

Nos. 25-962, 25-967

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, ET AL.,
Petitioners,

v.

BETTE EAKIN, ET AL., *Respondents.*

PENNSYLVANIA, *Petitioner,*

v.

BETTE EAKIN, ET AL., *Respondents.*

ON PETITIONS FOR WRITS OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

**BRIEF FOR AMERICA FIRST LEGAL
FOUNDATION AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE*

America First Legal Foundation is a nonprofit organization dedicated to promoting the rule of law in the United States by preventing executive overreach, ensuring due process and equal protection for every American citizen, and encouraging understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

America First Legal has a substantial interest in this case. AFL regularly litigates and files *amicus* briefs in cases involving the constitutional limits of federal judicial power and the proper allocation of authority between the federal courts and state legislatures. The question presented here—whether federal courts may subject neutral, minimally burdensome state election regulations to heightened scrutiny—goes to the heart of AFL’s mission to preserve the rule of law and ensure that elected state legislatures, not federal judges, exercise the authority the Constitution assigns to them.*

* Under Rule 37.2, *amicus* provided timely notice of their intention to file this brief. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF THE ARGUMENT

Federal courts of appeals are divided over how to review neutral, nondiscriminatory election regulations that impose only minimal burdens on voters. Seven circuits apply deferential review. Four, including the Third Circuit below, apply heightened scrutiny regardless of the burden's magnitude, demanding empirical proof of incremental benefit. An identical rule may be upheld in seven circuits and enjoined in four, not because of anything in the rule itself, but because minority circuits require states to affirmatively justify even minimal regulations while majority circuits defer.

The decision below committed two independent errors. *First*, the panel measured the burden not by what compliance requires—writing a date—but by the consequence of noncompliance. This methodology exposes every mandatory voting rule to federal challenge. *Second*, even accepting a cognizable burden, the panel discounted Pennsylvania's legitimate interests in fraud deterrence, orderly administration, and ballot solemnity by demanding record proof this Court has never required.

This case presents a clean vehicle to resolve the split: the question is pure federal law, no factual disputes remain, and a recent Pennsylvania Supreme Court decision has eliminated the panel's premise that defective ballots go uncorrected. This Court should grant certiorari and clarify *Anderson-Burdick*.

REASONS FOR GRANTING THE WRIT

I. The Court Should Grant Review to Resolve a Deepening Circuit Split Over *Anderson-Burdick*.

The courts of appeals are divided over how to review neutral, nondiscriminatory voting regulations that impose only minimal burdens on voters. This Court’s decisions in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992), instruct courts to weigh the “character and magnitude” of a burden against the State’s regulatory interests. But those decisions do not license heightened scrutiny of routine election mechanics or transform ordinary compliance requirements into constitutional injuries. *See Burdick*, 504 U.S. at 433–34. In the absence of further guidance, lower courts have diverged sharply over how deferential review should be when the burden is minimal and the rule is generally applicable. Seven circuits apply rational basis review, or close to it. Four others, including the Third Circuit below, apply heightened scrutiny regardless of the burden’s magnitude. The panel acknowledged this division. App. 41a n.35.¹ This Court should resolve it.

A. Seven Circuits Apply Deferential Review to Minimal, Neutral Burdens.

Seven circuits hold that neutral election regulations imposing only the “usual burdens of voting” warrant deferential, rational basis review. The

¹ All references are to the petition appendix filed in No. 25-967.

First, Second, Fourth, Fifth, Seventh, Ninth, and Eleventh Circuits uphold such rules so long as they serve important regulatory interests, asking only whether a rational basis supports the legislature's choice. *See, e.g., Barr v. Galvin*, 626 F.3d 99, 110–11 (1st Cir. 2010); *Price v. New York State Bd. of Elections*, 540 F.3d 101, 109 (2d Cir. 2008); *Marcellus v. Virginia State Bd. of Elections*, 849 F.3d 169, 179–80 (4th Cir. 2017); *Richardson v. Texas Sec'y of State*, 978 F.3d 220, 239–41 (5th Cir. 2020); *Luft v. Evers*, 963 F.3d 665, 677 (7th Cir. 2020); *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1188–93 (9th Cir. 2021); *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020).

Critically, these circuits measure the burden by what compliance requires, not by the consequence of noncompliance. The fact that a voter who ignores a neutral requirement may have her ballot rejected does not convert the requirement itself into a constitutional injury.

B. Four Circuits Permit Improper Judicial Policymaking in an Area Reserved to the States.

Four circuits—the Sixth, Eighth, and Tenth, now joined by the Third—have broken from that approach and apply heightened scrutiny regardless of whether the burden is severe or merely incidental. These courts demand empirical proof of incremental benefit, dismiss legitimate state interests as “vague” or inadequately documented, and substitute judicial policy judgments for legislative ones. *See Obama for Am. v. Husted*, 697 F.3d 423, 433–34 (6th Cir. 2012); *SD Voice v. Noem*, 60 F.4th 1071, 1080–82 (8th Cir.

