No. 25-962 Vide 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

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF OF PROFESSOR MICHAEL T. MORLEY & FLORIDA STATE UNIVERSITY ELECTION LAW CENTER AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY

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MARCH 16, 2026

MOTION

Pursuant to Rule 21.2(b), putative *amici curiae* Professor Michael T. Morley and Florida State University Election Law Center respectfully request leave to submit a brief as *amici curiae* regarding the petitions for writs of certiorari in the above-captioned cases.

Rule 37.2 requires that amici notify all parties' counsel of their intent to file a brief concerning a petition for certiorari at least ten days before the date on which a response to the petition is due. A response to the petition in *RNC v. Eakin*, No. 25-962, was due on March 16, 2026. A response to the petition in *Pennsylvania v. Eakin*, No. 25-967, was due on March 19, 2026. Putative *amici* notified the parties in both cases of their intent to submit this brief on Thursday, March 12, 2026, and requested the parties' consent due to the delayed notice.

In ***RNC v. Eakin***, the following parties ***consented*** to the filing of this brief:

- Petitioners Republican National Committee ("RNC"), National Republican Congressional Committee ("NRCC"), and Republican Party of Pennsylvania;

- Appellant-Intervenor Commonwealth of Pennsylvania;

- Plaintiff-Respondents Bette Eakin, Democratic Senatorial Campaign Committee ("DSCC"), Democratic Congressional Campaign Committee

("DCCC"), and American Federation of Teachers ("AFT") Pennsylvania; and

- Respondents Berks County Board of Elections, Crawford County Board of Elections, Lackawanna County Board of Elections, Northampton County Board of Elections, and Philadelphia County Board of Elections.

In ***Commonwealth of Pennsylvania v. Eakin***, the following parties ***consented*** to the filing of this brief:

- Petitioner Commonwealth of Pennsylvania;

- Respondents Bette Eakin, Democratic Senatorial Campaign Committee ("DSCC"), Democratic Congressional Campaign Committee ("DCCC"), and American Federation of Teachers ("AFT") Pennsylvania;

- Respondents Republican National Committee ("RNC"), National Republican Congressional Committee ("NRCC"), and Republican Party of Pennsylvania; and

- Respondents Crawford County Board of Elections, Berks County Board of Elections, Lackawanna County Board of Elections, Northampton County Board of Elections, and Philadelphia County Board of Elections..

In **both cases**, the following Defendant-Respondents likewise stated they have ***no objection*** to the filing of the brief:

- Board of Elections for Butler County;
- Board of Elections for Clarion County;
- Board of Elections for Lancaster County;
- Board of Elections for Potter County;
- Board of Elections for Susquehanna County;
- Board of Elections for Tioga County; and
- Board of Elections for York County.

The Juniata County Board of Elections responded that it "takes no position."

The Erie County Board of Elections responded that it "can not consent" and did not further elaborate. Beyond that, no party objected or otherwise provided a negative response.

As of the time this motion went to print, undersigned counsel had not received a definite response from any of the other parties (all of which appear to be County Boards of Elections).

The filing of this brief will not prejudice any party. Undersigned *amici* present this brief to explain why granting certiorari in this case would substantially aid the development of election law by allowing resolution of numerous circuit splits concerning the *Anderson-Burdick* standard for voting rights.

Accordingly, putative *amici* respectfully ask this Court for leave to file this amicus brief.

Respectfully Submitted,

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BRIEF OF *AMICI CURIAE* PROFESSOR MICHAEL T. MORLEY AND FLORIDA STATE UNIVERSITY ELECTION LAW CENTER IN SUPPORT OF NEITHER PARTY

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INTEREST OF *AMICI CURIAE*[1]

Professor Michael T. Morley is Sheila M. McDevitt Professor of Law at the Florida State University College of Law and Faculty Director of the FSU Election Law Center. He teaches and writes in the areas of federal courts, remedies, and election law, and has an interest in the sound development of these fields. This Court cited his work most recently in *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025).

The FSU Election Law Center was established by the Florida Legislature to "[c]onduct and promote rigorous, objective, nonpartisan, evidence-based research concerning important constitutional, statutory, and regulatory issues relating to election law," FLA. STAT. § 1004.421(2)(a) (2025), including "[d]octrines relating to remedies," *id.* § 1004.421(1)(a)(13). The Center is empowered to "[p]rovide formal or informal assistance . . . to governmental entities or officials at the federal, state, or county levels, concerning elections or election law, including, but not limited to, research, reports, public comments, testimony, or briefs." *Id.* § 1004.421(3)(e). The Election Law Center operates pursuant to academic freedom protections. *Id.* § 1004.421(7). Accordingly, the Center's arguments and positions should not be attributed to Florida State University,

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[1] *Amici* provided notice to all parties of their intent to file this brief on March 12, 2026. Pursuant to Sup. Ct. R. 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

the FSU College of Law, or either school's administration.

