No. _____

# In the Supreme Court of the United States

Dawn Keefer; Timothy Bonner; Barry Jozwiak; Barbara Gleim; Joseph Hamm; Wendy Fink; Robert Kauffman; Stephanie Borowicz; Donald (Bud) Cook; Paul (Mike) Jones; Joseph D'orsie; Charity Krupa; Leslie Rossi; David Zimmerman; Robert Leadbeter; Daniel Moul; Thomas Jones; David Maloney; Timothy Twardzik; David Rowe; Joanne Stehr; Aaron Bernstine; Kathy Rapp; Representative Mark Gillen; Representative Jill Cooper; Representative Marla Brown; Senator Cris Dush, All Pennsylvania Legislators,

*Petitioners,*

v.

President United States of America; Governor of Pennsylvania; Secretary Commonwealth of Pennsylvania; Deputy Secretary Elections Commissions; United States of America; United States Department of Agriculture; Secretary; United States Department of Health and Human Services; Secretary Pennsylvania Department of Human Services; United States Department of State; Secretary Pennsylvania Department of State; United States Department of Housing and Urban Development; United States Department of Energy; Secretary; United States Department of Education; Secretary United States Department of Education

*Respondents.*

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

The Elections Clause expressly assigns state legislatures authority and duty to regulate federal elections: "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." Art. I, § 4, cl. 1. State legislatures, composed of individual legislators, propose, and vote for, or against election regulations. State and federal executives have no such delegated authority. This Court recognizes individual legislator standing in Constitutional subject-matter when votes are "overridden and virtually held for naught" due to legislators' "plain, direct and adequate interest in maintaining the effectiveness of their votes." *Coleman v. Miller,* 307 U.S. 433, 438 (1939). State and federal executives altered the time, place, and manner of federal elections in Pennsylvania against the democratically successful votes of individual legislators, contrary to Constitutional duty and authority assignment. Some individual legislators sued to vindicate their votes, calling to question:

Whether individual legislators have Article III standing to sue state and federal executive officials for altering the manner of federal elections in conflict with the individual legislators' successful votes to regulate the manner of federal elections in Pennsylvania pursuant to Article I's Elections Clause and Article II's Electors Clause.

## PARTIES TO THE PROCEEDINGS

Petitioners are Pennsylvania state legislators Representatives Dawn Keefer, Timothy Bonner, Barry Jozwiak, Barbara Gleim, Joseph Hamm, Wendy Fink, Robert Kauffman, Stephanie Borowicz, Donald (Bud) Cook, Paul (Mike) Jones, Joseph Dorie, Charity Krupa, Leslie Rossi, David Zimmerman, Robert Leadbitter, Daniel Moul, Thomas Jones, David Maloney, Timothy Twardzik, David Rowe, Joanne Stehr, Aaron Berstine, Kathy Rapp, Jill Cooper, Marla Brown, Mark Gillen and Pennsylvania Senator Cris Dush. They were the plaintiffs-appellants below.

Respondents are, in their official capacities, the President United States Of America; Governor Of Pennsylvania; Secretary Commonwealth Of Pennsylvania; Deputy Secretary Elections Commissions; United States Of America; United States Department Of Agriculture; Secretary; United States Department Of Health And Human Services; Secretary Pennsylvania Department Of Human Services; United States Department Of State; Secretary Pennsylvania Department Of State; United States Department Of Housing And Urban Development; United States Department Of Energy; Secretary; United States Department Of Education; Secretary United States Department Of Education. They were the defendants-appellees (as the successors of the preceding office-holders Biden Administration in their official capacities) below.

## CORPORATE DISCLOSURE STATEMENT

The petitioners are individual Pennsylvania state legislators and no non-individual petitioners. There is no parent public or private corporation that has any interest in this matter.

## LIST OF RELATED CASES

The district court decision is *Keefer v. Biden*, No. 1:24-CV-00147, 2024 WL 1285538 (M.D. Pa. Mar. 26, 2024), reproduced at A-30–A-55. The Notice of Appeal to the U.S. Court of Appeals for the Third Circuit was filed on April 18, 2024.

The U.S. Court of Appeals, issued its Opinion and Judgment on March 4, 2025, reproduced at A-1–A-15 and available at *Keefer v. President United States of Am.*, No. 24-1716, 2025 WL 688924, at *1 (3d Cir. Mar. 4, 2025).

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## PETITION FOR A WRIT OF CERTIORARI

Petitioners, 27 Pennsylvania state legislators, respectfully petition for a writ of certiorari regarding the United States Court of Appeals for the Third Circuit Judgment and Opinion, reproduced at A-1–A-15.

## OPINIONS BELOW

The United States Court of Appeals for the Third Circuit opinion is reported at *Keefer v. President United States of Am.*, No. 24-1716, 2025 WL 688924 (3d Cir. Mar. 4, 2025). The District Court opinion is reported at *Keefer v. Biden*, 725 F. Supp. 3d 491, 493 (M.D. Pa.). Previously, in 2024, this Court denied certiorari before judgment, which is reported at 145 S. Ct. 351 (2024).

## JURISDICTION

The judgment of the Court of Appeals was entered on March 4, 2025. A-11. This Court has jurisdiction under 28 U.S.C. § 1254.

## CONSTITUTIONAL PROVISIONS INVOLVED

1. The U.S. Constitution. Article I, section 4, clause 1, the Elections Clause, provides, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

2. The Electors Clause of the U.S. Constitution, Article II, section 1, clause 3 states:

"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an Office of Trust or Profit under the United States shall be appointed an Elector."

