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 United States Court of Appeals for the Third Circuit

EAKIN RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

In recent elections, county supervisors of elections across the Commonwealth of Pennsylvania have been forced to disqualify thousands of otherwise valid mail ballots because of inconsequential errors with a handwritten date on the ballot envelope. This dating requirement is a relic of a bygone era in Pennsylvania election law, which many decades ago, allowed absentee ballots *submitted* before election day, but *received* after election day, to be counted. The date requirement thus allowed election officials to determine a ballot's timeliness. But the General Assembly changed that rule many decades ago—ballots received after election day are no longer valid under Pennsylvania law, and the date requirement's original purpose is indisputably obsolete.

The date requirement had no meaningful impact on Pennsylvania elections for many years—until the Commonwealth made the laudable choice to authorize no-excuse mail voting for all eligible electors. In so doing, the General Assembly simply transposed the requirements for absentee voting onto its new mail voting process, including the date requirement. The result was dramatic, with the date requirement prompting the invalidation of nearly 15,000 ballots between the 2022 and 2024 general elections. The question presented is:

Did the Third Circuit err in concluding that, under the *Anderson-Burdick* framework, the Commonwealth's enforcement of a ballot envelope dating requirement that has disqualified thousands of otherwise valid mail votes, but which the Commonwealth's

election officials agree serves no legitimate state interest in election administration or fraud detection or deterrence, violates the First and Fourteenth Amendments to the U.S. Constitution?

RULE 29.6 DISCLOSURE STATEMENT

I, Uzoma N. Nkwonta, counsel for Respondents and a member of the Bar of this Court, certify that DSCC, DCCC, and AFT Pennsylvania have no parent corporation, and that no publicly held company owns 10% or more of their stock.

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INTRODUCTION

This case is a stark outlier, though not in the way Petitioners suggest. It involves a handwritten date requirement enacted in the 1940s, at a time when Pennsylvania accepted absentee ballots that arrived well after election day. The date's sole purpose was to ensure that election officials count only those late arriving ballots that were completed on or before election day.

But that process is now obsolete because Pennsylvania has since chosen a different method for ensuring ballot timeliness: now, all absentee ballots must be *received* by election day, and officials must confirm receipt (and timeliness) by scanning the bar code on the ballot envelope into the Statewide Uniform Registry of Electors ("SURE"). Despite these advances, the date requirement lingered in Pennsylvania's Election Code, little-noticed until 2019. That year, the General Assembly enacted Act 77, which permitted all eligible voters to vote by mail, and enacted statutory text identical to Pennsylvania's existing procedures for absentee voting, including the date requirement. *Compare* 25 P.S. § 3150.16(a), *with* 25 P.S. § 3146.6(a). With this change, a forgotten artifact turned into a trap for voters who vote by mail and resulted in the rejection of more than 10,000 ballots in 2022 alone.

Pennsylvania's election officials have been unable to articulate a coherent state interest in a requirement that has not served its intended purpose for over half a century yet disenfranchises thousands. Secretaries of the Commonwealth from both major political

parties expressly disavowed any interest in the requirement at all. Thus, to defend the requirement, the Republican National Committee was forced to concoct post hoc justifications the Commonwealth itself had not previously endorsed.[1]

In the end, the best the RNC could do was point to a single example of a voter in Lancaster County submitting her deceased mother's mail ballot, dated after her mother had passed away. But even that is not a case where the date requirement had any impact. The ballot was rejected as soon as election officials received it, because the deceased mother had already been removed from the voter rolls. Regardless, Lancaster County *was not even rejecting* undated or misdated ballots at the time the fraudulent ballot was received. The injunction in this case does nothing more than resume the state of affairs in place during the Lancaster County case: voters are instructed to date their ballots, but counties may not reject them for innocuous errors. With the present injunction in place, the Lancaster County case would have unfolded exactly as it did in 2022.

The other two interests the RNC came up with—determining timeliness and the "solemnity" of the voting process—are so implausible that Petitioners barely attempt to rehabilitate them. Receipt, not a

[1] Only on appeal did the Commonwealth, through its attorney general, intervene in this case and co-sign the RNC's hypothesized state interests—despite the Commonwealth's chief elections official stating unequivocally that those interests are contrived.

handwritten date, is how Pennsylvania officials determine ballot timeliness. And writing the date next to one's signature on a declaration envelope imparts no "solemnity" beyond that of the signature or the ballot itself.

So much for the RNC's purported state interests. What about the burdens on voters? Petitioners latch on to a recent decision of the Pennsylvania Supreme Court that, they argue, pulls out the linchpin from the Third Circuit's burden analysis by requiring election officials to notify voters if their ballot is rejected for a missing date. *Center for Coalfield Justice v. Washington County*, 343 A.3d 1178 (Pa. 2025). But that is not what *Coalfield Justice* says. It merely holds that *if* county election officials conduct a pre-election day "preliminary" review of mail ballots—something the Pennsylvania election code does not require—and *if* officials thereby become aware of facial deficiencies, then they may not send the voter misleading notifications suggesting the ballot will be counted. That is all. It does not require counties to conduct such a review or provide such notices, let alone *guarantee* an opportunity to cure. The Third Circuit knew and understood this—*Coalfield Justice* was decided while petitions for panel and en banc rehearing were pending, and a majority of the en banc court, including the original panel, saw no reason to disturb the panel's reasoning.

Unable to assail the Third Circuit's balancing of the interests and burdens, Petitioners try another tack: the courts below, they argue, should not have engaged in *Anderson-Burdick* balancing at all, and, at most, should have applied rational basis review. The

theories Petitioners advance in support of this argument are irreconcilable with this Court's precedents, and their attempt to gin up circuit splits distorts—and sometimes ignores—circuit precedent.

First, there is no threshold rule exempting the "usual burdens of voting" from *Anderson-Burdick* scrutiny. This Court plainly said otherwise in *Crawford v. Marion County*—in both the plurality opinion and Justice Scalia's concurring opinion. Unsurprisingly, then, no Circuit has adopted Petitioners' view.

Second, no circuit has held that this Court's decision in *McDonald v. Board of Election Commissioners of Chicago* categorically exempts mail ballot regulations from *Anderson-Burdick* review, and several have held the opposite. Petitioners vastly overstate *McDonald*'s reasoning: there, the Court simply held that the plaintiffs had not marshaled sufficient evidence to prove that a failure to expand mail voting to unsentenced inmates—individuals who were not permitted to vote absentee under state law—violated their constitutional right to vote. The Court did not conclude that states are immune from constitutional scrutiny when rejecting ballots submitted by qualified mail voters. And the only cases Petitioners cite to suggest otherwise are no longer good law even within those circuits.