SUMMARY OF ARGUMENT

This Court should grant the petitions for certiorari in this case for several reasons. ***First***, this case presents a perfect vehicle for resolving the deep and longstanding circuit split over whether rules, requirements, and procedures governing absentee and mail voting are governed by the *Anderson-Burdick* balancing test derived from this Court's rulings in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), or instead are subject only to rational basis scrutiny. *Compare Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 309, 317 (3d Cir. 2025) (applying *Anderson-Burdick* balancing); *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1187, 1194 (9th Cir. 2021) (same); *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1325-26 (11th Cir. 2019) (same); *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 630-31, 634 (6th Cir. 2016) (same), *with Common Cause Ind. v. Lawson*, 977 F.3d 663, 664 (7th Cir. 2020) (applying rational basis scrutiny); *accord Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 608 (8th Cir. 2020) (same).

Second, this case provides an opportunity for this Court to clarify whether reasonable, limited, small, slight, or minimal burdens on voters are subject to *Anderson-Burdick* balancing or, instead, rational basis scrutiny. *Compare Eakin*, 149 F.4th at 314 (applying *Anderson-Burdick* balancing); *Vote.org v. Callanen*, 39 F.4th 297, 308 (5th Cir. 2022) (same);

Hobbs, 18 F.4th at 1192-93 (same); *Lee*, 915 F.3d at 1318-19 (same); *Ne. Ohio Coal. for the Homeless*, 837 F.3d at 631 (same), *with Mays v. LaRose*, 951 F.3d 775, 784 (6th Cir. 2020) (applying rational basis scrutiny); *Ashcroft*, 978 F.3d at 608 (same).

Third, this case would allow the Court to clarify how courts should assess the burden that election rules impose on voters. Many courts have properly recognized that they should consider such burdens from an *ex ante* perspective, before the voting period (or other relevant timeframe) has commenced and voters have failed to satisfy the requirement at issue. *See, e.g.*, *Hobbs*, 18 F.4th at 1189; *Org. for Black Struggle*, 978 F.3d at 608; *New Ga. Proj. v. Raffensperger*, 976 F.3d 1278, 1281 (11th Cir. 2020). In contrast, the court below in this case calculated the burden of Pennsylvania's date requirement based on the fact that it "caused county election boards to discard over 10,000 ballots in the 2022 general election." *Eakin*, 149 F.4th at 309.

Finally, most fundamentally, this case provides the chance—outside the context of a contested election—to reassess more broadly whether the vague, subjective, *ad hoc Anderson-Burdick* standard provides the appropriate metric for assessing the permissibility of election-related rules.

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THAT, ONCE THE STATE CHOOSES TO ALLOW SOME OR ALL OTHERWISE ELIGIBLE VOTERS TO CAST ABSENTEE OR MAIL BALLOTS, THE CONSTITUTIONAL RIGHT TO VOTE ATTACHES, PROHIBITING UNDUE BURDENS ON THE ABSENTEE OR MAIL VOTING PROCESS

This Court should grant certiorari on Question #2 presented by the RNC Petitioners in *RNC v. Eakin*, No. 25-962 (U.S. filed Feb. 11, 2026), to resolve a critical threshold circuit split concerning the existence of constitutional protections for the process for absentee and mail voting.

The bulk of current precedent draws a distinction between two issues: (i) whether an otherwise eligible voter is entitled to vote by mail or absentee, and (ii) the procedures governing mail or absentee voting for individuals who are entitled to use those processes. Regarding the first issue, this Court has consistently held that requiring an eligible voter to cast their ballot in person generally does not impose an unconstitutional burden on the right to vote in violation of the Fourteenth Amendment's Due Process Clause. Accordingly, an eligible voter generally does not have a constitutional right to cast an absentee or mail ballot, *McDonald v. Bd. of Election Comm'rs*, 394 U.S. 802, 808 (1969) (distinguishing "the fundamental right to vote" from "a claimed right to receive absentee ballots"), unless the state completely denies them the opportunity to vote in person, *O'Brien v. Skinner*, 414

U.S. 524, 529-30 (1974). Accordingly, many states permit only "for cause" absentee voting, in which only certain statutorily designed groups of people, such as senior citizens and the disabled, are permitted to cast absentee ballots. *See* Nat'l Conf. of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options*, "Excuses to Vote Absentee," tbl. 2 (Aug. 26, 2026).[2] Courts have rejected constitutional challenges to such restrictions. *See Tully v. Okeson*, 977 F.3d 608, 616 (7th Cir. 2020); *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004); *see also Tex. Democratic Party v. Abbott*, 978 F.3d 168, 194 (5th Cir. 2020).

