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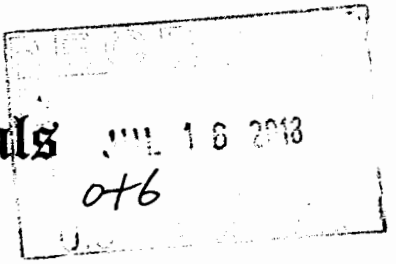

In The

United States Court of Appeals for the Third Circuit

18-1816

JACOB CORMAN, *et al.*
Plaintiffs,

v.

ROBERT TORRES, *et al.*
Defendants

v.

JEFFREY CUTLER,
Appellant/Intervenor-Plaintiff

CARMEN FEBO SAN MIGUEL, *et al*
Intervenor-Defendants

Appeal from the Order/Judgment entered April 10, 2018 in the United States District Court for the Middle District of Pennsylvania at No. 1-18-cv-00443

BRIEF AND APPENDIX FOR APPELLANT/INTERVENOR-PLAINTIFF
Volumes I of II (pgs. 1a-33a)

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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The United States District Court had subject matter jurisdiction pursuant to 18 U.S.C. § 3231, which confers upon the district courts original jurisdiction over all offenses against the laws of the United States. Appellate jurisdiction is conferred upon the Court of Appeals for the Third Circuit by 28 U.S.C. § 1291 and U.S.C. 18 U.S.C. § 3742(a).

The District Court imposed a decision on March 19, 2018, with the judgment officially entered that same day. (AA5-28; DDE ## 136, 137).[1] Appellant Jeffrey Cutler complied with Rule 4(b)(1) of the Federal Rules of Appellate Procedure by filing a timely Motion to Reconsider and Intervene on April 3, 2018, however the court omitted page 3 during scanning (AA396-397). The court corrected the document on April 9, 2018 (AA561-570), and rendered a decison on April 10, 2018. Notice of Appeal was filed on April 12, 2018 (AA1-2; DDE # 141) and a corrected appeal on April 17, 2018. (AA3-4; DDE # 143).

STATEMENT OF RELATED CASES

Appellant believes USCA case #17-2709 currently pending before this Court is directly related to this appeal, and case #5:17-cv-05025 in the eastern district of

[1] "AA" refers to the Appellant's Appendix filed with this brief. "DDE #" refers to the district docket entry and corresponding entry number.

Pennsylvania are both related to this case. Case # CI-17-01626 Lancaster County court of Common Pleas, was also aimed at setting a precedent in altering the Pennsylvania Constitution by Judicial Decree. Case # 3:17-cv-02692 from the Northern District of Texas, and case # 1:16-cr-10233-RGS Massachussetes, both involve FBI misconduct. Case # 3:12-cr-00034-CWR-FKB involves the KLU KLUX KLAN or copycat behavior.

STATEMENT OF THE ISSUE ON APPEAL

1. Whether the remedy imposed by the Supreme Court of Pennsylvania, which clearly violates the Pennsylvania Constitution and creates a precedent that allows any part of the constitution be circumvented in 10 days without any notice being afforded to voters or the public, and was substantively unreasonable because it exceeded the necessary to satisfy the goals set forth in 18 U.S.C. §3553(a) and violates the United States Constitution Amendment 1. The Public Interest Law Center claims this case is based soley on state constitutional grounds and not perjured testimony.

   Standard of Review: Appellate courts review sentencing challenges under the abuse of discretion standard. *Gall v. United States*, 552 U.S. 38 (2007).

   Preservation of Issue: Mr. Cutler opposed the government's request for a remedy that allows the court to Ammend the Pennsylvania Constitution in effectively 10 days based on perjured testimony.

   The courts have affirmed, it must "afford a liberal reading to a complaint filed by a pro se plaintiff," particularly when the plaintiff has no formal legal training or education. Klayman v. Zuckerberg, 753 F.3d 1354, 1357 (D.C. Cir. 2014); see also Erickson v. Pardus, 551 U.S. 89, 94 (2007) ("A document filed pro se is to be liberally

> construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers."

STATEMENT OF THE CASE

Jeffrey Cutler appeals the remedy imposed by the Pennsylvania Supreme court which allows a process that minimally is described by the Pennsylvania constitution at a minimum of 90 days, during 2 seperate sessions. Mr. Cutler respectfully submits that under the facts and circumstances specific to this case, the final remedy was significantly greater more intrusive than necessary to achieve the statutory purposes of case, and was therefore substantively unreasonable.

Furthermore, the remedy created an unwarranted disparity in law in contravention of 18 U.S.C. § 3553(a), and violates the United States Constitution Amemdment 1.

A. The Offense

Mr. Cutler was elected to public office in November 2013. He was subsequently removed from office based on a single-count Complaint in Mandamus with violating the local tax collector law, and was removed from office based on a two hour hearing based on perjured testimony. The incident took place on March 17, 2017 in the court of common pleas by Judge Margaret Miller, ordering his mail be redirected and bank accounts seized in violation of federal

law.

Prior to this incident, Mr. Cutler after taking his required oath office to defend the constitution of the United States and Commonwealth of Pennsylvania, had tried to overturn the affordable care act because he felt it violated the establishment clause of the United States constitution Amendment 1. He had hired the American Freedom Law Center to assist him in the appeal of this effort. Mr. Cutler had filed an original lawsuit in Washington, DC on December 31, 2013 Pro Se (1:13-cv-2066). Mr. Cutler had gotten into a verbal altercation with a township about being elected, and was urged to resign, the position he was legally elected in November of 2013. By January 9, 2014, East Lampeter Township solicitor had sent a threat of legal action for getting legally elected. Mr. Cutler contracted the Fulton Bank to accept payments at any of the over 80 state branches, just like the Conestoga Valley School system. Mr. Cutler deputized the Conestoga Valley School system to collect the school sytem taxes for East Lampeter Township, since they had an employee in place to perfrom this activity and the other two townships that use the Conestoga Valley School system were not part of East Lampeter Township. Mr. Cutler continued to perform the duties required of the position and was continually

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2 Mr. Cutler was never convicted of any crime and attempted to clear his name and recover assets seized by court order, and found not a single lawyer would assist him. Mr. Cutler had reported crimes to the FBI and had been directed to cease and desist reporting crime, by email of the FBI (AA118).

harraseed by East Lampeter Township and they filed action in Mandamus on June 9, 2015 (case # CI-15-05424) on three counts, but 2 of the counts were removed by stipulation. The action in Common Pleas court, caused Mr. Cutler to try and defend his reputation. The solicitor of East Lampeter Townsip supported perjured verification of Ralph Hutchinson and Mail Fraud. Mr. Cutler believes his lawyer Drew Deyo was bribed or coerced into throwing the case, and committed legal malpractice. Mr. Deyo complained about the FBI harrasing him. Evidence of East Lampeter Township using bribes or payments to coerce false testimony had been discoveed previously during discovery and trials involving Lisa Michelle Lambert. The malicious prosecution of a crime that did not happen, via Mandamus action violates the very foundations of the justice system. The fact that they felt compelled to not only ruin Mr. Cutler's reputation and life, but had to make sure he knew it was because he was born Jewish by keying a SWASTIKA on his minivan. Mr. Cutler was aware that KLU KLUX KLAN existed in Lancaster County, but since he chose to not openly display signs of being Jewish he felt reasonably safe. There were stories in the Lancaster newspaper that Jewish families were being threatened and harrased and fled Lancaster county. Mr. Cutler had an incident at a McDonald's where Lancaster city police were called to evict him for criminal tresspass from the site and inform him he was not allowed at any McDonald's owned by the same franchise, in perpetuity. His alledged infraction was he

allegdedly said something that was heard by an employee. Mr. Cutler purchased 10 shares of McDonald's stock and wrote a priority mail letter to the corporate headquarters and CEO. He informed the CEO he would file an action in Federal court. The corporation informed the franchise, and Mr. Cutler and the franchise resolved the problem and no action was required in court, and no compensation was paid.

Mr. Cutler sent out tax bills using the same printer as used by the Conestoga Valley School system, but was not paid for the postage and printing as required by law. The data for the tax bills was supplied by the office of the Lancaster County Treasurer (Craig Ebersole at the time). Mr. Cutler was never fully compensated for the postage and printing, but after a 1 year delay based on emails and letters from the solicitor of East Lampeter Township, was paid half the amount spent for the service. Mr. Cutler accepted a contract engineering support position for Harley Davidson in York, Pennsylvania at night to supplement his revenue. His lawsuit challenging the affordable care act progressed in court at the same time he was doing both collectimg taxes and supporting the Harley Davidson plant in York, PA. The data provided by the office of the treasurer contained approximately 175 exempt properties (such as churches), which required a significant amount of time to correct. Mr. Culer's interface to the funds collected was reports provided by Fulton Bank, via internet access. He also was required to enter the tax data on the Lancaster county progam know as "MRETC", via the

internet. During this time Mr. Cutler experienced at least one period where his internet "IP"address was blocked from access to the Lancaster county system "MRETC". After a verbal altercation with the treasurer (Craig Ebersole), the IP access was restored. At the same time Mr. Cutler's case in district court progressed and Kimberly Herr of the United States justice department of Justice contacted him about an extension of time to respond to case 1:13-cv-02066. Mr. Cutler prepared a response opposing the motion for extended time, and travelled to Washington, DC to deliver the response (Mr. Cutler does not have CM/ECF access to the federal courts). Mr. Cutler discovered during his trip to Washington, DC that judge (Colleen Kollar-Kotelly) had granted the extension without even seeing Mr. Cutler's response. This was Mr. Cutler's first hard example of un-equal justice. Case 1:13-cv-02066 was dismissed for lack of standing and Mr. Cutler filed an appeal in the United States Court of appeals in Washington, DC (case # 14-5183), and paid cash at the time of the appeal. Despite paying cash for the appeal, the United States Court sent Mr. Cutler a notice requesting payment or declaration of paupris. Mr. Cutler went to Washington, DC and filed a motion to continue with a copy of the receipt. Mr. Cutler believing the court system was essentially rigged against pro se litigants sought assistance from any competent lawyer. Mr Cutler was able to induce the American Freedom Law Center to assist him, by making a large donation (over $ 75,000). His goal was very similar to their objective, based on cases they had in federal court. They performed very

well and took the appeal all the way to the Supreme Court (15-632) (AA130). On May 12, 2015 oral arguments were held in Washington, DC in front of a three judge panel. Mr. Cutler had purchased a roundtrip ticket at an Amtrak terminal that morning with an American Express card in Baltimore Penn Station. On the return trip home Mr. Cutler recieved a phone call from his brother about a Amtrak crash and wanted to know if he was safe. Amtrak 188 had gone off the tracks in Philadelphia, and killed 8 people. NBC sought out and interviewed a Jeffrey Cutler about the crash. That Jeffrey Cutler was not the same Jeffrey Cutler, but that Jeffrey Cutler had purchased a reserved seat on that Amtrak 188. One of the people killed was a midshipman of the United States Naval Acadamy (Justin Zemser), and thus his murder would be subject to the laws of the United States government. Mr. Cutler became aware the locomotive involved in the accident had a feature that allowed some control via the internet, yet this has not been examined or noted in public.

On June 10, 2015 East Lampeter Township filed an action in Mandamus against Mr. Cutler in Common Pleas Court (CI-15-05424). On June 30, 2015 Mr. Cutler filed a civil action against East Lampeter Township, pro se for violations of the sunshine law and to force them to pay expenses of the Tax Collector (CI-15-05682) and other remedies.

