No. 24-363

IN THE

Supreme Court of the United States

PENNSYLVANIA STATE CONFERENCE OF THE NAACP, ET AL.,

Petitioners,

v.

AL SCHMIDT, SECRETARY OF PENNSYLVANIA, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Materiality Provision of the Civil Rights Act of 1964 bars states from "deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election[.]" 52 U.S.C. § 10101(a)(2)(B). Every appellate precedent to hold that the Provision invalidates a state election rule has involved a voter-registration rule. Yet in recent years, litigants have attempted to broaden the Provision to reach all paper-based voting rules, including rules regulating mail voting.

Rejecting that novel reading, the Third Circuit held that the Provision regulates only voter-qualification determinations made during the voter-registration process. That holding tracks the view previously expressed by three Justices of this Court. No appellate court has split from this view.

The question presented is whether the Materiality Provision applies outside the voter-registration process, such that it preempts all mandatory paper-based voting rules that further interests besides determining voter eligibility.

RULE 29.6 STATEMENT

The Republican National Committee, National Republican Congressional Committee, and Republican Party of Pennsylvania have no parent corporation, and no publicly held company owns 10% or more of their stock.

December 12, 2024 */s/ John M. Gore*

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INTRODUCTION

The Materiality Provision of the Civil Rights Act of 1964 prohibits states from "deny[ing] the right . . . to vote" based on certain paper-based errors or omissions that are "not material in determining whether [an] individual is qualified under State law to vote." 52 U.S.C. § 10101(a)(2)(B). For nearly sixty years, everyone seemed to agree that the Provision applies only to voter registration—that is, the process by which a state determines *who* may vote. Indeed, in 2004, a federal court noted that it had found no "case law in [any] jurisdiction . . . indicat[ing] that section [10101](a)(2)(B) was intended to apply to the counting of ballots by individuals *already deemed qualified to vote*." *Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1371 (S.D. Fla. 2004) (emphasis original).

Voting by mail was relatively rare at the time of the Provision's enactment but has become more common in recent years. Litigants have responded to this trend by devising new theories to challenge rules governing the use of mail ballots. Among those theories is the assertion that the Provision applies *outside* the voter-registration context, such that it invalidates rules that govern *how* one casts his or her ballot—including rules designed to combat voter fraud.

Three Justices of this Court, Judges Ambro and Chung forming the majority below, and two Fifth Circuit motions panels have rejected this bolt-from-the-blue reading of the Provision. *See Ritter v. Migliori*, 142 S. Ct. 1824, 1825 (2022) (Alito, J., dissental); *Vote.Org v. Callanen*, 39 F.4th 297, 305 n.6 (5th Cir. 2022) (*Vote.Org I*); *United States v. Paxton*, No. 23-50885, ECF 80-1 at 5 (5th Cir. Dec. 15, 2023)

(per curiam). The three Justices did so in a prior case challenging Pennsylvania's date requirement for mail ballots. *See Ritter*, 142 S. Ct. at 1825 (Alito, J., dissental).

Against that authority, Petitioners again challenge the date requirement but can invoke zero appellate precedent supporting, much less adopting, their reading of the Provision. No surprise, then, that Petitioners do not identify any split in appellate authority. That is reason enough to deny their petition and, at a minimum, allow the question presented to percolate in the lower courts before taking it up. *See* Sup. Ct. R. 10(a)-(b).

If more were somehow needed, Petitioners identify no alternative grounds that warrant the Court's review. They fail to show that the question is so exceptionally important that it demands review in the absence of a circuit split. *See* Sup. Ct. R. 10(c).

In the end, Petitioners have nothing to offer but their belief that the decision below was wrong on the merits. But error correction, of course, is not a basis for granting certiorari. And in any event, the decision below is correct. Judges Ambro and Chung applied well-established principles of statutory interpretation to reach the only textually justifiable conclusion: The Materiality Provision regulates only voter-registration rules that govern *who* may vote, not ballot-casting rules—like the date requirement—that govern *how* already-qualified voters cast their ballots.

The Court should deny the petition.

STATEMENT OF THE CASE

A. Legal Background

1. Almost a century after the Fifteenth Amendment gave African Americans the right to vote on paper, many African Americans were still prevented from registering to vote. By the end of 1963, in "over 250 counties . . . less than 15 percent of the voting-age [African-Americans were] registered to vote." H.R. Rep. No. 88-914, pt. 2, at 2 (1963). Congress laid the blame for this low rate on efforts by local "voting officials to defeat [African-American] registration." *Id.* at 5. Among other strategies, "registrars w[ould] overlook minor misspelling errors or mistakes in age or length of residence of white applicants, while rejecting [an African-American] application for the same or more trivial reasons." *Id.*

Congress responded with Section 101(a) of the Civil Rights Act of 1964, which consists of three provisions addressed to "State registration officials," *id.*, and "designed to insure nondiscriminatory practices in the registration of voters," *id.*, pt. 1, at 19; *see* Civil Rights Act of 1964, Pub. L. No. 88-352, § 101(a), 78 Stat. 241, 241 (codified at 52 U.S.C. § 10101(a)(2)).

The first requires state officials to apply uniform standards "in determining whether any individual is qualified" to vote. 52 U.S.C. § 10101(a)(2)(A). The second, the Materiality Provision, prohibits "deny[ing] the right . . . to vote" based on certain errors or omissions that are "not material in determining whether [an] individual is qualified under State law to vote." *Id.* § 10101(a)(2)(B). The third narrowed the permissible uses of a "literacy test as a qualification for voting." *Id.* § 10101(a)(2)(C).

The House Report consistently described the Materiality Provision, like the other two provisions of Section 101(a), as a regulation of the voter-registration process. *See* H.R. Rep. No. 88-914, pt. 1, at 19 (Provision bars "registration officials" from "disqualifying an applicant for immaterial errors or omissions" and "prohibit[s] the disqualification of an individual because of immaterial errors or omissions"); *id.*, pt. 2, at 5 (under the Provision, "State registration officials must . . . disregard minor errors or omissions if they are not material in determining whether an individual is qualified to vote"). Contemporaneous observers read it similarly. *See, e.g.*, Warren M. Christopher, *The Constitutionality of the Voting Rights Act of 1965*, 18 Stan. L. Rev. 1, 7 (1965) (Provision prohibits "[d]enial of the right to vote in any federal election because of immaterial omissions or errors in registration forms").

This understanding also prevailed in the courts for the next half century. For example, the Eleventh Circuit observed that the Provision targets "the practice of disqualifying potential voters for their failure to provide information irrelevant to determining their eligibility to vote." *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003); *see Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1173 (11th Cir. 2008); *Thrasher v. Ill. Republican Party*, 2013 WL 442832, at *3 (C.D. Ill. Feb. 5, 2013); *Friedman*, 345 F. Supp. 2d at 1371; *Condon v. Reno*, 913 F. Supp. 946, 950 (D.S.C. 1995).