Third, Petitioners' plea for rational basis review seeks to transform decades of settled precedent. *Anderson-Burdick* always requires carefully weighing the burdens a law imposes—however slight—against the state interests advanced. *See Burdick v. Takushi*, 504 U.S. 428, 439 (1992). No court of appeals has held

otherwise. RNC's petition broadly mischaracterizes a slew of circuit cases by plucking out isolated phrases while ignoring those courts' own careful weighing of burdens and interests—including the sheer number of voters affected—exactly as *Anderson-Burdick* requires.

And, finally, as a practical matter this case is a poor vehicle for remaking the Court's *Anderson-Burdick* jurisprudence. The Pennsylvania Supreme Court is poised to decide whether the date requirement violates the Pennsylvania Constitution's Free and Equal Elections Clause. That case, which was argued in September 2025, could very well moot the federal issues presented here. For all of these reasons, the Court should deny certiorari.

STATEMENT

I. Pennsylvania enacts the date requirement to help officials count ballots delivered after election day.

Enacted in 1945, Pennsylvania's requirement that voters date their absentee ballot envelopes helped election officials determine whether the ballot was submitted on time. That was necessary because, under Pennsylvania law at the time, absentee ballots were counted even if received after election day, so long as they were mailed before that day. *See* Act of Mar. 9, 1945, P.L. 29, No. 17, § 10 (amending Election Code Section 1306, 25 P.S. § 3146.6).

But in 1968, the General Assembly changed the law to require receipt by the Friday before election

day. *See* Act of Dec. 11, 1968, P.L. 1183, No. 375, § 8, (amending Election Code Section 1306, 25 P.S. § 3146.6, and Section 1308, 25 P.S. § 3146.8). With this change, there was no need to sort ballots using the date marked on the ballot envelope—timeliness was determined solely by the date of receipt. *Id.* Nonetheless, the date requirement remained in the Pennsylvania Election Code's section on absentee voting. And when the General Assembly enacted Act 77 in 2019, authorizing no-excuse mail-in voting for all qualified voters, it simply copied many of the provisions of the already-existing absentee voting statute without any additional analysis or explanation. As such, Act 77 incorporated the date requirement, along with other "requirements" that Pennsylvania courts have long held serve no genuine purpose in election administration, like the requirement that voters use blue or black ink to fill out their ballot. *See* Act of Oct. 31, 2019, P.L. 552, No. 77; 25 P.S. § 3150.16(a); *In re Luzerne Cnty. Return Bd.*, 290 A.2d 108, 109 (Pa. 1972) (holding ballots cannot be disqualified for failure to use blue or black ink); *see also* Br. for Pa. Dep't of State et al. Supporting Resp't at 17–18 (3d Cir. June 4, 2025), Dkt. No. 101 ("SOS Br.").

Under Pennsylvania law today, 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(a). To confirm timely receipt, county officials physically date stamp each ballot return envelope when they receive it. County officials also scan a barcode that is unique to each ballot into the statewide SURE system,

which records the date and time of receipt. App.17a.[2] Then, as part of the canvassing process, the county boards set aside all ballots delivered after 8:00 p.m. on election day, 25 P.S. § 3146.8(g)(1)(ii), as well as ballots submitted by voters who passed away before election day, *id.* § 3146.8(d). County officials accordingly do not rely on the handwritten declaration date to determine whether a mail ballot is (a) timely or (b) fraudulent.

Two consecutive Secretaries of the Commonwealth—one Democrat, one Republican—have agreed that there is "no reason to reject ballots for declaration-date errors or omissions." SOS Br. at 2; *see also* App.118a n.9 (D. Ct. Mem. Op.) (quoting previous Secretary asserting the same). As the current Secretary has argued, "no election official today uses the handwritten date for any purpose other than to exclude the votes of eligible voters." SOS Br. at 8. To the contrary, "requiring election officials to cancel ballots for declaration-date errors undermines the orderly administration of Pennsylvania elections." *Id.* at 2.

II. The date requirement ensnares thousands of Pennsylvania voters.

Although the date requirement has not served any election administration function for decades, election officials have discarded tens of thousands of otherwise lawful and timely mail ballots because of missing or

[2] For ease of reference, and unless otherwise noted, "App." refers to the Appendix filed by the RNC Petitioners on Docket No. 25-962.

superficially defective handwritten dates. That includes over 10,000 voters in the 2022 general election alone—the first federal general election after the General Assembly enacted no-excuse mail voting where counties were uniformly required to disqualify mail ballots based on the date requirement.[3] *See* App.19a; *see also* Suppl. App. of Pls.-Appellees Vol. I at 24 ¶ 10, No. 25-1644 (3d Cir. June 4, 2025), Dkt. No. 96 ("CA3.Supp.App.Vol.I."). And even after the Secretary's office reformatted the ballot envelope to help minimize errors before the 2024 election, another 4,500 ballots were still affected. App.19a.

Because Pennsylvania law neither dictates the format for the voter declaration nor offers guidance on how to evaluate a written date for compliance, enforcement has varied arbitrarily from county to county. For example, Westmoreland and Berks Counties rejected ballots that—obviously mistakenly—included "2021" or "2023" dates during the November 2022 general election. CA3.Supp.App.Vol.I.24, 26. Similar typographical errors plagued ballots in several other counties, where voters had ballots rejected for accidentally writing "2202" or "2033." *See* Br. for Pa. NAACP et al. Supporting Resp't at 9 (3d Cir. June 9, 2025), Dkt. No. 110-1. Other counties have invalidated ballots simply because the handwritten date followed the day/month/year format instead of month/day/year. CA3.Supp.App.Vol.I.27 ¶ 27.

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[3] There was no uniform rule applied in the 2020 general election. *See In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1079 (2020).

III. The Third Circuit joins several other courts to conclude the date requirement does not advance any state interest and enjoins Pennsylvania from discarding ballots for noncompliance.

