THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JACOB CORMAN, *et al*., Plaintiffs, v. ROBERT TORRES, *et al*., Defendants, and CARMEN FEBO SAN MIGUEL, *et al*., Intervenor-Defendants.	Civil Action No. 1:18-cv-00443-CCC-KAJ-JBS Circuit Judge Jordan Chief Judge Conner Judge Simandle

THE NATIONAL DEMOCRATIC REDISTRICTING COMMITTEE'S BRIEF AS AMICUS CURIAE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

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The National Democratic Redistricting Committee ("NDRC") opposes Plaintiffs' motion for a preliminary injunction. This Court lacks subject matter jurisdiction because Plaintiffs lack standing. Even if Plaintiffs could establish standing, their claims are a meritless and impermissible collateral attack on the Pennsylvania Supreme Court's state-law judgment. Not only is the Elections Clause claim that a state court cannot enforce its constitution groundless, its very premise is mistaken: at no point, even after the state court's judgment, was the legislature impeded from enacting a new map which complies with Pennsylvania law.

Candidates and their campaigns have already acted in reliance on the Pennsylvania Supreme Court's ruling: candidates have announced their intentions to run in the new districts, jettisoning other geographies as well as other campaigns with different filing deadlines; petitions to qualify for the primary ballot are circulating; and campaigns are being waged. There simply is no basis for a federal court to upend the statewide 2018 election in Pennsylvania this late in the day, particularly where the state court has rendered a considered decision and order based on the Pennsylvania Constitution and Plaintiffs' claims are fatally flawed.

ARGUMENT

I. PLAINTIFFS' CLAIMS HAVE NO LIKELIHOOD OF SUCCESS

A. This Court Lacks Subject Matter Jurisdiction.

To invoke federal court jurisdiction, Article III requires Plaintiffs to demonstrate an injury-in-fact, defined as "an invasion of a legally protected interest, which is (a) concrete and particularized, and (b) 'actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-

61 (1992). Moreover, the injury test requires "that the party seeking review be himself among the injured." *Id*. at 563. None of the Plaintiffs can survive even the first element of standing: the Republican state legislators allege injuries suffered not by them, individually, but purportedly by a legislative body that is not before the Court; and the Republican Members of Congress fail to identify any legally protectable interest in the composition of their districts that would be sufficient to invoke this Court's jurisdiction. Therefore, Plaintiffs' claims must be dismissed for lack of standing.

1. The Republican State Legislators Lack Standing to Vindicate Institutional Harm to the General Assembly's Authority.

Plaintiffs Jacob Corman and Michael Folmer, two individual Republican state legislators, complain solely of institutional injuries to the General Assembly's authority, and fail to allege any specific personal stake in this lawsuit that would confer Article III standing. The Supreme Court has held unequivocally that individual legislators, asserting claims based solely on institutional injuries to the legislative body, cannot satisfy Article III's injury requirement. *See Raines v. Byrd*, 521 U.S. 811 (1997). In *Raines*, the Court held that a group of six Members of Congress lacked standing to challenge the Line Item Veto Act, notwithstanding their allegation that the Act unconstitutionally expanded the President's power and, consequently, diluted their Article I voting power. *See id*. Specifically, the Court noted that the lawmakers' claim was "based on a loss of political power," which was an institutional injury that all Members of Congress shared, as opposed to the loss of a private right to which the lawmakers were personally entitled. *See id*. at 821.

Further illustrating the distinction between institutional and personal injuries—and its preclusive effect on the state legislators' claims here—the Supreme Court later held, in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, that the Arizona legislature had standing to challenge a state constitutional amendment that removed congressional redistricting authority from the legislature, in favor of a nonpartisan redistricting commission. 135 S.Ct. 2652, 2664 (2015). There, the Court distinguished *Raines*, noting that "[t]he Arizona Legislature, in contrast, is an institutional plaintiff asserting an institutional injury, and it commenced this action after authorizing votes in both of its chambers." *Id*. As *Raines* and *Arizona State Legislature* establish, institutional injuries are not specific to any legislator in particular, but rather, are shared by the entire legislative body. *See Raines*, 521 U.S. at 821.

The only rights the state legislators seek to vindicate are those purportedly conferred on the General Assembly under Article I, § 4 of the U.S. Constitution. While the Complaint identifies the lead plaintiffs as Jacob Corman, Majority Leader of the Pennsylvania Senate, and Michael Folmer, Chairman of the Senate State Government Committee, it fails to mention whether these lawmakers are suing on behalf of the General Assembly, or whether they were authorized by (or sought authorization from) the Senate to file suit on its behalf; nor does it specify the injury that the state legislators claim to have suffered. *See Raines*, 521 U.S. at 829 ("We attach some importance to the fact that [the members of Congress] have not been authorized to represent their respective Houses . . . in this action, ..."). Moreover, the Complaint asserts two counts, both of which are based on alleged usurpation of

legislative authority granted by the Elections Clause. That interest implicates only an institutional right that two Republican legislators have no authority to vindicate in federal court. *See Lance v. Coffman*, 549 U.S. 437 (2007).

