No. _____

In The Supreme Court of the United States

Michael C. Turzai, in his capacity as Speaker of the Pennsylvania House of Representatives, and Joseph B. Scarnati III, in his capacity as Pennsylvania Senate President Pro Tempore,

Applicants,

v.

League of Women Voters of Pennsylvania, *et al.*,

Respondents.

EMERGENCY APPLICATION FOR STAY PENDING RESOLUTION OF APPEAL TO THIS COURT

To the Honorable Samuel A. Alito, Jr.
Associate Justice of the United States and
Circuit Justice for the Third Circuit

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TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE THIRD CIRCUIT:

This case arises from the Pennsylvania Supreme Court's usurpation of the Pennsylvania General Assembly's legislative authority to draw its congressional district lines through its preordained invalidation of the lawful districts the General Assembly enacted in 2011 (the "2011 Plan"). At all stages, the Pennsylvania Supreme Court set this case on a path whereby only it would draw Pennsylvania's new congressional districts—a task delegated to the "Legislature"—in violation of the Elections Clause. U.S. Const. art. I, § 4. But as Justice Kennedy stated in *League of United Latin Am. Citizens v. Perry*, "drawing lines for congressional districts is one of the most significant acts a State can perform to ensure citizen participation in republican self-governance. * * * As the Constitution vests redistricting responsibilities foremost in the legislatures of the States and in Congress, a lawful, legislatively enacted plan should be preferable to one drawn by the courts." 548 U.S. 399, 415-16 (2006). **"**Underlying this principle is the assumption that to prefer a court-drawn plan to a legislature's replacement would be contrary to the ordinary and proper operation of the political process." *Id.* at 416. The Pennsylvania Supreme Court conspicuously seized the redistricting process and prevented any meaningful ability for the legislature to enact a remedial map to ensure a court drawn map.

First, on January 22, 2018, the Pennsylvania Supreme Court issued an order enjoining the 2011 Plan because it failed to comply with purported mandatory requirements found nowhere in the Pennsylvania Constitution that districts be

"composed of compact and contiguous territory" and that they "do not divide any county, city, incorporate town, borough, township, or ward, except when necessary to ensure equality of population." But no act of legislation promulgated these rules, and the same Pennsylvania Supreme Court, in adjudicating Pennsylvania's 2001 Congressional plan, expressly *disclaimed* the applicability of any such requirements to Pennsylvania congressional districts. *Erfer v. Commonwealth*, 794 A.2d 325, 334 n.4 (Pa. 2002).

Second, the Pennsylvania Supreme Court provided an inadequate remedial opportunity to the General Assembly, thus ensuring a court drawn map. It did not issue an opinion with its initial order and did not provide its sufficient guidance on how a new map could be drawn in compliance with the Pennsylvania Constitution. It nevertheless gave the General Assembly a mere 18 days, until February 9, to enact new legislation before the Court would impose a plan of its own, and even reserved the right to review the enacted map. Indeed, that was the court's intention all along. It proceeded to hire a political scientist to prepare for a judicial, rather than a legislative, redistricting.

On January 26, the Applicants (the Speaker of the Pennsylvania House of Representatives Michael C. Turzai and Senate President Pro Tempore Joseph B. Scarnati, III) filed an Application for Stay with this Court on the basis that the Elections Clause of the United States Constitution delegates authority to prescribe rules for congressional elections to "the Legislature" of each state, not the state courts. *See* U.S. Const. art. I, § 4, cl. 1. On February 5, the stay application was

denied. Because no explanation accompanied the denial, Applicants had no way to ascertain which, if any, of the stay elements was deemed unsatisfied or, alternatively, whether the Court viewed the application as premature, given that no opinion had been issued and that the Pennsylvania Supreme Court had not yet imposed its own redistricting plan.

Those two events have now occurred and the Pennsylvania Supreme Court's intentional seizure of the redistricting process is now complete. On February 7—just two days before the deadline that the Court imposed to enact a new plan—the Pennsylvania Supreme Court issued an opinion clarifying that it invalidated the 2011 Plan for its ostensible failure to comply with the newly-invented subdivision-integrity and compactness rules. The Pennsylvania Supreme Court also announced a new requirement of proportional representation, holding that a congressional map must afford "all voters" an "equal opportunity to translate their votes into representation," a rule not articulated in the January 22 Order.

The General Assembly's leadership rushed to prepare a plan to comply with the court's opinion, but, given the two-day timeframe, it was unable to put a plan to a vote or negotiate a mutually agreeable plan with the Governor.[1] It submitted that plan to the court and the Governor for review on February 9. On February 19, the Pennsylvania Supreme Court adopted its own plan. The parties to the litigation had

[1] In fact, it is impossible under Pennsylvania law to pass a legislative enactment, which a redistricting plan is, in the time allotted following the Pennsylvania Supreme Court's full opinion. Pa. Const. art. III, § 4 ("Every bill shall be considered on *three different days* in each House.") (emphasis added).

never before seen the court's plan and had no opportunity to vet for compliance with the court's own criteria.

By promulgating mandatory criteria the General Assembly could not anticipate in 2011, and that are found nowhere in the Pennsylvania Constitution, withholding guidance as to how to achieve compliance with Pennsylvania law until two days before the court's imposed deadline to enact a new plan, creating a proportional-representation criterion that is practically impossible to implement, and imposing a remedial plan that had been in the works all along, the Pennsylvania Supreme Court ensured that its desired plan to draft the new map would be successful.

This course of action cannot square with either the plain text of the U.S. Constitution's Elections Clause, which delegates redistricting authority to "the Legislature" of each state, or with this Court's interpretive precedent, which holds that "[r]edistricting involves lawmaking in its essential features and most important aspect." *Arizona State Leg. v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2667 (2015) (quotation marks omitted). The Pennsylvania Supreme Court's position to the contrary, and the position articulated by the various Respondents in the last round of stay briefing, is in essence that the Elections Clause simply delegates authority to the *states* and is indifferent to whether the Legislature or, alternatively, the courts or executive branch either conducts the redistricting or creates the rules governing it. But that view simply reads the word "Legislature" out of the Constitution, and effectively delegates redistricting authority to whichever branch of state government

wins the will-to-power contest to control elections to federal congressional office. Because state courts have the final say over the meaning of state law, the courts will virtually always (as here) win that battle.

