No. 24-781

In the Supreme Court of the United States

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC,
Petitioner,

v.

MATTHEW PLATKIN, in his official capacity as Attorney General of New Jersey,
Respondent.

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

BRIEF OF AMICI CURIAE MEMBERS OF CONGRESS IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici are members of Congress who are familiar with the history of 42 U.S.C. § 1983 and its critical role in the vindication of federal constitutional and civil rights against state encroachment.

As members of Congress, amici also have a strong interest in the vertical separation of powers issues at the heart of this case. Since the adoption of the Fourteenth Amendment, the Constitution has protected individual Americans from state encroachments on rights recognized in and guaranteed by the Constitution.

A full listing of amici and their signatures appears in the Appendix.

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[1] No counsel for any party authored this brief in any part. No person or entity other than *amici* funded its preparation or submission.

SUMMARY OF THE ARGUMENT

On April 20, 1871, the United States Congress passed "An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes," also known as the Ku Klux Klan Act. It was the third in a series of Enforcement Acts, designed to empower the federal government to protect the civil and political rights of individuals. The Fourteenth Amendment, ratified in 1868, defined citizenship and guaranteed due process and equal protection of the law to all, including four million formerly enslaved Black men and women. Vigilante groups like the Ku Klux Klan, however, freely threatened Blacks and their White allies in the South and undermined the Republican Party's plan for post-Civil War Reconstruction. The Ku Klux Klan Act made it a federal crime to deny any group or individual "any of the rights, privileges, or immunities, or protection, named in the Constitution." To enforce the law, the President could suspend habeas corpus, deploy the U.S. military, or use "other means, as he may deem necessary."

The Ku Klux Klan Act's very first section, however, did not deal with criminal liability. Now codified at 42 U.S.C. § 1983, it was an innovation at the time, allowing individuals suffering a deprivation of their constitutional rights under color of state authority to avoid hostile state courts and seek immediate redress in federal courthouses. Unlike the seldom-used enforcement powers bestowed on the Executive, this portion of the Ku Klux Klan Act has proven effective at protecting individuals' constitutional rights against hostile state officials.

Since its revival by this Court in 1961, Section 1983 has been particularly useful in protecting the freedom of association—the freedom directly at issue in this case and other cases involving state investigative subpoenas. As this Court has previously recognized, the mere requirement to comply with such subpoenas threatens free association, even if the subpoena's demands or the underlying investigation is eventually found to have been constitutionally suspect. This Court should confirm what Congress said when it passed the Ku Klux Klan Act: States may not deprive citizens of their right to freely associate and then force those citizens to try to vindicate their rights in hostile state forums before they can darken the door of a federal courthouse.

ARGUMENT

I. Congress Adopted Section 1983 to Allow Civil Rights Plaintiffs to Circumvent State Court.

On Christmas Eve of 1865, two and a half weeks after ratification of the Thirteenth Amendment abolished slavery nationwide, a group of former Confederates formed the Ku Klux Klan. STAFF OF H. COMM. ON UN-AMERICAN ACTIVITIES, 90TH CONG., REPORT ON THE PRESENT-DAY KU KLUX KLAN MOVEMENT 3 (U.S. Govt. Printing Office 1967); *see also* ELAINE F. PARSONS, KU-KLUX – THE BIRTH OF THE KLAN DURING RECONSTRUCTION, 37 (1989) (quoting J.C. LESTER AND D.L. WILSON, KU KLUX KLAN: ITS ORIGIN, GROWTH AND DISBANDMENT (1905)). Shortly after its founding Klansmen engaged in a disorganized, but widespread campaign of violence against Blacks, Unionists,

uncooperative government agents, and federal officers in the South. *Id.* at 4-5.

