

No. 21-1489

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In the Supreme Court of the United States

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ANDREW IOANNIDIS,

*Petitioner,*

v.

TOM WOLF, in His Official Capacity as Governor of  
the Commonwealth of Pennsylvania, and  
VERÓNICA DEGRAFFENREID, in Her Official  
Capacity as Secretary of the Commonwealth of  
Pennsylvania,

*Respondents,*

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF PENNSYLVANIA

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PETITION FOR A WRIT OF CERTIORARI

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May 18, 2022

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## QUESTIONS PRESENTED

Whether there is any remedy for violation(s) of the First and Fourteenth Amendment(s) to the United States Constitution.

Whether Pennsylvania Law supersedes the United States Constitution.

Whether Petitioner's challenge to the constitutionality of Electoral Count Act of 1887, as amended, is waived.

Whether Petitioner's claims are moot.

## II

### PARTIES TO THE PROCEEDINGS

Petitioner is Andrew Ioannidis. Petitioner is an individual and was the Petitioner/Plaintiff in the Commonwealth Court of Pennsylvania, and the Appellant in the Supreme Court of Pennsylvania.

Respondents are Tom Wolf, sued in his official capacity as Governor of the Commonwealth of Pennsylvania, and Veronica DeGraffenreid, sued in her official capacity as Secretary of the Commonwealth of Pennsylvania. Respondents were the Respondents/Defendants in the Commonwealth Court of Pennsylvania and the Appellees in the Supreme Court of Pennsylvania.

### RELATED PROCEEDINGS

- *Ioannidis v. Wolf and DeGraffenreid*, No 56 MAP 2021, Supreme Court of Pennsylvania. Judgment entered Feb. 23, 2022.
- *Ioannidis v. Wolf and DeGraffenreid*, No. 635 MD 2020, Commonwealth Court of Pennsylvania. Judgment entered July 8, 2021.

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
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**PETITION FOR A WRIT OF CERTIORARI**

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Andrew Ioannidis respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania in this case.

**OPINIONS BELOW**

The Pennsylvania Supreme Court's Order affirming the Pennsylvania Commonwealth Court's Order is not reported but is reproduced in Appendix A, p.1a. The Commonwealth Court's opinion and order is not reported but is reproduced in Appendix B, p.2a.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The judgment of the Pennsylvania Supreme Court was entered on February 23, 2022.

28 U.S.C. §2403(a) may apply to these proceedings and the required notification(s) have been made

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides, in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of laws.  
*U.S. Const. Amend. XIV, § 1.*

The First Amendment to the U.S. Constitution provides, in part:

Congress shall make no law respecting an establishment of religion, or

prohibiting the free exercise thereof; or  
abridging the freedom of speech, or of  
the press; or the right of the people  
peaceably to assemble, and to petition  
the Government for a redress of  
grievances.

*U.S. Const. Amend. I*

3 U.S.C. §§ 5 & 15 are reproduced in Appendix  
F, p.86a.

### STATEMENT OF THE CASE

Petitioner felt obligated to bring this civil  
rights lawsuit after watching the legislative hearing  
that occurred in Gettysburg on November 25, 2020.  
He initiated suit in the Commonwealth Court of  
Pennsylvania on December 6, 2020. Petitioner was,  
and is, politically unaffiliated, and did not believe  
that he was being protected by the process.

By means of the First and Fourteenth  
Amendments to the United States Constitution, this  
lawsuit seeks to cure the disparate treatment of  
voters based upon arbitrary classification. To  
preserve his civil rights, Petitioner filed four  
emergency applications that progressively sought to

halt or undo the certification of presidential electors.<sup>1</sup> Meanwhile, he expanded and refined his claims, which culminated in his January 19, 2021 Amended Petition for Review. *App. D, p.21a*. The petition encompasses the constellation of discrimination that imbued Pennsylvania's 2020 General Election.