For that reason, unless this Court intervenes to enforce the distinction within the state between "the Legislature thereof" and the other branches, the Elections Clause will be rendered meaningless. And now that any questions about the ripeness of this application are resolved, this case presents a prime vehicle to resolve these important federal issues. The Court is likely to grant certiorari and reverse, and because the Pennsylvania Supreme Court's order, if left in place, will ensure that its plan, not the General Assembly's, controls the next election, with deadlines beginning February 27, the General Assembly is sure to suffer irreparable harm without intervention. The Applicants therefore renew their stay application and respectfully request that the Court intervene to place the Pennsylvania Supreme Court's January 22 Order, February 7 Opinion, and February 19 Order on hold pending this appeal.

OPINIONS BELOW

The January 22 Order of the Pennsylvania Supreme Court enjoining the use of Pennsylvania's Congressional map (the "2011 Plan"), along with a concurring and dissenting statement, and two dissenting statements, are reproduced at Appendix A. The February 7 Opinion of the Pennsylvania Supreme Court, along with two dissenting and one partial dissenting statement, are reproduced at Appendix B. The February 19 Order of the Pennsylvania Supreme Court adopting an alternative plan, along with a concurring and dissenting, and dissenting opinions, are reproduced at

Appendix C. The Report and Recommendation of the Commonwealth Court (Pennsylvania's intermediate level appellate court) is reproduced at Appendix D.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257.

STATEMENT OF THE CASE

On December 22, 2011, the Pennsylvania General Assembly passed a bipartisan redistricting plan, which apportioned Pennsylvania into 18 Congressional districts. The 2011 Plan remained unchallenged for over five years and was used in three congressional elections. On June 15, 2017, 18 Pennsylvania residents (the "Challengers") commenced this action against the 2011 Plan, alleging that it violated their rights to free expression and association under Article I, Sections 7 and 20 of the Pennsylvania Constitution, equal protection provisions of Article I, Sections 1 and 26 of the Pennsylvania Constitution, and the Free and Equal Elections Clause of Article I, Section 5 of the Pennsylvania Constitution. The Challengers contended that the General Assembly violated these provisions by drawing the 2011 Plan to enhance the Republican Party's representation in Congress. They theorized (according to their briefing in the Pennsylvania Supreme Court) that *any* partisan motive in Congressional redistricting is unlawful under the Pennsylvania Constitution, "full stop." *See* Opening Brief for Petitioners, *League of Women Voters of Pa. v. Commonwealth of Pa.* (No. 159 MM 2017), 2018 Pa. LEXIS 438.

After a five-day trial, the Pennsylvania Commonwealth Court (the Pennsylvania intermediate court charged by the Pennsylvania Supreme Court to

conduct a trial, create the record, and recommend findings of fact and conclusions of law) concluded that the Challengers had failed to show a violation of any Pennsylvania constitutional provision. Commw. Ct. Concl. of Law, App. Ex. D at ¶ 64. The court observed that Pennsylvania Supreme Court precedent previously construed the governing Pennsylvania constitutional provisions as "coterminous" with their federal constitutional analogues and applied the standard adopted by the Pennsylvania Supreme Court in *Erfer*, 704 A.2d 325, which employed this Court's plurality opinion in *Davis v. Bandemer*, 478 U.S. 109 (1986), to claims of unlawful partisan considerations in redistricting. Commw. Ct. Concl. of Law, App. Ex. D at ¶ 45. The court then found that the Challengers had failed to present a "judicially manageable standard" by which to adjudicate a free-speech partisan gerrymandering claim *id*. at ¶ 31, and that the Challengers had failed to satisfy the equal-protection standard in *Erfer*/*Bandemer*, because the Challengers had failed to prove an "identifiable" political group suffered a cognizable burden on its representational rights. *Id*. ¶¶ 54–57.

The Pennsylvania Supreme Court expedited its review of the Commonwealth Court's recommendation, and, on January 22, 2018, issued an order by a 5-2 vote that the 2011 Plan "plainly and palpably violates the Constitution of the Commonwealth of Pennsylvania." But the January 22 Order did not specifically identify which of the constitutional provisions the 2011 Plan violated. App. A at 2. The court enjoined the 2011 Plan's "further use in elections for Pennsylvania seats in the United States House of Representatives, commencing with the upcoming May 15, 2018 primary."

Id. The court afforded the Pennsylvania General Assembly until February 9, 2018, to submit a proposed alternative plan to the Governor and specified that, if the Governor "accepts" such a plan, it must still be submitted for the court's further review. The Order instructed that, "to comply with this Order, any Congressional districting plan shall 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." *Id*. at 3. The court also ordered the Pennsylvania executive branch to reschedule the 2018 elections "if necessary." *Id*. Finally, the court stated that it "shall proceed expeditiously to adopt a plan" if the General Assembly fails to comply by February 9. *Id*. at 2.

The court did not provide a basis for its ruling or indicate how the General Assembly could satisfy the Pennsylvania Constitution. The Order only provided: "Opinion to follow." *Id*. at 3.

On January 25, the Applicants moved this Court to stay the January 22 Order, contending that it violated the Elections Clause's delegation of authority to prescribe time, place, and manner restrictions on elections to Congress. The Applicants observed that, as of that time, the Pennsylvania Supreme Court had not stated which Pennsylvania constitutional provision was the basis of its new criteria or articulated the full extent of legal principles it would apply to any proposed remedial plan. Also on January 26, the Pennsylvania Supreme Court issued an order stating that it had

hired Professor Nathan Persily "as an advisor to assist the Court in adopting, if necessary, a remedial congressional redistricting plan."

On February 2, the Respondents filed approximately 130 pages of briefing in in response to the Applicants' initial stay application. The Applicants filed a reply brief on February 3. The application was denied on February 5 without explanation.

