from appearing on a ballot for two years is a severe consequence that a court applying *Anderson-Burdick* should be able to consider.

[33] Multiple other circuits applying *Anderson-Burdick* have weighed the impacts of a voting law in assessing how a law burdens constitutionally protected rights. For example, the Sixth Circuit in *Obama for America v. Husted* credited that a law requiring county election offices to close on weekends and reducing the window during which voters could vote early would prevent thousands of working-class, less-educated Americans from voting, thereby burdening the right to vote. 697 F.3d 423, 430–32 (6th Cir. 2012); *see also NEOH*, 837 F.3d at 630–35 (assessing both the burden of providing personal information on ballot envelopes and the "impact" on voters whose ballots were not counted due to inaccuracies in that information). Similarly, the Eleventh Circuit in *Lee* concluded that a signature matching law seriously burdened the right to vote because the law would cause numerous otherwise valid ballots to be rejected. 915 F.3d at 1319–21. And the Tenth Circuit determined that a law requiring proof of citizenship in order to register to vote burdened the right to vote because it prevented 31,089 applicants from registering to vote. *Fish*, 957 F.3d at 1127–28.

In summary, we conclude that the date requirement imposes a minimal burden on voting rights, and that it does so, in part, due to its downstream consequences.

d. The Proffered State Interests Cannot Justify the Date Requirement's Burden

At the second step of *Anderson-Burdick*, we "must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." *Anderson*, 460 U.S. at 789. This analysis requires us to "not only determine the legitimacy and strength of each of those interests" but also "consider the extent to which those interests make it necessary to burden [constitutional] rights." *Id.* We weigh those interests against the burden that a law imposes. A law that imposes a severe burden must meet strict scrutiny while laws imposing lesser burdens "trigger less exacting review, and a State's 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" *Timmons*, 520 U.S. at 358 (quoting *Burdick*, 504 U.S. at 434). We apply that "less exacting review" here because the date requirement imposes a minimal burden. Before we proceed to that analysis, though, we address Appellants' contention that *Anderson-Burdick* equates to rational basis review if a law imposes a minimal burden.

A comparison between the application of *Anderson-Burdick* and rational basis review reveals that the two necessarily differ. *Anderson-Burdick* operates by weighing a burden a law imposes on relevant constitutional rights against a State's interest in applying that law. This "balancing of interests" lies "at the heart of the *Anderson-Burdick* framework."

Mazo, 54 F.4th at 152; *see also Norman v. Reed*, 502 U.S. 279, 288–89 (1992) (*Anderson-Burdick* calls "for the demonstration of a corresponding interest sufficiently weighty to justify the limitation"). Rational basis review, meanwhile, does not call for the balancing that lies at the core of *Anderson-Burdick* but merely requires a court to examine a law to determine if that law is "rationally related to furthering a legitimate state interest." *Vance v. Bradley*, 440 U.S. 93, 97 (1979) (internal quotation marks and citation omitted). A minimally burdensome law may pass rational basis review because its purpose relates rationally to a legitimate state interest, while flunking *Anderson-Burdick* because the legitimate state interest cannot justify the minimal burden. That difference—that distinction—convinces us that *Anderson-Burdick* is not simply another name for rational basis review, even if a law imposes only a minimal burden.

Consistent with this conclusion, our precedent counsels that we not "peg[]" *Anderson-Burdick* into the traditional tiers of scrutiny. *Rogers v. Corbett*, 468 F.3d 188, 194 (3d Cir. 2006). "Rather, following *Anderson*, our scrutiny is a weighing process: We consider what burden is placed on the rights which plaintiffs seek to assert and then we balance that burden against the precise interests identified by the [S]tate." *Id.* We would contradict that precedent were we to hold that *Anderson-Burdick* equates to rational basis review if a voting law imposes a minimal burden.[34]

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[34] This conclusion is also consistent with our own precedent and that of our sister Circuits. *See, e.g.*, *Mazo*, 54 F.4th at 153 (in a

That said, we recognize that the Supreme Court has not been hesitant about collapsing aspects of *Anderson-Burdick* into the traditional tiers of scrutiny when it chooses to do so. In *Timmons*, for example, the Supreme Court instructed that "[r]egulations imposing severe burdens on plaintiffs' rights *must be narrowly tailored and advance a compelling state interest*," *Timmons*, 520 U.S. at 358 (emphasis added), which is the language of strict scrutiny, *see Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171 (2015). Most important for our purposes, however, is that the Supreme Court has never stated that minimally burdensome voting laws receive rational basis review under *Anderson-Burdick*. Indeed, immediately following *Timmons*'s articulation of what we recognize as strict scrutiny language is the Court's instruction that "[l]esser burdens . . . trigger less exacting review, and a State's 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" 520 U.S. at 358 (quoting *Burdick,* 504 U.S. at 434). If that "less

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case involving a "minimal" burden, not using rational basis review but rather declaring that "a [S]tate must show relevant and legitimate interests that are sufficiently weighty to justify the limitation for the consent requirement to survive lesser scrutiny" (internal quotation marks omitted)); *id.* at 154 ("Because these interests are all important, they need only outweigh the minimal burden imposed by the consent requirement."); *Tedards v. Ducey*, 951 F.3d 1041, 1045, 1066 (9th Cir. 2020) (concluding that "the burdening of the right to vote always triggers a higher level of scrutiny than rational basis review"); *Pisano v. Strach*, 743 F.3d 927, 935–36 (4th Cir. 2014) (after concluding plaintiffs' burden was "modest," engaging in *Anderson-Burdick* weighing instead of rational basis review).

exacting review" equates to rational basis review, the Supreme Court would most likely have said so.[35]

In summary, *Anderson-Burdick* is not the identical twin of rational basis review where a law has been determined to impose only a minimal burden.[36] Applying *Anderson-Burdick*'s second step, we look to whether the proffered State interests justify the burden the date requirement imposes, not to whether the date requirement is just rationally related to a legitimate state interest. We turn to that analysis now and examine the three State interests Appellants offer to support the date requirement: (1) facilitating election efficiency; (2) promoting solemnity; and (3) detecting and deterring voter fraud. Although each of

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[35] We note that some of our sister Circuits have applied rational basis review, or something close to it, in minimal burden cases, but we decline to adopt their approach. *E.g.*, *Ohio Council 8 Am. Fed. of State v. Husted*, 814 F.3d 329, 335, 338 (6th Cir. 2016) (where the burden on plaintiffs' rights to expression and association was "minimal," characterizing its review under *Anderson-Burdick* as "a less-searching examination closer to rational basis"); *Libertarian Party of Ala. v. Merrill*, No. 20-13356, 2021 WL 5407456, at *10 (11th Cir. Nov. 19, 2021) (nonprecedential) (upholding a law that imposed a minimal burden because it "rationally served . . . important state interests").

[36] Appellants both argue that the District Court erred by weighing a lack of evidence supporting the proffered State interests because a court applying rational basis review may not seek evidence from the State. It logically follows that their argument must fail since *Anderson-Burdick* does not equate to rational basis review.

these interests are legitimate (and even strong), they do not support the date requirement.[37]

i.

The first proffered State interest is that the date requirement facilitates the orderly administration of elections. But, as a general proposition, the date requirement does not seem to facilitate orderly election administration in any manner. The date on a return envelope does not inform whether a voter is eligible to cast a ballot. It does not indicate when a voter completed a ballot. And it has no bearing on whether a ballot is timely. *NAACP*, 97 F.4th at 127. If anything, requiring county election boards to check the date field on return envelopes seems to hamper efficiency by foisting an additional responsibility on the boards for no apparent purpose. *See* App. 28 n.9 (citing quote from a brief filed in a separate case by the Secretary of the Commonwealth that "requiring officials to review declaration dates impedes effective election administration"); *see also* Counties Br. at 7 (asserting that the date requirement "serves no purpose in the County Boards' (or any other election

[37] For instance, in *Burdick*, Hawaii's ban on write-in voting was "a legitimate means" of protecting the articulated state interest and "a reasonable way of accomplishing th[e] goal," and thus, on balance, outweighed the asserted burden. 504 U.S. at 439–40; *see also id.* at 441 ("[W]hen a State's ballot access laws pass constitutional muster as imposing only *reasonable* burdens on First and Fourteenth Amendment rights—as do Hawaii's election laws—a prohibition on write-in voting will be presumptively valid." (emphasis added)). Here, the date requirement is not a legitimate means or a reasonable way of accomplishing the Commonwealth's interests, and thus, on balance, does not outweigh the burden on voters.

board's) election administration"); Adams Cnty. Br. at 52 ("Voiding undated or misdated ballots imposes significant burdens on election staff who must scrutinize and segregate them from the pre-canvass tallies.").[38]

Appellants contend the date requirement can serve as a "backstop" that county election boards may use to determine a ballot's timeliness in the event the SURE system were to fail.

But that argument betrays a misunderstanding of Pennsylvania's election laws. A ballot's timeliness is a function of when a county election board *receives the ballot*. 25 P.S. §§ 3146.6(c), 3150.16(c). A return envelope's date reflects when a voter *completed the declaration*. No Pennsylvania law permits county election boards to use the latter date as a proxy for the former. To the contrary, the county election boards which have chosen to participate in this appeal concede that they "do not—and *indeed cannot*—use the handwritten date to verify a mail ballot's timeliness in any circumstance." Counties Br. at 9 (emphasis added); Adams Cnty. Br. at 51–52. Moreover, even if the SURE system were to fail, county election boards could continue to date stamp

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[38] Numerous court decisions have noted that the date requirement serves no apparent purpose. *See, e.g.*, *NAACP*, 97 F.4th at 125 ("The date requirement, it turns out, serves little apparent purpose. It is not used to confirm timely receipt of the ballot or to determine when the voter completed it."); *Migliori v. Cohen*, 36 F.4th 153, 164 (3d Cir. 2022), *abrogated in part on other grounds recognized by Ritter v. Migliori*, 143 S. Ct. 297, 298 (2022) (describing the handwritten date on a return envelope as "superfluous and meaningless").

upon receipt and physically segregate timely and untimely mail-in ballots, as is their current practice.

ii.

The second proffered interest is that the date requirement promotes solemnity and marks "the casting of a vote as a serious and solemn act." RNC Opening Br. at 54. Appellants contend that the date requirement also pushes voters to contemplate their choices and make a considered decision about their government. *Id.*[39]

We by no means minimize the serious and thoughtful approach that every citizen should take in filling out a ballot. That voting is a solemn act is a truth that we ascribe to without question. But the decisions as to what candidates one will vote for and the deliberation that precedes the physical act necessary for recording those decisions is not what is at stake in the controversy that is before us. Appellants have cited no precedent that dating a document—here, a return envelope—carries a seriousness so portentous as do the actual decisions of who to vote for.

Further, there are other aspects of the mail-in voting process that promote solemnity, including the

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[39] The RNC argues that "[i]f States can require the formalities of signing and dating for wills and property transactions, then surely Pennsylvania can do the same for voting." RNC Opening Br. at 55. This is like arguing that the Commonwealth can ban handguns because it bans lots of things, like owning a polar bear. 58 PA. CODE § 137.1(a)(3). A dating requirement for wills and property transactions does not implicate voting rights protected by the First and Fourteenth Amendments. A requirement that voters date their mail-in ballots does.

process to acquire a mail-in ballot, *e.g.*, 25 P.S. §§ 3146.2, 3150.2, the steps required to submit a timely ballot, *e.g.*, *id.* §§ 3146.6, 3150.16, and the fact that the return envelope that accompanies a mail-in ballot features a declaration that a voter must sign. Affixing one's signature onto a legal document does indeed constitute a solemn act. *See Vote.Org v. Callanen*, 39 F.4th 297, 308 (5th Cir. 2022) ("[S]igning a voter registration form and thereby attesting, under penalty of perjury, that one satisfies the requirements to vote carries a solemn weight."). And under Pennsylvania law, signing the return envelope has legal import and could subject someone to criminal penalties. 25 P.S. § 3553. It is puzzling what incremental solemnity dating a return envelope might possibly add that affixing one's signature to the document has not already accomplished.[40]

iii.

Finally, we confront the proffered State interest in fraud detection and deterrence. That it is a legitimate interest is beyond cavil. *Crawford*, 553 U.S. at 196. But the date requirement must reasonably further that interest for us to weigh it. *Anderson*, 460 U.S. at 789; *NEOH*, 837 F.3d at 632 ("Combatting voter fraud perpetrated by mail is undeniably a legitimate concern. Yet some level of specificity is necessary to convert

[40] Appellants cite numerous cases that purportedly show that dating a document carries a solemn weight, but the cases either do not support that proposition or refer to the solemnity of "signing" a document. Appellants also contend that dating a return envelope is part of the signature. But that argument contradicts the text of Act 77, which states that a voter who seeks to vote by mail shall "fill out, date *and* sign the declaration." 25 P.S. §§ 3146.6(a), 3150.16(a) (emphasis added).

that abstraction into a definite interest for a court to weigh.") (Boggs, J.) (internal citation omitted).

At the outset, we are simply unable to discern any connection between dating the declaration on return envelopes and detecting and deterring voter fraud. County election boards have no means of verifying the handwritten dates on return envelopes. And the record shows that county election boards did not view the absence of a date on a return envelope's declaration or the presence of an incorrect date as a reason to suspect voter fraud. Similarly, the Department of State and several county election boards—the only Pennsylvania entities participating in this appeal that engage in administration of the Commonwealth's elections—have all written, in no uncertain terms, that the date requirement does not meaningfully further the Commonwealth's legitimate interest in detecting voter fraud.

