No. _____

In the Supreme Court of the United States

Representatives 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 Berstine, Kathy Rapp, Jill Cooper, Marla Brown, Mark Gillen and Senator Cris Dush— All Pennsylvania Legislators,

Petitioners,

v.

Joseph R. Biden, in his Official Capacity as the President of the United States, or his Successor; United States; U.S. Department of Agriculture; Tom Vilsack, in his Official Capacity as Secretary of Agriculture; U.S. Department of Health and Human Services; Xavier Becerra, in his Official Capacity as Secretary of Health and Human Services; U.S. Department of State; Antony Blinken, in his Official Capacity as Secretary of State; U.S. Department of Housing and Urban Development; Marcia Fudge, in her Official Capacity as Secretary of Housing and Urban Development; U.S. Department of Energy; Jennifer Granholm, in her Official Capacity as Secretary of Energy; U.S. Department of Education; Dr. Miguel Cardona, in his Official Capacity as Secretary of Education; Josh Shapiro, in his Official

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Capacity as Governor of Pennsylvania, or his Successor; Al Schmidt, in his Official Capacity as Secretary of the Commonwealth, or his Successor; Jonathan Marks, in his Official Capacity as the Deputy Secretary for Elections and Commissions, or his Successor,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

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QUESTIONS PRESENTED

In Pennsylvania, 27 state legislators, attempting to guard their duty to determine the manner of federal elections, have been denied standing due to the conflation of this Court's holdings in *Raines, Coleman,* and *Virginia House of Delegates*. As in *Coleman*, these executive actions nullified the legislators' votes that were sufficient to enact or defeat specific state laws. A nationwide conflict over individual state legislator standing exists between appellate courts relying on *Coleman* (1939) and other courts' interpretations.

1. Whether the lower court erred because "*Coleman* stands … 'for the proposition that [state] legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified.'" *Virginia House of Delegates v. Bethune-Hill*, 139 Sect. 1945, 1954 (2019), quoting *Raines v. Byrd*, 521 U.S. 811, 823 (1997) (referring to *Coleman v. Miller,* 307 U.S. 433 (1939)).

2. Whether the definition of "sufficient to defeat or enact" referenced in *Coleman* includes only final votes or votes throughout the entire lawmaking process including votes in legislative committees that defeat legislation, and if "plaintiff's injury in the nullification of his personal vote continues to exist whether or not other legislators who have suffered the same injury decide to join in the suit." *Silver v. Pataki*, 755 N.E.2d 842, 848-49 (N.Y. 2001).[1]

[1] The petitioners seek expedited consideration of the individual legislative standing issue before the Court. So, if they prevail, they can possibly obtain a preliminary injunction in the district court well before the November 2024 election.

PARTIES TO THE PROCEEDINGS

Pennsylvania 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 are petitioners.

Joseph R. Biden, in his official capacity as the President of the United States, or his successor; United States; U.S. Department of Agriculture; Tom Vilsack, in his official capacity as Secretary of Agriculture; U.S. Department of Health and Human Services; Xavier Becerra, in his official capacity as Secretary of Health and Human Services; U.S. Department of State; Antony Blinken, in his official capacity as Secretary of State; U.S. Department of Housing and Urban Development; Marcia Fudge, in her official capacity as Secretary of Housing and Urban Development; U.S. Department of Energy; Jennifer Granholm, in her official capacity as Secretary of Energy; U.S. Department of Education; Dr. Miguel Cardona, in his official capacity as Secretary of Education; Josh Shapiro, in his official capacity as Governor of Pennsylvania, or his successor; Al Schmidt, in his official capacity as Secretary of the Commonwealth, or his successor; Jonathan Marks, in his official capacity as the Deputy Secretary for Elections and Commissions, or his successor, are respondents.

CORPORATE DISCLOSURE STATEMENT

The petitioners are Pennsylvania state legislators. 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.2-25. The Notice of Appeal to the Third Circuit was filed on April 18, 2024, reproduced at A.26-28. The assigned case number is 24-1716.

TABLE OF CONTENTS

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

PETITION FOR A WRIT OF CERTIORARI

Petitioners, 27 Pennsylvania state legislators, respectfully petition for a writ of certiorari before judgment to the United States Court of Appeals for the Third Circuit regarding the U.S. District Court for the Middle District of Pennsylvania opinion, reproduced at A.2-25.

OPINIONS BELOW

The District Court issued an opinion, *Keefer v. Biden*, No. 1:24-CV-00147, 2024 WL 1285538 (M.D. Pa. Mar. 26, 2024), reproduced at A.2-25.

JURISDICTION

The District Court entered final judgment on March 26, 2024, reproduced at A1. The appeal to the Third Circuit was filed on April 18, 2024, reproduced at A.26-28. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

1. The Elections Clause is quoted below:

> 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 choosing Senators.

U.S. Const., Art. I, Sec. 4, Cl. 1.

2. The Electors Clause is quoted below:

> 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.

U.S. Const., Art. II, Sec. 1, Cl. 2.

STATEMENT OF THE CASE

1. The Court needs to make a decision regarding individual state legislator standing under the Elections Clause and Electors Clause. Twenty-seven Pennsylvania state legislators, filed a federal court lawsuit to enjoin federal and state executive usurpations of law-making power over federal elections and to guard their duty to determine the manner of federal elections. But, the district court dismissed the lawsuit based on lack of individual state legislator standing. A. 15-25.

2. The amended complaint (Dkt. no. 18) made three separate claims against three different defendants for usurping law-making under Elections Clause and Electors Clause. For each of the claims, the amended complaint alleged "legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act" and alleged that the "legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified.'" *Virginia House of Delegates,* 139 S.Ct. at 1954, quoting *Raines*, 521 U.S. at 823 (referring to *Coleman,* 307 U.S. 433).

However, the legislative process has many stages. The question of how many legislators would be "sufficient to defeat (or enact) a specific legislative Act" must be considered in the context of the complex lawmaking process. One legislator is all that is required to introduce a bill in the legislature. Once introduced, the bill would be sent to an appropriate committee. In Pennsylvania, proposed legislation regarding the manner of elections is typically sent to the State Government Committees in both the House

and the Senate[2]. In the committee, one legislator, the Chairman of the Committee, can defeat the bill by simply refusing to bring it to a vote in the committee. When a bill is voted on in Committee, only 4 or 5 individual legislators can create a majority "sufficient to defeat a specific legislative Act." The legislative process is complex. To construe Coleman so narrowly as to require "a controlling bloc" in just a final vote, ignores the complexity of the legislative process. Legislation can be defeated in various stages by a single legislator or a group of just four or five Pennsylvania legislators.

