

No. 18-1816

---

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

---

**JACOB CORMAN, in his official capacity as Majority Leader of the  
Pennsylvania Senate, *et al.*, Plaintiff,**

**v.**

**ROBERT TORRES, in his official capacity as Acting Secretary of the  
Commonwealth, *et al.*, Defendants-Appellees,**

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

**JEFFREY CUTLER, Appellant**

---

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA**

---

**DEFENDANTS-APPELLEES' OPPOSITION TO APPELLANT  
JEFFREY CUTLER'S MOTION FOR INJUNCTION PENDING APPEAL**

Thomas P. Howell  
Office of General Counsel  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101

Timothy E. Gates  
Kathleen M. Kotula  
Pennsylvania Department of State  
Office of Chief Counsel  
306 North Office Building  
Harrisburg, PA 17120

Mark A. Aronchick  
Michele D. Hangle  
Hangle Aronchick Segal Pudlin &  
Schiller  
One Logan Square, 27th Floor  
Philadelphia, PA 19103

*Attorneys for Acting Secretary Torres  
and Commissioner Marks*

Defendants-Appellees 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, hereby respectfully request that the Court deny Appellant Jeffrey Cutler's motion for an injunction pending appeal. Appellant has failed to meet the requirements of Rule 8 of the Federal Rules of Appellate Procedure by filing a motion for an injunction in this Court without first seeking an injunction from the District Court. Appellant, whose motion to intervene as a plaintiff in this matter was denied by the District Court (*see Corman v. Torres*, No. 1:18-cv-00443-CCC-KAJ-JBS, ECF No. 140 (M.D. Pa., April 10, 2018)), seeks to enjoin enforcement of the remedial redistricting map adopted by the Pennsylvania Supreme Court in *League of Women Voters of Pennsylvania, et al. v. Commonwealth of Pennsylvania, et al.*, No. 159 MM 2017 (Pa.), pending the appeal of the instant litigation. Under Rule 8, "a party must ordinarily move first in the district court for . . . an order suspending, modifying, restoring, or granting an injunction while an appeal is pending." Fed. R. App. P. 8(a)(1)(C). Where the movant instead makes the motion directly to the Court of Appeals, "[t]he motion must: (i) show that moving first in the district court would be impracticable; or (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action." *Id.* at 8(a)(2)(A).

Appellant did not move for an injunction in the District Court, and his motion in this Court makes no attempt to show that moving first in the district court would have been impracticable. Thus, Appellant has improperly filed in this Court and has failed to make the required showing under Rule 8 to explain why it was necessary to do so. Apart from the procedural deficiency of Appellant's motion, the substance of the motion shows that it is without merit. For the foregoing reasons, the motion for an injunction pending appeal should be denied.

Dated: May 4, 2018

Thomas P. Howell  
Office of General Counsel  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101  
Tel: (717) 783-6563  
Fax: (717) 787-1788  
thowell@pa.gov

Timothy E. Gates  
Kathleen M. Kotula  
Pennsylvania Department of State  
Office of Chief Counsel  
306 North Office Building  
Harrisburg, PA 17120  
Tel: (717) 783-0736  
tgates@pa.gov  
kkotula@pa.gov

/s/ Mark A. Aronchick

Mark A. Aronchick  
Michele D. Hangle  
Hangle Aronchick Segal Pudlin & Schiller  
One Logan Square, 27th Floor  
Philadelphia, PA 19103  
Tel: (215) 568-6200  
Fax: (215) 568-0300  
maa@hangle.com  
mdh@hangle.com

*Attorneys for Acting Secretary Torres and  
Commissioner Marks*

**CERTIFICATE OF SERVICE**

I, Mark Aronchick, hereby certify that on May 4, 2018, a true and correct copy of the foregoing Defendants-Appellees' Opposition to Appellant Jeffrey Cutler's Motion For Injunction Pending Appeal, was filed via the Court's CM/ECF system, which will provide electronic notice to all counsel of record and sent via first class mail on the following:

Jeffrey Cutler  
P.O. Box 2806  
York, PA 17405

*/s/ Mark A. Aronchick*

Mark A. Aronchick