Because the state legislators have filed suit on their own behalf, with no apparent authority to represent the General Assembly, they cannot satisfy the threshold requirement of standing.

2. Even if the Court Finds That the Republican State Legislators Are Indeed Acting on Behalf of the General Assembly, the *Rooker-Feldman* Doctrine Would Require Dismissal.[1]

Even assuming the Republican state legislators are in fact suing on behalf of the General Assembly, the *Rooker-Feldman* doctrine would preclude this Court from exercising jurisdiction because the General Assembly was a losing party in the state court proceedings that Plaintiffs now seek to nullify.

Under the Supreme Court and the Third Circuit's well-settled precedents, the *Rooker-Feldman* doctrine precludes "state-court losers" from asserting claims "complaining of injuries caused by [a] state-court judgment[] rendered before the district court proceedings commenced and inviting district court review and rejection of [that] judgment." *Gary v. Braddock Cemetery*, 517 F.3d 195, 201 (3d Cir. 2008) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)).

[1] In light of space limitations and its role as amicus, NDRC highlights just one of several preclusion, abstention, and estoppel doctrines that bar Plaintiffs' claim. *See* ECF 88 at 8-15; ECF 91 at 13-28.

In other words, federal district courts cannot sit in direct review of final state court decisions. *See, e.g.*, *Walker v. Horn*, 385 F.3d 321, 329 (3d Cir. 2004).

The Republican state legislators' pleadings make clear that they complain *solely* of injuries caused by a state court judgment. *See, e.g.*, Pls.' Mem. at 1 ("This matter concerns a court's unprecedented decision . . . ."). Their requested relief seeks to enjoin state election officials from carrying out the Pennsylvania Supreme Court's order implementing a remedial districting plan, which in effect is an outright reversal of a state court ruling which rested entirely on state law grounds. *See, e.g.*, *In re Madera*, 586 F.3d 228, 232 (3d Cir. 2009) ("*Rooker-Feldman* doctrine is implicated when, 'in order to grant the federal plaintiff the relief sought, the federal court must . . . take action that would render that judgment ineffectual'."). Indeed, Plaintiffs' brief in support of their motion for preliminary injunction expressly invites this Court to review the Pennsylvania Supreme Court's decision, and argues that the state's highest court lacked authority to remedy violations of the state constitution. Pls.' Mem. at 9 (arguing that "federal courts have reviewed the decisions of state courts on this very question."). The *Rooker-Feldman* doctrine precludes this Court from exercising jurisdiction over such claims when asserted by a state-court loser, like the General Assembly. *See Reisinger v. Luzerne Cty.*, 712 F. Supp. 2d 332, 349 (M.D. Pa. 2010). Therefore, to the extent that the state legislators insist they filed suit on behalf of the General Assembly, this Court would still lack subject matter jurisdiction to address their claims.

3. The Republican Members of Congress Lack Standing Because They Have No Legally Protected Interest in the Composition of Their Districts.

The jurisdictional defects in the state legislators' claims cannot be cured by allegations from Republican Members of Congress, who claim to be injured by virtue of having to represent new or unfamiliar constituents. To demonstrate standing, not just any injury will suffice; rather, "the alleged injury must be legally and judicially cognizable," and the dispute must be one that is "'traditionally thought to be capable of resolution through the judicial process.'" *Raines*, 521 U.S. at 819.

"A legislative representative suffers no cognizable injury, in a due process sense or otherwise, when the boundaries of [his or her] district are adjusted by reapportionment," *City of Phila. v. Klutznick*, 503 F. Supp. 663, 672 (E.D. Pa. 1980), especially when the prior map violates the constitutional right to vote. Neither the Supreme Court nor the Third Circuit has endorsed the notion that a legislator has a legally protectable interest in maintaining the specific composition of his district, and for good reason. *See id*. ("While the voters in a representative's district have an interest in being represented, a representative has no like interest in representing any particular constituency."). To suggest that an elected representative is injured when his or her constituents change is incompatible with a republican form of government; Members of Congress hold their seats "as trustee[s] for [their] constituents, not as a prerogative of personal power." *Raines*, 521 U.S. at 821. And given the Pennsylvania Supreme Court's determination that the 2011 Plan violated the Pennsylvania Constitution—a ruling which Plaintiffs insist is not being challenged in this case, *see* ECF 33 at 17 ("Plaintiffs are not seeking to reargue the merits of the

2011 Plan, but are instead challenging the Pennsylvania Supreme Court's authority . . . .")—this Court cannot take seriously the allegations from Republican Members of Congress who attempt to assert a legal interest in reinstating their gerrymandered districts.