## STATEMENT OF THE CASE

### I. Legislator-Petitioners have the individual opportunity and responsibility to vote to regulate the manner of federal elections in Pennsylvania.

Petitioners are twenty-seven state legislators of the Commonwealth of Pennsylvania. Amend. Compl., R.Doc 18 at 3. As 27 of the 253 real persons who make up the legislative branch of the Commonwealth's government, *id.*, they have specific duties under the U.S. Constitution to appoint Electors, who, in turn, elect the President and Vice President under Article II's "Electors Clause," and to regulate the times, places, and manner of federal elections under Article I's Elections Clause. *Id.* at 6–7. The Legislator-Petitioners each took an oath to support, obey, and defend the Constitution of the United States and the Constitution of the Commonwealth. *E.g.*, Decl. of Representative Charity Grimm Krupa, R.Doc.22-4, ¶ 5).

Under the State's Constitution, the Commonwealth of Pennsylvania has three branches of government, the Executive, Legislative, and Judicial. Pa. Const. arts. II–V. The Legislative Branch—also known as the General Assembly—is composed of the House of Representatives and the Senate and has the sole legislative power to pass laws. Pa. Const. arts. II §1, III. § 1. As members of the state House and Senate, individual legislators have opportunity to vote yea or nay regarding proposed laws (bills). Pa. Const. art. III § 4.

### a. Pennsylvania legislators successfully voted for legislation prohibiting third-party involvement in elections.

A Pennsylvania law enacted after the 2020 election (SB982, 2022 Pa. Legis. Serv. Act 2022-88, now at 25 Pa. Stat. § 2607) prohibits the use of private resources for voter registration or for preparation or administration of conducting elections in the Commonwealth. *Id.*; Amend. Compl., R.Doc 18 at 10. For example, Legislator-Appellant Representative Joseph Hamm, successfully voted to have SB982 enacted. Decl. of Joseph Hamm, R.22-2. The law specifically states that any election costs incurred "shall be funded only upon lawful appropriation of the Federal, State and local governments, and the source of funding shall be limited to money derived from taxes, fees and other sources of public revenue." Amend. Compl., R.Doc 18 at 11; Pa. St. 25 P.S. § 2607.

The law does not authorize the type of election activities called for by President Biden's EO14019. In contrast, through EO14019, President Biden and his political appointees, including the named federal appellees as federal department heads, issued directives to solicit for, and facilitate use of private, non-governmental third-party funds in elections.

SB982, became law on July 11, 2022. The underlying policy rationale for the law's enactment was the need to prevent public officials from partnering with third party non-governmental organizations "for the registration of voters or the preparation, administration or conducting of an election in this Commonwealth." 25 P.S. § 2607(b). As

one of the chief authors of the law explained, the concern regarding outside support involved in the election process required action to prevent potential undue influence in those elections procedures or processes:

> No matter how well-intended, such outside support has the potential to unduly influence election procedures, policies, staffing, and purchasing, which in turn may unfairly alter election outcomes. Even more importantly, it stands to erode voter confidence in a pillar of our beloved democracy…The 2020 Presidential Election saw non-governmental entities contribute hundreds of millions of dollars…Further, it has been reported that this funding was only secretly vetted by certain high-ranking officials from the executive branch who identified which counties should be invited to apply.[1]

For over thirty years since Congress passed the federal National Voter Registration Act, 52 U.S.C. § 20901 et seq., the Pennsylvania legislative branch has

[1] Memorandum from Senators Lisa Baker and Kristin Phillips-Hall to All Senate Members (Oct.20, 2021) (available at https://www.legis.state.pa.us//cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&S Pick=20210&cosponId=36370)

had the opportunity to authorize federal agencies to perform voter registration, but they have declined to do so. Amend. Compl., R.Doc 18 at 9 25 Pa C.S.A. §1321).

## II. Biden's Executive Order 14019 solicits nongovernmental third-party involvement in the manner of elections—that is, the registration process.

In the aftermath of the 2020 Election, 28 states, including Pennsylvania, enacted laws prohibiting the influence of third-party non-governmental organizations in election operations.[2] This was largely in response to the more than $400 million dollars in donations from the Chan Zuckerberg Initiative (a foundation) selectively distributed by what has been described as partisan third-party non-governmental organizations, such as the Center for Tech and Civic Life ("CTCL"). Recently, U.S. House of Representatives, Committee of House Administration Chairman Bryan Steil explained how private third-

[2] The 28 states are: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin (state-legislature-approved constitutional amendment). *States Banning or Restricting "Zuck Bucks"*, Capital Rsrch. Ctr. https://capitalresearch.org/article/states-banning-zuck-bucks/ (last updated April 10, 2024).

party involvement in election processes may sow public distrust in the election process:

> *Publicly, CTCL said these funds were intended to support poll worker recruitment efforts or the purchase of new equipment. But in reality, some of these funds were used primarily for voter registration events and get-out-the-vote efforts in Democrat-leaning cities and counties.*[3]

On March 7, 2021, President Biden issued Executive Order No. 14019 Promoting Access to Voting" (EO14019) applying to all 50 states. (86 Fed. Reg. 13,623). EO14019 commanded the heads of the Appellee federal departments, sued in their official capacities, to develop plans to use the agencies to conduct get-out-the-vote activities and voter registration drives in partnership with Biden administration approved third-party non-governmental organizations. (Sec. 3(a)(iii)(C)), Amend. Compl., R.Doc 18 at 4–5. There is no evidence Congress authorized the executive action nor appropriated funding for Executive agencies to engage in the election activities under the Executive Order.

