

No. 25-967

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IN THE  
**Supreme Court of the United States**

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COMMONWEALTH OF PENNSYLVANIA,

*Petitioner,*

v.

BETTE EAKIN, ET AL.,

*Respondents.*

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**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Third Circuit**

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**BRIEF IN SUPPORT OF CERTIORARI**

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**RULE 29.6 STATEMENT**

The Republican National Committee has no parent corporation and is not publicly held, and no publicly held corporation owns 10% or more of its stock. The National Republican Congressional Committee has no parent corporation and is not publicly held, and no publicly held corporation owns 10% or more of its stock. The Republican Party of Pennsylvania has no parent corporation and is not publicly held, and no publicly held corporation owns 10% or more of its stock.

## ARGUMENT

The Commonwealth of Pennsylvania and Respondents Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania (collectively, “Republican Respondents”) each seek certiorari from the same erroneous Third Circuit decision holding Pennsylvania’s date requirement for mail-in ballots unconstitutional. *See* Petitions, Nos. 25-962 & 25-967. Both petitions demonstrate the need for this Court’s intervention to address the uncertainty and chaos wrought by the “standardless standards” lower courts wield under the *Anderson-Burdick* framework. *Daunt v. Benson*, 999 F.3d 299, 323 (6th Cir. 2021) (Readler, J., concurring in the judgment). And both petitions demonstrate the peril of allowing the federal judiciary to exercise virtually unchecked power to revise State election codes and remove even the most mundane and unburdensome voting rules they disfavor.

This Court should grant both petitions and consolidate the cases, as it has done time and again when both State and private petitioners seek review of the same judgment. *See, e.g., Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647 (2021). In *Brnovich*, this Court encountered an identical posture—dual petitions filed by both a State (Arizona) and a political party (Arizona Republican Party) seeking review of the same decision striking down a State election law—and granted both petitions. *See* Nos. 19-1257 & 19-1258. This is also the Court’s standard practice outside the election-law context, where it regularly grants petitions brought by

both private and State petitioners and consolidates the cases for argument.<sup>1</sup>

This case demonstrates the wisdom of this established practice: Granting both petitions will (1) ensure true adversity among the parties, (2) allow the Court to consider all issues presented by the case, and (3) provide the Court with a fulsome presentation of the record below.

1. The Commonwealth initially declined to defend the date requirement in the district court. Stepping into the void, Republican Respondents intervened and litigated the case through summary judgment. Repub’n. Respondents. Pet. 13. Only on appeal, after a change in the Commonwealth’s Attorney General office, did the Commonwealth intervene.<sup>2</sup> *Id.*

That alone demonstrates the risk of granting only the Commonwealth’s petition. Political winds are

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<sup>1</sup> See, e.g., *Haaland v. Brackeen*, 599 U.S. 255 (2023); *West Virginia v. EPA*, 597 U.S. 697 (2022); *Murphy v. NCAA*, 584 U.S. 453 (2018); *Michigan v. EPA*, 576 U.S. 743 (2015); *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014); *NFIB v. Sebelius*, 567 U.S. 519 (2012); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006); *Granholt v. Heald*, 544 U.S. 460 (2005); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

<sup>2</sup> Pennsylvania law makes the Attorney General independent from the Governor. Under the Pennsylvania Constitution, the Attorney General is an independently elected constitutional officer, chosen by the voters for a four-year term, and the Attorney General—not the Governor—is designated “the chief law officer of the Commonwealth.” Pa. Const. art. IV, § 4.1; see also *Synthes USA HQ, Inc. v. Commonwealth*, 289 A.3d 846, 859 (Pa. 2023) (Attorney General is “accountable directly to the Pennsylvania voters, and independent of the Governor and the Commonwealth agencies”).

fickle. Although the next Attorney General election in Pennsylvania is not until 2028, *see* Pa. Const. art. IV, § 4.1; Pa. Dep’t of State, 2024 General Election Official Returns, Attorney General, <https://www.electionreturns.pa.gov>, there is no guarantee that the Commonwealth’s position in this litigation will not again change.