On August 14, 2015 (AA80,98) the United States Court of appeals for the DC circuit granted Mr. Cutler standing to challenge the affordable care act based on

the establishment clause of the United States constitution. On December 10, 2015 East Lampeter Township filed a petition for an injunction to remove Mr. Cutler from office, bassed on perjured testimony and mail fraud in the court of common pleas. Judge Jeffrey Wright did not allow Mr. Cutler to be present in the hearing, and issued an order which Mr. Cutler complied, even though one part of the complaint was not relevent. On November 11, 2015 an 89 page petition was filed in the Supreme Court case 15-632 by the American Freedom Law Center on behalf of Mr. Cutler. On January 11, 2016 the Supreme Court announced it will decline to hear the case, even though the United States Government declined to respond to the petition. Also on January 11, 2016 two state police officers were waiting for Mr. Cutler near the entrence to his apartment complex. They claimed they followed Mr. Cutler the 1.1 miles he drove after leaving a resturant where Mr. Cutler consumed less than ten dollars worth of beer. They administered a field sobriety test, and Mr. Cutler registered a .05 blood alcohol level. Despite being under the legal limit they handcuffed Mr. Cutler, and transported him to Lancaster General Hospital. At the hospital they drew blood and Mr. Cutler requested they take an extra vial for his testing, but they refused. Lancaster General Hospital sent Mr. Cutler a bill for drawing blood of two hundred dollars. They also confiscated Mr. Cutler's driver's license. This required Mr. Cutler to get a duplicate driver's license. At the Pennsylvania DMV, they had no record that any possible DUI was in progress, or had occured. On January 20, 2016

Judge Wright issued an order to assign the case to Judge Margaret Miller, violating the rules of the court. They elected a new treasurer, and she (Amber Green) took office in January 2016. The Lancaster County Treasurer also changed the software to record tax payments. The software had numerous problems. On March 17, 2016 there was hearing with Judge Miller in common pleas court for case # CI-15-05682. Judge Miller had been assigned to the case # CI-15-05682, despite a request for Judge Wright for continuity. Judge Brown was assigned to the case # CI-15-05682 by random assignment, and then Judge Miller was assigned to the case, because of alleged conflict. Judge Miller dismissed case # CI-15-05682. within minutes of the hearing termination. Mr. Cutler stopped by the office of the FBI in Newtown Square in May of 2016 with documentation of misconduct by East Lampeter Township/Lancaster County identifying approximately 35 items. Mr. Cutler talked to an FBI agent for approximately 2 hours, and offered a hard copy of the documents but the FBI agent declined to take the hard copy of the documents. Mr. Cutler had also notified the treasurer's office of these problems. Some of the entries he had made in the payment of tax payments had been erased or not calculated correctly. In June of 2016 Mr. Cutler was notified of a hearing in common pleas court for case # CI-15-05424. Mr. Cutler requested that his lawyer Drew Deyo subpoena people to the hearing, Mr. Deyo refused. Mr. Cutler advised Mr. Deyo he is not authorized to represent him unless the action is approved in writing. Mr. Cutler started acting pro se in case #

CI-15-05424. He requested several motions and they were all denied by Judge Miller. He filed a move to Federal court middle district of Pennsylvania as case # 1:16-cv-1159 for Lancaster county court case CI-15-05424. Mr. Cutler had inserted the entire 89 page petition for the Supreme court in the case. It was dismissed tand remanded back to Common pleas court, however Mr. Cutler filed a STOP order in court of Common pleas, which was ignored by Judge Miller. Judge Miller held a hearing on June 17, 2016 (AA186, 188) even though the STOP order was in place. During the hearing they acknowledged that they never notified Mr. Cutler of the hearing, and violated due process. Mr. Cutler filed an appeal in federal court United States Court of Appeals for the third circuit for case # 1:16-cv-1159 as case # 16-3164. Mr. Cutler was notified by text message supposedly by his mother's land line (which is impossible), that Seth Rich had been murded in the hospital. Mr. Cutler called the Rabbi that gave the eulogy at Seth Rich's funeral. Mr. Cutler also mentioned Seth Rich in a filing in case 16-3164 (On August 16, 2016 Seth Rich is mentioned in the filing in Philadelphia United States Court of Appeals for the Third Circuit case 16-3164). The owner of the Best Cake bakery on Haverford Avenue in Philadlephia was shot during a robbery. This bakery is near Mr. Cutler's mother's house and Mr. Cutler would stop there to purchase bread for his mother when visiting her. Seth Williams (the elected district attorney of Philadelphia at the time) held a rally to try and find the individuals that shot the baker in front of the store. Several police and other

representatives of the Philadelphia District Attorney's office were present. Mr. Cutler met Seth Williams for the first time, and Jan McDermott an assitant district attorney. Mr. Cutler offered both Mr. Williams and ADA McDermott a T-SHIRT he had created in memory of his case in Federal Court. ADA McDermott accepted the TSHIRT. On August 9, 2016 Mr. Cutler attended a rally for Mr. Trump for president that Mike Pence attended at the Host Farm in Lancaster, PA. Mr. Cutler was one of four people to speak, and gave one of his T-SHIRTS to Mike Pence, who is now the Vice President of the United States. Another speaker talked about the "Right To Try" for experimental drugs and that has since become law. (https://www.youtube.com/watch?v=BdlZkt1Xlhs) Case 16-3164 was denied and Mr. Cutler filed for an Enbanc review that was also denied on Nov 10, 2016. Mr. Cutler sought a way to keep the case alive without filing a new petition to the Supreme Court. He filed motions to join cases, including a case involving the recount in Pennsylvania, by Jill Stein in the Eastern District of Pennsylvania (2:16-cv-06287). Mr. Cutler also filed motions in case 5:16-cv-04108 on December 23, 2016. This case involves another victim of Judge Miller and massive civil rights violations. He was held over 41 months at the time without trial, had zero representation in federal court, and used verbage to deny his release that asserts he failed to use his state appeals, even though he never even had a trial. Mr Cutler believes these are all related cases. Mr. Cutler discovered during this process and by the rules of the court he probaly prevented Jill Stein from mounting

any appeal, because Mr. Cutler's case had been through the entire Enbanc process, and only an emergency appeal to the Supreme Court would have any merit. Mr. Cutler also discovered during this process that other cases for incorrect jurisdiction were routinely transfered to the Eastern District of Pennsylvania. Mr. Cutler has no formal legal training. Mr. Cutler started sending hard copies and emails to ADA McDermott of misconduct in Lancaster county, just in case he became dead unexpectedly. He did this based on Mr. Williams prosecution of Kermit Gosnel, and his willingness to take on the cases of officials taking bribes on camera. On January 30, 2017 Jeffrey Cutler got an email reply from FBI agent Joesph A. Milligan that stated "Cease and desist adding myself and ADA McDemott to any more of your emails regarding this matter." (AA118) Note: Spelling error of McDemott which should be McDermott. This email was based on an email from Jeffrey Cutler the same day with a title "CONSPIRACY TO COMMIT BANK AND INSURANCE FRAUD"(AA118). Less than 60 days later Seth Williams was indited on corruption charges March 21, 2017. Mr. Cutler attended some of the trial and the FBI was presentening evidence trivial evidence that Mr. Williams would withdraw money from the ATM, and not care about a two dollar charge. Mr. Cutler also tried to intervene in the case, and filed motions for the case and show prejudice by the FBI including the cease and desist email (2:17-cr-00137). Mr. Cutler became aware that Seth Williams may be starting a grand jury to investigate the Murder of Jonathan Luna on November 4, 2003. On February 23,

2017 the East Lampeter Solicitor had a meeting to appoint the Lancaster County Treasurer (Amber Green) to collect real estate taxes in 2017, and this was aproved by the same day at a 7:00 AM meeting. Mr. Cutler attended the meeting but it ended when he started speaking. On March 3, 2017 Jeffrey Cutler filed a new federal lawsuit (2:17-cv-00984) against Amber Green et al., which is the basis of USCA case #17-2709. On March 7, 2017 Brian Hurter signed a verification which essentially claimed Mr. Cutler failed to turn in $ 90,000.00 (AA122). Yet on March 17, 2017, he testified under oath that neither he or anyone that worked for him ever audited a single record of the Lancaster County Treasurer. Based on court records Judge Miller filed an order on March 7, 2017 that allowed Mr.Cutler's lawyer to withdraw effective March 10, 2017. Mr. Hurter did nothing to stop wasted postage of sending out tax bills via first class mail instead of pre-sorted mail, which cost Lancaster county taxpayers over $250,000.00 over the period of his term. Mr. Hurter had allowed over three million dollars of checks to remain un-cashed at the office of the Lancaster County Treasurer for over 30 days. On March 10, 2017 Amber Green married Scott Martin. They both got divorces in the fall of 2016. Scott Martin was one of the 2 State Senators that initiated actions against Mark Reese (also without a aid of legal advice) to also set a precedent to allow a judge to alter the Pennsylvania Constitution by decree (Case # CI-17-01626 Lancaster County court of Common Pleas). Mr. Cutler filed a motion to intervene in that case also. Based on tax records Jeffrey Martin has one

of the the smallest tax bills in East Lampeter Township, of less than $ 2.00 per year. On March 17, 2017 after a two hour hearing Judge Miller ruled Mr. Cutler was essentially no longer the tax collecor, and issued an that order that siezed his mail and bank accounts opened at Fulton Bank for this purpose. Mr. Cutler had filed a motion with the Supreme Court of Pennsylvania complaing about his treatment and violations of whisteleblowerAct of Dec. 12, 1986, P.L. 1559, No. 169. On May 4, 2017 the funeral for Mr. Robert Needle, was held. He died unexpectedly and was a retired employee of the Commonwealth of Pennsylvania's auditor general's office and Mr. Cutler's cousin. On May 25, 2017 Beranton Whisenant was found murdered on Hollywood beach in Florida, he may have been the federal employee Mr. Needle was confering about the activities in Pennsylvania. Case # 2:17-cv-00984 was dismissed just after notice of default judgement was filed against the NBC affiliate. Despite over ninety thousand dollars being declared stolen by the verification of Brian Hurter of March 7, 2017, no criminal complaint was ever filed as of this date. Mr. Cutler contacted the attorney general of Pennsylvania, and made a complaint of insurance fraud. Mr. Cutler found not a single lawyer would represent him. Lawyers that at first showed interest would cancel after a day or two, as if intimidated or threatened. The email from the FBI shows Mr. Cutler was not only being monitored, but the people he contacted were also being monitored. On April 23, 2018 Mr. Cutler filed an Injunction Pending Appeal. On April 25, 2018 (AA219, 220) the court

filed an Order dictating the proper format of all responses by CM/ECF filers in the USCA case 18-1816. All of Mr. Cutler's Appeals in state court have been exhausted. On April 25, 2018 Mr. Geffen on behalf of the Public Interest Law Center filed an Entry of appearence that failed to notify Mr. Cutler and violated Rule 65 of the Federal Rules of Civil Procedure (AA552, 554). All documents filed on behalf of Acting Secretary Robert Torres and Commisioner Marks fail to comply with the order of April 25, 2018 (AA219, 220) (AA557, 559) and therefore all their claims should be dismissed.

B. The History and Characteristics of Jeffrey Cutler

Prior to this incident, the record shows that Mr. Cutler was a hardworking, man, who had successfully supported himself and never had any prior criminal convictions. Mr. Cutler was living in East Lampeter Township, Pennsylvanina for several years. He had worked for various companies and had got elected to public office as Tax Collector by simply writing his name on he ballot and having the good fortune to get marble #2 in a lottery draw to break the tie. His first day on the job was January 6, 2014 as a East Lampeter Township Tax Collector. He also had a solid work history before being elected, including jobs as an engineer and helping start up complicated pharmaceutical, manufacturing opertions, food plants, and paper manufacturing projects.

