

No. 25-962, 25-967

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In the Supreme Court of the United States

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REPUBLICAN NATIONAL COMMITTEE, ET AL.,  
*Petitioners,*

v.

BETTE EAKIN, ET AL., *Respondents.*

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COMMONWEALTH OF PENNSYLVANIA,  
Petitioner

v.

BETTE EAKIN, ET AL., Respondents.

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ON PETITIONS FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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BRIEF IN OPPOSITION TO WRITS OF CERTIORARI

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## INTRODUCTION

The petition filed in this matter is premised on a fundamental misunderstanding of the scope and effect of the Pennsylvania Supreme Court's decision in *Coalfield Justice*. This misunderstanding undermines the basis of the Petitioner's argument. Although the relief required by *Coalfield Justice* provides certain voters with the opportunity to submit a provisional ballot, many hundreds or even thousands of Pennsylvania voters will still have their votes discounted over a minor error without any opportunity to correct the error.

The combination of the dramatic effect of an otherwise minor error on the ability to have an otherwise valid vote counted and the lack of any justification for the requirement, means that this case is particularly unsuited for evaluating the *Anderson-Burdick* standard. At a minimum, under any interpretation of the *Anderson-Burdick* framework, a practically meaningless paperwork error should not be sufficient to disregard an otherwise valid vote.

## ARGUMENT

### I. IMPACT OF COALFIELD JUSTICE

The petitioners correctly identify that heart of the Third Circuit's decision is that "[t]he panel understood Pennsylvania law to provide no remedy if a voter fails to comply with the date requirement when casting a mail-in ballot." According the to panel, "A . . . voter who fails to comply with the date requirement will not have his or her vote counted. Period." "That person's ballot will be

discounted— potentially without notice or any opportunity to correct the ballot.”

The petitioners correctly state that, after the panel decision, while their petition for rehearing *en banc* was pending, the Pennsylvania Supreme Court issued a decision in *Center for Coalfield Justice v. Washington Cnty. Bd. of Elections*, 343 A.3d 1178 (Pa. 2025). However, the petitioners are mistaken about the extent of the relief granted by *Coalfield Justice*.

*Coalfield Justice* was about the Washington County Board of Elections using the SURE system to affirmatively be misrepresent the status of returned mail-in ballots to voters thereby preventing them from learning that their vote would not be counted on election day. It was specifically related to defective mail-in ballots returned BEFORE election day and therefore early enough that notice would allow the affected voters to vote using a provisional ballot. *Id.* The focus of the Pennsylvania Supreme Court’s decision in *Coalfield Justice*, was requiring that the proper code was entered into the SURE system to make sure that voters who had returned defective ballots, in time to vote provisionally on election day could submit a provisional ballot. *Id.*

The relief ordered by the Pennsylvania Supreme Court in *Coalfield Justice* does nothing for the large number of voters whose mail-in ballots are received but not reviewed before 8:00 P.M. on election day. Pursuant to 25 P.S. § 3150.16(c), “a completed mail-in ballot must be received in the office of the county board of elections no later than eight o'clock P.M. on the day of the primary or election.”

8:00 P.M. is also the time that polls close on election day in Pennsylvania. In order to vote by provisional ballot, a voter must be in line at his or her polling place by 8:00 P.M. on election day. Therefore, if a voter does not learn of an error on their mail-in or absentee ballot before 8:00 P.M. on Election Day, the voter has no opportunity to file a provisional ballot.

Pursuant to *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), elections offices are permitted to use drop boxes to collect mail-in and absentee ballots. Because drop boxes are an extension of the elections office, voters are permitted to deposit mail-in and absentee ballots in drop boxes until 8:00 P.M. on election day. The postal service continues to return mail-in and absentee ballots to the election's office until 8:00 P.M. and voters continue to drop off their ballots directly to the office until 8:00 P.M.