Since Act 77 took effect, the date requirement has been the subject of extensive state and federal court litigation on various grounds. Regardless of the outcome, most courts have agreed on one thing: the date requirement is meaningless. *See, e.g.*, *Pa. NAACP v. Sec'y Commw. of Pa.*, 97 F.4th 120, 125 (3d Cir. 2024) (date requirement "serves little apparent purpose"); *Migliori v. Cohen*, 36 F.4th 153, 164 (3d Cir. 2022) (finding handwritten date was "superfluous and meaningless" and not used for any purpose), *vacated as moot on procedural grounds sub nom. Ritter v. Migliori*, 143 S. Ct. 297 (2022); *Ball v. Chapman*, 289 A.3d 1, 16 n.77 (Pa. 2023) (noting handwritten date was not used to determine voter eligibility or timeliness, detect fraud, or for any other purpose); *Baxter v. Phila. Bd. of Elections*, 329 A.3d 483, 2024 WL 4614689, at *17 (Pa. Commw. Ct. 2024) (date requirement is "virtually meaningless"), *appeal pending*, 332 A.3d 1183 (Pa. 2025); *Chapman v. Berks Cnty. Bd. of Elections*, No. 355 M.D. 2022, 2022 WL 4100998, at *18 (Pa. Commw. Ct. Aug. 19, 2022) (unpublished) (finding "no factual or legal basis for concluding" that the date requirement serves state interests), *abrogated by Ball*, 289 A.3d 1.

Here, the district court and the Third Circuit joined that growing chorus. Based on clear admissions by county officials that missing dates are "not a reason

to suspect fraud," Suppl. App. of Pls.-Appellees Vol. II, at 410–11, No. 25-1644 (3d Cir. June 13, 2025), Dkt. No. 120 ("CA3.Supp.App.Vol.II."), and are not used to determine a ballot's timeliness, *id.* 409, the district court found "no evidence that the date requirement serves any state interest." App.117a. The Third Circuit panel unanimously affirmed. Although the Third Circuit determined that the date requirement imposed a minimal burden on Pennsylvania voters, App.34a, the court found that this burden could not be justified by Petitioners' unsubstantiated appeals to solemnity and fraud prevention, as neither interest is reasonably advanced by merely dating a declaration on a return envelope. App.43a–44a. As the Third Circuit panel acknowledged, every state election official who participated in the appeal expressly disclaimed any interest in the date requirement. App.48a; *see also* SOS Br. 8–14; Br. for Philadelphia Cnty. et al. Supporting Resp't at 7–17 (3d Cir. June 4, 2025), Dkt. No. 91. The en banc court denied rehearing shortly thereafter. App.67a.

ARGUMENT

I. The Petitions do not raise an issue of national importance.

This Court's review is reserved for cases of national importance, with wide-reaching impacts. This is not that case. The date requirement's unique history and the uniform position of the Commonwealth's election officials in this appeal make the date requirement a true outlier in *Anderson-Burdick* world. Peti-

tioners' doomsaying about freewheeling judicial superintendence of state election rules simply bears no relation to this case.

A. The date requirement is an anachronism with few modern analogues.

The date requirement is not an election integrity measure, nor does it play any role whatsoever in the administration of elections in Pennsylvania. As explained, the General Assembly first required absentee voters to include a handwritten date on ballot envelopes in 1945 because the Commonwealth accepted absentee ballots after election day so long as they were *mailed* on time. *See* Act of Mar. 9, 1945, P.L. 29, No. 17, § 10. The handwritten date thus served the critical function of verifying a ballot was timely submitted and could thus be counted. This utility evaporated, however, when the General Assembly changed the rule to disqualify ballots received after election day, and that has remained true for more than 50 years. Now, a ballot's timeliness is determined when county officials scan mail ballots into the Commonwealth's SURE system. The handwritten date is obsolete.

Election officials have largely reached the same conclusion—indeed, none of them defended the date requirement on appeal, and it's easy to see why. Ballots that counties indisputably receive on time before the election, but include the wrong year, *e.g.*, CA3.Supp.App.Vol.I.26 ¶¶ 21–22, or that list the day before the month, *e.g.*, *id.* at 25–27 ¶¶ 18, 25, 27, do not threaten any valid interest in election administration. Furthermore, the injunction now in place changes nothing about the format of ballot envelopes:

mail-ballot declarations still instruct voters to provide the date, and most voters will complete it without issue. All that will change is that voters who do make innocent mistakes in writing or omitting the date will not have their ballots discarded for that reason.

B. The Third Circuit rightly rejected the RNC's contrived state interests.

With the date requirement's origins in mind, it is hardly surprising that courts have struggled throughout several bouts of litigation to identify a coherent justification for disqualifying ballots for dating errors. *See* Statement § III. The RNC—and, on appeal, the Attorney General—manufactured three post-hoc interests in the date requirement. Each is meritless, and the Third Circuit was right to recognize as much in applying the *Anderson-Burdick* framework. The utter dearth of evidence or reasoned argument in support of any state interest in the date requirement solidifies its outlier status.

1. The Third Circuit credited ample record evidence, including admissions from the counties that participated in the district court proceedings, 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." *See* App.48a; *see also* CA3.Supp.App.Vol.I.155; *see also id.* at 213–16 ¶¶ 65–75 (Lancaster BOE admitting date serves no fraud prevention interests); *id.* at 310–12 ¶¶ 65–75 (same for Berks BOE); *id.* at 180–81, 184–85 (Westmoreland BOE testifying similarly). The court further noted that "the only Pennsylvania

entities participating in this appeal that engage in administration of the Commonwealth's elections" each conceded, "in no uncertain terms, that the date requirement does not meaningfully further the Commonwealth's legitimate interest in detecting voter fraud." App.48a. All 67 counties also admitted they had not identified, raised, or been made aware of any credible concern regarding fraud with respect to the date requirement. CA3.Supp.App.Vol.II.408–12; *see also* CA3.Supp.App.Vol.I.215 ¶ 72.

Petitioners offer *a single* instance in which they claim the date requirement was instrumental in *prosecuting* (but not detecting) a voter fraud suspect. That is a stretch. In *Commonwealth v. Mihaliak*, a Lancaster County voter allegedly completed and dated her recently deceased mother's mail ballot for the 2022 primary election after the mother had died. RNC Pet. 28–29. But as the Lancaster County Board of Elections admitted, CA3.Supp.App.Vol.II.410, and Petitioners concede (at 28), the envelope's date played *no* role in detecting the fraud: The perpetrator's mother had already been removed from the voter rolls before the ballot was received, prompting county officials to immediately set it aside. CA3.Supp.App.Vol.I.215–16 ¶¶ 73–75. The Lancaster County registrar reported the incident to the police, App. of Appellants Vol. II at 227, No. 25-1633 (3d Cir. May 6, 2025), Dkt. No. 76-1 ("RNC.CA3.App.Vol.II"), so "an investigation would have followed no matter what was written on the return envelope." *Ball*, 289 A.3d at 16 n.77.