Notably, the number of petitioner-legislators being 27 is sufficient to enact or defeat legislation at some stages of the lawmaking process in the General Assembly. This is analogous to the court's holding in *Silver*, in which the court stated:

> Nor is a controlling bloc of legislators (a number sufficient to enact or defeat legislation)) a prerequisite to plaintiff's standing as a Member of the Assembly... Moreover, plaintiff's injury in the nullification of his personal vote continues to exist whether or not other legislators who have suffered the same injury decide to join in the suit.

Silver, 755 N.E.2d at 848-49.

First, the amended complaint, Count I (similar to Counts II and III), alleges that the petitioner-legislators' votes were, in fact, sufficient to enact a specific legislative act, the Act of July 11, 2002, P.L. 1577, No. 88 (25 P.S. § 107), and that the specific

[2] https://www.pasen.gov/rules.cfm

legislative act did not go into effect on the ground that the votes for 25 P.S. § 107 were nullified by President Biden's Executive Order 14019 (EO 14019).

EO 14019 nullifies the votes of the individual legislators by usurping the law-making process that led to enactment of the Act of July 11, 2022, P.L. 1577, No. 88 (25 P.S. § 107). Senate Bill 982 (SB982) passed the state legislature on July 8, 2022, and was signed into law on July 11, 2022. *Id.* SB982 required that public funding of Pennsylvania elections be based on "lawful appropriations" by federal, state and local governments. *Id.* When the legislation was introduced as SB982, the sponsor's memo explained 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. § 107. The legislative record provides:

> 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.[3]

As to the passage of SB982, which was enacted and codified as 25 P.S. § 107, Senator Dush, a petitioner, successfully voted for final passage of it on April 13, 2022, and voted to concur with the House amendments on July 7, 2022 [4]

Exactly what the legislators sought to prevent has now been facilitated by executive action by the President who is also a candidate in the 2024 election and stands to benefit personally from the executive action.

Since March 7, 2021, when President Biden issued Executive Order No. 14019 (EO), federal agencies have been developing plans for implementation. Dkt. no. 18, ¶ 85-93. The EO requires the "federal agencies" to use government funds and resources for voter registration drives and Get-Out-The-Vote (GOTV) activities despite a lack of Congressionally-approved appropriations for these activities as required by 25 P.S. § 107. *Id.* And, the EO commands federal agencies to expend government resources to work with non-governmental third party organizations:

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[3] See https://www.legis.state.pa.us//cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20210&cosponId=36370 (last visited: Apr. 22, 2024).

[4] See https://www.legis.state.pa.us/CFDOCS/Legis/RC/ Public/rc_view_action2.cfm?sess_yr=2021&sess_ind=0&rc_body=S&rc_nbr=497;https://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc_view_action2.cfm?sess_yr=2021&sess_ind=0&rc_body=S&rc_nbr=704) (PA Senate roll calls) (last visited: Apr. 22, 2024).

- Solicit and partner with specified partisan third party organizations, chosen by the Biden administration, whose names and roles are willfully withheld from Congress, state officials and the public.

- Assist individuals who interact with the agency with completing voter registration and mail ballot application forms despite the fact that the Pennsylvania legislature has not authorized the federal agencies to perform these tasks.

Id., Ex. H.

The amended complaint alleges EO 14019 has usurped the state law-making process of the specific state legislative act, 25 P.S. § 107, resulting in no legal effect for 25 P.S. § 107 because of the implementation of EO 14019:

> The executive action taken by the President, nullifies the votes of the individual legislators, nullifies the enactment of the Legislature, violates the Electors Clause, violates the Elections Clause, deprives the legislators of their particular rights, and jeopardizes candidates' rights to an election free from fraud and abuse.

Dkt. no. 18, ¶ 178. The amended complaint alleges that "Executive Order 14019 do[es] not comply with Pennsylvania law, including that all election expenses be funded by federal, state or local appropriations, and undermines the integrity of Pennsylvania's elections.

(Exhibit G)." *Id,* ¶ 104. And, that EO 14019 authorizes federal agencies to use taxpayer resources to support partnering with partisan third party organizations to do voter registration drives and get-out-the-vote (GOTV) activities:

> Executive Order 14019 requires all federal agencies to identify and partner with specified partisan third party organizations chosen by the Biden administration whose names and roles are not transparent but are willfully withheld from the public.
>
> Under EO 14019, taxpayer resources can be used to support the efforts of the third-party partners to do voter registration drives and GOTV activities.

Id, ¶¶ 86-87. The amended complaint concludes as to EO 14019 usurping Pennsylvania law and causing petitioners' injuries.

> Defendant Biden caused injury to Plaintiffs with his Executive Order No. 14019 changing Pennsylvania election law, which usurps the state legislature's powers and violates the state legislators' federal civil rights under the Electors Clause and the Elections Clause.

Id, ¶ 106.

Pennsylvania law requires that any costs incurred by state and local government relating to the registration of voters in Pennsylvania "shall" be funded "only" through lawful appropriations and that they involve no private organizations. 25 P.S. § 107

(2022). Importantly, during the course of this litigation, President Biden, through counsel, claimed that "Congressional authorization for the EO was unnecessary" under the Elections Clause and Electors Clause:

> Plaintiffs also claim, in passing, that the EO was issued without Congressional authorization. *See* PI Mot. at 12; Am. Compl. ¶ 69. But Congressional authorization for the EO was unnecessary. The EO issues directives to Executive Branch agencies and officials, which is a proper exercise of the President's Article II authority.

Dkt no. 41 at 13. So, by the Defendants' admission, no funds have been Congressionally-appropriated to support the implementation of EO 14019 in Pennsylvania and the President's counsel claims that no authorization is needed for the President to direct voter registration activities in Pennsylvania.

Accordingly, EO 14019's implementation is a usurpation of Pennsylvania state law. The will of the legislators who successfully voted for the state law to be enacted was manifested through final legislative action, 25 P.S. § 107 (2022). EO 14019 nullifies the intended legal effects of the enacted state law, depriving the individual state legislators of the intended legal effects of their successful vote on 25 P.S. § 107 (2022)—a legally cognizable injury under Article III per *Coleman* because the individual state legislators' personal votes were nullified.

