No. _____

In the Supreme Court of the United States

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

BETTE EAKIN, ET AL.,
Respondents

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Among other simple steps Pennsylvania voters take when casting mail-in ballots, they must sign *and date* a pre-printed declaration on a return envelope. 25 Pa. Stat. §§3146.6(a), 3150.16(a). "[F]or a voter with a functioning pen, sufficient ink, and average hand dexterity," complying with this instruction "should take less than five seconds." App.94a. (Bove, J., dissenting from the denial of *en banc*). Yet the Court of Appeals held that this *de minimis*, generally applicable requirement somehow violates the First and Fourteenth Amendments, purporting to apply this Court's *Anderson-Burdick* balancing test in reaching that conclusion. *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992). App.38a.

Over two forceful dissents, the Third Circuit narrowly denied rehearing *en banc*. App.90a. Both dissents noted that the Pennsylvania Supreme Court's intervening ruling in *Center for Coalfield Justice v. Washington County Board of Elections*, 343 A.3d 1178 (Pa. Sep. 26, 2025), fatally undercut the panel's central rationale. App.91a–92a (Phipps, J., dissenting from the denial of *en banc*); App.101a–102a (Bove, J., dissenting from the denial of *en banc*). And one dissent highlighted that the panel opinion raised "significant federalism concerns," misread binding precedent, and "deepened a Circuit split" over elevating scrutiny under *Anderson-Burdick*. App. 95a (Bove, J., dissenting from the denial of *en banc*). The question presented is:

Does Pennsylvania's requirement that mail-in voters provide a handwritten date when signing a preprinted declaration on a ballot return envelope violate the First or Fourteenth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING

Petitioner the Commonwealth of Pennsylvania, represented by and through its chief law officer, Attorney General David W. Sunday, Jr., was an intervenor-appellant in the Court of Appeals.

Respondents Bette Eakin, the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee, and AFT Pennsylvania were plaintiffs in the District Court and appellees in the Court of Appeals.

Respondents the Republican National Committee, the National Republican Congressional Committee, and the Republican Party of Pennsylvania were intervenor-defendants in the District Court and appellants in the Court of Appeals.

Respondents Adams County Board of Elections, Allegheny County Board of Elections, Beaver County Board of Elections, Bedford County Board of Elections, Berks County Board of Elections, Blair County Board of Elections, Bradford County Board of Elections, Bucks County Board of Elections, Butler County Board of Elections, Cambria County Board of Elections, Cameron County Board of Elections, Carbon County Board of Elections, Centre County Board of Elections, Chester County Board of Elections, Clarion County Board of Elections, Clearfield County Board of Elections, Clinton County Board of Elections, Columbia County Board of Elections, Crawford County Board of Elections, Cumberland County Board of Elections, Fulton County Board of Elections, Huntingdon County Board of Elections, Indiana County Board of Elections, Dauphin County Board of Elections, Delaware County Board of Elections, Elk County Board of Elections, Fayette County Board of Elections, Forest County Board of Elections, Franklin County Board of Elections, Jefferson County Board of Elections, Juniata County Board

of Elections, Lackawanna County Board of Elections, Lancaster County Board of Elections, Lawrence County Board of Elections, Lebanon County Board of Elections, Lehigh County Board of Elections, Luzerne County Board of Elections, Lycoming County Board of Elections, McKean County Board of Elections, Mercer County Board of Elections, Mifflin County Board of Elections, Monroe County Board of Elections, Montgomery County Board of Elections, Montour County Board of Elections, Northampton County Board of Elections, Northumberland County Board of Elections, Perry County Board of Elections, Pike County Board of Elections, Potter County Board of Elections, Snyder County Board of Elections, Somerset County Board of Elections, Sullivan County Board of Elections, Tioga County Board of Elections, Union County Board of Elections, Venango County Board of Elections, Warren County Board of Elections, Wayne County Board of Elections, Westmoreland County Board of Elections, Wyoming County Board of Elections, Erie County Board of Elections, Greene County Board of Elections, Philadelphia County Board of Elections, Schuylkill County Board of Elections, Susquehanna County Board of Elections, York County Board of Elections, Armstrong County Board of Elections, and Washington County Board of Elections were defendants in the District Court and appellees in the Court of Appeals.

RELATED PROCEEDINGS

United States District Court for the Western District of Pennsylvania:

> *Bette Eakin, et al. v. Adams County Board of Elections, et al.*, No. 1:22-CV-00340 (judgment entered on April 1, 2025).

United States Court of Appeals for the Third Circuit:

> *Bette Eakin, et al. v. Adams County Board of Elections, et al.*, No. 25-1644 (judgment entered on August 26, 2025).

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* The Third Circuit issued an amended order on this date to include Judge Bove's dissent from the denial of *en banc* review. *See* App.90a n.1.

For ease of reference, this Petition hereinafter cites the dissents from the denial of *en banc* review as (Phipps, J., dissenting) and (Bove, J., dissenting).

TABLE OF AUTHORITIES

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INTRODUCTION

Pennsylvania's Election Code requires a voter submitting a mail-in ballot to handwrite the date in designated fields next to their signature when filling out the pre-printed declaration on a ballot return envelope. *See* 25 Pa. Stat. §§3146.6(a); 3150.16(a). The voter presumably has a writing implement handy, having just signed their name—a statutory mandate not in dispute here. All the voter must then do is move the pen a few inches and write, at most, six digits. The Court of Appeals concluded that requiring voters to complete this simple task violates the First and Fourteenth Amendments.

To reach this counterintuitive result, the Court of Appeals disfigured this Court's *Anderson-Burdick* framework.[1] Its intemperate application of that paradigm has "the potential to cause election chaos in Pennsylvania and beyond." App.98a (Bove, J., dissenting).

To avert this chaos, this Court should grant certiorari, vacate the opinion below, and remand (GVR) for reconsideration in light of *Center for Coalfield Justice v. Washington County Board of Elections*, 343 A.3d 1178 (Pa. 2025) ("*Coalfield Justice*"), issued just weeks after the Court of Appeals' opinion. There, the Pennsylvania Supreme Court clarified that mail-in voters are entitled to cast provisional ballots when they make simple mistakes on their mail ballots—including the failure to provide a date. *Id.* at 1219–21.

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[1] *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992). The first step of that framework requires careful examination of the "character and magnitude" of the claimed constitutional injury. *Anderson*, 460 U.S. at 789; *Burdick*, 504 U.S. at 434. Step two then requires courts to weigh the burden the State's rule imposes against the interests the State contends justify that burden. *Ibid.*

Because the Third Circuit preempted the Pennsylvania Supreme Court's imminent guidance, however, it incorrectly construed state law to provide a voter with no recourse when they fail to date their mail-in ballot. The Third Circuit's mistaken understanding of Pennsylvania law was central to its conclusion that the date requirement is unconstitutional under *Anderson-Burdick*. App.36a ("A Pennsylvania mail-in voter who fails to comply with the date requirement will not have his or her vote counted. Period."); App.34a ("Pennsylvania county election boards have no obligation under the Election Code to notify voters if their ballots are rejected for failure to comply with the date requirement."). So, there is at least a reasonable probability that the result below would have been different if the panel had the benefit of *Coalfield Justice*.