Petitioners cannot dispute that the handwritten date on the ballot envelope in *Mihaliak* did nothing to

prevent fraudulent votes from being counted. *See id.* Instead, they argue that it had independent evidentiary value to investigate and prosecute the *daughter*'s fraudulent conduct. RNC Pet. 29. But that is pure speculation: Mihaliak promptly *confessed* to investigators that she had signed the ballot for her mother after she died, so Petitioners' argument about the evidentiary value of the handwritten date in that case is mere conjecture, unsupported by any evidence. *See* RNC.CA3.App.Vol.II.227.

In any event, the Third Circuit's decision does not require the Commonwealth to remove the "date" line from ballot envelopes. It merely prevents county boards from disqualifying otherwise valid mail ballots for noncompliant dates. So the date requirement's supposed evidentiary function remains intact. The *Mihaliak* case itself proves as much: in that election (the May 2022 primary), Lancaster County was ordered by a court to count mail ballots missing handwritten dates on the ballot envelope—much as the injunction here orders counties to do. *Chapman*, 2022 WL 4100998, at *29–30; *see also McCormick for U.S. Senate v. Chapman*, No. 286 M.D. 2022, 2022 WL 2900112 (Pa. Commw. Ct. June 2, 2022).

2. Petitioners barely bother to defend their remaining interests in election administration and solemnity. Based on the record before it, the Third Circuit properly concluded that the date requirement does *nothing* to facilitate orderly election administration: "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." App.44a (collecting evidence). Even the Commonwealth has abandoned any argument otherwise. Commw. Pet. 23 n.12.

Petitioners also contend that requiring voters to date their ballot envelopes promotes "solemnity." But even assuming this is a legitimate reason to burden the right to vote, the Third Circuit's decision does not threaten that interest either. Once again, the decision below does not require Pennsylvania to *remove* the date line from mail ballot declarations. Neither Petitioner has attempted to explain how discarding ballots for innocuous mistakes advances any solemnity interest that is not already satisfied by asking voters to sign and date the declaration in the first place.

C. The Third Circuit's decision does not threaten states' ability to administer elections.

Anderson-Burdick has been the law of the land for over three decades. In that time, courts have applied the framework to all manner of state election laws—including those governing absentee and mail voting, many of which courts ultimately concluded were minimally burdensome—and have invalidated voting-process regulations very infrequently.

There is an obvious reason that decisions invalidating voting-process regulations under *Anderson-Burdick* are uncommon: if the state has a legitimate reason for passing a minimally burdensome regulation, courts usually will not disturb it. Nothing about the district court's ruling or the Third Circuit's deci-

sion displaces *Burdick*'s guidance that a "State's important regulatory interests are *generally* sufficient to justify" a minimally burdensome restriction on the right to vote. *Burdick*, 504 U.S. at 428 (emphasis added). The many idiosyncrasies of this case simply make it the rare exception to that general rule, where the state has decisively failed to offer *any* "important regulatory interest" that would be advanced by invalidating ballots for dating errors—and election officials' admissions deny the interests the RNC and Attorney General advance.

II. The Third Circuit's decision was correct and fits comfortably with precedents from other circuits.

Unable to offer any coherent defense of the date requirement's role in Pennsylvania's elections, which the Commonwealth's election officials acknowledged has no purpose, Petitioners manufacture division among the circuits over how to apply the *Anderson-Burdick* framework. The RNC insists the lower courts "are in disarray," RNC Pet. 18, but the decisions they cite cannot bear the weight of their hyperbole. Lower courts have successfully navigated the *Anderson-Burdick* framework for decades, and the Third Circuit's decision falls comfortably in line with precedent from its sister circuits and this Court. The Court's intervention is unwarranted.

A. Rational basis is not the correct standard, and the Third Circuit was right to reject it.

The bottom line spanning most of Petitioners' arguments is that the Third Circuit should have applied rational basis review when it analyzed the date requirement, for one of three reasons. First, Petitioners advance a "threshold rule" that precludes any constitutional scrutiny here. Second, they contend that this Court's decision in *McDonald v. Board of Election Commissioners of Chicago* requires the Court to apply rational basis review instead of *Anderson-Burdick*. And third, they contend that, even if *Anderson* and *Burdick* govern, rational basis is the right test anyway. Each argument is wrong, as every circuit to address each of these issues has said.

1. There is no "threshold rule" that precludes constitutional scrutiny of "usual burdens" of voting.

Petitioners first advance a heretofore unheard of "threshold rule" that voting regulations that impose "'the usual burdens of voting' do not even *implicate* the Constitution's protections of the right to vote." RNC Pet. 25. "Had the panel applied that rule," Petitioners contend, "it would have dismissed, rather than upheld, Plaintiffs-Respondents' constitutional claim," *id.* at 26, presumably under rational basis review, *see Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 471 (2025) ("[R]ational-basis review" is "the minimum constitutional standard that all legislation must satisfy.").

The "rule" Petitioners invoke does not exist—in fact, precedent forecloses it. In *Crawford*—the very decision from which Petitioners derive the so-called rule they cite—this Court *applied* the *Anderson-Burdick* framework to review Indiana's voter identification law. The plurality opinion explained that because there is no "litmus test for measuring the severity of a burden that a state law imposes on [voters]," *any* burden "must be justified by relevant and legitimate state interests" "*[h]owever slight that burden may appear*." *Crawford v. Marion County Election Board,* 553 U.S. 181, 191 (2008) (plurality op.) (emphasis added). Far from "confirm[ing] that . . . usual burdens do not implicate the right to vote," the plurality reiterated that *Anderson-Burdick* offers the correct starting point for assessing *any* burden on the right to vote—even "usual" ones.

Justice Scalia's concurring opinion does not support Petitioners' view, either. Justice Scalia acknowledged that Indiana's law could be allowed only because "the burden at issue [was] minimal *and justified*." *Id.* at 204 (Scalia, J., concurring) (emphasis added). He noted expressly that, "[t]o evaluate a law respecting the right to vote," including laws regulating "the voting process," courts "use the approach set out in *Burdick*," which calls for "application of a deferential," but not *nonexistent*, "standard for nonsevere, nondiscriminatory restrictions." *Id.* In short, a majority of the Court in *Crawford* agreed that even minimally burdensome laws—those imposing only the "usual burdens of voting"—are still evaluated within the *Anderson-Burdick* framework.