Second, the amended complaint, Count IV, alleges that the petitioner-legislators' successful opposition to previous bills authorizing automatic

voter registration, such as Senate Bill 40 (SB40) introduced in January 2023, is completely nullified by Governor Shapiro's edict to unilaterally implement automatic voter registration in Pennsylvania. On September 19, 2023, Governor Shapiro announced that he was unilaterally implementing automatic voter registration in Pennsylvania. Commonwealth residents obtaining new or renewed driver licenses and ID cards are now automatically registered to vote unless they opt out of doing so. But, policy decisions regarding how one registers to vote in Pennsylvania have been clearly addressed by the Pennsylvania legislature. Individuals "may apply to register" means they are not automatically registered. 25 Pa.C.S.A. § 1321 (2002).

Specifically, the amended complaint, Count IV, alleges that the petitioner-legislators' votes were sufficient to defeat specific legislative bills authorizing automatic voter registration. In multiple legislative sessions, including the 2022 legislative session and 2023 legislative session, some legislators attempted to pass legislation authorizing automatic voter registration. For example, in 2023, a Pennsylvania Senator introduced SB40 in an effort to enact automatic voter registration by amending Pennsylvania law. Dkt. no. 18, Exs. D and E. SB40 was referred to the Senate State Government Committee on January 31, 2023. However, SB40 did not get out of committee and failed to become law. So, like similar bills in prior legislative sessions, the bill failed because the legislators, including the petitioners, did not support automatic voter registration.

Despite the SB40 failing to pass the state legislature, Governor Shapiro went ahead and issued

his automatic voter registration edict anyway. The Governor's usurpation nullified the federal rights of individual legislators who had defeated multiple bills authorizing automatic voter registration. Moreover, the legislators have no ability or recourse through the legislative process to remedy the Governor's usurpation. Governor Shapiro's automatic voter registration nullifies the legislators' lawmaking actions against failed SB40 authorizing automatic voter registration and the intended legal effects of 25 Pa.C.S.A. § 1321. Governor Shapiro's usurpation has caused a legally cognizable injury under Article III per *Coleman* because the individual state legislators' actions were nullified by Governor Shapiro's automatic voter registration edict.

Third, the amended complaint, Count V, alleges that the petitioner-legislators' successful opposition to amendments to Pennsylvania laws requiring verification of voter identity, such as 25 Pa.C.S.A. § 1328(a) and (b), is nullified by the Pennsylvania Department of State's "Directive Concerning HAVA-Matching Drivers' Licenses or Social Security Numbers For Voter Registration Applications. This directive instructs Pennsylvania counties to register applicants even if an applicant provides invalid identification on their voter registration application. Invalid driver's license numbers and invalid social security numbers on an application makes the application "incomplete" and "inconsistent;" conditions that the duly-enacted law describes as reasons to reject an application. This executive action circumvents the legislature and, through unilateral directive, 'repeals' or 'amends' clearly established Pennsylvania law, which requires verification of both identity and eligibility. 25 Pa.C.S.A. § 1328(a) and (b).

In 2020, the legislators-Petitioners voted to amend § 1328 but chose not to change the language related to rejection of incomplete and inconsistent voter registration applications.[5] The Department of State's directive to register applicants even if an applicant provides invalid identification nullifies the intended legal effects of 25 Pa.C.S.A. § 1328 (a) and (b). Thus, the Department of State's directive nullifies the state legislators' votes under the Elections Clause and Electors Clause, a legally cognizable injury under Article III per *Coleman.*

In summary, the amended complaint, Counts I through V, alleged that President Biden's EO 14019, Pennsylvania Governor Shapiro's automatic voter registration edict and the Pennsylvania Department of State's directive to counties not to verify the identification of voters, usurp legislatively-enacted Pennsylvania state laws, 25 P.S. § 107 and 25 Pa.C.S.A. §§ 1321, 1328(a), (b), respectively. As in *Coleman*, individual standing exists because these executive actions nullified the legislators' votes that were sufficient to enact or prevent specific state laws. And, the petitioner-legislators' injuries in the nullification of their personal votes in this lawsuit continue to exist whether or not other legislators who have suffered the same injury decide to join in this lawsuit. *Silver v. Pataki*, 755 N.E.2d at 848-49.

3. On March 26, 2024, the district court granted dismissal of the amended complaint for lack of individual state legislator standing. A.15-25. The lower court did not reach the merits on the state

[5] See 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 (last visited: Apr. 22, 2024)

legislators' Elections Clause and Electors Clause claims. *Id.*

REASONS FOR GRANTING THE PETITION

This petition satisfies the factors listed in Rules 10 and 11 of the Rules of the Supreme Court. The Court should grant the petition.

I. Individual state legislator standing is necessary to preserve the integrity of the 2024 federal elections—and the Court should declare so.

Pennsylvania state legislators, for the 2024 election, cannot do their part in suing to enjoin federal and state executive usurpations of Pennsylvania state law, pursuant to the Elections Clause and Electors Clause, unless the Court does its part and declares individual state legislator standing in this case. As the Court has stated, when cases involve federal elections, it "heightens the need for review" as "[e]lections are 'of the most fundamental significance under our constitutional structure. *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). Through them, we exercise self-government.'" *Republican Party of Pennsylvania v. Degraffenreid*, 141 S.Ct. 732, 734 (2021)(cert. denied)(J. Thomas, dissenting).

Time is of the essence here:

> Because the judicial system is not well suited to address these kinds of questions in the short time period available immediately after an election, we ought to use available cases outside that truncated context to address these admittedly important questions. And

> there is a reasonable expectation that these petitioners… legislators will again confront non-legislative officials altering election rules.

Id. at 737. As predicted, non-legislative officials continue to alter the election rules in Pennsylvania. Petitioners seek to address this recurring and ongoing issue of executive overreach now.

II. The conflation of the facts and holdings in *Raines, Coleman* and *Virginia House of Delegates* is disabling federal court remedies for the 2024 election—remedies necessary for the integrity of the 2024 election.

In Pennsylvania, 27 state legislators, attempting to restore the balance of power and guard their duty to determine the manner of federal elections, have been denied standing due to the conflation of this Court's holdings in *Raines, Coleman and Virginia House of Delegates*. Relying on *Raines*, *Virginia House of Delegates* and their progeny, the district court denied the legislators the courtroom opportunity to protect their duties under the Elections Clause and Electors Clause and to stop federal and state executive overreach.