Mr. Cutler not only worked as an engineer, but as an electrician for a ship yard,

and other companies. Mr. Cutler does not have an any criminal record, and has tried to preserve his reputation throughout his life. Mr. Cutler term in office of 27 months, was short of the elected term of 48 months. It does bear mentioning that he was relatively young at the time (62) of the illegal removal from public office based on prejudice of the township and Lancster County. The township supervisor has been employed for over 21 years, and the township now has a debt of over 25 million dollars. Mr. Cutler has been exceptionally proactive about trying to clear his name and had to investigate misconduct of East Lampeter Township, Lancaster County and FBI (AA118). However on June 27, 2017 Mr. Cutler visited the Central Penn college in East Lampeter Township and inquired about some of the summer courses. That evening Mr. Cutler got a call from an officer of the East Lampeter Township Police department and was told Mr. Cutler will be arrested for criminal tresspass if he enters the college again. Essentially there was no complaint and Ralph Hutchinson tried to turn East Lampeter Township into a concentration camp for Mr. Cutler just like NAZI Germany (AA126). Except for the brief detention by State Police on January 11, 2016, Mr. Cutler has never beem in custody. He lived a law-abiding, productive life, characterized by a solid work-ethic.

C. The Guilty Plea

Jeffrey Cutler has only entered into a plea agreement to open an office in East

Lampeter Township, and post hours on the tax bills. This agreement was negotiated by Drew Deyo without Mr. Cutler's appproval or Mr. Cutler allowed to be in attendence on Dec 30, 2015.

D. The Sentence

On March 7, 2017 based on time stamp on the prothontary web site Judge Miller entered an order that is dated March 10, 2017 which froze the assets of the bank accounts of Jeffrey Cutler at Fulton Bank. The petition to intervene was filed on On March 8, 2017 based on time stamp prothontary web site, by Christina Hausner. On March 17, 2017 Judge Miller issued an order which made final the theft of Mr. Cutler's assets. On October 2, 2017 six police officers of East Lampeter Township and 1 one constable threatened Mr.Cutler with death if he failed to leave his apartment at 67 Cambridge Village, based on fraudulent paperwork of eviction (a legal stop order was in effect based on case filed in federal court which is now 5:17-cv-05025). All of Mr. Cutler' assests have been destroyed or stolen, despite 2 insurance policies.

SUMMARY OF THE ARGUMENT

The sole issue on appeal is the reasonableness of Jeffrey Cutler's sentence that included a very rare documented fraud by public officials. Mr. Cutler submits that the above-the-range sentence is substantively unreasonable based on the totality of the circumstances.

The sentence is a result of criminal activity and discrimination by the state. The state Court's unsustainable finding that Mr. Cutler demonstrated, through this alleged offense, a disregard for being the wrong religion. The record simply does not support the court's conclusion. Instead, the facts show that despite Mr. Cutler's demonstrated efforts at rehabilitation of his name, censorship of his activities by NBC, the LNP Media Group and every other media outlet in the United States, showed a disregaed for Human Life and support of Fake News. Worse, data from the Sentencing Commission conclusively shows that upward variances are extraordinarily rare, but not in Lancaster County Pennsylvania. The sentence facially created a disparity, one that was not warranted under the facts specific to Mr. Cutler and this case. A previous case in East Lampeter Township of Lisa Michelle Lambert was significantly tainted based on the federal judge Stewart Dalzell. In short, the final sentence was far greater than necessary to address the statutory goals of sentencing, since it was based on perjured testimony in both cases.

LEGAL ARGUMENT

I. THE SENTENCE IMPOSED BY THE COURT, WHICH INCLUDED AN EXTREMELY RARE SIEZURE AND UPWARD VARIANCE, WAS FAR GREATER THAN NECESSARY TO SATISFY THE RELEVANT SENTENCING GOALS SET FORTH IN 18 U.S.C. § 3553(a) AND WAS THEREFORE UNREASONABLE.

A. Standard of Review

Mr. Cutler challenges the substantive un-reasonableness of his asset siezure and being made homeless by police misconduct including the destruction of evidence of the murder of Jonathan Luna. Final sentences are reviewed for reasonableness under the abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 46 (2007). Mr. Cutler preserved this issue by objecting to the government's request for an upward variance, while simultaneously advocating for vacating the sentence below the guideline range.

B. Argument

Mr. Cutler respectfully challenges the reasonableness of his above-the-range sentence. The substantive reasonableness review focuses on whether it was reasonable for the state court to conclude, in light of all of the relevant sentencing factors, that the sentence imposed was minimally sufficient to comply the sentencing goals set forth in 18 U.S.C. 3553(a). As the Court explained in *United States v. Doe*, "[s]ubstantive reasonableness inquires into 'whether the final sentence, wherever it may lie within the permissible statutory range, was premised upon appropriate and judicious consideration of the relevant factors.'" 617 F.3d 766, 769 (3d Cir. 2010), *cert. denied,* 564 U.S. 1005 (2011), (citing *United States v. Schweitzer*, 454 F.3d 197, 204 (3d Cir. 2006)). Mr. Cutler maintains that in light of the facts and circumstances particular to his case, that his sentence, which included an upward variance, was plainly unreasonable and did not comply with the "overarching instruction to courts that they must 'impose a sentence sufficient, but not greater than necessary,' to

achieve the goals of sentencing," *Kimbrough v. United States*, 552 U.S. 85, 101 (2007).

When imposing a final sentence, a court must consider all of the goals and factors set forth in 18 U.S.C. § 3553(a)(2), which are:

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) to afford adequate deterrence to criminal conduct;
> (C) to protect the public from future crime of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Additionally, the court must consider the nature and circumstances of the offense, the history and characteristics of the defendant, the kinds of sentences available, the guideline range, and the need to avoid unwarranted disparities in sentencing. *See* 18 U.S.C. § 3553(a)(1)-(7). On appeal, as he did at sentencing, Mr. Cutler submits that these factors not only weighed against an upward variance, they actually supported his request for completely vacating a verdict based on perjured testimony.

1. The guideline range remains a strong starting point for any sentence. Sentences outside the range must be justified by the record.

A correctly calculated guideline range remains the "starting point for the entirety of the §3553(a) analysis." *United States v. Langford*, 516 F.3d 205, 211 (3d Cir. 2008). While the guideline range is not entitled to any presumption of reasonableness, the Supreme Court considers it "the starting point and the initial benchmark." *Gall,* 552 U.S. at 50.

The extent of the variance is important because the sentencing court must explain a variance and "ensure that the justification is sufficiently compelling to support the degree of the variance." *Id.* at 50. As the First Circuit explained, in reviewing the reasonableness of a sentence, an appellate court "focuses on the duration of the sentence in light of the totality of the circumstances." *United States v. Del Valle-Rodriguez,* 761 F.3d 171, 176 (1st Cir. 2014). Moreover, in *Gall,* the Supreme Court noted that it was "uncontroversial that a major departure should be supported by a more significant justification than a minor one." *Gall,* 552 U.S at 50.

For the reasons more fully addressed below, Mr. Cutler maintains that the record, as a whole, did not support any verdict by Judge Miller. Furthermore, the reasoning given by the court for the variance did not justify an upward variance, and violation of law.

2. The nature and circumstances of the offense did not justify an upward variance.

Mr. Cutler respectfully submits that a careful review of the record and a balanced analysis of all the facts surrounding this offense do not support any penalty imposed by the court or the reasoning offered by the court for the final sentence. The nature and circumstances of the offense is an important factor within the §3353(a) analysis, but that analysis requires the court to look at the totality of the circumstances. To the contrary, Mr. Cutler did not and does not have a disregard for human life. There is no question that the nature of the underlying offense was extremely not serious or

dangerous. Mr. Cutler does not acknowledge his behavior was wrong, but he simply maintains that his conduct must be put in the correct context. There was no crime, except the 190,000 counts of mail fraud committed by Brian Hurter and Amber Green Martin defrauding almost every taxpayer in Lancaster County, except High Inc and their partner LNP Media Group.

His actions were driven by the natural desire for self-preservation, rather than an indifference towards others.

Moreover, characterizing his behavior as reflecting a disregard for human life would place Mr. Cutler among the worst and most violent offenders. However, it must be emphasized that Mr. Cutler has no criminal history points and was convicted of no crime. A 2017 report by the United States Sentencing Commission ("Commission") entitled *"The Past Predicts the Future Criminal History,"* explains, "the Commission's present study found that recidivism rates are closely correlated with total criminal history points and resulting CHC classification, as offenders with lower criminal history scores have lower recidivism rates than offenders with higher criminal scores."

Mr. Cutler did not commit any criminal offense but the action in Mandamus was aimed at incarcerating Mr. Cutler like Lisa Michelle Lambert. Data from the Commission does not support placing Mr. Cutler in the company of the worst, most dangerous offenders who demonstrate a disregard for the safety of others.

3. Mr. Cutler's and Lisa Michelle Lambert's history and characteristics strongly supported his request for vacating the verdicts. A downward variance was both available and appropriate in both cases.

An equally important sentencing factor is the history and characteristics of the individual defendant. Lisa Michelle Lambert's tremendous efforts to improve herself while incarcerated and then striving to lead an honest, law abiding life, are proof of good name. There is no question she successfully established herself as a hardworking, person. Moreover, the court's disregard for human life should warrant a full dismissal of all charges against Lisa Michelle Lambert, Mr. Cutler and Jammal Harris.

Because a defendant disagrees with the manner in which a court weighs the sentencing factors. *United States v. Bunger*, 478 F.3d 540, 546 (3d Cir. 2007) ("Nor do we find that a district court's failure to give mitigating factors the weight a defendant contends they deserve renders the sentence unreasonable.") However, post-offense rehabilitation, and how it relates to the history and circumstances of the defendant, is arguably a unique factor and an exception to that policy.

First, the Supreme Court has affirmatively stated the rehabilitation merits "great weight" and provides strong support for more lenient sentences. *Gall v. United States*, 552 U.S. 38, 59 (2007) ("The District Court quite reasonably attached great weight to Gall's self-motivated rehabilitation, which was undertaken not at the direction of, or under supervision by, any court, but on his own initiative. This also lends strong support to the conclusion that imprisonment was not necessary to deter Gall from engaging in future criminal conduct or to protect the public from his future criminal act.") In fact, a defendant's demonstrable efforts at rehabilitation are among the most important

considerations in the whole sentencing analysis. Persuasively, as the Supreme Court observed in *Pepper v. United States*,

> There is no question that the evidence of Pepper's conduct since his initial sentencing constitutes a critical part of the 'history and characteristics' of a defendant that Congress intended sentencing courts to consider.
>
> Pepper's postsentencing conduct also sheds light on the likelihood that he will engage in future criminal conduct, a central factor district courts must assess when imposing sentence. As recognized by Pepper's probation officer, Pepper's steady employment, as well as his successful completion of a 500-hour drug treatment program and his drug-free condition, also suggest a diminished need for 'education or 'vocational training . . . or other treatment.' Finally, Pepper's exemplary postsentencing conduct may be taken *as the most accurate indicator* of his 'present purposes and tendencies and significantly to suggest the period of restraint and the kind of discipline that ought to be imposed upon him. Accordingly, evidence of Pepper's postsentencing rehabilitation bears directly on the District Court's overarching duty to 'impose a sentence sufficient, but no greater than necessary' to serve the purposes of sentencing.'

562 U.S. 476, 492-3 (2011) (emphasis added). Lisa Michelle Lambert's case is remarkably similar to Pepper's case in the sense that both defendants made extensive efforts at rehabilitating themselves. In sum, the Supreme Court explicitly holds rehabilitative efforts are among the most important factors in the overall sentencing analysis, and corruption of public officials and religion should not weigh into these guidelines.

