

Supreme Court, U.S.
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In the Supreme Court Of The United States

MICHAEL MILLER

v.

COUNTY OF LANCASTER, ET AL.

Application to Circuit Justice for Preservation Stay Pending Certiorari or Further

Application in Third Circuit Appeals 24-2934, 25-2570, and 25-2616

(Supreme Court Rules 22 and 23; Rule 11 Preserved in the Alternative)

To the Honorable Samuel A. Alito, Jr.

Associate Justice of the Supreme Court of the United States

and Circuit Justice for the Third Circuit

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I. PARTIES TO THE PROCEEDING

- Applicant is Michael Miller, proceeding pro se.
- Respondents are the parties and official-capacity respondents identified in the three underlying proceedings addressed in this Application.

II. INTRODUCTION

Applicant seeks emergency preservation relief arising from Third Circuit appeals 24-2934, 25-2570, and 25-2616.¹ Applicant asks the Circuit Justice to preserve this Court's jurisdiction, protect access to timely certiorari or further application, and stay enforcement of judgment-like instruments and derivative consequences while this Court determines whether those instruments have lawful Article III effect.

The three proceedings followed a common sequence. Applicant invoked federal jurisdiction, constitutional rights, continuing injury, tribunal authority, recusal, clerk authority, finality, mandate effect, statutory coverage, and adversarial-process objections. The lower courts entered or permitted judgment, mandate, sanctions-warning, filing-restriction, electronic-filing, cost, fee, or

¹ Public docket materials for the three proceedings are available at: Appeal No. 24-2934, <https://www.courtlistener.com/docket/69829520/michael-miller-v-county-of-lancaster/>; Appeal No. 25-2570, https://www.courtlistener.com/docket/71100409/michael-miller-v-county-of-lancaster/?order_by=desc; Appeal No. 25-2616, <https://www.courtlistener.com/docket/71174376/michael-miller-v-judicial-council-united-states-third-circuit-court>. Applicant provides these public links only for docket-location convenience. The operative record materials are the orders, opinions, judgment instruments, mandate instruments, and related papers appended under Supreme Court Rule 23.3.

preclusion consequences without first adjudicating the threshold predicates on which those consequences depended.

This Application rests on Supreme Court Rules 22 and 23, 28 U.S.C. § 2101(f), the All Writs Act, Article III, this Court's inherent authority to protect the integrity of judicial proceedings, and the fraud-preservation principles recognized in *Hazel-Atlas* and *Universal Oil*. Applicant also preserves Rule 11 only in the alternative to the extent any challenged proceeding is deemed still pending because unresolved threshold predicates prevented lawful final judgment.

The requested relief is preservation only. Applicant does not ask the Circuit Justice to decide the merits of the underlying constitutional claims. Applicant asks that the challenged instruments and their derivative consequences not be enforced as lawful judgments, mandates, sanctions predicates, filing restrictions, costs, fees, or preclusion devices until this Court can determine whether the proceedings below supplied the Article III adjudication that lawful enforcement requires.

III. JURISDICTION AND STANDARD

Applicant files this Application under Supreme Court Rule 22 to the Circuit Justice for the Third Circuit. The challenged proceedings arise from the United States Court of Appeals for the Third Circuit. Sup. Ct. R. 22.3.

Supreme Court Rules 22 and 23, 28 U.S.C. § 2101(f), and the All Writs Act, 28 U.S.C. § 1651(a), authorize preservation relief to protect this Court's jurisdiction, stay enforcement consequences, and preserve access to timely certiorari or further application. Article III, this Court's inherent authority, and the fraud-preservation

principles recognized in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), and *Universal Oil Co. v. Root Refining Co.*, 328 U.S. 575 (1946), supply additional grounds for preserving review before structurally disputed instruments are enforced as lawful judgments.

Rule 22 governs filing and transmission to the Circuit Justice. Sup. Ct. R. 22.1. Rule 23 governs stay applications. Sup. Ct. R. 23.1–23.3. Section 2101(f) authorizes a Justice to stay execution or enforcement of a judgment subject to certiorari review. The All Writs Act authorizes orders necessary or appropriate in aid of this Court’s jurisdiction. 28 U.S.C. § 1651(a). Rule 13 confirms that certiorari time runs from the judgment or rehearing denial sought to be reviewed, not from mandate issuance. Sup. Ct. R. 13.3.

This Application satisfies Rule 23.3. Applicant identifies the judgments, orders, mandate consequences, sanctions warnings, filing restrictions, clerk directives, costs, fees, and judgment-like instruments to be preserved from enforcement. Applicant appends the relevant orders and opinions. Applicant sought available relief below through objections, motions to strike, motions to vacate as void, recusal and reassignment motions, rehearing petitions, requests for final judgment, and requests for disposition of unresolved threshold objections. Relief is unavailable below because the lower courts denied, refused action on, recharacterized, or left unresolved the same rehearing, recusal, fraud-on-the-court, voidness, clerk-authority, mandate-authority, finality, and tribunal-authority objections that make the lower-court process itself the challenged defect.

The stay standard is satisfied where preservation is necessary to protect this Court's jurisdiction, prevent irreparable injury, preserve the status quo, and prevent enforcement of disputed judgments or judgment-like instruments pending timely certiorari or further application. See Sup. Ct. R. 23; 28 U.S.C. § 2101(f).

Applicant does not principally seek certiorari before judgment under Rule 11. To the extent any challenged proceeding is deemed still pending below because unresolved threshold predicates prevented lawful final judgment, Applicant preserves Rule 11 only in the alternative.

Section IV supplies the facts. Section V states the grounds for preservation relief. The immediate question is whether the challenged instruments and derivative consequences should be stayed before they defeat this Court's review.

IV. STATEMENT OF THE CASE

This section identifies the three proceedings from which this Application arises and the factual sequence relevant to preservation relief. Subsections A, B, and C set out the sequence case by case. Subsection D identifies the common actors and recurring method across the three proceedings.

A. Appeal No. 24-2934

Appeal No. 24-2934 arose from a federal petition filed in the Middle District of Pennsylvania on January 4, 2024. Applicant sought declaratory and injunctive relief from continuing state and county restraints on access to public election records for political speech, election oversight, and public advocacy. Applicant invoked 28 U.S.C. §§ 1331 and 1343(a)(3), sought declaratory and coercive relief

under 28 U.S.C. §§ 2201 and 2202, and alleged First Amendment, due-process, and equal-protection violations. MDPA ECF 1.

The petition did not present a routine records dispute or seek ordinary state appellate review. It alleged that County and state actors used Pennsylvania records-access and election-law procedures to prevent access to election records needed to evaluate and criticize County's administration of the May 17, 2022 primary election. Applicant alleged continuing federal constitutional injury from those restraints. MDPA ECF 1; 3d Cir. ECF 59.

Magistrate Judge Martin C. Carlson invoked abstention but rested on a disputed predicate that was never adjudicated through ordinary adversarial process. MDPA ECF 59. No parallel state proceeding existed for the federal claims presented in district court. 3d Cir. ECF 57. The state proceeding was a mandamus action concerned with release of election records under Pennsylvania law; it did not adjudicate the federal declaratory-judgment petition, did not provide a federal forum for prospective relief under 28 U.S.C. §§ 2201 and 2202, and did not resolve Applicant's claims that Pennsylvania's records-access scheme and its enforcement imposed continuing First Amendment, due-process, and equal-protection restraints. MDPA ECF 60; 3d Cir. ECF 57-1; 3d Cir. ECF 75.