This Court has a "'longstanding practice' of vacating a court of appeals' decision based on a construction of state law that appears to contradict a recent decision of the highest state court." *Lords Landing Vill. Condo. Council of Unit Owners v. Continental Ins. Co.*, 520 U.S. 893, 896 (1997) (*per curiam*). It should employ that practice here.

If the Court does not issue a GVR, it should resolve the question presented. As the Third Circuit acknowledged, *see* App.41a n.35, its decision deepens a circuit split over the second step of *Anderson-Burdick*, which has persisted since this Court's fractured ruling in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008) (plurality). While some courts (the First, Second, Fourth, Fifth, Seventh, Ninth, and Eleventh Circuits) apply rational basis review to neutral ballot-casting rules amounting to the "usual burdens of voting," *id.* at 198, others (the Sixth, Eighth, Tenth, and now Third Circuits) elevate their scrutiny for all *Anderson-Burdick* claims. And underlying this 7-4 split

are more fundamental questions regarding how to identify and define burdens on voting rights in the first place.

The implausibility of the result below demonstrates that post-*Crawford* divergence over the proper application of *Anderson-Burdick* is no longer tenable. Absent a GVR, this Court should grant plenary review to clarify the role federal courts play when reviewing state voting regulations and the proper analysis for *de minimis* or otherwise "usual" burdens. This case presents an excellent vehicle for doing so.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 149 F.4th 291 and reproduced in the appendix at 1a–51a. The dissenting opinions from the denial of rehearing *en banc* are reported at 158 F.4th 185 and reproduced in the appendix at 91a–115a. The District Court's opinion is reported at 775 F.Supp.3d 903 and reproduced in the appendix at 52a–77a.

STATEMENT OF JURISDICTION

The Court of Appeals entered its judgment on August 26, 2025, and denied rehearing *en banc* on October 14, 2025. On December 5, 2025, Justice Alito extended the time to file a petition for a writ of certiorari to and including February 11, 2026. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First and Fourteenth Amendments to the United States Constitution and the relevant provisions of Pennsylvania's Election Code are reproduced in the appendix at 116a–119a.

STATEMENT OF THE CASE

1. Act 77 (2019), amended Pennsylvania's Election Code to permit universal no-excuse mail-in voting. 25 Pa. Stat. §§3146.1; 3150.11. Its reforms were "the result of years of careful consideration and debate[.]" *McLinko v. Pennsylvania Dep't of State*, 278 A.3d 539, 543 (Pa. 2022). Act 77's provisions expanding access to the ballot were "not written to benefit one party or the other, or one candidate or single election." *Ibid.* (citation omitted). The legislation was thus "enormously popular *** on both sides of the isle," receiving overwhelming Republican support in the General Assembly before being signed by a Democratic governor. *Ibid.*

Notably, Act 77's grand bargain included a non-severability clause. It commands that key provisions, including those that expand mail-in voting, are "void" if any of them, or their "application to any person or circumstance is held invalid." *See* Act of October 31, 2019, P.L. 552, No. 77 § 11. Thus, challenges to Act 77 inherently imperil no-excuse mail-in voting for all Pennsylvanians.

Act 77 outlines the steps a voter must follow to cast a valid mail-in ballot. A mail-in voter places their marked ballot in a secrecy envelope, which goes inside an outer return envelope. They must then "fill out, date and sign" a pre-printed declaration on the outer envelope and send the completed return packet to a county board of elections. *See* 25 Pa. Stat. §§3146.6; 3150.16. Since 2019, the simple requirement that voters write dates next to their signatures[2] has faced a bevy of chal-

[2] Throughout this litigation, the Commonwealth has insisted that conceiving of the handwritten date as an independent requirement, as opposed to a *component* of the larger *declaration*

lenges under various legal theories. *See, e.g.*, *Pennsylvania State Conference of NAACP Branches v. Secretary Commonwealth of Pa.*, 97 F.4th 120 (3d Cir. 2024), *cert. denied*, No. 24–363, 145 S. Ct. 1125 (Jan. 21, 2025) (*Pennsylvania NAACP*);[3] *Baxter v. Philadelphia Bd. of Elections*, 332 A.3d 1183 (Pa. Jan. 17, 2025) (*per curiam*) (granting allocatur).[4]

2. In 2022, an individual voter—Bette Eakin—and three organizations (the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee, and the American Federation of Teachers – Pennsylvania) sued all 67 county boards of election in the Western District of Pennsylvania. App.52a–54a. They asserted, *inter alia*, that the date requirement violates the First and Fourteenth Amendments to the U.S. Constitution. *Ibid*; *but see* App.103a (Bove, J., dissenting) ("From the outset *** Plaintiffs made only vague references to the 'right to vote' and the First and Fourteenth Amendments.").

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requirement, is erroneous under familiar rules of statutory construction and *Burdick* itself. *Abramski v. United States*, 573 U.S. 169, 179 (2014) ("[W]e interpret the relevant words not in a vacuum, but with reference to the statutory context."). That this Petition nonetheless alludes to the "date requirement" for ease and to mirror the opinions below should not be construed as conceding or abandoning those arguments.

[3] In *Pennsylvania NAACP*, the Third Circuit rejected a challenge arising under the materiality provision of the Civil Rights Act of 1964. *See* 52 U.S.C. §10101(a)(2)(B). Prior to that ruling, the Third Circuit ruled that enforcing the date requirement violated federal law. *Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022). But this Court vacated on mootness grounds. *Ritter v. Migliori*, 143 S. Ct. 297 (2022).

[4] The Pennsylvania Supreme Court heard oral argument in *Baxter* in September 2025. It is pending disposition as of the date of this Petition. That suit asks, in part, whether enforcing the date requirement violates the state constitution.

Ultimately, the District Court entered judgment against the county boards, enjoining enforcement of the date requirement. It observed that "Plaintiffs ground[ed] their claim in the First Amendment," and reasoned that the date requirement "burdens the fundamental right to vote by disenfranchising some voters for defects in the envelope holding their ballots." App. 63a–64a, 65a.[5] In the District Court's view, there was "no evidence that the date requirement serves any state interest[.]" App.76a.

The Republican National Committee, the National Republican Congressional Committee, and the Republican Party of Pennsylvania—intervenor-defendants in the District Court—timely appealed.

3. The Commonwealth of Pennsylvania, by and through its Attorney General, intervened in the Third Circuit to defend the constitutionality of Pennsylvania's Election Code. App.22a.

