No. 20A98

IN THE

Supreme Court of the United States

MIKE KELLY, *ET AL.*,
Applicants,

v.

COMMONWEALTH OF PENNSYLVANIA, *ET AL.*,
Respondents.

On Emergency Application for Writ of Injunction Pending the Filing and Disposition of a Writ of Certiorari

MOTION FOR LEAVE TO FILE AND BRIEF OF CARTER PHILLIPS, STUART GERSON, JOHN DANFORTH, CHRISTINE TODD WHITMAN, LOWELL WEICKER, *ET AL.*, AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS AND IN OPPOSITION TO THE EMERGENCY APPLICATION FOR INJUNCTIVE RELIEF

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December 7, 2020

MOTION FOR LEAVE TO FILE[1]

Amici respectfully move for leave to file a short brief as *amici curiae* in support of Respondents and in opposition to the emergency motion for injunctive relief. Petitioner and the Pennsylvania General Assembly consent, and the Commonwealth of Pennsylvania, the Pennsylvania Secretary of State, and the Pennsylvania Governor Wolf, take no position on the filing of the enclosed *amici* brief in opposition to the emergency motion for injunctive relief.

Amici respectfully request that the Court consider the arguments herein and in the enclosed, short *amici* brief. If this Court considers the merits of the laches issue, the attached *amici* brief would be helpful to the Court for three reasons. First, the laches ruling below has not "impermissibly distorted [state law] beyond what a fair reading required." *Bush v. Gore,* 531 U.S. 98, 115 (2000) (Rehnquist, J., concurring, joined by Scalia and Thomas, JJ.). That should be the end of the matter.

Second, although this case is not a vehicle to address the question,

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[1] No counsel for any party authored the *amici* brief in whole or in part and no person or entity other than *amici* made a monetary contribution to its preparation or submission.

a majority of this Court should not endorse the standard of direct review in the *Bush v. Gore* concurrence. The Elections and the Electors Clauses, and 3 U.S.C. § 5, authorize what Pennsylvania's General Assembly indisputably has done as part of the "manner" of federal elections – delegate by statute the final adjudication of all disputes about state law concerning federal elections ultimately to the Pennsylvania Supreme Court. The only review in this Court of the correctness of a state supreme court's interpretation of state law should be limited to the Due Process standard – that is, whether the interpretation is "indefensible." *Metrish v. Lancaster,* 569 U.S. 351 (2013). Any other approach would improperly federalize state election law and result, as it has in 2020, in disgruntled candidates and their allies repetitively going to multiple federal district and circuit courts, and now this Court, in an effort – contrary to more than two centuries of history – to bypass or overturn state supreme court interpretations of state law.

Third, federalism and the Tenth Amendment contradict Applicants' arguments. If federalism and the Tenth Amendment do not apply to federal elections, then, for that reason alone, Applicants do not have standing to assert claims under the Elections and Electors Clauses. But

if federalism and the Tenth Amendment do apply to federal elections, Applicants fare no better. Here, it would violate federalism and the Tenth Amendment for this Court to substitute its interpretation of state law for that of a state supreme court.

I. Statement of Movant's Interest.

Amici include lawyers and others who have worked in Republican administrations, and former Senators, governors and Congressional representatives. *See* Appendix A. Reflecting their experience in supporting the rule of law, *amici* have an interest in seeing that judicial decisions about the forthcoming election are based on sound legal principles. *Amici* speak only for themselves personally, and not for any entity or other person.

II. Statement Regarding Brief Form and Timing.

Given the expedited briefing of the application, *amici* respectfully request leave to file the enclosed brief supporting Respondents and their opposition to the motion without 10 days' advance notice to the parties of intent to file. *See* Sup. Ct R. 37.2(a). On December 6, 2020, this Court ordered responses to the motion to be filed by 9:00 a.m. on December 8, 2020. On December 3, 2020, counsel for *amici* gave notice to Petitioner

and Respondents of the intent of *amici* to file an *amici* brief opposing the motion for injunctive relief if the Court entered an order for any responses. Petitioner consented on December 3, 2020, and the Pennsylvania General Assembly consented on December 4, 2020. On December 4, 2020, Respondents the Commonwealth of Pennsylvania, Secretary Boockvar, and Governor Wolf responded that they do not take a position on *amici'* s motion for leave to file. The above justifies the request to file the enclosed *amici* brief supporting Respondents and in opposition to the emergency motion for injunctive relief without 10 days' advance notice to the parties of intent to file.