Magistrate Judge Carlson issued a recommendation combining Rule 12(b)(1), Rule 12(b)(6), and abstention rationales. MDPA ECF 59. Applicant filed specific objections preserving the jurisdictional, constitutional, abstention, and § 636(b)(1) defects. MDPA ECF 60. Respondent characterized Applicant's objections as

generalized. MDPA ECF 62. Judge Wilson adopted the report and recommendation, treated Applicant's detailed objections as generalized, denied de novo review, dismissed with prejudice, and allowed sanctions pressure to continue after appeal. MDPA ECF 64; see also MDPA ECF 48; MDPA ECFs 67–70. The district court held no hearings, no briefing schedules, and heard no oral argument.

Upon appeal, the Third Circuit Clerk issued a jurisdiction-defect directive and shaped the initial appellate pathway. 3d Cir. ECF 11-1. Applicant objected, invoked the jurisdiction-first rule, moved to strike the directive, and demanded Article III adjudication. 3d Cir. ECFs 12-16. The Krause-Phipps-Scirica panel affirmed by unpublished memorandum and judgment while using jurisdictional and abstention language to dispose of merits-adjacent issues. 3d Cir. ECFs 59–60; Attach. Exhs. 2–11. The panel did not cure the predicate defect; it treated references to federal constitutional injuries in state records litigation as if they made the state proceedings parallel to a federal DJA action seeking prospective constitutional relief. It held that the denial of de novo review was “harmless error” since the panel could provide that review. 3d Cir. ECF 59; 3d Cir. ECF 60; Attach. Exhs. 2–11. The panel held no hearing and heard no oral argument.

Applicant filed a Rule 40 petition identifying controlling conflicts and overlooked facts. 3d Cir. ECF 61. Applicant also sought recusal and threshold structural relief. 3d Cir. ECFs 62–65. Applicant later moved for disposition of the pending rehearing petition by date certain and preserved all other pending structural objections. 3d Cir. ECF 66.

The panel did not resolve those predicates before preserving the challenged panel's control. 3d Cir. ECF 77. The Third Circuit later denied rehearing without reasons. 3d Cir. ECF 80; Attach. Exhs. 14–15. That sequence is the full adjudication the January 4, 2024 federal petition received.

B. Appeal No. 25-2570

Appeal No. 25-2570 arose from a verified federal civil-rights complaint filed in the Eastern District of Pennsylvania on October 5, 2024. Applicant pleaded claims under 42 U.S.C. § 1983, invoked 28 U.S.C. §§ 1331 and 1343(a), asserted First Amendment and Fourteenth Amendment injuries, pleaded individual-capacity, official-capacity, and municipal-liability claims under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), and sought declaratory, injunctive, and damages relief. FAC, EDPA ECF No. 4.

The complaint did not seek ordinary appellate review of a state public-records ruling. It alleged that County and its officers violated the First Amendment, retaliated against Applicant's advocacy, denied meaningful process, treated Applicant unequally, and caused continuing constitutional injury. FAC, EDPA ECF No. 4.

The complaint never received discovery, evidentiary development, trial, or ordinary appellate merits review. On March 7, 2025, District Judge Leeson disposed of the federal claims through Rule 12. Mem. Op., EDPA ECF No. 35; Order, EDPA ECF No. 36. Judge Leeson dismissed Counts V and VI for lack of subject-matter jurisdiction and also dismissed the same counts with prejudice for failure to state a

claim. Order, EDPA ECF No. 36. Judge Leeson dismissed other federal claims with prejudice and left some claims in an amendment posture. Mem. Op., EDPA ECF No. 35; Order, EDPA ECF No. 36.

The controlling finality rule matters. Under *Borelli v. City of Reading*, 532 F.2d 950 (3d Cir. 1976), and *Weber v. McGrogan*, 939 F.3d 232, 239–40 (3d Cir. 2019), a plaintiff may create finality after a dismissal without prejudice by clearly electing to stand on the dismissed pleading and forgo amendment.

Applicant first appealed the March 7, 2025 dismissal order in Appeal No. 25-1423. The Clerk issued a jurisdiction-defect letter invoking finality concerns; Appellees adopted that jurisdictional-defect theory; Applicant clarified that he stood on the complaint and had not amended; and the Krause-Phipps-Scirica panel dismissed for lack of jurisdiction, relying on *Weber* and treating Applicant's position as insufficiently clear. CA3 No. 25-1423, ECF Nos. 7, 14, 21, 34.

After 25-1423 was dismissed, Applicant did not amend. He filed finality papers in the district court, including Rule 58 motions, a notice of intent not to amend, clarifications of waiver, a proposed final judgment, and an express election to stand on the dismissed pleadings. EDPA ECF Nos. 68, 70, 71, 72, 72-1, 73. Those filings eliminated any amendment ambiguity under *Borelli* and *Weber*. Applicant then appealed, creating Appeal No. 25-2570. Notice of Appeal, EDPA ECF No. 74.

Within days, the Third Circuit Clerk issued another jurisdiction-defect letter, again stating that the March 7 order might not be final. CA3 ECF No. 7. Applicant objected, moved to strike, and argued that the letter omitted the waiver and Rule 58

filings that perfected finality under *Weber*. CA3 ECF Nos. 8, 9; see EDPA ECF Nos. 68, 70, 71, 72, 72-1, 73.

Judge Leeson then refused to enter final judgment because Applicant had filed the notice of appeal in 25-2570. EDPA ECF No. 78. On April 30, 2026, the appellate panel dismissed 25-2570 because Judge Leeson had not entered final judgment. CA3 ECF No. 30; EDPA ECF No. 80; Attach. Exhs. 17–19.

That sequence inverted *Weber*. District Court withheld the final order because appellate jurisdiction had been invoked, and the Court of Appeals denied jurisdiction because the withheld order did not exist. The result was a closed jurisdictional loop: Applicant could not obtain final judgment because he appealed, and could not obtain appellate review because final judgment had been withheld. Applicant sought rehearing and preserved the finality objection. CA3 ECF No. 31. Applicant also preserved ECF 51's collateral nature, the conflict with finality precedent, and the alternative request for an order directing Judge Leeson to enter final judgment. CA3 ECF No. 31; see Mot. for Entry of Final Judgment and Express Resolution of ECF No. 51, EDPA ECF No. 80.

The Clerk later recharacterized Applicant's notice of continuing prejudicial delay as a rehearing supplement, imposed a cure deadline, and invoked sanctions language without identifying the judge or panel responsible for that determination. Clerk Cure/Recharacterization Notice, CA3 ECF No. 33.

On June 2, 2026, the Third Circuit denied rehearing without addressing the finality sequence, ECF 51's collateral nature, or Applicant's alternative request for

an order directing entry of final judgment. Order Denying Rehearing, CA3 ECF No. 35; Attach. Exhs. 20–21.

The same day, Judge Leeson entered a final order dismissing all federal claims with prejudice. Final Order, EDPA ECF No. 81; Attach. Exhs. 22–23. The final order again dismissed Counts V and VI both for lack of subject-matter jurisdiction and for failure to state a claim. Final Order, EDPA ECF No. 81; Attach. Exhs. 22–23. Judge Leeson did not finally resolve ECF 51, even though the appellate panel had cited ECF 51 as an apparent finality obstacle. Compare CA3 ECF No. 30 and EDPA ECF No. 80 with Final Order, EDPA ECF No. 81; Attach. Exhs. 17–19, 22–23.

Thus, 25-2570 did not fail because Applicant omitted a necessary finality step. It failed because the lower courts made finality depend on reciprocal non-action. Applicant elected to stand on the complaint and requested final judgment; District Court refused final judgment because the appeal was pending; Court of Appeals dismissed because final judgment had not been entered; and District Court entered formal closure only after rehearing was denied. That sequence supplied the appearance of finality without adjudicating the threshold objections concerning *Weber* finality, ECF 51's collateral nature, clerk authority, recusal, subject-matter jurisdiction, merits authority, and the facial Rule 12(b)(1) standard.

