No. 25-962

IN THE
Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, ET AL.,
Petitioners,

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 THE STATE OF MISSOURI AND TWENTY OTHER STATES AS AMICI CURIAE IN SUPPORT OF PETITIONERS

CATHERINE L. HANAWAY
Attorney General
of Missouri
815 Olive Street,
Suite 200
St. Louis, MO 63101

LOUIS J. CAPOZZI, III
Solicitor General
Counsel of Record
MADELINE SPARKS LANSDELL
Assistant Solicitor General
(573) 645-9662
Louis.Capozzi@ago.mo.gov

Counsel for Amicus State of Missouri

[Additional Counsel Listed on Inside Cover]

March 13, 2026

ADDITIONAL COUNSEL

Steve Marshall
Attorney General of
Alabama

Stephen J. Cox
Attorney General of
Alaska

James Uthmeier
Attorney General of
Florida

Chris Carr
Attorney General of
Georgia

Raúl R. Labrador
Attorney General of
Idaho

Theodore E. Rokita
Attorney General of
Indiana

Brenna Bird
Attorney General of
Iowa

Kris W. Kobach
Attorney General of
Kansas

Liz Murrill
Attorney General of
Louisiana

Lynn Fitch
Attorney General of
Mississippi

Austin Knudsen
Attorney General of
Montana

Michael T. Hilgers
Attorney General of
Nebraska

Drew Wrigley
Attorney General of
North Dakota

Dave Yost
Attorney General of
Ohio

Gentner Drummond
Attorney General of
Oklahoma

Alan Wilson
Attorney General of
South Carolina

Marty Jackley
Attorney General of
South Dakota

Ken Paxton
Attorney General of
Texas

Jonathan Skrmetti
Attorney General of
Tennessee

John B. McCuskey
Attorney General of
West Virginia

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INTEREST OF AMICI CURIAE AND SUMMARY OF THE ARGUMENT[1]

The Constitution vests state legislatures with the primary authority to set the rules for elections. *See, e.g.*, U.S. Const. art. I, § 4, cl. 1; *id.* art. II, § 1, cl. 2; *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997); *Carrington v. Rash*, 380 U.S. 89, 91 (1965). The power to set election rules comes with the responsibility of making difficult policy choices in a politically-sensitive area where States must balance between sometimes-competing considerations—such as making voting easier and ensuring election integrity.

Amici States have a strong interest in maintaining their constitutional prerogatives to set election rules. That interest is undermined when judges insert their own policy preferences into elections and displace rules enacted by the people's elected representatives. Of course, courts must enforce constitutional and statutory commands—such as prohibitions against racially discriminatory rules. U.S. Const. amend. XIV; *id.* amend. XV. But if judges strike down state election laws *without* clear legal authority to do so, citizens will rightfully fear that the judiciary is interfering with their elections. *See Rucho v. Common Cause*, 588 U.S. 684, 704 (2019) ("With uncertain limits, intervening courts—even when proceeding with best intentions—would risk assuming political, not legal, responsibility for a process that often produces ill will and distrust." (cleaned up)); *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024) ("[W]e must be wary of plaintiffs who seek to transform federal courts into weapons of political

[1] Pursuant to Rule 37.2, amici provided timely notice of their intent to file this brief to all parties.

warfare that will deliver victories that eluded them in the political arena." (cleaned up)).

In this case, the Third Circuit utterly discarded all rules of judicial restraint in the election-law context; and it badly erred in enjoining Pennsylvania's requirement that individuals voting by mail handwrite a date when filling out ballot declarations. In that court's view, the Constitution's atextual right to vote gives judges vast discretion to second-guess *every* mandatory election rule. According to the panel, courts must "balance" an election rule's "burden" against the policy interests supporting the rule. And if judges disagree with the State's policy justifications, they can brush them aside—like the panel did. *See Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 317 (3rd Cir. 2025) ("The date requirement *seems* to hamper rather than facilitate election efficiency." (emphasis added)).