2. In 2019, a bipartisan majority of the Pennsylvania General Assembly expanded mail voting to make it universal for the first time in history. Act of Oct. 31, 2019, P.L. 552, No. 77, sec. 8 ("Act 77"); *see*

25 P.S. § 3150.11(a). As part of that compromise, the General Assembly reiterated the requirement—which has been part of Pennsylvania law since 1945—that mail voters "fill out, date and sign the declaration" on the ballot return envelope. Act 77, sec. 6, 8; *see* 25 P.S. §§ 3146.6(a), (b)(3), 3150.16(a), (b)(3); Act of Mar. 9, 1945, P.L. 29, No. 17, 1945 Pa. Laws 29, 37. The declaration includes the statement that the voter is "a qualified registered elector." 25 P.S. §§ 3146.6(b)(3), 3150.16(b)(3).

Various groups of plaintiffs responded to Pennsylvania's historic expansion of mail voting with challenges to the longstanding date requirement. In federal court, litigants argued that the date requirement violates the Materiality Provision. A panel of the Third Circuit agreed and held that the Provision applies to all paper-based voting requirements, including ballot-casting rules, not just registration-related rules. *Migliori v. Cohen*, 36 F.4th 153, 162 n.56 (3d Cir. 2022), *vacated* 143 S. Ct. 297.

This Court vacated *Migliori*, depriving the decision of precedential effect. *Ritter v. Migliori*, 143 S. Ct. 297 (2022). When addressing a stay request on the emergency docket, three Justices opined that the vacated holding was "very likely wrong." *Ritter*, 142 S. Ct. at 1824 (Alito, J., dissental). As Justice Alito explained, *Migliori* conflated "the forfeiture of the right to vote" due to "failure to follow" ballot-casting rules with "the denial of 'the right to vote'" prohibited by the Provision. *Id.* at 1825. Further, the three Justices found it "absurd to judge the validity of" "the rules for casting a vote" "based on whether they are material to eligibility," when those rules serve totally separate purposes. *Id.*

The Pennsylvania Supreme Court also declined to follow *Migliori*. In 2022, it upheld the date requirement under state law and rejected, on an equally divided vote, a claim that the requirement violates the Materiality Provision. *Ball v. Chapman*, 284 A.3d 1189, 1192 (Pa. 2022) (per curiam). That holding followed a 2020 decision in which that court held that the entire declaration mandate for mail ballots—of which the date requirement is part—is mandatory under state law and constitutional under Pennsylvania's Free and Equal Elections Clause. *See Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 374, 380 (Pa. 2020).

B. Procedural History

Shortly after the Pennsylvania Supreme Court's decision in *Ball*, Petitioners filed this lawsuit against all 67 county boards of elections and the Secretary of the Commonwealth. Petitioners did not bring any state-law challenges to the date requirement at that time. Instead, they brought only one claim: that the date requirement violates the Materiality Provision. *See* Compl. ¶¶ 57-64, ECF No. 1 (Nov. 4, 2022).[1] Petitioners' First Amended Complaint added a claim under the Equal Protection Clause but no state-law claim. *See* First Am. Compl. ¶¶ 83-88, ECF No. 121 (Nov. 30, 2022).

Respondents the Republican National Committee, the National Republican Congressional Committee, the Republican Party of Pennsylvania, and Richard Marino (collectively, Intervenor-Respondents)

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[1] "ECF No." refers to entries on the district court's docket, No. 22-CV-339 (W.D. Pa.).

intervened to defend the date requirement. The Secretary, represented by the Pennsylvania Attorney General, declined to defend the General Assembly's duly enacted date requirement against the Materiality Provision challenge and, in fact, agreed that the requirement violates the Provision. *See* Answer ¶ 2, ECF No. 154 (Jan. 4, 2023). Intervenor-Respondents thus were left as the principal defenders of the date requirement against the Materiality Provision claim.

At summary judgment, the district court relied on the vacated decision in *Migliori* to hold that the date requirement violates the Provision. Pet.App. 170a. It declined to reach the Equal Protection claim. Pet.App. 170a-175a.

Intervenor-Respondents appealed. In a thorough opinion, the Third Circuit reversed. The panel majority—Judges Ambro and Chung—held "that the Materiality Provision only applies when the State is determining *who* may vote." Pet.App. 17a. "The Provision does not apply to rules, like the date requirement, that govern *how* a qualified voter must cast his ballot for it to be counted." Pet.App. 17a.

In reaching this conclusion, the majority observed that "[s]tates have separate bodies of rules for separate stages of the voting process." Pet.App. 26a. "One stage, voter qualification, deals with *who* votes" and is governed by rules designed to answer that question. Pet.App. 26a. Meanwhile, a "different set of rules" "deals with *how* ballots are cast by those previously authorized to vote." Pet.App. 27a.

The majority explained that the plain text demonstrates that the Provision applies "during the 'who' stage: voter qualification." Pet.App. 27a. For

instance, it applies when the "error or omission" is not "material *in determining* whether such individual is qualified under State law to vote . . . ." Pet.App. 29a (quoting 52 U.S.C. § 10101(a)(2)(B)). Read naturally, this means that the "error or omission . . . must itself relate to ascertaining a person's qualification to vote (like paperwork submitted during voter registration)." Pet.App. 30a.

Moreover, the Provision requires that the error or omission appear on a "record or paper relating to any application, registration, or other act requisite to voting." Pet.App. 30a (quoting 52 U.S.C. § 10101(a)(2)(B)). The majority applied familiar canons of construction to conclude that the catch-all phrase—"other act requisite to voting"—does not cover dating a mail ballot's return envelope. As the majority explained, "those words take meaning from the words that precede" them, Pet.App. 30a, and the terms "application" and "registration" delimit "the scope of the relevant paperwork in a way that coheres with the statute's voter qualification focus," Pet.App. 31a.

Relying on Justice Alito's opinion in *Ritter*, the majority also concluded that ballot-casting rules like the date requirement do not implicate the Provision because "a voter who fails to abide by state rules prescribing how to make a vote effective is not denied the right to vote when his ballot is not counted." Pet.App. 34a (cleaned up). After all, "[c]asting a vote . . . requires compliance with certain rules," Pet.App. 34a, and Petitioners' reading would "tie state legislatures' hands in setting voting rules unrelated to voter eligibility," Pet.App. 36a.

Petitioners requested rehearing or rehearing *en banc* on April 10, 2024. The Third Circuit denied that request by a 9-4 vote on April 30, 2024. Pet.App. 1a-4a.