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[3] *American Confidence in Elections: Confronting Zuckerbucks, Private Funding of Election Administration: Hearing before the Committee on House Admin.*, 118 Cong. (2024) (opening remarks of Rep. Bryan Stiel), https://cha.house.gov/2024/2/chairman-steil-delivers-opening-remarks-at-zuckerbucks-hearing.

*Id.* at 11–18. Notably, Pennsylvania did not appropriate funds to support EO14019. *Id.* at 11. On January 20, 2025, President Trump rescinded EO14019.[4]

**a. State Secretaries of State, Attorneys General, and members of Congress asked Biden to rescind EO 14019 and explain its implementation.**

Despite numerous requests from agencies and elected officials, the Biden Administration has neither rescinded EO14019, nor offered transparency regarding the Order's implementation.

In August 2022, 15 State Secretaries of State wrote to President Biden requesting that EO14019 be rescinded.[5] The Secretaries expressed concern that involving Federal agencies in the registration process "will produce duplicate registrations, confuse citizens, and complicate the jobs of our county clerks and

[4] *Initial Recissions of Harmful Executive Orders and Actions*, THE WHITE HOUSE, (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/

[5] Joint Letter from Secretaries of State of Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Louisiana, Mississippi, Montana, Nebraska, Ohio, South Dakota, Tennessee, West Virginia, and Wyoming to President Joe Biden, (Aug. 3, 2022) (publicly available at https://sos.wyo.gov/Media/2022/Joint_SOS_Letter-Biden_EO_14019.pdf).

election officials."[6] They explained that their respective state legislative branch is solely authorized to prescribe the way elections are run, and should alterations in the election process be needed, that would be the province of the legislative branch of *their* state government and not the federal executive branch.[7] Finally, the Secretaries warned that "[i]f implemented, [EO14019] would also erode the responsibility and duties of the state legislatures to their constitutional duty within the Election Clause."[8]

Likewise, in September 2022, 13 State Attorneys General wrote a letter to President Biden asking him to rescind EO14019 explaining their view that the Executive Order as unconstitutional and potentially designed to benefit the President's own political party.[9]

Then again, in October 2022, nine members of the U.S. House of Representatives sent a letter to the U.S. Attorney General asking him to turn over the

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] Multistate Letter from Attorneys General of Louisiana, Alabama, Arizona, Arkansas, Montana, Nebraska, Oklahoma, Indiana, Kentucky, Mississippi, South Carolina, Texas, and Utah to Joseph R. Biden, Jr., President of the United States (Sept. 28, 2022) (publicly available at https://attorney general.utah.gov/wp-content/uploads /2022/09/EO-14019-Multistate-letter-FINAL.pdf).

strategic plans for the Department of Justice's implementation of EO14019.[10]

In May 2023, 14 U.S. Senators sent a letter to President Biden complaining about the secrecy of EO14019 agency plans and partisan motives and tactics.[11] No evidence of any response was received. In that light, months later, in November 2023, 23 U.S. Senators sent another letter to President Biden reminding him: (1) the Executive Order directed federal agencies to engage in voter activities without Congressional approval; (2) using funds for the Order objectives not intended for such use by Congress is a violation of law; and (3) that the White House is avoiding Congressional oversight as the Executive election plans remained undisclosed despite repeated requests:

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[10] Letter from Congress Members: Ralph Norman, Mary E. Miller, Bill Posey, Louis Gohmert, Ben Cline, Randy K. Weber, Fred Keller, Chip Roy, and Andy Briggs to Merrick Garland, Attorney General of the United States (Oct. 18, 2022) (publicly available at https://norman.house.gov/uploadedfiles/letter-to-ag-garland-re-eo-14019-final.pdf).

[11] Letter from Senators Bill Hagerty, Mitch McConnell, Deb Fischer, Ted Budd, Rick Scott, Mike Braun, Mike Lee, Cindy Hyde-Smith, Shelley Moore Capito, Roger F. Wicker, James Lankford, Ted Cruz, Ron Johnson, and Katie Boyd Britt to President Joseph R. Biden, Jr. (May 10, 2023) (publicly available at https://www.lankford.senate.gov/wp-content/uploads/media/doc/lankford_hagerty_letter_on-eo-14019.pdf).

> Executive Order 14019 directs more than 600 federal agencies to engage in voter-related activities without congressional approval…[u]sing appropriated funds for a purpose that Congress did not expressly authorize would constitute a violation of [law]… Unfortunately, the White House has kept these plans hidden despite numerous requests from Congress.[12]

Recognizing that EO14019 would not be rescinded and after the repeated refusal to disclose the scope of agency plans or the identity of the "approved" third-party non-governmental organizations, the Appellant-Legislators were forced to take action. *E.g.*, Amend. Compl., R.Doc 18 at 30.. In January 2024, the Legislators commenced a federal action in the U.S. District Court for the Middle District of Pennsylvania seeking to enjoin the unlawful overreach of the federal

[12] Letter from Senators Bill Hagerty, Mitch McConnell, Deb Fischer, Cynthia Lummis, Ron Johnson, Ted Budd, Shelley Moore Capito, Ted Cruz, Katie Boyd Britt, Roger F. Wicker, Mike Lee, Mike Braun, Rick Scott, JD Vance, James Lankford, Bill Cassidy, Roger Marshall, Tom Cotton, Kevin Cramer, Cindy Hyde-Smith, Jim Risch, Steve Daines, and Mike Crapo to President Joseph R. Biden, Jr. (Nov. 28, 2023) (publicly available at https://www.hagerty.senate.gov/wp-content/ uploads/2023/11/FINAL-EO-14019-Letter-to-POTUS.pdf).

and state executive branches. Amend. Compl., R.Doc 18; Compl. Exhibits, R.Docs.18-1–18-14.

