No. 23-1162

In the Supreme Court of the United States

Representative Dawn Keefer, et al.,

Petitioners,

v.

Joseph R. Biden, et al.,

Respondents.

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

MOTION TO EXPEDITE CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI AND TO EXPEDITE CONSIDERATION OF THIS MOTION

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Pursuant to Supreme Court Rule 21, the Petitioners, 27 Pennsylvania Legislators, respectfully move for expedited consideration of their petition for a writ of certiorari before judgment, filed on April 23, 2024. The U.S. District Court for the Middle District of Pennsylvania dismissed the Petitioners' amended complaint against President Biden, and federal and state executives for lack of standing. The petition raises the important question of whether individual state legislators have standing to sue if their votes to defeat or enact specific legislation regulating federal elections have been nullified by unilateral executive edict. It is of particular concern in an exceedingly narrow scope of matters, here, concerning a federal constitutional duty and privilege granted under the Elections Clause or Electors Clause or both, to a limited number of individuals elected as state legislators.

Under the Elections Clause and the Electors Clause, the Petitioners challenged the actions of members of the executive branch who made (and continue to make) changes to the manner of Pennsylvania's elections without the involvement of the state legislators. When executive officials make unilateral changes to the manner of elections, the politically aligned legislators who support the changes are not harmed. Here, only some of the Pennsylvania legislators, who do not support the executive changes to the manner of elections, suffer the injury. Therefore, executive actions complained of in Petitioners' complaint, that result in the nullification of the votes of some legislators is not an institutional injury because the executive actions do not damage all members of the General Assembly equally. The law-making process has been usurped by executive action. The district court's suggestion that the legislators should attempt a new law-making process to regain the power usurped would be futile.

The decision of the district court poses a severe, immediate, and on-going threat to the orderly conduct of the upcoming election in Pennsylvania, where early voting will begin in September. The legislators have no recourse but to ask the judicial branch to curtail the unconstitutional overreach of the executive branch and restore the balance of power.

The question of individual legislator standing remains an important issue on narrow claims regarding violations of the Elections and Electors Clauses of the US Constitution. When executive actions effectively *amend* or *repeal* state election laws, as they have in Pennsylvania, those executive actions distort the state legislative law-making function regulating federal election law, unilaterally nullifying legislator duties guaranteed through the Constitution. Individual legislators must have standing to enjoin those executives' usurpative acts—and time is of the essence. As Justice Thomas wrote, when the actions of nonlegislative officials "alter election results, they can severely damage the electoral system on which our selfgovernance so heavily depends. If …officials have the authority they have claimed we have to make it clear. If not, we have to put an end to this practice now before the consequences become catastrophic." *Republican Party of Pennsylvania v Degraffenreid,* 141 S.Ct. 732, 735 (2021)(*J. Thomas, dissenting from denial of certiorari*).

The Court's expedited review is necessary to prevent further harm to the legislators' rights and through them, the rights of the citizens of the Commonwealth to have an election free from outside third party influence and unchecked, unilateral executive rule changes "in the middle of the game." *Id.* The lower court's decision to deny standing was based upon an incorrect application of *Raines v. Byrd*, 521 U.S. 811 (1997), a case in which legislators alleged institutional injury. Petitioners are alleging personal injury of a type recognized in *Coleman v. Miller*, 307 U.S. 433 (1939). The lower court's conflation of the Court's holdings in *Coleman* and *Raines* on the issue of individual legislator standing must be resolved. Without this Court's intervention, the unchecked actions of executive officials will continue. While the legislators recognize that this motion is not a matter of right, but of discretion that is sparingly exercised by this Court; here, these time-sensitive, exceptional circumstances warrant the exercise of the Court's discretionary powers. Petitioners have no other recourse to obtain relief in the four short months remaining before voting begins in the 2024 federal election. Under the ordinary briefing schedules provided by the Court's rules, the Pennsylvania Legislators' petition for certiorari

would not be resolved until September 26, 2024, and in the event the Court grants review, the case would not be argued and decided until next Term, long after the 2024 election has been decided.

Given the pressing need for prompt resolution of the question presented, the 27 Pennsylvania Legislators, therefore, respectfully request that the Court expedite its consideration of their petition for writ of certiorari. Should the Court grant the petition, the Petitioners request review at this Court's May 9 or May 16 conference. Alternative briefing and argument schedules are proposed below which would permit the Court to hear and decide the case this Term.

