

No. 25-967

IN THE
Supreme Court of the United States

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

v.

BETTE EAKIN, DEMOCRATIC SENATORIAL
CAMPAIGN COMMITTEE, DEMOCRATIC CONGRESSIONAL
CAMPAIGN COMMITTEE, *et al.*,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

**BRIEF FOR PRESIDENT PRO TEMPORE OF
THE PENNSYLVANIA SENATE, KIM WARD,
MAJORITY LEADER OF THE PENNSYLVANIA
SENATE, JOE PITTMAN, AND REPUBLICAN
LEADER OF THE PENNSYLVANIA
HOUSE OF REPRESENTATIVES,
JESSE TOPPER AS AMICI CURIAE
IN SUPPORT OF PETITIONER**

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INTERESTS OF AMICI CURIAE¹

Amici Curiae, President Pro Tempore of the Pennsylvania Senate, Kim Ward, Majority Leader of the Pennsylvania Senate, Joe Pittman, and Republican Leader of the Pennsylvania House of Representatives, Jesse Topper (the “Legislative Amici”), have a strong interest in the outcome of this case and in the underlying issues being carefully considered by this Court.

The Legislative Amici, as legislative leaders in the two coequal houses of Pennsylvania’s legislative branch, have been deeply involved in the creation of election policy and procedures in the Commonwealth, pursuant to the powers granted to the Pennsylvania General Assembly under the federal and state Constitutions.

The Legislative Amici have personal and direct insight into the goals of the General Assembly in its recent amendments to the Pennsylvania Election Code, including the statutes that are the subject of this litigation. The Legislative Amici participated as amici curiae in this case at the Third Circuit Court of Appeals, as well as in other cases on this subject in both state and federal courts.

INTRODUCTION AND SUMMARY OF ARGUMENT

Something went very wrong in the proceedings below. In its holding, the court below somehow concluded that a straightforward ballot-casting rule

¹ No party’s counsel authored any part of this brief. No person other than amici and their counsel contributed any money intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, amici provided timely notice of their intent to file this brief to all parties.

that is easy to comply with, has a documented history of detecting fraud, and can be avoided altogether by voting in person, violates the First and Fourteenth Amendments of the U.S. Constitution. *Eakin v. Adams Cty. Bd. of Elections*, 149 F.4th 291 (3d Cir. 2025) (Pet.App.1a).

This holding came despite the panel:

- 1) Acknowledging that this requirement impacts very few non-compliant voters (just “0.064% of total votes cast” in the 2024 general election), Pet.App.33a;
- 2) Concluding that dating the declaration is a “minimal burden” with which to comply, *id.*; and
- 3) Recognizing demonstrated state interests in the prevention of voter fraud from the subject provision. Pet.App.47a-48a.

This result defies common sense and is completely incongruous with the jurisprudence of this Court.

The panel compounded its errors by misapplying Pennsylvania law in arriving at its conclusion, as it ignored recent state court decisions finding a right to cure mistakes such as omitting the date through the provisional ballot process. As Petitioner argues, it would therefore be reasonable under the circumstances to remand this matter to the Third Circuit for further proceedings which properly apply those state court holdings.

The Petition, however, also identifies a series of broader questions about this Court’s guidance under the *Anderson* and *Burdick* decisions and their progeny, as despite examining “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.” Pet. at 28.

As such, this case represents an ideal vehicle for addressing those important issues and to provide “a much-needed recalibration” of *Anderson-Burdick*. Pet. at 17. For those reasons, the Legislative Amici respectfully ask this Court to grant the Petition and provide much needed clarity to Pennsylvania’s General Assembly in its role of legislating for Pennsylvania’s elections.