The dispositive appellate instruments in 25-2570 were issued by the Restrepo-Porter-Montgomery-Reeves panel. Rehearing was denied after submission to the active Third Circuit, whose listed members included Judges Hardiman,

Shwartz, Krause, and Phipps; Judge Porter signed the denial order. Attach. Exhs. 17–21.

C. Appeal No. 25-2616

Appeal No. 25-2616 arose from a federal complaint filed in the Eastern District of Pennsylvania on August 12, 2025. D. Ct. ECF 1. Applicant sought declaratory and injunctive relief against the Judicial Council of the Third Circuit and two Third Circuit judges in their official capacities. D. Ct. ECF 1. Applicant alleged that officials acting under the Judicial Conduct and Disability Act exceeded the limited administrative authority Congress conferred under 28 U.S.C. §§ 352–354 and the Judicial Conduct and Disability Rules. D. Ct. ECF 1.

The complaint pleaded the statutory defects in detail. Applicant alleged that Acting Chief Judge Hardiman dismissed verified misconduct complaints without identifying the complaints, making factual findings, or applying the governing Rules. D. Ct. ECF 1. Applicant alleged that Judge Shwartz, signing for the Judicial Council, adopted that result and imposed a Rule 10 filing restriction without applying the Rule 10 standard, disclosing a Council vote, citing record evidence, or giving reasons. D. Ct. ECF 1; Attach. Exhs. 31–33. Applicant sought a declaration that the challenged administrative orders were void, an injunction barring enforcement of the filing restriction, and prospective compliance with the statute. D. Ct. ECF 1. In the alternative, if the restriction were deemed statutorily authorized, Applicant sought a First Amendment declaration that the statute and Rules authorized standardless restrictions on protected petitioning activity. D. Ct. ECF 1.

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Applicant invoked 28 U.S.C. § 1331, 28 U.S.C. §§ 2201 and 2202, and the First Amendment. D. Ct. ECF 1. Applicant also pleaded why immunity and finality did not defeat jurisdiction at the threshold: Defendants were not sued for judicial acts; the challenged acts were administrative; Applicant sought prospective relief only; and § 357(c) does not shield orders issued without jurisdiction, without findings, or in violation of mandatory procedures. D. Ct. ECF 1.

On August 14, 2025, before service and within two days of filing, District Judge Leeson dismissed the complaint sua sponte under Rule 12(h)(3). D. Ct. ECF 7. No judicial officer gave the complaint service-stage adversarial development, an appellee response, an evidentiary hearing, a preliminary-injunction hearing, a

merits briefing schedule, or a trial. D. Ct. ECF 7; D. Ct. ECF 9; 3d Cir. ECF 15.

Judge Leeson treated the Judicial Conduct and Disability Act's finality provision as jurisdictional, denied recusal inside the dismissal order, and did not adjudicate the complaint's threshold premise that the challenged acts were administrative acts outside the statute rather than covered Act orders. D. Ct. ECF 7.

On August 15, 2025, Applicant moved for reconsideration and renewed his recusal and threshold-jurisdiction objections. D. Ct. ECF 8. On August 18, 2025, Judge Leeson denied reconsideration, expanded the dismissal rationale to § 357(c), declared judicial review barred "on appeal or otherwise," rejected the ultra vires pathway, turned the constitutional-review arguments against the complaint, and invoked immunity concepts against a complaint seeking prospective declaratory and injunctive relief. D. Ct. ECF 9.

Applicant appealed and preserved recusal, reassignment, ultra vires, First Amendment, and access-to-process objections. D. Ct. ECF 10; 3d Cir. Doc. 7; 3d Cir. Doc. 8. Applicant also sought neutral-tribunal relief and reassignment under 28 U.S.C. § 292(d). 3d Cir. Doc. 8. Clerk-signed appellate papers routed the structural motions to a future merits panel. 3d Cir. ECF 13. The appeal was later submitted on Applicant's brief only. 3d Cir. ECF 15. No appellee appeared, no appellee filed a brief, and no panel held a hearing or heard oral argument. 3d Cir. ECF 15.

Applicant objected to the clerk-signed appellate papers, the unresolved recusal posture, the panel assignment, the lack of adversarial process, and the absence of authenticated Article III panel action. 3d Cir. ECF 16; 3d Cir. ECF 17. Applicant

preserved that ECF 13 and ECF 15 performed adjudicative functions without judicial signatures, routed dispositive structural motions while recusal remained unresolved, and assigned a panel for submission on Applicant’s brief only. 3d Cir. ECF 16; 3d Cir. ECF 17.

The Krause-Phipps-Scirica panel issued a nonprecedential per curiam disposition. 3d Cir. ECF 19; Attach. Exhs. 25–29. The panel did not decide the complaint’s threshold premise that the challenged orders lacked the statutory predicates required to qualify as final Act orders. 3d Cir. ECF 19; Attach. Exhs. 25–29. Instead, the panel characterized the complaint as an impermissible collateral challenge, invoked § 357(c), relied on judicial-conduct finality cases, and treated the Rule 10 filing restriction as a covered Act order even though the complaint disputed that predicate. 3d Cir. ECF 19; Attach. Exhs. 25–29.

Judge Krause relied on *Newman v. Moore*, 151 F.4th 472 (D.C. Cir. 2025), to conclude that its holding precludes review of Judicial Council orders “issued under the Act.” The panel therefore converted a disputed statutory-coverage predicate into an assumed jurisdictional bar. 3d Cir. ECF 19; Attach. Exhs. 25–29. The same disposition denied Applicant’s pending motions and requests, including recusal and § 292(d) relief. 3d Cir. ECF 19; Attach. Exhs. 25–29. The panel warned that continued filings could result in termination of electronic-filing privileges, monetary sanctions, and filing restrictions. 3d Cir. ECF 19; Attach. Exh. 29. The panel prohibited further filings except timely rehearing-related filings. 3d Cir. ECF 19; Attach. Exh. 29.

Applicant filed a Rule 40 petition identifying the omitted threshold issue: § 357(c) could not bar review until an Article III tribunal first determined whether the Rule 10 filing restriction qualified as an “order or determination” issued under the Act. 3d Cir. ECF 20. Applicant explained that finality may protect covered orders, but finality cannot create covered orders. 3d Cir. ECF 20. The Third Circuit denied rehearing without answering that threshold argument. 3d Cir. ECF 22; Attach. Exhs. 34–35.

On June 5, 2026, clerk personnel issued the judgment and opinion in lieu of a formal mandate and directed that the judgment be treated “in all respects as a mandate.” 3d Cir. ECF 23-3; Attach. Exh. 30. That act converted the unadjudicated coverage premise into mandate consequences while the objections to jurisdiction, recusal, tribunal authority, clerk routing, adversarial process, statutory coverage, and sanctions pressure remained unresolved. 3d Cir. ECF 13; 3d Cir. ECF 15; 3d Cir. ECF 16; 3d Cir. ECF 17; 3d Cir. ECF 19; 3d Cir. ECF 20; 3d Cir. ECF 23-3; Attach. Exhs. 25–30.

The district-court dismissal in 25-2616 was entered by Judge Leeson, while the appeal was decided by the Krause-Phipps-Scirica panel in a case naming the Judicial Council, Judge Hardiman, and Judge Shwartz as defendants in their official capacities.

D. Common Actors and Pattern Across the Three Proceedings

Subsections A through C, *supra*, show a common structural pattern. In each proceeding, Applicant invoked federal jurisdiction, constitutional rights, continuing

injury, and threshold objections to tribunal authority, recusal, finality, clerk authority, statutory coverage, and adjudicatory process. In each proceeding, those predicates were treated as resolved before they were adjudicated.