Petitioners thereafter sought and were granted leave to file a Second Amended Complaint. *See* Order, ECF No. 412 (June 11, 2024). Once again, the Second Amended Complaint did not include a state-law claim, but instead added a claim under the *Anderson-Burdick* framework. *See* Second Am. Compl. ¶¶ 89-92, ECF No. 413 (June 14, 2024).

Only after losing in the Third Circuit and seeking leave to file their Second Amended Complaint, certain Petitioners (and their counsel) mounted a flurry of challenges to the date requirement under Pennsylvania's Free and Equal Elections Clause. But instead of joining those challenges to this case, Petitioners split them off and shopped them to state court.

Four of the Petitioners, joined by other claimants and represented by the same counsel as in this case, filed the first such challenge on May 28, 2024. The Pennsylvania Supreme Court rejected that challenge on September 13, 2024. *See Black Political Empowerment Project v. Schmidt*, 322 A.3d 221, 2024 WL 4181592, at *1 (Pa. Sept. 13, 2024) (per curiam).

Those four Petitioners, again joined by other claimants and represented by the same counsel, filed a second challenge in the Pennsylvania Supreme Court just twelve days thereafter. Petitioners filed their petition with this Court on September 27, 2024, while this second state-court challenge was pending. The Pennsylvania Supreme Court rejected that

challenge in short order. *See New PA Project Educ. Fund v. Schmidt*, 2024 WL 4410884, at *1 (Pa. Oct. 5, 2024) (per curiam); *see also id.* (Brobson, J., concurring) (noting the claimants "inexplicably" delayed in bringing that challenge).

This Court called for a response to the petition on November 12, 2024. Since that date, the Pennsylvania Supreme Court has again held that the date requirement is mandatory and must be enforced under state law. *See RNC v. All 67 Cnty. Bds. Of Elections*, __A.3d__, 2024 WL 4814174, at *1 (Nov. 18, 2024) (per curiam).

REASONS FOR DENYING THE PETITION

I. THE JUDGMENT BELOW DOES NOT WARRANT REVIEW.

"Until recently, the Materiality Provision received little attention from federal appellate courts." Pet.App. 21a. And in those rare cases where the Provision was at issue, "the challenged state law prescribed rules governing voter registration." Pet.App. 21a; *see Schwier*, 439 F.3d at 1286 (Georgia statute requiring applicants to write their social security numbers on voter-registration forms violated the Provision); *Fla. State Conf. of NAACP*, 522 F.3d at 1173 (Florida voter-registration statute did not violate the Provision); *Vote.Org v. Callanen*, 89 F.4th 459, 485-89 (5th Cir. 2023) ("*Vote.Org II*") (Texas law requiring signature on voter-registration form did not violate the Provision). This reality reflected a near-sixty-year consensus that the Provision plays no role outside the voter-registration context. *See* Pet.App. 21a-22a.

With the recent expansion of mail voting, litigants have sought to upset that consensus with a novel theory that the Materiality Provision invalidates vote-casting rules that are unrelated to voter eligibility, such as rules designed to prevent fraud and safeguard the integrity of elections. Other than the Third Circuit's now repudiated *Migliori* decision, no appellate court has accepted Petitioners' legal arguments. No circuit split exists.

Granting review now would therefore be far too premature. Indeed, Petitioners fail to explain why the issue is so important that it justifies this Court's intervention before the lower courts have had an opportunity to offer their own guidance on it. The Court should deny the petition.

A. There Is No Division In The Appellate Courts On The Scope Of The Materiality Provision.

Petitioners do not even try to show the existence of a circuit split. Nor could they. The decision below is the only final federal appellate decision that fully addresses Petitioners' novel reading of the Provision, and three Justices of this Court and two Fifth Circuit motions panels have rejected that reading too.

The issue would therefore "benefit from further percolation in the lower courts prior to this Court granting review." *Calvert v. Texas*, 141 S. Ct. 1605, 1606 (2021) (Sotomayor, J., respecting the denial of certiorari). Full "consideration" of a legal issue "by other courts . . . enable[s] [this Court] to deal with the issue more wisely at a later date." *McCray v. New York*, 461 U.S. 961, 962 (1983) (Stevens, J., respecting the denial of certiorari). That is because "the crucible

of adversarial testing . . . along with the experience" of the lower courts "could yield insights (or reveal pitfalls)" that may otherwise go overlooked. *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment).

That process is already playing itself out here. As Petitioners note, the scope of the Provision is at issue in appeals pending before two other federal circuits. *See* Pet. 24 (*In re Georgia Senate Bill 202*, Nos. 23-13085 and 23-13095 (11th Cir.); *Paxton*, No. 23-50885 (5th Cir.)). Decisions in those appeals may "enable [this Court] to deal with the issue more wisely at a later date," *McCray*, 461 U.S. at 962 (1983) (Stevens, J., respecting the denial of certiorari)—or even eliminate any need for the Court's review.

B. The Question Presented Is Not Important Enough To Justify Splitless Error Correction.

Petitioners' only real grounds for certiorari is their belief that this case presents a question of great national importance. *See* Pet. 24-27. That is mainly because, in their view, the Third Circuit's interpretation of the Provision threatens to disenfranchise "literally millions" of voters in Pennsylvania and across the country. Pet. 24.

Petitioners' sky-is-falling response is rich given that litigants waited nearly *sixty years* to challenge commonplace ballot-casting rules (like Pennsylvania's date requirement) under the Provision. In any event, Petitioners' claim that this case is important because the decision below threatens to "disenfranchise" voters, Pet. 24, begs one of the merits questions:

whether the date requirement (and rules like it) "den[ies] the right . . . to vote," 52 U.S.C. § 10101(a)(2)(B). If, as three Justices already indicated, the date requirement does *not* deny anyone the right to vote, *see* Part II.A.3, *infra*; *Ritter*, 142 S. Ct. at 1824-26 (Alito, J., dissental), Petitioners' main grounds for certiorari vanishes.

Petitioners suggest only one reason this case is "especially important" independent of their merits argument. Pet. 26. In their view, "[c]larifying the application of federal law" will "promot[e] trust in elections, improv[e] voter confidence, and avoid[ ] voter confusion." Pet. 26. But there is nothing to "clarify" because there is no disagreement on the Provision's meaning among the federal or state appellate courts. And it is Petitioners who threaten to sow confusion and undermine voter trust and confidence in elections by advancing an interpretation that would invalidate scores of ballot-casting rules that serve purposes besides determining eligibility, such as rules designed to prevent fraud. *See infra* at 30-33; *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam) ("Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.").

II. THE DECISION BELOW IS CORRECT.

Because they cannot rely on the traditional criteria for granting certiorari, Petitioners devote nearly three-quarters of their argument to explaining why (in their view) the decision below is wrong. *See* Pet. 14-23. Of course, "error correction is outside the mainstream of the Court's functions and not among the compelling reasons that govern the grant of

certiorari." *Barnes v. Ahlman*, 140 S. Ct. 2620, 2622 (2020) (Sotomayor, J., dissenting from the grant of stay) (cleaned up). But in any event, the decision below is correct.