Resisting this conclusion, Appellants argue that the date requirement can assist in, and even lead to, an investigation of voter fraud, which in itself contributes to deterrence.[41] They rely heavily on *Commonwealth*

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[41] Separately, Appellants argue that the District Court committed reversible error by weighing that the RNC had adduced only a single example of the date requirement assisting in fraud detection. They argue that *Crawford* established that no evidence of fraud is needed because, in *Crawford*, the Supreme Court accepted the State's fraud-prevention rationale despite the record's lacking any evidence of fraud. That argument fails because the Supreme Court in *Crawford* credited examples of fraud around the nation that Indiana's voter-ID law would have prevented. *Crawford*, 553 U.S. at 194–96 & nn. 10, 11. Moreover, there is a logical and obvious connection between a requirement that voters present an ID at the polls and fraud detection, which reduced any need for evidence in *Crawford*. By contrast, there is

v. Mihaliak, No. MJ-2202-CR-126-22 (Pa. Mag. Dist. Ct. 2022) and argue that it proves the date requirement can prompt an investigation of voter fraud in the rare instance in which a registered voter who had received a mail-in ballot dies and a fraudster completes the ballot and adds a date on the deceased voter's return envelope postdating her death.

The date requirement imposes a burden on Pennsylvanians' constitutional right to vote. And it culminates in county election boards discarding thousands of ballots each time an election is held. The date requirement will not protect against the vast majority of attempts at voter fraud. The *Mihaliak* case demonstrates that the date requirement can narrowly advance the Commonwealth's interest in fraud detection and deterrence—but only in the extremely rare instance involving a hapless fraudster who obtains a recently deceased voter's mail-in ballot, completes the ballot, and adds a date on the return envelope postdating the deceased voter's death. Over six years and across multiple elections in which

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no intuitive connection between a requirement that a voter date a declaration such as that presented in this case and fraud detection and deterrence. In fact, the Chief Clerk of the Lancaster County Election Board stated flatly in a deposition that a declaration with a missing or incorrect date was not an indicator of fraud. Hence, the District Court rightly considered the dearth of evidence that would have established an otherwise non-apparent connection between the date requirement and fraud detection and deterrence, as a district court would in any other context. As *Anderson* instructed, when confronted with "[c]onstitutional challenges to specific provisions of a State's election laws . . . a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation." 460 U.S. at 789 (internal citation omitted).

thousands of Pennsylvanians have voted by mail, this fact pattern has apparently manifested itself only once.

Anderson-Burdick is a weighing test. Even where the law imposes a minimal burden and thus invites less scrutiny in our weighing of the interests, *see Timmons*, 520 U.S. at 358, *one* bizarre instance of the date requirement helping the Commonwealth prosecute a criminal case of voter fraud—fraud that had been detected by other means—cannot justify the burden the date requirement imposes that affects *thousands* of Pennsylvania voters every election, *see League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 246 (4th Cir. 2014) ("[S]tates cannot burden the right to vote in order to address dangers that are remote . . . ." (citation omitted)).

Finally, we note that the District Court's order only prevents county election boards from setting aside ballots enclosed in return envelopes with missing or incorrect dates. It does not affect what appears on the return envelopes or prevent future return envelopes from including a date field. The Commonwealth may continue printing return envelopes with a date field—and it may continue to utilize the date field in advancing its interest in fraud detection, however marginal its utility in furthering that goal. That county election boards no longer reject ballots in return envelopes with missing or incorrect dates will have no effect on fraud detection. Recall that this was the Commonwealth's uninterrupted practice regarding absentee ballots from 1968 to 2019. The return envelopes of absentee ballots included a date field, but absentee ballots in return envelopes with missing or incorrect dates were not discarded. Act of

Dec. 11, 1968, Pub. L. 1183, No. 375, § 8 (amending §§ 1306(a), 1308(a)).[42]

In summary, the proffered State interests in facilitating election efficiency, promoting solemnity, and detecting and deterring voter fraud cannot, individually or in combination, bear the weight of the burden the date requirement imposes. The date requirement seems to hamper rather than facilitate election efficiency. By its nature, it fails to add solemnity to the process of voting. And discarding thousands of ballots every election is not a reasonable trade-off in view of the date requirement's extremely limited and unlikely capacity to detect and deter fraud.

VI. Conclusion

In modern times, every election cycle is witness to thousands of Pennsylvania citizens deciding that they will vote by mail. They dutifully complete their mail-in ballots carefully and to the best of their abilities. And they drop their ballots in a mailbox, expecting their votes will be tallied and hopeful that their desired candidates will emerge victorious. But as we have discussed, those expectations are not always met. Because of the Commonwealth's date requirement, an inadvertent typographical error or a flipped number or even a stray pen mark in the date field will remove the ballot contained within the return envelope from consideration. And the voter may never be the wiser.

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[42] *See* Pa. Dep't of State Br. at 12–13 ("[D]irecting counties not to reject ballots for date errors does not remove the date field from the declaration . . . because the instruction that voters date the declaration and the instructions to election officials about which mail ballots to canvass are governed by *different* sections of the Election Code.").

Casting a ballot and having it counted are central to the democratic process. And while we acknowledge a State's unique role in administering elections, courts are sometimes called upon to make difficult decisions—decisions like the one at hand that seek to weigh these interests with an eye towards safeguarding the democratic process. This case is no exception. While the Commonwealth has raised legitimate interests related to voting, we see only tangential links, at best, between these interests and the date requirement that Pennsylvania imposes on mail-in voters. The date requirement does not play a role in election administration, nor does it contribute an added measure of solemnity beyond that created by a signature. And only in the exceedingly rare circumstance does it contribute to the prosecution of voter fraud.

Weighing these interests against the burden on voters, we are unable to justify the Commonwealth's practice of discarding ballots contained in return envelopes with missing or incorrect dates that has resulted in the disqualification of thousands of presumably proper ballots. We will affirm the District Court's judgment.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-1644

BETTE EAKIN; DSCC; DCCC; AFT PENNSYLVANIA

v.

ADAMS COUNTY BOARD OF ELECTIONS; ALLEGHENY COUNTY BOARD OF ELECTIONS; BEAVER COUNTY BOARD OF ELECTIONS; BEDFORD COUNTY BOARD OF ELECTIONS; BERKS COUNTY BOARD OF ELECTIONS; BLAIR COUNTY BOARD OF ELECTIONS; BRADFORD COUNTY BOARD OF ELECTIONS; BUCKS COUNTY BOARD OF ELECTIONS; BUTLER COUNTY BOARD OF ELECTIONS; CAMBRIA COUNTY BOARD OF ELECTIONS; CAMERON COUNTY BOARD OF ELECTIONS; CARBON COUNTY BOARD OF ELECTIONS; CENTRE COUNTY BOARD OF ELECTIONS; CHESTER COUNTY BOARD OF ELECTIONS; CLARION COUNTY BOARD OF ELECTIONS; CLEARFIELD COUNTY BOARD OF ELECTIONS; CLINTON COUNTY BOARD OF ELECTIONS; COLUMBIA COUNTY BOARD OF ELECTIONS; CRAWFORD COUNTY BOARD OF ELECTIONS; CUMBERLAND COUNTY BOARD OF ELECTIONS; DAUPHIN COUNTY BOARD OF ELECTIONS; DELAWARE COUNTY BOARD OF ELECTIONS; ELK COUNTY BOARD OF ELECTIONS; FAYETTE COUNTY BOARD OF ELECTIONS; FOREST COUNTY BOARD OF ELECTIONS; FRANKLIN COUNTY

BOARD OF ELECTIONS; FULTON COUNTY BOARD OF ELECTIONS; HUNTINGDON COUNTY BOARD OF ELECTIONS; INDIANA COUNTY BOARD OF ELECTIONS; JEFFERSON COUNTY BOARD OF ELECTIONS; JUNIATA COUNTY BOARD OF ELECTIONS; LACKAWANNA COUNTY BOARD OF ELECTIONS; LANCASTER COUNTY BOARD OF ELECTIONS; LAWRENCE COUNTY BOARD OF ELECTIONS; LEBANON COUNTY BOARD OF ELECTIONS; LEHIGH COUNTY BOARD OF ELECTIONS; LUZERNE COUNTY BOARD OF ELECTIONS; LYCOMING COUNTY BOARD OF ELECTIONS; MCKEAN COUNTY BOARD OF ELECTIONS; MERCER COUNTY BOARD OF ELECTIONS; MIFFLIN COUNTY BOARD OF ELECTIONS; MONROE COUNTY BOARD OF ELECTIONS; MONTGOMERY COUNTY BOARD OF ELECTIONS; MONTOUR COUNTY BOARD OF ELECTIONS; NORTHAMPTON COUNTY BOARD OF ELECTIONS; NORTHUMBERLAND COUNTY BOARD OF ELECTIONS; PERRY COUNTY BOARD OF ELECTIONS; PIKE COUNTY BOARD OF ELECTIONS; POTTER COUNTY BOARD OF ELECTIONS; SNYDER COUNTY BOARD OF ELECTIONS; SOMERSET COUNTY BOARD OF ELECTIONS; SULLIVAN COUNTY BOARD OF ELECTIONS; TIOGA COUNTY BOARD OF ELECTIONS; UNION COUNTY BOARD OF ELECTIONS; VENANGO COUNTY BOARD OF ELECTIONS; WARREN COUNTY BOARD OF ELECTIONS; WAYNE COUNTY BOARD OF ELECTIONS; WESTMORELAND COUNTY BOARD OF ELECTIONS; WYOMING COUNTY BOARD OF

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REPUBLICAN NATIONAL COMMITTEE; NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE; REPUBLICAN PARTY OF PENNSYLVANIA, (Intervenors in District Court)

Appellants

On Appeal from the United States District Court
for the Western District of Pennsylvania
(District Court No. 1:22-cv-00340)
District Judge: Honorable Susan Paradise Baxter

Argued July 1, 2025

Before: SHWARTZ, FREEMAN, and SMITH, *Circuit Judges*

JUDGMENT

This cause came on to be considered on the record from the United States District Court for the Western District of Pennsylvania and was argued on July 1, 2025.

On consideration whereof, it is now hereby ADJUDGED and ORDERED that the judgment of the District Court entered April 1, 2025, be and the same is hereby AFFIRMED. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: August 26, 2025

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT
CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

August 26, 2025

Omeed Alerasool
Elias Law Group
250 Massachusetts Avenue NW
Suite 400
Washington, DC 20001

Brian H. Benjet
DLA Piper
1650 Market Street
One Liberty Place, Suite 5000
Philadelphia, PA 19103

Adam C. Bonin
121 S Broad Street
Suite 400
Philadelphia, PA 19107

Jacob B. Boyer
Office of Attorney General of Pennsylvania
Office of General Counsel
30 North Third Street

Suite 200
Harrisburg, PA 17101

Dara Burns
Bucks County Law Department
55 E Court Street
5th Floor
Doylestown, PA 18901

Daniel J. Cohen
Elias Law Group
250 Massachusetts Avenue NW
Suite 400
Washington, DC 20001

Benjamin Daus
Jones Day
51 Louisiana Avenue NW
Washington, DC 20001

Ilana H. Eisenstein
DLA Piper
1650 Market Street
One Liberty Place, Suite 5000
Philadelphia, PA 19103

Ben C. Fabens-Lassen
DLA Piper
2000 Avenue of the Stars
Suite 400, North Tower
Los Angeles, CA 90067

Timothy J. Ford
Dilworth Paxson
1650 Market Street
Suite 1200
Philadelphia, PA 19102

John M. Gore
Jones Day
51 Louisiana Avenue NW
Washington, DC 20001

Brett Graham
Office of Attorney General of Pennsylvania
1600 Arch Street
Suite 300
Philadelphia, PA 19103

Daniel D. Grieser
Bucks County Law Department
55 E Court Street
5th Floor
Doylestown, PA 18901

Melissa A. Guiddy
2 N Main Street
Suite 103
Greensburg, PA 15601

John Marlatt
Montgomery County Office of Solicitor
One Montgomery Plaza, Suite 800
P.O. Box 311
Norristown, PA 19404

Richard A. Medina
Elias Law Group
250 Massachusetts Avenue NW
Suite 400
Washington, DC 20001

Lisa G. Michel
Allegheny County Law Department
445 Fort Pitt Boulevard
3rd Floor
Pittsburgh, PA 15219

Molly R. Mudd
Adams County Office of Solicitor
117 Baltimore Street
Gettysburg, PA 17325
Daniel B. Mullen
Office of Attorney General of Pennsylvania
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
Uzoma N. Nkwonta
Elias Law Group
250 Massachusetts Avenue NW
Suite 400
Washington, DC 20001
J. Manly Parks
Duane Morris
30 S 17th Street
Philadelphia, PA 19103
Michael W. Pfautz
City of Philadelphia
Law Department
1515 Arch Street
Philadelphia, PA 19102
Ari J. Savitzky
American Civil Liberties Union
125 Broad Street
18th Floor
New York, NY 10004
Jessica L. Vanderkam
Stuckert & Yates
N State Street
P.O. Box 70
Newtown, PA 18940

Zachary M. Wallen
Chalmers Adams Backer & Kaufman
301 S Hills Village Drive
Suite LL200-420
Pittsburgh, PA 15241

Nicole E. Wittstein
Elias Law Group
250 Massachusetts Avenue NW
Suite 400
Washington, DC 20001

RE: Bette Eakin, et al v. Adams County Board of Elections, et al
Case Number: 25-1644
District Court Case Number: 1:22-cv-00340

ENTRY OF JUDGMENT

Today, **August 26, 2025,** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.
Certificate of service, unless the petition is filed and served through the Court's electronic-filing system.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. A party seeking both forms of rehearing must file the petitions as a single document. Fed. R. App. P. 40(a).