ARGUMENT

I. The Statutes in Question Were Properly Enacted Pursuant to the General Assembly’s Constitutional Authority to Legislate for Procedures that Govern Pennsylvania’s Elections

A. The Legislative History of the Statutes in Question Demonstrates a Clear Commitment by the General Assembly to Free, Equal, and Fair Elections

The statutes at issue are straightforward sections of Pennsylvania’s Election Code implemented by its General Assembly pursuant to its constitutional powers under the Elections Clause of Article I, § IV of the U.S. Constitution. Notwithstanding the decision of the court below, by the plain meaning of both the Election Code and the decisions of Pennsylvania courts, it is unequivocal that Pennsylvania law requires both a signature and date on a legally cast mail-in ballot. Moreover, the orderly procedures necessary for the free and equal administration of elections are of vital importance to the Commonwealth and cannot reasonably be deemed immaterial.

The requirement in question has a long history as a part of the Commonwealth's Election Code. While originally absentee voting was limited to military voters, absentee voting was extended to the general public in 1963. *See* Act No. 37, Session of 1963, Pub. L. No. 707, § 22 (amending Section 1306 of the Election Code (25 P.S. § 3146.6) to apply beyond military voters). Even then, Pennsylvania law only allowed absentee voting by those with a statutorily defined excuse to do so, such as physical disability or absence from their municipality on Election Day. *See* 25 P.S. § 3146.1. For someone to vote absentee, the voter would have had to provide a permissible reason to do so, and the voter would have been provided with an absentee ballot that would have had to be returned by the voter no later than 5:00 p.m. on the Friday before the election. *Id.*

Since that 1963 enactment, the procedure for marking an absentee ballot has remained constant. A Pennsylvania absentee voter, after marking his or her ballot, shall:

then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed 'Official Election Ballot.' This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. **The elector shall then fill out, date and sign the declaration printed on such envelope.** Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or

deliver it in person to said county board of election.

25 P.S. § 3146.6(a) (emphasis added); *see also* Act No. 37, Session of 1963, Pub. L. No. 707, § 22 (amending Section 1306 of the Election Code (25 P.S. § 3146.6) to apply beyond military voters) (“The elector shall then fill out, date[,] and sign the declaration printed on such envelope.”).

In 2019, when the General Assembly expanded the ability to vote by mail by creating a new category of “no excuse” mail-in voting through Act 77², that identical procedure of filling out, dating, and signing the envelope was applied to mail-in voters. *See* 25 P.S. § 3150.16(a).

² Act 77 was a wide-ranging piece of legislation that included, *inter alia*, a non-severability clause should any of its provisions be deemed unenforceable. *See* 2019 Pa. Legis. Serv. Act 2019-77 (S.B. 421) (West) (providing in Section 11 that certain provisions, including Sections 6 and 8 containing the dating requirement “are nonseverable. If any provision of this act or its application to any person or circumstances is held invalid, the remaining provisions or applications of this act are void.”). The application of Act 77’s non-severability clause is currently pending before the Supreme Court of Pennsylvania in *Baxter v. Philadelphia County Board of Elections*, Nos. 1 EAP 2025 and 2 EAP 2025. While the lower court decisions in *Baxter* held that the non-severability provision was not triggered in those state court proceedings, that analysis hinged on “the fact we are not asked in these appeals to declare the dating provisions unconstitutional or otherwise strike them from Act 77. . .” *Baxter v. Phila. Bd. of Elections*, 329 A.3d 483 (Pa. Commw. Ct. 2024), *allocatur granted*, Nos. 1 EAP 2025 and 2 EAP 2025. Here, however, the Third Circuit panel *does* declare the dating provisions unconstitutional. As such, the non-severability provision’s existence weighs in favor of the Court’s careful consideration of the Petition.

Moreover, the traditional voting options have always remained available – voters may still choose to request an absentee ballot if they have a statutorily permitted reason for doing so, or vote in-person on Election Day. *See* 25 P.S. § 3146.1; 25 P.S. § 3031.12.

B. The Requirement to Date and Sign Absentee and Mail-In Ballots Serves a Clear Purpose as a Part of the General Assembly’s Comprehensive Election Code

The requirement that electors date and sign their absentee or mail-in ballot return envelope serves a variety of important election administration purposes.