The same judges, panels, and court offices controlled decisive stages of the three proceedings. Judge Leeson presided over the district-court proceedings in 25-2570 and 25-2616. The Krause-Phipps-Scirica panel decided 24-2934 and 25-2616. Judge Porter signed the dispositive appellate orders in 25-2570. Judges Hardiman and Shwartz were named administrative actors in 25-2616 and were also listed among the active Third Circuit judges to whom rehearing was submitted in 24-2934 and 25-2570. The Third Circuit Clerk's Office repeatedly handled routing, jurisdictional framing, mandate issuance, and filing-access consequences. That overlap matters because the same institutional court retained control over objections directed at its own officers, panels, clerk personnel, and administrative acts. No neutral outside tribunal resolved those objections before judgment-like instruments issued.

The same procedural method also recurred. Each case turned on a threshold barrier: abstention and jurisdictional framing in 24-2934, appellate finality in 25-2570, and statutory finality under § 357(c) in 25-2616. In each instance, the disputed predicate was used to close review before the objection to that predicate received ordinary adversarial adjudication. Across all three cases, the proceedings remained paper-only. Applicant received no hearing, no conference, no oral argument, no evidentiary presentation, no ordinary merits briefing sequence, and

no merits adjudication of the pleaded constitutional claims. The presiding officers were never seen or heard by the parties in any live adversarial proceeding.

Taken together, the three proceedings show procedural substitution, not ordinary adjudication. The same institutional process supplied the threshold barriers, retained control over objections to those barriers, and converted unresolved predicates into operative judgment, mandate, sanctions, filing-access, and preclusion consequences. The operative instruments supporting that pattern are attached at Attach. Exhs. 2–15, 17–23, and 25–35.

V. REASONS PRESERVATION RELIEF IS JUSTIFIED

Preservation relief is justified because the challenged instruments rest on disputed predicates that were treated as resolved before they were adjudicated. Section IV supplies the factual showing. The legal consequence is narrow but decisive: instruments resting on unresolved predicates of jurisdiction, finality, recusal, clerk authority, tribunal authority, statutory coverage, fraud, voidness, voidability, and adversarial process should not operate as lawful Article III judgments, mandates, sanctions predicates, filing restrictions, costs, fees, or preclusion devices before this Court reviews their validity.

The facial defects identify the governing grounds. *Bell v. Hood*, 327 U.S. 678, 682–83 (1946), *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89, 94–95 (1998), and Federal Rule of Civil Procedure 12(b)(1) prohibit treating merits defects as jurisdictional defects. *Zwickler v. Koota*, 389 U.S. 241, 248–52 (1967), *Wilton v. Seven Falls Co.*, 515 U.S. 277, 282–90 (1995), *Reifer v. Westport*

Insurance Corp., 751 F.3d 129, 139–46 (3d Cir. 2014), and *Kelly v. Maxum Specialty Insurance Group*, 868 F.3d 274, 282–89 (3d Cir. 2017), require a reasoned, predicate-level determination of whether a contemporaneous and truly parallel state proceeding exists before declaratory-judgment discretion or abstention may displace federal adjudication of pleaded constitutional claims. *EEOC v. City of Long Branch*, 866 F.3d 93, 99–100 (3d Cir. 2017), *Henderson v. Carlson*, 812 F.2d 874, 878–79 (3d Cir. 1987), *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985), and 28 U.S.C. § 636(b)(1) require the Article III district judge to make the final adjudicatory determination, including de novo review of the portions of a magistrate judge’s report and recommendation addressed by specific objections. *Weber v. McGrogan*, 939 F.3d 232, 239–41 (3d Cir. 2019), prevents finality from being obstructed after a plaintiff elects to stand on dismissed pleadings.

Nguyen v. United States, 539 U.S. 69, 77–83 (2003), *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270–71 (2010), and *Marshall v. Board of Education, Bergenfield, New Jersey*, 575 F.2d 417, 422 (3d Cir. 1978), distinguish ordinary legal error from structural voidness where the judgment rests on unlawful tribunal authority, a jurisdictional defect, a due-process deprivation of notice or opportunity to be heard, or a decree beyond the court’s lawful power. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245–46 (1944), and *Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575, 580–81 (1946), confirm the federal courts’ inherent equitable power to protect the integrity of their own proceedings

where fraud is directed at the tribunal itself and corrupts the administration of justice.

The preservation showing differs by proceeding but supports the same relief. As to 24-2934 and 25-2570, Section IV, *supra*, supplies a substantial voidness predicate because judgment, mandate, and enforcement consequences attached without adjudication of threshold objections to jurisdiction, finality, de novo Article III review, adversarial process, and due process. As to 25-2616, Section IV, *supra*, supplies at minimum a voidability and validity-preservation predicate because the lower courts treated § 357(c) statutory coverage as established before adjudicating whether the challenged Rule 10 restriction qualified as a covered Act order.

This Application satisfies Supreme Court Rule 23.3. Applicant identifies the judgments, orders, mandate instruments, sanctions warnings, filing restrictions, clerk directives, and related instruments to be preserved from enforcement, and appends the relevant orders and opinions. See Section VI, *infra*. Applicant sought available relief below through objections, motions to strike, motions to vacate as void, recusal and reassignment motions, rehearing petitions, requests for final judgment, and requests for disposition of unresolved threshold objections. Relief is unavailable below because the lower courts denied, recharacterized, refused action on, or left unresolved the same objections that make the lower-court process the challenged defect.

Rules 22 and 23, 28 U.S.C. § 2101(f), and the All Writs Act supply the procedural and substantive basis for relief. Rule 22 governs presentation to the Circuit Justice. Rule 23.1 permits a Justice to grant a stay “as permitted by law,” and Rule 23.2 permits a party to a judgment sought to be reviewed to seek a stay of enforcement. Section 2101(f) authorizes a Justice to stay enforcement of a judgment subject to certiorari review. The All Writs Act authorizes orders necessary or appropriate to protect this Court’s jurisdiction. Rule 13 confirms the timing interest: certiorari time runs from the judgment or rehearing denial sought to be reviewed, not from mandate issuance.

The injury is irreparable because the challenged instruments convert disputed validity predicates into enforceable legal consequences. Mandate, filing-access, electronic-filing, sanctions, costs, fees, and preclusion consequences have no independent Article III force apart from the judgment or judgment-like instrument they enforce. If the predicate instrument is structurally disputed, enforcement before validity review impairs timely Supreme Court review, chills further efforts to seek lawful relief, and allows non-adjudication to operate as adjudication.

The balance of equities favors preservation. A stay would not decide the merits of Applicant’s underlying constitutional claims, disturb any completed trial, or impose affirmative merits relief against Respondents. It would preserve the status quo while the Circuit Justice or this Court determines whether the challenged instruments may lawfully be enforced. Denial of preservation relief would allow structurally disputed instruments to operate as final judgments,

mandates, sanctions predicates, filing restrictions, and preclusion devices before validity review.

The public interest also favors preservation. Supreme Court Rule 10(a) recognizes that this Court's supervisory review may be warranted where a court of appeals has departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court. Applicant does not invoke Rule 10 as independent stay authority. Applicant invokes Rule 10 to show why preservation serves the public interest while this Court determines whether the challenged instruments resulted from lawful adjudication or from a departure from the ordinary course of Article III proceedings.