In fairness to the Third Circuit, widespread confusion persists over how to apply this Court's right-to-vote jurisprudence. Federal appellate courts apply different standards of review. *Compare SAM Party of N.Y. v. Kosinski*, 987 F.3d 267, 274 (2d Cir. 2021) (two-tiered standard), *with Daunt v. Benson (Daunt II)*, 999 F.3d 299, 323 (6th Cir. 2021) (Readler, J., concurring in the judgment) (discussing the Sixth Circuit's three-tiered standard). Some circuits offer no scrutiny for rules that impose *de minimis* burdens; other circuits do not recognize that rule. *Compare New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020), *with Mazo v. N.J. Sec'y of State*, 54 F.4th 124, 138–39 (3d Cir. 2022). Some circuits have determined that the Constitution recognizes a right to vote in a particular way (such as by mail), while others reject that approach. *Compare Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318–19 (11th Cir. 2019), *with Tex. Democratic Party v. Abbott*, 961

F.3d 389, 406 (5th Cir. 2020). All those divisions were reflected in the Third Circuit's sharply divided 7–6 en banc vote. *See Eakin v. Adams Cnty. Bd. of Elections*, 158 F.4th 185, 189–90 (3d Cir. 2025) (Bove, J., dissental from denial of rehearing en banc).

Further, judges and commentators have expressed concern that the federal courts' confusion over the constitutional right-to-vote standard ultimately leaves judges with too much discretion to second-guess legislative policy choices. *See, e.g.*, *id.* at 196 ("[T]his amorphous test can result in an anti-democratic seizure of power from the People's politically accountable representatives."); *Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 561 (6th Cir. 2021) (Readler, J., concurring) ("*Anderson-Burdick* does little to constrain a court's decisionmaking process, and instead leaves federal judges to weigh standards entirely crafted by the judges themselves."); Edward B. Foley, *Voting Rules and Constitutional Law*, 81 Geo. Wash. L. Rev. 1836, 1859 (2013) ("Anderson-Burdick balancing is such an imprecise instrument that it is easy for the balance to come out one way in the hands of one judge, yet come out in the exact opposite way in the hands of another.").

This Court should grant certiorari and clarify the standard of review for right-to-vote claims. In particular, this Court should confirm that the atextual constitutional right to vote prohibits only (1) *discriminatory* voting rules and (2) those that impose severe burdens and thus block *access* to the voting booth. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 208 (2016) (Scalia, J. concurring in the judgment).

Under that (or any appropriate) standard, the Third Circuit's decision is wrong. All agree that

Pennsylvania's date requirement is not discriminatory. *Eakin*, 149 F.4th at 303, 312. And requiring individuals voting by mail to handwrite a date obviously does not impose a severe burden on voters or block access to the voting booth. *See id.* at 309. Indeed, such a *de minimis* requirement merely involves the "usual burdens of voting" and should merit *no* judicial scrutiny. *Crawford*, 553 U.S. at 198 (plurality op.); *accord Brnovich v. DNC*, 594 U.S. 647, 669 (2021). Further, the date requirement regulates *only* mail voting; the fact that Pennsylvanians can simply avoid the rule by voting in person should also foreclose finding a constitutional right-to-vote violation. *McDonald v. Bd. of Election Comm'rs of Chicago*, 394 U.S. 802, 807 (1969). Finally, even if the date requirement is subjected to rational-basis review, both Pennsylvania and the Republican Party intervenors easily satisfied that standard in this case. *See Eakin*, 158 F.4th at 197 (Bove, J., dissental from denial of rehearing en banc); *id.* at 178 (Phipps, J., dissenting).

The Third Circuit's contrary decision misapplies precedent and deepens substantial splits among the federal appellate courts over how to apply this Court's constitutional right-to-vote standard. If the panel's decision stands, litigants around the country will understand that all mandatory election rules are vulnerable to invalidation. This Court should close that Pandora's box, grant certiorari, and ultimately reverse.

ARGUMENT

Under any appropriate standard of review, this should be an easy case. The challenged Pennsylvania law merely requires voters to write a date in partially pre-filled boxes. The notion that such a mundane and simple requirement violates the right to vote defies common sense.

