

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

**BRIEF OF RESPONDENT
BERKS COUNTY BOARD OF ELECTIONS
IN SUPPORT OF GRANTING THE
COMMONWEALTH OF PENNSYLVANIA PETITION**

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QUESTION PRESENTED

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

PARTIES TO THE PROCEEDINGS
No. 25-967
Commonwealth of Pennsylvania,
v. Bette Eakin, Et Al.

**Respondent (On Brief) in Support of Granting
Petition and Defendant/Appellee below**

Berks County Board of Elections

Petitioner and Intervenor-Appellant below

Commonwealth of Pennsylvania

**Respondents and Defendants-Intervenors/
Appellants below**

Republican National Committee

National Republican Congressional Committee

Republican Party of Pennsylvania

**Respondents and Plaintiffs/Appellees below
("Plaintiffs-Respondents")**

Bette Eakin

Democratic Senatorial Campaign Committee

Democratic Congressional Campaign Committee

American Federation of Teachers Pennsylvania

Respondents and Defendants/Appellees below

In addition to the Berks County Board of Elections, the remaining 66 Pennsylvania county boards of elections were named as Respondents.

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WHY THE PETITION SHOULD BE GRANTED

It is now time for this Court to decide the question presented in this case

Like many other county boards of elections—which are local government entities with limited resources and staffing—the Berks County Board of Elections (“Berks County”) is weary of repeated litigation challenging unambiguous election rules. Each election cycle, major political parties, candidates, and voter advocacy groups like the Respondent organizations invent new and creative legal arguments why they are entitled to have additional votes counted—or why certain votes should not be counted—in a results-oriented calculation based on whichever action will cause their preferred candidates to prevail.

The present case is just the latest in a series of state and federal lawsuits challenging Pennsylvania’s facially nondiscriminatory and neutrally applied vote-casting rule duly adopted by the Legislature and signed into law by the Governor. Berks County would welcome the clarity and finality that would come from the United States Supreme Court resolving this controversy on the merits. Now is the right time.

Pennsylvania’s Election Code was amended in 2019 to allow universal no-excuse mail-in voting (in addition to traditional excuse-based absentee voting). Act of Oct. 31, 2019, P.L. 552, No. 77, § 8 (effective Oct. 31, 2019); 25 Pa. Stat. §§ 3150.11-3150.18. The Election Code, as amended, requires voters casting their vote by mail-in or absentee ballot, among other requirements, to “fill out, date and sign” a voter declaration

printed on the outer envelope in which the voter's official election ballot is returned. *See* 25 Pa. Stat. §§ 3146.6(a), 3150.16(a). The Election Code requirement that voter declarations be dated has become known as the "Date Requirement."

On November 1, 2022, the Pennsylvania Supreme Court ruled 4-2 that the Date Requirement is a mandatory vote-casting requirement and ordered all county boards of election (including Berks County) to set aside and not count mail-in and absentee ballots submitted in an outer envelope on which the voter declaration was either undated or incorrectly dated. *See Ball v. Chapman*, 284 Pa. 1189, 1192 (Pa. 2022) (*per curiam*); *see also* 289 A.3d 1 (Pa. 2023) (opinion filed Feb. 8, 2023). In that same decision, the Pennsylvania Supreme Court was evenly divided 3-3 on whether this mandatory Date Requirement violates Section 10101(a)(2)(B) of the Civil Rights Act of 1964, called the Materiality Provision. *Id.*

Immediately after the Pennsylvania Supreme Court decided *Ball v. Chapman*, two separate voter advocacy groups filed legal challenges in the district court below, claiming the Date Requirement violates not only the Materiality Provision but also violates the First and Fourteenth Amendments of the U.S. Constitution. Plaintiffs-Respondents' lawsuit was filed at the same time as a virtually identical legal challenge by other voters and organizations, including lead plaintiff Pennsylvania State Conference of NAACP Branches. The NAACP Branches case was docketed in the district court as 1:22-cv-939-SPB; Plaintiffs-Respondents' case was docketed as 1:22-cv-340-SPB. The district court coordinated the two cases for discovery.

After expedited discovery, on November 21, 2023, the district court granted summary judgment in the NAACP Branches case on their statutory claim, ruling that setting aside and not counting undated or incorrectly dated ballots violates the Materiality Provision. *Pennsylvania State Conference of NAACP Branches v. Secretary of Commonwealth of Pennsylvania*, 703 F. Supp.3d 632 (W.D. Pa. 2023). On January 2, 2024, the district court stayed this case while its summary judgment decision on the Materiality Provision in the NAACP Branches case was appealed to the Third Circuit.