4. The panel affirmed. The panel engaged in *Anderson-Burdick* balancing and concluded that the date requirement imposed a "minimal"—but nevertheless unjustified—"burden on voting rights *** in part, due to its downstream consequences." App.36a–37a.

a. The panel understood Pennsylvania law to provide no remedy if a voter fails to comply with the date requirement when casting a mail-in ballot. App.34a ("A *** voter who fails to comply with the date requirement will not have his or her vote counted. Period."); *see also* App.31a ("[T]hat person's ballot will be discounted—potentially without notice or any opportunity to correct the ballot."). The panel therefore rejected the notion that the burden of handwriting a date is *de minimis*

[5] The District Court's opinion did not reference the Fourteenth Amendment.

and, accordingly, beyond the scope of *Anderson-Burdick*. App.35a–38a. According to the panel, a *de minimis* burden is one "that has *** a speculative impact on and connection to voting rights." App.35a. Because the consequence of failing to handwrite the date is "not speculative," the burden could not be *de minimis*. App.36a.

b. The panel opined that enforcement of the provision implicated the "right to vote," which it seemingly located in the First Amendment. App.36a. It thus acknowledged a "minimal" burden at *Anderson-Burdick*'s first step because failing to provide a handwritten date results in that mail-in ballot not counting. App.37a–38a. The panel then determined that, for a minimal burden, the appropriate level of scrutiny was something more rigorous than rational basis review. App.39a.

c. The panel acknowledged a disagreement among the Circuits as to the appropriate level of scrutiny under *Anderson-Burdick*'s second step. App.41a n.35. While some apply rational basis review for minimal burdens, the panel "declined to adopt that approach," and held that the appropriate level of scrutiny was something more rigorous. *Ibid.*; App.39a.

d. Notably, while the panel affirmed the conclusion that the date requirement does not pass constitutional muster, it did so on alternative grounds. Whereas the District Court discerned "no evidence that the date requirement serves *any* state interest" whatsoever, App.76a (emphasis added), the panel disagreed. It recognized state interests in protecting against voting fraud and communicating solemnity to a mail-in voter. *See* App.44a–48a.

Nevertheless, the panel concluded that the proffered state interests were insufficient to justify the relevant burden. App.38a. The Commonwealth argued

that signing and dating something is a commonly understood act of finality that helps signal to the mail-in voter that they have completed all necessary steps. The panel doubted whether the date added any "incremental solemnity," which in its view was "already accomplished" by the signature requirement. App.45a. The panel further rejected the notion that the handwritten date could serve any interest in the receipt or tabulation of ballots, pointing to the SURE System's capabilities,[6] and current administrative practices in most counties. *See* App.43a.

The Commonwealth also asserted its interest in the prevention and prosecution of voter fraud. To that end, it pointed to a fraud prosecution in Lancaster County in which a handwritten date on the outer return envelope helped prove that a woman cast her mother's ballot *after* her mother had died. *See* App.46a–47a (citing *Commonwealth v. Mihaliak*, No. MJ–2202–CR126–22 (Pa. Mag. Dist. Ct. 2022)). The panel conceded that *Mihaliak* "demonstrates that the date requirement can narrowly advance the Commonwealth's interest in fraud detection and deterrence." *Ibid.* However, because the handwritten date would only be relevant in the "rare instance" of a "hapless fraudster"—a "fact pattern" that had "manifested itself only once" in Act 77's six-year life—it could not justify the enforcement of the date requirement writ large. App.47a–48a.

5. The Commonwealth sought rehearing *en banc*. While its petition was pending, the Pennsylvania Supreme Court decided *Coalfield Justice*, clarifying that

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[6] The Statewide Uniform Registry of Electors (SURE) System is an integrated computerized database of all registered voters, which county boards use to track mail-in ballots. *See* App.15a n.9 (citing 25 Pa. Stat. §3150.1).

as a matter of state law, county boards must alert voters when they submit facially defective mail-in ballots—specifically including undated mail-in ballots—and permit them to cast provisional ballots. *Coalfield Justice*, 343 A.3d at 1216.

6. The Court of Appeals narrowly denied rehearing *en banc* by a 7-6 vote. App.87a–90a. Judges Hardiman, Bibas, Porter, Matey, Phipps, and Bove would have granted the petition. Judges Phipps and Bove authored dissenting opinions, both of which were joined by the remaining dissenters. App.91a–115a.

a. Judge Phipps noted that the Pennsylvania Supreme Court's decision in *Coalfield Justice*—issued four weeks after the panel opinion—neutralized "two of the key rationales for th[e] Court's decision: the lack of notice of a rejected mail-in ballot and the opportunity to correct such a rejected ballot." App.92a.[7] In his view, this development alone necessitated rehearing. *Ibid.*

Additionally, Judge Phipps expressed skepticism at the panel's refusal to treat the date requirement as imposing a *de minimis* burden. *Ibid.* And he suggested that the panel "substantially undervalued the Commonwealth's identified interests" in the date requirement. *Ibid.*

b. Judge Bove noted that complying with the date requirement "should take less than five seconds." App.94a. And he expressed incredulity at the idea that those five seconds "violate the First and Fourteenth Amendments." App.94a–95a.

Judge Bove then reiterated a persistent criticism of *Anderson-Burdick*: that it invites judicial usurpation of a role constitutionally assigned to state legislatures.

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[7] *Coalfield Justice* highlighted that the SURE System, which all counties must use, sends out automatic notifications to voters who make mistakes. *See* 343 A.3d at 1212–14.

App.94a–96a (citing, *inter alia*, *Daunt v. Benson*, 999 F.3d 299, 323 (6th Cir. 2021) (Readler, J., concurring)). He called the panel opinion "particularly invasive" because it marginalized that test's *de minimis* exception, over-scrutinized the Commonwealth's proffered interests, and haphazardly broadened the categories of claims that pass *Anderson-Burdick* step one. App.97a–109a (citing *Lichtenstein v. Hargett*, 83 F.4th 575, 590 (6th Cir. 2023)). Judge Bove also echoed Judge Phipps's observation that, following *Coalfield Justice*, "there is no longer any basis for the suggestion that a Pennsylvania voter who submits a defective mail-in ballot will be disenfranchised without notice." App.101a.

Judge Bove then criticized the panel's framing of the appeal around the "right to vote" when the challengers "did not allege the types of speech, association, equal protection, or due process claims that could arguably support *Anderson-Burdick* balancing." App.103a. The panel's invocation of "downstream consequences," he explained, operated as a "backdoor to the flawed *** theory" that voters are disenfranchised when defective ballots do not count. App.105a. And that theory conflicted with the reasoning of yet another Third Circuit case. *Ibid.* (citing *Pa. NAACP*, 97 F.4th at 133 ("[W]e know no authority that the right to vote encompasses the right to have a ballot counted that is defective under state law.")).

Writing on a clean slate, Judge Bove would have dismissed the suit under Rule 12(b)(6) based upon its "vague references to the First and Fourteenth Amendments." App.106a. Assuming a proper claim, however, he would have applied rational basis review. *Ibid.* Failing to do so, he contended, deepened a circuit split regarding the continued validity of this Court's holding in *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969). App.106a–108a.

After briefly touching on the various state interests and how they had been "discounted," Judge Bove urged the Commonwealth to look to this Court "for assistance in restoring the state-federal equilibrium" in constitutional election litigation. App.112a–115a.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD VACATE THE JUDGMENT AND REMAND FOR FURTHER PROCEEDINGS IN LIGHT OF *COALFIELD JUSTICE*.

Because the Court of Appeals "evaluated the prior scheme for mail-in voting, not the one now required by *Coalfield Justice*," this Court should GVR. *See* App.92a (Phipps, J., dissenting); App.101a–102a (Bove, J., dissenting).