In contradiction with U.S. Const. art. II, § 1, cl. 2,<sup>2</sup> and contrary to the plain letter of the statute, in-person voters are subject to signature verification<sup>3</sup> and may have their votes challenged by third-party election observers,<sup>4</sup> whereas mail-in voters and absentee voters are not,<sup>5</sup> and cannot.<sup>6</sup> *App. D, p.41a, 43a*. The Petition also seeks to address the fact

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<sup>1</sup> Petitioner's first emergency application, ¶92-106, filed 12/11/2020, and every subsequent emergency application, challenged the constitutionality of the *Electoral Count Act of 1887*, as amended, ("ECA"), 3 U.S.C. §§ 5, 7, 15. Petitioner continued to challenge the ECA in the trial court, *e.g.*, Feb. 3, 2021 Reply Brief, and July 18, 2021 Application for Reconsideration and Re-Argument, ¶31-37, and in the Pennsylvania Supreme Court. *App. E, p.83a*.

<sup>2</sup> *Pennsylvania Election Code*, Act of Jun. 3, 1937, P.L. 1333, No. 320, Sections 1308(f) & (g)(3).

<sup>3</sup> *Id.* at Section 1210.

<sup>4</sup> *Id.* at Section 417.

<sup>5</sup> *In re: November 3, 2020 General Election*, 240 A.3d 591, 611 (Pa.2020) ("[C]ounty boards of elections are prohibited from rejecting absentee or mail-in ballots based on signature comparison conducted by county election officials or employees, or as the result of third-party challenges based on signature analysis and comparisons.").

<sup>6</sup> *Id.* at 610 ("[T]he Election Code presently provides no mechanism for time-of-canvassing challenges by candidate or party representatives.").

that mail-in and absentee voters were afforded more time to vote than in-person voters. *App. D, p.47a.*

This case thwarts challenges to standing, which plagued almost every other dilution case, and seeks to investigate the influx of private money and third parties into the electoral process. *App. D, p.45a, 49a, 51a.* The remaining claims, sounding in substantive due process and freedom of association, further envelop the issues. *App. D, p.53a, 55a, 56a, 58a.*

Each of Petitioner's constitutional claims, as noted by the trial court, prays for injunctive and declaratory relief, as well as any other relief provided by law. *App. B, p.7a.*

Respondents filed preliminary objections<sup>7</sup> and a motion to dismiss for mootness on February 19, 2021. Petitioner addressed these challenges in his May 2, 2021 Answer and Brief in Opposition, and the Commonwealth Court dismissed the Amended Petition as moot on July 8, 2021, holding that there is no remedy for the violation of Petitioner's civil rights. Petitioner applied for reconsideration on July 18, 2021, which the Commonwealth Court denied on August 5, 2021. Petitioner appealed to the Pennsylvania Supreme Court on August 6, 2021, and addressed the issues in his November 21, 2021 Brief

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<sup>7</sup> Asserting that Petitioner failed to state a claim, lacked standing and subject matter jurisdiction, and was barred by laches.

for Appellant.<sup>8</sup> The Pennsylvania Supreme Court affirmed the Commonwealth Court's decision on February 23, 2022, without opinion.

### REASONS FOR GRANTING THE PETITION

The Supreme Court of Pennsylvania affirmed that there is no remedy for the violation of Petitioner's voting and associational rights, rendering them effectively meaningless. In so doing, it contradicted long-standing precedent established by the Third Circuit Court of Appeals and this Court. *Sup. Ct. R. 10(b), (c)*. It confounded constitutional law with state law, establishing that the latter supersedes the former, and neglected an opportunity to address unresolved constitutional issues that would restore faith in the electoral process.

#### I. The Supreme Court of Pennsylvania's Decision is Incorrect

Petitioner sufficiently plead his constitutional claims. *See App. D, p. 21a*. The Courts tacitly acknowledged this fact by dismissing the case on account of mootness, rather than on the basis of the preliminary objections.<sup>9</sup> The Courts recognized that

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<sup>8</sup> *App. E, p. 65a*.

<sup>9</sup> "Petitioner may well have asserted a viable claim with respect to the 2020 General Election at the inception of this case. However, the subsequent certification of the election results and the inauguration of the new President and Vice-President on January 20, 2021, have rendered any claim moot." *App. B, p. 13a*.