There is a real threat here, that instead of sending a message to other individuals about the risks of reoffending, the upward variance in this case serves as a deterrent against running for public office, as those efforts were grossly undervalued by the sentencing court.

The record simply does not support a finding that Mr. Cutler deserved any penalty and that sentence.

4. The final sentence resulted in an unfair and unwarranted sentencing disparity.

Furthermore, this sentence must be vacated and this matter remanded because the final sentence in this case created a major sentencing disparity. Statistics and data released by the Commission show that upward variances pursuant to §3553(a) are extremely rare. In reality, they are so rare that they are virtually a statistical anomaly.

Based on the data, to justify this sentence, Mr. Cutler and Lisa Michelle Lambert have to be among the very worst offenders, and have committed one of the most egregious offenses. However, for the reasons discussed above, Mr. Cutler does not belong among the category of worst offenders. In fact, he stands apart from other persons never convicted. Mr. Cutler and Lisa Michelle Lambert are inexplicably placed among the top three or four worst defendants, committing the worst offenses, in the fiscal year. The record simply does not justify such a conclusion. Therefore, the upward variance led to an unjustifiable disparity.

- *United States v. Rogers*, 598 Fed. Appx. 114 (3d Cir. 2015), *cert. denied* 135 S.Ct. 1570. Third Circuit upheld the upward variance based in large part on the defendant's personal characteristics which included a lack of employment, and a lengthy juvenile and adult criminal record.

- *United States v. Ramirez*, 460 Fed. Appx. 119 (3d Cir. 2012), *cert. denied* 568 U.S. 1016. The district court did not abuse its discretion in imposing an upward variance after finding the defendant had a lengthy and "disturbing" record. *Id.* at 120. Also, the firearm was used in connection with drug distribution.

- *United States v. Cabbagestalk*, 246 Fed. Appx. 109 (3d Cir. 2007), *cert. denied*

552 U.S. 1126 (2008). Third Circuit ruled the district court's explanation that defendant's lengthy criminal history, which included convictions for robbery, aggravated assault, making terroristic threats, and reckless endangerment of another person, justified the upward variance. This case also involved the use of a weapon in connection with another felony.

- *United States v. Perez-Carrera*, 686 Fed. Appx. 15 (3d Cir. 2017), *cert. denied* 138 S.Ct. 281. Third Circuit noted that defendant not only had prior drug and firearm convictions, but there were very short time gaps in between offenses.

- *United States v. Carson*, 377 Fed. Appx. 257 (3d Cir. 2010). Upward variance affirmed for defendant with "deplorable" criminal record that spanned "a little over 30 years" and included multiple convictions for firearm offenses and other crimes of violence.

Mr. Cutler or Lisa Michelle Lambert are not comparable to any of these defendants; they wer not "similarly situated" to these defendants. Mr. Cutler had a solid employment record, and no prior conviction, did not offend or use a firearm in connection with another offense.

In sum, these cases highlight that the final sentence created an unfair and unwarranted sentencing disparity. Instead of being sentenced with a no fine like a defendant never convicted (or John Corsine), of with no prior conviction, and who presented a number of verifiable mitigating factors, Mr. Cutler and Lisa Michelle Lambert were sentenced like an individual with a lengthy criminal history and no history of post-offense rehabilitation.

The disparity was not only unwarranted, it was also inherently unfair.

5. The sentence was substantively unreasonable.

As established above, the upward variance was not justified in this case. The

record does not support a finding that Mr. Cutler showed a disregard for human life. Due to the application of the variance, the sentence created an unwarranted disparity placing Mr. Cutler and Lisa Michelle Lambert among the top worst offenders before the court. The final result was an above- the-range sentence that cannot be justified by the record, and is unduly punitive based on the totality of circumstances. Because the final sentence does not represent the statutorily mandated minimally sufficient sentence, it is substantively unreasonable. Because of the number of documents that appear to be altered (AA339)(AA587) or late, even in federal court. In previous appeals (16-3164) parts of Rand Paul's book "Government Bullies" which was photocopied as part of the appeal it was obscured and made unreadable. Robert Mueller was the director of the FBI on December 4, 2003 when Jonathan Luna, (POSSIBLY BY MEMBERS OF THE KLU KLUX KLAN) was found MURDERED in Lancaster county, Pennsylvania. Five days after the death James Comey may have been given the number 2 position at the DOJ, to help cover-up the murder. At the time of the MURDER Andrew McCabe was in charge of the criminal division of the FBI. The FBI tried to get the coroner of Lancaster, county to call the MURDER a SUICIDE. Mr. McCabe was fired from the FBI for lies he made on March 16, 2018.

April Brooks made the FALSE statement "There's no evidence to show that he met his death at the hands of any other individual," Brooks said. "Or that he had seen or been with any other individual that night. You have naysayers and you have a divergence of (law enforcement) opinion," she said. "But again, we turned over every rock. We are

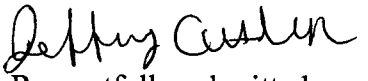
confident that there is nothing hanging out there to find."<ref>http://articles.chicagotribune.com/2012-08-29/news/sns-rt-us-usa-security-fbibre87s0u5-20120829_1_white-collar-crime-drug-gangs-gang-cases</ref>., even though this contradicts the report of the Lancaster county coroner. Flora Posteraro was fired <ref>https://www.ydr.com/story/news/2018/03/13/abc-27-anchor-leaves-station-says-not-my-choice/421175002/</ref>the same day Jeffrey Cutler emailed a reminder that on the 10 year anniversary of Luna's death WHTM had done a story that mentioned the FBI cover-up <ref>https://www.youtube.com/watch?v=LOXQSptqGKQ</ref>. The Baltimore Sun reported of the FBI cover-up on the 5 year anniversary of Luna's death <ref> http://www.baltimoresun.com/news/maryland/bal-md.luna30nov30-story.html </ref>

Based on United States v. Williams, 341 U.S. 58 (1951) and Gill v. Whitford, (Supreme Court 2018) and Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, Mr. Cutler requests the following conclusion.

CONCLUSION

For the foregoing reasons, Appellant Jeffrey Cutler respectfully submits that hereby requests that the court grant his Permanent Injunction and enjoin the enforcement of the revised voting map, a new election date set using the previously approved voting districts, bar all Pennsylvania judges from submitting remedies which knowingly violate the Pennsylvania constitution, bar any further enforcement of "Obamacare", remove all penalties

from plaintiffs, declare executive ORDER 9066 UNCONSTITUTIONAL, and bar the review of documents siezed of Mr. Cutler/Mr. Cohen and the supension of further action in NY cases known as 1:18-cv-03501 and 1:18-mj-03161KMW., and other remedies that court deems appropriate, and vacate the sentence for Jeffrey Cutler, Lisa Michelle Lambert, and Jammal Harris and all persons simillary situated. Also stop retrial of case 1:16-cr-10233-RGS so these people are not treated differently than Senator Menendez, or John Corsine in the MF Global fraud case.



Respectfully submitted,
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Appellant

Dated: July 16, 2018

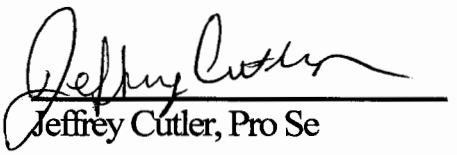
CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) because it contains 8,427 words, excluding those parts exempted by Fed. R. App. P. 32(a)(7).

This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word in Times New Roman 14-point font.

Respectfully Submitted,

Dated: July 16, 2018



Jeffrey Cutler, Pro Se

CERTIFICATE OF SERVICE

I, Jeffrey Cutler, Pro Se Appellant/Intervenor-Plaintiff, deposited two copies of the Brief and Appendix with the United States Post Office by Priority Mail this date 16th of July 2018 to be mailed to the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

JACOB CORMAN et al.		) No.: 1:18-CV-00443
	Plaintiffs,	)
v.		)
ROBERT TORRES et al.		)
	Defendants	)
v.		)
JEFFREY CUTLER		)
	Intervenor Plaintiff	)
v.		)
CARMEN FEBO SAN MIGUEL, et al.		)
	Intervenor Defendants	)

FILED
HARRISBURG, PA
APR 12 2018
PER
DEPUTY CLERK

NOTICE OF APPEAL and MOTION TO CONSOLIDATE RELATED APPEALS

Notice is hereby given Jeffrey Cutler, Plaintiff Intervenor in this matter hereby appeals to the United States Court of Appeals for the Third Circuit of Pennsylvania the Order from the United States Middle District of Pennsylvania dated April 10, 2018 denying Plaintiff Intervenor's Motion for Reconsideration and Motion to Intervene as Plaintiff of April 3, 2013. On October 27, 2017 in the United States Middle District of Pennsylvania a Motion for Reconsideration was filed in case 1:17-cv-01740 and granted on November 6, 2017. The current order violates Mr. Cutler's rights under the Fifth Amendment of the Constitution Based on Elouise Pepion Corbel et al. v. Gale v. Norton, et al. (03-5262, 03-5314) Mr. cutler requests this appeal be consolidated with case 17-2709 currently in deliberations and on an expedited basis since they both involve related issues of Judges blatantly issuing orders with remedies that violate and circumvent the constitution of Pennsylvania based on Perjured information to hurt and injure persons. It should also be noted that Censorship by the government (Including the

Order of April 10, 2018), and media (Google, Facebook, and others) acting as agents for the government and deep state obstruct the ability to be treated fairly and violate the civil rights based on religion and race of not only Mr. Cutler but others including the individuals known as "Diamond and Silk", Nasim Aghdam and others.

Respectfully submitted:

Jeffrey Cutler

By: _____

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Date: 12APRIL2018

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

JACOB CORMAN et al.		) *No.: 1:18-CV-00443*
	Plaintiffs,	)
v.		)
ROBERT TORRES et al.		)
	Defendants	)
v.		)
JEFFREY CUTLER		)
	Intervenor Plaintiff	)
v.		) **ORAL ARGUMENTS REQUESTED**
CARMEN FEBO SAN MIGUEL, et al.		)
	Intervenor Defendants	)
		)

FILED
HARRISBURG, PA
APR 17 2018
PER DM
DEPUTY CLERK

NOTICE OF APPEAL and MOTION TO CONSOLIDATE RELATED APPEALS CORRECTION

Notice is hereby given Jeffrey Cutler, Plaintiff Intervenor in this matter hereby appeals to the United States Court of Appeals for the Third Circuit of Pennsylvania the Order from the United States Middle District of Pennsylvania dated April 10, 2018 denying Plaintiff Intervenor's Motion for Reconsideration and Motion to Intervene as Plaintiff of April 3, 2013., and the motion denying Plaintiff's motion of March 19, 2018. On October 27, 2017 in the United States Middle District of Pennsylvania a Motion for Reconsideration was filed in case 1:17-cv-01740 and granted on November 6, 2017. The current order violates Mr. Cutler's rights under the Fifth Amendment of the Constitution Based on Elouise Pepion Corbel et al. v. Gale v. Norton, et al. (03-5262, 03-5314) Mr. cutler requests this appeal be consolidated with case 17-2709 currently in deliberations and on an expedited basis since they both involve related issues of Judges blatantly issuing orders with remedies that violate and circumvent the constitution of Pennsylvania based on Perjured information to hurt and injure persons. It should also be

noted that Censorship by the government (Including the Order of April 10, 2018), and media (Google, Facebook, and others) acting as agents for the government and deep state obstruct the ability to be treated fairly and violate the civil rights based on religion and race of not only Mr. Cutler but others including the individuals known as "Diamond and Silk", Nasim Aghdam and others. **The use of false and perjured statements by agents of the government threatens the religious liberty of not only Mr. Cutler but also others of similar beliefs, like Michael Cohen, the United States Constitution Amendment 1 and just because it is not reported at a Starbucks in Philadelphia, does not mean it did not happen.**