This Court has a "'longstanding practice' of vacating a court of appeals' decision based on a construction of state law that appears to contradict a recent decision of the highest state court." *Lords Landing*, 520 U.S. at 896 (*per curiam*) (quoting *Thomas v. American Home Prod., Inc.*, 519 U.S. 913, 914 (1996) (Scalia, J., concurring)). After all, "state courts are the ultimate expositors of state law[.]" *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975).

Federal courts, by contrast, "often get state law wrong because federal judges don't know state law and are not the ultimate decisionmakers on it." Guido Calabresi, *Federal and State Courts: Restoring a Workable Balance*, 78 N.Y.U. L. REV. 1293, 1300 (2003). When that happens, it creates the potential for "serious disruption *** of state government or needless friction between state and federal authorities." *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 28 (1959); *Allstate Ins. Co. v. Menards, Inc.*, 285 F.3d 630, 638 (7th Cir. 2002) ("missteps by federal courts" on

state law questions can produce "disastrous results"). As Justice Scalia noted, the origins of this Court's GVR practice are linked to the "special deference owed to state law and state courts in our system of federalism." *Youngblood v. West Virginia*, 547 U.S. 867, 874 (2006) (*per curiam*) (Scalia, J., dissenting) (cleaned up).

This case is a prime candidate for a GVR. Pennsylvania courts were actively deciding highly relevant questions about the operation of Pennsylvania's Election Code during the pendency of this case. Yet the federal courts exhibited no deference—special or otherwise—to the state judiciary.

The Third Circuit did not acknowledge, let alone "consider[] and reject[]" the effect of recent and on-point Pennsylvania Supreme Court decisions that dismantle its core rationale. *Cf. Lords Landing*, 520 U.S. at 897; App.91a (Phipps, J., dissenting) (calling notice and cure "[c]entral to [the Court's] analysis"); App.101a (Bove, J., dissenting) (state court developments "allay[ed] the [Court's] main concerns"). After *Coalfield Justice*, the Third Circuit's understanding of state election law is woefully incomplete, if not outright wrong.

Such circumstances warrant a GVR under this Court's longstanding practice. *See, e.g.*, *Arizona v. Gant*, 540 U.S. 963 (2003) (*per curiam*); *Nolan v. Transocean Air Lines*, 365 U.S. 293, 295–96 (1961) (*per curiam*); *Huddleston v. Dwyer*, 322 U.S. 232, 236 (1944) (*per curiam*). In *Lords Landing*, for instance, the Fourth Circuit relied upon an understanding of Maryland insurance law, of which that state's highest court had "expressly disapproved" just 11 days earlier. *See* 520 U.S. at 895. The plaintiffs were unaware of that state court decision when the federal court ruled, but soon learned of it and requested reconsideration on those grounds. *Ibid.* The Fourth Circuit summarily declined, "ambiguous[ly]" deeming the request "without

merit." *Id.* at 896–97. This Court issued a GVR because it was unclear whether the Fourth Circuit "actually considered and rejected" petitioner's argument. *Id.* at 897. Maryland's highest court had plainly "cast doubt on the soundness of the [Fourth Circuit's] decision," which in turn merited further consideration. *Id.* at 895.

Relatedly, in *Thomas*, the Eleventh Circuit was unable to consider a relevant Georgia Supreme Court decision, issued shortly after the federal court denied rehearing *en banc*. *See* 519 U.S. at 913. This Court granted a GVR due to that intervening state-court development. Concurring, Justice Scalia emphasized that the Court's decision fell "squarely within [its] historical use" of the GVR. *Id.* at 914 (Scalia, J., concurring). He explained that the GVR in *Thomas* did not rebuke the lower court for failing to anticipate "the course that the Supreme Court of Georgia would ultimately take." *Id.* at 915. Rather, vacatur rightly allowed the federal court "to consider an intervening decision" by "the final expositor of a particular body of law"—there, the Supreme Court of Georgia. *Ibid.*

The same result is appropriate here. *First*, the holding in *Coalfield Justice* directly contradicts the Third Circuit's professed understanding of the Election Code. *Second*, that contradiction is logically and doctrinally intertwined with the federal constitutional question at issue.

A. The Third Circuit Misconstrued State Law

At the crux of the Third Circuit's analysis was the proposition that county boards of election "need not provide notice" to voters of a disqualifying ballot defect, such as failing to provide a date. App.17a. Citing *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), the panel catastrophized that some voters' ballots would be stricken "potentially" without their

knowledge or the "opportunity to correct the ballot." App.31a. The holding in *Coalfield Justice*—issued just four weeks after the Third Circuit's opinion—torpedoes that reasoning.

Initially, *Coalfield Justice* explicitly counsels against reading *Boockvar* too broadly. The Pennsylvania Supreme Court explained that *Boockvar* concerned only "the notice and opportunity to cure procedure *sought by* [*p*]*etitioner*" therein. *Coalfield Justice*, 343 A.3d at 1217 (emphasis in original). Accordingly, when presented with a more developed challenge—grounded in procedural due process rights, Pennsylvania's robust provisional balloting mechanism, and specific commands to county boards within the Election Code—it reached a very different result. *Id.* at 1193–97, 1203, 1215–18.

Coalfield Justice establishes that Pennsylvania mail-in voters will receive notice of facial ballot defects through county boards' use of the SURE system. *Id.* at 1184–85 n.7, 1209, 1215 (citing 25 Pa. Stat. §1402(c)); *supra* n.6. Contrary to the Third Circuit's view, Pennsylvania's Election Code does not *preclude* a mail-in voter who makes a mistake from casting a provisional ballot. App.14a, 31a. Rather, it *expressly contemplates* that very circumstance. *Coalfield Justice*, 343 A.3d at 1203. Together, these elements—a notification about one's mistake and the opportunity to nonetheless vote—dispel the concerns that led the Third Circuit to elevate its scrutiny of Pennsylvania's law.

B. The Third Circuit's State Law Error Was Pivotal to its *Anderson-Burdick* Analysis

This Court routinely GVRs a case in which "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." *Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (*per curiam*). It need not be certain that the court of appeals will reach a different result. Rather, "[i]t is precisely because of the uncertainty that [this Court] GVRs." *Id.* at 172, 174.

In concluding that the date requirement is unconstitutional, the Third Circuit focused on the purported "downstream consequences" of failing to write the date. App.35a–38a. It believed that those consequences were certain, *i.e.*, the voter would be precluded from casting a valid ballot. App.31a, 34a. But *Coalfield Justice* establishes the opposite. A Pennsylvania voter in Eakin's position—that is, one who chooses to vote by mail *and* neglects to date the envelope—will have the opportunity to cast a provisional ballot. *Coalfield Justice*, 343 A.3d at 1222. So, that voter will suffer "downstream consequences" *only if* they decline to avail themselves of that opportunity.