**b. Pennsylvania Governor Shapiro changed the manner of federal elections by unilaterally proclaiming automatic voter registration that is contrary to the state's election law.**

On September 19, 2023, Governor Shapiro proclaimed through a press release that Pennsylvania had implemented Automatic Voter Registration (AVR). Amend. Compl., R.Doc 18 at 18–19. However, AVR is not part of Pennsylvania's election code. *Id.* at 23. While Pennsylvania's election code provides for individual voter registration through the individual's action to register, it does not include automatic voter registration. 25 Pa.C.S.A. § 1321 (2002).

In recent legislative sessions, bills were introduced that would have changed Pennsylvania law to make AVR legal. Amend. Compl., R.Doc 18 at 22,; R.Doc.18-4 (Memorandum regarding reintroducing proposed AVR legislation); R.Doc.18-5 (SB40 of 2023, Proposed AVR Amendment to Pennsylvania Election Code). However, every AVR bill introduced was defeated in the legislative law-making process reflecting the intent of legislators, not to support AVR, including the Appellant-Legislators. Amend. Compl., R.Doc 18 at 22–23.

Despite the lack of legislator support to legalize AVR, Governor Shapiro took executive action to implement automatic voter registration contrary to existing law, and specifically, contrary to the votes of

the individual legislators who successfully defeated AVR bills. Amend. Compl., R.Doc 18 at 22–23.

**c. Pennsylvania executive officials changed the manner of federal elections through directives that contradict legislation.**

The U.S. Congress and the Pennsylvania legislature have enacted laws regarding verification of identity and eligibility of applicants for voter registration, in portions of the "Help America Vote Act" (HAVA) at 52 U.S.C. § 21083 and 25 Pa.C.S.A. § 1328(a) and (b), respectively. Meanwhile, the Pennsylvania Department of State has issued directives "Directive Concerning HAVA-Matching Drivers' Licenses or Social Security Numbers For Voter Registration Applications." Amend. Compl., R.Doc 18 at 23. This directive instructs counties to register applicants even if an applicant provides invalid identification on their voter registration application. *Id.*

The Legislator-Petitioners' amended complaint alleged that the directive contradicts laws enacted by both Congress and Pennsylvania. *Id.* at 23–25. The amended complaint alleges that invalid driver's license numbers and invalid social security numbers on an application make it "incomplete" and "inconsistent;" conditions that existing election laws describe as reasons to reject an application. *Id.* at 35, 37. The amended complaint further claims that the directive also violates federal law, specifically HAVA's requirement to verify the identity of applicants for voter registration *Id.* at 36.

In 2005, the U.S. Election Assistance Commission issued guidance that States must give individuals who provided invalid or mismatched information "an opportunity to correct the information at issue."[13] The guidance further stated that the opportunity to correct the information "does not mean that States should accept or add unverified registration applications to the statewide list." *Id.*

In 2020, Pennsylvania legislators, including several of the Legislator-Petitioners, voted to amend 25 Pa. Stat. § 1328, but that 2020 amendment did not change or remove the language of the statute related to the reasons to reject incomplete and inconsistent voter registration applications.[14]

To stop the overreach of federal and state executive officials as it relates to the times, places, and manner of federal elections that is within the exclusive purview of the legislative branch, the Legislator-Petitioners who specifically voted against such executive actions being taken commenced this federal lawsuit. Amend. Compl., R.Doc 18. The amended

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[13] *Voluntary Guidance on Implementation of Statewide Voter Registration Lists*, U.S. Election Assistance Commission (July, 2005), https://www.eac.gov/sites/default/files/eacassets/1/1/ Implementing%20Statewide%20Voter%20Registration%20Lists.pdf .

[14] House Roll Call: Details for House RCS No. 1139, Pa. House Reps. (Mar. 25, 2020) (available at https://www.legis.state.pa.us/CFDOCS/Legis/RC/Public /rc_view_action2.cfm?sess_yr=2019&sess_ind=0&rc_body=H&rc_nbr=1139).

complaint alleges that President Biden's EO14019, Pennsylvania Governor Shapiro's AVR edict, and the Pennsylvania Department of State's directive to counties not to verify the identification of voters, usurped or nullified the legislators' successful votes to defeat and to enact legislation and rights related to Pennsylvania federal election laws. 25 Pa. Stat. § 2607, and 25 Pa.C.S.A. §§ 1321, 1328(a), (b), respectively.

On March 26, 2024, the district court dismissed the amended complaint for lack of jurisdiction, specifically, lack of individual legislator standing. A-30 (Order), A-31–55 (Memorandum). The lower court did not reach the merits on the remaining claims. *Id.* The United States Court of Appeals for the Third Circuit affirmed the decision of the District Court on March 4, 2025. A-1–9 (Opinion), A-10–A-15 (Judgment). Petitioners now respectfully petition this Court for a writ certiorari to resolve the conflict in *this* Court's opinions.

## REASONS FOR GRANTING THE PETITION

"The right to vote is a fundamental right, 'preservative of all rights.'" *League of Women Voters v. Brunne*r, 548 F.3d 463, 476 (6th Cir. 2008) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). It cannot be refuted that individual state legislators play an important role in regulating voting rights because the constitution vests states with the authority to regulate "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. Art. I, § 4, cl. 1). And, the Elections Clause is the express delegation of power to the state legislature to act with respect to federal elections. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804–05 (1995). This case presents an issue of national significance that could harmonize this Court's own precedent, and clarify when, if ever again, individual legislators have standing to vindicate injury to their constitutional rights *qua* individual legislators when their successful votes as legislators are overridden by over-reaching executive action, as under this Court's decision in *Coleman v. Miller,* 307 U.S. 433 (1939).