Nor should the Court allow Republican Members of Congress to convert day-to-day requirements of elected office into cognizable injuries. *Cf. Conservative Baptist Ass'n of Am., Inc. v. Shinseki*, 42 F. Supp. 3d 125, 132 (D.D.C. 2014) (holding that organization "cannot convert its ordinary activities and expenditures related to endorsing chaplains into an injury-in-fact"). These legislators have alleged in various forms that they provided services to constituents and had started campaigning in their old districts, but do not explain how the Pennsylvania Supreme Court's Order or the remedial map prevents them from campaigning or engaging with constituents in the future. *See McNair v. Synapse Group, Inc.*, 672 F.3d 213, 223 (3d Cir. 2012) ("When, as in this case, prospective relief is sought, the plaintiff must show that he is 'likely to suffer future injury' from the defendant's conduct.") (quoting *City of Los Angeles. v. Lyons*, 461 U.S. 95, 105 (1983)). These allegations are simply variations of the same alleged injury: that the Republican Members of Congress will now have to conduct these same day-to-day activities (i.e., providing services to residents and campaigning) for new constituents. This would be true of all redistricting plans, however, and, as explained above, legislators have no legal interest in keeping certain voters within or outside of their districts.

The Court should reject Plaintiffs' unbounded theory of standing, which would bestow upon every legislator a legally-protected interest in maintaining the

composition of his or her district—even when that district is unconstitutionally gerrymandered. Such allegations are plainly insufficient to demonstrate a cognizable injury.

B. Plaintiffs' Election Clause Claims Are Meritless.

Even if the Court reached the merits of Plaintiffs' claims, they would fare no better. To label their claims novel would be too polite: over the past century, the Supreme Court has invariably rejected attempts to use the Elections Clause to sideline state courts and other state institutions from exercising their responsibilities under state constitutions.

1. Count I is Meritless Because the Elections Clause does not Preempt State Judicial Authority to Enforce State Constitutional Requirements.

"Nothing in [the Elections] Clause instructs, nor has th[e] [U.S. Supreme] 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." *Ariz. State Legislature*, 135 S. Ct. at 2673. To the contrary, the Supreme Court has expressly rejected claims that the Elections Clause grants state legislatures greater authority than they enjoy under their state constitutions. *See id.* at 2659, 2671-77 (upholding redistricting commission established by initiative); *Smiley v. Holm*, 285 U.S. 355, 367-68 (1932) (upholding Constitutionality of gubernatorial veto of Congressional redistricting plan) ("We find no suggestion in the Federal constitutional provision of an attempt to endow the legislature of the State with power to enact laws in any manner other than that in which the constitution of the State has provided that laws shall be enacted."); *Ohio ex rel. Davis*

v. Hildebrant, 241 U.S. 565, 568 (1916) (holding map enacted by legislature invalid after rejection in referendum because it "was no law under the constitution and laws of the State"). These cases recognize that although the Elections Clause grants authority to the state legislature, "[s]tates retain autonomy to establish their own governmental processes." *Ariz. State Legislature*, 135 S. Ct. at 2673 (citing *Alden v. Maine*, 527 U.S. 706, 752 (1999) ("A State is entitled to order the processes of its own governance.")); *see also id.* at 2687 (Roberts, C.J., dissenting) (conceding that the Supreme Court precedents hold that "the Elections Clause did not prevent a State from applying the usual rules of its legislative process" "to *supplement* the legislature's role in the legislative process"). Pennsylvania granting its Supreme Court authority to review legislation for compliance with its state Constitution is no different.

The Supreme Court has flatly rejected efforts such as Plaintiffs' to displace the state judiciary from its essential role in the redistricting process. *See, e.g.*, *Growe v. Emison*, 507 U.S. 25, 33 (1993) (ruling on Congressional and state legislative redistricting case) ("state courts have a significant role in redistricting."). Indeed, federal courts are required to yield to state courts' redistricting of Congressional maps. *Id.* at 34 (reversing federal court "ignoring the possibility and legitimacy of state *judicial* redistricting").[2] The state courts routinely exercise their authority to

[2] Despite successfully arguing in *Diamond v. Torres* for a stay in light of *League of Women Voters v. Pennsylvania* because "state courts are better suited to decide legislative redistricting claims," No. 5:17-cv-05054-MMB, ECF 69-2 at 2 (E.D. Pa. Jan. 11, 2018), the same counsel now move here to "enjoin[] Defendants from implementing any congressional redistricting schedule arising" from that same

issue orders establishing districts to remedy Congressional redistricting plans that violate the state constitution.[3]

Plaintiffs contend that somehow the *League of Women Voters* case stands apart from other precedents of state judicial review of the legality of Congressional districts. Their assertion is baseless. The most commonplace map-making by the state judiciary is to remedy violations of the one-person, one-vote requirement announced in the once-controversial *Reynolds v. Sims*, 377 U.S. 533 (1964). *See* note 2, *supra*. *Reynolds* and its extensive progeny interpret the Equal Protection Clause of the U.S. Constitution, just as *League of Women Voters* interprets the Free and Equal Elections Clause of the Pennsylvania Constitution. To categorize one as a legitimate exercise of judicial authority and dismiss the other pejoratively as legislating from the bench denigrates the importance of the state Constitutions and their state court guardians.[4]

Even if the Elections Clause displaced judicially-enforced limitations on legislative power (and it does not), Congress has exercised its authority to "make or

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litigation. Mem. at 1. They should be judicially estopped from doing so. *See* ECF 91 at 22-26.