As the dissenters from rehearing *en banc* articulated, little of the reasoning below thus remains to satisfy *Anderson-Burdick*'s first step. App.91a (Phipps, J., dissenting); App.101a (Bove, J., dissenting). The panel's erroneous understanding of Pennsylvania law has far-reaching implications because, historically, "much of the action" takes place at the first step. *Acevedo v. Cook Cnty. Officers Electoral Bd.*, 925 F.3d 944, 948 (7th Cir. 2019) (cleaned up); *cf. Crawford*, 553 U.S. at 205 (Scalia, J., concurring) ("[W]e have to identify a burden before we can weigh it.").

Moreover, federal courts analyzing similar circumstances all instruct that state efforts to mitigate a burden on voters are highly relevant to the constitutional

assessment of an underlying rule.[8] The Third Circuit's logic below, *see* App.17a, 31a, 43a, and this Court's own reasoning in *Crawford* reinforce that reasoning.[9] This Court should remand for an analysis that proceeds from an accurate understanding of Pennsylvania law as expounded by the Commonwealth's highest court.

II. ALTERNATIVELY, THIS COURT SHOULD GRANT PLENARY REVIEW TO CLARIFY THE SCOPE OF ITS *ANDERSON-BURDICK* FRAMEWORK

At its best, this Court's *Anderson-Burdick* framework is the "flexible" and "fact-intensive" workhorse of American election law. *Buckley v. American Const. L. Found., Inc.*, 525 U.S. 182, 215 (1999) (O'Connor, J., concurring in judgment); *Gill v. Scholz*, 962 F.3d 360, 365 (7th Cir. 2020). But, since *Crawford*, some have pushed that flexibility beyond any reasonable breaking point. And, at its worst, *Anderson-Burdick* amounts to little more than a "judicial eyeball test[;]" a "standardless standard[;]" a "flabby *** *ad hoc* totality-of-the-circumstances" exercise; and "such an imprecise instrument that it is easy for the balance to come out one way

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[8] *See, e.g.*, *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1281–82 (11th Cir. 2020); *Northeast Ohio Coal. for the Homeless v. LaRose*, 767 F.Supp.3d 585, 607 (N.D. Ohio 2024); *DCCC v. Ziriax*, 487 F.Supp.3d 1207, 1229–30 (N.D. Okla. 2020); *League of United Latin Am. Citizens of Iowa v. Pate*, 950 N.W.2d 204, 213 (Iowa 2020).

[9] In *Crawford*, all four opinions discussed the carve-out Indiana's statute provided to voters who were "indigent or [had] a religious objection to being photographed." *Crawford*, 553 U.S. at 186. (Stevens, J., plurality). Those voters were entitled to cast a provisional ballot. *See id.* at 199–200 (such ballots "will ultimately be counted"); *id.* at 205 (Scalia, J., concurring); *id.* at 216 (Souter, J., dissenting); *id.* at 239–40 (Breyer, J., dissenting).

in the hands of one judge, yet come out in the exact opposite way in the hands of another."[10]

This case is a near-perfect vehicle for a much-needed recalibration. *Cf. infra* I. Review would allow this Court to resolve an acknowledged circuit split over the proper level of scrutiny for minimal burdens under *Anderson-Burdick*. And it would enable this Court to provide much-needed guidance on fundamental questions about federalism and the separation of powers in voting rights cases.

A. The Circuits Are Split 7–4 Over What Scrutiny Applies to Minimally Burdensome Election Laws

The Third Circuit's ruling deepened a longstanding circuit split over the appropriate level of scrutiny at *Anderson-Burdick* step two. Step two requires courts to "weigh *** the burden the State's rule imposes on rights against the interests the State contends justify that burden." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

Classifying the burden of complying with the date requirement as "minimal," the Third Circuit nonetheless zealously probed the Commonwealth's interests. *See* App.47a–48a (discounting anti-fraud interest because law furthers it "rare[ly]"); App.45a ("there are other aspects of the mail-in voting process that promote solemnity"). In other words, it was not enough that

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[10] *See* Bruce E. Cain & Aaron Spikol, *Balancing Small-D Democratic Values*, 2024 U. ILL. L. REV. 1699, 1730–31 (2024); *Daunt*, 999 F.3d at 323 (Readler, J., concurring); Derek T. Muller, *The Fundamental Weakness of Flabby Balancing Tests in Federal Election Law Litigation*, EXCESS OF DEMOCRACY BLOG (Apr. 20, 2020), https://perma.cc/4EM2-QPJ5; Edward B. Foley, *Voting Rules and Constitutional Law*, 81 GEO. WASH. L. REV. 1836, 1859 (2013).

Pennsylvania's law "rationally served *** important state interests." App.41a n.35 (citations omitted).

1. *The majority view.* The First, Second, Fourth, Fifth, Seventh, Ninth, and Eleventh Circuits uphold election rules that are nondiscriminatory or otherwise impose only trivial burdens on voting, if they serve "important regulatory interests." *Anderson*, 460 U.S. at 788; *Burdick*, 504 U.S. at 434. In other words, these courts apply a "less searching" rational basis review, or something close to it. App.41a n.35.

a. Texas requires mail-in voters to sign a "carrier envelope," affirming that the enclosed ballot expresses the voter's intent "independent of any dictation or undue persuasion by any person." *See Richardson v. Texas Sec'y of State*, 978 F.3d 220, 225 (5th Cir. 2020). After a district court effectively "t[ook] it upon itself to rewrite" the relevant statutes pursuant to *Anderson-Burdick*, the Fifth Circuit reversed. *Id.* at 224.

The district court treated state law as imposing a severe burden because of the possibility of "untimely notice of rejection," which would mean no "meaningful opportunity to cure" for "certain voters." *Id.* at 236–37. But the Fifth Circuit explained that treating "ordinary and widespread burdens" as severe because of "their impact on a small number of voters," would result in erroneously subjecting every election rule to strict scrutiny. *Ibid.* (quoting *Clingman v. Beaver*, 544 U.S. 587, 593 (2005)). The signature requirement was "no more burdensome" than the law that withstood constitutional review in *Crawford*, and states need not "afford every voter *** infallible ways to vote." *Id.* at 237–38 (quoting *Texas League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136, 146 (5th Cir. 2020)). Succinctly, "mail-in ballot rules that merely make casting a ballot more inconvenient for some voters are not constitutionally suspect." *Ibid.*

Given the minimal burden, Texas did not need to "provide evidence of voter fraud" to substantiate its interest, nor was it required to demonstrate that its rule was narrowly tailored. *Id.* at 239–40. "[T]he *Anderson-Burdick* framework," the Fifth Circuit explained, "imposes a narrow-tailoring requirement only on restrictions that constitute *severe* burdens, not on *reasonable* voting restrictions." *Id.* at 241 (emphasis in original).

b. Virginia precludes local candidates from using party identifiers on the ballot. *Marcellus v. Virginia State Bd. of Elections*, 849 F.3d 169, 172–73 (4th Cir. 2017). When county officials challenged that law under *Anderson-Burdick*, they asserted, in part, that it took the "wrong approach" to furthering a legitimate state interest in combatting the negative effects of partisanship. *Id.* at 179. The Fourth Circuit disagreed.