Federal and state executive officials have issued executive orders, edicts and directives that contradict state election law. They have circumvented the legislative process for establishing the times, places and manner of federal elections and, in doing so, have usurped the authority of the legislators. As in *Coleman*, these executive actions nullified the legislators' votes that would be or were sufficient to enact specific state laws—such as 25 P.S. § 107 (2022)

and 25 Pa.C.S.A. §§ 1321, 1328(a), (b) (2002; amended 2020).

A nationwide conflict over individual state legislator standing exists between state appellate courts relying on the *Coleman* holding since 1939 and the federal courts' conflation of the facts, context, and holdings in *Raines, Coleman* and *Virginia House of Delegates*. *See Lindsey v. Whitmer,* No. 1:23-CV-01205, (W.D. Mich. Apr. 10, 2024) (granting dismissal of complaint for lack of individual state legislator standing).

Raines applies when legislators lose legislative battles and seek judicial intervention by invoking an injury to the legislature as an institution. *Coleman* applies when individuals outside of the legislative branch attempt to insert themselves into the legislative process thereby circumventing the authority granted to the legislators and undermining the authority of the legislative branch. *Virginia House of Delegates* did not specifically address individual legislator standing, but clarified who can litigate on behalf of a state or institution. This decision opened the door for individual legislators to look to a defined class of cases to determine if their state courts recognized their standing as individuals. Essentially, the Court said that the "the choice belongs to Virginia" regarding Article III standing when states allow for it, although individual state legislator standing was not addressed.

The Court's lack of clear direction on individual state legislator standing under the Elections Clause and Electors Clause references to the word "legislature" is disabling federal court remedies for state legislators against federal executive and state executive usurpations of state legislative law-making

under the Elections and Electors Clause. The status quo causes a functional problem for the 2024 election. Practically speaking, politically-aligned majorities in state legislative bodies and politically-aligned attorney generals will not sue a President, Governor or other executive of the same political party, even when there are usurpations. And, as is the case with almost all proposed legislation, some legislators support the legislation, and some legislators oppose the legislation. The district court applied *Yaw v. Delaware River Basin Comm'n,* 49 F.4th 302 (3d Cir. 2022*),* a case related to legislators' rights to vote on fracking (for which there exists no Constitutional duty) to legislators' rights to vote on the manner of federal elections (for which there does exist a Constitutional duty.) Thus, for the 2024 election, the Court's immediate direction on individual state legislator standing is necessary to enable federal court remedies for the Pennsylvania state legislators before the 2024 election.

The Court in *Coleman* held that individual state legislators standing existed because state "senators have a plain, direct and adequate interest in maintaining the effectiveness of their votes." *Id.* at 438 (concerning individual state legislators rights under Article V constitutional amendment process). And, under the Electors Clause, the Court has explained that legislative power is plenary, "[t]he legislative power is the supreme authority except as limited by the constitution of the state[.]*" McPherson v. Blacker*, 146 U.S. 1, 25 (1892), quoted in *Moore v. Harper*, 600 U.S. 1, 28 (2023).

Similarly, as a clause within the U.S. Constitution, the Elections Clause, specifically delineated the manner of federal elections for senators

and representatives, as reserved with state legislatures subject to Congressionally-enacted laws. The U.S. Constitution gives the legislatures plenary power, and even if it can be constrained somewhat by a state constitution, there is no authority for the President or the Governor to usurp those powers. *Moore,* 600 U.S. at 27-28.

The Court must have understood when deciding *Moore,* that when a President, Governor or other executive is performing its election-related duties, both the federal and state constitutions and laws restrain the federal or state executive's exercise of power too.

Nonetheless, the status quo is unsustainably paradoxical. Individual state legislators based on "individual state legislator standing" can sue state executive officials in state court for violating the Elections Clause and Electors Clause. See *Fumo v. City of Philadelphia*, 972 A.2d 487, 502 (Pa. 2009). But, according to the district court, individual state legislators cannot sue federal executive officials in federal court for violating the Elections Clause and Electors Clause. The injured party is the same. It is individual state legislators who have been deprived of their rights under the Elections Clause and the Electors Clause. And, the constitutional violations by the federal executives can be the same constitutional violations by the state executives. But, only state executives can be sued (and only in state court), but federal executives cannot be sued at all.

III. A nationwide conflict has emerged regarding individual legislator standing.

Because of the Court's lack of direction on individual legislator standing, a nationwide conflict

has arisen between the state appellate courts which have since 1939 historically relied on the *Coleman* decision for individual state legislator standing and the federal courts which inconsistently rely on *Raines*, *Coleman* and the *Virginia House of Delegates* decisions to reject individual state legislator standing.

The lower court's decision to not recognize individual legislator standing conflicts with decisions of the Pennsylvania Supreme Court, other states' appellate courts, and the Third Circuit's prior decisions, recognizing individual state legislator standing. These appellate courts, since 1939, have relied on *Coleman,* its progeny, or its reasoning to uphold individual legislator standing. In 2009, the Pennsylvania Supreme Court affirmed the standing of individual state legislators to bring legislative usurpation claims.

> We conclude that the state legislators have legislative standing…The state legislators seek redress for an alleged usurpation of their authority as members of the General Assembly; aim to vindicate a power that only the General Assembly allegedly has; and ask that this Court uphold their right as legislators to cast a vote…Thus, the claim reflects the state legislators' interest in maintaining the effectiveness of their legislative authority and their vote, and for this reason, falls within the realm of the type of claim that legislators, *qua* legislators have standing to pursue.

Fumo, 972 A.2d at 502.

In 1993, the Michigan Supreme Court affirmed standing for individual state legislators when their individual rights or privileges have been nullified or usurped. *Dodak v. State Administrative Bd.*, 495 N.W.2d 539, 545 (Mich. 1993).

In 2001, the New York Court of Appeals affirmed that an individual state legislator had standing to challenge the constitutionality of the governor's veto power on the basis that a legislator "can maintain an action 'to vindicate the effectiveness of his vote where he is alleging that the Governor has acted improperly so as to usurp or nullify that vote.'" *Silver v. Pataki*, 755 N.E.2d at 845 quoting *Silver v. Pataki*, 274 A.D.2d 57, 67, 711 N.Y.S.2d 402, 410 (2000).

In 2007, the Ohio Supreme Court affirmed that individual state legislators had standing to prosecute an action seeking "to prevent nullification of their individual votes" by executive officials' refusal to treat a bill as validly enacted law. *State ex. Rel. Ohio General Assembly v. Brunner*, 872 N.E.2d 912, 919 (2007).