Because mail-in and absentee ballots continue to be received right up to the 8:00 P.M. deadline, the process of reviewing, sorting, and entering the proper SURE codes for such ballots can take several hours after 8:00 P.M. in a county like Northampton and even longer in a large county like Philadelphia or Allegheny. No voter whose mail-in ballot, although received before 8:00 P.M., is not reviewed until after 8:00 P.M. will be notified of any error in time to file a provisional ballot. As a result, despite the decision in *Coalfield Justice*, many hundreds or even thousands of otherwise legitimate votes will still be discounted without notice or any opportunity to correct.

Although the decision in *Coalfield Justice*, reduces the damage caused by the date requirement by putting a

stop to active misinformation of voters about the status of their ballot, the votes of hundreds or thousands of individual Pennsylvanians will still not be counted because they will not receive notice until after the polls close. The petition should be denied because the reasoning of the lower court continues to apply to many Pennsylvania voters.

## II. *ANDERSON-BURDICK* FRAMEWORK

This case is particularly unsuited to evaluating the standard of review appropriate to voting rights cases. The current framework, referred to as, *Anderson-Burdick*, requires a weighing of the burden imposed on a voter's constitutional rights by a voting law or regulation against the State's legitimate interest in the law, thereby allowing a court to factor in both interests before reaching a final determination. *Burdick v. Takushi*, 504 U.S. 428 (1992). This case is particularly unsuited because if *Anderson-Burdick*, means anything at all, it means that the State should not be able to disenfranchise legitimate voters over a practically meaningless paperwork error. Under any level of scrutiny or test, the date requirement does not serve any legitimate interest sufficient to justify compete disenfranchisement.

Regardless of whether or not there is a date written on the outer envelope, the county knows exactly when voter applied for a mail in ballot, when the ballot was mailed to the voter, and when the ballot was returned to the County. The date the ballot was completed does not matter. Since 1968 in Pennsylvania, it has not mattered when the ballot was actually completed.

According to the decision below, the Commonwealth of Pennsylvania offered three possible interests in the date requirement. “The first proffered State interest is that the date requirement facilitates the orderly administration of elections.” “The second proffered interest is that the date requirement promotes solemnity and marks the casting of a vote as a serious and solemn act.” The final interest was in “fraud detection and deterrence.”

In all three cases, the court found that the date requirement did little or nothing to advance the proffered state interest. The date requirement actually works against the first claimed interest by making the administration of elections harder. There is also no evidence that, considering all of the other circumstances surrounding the completion of a mail-in ballot, that the date requirement adds any additional solemnity to the process.

In regard to the third proffered basis, the petitioners attempt to argue that *Commonwealth v. Mihaliak*, No. MJ-2202-CR-126-22 (Pa. Mag. Dist. Ct. 2022) demonstrates that the date requirement helped to detect fraud. The *Mihaliak* case was centered on an individual that fraudulently submitted a mail-in ballot for sent to her deceased mother. The individual wrote a date on the envelope that was after her mother death. However, in this case any fraud was prevented because the SURE system recognized that the ballot should not be counted because the voter was deceased.

The written date had nothing to do with preventing the vote from being counted. Even if the daughter wrote a date on the ballot before her Mother’s death, the vote would

not have counted because the voter was not alive on Election Day. The written date made it slightly easier for the state to investigate how the fraudulent ballot was submitted, but it made no difference in actually preventing the vote from counting.

The idea that a Pennsylvania voter should be completely denied a voice in an election because of the failure to write a practically meaningless date on the return envelope of a mail-in or absentee ballot seems to be the exact type of harm the *Anderson-Burdick* framework is intended to prevent. Under any reasonable interpretation of *Anderson-Burdick*, this date requirement should not be used to completely disenfranchise otherwise valid votes. Therefore, this case is particularly unsuited to clarification of the *Anderson-Burdick* framework, and the petition should be denied.

#### CONCLUSION

The petition should be denied and the long running dispute over disenfranchising otherwise qualified voters over a practically meaningless error should be allowed to come to a rest.

Respectfully Submitted,

*s/ Michael J. Vargo*

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