Respectfully submitted:

By: *Jeffrey Cutler*

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Date: 17APRIL2018

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JACOB CORMAN, in his official capacity as Majority Leader of the Pennsylvania Senate, MICHAEL FOLMER, in his official capacity as Chairman of the Pennsylvania Senate State Government Committee, LOU BARLETTA, RYAN COSTELLO, MIKE KELLY, TOM MARINO, SCOTT PERRY, KEITH ROTHFUS, LLOYD SMUCKER, and GLENN THOMPSON,	:	CIVIL ACTION NO. 1:18-CV-443
Plaintiffs	:	Three Judge Panel Convened Pursuant to 28 U.S.C. § 2284(a)
v.	:	
ROBERT TORRES, in his official capacity as Acting Secretary of the Commonwealth, and JONATHAN M. MARKS, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation,	:	
Defendants	:	
v.	:	
CARMEN FEBO SAN MIGUEL, JAMES SOLOMON, JOHN GREINER, JOHN CAPOWSKI, GRETCHEN BRANDT, THOMAS RENTSCHLER, MARY ELIZABETH LAWN, LISA ISSACS, DON LANCASTER, JORDI COMAS, ROBERT SMITH, WILLIAM MARX, RICHARD MANTELL, PRISCILLA McNULTY, THOMAS ULRICH, ROBERT McKINSTRY, MARK LICHTY, and LORRAINE PETROSKY,	:	
Intervenor-Defendants	:	

MEMORANDUM OPINION

BEFORE: Kent A. Jordan, Circuit Judge, *United States Court of Appeals for the Third Circuit*; Christopher C. Conner, Chief District Judge, *United States District Court for the Middle District of Pennsylvania*; Jerome B. Simandle, District Judge, *United States District Court for the District of New Jersey*.

Per Curiam **March 19, 2018**

I. Introduction

This case has its genesis in a hard-fought congressional redistricting battle waged in state and federal courts across the Commonwealth of Pennsylvania. The various antecedent lawsuits engaged Republican members of the Pennsylvania General Assembly, Democratic elected and appointed officials of the Commonwealth, Democrat and Republican activists, and numerous interested parties from within and outside the Commonwealth. The most recent events in that redistricting affray – namely, the Pennsylvania Supreme Court's decision invalidating the 2011 districting map as an unconstitutional partisan gerrymander under the Commonwealth's constitution and its further decision to issue a court-drawn map – are the subjects of the present lawsuit. The Pennsylvania Supreme Court granted the General Assembly an abbreviated period of time to enact remedial legislation, subject to the court's newly adopted legislative redistricting criteria. When the General Assembly failed to do so, the court imposed its own remedial redistricting map. *League of Women Voters v. Commonwealth*, No. 159 MM 2017, 2018 WL 936941, at *4 (Pa. Feb. 19, 2018).

The Plaintiffs – Senator Jacob Corman, in his official capacity as Majority Leader of the Pennsylvania Senate; Senator Michael Folmer, in his official capacity as Chairman of the Pennsylvania Senate State Government Committee (the "State Legislative Plaintiffs"); and eight Republican members of Pennsylvania's delegation to the United States House of Representatives

(the "Federal Congressional Plaintiffs,"[1] and together with the State Legislative Plaintiffs, the "Plaintiffs") – contend that the Pennsylvania Supreme Court's decisions to strike the 2011 map and to issue its own replacement map violate the Elections Clause of the United States Constitution. The Plaintiffs claim that the Pennsylvania Supreme Court usurped the General Assembly's authority to develop congressional districts and effectively gave the General Assembly only two days to pass remedial legislation. Unsurprisingly, the Defendants have a decidedly different view. They assert that the Pennsylvania Supreme Court gave the General Assembly precisely the amount of time it requested: three weeks to enact a replacement map. The substance and timing of the Pennsylvania Supreme Court's orders are the focus of the Plaintiffs' claims against Defendants Robert Torres, in his capacity as Acting Secretary of the Commonwealth of Pennsylvania, and Jonathan Marks, in his capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State (together, the "Executive Defendants"). The issues presented in this case touch on questions of high importance to our republican form of government. As the 2018 election cycle quickly progresses, these issues are of particular salience to the voters of the Commonwealth. The Plaintiffs' frustration with the process by which the Pennsylvania Supreme Court implemented its own redistricting map is plain. But frustration, even frustration emanating from arduous time constraints placed on the legislative process, does not accord the Plaintiffs a right to relief.

The Plaintiffs seek an extraordinary remedy: they ask us to enjoin the Executive Defendants from conducting the 2018 election cycle in accordance with the Pennsylvania

[1] The Federal Congressional Plaintiffs are Congressman Lou Barletta (11th District); Congressman Ryan Costello (6th District); Congressman Mike Kelly (3rd District); Congressman Thomas Marino (10th District); Congressman Scott Perry (4th District); Congressman Keith Rothfus (12th District); Congressman Lloyd Smucker (16th District); and Congressman Glenn Thompson (5th District).

Supreme Court's congressional redistricting map and to order the Executive Defendants to conduct the cycle using the map deemed by the Pennsylvania Supreme Court to be violative of the Commonwealth's constitution. In short, the Plaintiffs invite us to opine on the appropriate balance of power between the Commonwealth's legislature and judiciary in redistricting matters, and then to pass judgment on the propriety of the Pennsylvania Supreme Court's actions under the United States Constitution. These are things that, on the present record, we cannot do.

II. Background[2]

Following the 2010 decennial census mandated by Article I, Section 2 of the United States Constitution, Pennsylvania's congressional delegation to the United States House of Representatives was reduced from nineteen seats to eighteen seats. The Pennsylvania General Assembly thereafter adopted a new congressional redistricting map, which was passed in December 2011 and signed into law by former Pennsylvania Governor Tom Corbett that same month (the "2011 Map"). The 2011 Map governed three primary elections, three general elections, and one special election, until January 22, 2018, when the Pennsylvania Supreme Court declared it to be "clearly, plainly and palpably" violative of the Commonwealth's constitution and hence invalid. (Compl. Ex. B. at 2.)

The Pennsylvania Supreme Court's rulings came in a lawsuit filed in June 2017 in the Commonwealth Court of Pennsylvania by the League of Women Voters[3] and eighteen individual

[2] The facts and procedural history described here are derived from the Plaintiffs' verified complaint, attachments thereto, and matters of public record, such as judicial proceedings, of which we can take judicial notice for purposes of the pending motions. *See McTernan v. City of York*, 577 F.3d 521, 526 (3d Cir. 2009) ("In addition to the complaint itself, the court can review [on a Rule 12 motion] documents attached to the complaint and matters of public record, and a court may take judicial notice of a prior judicial opinion." (internal citation omitted)). We view those facts in the light most favorable to the Plaintiffs. *Alston v. Countrywide Fin. Corp.*, 585 F.3d 753, 758 (3d Cir. 2009).

Pennsylvania voters (the "state-court petitioners"). Prior to the filing of that action, the 2011 Map had not been the subject of suit in federal or state court, though it was later challenged in two federal cases, *Agre v. Wolf*, --- F. Supp. 3d ---, 2018 WL 351603 (E.D. Pa. Jan. 10, 2018), and *Diamond v. Torres*, No. 17-5054 (E.D. Pa.).[4] The state-court petitioners named as respondents the Commonwealth; Michael Turzai, in his capacity as Speaker of the Pennsylvania House of Representatives; Joseph Scarnati, in his capacity as Pennsylvania Senate President *Pro Tempore* (together with Turzai, the "state legislative respondents"); the Pennsylvania General Assembly; Thomas Wolf, in his capacity as Governor of Pennsylvania; Michael Stack, III, in his capacity as Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate; and the Executive Defendants before us now. The eighteen individual plaintiffs – all registered Democrats – claimed that the 2011 Map was an impermissible partisan gerrymander that intruded on their rights under numerous provisions of the Pennsylvania Constitution. They specifically asserted that the 2011 Map violated the state constitution's guarantees of free expression, free association, and equal protection, in addition to its Free and Equal Elections

---

[3] The Commonwealth Court dismissed the League of Women Voters for lack of standing. *League of Women Voters v. Commonwealth*, --- A.3d ---, No. 159 MM 2017, 2018 WL 750872, at *1 n.3 (Pa. Feb. 7, 2018). The eighteen individual plaintiffs remained as plaintiffs throughout the state-court proceedings.

[4] In *Agre*, a group of Pennsylvania residents brought suit seeking a declaratory judgment that the Pennsylvania General Assembly exceeded its authority under the federal Elections Clause by enacting the 2011 Map with the intent that it favor Republican candidates over Democratic candidates. 2018 WL 351603, at *1. Following a four-day trial, a split three-judge panel entered judgment in favor of the defendants (who largely overlapped with the defendants in the state-court action). *Id.* at *2 n.6, *3.

In *Diamond*, a separate group of Pennsylvania residents challenged the 2011 Map under the United States Constitution, alleging that it violated the First and Fourteenth Amendments, as well as the Elections Clause. The three-judge *Diamond* panel initially stayed that case pending the disposition in *Agre* and subsequently stayed the case indefinitely in light of the Pennsylvania Supreme Court's January 22 Order declaring the 2011 Map invalid.

Clause. *League of Women Voters v. Commonwealth*, --- A.3d ---, No. 159 MM 2017, 2018 WL 750872, at *8 (Pa. Feb. 7, 2018).

The Commonwealth Court stayed the matter pending an anticipated decision by the United States Supreme Court in a case alleging partisan gerrymandering. *Id.* at *9. On November 9, 2017, the Pennsylvania Supreme Court granted a request by the state-court petitioners for extraordinary relief, assumed plenary jurisdiction over the matter, lifted the stay, and instructed the Commonwealth Court to develop a factual record and issue proposed findings of fact and conclusions of law by December 31, 2017. *Id.* The Commonwealth Court proceeded as instructed, overseeing a flurry of pretrial activity, presiding over a five-day trial, and submitting recommended findings and conclusions to the Pennsylvania Supreme Court on December 29, 2017. *Id.* In the end, the Commonwealth Court concluded that "partisan considerations [were] evident in the enacted 2011 [Map]" and that, with use of "neutral, or nonpartisan, criteria *only*, it is possible to draw alternative maps that are not as favorable to Republican candidates as is the 2011 [Map]." Recommended Findings of Fact and Conclusions of Law, *League of Women Voters v. Commonwealth*, No. 261 MD 2017 (Pa. Commw. Ct. Dec. 29, 2017) at 126. But, the court said, the state-court petitioners had "not articulated a judicially manageable standard" to measure whether the 2011 Map "crosse[d] the line between permissible partisan considerations and unconstitutional partisan gerrymandering under the Pennsylvania Constitution." *Id.* at 126-27. It thus concluded that the state-court petitioners "failed to meet their burden of proving that the 2011 [Map], as a piece of legislation, clearly, plainly, and palpably violate[d] the Pennsylvania Constitution." *Id.* at 127.