Consistent with *Crawford,* circuit courts routinely apply the *Anderson-Burdick* framework to regulations of the voting process, even where they ultimately judge the relevant burden to be minimal. *E.g.*, *Price v. New York State Bd. of Elections*, 540 F.3d 101, 112 (2d Cir. 2008); *Mazo v. N.J. Sec'y of State*, 54 F.4th 124, 139 & n.11 (3d Cir. 2022); *Pisano v. Strach*, 743 F.3d 927, 935 (4th Cir. 2014); *Vote.org v. Callanen*, 39 F.4th 297, 307–08 (5th Cir. 2022); *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 631–32 (6th Cir. 2016); *Tedards v. Ducey*, 951 F.3d 1041, 1066 (9th Cir. 2020); *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318–19 (11th Cir. 2019).

Petitioners have not identified even *one* case in the 43 years since *Anderson* that applied the purported "rule" it faults the Third Circuit for missing here. *Brnovich v. DNC*, 594 U.S. 647 (2021), involved a claim under Section 2 of the Voting Rights Act; it did not address *Anderson-Burdick* review at all. The same is true of the Fifth Circuit's decision in *La Union del Pueblo Entero v. Abbott*, 151 F.4th 273 (5th Cir. 2025), which likewise did not even mention the *Anderson-Burdick* framework.

Were it not enough that Petitioners' "rule" is unmoored from precedent, it is also standardless. Petitioners offer no way to distinguish "usual" burdens on the right to vote from the "unusual" ones. The Court should not entertain this approach. *Anderson* and *Burdick* strike the appropriate balance between states' authority to set the rules governing elections and citizens' ability to exercise their right to vote without facing arbitrary barriers to the franchise. Indeed,

respect for states' "active role in structuring elections," *Burdick*, 504 U.S. at 433, and the recognition that such regulations will "inevitably affect, at least to some degree," the right to vote, *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983), is the very foundation of the framework itself. Courts have performed the fact-intensive, case-specific *Anderson-Burdick* test for decades, and the judicially wrought chaos Petitioners predict has never come to pass. There is simply no need to reinvent the wheel now.

2. ***McDonald*** **does not immunize mail voting regulations from** ***Anderson-Burdick*** **review.**

Petitioners next argue that *McDonald v. Board of Election Commissioners of Chicago,* 394 U.S. 802, 807 (1969), immunizes all mail-voting regulations from constitutional scrutiny. It does not, and no court has so held. The Fifth and Seventh Circuit decisions that Petitioners cite are not good law even within those circuits. But this case would be a poor vehicle to resolve any circuit split anyway because even Petitioners' reading of *McDonald* would not preclude *Anderson-Burdick* review of the date requirement.

1. To start, Petitioners miss the point of *McDonald*. *McDonald*'s holding that the "'right to vote' do[es] not encompass 'a claimed right to receive absentee ballots,'" RNC Pet. 18 (quoting *McDonald*, 394 U.S. at 807), does not—as Petitioners would have it—exempt *every* regulation of mail voting from *Anderson-Burdick* review. The *McDonald* plaintiffs alleged a constitutional right to *receive* mail ballots that Illinois law did not permit at that time—in other words, to expand

methods of voting the state's legislature had not authorized. *See Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 626 n.6 (1969) ("at issue [in *McDonald*] was not a claimed right to vote but a claimed right to an absentee ballot"); *Hill v. Stone*, 421 U.S. 289, 300 n.9 (1975) ("In *McDonald* . . . the only issue before the Court was whether pretrial detainees in Illinois jails were unconstitutionally denied absentee ballots."). This case involves no such claim. It did not require the courts to expand mail balloting beyond what the General Assembly has authorized.

Once a state has chosen to allow mail voting, inducing its residents to rely on mail ballots to exercise their rights, it is not then free to arbitrarily burden that process simply because electors *could* have—but did not—vote another way. App.30a. This Court, in closely analogous contexts, has recognized that once a state extends a benefit, it must do so consistent with the Constitution—even if it was not constitutionally required to extend the benefit in the first place. *See, e.g.*, App.30a (citing *Kramer*, 395 U.S. at 627 (popular election of school board members); *Meyer v. Grant*, 486 U.S. 414, 424 (1988) (ballot initiatives)); *see also Agency for Int'l Dev. v. Alliance for Open Society Int'l, Inc.*, 570 U.S. 205, 214 (2013) ("[T]he Government may not deny a benefit to a person on a basis that infringes his constitutionally protected freedom of speech even if he has no entitlement to that benefit." (citation omitted)); *cf. McDonald*, 394 U.S. at 807 (acknowledging that once a state grants the franchise, it may not impose conditions that violate constitutional rights). Petitioners do not acknowledge this authority.

For these reasons, it is not surprising that many circuits have applied the *Anderson-Burdick* framework to mail- and absentee-voting regulations irrespective of *McDonald*. *See, e.g.*, *Democratic Exec. Comm. of Fla.*, 915 F.3d at 1318–19; *Short v. Brown*, 893 F.3d 671, 676–79 (9th Cir. 2018); *Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir. 2012); *Price*, 540 F.3d at 107–12.

2. The cases Petitioners cite from the Fifth and Seventh Circuits are not binding authority even within those circuits. *Texas Democratic Party v. Abbott (TDP I)*, 961 F.3d 389, 394 (5th Cir. 2020), is a stay panel decision, and in a published merits decision in the same case, the Fifth Circuit expressly *refused* to hold that *McDonald* precludes constitutional scrutiny of mail-voting restrictions. *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 193–94 (5th Cir. 2020).[4]

In the Seventh Circuit, *Tully v. Okeson*, 977 F.3d 608 (7th Cir. 2020) ("*Tully I*"), was likewise a ruling on a preliminary injunction that the court later refused to treat even as "law of the case," *Tully v. Okeson*, 78 F.4th 377, 380–82 (7th Cir. 2023) ("*Tully II*"). In *Tully II*, the Seventh Circuit repudiated *Tully I*, concluding it was not "bound by [*Tully I*'s] reasoning."

[4] The other stay panel opinions Petitioners cite are no more persuasive than *TDP I*. *Texas League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136 (5th Cir. 2020), involved an early-voting regulation, not mail voting, and it expressly did not decide whether *McDonald* applied. *Id.* at 144 n.6, 146 n.8. And *United States v. Paxton* was not even an *Anderson-Burdick* case. *See* Order, *United States v. Paxton*, No. 23-50885 (5th Cir. Dec. 15, 2023), Dkt. No. 80.

Id. at 379. The court explained its resolution of the "point of law" at issue in *Tully I* was "animated by . . . weighty concerns" about the risks of changing voting rules on the eve of the 2020 election. *Id.* at 381–82. For that reason, *Common Cause Indiana v. Lawson*, 977 F.3d 663 (7th Cir. 2020)—which treated *Tully I* as binding for its "hold[ing]" that mail-ballot regulations did not implicate the right to vote—likewise has very limited precedential value. *Id.* at 664.