One example of this violence was the 1870 assassination of North Carolina State Senator John W. Stephens. While Sen. Stephens had served in the Confederate Army during the Civil War, after the war he dedicated himself to reconstruction, becoming a leader among the black population in the state, and a member of the Republican Party. Allen W. Trelease, Stephens, John "Chicken" Walter, NCPEDIA (1994) (available at: https://www.ncpedia.org/biography/stephens-john-walter). The Klan reacted by issuing a death warrant for Sen. Stephens. John G. Lea, Confession to the Ku Klux Klan murder of John W. Stephens, July 2, 1919, *Civil War Era NC*, (available at: https://cwnc.omeka.chass.ncsu.edu/items/show/22). The Klan initially lynched four Black men who had participated in Sen. Stephen's efforts and warned Sen. Stephens that he would be killed next if he did not cease his work to register and organize Black voters. *Id.* Sen. Stephens either disregarded or ignored the warning. *Id.*

On May 21, 1870, Sen. Stephens was lured to a county courthouse where a meeting of the local Democratic Party was underway on the auspices of recruiting a Democratic Party member to run as a Republican for county sheriff. *Id.* Unfortunately, that potential candidate was working with the Klan. *Id.* He lured Sen. Stephens into a back room of the courthouse where between eight and twelve Klan members were waiting. *Id.* The men killed Sen. Stephens on the spot. His body was left to be discovered by family and friends the next day. *Id.*

Perhaps more troubling than Sen. Stephens' assassination was the lack of any real consequence to the perpetrators. North Carolina's Governor William W. Holden (who had at one time been appointed by President Johnson in the immediate aftermath of the Confederate surrender) declared martial law and raised a militia to root out the Klan. Brisson, Jim D., "'Civil Government Was Crumbling Around Me': The Kirk-Holden War of 1870". *The North Carolina Historical Review*. 88, no.2 at 148 (April 2011). This resulted in the detention of over 100 men believed to have been involved with a series of Klan assassinations and murders in North Carolina and the temporary cessation of Klan activities. BRADLEY, MARK L. BLUECOATS AND TAR HEELS: SOLDIERS AND CIVILIANS IN RECONSTRUCTION NORTH CAROLINA 233. (University of Kentucky Press 2009). However, by August of 1870, every single person indicted for his role in these murders and assassinations had been acquitted or released. Brisson at 152. The militia was disbanded in September of 1870 and by March of 1871 Holden had been impeached and removed from office by the North Carolina General Assembly. BRADLEY, MARK L., THE ARMY AND RECONSTRUCTION, 1865-1877 60 (Center of Military History, United States Army 2015).

Outrages of this sort were, tragically, common across the former Confederacy as reflected in the testimony received by a U.S. Senate committee on Klan atrocities in January of 1871. U.S. Congress. Senate. 42nd cong., 2nd sess., 1872. S.Rpt. 41, pt. 1, serial 1484. Congress became convinced that although the Fourteenth and Fifteenth amendments had been ratified in 1868 and 1870, respectively, additional enforcement legislation was necessary to permit the

federal government to protect the rights guaranteed by these Amendments.

On February 28, 1871, Congress adopted the Second Enforcement Act, which strengthened the protections of the Enforcement Act of May 1870. 16 Stat. 433-440. The original Enforcement Act had enforced the Fifteenth Amendment's guarantee of the right to vote without account to an individual's race, color or prior condition of servitude by providing federal protection for the right of all persons to register to vote. The Second Enforcement Act furthered these federal protections by increasing the federal fines and prison terms applicable to persons found to have abridged the right to vote and also allowed localities to request federal oversight and administration of their elections. *Id.*

Having enforced the Fifteenth Amendment, Congress turned to enforcement of the Fourteenth Amendment, which by its Due Process and Equal Protection Clauses, purported to protect a host of federally guaranteed constitutional and civil rights.