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,

Patricia S. Dodszuweit, Clerk

By: s/ Tina

Case Manager
267-299-4930

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1644

BETTE EAKIN; DSCC; DCCC; AFT PENNSYLVANIA

v.

ADAMS COUNTY BOARD OF ELECTIONS; ALLEGHENY COUNTY BOARD OF ELECTIONS; BEAVER COUNTY BOARD OF ELECTIONS; BEDFORD COUNTY BOARD OF ELECTIONS; BERKS COUNTY BOARD OF ELECTIONS; BLAIR COUNTY BOARD OF ELECTIONS; BRADFORD COUNTY BOARD OF ELECTIONS; BUCKS COUNTY BOARD OF ELECTIONS; BUTLER COUNTY BOARD OF ELECTIONS; CAMBRIA COUNTY BOARD OF ELECTIONS; CAMERON COUNTY BOARD OF ELECTIONS; CARBON COUNTY BOARD OF ELECTIONS; CENTRE COUNTY BOARD OF ELECTIONS; CHESTER COUNTY BOARD OF ELECTIONS; CLARION COUNTY BOARD OF ELECTIONS; CLEARFIELD COUNTY BOARD OF ELECTIONS; CLINTON COUNTY BOARD OF ELECTIONS; COLUMBIA COUNTY BOARD OF ELECTIONS; CRAWFORD COUNTY BOARD OF ELECTIONS; CUMBERLAND COUNTY BOARD OF ELECTIONS; FULTON

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REPUBLICAN NATIONAL COMMITTEE;
NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE;
REPUBLICAN PARTY OF PENNSYLVANIA,

(Intervenors in District Court)

Appellants

District Court No. 1:22-cv-00340

SUR PETITION FOR REHEARING

Before: CHAGARES, *Chief Judge*, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-

REEVES, CHUNG, BOVE, and SMITH,* *Circuit Judges*

* The vote of the Honorable D. Brooks Smith, Senior Judge of the United States Court of Appeals for the Third Circuit, is limited to panel rehearing.

The petition for rehearing filed by the Intervenor Appellant, the Commonwealth of Pennsylvania, and the petition for rehearing filed by the Intervenor Appellants, the Republican National Committee, the National Republican Congressional Committee, and the Republican Party of Pennsylvania, in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petitions for rehearing by panel and the Court en banc, are denied.[1]

BY THE COURT,

s/D. Brooks Smith
Circuit Judge

Dated: October 14, 2025

tmk/cc: all counsel of record

[1] Judges Hardiman, Bibas, Porter, Matey, Phipps, and Bove would grant the petitions for rehearing by the en banc court. Judge Phipps, joined by Judges Hardiman, Bibas, Porter, Matey and Bove, files the attached dissent sur denial of rehearing. Judge Bove will file a separate dissent sur rehearing on a later date.

Eakin v. Adams County Board of Elections, No. 25-1644

PHIPPS, *Circuit Judge*, joined by HARDIMAN, BIBAS, PORTER, MATEY, and BOVE, *Circuit Judges*, dissenting sur denial of rehearing *en banc*.

The decision in this case declared unconstitutional the date requirement for mail-in ballots in Pennsylvania on the ground that its burden on voters outweighed the Commonwealth's interests in the orderly administration of elections, the solemnity of elections, and the prevention of election fraud. Central to this Court's analysis under that *Anderson-Burdick* balancing test[1] was the *Boockvar* decision from the Pennsylvania Supreme Court, which held that the Free and Equal Elections Clause of the Pennsylvania Constitution[2] did not require either notice to voters of the rejection of their mail-in ballots or the opportunity to correct ballot defects. *See Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 302, 309–10 (3d Cir. Aug. 26, 2025) (citing *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374 (Pa. 2020)). A month after this Court's ruling, however, the Pennsylvania Supreme Court decided *Coalfield Justice*, which held that the Inherent Rights Clause of the Pennsylvania Constitution[3] requires that mail-in

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[1] *See generally Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992).

[2] Pa. Const. art. 1, § 5.

[3] Pa. Const. art. 1, § 1; *see also R. v. Commonwealth, Dep't of Pub. Welfare*, 636 A.2d 142, 152 (Pa. 1994) ("Even though the term 'due process' appears nowhere in [Section 1 or 11 of Article I of the Pennsylvania Constitution], due process rights are considered to emanate from them.").

voters receive notice of the rejection of their ballots and the opportunity to correct ballot defects. *Ctr. for Coalfield Just. v. Wash. Cnty. Bd. of Elections*, 2025 WL 2740487, at *8, *25, *30 (Pa. Sept. 26, 2025). This Court's decision evaluated the prior scheme for mail-in voting, not the one now required by *Coalfield Justice*.

As a legal matter, this Court's decision was already questionable because in its *Anderson-Burdick* balancing, it did not treat the date requirement for mail-in ballots as a *de minimis* burden, *see Mazo v. N.J. Sec'y of State*, 54 F.4th 124, 138–39 (3d Cir. 2022), and because it substantially undervalued the Commonwealth's identified interests in the date requirement.[4] And that was before *Coalfield Justice* eliminated two of the key rationales for this Court's decision: the lack of notice of a rejected mail-in ballot and the absence of an opportunity to correct such a rejected ballot. So now as a practical matter, reconsideration of this Court's decision is especially needed because it is not clear that the ruling has any applicability going forward – it appears not to.[5]

In short, there are significant questions about this Court's decision, and as a matter of exceptional

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[4] *Cf. generally Daunt v. Benson*, 999 F.3d 299, 322–33 (6th Cir. 2021) (Readler, J., concurring) (identifying broader problems with the *Anderson-Burdick* balancing test and its application).

[5] *Cf. Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 44 (2018) ("If the relevant state law is established by a decision of 'the State's highest court,' that decision is 'binding on the federal courts.'" (quoting *Wainwright v. Goode*, 464 U.S. 78, 84 (1983))).

importance, it merits *en banc* reconsideration. I therefore vote for such review.

Eakin v. Adams County Board of Elections, No. 25-1644

BOVE, *Circuit Judge*, joined by Hardiman, Bibas, Porter, Matey, and Phipps, *Circuit Judges*, dissenting sur denial of rehearing *en banc*.

Several years ago, Judge Readler found it "hard to think of a less burdensome requirement associated with the voting process" than Tennessee's rule that first-time voters must appear in person either to register or to cast their votes. *Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 563 (6th Cir. 2021) (Readler, J., concurring).[1]

Well, we found one. At issue here is Pennsylvania's requirement that voters write the date next to their signature on a declaration while transmitting a mail-in ballot. For a voter with a functioning pen, sufficient ink, and average hand dexterity, this should take less than five seconds. Yet Plaintiffs narrowed in on this decades-old requirement situated within a package of recently reformed Pennsylvania laws, known as "Act 77," that established universal mail-in voting and other protections. These five seconds, Plaintiffs alleged, violate the First and Fourteenth Amendments.

At the headline level, this general claim strains credulity and defies common sense. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 209 (2008) (Scalia, J., concurring in the judgment) ("That the State accommodates some voters by permitting (not requiring) the casting of absentee . . . ballots, is an

[1] Unless otherwise indicated, case quotations omit all internal citations, quotation marks, footnotes, alterations, and subsequent history.

indulgence—not a constitutional imperative that falls short of what is required."); *see also McDonald v. Bd. of Election Comm'rs of Chi.*, 394 U.S. 802, 810-11 (1969) ("Ironically, . . . extending the absentee voting privileges . . . provided appellants with a basis for arguing that the provisions operate in an invidiously discriminatory fashion to deny them a more convenient method of exercising the franchise.").

A complex thicket of decisions—some of which also defy common sense—obscured that reality and led to what I concede were "hard judgment[s]." *Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 298 (3d Cir. 2025). The opinion, however, raised significant federalism concerns, misapplied binding precedent from the Supreme Court and this Court, deepened a Circuit split regarding the appropriate level of scrutiny, and conflicted with a subsequent decision of Pennsylvania's Supreme Court. *See Eakin v. Adams Cnty. Bd. of Elections*, 2025 WL 2909016, at *1 (3d Cir. 2025) (Phipps, J., dissenting sur denial of rehearing *en banc*) (citing *Ctr. for Coalfield Just. v. Wash. Cnty. Bd. of Elections*, 2025 WL 2740487 (Pa. 2025)). These issues of exceptional importance add to existing uncertainty already faced by Pennsylvania officials preparing to administer elections on November 4, 2025, as well as during the midterm congressional elections next year. Therefore, the case merited *en banc* review.

I.

The Constitution vests authority over the administration of elections in politically accountable bodies. The Elections Clause "provides that state legislatures—not federal judges, not state judges, not

state governors, not other state officials—bear primary responsibility for setting election rules." *DNC v. Wisconsin State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay) (citing U.S. Const. art. I, § 4, cl. 1). As a "second layer of protection," "[i]f state rules need revision, Congress is free to alter them." *Id.*

These textual commitments make sense. Compared to courts, legislatures are in a better position to "make policy and bring to bear the collective wisdom of the whole people when they do," and they "enjoy far greater resources for research and factfinding." *Wisconsin State Legislature*, 141 S. Ct. at 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay); *see also Regan v. Time, Inc.*, 468 U.S. 641, 652 (1984) (plurality opinion) (reasoning that "a federal court should act cautiously" when "exercising its power to review the constitutionality of a legislative Act" because a "ruling of unconstitutionality frustrates the intent of the elected representatives of the people").

Apart from the lack of political accountability, the shortcomings of the judicially created test applied in this case are another good reason for courts to proceed with caution in this space. "[T]he States depend on clear and administrable guidelines from the courts." *Little v. Reclaim Idaho*, 140 S. Ct. 2616, 2616 (2020) (Roberts, C.J., concurring in the grant of stay). But *"Anderson-Burdick's* hallmark is standardless standards." *Daunt v. Benson* (*Daunt II*), 999 F.3d 299, 323 (6th Cir. 2021) (Readler, J., concurring in the judgment). This is a "dangerous tool" in "sensitive policy-oriented cases," as the test "affords far too much discretion to judges in resolving the dispute before them." *Daunt v. Benson* (*Daunt I*), 956 F.3d 396, 424

(6th Cir. 2020) (Readler, J., concurring in the judgment); *see also Graveline v. Benson*, 992 F.3d 524, 553 (6th Cir. 2021) (Griffin, J., dissenting) ("This case illustrates once again why applying *Anderson-Burdick's* grant of discretion to the federal judiciary can lead to tension with the principles of federalism and separation of powers.").

"A case-by-case approach naturally encourages constant litigation." *Crawford*, 553 U.S at 208 (Scalia, J., concurring in the judgment). It is a "metaphysical task," and "legal gymnastics" are often required. *Daunt II*, 999 F.3d at 323 (Readler, J., concurring in the judgment); *Mays v. LaRose*, 951 F.3d 775, 783 n.4 (6th Cir. 2020). This "leaves much to a judge's subjective determination," results in a lack of uniformity, and offers states inadequate guidance to "govern accordingly." *Daunt I*, 956 F.3d at 424-25 (Readler, J., concurring in the judgment); *see also Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 208 (1999) (Thomas, J., concurring in the judgment) ("When an election law burdens voting and associational interests, our cases are much harder to predict . . . .").

A sounder approach in voting-rights cases would leave it to "state legislatures to weigh the costs and benefits of possible changes to their election codes," with federal courts stepping in to second-guess those judgments only when a state's decision imposes "a severe and unjustified overall burden upon the right to vote, or is intended to disadvantage a particular class." *Crawford*, 553 U.S. at 208 (Scalia, J., concurring in the judgment). That is not the trend in this Circuit's caselaw, which is one of the reasons I believe *en banc* review was appropriate in this case.

By marginalizing the *de minimis* exception to *Anderson-Burdick* review, and proceeding with invasive scrutiny of state interests relative to "downstream consequences" and "impacts," the panel opinion exacerbates the risk that judges act contrary to the will of the People. *Eakin*, 149 F.4th at 311. Equally problematic, earlier and unnecessary dicta purports to extend *Anderson-Burdick* to "vindicate a variety of constitutional rights." *Mazo v. N.J. Sec'y of State*, 54 F.4th 124, 138 (3d Cir. 2022). This stands in stark contrast to the three specific contexts in which the Supreme Court has applied this unique balancing test: "ballot-access claims, political-party associational claims, and voting-rights claims." *Lichtenstein v. Hargett*, 83 F.4th 575, 590 (6th Cir. 2023); *see also id*. at 593 (rejecting the argument that *Anderson-Burdick* applies to "*all* election law challenges—whether the challenger raises a free-speech claim, a substantive-due-process claim, an equal-protection claim, or any other claim").