On February 7, two days prior to the General Assembly's court-imposed redistricting deadline, the Pennsylvania Supreme Court issued a 138-page opinion, stating for the first time that the basis of its January 22 Order was Pennsylvania's Free and Equal Elections Clause. That provision had received practically no attention in the Challengers' briefing and had expressly been found in the Pennsylvania Supreme Court's prior *Erfer* decision *not* to provide any standards different from those applicable under the federal Equal Protection Clause. *Erfer,* 792 A.2d at 332. The provision was also necessarily implicated in the Pennsylvania Supreme Court's repeated holdings that "there is nothing at all" in the Pennsylvania Constitution to prevent politically motivated reapportionment—"nothing," of course, would include the Free and Equal Elections Clause. *Holt v. 2011 Legis. Reapportionment Comm'*n, 67 A.3d 1211, 1235 (Pa. 2013). That clause was also necessarily ruled out as a basis for compactness and subdivision integrity rules by *Erfer*'s holding that "[i]n the present context of Congressional reapportionment…there are *no*…direct textual references to such neutral apportionment criteria." *Erfer*, 794 A.2d at 334 n.4.

No matter, the Court interpreted the clause to mandate "that all voters have an equal opportunity to translate their votes into representation." App. B at 100. The

Court proceeded to conclude that the compactness and political-subdivision-integrity principles announced in the January 22 Order were "measures" to ensure this "equal opportunity." *Id.* at 119-125. It conceded that "[n]either [the Free and Equal Elections Clause], nor any other provision of our Constitution, articulates explicit standard which are to be used in the creation of congressional districts." *Id.* at 119. It also conceded that map-drawers may "unfairly dilute the power of a particular group's vote for a congressional representative" *even while complying with these criteria*, and therefore held that a showing of non-compactness or split political subdivisions is "not the exclusive means by which a violation of [the Free and Equal Elections Clause] may be established. *Id.* at 124. This *additional* criterion of proportional representation did not appear in the January 22 Order, and the first time the General Assembly heard of it was two days before the court-imposed redistricting deadline.

The court provided other guidance that was not contained in the January 22 Order. For example, a congressional plan violates the Free and Equal Elections Clause when it splits 28 counties and 68 municipalities. App. B at 126, 128, 130. The opinion also appears to hold that a congressional plan violates the Free and Equal Elections Clause when its "mean-median vote gap" is 5.9% or higher (as an acceptable range is between 0 and 4%). *Id.* at 128, 130. Finally, the opinion appears to conclude that a congressional plan violates the Free and Equal Elections Clause when its "efficiency gap" is between 15% and 24% relative to statewide vote share. *Id.* at 128, 129, 130.[2]

[2] The so-called "efficiency gap" wasn't even created until after the 2011 Plan had been adopted by the Commonwealth of Pennsylvania.

Two dissents and a partial dissent accompanied the majority opinion. Justice Mundy's dissent argued at length that the Pennsylvania Supreme Court's actions violated the Elections Clause of the U.S. Constitution, contending, among other things, that the Court violated it by choosing "to put the General Assembly on a three-week timeline without articulating the complete criteria necessary to be constitutionally compliant." App. B, Mundy Dissenting Op. at 5. Similarly, the partial dissent of Justice Baer rejected the majority's application of "court-designated districting criteria" that did not appear in the Pennsylvania Constitution. He observed that the language of the Free and Equal Elections Clause "obviously does not address the size or shape of districts" and that "there is nothing inherent in a compact or contiguous district that insures a free and equal election." App. B, Baer Concurring and Dissenting Op. at 1, 5.

After the February 7 Opinion, the General Assembly's leadership was able to prepare a new congressional plan, but there was insufficient time to set the plan for a vote in the General Assembly or to negotiate with Pennsylvania's Governor to obtain his support. Perhaps not surprisingly, the Governor did not support the plan, and the General Assembly did not vote on it. Nevertheless, in an effort to comply with the spirit of the Pennsylvania Supreme Court's order, the General Assembly's leadership filed the plan with the Pennsylvania Supreme Court for consideration on February 9. Other parties, including the Governor, filed proposed plans on February 15.

Ultimately, the Pennsylvania Supreme Court chose *none* of the proposed alternatives and enacted its own plan instead. The court concluded that its map "is superior or comparable to all plans submitted" as to the compactness, contiguity, and political-subdivision criteria, but never stated that any of the other maps, including the one proposed by Applicants did not meet their criteria. Moreover, the court afforded no opportunity to question the map-drawing expert it hired as to his redistricting choices. It remains unclear what efforts were made to ensure "that all voters have an equal opportunity to translate their votes into representation." Likewise, Applicants were not afforded any opportunity to question the court's map-drawer on whether certain political subdivision splits were necessary for population equality—one of the court's newly created criteria.

Initial news accounts have concluded that it appears the court's adopted map was intentionally drawn to favor the voters of the Democratic Party. The *New York Times*, among others, declared that "Democrats couldn't have asked for much more from the new map. It's arguably even better for them than the maps they proposed themselves."[3] Real Clear Politics observed that the court "repeatedly made choices that increased the Democrats' odds of winning districts."[4] The court, however, made

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[3] Note Cohen, Matthew Bloch, & Kevin Quealy, *The New Pennsylvania Congressional Map, District by District*, The New York Times: TheUpshot (Feb. 19, 2018), https://www.nytimes.com/interactive/2018/02/19/upshot/pennsylvania-new-house-districts-gerrymandering.html.

[4] Sean Trende, *How Much Will Redrawn Pa. Map Affect the Midterms*, Real Clear Politics (Feb. 20, 2018), https://www.realclearpolitics.com/articles/2018/02/20/how_much_will_redrawn_pa_map_affect_the_midterms_136319.html.

no effort to respond to the plans submitted to it, or obtain any feedback whatsoever from the parties regarding its plan. Rather, it ordered that the court drawn plan be implemented immediately, and even ordered the General Assembly's Legislative Data Processing Center to prepare the textual language for its plan. App. C at pg. 8. The court then adopted a plan rearranging various dates related to the upcoming congressional elections.