The Pennsylvania Supreme Court took the matter up immediately. It ordered expedited briefing and, when that was completed, held oral argument on January 17, 2018. Five days later,

on January 22, 2018, it issued a two-page *per curiam* order striking the 2011 Map for "clearly, plainly and palpably violat[ing]" the Pennsylvania Constitution and enjoining "its further use in elections for Pennsylvania seats in the United States House of Representatives[.]" (Compl. Ex. B. at 2.) Five of the seven justices agreed that the 2011 Map violated the Pennsylvania Constitution, but only four of seven agreed that the proper course of action, given the temporal proximity to the 2018 election cycle, was to enjoin use of the 2011 Map for the 2018 primary and general elections. The court established the following timeline:

- February 9, 2018 – deadline for the General Assembly to submit a remedial congressional redistricting map to the Governor;
- February 15, 2018 – deadline for the Governor to approve or reject a proposed remedial congressional redistricting map and for the Governor to submit an approved map to the Pennsylvania Supreme Court;
- February 15, 2018 – deadline for all interested parties to submit proposed remedial congressional redistricting maps to the Pennsylvania Supreme Court if the General Assembly did not pass, or the Governor did not sign, a proposed remedial congressional redistricting map;
- February 19, 2018 – deadline by which the Pennsylvania Supreme Court would adopt its own remedial congressional redistricting map if the General Assembly did not pass, or the Governor did not sign, a proposed remedial congressional redistricting map.

The order excluded from its injunction against further use of the 2011 Map a special election for Pennsylvania's 18th Congressional District, which was held on March 13, 2018. It further instructed that any new congressional redistricting map had to "consist of: congressional districts composed of compact and contiguous territory; as nearly equal in population as practicable; and which do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population." (Compl. Ex. B at 3.)

The Pennsylvania Supreme Court indicated in its January 22 order that an opinion would follow. On February 7, 2018, two days before the General Assembly's February 9, 2018,

deadline to submit a remedial redistricting map to the Governor, a 137-page majority opinion issued. The opinion announced the specific provision of the Pennsylvania Constitution violated by the 2011 Map – the Free and Equal Elections Clause.[5] *League of Women Voters*, 2018 WL 750872, at *1. It then set out a litany of statistical measures that it said demonstrated the 2011 Map subordinated the "traditional redistricting requirements" announced in the January 22 order to other motivations.[6] *Id.* at *50. The court held that finding alone was "sufficient to establish" that the 2011 Map contravened the Pennsylvania Constitution.[7] *Id.*

Pennsylvania's Republican-dominated General Assembly and Democratic Governor were unable to agree on remedial congressional redistricting legislation by the deadlines mandated in the January 22 order. Consequently, in the absence of a legislatively-approved redistricting plan, the Pennsylvania Supreme Court formulated its own congressional redistricting map with the assistance of an appointed advisor. The court implemented its map by order of February 19, 2018. Although the parties and several *amici* submitted a number of proposed remedial maps, the court determined that its own remedial map was "superior or comparable to all plans submitted by the parties, the intervenors, and *amici*[.]" (Compl. Ex. J. at 7.)

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[5] The state constitution's Free and Equal Elections Clause provides: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. art. I, § 5.

[6] The court's conclusions in that regard were rooted in expert evidence that had been adduced in the evidentiary hearing before the Commonwealth Court.

[7] Dissents were written by Chief Justice Saylor and Justice Mundy, which, in part, questioned the wisdom of opining on the inherently political nature of congressional redistricting and criticized the majority for giving the General Assembly "very little time and guidance" for enacting remedial legislation. *League of Women Voters*, 2018 WL 750872, at *63. Justice Baer concurred in part and dissented in part. He agreed with the majority that the 2011 Map violated the Pennsylvania Constitution, but disagreed with the majority's adoption of specific redistricting criteria and its failure to afford a "reasonable time for the Legislature to act." *Id.* at *58.

The Plaintiffs commenced this action on February 22, 2018, with the filing of a verified complaint and contemporaneous motion for emergency injunctive relief. They assert that the Pennsylvania Supreme Court's actions constitute a twofold violation of the Elections Clause of the United States Constitution. Specifically, they allege in Count I that the Pennsylvania Supreme Court's imposition of mandatory redistricting criteria violated the Elections Clause by usurping congressional redistricting authority vested exclusively in the General Assembly, and, in Count II, they allege that the court further violated the Elections Clause when it developed its own remedial map without providing the General Assembly an adequate opportunity to do so. The Plaintiffs entreat this Court to enjoin the Executive Defendants from implementing the Pennsylvania Supreme Court's remedial map for the upcoming election and to require the Executive Defendants to conduct the 2018 election cycle under the 2011 Map.

We denied the Plaintiffs' request for a temporary restraining order and deferred consideration of the request for a preliminary injunction pending an expedited evidentiary hearing. Following a scheduling hearing on March 1, 2018, we granted the eighteen individual state-court petitioners (the "Intervenor-Defendants") leave to intervene and participate in this action. The General Assembly is not a party to this suit, and it has not moved to intervene. The Executive Defendants moved to dismiss the verified complaint for lack of jurisdiction and for failure to state a claim upon which relief can be granted under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The Intervenor-Defendants (together with the Executive Defendants, the "Defendants") moved for judgment on the pleadings on the same grounds under Rule 12(c). The Defendants' Rule 12 motions contend that we lack subject matter jurisdiction over the action because (i) the Plaintiffs do not have constitutional or prudential standing to bring their Elections Clause claims, and (ii) the *Rooker-Feldman* doctrine bars the Plaintiffs from attacking in our

Court the judgment of the Pennsylvania Supreme Court. The Defendants also urge us to abstain from exercising jurisdiction over this case under the *Colorado River* and *Younger* abstention doctrines because the state-court proceedings are currently pending before the United States Supreme Court as a result of the state legislative defendants' emergency application to stay the Pennsylvania Supreme Court's judgment. The Defendants further argue in their Rule 12 motions that the Plaintiffs have failed to state a claim because (i) issue preclusion prohibits the Plaintiffs from litigating issues already decided by the Pennsylvania Supreme Court, (ii) judicial estoppel precludes the Plaintiffs from raising arguments inconsistent with ones raised by related parties in *Diamond*, a separate federal action challenging the constitutionality of the 2011 Map, and (iii) the Pennsylvania Supreme Court did not usurp the General Assembly's authority under the Elections Clause when it decided to remedy a violation of the Pennsylvania Constitution.

On March 9, 2018, we conducted a full hearing on those motions and on the Plaintiffs' motion for a preliminary injunction.

III. Legal Standards

A court must grant a motion to dismiss made under Federal Rule of Civil Procedure 12(b)(1) when it lacks subject matter jurisdiction. *In re Schering Plough Corp. Intron/Temodar Consumer Class Action*, 678 F.3d 235, 243 (3d Cir. 2012). Such jurisdictional challenges take two forms: (1) parties may make a "factual" attack, arguing that one or more of the pleading's factual allegations are untrue, removing the action from the court's jurisdiction; or (2) they may assert a "facial" challenge, which assumes the veracity of the complaint's allegations but nonetheless argues that a claim is not within the court's jurisdiction. *Lincoln Benefit Life Co. v. AEI Life, LLC*, 800 F.3d 99, 105 (3d Cir. 2015) (quoting *CNA v. United States*, 535 F.3d 132,

139 (3d Cir. 2008)). In either instance, it is the plaintiff's burden to establish jurisdiction. *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for the dismissal of complaints that fail to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion, a complaint must allege "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation marks and citation omitted). A motion for judgment on the pleadings brought under Rule 12(c) is analyzed under the same standards that govern a motion under Rule 12(b)(6). *Zimmerman v. Corbett*, 873 F.3d 414, 417 (3d Cir. 2017).

IV. Discussion

As already described, the Executive Defendants and Intervenor-Defendants have collectively raised several jurisdictional, justiciability, abstention, preclusion, and merits arguments in answer to the Plaintiffs' verified complaint. Because standing "is always an antecedent question," *Hamilton v. Bromley*, 862 F.3d 329, 334 (3d Cir. 2017), our analysis begins with examination of the Plaintiffs' standing to bring suit.[8] That is also where the case ends.

A. Article III Standing

Article III, Section 2 of the United States Constitution limits the jurisdiction of the federal courts to resolving only "cases" and "controversies." U.S. Const. art. III, § 2; *Raines v. Byrd*, 521 U.S. 811, 818 (1997). "No principle is more important to the [federal] judiciary's proper role in our system of government than [that] constitutional limitation[.]" *Raines*, 521 U.S. at 818 (citation omitted). When subject matter jurisdiction is lacking, our only remaining

[8] "[I]t is familiar law that a federal court always has jurisdiction to determine its own jurisdiction." *United States v. Ruiz*, 536 U.S. 622, 628 (2002).

function "is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1868)).

There can be no "case" or "controversy" if the party seeking relief does not have standing. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). The standing requirement guards against abuse of federal jurisdiction and limits which litigants may seek legal redress in our courts. *Id.* The standing analysis thus focuses on whether the particular parties before the court are "the proper part[ies] to bring [the] suit[.]" *Raines*, 521 U.S. at 818.

To establish Article III standing, a party seeking relief must establish that it has suffered injury to a legally protected interest, which injury is "fairly traceable to the challenged action and redressable by a favorable ruling." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2663 (2015) (internal quotation marks and citations omitted). These elements are often referred to by the labels "injury-in-fact," "causation," and "redressability." *Finkelman v. Nat'l Football League*, 810 F.3d 187, 193-94 (3d Cir. 2016). The party invoking jurisdiction bears the burden of establishing standing. *Spokeo*, 136 S. Ct. at 1547.

1. *The State Legislative Plaintiffs*

The State Legislative Plaintiffs initiated this lawsuit in their official capacities as Pennsylvania state senators. The verified complaint, however, does not allege an injury specific to those two plaintiffs. On the contrary, the claims in the complaint rest solely on the purported usurpation of the Pennsylvania General Assembly's exclusive rights under the Elections Clause of the United States Constitution. We do not gainsay that these Senate leaders are in some sense aggrieved by the Pennsylvania Supreme Court's actions. But that grievance alone does not carry them over the standing bar. United States Supreme Court precedent is clear – a legislator suffers

no Article III injury when alleged harm is borne equally by all members of the legislature. *Raines*, 521 U.S. at 821.

The principles governing a legislator's standing to bring suit to vindicate a purported institutional injury are set forth in three cases: *Raines v. Byrd*, 521 U.S. 811 (1997); *Coleman v. Miller*, 307 U.S. 433 (1939); and *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S. Ct. 2652 (2015). *Raines* involved a challenge by four United States senators and two United States congressmen to the federal Line Item Veto Act. 521 U.S. at 813-14. The Supreme Court concluded that the legislators lacked personal standing to sue because the injury they alleged was an "institutional injury (the diminution of legislative power), which necessarily damage[d] all Members of Congress ... equally." *Id.* at 821. The Court emphasized that the individual legislators were not "deprived of something to which they *personally* [were] entitled," and that they were claiming an injury in their "official capacities." *Id.* It reasoned that the injury ran with the position, not the person, and had the plaintiff legislators retired the next day, their injury would evanesce. *Id.*

The *Raines* Court contrasted the facts before it with the Court's earlier decision in *Coleman*. In *Coleman*, a bloc of twenty state legislators voted against adoption of a proposed amendment to the federal constitution. 307 U.S. at 435-36. The forty-person legislature split evenly on the vote, and the state's lieutenant governor, as presiding officer of the state senate, cast a decisive tie-breaking vote to pass the amendment. *Id.* at 436. The legislators challenged the lieutenant governor's right to cast a tie-breaking vote. *Id.* The Supreme Court held that the legislators had standing because they had an "interest in maintaining the effectiveness of their votes," which collectively could have defeated ratification, had the lieutenant governor not cast his vote. *Id.* at 438, 441. The Court later cautioned, when deciding *Raines*, that *Coleman* is a

case of limited application, which "at most" stands "for the proposition that legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified." *Raines*, 521 U.S. at 823.