STATEMENT

1. President Biden's Executive Action Has Nullified the Votes of Legislators and Violates Pennsylvania Election Law

In the aftermath of the 2020 Election, 28 state legislatures, including Pennsylvania, passed laws prohibiting the influence of outside organizations in election operations. This was largely in response to the more than $400 million dollars of Zuckerberg-Chan Foundation donations that were selectively distributed by partisan third party non-governmental organizations. As the Committee of House Administration Chairman explained, the third party involvement,

> …sowed distrust in our elections. Publicly, CTCL said these funds were intended to support poll worker recruitment efforts or the purchase of new equipment. But in reality, some of these funds were used primarily for voter registration events and get-out-the-vote efforts in Democrat-leaning cities and counties.[1]

On March 7, 2021, President Biden issued Executive Order No. 14019 (EO) applying to all 50 states, including Pennsylvania. This executive order commanded the political appointees who lead federal agencies to develop plans to use the agencies of the federal government to conduct get-out-the-vote activities and voter registration drives in partnership with Biden administration approved third party non-governmental organizations. Congress did not authorize this executive action and no funding has been appropriated for the agencies to engage in these election activities.

[1] Source: https://cha.house.gov/2024/2/chairman-steil-delivers-opening-remarks-at-zuckerbucks-hearing

The Pennsylvania legislature did not authorize these election activities. In fact, a Pennsylvania law, enacted after the 2020 election (25 P.S. § 107) prohibits it. But, President Biden and his political appointees are doing it anyway. Pennsylvania law requires that any costs incurred for "elections in this Commonwealth shall be funded only upon lawful appropriation of the Federal, State and local governments, and the source of funding shall be limited to money derived from taxes, fees and other sources of public revenue." 25 P.S. § 107(a)(2022). Because Congress has not appropriated funds for the EO, all activities in furtherance of the EO are contrary to and a violation of Pennsylvania law. To be sure, federal statutes preempt state laws under the Supremacy Clause and the Elections Clause. But, EO14019 is no federal statute. Therefore, Pennsylvania state law regulating the registration of voters preempts EO14019. The will of the individual legislators manifested through their duty and opportunity to vote and enact a final legislative action, here 25 P.S. § 107 (2022), is nullified. Executive Order 14019 nullifies the intended legal effects of that enacted state law, depriving the individual state legislators of the intended legal effects of their successful vote on 25 P.S. § 107 (2022)—a legally cognizable injury under Article III per *Coleman*.

Determining the time, place, and manner of federal elections is a duty conferred through the Elections Clause or the Electors Clause or both, granted to state legislators pursuant to their respective state constitutions. The Pennsylvania State Constitution, Article VII, Section 1 clearly places the duty of passing laws regulating the registration of electors on the General Assembly.

> Every citizen 21 years of age, possessing the following qualifications, shall be entitled to vote at all elections **subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact**. (emphasis added)

EO14019 nullifies the votes of the individual legislators by usurping the law-making process that led to enactment of Act 88 of 2022 (25 P.S. § 107). Introduced as Senate Bill 982 (SB982), the **legislation received votes sufficient to enact** and was signed into law on July 11, 2022. When the legislation was introduced as SB982, the sponsor's memo explained the need to prevent public officials

from partnering with third party non-governmental organizations "for the registration of voters or the preparation, administration or conducting of an election in this Commonwealth." 25 P.S. § 107(b). From the legislative record:

> No matter how well-intended, such outside support has the potential to unduly influence election procedures, policies, staffing, and purchasing, which in turn may unfairly alter election outcomes. Even more importantly, it stands to erode voter confidence in a pillar of our beloved democracy…The 2020 Presidential Election saw non-governmental entities contribute hundreds of millions of dollars…Further, it has been reported that this funding was only secretly vetted by certain high-ranking officials from the executive branch who identified which counties should be invited to apply.[2]

Exactly what the legislators sought to prevent through their law-making authority has now been facilitated by executive action by the President who is also a candidate in the 2024 election and, as such, stands to benefit personally from the executive action.

Further, when the federal National Voter Registration Act was passed in 1993, the Pennsylvania legislature had the opportunity to authorize federal agencies to perform voter registration, but they declined to do so. (Doc. 18, ¶ 58.) Biden's EO and the federal agencies' efforts to carry it out, has harmed and will continue to cause irreparable harm to Plaintiffs, both as individual state legislators and candidates in the 2024 election.