In 2013, the Washington Supreme Court held that "[t]he legislator respondents "have a plain, direct and adequate interest in maintaining the effectiveness of their votes." *League of Educ. Voters v. State*, 295 P.3d 743, 748 (Wash., 2013), quoting *Coleman,* 307 U.S. at 438.

In 2015, the Hawaii Supreme Court opined that both federal and state case law "show that…a legislator may indeed have standing to challenge a law if his or her vote was nullified or if he or she was unlawfully deprived of the right to vote." *McDermott v. Ige*, 349 P.3d 382, 394 (2015).

In 2017, the Vermont Supreme Court confirmed that an individual state senator had "legislative standing when a governor's conduct concerning the appointment of state officers interfered with the legislators' constitutional duty to provide advice and consent with regard to the appointments." *Turner v. Shumlin*, 163 A.3d 1173, 1179 (2017).

To be sure, some states have not followed *Coleman,* its progeny nor its reasoning. In Kentucky, the court noted, "[i]ndividual legislators simply do not have a sufficient personal stake in a dispute over the execution or constitutionality of a statute, even when the claim is that another branch of government is violating the separation of powers." *Commonwealth ex rel. Beshear v. Commonwealth Office of the Governor ex rel. Bevin*, 498 S.W.3d 355, 367-68 (Ky. 2016). Also, in Alabama, standing was not recognized for individual legislators against the Governor for usurpation of the legislature's appropriation power *Morrow v. Bentley*, 261 So.3d. 278 (Ala. 2017).

In this case, the district court's decision relied improperly on *Raines* and *Yaw* (the progeny of *Raines),* when the facts presented more consistently align with *Coleman* and *Fumo,* (the progeny of *Coleman).* The district court also ignored Third Circuit decisions recognizing individual legislator standing.

In *Dennis v. Luis*, 741 F.2d 628 (3d Cir. 1984), the Third Circuit concluded that the legislators alleged a "personal and legally cognizable interest peculiar to the legislators." In holding that the legislators had standing, the court stated:

> Thus, our problem involves determining the court's role when these separate, independent branches of government –

> the executive and the legislative – clash and cannot resolve their differences on their own political turfs. Should legislators be allowed to use the judicial process to force the executive branch to comply with "the law of the land?" Or, phrased differently, should legislators be able to use the court to implement a victory that was won in the legislative hall and ignored in the executive mansion?" …In short, this case concerns a flouting by the Governor of a law that has been in fact enacted. Consequently, we believe it appropriate for us to consider the case."

Id. at 632-34.

The Third Circuit in *Goode v. City of Philadelphia*, 539 F.3d 311 (3d Cir. 2008) denied standing for individual legislators but differentiated their holding from *Dennis* in this way:

> Moreover, we explained that "[s]ince the right to advise and consent has been vested only in members of the legislature, and since only members of the legislature are bringing this action, the allegation that the right has been usurped…[is] sufficiently personal to constitute an injury in fact thus satisfying the minimum constitutional requirements of standing." Id…Here, in contrast to *Dennis*…the City Council appellants do not claim that they have been deprived of meaningful participation in the legislative process, or that they have been

> unable to exercise their rights as legislators.

Id. at 318-19.

The Pennsylvania Supreme Court has recognized individual legislator standing. The Third Circuit has recognized individual legislators suffer personal injury when rights have been usurped. This Court has recognized individual legislator standing when individuals outside of the legislative branch attempt to insert themselves into the legislative process thereby circumventing the authority granted to the legislators. By every measure from the precedential cases, the individual legislator plaintiffs should have standing to prevent nullification and usurpation of their legislative authority. Nonetheless, a nationwide conflict has emerged regarding individual state legislator standing.

IV. The district court erred by characterizing petitioners' injuries as "institutional."

The word "legislature" in the Constitution's Elections Clause and Electors Clause must be interpreted on its own. If it is, the word "legislature" refers to the "body of people" elected to enact laws:

> Legislature…a predominantly elected body of people that has at least the formal but not necessarily the exclusive power to enact laws binding on all members of a specific geopolitical entity.

Black's Law Dictionary, Legislature (11th ed. 2019) (excerpt). Since the "body of people" referred to in the Elections Clause and Electors Clause consist of the individual state legislators, who have federal duties thereunder, the individual state legislators have

standing to sue when their federal rights thereunder are usurped by federal and state executives.

Nonetheless, the District Court dismissed Petitioners' Amended Complaint. In dismissing the claim of 27 lawmakers, the court, primarily relying on the holdings in *Raines* and *Yaw,* concluded that the "Plaintiffs do not have standing to assert the institutional injuries they raise," but nowhere in the complaint's allegations do the individual legislators complain about institutional injury. A. 16; Dkt. no 18. The complaint's allegations are targeted to the violation of the individual legislators' federal duties under the Elections and Electors Clauses. *Id.* Petitioners assert that neither *Raines*, nor *Yaw*, are dispositive in this case.

As a preliminary matter, election laws and the implementation of them can have a partisan effect. So, there may not be merely an "institutional injury" because the executive action does not damage all members of the legislature equally. For example, this partisan effect is evident by the votes taken by the individual legislators. Legislators who vote in favor of a law that passes are certainly injured when executive action nullifies their vote. However, when the executive action taken is consistent with the votes opposed to an enacted law, the legislators who voted against the bill aren't injured; in fact, they receive a benefit from the executive action.

Like *Coleman*, the petitioner-legislators not only cast "votes sufficient to defeat" the opposition to the bills, but the bills were successfully passed and became state law in Pennsylvania. Each of the respondents' executive actions nullified the votes of some, including the petitioners, but not all of the

legislators. So, this is not an institutional injury as the district court ruled.

V. The case law confirms that individual state legislators have standing when they are denied their constitutional duty to craft the rules governing federal elections.

The controlling case law confirms that individual state legislators have standing under the Constitution to challenge the usurpation of state legislative powers. Petitioners' complaint asserts equitable relief claims against all respondents, APA violations against the federal agencies, and 42 U.S.C. § 1983 claims against the state respondents. For well over a century, the Supreme Court has recognized the ability to seek injunctive relief in federal court for violations of the Constitution. *Ex Parte Young*, 209 U.S. 123 (1908); *Trump v. Hawaii*, 138 S.Ct. 2392, 2407 (2018). Writing for the Court in 2015, Justice Scalia observed that "we have long held that federal courts may in some circumstances grant injunctive relief . . . with respect to violations of federal law by state officials, but also with respect to violations of federal law by federal officials." *Armstrong v. Exceptional Child,* 575 U.S. at 326-7. The authority of courts to "enjoin unconstitutional actions by state and federal officers" is a longstanding judicial remedy derived from a court's inherent equity powers. *Id.* at 327.