Introduced by Representative Samuel Shellabarger of Ohio, in response to a March 23, 1871 request from President Ulysses S. Grant to Congress, the Ku Klux Klan Act (officially an "Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes") was intended to remedy the then endemic depredations of the constitutional rights of Blacks and those, like North Carolina State Senator Stephens, loyal to Reconstruction efforts in the South. Adopted on April 20, 1871, the KKK Act included seven sections. *See* 17 Stat. 13. Unlike the first two

Enforcement Acts, the KKK Act did not only empower the federal government: three sections allowed individuals to bring civil actions for the redress of injuries caused by the violation (or in some cases the attempted violation) of constitutional rights. *Id.* Critically, and as hotly debated in Congress, these sections permitted such plaintiffs to bring their cases before the federal courts.

A. The Legislative History of the KKK Act Demonstrates Congress Intended Private Parties be able to use Section 1983 to Bypass often hostile State Courts.

Congress saw the KKK Act's creation of civil causes of action for the violation of federal constitutional rights in a federal forum—rightly—for the watershed it was. A review of the debate of the KKK Act reveals unanimity among both its supporters and opponents: if this Act were adopted, plaintiffs could use the law to avoid litigating their constitutional rights before state judges.

For example, Senator Thomas Osborn of Florida speaking in support of the KKK Act stated:

> That the State courts in the several States have been unable to enforce the criminal laws of their respective States or to suppress the disorders existing, and, in fact, that the preservation of life and property in many sections of the country is beyond the power of the State government, is a sufficient reason why Congress should, so far as they have authority under the Constitution, enact the laws necessary for the

> protection of citizens of the United States. The question of the constitutional authority for the requisite legislation has been sufficiently discussed.

Cong. Globe, 42d Cong., 1st Sess. at 653. The theme of the inability or unwillingness of some States to enforce laws that would, if applied in an evenhanded manner, preserve basic constitutional rights was noted by others. The unavailability of redress in state courts was of particular concern to the KKK Act's sponsors. Senator Daniel Pratt of Indiana, touching on the then-recent events in North Carolina correctly observed:

> *Plausibly and sophistically, it is said the laws of North Carolina do not discriminate* against them; that the provisions in favor of rights and liberties are general; *that the courts are open to all*; that juries, grand and petit, are commanded to hear and redress without distinction as to color, race, or political sentiment. . .. But it is a fact, asserted in the report, that of the hundreds of outrages committed upon loyal people through the agency of this Ku Klux organization, not one has been punished. *This defect in the administration of the laws does not extend to other cases. Vigorously enough are the laws enforced against Union people. They only fail in efficiency when a man of known Union sentiments, white or black, invokes their aid. Then Justice closes the door of her temples.*

Id. at 505 (emphasis added). The opponents of the KKK Act argued primarily on the basis that the Act, particularly what would become 42 U.S.C. § 1983, would threaten state court jurisdiction by permitting suits to vindicate individual rights in federal courts. Representative William Arthur of Kentucky, himself a former state judge, noted that the KKK Act would

> "override[] the reserved powers of the States. . . if the sheriff levy an execution, execute a writ, serve a summons, or make an arrest, all acting under a solemn, official oath, though as pure in duty as a saint and as immaculate as a seraph, for a mere error of judgment, [he can be made liable in federal court]. . . .

Id. at 365. Representative (and later Speaker of the House) Michael Kerr of Indiana was acutely aware that what would become Section 1983 meant litigants could avoid state courts:

> This section gives to any person who may have been injured in any of his rights, privileges, or immunities of person or property a civil action for damages against the wrongdoer in the Federal courts. . . .
>
> *It is a covert attempt to transfer another large portion of jurisdiction from the State tribunals, to which it of right belongs, to those of the United States.* It is neither authorized nor expedient, and is not calculated to bring peace or order or domestic content and prosperity to the disturbed society of the South. The contrary will certainly be its effect.