Applicant therefore respectfully requests preservation relief pending timely certiorari or further application, including:

1. an order directing transmission of this Rule 22 Application to the Circuit Justice without treating disputed exhaustion, prematurity, jurisdiction, mandate, fraud, voidness, voidability, or structural-defect questions as administrative grounds to prevent presentation;
2. a stay of enforcement of the judgments, judgment-like instruments, judgments or orders in lieu of mandate, mandate consequences, filing restrictions, sanctions warnings, electronic-filing consequences, costs, fees, and preclusion consequences identified in this Application;

3. preservation of Applicant's ability to file timely petitions for writs of certiorari, renewed Rule 22 applications, Rule 23 stay applications, or related protective filings without those filings being treated as barred, restricted, or precluded by the disputed lower-court instruments;
4. preservation of the unresolved recusal, reassignment, clerk-authority, tribunal-authority, mandate-authority, finality, statutory-coverage, fraud-on-the-court, voidness, voidability, and validity objections for review by this Court or another tribunal acting under lawful authority; and
5. any further relief necessary to preserve this Court's jurisdiction and prevent structurally disputed non-adjudication from operating as lawful Article III judgment before review can be obtained.

Applicant asks that the challenged instruments and their derivative consequences not be enforced as lawful judgments, mandates, sanctions predicates, filing restrictions, costs, fees, or preclusion devices until this Court can determine whether the proceedings below supplied the Article III adjudication that lawful enforcement requires.

Respectfully Submitted,



Michael Miller, pro se
108 N. Reading Rd., Ste F, 246
Ephrata, Pennsylvania 17522
717-388-0163
reaganfive@protonmail.com

Dated: June 17, 2026

VI. REQUIRED ATTACHMENTS UNDER SUPREME COURT RULE 23.3

Applicant appends only the instruments required by Supreme Court Rule 23.3 and the judgment-like instruments whose enforcement consequences Applicant asks the Circuit Justice to preserve from operation. Applicant does not append the full lower-court records, docket reports, motions practice, briefing, or record indexes. Public docket links are supplied in the Introduction only for docket-location convenience.

The required attachments are:

- 24-2934: the Third Circuit opinion and judgment, the order denying rehearing or related preservation relief, and the judgment or mandate instrument whose enforcement consequences are challenged.
- 25-2570: the Third Circuit dismissal order, the order denying rehearing or related preservation relief, the judgment or mandate instrument, and the EDPA June 2, 2026 final order.
- 25-2616: the Third Circuit opinion and judgment, the order denying rehearing or related preservation relief, the judgment or mandate instrument, and any separate order or instrument—if not already contained in the opinion or judgment—that imposes or threatens filing restrictions, sanctions, or electronic-filing consequences.

These attachments are submitted solely to satisfy Rule 23.3 and to identify the judgment-like instruments and enforcement consequences sought to be stayed.

VII. CERTIFICATE OF COMPLIANCE

This filing contains 5,326 words as determined by the word-processing system used to prepare it.

Respectfully Submitted,



s/ Michael Miller

Michael Miller

Dated: June 17, 2026

AFFIDAVIT OF SERVICE

I, Michael Miller, declare as follows:

1. I am the Applicant in this matter, proceeding pro se.
2. On June 17, 2026, I served true and correct copies of the *Application to Circuit Justice for Preservation Stay Pending Certiorari or Further Application*, including the required Rule 23.3 attachments.
3. Service for Appeal No. 24-2934 was made on counsel of record for the Pennsylvania Office of Open Records:

Michael Scarinci
mscarinci@attorneygeneral.gov
PA I.D. No. 323816
Pennsylvania Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
717-857-2184
Counsel in 24-2934

4. Service for Appeal Nos. 24-2934 and 25-2570 was made by email on counsel of record for County of Lancaster, et al.:

Sarah Hyser-Staub
sstaub@mcneeslaw.com
PA I.D. No. 315989
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, Pennsylvania 17101
717-237-5473
Counsel in 24-2934 and 25-2570

5. In Appeal No. 25-2616, no appellee appeared and no counsel of record appeared for the Judicial Council of the Third Circuit, Judge Thomas M. Hardiman, or Judge Patty Shwartz. Because 25-2616 named federal official-

capacity respondents, service was made by U.S. Mail on the Solicitor General of the United States under Supreme Court Rule 29.4:

Solicitor General of the United States
Room 5616
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

6. Service in Appeal No. 25-2616 was also made by U.S. mail on the official-capacity respondents at their official court address:

Judicial Council of the United States Court of Appeals for the Third Circuit
Judge Thomas M. Hardiman, in his official capacity
Judge Patty Shwartz, in her official capacity
c/o Clerk of Court
United States Court of Appeals for the Third Circuit
601 Market Street
Philadelphia, Pennsylvania 19106

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 17, 2026, at Ephrata, Pennsylvania.

s/ Michael Miller 

Michael Miller, Applicant

24-2934: the Third Circuit opinion and judgment, the order denying rehearing or related preservation relief, and the judgment or mandate instrument whose enforcement consequences are challenged.

CLD-163

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2934

MICHAEL MILLER,
Appellant

v.

COUNTY OF LANCASTER, Political Subdivision;
OFFICE OF OPEN RECORDS, State Agency

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 1:24-cv-00014)
District Judge: Honorable Jennifer P. Wilson

Submitted for Possible Summary Action, and on Appellant's Motion to
Summarily Reverse, Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
June 12, 2025

Before: KRAUSE, PHIPPS, and SCIRICA, Circuit Judges

(Opinion filed: July 28, 2025)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Michael Miller appeals from the District Court’s order dismissing his complaint.

We will affirm.

I.

In 2022, Miller unsuccessfully ran for Pennsylvania State Senate in a district within Lancaster County. He later requested three categories of voting records from the County under Pennsylvania’s Right to Know Law.

First, Miller asked to inspect and copy mail-in ballots and envelopes. The County’s Office of Open Records (“OOR”) ordered it to make certain of those records available “subject to the provisions of the Election Code,” and the County made them available under conditions including that Miller could inspect the documents under supervision and take notes but not make copies. Miller instead filed a petition in the Court of Common Pleas for Lancaster County to “enforce” the OOR’s order in which he sought unconditional access. That court denied his petition, and the Commonwealth Court affirmed on the ground that the conditions were consistent with both the OOR’s order and the Election Code. See Miller v. County of Lancaster, No. 595 C.D. 2023, 2025 WL 1086877, at *6-8 (Pa. Commw. Ct. Apr. 11, 2025).

Second, Miller requested digital images of the same mail-in ballots and envelopes. The County denied this request on the ground that the records did not exist in that format.

The OOR, the Court of Common Pleas, and the Commonwealth Court all have affirmed that decision. See Miller v. County of Lancaster, No. 596 C.D. 2023, 2025 WL 1088110, at *1, 10 (Pa. Commw. Ct. Apr. 11, 2025).

Finally, Miller requested the Cast Vote Records for the election. The County denied his request, and the OOR denied his appeal. Miller did not seek further review.

While Miller’s Commonwealth Court appeals were pending, he filed pro se the federal action at issue here. He named Lancaster County and the OOR as defendants, and he requested two forms of relief. First, he requested a declaratory judgment that the decisions of the County, the OOR, and the Court of Common Pleas, as well as the provisions of Pennsylvania law they applied—all of which he characterized as “restraints” on his access to voting records—are invalid under the First and Fourteenth Amendments. In that regard, he asked the court to “address” 23 questions about his state proceedings and Pennsylvania law. Second, Miller also asked the court to enjoin these alleged “restraints,” including various provisions of Pennsylvania law that he asked the court to replace with its own “interim provisions for public record access.” (ECF No. 1 at 19 ¶ 105.) Although Miller couched many of his requests in constitutional terms, his constitutional claims were wholly vague and conclusory.¹

¹ For example, Miller asserted his First Amendment claim primarily by posing a series of generalized questions such as “[d]oes the County’s imposition of restraints constitute action by which the government might prevent free and general discussion of public

The defendants filed motions to dismiss Miller’s complaint, and a Magistrate Judge recommended granting them on the ground that the District Court should exercise its discretion under the Declaratory Judgment Act to decline to hear the suit. The Magistrate Judge recommended in the alternative that the court transfer the suit to the Eastern District of Pennsylvania, which encompasses Lancaster County. Miller filed objections, but the District Court overruled them and adopted the Magistrate Judge’s primary recommendation to dismiss the suit, which it did with prejudice.