These expansions of *Anderson-Burdick* have the potential to cause election chaos in Pennsylvania and beyond. *See McDonald*, 394 U.S. at 809 ("[A] legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked."). Striking the date requirement as unconstitutional risked activation of Act 77's non-severability clause. *See* Act 77 § 11. The Pennsylvania Supreme Court is currently considering the operation of that clause. *See Baxter v. Phila. Bd. of Elections*, 332 A.3d 1183 (Pa. 2025). Other features of Act 77 will be struck if the clause is triggered, further undermining the bipartisan

democratic compromise that led to Act 77 in the first place. County clerks could lose the ability to begin processing mail-in ballot applications more than 50 days before an election, under § 5.1 of Act 77, which could result in delays that would be especially challenging in smaller and more rural counties. The extension of the voter registration deadline to 15 days before an election, under § 4, would likely revert to 30 days. The status of voters who registered between those deadlines would be unclear. In connection with the November 4, 2025 election and the midterms, voters could be misled by voter education efforts that Pennsylvania commissioned to explain Act 77's reform under § 10. These examples demonstrate why Pennsylvania warned that the case has "the potential to wreak havoc across the Election Code." Intervenor-Appellant's Emergency Mot. to Stay at 19, Dkt. No. 145.

II.

The uncertainty created by the panel's decision was unnecessary because existing authority addresses the panel's main concern relating to Pennsylvania discarding mail-in ballots based on violations of the date requirement. *See Eakin*, 149 F.4th at 318 ("[W]e are unable to justify the Commonwealth's practice of discarding ballots contained in return envelopes with missing or incorrect dates that has resulted in the disqualification of thousands of presumably proper ballots"). The panel opinion offered a thorough treatment of the history of absentee mail-in voting in Pennsylvania, but it omitted key litigation developments that undermined the holding. There is no federal constitutional problem with Pennsylvania rejecting ballots that do not comply with duly enacted

statutory procedures, and Pennsylvania's constitution has been interpreted to mitigate any voting hardships arising from that outcome.

Voting by mail in the Commonwealth dates back to 1937. *See Eakin*, 149 F.4th at 298. Absentee voting was expanded in 1963, and around that time Pennsylvania began to require voters to "fill out, date, and sign" a declaration on the mail-in envelope. *Id*. at 299. Pennsylvania enacted Act 77 in 2019. Among other things, the law "established a comprehensive process for voting by mail" and "retained" the language now located at 25 Pa. Cons. Stat. §§ 3146.6(a), 3150.16(a).

After the onset of the COVID-19 pandemic and the 2020 Election, challenges to Pennsylvania's mail-in voting procedures worked their way through the Pennsylvania courts. *See, e.g., In re: Nov. 3, 2020 Gen. Election*, 240 A.3d 591 (Pa. 2020); *Kelly v. Commonwealth*, 240 A.3d 1255 (Pa. 2020). By January 2022, related federal litigation commenced under the Civil Rights Act. A group of Pennsylvania voters obtained a short-lived victory in this Court. *See Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022). Later that year, three Justices of the Supreme Court concluded that the *Migliori* panel's interpretation of the Civil Rights Act was "very likely wrong," and the Court vacated the decision. *Ritter v. Migliori*, 142 S. Ct. 1824, 1824 (2022) (Alito, J., dissenting from the denial of the application for stay); *Ritter v. Migliori*, 143 S. Ct. 297 (2022).

Soon after the vacatur order in *Migliori*, a new group of plaintiffs brought a fresh challenge to Pennsylvania's date requirement under the Civil

Rights Act. *NAACP v. Schmidt*, 97 F.4th 120, 125 (3d Cir. 2024). A divided panel of this Court rejected that claim. The *Schmidt* majority echoed the *Migliori* Justices' guidance by reasoning that: (i) "a voter who fails to abide by state rules prescribing how to make a vote effective is not 'den[ied] the right . . . to vote' when his ballot is not counted"; and (ii) "we know no authority that the 'right to vote' encompasses the right to have a ballot counted that is defective under state law." 97 F.4th at 133. This reasoning addresses the concern in *Eakin* that "[a] Pennsylvania mail-in voter who fails to comply with the date requirement will not have his or her vote counted. Period." 149 F.3d at 311. Even if that were true, the result would be of no significance under the federal Constitution.

Furthermore, as Judge Phipps already pointed out, there is no longer any basis for the suggestion that a Pennsylvania voter who submits a defective mail-in ballot will be disenfranchised without notice. *See Eakin*, 2025 WL 2909016, at *1 (Phipps, J., dissenting sur denial of rehearing *en banc*). While the Petitions For Rehearing were pending in this case, the Pennsylvania Supreme Court held that "the Pennsylvania Constitution itself creates a liberty interest in the right to vote that implicates the protections of procedural due process" under Pennsylvania law. *Coalfield Just.*, 2025 WL 2740487, at *12. Pennsylvania voters "who submitted facially defective mail-in ballots" are entitled to notice via email "that they still had a right to vote provisionally." *Id.* at *25.

Coalfield Justice also addressed several of the more specific concerns expressed in the panel's opinion. The opinion asserted that "Pennsylvania county election

boards have no obligation under the Election Code to notify voters if their ballots are rejected for failure to comply with the date requirement." *Eakin*, 149 F.4th at 310. If that was ever accurate, it is no longer the case. *See Coalfield Just.*, 2025 WL 2740487, at *25 (requiring "[a]ccurate SURE coding [that] would have triggered an email alerting the electors who submitted facially defective mail-in ballots that they still had a right to vote provisionally"). The opinion contended that "a Pennsylvanian who fails to comply with the date requirement cannot vote in person." *Eakin*, 149 F.4th at 308. Not a valid concern today. *See Coalfield Just.*, 2025 WL 2740487, at *30 ("[T]his case . . . . is about allowing a voter who made a mistake on a mail-in ballot return packet . . . to avail herself of the remaining fail-safe attempt to exercise her fundamental right: completing a provisional ballot on Election Day."). Nor, under *Coalfield Justice*, is Pennsylvania free to "induce its citizens to vote by mail, yet proceed to discard countless ballots for any number of reasons . . . . " *Eakin*, 149 F.4th at 308. The opinion "confirm[ed] a mandate to not mislead electors . . . . " *Coalfield Just.*, 2025 WL 2740487, at *30.

Therefore, our precedential decision in *Schmidt* and the Pennsylvania Supreme Court's decision in *Coalfield Justice* allay the main concerns that appear to have led the panel to strike the Commonwealth's date requirement.

III.

The panel opinion also missed two dispositive offramps from the path to standardless *Anderson-Burdick* balancing. Plaintiffs failed to allege an actual

violation of the Constitution, and the burden arising from the date requirement is *de minimis*.

Anderson-Burdick does not apply where there is "no cognizable constitutional right at issue." *Mazo*, 54 F.4th at 138. There is not one at issue here. *See Election Integrity Project Cal., Inc. v. Weber*, 113 F.4th 1072, 1088 (9th Cir. 2024) (describing the "commonsense principle that generally applicable, even handed, and politically neutral election regulations that tend to make it easier to vote generally do not impose a cognizable burden on the right to vote"). From the outset of the litigation, Plaintiffs made only vague references to the "right to vote" and the First and Fourteenth Amendments. "[T]he right to vote, *per se*, is not a constitutionally protected right." *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 9 (1982). The right to vote is undoubtedly fundamental, but it is properly framed as a right to participate in elections "on an equal basis with other qualified voters whenever the State has adopted an elective process for determining who will represent any segment of the State's population." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 n.78 (1973). Plaintiffs did not allege the types of speech, association, equal protection, or due process claims that could arguably support *Anderson-Burdick* balancing.

Most importantly, "there is no constitutional right to vote by mail." *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 607 (8th Cir. 2020); *see also Schmidt*, 97 F.4th at 133. "[W]here only the claimed right to vote by mail is at issue, the *Anderson/Burdick* test, by its own terms, cannot apply." *Tully v. Okeson*, 977 F.3d

608, 616 n.6 (7th Cir. 2020). That principle is dispositive here.

There was an alternative basis that required rejecting *Anderson-Burdick* balancing in this case. The test does not apply where "the burden on a constitutional right is no more than *de minimis*." *Mazo*, 54 F.4th at 138-39; *see also Eakin*, 2025 WL 2909016, at *1 (Phipps, J., dissenting sur denial of rehearing en banc) ("[T]his Court's decision was already questionable because in its *Anderson-Burdick* balancing, it did not treat the date requirement for mail-in ballots as a *de minimis* burden"). "*De minimis*" is an accurate characterization of the five-second burden imposed by a state-law requirement that voters date their signature. *See Tex. League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136, 145 (5th Cir. 2020) (finding "no more than a *de minimis* burden on the right to vote" where "some absentee voters would have to travel farther to drop off mail ballots at a centralized location"). Another is "non-existent." *See Vote.org v. Callanen*, 39 F.4th 297, 308 (5th Cir. 2022) (reasoning that "one strains to see how" an original-signature requirement for voting registration "burdens voting at all").

The panel's opinion concluded that the *de minimis* exception did not apply by equating *de minimis* burdens with "speculative" ones. *Eakin*, 149 F.4th at 311. In fact, *de minimis* means "[t]rifling; negligible," or "so insignificant that a court may overlook it in deciding an issue or case." *Black's Law Dictionary* (12th ed. 2024). The "*de minimis*" exception described in *Mazo* appears to have roots in *Timmons v. Twin Cities Area New Party*, where Chief Justice Rehnquist, writing for the Court, applied *Anderson-Burdick*

balancing to a constitutional burden that was "not trivial" but "not severe." 520 U.S. 351, 363 (1997); *see also Molinari v. Bloomberg*, 564 F.3d 587, 606 (2d Cir. 2009) ("If the burden is minor, *but non-trivial, Burdick's* balancing test is applied." (emphasis added)). "Trivial" is essentially a synonym of *de minimis*. *Black's Law Dictionary* (12th ed. 2024) (defining "trivial" as "[t]rifling; inconsiderable; of small worth or importance"). Tellingly, the *Eakin* opinion acknowledged that a violation of the date requirement could arise from "something as *trivial* as a stray mark on the date field." 149 F.4th at 310 (emphasis added).

After restricting the *de minimis* exception to so-called *speculative* burdens, the opinion put another thumb on the scale for Plaintiffs by *speculating* that failure to follow the date requirement would result in an unconstitutional burden based on "downstream consequences" and "downstream effects." *Eakin*, 149 F.4th at 311. This was simply a backdoor to the flawed disenfranchisement theory that is foreclosed by *Schmidt* and weakened further by *Coalfield Justice*. *See Schmidt*, 97 F.4th at 133; *Coalfield Just.*, 2025 WL 2740487, at *30; *see also Migliori*, 142 S. Ct. at 1824 (Alito, J., dissenting from the denial of the application for stay) ("When a mail-in ballot is not counted because it was not filled out correctly, the voter is not denied 'the right to vote.'"); *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020) (reasoning that "no one is 'disenfranchised'" where "[v]oters must simply take reasonable steps and exert some effort to ensure that their ballots are submitted on time").

Accordingly, because Plaintiffs' mail-in voting claims were not founded on a cognizable constitutional right, and because the date requirement's burden is at most *de minimis*, there was no need to resort to *Anderson-Burdick* balancing. *En banc* review was appropriate so that the Court could establish and clarify guideposts necessary to prevent continued expansion of this amorphous test.

IV.

I believe that Plaintiffs failed to state a claim altogether, under Rule 12(b)(6), by relying on vague references to the First and Fourteenth Amendments. App. 73-75 ¶¶ 41-47. If the claim merited further scrutiny, however, the proper framework was rational-basis review. By finding otherwise, the *Eakin* opinion misapplied additional binding precedent and deepened a Circuit split.

In a decision that predated *Anderson-Burdick*, the Supreme Court applied rational-basis review to an Illinois law that permitted absentee voting by some groups of voters but not a class of pretrial detainees. *See McDonald*, 394 U.S. at 807. Like our opinion in *Schmidt*, the *McDonald* Court distinguished between "the fundamental right to vote" and the "claimed right to receive absentee ballots," which has no basis in the Constitution. *Id*. Granting Illinois courtesies that were not extended to Pennsylvania in this case, the Supreme Court declined to assume the state had disenfranchised the plaintiffs and applied a presumption that "[l]egislatures . . . have acted constitutionally." *Id*. at 809. On rational-basis review, the Court concluded that the Illinois law bore a "rational relationship to a legitimate state end" by

authorizing absentee voting for certain groups such as the physically handicapped. *Id.*

The Supreme Court "has not discarded *McDonald, sub silentio* or otherwise." *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 406 (5th Cir. 2020). Under *McDonald*, "rational-basis scrutiny applies to election laws that do not impact the right to vote—that is, the right to cast a ballot in person." *Tully*, 977 F.3d at 616. "As long as it is possible to vote in person, the rules for absentee ballots are constitutionally valid if they are supported by a rational basis and do not discriminate based on a forbidden characteristic such as race or sex." *Common Cause Indiana v. Lawson*, 977 F.3d 663, 664 (7th Cir. 2020). This is the rule in the Fifth, Sixth, and Seventh Circuits. *See id.*; *Tully*, 977 F.3d at 616 n.6 ("So, in cases like *McDonald*, where only the claimed right to vote by mail is at issue, the *Anderson/Burdick* test, by its own terms, cannot apply."); *Abbott*, 961 F.3d at 406 ("Because the plaintiffs' fundamental right is not at issue, *McDonald* directs us to review only for a rational basis . . . ."); *Mays*, 951 F.3d at 784 ("When States impose 'reasonable nondiscriminatory restrictions' on the right to vote, courts apply rational basis review and 'the State's important regulatory interests are generally sufficient to justify' the restrictions." (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992))).