In addition to equitable relief, the complaint seeks relief under the APA. Under 5 U.S.C. § 706, APA claims can be based on agency actions that are "contrary to constitutional right, power, privilege, or immunity." Here, the state legislators are claiming their federal constitutional rights under the Elections

and Electors Clauses have been deprived or usurped by Executive Order 14019.

The question of state legislators' standing turns on whether the Elections Clause and the Electors Clause create enforceable federal duties, or even federal rights, in favor of individual state legislators. *See generally, City of Rancho Palos Verdes v. Abrams,* 544 U.S. 113, 119–121(2005). For illustration purposes, for § 1983 claims, the Court requires an "unambiguously conferred right to support a cause of action brought under § 1983." *Id.* Three factors are identified for the Court to consider:

> First, Congress must have intended that the provision in question benefit the plaintiff. Second, the plaintiff must demonstrate that the right assertedly protected by the statute is not so "vague and amorphous" that its enforcement would strain judicial competence. Third, the statute must unambiguously impose a binding obligation on the States. In other words, the provision giving rise to the asserted right must be couched in mandatory, rather than precatory, terms.

Colon-Marrero v. Velez, 813 F.3d 1, 17 (1st Cir. 2016), quoting *Blessing v. Freestone*, 520 U.S. 329 (1997)(citations omitted).

As for the first factor—the intent to benefit the plaintiffs—establishing that factor requires a showing that the Petitioners were intended to be the class of beneficiaries to which the plaintiffs belong. *Rancho Palos Verdes,* 544 U.S. at 120; *see also, Gonzaga Univ. v. Doe,* 536 U.S. 273, 281 (2002). The targeted portion of the Elections and Electors Clauses fits comfortably

among federal legal provisions found to create individually enforceable rights because of their "'unmistakable focus on the benefited class.'" *Colon-Marrero,* 813 F.3d at 17, quoting *Gonzaga Univ.* 536 U.S. at 287. The Elections Clause text specifies the "Legislature" as a discrete class of beneficiaries, the members of the legislature, and provides to them a specific power of regulating federal elections to them:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof…

The command of the Elections Clause directs the state legislators to "prescribe" the manner of federal elections. The corresponding rights arise from the state legislators' federal duties to prescribe the manner of federal elections subject to federal and state constitutional limitations. Similarly, the Electors Clause authorizes the state legislators to determine the method of appointment of the electors. The corresponding federal rights arise from the state legislators' federal duties to direct the method of appointment of the presidential electors. "This Court has described that clause as 'conveying the broadest power of determination' over who becomes an elector. *McPherson v. Blacker*, 146 U.S. 1, 27…(1892). And the power to appoint an elector (in any manner) includes power to condition the appointment[.])" *Chiafalo v. Washington*, 591 U.S. 578, 589 (2020).

So, the Elections and Electors Clauses specify the same discrete class of beneficiaries—state legislators—and command them to prescribe the times, places and manner of federal elections and the method of appointment of presidential electors. In *Moore v. Harper*, the Court clarified that, when the

state legislature carries out its constitutional power, it is acting as the "entity assigned particular authority by the Federal Constitution." 600 U.S. at 27. Pennsylvania's Constitution describes the entity with particular authority as the General Assembly which is made up of "Members" who "shall be chosen at the general election." Pa. Const., Art. II, § 2. The real persons who make up the entity are the individuals elected as state legislators. Historically, "the relevant citizens" for jurisdictional purposes in a suit involving a "mere legal entity" were that entity's "members," or the "real persons who come into court." *Americold Realty Tr. v. Conagra Foods, Inc.*, 577 U.S. 378, 381 (2016)(citations omitted).

The petitioners have each suffered personal injury because they have been denied rights and privileges secured to them by the Elections Clause and Electors Clause. The "usual demands of Article III, requir[e] a real controversy with real impact on real persons to make a federal case out of it." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 34 (2019) "When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people." *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682, 706–07 (2014). Also, the Court has recognized associational standing. *See, e.g., Hunt v. Washington State Apple Advertising Com'n*, 432 U.S. 333, 342 (1977).

The legislators are a small, particular class of citizens who make up the entity, the legislature. Only 253 of Pennsylvania's 13 million citizens are members of the entity and the Elections and the Electors Clauses grant these 253 state legislators unique, constitutional rights to determine the time, place, and manner of elections.

As alleged in the amended complaint, the Pennsylvania Constitution vests the Elections Clause legislative power in individual state legislators as part of their respective "senate" and "house" associations. Therefore, under the Elections Clause and the Pennsylvania Constitution, the Pennsylvania state legislators, as part of two associations called the senate and house of representatives, must enact laws, subject to the Governor's veto, to regulate the times, places, and manner of federal elections subject only to Congressional enactments. The Pennsylvania state legislature is not a state agency with a governor-appointed Commissioner and employees. Instead, the Pennsylvania state legislature consists of elected senators and representatives who organize their respective legislative bodies at the first meeting after the general election. In this way, the individual state legislators, with their newly printed election certificates, precede and constitute the legislative body, as it is with any private association.

The Supreme Court has adopted individual state legislator standing, albeit for Article V state legislative ratification of federal constitutional amendments. *Coleman v. Miller,* 307 U.S. 433 (1939), cited in *Arizona State Legislature v. Arizona Independent Redistricting Com'n*, 576 U.S. 787, 803 (2015). In *Coleman*, twenty Kansas state senators challenged 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. *Id.* 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 federal constitutional amendments. *Id.* at 436. In

acknowledging that legislators' interest in their votes may constitute an injury that could be vindicated in federal court, the Supreme Court held:

> Here, the plaintiffs include twenty senators, whose votes against ratification have been overridden and virtually held for naught…We think that these senators have a plain, direct and adequate interest in maintaining the effectiveness of their votes. Petitioners come directly within the provisions of the statute governing our appellate jurisdiction. They have set up and claimed a right and privilege under the Constitution of the United States to have their votes given effect.

Id. at 438.

Moreover, since the decision in *Virginia House of Delegates,* the Court has recognized state legislative powers under the Elections Clause in a more specific way "as the entity assigned particular authority by the Federal Constitution." *Moore v. Harper*, 600 U.S. at 27.