On March 27, 2024, the Third Circuit, in a 2-1 panel decision, reversed the district court's summary judgment order in the NAACP Branches case. *Pennsylvania State Conference of NAACP Branches v. Secretary Commonwealth of Pennsylvania*, 97 F.4th 120 (3d Cir. 2024). The Third Circuit majority analyzed the text, context, and historic backdrop of the Materiality Provision, and determined States are free to adopt vote-casting rules that have nothing to do with determining who may vote, like Pennsylvania's Date Requirement, without running afoul of the Materiality Provision. *Id.*, 97 F.4th at 134 (quoting *Ball v. Chapman*, 289 A.3d at 38 (Brobson, J., concurring in part, dissenting in part) and *Ritter v. Migliori*, __ U.S. __, 142 S. Ct. 1824, 1825, 213 L.Ed.2d 1034 (2022) (Alito, J., dissenting from denial of application for stay)).

Although the NAACP Branches (and Plaintiffs-Respondents in this case) had challenged the Date Requirement on both federal statutory and constitutional grounds, the district court's summary judgment order avoided reaching the constitutional question and decided the case instead solely on the statutory Mate-

riality Provision claim. The Third Circuit remanded the NAACP Branches case to the district court for a ruling on the constitutional challenges that the district court had not yet decided.

On May 16, 2024, after entry of the Third Circuit's mandate remanding the NAACP Branches case, the district court promptly lifted the stay in this case, reinstated the previously-filed summary judgment motions, and permitted the parties to supplement their summary judgment motions and briefs on the remaining constitutional questions.

On March 31, 2025, the district court granted summary judgment for all defendants on plaintiffs' claim that the Date Requirement violates the Materiality Provision; however, the district court granted summary judgment for Respondent organizations on their claim seeking a declaration that the Date Requirement violates the First and Fourteenth Amendments to the United States Constitution. *Eakin v. Adams Cnty. Bd. of Elections*, 775 F. Supp. 3d 903, 920–21 (W.D. Pa. 2025). As part of its order, the district court prohibited all county boards of elections from rejecting or refusing to count votes on otherwise valid mail-in ballots due to a missing or incorrect date on the voter declaration on the ballot's outer envelope (*i.e.*, violation of the Date Requirement). *Id.* at 921. The district court entered final judgment on all claims in this case under Rule 58 on April 1, 2025.¹

¹ On April 14, 2025, the plaintiffs in the NAACP Branches case filed motions requesting entry of judgment under Rule 54(b) based on the district court's grant of summary judgment on the constitutional claims in this case. The district court has not yet ruled on those pending motions.

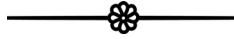
On August 26, 2025, a Third Circuit panel entered judgment affirming the district court's grant of summary judgment on Respondents' constitutional challenges to the Date Requirement. *Eakin v. Adams Cty. Bd. of Elections*, 149 F.4th 291, 310-318 (3d Cir. 2025) (concluding, under the *Anderson-Burdick* framework, the practice of rejecting and not counting ballots contained in return envelopes that do not comply with the Date Requirement violates the First and Fourteenth Amendments because the Date Requirement imposes a minimal burden on voters that is not justified by the proffered State interests of facilitating election efficiency, promoting solemnity, and detecting and deterring voter fraud). On October 14, 2025, the Third Circuit denied a motion for rehearing *en banc*.

On February 11, 2026, the Commonwealth of Pennsylvania filed the present petition for writ of certiorari. That same day, the Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania filed a separate petition for writ of certiorari (No. 25-962).

When the NAACP Branches petitioned the Court for a writ of certiorari after the Third Circuit reversed the district court's summary judgment order on the statutory challenge to the Date Requirement (No. 24-363), Berks County opposed that petition, requesting the Court to wait and see how the district court and Third Circuit rule on the as yet undecided constitutional challenges to the Date Requirement. On January 21, 2025, this Court denied the NAACP Branches' petition.

Now that the district court and Third Circuit have decided those constitutional challenges in favor of Respondent organizations, this Court now has a fully developed record and lower court decisions on all of

the legal challenges to the Date Requirement upon which the Court can now decide all the relevant issues at one time. Berks County respectfully requests that it do so.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 1, 2026