Even if authoritative, *TDP I* and *Tully I* are not like this case. Both cases reflect only the distinction described above, between claims seeking to *expand* mail-voting access versus those *regulating* existing procedures. Both arose during the COVID-19 pandemic and, like in *McDonald*, the plaintiffs sought to *expand* access to absentee voting to groups the state legislature had not authorized. This case, however, involves the rights of voters who indisputably are entitled to vote by mail under Pennsylvania law, and have cast their ballots in reliance on that promise.

Thus, this case would be a poor vehicle to address the legal question Petitioners raise, even if there were a real circuit split. Even Petitioners agree that *McDonald*, under any court's reading, contemplates constitutional scrutiny of mail-voting regulations if voters are "'absolutely prohibited from exercising the franchise' through any other method—including in-person voting." RNC Pet. 18 (quoting *McDonald*, 394 U.S. at 809). Indeed, this Court later explained that the "disposition of the claims in *McDonald* rested on failure of proof" that the challenged statute prohibited the plaintiffs from voting, rather than on some broad

exemption of absentee voting from the protections of federal law. *O'Brien v. Skinner*, 414 U.S. 524, 529 (1974). When plaintiffs presented evidence of a burden on their right to vote in a later case challenging an absentee voting restriction, this Court held the restriction unconstitutional. *See id*. at 530.

The same is true here. Any voter who does not receive notice of a dating error with sufficient time to vote in person—either because their mail ballot arrived shortly before the deadline, or county officials did not review the ballot envelope for defects before election day—will be prohibited from exercising the franchise through any other method. *See* App.35a–36a. That also distinguishes this case from the Seventh Circuit's decision in *Common Cause Indiana v. Lawson*, where "[t]he district court did not find that anyone entitled to vote in Indiana would be unable to cast an effective ballot by acting ahead of the deadline or, if necessary, voting in person on November 3." 977 F.3d at 665.

3. ***Anderson-Burdick*** always requires hard judgments—weighing the burden of the challenged law against the state's asserted interests.

Finally, Petitioners insist that the Third Circuit should have applied rational basis review because the date requirement is only minimally burdensome. But circuit courts have uniformly refused to adopt this approach because rational basis review is *never* the appropriate standard when *Anderson-Burdick*'s balancing test is triggered. Again, Petitioners fail to identify

a divide among lower courts that warrants this Court's attention.

1. This Court's precedent straightforwardly requires something more than rational basis review when a law even minimally burdens the right to vote. Under traditional rational basis review, "a law will be upheld 'if there is any reasonably conceivable state of facts that could provide a rational basis' for its enactment." *Free Speech Coal.*, 606 U.S. at 471 (quoting *FCC v. Beach Comms., Inc.*, 508 U.S. 307, 313 (1993)). And courts may "supplant the precise interests put forward by the State with other suppositions." *Edenfield v. Fane*, 507 U.S. 761, 768 (1993). There is also no balancing involved—rather, "it suffices if the law could be thought to further a legitimate governmental goal, without reference to whether it does so at an inordinate cost." *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989).

Anderson-Burdick necessarily requires more. In *Burdick*, the Court distinguished traditional rational basis in at least two ways by instructing courts to "*weigh*" an election regulation's burdens against "the *precise interests* put forward by the state." 504 U.S. at 434 (emphasis added). *Crawford* reinforces this approach, explaining that "*[h]owever slight* [a] burden may appear . . . it must be justified by relevant and legitimate state interests." 553 U.S. at 191 (emphasis added); *see also id.* at 204 (Scalia, J., concurring) (similarly acknowledging that Indiana's voter ID law could be allowed only because "the burden at issue [was] minimal *and justified*" (emphasis added)).

To be sure, *Anderson-Burdick* does not "require elaborate, empirical verification of the weightiness of the State's asserted justifications." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). But nothing in *Timmons* prohibits courts from crediting unrebutted record evidence—including admissions from all 67 county election administrators, CA3.Supp.App.Vol.II.404–05, 409–11—that the challenged regulation *does not* advance any state interest. This record evidence simply informed the "hard judgment" *Anderson-Burdick* instructed the Third Circuit to make. *See Anderson*, 460 U.S. at 789–90. For that reason, Petitioners' repeated objection that the Third Circuit held them to an improper standard of proof to substantiate the interests they advanced is misplaced. *See, e.g.*, RNC Pet. 28. The record was developed and the evidence was clear—it just contradicted Petitioners' position: the Commonwealth's election officials admitted the date requirement does not advance any election administration or fraud detection interest. *See supra* Arg. § 1(B)(1). The Third Circuit was right not to ignore the record.

2. The Third Circuit had the right measure of this Court's precedent. It clearly articulated the key distinctions between rational basis review and *Anderson-Burdick*, explaining that "rational basis review . . . does not call for the balancing that lies at the core of *Anderson-Burdick*." App.41a. In so doing, it joined the Ninth and Second Circuits, both of which have squarely rejected identical arguments that *Anderson-Burdick* review of minimally burdensome regulations mirrors rational basis. *Tedards*, 951 F.3d at

1066 ("[T]he burdening of the right to vote always triggers a higher level of scrutiny than rational basis review."); *Price*, 540 F.3d at 108 (rejecting state defendants' argument "that pure rational basis review should be utilized" when reviewing an election regulation). As far as Respondents are aware, only these three circuits have squarely addressed the relationship between *Anderson-Burdick* review and rational basis—and not one has dubbed them equal.

Petitioners contend that the First, Fourth, Fifth, Sixth, Eighth, and Eleventh Circuits all agree that minimally burdensome laws receive rational basis review.[5] They are wrong on all counts.