Petitioner prayed for “injunctive relief, declaratory relief, non-discriminatory investigation and enforcement of violations, [...] and any other relief provided by law.” *App. B, p. 7a*.

“[T]he party who brings a suit is master to decide what law he will rely upon, and [...] does determine whether he will bring a suit arising under the Constitution or laws of the United States”. *Bell v. Hood*, 327 U.S. 678, 681 (1946). “The key inquiry in determining whether a case is moot is whether the court or agency will be able to grant effective relief and whether he has been deprived of the necessary stake in the outcome of the litigation.” *Consol PA Coal Co. v. DEP*, 129 A.3d 28, 39 (Pa.Cmwlth. 2015).

Respondents issued discriminatory guidance to county boards of election, and argued for discriminatory policies in litigation. *App. D, p. 30a*, ¶66-67. They facilitated the granting of funds to county boards of election from non-government organization(s) associated with Google and Facebook Billionaire Mark Zuckerberg to benefit Democrat voters. *App. D, p. 34a*, ¶99. They provided access to the SURE system to non-government organization(s) to the benefit of urban and Democrat voters. *App. D, p. 34a*, ¶102. They illegally certified voting systems that changed, weighted, falsely recorded, and manipulated votes to benefit Democrat voters. *App. D, p. 36a*, ¶124-138. They facilitated the counting of illegal votes to benefit Democrat voters. *App. D, p. 46a*, ¶194. They accorded Petitioner’s vote less weight than a Democrat voter’s vote. *App. D, p. 35a*,



¶106. They intentionally discriminated against Petitioner, failed to uphold and enforce the law, and certified false election results. *App. D, p.22a, ¶5-6.*

“Redressability is ‘easily established in a case where, as here, the alleged injury arises from an identifiable discriminatory policy.’ While we cannot predict ‘the exact nature of the possible relief . . . without a full development of the facts, an order enjoining the policy and requiring non-discriminatory investigation and enforcement would redress the injury.’”

*Hassan v. City of New York*, 804 F.3d 277, 290 (3rd Cir. 2015) (internal citations omitted).

“Once a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.” *Swann v. Charlotte-Mecklenburg*, 402 U.S. 1, 15 (1971).<sup>10</sup> “[T]he major purpose of the suit may be to obtain a public declaration that they ‘are right and were improperly treated,’ along with nominal damages that serve as ‘symbolic vindication of their constitutional rights.’ Given the range of available remedies, redressability is easily satisfied.” *Hassan*, 904 F.3d at 293. “When a right is violated, the violation ‘imports damage in the nature of it’ and ‘the party injured is entitled to a verdict for nominal

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<sup>10</sup> *Accord Mazzie v. Commonwealth*, 495 Pa. 128 (Pa.1981).

damages.” *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 800 (2021) (internal citations omitted).

“[I]t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution, and to restrain individual state officers from doing what the 14th Amendment forbids the state to do. Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.”

*Bell*, 237 U.S. at 684.<sup>11</sup>

Petitioner also seeks an injunction that would compel the decertification of the 2020 General Election. *App. B, p. 7a-13a*. This is an appropriate remedy, and has been granted in similar, but less egregious, circumstances, explicitly on Fourteenth Amendment grounds. *See Marks v. Stinson*, 19 f.3d 873 (3rd Cir. 1994). Admittedly, Marks was a down-ticket race, but the proposition stands and is supported by law, for “[t]he President is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole

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<sup>11</sup> *Accord William Penn School District v. Dept. of Ed.*, 170 A.3d 414 (Pa.2017) (“It is settled beyond peradventure that constitutional promises must be kept.”)

people cannot be too strongly stated.” *Bush v. Gore*, 531 U.S. 98, 112 (2000) (Rehnquist, J., concurring).