The decision below vividly illustrates the need to clarify this Court's right-to-vote jurisprudence. Under a principled approach, Pennsylvania's date requirement is obviously constitutional. This Court should grant review and reverse.

I. The Constitution's Right to Vote is Narrow.

When it comes to voting rights, the Constitution's text prohibits only *discriminatory* voting rules. U.S. Const. amend. XV. Nevertheless, this Court has inferred the existence of a slightly broader constitutional right to vote. *See Reynolds v. Sims*, 377 U.S. 533, 568 (1964). This right, however, has clear limits. *See, e.g.*, *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 9 (1982) ("The right to vote, *per se*, is not a constitutionally protected right." (cleaned up)). Notably, this right does not guarantee voters the right to vote "in any manner" they please. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). For example, this Court has held that the right to vote does not guarantee any right to vote by mail. *McDonald*, 394 U.S. at 807.

The narrow scope of the constitutional right to vote is fundamental to an orderly democratic process. The Constitution expressly delegates the power to regulate the "Times, Places, and Manner" of federal elections to the States. U.S. Const. art. I, § 4, cl. 1. And "as a practical matter, there must be a *substantial regulation* of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (emphasis added) (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

Given this clear and broad constitutional assignment of power to state legislatures, courts must avoid treating the constitutional right to vote as an invitation "to rewrite state electoral codes." *Clingman*

v. Beaver, 544 U.S. 581, 593 (2005). After all, any "sort of detailed judicial supervision of the election process would flout the Constitution's express commitment of the task to the States." *Crawford*, 553 U.S. at 208 (Scalia, J., concurring in the judgment).

To avoid giving courts a broad license to second-guess state election rules, this Court has carefully defined and limited the constitutional right to vote. The right to vote is the right to "participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). Accordingly, this right guarantees only *two* fundamental protections.

First, States may not *discriminate* against voters. This anti-discrimination rationale explains this Court's adoption of the "one-person-one-vote rule," *see Reynolds*, 377 U.S. at 568, and its invalidation of poll taxes that "invidiously discriminate" on the basis of race or wealth, *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966); *accord Lassiter v. Northampton Cnty. Bd. of Elections*, 360 U.S. 45, 50 (1959) ("States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, absent of course the discrimination which the Constitution condemns." (cleaned up)).

Second, States must ensure a fair and meaningful opportunity for citizens to "participate in elections." *Dunn*, 405 U.S. at 336. To safeguard this opportunity, this Court has recognized that the right to vote—combined with the First Amendment's right of association—limits States' ability to keep candidates off the ballot. *See Anderson*, 460 U.S. at 787–88; *Mazo*, 54 F.4th at 138 ("[A]ssociational rights have also played a central role in many of the Supreme Court's other cases applying the *Anderson-Burdick* test."). In the same vein, this Court recognized that States may not

impose objectively severe burdens on voting that prevent citizens from accessing the polling place. *See Crawford*, 553 U.S. at 190 (plurality op.); *id.* at 205 (Scalia, J., concurring in the judgment).

Importantly, this Court has never found that a non-discriminatory ballot-casting regulation imposes a severe burden or violates the right to vote—as the Third Circuit did in this case.

II. Confusion Reigns Among Federal Courts Over How to Apply This Court's Right-to-Vote Precedents.

Beyond recognition of prohibitions against discrimination and severe burdens on voting, federal courts are divided on what the right to vote protects. And this Court's plurality decision in *Crawford* spurred considerable confusion.

Crawford reflects a fundamental disagreement about whether non-severe burdens on voting even *implicate* the right to vote. *Compare* 553 U.S. at 190 n.8 (plurality op.), *with id.* at 206–08 (Scalia, J., concurring in the judgment). Writing for three Justices, Justice Scalia argued that only severe burdens implicate the right to vote and that such burdens should be assessed using strict scrutiny. *Id.* at 206–08 (Scalia, J., concurring in the judgment). Writing for three other Justices, Justice Stevens seemed to envision a sliding scale of judicial scrutiny for a range of burdens, including some non-severe burdens depending on their impact. *Id.* at 190 n.8 (plurality op.); *see also id.* at 210 (Souter, J., dissenting).