[3] *See, e.g.*, *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 261-63 (Fla. 2015); *Hall v. Moreno*, 270 P.3d 961, 963 (Colo. 2012) (en banc); *In re 2003 Apportionment of State Senate & U.S. Congressional Dists.*, 827 A.2d 844, 845 (Me. 2003); *Hippert v. Ritchie*, 813 N.W.2d 391, 395 (Minn. 2012); *Alexander v. Taylor*, 51 P.3d 1204, 1207-10 (Okla. 2002); *Perrin v. Kitzhaber*, 83 P.3d 368, 370-71 (Or. Ct. App. 2004).

[4] *See also People ex rel. Salazar v. Davidson*, 79 P.3d 1221 (Colo. 2003) (interpreting state constitution to prohibit mid-decade Congressional redistricting).

alter regulations" of "the times, places and manner of holding elections" by expressly providing that Congressional districts shall be established by states "in the manner provided by the law thereof."[5] 2 U.S.C. § 2a(c). In doing so, Congress made an intentional choice to expressly permit states to use whatever mechanisms govern redistricting under state law without any limitation to a particular branch of state government. *See generally Ariz. State Legislature*, 135 S. Ct. at 2687 & nn.19-20 (concluding the statute was enacted to "safeguard to 'each State full authority to employ in the creation of congressional districts its own laws and regulations.'"); Amicus Brief of Scholars and Historians of Congressional Redistricting, *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, No. 13-1314, 2015 WL 309081, *10-16 (S. Ct. Jan. 23, 2015). Based on that interpretation of the statute, the Supreme Court "h[e]ld" Section 2a(c) was a separate ground that "permits" a state to assign a redistricting function to any state government mechanism it chooses, rather than being limited by the Elections Clause to the state legislature. *Ariz. State Legislature*, 135 S. Ct. at 2668; *see also id.* at 2659. This interpretation of Section 2a(c) is binding precedent which forecloses Plaintiffs' claims.

Taken to its logical conclusion, the Plaintiffs' position would bar all state judicial enforcement of general state Constitutional protections with respect to the "time, place, and manner" of Congressional elections. If the Pennsylvania Supreme Court cannot interpret and enforce its constitution's Free and Equal Elections Clause

[5] Congress has "plenary authority to 'make or alter'" state laws regarding Congressional elections. *Ariz. State Legislature*, 135 S. Ct. at 2670 (quoting U.S. Const., Art. I, § 4, cl. 1); *accord Smiley*, 285 U.S. at 366-367.

with respect to redistricting (one aspect of the "time, place, and manner" of Congressional elections), there is no reason that the court can enforce state constitutional provisions in relation to other aspects of Congressional elections. *Cf. id*, 135 S. Ct. at 2676 (explaining that most state constitutions were not adopted by state legislatures and a theory that the Elections Clause mandates a state's separation of powers cannot be limited to redistricting). Nor could the other 12 states enforce their similar Free and Equal Elections Clauses in Congressional elections, *see League of Women Voters v. Pa.*, No. 159-MM-2017, at 116 n.71 (Pa. Feb. 7, 2018) (Compl. Ex. F (ECF 1-3)), not to mention the plethora of other state constitutional election law requirements. *See generally Ariz. State Legislature*, 135 S. Ct. at 2676-77 (listing state constitutional provisions that would be invalidated by a broad reading of the Elections Clause). And, of course, the federal courts are also barred from enforcing state law provisions against state officials. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984). Consequently, Plaintiffs' truly radical position would call into question the judicial enforcement of *every* state Constitutional guarantee as it applies to Congressional elections.

2. Count II's Election Clause Objections to the Pennsylvania Supreme Court's Remedy Procedure are Meritless.

The *federal* requirement that a legislature must be given a second opportunity to draw a valid map applies only to a *federal* court that remedies a violation of *federal* law. Plaintiffs only cite holdings which instruct *federal* courts for their

proposition that this is a constitutional rule.[6] *See* Pls.' Mem. at 10. However, this deference is based on general federalism principles (which apply to all elections), not the Elections Clause (which applies only to Congressional elections). *See Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (White, J., judgment of the Court) (reversing federal court order establishing at-large city council elections) ("When a *federal* court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the *federal* court to devise and order into effect its own plan.") (emphasis added) (collecting cases). Accordingly, the federalism principles limiting the federal courts' remedial authority have no bearing on a state court's ability to develop remedies to state constitutional violations.