The remaining factors of the private-right inquiry are also satisfied. Enforcing the federal rights of individual state legislators, as commanded under the Elections and Electors Clauses, would impose no "'strain [on] judicial competence,' as the right is concrete and well-defined." *Colon-Marrero*, 813 F.3d at 20, quoting *Blessing,* 520 U.S. at 341. The specificity of the Elections Clause and Electors Clause directives "shields against potentially disparate outcomes, bolstering the conclusion that the language is rights-creating." *Id.* (citation omitted). Furthermore, the Elections and Electors Clauses, requiring state

legislators to prescribe the manner of federal elections, are couched in mandatory terms, "rather than precatory, terms,' and 'unambiguously impose a binding obligation.'" *Id.* A determination of Petitioners' rights "require[s] no more than an interpretation of the Constitution. Such a determination falls within the traditional role accorded to courts to interpret the law[.]" *Powell v. McCormack*, 395 U.S. 486, 548 (1969).

Although the trial court dismissed Petitioners' Amended Complaint based upon the holding in *Raines, Raines* is not dispositive to this case. 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. *Id.* at 814-17. In denying standing, the Court noted that the plaintiffs' asserted injury to their legislative power was, in a real sense, inflicted by Congress upon itself. Indeed, the plaintiffs had tried and failed to persuade Congress not to pass the Act. When Congress considered the Line Item Veto Act, the plaintiffs' votes "were given full effect. [Plaintiffs] simply lost that vote." *Id.* at 824. The Court expressed doubts that individual legislators who had lost a legislative battle could ever establish standing to assert a resulting injury on behalf of either their chamber or Congress itself. In such a case, the Court stated, the plaintiffs' quarrel was with their colleagues in Congress and not with the executive branch. *Id.* at 830, n.11. The Court 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 plaintiffs 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. Plaintiffs' allegations were, the Court held, insufficient to establish a judicially cognizable vote nullification injury of the type at issue in *Coleman*. *Id.* at 824.

The *Raines* court suggested that to establish legislative standing on their own behalf, individual legislators must show vote nullification of the sort at issue in *Coleman*: that a specific legislative vote was "completely nullified" despite a legislator-plaintiff having cast a vote that was "sufficient to defeat (or enact)" the act. *Id.* at 823.

In this case, the petitioners' "quarrel" is not with their colleagues, but with the federal and state executive branches. The Petitioners have not lost a battle in the legislative process, but in fact, have succeeded. Unlike *Raines*, this case does not involve legislators who voted, "simply lost that vote" and then sought to have the law invalidated. Just as in *Coleman*, the legislators' votes have been overridden and held for naught through unlawful executive actions. Just as in *Coleman*, the legislators' votes have been "stripped of their validity," and petitioners' votes have been "denied [their] full validity in relation to the votes of their colleagues." *Id.* at 824 n. 7. And, just as in *Coleman,* Petitioners seek recovery based upon rights and privileges granted to them through the Constitution. *Coleman*, 307 U.S. at 438.

Raines only contemplated the standing of members of Congress who lost a legislative vote to colleagues. It remained silent on the standing of state legislators who prevailed in legislative votes but whose votes were ignored or supplanted. Moreover, *Raines* is

silent on the preemptive effect of an executive action that properly belongs to the legislature.

In *Dennis v. Luis*, the Third Circuit recognized standing for eight legislators stating:

> [T]he plaintiffs here do not complain of the "acts or omissions of [their] colleagues" that could be remedied through the legislative process, noting instead that the real issue was that the Governor was unable "to recognize the legal limitations of his appointment powers."

741 F.2d at 633. *See Goldwater v. Carter*, 617 F.2d 697, 702 (D.C. Cir. 1979), *vacated on other grounds* 100 S.Ct. 533). As explained in *U.S. House of Representatives v. Miers*, 558 F.Supp.2d 53 (2008):

> In *Raines*, the asserted injury was to Congress's vaguely defined "political power." The harm was not tied to a specific instance of diffused voting power; rather the injury was conceived of only in abstract, future terms.

Id. at 70.

In *U.S. House of Representatives v. Burwell*, 130 F.Supp.3d 53 (D.D.C. 2015), the district court concluded that the House possessed standing to pursue constitutional claims "that the Executive ha[d] drawn funds from the Treasury without a congressional appropriation." *Id.* at 70. Critical to the court's holding was the fact that the constitution designated "the Congress" as "the only body empowered…to adopt laws directing monies to be spent from the U.S. Treasury." *Id.* at 71. According to

the court, the "constitutional structure would collapse, and the role of the House would be meaningless, if the Executive could circumvent the appropriations process and spend funds however it pleases." *Id.* *Burwell* suggests that Congress could have a justifiable injury when the executive branch violates the Constitution in a way that specifically undermines Congress's authority in a particular government process.

Here, the integrity of Pennsylvania's voter registration process is being undermined by the executive branch – at all levels of government. Petitioners allege that they recently enacted Senate Bill 982 which was designed, in part to ban outside, third-party financial support for Pennsylvania elections and to eliminate the influence of nongovernmental third-party organizations from elections. Dkt. no. 18, ¶ 6. Petitioners allege that they opted not to pass a regulatory scheme that implemented automatic voter registration in Pennsylvania and that as recently as January 2023 attempts to pass automatic voter registration through the legislative process failed. *Id.,* ¶¶ 132 – 133. Petitioners allege that Biden's Executive Order 14019 was "unauthorized by law" and "does not comply with Pennsylvania law" *Id.,* ¶¶ 103, 104, and that they "have been denied the opportunity to exercise their constitutionally vested authority to cast their legislative vote on affirming or rejecting…new regulatory regimes." *Id.,* ¶162.

"The courts have drawn a distinction…between a public official's mere disobedience of a law for which a legislator voted—which is not an injury in fact—and an official's "distortion of the process by which a bill becomes law" by nullifying a legislator's vote or depriving a legislator of an opportunity to vote—which

is an injury in fact." *Russell v. DeJongh*, 491 F.3d 130, 135 (3d Cir. 2007). Here, the federal and state executives, by circumventing the legislative process, have nullified duly-enacted legislation—which is an injury in fact. The respondents are establishing, operating, and enforcing election policy in Pennsylvania in violation of the Elections Clause and Electors Clause. Dkt. no. 18, ¶ 162.