Were that to happen, this Court could well be left without adverse parties if it grants only the Commonwealth’s petition. But “cases and controversies in our legal system are adversarial in nature,” *Ayestas v. Davis*, 584 U.S. 28, 40 (2018), and this Court requires “an honest and actual antagonistic assertion of rights by one party against another,” *U.S. Nat’l Bank of Ore. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 446 (1993) (cleaned up). The reason for this is sound: Adversity “sharpens the presentation of issues upon which the court so largely depends for illumination of difficult questions.” *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 382–83 (1980) (cleaned up).

Granting both petitions ensures that adverse parties will remain before this Court throughout the proceedings, thus avoiding potential jurisdictional complications down the road.

2. The two petitions are broadly aligned. Both argue that the Third Circuit misapplied the *Anderson-Burdick* framework in striking down a law that imposes only a minimal burden on voters; that the lower court erred by considering the date requirement in isolation from the rest of the Commonwealth’s voting framework; that the date requirement serves legitimate State interests, including the prevention of voter

fraud; and that courts may not measure a voting rule's burdens by the consequence of noncompliance. Commw.Pet.28–32; Repub'n.Respondents.Pet.24–33. Both highlight the uncertainty and confusion produced by *Anderson-Burdick's* flabby balancing framework. Commw.Pet.16–17,27; Repub'n.Respondents.Pet.33–36. And both rightly warn of the consequences that the decision below will spawn—stand-ardless, freewheeling supervision of State election laws by unelected federal judges, representing a stark and unprecedented transfer of power from the States to the federal judiciary. Commw.Pet.27–28; Repub'n.Respondents.Pet.4–6.

At the same time, the petitions are not identical, and addressing both will enable the Court to consider all issues presented by the Third Circuit's erroneous decision. For example, Republican Respondents have argued that the date requirement does not implicate the right to vote at all and is subject only to rational-basis review under *McDonald v. Board of Election Commissioners*, 394 U.S. 802 (1969). See Repub'n.Respondents.Pet.i,18–20,27–30. The Commonwealth does not make this argument. Additionally, Republican Respondents' petition identifies a circuit split on the question of whether courts may consider the *consequence* of noncompliance with a State voting law when assessing the *burden* that the challenged law imposes on voters. See Repub'n.Respondents.Pet.22–24. Although the Commonwealth's petition criticizes the Third Circuit's decision to consider such consequences, see Commw.Pet.29, it does not identify any split on the question or frame the issue as a separate Question Presented, *compare id.* at i, *with* Repub'n.Respondents.Pet.i. Because the two petitions' arguments

overlap substantially but are not identical, granting both ensures this Court may attend to the full panoply of issues presented by this case.

Moreover, the petitions seek different relief. The Commonwealth's petition primarily asks this Court to grant certiorari, vacate the opinion below, and remand (GVR) in light of the Pennsylvania Supreme Court's decision in *Center for Coalfield Justice v. Washington County Board of Elections*, 343 A.3d 1178 (Pa. 2025). The Commonwealth requests ordinary review only in the alternative. Commw.Pet.1–3,32. By contrast, Republican Respondents do not ask for a GVR, instead asking only that this Court grant certiorari and reverse. Repub'n.Respondents.Pet.6,37. A GVR would leave the important underlying constitutional questions unresolved, perpetuating the multiple circuit splits implicated by the Third Circuit's erroneous decision. And the likelihood of a different result on remand in light of *Coalfield Justice* is far from certain. This Court should grant both petitions and proceed to the merits.

**3.** Granting Republican Respondents' petition will also aid the Court's deliberations. Because the Commonwealth did not initially defend the date requirement in the district court, Republican Respondents were responsible for developing the record below—including adducing evidence that the date requirement serves the Commonwealth's interest in fraud detection. Repub'n.Respondents.Pet.15. Republican Respondents have been with the case from the beginning, and their familiarity with the record will assist the Court as it decides the important issues presented.

**CONCLUSION**

This Court should grant both the Commonwealth's and Republican Respondents' petitions.

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Respectfully submitted,

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