Even if such a legislative-last-chance rule binds a state court, the Pennsylvania Supreme Court permitted a sufficient opportunity for the Pennsylvania Legislature to enact a remedial map. The 19-day period provided by the Pennsylvania Supreme Court for the Pennsylvania legislature to enact a map is longer than the 8 days the Legislature considered the Congressional map enacted in the 2011 Plan. *See* Opinion at 7 (Pa. Feb. 7, 2018); *see also id.* at 78 (Pa. Feb. 7, 2018) ("[T]he General Assembly

[6] The only case Plaintiffs cite that concerns the orders of a state court suggests a state court enforcing the one-person, one-vote requirement of the "federal Constitution" should not act until the state legislature has failed to enact a map after a decennial census. *Valenti v. Mitchell*, 962 F.2d 288, 298 (3d Cir. 1992) *cited in* Pls.' Mem. at 10. But this statement is *dicta*, at most speaks to the ripeness of a federal constitutional claim, and does not address the remedy phase which follows a judgment that a map is unconstitutional under a state constitution.

previously enacted a revised congressional districting plan within only 10 days of the court's order to do so."). It is also longer than the time allowed for legislative redistricting granted by other recent federal decisions. *See, e.g.*, *Common Cause v. Rucho*, No. 1:16-cv-1026, 2018 WL 341658 (M.D.N.C. Jan. 9, 2018) (14 days) (unanimous three-judge court), *stayed* Application No. 17A745 (Sup. Ct. Jan. 18, 2018); *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (citing N.C. Gen. Stat. § 120-2.4 (14 days to enact a new map after redistricting plan struck down)); *Calvin v. Jefferson Cty. Bd. of Commissioners*, 172 F. Supp. 3d 1292, 1326 (N.D. Fla. 2016) (16 days). And, in instances like this when an election is imminent, the legislature need not be invited to try again in advance of a remedial order. *See Ga. State Conference of NAACP v. Fayette Cty. Bd. of Comm'rs*, 996 F. Supp. 2d 1353 (N.D. Ga. 2014) (describing as an exception to deferring to legislative redistricting "when the timing of an upcoming election makes legislative action impractical") (citing *Wise*, 437 U.S. at 540 (plurality opinion)).

Plaintiffs complain that the Pennsylvania Supreme Court's opinion was announced after its per curiam order, but the order announced all the criteria required for a valid map under its later opinion. The Pennsylvania Supreme Court's January 22, 2018 per curiam decision followed its *state law* procedure that "the Court may enter, shortly after briefing and argument, a per curiam order setting forth the court's mandate, so that the parties are aware of the court's ultimate decision and may act accordingly." *League of Women Voters.*, No. 159-MM-2017, at 4.[7] The Elections

[7] "This is particularly so in election matters, where time is of the essence." *Id.* Other courts follow this procedure. *See Hall*, 270 P.3d at 964 (¶ 7).

Clause simply does not reach a state court's procedures for announcing judgments and issuing orders remedying violations of state law. Nor may a federal court invalidate the ruling of a state's highest court on matters of state law, as Plaintiffs invite this Court to do (*see* Pls.' Mem. at 13-15). *See Commissioner v. Estate of Bosch*, 387 U.S. 456, 465 (1967) ("[T]he State's highest court is the best authority on its own law.").

Even if the Elections Clause did require that a state Legislature have more time to enact a new Congressional map, the Pennsylvania Supreme Court's order of a remedial map does nothing to displace the Pennsylvania Legislature's continuing legislative authority to adopt such a map. The dates for legislative action in the Court's per curiam order merely triggered the next stages of its remedy proceeding in the (overwhelmingly likely) eventuality that no districting legislation would be enacted. But even after the entry of the Pennsylvania Supreme Court's remedial order, the Legislature remained "free to replace [the] court-mandated remedial plan[] by enacting [a] redistricting plan[] of [its] own." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 404 (2006). If the legislature had enacted a new Congressional map that was valid under federal and Pennsylvania law, that map could have been used for the 2018 Congressional elections.

But waiting for the enactment of a new map is clearly futile. It has now been 43 days since the per curiam order was entered and 27 days since the Pennsylvania Supreme Court's opinion was released. There is no sign that the Pennsylvania Legislature has any intention of considering enactment of a new Congressional map,

let alone adopting one which will merit the Governor's signature or garner two-thirds support in each House to override his veto.[8]

II. THE PUBLIC INTEREST DISFAVORS AN INJUNCTION

The public interest favors enforcing the guarantee of the Free and Equal Elections Clause of the Pennsylvania Supreme Court as interpreted by that state's highest court. Beyond the principle that voters are entitled to elect representatives under a map that comports with their state constitution, this Court must also consider the impracticality of changing districts after the candidates and their campaigns have shifted to the new electoral map. Nor do next week's Special Election or the timing of overseas ballots militate in favor of an injunction. *Contra* Pls.' Mem. at 20-22.

A. Candidates Have Heavily Relied on the 2018 Map.

An order forcing a return to the 2011 Plan would wreak havoc for candidates who have already relied on the Pennsylvania Supreme Court's decision. Several candidates whose districts under the 2011 Plan were split under the remedial map have publicly announced which district they will run in, bidding farewell to large sections of their constituencies on the prior map.[9] One candidate is now running in a district that does not overlap with the district in which she ran in 2016 and had

[8] The Pennsylvania Senate is not even scheduled to reconvene until March 19, 2018. *See* General Assembly of Pennsylvania, Senate Calendar, available at http://www.legis.state.pa.us/WU01/LI/SC/SC/0/RC/CAL.PDF?r=1520006929270.