In August of 2022, 13 State Secretaries of State wrote a letter to President Biden asking him to rescind the EO in part because it would erode the duties of state legislatures:

> As the chief election officials for our respective states, we ask you to rescind Executive Order 14019…As the supreme law of the land, the Constitution clearly says the state legislatures shall …prescribe the way elections are run, and that if any adjustments need to be made, such adjustments are the province of Congress, not the Executive branch…If implemented, the Executive Order would also erode the responsibility and duties of the state legislatures to their situational duty within the Election Clause.[3]

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[2]https://www.legis.state.pa.us//cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20210&cosponId=36370 viewed 4/21/2024)

[3] https://sos.wyo.gov/Media/2022/Joint_SOS_Letter-Biden_EO_14019.pdf

In September of 2022, 13 State Attorneys General wrote a letter to President Biden asking him to rescind the EO in part because it is unconstitutional and potentially designed to benefit the President's political party.

> As attorneys general, it is our obligation to protect our states and citizens from illegal and unconstitutional overreach by the federal government. In fulfilling our sacred duty, we call on you to immediately rescind Executive Order 14019… Nowhere does the U.S. Constitution authorize the executive branch to utilize the power, resources, and reach of all federal executive agencies to carry out voter registration and voter mobilization activities. Yet, that is precisely what your executive order seeks to do.
>
> But that is not all. In carrying out your EO, these agencies and their employees could also violate other laws such as the Hatch Act, designed to keep federal agencies led by political appointees from engaging in political activities to benefit one political party over another, as well as the Antideficiency Act which prohibits executive agencies from spending funds Congress has not authorized, or accepting volunteer services from "approved" third-party organizations as your executive order directs.[4]

In October of 2022, 9 members of Congress sent a letter to the US Attorney General asking him to turn over the secret plan for the DOJ's implementation of EO14019.

> The US Constitution does not authorize the President to transform all federal executive agencies, led by his political appointees, including the DOJ, into get-out-the-vote machines for the left, paid for by federal taxpayers…Why is DOJ attempting to hide from the public its plan…[w]hat possible reason could there be to keep this plan a secret? If the plan is fair and non-partisan, why would you not share it with the American people?[5]

In May of 2023, 14 members of the US Senate sent a letter to President Biden complaining about the secrecy of the agency plans and partisan motives and tactics.

> [T]he job of federal agencies is to perform their defined missions in a nonpartisan way, not use their taxpayer funds for clandestine voter mobilization and election-turnout operations. This is especially true if such federally funded efforts involve partnering with nongovernmental organizations with unclear and potentially partisan motives and tactics…Though the White House has kept these plans hidden, a few pieces of information have emerged which themselves prompt questions.[6]

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[4] https://www.oag.ok.gov/sites/g/files/gmc766/f/eo_14019_multistate_letter_final.pdf
[5] https://norman.house.gov/uploadedfiles/letter-to-ag-garland-re-eo-14019-final.pdf
[6]https://www.lankford.senate.gov/wp-content/uploads/media/doc/lankford_hagerty_letter_on-eo-14019.pdf

In November of 2023, 20 members of the US Senate sent a letter to President Biden

> Executive Order 14019 directs more than 600 federal agencies to engage in voter-related activities without congressional approval…[u]sing appropriated funds for a purpose that Congress did not expressly authorize would constitute a violation of [law]…Unfortunately, the White House has kept these plans hidden despite numerous requests from Congress.[7]

Despite numerous requests from agencies and elected officials, the Biden Administration has been undeterred. The Petitioners recognized that the EO would not be rescinded and that the White House continued to refuse to disclose the scope of the agency plans and the identity of the "approved" third-party non-governmental organizations. So, in January 2024, the beginning of the Presidential election cycle, the Pennsylvania legislators filed suit in the U.S. District Court for the Middle District of Pennsylvania seeking to restore their authority to determine the manner of elections, including the registration of voters, and to enjoin the unlawful overreach of the federal and state election officials. President Biden's executive action deprives the individual state legislators of their federal rights [under the Elections Clause and Electors Clause], a legally cognizable injury under Article III per *Coleman.*

2. Governor Shapiro's Unilateral Executive Action Establishing Automatic Voter Registration Has Circumvented the Law-Making Process and Violates Pennsylvania Election Law

On September 19, 2023, Governor Shapiro announced through a press release that he was unilaterally implementing automatic voter registration (AVR) in Pennsylvania, thus effectively amending election law regarding voter registration. Individual legislators, using their respective federal authority under the Elections Clause or Electors Clause or both, and their state constitutional right and opportunity to vote regarding election laws, preserved the right to decide in state law: individuals "may apply to register." 25 Pa.C.S.A. § 1321 (2002). In recent legislative sessions, legislators have

[7]https://www.hagerty.senate.gov/wp-content/uploads/2023/11/FINAL-EO-14019-Letter-to-POTUS.pdf

introduced bills that would have made AVR legal in Pennsylvania. Each bill was defeated through the proper law-making process because the legislators did not support AVR. (Doc. 18, ¶¶ 132-33).