The Pennsylvania Supreme Court's decisions in this case were a preordained plan that originated during the campaigns of a few of the Justices. In fact, one of the deciding votes[5] on the Court was cast by Justice David Wecht who included attacks on the constitutionality of the Congressional districting plan as part of his 2015 election campaign. On at least one occasion, Justice Wecht expressed his views regarding the 2011 Plan *in a forum held by the League of Women Voters – the original lead Petitioner in this very case.* At that forum, he stated: "*Everybody in this room should be angry about how gerrymandered we are … Understand, sitting here in the city of Pittsburgh, your vote is diluted. Your power is taken away from you*." Eric Holmberg, *Forums Put Spotlight on PA Supreme Court Candidates*, PUBLICSOURCE (Oct. 22, 2015), www.publicsource.org/forums-put-spotlight-on-pa-supreme-court-candidates (emphasis added). Not surprisingly, the majority of

[5] On November 9, 2017, the Pennsylvania Supreme Court, by a vote of 4-3, exercised its power of extraordinary jurisdiction to assume control of the case, lifting an existing stay pending this Court's decision in *Gill v. Whitford*, No. 16-1161 (U.S.), and scheduling an expedited trial to begin on December 11, 2017. The Court's January 22, 2018 Order enjoining any further use of the 2011 Plan, "commencing with the upcoming May 15, 2018 primary" was also only joined by 4 Justices.

the court found the 2011 Plan unconstitutional because it *diluted* the non-favored party's votes in violation of the Free and Equal Elections Clause. App. B at 110, 117-18, 128-30. On February 2, the Applicants moved to recuse Justice Wecht but he denied the request on February 5.

REASONS FOR GRANTING THE APPLICATION

To obtain a stay pending appeal, an applicant must show: (1) a reasonable probability that the Court will consider the case on the merits; (2) a fair prospect that a majority of the Court will vote to reverse the decision below; and (3) a likelihood that irreparable harm will result from the denial of a stay. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

Those factors are satisfied here. First, the federal question in this case—under what circumstances a state court improperly intrudes on authority allocated to the "Legislature" by the Elections Clause—has specifically been identified as meriting review by multiple Justices of this Court, and the Court has reviewed Elections Clause challenges and their kin in the past. Second, the specific form of intrusion at issue here presents a plain violation of the Elections Clause because, while close cases can and have arisen as to whether a specific type of lawmaking function falls within the term "Legislature," it is beyond dispute that the Pennsylvania Supreme Court lacks any legislative power. Third, the irreparable harm in this case is immediate and palpable: the Pennsylvania Supreme Court's order blatantly usurps the power of the Pennsylvania General Assembly and inflicts confusion on the Commonwealth's upcoming congressional elections, and, without intervention from this Court,

elections will not proceed under the lawfully enacted 2011 Plan, even if (as is likely) the Court grants certiorari and reverses or vacates the decision below. That is the paradigmatic form of harm necessitating a stay pending appeal.

I. There Is a Reasonable Probability That the Court Will Review This Case on the Merits and a Fair Prospect That It Will Vacate or Reverse the Decision Below

There is, at minimum, a "reasonable probability" that the Court will set this case for consideration on the merits and a "fair prospect" that it will reverse or vacate the decision below. *See Hollingsworth*, 558 U.S. at 190. The Pennsylvania Supreme Court's actions intrude on the power delegated expressly to Pennsylvania's legislature under the *federal* Constitution, presenting an issue of federal law long overdue for definitive resolution by this Court. Three of the seven Justices of the Pennsylvania Supreme Court agree.

A. The Pennsylvania Supreme Court's Course of Action Violates the Elections Clause

The Constitution's Elections Clause provides that "[t]he Times, Places and Manner" of congressional elections "shall be prescribed in each State by the Legislature thereof" unless "Congress" should "make or alter such Regulations." U.S. Const. art. I, § 4, cl. 1. The Elections Clause vests authority over congressional elections in two locations: (1) the state legislature and (2) Congress. State courts enjoy none of this delegated authority.[6]

[6] The Elections Clause was a source of significant debate during the Constitutional Convention, and its allocation of authority is not an accident. *See Agre v. Wolf*, No. 17-cv-4392, 2018 U.S. Dist. LEXIS 4316, at *9 (E.D. Pa. January 10, 2018) (quoting and citing The Federalist No. 59 (Alexander Hamilton)). As noted in *Agre*, "the States' authority to redistrict is a power delegated by Art. I, § 4, and not a power reserved by

Consistent with that plain language, this Court has held "that redistricting is a legislative function, to be performed in accordance with the State's prescriptions for lawmaking." *Arizona State Leg.*, 135 S. Ct. at 2668. While five Justices in *Arizona State Legislature* construed "prescriptions for lawmaking" broadly enough to include "the referendum," and four believed only the state's formal "legislature" qualifies, (*compare id., with id.* at 2677-2692 (Roberts, C.J., dissenting)), *all* the Justices agreed that redistricting is *legislative* in character. No Justice suggested that state courts might share in that legislative function.

It is undisputed that the Pennsylvania Supreme Court does not exercise a legislative function when it decides cases. *See Watson v. Witkin*, 22 A.2d 17, 23 (Pa. 1941) ("[T]he duty of courts is to interpret laws, not to make them."). Yet, the Pennsylvania Supreme Court *legislated* criteria the Pennsylvania General Assembly must satisfy when drawing a congressional districting plan, such as contiguity, compactness, equal population, limiting subdivision splits, and now proportional representation of political parties. These standards amount to mandatory redistricting criteria of the type typically found in a legislatively enacted elections code. But no Pennsylvania legislative process—not the General Assembly itself, not a constitutional convention, not a referendum, not even an administrative agency with delegated rulemaking authority—adopted or ratified those criteria. Rather, the Pennsylvania Supreme Court wove them from whole cloth. Indeed, the Pennsylvania

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the Tenth Amendment." *Id.* at *22 (analyzing decisions from this Court in so concluding). The *Agre* decision has been appealed to this Court. *In Re Michael C. Turzai, Speaker of the Pennsylvania House of Representatives,* No. 17-631 (U.S.).

Supreme Court acknowledged that there is no constitutional provision containing these criteria. *See* App. B at 119-125.

In fact, the Pennsylvania Constitution *does* enumerate very similar redistricting criteria, which were carefully crafted by the Pennsylvania Constitutional Convention of 1968, for state *legislative* districts, but not *congressional* districts:

> The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

Pa. Const. art. II, § 16. The Pennsylvania Supreme Court's order uses virtually identical language:

> [T]o comply with this Order, any congressional districting plan shall 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.

App. A at 3. But no criteria or other restrictions on the General Assembly's legislative power to enact congressional district plans exist in the Pennsylvania Constitution, and have not since the adoption of Pennsylvania's 1790 Constitution. Indeed, the Pennsylvania Supreme Court itself has confirmed that, in the "context of Congressional reapportionment," there are "*no analogous, direct textual references to such neutral apportionment criteria*." *Erfer*, 794 A.2d at 334 n.4 (emphasis added).