As this Court's last word on the constitutional right to vote, *Crawford* has provided little clarity. To start, it is not entirely clear whether the plurality approach is binding or not. *See Ramos v. Louisiana*, 590 U.S. 83, 103 (2020) (plurality op.); *id.* at 148–49 (Alito, J., dissenting). "When a fragmented Court decides a

case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977) (cleaned up). But among the six Justices who voted to affirm in *Crawford*, there was no majority rationale; quite the contrary, there was stark disagreement on what the governing standard should be. *Compare* 553 U.S. at 190 n.8 (plurality op.), *with id.* at 206–08 (Scalia, J., concurring in the judgment).

Perhaps unsurprisingly, *Crawford* has generated confusion among the lower courts. *See Daunt v. Benson (Daunt I)*, 956 F.3d 396, 424 (6th Cir. 2020) (Readler, J., concurring in the judgment) ("In sensitive policy-oriented cases, [*Anderson*-Burdick] affords far too much discretion to judges in resolving the dispute before them."). Some circuits follow a two-tiered approach for the level of judicial scrutiny afforded to different burdens. *See, e.g.*, *SAM Party of N.Y.*, 987 F.3d at 274; *Mazo*, 54 F.4th at 145; *Marcellus v. Va. State Bd. of Elections*, 849 F.3d 169, 175 (4th Cir. 2017); *Stone v. Bd. of Election Comm'rs for City of Chicago*, 750 F.3d 678, 681 (7th Cir. 2014). Under this approach, strict scrutiny applies to severe burdens whereas a lesser level of scrutiny applies to non-severe burdens. In some courts, this "lesser" level of scrutiny requires courts to "'weigh' the burdens imposed on the plaintiff against the precise interests put forward by the State," and to take "into consideration the extent to which those interests make it necessary to burden the plaintiff's rights." *SAM Party of N.Y.*, 987 F.3d at 274 (cleaned up). Other courts apply rational basis review. *See, e.g.*, *Peters v. Johns*, 489 S.W.3d 262, 273–74 (Mo. 2016) (interpreting federal law and applying *Anderson-Burdick*).

By contrast, the Sixth Circuit applies a three-tiered test. *Daunt II*, 999 F.3d at 323 (Readler, J., concurring) ("[W]e deem 'most' Anderson-Burdick cases to 'fall in between' the extremes of laws that impose severe burdens and no burdens at all, thereby subjecting a wide swath of state laws to the supposed 'hard judgment[s]' that the whims of Anderson-Burdick's 'flexible standard' 'demand[].'" (alterations in original) (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir. 2012))). This approach applies strict scrutiny to severe burdens, a form of rational-basis scrutiny to "reasonable, nondiscriminatory regulations," and the flexible *Anderson-Burdick* burden and interest analysis to regulations that fall between the extremes. *Id.* at 310–11.

Another point of disagreement amongst the circuit courts is whether *de minimis* burdens implicate the right to vote. Some circuits exclude *de minimis* burdens from *Anderson-Burdick* review, finding that these burdens do not implicate the constitutional right to vote. *Mazo*, 54 F.4th at 138–39; *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 730–31 (9th Cir. 2015). Other circuits subject even the most ordinary election regulations to scrutiny under *Anderson-Burdick*. *See, e.g.*, *New Ga. Project*, 976 F.3d at 1282; *Tripp v. Scholz*, 872 F.3d 857, 864 (7th Cir. 2017).

A final point of confusion for federal appellate courts is whether and how the constitutional right to vote applies to rules limiting only mail voting. The Fifth, Sixth, and Seventh Circuits follow this Court's precedent in *McDonald* and apply rational-basis scrutiny "to election laws that do not impact the right to vote—that is, the right to cast a ballot in person." *Tully v. Okeson*, 977 F.3d 608, 616 n.6 (7th Cir. 2020) ("So, in cases like *McDonald*, where only the claimed right to vote by mail is at issue, the *Anderson/Burdick*

test, by its own terms, cannot apply."); *see Tex. Democratic Party*, 961 F.3d at 406 ("Because the plaintiffs' fundamental right is not at issue, *McDonald* directs us to review only for a rational basis . . . ."). The Third Circuit joined the Second, Eight, Ninth, and Eleventh Circuits in extending *Anderson-Burdick* review to rules that affect only mail voting. *See Eakin*, 149 F.4th at 308 n.23 (collecting cases).