"States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Yet according to Petitioners, the Materiality Provision prohibits states from adopting *any* mandatory paper-based election rule—including any ballot-casting rule—unless it is used to determine voter eligibility (or for certain other favored purposes).

That makes no sense. "[I]t would be absurd to judge the validity of voting rules based on whether they are material to eligibility." *Ritter*, 142 S. Ct. at 1825 (Alito, J., dissental); Pet.App. 40a. Almost every state, including Pennsylvania, determines voter eligibility during a voter-registration process. *See, e.g.*, U.S. Election Assistance Comm'n, *Voter FAQs*, https://perma.cc/FNQ3-SLC4 (last visited Dec. 10, 2024) (noting 49 states require voters "to be registered to vote to participate in an election"). The Materiality Provision governs only qualification determinations during *that* process, not "the counting of ballots by individuals *already deemed qualified to vote*." *Friedman*, 345 F. Supp. 2d at 1371; *see Ritter*, 142 S. Ct. at 1825-26 (Alito, J., dissental); *Vote.Org I*, 39 F.4th at 305 n.6.

The Provision's text makes this clear. It applies only to "registration" and "other" analogous acts. 52 U.S.C. § 10101(a)(2)(B). It is implicated only "in determining" voters' qualifications. *Id.* And it

prohibits only outright "den[ials]" of "the right . . . to vote" by deeming a would-be voter ineligible based on "not material" errors or omissions on registration-related paperwork. *Id.* It simply does not address ballot-casting rules, like the date requirement, that govern how qualified voters cast a ballot. *See id.*

A. The Date Requirement Does Not Implicate the Materiality Provision.

The Materiality Provision forbids state actors to:

> deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.

52 U.S.C. § 10101(a)(2)(B).

In at least three ways, the Provision's plain text confirms that the date requirement cannot violate it.

1. The date requirement does not apply to a "record or paper" related to an "application, registration, or other act requisite to voting."

The Materiality Provision applies only to a "record or paper" related to an "application, registration, or other act requisite to voting." *Id.* These terms refer to documents used in "voter registration specifically." *Vote.Org I*, 39 F.4th at 305 n.6; *see Ritter*, 142 S. Ct. at 1825-26 (Alito, J., dissental); *see also Vote.Org II*, 89 F.4th at 479 n.7 (noting that applying the Provision to rules regulating "vote counting" rather than voter

registration is "possibly overbroad"); Pet.App. 30a-31a ("Congress further signaled its focus on qualification determinations by referring to acts like 'application' and 'registration.'"). Indeed, the House Report notes that § 10101(a)(2), including the Provision, "is designed to insure nondiscriminatory practices in the registration of voters." H.R. Rep. No. 88-914, pt. 2, at 19.

The relevant legislative history also shows that Congress used the words "application" and "registration" interchangeably to refer to voter registration. H.R. Rep. No. 88-914, pt. 1, at 19 (Provision bars "registration officials" from "disqualifying an applicant for immaterial errors or omissions"); *id.* at 77 (referring to "application to register"); *id.*, pt. 2, at 5 (referring to efforts to "defeat [African-American] registration" by "rejecting [African-American] applications" to vote); *id.* (faulting "registrars" for "rejecting [African-American] application[s]" in registration process); Pet.App. 32a-33a; *cf. In re Sinclair*, 870 F.2d 1340, 1342 (7th Cir. 1989) (Easterbrook, J.) (legislative history is "invaluable" when used to "reconstruct the legal and political culture" in which the text was enacted).

The catch-all phrase "other act requisite to voting" likewise refers only to voter registration. 52 U.S.C. § 10101(a)(2)(B). "[W]here general words follow an enumeration of specific items, [they] are read as applying only to other items akin to those specifically enumerated." *Harrison v. PPG Indus.*, 446 U.S. 578, 588 (1980). Thus, the catch-all phrase must be "controlled and defined by reference to the enumerated categories," *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 115 (2001), of "application" and

"registration," 52 U.S.C. § 10101(a)(2)(B); *see Ball v. Chapman*, 289 A.3d 1, 38 n.11 (Pa. 2023) (opinion of Brobson, J.); Pet.App. 30a-31a.

Application of *ejusdem generis* is the only way to give meaning to the entire phrase "application, registration, or other act requisite to voting." If the canon did not limit the catch-all phrase, the words "registration" and "application" would become superfluous—an outcome courts must "avoid[]." *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 635 (2012) (emphasis omitted). In contrast, with the canon applied, the catch-all still has plenty to do. *See Liebert v. Millis*, 2024 WL 2078216, at *15 (W.D. Wis. May 9, 2024). It helps prevent election officials from circumventing the Provision based on labeling: Referring to a qualification-determining practice as something other than a voter "application" or "registration" does not permit disqualifying voters for immaterial paperwork "error[s] or omission[s]." 52 U.S.C. § 10101(a)(2)(B); *see Liebert*, 2024 WL 2078216, at *15. And it may cover any forms citizens must submit to remain registered to vote besides initial applications and registrations, such as a declaration by a released felon that he has paid all outstanding fines or by an inactive voter that she continues to reside at her registered address.

Moreover, applying *ejusdem generis* is the only way to harmonize the Provision's reach with precedent and Congress's statutory aim: preventing states from "defeat[ing] [African-American voter] registration" by denying registration applications based on "minor misspelling errors or mistakes in age or length of residence." H.R. Rep. No. 88-914, pt. 2, at 5; *see Fla.*

State Conf. of NAACP, 522 F.3d at 1173; *Schwier*, 340 F.3d at 1294; Pet.App. 32a.

The date requirement is not applied during Pennsylvania's voter-registration process. It governs the casting of mail ballots and, as the district court agreed, applies only to voters who "ha[ve] previously been determined to be eligible and qualified to vote." Pet.App. 166a. It therefore does not even implicate the Materiality Provision. *See* Pet.App. 30a-34a.

2. The date requirement is not used "in determining" any individual's qualifications to vote.

The Provision also requires that the paper or record be used "in determining" whether an individual is "qualified" to vote. 52 U.S.C. § 10101(a)(2)(B). When used with a "verbal noun[]"—here, "determining"—the word "in" is typically "equivalent in sense to a temporal clause introduced by *when*, *while*, *if*." *In*, prep., def. II.21(b), *Oxford English Dictionary* (3d ed. 2021, rev. online 2024). The Provision thus applies only to actions taken *when determining* a voter's eligibility—that is, the "process" of "determining whether an individual is qualified to vote." Pet.App. 29a-30a; *see Ball*, 289 A.3d at 38 (opinion of Brobson, J.); *see also Ritter*, 142 S. Ct. at 1825-26 (Alito, J., dissental).