[9] *See*, *e.g.*, Ex. A (Friedenberg Decl.) ¶¶ 3-5; Statement of Rep. Brendan Boyle (Feb. 22, 2018), available at https://www.facebook.com/brendan.boyle.7165/posts/1578280398875487 ("This was a very tough decision . . . . I know my friends, supporters, and constituents in Montgomery County . . . will be disappointed with my decision.").

begun to campaign in 2018.[10] Another ended her statewide campaign for Lieutenant Governor to enter the Fourth Congressional District race, requiring her to refund contributions for her state race and to refocus her efforts from the entire state to just one of eighteen districts.[11] And, because the deadline to submit petitions to appear on the ballot for Lieutenant Governor has now passed, her decision is now irreversible.[12]

Congressional candidates started circulating nominating petitions on February 27, which must be submitted by March 20 to the Pennsylvania Secretary of State with 1,000 valid signatures of registered voters of their party in their district.[13] The campaigns have leased office space,[14] adjusted staffing plans,[15] and refocused their schedules to account for the remedial map.[16] To reverse course now would disrupt and confuse campaigns—and an election—that are already underway.

B. The Special Election in Congressional District 18 is Irrelevant.

Next Tuesday, Pennsylvania will hold a Special Election to fill the vacancy in Congressional District 18, which will ensure that every Pennsylvanian is represented

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[10] Ex. B (Hartman Decl.) ¶¶ 4-6.

[11] Ex. C (Dean Decl.) ¶¶ 2, 10-14.

[12] *Id.* ¶ 11.

[13] *See*, e.g., Ex. A ¶ 5; Ex. B ¶ 6; Ex. C ¶ 14; Marc Levy, *GOP congressmen hit ground in districts they hope to block*, Washington Post (Feb. 27, 2018), available at http://wapo.st/2HXqJZk ("Republican congressmen who are suing to block Pennsylvania's court-ordered U.S. House district boundaries nonetheless began circulating petitions in those new districts Tuesday").

[14] Ex. A ¶ 5; Ex. B ¶ 6. *See also* Ex. C ¶ 17.

[15] Ex. B ¶ 6; Ex. C ¶¶ 13, 15.

[16] Ex. A ¶ 5; Ex. B. ¶¶ 5-6; Ex. C ¶ 17.

for the remainder of the 115th Congress. Regardless of the Pennsylvania Supreme Court's decision, a Primary Election will be held for all offices throughout Pennsylvania shortly after that Special Election. That the district lines will change for the 2018 primary and general election cycle is no different than any Special Election that arises during an Election Year following a decennial census. In any case *every* Pennsylvania voter will be voting for a member of Congress—and many state and local offices—in the Primary and General Election. Plaintiffs' unevidenced claim that "confusion" will impair voters' ability to vote for the candidates who appear on their ballot in each election is simply implausible. *See* Pls.' Mem. at 10.

C. Overseas Ballots do not Favor Injunction.

Defendants convincingly explain that the state will comply with Uniform and Overseas Citizens Absentee Voting Act (UOCAVA). *See* ECF 92-3 at ¶¶ 53-69. But even if Plaintiffs were correct that Pennsylvania's timeline conflicts with UOCAVA, this Court issuing an injunction to change the Congressional districts now would only exacerbate the conflict. Such an injunction would require a further period for candidates to circulate nominating petitions under a map other than the one instituted by the Pennsylvania Supreme Court's order, and would shorten the time available between finalizing the ballot and Election Day. In any case, the proper remedy for a UOCAVA violation is to revise the deadline to finalize the ballot, or else to extend the deadline to return UOCAVA ballots. *See* Consent Decree, *United States v. West Virginia*, No. 2:14-27456, ECF 5 at 8 (S.D. W. Va. Nov. 3, 2014).

CONCLUSION

For the reasons stated above, NDRC respectfully urges the Court to deny the Plaintiffs' motion for a preliminary injunction.

Dated: March 6, 2018

By: */s/ Bruce V. Spiva*

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.8(b)

I certify that the foregoing brief complies with the word-count limitation set forth in L.R. 7.8(b)(2). Based on the word count feature of the word-processing system used to prepare this brief, I certify that it contains 4,955 words, exclusive of the cover page, Tables of Contents and Authorities, and the signature block.

Date: March 6, 2018

/s/ Bruce V. Spiva

CERTIFICATE OF SERVICE

I certify that on March 6, 2018, I filed the foregoing with the Clerk of the Court using the ECF System which will send notification of such filing to the registered participants as identified on the Notice of Electronic Filing.

Date: March 6, 2018

/s/ Bruce V. Spiva

Exhibit A

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

CORMAN, *et al.*,

Plaintiffs,

v.