In addition, *amici* respectfully request leave to file the enclosed brief on 8½-by-11-inch paper. Because of the urgent timing of the motion and the logistics required to print this *amici* brief, *amici* respectfully request leave to file their brief on 8½-x-11-inch paper.

CONCLUSION

The Court should grant *amici curiae* leave to file the enclosed brief in support of Respondents and in opposition to the emergency motion for injunctive relief, and leave to file the *amici* brief on 8½-x-11-inch paper.

December 7, 2020

Respectfully submitted,

/s/ Richard D. Bernstein

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional and Statutory Authorities

Legislative History

INTEREST OF *AMICI CURIAE*

Amici include Carter Phillips, Stuart Gerson, former Senator John Danforth, former Governor Christine Todd Whitman, former Senator and Governor Lowell Weicker, and others who have worked in Republican federal administrations. *See* Appendix A.[1] Reflecting their experience in supporting the rule of law, *amici* have an interest in seeing the rule of law applied in contentious election cases. *Amici* speak only for themselves personally, and not for any entity or other person.

INTRODUCTION AND SUMMARY OF ARGUMENT

This is neither the stage nor the vehicle for this Court to evaluate Applicants' attacks on the merits of the Pennsylvania state court decision on laches. *See* Application at 32-40. Nonetheless, the decision of the Pennsylvania Supreme Court on Pennsylvania law readily passes muster under any potentially appropriate standard of direct review.

First, at most, this Court may set aside on direct review a state supreme court's interpretation of state election law, and any remedy thereunder, only if the decision "impermissibly distorted [state law]

[1] No counsel for any party authored the brief in whole or in part, and no person other than *amici* made a monetary contribution to its preparation or submission.

beyond what a fair reading required." *Bush v. Gore,* 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring, joined by Scalia and Thomas, JJ.) (the "*Bush v. Gore* concurrence"). As demonstrated by the reasoning of the Pennsylvania Supreme Court and the arguments below of Respondents, that is not remotely this case. That should be the end of the matter.

Second, although this case is not a vehicle to address the question, a majority of this Court should not endorse the standard of direct review in the *Bush v. Gore* concurrence. The Elections and the Electors Clauses, and 3 U.S.C. § 5, authorize what Pennsylvania's General Assembly indisputably has done: delegate by statute the final adjudication of all disputes concerning federal election results ultimately to the Pennsylvania Supreme Court. That statutory delegation is part of the General Assembly's chosen statutory "manner" for elections as much as are the statutes on, for example, mail-in voting. A state's chosen "manner" applies "exclusively," *McPherson v. Blacker,* 146 U.S. 1, 27 (1892), "absent some *other* constitutional constraint." *Chiafolo v. Washington,* 140 S. Ct. 2316, 2324 (2020) (emphasis added). The only "*other* constitutional constraint" on whether a state supreme court has

correctly interpreted state law is the Due Process Clause. Under the Due Process Clause, on direct review, this Court may set aside a state supreme court's interpretation of state law as incorrect only if it is "indefensible." *Metrish v. Lancaster,* 569 U.S. 351, 360 (2013) (quotations and citation omitted).

The definitive authority of a state's supreme court is confirmed by 3 U.S.C. § 5, which expressly enables a state to designate "its" *state* tribunals as the "conclusive" arbiter of "any controversy or contest concerning" presidential election results in that state. Any other approach would improperly federalize state election law and result, as it has in 2020, in disgruntled candidates and their allies repetitively going to multiple federal district and circuit courts, and now this Court, in an effort – contrary to more than two centuries of history – to bypass or overturn state supreme court interpretations of state law.

Third, federalism and the Tenth Amendment contradict Applicants' arguments. If federalism and the Tenth Amendment do not apply to federal elections, then, as the Third Circuit has held, for that reason alone Applicants, who are supporters of a disgruntled candidate, do not have standing to bring claims under the Elections and Electors Clauses.

But if federalism and the Tenth Amendment do apply to federal elections, Applicants fare no better. It would violate federalism and the Tenth Amendment for this Court to substitute its view of state election law for that of a state supreme court when, as here, the state supreme court's decision is not remotely indefensible and thus does not violate the Due Process Clause.