2023); *Fish v. Schwab*, 957 F.3d 1105, 1128, 1144 (10th Cir. 2020). The Third Circuit joined this group below, acknowledging the burden was “minimal” yet demanding evidentiary justification for each of the Commonwealth’s interests. App. 38a, 44a–48a. The panel’s 7–6 *en banc* denial confirms the divide is genuine. *See also* App. 41a n.35. This approach effectively converts federal courts into permanent superintendents of state election administration, displacing the legislative judgments that the Constitution specifically assigns to the states and that *Anderson-Burdick* was never designed to transfer to the judiciary.

C. The Split Imposes Asymmetric Burdens on State Legislatures and Requires This Court’s Correction.

The split’s most concrete cost falls on state legislatures. In the seven majority circuits, a legislature may enact a neutral, generally applicable election rule without generating an evidentiary record to support each procedural choice. In the four minority circuits, legislatures must anticipate litigation and prove the incremental value of every ballot-casting requirement against a standard that no majority circuit imposes. An identical rule may be constitutional in seven circuits and enjoined in four—not because of anything in the rule itself, but because minority circuits require states to affirmatively justify even minimal, neutral election regulations, while majority circuits apply deferential review. States in the minority circuits face structural pressure to abandon workable administrative procedures, and election officials cannot build stable, reliable systems

when the validity of their rules turns not on whether their decision had a rational basis, but whether empirical proof can support the minimal burden. This Court’s intervention is necessary to restore a uniform constitutional baseline, ensure that *Anderson-Burdick* is applied consistently throughout the country, and reaffirm that the authority to regulate elections belongs to the states.

II. The Decision Below Misapplied *Anderson-Burdick* by Treating a *De Minimis* Compliance Requirement as a Constitutional Injury.

The decision below rests on a fundamental methodological error: rather than measuring the burden by what compliance requires, the panel defined it by the consequence of noncompliance. That inversion collapses *Anderson-Burdick*’s threshold inquiry, elevates a *de minimis* compliance step into a constitutional injury, and then compounds the error by applying searching scrutiny to a burden the panel itself characterized as “minimal.” App. 38a. Each stage of the analysis departs from this Court’s precedents.

A. *Anderson-Burdick* Requires Identification of a Genuine Constitutional Burden.

Anderson-Burdick requires courts to first evaluate the “character and magnitude” of the alleged injury before weighing it against the State’s interests. *Anderson*, 460 U.S. at 789; *Burdick*, 504 U.S. at 434. That threshold inquiry is indispensable. Without a cognizable burden on a protected right, heightened scrutiny is unwarranted. The Constitution tolerates

the “usual burdens of voting,” including reasonable procedural requirements that structure the mechanics of voting itself. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (plurality op.). Writing a date on a return envelope is a simple compliance step requiring, at most, a pen and five seconds. *See* App. 94a (Bove, J., dissenting from denial of rehearing *en banc*). It does not implicate core political speech, discriminate among voters, or restrict electoral participation. Treating that modest act as a constitutional injury simply because of the consequence of failure collapses the framework’s first step and exposes every mandatory election rule to federal challenge.

B. The Court Improperly Measured the Burden by the Consequences of Noncompliance.

Rather than measuring the burden by the effort required to comply with the date requirement, the court of appeals defined the burden in terms of the consequence of failing to comply. The panel repeatedly emphasized that “[a] Pennsylvania mail-in voter who fails to comply with the date requirement will not have his or her vote counted. Period.” App. 36a; *see also* App. 31a, 34a. It described those downstream consequences as dispositive in assessing the burden’s magnitude. App. 35a–38a.

That framing inverts *Anderson-Burdick*’s first step. That step requires courts to evaluate the “character and magnitude” of the burden imposed by the regulation itself. *Anderson*, 460 U.S. at 789. The burden here is the requirement to write a date, a task that takes seconds to complete. *See* App. 94a (Bove, J.,

dissenting from denial of rehearing *en banc*). The possibility that a ballot will be rejected if a voter chooses not to comply with a neutral, generally applicable rule does not transform the compliance requirement into a severe constitutional burden.

Other courts have rejected precisely this consequence-based reasoning. See *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1188–1193 (9th Cir. 2021) (declining to measure burden by the “consequence of noncompliance”); *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020) (no disenfranchisement where voters must take reasonable steps to comply with ballot rules). The Constitution protects the right to vote; it does not guarantee a right to have a ballot counted despite failure to follow reasonable procedural requirements. See *Pa. State Conf. of the NAACP Branches v. Sec’y Commonwealth of Pennsylvania*, 97 F.4th 120, 133 (3d Cir. 2024).