The date on the ballot envelope provides proof of when the ‘elector actually executed the ballot in full, ensuring their desire to cast it in lieu of appearing in person at a polling place. The presence of the date also establishes a point in time against which to measure the elector’s eligibility to cast the ballot[.]’ The date also ensures the elector completed the ballot within the proper time frame and prevents the tabulation of potentially fraudulent back-dated votes.

In re Canvass of Absentee and Mail-in Ballots of Nov. 3, 2020 Gen. Election, 241 A.3d at 1079 (Dougherty, J., concurring and dissenting) (quoting *In re 2,349 Ballots in the 2020 Gen. Election*, 241 A.3d 694 (Pa. Commw. Ct. 2020) (memorandum); *Ritter v. Lehigh Cty. Bd. of Elections*, No. 1322 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 1, at *10-11 (Pa. Commw. Ct. Jan. 3, 2022) (same).

As acknowledged by the Third Circuit panel, a concrete example of the application of this require-

ment comes from a recent Lancaster County election fraud case concerning a mail-in ballot cast 12 days after a voter's death. There the date supplied on the ballot declaration was the only piece of evidence of fraud on the face of the ballot, and in conjunction with the Commonwealth's SURE system, the date on the ballot declaration helped to detect fraud. *See Commonwealth v. Mihaliak*, Docket Nos. MJ-02202-CR-000126-2022; CP-36-CR-0003315-2022.

The Third Circuit panel minimizes *Mihaliak* due to both its scope (one case of voter fraud) and that it was only a part of the evidence used to detect it. But this Court has "recognized that a State has a compelling interest in ensuring that an individual's right to vote is not undermined by fraud in the election process." *Burson v. Freeman*, 504 U.S. 191, 199 (1992).

Unfortunately, the Commonwealth of Pennsylvania has long combatted the scourge of fraud in its elections. *See, e.g., Marks v. Stinson*, 19 F.3d 873, 887 (3d Cir. 1994) (internal citations omitted) (discussing "massive absentee ballot fraud, deception, intimidation, harassment and forgery, and that many of the absentee votes were tainted" in a Pennsylvania State Senate election); *United States v. Laiss*, No. 5:25-cr-00386 (E.D. Pa. Mar. 5, 2026) (case from within the past few weeks where an individual was convicted of committing voter fraud in connection with the 2020 election). Thus, the Commonwealth's interest in preventing fraud is a sadly concrete state interest. Pet.App.45a (citing *Crawford v. Marion Cty. Election Board*, 553 U.S. 181 (2008)) (acknowledging that "fraud detection and deterrence. . . is a legitimate interest is beyond cavil.").

And whether it is an example of one fraudulent vote, like in *Mihaliak*, or many like in *Marks*,

[v]oter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. ‘[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.’

Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (*per curiam*) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)).

Moreover, that the dated declaration was part of the evidence of the fraud (in conjunction with the SURE System and other extrinsic evidence concerning the death of the voter), rather than the *sole* evidence in *Mihaliak*, does not make it less important from a state interest perspective. Given the state’s “compelling interest in ensuring that an individual’s right to vote is not undermined by fraud in the election process,” the state would obviously want to construct a statutory framework, as here, that makes the fraud clear-cut, rather than having to rely on just a single piece of evidence. *Burson*, 504 U.S. at 199; *see also* Pet. at 23 (“the Commonwealth would not have been expected to meet some ethereal standard for how ‘hapless’ a fraudster may be . . . 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.”).

In 2022, the District Court for the Eastern District of Pennsylvania, in considering the exact claim made by the Plaintiffs here, similarly concluded that “an important public interest in the integrity of an election process that ensures fair, efficient, and fraud-free elections is served by compliance with the statute mandating the handwritten date requirement.”