Miller responded by filing both a separate civil action in the Eastern District of Pennsylvania² and this appeal. In this appeal, our Clerk advised Miller that the Court would consider taking summary action, which we may do when an appeal presents no substantial question. See 3d Cir. L.A.R. 27.4(a) (2011). Miller has filed several

matters?” and “[m]ight the State’s actions . . . prevent free and general discussion of public matters?” (ECF No. 1 at 19 ¶ 74, 21 ¶ 90.) Miller’s due process and equal protection claims were similarly undeveloped. (E.g., id. at 21 ¶ 94) (“Did the judicial review provided to Miller satisfy due process and equal protection requirement[s]?”). Miller did not allege anything permitting a meaningful declaration on these issues.

² See Miller v. County of Lancaster, et al., E.D. Pa. Civ. No. 5:24-cv-05338. In that case, Miller asserted numerous similar claims against Lancaster County and other defendants and requested similar declaratory and injunctive relief as well as damages. His 83-page amended complaint in that case provided more detail about his claims than he provided here. In that case, the District Court dismissed most of Miller’s claims but gave him leave to amend some of them, which Miller still has. Miller has appealed that ruling at C.A. No. 25-1423, which we are addressing separately.

responses on that issue and numerous other documents, including a brief on the merits and his own motion for summary action. We have jurisdiction under 28 U.S.C. § 1291.

II.

We will affirm. The District Court had “substantial discretion” to decline Miller’s request for a declaratory judgment, Reifer v. Westport Ins. Corp., 751 F.3d 129, 139 (3d Cir. 2014) (quotation marks omitted), and we review its ruling only for abuse of that discretion, see id. at 140. We review attendant legal issues de novo. See Kelly v. Maxum Specialty Ins. Grp., 868 F.3d 274, 281 (3d Cir. 2017).

We perceive no abuse of discretion or reversible error of law here. The Magistrate Judge identified the general factors that a court must consider in declining a declaratory judgment, see Reifer, 751 F.3d at 140, and the court did not abuse its discretion in adopting the Magistrate Judge’s assessment of those factors. Among other things, the Magistrate Judge considered Miller’s pending proceedings in state court and some potential impediments to resolving his federal claims in the manner he presented them here. See id. The Magistrate Judge also considered the convenience of the parties in determining that the Eastern District of Pennsylvania would be a more convenient forum. See id. Indeed, now that Miller has substantially litigated his more specific claims in that forum, the court’s decision to decline a declaratory judgment in this case appears even more appropriate.

Miller, despite his many filings, has raised only two related challenges to the District Court’s ruling that we need address.³ Miller argues that his pending Commonwealth Court appeals were not “parallel state proceedings” for declaratory judgment purposes. Kelly, 868 F.3d at 282 (quotation marks omitted). He further argues that the District Court erred in reviewing the Magistrate Judge’s assessment of that issue only for clear error or manifest injustice because his objections were specific enough to trigger de novo review. But even if we agreed with Miller on that second point, any error in that regard would be harmless because we review the issue de novo ourselves, see id. at 281, and because Miller’s underlying argument lacks merit.

Miller argues that his Commonwealth Court appeals were not “parallel state proceedings” for declaratory judgment purposes because they did not include his federal claims.⁴ This argument ignores the fact that Miller himself raised his federal claims in at least one of those appeals. See, e.g., Miller, 2025 WL 1086877, at *3 (noting Miller’s argument “that County and common pleas violated Miller’s rights under the First and

³ In so concluding, we reject as meritless all of Miller’s other arguments, including that the Magistrate Judge and District Court committed judicial misconduct and that the court should have granted him a default judgment.

⁴ Miller relatedly argues in his motion for summary action that the District Court was required to hear his federal claims pursuant to Zwickler v. Koota, 389 U.S. 241 (1967). But Zwickler was an abstention case in which the Court did not discuss courts’ discretion under the Declaratory Judgment Act or opine on whether the plaintiff was entitled to a declaration. See id. at 244-45 & n.3.

Fourteenth Amendments to the United States Constitution”); see also id. at *4 (noting the County’s argument that Miller’s constitutional claims there were “vague and uncertain”). In any event, Miller’s claims in this case too were “vague and uncertain” and in fact were so conclusory that they failed to meaningfully assert any federal right that the District Court could have declared.⁵ Thus, any error in this regard was harmless as well.

We note one final issue. In his complaint, Miller requested both declaratory and injunctive relief. The Magistrate Judge acknowledged Miller’s requests for injunctive relief but did not address whether they were independent of his requests for declaratory relief such that the court should have heard them regardless of its decision to decline a declaration. See Rarick v. Federated Serv. Ins. Co., 852 F.3d 223, 229 (3d Cir. 2017). Miller, however, has not raised or even mentioned that issue in his many filings with this Court. And even if we were to reach it, we would perceive no reversible error because his underlying claims were wholly vague and conclusory as explained above. Many of Miller’s requests also failed as a matter of law for other reasons, including that federal courts cannot rewrite state statutes as he asked. See Ayotte v. Planned Parenthood of N. New England, 546 U.S. 320, 329 (2006); Conchatta Inc. v. Miller, 458 F.3d 258, 263, 265 (3d Cir. 2006).

⁵ We again note that Miller later asserted more specific constitutional claims in his action in the Eastern District of Pennsylvania and that he still has leave to amend some of those claims. We express no opinion on the merits of that action or any claim therein.

III.

For these reasons, we will affirm the judgment of the District Court. Miller's motions and requests for relief are denied.

CLD-163

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2934

MICHAEL MILLER,
Appellant

v.

COUNTY OF LANCASTER, Political Subdivision;
OFFICE OF OPEN RECORDS, State Agency

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 1:24-cv-00014)
District Judge: Honorable Jennifer P. Wilson

Submitted for Possible Summary Action, and on Appellant's Motion to
Summarily Reverse, Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
June 12, 2025

Before: KRAUSE, PHIPPS, and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted for possible summary action, and on Appellant's motion to summarily reverse, pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on June 12, 2025. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered September 30, 2024, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: July 28, 2025

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

TELEPHONE

215-597-2995

July 28, 2025

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Michael Miller
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Ephrata, PA 17522

Michael J. Scarinci
Office of Attorney General of Pennsylvania
Strawberry Square 15th Floor
Harrisburg, PA 17120

RE: Michael Miller v. County of Lancaster, et al
Case Number: 24-2934
District Court Case Number: 1:24-cv-00014

ENTRY OF JUDGMENT

Today, **July 28, 2025**, the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service, unless the petition is filed and served through the Court's electronic-filing system.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. A party seeking both forms of rehearing must file the petitions as a single document. Fed. R. App. P. 40(a).

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ James King
Case Manager
267-299-4958

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2934

MICHAEL MILLER,
Appellant

v.

COUNTY OF LANCASTER, Political Subdivision;
OFFICE OF OPEN RECORDS, State Agency

(D.C. Civ. No. 1:24-cv-00014)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES,
CHUNG, BOVE, MASCOTT, and SCIRICA*, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

*As to panel rehearing only.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Anthony J. Scirica
Circuit Judge

Date: May 18, 2026

Tmm/cc: Michael Miller

Sarah A. Hyser-Staub, Esq.