By equating noncompliance with disenfranchisement, the decision below effectively collapses the distinction between access to the ballot and compliance with neutral ballot-casting procedures. That approach would render virtually any mandatory voting rule constitutionally suspect, because every rule carries consequences for noncompliance. *Anderson-Burdick* does not compel, and this Court’s precedents do not permit, that result. That error was then compounded: even accepting a cognizable burden, the panel applied searching scrutiny to a burden it had just characterized as “minimal”—an approach directly incompatible with this Court’s instruction that nondiscriminatory regulations of that

kind warrant only deferential review. *Burdick*, 504 U.S. at 434.

III. The Panel Improperly Elevated Scrutiny and Discounted Legitimate State Interests.

Even setting aside the question of the appropriate standard, the panel's treatment of Pennsylvania's interests was independently flawed. Under *Anderson-Burdick*, the level of scrutiny tracks the burden's severity: minimal, nondiscriminatory burdens warrant only deferential review, while severe burdens require narrow tailoring. *Id.*; *Crawford*, 553 U.S. at 198 (plurality op.). The panel inverted that framework by acknowledging that the burden was "minimal," then applying a searching inquiry demanding positive proof of each interest's incremental value.

A. Pennsylvania Identified Legitimate and Long-Recognized Election Interests.

Pennsylvania advanced several legitimate interests served by the date requirement, including deterring and prosecuting voter fraud, promoting orderly election administration, and reinforcing the solemnity and finality of ballot submission. App. 42a–48a.

This Court has long recognized the legitimacy of such interests. States may enact generally applicable rules to safeguard the integrity and reliability of the electoral process. *Anderson*, 460 U.S. at 788 n.9. *Crawford*, for example, credited Indiana's interest in deterring voter fraud even though the record contained no evidence of "any such fraud actually occurring in Indiana at any time in its history." 553 U.S. at 194 (plurality op.). The absence of documented

fraud did not undermine the state's interest; the prophylactic purpose was sufficient. That principle forecloses the panel's reasoning here, which discounted Pennsylvania's fraud-detection interest primarily because documented prosecutions were infrequent. Even modest procedural requirements may further these interests by promoting accuracy, uniformity, and voter confidence.

B. The Panel Improperly Discounted Legislative Judgments.

Despite acknowledging these interests, the panel discounted them based on its own assessment of their incremental utility, concluding the requirement did not sufficiently advance the State's goals. App. 42a–48a. In particular, it minimized the fraud-detection interest because documented prosecutions were rare, and questioned whether the date requirement added “incremental solemnity” beyond a signature. App. 45a.

That reasoning is inconsistent with settled principles of judicial review. Legislatures need not produce empirical proof of effectiveness to justify reasonable election regulations. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 195–96 (1986) (states need not produce particularized proof of the harm they seek to prevent through election regulations); *see also Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 686 (2021) (“[A] State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders.”). Legislative judgments “may be based on rational speculation unsupported by evidence or empirical data.” *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993). Nor may courts invalidate neutral rules based on

disagreement with legislative line-drawing: “[T]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record.” *Heller v. Doe*, 509 U.S. 312, 320–21 (1993) (citation modified). The panel put that burden on Pennsylvania instead.

By demanding record evidence and second-guessing legislative judgments, the panel exceeded the limited role *Anderson-Burdick* assigns to courts reviewing routine election regulations.

**C. Elevating Scrutiny for Routine Rules
Risks Destabilizing Election
Administration.**

If neutral compliance requirements must survive searching judicial review and empirical proof of incremental value, routine election procedures will be vulnerable to constitutional challenge. Every mandatory rule carries consequences for noncompliance. Thus, requiring states to justify each procedural detail risks transforming ordinary election administration into perpetual constitutional litigation.

Again, *Anderson-Burdick* does not compel, and this Court’s precedents do not permit, that result. The regulation of elections is an area the Constitution generally reserves to state authority. U.S. Const. art. I, § 4, cl.1. Where burdens are minimal and rules are neutral and nondiscriminatory, judicial deference is constitutionally required. By subjecting routine legislative judgments to searching federal scrutiny, circuits in the minority, including the Third Circuit

here, have taken on a supervisory role over state election administration that the Constitution does not allow. This Court should correct that overreach, reaffirm the proper scope of *Anderson-Burdick*, and restore the constitutional boundaries between judicial review and state legislative authority over elections.

IV. This Case Presents a Clean Vehicle to Improve the *Anderson-Burdick* Test.

This case provides the Court with an opportunity to resolve a major circuit split by clarifying the *Anderson-Burdick* test, as it presents a pure question of law, the state law issues have been clarified in the interim, and there are no obstacles to the Court taking it up.