ARGUMENT

I. THE PENNSYLVANIA SUPREME COURT'S DECISION EASILY PASSES MUSTER UNDER THE *BUSH V. GORE* CONCURRENCE.

Applicants cite the *Bush v. Gore* concurrence as authority for this Court to override the Pennsylvania Supreme Court's interpretation of Pennsylvania law on laches. *See* Application at 16, 33. That is nonsense. The *Bush v. Gore* concurrence permits, at most, this Court, on direct review, to evaluate a state supreme court's final decision *only* as to whether that ruling had "impermissibly distorted [state law] beyond what a fair reading required." 531 U.S. at 115; *see id.* at 119 (using "[n]o reasonable person" standard). For the reasons stated by the

Pennsylvania Supreme Court and the Respondents, that is certainly not this case.[2] That should be the end of the matter.

II. BECAUSE THE "MANNER" DIRECTED BY THE GENERAL ASSEMBLY CULMINATES IN STATE LAW INTERPRETATION BY THE PENNSYLVANIA SUPREME COURT, THE STANDARD FOR THIS COURT'S INTERPRETIVE REVIEW SHOULD BE THE DUE PROCESS STANDARD.

Respectfully, although this case is not a vehicle for addressing the question, the *Bush v. Gore* concurrence should not be adopted by a majority of this Court, much less extended to distinguishable circumstances. This is because its somewhat heightened standard of direct review contradicts the text of the Elections and Electors Clauses, 3 U.S.C. § 5, and this Court's decision in *Smiley v. Holm*, 285 U.S. 355 (1932).

The Elections and Electors Clauses give the Pennsylvania General Assembly power over the exclusive "manner" of federal elections. This power over "manner" includes the power to "delegate[] the authority to run the election and to oversee election disputes to the Secretary of State

[2] The procedural posture of *Bush v. Gore* was also different. Vice President Gore had filed an election contest in a Florida trial court and the Florida Supreme Court had decided Vice President Gore's appeal from an adverse decision in the contest action. 531 U.S. at 101 (per curiam). In turn, this Court reviewed the Florida Supreme Court's decision concerning that contest action. *Id.* at 100. Here, neither Applicants, nor anyone else, filed an election contest in a Pennsylvania state court. The deadline to do so expired November 23, 2020. 25 P.S. §§ 3291, 3456.

. . . and to state . . . courts." *Bush v. Gore* concurrence at 113-14. In particular, the exclusive "manner" includes statutorily-designated state court procedures for post-election "protest[s]" and "[c]ontests" concerning, among other things, "canvassing" and "certification." *Id.* at 116-18.

Likewise, 3 U.S.C. § 5 states that "when any State shall have provided," under pre-election law, for "*its* final determination of *any controversy or contest* concerning [presidential election results], by judicial or other methods or procedures," a *state* supreme court's decision about state law is "conclusive." (Emphases added). This obvious meaning of "its" is confirmed by the drafting history of 3 U.S.C. § 5, in which sponsors repeatedly stated that the phrase "*its* final determination . . . by judicial or other methods or procedures" meant determination by "the State tribunal." 18 Cong. Rec. 52 (1885) (statement of Rep. Adams); 8 Cong. Rec. 70-71 (1878) (statement of Sen. Morgan); *see also, e.g.,* 17 Cong. Rec. 1020 (1886) (statement of Sen. Hoar) ("The bill provides that where the State has created a tribunal for determination of [presidential election controversies], the proceedings of *that tribunal* shall be conclusive . . . .") (emphasis added); *id.* at 867 (statement of Sen. Morgan) (3 U.S.C. § 5 "secure[s] to each State its full electoral power, to be

expressed and exercised, as far as may be, under the Constitution, through its own laws *and through the final and conclusive judgment of its own tribunals.*") (Emphasis added).