While working past *McDonald*, the Eakin opinion acknowledged the Circuit split and aligned with decisions of the Second, Eighth, Ninth, and Eleventh Circuits. *See* 149 F.4th 309 at n.23. Only the Second Circuit's divided decision addressed *McDonald* explicitly. *See Price v. N.Y. State Bd. of Elections*, 540 F.3d 101 (2d Cir. 2008). The analysis in *Price* is

consistent with the assertion in *Eakin* that *McDonald* "rest[ed] on failure of proof" regarding disenfranchisement. *Eakin*, 149 F.4th at 307 n.21; *Price*, 540 F.3d at 109 n.9. That is a distinction without a difference in this case. The "very same 'failure[s] of proof' exist here, because, as explained, there is no evidence that [Pennsylvania] has prevented the plaintiffs from voting by all other means." *Abbott*, 961 F.3d at 404.

The *Eakin* opinion also asserted that, "[e]ven if no First Amendment right to vote by mail exists, we still must scrutinize Pennsylvania's mail-in voting regime to ensure that it complies with the Constitution." 149 F.4th at 308. The panel then cited a Fourteenth Amendment equal protection case that has no bearing on Plaintiffs' constitutional challenge to Pennsylvania's facially neutral date requirement. *Id.* (citing *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966)); *see also Crawford*, 553 U.S. at 205 (Scalia, J., concurring in the judgment) (reasoning that "[t]he State draws no classifications, let alone discriminatory ones, except to establish optional absentee and provisional balloting for" certain groups). This Court has applied rational-basis review—and rejected *Anderson-Burdick* balancing—where the "challenge relies solely on the Fourteenth Amendment and [plaintiff] makes no allegations based on freedom of association." *Biener v. Calio*, 361 F.3d 206, 214 (3d Cir. 2004). The *Eakin* opinion did not address that binding precedent either.

Therefore, *en banc* review was appropriate for the additional reason that the panel's opinion deepened a Circuit split by declining to follow *McDonald* and not

applying rational-basis review to Pennsylvania's date requirement.

V.

The panel opinion reflects a particularly invasive application of *Anderson-Burdick* that illustrates how this amorphous test can result in an anti-democratic seizure of power from the People's politically accountable representatives. *See Price*, 540 F.3d at 115 (Livingston, J., dissenting) ("This approach ignores both the State's interest in making legitimate policy judgments about the benefits and potential drawbacks of absentee voting in particular contexts, and the lack of judicial competence sensitively to balance the competing interests.").

As explained above, the date requirement's alleged burden on unspecified constitutional rights is *de minimis* if not non-existent. Some other state voting laws are far more onerous. Alabama requires signatures on an absentee ballot from not only the voter, but also two adult witnesses or a notary public. *See* Ala. Code § 17-11-7(b). Following a district court injunction based on *Anderson-Burdick*, the Supreme Court entered a stay and allowed the law to take effect during the 2020 elections. *See Merrill v. People First of Ala.*, 141 S. Ct. 25 (2020); *People First v. Merrill*, 491 F. Supp. 3d 1076 (N.D. Ala. 2020). The plaintiffs then dismissed their case. *See People First of Ala. v. Sec'y of State*, 2020 WL 7028611 (11th Cir. 2020). The statute remains in effect.

Compared to Alabama's requirements, it is "easy to place a date on a return envelope." *Eakin*, 149 F.4th at 309. So easy, in fact, that this had been a non-controversial aspect of Pennsylvania election law for

decades, as had been similar requirements in other states. The Pennsylvania legislature retained the requirement when it revised numerous other aspects of the law by passing Act 77 in 2019.

Act 77's universal mail-in voting provisions were "only a fraction of the scope of the Act." *McLinko v. Dep't of State*, 279 A.3d 539, 543 (Pa. 2022). The law also "included robust anti-fraud measures . . . ." *Eakin*, 149 F.4th at 300. These measures were "developed over a multi-year period, with input from people of different backgrounds and regions of Pennsylvania." *McLinko*, 279 A.3d at 543. Universal mail-in voting may not have functioned perfectly from the outset, but the system was improved "with notable results" through state-court litigation and efforts by the governor. *Eakin*, 149 F.4th at 302. There is thus every reason to believe—and we are to presume—that the resulting system was the product of a "consistent and laudable state policy." *McDonald*, 394 U.S. at 811.

In defense of this policy, Pennsylvania proffered three interests: solemnity, orderly election administration, and fraud detection and deterrence. *See* Appellant's Emergency Mot. to Stay at 19, Dkt. No. 145. These interests were more than enough to survive rational-basis review and should have been sufficient to withstand *Anderson-Burdick* balancing. *See Eakin*, 2025 WL 2909016, at *1 (Phipps, J., dissenting sur denial of rehearing *en banc*) (reasoning that the opinion "substantially undervalued the Commonwealth's identified interests in the date requirement").

Pennsylvania should not have been required to identify "incremental solemnity" flowing from the date

requirement alone. *Eakin*, 149 F.4th at 315; *see also Luft v. Evers*, 963 F.3d 665, 671 (7th Cir. 2020) ("Judges must not evaluate each clause in isolation."). The Commonwealth's instructions for the outer envelope of a mail-in ballot contain three features: "fill out" the declaration, "sign the declaration," and "date" the signature. 25 P.S. §§ 3146.6(a), 3150.16(a). The panel agreed that "[a]ffixing one's signature onto a legal document does indeed constitute a solemn act." *Eakin*, 149 F.4th at 315. The Pennsylvania legislature decided that this "solemn act" should include a *dated* signature. Mail-in voting is not the only context in which Pennsylvania imposes that requirement,[2] and the Commonwealth is not alone in directing voters to write the date next to their signature in connection with mail-in voting.[3] The National Voter Registration Application Form, which was produced at the direction of Congress, also calls for a dated signature. *See* 52 U.S.C. § 20505.[4] So too does the registration form used by Texas,[5] which the panel referenced. *See Eakin*, 149 F.4th at 315.

That other political bodies have exercised their judgment to proceed similarly to Pennsylvania is

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[2] *See* 57 Pa. Cons. Stat. § 316; 23 Pa. Cons. Stat. § 5331; 73 Pa. Cons. Stat. § 201-7(j.1)(iii)(3)(ii); 42 Pa. Cons. Stat. § 8316.2(b); 73 Pa. Cons. Stat. § 2186(c); 42 Pa. Cons. Stat. § 6206.

[3] *See e.g.*, Ga. Code Ann. § 21-2-384(b); Ind. Code § 3-11-4-21(a)(5); Mich. Comp. Laws § 168.764a; N.Y. Elec. Law § 7-119(6); Wash. Rev. Code § 29A.40.091(2).

[4] Election Assistance Commission, National Mail Voter Registration Form, available at https://perma.cc/C9ES-KCD5.

[5] Texas Secretary of State, Texas Voter Registration Application, available at https://perma.cc/H6ML-29Z7.

inconsistent with the panel's surmise that the "date requirement seems to hamper rather than facilitate election efficiency." *Eakin*, 149 F.4th at 317; *see also Lichtenstein*, 83 F.4th at 604 ("[O]ur job is not to decide whether the ban represents good or bad policy . . . . We may intervene to stop the enforcement of this democratically passed law only if it violates some federal standard, here the First Amendment."). "*Anderson-Burdick* does not license such narrow second-guessing of legislative decision making." *Lawson*, 978 F.3d 1040. "One less-convenient feature does not an unconstitutional system make." *Luft*, 963 F.3d at 675.

Pennsylvania's interest in orderly administration of elections was discounted too much. "A State indisputably has a compelling interest in preserving the integrity of its election process." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). "[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process." *Crawford*, 553 U.S. at 197 (plurality opinion). The fact that the SURE system may also serve these interests in administration and public confidence does not refute the Commonwealth's position regarding the date requirement. SURE is a "system that, despite its name, could fail or freeze, or just run out of funding down the road." *See Migliori*, 36 F.4th at 165 (Matey, J., concurring in the judgment). "Many a lawyer prefers a belt-and-suspenders approach," and one valid way for a legislature to address these types of concerns is "redundant requirements in statutes." *Luft*, 963 F.3d at 677. The fact that judges may have

chosen different redundancies, or no redundancies at all, is of no constitutional moment.

Finally, Pennsylvania's fraud concerns also justified the date requirement. "[T]he potential and reality of fraud is much greater in the mail-in ballot context than with in-person voting." *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 239 (5th Cir. 2020). "Courts recognize that legislatures need not restrict themselves to a reactive role: legislatures are 'permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively.'" *Feldman v. Ariz. Sec'y of State's Off.*, 843 F.3d 366, 390 (9th Cir. 2016) (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-96 (1986)); *see also Brnovich v. DNC*, 594 U.S. 647, 686 (2021) ("[I]t should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders.").

Nor was it appropriate to write off as "bizarre" Pennsylvania's example of a 2022 voter fraud conviction supported by evidence relating to the date on the mail-in envelope. *Eakin*, 149 F.4th at 317; *see ACLU of N.M v. Santillanes*, 546 F.3d 1313, 1323 (10th Cir. 2008) ("In requiring the City to present evidence of past instances of voting fraud, the district court imposed too high a burden on the City."). To the contrary, the fact that Pennsylvania was able to present specific and recent evidence supporting the State's anti-fraud interest is compelling. *See Crawford*, 553 U.S. at 195-96 (plurality opinion) (noting that "flagrant examples of such fraud . . . demonstrate that not only is the risk of voter fraud real but that it could affect the outcome of a close election"). The panel opinion acknowledged that the

Commonwealth "demonstrate[d] that the date requirement can narrowly advance the Commonwealth's interest in fraud detection and deterrence." *Eakin*, 149 F.4th at 316-17. This was a sufficient showing even if the date requirement's burden was, as the panel concluded, "minimal." *Id*. at 309. And in light of the collective weight of the three interests articulated by the Commonwealth, *Anderson-Burdick* was not a basis to strike the date requirement under our Constitution.

* * *

The record in this case demonstrates that state politics have pervaded the implementation of the date requirement and Act 77's universal mail-in voting system. In a good way. Pennsylvania's legislature retained the date requirement in 2019, the governor led efforts to improve implementation, the Commonwealth's Attorney General has defended the date requirement in this case on behalf of Pennsylvania, and elected Justices of Pennsylvania's Supreme Court have stepped in to clarify the state constitutional and statutory ground rules. This flurry of activity is entirely consistent with our guidance that "a state's sovereign interests are particularly implicated when the functions of its state government—especially, its state legislature—are impaired, impeded, or called into question." *Perrong v. Bradford*, -- F. 4th --, 2025 WL 2825982, at *7 (3d Cir. 2025).

All of that is not to say that every county clerk in the Commonwealth believes the date requirement is worthwhile as a matter of policy and administration. Indeed, it is clear from the briefing that

Pennsylvania's Secretary of State does not agree. Those disputes will be hashed out in the "hurly-burly, the give-and-take of the political process." *Trump v. Mazars USA, LLP*, 591 U.S. 848, 859 (2020). We are ill-equipped as an institution to participate, and there are significant federalism reasons for us to stay out of this dispute over mail-in voting rights that lack a federal constitutional dimension. Cases from the Supreme Court, this Court, and other Circuits explain why.

Because the Petitions For Rehearing failed to command the necessary votes, Pennsylvania must now look to the Supreme Court for assistance in restoring the state-federal equilibrium contemplated by the Elections Clause. I believe we should have done that ourselves, and therefore I respectfully dissent from the order denying rehearing *en banc*.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BETTE EAKIN, et al,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	**C.A. No. 1:22-CV-340**
	)	
ADAMS COUNTY BOARD OF ELECTIONS, et al,	)	**ECF Nos. 280, 281, 286, 287, 377**
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

I. Introduction

This case directly implicates the right of citizens of the Commonwealth of Pennsylvania to cast a vote. The Court of Appeals for the Third Circuit has delineated the strong, foundational undercurrents associated with laws and regulations which may burden that right:

> Nowhere are the First Amendment rights of free speech and association more essential, or more fiercely guarded, than in the context of free and open elections. Self-government depends on ensuring that speech intended to support, challenge, criticize, or celebrate political

> candidates remains unrestricted. But at the end of every hard-fought political campaign lies the ballot box, where our constitutional democracy depends equally on States fulfilling their solemn duty to regulate elections to ensure fairness and honesty, even where doing so may burden some First Amendment rights.

Mazo v. New Jersey Sec'y of State, 54 F.4th 124, 131 (3d Cir. 2022), *cert. denied sub nom. Mazo v. Way*, 144 S. Ct. 76 (2023).

Presently before the Court is another legal challenge to the "vote by mail" practices established by the Commonwealth of Pennsylvania in 2019. Ms. Bette Eakin is a registered voter who resided in Erie County, Pennsylvania at all times relevant to this litigation, including during the 2022 General Election. *See* ECF No. 228, ¶ 12. She is the lone individual Plaintiff in this case. The other Plaintiffs are organizations with varied interests in voting and elections. The Democratic Senate Campaign Committee ("DSCC") is the Democratic Party's national senatorial committee. Its mission is to elect candidates of the Democratic Party across the country, including in Pennsylvania, to the United States Senate. *Id.* at ¶ 13. Similarly, the Democratic Congressional Campaign Committee ("DCCC") is that Party's national congressional committee. Its mission is to elect candidates of the Democratic Party to the United States House of Representatives. *Id.* at ¶ 14. AFT Pennsylvania (the "Federation") is the Pennsylvania affiliate of the American Federation of Teachers and is a union of professionals representing over twenty-five thousand members in 55 local

affiliates across Pennsylvania, including 179 members across two affiliates in Erie County. *Id*. at ⁋ 15.