Id. at App. 505. (emphasis added). Senator Allen Thurman of Ohio argued similarly:

> It authorizes any person who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, *to bring an action against the wrongdoer in the Federal courts*, and that without any limit whatsoever as to the amount in controversy. The deprivation may be of the slightest conceivable character, the damages in the estimation of any sensible man may not be five dollars or even five cents; they may be what lawyers call merely nominal damages, and yet, *by this section, jurisdiction of that civil action is given to the Federal courts instead of its being prosecuted as now in the courts of the States.*

Id. at App. 216 (emphasis added). In the end, Congress adopted the KKK Act and with it what would become Section 1983. Although unquestionably motivated by events in the postwar South, the sentiments of Senator George Hoar captured the proponents' decision to apply the KKK Act to all States:

> The question is not whether a majority of the people in a majority of the States are likely to be attached to and able to secure their own liberties. The question is not whether the majority of the people in every State are not likely to desire to secure their own rights. It is whether a majority of the people in every State are sure to be

> so attached to the principles of civil freedom and civil justice as to be as much desirous of preserving the liberties of others as their own as to insure that under no temptation of party spirit, under no political excitement, under no jealousy of race or caste, will the majority, either in numbers or strength, in any State seek to deprive the remainder of the population of their civil rights.

Id. at 334-335. In sum, there can be no reasonable debate that the Congress that adopted the KKK Act understood Section 1 of that legislation to permit individuals to choose a federal forum to vindicate an injury to their rights guaranteed by the Constitution.

B. This Court has Already Adopted Congress' View that Section 1983 Affords a Federal Forum to Individuals Claiming an Infringement of Constitutional Rights.

This Court is of course familiar with much of the legislative history recounted above: it relied upon this history (and more) when, in 1961, it revitalized Section 1983 by confirming, after decades of the statute's disuse, that it permits a civil action in federal court for any action taken to deprive an individual of constitutional rights "under color of" law. *Monroe v. Pape*, 365 U.S. 167, 187 (1961). *Monroe* dealt with a complaint by a married couple that thirteen Chicago police officers broke into their home without a warrant before they were out of bed, "made them stand naked in the living room, and ransacked every room. . . ." 365 U.S. at 169. These city officers then detained and

interrogated the husband without formal charges about a murder he had nothing to do with without bringing him before a judge or permitting him to call his attorney. *Id.* The district court dismissed the case and the court of appeals agreed each holding that Section 1983 could not impose liability for acts done in legitimate performance of governmental functions. *Id.* at 170.

While this Court affirmed on the narrow ground that Section 1983 did not clearly contemplate relief against municipalities[2], it did so only after recognizing that Section 1983 unmistakably authorizes suit in federal court for the unconstitutional acts of state officials, even where a State's law and its courts were ostensibly available to the plaintiff. "Although [Section 1983] was enacted because of the conditions that existed in the South at that time, it is cast in general language, and is as applicable to Illinois as it is to the States whose names were mentioned over and again in the debates." *Id.*

This Court was right in *Monroe*: Section 1983 was intended to and does provide persons who believe someone aligned with the State has violated their constitutional rights the ability to bypass a potentially unfriendly state forum and seek redress in federal courts. It should say so again here.

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[2] This Court's holding in *Monroe* that Section 1983 did not apply to municipal corporations was overruled 17 years later in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978).

II. Since *Monroe*, 1983 has Vindicated Federally Recognized and Guaranteed Rights Against State Encroachment.

Since this Court's faithfulness to the original purpose of Section 1983 in *Monroe*, federal courts have assumed an almost indispensable role in the protection of a host of constitutional rights against state encroachment. The importance of *Monroe* is particularly evident in several First Amendment contexts where decisions in cases brought under Section 1983 were presaged by pre-*Monroe* cases that were only possible because they were appeals from the decisions of state supreme courts or in lawsuits brought after the litigants had already suffered under the unconstitutional policy for some time.