Now, a decade and a half later, the Pennsylvania Supreme Court has invented them from scratch, even while admitting that no "provision of our Constitution[] articulates explicit standards which are to be used in the creation of congressional districts."

The Pennsylvania Supreme Court's newly-crafted right to proportional representation is particularly troubling. It is untenable that the Pennsylvania Constitution's Free and Equal Elections Clause, which dates to the 1790s, establishes such a right. The right for a political party to hold seats in proportion to its votes, typical of European systems, is not the American tradition, and courts have repeatedly disclaimed the existence of such a right either under the guise of the right to political or racial equality. *See, e.g.*, *Bandemer*, 478 U.S. at 131; *White v. Regester*, 412 U.S. 755, 765-66 (1973). The notion that this right existed all along in Pennsylvania's Constitution is nothing short of absurd. While nothing in the federal Constitution prevents a state from adopting a proportional-representation requirement, the Elections Clause makes clear that a legislative process is required to adopt such a rule.

It is therefore not surprising that, in every instance prior to this case, the Pennsylvania Supreme Court has been in complete lockstep with this Court's jurisprudence on matters of congressional apportionment and that it rejected partisan-gerrymandering challenges each and every time. *Newbold v. Osser*, 230 A.2d 54 (Pa. 1967) (following *Baker v. Carr*, 369 U.S. 186 (1962)) (finding partisan gerrymandering claims to be non-justiciable); *In re 1991 Pa. Legis. Reapportionment Comm'n.,* 609 A.2d 132, 142 (Pa. 1992) (following *Bandemer*, 478 U.S. 109) (finding

that partisan gerrymandering claims are justiciable); *Erfer,* 794 A.2d 325 (also finding that partisan gerrymandering claims are justiciable, adopting *Bandemer's* intent and effects test, and noting that no state constitutional requirements apply to congressional district maps). In fact, as recently as four years ago, the Pennsylvania Supreme Court itself found that there is "nothing in the [Pennsylvania] Constitution to prevent" partisan redistricting. *Holt v. 2011 Legis. Reapportionment Comm'n*, 67 A.3d 1211, 1235 (Pa. 2013).

To make matters worse, the Pennsylvania Supreme Court issued only partial guidance in its January 22 Order. The court withheld its new proportional-representation requirement until two days before the court-ordered redistricting deadline, and then rejected all proposed remedial plans in favor of its own, thereby making redistricting by "the Legislature" an impossibility. But, creating a map that guarantees every voter "an equal opportunity to translate their votes into representation"—if it can even be done—requires extensive expert input and elections modeling that cannot be accomplished in two days. Indeed, it is unknown at this time whether the Pennsylvania Supreme Court's map complies with this requirement, and there is no body with authority to review the Pennsylvania Supreme Court's *ipse dixit* that its plan complies with state law. This roadmap for judicial seizure of redistricting can be followed again in the future at will: the Pennsylvania Supreme Court can simply find some metric to strike down the General Assembly's map and then declare, with no evidentiary support whatsoever, that its

replacement complies with the amorphous proportional-representation rule. None of this is hypothetical; it is what the court here actually did.

In short, none of the bases the Pennsylvania Supreme Court put forward to justify invalidating the 2011 Plan, nor its purported reasons for seizing redistricting power have the slightest grounding in Pennsylvania's "prescriptions for lawmaking." And, while judicial activism by a state supreme court would ordinarily be beyond this Court's purview, the question of what does and does not constitute a "legislative function" under the Elections Clause is a question of federal, not state law, and this Court is the arbiter of that distinction. *See Arizona State Leg.*, 135 S. Ct. at 2668; *see also Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 76 ("As a general rule, this Court defers to a state court's interpretation of a state statute. But in the case of a law enacted by a state legislature applicable not only to elections to state offices, but also to the selection of Presidential electors, the legislature is not acting solely under the authority given it by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution."). In "a few exceptional cases in which the Constitution imposes a duty or confers a power on a particular branch of a State's government" the "text of the election law itself, and not just its interpretation by the courts of the States, takes on independent significance," thereby requiring this Court to make its own review of what Pennsylvania's lawmakers have written. *Bush v. Gore*, 531 U.S. 98, 112-13 (2000) (Rehnquist, C.J., concurring).

In fact, this Court has twice reviewed the decisions of state courts of highest resort on this very question. In *Smiley v. Holm*, the Court reversed the holding of the Minnesota Supreme Court that the Minnesota legislature's function in drawing congressional districts was free from the possibility of a gubernatorial veto. 285 U.S. 355, 367, 375 (1932). The Court, interpreting the federal Constitution, disagreed and held that "the exercise of the authority must be in accordance with the method which the state has prescribed for legislative enactments." *Id.* at 367. There was, as here, no dispute about how the state legislative process worked by operation of the state Constitution.[7] *See id.* at 363–64.

Similarly, the Court in *Ohio ex rel. Davis v. Hildebrant* held that the Ohio Supreme Court's determination that a referendum vetoing the Ohio legislature's Congressional plan was properly within the legislative function under the Elections Clause. 241 U.S. 565, 569 (1916); *see also Arizona State Leg.*, 135 S. Ct. at 2666 (discussing *Hildebrant* for the proposition that the word "legislature" in the Elections Clause "encompassed a veto power lodged in the people"). This Court has also reviewed state-court judgments about the meaning of the term "legislature" in other provisions of the Constitution. *See Hawke v. Smith*, 253 U.S. 221, 226-30 (1920) (reversing Ohio Supreme Court's decision as to the proper scope of legislative power afforded to states under Article V); *McPherson v. Blacker*, 146 U.S. 1, 27-29 (1892)

[7] Under the Minnesota Constitution, there was no dispute that the Governor possessed the power to veto ordinary legislation, and thus participated in the state's lawmaking functions. Here, there is no question that the Pennsylvania Supreme Court does *not* participate in the state's lawmaking functions.

(reviewing Michigan Supreme Court's interpretation of Article 3, § 1, art. 2); *see also Palm Beach Cnty. Canvassing Bd.*, 531 U.S. at 76-77.