Once a state has chosen to permit either certain groups of people or all voters to cast absentee or mail ballots, however, then the constitutional right to vote attaches and requirements or restrictions on the process for those people are subject to *Anderson-Burdick* balancing.[3] *See, e.g.*, *Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 309, 317 (3d Cir. 2025) (applying *Anderson-Burdick* balancing over-aggressively to conclude that a state may not enforce its requirement that voters accurately date their mail ballots); *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1187, 1194 (9th Cir. 2021) (applying *Anderson-Burdick* balancing to properly conclude that states may require voters who fail to sign their absentee ballot affidavits to "correct [the] missing signature by election day"); *Democratic Exec. Comm. of Fla. v. Lee*,

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[2] https://www.ncsl.org/elections-and-campaigns/table-2-excuses-to-vote-absentee.

[3] *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

915 F.3d 1312, 1325-26 (11th Cir. 2019) (applying *Anderson-Burdick* balancing to conclude that states must grant vote-by-mail voters an opportunity to cure signature mismatches); *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 630-31, 634 (6th Cir. 2016) (applying *Anderson-Burdick* balancing to erroneously conclude that states may not enforce requirements that voters include their correct addresses and birthdates on absentee ballots); *cf. Price v. N.Y. State Bd. of Elections*, 540 F.3d 101, 103-04, 108-09, 112 (2d Cir. 2008) (applying *Anderson-Burdick* balancing to conclude that a state which allowed excused-based absentee voting could not prohibit such voters from casting absentee ballots solely in "elections for political party county committees").

This approach is somewhat comparable to how this Court approaches the question of the constitutional right to vote in the context of presidential elections. In *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam) (citing U.S. CONST. art. II, § 1), this Court recognized "[t]he individual citizen has no federal constitutional right to vote for electors for the President of the United States." A state legislature, for example, may choose to appoint its presidential electors for itself. *Bush*, 531 U.S. at 104. However, once a legislature "vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental" and equal protection restrictions apply. *Id.*; *see also Meyer v. Grant*, 486 U.S. 414, 424-25 (1988) (holding that although there is no fundamental constitutional right to propose ballot initiatives, once a state chooses to offer an initiative process, the

Constitution protects the signature-gathering process).

A few circuits, however, have drawn the opposite inference from *McDonald*. They reason that, because there is no fundamental constitutional right to cast absentee or mail ballots, any restrictions relating to such ballots are subject only to rational basis scrutiny. *See Common Cause Ind. v. Lawson*, 977 F.3d 663, 664 (7th Cir. 2020) ("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."); *accord Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 608 (8th Cir. 2020) ("The same holds true for mail-in ballots . . . .").

Thus, the Third Circuit's ruling in this case contributes to a burgeoning circuit split over a fundamental issue: whether restrictions on the process governing absentee and mail voting for voters who are otherwise eligible to cast such ballots are subject only to rational basis scrutiny or, instead, *Anderson-Burdick* balancing as the court below held, *see Eakin*, 149 F.4th at 309, 317. This case presents a suitable vehicle for this Court to clarify the implications of its holding in *McDonald*, 394 U.S. at 807-08, that the Constitution does not establish a fundamental right to cast absentee ballots.

In the 2024 general election, a total of 47,957,093 votes were cast by mail in some way (including both absentee and vote-by-mail ballots). U.S. ELECTION ASSISTANCE COMM'N, ELECTION ADMINISTRATION AND VOTING SURVEY 2024 COMPREHENSIVE REPORT 35,

App. A, tbl. 1 (June 2025).[4] This figure constitutes 30.3% of votes cast in that election. *Id.* It seems untenable to conclude that the heightened protections afforded the constitutional right to vote are categorically inapplicable to the rules and procedures governing nearly one-third of the votes cast in a presidential election.

II. THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THE PROPER WAY TO APPLY THE *ANDERSON-BURDICK* BALANCING TEST

Even setting aside disputes over whether *Anderson-Burdick* balancing applies to absentee and mail ballots, *see supra* Part I, that test governs broad swaths of the electoral process, *see, e.g.*, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 190 (2008) (explaining that *Anderson-Burdick* governs "constitutional challenge[s] to an election regulation"); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995) (explaining that *Anderson-Burdick* governs the validity of laws which "control the mechanics of the electoral process"). Given the ubiquity and importance of this standard, this Court should take this opportunity to clarify its contours to facilitate more consistent and constitutionally accurate resolution of election-related disputes in the lower courts. Granting certiorari in this case would allow this Court to resolve circuit splits concerning the proper way to apply *Anderson-Burdick* balancing before the outcome of a close, high-profile, politically

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[4] https://www.eac.gov/sites/default/files/2025-07/2024_EAVS_Report_508.pdf.

charged election hangs in the balance. *Cf*. *Bush*, 531 U.S. 98.

A. Lower Courts Disagree as to Whether this Court's Observations About *Anderson-Burdick* Balancing Create Exceptions to the Balancing Requirement

Burdick v. Takushi, 504 U.S. at 434, contains two paragraphs discussing the process courts must use to determine the constitutionality of election-related rules, restrictions, and procedures. The first paragraph reiterates the three factors which this Court's earlier ruling in *Anderson* had required courts to weigh:

> i. "the character and magnitude of the asserted injury to the asserted rights protected by the First and Fourteenth Amendments";
>
> ii. "the precise interests put forward by the State as justifications for the burden impose by its rule"; and
>
> iii. "the extent to which those interests make it necessary to burden the plaintiff's rights."

Id. (quoting *Anderson*, 460 U.S. at 788-89).

The following paragraph went on to provide two observations:

> ● election regulations that impose "severe" restrictions on plaintiffs' rights are subject to strict scrutiny, and can be upheld only if they are "narrowly drawn to advance a state interest of

compelling importance," *id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)), and

- "when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions,'" *id.* (quoting *Anderson*, 460 U.S. at 788-89 & n.9).

Circuits differ on how the three-prong balancing test and the two observations relate to each other. Some circuits have concluded that the *Anderson-Burdick* standard simply requires them to balance against each other the three prongs identified above—burden on the voter, nature of the state's asserted interest, and extent to which the challenged rules further that interest—to determine the constitutionality of an election rule. *Id.* Under this approach, *Anderson-Burdick* balancing involves only a fairly straightforward cost-benefit analysis to determine whether particular burdens on voters are justified.

Importantly, courts adopting this interpretation will apply such balancing even to laws that impose only minor burdens on voters. *See Lee*, 915 F.3d at 1318-19 ("[E]ven when a law imposes only a ***slight*** burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden." (emphasis added)); *see, e.g.*, *Vote.org v. Callanen*, 39 F.4th 297, 308 (5th Cir. 2022) ("[T]he State's asserted interests are surely adequate to justify the ***slight*** burden imposed by the wet signature rule." (emphasis added)); *Hobbs*, 18 F.4th

at 1192-93 ("[T]he State's interest in reducing administrative burdens outweighs the ***minimal*** burden on the voter . . . ." (emphasis added)); *Ne. Ohio Coal. for the Homeless*, 837 F.3d at 631 (invalidating requirement that voters correctly complete the address and birthday fields when returning their absentee ballots because "[a]lthough the burden is ***small*** for most voters . . . none of the precise interests put forward by Ohio justifies it" (quotation marks omitted and emphasis added)). From this perspective, this Court's two additional observations identified above are not actually part of the test, but instead are merely generalizations about what the results of that balancing typically tend to be.

In contrast, other appellate panels—including within some of the same circuits—believe this Court has created a trichotomy. At one end of the spectrum, "severe regulations" are subject to strict scrutiny. At the other end of the spectrum, "minimally burdensome and nondiscriminatory" regulations are effectively subject to rational basis scrutiny and generally permissible. *See Mays v. LaRose*, 951 F.3d 775, 784 (6th Cir. 2020) ("When States impose 'reasonable nondiscriminatory restrictions' on the right to vote, courts apply rational basis review . . . ." (quoting *Burdick*, 504 U.S. at 434)); *see, e.g.*, *Ashcroft*, 978 F.3d at 608 (upholding requirement which imposed a "minimal burden" because it was "a reasonable, nondiscriminatory restriction" without engaging in balancing). "It is when cases fall between these two extremes that the *Anderson-Burdick* framework departs from the traditional tiers of scrutiny and creates its own test." *Mays*, 951 F.3d at 784.