As a result of this confusion, federal appellate courts struggle to find consistency in adjudicating right-to-vote cases. And judges have voiced concerns when defining burdens and attempting to weigh those burdens. *See Citizens in Charge, Inc. v. Husted*, 810 F.3d 437, 443 (6th Cir. 2016) (Sutton, J.) ("The distinction between 'severe burdens' and 'lesser' ones is often murky." (quoting *Buckley v. Am. Const. L. Found.*, 525 U.S. 182, 207 (1999) (Thomas, J., concurring in the judgment)); *Daunt I*, 956 F.3d at 425 (Readler, J., concurring) ("In the name of 'flexibility,' *Anderson-Burdick* risks trading precise rules and predictable outcomes for the imprecision and unpredictability of how the judicial-assignment wheel turns."); *Eakin*, 158 F.4th at 191–92 (Bove, J., dissental from denial of rehearing en banc) ("These expansions of *Anderson-Burdick* have the potential to cause election chaos in Pennsylvania and beyond.").

This Court should grant review and adopt a more workable standard for constitutional right-to-vote cases. After all, "the States depend on clear and administrable guidelines from courts." *Little v. Reclaim Idaho*, 140 S.Ct. 2616, 2616 (2020) (Roberts, C.J., concurring in the grant of stay). And the need for clear rules is especially important in politically fraught election-law cases.

III. The Court Must Reject the Third Circuit's Fundamentally Flawed Approach.

In adopting a legal standard that subjects *all* mandatory voting rules to searching judicial scrutiny, the Third Circuit profoundly erred.

To start, the panel's approach undermines federalism and the separation of powers by transferring authority over election rules from States to federal courts. Once again, the Constitution assigns the responsibility for establishing voting regulations to the States in the first instance. U.S. Const. art. I, § 4, cl. 1. And for good reason. Setting election laws involves sensitive political disputes, and such political matters are quintessentially *legislative* questions, not judicial ones. *Cf. Rucho*, 588 U.S. at 707.

As a historical matter, States have accomplished much to celebrate in exercising their constitutional prerogatives to set voting rules. In the early days of the Republic, polling places could be boisterous, even "chaotic," "akin to entering an open auction." *Minn. Voters All. v. Mansky*, 585 U.S. 1, 7 (2018) (citations omitted). Voters also generally voted on ballots printed by parties instead of the government. *Id.* at 6. About a century ago, however, States began "implementing reforms to address these vulnerabilities and improve the reliability of elections." *Id.* at 7. These reforms are now fundamental—voting in private using state rather than party-printed ballots. *Id.*

And these innovations continue today. One irony of this case is that the Third Circuit's decision *punishes* Pennsylvania for engaging in such innovation. Six years ago, Pennsylvania's General Assembly enacted universal mail-in voting for the first time in the State's history. *See* Act of Oct. 31, 2019, Pub. L. No. 522-77; 25 Pa. Stat. § 3150.11(a). As part of the legis-

lative compromise that created mail voting, the General Assembly insisted on certain election-integrity measures, including a requirement that voters date their mail-ballot declarations. Yet the panel—with no clear legal authorization—set aside that legislative compromise. *Eakin*, 149 F.4th at 318. Should the Third Circuit's ruling persist, States will hesitate to further innovate in setting election-law rules.