First, this case presents a vehicle for resolving the longstanding circuit split. As discussed, the division between the circuits over the proper application of *Anderson-Burdick* is profound and frustrates the informal process by which federalism resolves questions of national dispute. This case is ideally situated for revision of the *Anderson-Burdick* test as it occupies what Judge Bove characterized as perhaps the least burden imaginable, a whole “five seconds” of effort. If any voting security measure is to be treated as *de minimis* and subjected to rational basis review, it should be this one. A clear framework on what is permitted to ensure the safety of our elections would go a long way toward providing clarity for state legislatures, and this case presents the ideal vehicle to do so.

Second, this case provides a clean vehicle because it poses a pure question of law; there are no factual

disputes. The Third Circuit noted that summary judgment requires that material facts not be disputed when reviewing and affirming the grant by the district court. App. 22a. None of the parties in their appellate briefs argued that there were material facts in dispute, and no judge on the Third Circuit raised concerns about disputes of material fact when considering the case for an *en banc* hearing. *See* App. 87a–155a. The question of law presented is straightforward: whether a neutral *de minimis* ballot-casting rule creates a cognizable *Anderson-Burdick* burden, and if so, what level of scrutiny should be applied? Rather than vacate and remand, the Court should decide the merits of this case and clarify the *Anderson-Burdick* test.

Third, the recent decision by the Pennsylvania Supreme Court in *Center for Coalfield Justice v. Wash. Cnty. Bd. of Elections*, has clarified the doctrinal state law question, such that the case now turns entirely on whether writing a date is itself a cognizable burden. 348 A.3d 1178 (Pa. 2025). The Third Circuit panel reached its decision, in part, because it interpreted Pennsylvania law as giving voters with defective ballots no notice or opportunity to correct the ballot, thereby increasing the regulation’s burden on the right to vote. App. 29a–31a. After the panel opinion but before the denial of rehearing *en banc*, *Coalfield Justice* clarified that Pennsylvania law entitles voters to both notice of rejection and an opportunity to cure. *See* App. 101a–102a (Bove, J., dissenting from denial of rehearing *en banc*) (discussing the impact of *Coalfield Justice*). For this Court’s purposes, the decision both renders the burden posed by the

challenged regulation even more *de minimis* than when the Third Circuit considered the case, and resolves a state law issue, distilling the question presented in this case into a purely federal law consideration of whether a date requirement creates a cognizable *Anderson-Burdick* burden.

Fourth and finally, there are no jurisprudential or prudential obstacles to the Court taking up this case. The case has been fully litigated and extensively briefed. At no point in the appellate briefing did any party raise concerns about standing, nor did the Third Circuit. At issue is “a matter of exceptional importance,” namely, the power of a state to enforce even *de minimis* anti-fraud provisions in elections. App. 93a (Phipps, J., dissenting from denial of rehearing *en banc*). Even the Third Circuit panel recognized that the case implicated the “State’s constitutionally mandated duty.” App. 9a. Additionally, the case is not moot. Pennsylvania’s law remains on the books despite the permanent injunction restraining any attempt to enforce it, and a merits decision by the Court upholding its constitutionality would trigger the challenged provision to resume effectiveness in time for the upcoming midterm elections. *See* 25 Pa. Cons. Stat. § 3146.6(a).

The only jurisdictional dispute raised by any party was the Commonwealth of Pennsylvania’s contention that the Plaintiffs had failed to sufficiently ground their claims in a specific constitutional right. *See* Br. for Intervenor Commonwealth of Pennsylvania at 11–17, *Eakin v. Adams County Bd. of Elections*, No. 25-1644, Dkt. 72 (3d Cir. June 6, 2025). Plaintiffs alleged

violations of the “right to vote under the First and Fourteenth Amendments.” Compl. at 14, *Eakin v. Adams Cnty. Bd. of Elections*, No. 1:22-cv-340, Dkt. 1 (W.D. Pa. Nov. 7, 2022). They argued specifically that the date provision disproportionately affected racial minorities, implicating the Equal Protection Clause of the Fourteenth Amendment. Mem. in Supp. of Pls.’ Mot. for Summ. J. at 21, *Eakin v. Adams Cnty. Bd. of Elections*, No. 1:22-cv-340, Dkt. 288 (W.D. Pa. Apr. 21, 2023). Ultimately, the Third Circuit panel found this sufficient and concurred with the district court. App. 23a. *But see* App. 105a (Bove, J., dissenting from denial of rehearing *en banc*) (declaring this finding unpersuasive). While Pennsylvania raises this argument again in its Petition for Certiorari, this Court need not disturb something that was briefed at summary judgment phase and deemed sufficient by both the district and circuit courts. This Court should take up the case on the merits and resolve the *Anderson-Burdick* test circuit split.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, take the case on the merits, and clarify the *Anderson-Burdick* test.

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