The structure of § 10101 underscores this point. *See* Pet.App. 30a. The immediately preceding provision of § 10101(a)—subsection (a)(2)(A)—requires "uniform standards *for voter qualifications*" within the same political subdivision of a state. 52 U.S.C. § 10101(a) (subsection title) (emphasis added). It also uses a substantially identical phrase—"in determining

whether any individual is qualified under State law or laws to vote in any election"—to make clear that it is limited to voter-qualification determinations. *Id.* § 10101(a)(2)(A). And the subparagraph following the Materiality Provision, subsection (a)(2)(C), which bans literacy tests formerly used in southern states during voter registration, *e.g.*, *Lassiter v. Northampton Cnty. Bd. of Elections*, 360 U.S. 45, 46 (1959), is likewise limited to "qualification" determinations, 52 U.S.C. § 10101(a)(2)(C).[2]

Subsection (e) of § 10101 further reinforces the qualification-and-registration focus of § 10101(a). That subsection empowers courts to address systemic violations of "*any* right or privilege secured by subsection (a)," including the Materiality Provision. *Id.* § 10101(e) (emphasis added). Yet the only remedy it authorizes is "an order declaring [an applicant] qualified to vote." *Id.* Subsection (e) thus confirms that the "right" secured by § 10101(a) and the Provision is the right of qualified individuals to register to vote. Indeed, if the Provision extended beyond voter-qualification determinations during the voter-registration process, subsection (e)'s remedy would leave courts powerless to redress the violation of "*any* right" secured by it. *Id.* (emphasis added). "[D]eclaring [an individual] qualified to vote" remedies nothing if the individual has already been determined qualified. *Id.*

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[2] Congress reinforced that § 10101(a) is limited to qualification determinations when it later enacted a separate provision banning literacy tests at all other steps of the election process. *See* 52 U.S.C. § 10501.

In contrast, when Congress wanted to prohibit intimidation in the *act* of voting, it sensibly set that topic apart in its own subsection, subsection (b), rather than stuff it between provisions about voter registration and qualifications. *See id.* § 10101(b) (prohibiting intimidation in the act of voting).

Pennsylvania, like virtually every state, determines whether an "individual is qualified . . . to vote," 52 U.S.C. § 10101(a)(2)(B), during the voter-registration process, *see* 25 P.S. § 1301(b); Pet.App. 43a-44a. As a regulation of mail voting, the date requirement has nothing to do with determining a voter's *qualifications* but, instead, is used to determine a ballot's *validity* only *after* election officials have found the voter qualified through the voter-registration process. Thus, the Materiality Provision does not regulate, much less invalidate, the date requirement.

3. The date requirement does not "deny the right of any individual to vote."

The Materiality Provision prohibits only "deny[ing] the right of any individual to vote," not imposing mandatory ballot-casting rules like the date requirement. 52 U.S.C. § 10101(a)(2)(B); *see also Ritter*, 142 S. Ct. at 1825-26 (Alito, J., dissental); Pet.App. 34a. For at least two reasons, this clause confirms that the date requirement does not even implicate the Provision.

First, the "right to vote" does not encompass mail voting, so mail voting rules do not deny any individual that right. *See, e.g.*, *Paxton*, No. 23-50885, ECF 80-1 at 5 (mail voting rules "do not deny anyone the right to vote" under the Provision "because they only affect the ability of some individuals to vote by mail"). By

the mid-1960s, the "right . . . to vote" was a well-established concept with a well-established meaning. *See, e.g.*, *Baker v. Carr*, 369 U.S. 186, 247 (1962) (Douglas, J., concurring) (the "right to vote" was "protected by the judiciary long before that right received the explicit protection" in civil-rights statutes). The Materiality Provision thus "codified a *pre-existing* right," not a "novel principle," so its contours must be discerned with reference to "history." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 20 (2022); *cf. Brnovich v. DNC*, 594 U.S. 647, 669-70 (2021) (looking to "standard practice" at the time "when § 2 [of the Voting Rights Act] was amended" to determine what "furnish[es] an equal 'opportunity' to vote in the sense meant by § 2").

At the time the Provision was enacted, the "right to vote" meant the right to register to vote and to cast a ballot on equal terms with other registered voters. *See McDonald v. Bd. of Election Comm'rs of Chicago*, 394 U.S. 802, 807 (1969). It was not understood to entail a right to vote by mail, since mail voting was limited to a small number of situations. *See, e.g.*, *id.* at 804 (discussing Illinois statute permitting mail voting only for voters "absent from the county" and those otherwise "unable to appear at the polls because of physical incapacity, religious holidays, or election duties"). And just a few years after the Provision became law, this Court unanimously held that "the right to vote" does not encompass the "right to receive absentee ballots." *Id.* at 807. Thus, applying a neutral paper-based rule to decline to count a mail ballot does not deny an individual the "right to vote" under the Provision.

Second, more generally, mandatory ballot-casting rules do not deny anyone "the right to vote" under the Materiality Provision. *See, e.g.*, *Ritter*, 142 S. Ct. at 1825-26 (Alito, J., dissental); Pet.App. 34a. The plain statutory text confirms as much. The operative definition of "vote" refers to "all action necessary to make a vote effective" under state law. 52 U.S.C. § 10101(e). Accordingly, the Provision prohibits only rules that "deny" voters the "*right*" to *take* "all action necessary to make a vote effective" under state law, not the rules that *delineate* those "action[s]." *Id.* §§ 10101(a)(2)(B) (emphasis added), 10101(e).

This text tracks longstanding understanding of the term "right to vote." When the Provision was enacted, the "right to vote" entailed a right to require election officials to count a ballot so long as it is "lawful and regular" and thus "entitled to be counted" under state law. *United States v. Mosley*, 238 U.S. 383, 385 (1915). It did not contemplate a right to be *free* from neutral, generally applicable state laws governing the act of casting a ballot. *See, e.g.*, *id.*

McDonald, for instance, recognized that restrictions on mail voting may make casting a ballot "extremely difficult, if not practically impossible," for some individuals. 394 U.S. at 810. But because such restrictions do not formally "deny [anyone] the exercise of the franchise," they do not implicate "the right to vote." *Id.* at 807-08.

Likewise, *Rosario v. Rockefeller* recognized that laws that "totally den[y] the electoral franchise to a particular class of residents" by deeming them not "eligible to vote" deny "the right to vote." 410 U.S. 752, 756-57 (1973). But laws regulating the voting process,

such as "a time deadline," do not "disenfranchise" anyone. *Id.* at 757.