Migliori v. Lehigh Cty. Bd. of Elections, No. 5:22-cv-00397, 2022 U.S. Dist. LEXIS 46352, at *38-39 (E.D. Pa. Mar. 16, 2022).³ As Judge Leeson further observed:

An elector’s compliance with the signature and date requirement is an important guard against fraud. Where an elector fully complies with the instructions on the outer envelope, the electoral authorities conducting the election can be assured of the date on which the ballot was executed. Where, however, the outer envelope remains undated, the possibility for fraud is heightened, as individuals who come in contact with that outer envelope may, post hoc, fill in a date that is not representative of the date on which the ballot was executed.

Id. at *38.

As the District Court for the Western District of Pennsylvania previously concluded in another case, “the Pennsylvania legislature ‘weigh[ed] the pros and cons,’ and adopted a broader system of ‘no excuse’ mail-in voting as part of the Commonwealth’s Election Code.” *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 395 (W.D. Pa. 2020) (citing *Weber v. Shelley*, 347 F.3d 1101, 1107 (9th Cir. 2003)). “And the key point is that the legislature made that judgment in the context of erecting a broader election

³ Importantly, while this District Court decision was later overruled on other grounds, this part of the decision (holding that the dating requirement did not violate the First or Fourteenth Amendments) was not appealed to this Court. See *Migliori v. Cohen*, No. 22-1499, Appellant’s Brief (ECF # 32) (filed March 29, 2022). As such, this District Court decision should be considered here as persuasive authority.

scheme that authorizes other forms of voting and has many . . . safeguards in place to catch or deter fraud and other illegal voting practices.” *Id.* at 396. “In this larger context, the Court cannot say that the balance Pennsylvania struck across the Election Code was unreasonable, illegitimate, or otherwise not ‘sufficiently weighty to justify . . .’” *Id.*

Here, the Third Circuit panel loses sight of that “larger context” and instead myopically fixates on one word (“date”), rather than to consider the provision’s contextual role within “the balance Pennsylvania struck across the Election Code. . .” *Id.* Considering that broader context and the General Assembly’s policy goals, and especially given the General Assembly’s constitutional power to prescribe the time, place, and manner of the Commonwealth’s elections, the clear legislative mandate of what is required of the elector, and the election-administration purposes of the statute in question, it is plainly a key part of Pennsylvania’s Election Code.

II. The Decision of the Court Below is Predicated on an Incorrect Understanding of Pennsylvania Law

Much has been written by the Petitioner, the Republican petitioners, and the dissenting Third Circuit judges that the panel’s decision below was predicated on an incorrect understanding of Pennsylvania law. Namely, the panel opined that:

[t]he Supreme Court of Pennsylvania has held that county election boards need not provide notice to a mail-in voter that her ballot has been rejected because it did not conform to the date requirement. *Pa. Democratic Party v. Boockvar*, 662 Pa. 39, 238

A.3d 345, 374 (Pa. 2020). Nor is that voter entitled to cure the date deficiency. *Id.* Some, but not all, of Pennsylvania’s county election boards provide no notice to voters if their ballots have been rejected due to having failed to meet the date requirement.

Pet.App.17a.

But the Pennsylvania Supreme Court has held that such a right to vote provisionally, and to have those ballots counted, *is* available to Pennsylvanians with defective mail-in ballots. And while largely the parties have considered the ability to cure deficient mail ballots by voting provisionally as an intervening event post-panel decision, the primary legal authority for voters to cure via provisional ballot actually stemmed from a 2024 decision of Pennsylvania’s Supreme Court in *Genser v. Butler Cty. Bd. of Elections*. 325 A.3d 458, 479 (Pa. 2024).