It concluded that the burden on associational and equal protection rights was "at most minimal" because candidates still had at their disposal "every other avenue by which to inform voters of [their affiliation]." *Id.* at 178. Because the burden was minimal, the Fourth Circuit asked whether there was a "legitimate" state interest supporting the regulation, and whether there was a "rational basis" for distinguishing between local candidates and statewide candidates. *Id.* at 179–80. It answered both questions affirmatively, cautioning that "[w]hether any such risk [plaintiffs posit] is sufficient to outweigh the statute's benefits *** is a legislative judgment for Virginia to make." *Ibid.*

c. Georgia requires third-party and independent candidates seeking ballot access to submit a nominating petition with a certain number of signatures and pay a small fee. *Cowen v. Secretary of State of Georgia*, 22 F.4th 1227, 1230–31 (11th Cir. 2022). When voters and prospective candidates challenged this scheme and

invoked the *Anderson-Burdick* framework, federal courts upheld the state law. *Ibid.*

The Eleventh Circuit acknowledged that collecting signatures can be "costly and difficult." *Id.* at 1232–33. But it emphasized that (i) at least one local candidate *had* satisfied the requirement, meaning that the state did not "bar candidates from the ballot" as a practical matter; and that (ii) the state provided alternative means for ballot access. *Ibid.* (discussing accommodation for indigent candidates). Accordingly, the court acknowledged no severe burden on First or Fourteenth Amendment rights. *Id.* at 1234.

Discerning no severe burden, the Eleventh Circuit upheld the requirements as a "rational way" of meeting state interests. *Ibid.* (cleaned up). And it did not demand "proof of actual voter confusion, ballot overcrowding, or the presence of frivolous candidacies" to justify the state's choices. *Id.* at 1234–36 ("Though we might be able to imagine more narrowly tailored alternatives *** [*Anderson-Burdick*] does not require perfect tailoring when the disparity is not severe.").

d. These cases illustrate the approach taken in a majority of circuits. The Second and Ninth Circuits, like the Fifth, disclaim any requirement of narrow tailoring or "particularized showings" of a state's justification to uphold a nondiscriminatory regulation. *Price v. New York State Bd. of Elections*, 540 F.3d 101, 109 (2d Cir. 2008); *Montana Green Party v. Jacobsen*, 17 F.4th 919, 926 (9th Cir. 2021). The First and Seventh Circuits, like the Eleventh, use the familiar language of rational basis review when they analyze non-severe, generally applicable burdens. *Barr v. Galvin*, 626 F.3d

99, 110–11 (1st Cir. 2010); *Luft v. Evers*, 963 F.3d 665, 677 (7th Cir. 2020).[11]

2. *The minority view.* On the other hand, the Sixth, Eighth, and Tenth Circuits—now joined by the Third Circuit—elevate their scrutiny no matter the burden at issue. These courts have invalidated generally applicable state election rules for lack of evidence substantiating claimed governmental interests.

a. The Sixth Circuit reflexively deems "most" *Anderson-Burdick* cases to "fall in between" the extremes of a severe burden and no burden at all, and it habitually rejects state interests deemed too "vague" or unsupported by empirical evidence. *Obama for Am. v. Husted*, 697 F.3d 423, 434 (6th Cir. 2012); *Daunt*, 999 F.3d at 330 (Readler, J., concurring) (criticizing court's "aggressive deployment of *Anderson-Burdick*"). Accordingly, it once enjoined Ohio from providing early voting opportunities to military voters that were unavailable to non-military voters. *Obama for Am.*, 697 F.3d at 425. The Sixth Circuit acknowledged "a compelling reason to provide more opportunities for military voters to cast their ballots." *Id.* at 434. But it saw "no corresponding satisfactory reason to prevent non-military voters from casting their ballots as well." *Ibid.*

The Sixth Circuit determined that the burden on voting was "not severe, but neither [was] it slight." *Id.* at 433. It thus looked to whether the state's interest in "smooth election administration" was "sufficiently weighty" to justify eliminating in-person early voting for civilians. *Id.* at 433. Statistical studies estimated that nearly 100,000 civilian voters would choose to cast a ballot early, and the state suggested that attendant

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[11] In particular, the Seventh Circuit emphasizes assessing rules in the context of a wider statutory scheme. *See Luft*, 963 F.3d at 671–72.

administrative burdens would make things difficult for local officials preparing for Election Day. *Id.* at 431. But the Sixth Circuit dismissed the state's administrative concerns as "vague" and unsupported by evidence, reasoning that local officials had ably "cope[d]" with the early voting system in past elections. *Id.* at 434.

b. The Eighth and Tenth Circuits have followed suit, pulling on jurisprudential threads Justices Stevens and Souter discussed in *Crawford*. *See* 553 U.S. at 203 (Stevens, J., plurality); *id.* at 216 (Souter, J., dissenting). In *SD Voice v. Noem*, a district court permanently enjoined South Dakota from enforcing a one-year filing deadline for ballot initiative petitions. 60 F.4th 1071, 1075 (8th Cir. 2023). The Eighth Circuit discerned a "less than severe" burden but ultimately affirmed. *Id.* at 1080. It rejected state interests in administrative efficiency, election integrity, and the legislature's ability to respond to ballot questions—not as illegitimate, but because the state "failed to provide evidence" substantiating them. *Id.* at 1082.

In *Fish v. Schwab*, a district court permanently enjoined Kansas from enforcing its law requiring documentary proof of citizenship when registering to vote. 957 F.3d 1105, 1111 (10th Cir. 2020). The Tenth Circuit affirmed, calling the burden not "severe" but "significant." *Id.* at 1128 n.6. Because the burden was significant as opposed to "limited," the Tenth Circuit skirted this Court's guidance in *Crawford* about state interests in preventing voter fraud and struck down the law based on Kansas' failure to show "that a substantial number of noncitizens successfully registered to vote." *Id.* at 1144 (discussing *Crawford*, 553 U.S. at 194 (plurality) ("[t]he record contain[ed] no evidence of any such fraud actually occurring in Indiana at any time in history.")).

3. Courts applying traditional *Anderson-Burdick* would have recognized either the date requirement's utility in prosecuting fraud, or the legislative judgment that Pennsylvanians ascribe some solemn importance to a dated signature—or both.[12] The Commonwealth would not have been expected to meet some ethereal standard for how "hapless" a fraudster may be before they are most properly ignored; or to guess how many prosecutions can legitimize a law's passage; or to prove the incremental value of every jot and tittle of its mail-in ballot scheme. *See* App.38–49a; *cf. Luft*, 963 F.3d at 671–72.

In short, the court below explicitly acknowledged and resolved a conflict of authority as to the degree of scrutiny federal courts employ at step two of *Anderson-Burdick*. *See* App.41a n.35. That tension—as evidenced by the mismatch between the Third Circuit's characterization of the burden as "minimal" and its pointed examination of state interests—merits this Court's review.