Further, the Third Circuit embraced a rule that is unworkable and threatens the integrity of the judiciary. As both courts and commentators have recognized, the *Anderson-Burdick* test is indeterminate and malleable. *See, e.g.*, *Citizens in Charge,* 810 F.3d at 443 (Sutton, J.) ("The distinction between 'severe burdens' and 'lesser' ones is often murky." (cleaned up)); Derek T. Muller, *The Fundamental Weakness of Flabby Balancing Tests in Federal Election Law Litigation*, Excess of Democracy (Apr. 20, 2020) (characterizing *Anderson-Burdick* as an "ad hoc totality-of-the-circumstances" test);[2] Note, "As the Legislature Has Prescribed": Removing Presidential Elections from the *Anderson-Burdick* Framework, 135 Harv. L. Rev. 1082, 1085, 1099 (2022) (describing *Anderson-Burdick* as a "frustratingly vague" "judicial morass").

The panel's approach pours gasoline on all of the risks associated with the current test. Under the panel's approach, a court could find even the most innocuous voting requirement to be a constitutional violation. Courts will possess broad discretion in characterizing how "burdensome" a rule is. *Eakin*, 149 F.4th at 305–06. And Courts will have expansive authority to evaluate the merits of the policy arguments for and against a challenged rule. *See, e.g.*, *id.* at 314–17. Courts must then weight these incommensurate

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[2] https://perma.cc/CSN6-9HJN

factors—somehow balancing burdens against policy benefits. *Cf. Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 393 (2023) (Barrett, J., concurring in part). But weighing such things is the equivalent of weighing the value of making more money versus spending more time with one's family; the weighing inherently calls for a *value* judgment that courts—as non-political actors—are ill-equipped to make. *See Eakin*, 158 F.4th at 190 (Bove, J., dissental from denial of rehearing en banc) ("Compared to courts, legislatures are in a better position to make policy and bring to bear the collective wisdom of the whole people when they do, and they enjoy far greater resources for research and factfinding." (cleaned up)).

In short, under the Third Circuit's rule, courts will be required to wade into policy and will have vast discretion to strike down any mandatory election rules they do not like. This, in turn, gives partisans who failed to obtain their preferred election laws through the legislative process every incentive to turn around and try their luck in the courts instead. *See Alexander*, 602 U.S. at 11. Such a consequence would regularly enmesh courts in inherently political fights—with only an open-ended and amorphous balancing test to guide them. *See Rucho*, 588 U.S. at 704 ("With uncertain limits, intervening courts—even when proceeding with best intentions—would risk assuming political, not legal, responsibility for a process that often produces ill will and distrust." (cleaned up)).

IV. The Court Should Uphold Pennsylvania's Date Requirement.

This Court should implement the constitutional right to vote in a way that lessens the risk of judicial overreach. Three rationales—all of which have a firm

basis in this Court's jurisprudence—should easily resolve this case. Under any of those approaches, the Court should reverse.

First, the date requirement is a "usual burden[] of voting" that merits no judicial scrutiny. *Crawford*, 553 U.S. at 198 (plurality op.). This Court has recognized that certain election requirements exist that are even more miniscule than minor burdens. In *Crawford*, this Court explained that some burdens imposed by election regulations are simply "neither so serious nor so frequent as to raise any question about the[ir] constitutionality." *Crawford*, 533 U.S. at 197 (plurality op.). This Court also observed that the "usual burdens of voting" are even less burdensome than minimally burdensome rules. *Id.* at 198 (plurality op.). This Court embraced a similar *de minimis* rule in *Brnovich*, determining that "mere inconvenience" is insufficient to "demonstrate a violation" of the right to vote. 594 U.S. at 669 ("[B]ecause voting necessarily requires some effort and compliance with some rules, the concept of a voting system that is 'equally open' and that furnishes equal 'opportunity' to cast a ballot must tolerate the 'usual burdens of voting.'" (cleaned up)). And, writing for three Justices, Justice Alito emphasized that failure to comply with certain rules does not constitute a violation of the right to vote. *Ritter v. Migliori*, 142 S. Ct. 1824, 1825 (2022) (Alito, J., dissental).

