

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2630

EUGENE MAZO;
LISA MCCORMICK,

Appellants

v.

NEW JERSEY SECRETARY OF STATE;
E. JUNIOR MALDANADO, in his official capacity as
Hudson County Clerk;
JOANNE RAJOPPI, in her official capacity as Union County
Clerk;
PAULA SOLLAMI COVELLO, in her official capacity as
Mercer County Clerk;
ELAINE FLYNN, in her official capacity as Middlesex
County Clerk;
CHRISTOPHER DURKIN, in his official capacity as Essex
County Clerk;
STEVE PETER, in his official capacity as Somerset County
Clerk

On Appeal from the United States District Court
for the District of New Jersey
District Court No. 3-20-cv-08174
District Judge: The Honorable Freda L. Wolfson

Argued July 6, 2022

Before: SHWARTZ, KRAUSE, and ROTH, *Circuit Judges*

(Filed: November 23, 2022)

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OPINION OF THE COURT

KRAUSE, *Circuit Judge*

Nowhere are the First Amendment rights of free speech and association more essential, or more fiercely guarded, than in the context of free and open elections. Self-government depends on ensuring that speech intended to support, challenge, criticize, or celebrate political candidates remains unrestricted. But at the end of every hard-fought political campaign lies the ballot box, where our constitutional democracy depends equally on States fulfilling their solemn duty to regulate elections to ensure fairness and honesty, even where doing so may burden some First Amendment rights. For this reason, courts have long applied the more flexible *Anderson-Burdick* balancing test to evaluate constitutional challenges to state election laws that govern the mechanics of the electoral process. At the same time, however, courts continue to apply a traditional—and often quite stringent—First Amendment analysis to state election laws that implicate core political speech outside of the voting process.

This case asks us to determine where the campaign ends and the electoral process begins. New Jersey permits candidates running in primary elections to include beside their name a slogan of up to six words to help distinguish them from others on the ballot. N.J. Stat. § 19:23-17. But New Jersey also requires that candidates obtain consent from individuals or New Jersey incorporated associations before naming them in their slogans. Appellants Eugene Mazo and Lisa McCormick challenged this requirement after their desired slogans were rejected for failure to obtain consent. They argue that New Jersey’s ballot slogans are, in effect, part of the campaign—a final, crucial opportunity for candidates to communicate directly with voters—and that the consent requirement should therefore be subject to traditional First Amendment scrutiny. The District Court disagreed. It held that, though the ballot slogans had an expressive function, the consent requirement regulates the mechanics of the electoral process, and so applied the *Anderson-Burdick* test, ultimately finding the consent requirement constitutional.

We agree with the District Court. In so doing, we recognize the line separating core political speech from the mechanics of the electoral process has proven difficult to ascertain: “Not only has the Supreme Court itself fractured deeply in the application of this jurisprudence, but so too has the judiciary in general.” PRINCIPLES OF THE L. OF ELECTION ADMIN.: NON-PRECINCT VOTING AND RESOL. OF BALLOT-COUNTING DISP. § 201 (AM. L. INST., Tentative Draft No. 2, 2017). Thus to “develop[] . . . this constitutional jurisprudence in ways that most promote rule-of-law values and the legitimacy of the electoral process, including the critical value of clarity,” we take this opportunity to survey the range of election laws to which the Supreme Court and appellate courts

have applied the *Anderson-Burdick* test, as opposed to a traditional First Amendment analysis. *Id.* From that review, we derive criteria to help distinguish—along the spectrum of mechanics of the electoral process to pure political speech—which test is applicable. And applying those criteria here, we conclude that New Jersey’s consent requirement is subject to *Anderson-Burdick*’s balancing test. We also conclude that because New Jersey’s interests in ensuring election integrity and preventing voter confusion outweigh the minimal burden imposed on candidates’ speech, the consent requirement passes that test. We will therefore affirm the judgment of the District Court.

I. Background

A. New Jersey’s Ballot Slogan Statutes

In New Jersey, a candidate who wants to have her name placed on the ballot for a primary election must file a petition containing certain information about the candidate and the requisite signatures for the public office sought. *See* N.J. Stat. Ann. §§ 19:23-5 to -11.¹ For candidates seeking federal office, these petitions must be directed to the Secretary of State, *id.* § 19:23-6, who is responsible for certifying petitions, *id.* §§ 19:13-3, 19:23-21, and instructing local election officials about the names and information that are to be placed on the primary ballots, *id.* §§ 19:23-21 to -22.4.²

¹ New Jersey has adopted a similar system for unaffiliated candidates seeking to be placed on the general election ballot. *See* N.J. Stat. §§ 19:13-1 to -3.

² The Secretary of State is also responsible for petitions for statewide offices; candidates seeking county or local office,

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