Michael J. Scarinci, Esq.

25-2570: the Third Circuit dismissal order, the order denying rehearing or related preservation relief, the judgment or mandate instrument, and the EDPA June 2, 2026 final order.

DLD-120

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 25-2570

MICHAEL MILLER, Appellant

VS.

COUNTY OF LANCASTER; ET AL.

(E.D. Pa. Civ. No. 5:24-cv-05338)

Present: RESTREPO, PORTER, and MONTGOMERY-REEVES, *Circuit Judges*

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
- (2) Appellant's motion to recuse Judges Krause, Phipps, Scirica, Hardiman, and Shwartz (Docket No. 6);
- (3) Appellant's jurisdictional response (Docket No. 8);
- (4) Appellant's motion to vacate Legal Division letter (Docket No. 9);
- (5) Appellees' jurisdictional response (Docket No. 13)
- (6) Appellant's supplemental motion to vacate Legal Division letter (Docket No. 14);
- (7) Appellant's motion for recusal of all Third Circuit judges (Docket No. 15);
- (8) Appellees' response in opposition to appellant's motion at Docket No. 14 (Docket No. 18);
- (9) Appellant's reply in support of motion at Docket No. 14 (Docket No. 19);

DLD-120
MICHAEL MILLER
V.
COUNTY OF LANCASTER; ET AL.
C.A. No. 25-2570
Page 2

- (10) Appellant's motion to strike and vacate Clerk filing (Docket No. 20);
- (11) Appellant's corrected motion for judicial notice, etc. (Docket No. 23);
- (12) Appellees' response thereto (Docket No. 25);
- (13) Appellant's reply (Docket No. 26); and
- (14) Appellant's supplemental motion for judicial notice, etc. (Docket No. 27)

in the above-captioned case.

Respectfully,

Clerk

ORDER

This appeal is dismissed for lack of appellate jurisdiction, and appellant's motions and requests for relief are denied. Appellant seeks to appeal from the order of partial dismissal without prejudice entered at ECF No. 36. Appellant previously appealed from that order at C.A. No. 25-1423, and we dismissed his appeal because the order was not a final decision under 28 U.S.C. § 1291. We concluded, *inter alia*, that appellant did not validly stand on his complaint and thus did not create the necessary finality under that theory. *See Weber v. McGrogan*, 939 F.3d 232, 240 (3d Cir. 2019).

Following further proceedings in the District Court, appellant has appealed from the same order again and argues that he now has validly stood on his complaint. But the order remains non-final by its terms, and the stand-on-the-complaint doctrine does not make it final under the circumstances presented here. Those circumstances include the facts that: (1) appellant continued to assert his right to amend and continued to

equivocate even after we dismissed his previous appeal; (2) although appellant eventually requested an express order of dismissal without leave to amend from the District Court, the court has not yet entered one or otherwise ruled on the substance of that request; and (3) at least one other motion (ECF No. 51) appears to remain pending in the District Court (ECF No. 63 at 3). Thus, we dismiss this appeal too for lack of appellate jurisdiction. Appellant is advised that he can appeal this matter under § 1291 by filing a timely notice of appeal if and when the District Court enters a final order of dismissal without leave to amend.

To the extent that appellant’s filings on appeal can be construed to request an order directing the District Court to enter such an order or to rule on any other matter, that request is denied. We are confident that the court will issue such further rulings as may be warranted in due course. Appellant’s other motions and requests for relief are denied as well. Those requests include appellant’s requests for the recusal of all judges of this Court. We deny the request for recusal as to ourselves. In light of that ruling, appellant’s request for a certificate under 28 U.S.C. § 292(d) is unnecessary. This ruling is without prejudice to appellant’s ability to seek the recusal of other judges if he files a petition for rehearing.

By the Court,

s/ David J. Porter
Circuit Judge

Dated: April 30, 2026
DWB/arr/cc:
Mr. Michael Mller
Sarah A. Hyser-Staub



A True Copy:

Patricia S. Dodszeit, Clerk
Certified Order Issued in Lieu of Mandate

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2570

MICHAEL MILLER,
Appellant

v.

COUNTY OF LANCASTER; TAMMY BENDER;
JACQUELINE PFURSICH; JOSHUA PARSONS;
RAY D'AGOSTINO; CHRISTA MILLER

(E.D. Pa. No. 5:24-cv-05338)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, BOVE, and MASCOTT, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ David J. Porter

Circuit Judge

Dated: June 2, 2026

cc: Michael Miller

Sarah A. Hyser-Staub, Esq.

- a. Count V and VI of the Amended Complaint, ECF No. 4, are **DISMISSED with prejudice** for lack of subject matter jurisdiction and **DISMISSED with prejudice** for failure to state a claim.
- b. Count X of the Amended Complaint is **DISMISSED with prejudice**, as untimely.
- c. Counts I, IX, and XI are **DISMISSED with prejudice**, for failure to state a claim.
- d. Counts II, III, IV, and XII are **DISMISSED with prejudice**, for failure to state a claim.

2. Having dismissed all federal claims with prejudice, the Court declines to exercise supplemental jurisdiction over the state law claims. Counts VII and VIII of the Amended Complaint, ECF No. 4, are **DISMISSED with prejudice** for lack of jurisdiction.

3. This case is **CLOSED**.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge

25-2616: the Third Circuit opinion and judgment, the order denying rehearing or related preservation relief, the judgment or mandate instrument, and any separate order or instrument—if not already contained in the opinion or judgment—that imposes or threatens filing restrictions, sanctions, or electronic-filing consequences.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2616

MICHAEL MILLER,
Appellant

v.

JUDICIAL COUNCIL OF THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT; JUDGE
THOMAS M. HARDIMAN, In His Official Capacity; JUDGE
PATTY SHWARTZ, In Her Official Capacity

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 5:25-cv-04633)
District Judge: Honorable Joseph F. Leeson, Jr.

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 4, 2025

Before: KRAUSE, PHIPPS, and SCIRICA, Circuit Judges

(Opinion filed: April 22, 2026)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Michael Miller appeals from an order dismissing his complaint. We will affirm.

I.

Miller has filed pro se several election-related lawsuits and appeals in this Circuit. Dissatisfied with the results thus far, he filed eleven judicial-misconduct complaints. After those proceedings concluded, he filed pro se the civil action at issue here seeking in essence to collaterally challenge the outcome of those proceedings. Toward that end, he named as defendants the Judicial Council of this Circuit and two of its member judges, and he alleged that various of their rulings violated the governing statutes. He also asserted what he called a “conditional” claim that, if the rulings were statutorily authorized, then the statutes violate the First Amendment as applied to him.

The District Court sua sponte dismissed Miller’s complaint for lack of subject-matter jurisdiction. Miller then filed a timely motion under Fed. R. Civ. P. 59(e), which the court denied. In its orders, the court held that 28 U.S.C. §§ 352(c) and 357(c) divested it of jurisdiction over Miller’s challenges to the orders entered in his judicial-misconduct proceedings and that the court otherwise lacked a basis to review the defendants’ alleged conduct. Miller appeals.¹

II.

¹ We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review over dismissals for lack of subject-matter jurisdiction based on the face of the complaint. See Treasurer of N.J. v. U.S. Dep’t of Treasury, 684 F.3d 382, 395 (3d Cir. 2012). We also exercise plenary review over the legal issues raised by Miller’s Rule 59(e) motion, though we review the ultimate denial of that motion only for abuse of discretion. See Long v. Atl. City Police Dep’t, 670 F.3d 436, 446-47 & n.20 (3d Cir. 2012).