This Court established that legislative bodies have standing to sue in *Arizona State Legislature v. Arizona Independent Redistricting Com'n*, 576 U.S. 787 (2015). But, when the state legislature as a body does not sue executive officials for Elections Clause enforcement, the lack of individual state legislator Article III standing is an important question of federal law. U.S. Const. Art. 1, § 4, cl. 1. In those states where the state legislature does not sue, there will be no Elections Clause enforcement. Essentially, in those states, state executive branch officials have no federal judicial oversight for their alleged Elections Clause

violations and federal executive branch officials have no judicial oversight at all for Elections-clause violating orders.[15]

However, the failure of the legislative body to file a lawsuit as a whole body, should not deprive individual legislators of Article III standing to challenge Elections Clause violations by the executive branches that impede or usurp the legislator's right or interest granted under a state constitution to vote to support or defeat federal election legislation as a delegated power expressly granted under Article I, § 4, cl. 1. The Elections Clause's expressed delegation of power to a state legislature is an implied limitation on state and federal executive branch officials.

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[15] While President Trump rescinded EO14019 after taking office in January, 2025, the authority of the federal executive to regulate time, place, and manner of elections through executive order against the successful votes of state legislators, is a live issue that is capable of repetition, yet evading review. For example, the President's executive order "Preserving and Protecting the Integrity of American Elections," EO 14248, March 25, 2025, presents another instance of the federal executive regulating the time, place, and manner of elections, which may be contrary to the successful votes of some individual legislators (though this EO is not challenged in this lawsuit). Because of the rapid alterations made to elections in changes of executive administrations, the Petitioners' challenge meets the requirements for the exception to mootness, "capable of repetition, yet evading review" *E.g.*, *Spencer v. Kemna*, 523 U.S. 1, 17, (1998).

Because of this Court's decision in *Arizona State Legislature,* which recognized a state legislature's standing to bring Elections Clause claims against state executive officials which are appropriately resolved by federal courts, this petition offers the Court the opportunity to extend the *Arizona State Legislature* precedent to cover individual state legislator Article III standing as well.

The Third Circuit erred by not reading the Elections Clause, Article III, and the *Arizona State Legislature* decision to draw the line supporting individual state legislator standing after *Raines* and *Coleman*. This Court relied upon *Coleman,* which expressly confirmed individual legislator standing, to establish a foundation for state legislature standing. "Our conclusion that the Arizona Legislature has standing fits that bill," because the actions of others—under a constitutional initiative—would completely nullify a vote of the legislature. *Arizona State Legislature*, 576 U.S. at 801–04 (footnotes omitted). The *Arizona State Legislature* decision, because it relied on *Coleman* which held for individual state legislator standing, supports individual state legislator Article III standing here.

## I. The Article III standing doctrine provides meaning to constitutional limits by identifying those disputes appropriately resolved through the judicial process.

Article III of the Constitution limits the jurisdiction of federal courts to "cases" and "controversies." U.S. Const., Art. III, § 2. The doctrine of standing gives meaning to these constitutional limits by "identify[ing] those disputes which are

appropriately resolved through the judicial process." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992). "The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 407 (2013). To establish Article III standing, a plaintiff must show (1) an "injury in fact," (2) a sufficient "causal connection between the injury and the conduct complained of," and (3) a "likel[ihood]" that the injury "will be redressed by a favorable decision." *Lujan, supra,* at 560–561 (internal quotation marks omitted).

This Pennsylvania case concerns the injury-in-fact requirement, which helps to ensure that the plaintiff has a "personal stake in the outcome of the controversy." *Warth v. Seldin,* 422 U.S. 490, 498 (1975) (internal quotation marks omitted). An injury sufficient to satisfy Article III must be "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" (internal question marks omitted). An allegation of future injury may suffice if the threatened injury is "certainly impending," or there is a "'substantial risk' that the harm will occur." *Clapper,* 568 U.S., at 414, n.5 (emphasis deleted and internal quotation marks omitted).

Specifically, the Third Circuit declined to reverse and remand the decision of the district court based on the particularized injury-in-fact requirement for standing. In this, the Third Circuit framed the Individual Legislator Petitioners' injuries as no more than an "a nonjusticiable 'general interest common to all members of the public,'" A-9 (citing *Gill v. Whitford*,

585 U.S. 48, 68 (2018) (quoting *Ex parte Levitt*, 302 U.S. 633, 634 (1937) (per curiam)) This framing of the alleged injury conflates injuries to the general public, which are entirely separate from the injuries alleged, with the specific injuries to each legislator's individual votes and unique contributions to our Constitutional order.

## II. The Elections Clause's express delegation of power to the state legislature, as defined by a state constitution, bars the state and federal executive branches from usurping the right or interest of individual state legislators to participate in state-law-making regulating federal elections as a means to create fair ballot competition.

In the election context, several circuits have recognized what has come to be known as an Article III "competitive standing" theory whereby a candidate or his political party can show direct injury if the government acts in a manner that hurts a candidate's or a party's chances of prevailing in an election. *See, e.g.*, *Drake v. Obama*, 664 F.3d 774, 783 (9th Cir. 2011); *Smith v. Boyle*, 144 F.3d 1060, 1062–63 (7th Cir. 1998); *Schulz v. Williams*, 44 F.3d 48, 53 (2d Cir. 1994). Thus, state laws governing time, place, and manner of federal elections must ensure fair competitive access to the ballot to pass constitutional muster, and must protect the fundamental right to vote. But, when executive branch officials usurp the legislative power to regulate federal elections, delegated under the Elections Clause, an injury-in-fact arises. And, as this Court in *Arizona State Legislature* held, the state legislature has Article III standing to

sue in federal court challenging alleged Elections Clause violations.