Genser centered on just that question: whether voters who erred in completing their mail-in ballots (in that case, by omitting the secrecy envelope) had the right to vote by provisional ballot. The *Genser* court held that they did; that

when a county board of elections determines an elector’s mail-in ballot is void, the Election Code ‘require[s] that, absent any other disqualifying irregularities, [a] provisional ballot [is] to be counted[.]’ *Id.* at 485, *citing* 25 P.S. §3050(a.4)(5)(i) (a county board of elections ‘shall count [a provisional] ballot if the [board] confirms that the individual did not cast any other ballot . . . in the election’). These statutory provisional balloting procedures

guarantee ‘access to the right to vote while also preventing double voting.’

Center for Coalfield Just. v. Wash. Cty. Bd. of Elections, 343 A.3d 1178, 1183 (Pa. 2025) (quoting *Genser*, 325 A.3d at 485).

Genser was predicated on the fact that Pennsylvania’s SURE System provided notice to the electors of the deficiency. *Genser*, 325 A.3d at 479 (electors received “Notice Email to Electors informing them that their mail-in ballot would not be counted because their Secrecy Envelopes were missing and informed Electors of their right to cast provisional ballots on Election Day.”); *but see* Pet.App.17a (claiming that “[n]or is that voter entitled to cure the date deficiency. . .”).

Yet the panel’s opinion makes no reference to *Genser* or the right to vote provisionally held by affected voters. For the Third Circuit panel to have not acknowledged and accorded a pivotal case like *Genser* in its opinion, should give this Court “reason to believe the court below did not fully consider” *Genser*’s crucial holding. *Lawrence v. Chater*, 516 U.S. 163, 167 (1996). Moreover, this ability to correct mail-in ballot errors through provisional balloting “reveal[s] 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, a GVR order is, we believe, potentially appropriate.” *Id.*

But *Genser* was not the only missing piece of information that would have likely changed the Third Circuit’s analysis, “[a] month after [the Third Circuit’s panel] ruling. . . , the Pennsylvania Supreme Court decided *Coalfield Justice*, which held that the Inherent

Rights Clause of the Pennsylvania Constitution requires that mail-in voters receive notice of the rejection of their ballots and the opportunity to correct ballot defects.” Pet.App.91a-92a (Phipps, J., dissenting) (*citing Center for Coalfield Just. v. Wash. Cnty. Bd. of Elections*, 343 A.3d 1178 (Pa. 2025)). This “intervening” case was certainly not considered by the Third Circuit panel. *See Lawrence*, 516 U.S. at 167.

Thus, the panel’s decision is premised on a wholly incorrect understanding of Pennsylvania law concerning the ability of electors to receive “notice of the rejection of their ballots and the opportunity to correct ballot defects.” Pet.App.91a-92a (Phipps, J., dissenting) (*citing Center for Coalfield Just. v. Wash. Cnty. Bd. of Elections*, 343 A.3d 1178 (Pa. 2025)). This makes intervention by this Court appropriate here.

III. The Third Circuit Panel Erred by Applying *Anderson-Burdick*

Far from being a “burden” or having a “real and appreciable impact on voters’ rights”, writing the date on the ballot envelope as part of the voter declaration is one of the easiest steps in the entire voting process—significantly easier than finding a mailbox at which to deposit a ballot and little more burdensome than licking (or peeling and sticking) the flap of the completed envelope. Writing the date remains a minor procedural step, and one which Pennsylvanians are asked to do any time they sign a contract, write a check, fill out a form, pick their child up early from school or in countless other everyday situations.

While certainly federal courts have used *Anderson-Burdick* to analyze a wide variety of constitutional election issues, the option to vote by mail is a statutory privilege rather than a constitutional right. *See*

McDonald v. Bd. of Election Comm'rs, 394 U.S. 802, 807-08 (1969) (“there is nothing in the record to indicate that the Illinois statutory scheme [concerning absentee ballots] has an impact on appellants’ ability to exercise the fundamental right to vote. It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots. Despite appellants’ claim to the contrary, the absentee statutes, which are designed to make voting more available to some groups who cannot easily get to the polls, do not themselves deny appellants the exercise of the franchise . . . Faced as we are with a constitutional question, we cannot lightly assume, with nothing in the record to support such an assumption, that Illinois has in fact precluded appellants from voting.”).