Because AVR bills failed in the legislature, Governor Shapiro, through an executive proclamation, effectively amended state law to enact *automatic* voter registration anyway. The Governor's act nullified the federal rights of each individual legislator to vote on automatic voter registration. Moreover, the legislators have no ability or recourse through the legislative process to remedy the Governor's violations. Governor Shapiro's executive action deprives the individual state legislators of their federal rights [under the Elections Clause and Electors Clause], a legally cognizable injury under Article III per *Coleman*.

3. State Executive Officials, Political Appointees of the Governor, are Nullifying Legislators' Votes and Violating Pennsylvania Election Law Through Illegal Directives Changing the Manner of Elections

The Pennsylvania legislature passed laws requiring verification of identity and eligibility of applicants for voter registration. State law, such as 25 Pa.C.S.A. § 1328(a) and (b), is nullified by the Pennsylvania Department of State's "Directive Concerning HAVA-Matching Drivers' Licenses or Social Security Numbers For Voter Registration Applications. (Doc. 18, ¶¶ 139-146). This directive instructs counties to register applicants even if an applicant provides invalid identification on their voter registration application. Invalid driver's license numbers and invalid social security numbers on an application make the application "incomplete" and "inconsistent;" conditions that the duly-enacted law describes as reasons to reject an application. This executive action circumvents the legislature and, through unilateral directive, 'repeals' or 'amends' clearly established Pennsylvania law, which requires verification of both identity and eligibility as provided on the application. 25 Pa.C.S.A. § 1328(a) and (b). In 2020, the legislators-Petitioners voted to amend § 1328 but chose not to change

the language related to rejection of incomplete and inconsistent voter registration applications.[8] The Department of State's directive to register applicants even if an applicant provides invalid identification nullifies the intended legal effects of 25 Pa.C.S.A. § 1328 (a) and (b). Thus, the Department of State's directive nullifies the state legislators' votes [under the Elections Clause and Electors Clause], a legally cognizable injury under Article III per *Coleman.*

To stop the overreach by federal and state executive officials, and to restore the balance of power, Petitioners filed suit. Defendants' Motion to Dismiss was granted on March 26, 2024. Denial was based on the lower court's conflation of the holdings in *Coleman* and *Raines.* A nationwide conflict over individual state legislator standing exists between courts relying on *Coleman* and the conflation of the facts, context, and holdings in *Raines v. Byrd*, 521 U.S. 811 (1997) and its progeny.

The existing conflict arises as the lower court has incorrectly applied *Raines* and has concluded that the injury suffered by Pennsylvania lawmakers is institutional in nature. But, *Raines* applies when legislators lose legislative battles and seek judicial intervention by invoking an injury to the legislature as an institution. *Coleman*, on the other hand, applies when executive officials outside of the legislative branch usurp the law-making process reserved to state legislators thereby usurping the constitutional duties granted to the legislators.

Pennsylvania state legislators, for the 2024 election, cannot do their part in suing to enjoin federal and state executive usurpations of Pennsylvania state law, pursuant to the Elections Clause and Electors Clause, unless the Court does its part and re-affirms individual state legislator standing in this case consistent with *Coleman.*

ARGUMENT

In *Coleman v. Miller*, 307 U.S. 433 (1939), cited in *Arizona State Legislature v. Arizona Independent*

[8] See https://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc_view_action2.cfm?sess_yr=2019&sess_ind=0&rc_body=H&rc_nbr=1139

Redistricting Com'n, 576 U.S. 787, 803 (2015) twenty Kansas state senators challenged the state legislature's ratification of a proposed amendment to the U.S. Constitution. The state senate had deadlocked on the amendment by a vote, and the lieutenant governor cast a tie-breaking vote in favor of ratification. *Id.* at 436. The claim of the objecting state legislators rested on the argument that the lieutenant governor did not have the power to break the tie in relation to proposed federal constitutional amendments. *Id.* at 436. In acknowledging that legislators' interest in their votes may constitute an injury that could be vindicated in federal court, the Supreme Court held:

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

Id. at 438.