TORRES, *et al.*,

Defendants,

and

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

Civil Action No.
1:18-cv-00443-CCC-KAJ-JBS

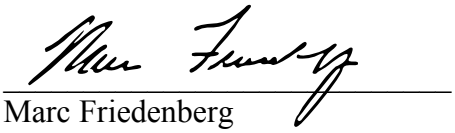
DECLARATION OF MARC FRIEDENBERG

I, Marc Friedenberg, declare under penalty of perjury as follows:

1. In September 2017, I announced as a candidate for Congress in the 5th Congressional District.
2. The 5th Congressional District, at the time, included all or part of the counties of Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Huntingdon, Jefferson, McKean, Potter, Tioga, Venango, and Warren, stretching from the state's middle towards its northwest corner.
3. When the Supreme Court of Pennsylvania adopted a new remedial congressional map on February 19, I faced a difficult decision. My home, as well as nearly 21% of the prior 5th Congressional District, were now placed in the new 12th Congressional District. Over 79% of the citizens I had previously courted would be in other districts, 57% of them in the new 15th District. The 12th Congressional District adds Bradford, Juniata, Lycoming, Mifflin, Northumberland, Perry, Snyder, Sullivan, Susquehanna, Union and Wyoming Counties, and stretches from Centre County in the opposite direction – towards the state's northeast corner.
4. However, I determined that my interests would be best served by running in the new 12 th Congressional District.
5. I have started to campaign for election in the 12th District. On February 27, my campaign started to petition for placement on the Democratic Primary ballot in the 12th District by seeking signatures from voters throughout the district. To qualify for the ballot, I must

submit a nominating petition to the Pennsylvania Secretary of State with 1,000 valid signatures of Democratic voters registered in the 12th Congressional District by March 20. As of this date, we have collected over 600 signatures from registered Democrats, primarily in Centre, Clinton, Lycoming, and Union counties. I have obtained these signatures through the efforts of over 100 campaign volunteers and four paid staff: a campaign manager, a field director, and two volunteer coordinators. We operate out of an office we have leased in State College, Pennsylvania; we paid a fixed sum to lease the office through May 23, 2018. We have planned a series of events through the counties in the 12th Congressional District over the coming weeks, as a way to introduce myself to the voters who were previously not in the 5th Congressional District, and have begun to advertise those events through press releases and social media. We have also purchased campaign literature and merchandise referencing the 12th Congressional District, have completely updated our Web site, and have spent significant time and energy conducting research about the new 12th Congressional District and its population.

DATE: March 5, 2018



Marc Friedenberg

Exhibit B

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

CORMAN, *et al.*,

Plaintiffs,

v.

TORRES, *et al.*,

Defendants,

and

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

Civil Action No.
1:18-cv-00443-CCC-KAJ-JBS

DECLARATION OF CHRISTINA HARTMAN

I, Christina Hartman, declare under penalty of perjury as follows:

1. In the 2016 election cycle, I was the Democratic nominee for the United States Congress for the 16th Congressional District. During that campaign, I raised and spent nearly $1.2 million to introduce myself to the voters of the district, and in opposition to my Republican opponent, Lloyd Smucker. In addition, I traveled the district for nearly 18 months, building relationships with active members in the local Democratic parties, business and community leaders, and voters in Lancaster, Chester and Berks counties. My campaign hosted, attended, and participated in hundreds of events, engaged hundreds of volunteers, and delivered the most Democratic votes of any candidate running in this district ever.

2. After losing that campaign, I determined to seek election to the 16th Congressional District again. By the end of 2017, I had already raised $356,294 and spent $181,937 towards seeking election in the 16th Congressional District, contrasting myself with Rep. Lloyd Smucker. Building off of our work in 2016, we again rented office space, hired staff, traveled the district hosting, attending and participating in more than 100 events, engaged hundreds of volunteers and supporters, and continued to cultivate local, state, and national coverage of my campaign.

3. The 16th Congressional District, at the time, included portions of Lancaster, Chester, and Berks Counties, including the City of Lancaster where I live.

4. When the Supreme Court of Pennsylvania adopted a remedial congressional map on February 19, I faced a difficult decision. My home, as well as nearly 69% of the prior 16th Congressional District, were now placed in the new 11th Congressional District. However, I determined that my interests and the interests of voters would be best served by running in the new 10th Congressional District, which is adjacent to the 11th.

5. In support of these efforts, on Monday night, February 26, I publicly announced that I would not seek the endorsement of the Lancaster County Democratic Committee for election to the 11th Congressional District, and withdrew from the race.

6. I have started to campaign for election in the 10th District. On February 27, my campaign started to petition for placement on the Democratic Primary ballot in the 10th District by seeking signatures from voters throughout the district, none of whom were in my prior district. I have reached out to the Democratic County Chairs, local elected officials, and leader in the community. I have already begun to attend local Democratic committee meetings and am scheduled for many more in the days and weeks ahead, including at least two public, announced forums. My supporters and I have also already reached out to people in our personal networks who live in the 10th District to help gather signatures from their neighbors and to begin to set up meet and greet events. For the petitioning process, we are scheduling tens of volunteers to collect signatures. For example, this weekend alone we have scheduled more than 10 volunteers, who will gather at least 300 signatures. To qualify for the ballot, I must submit a nominating petition to the Pennsylvania Secretary of State with 1,000 valid signatures of Democratic voters registered in the 10th District by March 20. Additionally, my campaign has already rented space in Harrisburg, hired additional staff to mount a successful primary in the new district, and made public announcements about my candidacy in the local, state, and national press.