Writing a date on a ballot declaration should be deemed a *de minimis* burden meriting no constitutional scrutiny. Dating a ballot is simple and "[f]or a voter with a functioning pen, sufficient ink, and average hand dexterity, this should take less than five seconds." *Eakin*, 158 F.4th at 190 (Bove, J., dissental from denial of rehearing en banc). And requiring voters to write information on voting papers for in-person voting and mail-in voting is a common practice in

every State. *See, e.g.*, 25 Pa. Stat. §§ 3146.6(a), 3150.16(a) (signature requirement); Mo. Rev. Stat. § 115.283 (absentee form requirements). To subject this common-place, simple requirement to judicial scrutiny defies reason.

Second, under this Court's precedent set-forth in *McDonald*, the Constitution does not guarantee a right to vote by mail. 394 U.S. at 807–811. Pennsylvania satisfied its constitutional obligation by making in-person voting available to all. *See id.* at 807–11. Pennsylvania's permissive mail-in regime is a privilege that voters may utilize. However, if voters find the requirements of the mail-in voting system too burdensome, they may exercise their right to vote in-person. *See id.* After all, "the right to vote, per se, is not a constitutionally protected right." *Rodriguez*, 457 U.S. at 9. Consequently, the dating requirement should not be subject to judicial scrutiny.

Third, even applying rational basis review, Pennsylvania's date requirement easily passes muster. The rational-basis test is one of the most "deferential" standards in American law. *Mazo*, 54 F.4th at 153–54. Indeed, when rational-basis scrutiny applies, a legislature's judgment "is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *FCC v. Beach Comms.*, 508 U.S. 307, 315 (1993).

Here, Pennsylvania and the Republican Party intervenors provided *more than enough* to uphold the date requirement under the rational-basis test. To start, the date requirement "provides proof of when the elector actually executed a ballot in full." *In re: Canvass of Absentee and Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1090 (Pa. 2020) (Dougherty, J., concurring and dissenting) (cleaned up). By serving as an important backstop, and aiding

the "orderly administration" of elections, that information undoubtedly furthers legitimate state interests. *Crawford*, 553 U.S. at 196 (plurality op.).

Additionally, the date requirement furthers Pennsylvania's interest in "deterring and detecting voter fraud" and "protecting the integrity and reliability of the electoral process." *Id.* at 191 (plurality op.). States are not required to endure fraud before acting to prevent and combat it. *Brnovich*, 594 U.S. at 686. The date requirement is an anti-fraud measure. And, though not required to establish the legitimacy of the burden, the State presented evidence that the date requirement has previously helped Pennsylvania deter and detect fraud. Intervenor-Appellants' Br., *Eakin*, No. 25-1644 (3d Cir. 2024), at 56–57.

The Third Circuit agreed that the date requirement "imposes only a minimal burden" and that rational-basis review applies. *Eakin*, 158 F.4th at 313. Nevertheless, it concluded that the State's interests, though each "legitimate (and even strong)," could not "support the date requirement." *Id.* at 314. This is an extreme overreach of judicial discretion. Rational-basis scrutiny is highly deferential to States. Where such scrutiny applies, the State need not adduce any evidence to demonstrate the interests advanced by the challenged law. Rather, federal courts must accept "rational speculation unsupported by evidence or empirical data." *Beach Comms.*, 508 U.S. at 315. The Third Circuit abused its discretion in treating rational-basis review as "a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Id.* at 313. Reaffirming that point would help prevent abuses of the constitutional right-to-vote standard.

CONCLUSION

The Third Circuit's decision defies logic and sows more chaos into an area of law that urgently needs clarification. If allowed to stand, the Third Circuit's approach will "hamper the ability of States to run efficient and equitable elections" and "compel federal courts to rewrite state electoral codes." *Clingman*, 544 U.S. at 593. This Court should grant review, reject the Third Circuit's unfounded approach, and reverse.

Respectfully submitted,

CATHERINE L. HANAWAY
Missouri Attorney General

LOUIS J. CAPOZZI, III
Solicitor General
Counsel of Record
MADELINE SPARKS LANSDELL
Assistant Solicitor General
OFFICE OF THE MISSOURI
ATTORNEY GENERAL
Old Post Office Building
815 Olive Street, Suite 200
St. Louis, MO 63101
(573) 645-9662
Louis.Capozzi@ago.mo.gov

March 13, 2026