It is equally true that state legislatures are governed by state Constitutions. Under the Pennsylvania Constitution, individual legislators have the opportunity to vote yea or nay regarding proposed laws (bills). Pa. Const. art. III § 4.

In this regard, individual legislators, as elected members of the legislature, are given opportunities to vote to exercise their authority on bills regarding federal elections consistent with the constitutional mandate of the Elections Clause. The Elections Clause delegates to state legislatures the power to enact laws governing times, places, and manner of federal elections. But, the state legislature cannot enact laws in Pennsylvania without individual state legislators exercising their right or interest to support or defeat federal elections laws subject only to federal constitutional limitations (*e.g.,* congressional acts) or state constitutional limitations (*e.g.,* gubernatorial vetoes).

Thus, when executive branch officials, be they state or federal, or other processes usurp the individual legislator's right or interest in regulating the time, place, and manner of elections with the normal, yet unique processes and democratic power bestowed for a time upon them, and the legislative body fails to challenge those acts in federal court, individual state legislators become the last bastion of defense to protect the voters' right to vote and to ensure a fair competition to ballot access.

Notably, this Court in exercising its right to review state appellate court decisions under 28 U.S.C.

§ 1257, has previously decided Elections Clause cases brought by voters, voter rights organizations, citizens, and taxpayers; not state legislatures. These same cases illustrate that the Elections Clause is a rule to ensure fair competition to ballot access by limiting the acts of executive branch officers and others. For example, in *Moore v. Harper*, 600 U.S. 1 (2023), the Court adjudicated Elections Clause and other claims brought by voters and voting rights organizations challenging the North Carolina state legislature's Congressional redistricting map. *Moore,* 600 U.S. at 7–10. In *Smiley v. Holm*, 285 U.S. 355 (1932), the Court decided an Elections Clause case brought by a "citizen, elector and taxpayer" to enjoin the secretary of state from giving notice of the holding of elections for that office in such subdivisions. *Smiley*, 285 U.S. at 361. In *Koenig v. Flynn,* 285 U.S. 375 (1932), the Court decided an Elections Clause case brought by "citizens."

Indeed, individual state legislators are distinguishable from citizens, voters, voter rights organizations, and taxpayers. In a constitutional republic, like ours, elected legislators represent citizens, voters, and taxpayers. Individual state legislators in Pennsylvania through the state's constitution, have preserved and expressed rights and interests to enforce the powers delegated to the state legislature via the Elections Clause. This direct authority is not directed generally to all citizens, voters and taxpayers. Instead, it is directed to the state legislature which in Pennsylvania consists of the elected members to the Pennsylvania Senate and House of Representatives.

## III. Federal court opinions after the *Arizona State Legislature* decision have unintentionally created a checkerboard pattern of Elections Clause enforcement against state executive branch officials.

This Court's decision in the *Arizona State Legislature* case did not intend to create a checkerboard pattern of Elections Clause enforcement in the states. But, requiring a state legislature to bring an Elections Clause case sets the jurisdictional bar so high that it shields state executive branch officials from Elections Clause violations brought in federal court, and shields federal executive officials all-but completely. It is difficult for a state legislature as a body to sue an executive branch official, because both chambers of a bicameral legislature must agree to do so. For example, a state legislature will not sue over the Elections Clause when one or two houses of a state bicameral legislature is controlled by the same political party as the Governor. In these situations, the state executive official enjoys safety from Elections Clause enforcement litigation. Consistently, the Third Circuit decision, by not recognizing individual state legislator standing when a state legislature does not sue, provides additional safety to the state official from Elections Clause enforcement litigation.

The result of recent federal court decisions outlined below is a checkerboard pattern of Elections Clause enforcement against state officials. In Arizona, the threat of Elections Clause enforcement exists because the Arizona state legislature sued. But, in Virginia, Michigan and Pennsylvania, there is no threat of Elections Clause enforcement because the

respective state legislatures have not sued and because individual legislator standing is not recognized.

**a. In 2015, this Court held that the Arizona State Legislature had standing to bring its Elections Clause enforcement action.**

The Arizona State Legislature brought an action against the state's independent congressional redistricting commission, its five members, and Arizona Secretary of State. The action sought judgment declaring that the state constitutional amendment creating the commission violated the Elections Clause. The action further sought an injunction against use of the commission's maps for any future congressional election. The Court held that the state legislature had standing to bring the action challenging the state constitutional amendment. *Arizona State Legislature*, 576 U.S. at 787.

**b. In 2019, this Court did not adjudicate the legal issue of individual legislator standing in the *Virginia House of Delegates* decision because the Virgina state legislature had not pursued the appeal.**

Several Virginia registered voters brought an action against the Virginia Board of Elections, Virginia Department of Elections, and various officials. The action challenged the redistricting of 12 House of Delegates districts as racial gerrymandering in violation of the Equal Protection Clause. *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658

(2019). The House of Delegates and the House Speaker intervened to defend the redistricting plan based on their institutional interest. A three-judge district court was convened, and after a bench trial, the court entered judgment for defendants and intervenors. Probable jurisdiction was noted. This Court affirmed in part, vacated in part, and remanded.