We will affirm because the District Court properly held that Miller’s complaint is barred by § 357(c). That statute governs review of orders in judicial misconduct proceedings, and it provides in relevant part that “all orders and determinations [in such proceedings], including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.” 28 U.S.C. § 357(c). We agree that this statute bars the claims that Miller asserted in this case. See Newman v. Moore, 151 F.4th 472, 479-80 (D.C. Cir. 2025) (discussing that court’s previous holding in McBryde v. Committee to Review Circuit Council Conduct & Disability Orders of the Judicial Conference of the United States, 264 F.3d 52 (D.C. Cir. 2001), that “§ 357(c) bars from federal court [all] statutory and as-applied constitutional challenges to judicial council or Judicial Conference orders issued under the [Judicial Councils Reform and Judicial Conduct and Disability] Act [of 1980]”).

Miller argues that § 357(c) does not bar any constitutional claims, but it bars the “conditional” as-applied challenge that he asserted in this case. See id. at 480-82. Section § 357(c) might not bar certain facial constitutional challenges, see id. at 480, 483, but we do not address that issue because Miller has not asserted any such challenge or otherwise raised anything suggesting a basis for one. See Free Speech Coalition, Inc. v. Att’y Gen., 974 F.3d 408, 427 (3d Cir. 2020) (discussing the standard for a facial First Amendment overbreadth challenge).

Miller raises three other arguments, but they lack merit too. First, he challenges the District Judge’s denial of a recusal motion. He argues that the judge should have decided the motion separately instead of denying it as part of the order of dismissal, but

we see no error in that regard. Nor did the judge abuse his discretion in declining to recuse because the circumstances on which Miller relied (including his prior complaints about the judge and the judge's prior rulings) did not suggest any bias or appearance of partiality. See Azubuko v. Royal, 443 F.3d 302, 304 (3d Cir. 2006) (per curiam); Securacomm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000). We see nothing else that does.

Second, Miller argues that the District Court improperly “collapsed” merits determinations into its jurisdictional ruling. He claims, for example, that the court improperly issued a merits ruling by rejecting his argument that the defendants’ allegedly ultra vires acts were reviewable under Leedom v. Kyne, 358 U.S. 184 (1958). But that argument went to the court’s jurisdiction, and the court properly rejected it. See McBryde, 264 F.3d at 63 (rejecting the same argument). The court otherwise squarely and properly held that § 357(c) deprived it of jurisdiction over Miller’s claims. Given that ruling, we need not address other potential impediments to those claims, including sovereign immunity and judicial immunity.

Third, Miller argues that the court erred in dismissing his complaint without any adversarial process. But courts may raise the issue of subject-matter jurisdiction sua sponte and must dismiss an action whenever such jurisdiction is lacking. See In re Plavix Mktg., Sales Pracs. & Prods. Liab. Litig. (No. II), 974 F.3d 228, 232 (3d Cir. 2020) (citing Fed. R. Civ. P. 12(h)(3)). And although courts should first provide notice and an opportunity to respond, Miller has had ample opportunity to respond on the jurisdictional

issue in his Rule 59(e) motion and on appeal. He has not raised anything suggesting that the court had any basis for exercising jurisdiction in this case, and it did not.

III.

For these reasons, we will affirm the judgment of the District Court. Miller's motions and other requests for relief in this Court are denied.² We note that many of the motions and other documents that Miller has filed in this appeal and in other appeals and proceedings with this Court have been frivolous, repetitive, and otherwise abusive. Miller is warned that, if he continues to file documents with this Court that are frivolous, repetitive, or otherwise abusive, then the Clerk will terminate his electronic filing privileges pursuant to 3d Cir. L.A.R. Misc. 113.2(d) and the Court will consider imposing sanctions. Such sanctions could include a monetary fine, an order restricting Miller's ability to file documents with this Court until the fine is paid, and other restrictions on his ability to file documents with this Court. In addition, now that we have resolved this appeal, Miller is prohibited from filing further documents in this appeal except for a timely petition for rehearing and any motions necessary to bring a timely petition for rehearing into compliance with the rules governing such petitions. Any violation of this prohibition will result in termination of Miller's electronic filing privileges and could result in further sanctions as noted above.

² These requests include Miller's motion for the recusal of all Third Circuit judges. We deny that motion as to ourselves. Given our ruling, Miller's request for issuance of a certificate under 28 U.S.C. § 292(d) is unnecessary.

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

June 5, 2026

TELEPHONE

215-597-2995

Mr. George V. Wylesol
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street
Philadelphia, PA 19106

RE: Michael Miller v. Judicial Council United States Third Circuit Court, et al
Case Number: 25-2616
District Court Case Number: 5:25-cv-04633

Dear District Court Clerk:

Enclosed herewith is the certified judgment together with copy of the opinion in the above-captioned case. The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment shows costs taxed, if any.

Very Truly Yours,

s/ Patricia S. Dodszuweit
Clerk

By: s/ Desiree
Case Manager
267-299-4252

cc: Michael Miller

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-25-90022, 03-25-90023, 03-25-90025,
03-25-90028, 03-25-90029, 03-25-90030, 03-25-90034, 03-25-90039

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

ORDER

(Filed: June 27, 2025)

PRESENT: SHWARTZ, KRAUSE, RESTREPO, BIBAS, HORNAK, CONNOLLY,
BRANN, BUMB, and GOLDBERG, Members of the Judicial Council¹

Throughout 2024 and 2025, Complainant has filed numerous complaints of judicial misconduct pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64. See J.C. Nos. 03-24-900148, 03-24-900149, 03-25-90018, 03-25-90022, 03-25-90023, 03-25-90025, 03-25-90028, 03-25-90029, 03-25-90030, 03-25-90034, 03-25-90039. These complaints are replete with frivolous allegations, lack sufficient evidence to raise an inference that misconduct occurred, and attempt to challenge the merits of judicial decisions and procedural rulings even though such allegations are not cognizable

¹ Two members of the Judicial Council did not participate in the disposition of this matter pursuant to Rule 25, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

under the Judicial Conduct and Disability Act.

In light of this history, the Judicial Council issued an order on June 4, 2025, directing Complainant to show cause in writing why he should not be enjoined under Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings from filing further complaints of judicial misconduct or disability under the Judicial Conduct and Disability Act with the Judicial Council of the Third Circuit.² Complainant filed a response to the order to show cause on June 17, 2025.

Upon careful review of the record, the Judicial Council of the Third Circuit concludes that Complainant has abused the complaint procedure and that restriction of the right to file further complaints is warranted. The Judicial Council therefore orders that Complainant is hereby enjoined under Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings from filing further complaints of judicial misconduct or disability under the Judicial Conduct and Disability Act in this Circuit. This restriction shall remain in effect until further order of the Judicial Council.

² Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides:

A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

For the Council,

s/ Patty Shwartz
Circuit Judge

Dated: June 27, 2025

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2616

MICHAEL MILLER,
Appellant

v.

JUDICIAL COUNCIL OF THE UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT; JUDGE THOMAS M. HARDIMAN, In His Official Capacity;
JUDGE PATTY SHWARTZ, In Her Official Capacity

(E.D. Pa. No. 5:25-cv-04633)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, KRAUSE, RESTREPO, BIBAS, PORTER,
MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, BOVE,
MASCOTT, and SCIRICA*, Circuit Judges

The petition for rehearing filed by Appellant Michael Miller in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the

* Judge Scirica's vote is limited to panel rehearing only.

judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Cheryl Ann Krause
Circuit Judge

Dated: May 28, 2026
dwb/nmb/cc: Michael Miller