This distinction between laws that disenfranchise by depriving eligible individuals of the opportunity to vote on equal terms and laws that regulate the casting of ballots persists to this day. *See, e.g.*, *Ritter*, 142 S. Ct. at 1825 (Alito, J., dissental) ("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."); *DNC v. Wis. State Legislature*, 141 S. Ct. 28, 35 (2020) (Kavanaugh, J., concurral) ("[A] State's election [rule] does not disenfranchise voters who are capable of [following it] but fail to do so."); *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 952 (7th Cir. 2007) (Posner, J.) (distinguishing denials of the right to vote from regulations that cause some "eligible voters to disenfranchise themselves"), *aff'd* 553 U.S. 181 (2008). And that distinction informs the scope of the Materiality Provision. Only rules that deprive eligible individuals of the opportunity to vote on equal terms for immaterial errors or omissions on registration-related paperwork violate the Provision; rules that regulate *how* eligible individuals receive and cast their ballots do not. *See, e.g.*, *Ritter*, 142 S. Ct. at 1825 (Alito, J., dissental); *Ball*, 289 A.3d at 38-39 (opinion of Brobson, J.); Pet.App. 34a ("[W]e know no authority that the 'right to vote' encompasses the right to have a ballot counted that is defective under state law.").

For this reason as well, the date requirement cannot, and does not, "deny" the "right to vote" under the Provision. Election officials enforcing the date requirement do not "disqualify potential voters,"

remove them from the voter-registration list, or prevent future voting. *Schwier*, 340 F.3d at 1294. Rather, they simply decline to count noncompliant ballots "because [individuals] did not follow the rules for casting [them]." *Ritter*, 142 S. Ct. at 1825 (Alito, J., dissental). Such individuals remain qualified and eligible to vote in any election on equal terms with—and subject to the same rules as—all other qualified individuals. Their right to vote has not been denied. *See, e.g.*, *id.*; *Rosario*, 410 U.S. at 757-58; *Schwier*, 340 F.3d at 1294.

4. Congress uses much different language to regulate state ballot-casting rules.

Finally, when Congress seeks to regulate state ballot-casting rules, it uses more direct language to do so. For example, Congress has declared that "[e]ach State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State." 52 U.S.C. § 21081(a)(6). The Materiality Provision's omission of any reference to "standards that define what constitutes a vote and what will be counted as a vote," *compare id.*, *with id.* § 10101(a)(2)(B), thus underscores that it has no application to ballot-casting rules like the date requirement, and instead is trained solely on voter-registration rules.

B. Petitioners' Reasoning is Flawed.

Petitioners ask the Court to reverse the decision below by rewriting the Provision to achieve their preferred policy outcome. To shoehorn the date requirement into the Provision's ambit, Petitioners

must delete several of its operative terms and write in terms that Congress neither contemplated nor enacted. They thus invite the Court to set aside what Congress *actually said* in favor of what they *wish* Congress had said as reflected in the stricken and bolded terms:

> (2) No person acting under color of law shall-
>
> (B) ~~deny the right of any individual to vote~~ **decline to count a ballot** in any election because of an error or omission on any record or paper relating to ~~any application, registration, or other act requisite to~~ voting, if such error or omission is not material ~~in determining~~ **to** whether such individual is qualified under State law to vote in such election**, or to the individual's identity, or to the timeliness of the ballot.**

Compare 52 U.S.C. § 10101(a)(2)(B).

The Third Circuit rightly rejected this request to redline the Materiality Provision by judicial fiat. This Court should too.

1. Relying on the statute's definition of "vote" as including "having [a] ballot counted," *id.* § 10101(a)(3)(A), (e), Petitioners assume that a person whose ballot is not counted has been "denied the right to vote," Pet. 14 (cleaned up). But the Provision's operative phrase is "*right* . . . to vote." 52 U.S.C. § 10101(a)(2)(B) (emphasis added). And as explained above, the *right* to vote does not encompass an exemption from ballot-casting rules; it merely encompasses the right to have one's ballot counted *on equal terms* with other eligible voters. The "right to

vote" therefore contemplates all voters being *subject to* ballot-casting rules for making their ballots "lawful[,] regular" and "entitled to be counted," *Mosley*, 238 U.S. at 385, not ballots being counted *regardless* of compliance with those rules, as Petitioners contend, *see* Pet.App. 34a-35a (right to vote is not "'denied' when a ballot is not counted because the voter failed to follow the rules"). Congress underscored this meaning when it referred, in the definition of "vote," to "mak[ing] a vote effective"; a ballot that does not comply with ballot-casting rules is not "effective." 52 U.S.C. § 10101(e).

Petitioners' contrary reading of the Provision contravenes the plain text. It requires striking the Provision's use of "right" and recognition that voters must "make [their] vote effective." *Compare* 52 U.S.C. §§ 10101(a)(2)(B), 10101(e), *with supra* at 25. Accordingly, their attempt to transform the Provision into a general prohibition on "refusing to count a person's ballot" should be rejected. Pet. 2; *compare* 52 U.S.C. § 10101(a)(2)(B), *with supra* at 25.

2. Petitioners also claim that the Third Circuit's "reading renders key portions of the statutory text entirely superfluous," namely, the phrase "other act requisite to voting." Pet. 16. Not so. As explained above, interpreting the phrase "other act requisite to voting" in light of the words that immediately precede it—"application" and "registration"—is the only way to give meaning to all the words in the statute. *See* Part II.A.1, *supra*. In fact, it is *Petitioners'* reading that creates superfluity because its "sweep . . . consume[s]" the terms "application" and "registration," thus "leaving [them] with no work to do." *Fischer v. United States*, 603 U.S. 480, 490 (2024).

Petitioners again point to the statutory definition of "vote" to assert that "other act requisite to voting" must refer to steps in the voting process other than voter registration. Pet. 16; 52 U.S.C. § 10101(a)(3)(A), (e) (defining "vote" to include "all action necessary to make a vote effective including . . . casting a ballot, and having such ballot counted"). But this move improperly transposes the statutory definition of "vote" onto the phrase "act requisite to voting." After all, "the casting of a ballot constitutes the act of voting," and it would be extremely "awkward to describe the act of voting as 'requisite to the act of voting.'" *Ritter*, 142 S. Ct. at 1826 n.2 (Alito, J., dissental); Pet.App. 38a-39a. Moreover, if Congress had wanted to extend the Provision to all steps in the voting process, it would have omitted the terms "any application, registration, or other acts requisite to" and simply applied the Provision to "an error or omission on any record or paper relating to ~~any application, registration, or other act requisite to~~ voting." *Compare* 52 U.S.C. § 10101(a)(2)(B). Congress used narrowing language instead—a decision that must be given effect. *See Corley v. United States*, 556 U.S. 303, 315 (2009).