The Supreme Court applied those principles in *Arizona State Legislature* to uphold the standing of the entire Arizona legislature to challenge a state constitutional amendment, adopted by popular initiative, that placed sole authority for congressional redistricting in an independent redistricting commission. 135 S. Ct. at 2658, 2665. The Court distinguished *Raines* as involving only six individual legislators, and analogized the Arizona legislature to the bloc of senators in *Coleman*. *Id.* at 2664-65. The state constitutional amendment at issue, the Court said, "would 'completely nullify' any vote by the Legislature, now or 'in the future,' purporting to adopt a redistricting plan." *Id.* at 2665 (quoting *Raines*, 521 U.S. at 823-34) (alteration omitted).

The State Legislative Plaintiffs' allegations fit squarely within *Raines*'s explicit limitation on legislative standing. They bear little resemblance to the facts of *Coleman* or *Arizona State Legislature*. The State Legislative Plaintiffs are only two of 253 members of the Pennsylvania General Assembly, just as the plaintiffs in *Raines* were only six out of 535 members of the United States Congress. Two votes could not on their own have defeated or enacted any proposed remedial redistricting legislation that might have – but did not – come up for a final vote in the Pennsylvania Senate.

The State Legislative Plaintiffs rejoin that their respective leadership roles in the state senate overcome that math and bring their interests within the purview of *Coleman*. That assertion is flawed in two significant respects. First, the Pennsylvania Senate is only one of two chambers of the General Assembly. Bicameralism is meaningful, and the Pennsylvania Senate

cannot pass legislation or override a gubernatorial veto by itself. *See* Pa. Const. art. III, § 4 ("No bill shall become a law, unless on its final passage the vote is taken by yeas and nays, the names of the persons voting for and against it are entered on the journal, and a majority of the members elected to each House is recorded thereon as voting in its favor."); Pa Const. art. IV, § 15 (requiring two-thirds of each chamber of the Pennsylvania General Assembly to vote to override a gubernatorial veto). The State Legislative Plaintiffs do not allege that either senator can command the two-thirds majority necessary in both chambers to override a gubernatorial veto. Second, and meaning no disrespect to any legislative leader, we can find no support – and none has been offered – for the implied proposition that the Republican Caucus is obligated to vote in line with a leader's suggestion. That they may vote in unison in a matter of great importance is perhaps a reasonable guess, but it is still just a guess.

Furthermore, the State Legislative Plaintiffs themselves frame their alleged injury as the deprivation of "their legislative authority to apportion congressional districts" and "the federally-mandated 'adequate opportunity' to craft a remedial plan[.]" (Pl. Opp. Br. at 29.) That injury is indistinguishable from the claimed "diminution of legislative power" the *Raines* Court explained affects all members of the legislative institution equally. 521 U.S. at 821. The Pennsylvania Supreme Court's alleged usurpation of the General Assembly's power did not deprive Senator Corman or Senator Fulmar of any rights vested personally in them by the Elections Clause. Any responsibilities afforded the State Legislative Plaintiffs by nature of their respective leadership positions in the Pennsylvania Senate derive from state law. Their claimed injury thus does not emanate from the federal Elections Clause.

In short, Supreme Court precedent compels dismissal of the State Legislative Plaintiffs' claims. Their two votes are inadequate as a matter of law to allow a lawsuit premised on an

institutional injury to the General Assembly. Accordingly, the State Legislative Plaintiffs lack standing to bring the Elections Clause claims asserted in the verified complaint.

2. ***The Federal Congressional Plaintiffs***

The Federal Congressional Plaintiffs fare no better, albeit for different reasons. The Defendants' attack all three of the underpinnings of the Federal Congressional Plaintiffs' standing: injury-in-fact, causation, and redressability.

i. **Injury-In-Fact**

To satisfy the injury-in-fact requirement, a plaintiff must allege a violation of a legally protected interest that is "actual or imminent." *Finkelman*, 810 F.3d at 193 (citation omitted). The Federal Congressional Plaintiffs allege that they were doubly injured by the Pennsylvania Supreme Court's purported disregard of the Elections Clause, asserting, first, that their current congressional districts are "radically altered," thereby reducing their incumbency advantage, and, second, that they have already invested time, energy, and resources campaigning in their current districts. (Pl. Opp. Br. at 36.) We address each of those claimed injuries in turn.

Case law strongly suggests that a legislator has no legally cognizable interest in the composition of the district he or she represents. In *City of Philadelphia v. Klutznick*, 503 F. Supp. 663 (E.D. Pa. 1980), for example, certain state and federal legislators challenged the 1980 decennial census conducted in the City of Philadelphia. *Id.* at 669. The legislators claimed that an undercounting of the city's population could lead to inaccurate congressional and legislative reapportionment. *Id.* at 672. The court disagreed that the legislators had a basis for complaint, holding that elected officials suffer no cognizable injury when their district boundaries are adjusted. *Id.* That interest, the court observed, belongs to the voters, "if [to] anyone[.]" *Id.* The Supreme Court recently echoed this theme in *Arizona State Legislature* when it said, a "core

principle of republican government" is "that the voters should choose their representatives, not the other way around." 135 S. Ct. at 2677 (citation omitted); *cf. Moore v. U.S. House of Representatives.*, 733 F.2d 946, 959 (D.C. Cir. 1984) (Scalia, J., concurring) ("In my view no officers of the United States ... exercise their governmental powers as personal prerogatives in which they have a judicially cognizable private interest.").

The several cases cited by the Federal Congressional Plaintiffs do not persuade us otherwise. (*See* Pl. Opp. Br. at 35-36 (collecting cases).) Those cases are distinguishable on the law, the facts, or both. *Johnson v. Mortham*, for example, is situated on a questionable legal premise. 915 F. Supp. 1529 (N.D. Fla. 1995). The court there allowed a congresswoman to intervene in her individual capacity to address a challenge to the constitutionality of her district under the Equal Protection Clause of the United States Constitution. *Id.* at 1533, 1538. In deciding that the congresswoman had standing, the court cited the decision of the United States Court of Appeals for the Fifth Circuit in *LULAC, Council No. 4434 v. Clements*, 884 F.2d 185 (5th Cir. 1989). But *LULAC* itself made the point that "[a] voting rights case challenges the election process rather than the individuals holding office," emphasizing that "government officials [in their *official* capacities] . . . have *no* legally protectable interest in redistricting." 884 F.2d at 188 (emphasis added). The remaining cases cited by the Federal Congressional Plaintiffs concern allegedly unconstitutional rules or regulations affecting rights of a candidate for office.[9] None stand for the proposition that an elected representative has a legally cognizable interest in the composition of his or her electoral district.

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[9] *See Cook v. Gralike*, 531 U.S. 510, 531 (2001) (Rehnquist, J., concurring) (explaining that candidates have standing to bring First Amendment challenges to ballot provisions); *Storer v. Brown*, 415 U.S. 724, 738 & n.9 (1974) (candidates have standing to challenge statute burdening "their access" to get their names on a ballot); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 36-37 (1st Cir. 1993) (candidates have standing to challenge public financing law).

Setting aside whether the Federal Congressional Plaintiffs' argument that already invested campaign resources will now be wasted bears on an injury that inheres to the candidate or the candidate's campaign organization or both, the issue of injury-in-fact becomes irrelevant when one considers, as we do in the following section, the question of causation. Even if the wasted investment of resources were a legally cognizable injury, the Federal Congressional Plaintiffs still lack standing because they cannot establish that such an injury was caused by the Elections Clause violations alleged in the verified complaint. The cost of shifting district boundaries – in terms of both campaign funding and constituent fealty – is surely appreciable. But the Federal Congressional Plaintiffs have identified no legal principle tethering that cost to a legally cognizable interest in the composition of their electoral districts under the Elections Clause of the Constitution.

ii. Causation

Article III's causation element is satisfied when an alleged injury is "fairly traceable to the challenged action[.]" *Finkelman*, 810 F.3d at 193 (citation omitted). The Third Circuit has described the causation requirement as "akin to 'but for' causation[.]" *Id.* at 193 (internal citation omitted). Even an "indirect causal relationship" may suffice when a plaintiff adequately establishes a "fairly traceable connection between" a claimed injury and an alleged violation. *Id.* at 193-94 (internal quotation marks and citation omitted). Here, the injuries of which the Federal Congressional Plaintiffs complain are not fairly traceable to the claims asserted in the verified complaint, namely that the Pennsylvania Supreme Court unlawfully imposed mandatory redistricting criteria (Count I) and failed to provide the General Assembly an adequate opportunity to pass a remedial congressional redistricting map (Count II).

The Federal Congressional Plaintiffs' injuries, to the extent they have any, fail this causation requirement as to both Count I and Count II because their alleged harm is not rooted in the claims they have pled. The Pennsylvania Supreme Court's decision to review the 2011 Map is not itself the basis of either Count I or Count II. Indeed, the Plaintiffs readily concede that the Pennsylvania Supreme Court has the authority to review redistricting legislation for compliance with the Pennsylvania Constitution. That is a sensible concession. *See Ariz. State Legislature*, 135 S. Ct. at 2673 ("Nothing in [the Elections] Clause instructs, nor has this Court ever held, that a state legislature may prescribe regulations on the time, place, and manner of holding federal elections in defiance of provisions of the State's constitution."); *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 510 (1837) ("The laws and constitutions of the states belong solely to the state courts to expound."). The Federal Congressional Plaintiffs' "injury" is that the 2011 Map did not survive, and that is plainly what all of the Plaintiffs dislike, but it is not their legal complaint.

The record reflects an unbridgeable gap in the causal chain between the Federal Congressional Plaintiffs' claimed injuries and the alleged Elections Clause violations. That is, even if the Pennsylvania Supreme Court had simply ordered that a new redistricting map be drawn, but had given the General Assembly free substantive rein (Count I) and a few months' time (Count II) to accomplish that objective, the Federal Congressional Plaintiffs' injury would persist. In that circumstance, the court would not have committed any of the improprieties alleged in the verified complaint, but district boundaries would still have changed. At bottom, the Federal Congressional Plaintiffs' injuries are traceable only to the court's decision to invalidate the 2011 Map and its mandate that a new map be adopted – acts that the Plaintiffs concede are "undoubtedly" within the state court's authority. (*See* Pl. Reply Br. at 2-3

(commenting that it is "undoubtedly true" that "a state court ... has the authority to invalidate a congressional districting plan that violates state law").) Their injuries are not fairly traceable to the substantive decision that the redistricting map be drawn according to specific criteria or to the process that actually led to the court-drawn map. The alleged violations of the Elections Clause, as framed by the Plaintiffs themselves, relate only to those significant but limited points. Accordingly, the Federal Congressional Plaintiffs have not established Article III standing.[10]

B. Prudential Standing: Third-Party Standing[11]

Distinct from Article III's immutable standing requirements are the judge-made prudential limitations on standing. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386 (2014); *Bennett v. Spear*, 520 U.S. 154, 162 (1997). Those limitations include "the general prohibition on a litigant's raising another person's legal rights[.]" *Lexmark Int'l*, 134 S. Ct. at 1386 (citation omitted); *see also Warth v. Seldin*, 422 U.S. 490, 499-500 (1975).[12]

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[10] Because the Plaintiffs' standing arguments fail at either the injury-in-fact or the causation stage of an Article III standing analysis, we do not address Article III's redressability requirement.