Thus, whether the Pennsylvania Supreme Court's new criteria and its bases for rejecting the 2011 Plan were ratified by a bona fide legislative process or, alternatively, arose from judicial prerogative presents a federal question squarely within this Court's jurisdiction and concern. And this Court's precedents virtually preordain the result.

Furthermore, review in this case does not amount to mere error correction; it presents precisely the type of issue that multiple Justices of this Court have previously suggested is ripe and appropriate for resolution in this Court. Three Justices voted to grant certiorari in order to review the Colorado Supreme Court's determination that a legislatively enacted Congressional redistricting plan violated a provision in the Colorado Constitution limiting redistricting to once per decade. *Colorado Gen. Assembly v. Salazar*, 541 U.S. at 1093 (2004) (Rehnquist, CJ., Scalia and Thomas, JJ., dissenting from the denial of certiorari). These Justices concluded that, although "purporting to decide the issues presented exclusively on state-law grounds," the Colorado Supreme Court "made an express and necessary interpretation of the term 'Legislature' in the Federal Elections Clause" in order to reject legislatively enacted congressional districts. *Id.* at 1094. "And to be consistent with Article I, § 4, there must be some limit on the State's ability to define lawmaking by excluding the legislature itself in favor of the courts." *Id.* at 1095. This case presents precisely the type of mischief that can arise without such a limit.

B. Neither the State Court's Power to Interpret Nor Their Power to Remedy Violations of Law Authorize Legislation of New Criteria

Applicants argued at both stages of litigation below that the Elections Clause precluded the state courts from adopting new redistricting criteria. No other party to the litigation responded to these arguments. When the Challengers responded for the first time during stay briefing, they attempted to locate authority for Pennsylvania Supreme Court's actions in its authority to interpret the state constitution and in its authority to remediate violations of law. Neither argument is tenable.

First, state courts' authority to interpret law has limited force in this context because the Elections Clause delegates power, not to "each State," but to "the Legislature thereof." U.S. Const. art. I, § 4, cl. 1. This delegation to a branch of government *within* the state is to the *exclusion* of other branches. *McPherson*, 146 U.S. at 25-26 (discussing the significance of the term "Legislature" as opposed to "State")[8]. But if the power to "interpret" legislation confers unlimited power to create redistricting rules, no matter how untethered from any legislative enactment, the delegation to "the Legislature" would, in fact, be a delegation to "the Courts" because the legislature would have no voice independent of the courts' voice.

In contrast to that view, this Court's precedents hold that redistricting is subject to "the method which the state has prescribed for legislative enactments."

[8] The Executive Respondents observed previously that many authorities the Applicants rely on concern the provision in Article II, § 1, cl. 2 governing appointment of presidential electors, but the Elections Clause "parallels" that provision, and "[t]he Clauses also reflect the idea that the Constitution treats both the President and Members of Congress as federal officers." *U.S. Term Limits v. Thornton,* 514 U.S. 779, 890, n.17.

Smiley, 285 U.S. at 367-68; *see also Hawke*, 253 U.S. at 230-31 (1920) (describing Election Clause's delegation to "the legislative authority of the state").[9] This authority carefully places redistricting power in the state's "*legislative*" processes—that is, in "the State's prescriptions for law*making*," not law *interpreting*. *Arizona State Leg.*, 135 S. Ct. at 2668 (emphasis added). Examples of law*making* include the formal legislature, the referendum, the governor's veto, and the initiative. *See id.* (summarizing this Court's precedent). All of these are channels for the expression of popular, rather than judicial, will. Accordingly, there is no analogy between the judiciary's interpretive function and the gubernatorial veto addressed in *Smiley*: the governor's veto belongs to the law*making* process, not the governor's executive function. *See Smiley*, 285 U.S. at 368 (observing that the Governor played "a part in the making of state laws"); *Jubelirer v. Rendell*, 953 A.2d 514, 529 (Pa. 2008) ("The Governor's exercise of his veto power is unique in that it is essentially a limited legislative power…."). The Pennsylvania Supreme Court's interpretive function is judicial and is entirely foreign to the law*making* process.

The majority opinion in *Arizona State Legislature* drove home the legislative nature of redistricting in holding that the initiative process that established a new redistricting regime in Arizona was justified as "[d]irect law*making* by the *people*." 135 S. Ct. at 2659 (emphasis added). As it further stated, the "Clause doubly empowers *the people*" to "control the State's law*making* processes in the first

[9] *Carroll v. Becker*, 285 U.S. 380, 382 (1932), and *Koenig v. Flynn*, 285 U.S. 375, 379 (1932), merely follow *Smiley* in nearly identical circumstances. They add nothing to the Challengers' or Executive Respondents' previously advanced position.

instance" or to "seek Congress' correction of regulations prescribed by state legislature." 135 S. Ct. at 2677 (emphasis added); *id.* at 2671-72 (emphasizing that "*the people* of Arizona"); *see also id.* at 2658 (emphasizing the "endeavor by *Arizona voters*"), *id.* at 2659 (emphasizing the "[d]irect lawmaking by the people"), *id.* at 2659 n.3 (emphasizing "the people's sovereign right to incorporate themselves into a State's lawmaking apparatus"), *id.* at 2660 (emphasizing "direct lawmaking" under the "initiative and referendum provisions" of the Arizona Constitution), *id.* (emphasizing the role of the "electorate of Arizona as a coordinate source of legislation"), *id.* at 2661 (emphasizing "the people's right…to bypass their elected representative and make laws directly"). *Arizona State Legislature* does not support the position that the judiciary is the vote of the "people" or the "legislature," and may seize the lawmaking power from both.

Indeed, the Pennsylvania Supreme Court's decision is without precedent. Although state courts have applied state constitutional criteria to congressional plans to invalidate them, they all involve application of *express* criteria identifiable in the plain text. For example, *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 261-63 (Fla. 2015), applied provisions of the Florida Constitution specifying that "districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries." Fla. Const. art. III, § 20. Likewise, *Beauprez v. Avalos*, 42 P.3d 642, 651 (Colo. 2002), applied provisions of the Colorado constitution specifying that "[e]ach district shall be as compact in area as possible" and "no part of one county shall be added to all or part of another county in forming districts."

Colo. Const. art. V, § 47. Undersigned counsel has yet to uncover a single case like this one, where the court identified mandatory criteria from a generic guarantee of equal protection.