After a second bench trial, the district court enjoined the State from conducting further elections in the challenged districts until a new redistricting plan was adopted. The House of Delegates appealed. The State defendants moved to dismiss. This Court held that the House of Delegates did not have standing to represent the State's interests on appeal and the House of Delegates, as one House of a bicameral legislature, did not have standing in its own right to pursue appeal. *Virginia House of Delegates,* 587 U.S. at 658. But, neither the Virginia House of Delegates, nor the House Speaker, argued individual state legislator standing. Accordingly, the Court did not adjudicate the legal issue of individual legislator standing in the *Virginia House of Delegates* decision.

**c. In 2024, the Sixth Circuit held that Michigan individual state legislators did not have standing to bring their Elections Clause enforcement action.**

In a recent case, Michigan state Senators and Representatives filed a § 1983 lawsuit against the Michigan Governor and others. They sought to enjoin Michigan executive-branch officials from enforcing two ballot-initiative amendments to the state constitution that governed procedures for state and

federal elections. The legislators argued that using citizen ballot initiatives to regulate federal elections violated the Elections Clause of the U.S. Constitution.. The Sixth Circuit held that plaintiffs lacked an injury in fact required for Article III standing. *Lindsey et al. v. Whitmer et al*, 124 F.4th 408 (6th Cir. 2025). This Court did not grant the Michigan legislators' petition for certiorari. No. 24-1017, 2025 WL 1426689, at *1 (U.S. May 19, 2025)

**d. On March 4, 2025, the Third Circuit held that Pennsylvania individual state legislators did not have standing to bring the same Elections Clause claims that the Pennsylvania state legislature could have brought.**

In this Pennsylvania case, the Pennsylvania state Senators and Representatives brought Elections Clause claims against the President, Governor and Pennsylvania executive-branch officials from violating state-legislatively-enacted laws. The Third Circuit held that individual state legislators lacked standing, but acknowledged that the parties did not dispute that the Pennsylvania state legislature would have standing under this Court's decision in *Arizona State Legislature* to bring the same Elections Clause claims:

> As a benchmark, no party disputes that if the General Assembly would have initiated this suit, then it would satisfy the elements for Article III standing, citing *Ariz. State Legislature,* 576 U.S. at 803–04.

A-7. Yet, this is not a case about the Pennsylvania General Assembly as a whole bringing a lawsuit, but rather, a case about individual state legislators suing to vindicate their own successful votes.

## IV. The Third Circuit erred because under the Elections Clause delegation of power to legislatures and under the Pensylvania State Constitution, individual state legislator standing is based on the deprivation of a "plain, direct and adequate interest in maintaining the effectiveness of their votes."

To the contrary of the Third Circuit's assertion that the individual Pennsylvania legislator Petitioners-Petitioners have only a generalized interest, this Court's *Coleman* decision (with facts involving Constitutional delegation of powers, just as the present case) is an instance where individual legislators did have Article III standing to vindicate their votes. *Coleman* has not been overturned. This Court's subsequent decisions, as explained below, highlight the narrow path to individual legislator standing under precise U.S. Constitution election-clause violations by executive actors.

The individual-legislator petitioners do not dispute that there is no individual state legislator standing for lost political battles as held in , *Raines v. Byrd,* 521 U.S. 811 (1997). But, placed in perspective, individual state legislator cases generally fall into three categories: "lost political battles, nullification of votes and usurpation of power." *Silver v. Pataki*, 755 N.E.2d 842, 847 (NY. Ct. App. 2001) (categorizing legislative standing case fact patterns). While there is

no standing for individual legislators' lost political battles, standing may exist for the nullification or usurpation of individual legislator votes. *See, id.* (citing *Coleman*, 307 U.S. 433 regarding vote nullification; *Dodak v. State Admin. Bd.,* 495 N.W.2d 539 (Mich. 1993) for an example of legislative usurpation; *Raines v. Byrd*, 521 U.S 811 (1997) for lost political battles).

This Court's recognition of individual state legislator standing will have the same salutary effect as 28 U.S.C. § 1257 (U.S. Supreme Court review of state supreme court decision) cases when the state legislature, for whatever reason, does not bring Elections Clause enforcement actions against state executive branch officials. This Court's decisions in *Moore, Smiley* and *Koenig* show the benefits of a federal court—this Court—deciding Elections Clause enforcement cases brought by voters, voter rights organizations, citizens and taxpayers, albeit under 28 U.S.C. § 1257. This Court decided in those Elections Clause that enforcement was required because injuries had occurred.

*Coleman* involved twenty Kansas state senators challenging the state legislature's ratification of a proposed amendment to the U.S. Constitution. The state senate had deadlocked on the amendment by a vote, and the lieutenant governor cast a tie-breaking vote in favor of ratification. *Coleman,* 307 U.S. at 436 The claim of the objecting state legislators rested on the argument that the lieutenant governor did not have the power to break the tie in relation to proposed Article V federal constitutional amendments. *Id.* This Court held that the legislators had "a plain, direct and

adequate interest in the effectiveness of their votes" as a right and privilege under the U.S. Constitution.

*Id.* at 438.

*Coleman* has been distinguished, but not overturned and similar to this case, deals with constitutionally-delegated powers to state legislatures. Here, similarly the individual-state-legislator petitioners have a plain, direct and adequate interest in maintaining their ability to propose effective federal election legislation, and to vote on bills that do regulate the time, place and manner of federal elections. *See e.g., id.*

Despite the Third Circuit's concerns to the contrary, *Raines v. Byrd,* 521 U.S. 811 (1997) and its progeny cases both in this Court, and in the Third Circuit have not overturned *Coleman*, and they do not foreclose the narrow path for individual legislators to bring enforcement claims under the U.S. Constitution's Elections and Electors Clauses.