DATE: March 1, 2018

_____

Christina M. Hartman

Exhibit C

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JACOB CORMAN, *et al.*,

Plaintiffs,

v.

ROBERT TORRES, *et al.*,

Defendants,

and

CARMEN FEBO SAN MIGUEL, *et al.*,

Intervenor-Defendants.

Civil Action No.
1:18-cv-00443-CCC-KAJ-JBS

Circuit Judge Jordan

Chief Judge Conner

Judge Simandle

DECLARATION OF STATE REPRESENTATIVE MADELEINE DEAN

I, Madeleine Dean, declare under penalty of perjury as follows:

1. I am the state representative for Pennsylvania's 153rd Legislative District and have served in that capacity since 2012.
2. On November 29, 2017, I announced that I would run for Lieutenant Governor of the Commonwealth. Toward that end, over the next two-plus months I travelled across the state, hired statewide staff, launched a website with policy positions on issues of statewide importance, and worked to promote my statewide campaign.
3. While I have always wanted to serve in Congress, I have been represented by Congressman Brendan Boyle, a fellow Democrat and a former colleague in the state legislature, and I was proud to support Brendan.
4. Nor did I think a run for Congress was practical as the Republican-drawn map had shattered my home county, Montgomery County, into five districts and no member of Congress resided in Montgomery County.
5. After the old maps were correctly held to be an unconstitutional gerrymander, I called on the Legislative leadership to convene hearings to draft a district and called on them to draft a Montgomery County district, to rectify these issues, and because Montgomery County has more residents than are required for a Congressional district.

6. Unfortunately, the Speaker of the House never gave my colleagues and me an opportunity to vote on and adopt a map, despite us understanding clearly what the Court had ordered (and why it did so).

7. We had begun to robustly collect signatures for me to appear on the ballot as a candidate for nomination as lieutenant governor as there are both county-by-county requirements and total signature requirements.

8. After the leadership of the Legislature refused to act, the Supreme Court of Pennsylvania had to do so, and when it promulgated a corrective map on February 19, I faced a difficult decision. My home was now placed in the new Fourth Congressional District, a district where over 97% of residents are from Montgomery County.

9. The map provided an opportunity for me to serve the people of Montgomery County and address critical issues facing our nation. It also prompted me to jump in and ensure that a woman be elected – despite the diversity of this Commonwealth, our current Congressional delegation are 17 white men and one black man.

10. Accordingly, after consulting with my husband, my grown children, and close friends, I quickly decided to run for Congress in the 4th Congressional District.

11. On February 21, 2018, I announced that I would be running for Congress and withdrawing from the lieutenant governor race. This decision is irrevocable because nomination petitions for the lieutenant governor race are due tomorrow, Tuesday, March 6, 2018.

12. I have contacted, both by phone and e-mail, many of the donors to my lieutenant governor's race to offer to refund their contributions, and where a refund was requested my campaign treasurer is in the process of refunding their money.

13. The staff, consultants, and supporters who I was working with who are not helpful for the 4th District race have been transitioned, and in some cases have moved to support other candidates.

14. For the last eight days, I have started to campaign for election in the 4th District. On February 27, my campaign started to circulate nomination petitions so that my name could appear on the Democratic Primary ballot in the 4th District by seeking signatures from registered Democratic voters throughout the district. We are collecting the 1,000 required signatures from 4th District Democrats on nominating petitions that I must submit to the Pennsylvania Secretary of State by the deadline in two weeks.

15. I have hired staff specifically for the 4th District race, including an experienced Congressional campaign manager who has moved to Pennsylvania from elsewhere.

16. In addition, because all of my funds raised have been for state office and are not transferrable into a campaign for Congress, I have expended great effort to fundraise for this race and my MAD4PA PAC authorized federal campaign committee. I have spent dozens of hours over the last eight days calling potential federal donors.

17. I have also undertaken myriad expenses and tasks associated with running for Congress. These include creating and filing a federal account, open bank accounts, locating offices for the Congressional race, launched a new website for the federal race, and changing my campaign schedule to spend all of my campaign time focused on the race in the 4th Congressional District.

18. My expenditures and commitments for the Congressional race that would not have been made for the Lieutenant Governor race are in the tens of thousands of dollars.

19. These actions were all made in reliance upon the Pennsylvania Supreme Court's order of February 19, 2018, and on the United States Supreme Court's refusal to alter the prior order of the Supreme Court invalidating the unconstitutional maps passed by the Pennsylvania Legislature in 2011.

DATE: March 5, 2018

Madeleine Dean