Named as Defendants are the Commonwealth's sixty-seven county boards of elections.[1] Plaintiffs challenge the manner in which the county boards enforce certain provisions of state law which concern the rejection of incorrectly dated and undated mail ballots, particularly as was done during the 2022 General Election. No department or administrative body representing the Commonwealth has been sued. Several organizations associated with the Republican Party have intervened as Defendants. These include: the Republican National Committee ("RNC"), the National Republican Congressional Committee ("NRCC"), and the Republican Party of Pennsylvania ("RPP").

The Amended Complaint challenges a Pennsylvania law that requires a voter using a mail ballot to indicate a date on the outer return envelope. *See* 25 Pa. Cons. Stat. §§ 3146.6(a), 3150.16(a). Plaintiffs argue that the date requirement violates the "Materiality Provision" of the Civil Rights Act (Count I), 52 U.S.C. § 10101, and their right to vote as guaranteed by the First and Fourteenth Amendments to the Constitution. *See* ECF No. 228, pp. 14-18. Plaintiffs seek declaratory and injunctive relief as well as litigation

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[1] According to Plaintiffs, each county board has jurisdiction over the conduct and management of primaries and general elections in their respective counties in accordance with provisions of state law. In this capacity, the county boards are charged with accepting applications for mail ballots, mailing the ballots to the requesting voter, as well as receiving, canvassing, and counting the returned mail ballots. ECF No. 228, ⁋ 16.

costs. *Id.*, p. 19. Specifically, Plaintiffs request: a declaration that the "Date Instruction, as it appears in 25 P.S. § 3146.6(a) and 25 P.S. § 3150.16(a), and any other provision that requires counties to reject ballots contained in envelopes that do not contain a correct date violates … the First and Fourteenth Amendment to the U.S. Constitution," as well as a permanent injunction "enjoining Defendants … and all persons acting in concert with each or any of them, from rejecting or refusing to count absentee and mail-in ballots for failure to comply with the Date Instruction." *Id.*

The Lancaster County Board of Elections has moved for summary judgment as has the Board of Elections from Berks County. ECF Nos. 280, 286. The RNC has also moved for summary judgment. ECF Nos. 281, 377. Plaintiffs have cross-moved for summary judgment. ECF No. 287. The motions have been fully briefed and are ripe for disposition.[2] Before turning to the merits of those motions, the standards which guide the Court's decision on the pending motions for summary judgment will be set out.

II. Standard of Review

Federal Rule of Civil Procedure 56(a) provides that summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See Kreschollek v. S. Stevedoring*

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[2] By Order dated May 16, 2024, the parties were granted leave to supplement their prior motions for summary judgment following lifting of a stay that was put in place during the pendency of an appeal in the companion case of *NAACP v. Chapman*, C.A. No. 1:22-cv-339. *See* ECF No. 375.

Co., 223 F.3d 202, 204 (3d Cir. 2000); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). When deciding a motion for summary judgment, a court must construe all facts and inferences in the light most favorable to the nonmoving party. *See Boyle v. Cnty. of Allegheny Pennsylvania*, 139 F.3d 386, 393 (3d Cir. 1998) *citing Peters v. Delaware River Port Auth. of Pa. & N.J.*, 16 F.3d 1346, 1349 (3d Cir. 1994).

The moving party bears the burden of establishing that no genuine issue of material fact remains. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). "[W]ith respect to an issue on which the nonmoving party bears the burden of proof...the burden on the moving party may be discharged by 'showing' — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. Once the moving party has met that threshold burden, the non-moving party "must do more than simply show that there is some metaphysical doubt as to material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must present actual evidence that creates a genuine issue as to a material fact for trial. *Anderson*, 477 U.S. at 248; *see also* Fed. R. Civ. P. 56(c) (setting forth types of evidence on which nonmoving party must rely to support its assertion that genuine issues of material fact exist).

Unsupported allegations, subjective beliefs, or argument alone cannot forestall summary judgment. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990) (nonmoving party may not successfully oppose summary judgment motion by simply replacing "conclusory allegations of the complaint or answer

with conclusory allegations of an affidavit."); *see also Brewer v. Quaker State Oil Ref. Corp.*, 72 F.3d 326, 330 (3d Cir. 1995) ("[T]he nonmoving party creates a genuine issue of material fact if it provides sufficient evidence to allow a reasonable jury to find for him at trial."). If the nonmoving party fails "to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial...there can be 'no genuine issue of material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Katz v. Aetna Cas. & Sur. Co.*, 972 F.2d 53, 55, n.5 (3d Cir. 1992) *quoting Celotex*, 477 U.S. at 322-23. In *Moore v. Walton*, 96 F.4th 616 (3d Cir. 2024), the Court of Appeals for the Third Circuit recently explained: "A genuine dispute exists when the evidence is such that a reasonable jury could return a verdict for the nonmoving party, and a fact is material if it might affect the outcome of the suit under the governing law." *Id.* at 622 (internal punctuation and citations omitted). *See also Tatel v. Mt. Lebanon Sch. Dist.*, 2024 WL 4362459, at *19–20 (W.D. Pa. Sept. 30, 2024); *Zurn Inds., LLC v. Allstate Ins. Co.*, 2024 WL 4350271, at *1 (W.D. Pa. Sept. 30, 2024).

III. Discussion

A. Background

The Commonwealth of Pennsylvania's Election Code permits voters to cast their ballots by mail. In completing such ballots, voters must "date and sign

the declaration" on the outer return envelope.[3] ECF No. 228, ⁋ 19. *See also* 25 P.S. § 3150.16(a). Under current practice, if the date on the outer envelope is incorrect or missing, the ballot is not counted. It is undisputed that in the 2022 general election, over 10,000 mail ballots were disqualified for this reason. ECF No. 311, ⁋ 10; ECF No. 313, ⁋ 10.

In challenging the requirement that a voter date the outer return envelope, Plaintiffs bring two claims: first, they contend that requiring voters to date the outer envelope violates the Materiality Provision of the Civil Rights Act (Count I). And second, Plaintiffs assert that the county boards' enforcement of the dating provisions violates their rights under the First and Fourteenth Amendments by impermissibly burdening the fundamental right to vote (Count II). *See* ECF No. 228.[4]

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[3] The mail ballot package consists of the ballot itself, instructions, a "Secrecy Envelope," and a larger pre-addressed outer "Return Envelope" on which a voter declaration form is printed. The Election Code provides that the inner Secrecy Envelope be marked only with the words "Official Election Ballot." 25 P.S. § 3146.4. The larger outer Return Envelope is to contain "the form of declaration of the elector, and the name and address of the county board of election of the proper county." *Id.*

[4] The Lancaster County Board, joined by the Berks County Board, raises a justiciability concern, that while important, is resolved without difficulty. The Boards argue that these Plaintiffs lack standing to pursue their claims *against them* because none of Plaintiffs' injuries were caused *by them* or resulted from any action *they* took. ECF No. 280 (Lancaster County), page 3; ECF No. 286 (Berks County).

Of course, standing is necessary for subject matter jurisdiction (*see Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157-58 (2014)), and part of the standing inquiry is whether a plaintiff

has shown that it has an injury that is fairly traceable to the defendant's conduct. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). "[S]tanding to sue each defendant…requires a showing that each defendant caused [the plaintiff's] injury…" *Calzone v. Hawley*, 866 F.3d 866, 869 (8th Cir. 2017) *citing Lujan*, 504 U.S. at 560-61. The evidence of record demonstrates that the AFT, DCCC, and DSCC each have standing against the Berks and Lancaster Boards.

These Plaintiff organizations claim direct or organizational standing. An entity has direct organizational standing when it suffers harm due to the defendant's allegedly unlawful conduct, particularly when it must divert resources to address the issue. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982). For example, standing exists when the defendant's actions significantly impair the organization's ability to provide services, forcing it to expend substantial resources to counteract the harm. *See id.; Fair Hous. Rts. Ctr. in Se. Pa. v. Post Goldtex GP, LLC*, 823 F.3d 209, 214 n.5 (3d Cir. 2016) (finding standing where an organization's mission was frustrated because it had to allocate resources to investigate and challenge the alleged misconduct). The actions of the Berks and Lancaster Boards, along with all sixty-five other boards of elections, hindered the AFT, DCCC, and DSCC from fulfilling their respective missions. *See* ECF No. 290 (Exhibit D, Declaration of Arthur Steinberg, President of AFT Pennsylvania), pages 18-19, at ⁋⁋ 5-7; ECF No. 290 (Exhibit C, Declaration of Erik Ruselowski, Chief Operating Officer of DCCC), pages 13-14, at ⁋⁋ 2-5; ECF No. 290 (Exhibit B, Declaration of Devan Barber, Senior Advisor of DSCC), pages 8-9, at ⁋⁋ 2-5. The evidence reflects that the county boards' enforcement of the Date Provision compels each Plaintiff organization to redirect resources from other initiatives in Pennsylvania and other states to voter education and assistance efforts aimed at preventing disenfranchisement or curing misdated and undated ballots in Pennsylvania. *See* ECF No. 290, pages 19-20, at ⁋⁋ 10-11 (AFT); ECF No. 290, pages 14-16, at ⁋⁋ 6-10 (DCCC); and ECF No. 290, pages 9-11, at ⁋⁋ 6-12 (DSCC).

All three Plaintiff organizations also claim associational or representative standing because they satisfy the three requirements for such: each organization's members have

standing in their own right, the interests the organization seeks to protect in the lawsuit are germane to the organization's purpose, and the individual members' participation in the lawsuit is unnecessary to resolve the legal claims. *See Pennsylvania Psychiatric Soc. v. Green Spring Health Services, Inc.*, 280 F.3d 278, 283 (3d Cir. 2002) *quoting Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). Examining the three requirements in reverse order, resolution of the constitutional claims in this case does not depend on, nor would it benefit from, the participation of the individual AFT members or the individual DCCC and DSCC constituents. Next, the record evidence demonstrates that the interests sought to be protected in this lawsuit, the enfranchisement of their voters, are highly germane to the DCCC's and DSCC's purposes of electing Democratic candidates to both houses of Congress. ECF No. 290 (Exhibit C-DCCC), page 13, ⁋ 3; ECF No. 290 (Exhibit B-DSCC), page 8, ⁋ 3. And the AFT's interest of electing candidates who support the policies for which AFT advocates is also germane to the enfranchisement of its members. ECF No. 290 (Exhibit D-AFT Declaration), ⁋ 11. Finally, the evidence reveals that the dues-paying members of the AFT, would have standing in their own right because they will have or have had mail ballots rejected due to the enforcement of the Date Provision. ECF No. 290 (Exhibit D-AFT Declaration), ⁋ 9. However, the same cannot be said of the DCCC and the DSCC as no evidence has been presented to show that the constituents of either organization have had their mail ballots rejected. Instead, the evidence set forth by the committees focuses only on diversion of resources rather than on disenfranchisement of individual constituents.

Accordingly, in summary, all three Plaintiff organizations have organizational standing and the AFT has representative standing on behalf of its members.

While the Plaintiff organizations have established standing to proceed against each of the sixty-seven county boards, the same cannot be said for Eakin. The record contains no evidence to support her standing against the Lancaster or Berks County Boards—or any other board aside from her own. Any harm she experienced due to the initial rejection of her 2022 mail ballot is directly linked only to the actions of the Erie County Board of

The first claim—whether the outer envelope date requirement violates the Materiality Provision of the Civil Rights Act—has been decided. An identical claim has already been litigated before this Court in *Pennsylvania State Conf. of NAACP v. Schmidt ("NAACP v. Schmidt")*, 703 F. Supp. 3d 632, 645 (W.D. Pa. 2023), *rev'd and remanded sub nom. Pennsylvania State Conf. of NAACP Branches v. Sec'y Commonwealth of Pennsylvania*, 97 F.4th 120 (3d Cir. 2024). On appeal from this Court's decision, on March 27, 2024, the Court of Appeals held that the date requirement did not violate the Materiality Provision. *See* 97 F.4th 120. This Court is bound by that holding regarding the Materiality Provision of the Civil Rights Act.[5] Accordingly, Plaintiffs' similar claim here lacks merit and judgment will be granted in favor of Defendants on that claim.

The Court of Appeals' decision in that case did not, however, resolve the constitutional claim alleged herein. Specifically, Plaintiffs maintain that the county boards' enforcement of the dating provisions violates the First Amendment by imposing impermissible burdens on Pennsylvanians' fundamental right to vote—burdens that are not justified by any state interest.

Elections. ECF No. 290 (Exhibit A, Declaration of Bette Eakin), pages 4-6. As a result, summary judgment will be granted in favor of the Lancaster and Berks Boards in this regard. Furthermore, because Eakin has not demonstrated standing against any county board other than Erie County, judgment will be entered in favor of those sixty-four boards and against her.

[5] A petition for Writ of Certiorari was denied by the United States Supreme Court. *See* 2025 WL 247452 (Jan. 21, 2025).

B. First Amendment Right to Vote Claims and the Appropriate Legal Tests

Elections and, concomitantly, election laws "occupy a special place in our constitutional system." *Mazo*, 54 F.4th at 136. States have the authority under the Constitution to set rules for the time, place, and manner of federal elections. U.S. Const. Art. I, § 4, cl. 1; Art. II, § 1, cl. 2. Given this, the individual states have historically maintained "comprehensive, and in many respects complex, election codes regulating...the time, place, and manner of holding primary and general elections." *Storer v. Brown*, 415 U.S. 724, 730 (1974). This authority over federal elections is broad and encompasses "notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Smiley v. Holm*, 285 U.S. 355, 366 (1932). This authority is expansive because, if elections "are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process," (*Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)), it is "[c]ommon sense, as well as constitutional law," that States must take an "active role in structuring elections." *Mazo v. Way*, 551 F.Supp.3d 478, 500 (D.N.J. 2021) (cleaned up). Since individual states "comprehensively regulate the electoral process," their election laws "inevitably affect[,] at least to some degree[,]"certain fundamental rights, including the right to vote and First Amendment rights of free expression and association. *Council of Alt. Pol. Parties v. Hooks*, 179 F.3d 64, 70 (3d Cir. 1999).