Executive officials cannot usurp the rights of the legislators to determine the manner of elections including the authority to regulate "notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices… All this is comprised in the subject of 'times, places and manner of holding elections,' and involves lawmaking in its essential features and most important aspect." *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

In *Silver v. Pataki*, the New York state court explained the personal nature of vote nullification in this way:

> The circumstances here are analogous to those present in *Coleman v. Miller*…Here, plaintiff as a Member of the Assembly won the legislative battle and now seeks to uphold that legislative victory against a claimed unconstitutional use of the veto power nullifying his vote…Such a direct and personal injury…unquestionably represents a "concrete and particularized" harm (*Raines*, *supra*, 521 U.S. at 819)(citations omitted).

Silver, 755 N.E. 2d at 846-48.

Here, Petitioners are real persons who are part of an exclusive entity, the state legislature of Pennsylvania. Each individual legislator has a right to protect "their constitutional duty to craft the rules governing federal elections[.]" *Moore*, 600 U.S. at 21-22. Members of the executive branch should not be permitted to strip state legislators of their Constitutional rights – representative rights of the people.

And, the people don't vote for the "legislature" – they vote for individuals to represent them as their state legislators.

> But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them.

Reynolds v. Sims, 377 U.S. 533, 565 (1964).

In *Silver v. Pataki*, the court stated, "A procedure that nullifies a legislator's vote is as harmful as one that precludes it. In each case, the legislator and the thousands of New Yorkers he or she represents are unlawfully precluded from participating in the governmental process. Thus, Mr. Silver does have capacity to sue as a Member of the Assembly." 755 N.E.2d at 847.

Just as in New York, and in other states as detailed above, Pennsylvania has made it clear that

individual legislators have standing "to challenge executive actions when specific powers unique to their functions under the Constitution are diminished or interfered with." *Wilt v. Beal*, 363 A.2d 876, 881 (Pa. 1976).

In dismissing Petitioners' Amended Complaint, the trial court also mistakenly relied on *Yaw* , an action involving 2 senators seeking recovery based upon a fracking moratorium. In characterizing their "narrow" ruling which denied standing, the court in *Yaw*, based its decision, in part, on the fact that the lawmakers were "free to seek redress through other means" *Id.* at 307.

Unlike *Yaw*, the Petitioners here have no ability to seek redress through other means. FAC ¶ ¶ 219, 230. Similarly in *Raines*, the court justified the denial of standing for members of Congress on the grounds that Congress "could simply repeal the disputed statute[.]" *Raines,* 521 U.S. at 829-30.

In *Coleman*, the Kansas senators were in a unique position because they were powerless to rescind the ratification of legislative action. The Kansas senators, just as these Pennsylvania legislators, were (and are) not free to confirm, reject, or defer voting on the executive actions taken by the respondents. Instead, executive officials circumvented the Legislature, nullifying their votes on changes to Pennsylvania voter registration laws. Depriving a legislator of an opportunity to vote "is an injury in fact." *Russell v. DeJongh*, 491 F.3d 130, 135 (3d Cir. 2007). Unlike *Raines*, petitioners claim executive action that preempts their right to direct the manner of elections.

Yaw similarly fails in application because the Senate Plaintiffs in *Yaw* "alleged no injury to themselves as individuals.'" *Yaw*, 49 F. 4th at 314. Petitioners' Amended Complaint in *Yaw*, was "replete with allegations that the Commission and Pennsylvania government have harmed the Commonwealth and its citizens." Following review of the Amended Complaint, the District Court held, "This Court repeatedly has rejected claims of standing predicated on 'the right, possessed by every citizen, to require that the Government be administered according to law…" *Yaw v. Delaware River Basin Commission*, 2021 WL 2400765, Civ. No. 21-1119 (2021), p. 9-10, *affirmed by* 49 F.4th 302 (2022). Here, Petitioners do not claim a right that is possessed by every citizen, but unique rights granted to them as individual state legislators to regulate federal elections.

Yaw was not predicated on individual rights flowing from the Elections Clause and the Electors Clause. In contrast, petitioners have alleged a personal injury because they have been denied their right to oversee and participate in making legislative decisions regulating federal elections, personal duties that flow directly from the word "legislature" in the Elections Clause and Electors Clause.

Although arguably Pennsylvania citizens are additionally harmed by respondents' actions, as citizens achieve participation in government through their elected legislators, the Court has clearly held that conduct undertaken to deprive an individual of their constitutional rights does not become "less injurious because it has collateral consequences for other people." *Falcone v. Dickstein*, 92 F.4th 193, 203 (3d Cir. 2024). "A prerequisite to standing is that a

party be 'among the injured." *Kennedy v. Sampson*, 511 F.2d 430 (D.C. Cir. 1974), overruled in part by *Raines v. Byrd*, 521 U.S. 811 (1997).

Petitioners allege that they "have a plain, direct and adequate interest in maintaining the effectiveness of their votes…They have set up and claimed a right and privilege under the Constitution of the United States to have their votes given effect" and they have been "denied that right and privilege." *Coleman*, 307 U.S. at 438. "No more essential interest could be asserted by a legislator" than "to vindicate the effectiveness of his vote." *Kennedy,* 511 F.2d at 436.

As the right claimed is an individual right, each individual legislator has standing to protect the effectiveness of his vote with or without the concurrence of other members of the majority. As one court noted, the plaintiff's injury in the nullification of his personal vote continues to exist whether or not other legislators who have suffered the same injury decide to join in the suit." *Silver*, 755 N.E. at 848-49. And, using this analysis, "a suit could be blocked by one legislator who chose, for whatever reason, not to join in the litigation. Such a result would place too high a bar on judicial resolution of constitutional claims." *Id.* at 854, n. 7.

Petitioners ask this Court to resolve the nationwide conflict over individual legislator standing. The stakes could not be higher:

> Changing the rules in the middle of the game is bad enough. Such rule changes by officials who may lack authority to do so is even worse. When those changes alter election results, they can severely damage the electoral system on which

> our self-governance so heavily depends. If …[executive] officials have the authority they have claimed we have to make it clear. If not, we have to put an end to this practice now before the consequences become catastrophic.

Republican Party of Pennsylvania, 141 S.Ct. 732, 735 (Mem.) (Thomas, J., dissenting). Here, the critical need for judicial resolution is clear. We cannot allow election laws to remain "beneath a shroud of doubt… By doing nothing, [this Court] invite[s] further confusion and erosion of voter confidence." *Id*. at 738.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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