B. The Third Circuit's Lax Approach to Defining the Burden at Issue Demonstrates Fundamental Confusion Underlying *Anderson-Burdick*

The first step of *Anderson-Burdick* requires careful examination of the "character and magnitude" of a claimed constitutional injury. *Anderson*, 460 U.S. at 789. Failure to meaningfully engage in that inquiry is

[12] The Commonwealth does not press any further its argument that the handwritten date serves an interest in counting or tabulating ballots. Because consternation over this question distracts from other, stronger arguments, *see* App.42a–44a, this Petition sets forth as government interests (1) protecting against and prosecuting fraud; and (2) promoting and communicating solemnity to the voter.

a calling card for the courts that have supercharged *Anderson-Burdick* beyond recognition. And it has cascading negative consequences.

Simply put, the framework this Court developed is not an independent source of constitutional protection. It provides structure for lower courts as they determine which legal standards and principles apply to a given dispute.

To illustrate this point, it bears emphasis what the lower courts here did *not* conclude. Neither court determined that the date requirement implicates core political speech, nor that it disadvantages voters who share a particular viewpoint, associate with one another, or wish to associate with one another.[13] Indeed, the date requirement is generally applicable, uniformly applied, and has not been shown to hamper, either intentionally or incidentally, the electoral behavior of individuals who share particular characteristics. *Cf. Ohio Democratic Party v. Husted*, 834 F.3d 620, 627 (6th Cir. 2016) (considering whether elimination of early-voting period and same-day registration disadvantaged African American voters).

Lacking any indication that the date requirement implicates concrete constitutional concerns, the Third Circuit hung its hat on "vague references to the right to vote and the First and Fourteenth Amendments." App.103a (Bove, J., dissenting). Nothing in this Court's caselaw sanctions such unmoored judicial balancing.

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[13] *Cf. Soltysik v. Padilla*, 910 F.3d 438, 445 (9th Cir. 2018) (discussing "potentially significant handicap" of "misleading" label for independent candidates); *Lerman v. Board of Elections in City of New York*, 232 F.3d 135, 146 (2d Cir. 2000) (subjecting "core political speech" to "exacting scrutiny").

Rather, this Court is concerned with "actual violation[s] of the Constitution." App.102a–103a (Bove, J., dissenting).

The Third Circuit's unprincipled methodology proceeded from imprecision of its federal constitutional hook. Shrugging off this Court's various admonitions concerning the contours of the right to vote, it bulldozed the separation of powers and relevant federalism principles. *Burdick*, 504 U.S. at 433 ("the right to vote in any manner is not absolute"); *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 9 (1982) ("the Constitution does not confer the right of suffrage upon anyone *** [and] the right to vote, *per se*, is not a constitutionally protected right") (cleaned up).

Properly construed, *Anderson-Burdick* "forecloses [the] substitution of judicial judgment for legislative judgment" on the "political question [of] *** whether a rule is beneficial on balance." *Luft*, 963 F.3d at 671. Because the variant of that framework applied below invites that substitution, this Court should provide guidance to the bench and bar.

III. THE QUESTION PRESENTED IS IMPORTANT

The ambiguities that *Crawford* left behind are no secret. Nearly all agree that Justice Stevens's plurality opinion is the narrowest and therefore controls—but its phrasing is, to say the least, "a little unclear." James M. Fischer, *What Are "The Usual Burdens of Voting"?*, 40 GA. ST. U. L. REV. 573, 581 (2024).[14]

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[14] In *Crawford*, both Justice Stevens and Justice Souter engaged in interest balancing. Unlike the dissent, though, the plurality did not address the "scope of voter burden," nor did it seem to factor into its analysis the "number of individuals likely to be affected." Richard W. Trotter, *Vote of Confidence*, N.Y.U. J. LEGIS. & PUB. POL'Y 515, 543 (2013); Joshua A. Douglas, *Is the Right to Vote Really Fundamental?*, 18 CORNELL J. L. & PUB. POL'Y 143,

The advent of voting by mail in Pennsylvania and across the United States has exacerbated these ambiguities. Cycle after cycle, federal courts applying *Anderson-Burdick* struggle to reach consensus on constitutional questions concerning provisional balloting, receipt deadlines, and drop boxes. This confusion has produced tortured litigation histories across the country.[15]

The deep doctrinal unpredictability associated with the muscular form of *Anderson-Burdick* cries out for this Court's review. Disharmony and divergent rationales pose a real practical problem for states as they enact, refine, and utilize mail-in voting schemes. Legislators and county election officials require clarity as they wield the state's "broad power to prescribe the '[t]imes, [p]laces and [m]anner of holding [e]lections'" for both federal and state offices. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451 (2008) (cleaned up).

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172 (2008) ("*Crawford* injected even more confusion into this issue").

[15] *See, e.g.*, *Service Emps. Int'l Union, Local 1 v. Husted*, 887 F.Supp.2d 761, 777–79 (S.D. Ohio 2012), *rev'd in part*, *Northeast Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 604 (6th Cir. 2012) (*per curiam*) (reversing preliminary injunction); *Northeast Ohio Coal. for Homeless v. Husted*, No. 06–CV–896, 2016 WL 3166251 (S.D. Ohio June 7, 2016) (granting relief on separate *Anderson-Burdick* claim), *rev'd in part*, 837 F.3d 612 (6th Cir. 2016), *abrogated in part*, *Tennessee Conference of NAACP v. Lee*, 139 F.4th 557 (6th Cir. 2025); *Ohio Org. Collaborative v. Husted*, 189 F.Supp.3d 708 (S.D. Ohio 2016) (revisiting issue after consent decree), *rev'd sub nom. Ohio Democratic Party*, 834 F.3d at 620; *see also* Edward B. Foley, *Due Process, Fair Play, and Excessive Partisanship*, 84 U. CHI. L. REV. 655, 678 nn.91–92 (2017) (citing cases in Wisconsin and Texas); Joshua A. Douglas, *Undue Deference to States in the 2020 Election Litigation*, 30 WM. & MARY BILL RTS. J. 59, 64–67 (2021) (citing cases in Minnesota, Tennessee, Michigan, and Arizona).

One understanding suggests that as long as states do not "violate[] *** specific provisions of the Constitution," *Williams v. Rhodes*, 393 U.S. 23, 29 (1968), and their choices are "reasonable and neutral," they should be "free from judicial second-guessing," *Weber v. Shelley*, 347 F.3d 1101, 1107 (9th Cir. 2003).[16] After all, "[n]o balloting system is perfect." *Id.* at 1106; *Burdick*, 504 U.S. at 433 ("Election laws will invariably impose some burden upon individual voters.").

But another understanding—adopted below—treats balancing as inevitable. *Cf.* App.63a. This approach admits of no limiting principle. And it sanctions a system of crafting election laws that is an ongoing, free-wheeling, and sometimes one-sided dialogue between the judiciary and the legislature.[17]

Granting review in this case to reject the latter view and clarify the principles undergirding *Anderson-Burdick* would be a coup for judicial economy, the separation of powers, and "our system of federalism." *Youngblood*, 547 U.S. at 874 (Scalia, J., dissenting). Jurists and claimants alike benefit from clear rules, especially in a politically fraught and contentious thicket of

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[16] *Cf.* App.64a ("Plaintiffs ground their claim in the First Amendment to the Constitution."), App.105a (Bove, J., dissenting) (suggesting that Eakin failed to state a claim "altogether *** by relying on vague references to the First and Fourteenth Amendments").