Second, the power of state courts to remedy violations of law does not incorporate the power to *legislate*. This Court's decisions in *Growe v. Emison*, 507 U.S. 25 (1993), and *Scott v. Germano*, 381 U.S. 407 (1965), do not suggest otherwise. Both cases hold that, as between the federal courts and state courts, principles of comity establish a preference that state courts take the lead in remedying a legislature's *failure* to redistrict. In both cases, the state legislature failed to pass *any* plan once the former plan was deemed malapportioned in violation of the federal Constitution. *See Growe*, 507 U.S. at 27-31; *Germano*, 381 U.S. at 408-409. With the proper legislative bodies out of the picture, the cases assessed the lesser-of-two-evils choice of which of two competing *courts* should draw the new plan—given that only *one* plan can govern. The Court's choice of state courts over federal courts for that task did not suggest an equivalence between state courts and state *legislatures* where, as here, the state legislature had passed a plan. That much is clear from *Germano*'s reliance on *Maryland Comm. for Fair Representation v. Tawes*, which cautioned that state courts "need feel obliged to take further affirmative action only if the legislature fails to enact a constitutionally valid state legislative apportionment scheme in a timely fashion after being afforded a further opportunity by the courts to do so." 377 U.S. 656, 676 (1964); *see also Germano*, 381 U.S. at 409. The preference in all instances is the legislature over *any* court, state or federal.

Accordingly, *Growe* and *Germano* have no relevance in a case like this where, instead of conflict between two ill-equipped competitors (state and federal courts), the conflict is between the constitutional ideal ("the Legislature") and an ill-equipped competitor (a state court). Likewise, neither *Growe* nor *Germano* even hints that state courts are empowered to *create* new criteria to *find* an otherwise nonexistent violation and then veto any proposed replacement plan that does not adhere to those criteria, or use them as justification to adopt a self-proclaimed "superior" court drawn map.

In fact, this Court's precedents define the scope of courts' remedial authority and expressly refute the legitimacy of court-made criteria. Courts must implement plans that "most clearly approximate[] the reapportionment plan of the state legislature," *White v. Weiser*, 412 U.S. 783, 796 (1973), and this duty deprives courts of any independent power to create policy. *Upham v. Seamon*, 456 U.S. 37, 41-43 (1982). Even if a plan is struck down for failure to comply with some *valid* legal criterion—which is not the case here—a court's power to impose a remedy does not mean "that the policy judgments" of the legislature "can be disregarded;" rather a court "appropriately confines itself to drawing interim maps…without displacing legitimate state policy judgment *with the court's own preferences*." *Perry v. Perez*, 565 U.S. 388, 394 (2012) (emphasis added). Thus, the suggestion that the courts' power to remedy entails the power to legislate is exactly backwards.

C. The Pennsylvania Supreme Court Further Violated the Elections Clause by Failing to Provide the General Assembly Any Meaningful Opportunity to Draw a New Map.

Not only did the Pennsylvania Supreme Court violate the Elections Clause by adopting new congressional districting criteria from whole cloth, but also by implementing a remedial phase that did not give the General Assembly an "adequate opportunity" to enact a new map. *See Upham,* 456 U.S. at 41. This ensured that the court would get to draw the map it wanted, instead of being crafted through the legislative process. As Justice Mundy stated in her dissent, the Pennsylvania Supreme Court violated the Elections Clause choosing "to put the General Assembly on a three-week timeline without articulating the complete criteria necessary to be constitutionally compliant." App. B, Mundy Dissenting Op. at 5. Similarly, Justice Baer stated in his dissent to the court's February 19 Order adopting a new map: "I continue to conclude that the compressed schedule failed to provide a reasonable opportunity for the General Assembly to legislate a new map in compliance with the federal Constitution's delegation of redistricting authority to state legislature. U.S. Const. art. I, § 4." App. C, Baer Dissenting Op. at 2.

First, the court's January 22 Order provided the General Assembly a mere 18 days to pass a new plan. But a redistricting plan, like any other statute, must go through the normal legislative process, including several reviews in both chambers. The General Assembly must go through the arduous political process of obtaining enough votes in both chambers, which often involves a back and forth among legislators to reach various compromises. Eighteen days was utterly inadequate

especially given that the court's full opinion did not issue until two days prior to the Court imposed deadline.

To make matters worse, the court did not issue its opinion until just two days before the General Assembly's deadline to pass a plan and submit it to the Governor. Thus, the General Assembly was left to speculate on exactly which provision of the Pennsylvania Constitution the 2011 Plan purportedly violated, and how such violation could be remedied in any new map. In addition, although the court's January 22 Order articulated creation of the newly-mandated criteria, it was silent on exactly how those criteria needed to be applied and how they would be evaluated. For example, the January 22 Order stated that a political subdivision could only be split for population equality. But what if such a split was necessary to comply with the Voting Rights Act? Moreover, it was not until the court's February 7 Opinion where the court indicated that a showing of compactness or split subdivisions was "not the exclusive means by which a violation of [the Free and Equal Elections Clause] may be established." App. B at 124. The court's opinion also for the first time imposed the notion of proportional representation—a requirement that would greatly dictate how the lines can be drawn.

But the seizure of the process from the General Assembly in violation of the Elections Clause did not stop there. The court's January 22 Order further indicated that even if the General Assembly were to pass a plan that the Governor signed, it still needed to be submitted to the court for review. App. A at 2. The court then backtracked in its February 7 Opinion stating that if the legislature and executive

timely enacted a remedial plan its role would conclude until such plan was challenged. App. B at 132.

Separately, while the court allowed the parties to submit proposed remedial maps, it appears the court never had the intention of giving them any meaningful review. The court's January 22 Order required proposed plans to be submitted by February 15, but indicated that a new redistricting plan would be available February 19, just four days later. The court in fact adopted its own map on February 19, just 10 days after Applicants submitted their plan and 4 days after the other parties submitted their proposed plans. The court's February 19 Order does not indicate that any of the proposed plans failed to meet the court's criteria; it only summarily concludes that its plan was "superior." App. C at 7.