For one, the First, Fourth, Fifth, and Eleventh Circuit cases Petitioners cite do not apply rational basis. Each court carefully assessed the state's asserted interests and weighed them against burdens on the right to vote (which, in each case, were deemed minimal). *See, e.g.*, *Marcellus v. Va. State Bd. of Elections*, 849 F.3d 169, 180 (4th Cir. 2017) (upholding challenged law only after determining that its "minimal" burdens were "outweighed by the important state interests advanced by the law"); *Libertarian Party of Va.*

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[5] The Attorney General also cites the Seventh Circuit's decision in *Luft v. Evers*, 963 F.3d 665 (7th Cir. 2020). But the section of the decision they cite addresses a *disparate treatment* claim, and it thus does not involve the *Anderson-Burdick* framework at all. *See id.* at 677; Commw. Pet. 21. Additionally, the Seventh Circuit found that a provision of Wisconsin law allowing voters to use unexpired student IDs at the polls—but not expired student IDs—was unconstitutional even under rational basis review.

v. Alcorn, 826 F.3d 708, 716 (4th Cir. 2016) (explaining *Anderson-Burdick* review "requires 'hard judgments'—it does not dictate 'automatic' results" (quoting *Anderson*, 460 U.S. at 789)); *Vote.org*, 39 F.4th at 308 (reciting the *Anderson-Burdick* "balancing test" as the governing framework but concluding that the challenged requirement advanced two state interests and justified a burden it characterized as "very slight"); *Polelle v. Fla. Sec'y of State*, 131 F.4th 1201, 1240 (11th Cir. 2025) ("Florida's interests . . . outweigh the minimal burdens that Florida's closed-primary system imposes on Polelle's First and Fourteenth Amendment rights."); *Cowen v. Sec'y of State of Ga.*, 22 F.4th 1227, 1236 (11th Cir. 2022) ("[T]he Secretary's stated interest sufficiently justifies this distinction."); *Barr v. Galvin*, 626 F.3d 99, 111 (1st Cir. 2010) (weighing the "legitimate interest" the Secretary advanced against a "modest burden" on ballot access); *see also Democratic Exec. Comm. of Fla.*, 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."); *Pisano*, 743 F.3d at 935 (even where plaintiffs did not show that the challenged regulations "burden[ed] them in any meaningful way," the court must "balance the character and magnitude of the burdens imposed against the extent to which the regulations advance the state's interests" and the "asserted regulatory interests" must be "sufficiently weighty to justify the limitation imposed" (quotation omitted)). Using generalized descriptors like "rational" or "reasonable" to describe the state's interest does not mean that these courts eschewed *Anderson-*

Burdick in favor of rational basis. Whatever their precise terminology, each court performed the careful balancing *Anderson-Burdick* requires.

As for the Sixth and the Eighth Circuits, Petitioners *at most* identify intra-circuit splits. Petitioners cite dicta from *Mays v. LaRose*, 951 F.3d 775 (6th Cir. 2020)—a case in which the court found a more-than-minimal burden and did not apply rational basis at all. *Id.* at 786; *see* RNC Pet. 21. But in *Obama for America v. Husted*, the same court made clear its holding that "a straightforward rational basis standard of review should be used" *only* when "a plaintiff alleges only that a state treated him or her differently than similarly situated voters, *without a corresponding burden on the fundamental right to vote*," 697 F.3d at 429 (emphasis added). *Obama for America* thus makes clear that even minimally burdensome laws receive *Anderson-Burdick* review, and to the extent dicta in *Mayes* suggests otherwise, that is a matter for the Sixth Circuit to resolve internally.

Petitioners themselves illustrate that the Eighth Circuit is internally divided on whether rational basis applies to minimally burdensome laws, with each set of Petitioners citing different cases to place the circuit on opposite sides of the "split" they describe. *Compare* RNC Pet. 21 (citing *Org. for Black Struggle v. Ash-*

croft, 978 F.3d 603, 608 (8th Cir. 2020) (applying rational basis to an absentee ballot receipt deadline)),[6] *with* Commw. Pet. 22 (discussing *SD Voice v. Noem*, 60 F.4th 1071, 1075, 1080, 1082 (8th Cir. 2023) (applying *Anderson-Burdick* and invalidating a filing deadline for ballot initiative petitions because the interests the state advanced did not justify the law's "less than severe" burdens)).

Any internal conflict within these circuits should be resolved by those courts themselves. Stephen M. Shapiro, et al., Supreme Court Practice 254 (10th ed. 2013) ("Ordinarily, a conflict between decisions rendered by different panels by the same court of appeals is not a sufficient basis for granting a writ of certiorari." (citing *Davis v. United States*, 417 U.S. 333, 340 (1974))); *Joseph v. United States*, 574 U.S. 1038, 135 S. Ct. 705, 707 (2014) (Kagan, J., concurring) ("[W]e usually allow the courts of appeals to clean up intra-circuit divisions on their own[.]").

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[6] *Organization for Black Struggle v. Ashcroft* also suffers a fatal flaw. Despite reciting the rule that *Anderson-Burdick* should have governed the analysis, it deployed rational basis review based on the Seventh Circuit's analysis from *Common Cause Indiana v. Lawson*—which, as discussed previously, did not apply *Anderson-Burdick* at all. An analytical lapse, but not one that requires this Court's intervention.

B. The Third Circuit properly assessed the date requirement's burden.

Petitioners also take issue with how the Third Circuit applied the *Anderson-Burdick* framework. Petitioners object that the court should not have considered any "downstream consequences" when assessing the right to vote. And to gin up yet another purported circuit split, Petitioners contend the Third Circuit's decision conflicts with cases from the Fifth, Eighth, Ninth, and Eleventh Circuits that have "refused to consider the *consequence* of noncompliance when determining the challenged rule's burden on voters." RNC Pet. 22–23. Again, Petitioners misrepresent these cases, which hold only that a regulation's burden is not automatically deemed *severe* when it may result in ballots being rejected. That is irrelevant here because the Third Circuit also did not find the date requirement's burden severe. There is thus no reason for this Court to intervene.

1. This Court has specifically declined to establish "any litmus test for measuring the severity of a burden that a state law imposes on . . . an individual voter[.]" *Crawford*, 553 U.S. at 191. The Third Circuit thus canvassed precedent and identified five "non-exhaustive considerations that bear on [the] inquiry," just one of which is the "impacts of the voting law[.]" App.33a–34a. It then determined that the date requirement imposes a minimal burden on the right to vote in part because it has disqualified thousands of ballots in recent elections. App.34a.

That analysis comes directly from *Anderson* itself. In *Anderson*, this Court highlighted that the deadline

for independent candidates to declare their candidacy "may have [had] a substantial *impact* on independent-minded voters," for it might have prevented such voters from coalescing around an independent candidate later in the election cycle. 460 U.S. at 790. Based on this assessment of the burden, the Court determined that "minimal" state interests could not justify the "substantial" potential impacts on independent voters. *Id.* at 790, 806.