And here, as in *McDonald*, the General Assembly merely *extended* the methods of voting available to Pennsylvanians. The traditional voting options have always remained available – voters may still choose to request an absentee ballot if they have a statutorily permitted reason for doing so, or vote in-person on Election Day. *See* 25 P.S. § 3146.1; 25 P.S. § 3031.12. As such, nothing in the subject requirement affects the *right* to vote, given that those alternative voting mechanisms remain available.

The dating requirement is a compliance rule rather than something that denies the right to vote. Therefore, “when a mail-in ballot is not counted because it was not filled out correctly, the voter is not denied ‘the right to vote.’ Rather, that individual’s vote is not counted because he or she did not follow the rules for casting a ballot.” *Ritter v. Migliori*, 142 S. Ct. 1824, 1825 (2022) (Alito, J., dissenting); *see also Pennsylvania State Conference of NAACP v. Schmidt*, 97 F.4th 120, 133 (3d Cir. 2024) (“a voter who fails to

abide by state rules prescribing how to make a vote effective is not ‘den[ied] the right . . . to vote’ when his ballot is not counted.”; “we know no authority that the ‘right to vote’ encompasses the right to have a ballot counted that is defective under state law.”).

As Justice Alito opined in *Ritter*:

A registered voter who does not follow the rules may be unable to cast a vote for any number of reasons. A voter may go to the polling place on the wrong day or after the polls have closed. A voter may go to the wrong polling place and may not have time to reach the right place before it is too late. A voter who casts a mail-in ballot may send it to the wrong address. A State’s refusal to count the votes of these voters does not constitute a denial of ‘the right to vote.’ Even the most permissive voting rules must contain some requirements, and the failure to follow those rules constitutes the forfeiture of the right to vote, not the denial of that right.

Ritter, 142 S. Ct. at 1825 (Alito, J., dissenting).

As such, it is improper to use *Anderson-Burdick* to evaluate the declaration, when it is the voter’s own negligence that results in “the forfeiture of the right to vote” pursuant to a statutory rule—especially where alternative voting mechanisms remain available. This is even more true given the notice and the opportunity to cure defective mail ballots provided by Pennsylvania law. *See* Section II *supra*.

Instead of *Anderson-Burdick* analysis, the Third Circuit panel should have considered the Plaintiffs’ claims under a rational basis test. *McDonald*, 394 U.S. at 809 (“a challenged statute must bear some rational

relationship to a legitimate state end.”); *see also Mazo v. New Jersey Sec’y of State*, 54 F.4th 124, 138-139 (3d. Cir. 2022) (*Anderson-Burdick* “does not apply where the alleged right relates only to a statutory right or there is otherwise no cognizable constitutional right at issue or where the burden on a constitutional right is no more than *de minimis*.”).

Thus, under the Third Circuit’s precedent, even should a court find that the right to vote is somehow implicated, it should still apply rational basis review rather than *Anderson-Burdick*. *See Mazo*, 54 F.4th at 138-39. But this is where the Third Circuit panel really misstepped—it removed any possibility of a burden *actually being de minimis*. Per the Third Circuit panel’s analysis “a *de minimis* burden is one that has merely a speculative impact on and connection to voting rights.” Pet.App.35a. Therefore, *any* burden—no matter how small—would trigger *Anderson-Burdick* analysis as long as a plaintiff could show that burden was actual. Thus even in the scenario where a voter suffers the usual burdens of voting, such as “go[ing] to the polling place on the wrong day or after the polls have closed”, a reviewing court would need to conduct full *Anderson-Burdick* analysis since the voter suffered a tangible rather than a speculative burden. *Ritter*, 142 S. Ct. at 1825 (2022) (Alito, J., dissenting).