To assess whether restrictions or regulations related to voting rights are constitutionally valid, courts must utilize one of two possible tests. In some cases, a traditional First Amendment test which applies strict scrutiny to any such regulation is used. But that test does not take into account the reality that "for elections to run smoothly, some restrictions on expression and association are necessary." *Mazo*, 54 F.4th at 137. In recognition of that omission, the Supreme Court developed a balancing test for courts to use when reviewing "[c]onstitutional challenges to specific provisions of a state's election laws." *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). *See also Burdick v. Takushi*, 504 U.S. 428, 433 (1992). This "*Anderson-Burdick*" test is "more flexible" than the rigid tiers of scrutiny under a traditional First Amendment analysis, *Burdick*, 504 U.S. at 434, reflecting the reality that there is no " 'litmus-paper test' that will separate valid from invalid restrictions," *Anderson*, 460 U.S. at 789. The test directs a reviewing court to (1) determine the "character and magnitude" of the burden that the challenged law imposes on constitutional rights, and (2) apply the level of scrutiny corresponding to that burden. *Burdick*, 504 U.S. at 434, *quoting Anderson*, 460 U.S. at 789. If the burden is "severe," the court must apply exacting scrutiny and decide if the law is "narrowly tailored and advance[s] a compelling state interest." *Timmons*, 520 U.S. at 358. But if the law imposes only "reasonable, nondiscriminatory restrictions," *Anderson*, 460 U.S. at 788, the court may use *Anderson-Burdick's* sliding scale approach under which a state need only show that its "legitimate interests...are sufficient to outweigh the limited

burden," *Burdick*, 504 U.S. at 440. *See also Mazo*, 54 F.4th at 137. No matter the test utilized, some sort of balancing is always required.

Courts have applied *Anderson-Burdick* to a wide range of state election laws covering nearly every aspect of the electoral process. *See, e.g., Belitskus v. Pizzingrilli*, 343 F.3d 632, 643- 47 (3d Cir. 2003) (applying *Anderson-Burdick* in challenge to Pennsylvania ballot access law requiring candidates to pay filing fee to have their names placed on the general election ballot); *Ohio Democratic Party v. Husted*, 834 F.3d 620, 626-36 (6th Cir. 2016) (applying *Anderson-Burdick* to a challenge to Ohio law that changed the first day of early absentee voting from 35 days before election day to the day after the close of voter registration). In other cases, however, the Supreme Court has declined to apply *Anderson-Burdick*'s balancing test and has reverted instead to a traditional First Amendment analysis. *See, e.g., McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995) (rejecting application of *Anderson-Burdick* in challenge to ban on anonymous leafletting of political materials as it constituted the "regulation of pure speech"); *Meyer v. Grant*, 486 U.S. 414, 420 (1988) (declining to apply *Anderson-Burdick* to free expression challenge to ban on paying petition circulators for ballot initiatives). The Supreme Court has never laid out a clear rule to distinguish between these two categories of election laws, nor has any Court of Appeals to our knowledge. So, to decide the category in which the outer envelope date requirement falls, the Court must first identify its defining characteristics.

A survey of the Supreme Court's case law both before and after the *Anderson* and *Burdick* decisions reveals two principal characteristics of the laws to which the *Anderson-Burdick* test applies. First, the law must burden a relevant constitutional right, such as the right to vote or the First Amendment rights of free expression and association. Second, the law must primarily regulate the mechanics of the electoral process, as opposed to core political speech.

1. Does the Pennsylvania date requirement burden a fundamental right?

Plaintiffs ground their claim in the First Amendment to the Constitution. The First Amendment provides that "Congress shall make no law…abridging the freedom of speech." The United States Supreme Court has held that "the right to vote, as the citizen's link to h[er] laws and government, is protective of all fundamental rights and privileges. And before that right can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny," *Evans v. Cornman*, 398 U.S. 419, 422 (1970). *See also Jones v. United States Postal Serv.*, 488 F. Supp. 3d 103, 138 (S.D.N.Y. 2020), *order clarified*, 2020 WL 6554904 (S.D.N.Y. Sept. 29, 2020). It is well established that voting implicates First Amendment rights. *See, e.g., Yang v. Kosinski*, 960 F.3d 119, 130 (2d Cir. 2020) ("[Plaintiffs'] interest 'to cast their vote effectively' falls squarely within the ambit of the protection offered by the First Amendment."). And the right to vote necessarily includes the right to have that vote counted. This principle has been affirmed by the Supreme Court. *See e.g., Reynolds v. Sims*, 377 U.S. 533 (1964) (finding that the right to vote would be

meaningless without ensuring that every legally cast vote is counted). Disenfranchising voters for defects in their ballots imposes significant burdens on voting rights even if the effort needed for a voter to complete the ballot correctly appears slight when considered in isolation. See *Ne. Ohio Coal. for the Homeless*, 837 F.3d at 631 ("Requiring boards of election to reject the ballots of absentee and provisional voters who fail to accurately complete birthdate and address fields directly and measurably disenfranchise some voters."). The first part of the test is met because the Pennsylvania date requirement similarly burdens the fundamental right to vote by disenfranchising some voters for defects in the envelope holding their ballots.

2. Does Pennsylvania's outer envelope date requirement primarily regulate the mechanics of the electoral process, as opposed to core political speech?

The second inquiry asks whether Pennsylvania's requirement that a voter place a date on the outer envelope of their ballot is a law primarily concerned with the mechanics of the electoral process, or whether it implicates core political speech. As the Court of Appeals noted, "[t]he distinction between 'pure speech' and the mechanics of the electoral process is not always easy to ascertain." *Mazo*, 54 F.4th at 142. In resolving such questions, there are "two distinguishing factors" to be considered: "the location and timing (the 'where and when') and the nature and character ('the how and what') of the regulated speech." *Id*.

a. Location and Timing of the Regulated Speech

Speech which occurs "on the ballot or within the voting process will typically trigger application of the *Anderson-Burdick* balancing test." *Id., citing Burdick*, 504 U.S. at 437-38. In contrast, "speech that relates to an election but occurs nowhere near the ballot or any other electoral mechanism is treated as core political speech entitled to the fullest First Amendment protection." *Id. citing McIntyre*, 514 U.S. at 347 (applying strict scrutiny where the speech being regulated was leafletting that occurred far from the polling place and potentially weeks or months before Election Day). Here, the requirement that voters date the outer envelope of their ballot is speech that occurs within the voting process, as opposed to core political speech.

b. Nature and Character of the Regulated Speech

Next, the Court must consider the nature and character of the regulated speech. Here, the Court considers "what is being said and how it is communicated." *Mazo*, 54 F.4th at 142. The Supreme Court has characterized "core political speech" as "interactive communication concerning political change." *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 186 (1999) (citation omitted). *Anderson-Burdick* balancing is not applied to regulations which burden such interactive communication between individuals. *Meyer*, 486 U.S. at 421-22. Of import, such a regulation must have the potential to "spark direct interaction and conversation." *Mazo*, 54 F. 4th at 143. Here, there is no evidence to suggest that the placing of a date on the outer envelope of a mail ballot sparks interaction or political conversation with other individuals. Indeed, no litigant has suggested that the signing and dating

of a mail ballot by a Pennsylvania voter is anything other than a solitary act. It is not a social occasion. It cannot be said that handwriting a date on the outer ballot envelope is core political speech. The regulation affects only the mechanics of voting.

So then, because the date requirement burdens the fundament right to vote but concerns only the mechanics of voting, the Court will utilize *Anderson-Burdick's* balancing test to determine whether the date requirement passes constitutional muster.

C. Application of the Anderson-Burdick Test – Defendants' motion for summary[6]

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[6] Alternative to the application of the constitutional framework, the RNC submits that recent decisions by state courts preclude any action from this Court. *See* ECF No. 411, p. 2. This Court disagrees. The RNC points to the recent litigation in *Black Pol. Empowerment Project v. Schmidt*, as a reason for this Court to refrain from issuing a decision. *Id.* In that case, the Pennsylvania Commonwealth Court held that enforcement of the state's requirement that voters date the outer envelope of their mail ballot violates the Free and Equal Elections clause of the Pennsylvania Constitution. *See* 2024 WL 4002321, at *1 (Pa. Commw. Ct. Aug. 30, 2024); PA. CONST. art. I, § 5. The decision of the Commonwealth Court concerned the state constitution's "Free and Fair Elections" clause; not the federal constitution. Two weeks later, in a one paragraph Order, the Supreme Court of Pennsylvania vacated that decision, concluding that the Commonwealth Court lacked original jurisdiction because Plaintiffs failed to name all of the Commonwealth's sixty-seven counties. *See Black Pol. Empowerment Project v. Schmidt*, 2024 WL 4181592, at *1 (Pa. Sept. 13, 2024). As such, the Pennsylvania Supreme Court's order cannot be seen as a decision on the merits of the Commonwealth Court's holding. It simply vacated that decision because the Commonwealth Court lacked the proper jurisdictional foundation. Because the challenge before this Court is one brought exclusively under the federal constitution, these decisions by the state courts have little

Having determined that the *Anderson-Burdick* test is the appropriate analytical framework for reviewing Plaintiffs' constitutional challenge, the Court now applies that standard to Pennsylvania's ballot date requirement. *Anderson-Burdick* involves a "two track approach." *Mazo*, 54 F.4th at 145, *citing Crawford v. Marion Cty. Elec. Bd.*, 553 U.S. 181, 205 (2008) (Scalia, J., concurring). "[O]ur scrutiny is a weighing process: We consider what burden is placed on the rights which plaintiffs seek to assert and then we balance that burden against the precise interests identified by the state and the extent to which these interests require that plaintiff's rights be burdened." *Rogers v. Corbett*, 468 F.3d 188, 194 (3d Cir. 2006); *see also Burdick*, 504 U.S. at 434 ("Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens [constitutional] rights."). Where the law or regulation imposes a "severe" burden, the Court will employ "[s]trict scrutiny" in reviewing the regulation. *See Crawford*, 553 U.S. at 205 (Scalia, J., concurring) *quoting Clingman v. Beaver*, 544 U.S. 581, 592 (2005). But if a burden is not severe and "imposes only 'reasonable, nondiscriminatory restrictions' " on constitutional rights, "the State's important regulatory interests are generally sufficient to justify the restrictions." *Burdick*, 504 U.S. at 434, *quoting*

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relevance here. And as the RNC acknowledges, this Court would not be bound by those decisions in any event. *See* ECF No. 411, p. 2 ("The Commonwealth Court's (now-appealed) ruling, of course, does not bind this Court. This Court remains bound by the rulings of the U.S. Supreme Court and Third Circuit…"). Accordingly, the Court sees no reason to stay this matter or delay a decision on the pending motions.

Anderson, 460 U.S. at 788. *See also Mazo*, 54 F.4th at 145–46.

1. The burden on First Amendment rights

Having already recognized that the date requirement burdens the First Amendment right to vote, the Court now must determine to what extent. Although there is no "litmus test" for doing so, this Court concludes that the burden imposes only a minimal burden on Plaintiffs' rights. *Mazo*, 54 F.4th at 146, *quoting Crawford*, 553 U.S. at 191. First, the date requirement is non-discriminatory. Election laws discriminate by "limit[ing] political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status." *Id.* Such laws impose severe burdens and will be "especially difficult for the State to justify." *Id. quoting Anderson*, 460 U.S. at 793. As concerns discrimination against voters, such cases "focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process." *Id. citing Clements v. Fashing*, 457 U.S. 957, 964 (1982). Put another way, the relevant inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity. *Id.* (citation and internal quotation marks omitted). Burdens that apply to all voters, on the other hand, are less likely to be severe. *Mazo*, 54 F.4th at 147. Pennsylvania's requirement that voters who wish to submit a ballot by mail date the outer envelope applies to all vote-by-mail voters. The requirement draws no distinctions. Thus, it is nondiscriminatory.

2. As identified, Pennsylvania's interests are insufficient to justify the requirements of this minimal burden.

Where a state election law imposes only minimal burdens, the State's " 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" *Timmons*, 520 U.S. at 358, *quoting Burdick*, 504 U.S. at 434. But here, the Commonwealth has not identified what specific regulatory interest is furthered. Indeed, despite formal notification, the Commonwealth has not defended the constitutionality of the dating requirement.[7] In other words, the Commonwealth has not identified any interests that are served by imposing even this minimal burden on the right to vote. Nor, for that matter, have most of the Defendant county boards of elections identified an interest in requiring a voter to date the outer envelope of their ballot.

Only two Defendants have identified state interests which they assert are furthered by the envelope date requirement: the RNC and Berks County. First, they argue that the dating requirement furthers the Commonwealth's interest in detecting voter fraud.

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[7] Pursuant to Federal Rule of Civil Procedure 5.1, the Court notified the Commonwealth of Plaintiffs' challenge to the constitutionality of 25 P.S. § 3146.6(a) and 25 P.S. § 3150.16(a) and instructed the state that it could intervene for the presentation of evidence and argument on the question of the date requirements' constitutionality. *See* ECF No. 383 (Certification dated June 18, 2024). To date, the Commonwealth has not intervened to defend the enforcement of the ballot dating requirement. So then, this Court must proceed without benefit of the Commonwealth's participation here.