[11] The Intervenor-Defendants' motion for judgment on the pleadings argued that "[a]ll Plaintiffs lack prudential standing because their claims 'rest ... on the legal rights or interests of third parties.'" (Int. Def. Br. in Supp. MJP at 6 (citation omitted).) The Federal Congressional Plaintiffs did not respond to that argument at all, representing to us at the March 9 hearing that they did not "appreciate the fact that [the Intervenor-Defendants] were raising a prudential standing argument[.]" (Mar. 9, 2018 Hr'g Tr. at 74:7-8.) The Intervenor-Defendants therefore have a colorable argument that the Federal Congressional Plaintiffs forfeited their arguments on prudential standing. *See Griswold v. Coventry First LLC*, 762 F.3d 264, 274 n.8 (3d Cir. 2014) (explaining that a party had waived an argument "having neglected to properly brief the issue and having conceded as much at oral argument"). Given the frenetic pace of briefing in this matter, however, we will overlook the Federal Congressional Plaintiffs' potential forfeiture and resolve the prudential standing issue on its merits.

[12] Third-party standing is understood as one of the doctrines of "prudential standing." *Lexmark Int'l*, 134 S. Ct. at 1387 n.3. The Supreme Court recently discussed the overarching concept of prudential standing in *Lexmark International, Inc. v. Static Control Components, Inc.*, and clarified that, although several doctrines are usually analyzed under that label, those

Review of the Plaintiffs' verified complaint reflects that their claims fail the prudential standing prong as well.

A party that meets Article III's standing requirements generally must rest its claim for relief on a violation of its own rights and not the rights of a third party. *The Pitt News v. Fisher*, 215 F.3d 354, 361-62 (3d Cir. 2000). An exception to that limitation exists when the third party "asserting the right has a 'close' relationship with the person who possesses the right ... [and when] there is a 'hindrance' to the possessor's ability to protect his own interests," *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (citation omitted), and "[t]he litigant [has] suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute," *Powers v. Ohio*, 499 U.S. 400, 411 (1991) (internal quotation marks and citation omitted). Absent a "hindrance" to the third-party's ability to defend its own rights, this prudential limitation on standing cannot be excused. *Kowalski*, 543 U.S. at 130; *accord Barrows v. Jackson*, 346 U.S. 249, 257 (1953) (permitting third-party standing because "it would be

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doctrines may not implicate ideas about Article III "standing" at all. For instance, the Court suggested that the "zone of interests" test is better understood as assessing whether a particular plaintiff states a claim, rather than whether that plaintiff has standing. *Id.* at 1386-87. In contrast, the "rule barring adjudication of generalized grievances" implicates Article III standing concerns. *Id.* at 1386. Third-party standing, however, is "harder to classify" but may be "closely related to the question whether a person in the litigant's position will have a right of action on the claim[.]" *Id.* at 1387 n.3 (citation omitted). The *Lexmark* Court noted that the case did not present a question of third-party standing and left "consideration of that doctrine's proper place in the standing firmament [to] await another day." *Id.*

While *Lexmark* took note that for a court to decline jurisdiction "on grounds that are 'prudential,' rather than constitutional[,] ... is in some tension with our recent reaffirmation of the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging," *id.* at 1386 (internal question marks and citation omitted), the Court nevertheless continues to apply that doctrine of third-party standing. *See, e.g., Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689 (2017) (conducting third-party standing analysis to conclude that son could rest claim for relief on legal rights of his deceased father). So too will we.

difficult if not impossible for the persons whose rights are asserted to present their grievance before any court").

The Elections Clause vests authority to prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives ... in each State by the Legislature thereof[.]" U.S. Const. art. I, § 4, cl. 1. The Supreme Court interprets the words "the Legislature thereof," as used in that clause, to mean the lawmaking processes of a state. *Ariz. State Legislature*, 135 S. Ct. at 2673. The Elections Clause, therefore, affirmatively grants rights to state legislatures, and under Supreme Court precedent, to other entities to which a state may, consistent with the Constitution, delegate lawmaking authority. *See id.* at 2668. The Plaintiffs are neither the Pennsylvania General Assembly nor a group to which Pennsylvania has delegated the Commonwealth's lawmaking power. As far as we can tell on this record, the Elections Clause claims asserted in the verified complaint belong, if they belong to anyone, only to the Pennsylvania General Assembly.

Assuming *arguendo* that the Plaintiffs could fashion a cognizable claim to assert the prerogatives of the General Assembly, they can only do so if the General Assembly faces a hindrance to vindicating its own rights. That is demonstrably not the case. The General Assembly was an independent party to the state-court proceedings, was represented by its own counsel, and filed its own brief to protect its institutional interest in legislative privilege. Its co-respondents in that case – the state legislative respondents – presently have an emergency stay application pending before the United States Supreme Court seeking to enjoin implementation of the Pennsylvania Supreme Court's judgment. *See Turzai v. League of Women Voters of Pa.*, No. 17A909 (filed Feb. 27, 2018). The General Assembly undertook a fight that is in fact still going on.

The Plaintiffs argue that, because the General Assembly lost in that fight and cannot re-litigate the matter, it truly is hindered and cannot assert its own rights. That line of argument, however, could always be made by someone associated with a losing party. It is untenable in light of multiple doctrines protecting the finality of judgments. *See, e.g.*, *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (issue preclusion); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 10, 14 (1987) (*Younger* abstention); *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 163-64 (3d Cir. 2010) (*Rooker-Feldman* doctrine); *Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc.*, 571 F.3d 299, 307 (3d Cir. 2009) (*Colorado River* abstention). We need not analyze the applicability of those doctrines. It is enough that the Plaintiffs themselves acknowledge that one or more of them would block the General Assembly's path. That is meant to be the end of it, unless the United States Supreme Court chooses to take up the case.

The Plaintiffs have not presented us with any reason to believe the General Assembly could not vigorously defend its rights in that forum. We therefore conclude that none of the Plaintiffs has prudential standing to assert claims for relief premised on rights granted to the Pennsylvania General Assembly by the federal Elections Clause.

V. Conclusion

We hold that the federal Elections Clause violations that the Plaintiffs allege are not the Plaintiffs' to assert. Because fundamental principles of constitutional standing and judicial restraint prohibit us from exercising jurisdiction, we have no authority to take any action other than to dismiss the Plaintiffs' verified complaint. Moreover, the deficiencies identified herein are legal rather than factual in nature. Accordingly, we conclude that leave to amend would be futile. For the foregoing reasons, the Plaintiffs' verified complaint will be dismissed, and Plaintiffs' motion for preliminary injunction will be denied.

FOR THE COURT:

s/ Kent A. Jordan
Kent A. Jordan, Circuit Judge
United States Court of Appeals
for the Third Circuit

s/ Christopher C. Conner
Christopher C. Conner, Chief District Judge
United States District Court
for the Middle District of Pennsylvania

s/ Jerome B. Simandle
Jerome B. Simandle, District Judge
United States District Court
for the District of New Jersey

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JACOB CORMAN, in his official capacity as Majority Leader of the Pennsylvania Senate, *et al.*,	:	**CIVIL ACTION NO. 1:18-CV-443**
	:	**Three Judge Panel Convened Pursuant to 28 U.S.C. § 2284(a)**
Plaintiff	:	
v.	:	
ROBERT TORRES, in his official capacity as Acting Secretary of the Commonwealth, *et al.*,	:	
Defendants	:	
v.	:	
CARMEN FEBO SAN MIGUEL, *et al.*,	:	
Intervenor-Defendants	:	

ORDER

BEFORE: Jordan, Circuit Judge; Conner, Chief District Judge; Simandle, District Judge.

AND NOW, this 10th day of April, 2018, upon consideration of the motion (Doc. 139) to intervene as plaintiff and for reconsideration filed *pro se* by Jeffrey Cutler ("Cutler") on April 3, 2018, wherein Cutler—who identifies himself as a citizen of the United States and elected municipal official—remonstrates that the Pennsylvania Supreme Court decision challenged *sub judice*, which decision this court declined to review for lack of jurisdiction on March 19, 2018, (see Docs. 136, 137), contravenes both the First and Fourteenth Amendments to the United States Constitution, (Doc. 139 at 2), as well as the Pennsylvania Constitution, (see id. at

4-6), and the court observing as a threshold matter that the rules governing intervention require proposed intervenors to "state the grounds" supporting their request, see FED. R. CIV. P. 24(c), but that Cutler has failed to articulate a basis for leave to intervene as of right under Federal Rule of Civil Procedure 24(a), see FED. R. CIV. P. 24(a), nor has he set forth a basis for permissive intervention under Federal Rule of Civil Procedure 24(b)(1), see FED. R. CIV. P. 24(b)(1), and the court further observing, assuming *arguendo* that Cutler could assert a proper basis for intervention, that Cutler's proposed motion for reconsideration is untimely under and noncompliant with the local rules of this court, which require that any motion for reconsideration "be accompanied by a supporting brief" and be "filed within fourteen (14) days after entry of the order concerned," LOCAL RULE OF COURT 7.10, and the court thus concluding that the instant motion is both untimely and without merit, it is hereby ORDERED that Cutler's motion (Doc. 139) to intervene as plaintiff and for reconsideration is DENIED with prejudice.

FOR THE COURT:

/S/ Kent A. Jordan
Kent A. Jordan, Circuit Judge
United States Court of Appeals
for the Third Circuit

/S/ Christopher C. Conner
Christopher C. Conner, Chief District Judge
United States District Court
for the Middle District of Pennsylvania

/S/ Jerome B. Simandle
Jerome B. Simandle, District Judge
United States District Court
for the District of New Jersey

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... electronically). THREE JUDGE COURT REQUESTED PURSUANT TO 28 U.S.C. § 2284(a). MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION. Case 1:18-cv-00443-CCC-KAJ-JBS Document 3-2 Filed 02/22/18 Page 1 of 33 ...

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Mar 19, 2018 - court may take judicial notice of a prior judicial opinion." (internal citation omitted)). We view these facts in the light most favorable to the Plaintiffs. Alston v. Countrywide Fin. Corp., 585 F.3d 753, 758 (3d Cir. 2009). Case 1:18-cv-00443-CCC-KAJ-JBS Document 126 Filed 03/19/18 Page 4 of 24 .

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[PDF] **Motion for Leave to File Amicus Brief by the Republican Caucus of th...**
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... consideration of the Motion for Leave to Participate as Amicus Curiae filed by Movant, the Republican Caucus of the Pennsylvania House of Representatives, the Motion is hereby granted. Amicus Curiae is hereby granted leave to file its Brief. Case 1:18-cv-00443-CCC-KAJ-JBS Document 38 Filed 02/27/18 Page 1 of 17 ..

[PDF] **Motion for Leave to Participate as Amicus Curiae in Support of ...**
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curiae in support of Defendants. Movant's proposed brief is attached as Exhibit A. A district court has broad discretion to permit an amicus curiae to participate in a pending action. Wayne Land & Mineral Grp. v. Del. River Basin Comm'n,. Case 1:18-cv-00443-CCC-KAJ-JBS Document 60 Filed 03/02/18 Page 1 of 3 ...

[PDF] **Amicus Brief of Brian McCann et al. - Brennan Center for Justice**
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Mar 19, 2018 - LORRAINE PETROSKY, . : : Intervenor-. : Defendants. . Case 1:18-cv-00443-CCC -KAJ-JBS Document 136 Filed 03/19/18 Page 1 of 24 .... Although the parties and several amici submitted a number of proposed remedial maps, the court determined that its own remedial map was "superior or comparable to ..

[PDF] **ACRU Amicus Brief - The Public Interest Law Center**
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[PDF] **exhibit c - All About Redistricting**
redistricting.lls.edu/files/PA%20Corman%20180302%20Pl%20opp%20exhC.pdf
Mar 2, 2018 - the brief. There's an excellent amicus brief 22 from the AFL and related unions doing an. 23. Edmond's analysis of this. The Court of. 24 course has done an extensive Edmonds. 25 analysis in the Pappa' (ph) case, and the Case 1:18-cv-00443-CCC-KAJ-JBS Document 97-4 Filed 03/02/18 Page 10 of 192 ..

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