That cannot be right. Nor does it require a crystal ball to see what a disaster that would be for any state legislature trying to legislate for its elections when any and all voting rules, no matter how narrow or neutral, require a full *Anderson-Burdick* analysis. This matter requires this Court’s review.

IV. The Third Circuit Panel Contorted *Anderson-Burdick* to an Impossible Standard, Laying Bare the Defects of the Current *Anderson-Burdick* Framework

Even if *Anderson-Burdick* should somehow apply to the present case, the Third Circuit panel plainly erred in its analysis, demonstrating along the way the problems with that framework.

“Under *Burdick*, ‘the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights,’ 504 U.S., at 434, upon an assessment of the character and magnitude of the asserted [threatened] injury,” *ibid.* (quoting *Anderson, supra*, at 789), and an estimate of the number of voters likely to be affected. *Crawford*, 553 U.S. at 211.

Pursuant to the *Anderson-Burdick* analysis, a reviewing court must:

first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Anderson, 460 U.S. at 789.

Here, the Third Circuit panel readily concedes “that the date requirement imposes a minimal burden on voting rights.” Pet.App.33a. Moreover, “there is no evidence that the date requirement disproportionately limits political participation by a defined political group. . .” *Id.* And the number of those voters who are affected is exceedingly small. *Id.*

Under such circumstances, “when a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, ‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788).

Yet the Third Circuit panel somehow reached the opposite conclusion despite the numerous interests proffered by the parties and acknowledged by other courts (as discussed above). This panel agreed that “[t]he proffered State interest in fraud detection and deterrence . . . is a legitimate interest . . . beyond cavil.” Pet.App.45a. And the panel concedes—albeit begrudgingly—that “the date requirement can narrowly advance the Commonwealth’s interest in fraud detection and deterrence . . .” Pet.App.47a

To summarize, the panel acknowledged that the date requirement imposes a “minimal burden”, affecting perhaps “0.064% of total votes cast”, and “advance[s] the Commonwealth’s interest in fraud detection and deterrence. . .”, and yet somehow fails a test meant to balance important anti-fraud interests. Judge Bove found it “hard to think of a less burdensome requirement associated with the voting process.” Pet.App.94a (quoting *Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 563 (6th Cir. 2021) (Readler, J., concurring)).

This contorted analysis—where the test seems to be based on the court’s desired policy outcome rather than on any true balancing—brings Legislative Amici back to their original contention: that something went very wrong here in the panel’s application of *Anderson-Burdick*, arguably at every step.

“*Anderson-Burdick*’s hallmark is standardless standards. See [*Daunt v. Benson*, (“*Daunt I*”) 956 F.3d 396, 424 (6th Cir. 2020)] (Readler, J., concurring in the judgment) (“*Anderson-Burdick* is a dangerous tool. In sensitive policy-oriented cases, it affords far too much discretion to judges in resolving the dispute before them.’)” *Daunt v. Benson*, 999 F.3d 299, 323 (6th Cir. 2021) (Readler, J., concurring).

The Elections Clause of the United States Constitution, Art. I, § 4, cl. 1, provides that “the Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the *Legislature* thereof.” (emphasis added). This “power is matched by state control over the election process for state offices.” *Tashjian v. Republican Party*, 479 U.S. 208, 217 (1986).

And yet, the Pennsylvania General Assembly and legislatures across the country are at the mercy of an opaque test composed of “standardless standards,” even with a statutory requirement that, at most, constitutes a minimal burden on voters. *Anderson-Burdick* has thus morphed into a Frankenstein’s monster—where policymakers are subject to the policy whims of unelected judges.

The Legislative Amici concur with the Petitioner that “[t]his 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.” Pet. at 31. Therefore, the Legislative Amici respectfully encourage this Court to grant the petition to provide clarity on the proper scope of federal courts’ consideration of neutral ballot-casting rules, such as this one.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge this Court to grant the Petition for Writ of Certiorari.

Respectfully submitted,

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