3. Petitioners next fault the Third Circuit for concluding that the phrase "in determining whether such individual is qualified under State law to vote" limits the Provision's scope to voter registration. In doing so, Petitioners divide the Provision in two—a "main clause" identifying which *records or papers* count, and a "subordinate clause" identifying which *errors or omissions* count. Pet. 17-18. Petitioners then argue that the "nearest reasonable referent" rule means that the "in determining" language cannot refer

to the act of determining qualifications during voter registration because the phrase appears in the Provision's subordinate clause, not in its main clause. Pet. 18.

At the outset, section 101(a)(2)(A)'s requirement of uniform voter-registration rules uses virtually identical "in determining" language in its subordinate clause, 52 U.S.C. § 10101(a)(2)(A)—and that section, it is undisputed, is limited to the voter-registration process. Likewise, it is perfectly "natural" and "permissible," Pet. 18, to read the Materiality Provision's "in determining" language as reflecting its "voter qualification focus," Pet.App. 40a. The language simply reflects Congress's choice—expressed in both the "main clause" and the "subordinate clause"—to limit the Provision to the voter-registration process. Indeed, under Petitioners' reading, it is not clear what work the "in determining" language even does. As the Third Circuit noted, Congress could have simply substituted "to" for "in determining" so that the Provision read "not material **to** ~~in determining~~ whether such individual is qualified under State law to vote." Pet.App. 29a; *compare* 52 U.S.C. § 10101(a)(2)(B); *Ball*, 289 A.3d at 38 (opinion of Brobson, J.). The better view is that Congress used "in determining" to cabin the Provision to rules applied when actually *determining* qualifications—*i.e.*, during the registration stage. Pet.App. 29a-30a; *Ball*, 289 A.3d at 38 (opinion of Brobson, J.).

Petitioners respond by asserting that "a voter's qualifications may also be assessed or confirmed" at stages other than the initial registration. Pet. 18. As an example, Petitioners note that in Pennsylvania "the paper form on which voters are asked to write the

date . . . *is* used to confirm a voter's qualifications" because it requires voters to declare that they are qualified to vote. Pet. 20. But as Petitioners themselves acknowledge, a voter merely "*confirm[s]*" his or her qualifications at this stage. *Id.* (emphasis added). Election officials will have already *determined* that the voter is qualified and eligible to vote during voter registration, which occurs *before* they even send the voter a mail ballot. Pet.App. 43a, 166a.

Petitioners' attempt to bootstrap their preferred construction upon the phrase "any election" fares no better. That language is not superfluous under the Third Circuit's reading. To the contrary, Congress recognized that states may adopt different qualifications for different types of elections. *See, e.g.*, *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 734-35 (1973) (upholding property requirement for local water-district election). The Provision thus applies to voter-qualification determinations for "any election," permits states to apply their specific qualifications to any "such election," and prohibits voter disqualification based on paper-based errors or omissions "not material" to determining the applicable qualifications in any "such election." 52 U.S.C. § 10101(a)(2)(B).

4. Petitioners also criticize the Third Circuit's citation of legislative history, *see* Pet. 21, even as they invoke legislative history to support their construction, *see* Pet. at 5-7, 21-23. In any event, legislative history can helpfully shed light on "the understandings of the law's drafters" and "the law's ordinary meaning at the time of enactment" even in the absence of statutory ambiguity. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 674-75 (2020); *accord In re*

Sinclair, 870 F.2d at 1342 (Easterbrook, J.). Here, "the law's drafters" used "application," "registration," and "other act requisite to voting" to refer exclusively to voter registration. *See* Part II.A.1, *supra*. The Provision's "meaning at the time of enactment," therefore, was tied exclusively to voter registration. *Bostock*, 590 U.S. at 674.

Petitioners offer precisely nothing from the legislative history to refute that point. They identify no reports or statements suggesting that the 1964 Congress understood "application," "registration," or "other act requisite to voting" to refer to anything other than the voter-registration process. That is the end of the legislative history debate, which shows Congress used the catch-all phrase to refer exclusively to voter registration and functional equivalents.

Instead, Petitioners offer the policy argument that limiting the Provision to registration will allow states to impose arbitrary requirements at other stages of the voting process. *See* Pet. 22. But Petitioners wrongly assume that the Provision must foreclose all unreasonable voting restrictions at every stage. The Materiality Provision, on anyone's reading, cannot solve all potential voting problems. That, however, does not permit the Court to rewrite its plain terms.

5. Petitioners' reading would unleash electoral chaos by dooming countless voting rules all across the country. Under Petitioners' logic, many other widespread, commonsense paper-based regulations may result in federal civil-rights violations, merely because they further interests besides determining eligibility. Pet.App. 36a-37a. These include:

- Mail-ballot signature requirements, *e.g.*, Ariz. Rev. Stat. § 16-547(A), (D); Cal. Elec. Code § 3011(a)(2); Fla. Stat. § 101.65(7); 10 ILCS § 5/19-5; Ky. Rev. Stat. § 117.085(2); La. Stat. § 18:1306E.(1)(f); Minn. Stat. § 203B.07, subd. 3; N.J. Stat. § 19:62-11(c); 25 P.S. §§ 3146.6(a), 3150.16(a); Wash. Rev. Code § 29A.40.091(1);

- Mail-ballot application signature requirements, *e.g.*, Ariz. Rev. Stat. § 16-542; Colo. Rev. Stat. § 31-10-1002(1); Ky. Rev. Stat. § 117.085(2); Mass. Gen. Laws ch. 54 § 25B(a)(2); Md. Code, Elec. Law § 9-305(a)(3)(i); Minn. Stat. § 203B.04, subd. 1; Tenn. Code § 2-6-202(a)(3);

- Requirements to have a witness sign a mail ballot or application, *e.g.*, Ala. Code § 17-11-7; Colo. Rev. Stat. § 31-10-1002(1); Ind. Code § 3-11-10-29; Ky. Rev. Stat. § 117.085(7); La. Stat. § 18:1306E.(2)(a); Vt. Stat. tit. 17 § 2542(b); *see also Liebert*, 2024 WL 2078216, at *2 (rejecting Materiality Provision challenge to witness requirement);

- Requirements to sign early-voting certificate, *e.g.*, Fla. Stat. § 101.657(4)(a); Ga. Comp. R. & Regs. 183-1-14-.02(11); 10 ILCS § 5/19A-40, 45; Mass. Gen. Laws ch. 54 § 25B(b)(8), (c)(5);

- Prohibitions on voting for more candidates than there are offices, *e.g.*, Ariz. Rev. Stat. § 16-611; 15 Del. Code § 4972(b)(6); Fla. Stat. § 101.65(3); 25 P.S. § 3063(a);

- Requirements to maintain pollbooks, *e.g.*, Fla. Stat § 101.23; 10 ILCS § 5/17-4; Mass. Gen. Laws ch. 54 § 25B(b)(7); 25 P.S. § 3050; Va. Code § 24.2-611;

- Secrecy envelope requirements, including prohibitions on leaving identifying marks on secrecy envelopes, Ala. Code § 17-11-9; Fla. Stat. § 101.64; Ga. Code § 21-2-384(b); Ky. Rev. Stat. § 117.085(3), (7); Mass. Gen. Laws ch. 54 § 25(B)(a)(10); N.J. Stat. § 19:63-12; N.M. Stat. § 1-6-8; Okla. Stat. tit. 26 § 14-107(A)(1); 25 P.S. § 3146.4; S.C. Code § 7-15-370; and

- Voter assistance forms, *e.g.*, Fla. Stat. § 101.051(4); Ind. Code § 3-11.5-4-13; Ky. Rev. Stat. 117.0863; Mass. Gen. Laws ch. 54 § 25B(a)(3), (14); Md. Code, Elec. Law § 9-308; 25 P.S. § 3058; Tenn. Code § 2-7-116; Va. Code § 24.2-649(A).