After *Monroe*, Section 1983 quickly served to protect Americans' First Amendment right to free speech. In *Tinker v. Des Moines Independent Community School District*, this Court vindicated the right of students in public schools to wear armbands protesting the Vietnam War. 393 U.S. 503, 512-514 (1969). More recently, it has allowed the owner of a wedding website design business committed to a Christian view of marriage to vindicate her right against being compelled to design sites for same-sex couples from testing her right before a state commission and judiciary that have recently taken a narrow view of the First Amendment rights of similar individuals. *See 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

Section 1983 has also protected Americans' right to freely exercise their religious beliefs. For example, in *Church of the Lukumi Babalu Aye, Inc. v. City of*

Hialeah, 508 U.S. 520 (1993), this Court reversed the Eleventh Circuit's affirmance of a district court's dismissal of a Section 1983 suit challenging a municipal ordinance targeting religious animal sacrifices. The suit was filed before the ordinance was enforced against the religious group. This result is certainly preferable to the ordeal endured by the Amish parents in *Wisconsin v. Yoder*, 406 U.S. 205 (1972). There, the parents' Free Exercise rights implicated by Wisconsin's compulsory school-attendance statutes were only vindicated thanks to the parents' willingness to endure state criminal convictions for violating them. 406 U.S. at 213.

More recently, and perhaps poetically, Section 1983 has even safeguarded the right to bear arms guaranteed by the Second Amendment. The law served as the vehicle for Otis McDonald's lawsuit challenging the City of Chicago's functional (if not expressly absolute) ban on handguns. Mr. McDonald, a Black resident of Chicago, sued under Section 1983 arguing that the city's law abridged his Second Amendment rights to keep a handgun in his home for self-defense. The district court dismissed his complaint and the Seventh Circuit affirmed, citing *United States* v. *Cruikshank*, 92 U. S. 542 (1876), the decision which effectively gutted Section 1983's utility until *Monroe*.[3] This Court reversed and, holding that the

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[3] *Cruikshank* reversed federal criminal convictions obtained against several Louisianans under the First Enforcement Act after the Colfax Massacre, which involved the killing of over 60 former slaves. The convictions were for hindering the former slaves' constitutional rights to free assembly (First Amendment)

Fourteenth Amendment incorporated the Second Amendment against the States, vindicating Mr. McDonald's constitutional right to bear arms.

While Section 1983 suits cannot always be brought before state enforcement action and may sometimes—whether of necessity or by strategic choice—be litigated in state courts, *Monroe* properly cleared the way for their prosecution in the face of foreseeable state action to contravene constitutional rights. This Court should affirm the availability of the federal forum in this case.

III. Section 1983 is Particularly Critical to the Protection of the Freedom of Association from State Attack in the Present Day.

This case is a contemporary example of Section 1983's raison d'être. Since at least *National Association for Advancement of Colored People v. State of Alabama ex rel. Patterson*, 357 U.S. 449 (1958), this Court has recognized the chilling effect of a state subpoena seeking membership information in associations of persons pursuing politically controversial or unpopular goals. There, this Court invalidated a state subpoena seeking disclosure of the NAACP's members in Jim Crow Alabama: "[w]e hold that the immunity

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and to bear arms (Second Amendment). This Court held that because these rights existed independently of the Bill of Rights (which recognized these rights, but did not create them), they were somehow not among the rights protected against State encroachment by the Fourteenth Amendment.

from state scrutiny of membership lists which the Association claims on behalf of its members is here so related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment." 357 U.S. at 466. Because *Monroe* was still three years in the future, the NAACP had to endure a contempt sanction from Alabama's state courts in order to vindicate its rights before this Court. 357 U.S. at 451. Exposure to contempt sanctions should not be the ordinary cover charge to vindicate basic constitutional freedoms, particularly the right to free association.

This Court recognized as much four years ago when it held that California's threat to require two non-profits to disclose their contributors in order to maintain their state registrations to do business abridged the right of the organizations and their members to freely associate. *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 614 (2021). *Bonta* was brought under Section 1983 before California concretely compelled the disclosure of the contributors' information. Responding to his dissenting colleagues, the Chief Justice wrote for the Court:

> When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals. The risk of a chilling effect on association is enough, "[b]ecause First Amendment freedoms need breathing space to survive."