For laws that impose severe burdens, the outcome will generally be the same whether a court applies strict scrutiny or instead weighs the three *Anderson-Burdick* factors directly. The difference between these two approaches becomes most salient for laws, such as the date requirement at issue in this case, that impose minimal burdens. *See Eakin*, 149 F.4th at 314 ("*Anderson-Burdick* is not the identical twin of rational basis review where a law has been determined to impose only a minimal burden."). If a court concludes the requirement is "minimally burdensome and nondiscriminatory" and therefore is subject only to rational basis scrutiny, it will invariably be upheld. In contrast, if the court nevertheless goes on to subject the provision to *Anderson-Burdick* balancing based on the three-factor test, then the challenged provision will be invalidated if the state's underlying interests are deemed insufficient to warrant that burden on voters. Indeed, that is precisely what occurred in the court below. *Id.* at 317 (holding that Pennsylvania's requirement that voters date their absentee ballot envelopes "imposes a minimal burden" but nevertheless fails *Anderson-Burdick* balancing); *see also Ne. Ohio Coal. for the Homeless*, 837 F.3d at 631.

Accordingly, this Court should grant certiorari on Questions #1 and 3 presented by the RNC Petitioners in *RNC v. Eakin*, No. 25-962 (U.S. filed Feb. 11, 2026), to resolve the circuit split over whether and how *Anderson-Burdick* balancing applies to election requirements that impose small, minor, limited, ordinary, minimal, and/or de minimis burdens. Adopting the second approach—the so-called "trichotomy"—would help ensure federal courts do not

substitute their judgment for that of legislatures, which are primarily responsible for crafting the election process. That approach also better reflects this Court's recognition 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 process." *Burdick*, 504 U.S. at 433 (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

B. Courts Disagree as to How Burdens on Voters Should be Measured Under the *Anderson-Burdick* Balancing Test

Yet another reason this Court should grant certiorari is to clarify the proper method for applying the *Anderson-Burdick* balancing test. Specifically, it should reiterate that the burden on voters must be measured solely from an *ex ante* perspective, before the voting period (or other relevant timeframe) has commenced and the voter has failed to comply with the requirement at issue. The burden to be measured is the burden, difficulty, cost, and inconvenience of satisfying that requirement at the appropriate time—not the consequences of violating it. *See, e.g.*, *Hobbs*, 18 F.4th at 1189 ("The relevant burden for constitutional purposes is the small burden of signing the affidavit or, if the voter fails to sign, of correcting the missing signature by election day."); *Org. for Black Struggle*, 978 F.3d at 608 ("[T]he likelihood that some ballots are likely to be rejected . . . does not transform the burden into one that is severe."); *New Ga. Proj.*, 976 F.3d at 1281 (11th Cir. 2020) ("[I]t is just not enough to conclude that if some ballots are likely to be rejected because of a rule the burden on

many voters will be severe." (quotation marks omitted)).

The court below appeared to recognize this principle. It declared in the middle of its opinion that Pennsylvania's date requirement "imposes a minimal burden on voting rights." *Eakin*, 149 F.4th at 309. But it immediately went on to declare, "Although it may seem easy to place a date on a return envelope . . . the date requirement caused county election boards to discard over 10,000 ballots in the 2022 general election." *Id.* In conducting the actual balancing, the court concluded, "[D]iscarding 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." *Id.* at 317. This approach is both inconsistent with other circuits and erroneous on its face. This Court should grant certiorari on Question # 3 presented by the RNC Petitioners in *RNC v. Eakin*, No. 25-962 (U.S. filed Feb. 11, 2026), to clarify that the burden on voters must be assessed from an *ex ante* perspective, focusing solely on the challenged requirement itself rather than the consequences of violating it.

III. THIS CASE PRESENTS AN EXCELLENT VEHICLE FOR REASSESSING THE *ANDERSON-BURDICK* BALANCING TEST

Finally, this case presents an ideal opportunity to reassess the *Anderson-Burdick* test more broadly. As Professor Edward B. Foley explains:

> *Anderson-Burdick* balancing is such an imprecise instrument that it is easy for the balance to come out one way in the hands of one

> judge, yet come out in the exact opposite way in the hands of another. A test this indeterminate is arguably no test at all, and thus the federal constitutional law that is supposed to supervise the operation of a state's electoral process has little objectivity or predictability.