In short, Petitioners' overbroad construction of the Materiality Provision would "tie state legislatures' hands in setting voting rules unrelated to voter eligibility." Pet.App. 36a; *see Liebert*, 2024 WL 2078216, at *14 ("[A] broader interpretation of the Materiality Provision would mean that numerous rules related to vote casting would be invalid."). The "lack of historical precedent" for Petitioners' "broad" reading is a particularly "'telling indication' that [it] extends beyond the [Provision's] legitimate reach." *NFIB v. OSHA*, 595 U.S. 109, 119 (2022).

Perhaps recognizing the sweep of their reading, Petitioners try to rewrite the Provision to invalidate

the date requirement but not other voting rules they favor. In particular, Petitioners assume that states may reject ballots with errors that are material to determining a voter's *identity* or the *timeliness* of a ballot. *See* Pet. 4, 27. But the Provision's plain text makes no mention of determining "identity" or "timeliness." Rather than blue-pencil in new statutory language, this Court should simply reject Petitioners' implausible reading.

6. Finally, to the extent any doubt remains on the Materiality Provision's text, two interpretive canons foreclose Petitioners' reading. *First*, under the federalism canon, courts must not read a statute "to significantly alter the balance between federal and state power" absent "exceedingly clear language." *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758 , 764 (2021). And relatedly, the Court avoids reading statutes in a way that would "hamper the ability of States to run efficient and equitable elections[.]" *Clingman v. Beaver*, 544 U.S. 581, 593 (2005). Because Petitioners' reading would do just that, it must be rejected.

Second, constitutional avoidance forecloses adopting Petitioners' interpretation. Congress enacted the Materiality Provision using its Fifteenth Amendment enforcement authority. *See United States v. Mississippi*, 380 U.S. 128, 138 (1965). Thus, to pass constitutional muster, there "must be a congruence and proportionality between the [racial discrimination] injury to be prevented or remedied and the means adopted [by Congress] to that end." *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997). As established, Congress invoked *only* evidence of racial discrimination in voter registration, but Petitioners' reading extends the Provision far beyond that limited

context Congress considered. Petitioners' reading thus would raise "serious doubt[s]" about the Provision's "constitutionality," which means the Court must reject it if another "plausible" construction is available. *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018). Fortunately, the Provision's plain text reveals it applies only to voter-registration rules, thus preventing serious constitutional questions and foreclosing Petitioners' arguments.

III. VACATUR IS NOT APPROPRIATE BECAUSE THE CASE HAS NOT BECOME MOOT.

Petitioners close by observing that, at the time their petition was filed, a King's Bench application was pending in the Pennsylvania Supreme Court challenging the date requirement under the Free and Equal Elections Clause. Pet. 27. Petitioners contend that "the prospect that . . . the underlying controversy" could be "resolved on state law grounds through separate state court litigation" means it may become appropriate for the Court to vacate the decision below and remand with instructions to dismiss. *See* Pet. 28 (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950)).

This suggestion is empty. The Pennsylvania Supreme Court denied the King's Bench application Petitioners reference. *See New PA Project*, 2024 WL 4410884. Although the Commonwealth Court subsequently held that the date requirement violates the Pennsylvania Constitution in another case brought by Petitioners' counsel, the Pennsylvania Supreme Court unanimously stayed that ruling, *see Baxter v. Philadelphia Bd. of Elections*, __A.3d__, 2024

WL 4650792, at *1 (Pa. Nov. 1, 2024) (trial court proceeding referenced at Pet. 28), and later reaffirmed that the date requirement must be enforced during the 2024 General Election, *RNC*, 2024 WL 4814174, at *1.

Thus, despite the flurry of state-court challenges recently filed by some of the Petitioners and their counsel, the date requirement remains the law in Pennsylvania. This case has not become moot and vacatur is inappropriate. *See Munsingwear*, 340 U.S. at 39 (vacatur appropriate only where the case "has become moot while on its way" to this Court and the equities otherwise justify such relief).

Nor does the remote prospect that the Pennsylvania Supreme Court may in the future depart from its prior holdings, *see supra* at 6, 9-10, and declare the date requirement invalid (in *Baxter* or otherwise) justify vacatur. Any such departure would occur, if at all, well after the time for this Court to dispose of the petition—and, of course, would itself be subject to further review in this Court. *See* U.S. Const. art. I, § 4, cl. 1; *id.* art. II, § 1; *Moore v. Harper*, 600 U.S. 1, 37 (2023).

Moreover, even if another court actually renders the date requirement unenforceable, thus potentially mooting Petitioners' claim for *forward-looking* relief, the case would not be moot because Petitioners' operative Second Amended Complaint seeks nominal damages. *See* Second Am. Compl. at 36, ECF No. 413. As this Court recently explained, a case is not moot so long as a live claim for nominal damages persists. *See Uzuegbunam v. Preczewski*, 592 U.S. 279, 801-02 (2021).

Finally, even if Petitioners attempt to generate mootness by voluntarily dismissing their claims for nominal damages, vacatur would not be warranted. After all, the "equitable" relief of *Munsingwear* vacatur is unavailable when "the party seeking relief from the judgment below caused the mootness by voluntary action." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 24-25 (1994). And for this same reason, vacatur would not be appropriate if any of the belated state-court challenges Petitioners and their counsel have manufactured somehow succeeds. Petitioners and their counsel could have brought those challenges in this case—but they waited until *after* they knew they had lost in the Third Circuit and twice had amended their complaint to rush to state court to file them. *See supra* at 9-10. The Pennsylvania Supreme Court has declined to reward this claim-splitting, forum-shopping gamesmanship, *see New PA Project*, 2024 WL 4410884, at *1 (Brobson, J., concurring), and vacatur would be unwarranted here for the same reasons, *see Bancorp*, 513 U.S. at 24-25.

CONCLUSION

The petition for a writ of certiorari should be denied.

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