594 U.S. at 614 (quoting *NAACP v. Button*, 371 U. S. 415, 433 (1965)). By making a federal forum available to hear claims of injury to First Amendment associational rights before those rights are tested in a potentially hostile state forum, Section 1983 ensures this "breathing room." The Court should confirm as much in this case.

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CONCLUSION

The Court should reverse the Third Circuit and confirm that as Congress intended when it adopted the KKK Act in 1871, targets of intrusive state subpoenas implicating First Amendment associational rights need not wait for enforcement proceedings in state court to challenge such unlawful subpoenas issued under the color of state law.

Respectfully submitted,

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AUGUST 28, 2025

APPENDIX

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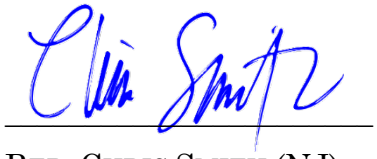
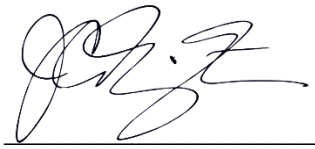


REP. CHRIS SMITH (NJ)

SENATOR TED BUDD (NC)

SENATOR CYNTHIA M. LUMMIS (WY)

REP. ROBERT B. ADERHOLT (AL)



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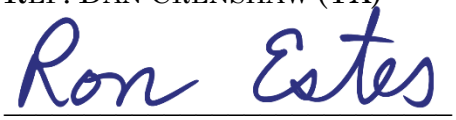
REP. ANDY BIGGS (AZ)

REP. SHERI BIGGS (SC)

REP. DAN CRENSHAW (TX)



REP. RON ESTES (KS)

REP. MICHELLE FISCHBACH (MN)

REP. RUSS FULCHER (ID)

REP. MARJORIE TAYLOR GREENE (GA)

REP. GLENN GROTHMAN (WI)

REP. PAUL A. GOSAR, D.D.S. (AZ)

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REP. HARRIET M. HAGEMAN (WY)

REP. PAT HARRIGAN (NC)

REP. DIANA HARSHBARGER (TN)

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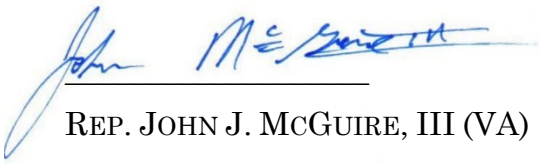

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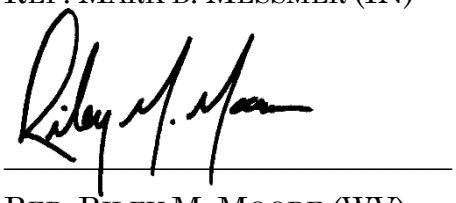

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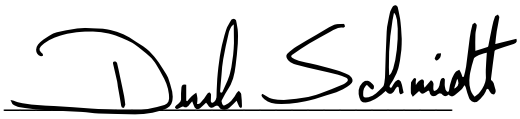
REP. ANDY OGLES (TN)

REP. ROBERT F. ONDER (MO)



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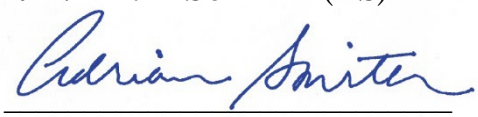

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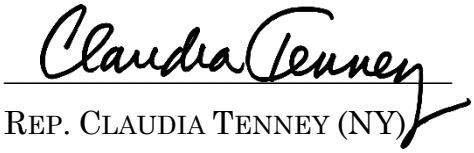

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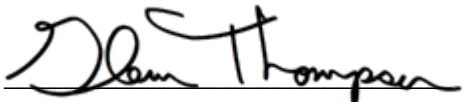
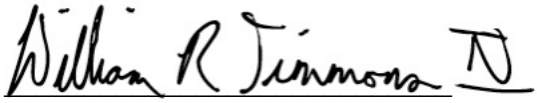


REP. GLENN "GT" THOMPSON (PA)



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