The Courts relied on *Bognet v. Degraffenreid*, 980 F.3d 336 (3rd Cir. 2020), *Sibley v. Alexander*, 916 F.Supp.2d 58 (D.D.C. 2013), and *Conant v. Brown*, 248 F.Supp.3d 1014 (D.Or.2017) to support the proposition that Petitioner’s claims are moot. Regardless of the fact that the relief Petitioner requested is distinguishable and his claims are redressable, none of these cases are controlling. *Conant* actually supports the proposition that Petitioner’s claims are vital, noting “that jurisdiction over Plaintiff’s claims is appropriate to the extent they seek declaratory relief”. Further, *Sibley* wasn’t a Fourteenth Amendment case, and was rejected because the Plaintiff failed to allege fairly traceable harm.

In *Bognet*, the Plaintiffs sued prior to the election alleging that the deadline extension for receiving mail-in and absentee ballots was unconstitutional because mail-in voters would have more time to vote and that their lawful votes would be diluted by unlawful late votes.<sup>12</sup> They sought an order enjoining the counting of ballots received after November 3, and a declaration that the deadline extension in conjunction with the presumption of timeliness were unconstitutional. The District Court

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<sup>12</sup> Petitioner’s dilution claim is not a generalized grievance. It is differentiated and not common to all members of the public. It asserts that unlawful Democrat votes diluted his non-Democrat vote.

found their dilution claim to be generalized and speculative, but found that they were likely to succeed on the additional time to vote claim. The Third Circuit disagreed and reversed, but this Court granted certiorari and directed dismissal without prejudice, presumably so that the claims may be litigated in the past tense, exactly as Petitioner has done here.

The Pennsylvania Supreme Court's decision warrants summary reversal. This Court has often summarily reversed decisions of lower courts that contradict controlling precedents of this Court. See, *e.g.*, *Moore v. Texas*, 139 S. Ct. 666 (2019) (per curiam); *Pavan v. Smith*, 137 S. Ct. 2075 (2017) (per curiam). If this Court does not summarily reverse the decision below, it should grant plenary review. A fundamental right, that is preservative of all rights, cannot be effectively meaningless in the Commonwealth of Pennsylvania. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

## II. The Pennsylvania Courts confounded the Declaratory Relief Act, and the Election Code, with the First and the Fourteenth Amendments

Despite express acknowledgment that this is a civil rights lawsuit,<sup>13</sup> the Courts abridged, and ultimately abrogated the Constitution by requiring compliance with extraneous statutory provisions.

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<sup>13</sup> *App. B*, p. 7a, 10a.

Essentially, the Courts held that civil rights cases seeking declaratory relief, or that relate to elections, are governed by the State's Declaratory Relief Act and Election Code. *App. B, p.13a-17a.*

In so doing, the Courts overruled their own precedent,<sup>14</sup> relying upon a case about an administrative agency that denied third party intervention for a horse racing license, where that third party followed the statutory procedure for licensure, and then decided to sue under the Declaratory Judgment Act after losing. *See Pittsburgh Palisades Park, LLC v. Pennsylvania State Horse Racing Commission*, 844 A.2d 62 (Pa.Cmwlth. 2004). Then, the Courts relied upon a case brought under a fraud statute that only failed on appeal for lack of jurisdiction. *See In re Twenty-First Senatorial District Nomination*, 126 A. 566 (Pa. 1924). Finally, the Courts relied upon a case about a media outlet, that was denied access to a suppression hearing, that failed because the outlet didn't request a stay of the hearing while litigating the appeal. *See Commonwealth v. Dörler*, 588 A.2d 525 (Pa.Super. 1991).

The crux of the Courts' argument is that the Election Code contains procedures for obtaining recounts or otherwise contesting election results. Therefore, statutory provisions were available that may have addressed Petitioner's Fourteenth

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<sup>14</sup> *See William Penn School District*, 170 A.3d at 457 & n.3 (finding that injunctive and declaratory relief are appropriate remedies for constitutional violations).