[17] Since Pennsylvania adopted universal no-excuse mail voting in 2019, courts have considered a host of challenges to the date requirement. *See supra* n.3. Another case filed alongside this one has already appeared on this Court's docket. *See Ritter*, 143 S. Ct. at 297. Looming over all of these disputes is Act 77's non-severability clause. *See* App.98a–99a (Bove, J., dissenting) ("[o]ther features of Act 77 will be struck if the clause is triggered"). In short, litigation begets more litigation. And with each successive challenge, the viability of Pennsylvania's entire mail-in voting scheme hangs in the balance.

this Court's caselaw. James Madison called the regulation of American elections "a task of peculiar delicacy," and that task is not made any easier by lowering the bar for federal court intervention. *See* James Madison, *Note to Speech on the Right of Suffrage*, in 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, 450 (Max Farrand ed., rev ed. 1966); *cf. Grimes v. Smith*, 776 F.2d 1359, 1367 (7th Cir. 1985) ("the federal judiciary should not be quick to assume" role of election monitor).

With both mail-in voting and election litigation on a steep rise, it is harrowing to consider the avalanche of claims that are viable under the Third Circuit's rationale if allowed to stand. Equally disconcerting, its version of *Anderson-Burdick* essentially invites federal judges to, at their discretion, superintend over "the hurly-burly, the give-and-take of [a state's] political process." *Trump v. Mazars USA, LLP*, 591 U.S. 848, 859 (2020) (cleaned up).

IV. THE THIRD CIRCUIT'S RULING IS WRONG

Purporting to address a fairly narrow concern about the application of a neutral ballot-casting rule, the Third Circuit threw open the door to all manner of claims and effectively retired the two-step *Anderson-Burdick* inquiry in favor of a plenary, searching review of state election laws.

The Third Circuit invoked "downstream consequences,"—*i.e.*, the fact that an undated ballot might not count—to justify its heavy hand. But it is axiomatic that rules have downstream consequences. That is what makes them rules. *Cf.* App.36a–37a. And "there must be substantial regulation of elections if they are to be fair and honest and if some sort of order *** is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). To demand narrow tailoring

for each discrete election rule "would have the effect of invalidating a great many neutral voting regulations *** that are reasonable means of pursuing legitimate interests." *Brnovich*, 594 U.S. at 673–74. And in practice, it would represent a tectonic transfer of authority from the States to federal courts. *See ibid.*

Nothing in this Court's caselaw permits, let alone requires, such an approach.

1. It strains credulity to describe the effort required to write a few numbers on an envelope as anything other than *de minimis*. The Third Circuit's contrary holding rests upon a fundamental misunderstanding of *Anderson-Burdick* and exacerbates latent ambiguities in *Crawford*. Burdens are not measured by the consequence of failing to comply with state law, but by the effort required to comply in the first place. *Cf. Crawford*, 553 U.S. at 197–201 (plurality).[18]

The reasoning below renders the first step of *Anderson-Burdick* an exercise in empty formalism. Ballot-casting rules are constitutionally suspect, it suggests, whenever they are mandatory, regardless of the effort it takes for voters to comply or whether the rules themselves undermine political competition. That view cannot be correct under this Court's caselaw. *See Anderson*, 460 U.S. at 788 n.9 ("We have upheld generally-applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself."); *id.* at 794 (focusing skepticism on "restrictions

[18] *See also Arizona Democratic Party v. Hobbs*, 18 F.4th 1179, 1188–93 (9th Cir. 2021) (rejecting notion that "the burden of a challenged law [is] measured by the consequence of noncompliance"); *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020) ("Contrary to the district court's conclusion *** no one is 'disenfranchised' where voters simply had to "take reasonable steps and exert some effort to ensure that their ballots are submitted on time").

[that] threaten to reduce diversity and competition in the marketplace of ideas").

Under *Crawford*, the federal Constitution tolerates administrative inconveniences that amount to the "usual burdens of voting." *Crawford*, 553 U.S. at 198 (plurality). And it does not excuse *Anderson-Burdick* claimants from grounding their arguments in the particular ways the federal Constitution protects the right to vote. *Cf.* App.105a (Bove, J., dissenting). Here, the only burden Eakin claimed was the burden of following a law that applies to all mail-in voters. That burden is *de minimis*.

2. Even assuming a burden exists that would trigger balancing under this framework, the Third Circuit overstepped when it demanded evidence substantiating the wisdom of a part *of a part* of the Commonwealth's Election Code. *See supra* n.2. This error is twofold.

First, failing to analyze Pennsylvania's voting rules as a whole decoupled the Third Circuit's reasoning from the lion's share of *Anderson-Burdick* applications. Indeed, *Burdick* upheld Hawaii's law "*as part of an electoral scheme* that provide[d] constitutionally sufficient ballot access." *See* 504 U.S. at 441–42 (emphasis added). Pennsylvania "has lots of rules that make voting easier," and that fact "matter[s] when assessing challenges to [a rule] that make[s] voting harder." *Cf. Luft*, 963 F.3d at 671–72; *McLinko*, 278 A.3d at 543 (discussing Act 77's reforms).

When judges "evaluate each clause [of an election code] in isolation," and decide "whether any given election law is necessary," or "beneficial, on balance," they resolve political disputes, not constitutional ones. *Luft*, 963 F.3d at 671–72. These "abstract question[s] of wide public significance" are "most appropriately addressed in the representative branches." *Warth v. Seldin*, 422

U.S. 490, 500 (1975). Narrow claims like Eakin's—ones that do not implicate foundational concepts like openness and opportunity—will rarely warrant the exercise of judicial power, which is commonly understood to be a "tool of last resort." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473–74 (1982).

Second, not even rational basis review empowers federal courts to dismiss reasonable legislative judgments. The wisdom of a given law "is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 311–15 (1993); *contra* App.73a.

The Commonwealth's proffered interests in communicating solemnity and protecting against fraud should have been sufficient to justify any *de minimis* burden associated with the date requirement, regardless of record support. *Cf. Heller v. Doe*, 509 U.S. 312, 320–21 (1993) ("[T]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, *whether or not the basis has a foundation in the record*.") (cleaned up, emphasis added). By putting those interests under its proverbial microscope and elevating its scrutiny without jurisprudential cause, the Third Circuit exceeded its role. *Cf. Beach Comm'cns*, 508 U.S. at 113; *Richardson*, 978 F.3d at 241 n.39.

This appeal presents an excellent vehicle for the Court to reinvigorate those parts of *Anderson-Burdick* that emphasize carefully defining the constitutional right at issue and deferring to reasonable legislative judgments. Absent such intervention, it would be difficult to distinguish the Third Circuit's present regime from one in which the right to vote in any manner one

chooses is "absolute." *Cf. Burdick*, 504 U.S. at 433 ("the right to vote in any manner is not absolute").

CONCLUSION

The Court should grant, vacate, and remand in light of *Coalfield Justice*. Alternatively, the Court should grant the petition for a writ of certiorari, exercise plenary review, and resolve the question presented.

Respectfully submitted,

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February 2026

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