Edward B. Foley, *Voting Rules and Constitutional Law*, 81 GEO. WASH. L. REV. 1836, 1859 (2013); *see also* Michael T. Morley, *Prophylactic Redistricting? Congress's Section 5 Power and the New Equal Protection Right to Vote*, 59 WM. & MARY L. REV. 2053, 2082 (2018) (discussing the "subjective, *ad hoc Anderson-Burdick* balancing test"); *see also Daunt v. Benson*, 956 F.3d 396, 424 (6th Cir. 2020) (Readler, J., concurring).

The *Anderson-Burdick* test is not well-suited to ensuring that "all eligible voters . . . have a reasonable opportunity to cast their ballots safely and have them counted." Michael T. Morley, *Election Emergencies: Voting in Times of Pandemic*, 80 WASH. & LEE L. REV. 359, 362 (2023) [hereinafter, "Morley, *Election Emergencies*"]. An *Anderson-Burdick* claim typically singles out a particular rule, restriction, or requirement and contends it is unduly burdensome. Focusing on a single aspect of the electoral process in this manner, however, typically provides a misleadingly myopic view about whether the state's electoral process as a whole provides constitutionally adequate opportunity to vote. *Cf. Luft v. Evers*, 963 F.3d 665, 671-72 (7th Cir. 2020).

Moreover, an election—particularly a federal election—is a "fundamentally bureaucratic endeavor[] . . . . Largely part-time or even volunteer

personnel with limited training and expertise staffing thousands of temporary polling locations collectively determine tens of millions of voters' eligibility; provide them with the correct ballots; and then collect, store, and often transport those ballots or resulting electronic records for tabulation." Morley, *Election Emergencies*, *supra* at 432. *Anderson-Burdick* effectively converts a state's election code into a Jenga tower comprised of discrete blocks, each potentially subject to individualized judicial scrutiny on a seriatim basis. Given the bureaucratic nature of the electoral process, it can be difficult for the state to justify, much less provide empirical evidence demonstrating, the need for many individual rules within its election code in isolation. Even if various rules on their own cannot be shown to further the state's interests in "minimiz[ing] the possibility of mistake, irregularity, illegality, accident, confusion, or fraud," *id.* at 362, however, the invalidation of enough such rules—like the removal of enough blocks from the tower—can undermine the system as a whole in unpredictable ways.

This Court might consider using this case as a vehicle for replacing the *Anderson-Burdick* test with a standard that is more firmly rooted in the Constitution itself and does not put federal judges in the uncomfortable position of second-guessing legislatures' policy judgments. Remedial equilibration might provide one such approach. *See* Daryl Levinson, *Rights Essentialism and Remedial Equilibration*, 99 COLUM. L. REV. 857 (1999). Remedial equilibration teaches that "rights and remedies are inextricably intertwined." *Id.* at 858. In particular, a right "may be shaped by the nature of the

remedy that will follow if the right is violated." *Id.* at 884.

Section 2 of the Fourteenth Amendment—as modified by subsequent constitutional amendments, *see, e.g.*, U.S. CONST. amends. XIX, XXVI—specifies that if a state denies or abridges the right to vote to any U.S. citizen who is at least 18 years old and has not been convicted of a crime, its "basis of representation" in the U.S. House of Representatives, and by extension the electoral college, "shall be reduced" proportionally. *Id.* amend. XIV, § 2.

> The severity of the remedy set forth in § 2 strongly implies that the right to vote protects individuals against acts that are sufficiently serious to warrant the extreme relief of reduction in representation: actual, literal disenfranchisement. The enactment of mere [paperwork] or administrative requirements that a person must satisfy in order to be permitted to vote are [generally] unlikely to warrant such relief . . . .

Michael T. Morley, *Remedial Equilibration and the Right to Vote Under Section 2 of the Fourteenth Amendment*, 2015 U. CHI. L. FORUM 279, 297. Of course, remedial equilibration is not the only alternative for attempting to craft judicially manageable standards for implementing and enforcing the constitutional right to vote. To the extent this Court believes the *Anderson-Burdick* standard has led to inconsistent, unpredictable, and subjective results in election litigation, this case presents an opportune vehicle for reconsidering that standard more broadly.

CONCLUSION

For these reasons, this Court should grant these petitions for certiorari.

Respectfully Submitted,

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MARCH 16, 2026

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