Amendment dilution claim, but, because Petitioner did not conform his suit to the Election Code, he is precluded from relief. Setting aside the fact that there is less than no precedent to support this proposition, the Election Code does not provide adequate remedies, as Petitioner is unable to petition to open ballot boxes in 66 of Pennsylvania's 67 counties under Section 1701, or voting machines under Section 1702. Section 1731 is impracticable for citizens, like Petitioner, who are not affiliated with any political party, and Section 1756 relates only to claims that an election was illegal. The enforcement provisions contained in Article XVIII were not pursued by the Commonwealth. Not to mention that the Commonwealth Court has held that the Election Code is inadequate for remedying violations of rights associated with fair elections. *Bradway v. Cohen*, 642 A.2d 615 (Pa.Cmwlth.1994).

The Courts applied this logic to each of Petitioner's claims, not just his dilution claim, even though it was never suggested, nor substantiated, that the Election Code is capable of remedying other instances of disparate treatment, such as being subjected to signature verification and third party challenges, or having less time to vote, or receiving fewer opportunities and resources than urban voters due to outside funding and access to the electoral system.

"[I]f a constitutional claim is covered by a specific constitutional provision, [ . . . ] the claim must be analyzed under the standard appropriate to that

specific provision . . .". *U.S. v. Lanier*, 520 U.S. 259, 272 n.7 (1997); *See also Graham v. Connor*, 490 U.S. 386 (1989) and *Commonwealth v. Colavita*, 993 A.2d 874, 890 (Pa.2010). State law does not abridge or abrogate the United States Constitution. *U.S. Const. art. VI, § 2*.

### III. The ECA is Unconstitutional

Pennsylvania's certified electors were chosen and counted in violation of the Electors Clause, the Fourteenth Amendment, and the Twelfth Amendment. *U.S. Const. art. II, § 1, cl. 2; U.S. Const. Amend. XIV, § 1; U.S. Const. Amend. XII*.

The ECA, specifically *3 U.S.C. § 5, 15*, establishes that Presidential Electors appointed by the State Executive shall be conclusive, establishes the procedures for determining which of two or more competing slates of Presidential Electors for a given State are to be counted, and establishes how objections to a proffered slate are to be adjudicated.

Petitioner may challenge the ECA because it relates to his claims.<sup>15</sup> His challenges were timely raised and preserved on appeal. *App. B, p.10a; App. E, p.65a*. The case relied upon by the Courts to establish otherwise is inapplicable. That case concerns a regulation promulgated during the course of litigation which clarified the statute that the

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<sup>15</sup> *Brouillette v. Wolf*, 213 A.3d 341, 351 (Pa.Cmwlth. 2019) (citing *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Plaintiffs were alleging to be unconstitutionally vague, and violative of the due process clause. The Court essentially held that the Plaintiffs couldn't pivot to the new regulation being unconstitutionally vague, and that the Plaintiffs' due process concerns were addressed by the new regulation and dispositive case law. *See Pennsylvania Medical Providers Association v. Foster*, 613 A.2d 51 (Pa.Cmwlt.1992).

Pennsylvania Courts routinely consider matters collateral to the complaint when they touch upon a litigant's rights and claims,<sup>16</sup> as reflected by the Pennsylvania Rules of Appellate Procedure.<sup>17</sup> Paradoxically, the Courts refused to entertain Petitioner's challenges to the ECA when considering mootness, because they weren't contained in the petition, but then decided the case was moot due to the inauguration, which also wasn't in the petition.

Pennsylvania's certified electors were not chosen in the manner designated by the State legislature, nor were they chosen in conformity with notions of equal protection or due process. The elector dispute provisions of the ECA were utilized instead of the Twelfth Amendment in January of 2021. Petitioner's challenge to the ECA serves to remedy violations of his civil rights.

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<sup>16</sup> *See Hamilton Contracting Co. v. Department of Environmental Resources*, 494 A.2d 516 (Pa.Cmwlt. 1985); *Wiegand v. Wiegand*, 337 A.2d 256 (Pa. 1975).

<sup>17</sup> *Pa.R.A.P. §§ 302(a), 521(a)*.



In the event that a law presents an obstacle to faithfully adhering to Constitutional requirements, it is necessary to disregard the statute in favor of the plain meaning of the Constitution. *U.S. Const. art. VI, § 2.*

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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*Petitioner*

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