The U.S. Court of Appeals for the Third Circuit has similarly recognized individual legislator standing when lawmakers seek to exercise unique powers vested only in state legislators. In *Dennis v. Luis*, 741 F.2d 628 (3d Cir. 1984), the Third Circuit concluded that 8 state lawmakers had federal court standing to challenge the usurpation of their legislative authority by an executive official, holding:

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

Id. at 632-34.

Individual legislator standing was predicated on the "personal and legally cognizable interest peculiar to the legislators" as their "right to advise and consent" which was "vested only in members of the legislature" was "sufficiently personal to constitute an injury in fact thus satisfying the minimum

constitutional requirements of standing." *See Goode v. City of Philadelphia*, 539 F.3d 311, 318-19 (3d Cir. 2008) discussing *Dennis*.

Here, Petitioners, Pennsylvania lawmakers, are claiming that executive officials – at all levels of government, are circumventing the legislative process, by unilaterally creating and amending election laws in Pennsylvania thus "'distorti[ng]…the process by which a bill becomes law' by nullifying a legislator's vote or depriving a legislator of an opportunity to vote – which is an injury in fact." See *Russell v. DeJongh, Jr.*, 491 F.3d 130, 135 (3d Cir. 2007), citations omitted.

The Court has recognized individual legislator standing when individuals outside of the legislative branch attempt to insert themselves into the legislative process thereby circumventing the authority granted to the legislators. *See Coleman*, 307 U.S. at 438. The Third Circuit has recognized individual legislators suffer personal injury when rights vested "only in members of the legislature" have been usurped. *See Dennis*, 741 F.2d at 632-34.

Although Petitioners do not allege institutional injury and are not acting on behalf of the legislature as a whole, this Court recently provided guidance on who can litigate on behalf of a state or institution in *Virginia House of Delegates*, in which this Court held, "Virginia, had it so chosen, could have authorized the House to litigate on the State's behalf, either generally or in a **defined class of cases**." *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1952 (2019)(emphasis added).

The Pennsylvania Supreme Court has recognized individual legislator standing when members of the General Assembly "aim to vindicate a power that only the General Assembly" has:

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

Fumo v. City of Philadelphia, 972 A.2d 487, 502 (Pa. 2009):

The district court's decision relied improperly on *Raines* and *Yaw* (the progeny of *Raines)* when the facts presented more consistently align with *Coleman* and *Fumo (*the progeny of *Coleman). See Yaw v. Delaware River Basin Comm'n,* 49 F.4th 302 (3d Cir. 2022). The district court also ignored Third Circuit decisions recognizing individual legislator standing. By every measure from the precedential cases of *Fumo, Dennis*, and *Coleman*, the individual legislator plaintiffs should have standing to prevent nullification and usurpation of their legislative authority to regulate the manner of elections in Pennsylvania. If not the legislators, then who?

Under the Elections Clause and Electors Clause, the references to the word "legislature" should trigger federal court remedies for state legislators against federal executive and state executive usurpations of state legislative law-making under the Elections and Electors Clause. The status quo causes an immediate functional problem for the forthcoming 2024 election.

In *Moore v. Harper*, 600 U.S. 1 (2023), the Court clarified that when the state legislature carries out its constitutional power it is acting as the "entity assigned particular authority by the Federal Constitution." *Id.* at 27. Pennsylvania's Constitution describes the entity with particular authority as the General Assembly which is made up of "Members" who "shall be chosen at the general election." Pa. Const. art. II, § 2. The real persons who make up the entity are the individuals elected as state legislators. Historically, "the relevant citizens" for jurisdictional purposes in a suit involving a "mere legal entity" were that entity's "members," or the "real persons who come into court." *Americold Realty Tr. v. Conagra Foods, Inc.*, 577 U.S. 378, 381 (2016)(citations omitted).

The "usual demands of Article III, requiring a real controversy with real impact on real persons to make a federal case out of it." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 34 (2019) "When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people." *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682, 706–07 (2014).

Also, the Court has recognized associational standing. *See, e.g., Hunt v. Washington State Apple Advertising Com'n*, 432 U.S. 333, 342 (1977).

Relying on *Raines*, and *Yaw,* a fracking moratorium case, the district court denied standing to Petitioners, thereby emboldening executive officials in a presidential election year and depriving the lawmakers of their constitutional right to regulate federal elections. Without this Court's intervention "officials who…lack the authority" to establish election law will continue to "chang[e] the rules in the middle of the game." *Republican Party of Pennsylvania*, 141 S.Ct. at 735. Thus, for the 2024 election, the Court's immediate direction on individual state legislator standing is necessary to enable federal court remedies for the individual Pennsylvania state legislators before the 2024 election.