ECF No. 378, p. 25 (RNC); ECF No. 379, p. 10 (Berks County). Absent from the record, however, is any evidence demonstrating how this requirement furthers that purported interest. Instead, the RNC points to a single criminal case where the daughter of a deceased voter was charged with fraud after she allegedly completed, backdated, and returned her deceased mother's mail ballot. ECF No. 378, p. 24-25, *citing Commonwealth v. Mihaliak*, CR126-22 (June 3, 2022). But in *Mihaliak*, the fraudulent ballot was first detected through use of the Commonwealth's SURE system, which was cross-referenced with Pennsylvania Department of Health records, not by any error in dating on the outer envelope.[8] The evidentiary record reflects that the County Board (here, Lancaster) admitted that it removed the deceased woman from the voter rolls before the mail ballot was received. *See* ECF No. 290, p. 156 (deposition of Christa Miller). Record evidence from the Board's own Rule 30(b)(6) designee indicates that the fraudulent ballot was first detected by way of the

[8] The SURE system is the Commonwealth's Statewide Uniform Registry of Electors, a uniform integrated computer system that, inter alia, tracks mail ballots from application through final tabulation. ECF No. 290 (deposition of Jonathan Marks), pages 23-65. The outer return envelope of a mail ballot is printed with a unique barcode associated with the individual voter. That unique barcode is used to track the ballot through the SURE system. *Id*. at page 33. Upon the county board's receipt of the ballot envelope, the board stamps or otherwise marks it with the date of receipt to confirm its timeliness and log its receipt into the SURE system. *Id*. at pages 29, 32-33. The Election Code requires that county boards of elections track the date that every mail ballot was received and make that information available for public inspection. 25 P.S. § § 3146.9(b)(5), 3150.17(b)(5).

SURE system and Department of Health records, not by review of the date on the return envelope. *Id*. The County Board acknowledges that it recognized that the ballot was invalid as soon as it was scanned into the SURE system because the voter had been removed from the rolls due to her death. *Id*. at 157. Importantly, the Lancaster County Board admits that an outer envelope that is missing a hand-written date is no reason to suspect voter fraud. *Id*. at 175.

The RNC and the Berks County Board of Elections point to other interests of the Commonwealth which they claim are advanced by the date requirement, but these are not supported by any evidence of record. For example, these Defendants suggest that the Commonwealth has an interest in promoting or preserving "solemnity" in the act of voting, which they define as "ensuring that voters contemplate their choices and reach considered decisions about their government and laws." ECF No. 378, p. 23 (RNC); ECF No. 379, p. 11 (Berks County). They argue that requiring voters to sign and date the outer envelope of a mail ballot is a formality which fosters thoughtful deliberation. This argument is based solely on supposition. And even if Defendants could articulate examples of how dating the outer envelope makes the act of voting more solemn, they have not pointed to any evidence in this record to support their position. They are left only with their nebulous contention that requiring a voter to date their ballot somehow makes it a solemn occasion, which of course is not evidence which could support summary judgment.

Additionally, the RNC contends that the state has an interest in the "orderly administration of elections." ECF No. 378, p. 22. This, of course, is a valid state

interest. Nevertheless, the RNC admits that Pennsylvania election officials are required to time stamp a ballot upon receiving it and the officials rely on that date when entering the information into the SURE system. The RNC supposes that while "there is every reason to think this ordinarily happens," "the handwritten date serves as a useful backstop, and it would become quite important if a county failed to timestamp a ballot upon receiving it or if Pennsylvania's SURE system malfunctioned." *Id*. That requiring a voter to handwrite a date serves as a safeguard is a speculative assertion because, again, the RNC has failed to point this Court to any evidence regarding potential failures in the timestamp process or in the SURE system.

Similarly, the Berks County Board claims that enforcing the dating provisions enhances voter "confidence," yet this assertion is also based on conjecture. *See* ECF No. 379, p. 14. The Berks County Board provides no evidence which connects the date requirement to an increase in voter confidence in the electoral process.

None of the potential state interests suggested by the RNC or the Berks County Board are supported by any evidence. Suggestions and legal arguments are not a sufficient ground upon which to base summary judgment, which is only appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In this case, it is up to Defendants, who are asking for summary judgment, to point to evidence that a governmental interest is furthered by the burden the date requirement imposes on the right to vote. Since

Defendants have not met this requirement, their motions for summary judgment will be denied.

D. Application of the *Anderson-Burdick* Test: Plaintiffs' motion for summary judgment

When a court is faced with cross-motions for summary judgment, the standard of review remains the same. *Jacobs v. City of Philadelphia*, 2023 WL 11904070, at *1 (E.D. Pa. May 8, 2023) *citing Allah v. Ricci*, 2013 WL 3816043 (3d Cir. July 24, 2013). The fact that one party fails to satisfy the burden on its own Rule 56 motion does not automatically mean that the opposing party has satisfied its burden and should be granted summary judgment on the cross motion. *See* Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2720 (4th ed. 2020). Instead, "[w]hen confronted with cross-motions for summary judgment, […] the court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the summary judgment standard." *Transguard Ins. Co. of Am., Inc. v. Hinchey*, 464 F.Supp.2d 425, 430 (M.D. Pa. 2006) (cleaned up). In other words, the fact that Defendants have failed to meet their burden does not mean that Plaintiffs have necessarily met theirs.

As explained above, the *Anderson-Burdick* balancing test is the appropriate framework for determining whether Pennsylvania's outer envelope date requirement violates the Plaintiffs' right to vote under the First Amendment. *See discussion, supra.* For the Court to find the date requirement unconstitutional, Plaintiffs must point to evidence that even the limited burden imposed by the date

requirement outweighs any valid governmental interest. *See Burdick*, 504 U.S. at 440. Plaintiffs contend that Pennsylvania has no legitimate interest which justifies the outer envelope date requirement. *See* ECF No. 288, p. 24. Instead, they submit that the date requirement is nothing more than a "compliance test" put in place to determine "how well [Pennsylvania voters] can follow written instructions." *Id*.

Plaintiffs discredit the Defendants' suggested state interests of fraud detection, solemnity, and voter confidence. Plaintiffs highlight the lack of evidence in the record to support Defendants' purported state interests, as did the Court above. Ultimately, solemnity and voter confidence are nebulous and are unsupported by evidence, and fraud detection, while less ambiguous of an interest, is similarly unsupported by evidence of record in this case.

Since there is no evidence that the date requirement serves any state interest, even a slight burden on voting rights cannot withstand constitutional scrutiny. Put another way, even the slightest burden that results from the enforcement of the date provision is too much when there is no counterbalance. The evidence of record demonstrates that county boards across the Commonwealth discarded 10,657 otherwise valid ballots in the 2022 general election solely because voters either forgot to date them or used an incorrect date. ECF No. 311, ⁋ 10; ECF No. 313, ⁋ 10; ECF No. 290, p. 246-782. Such disenfranchisement burdens the right to vote and there is no valid state interest to weigh this against. Accordingly, Plaintiffs'

motion for summary judgment will be granted in this regard.[9]

IV. Conclusion

Constitutional analysis always requires the balancing of interests – i.e., weighing one thing against another. In the context of the First Amendment right to vote, a court must weigh the individual's right to vote, which includes the right to have their vote counted, against the government interest. In this case, the weight of the burden on the citizens right to vote is not counterbalanced by evidence of any governmental interest. Accordingly,

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[9] As discussed *supra*, the evaluation of the constitutionality of the date provisions is complicated by the fact that the state is not present to articulate its own interests. In order to leave no stone unturned, this Court looked to the Commonwealth's filings in the companion case of *NAACP v. Schmidt*, in search of an identified governmental interest in the enforcement of the date provisions. The Secretary of the Commonwealth's position there solidifies the result here. In that case, the Secretary notes that he filed his brief in order "to aid the Court's performance of this [*Anderson-Burdick*] balancing by explaining why rejecting timely mail ballots from qualified voters who failed to correctly write a meaningless date does not advance any state election interest and why it, in fact, undermines sound election administration." *See* C.A. No. 1:22-cv-339, ECF No. 440, p. 5-6. Instead of identifying and defending any Commonwealth interest in the enforcement of the dating provisions, the Secretary explains that: 1) the date requirement provisions are a vestige of a different era; 2) the date requirement has no election function; and 3) "requiring officials to review declaration dates impedes effective election administration." *Id*. By way of conclusion, the Secretary succinctly states "**there is no state interest** in rejecting timely mail ballots from eligible voters who merely neglected to correctly date their return-envelope declaration." *Id*. at 20 (emphasis added).

the enforcement of the date provisions does not pass constitutional muster.

APPENDIX D

U.S. Const. art. I, § 4, cl. 1

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S. Const. art. II, § 1 cl. 2

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

25 Pa. Stat. § 3146.6

Pennsylvania Statutes Title 25 P.S. Elections & Electoral Districts § 3146.6. Voting by absentee electors

(a) Except as provided in paragraphs (2) and (3), at any time after receiving an official absentee ballot, but on or before eight o'clock P.M. the day of the primary or election, the elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

(1) Deleted by 2019, Oct. 31, P.L. 552, No. 77, § 6, imd. effective.

(2) Any elector, spouse of the elector or dependent of the elector, qualified in accordance with the provisions of section 1301, subsections (e), (f), (g) and (h) [i] to vote by absentee ballot as herein provided, shall be required to include on the form of declaration a supporting declaration in form prescribed by the Secretary of the Commonwealth, to be signed by the head of the department or chief of division or bureau

in which the elector is employed, setting forth the identity of the elector, spouse of the elector or dependent of the elector.

(3) Any elector who has filed his application in accordance with section 1302 subsection (e) (2),[ii] and is unable to sign his declaration because of illness or physical disability, shall be excused from signing upon making a declaration which shall be witnessed by one adult person in substantially the following form: I hereby declare that I am unable to sign my declaration for voting my absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.

.....	.....
(Date)	(Mark)
.....	.....
(Complete Address of Witness)	(Signature of Witness)

(b)(1) Any elector who receives and votes an absentee ballot pursuant to section 1301 shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted absentee ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted an absentee ballot to vote at the polling place.

(2) An elector who requests an absentee ballot and who is not shown on the district register as having voted

the ballot may vote by provisional ballot under section 1210(a.4)(1). [iii]

(3) Notwithstanding paragraph (2), an elector who requests an absentee ballot and who is not shown on the district register as having voted the ballot may vote at the polling place if the elector remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and the elector signs a statement subject to the penalties under *18 Pa.C.S. § 4904* (relating to unsworn falsification to authorities) in substantially the following form:

I hereby declare that I am a qualified registered elector who has obtained an absentee ballot or mail-in ballot. I further declare that I have not cast my absentee ballot or mail-in ballot, and that instead I remitted my absentee ballot or mail-in ballot and the envelope containing the declaration of the elector to the judge of elections at my polling place to be spoiled and therefore request that my absentee ballot or mail-in ballot be voided.

(Date)

(Signature of Elector) .....(Address of Elector)

(Local Judge of Elections)

(c) Except as provided under *25 Pa.C.S. § 3511* (relating to receipt of voted ballot), a completed absentee ballot must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

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[i] 25 P.S. § 3146.1.

[ii] 25 P.S. § 3146.2.

[iii] 25 P.S. § 3050.

25 Pa. Stat. § 3150.16

Pennsylvania Statutes Title 25 P.S. Elections & Electoral Districts § 3150.16. Voting by mail-in electors

(a) General rule. –At any time after receiving an official mail-in ballot, but on or before eight o'clock P.M. the day of the primary or election, the mail-in elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "Official Election Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

(a.1) Signature.–Any elector who is unable to sign the declaration because of illness or physical disability, shall be excused from signing upon making a declaration which shall be witnessed by one adult person in substantially the following form:

> I hereby declare that I am unable to sign my declaration for voting my mail-in ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.

(Mark)

(Date)

(Complete Address of Witness)

(Signature of Witness)

(b) Eligibility.–

(1) Any elector who receives and votes a mail-in ballot under section 1301-D [i] shall not be eligible to vote at a polling place on election day. The district register at each polling place shall clearly identify electors who have received and voted mail-in ballots as ineligible to vote at the polling place, and district election officers shall not permit electors who voted a mail-in ballot to vote at the polling place.

(2) An elector who requests a mail-in ballot and who is not shown on the district register as having voted may vote by provisional ballot under section 1210(a.4)(1).[ii]

(3) Notwithstanding paragraph (2), an elector who requests a mail-in ballot and who is not shown on the district register as having voted the ballot may vote at the polling place if the elector remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and the elector signs a statement subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) which shall be in substantially the following form:

I hereby declare that I am a qualified registered elector who has obtained an absentee ballot or mail-in ballot. I further declare that I have not cast my absentee ballot or mail-in ballot, and that instead I remitted my absentee ballot or mail-in ballot to the judge of elections at my polling place to be spoiled and

therefore request that my absentee ballot or mail-in ballot be voided.

(Date)

(Signature of Elector) ……. (Address of Elector)

(Local Judge of Elections)

(c) Deadline.--Except as provided under *25 Pa.C.S. § 3511* (relating to receipt of voted ballot), a completed mail-in ballot must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.

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[i] 25 P.S. § 3150.11.

[ii] 25 P.S. § 3050.