In *Raines*, six disgruntled members of Congress who had voted against the Line Item Veto Act, which was enacted and signed into law, filed suit seeking a declaratory judgment that the Act was unconstitutional. *Raines,* 521 U.S. at 814–17. In denying standing, this Court noted that the petitioners asserted injury to their legislative power was, in a real sense, inflicted by Congress upon itself. Indeed, the *Raines* petitioners tried and failed to defeat to the passage of an Act of Congress. When Congress considered the Line Item Veto Act, the petitioners votes "were given full effect. [Petitioners] simply lost that vote." *Id.* at 824. In other words, their loss was a political one derived from losing in the legislative

process, duly separated from other branches of government.

The *Raines* Court expressed doubts that individual legislators who had lost a legislative battle could ever establish standing to assert an injury from that lost battle on behalf of either their chamber or Congress itself. In such a case, this Court opined that the petitioners quarrel was with their colleagues in Congress and not with the executive branch. *Id.* at 830, n.11. This Court further expressed a deep reluctance to let members who had lost a battle in the legislative process seek judicial intervention by invoking an injury to Congress as a whole. This difference of opinion between the individual Congressmen and their respective chambers was not speculative; the Senate, together with the House leadership had filed an amicus brief urging that the law be upheld. *See Id.* at 818, n. 2. Thus, the plaintiffs' allegations were, insufficient to establish a judicially cognizable vote nullification injury of the type at issue in *Coleman*. *Id.* at 824.

The *Raines* Court suggested individual legislator standing could be established when individual legislators show vote nullification of the sort at issue in *Coleman*: that a specific legislative vote was "completely nullified" by executive action despite a legislator-plaintiff having cast a vote that was "sufficient to defeat (or enact)" the act. *Id.* at 823. That is similar to this case in which the individual-legislator petitioners claim that their votes have been nullified by executive branch official executive order alterations to the time, place, and manner of elections.

Unlike *Raines*, in this case, the Pennsylvania individual-state-legislator petitioners quarrel is not with their colleagues in the state house or senate, but with the state and federal executive branch whose executive orders and administrative actions undo and circumvent the successful votes of these legislators through the normal political process. And unlike *Raines*, this case does not involve legislators who voted, "simply lost that vote" and then sought to have the law invalidated. While some other Pennsylvania legislators in the house and senate may not view their votes as violated or harmed executive actions (indeed, legislators who lost their political battles may rejoice where executive officials imposed their shared will by fiat), the individual-state-legislator petitioners are harmed. Just as in *Coleman*, the individual-state-legislator petitioners' votes and, opportunity to vote for proposed election legislation, have been "stripped of their validity," and "denied [their] full validity in relation to the votes of their colleagues." *Id.* at 824 n.7. And, just as in *Coleman,* the individual-state-legislator petitioners seek recovery based upon rights, interests, or privileges granted to them, and thus a duty charged to them through the delegated power under the Elections Clause. *Coleman*, 307 U.S. at 438.

To further emphasize this point, this Court recently provided guidance on who can litigate on behalf of a state or institution in the *Virginia House of Delegates* case. In that case this Court held: "Virginia, had it so chosen, could have authorized the House to litigate on the State's behalf, either generally or in a defined class of cases." *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 664 (2019). The *Virginia* decision descends from, but is also distinct from, this Court's decision in *Arizona State Legislature.,* 576 U.S.

at 804. As previously mentioned, this Court had held in *Arizona* that there was standing for the Arizona State Legislature—using the logic of *Coleman* for granting standing to individual legislators—because "the Arizona Constitution's ban on efforts to undermine the purposes of an initiative…. would "completely nullif[y]" any vote by the Legislature, now or "in the future…." *Id.*

In *Virginia House of Delegates*, both houses of the bicameral legislature had started in a lawsuit together, but the House proceeded to appeal on behalf of the state without its Senate partner in the legislative process, which negated its original standing basis. 587 U.S. at 665. Neither *Arizona State Legislature*, nor *Virginia House of Delegates,* overruled or cabined *Coleman*. Neither decision forecloses individual legislator standing.

In this case, the Third Circuit's denial of Article III standing to the Pennsylvania legislators for Elections Clause enforcement claims, unintentionally allows Pennsylvania state executive branch officials, and the federal executive, an unfettered ability to usurp the power delegated to the Pennsylvania state legislature under the Elections Clause, and derivatively, to the individual state legislators who won their political battles in the legislative body. Those individual legislators should have prudential standing to seek to vindicate those successful votes without forcing an additional political fight to convince the entire General Assembly to join a lawsuit as a body. The Court should close this constitutional loophole for state and federal executive official violations of the Elections Clause by recognizing individual state legislator standing for the narrow

purpose of U.S. Constitutional Elections Clause enforcement actions in federal court.

For reasons explained above, this case involves matters of exceptional national importance as applied to narrow cases involving state-enacted election laws and the individual legislators whose participation in the democratic process in was successful, though abrogated by executive fiat. Further, acknowledging individual legislator standing in this case would not blow open the courthouse doors for legislators grieving lost legislative battles, the Article III injury is still narrowed and constrained to core Constitutionally-delegated authority and duty, per this Court's surviving *Coleman* decision and through the narrow path allowed by this Court's subsequent decisions. While *Virginia House of Delegates* did not specifically address individual legislator standing, the decision did clarify who can litigate on behalf of a state or institution. And, *Virginia House of Delegates* left open the *Coleman* door for individual legislators to seek court recognition of standing in a defined class of cases.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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