The court's process was entirely closed. It did not allow the parties the opportunity to provide any comment to the proposed map, inquire on why certain subdivisions were split and whether it was to meet population equality, or further evaluate whether partisan intent played any role in the drafting. As Chief Justice Saylor stated in his dissenting opinion:

> The latest round includes: the submission, within the past few days, of more than a dozen sophisticated redistricting plans; the lack of an opportunity for critical evaluation by all of the parties; the adoption of a judicially created redistricting plan apparently upon advice from a political scientist who has not submitted a report as of record nor appeared as a witness in any court proceeding in this case; and the absence of an adversarial hearing to resolve factual controversies arising in the present remedial phase of this litigation. In these circumstances, the displacement to the judiciary of the political responsibility for redistricting -- which is assigned to the General Assembly by the United States Constitution -- appears to me to be unprecedented.

App. C, Saylor Dissenting at 2.

In short, although the court acknowledged that the primary responsibly for drawing congressional districts rests with the legislature, App. C at 3, its orders were issued in a calculated manner to avoid just that. The court's actions ensured that the judiciary would draw the lines rather than the legislature. In failing to provide the General Assembly a meaningful opportunity to re-draw the congressional districts, it violated the Elections Clause.

II. Absent a Stay, Irreparable Harm Will Occur

Without a stay of the decisions below, irreparable injury is certain. "[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 3 (2012). This is even truer for statutes relating to elections because "[a] State indisputably has a compelling interest in preserving the integrity of its election process." *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). Accordingly, the Pennsylvania Supreme Court injunction and imposition of a new plan is itself sufficient irreparable injury to warrant a stay because these orders ensure that the validly enacted plan of the Legislature will not govern in the upcoming election—even if, as is likely, the Court grants certiorari and reverses.

The irreparable injury is all the more acute given the eleventh-hour intrusion into the Commonwealth's electoral processes, and the confusion it injects into an election for federal office. As explained in Applicants' original stay motion and reply, the current Plan has been in effect since 2011 and has governed three elections,

thereby acclimating voters and potential candidates alike to the current lines. Now, only three weeks prior to the nominating-petition period, the court has ordered a new plan and has ordered the Executive Defendants to re-write the Commonwealth's 2018 primary calendar to accommodate the map-drawing process.

An independent basis for a stay also lies in this Court's decisions holding that judicial intrusion into elections must take account of "considerations specific to election cases." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). "Court orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls." *Id.* at 4-5. "As an election draws closer, that risk will increase." *Id.* at 5. The Court therefore should weigh such factors as "the harms attendant upon issuance or nonissuance of an injunction," the proximity of the upcoming election, the "possibility that the nonprevailing parties would want to seek" further review, and the risk of "conflicting orders" from such review. *Id.* Other relevant factors include "the severity and nature of the particular constitutional violation," the "extent of the likely disruption" to the upcoming election, and "the need to act with proper judicial restraint" in light of the General Assembly's heightened interest in creating Congressional districts. *North Carolina v. Covington*, 137 S. Ct. 1624, 1626 (2017).

The circumstances here overwhelmingly warrant a stay. The changes in the elections schedule is highly likely to cause voter confusion and depress turnout. Moreover, the voting public in Pennsylvania is familiar with the 2011 Plan's district boundaries, and a shift would drive perhaps millions of Pennsylvania residents out

of their current districts and into unfamiliar territory with unfamiliar candidates. This means that innumerable Pennsylvanians expecting to vote for or against specific candidates on the bases of specific issues will be required to return to the drawing board and relearn the facts, issues, and players in new districts. Voters who fail to make those efforts will face only confusion when they arrive to their precincts on Election Day and potential conflict with poll workers about the contents of the ballots they are given.[10] That state of affairs poses a substantial risk of undermining the will of the electorate.

Also at stake is the General Assembly's interest in enacting the Pennsylvania Congressional districting plan, which it derives directly from the Elections Clause. That provision requires that, if a plan is deemed to be invalid, the General Assembly receive a genuine opportunity to remedy any violation. But as discussed more fully above, the court failed to provide the General Assembly with a meaningful opportunity to draw a new plan.

This Court should therefore follow its "ordinary practice" and prevent the Pennsylvania Supreme Court's order "from taking effect pending appellate review."

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[10] Voter confusion is only more likely in Pennsylvania's 18th Congressional District. While the Pennsylvania Supreme Court has enjoined use of the 2011 Plan for the upcoming elections, with regard to Pennsylvania's 18th Congressional District the court ruled: "[T]he March 13, 2018 special election for Pennsylvania's 18th Congressional District, which will fill a vacancy in an existing congressional seat for which the term of office ends in 11 months, shall proceed under the [2011 Plan] and is unaffected by this Order." App. Ex. A at 3. Thus, voters in this district will be voting for their interim candidate in March, but then potentially in a new district for the primary in May. Moreover, neither of the candidates currently running in the March special election to represent the 18th Congressional district will reside in the 18th Congressional district if this new map is permitted to take effect.

Strange v. Searcy, 135 S. Ct. 940, 940 (2015) (Thomas, J., dissenting) (citing *Herbert v. Kitchen*, 134 S. Ct. 893 (2014), and *San Diegans for Mt. Soledad Nat'l War Mem'l v. Paulson*, 548 U.S. 1301 (2006) (Kennedy, J., in chambers)).

CONCLUSION

For the foregoing reasons, Applicants respectfully request that this Court grant this emergency application for a stay of the Pennsylvania Supreme Court's orders pending resolution of Applicants' petition for certiorari.

Respectfully Submitted,

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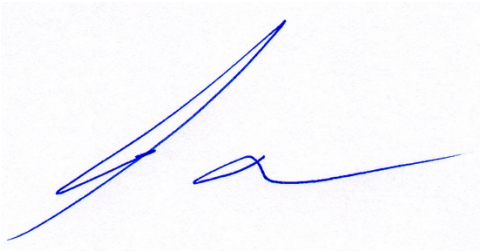

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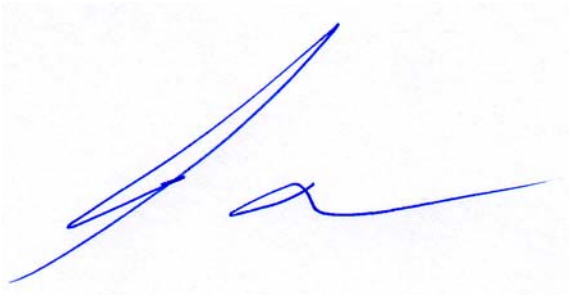

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