2. The Third Circuit's ruling that the date requirement minimally burdens the right to vote does not create a conflict with any other circuit. Not one of the cases Petitioners cite holds that courts must ignore a law's impacts when assessing whether, and to what extent, that law burdens voters. Rather, the Fifth, Eighth, Ninth, and Eleventh Circuits have held only that they will not deem a law *severely* burdensome, thereby triggering strict scrutiny, solely because it may prompt the state to discard ballots. *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 236 n.33 (5th Cir. 2020) ("If we were to find that a burden is *severe* based solely on a plaintiff's assertion that he or she might be disenfranchised, our Fourteenth Amendment analysis of voting laws would risk collapsing into standing analysis[.]" (emphasis added)); *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*." (emphasis added)); *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1188 (9th Cir. 2021) ("every voting prerequisite would impose the same burden," and be subject to strict scrutiny, "[i]f the burden imposed by a challenged law

were measured by the consequence of noncompliance"); *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 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*." (emphasis added)).

The Third Circuit did not hold otherwise. It merely recognized, as have the Sixth and Tenth Circuits, that *quantifiable* evidence of widespread disenfranchisement is probative of the extent of a law's burdens on the right to vote. *See Fish v. Schwab*, 957 F.3d 1105, 1127–28 (10th Cir. 2020) (applying heightened scrutiny to Kansas's documentary-proof-of-citizenship requirement because the "significant burden *quantified by* the 31,089 voters who had their registration applications canceled or suspended requires us to increase the 'rigorousness of our inquiry'" (emphasis added)); *Obama for Am.*, 697 F.3d at 431 ("Plaintiffs introduced extensive evidence that a significant number of Ohio voters will in fact be precluded from voting without the additional three days of in-person early voting."). If compliance with the date requirement imposed no burden at all, one would not expect *thousands* of Pennsylvanians to be affected. But the record here shows that nearly 15,000 ballots have been discarded in the last two federal general elections. App.34a. This evidence, the Third Circuit held, was enough to show that the law was at least *minimally* burdensome. As a result, the Commonwealth needed to come forward with at least some legitimate justification for the rule—states cannot simply discard thousands of ballots for no reason at all. That holding is perfectly in line with the unremarkable proposition,

endorsed by the Fifth, Eighth, Ninth, and Eleventh Circuits, that the mere possibility of disenfranchisement is not enough to establish a severe burden on the right to vote.

III. The Pennsylvania Supreme Court's decision in *Center for Coalfield Justice* does not warrant a GVR.

The Commonwealth alternatively asks this Court to GVR the Third Circuit's ruling in light of *Center for Coalfield Justice v. Washington County Board of Elections*, 343 A.3d 1178 (Pa. 2025). That ask is meritless. GVR is "*potentially* appropriate" only "[w]here intervening developments . . . reveal a *reasonable probability* that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, *and* where it appears that such a redetermination may determine the ultimate outcome of the litigation." *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) (emphases added). The Third Circuit had the opportunity to consider the impact of *Coalfield Justice* on the issues presented here, and the court declined panel and *en banc* rehearing on that basis. And rightly so—nothing in *Coalfield Justice* casts doubt on the panel's analysis.

1. *Coalfield Justice* addressed a narrow set of circumstances: where a county board (1) opted to conduct pre-election-day review of mail-in ballot return packets, (2) "segregated electors' mail-in ballot return packets for disqualifying errors," but then (3) issued misleading notifications to those same electors through SURE, suggesting that their ballots would likely be counted. *Coalfield Justice*, 343 A.3d at 1183–

86, 1216. As *every Justice* recognized, if a county board "is not segregating ballots," it is *not* required "to notify the elector of such defect or otherwise reflect the disqualification of the mail-in ballot when it inputs a SURE code." *Id.* at 1220 n.57 (majority op.); *see also id.* at 1234 (Brobson, J., dissenting, joined by Wecht and Mundy, J.J.) ("Whether . . . a county board of elections must provide notice of a defective mail ballot . . . depends on whether the county board of elections has implemented a procedure . . . to inspect and segregate defective ballots prior to the pre-canvass and canvass."). In the counties that do not undertake this preliminary analysis, the decision changes nothing: voters who submit mail ballots with missing or incorrect dates will not have another opportunity to cast an effective ballot.

2. Even if the Commonwealth were right that *Coalfield Justice* requires all counties to offer voters advance notice and opportunity to cure dating errors, it is still improbable that this change would "determine the ultimate outcome of the litigation." *Lawrence*, 516 U.S. at 167. The Third Circuit's principal focus was the fact "that the date requirement can result in the rejection of a number of ballots sufficient to affect the composition of elected governing bodies." *See* App.35a & n.29. To be sure, the court noted an additional concern that voters "*potentially* ha[ve] no means to correct the deficiency and cast a valid ballot," App.35a (emphasis added). But it never suggested that fact was at all dispositive toward the outcome. Indeed, the Third Circuit confirmed as much when it denied the rehearing petitions, which were pending when *Coalfield Justice* issued, even as the

Commonwealth expressly urged rehearing on that basis. *See* Commw. Rule 28(j) Ltr. at 2, (3d Cir. Sept. 30, 2025), Dkt. No. 152-1; Commw. Pet. for Reh'g En Banc at 13–15, (3d Cir. Sep. 9, 2025), Dkt. No. 149; *see also* Pls.-Appellees' Resp. to Pets. for Reh'g at 13 n.2 (3rd Cir. Oct. 10, 2025), Dkt. No. 153.

IV. The Pennsylvania Supreme Court is poised to enjoin the date requirement on state constitutional grounds.

Finally, even if the Petitions raised cert-worthy questions for review, this case would be a poor vehicle to address them. As the RNC acknowledges, RNC Pet. 37, the Pennsylvania Supreme Court is currently considering a parallel challenge to the date requirement under the Pennsylvania Constitution's Free and Equal Elections Clause. *See Baxter v. Philadelphia Bd. of Elections*, 332 A.3d 1183 (Table) (Pa. 2025) (granting Petition for Allowance of Appeal). Like nearly every federal judge to consider the question, the Pennsylvania Supreme Court is likely to affirm the Commonwealth Court's ruling that the date requirement serves no legitimate state interest and therefore violates the Commonwealth's constitution.

If the Pennsylvania Supreme Court enjoins enforcement of the date requirement on an independent state law ground, then the only course for this Court will be to dismiss the petition as moot. *See generally Aikens v. California*, 406 U.S. 813 (1972) (dismissing writ of certiorari on question of federal constitutional

law after the California Supreme Court held the challenged law violated the state's constitution).[7]

CONCLUSION

The Court should deny the Petitions.

[7] Petitioners suggest that, in this circumstance, this Court should vacate the Third Circuit's decision under the *Munsingwear* doctrine. If the Pennsylvania Supreme Court enjoins enforcement of the date requirement before this Court rules on the petitions, Plaintiffs-Respondents request supplemental briefing before the Court decides whether *Munsingwear* applies.

Respectfully submitted,

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June 1, 2026