Expedited consideration of the petition for certiorari is warranted to permit the Court to resolve the questions presented this Term and end acts of executive officers effectively usurping the law-making process for election laws under the Elections Clause or Electors Clause or both. "That these cases concern federal elections only further heightens the need for review. Elections are "of the most fundamental significance under our constitutional structure." See *Illinois Bd. of Elections v. Socialist Workers Party,* 440 U.S. 173, 184…(1979). Through them, we exercise self-government." *Republican Party of Pennsylvania*, 141 S. Ct. at 734.

> Because the judicial system is not well suited to address these kinds of questions in the short time period available immediately after an election, we ought to use available cases outside that truncated context to address these admittedly important questions. And there is a reasonable expectation that these petitioners… legislators will again confront non-legislative officials altering election rules. *Id.* at 737.

For reasons explained in the petition, this case involves matters of exceptional national importance as applied to narrow cases involving state enacted election laws. An unsustainable paradox exists. Individual state legislators based on "individual state legislator standing" can sue state executive officials in state court for violating the Elections Clause and Electors Clause. See *Fumo*. But, according to the district court, individual state legislators cannot sue federal executive officials in federal court

for violating the Elections Clause and Electors Clause. The injured party is the same. It is individual state legislators who have been deprived of their rights under the Elections Clause and the Electors Clause. And, the constitutional violations by the federal executives can be the same constitutional violations by the state executives. But, only state executives can be sued (and only in state court), but federal executives cannot be sued at all.

In reviewing the holding of *Coleman*, the New York Court of Appeals explained that a specific number of legislators is not a prerequisite for individual legislator standing, at least with regard to New York state law. Explaining their interpretation of *Coleman* they held:

> Nor is a controlling bloc of legislators (a number sufficient to enact or defeat legislation)) a prerequisite to plaintiff's standing as a Member of the Assembly. The *Coleman* Court did not rely on the fact that all Senators casting votes against the amendment were plaintiffs in the action…we think the better reasoned view*** is that an individual legislator has standing to protect the effectiveness of his vote with or without the concurrence of other members of the majority…Moreover, plaintiff's injury in the nullification of his personal vote continues to exist whether or not other legislators who have suffered the same injury decide to join in the suit.

Silver v. Pataki, 755 N.E.2d 842, 848-49 (N.Y. 2001). This must be the proper interpretation because otherwise, by requiring a specific number of legislators, "a suit could be blocked by one legislator who chose, for whatever reason, not to join in the litigation. Such a result would place too high a bar on judicial resolution of constitutional claims." *Id.* at 854, n. 7.

Petitioners respectfully submit that the Court should definitively resolve the questions presented prior to the 2024 election. The ordinary briefing schedules prescribed by Rules 15 and 25 of the Court, however, would not permit that. Absent expedition, uncertainty about Pennsylvania's election processes will endure through the November 2024 election and the damage will be done. Accordingly, the Petitioners respectfully request that the Court issue a schedule for briefing and, if applicable, merits briefing that permits the Court to hear this case on an expedited basis.

Two alternative schedules for certiorari-stage briefing that would permit the Court to consider the petition either at the May 9, 2024 or May 16, 2024 conference are respectfully proposed. Under

either alternative, Petitioners would waive the 14–day waiting period provided under Supreme Court Rule 15.5, between the filing of a brief in opposition and distribution of the petition and other materials to the Court. If the Court grants the petition following either conference, Petitioners respectfully request that the Court set an expedited merits briefing schedule.

Proposed Schedule	If the Court grants the petition on May 9, 2024	If the Court grants the petition on May 16, 2024
Petitioners opening brief due	May 20, 2024	May 27, 2024
Respondents brief due	June 17, 2024	June 21, 2024
Petitioners reply brief due	June 24, 2024	June 28, 2024

Finally, the 27 Pennsylvania Legislators also move for expedited consideration of this motion, so that the Court may consider it at the May 9, 2024 conference. Petitioners respectfully request that the Court direct respondents to respond to this motion by May 16, 2024.

CONCLUSION

For the reasons stated, the 27 Pennsylvania Legislators request that the Court expedite consideration of their petition for writ of certiorari based upon one of the proposed schedules above. And, if the Court grants the petition, the Court set an expedited briefing and oral argument schedule that permits the Court to hear this case during the current Term. Petitioners also respectfully request expedited consideration of this motion.

Respectfully submitted,

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