The *Bush v. Gore* concurrence itself stated that a state's legislature's chosen "manner" is not merely "isolated sections of the code" but rather the "general coherence of the legislative scheme." 531 U.S. at 114. Statutes enacted by the General Assembly both make state courts the adjudicator of federal election disputes, *see, e.g.,* 25 P.S. §§ 3291, 3456, and make the *Pennsylvania* Supreme Court, not this Court, the final adjudicator of state law in all cases, including federal election disputes arising in Pennsylvania. *See, e.g.,* 42 P.S. §§ 501-02, 722(2), 724, 726; Act of October 31, 2019 (P.L. 552, No. 77), § 13(2), 2019 Pa. Legis. Sen. Act. 2019-77. Neither "manner" in the Elections and Electors Clauses nor "*its* final determination" in 3 U.S.C. § 5 permits any exception that would allow this Court to override these Pennsylvania statutes. When a text does not "include any exceptions to a broad rule, courts apply the broad rule." *Bostock v. Clayton County,* 140 S. Ct. 1731, 1747 (2020).

The delegated final authority of the Pennsylvania Supreme Court is a part of the exclusive "manner" directed by the General Assembly just as much as are the General Assembly's statutes regarding, for example, mail-in voting. Applicants have offered no legal argument how the word "Legislature" supports overriding the Pennsylvania *statutes* that give the Pennsylvania Supreme Court final authority to interpret Pennsylvania's election laws and decide any remedial issues thereunder.

The approach of the *Bush v. Gore* concurrence conflicts with the rationales of *Smiley v. Holm,* 285 U.S. 355 (1932), which it did not address. *Smiley* did not conclude that the Elections Clause itself affirmatively authorized a governor's veto of a state statute applicable to federal elections. Rather, *Smiley* rested on three rationales. First, "there is *nothing* in article 1, section 4, which *precludes* a state from providing that legislative action in districting the state for congressional elections shall be subject to the veto power of the Governor *as in other cases of the exercise of the lawmaking power*." 285 U.S. at 372-73 (emphases added). Second, when the federal Constitution was adopted, some governors had veto power over state statutes. *Id.* at 368. Third, after the Constitution's

ratification, a governor's power to veto election statutes had gone unchallenged for 143 years. *Id.* at 369.

So too here. Nothing in the Elections Clause or the Electors Clause limits the normal power of a state's supreme court to interpret state law and decide any remedies thereunder. State courts exercised the power to interpret state law before the adoption of the federal Constitution. And for 210 years thereafter, no federal court challenged the authority of a state supreme court as the final arbiter of state election laws.[3]

This Application illustrates the misuse of the *Bush v. Gore* concurrence. *See* Part I, *supra.* But it is not the only one. In 2020, challengers who prefer a federal forum to the state supreme court, or disagree with a state supreme court ruling, have gone to the federal district and circuit courts – and now this Court – seeking to bypass an issued, pending, or available state supreme court decision based on the proposition that the Elections Clause and the Electors Clause somehow

[3] The Court need not address in this case what the federal standard of review would be if, for example, a state actor retroactively purported to "revers[e] the vote of millions of its citizens." *Chiafolo,* 140 S. Ct. at 2328. When a state statute has chosen popular election as the manner for a federal election, the guiding constitutional principle after citizens have voted must be: "here, We the People rule." *Id.*

federalized the interpretation of state election laws.[4] They continue to do this repetitively concerning six states – Pennsylvania, Georgia, Wisconsin, Nevada, Arizona, and even Michigan, with its certified results showing a victory for Joe Biden by approximately 154,000 votes, or 2.8%.[5]

Thus, misuse of the *Bush v. Gore* concurrence has led to federal court litigation in a state where the lead is approximately 300 times as large as the 537-vote margin – 0.009% – in Florida in 2000. In 2020, the federal court plaintiffs and Applicants are Republicans. If a majority of this Court encourages their approach, in future elections, the Democrats

[4] That rush would not be abated by limiting the federalization to cases where a state statute is asserted to have a plain meaning. Virtually every litigant asserts that its interpretation of a statute is the plain meaning. And as illustrated recently in the majority and dissenting opinions in *Bostock v. Clayton County,* 140 S. Ct. 1731 (2020), even the most devoted textualist judges can disagree about the plain meaning of a statute.

[5] *See, e.g., Trump v. Wisconsin Elections Comm'n,* No. 2:20-cv-01785-BHL, filed Dec. 2, 2020 (E.D. Wis.); *Donald J. Trump for President, Inc. v. Pennsylvania,* No. 20-3371, 2020 WL 7012522 (3d Cir. Nov. 27, 2020) (affirming dismissal); *Donald J. Trump for President, Inc. v. Benson,* No. 1:20-cv-01083-JTN-PJG, voluntarily dismissed, Nov. 19, 2020 (W.D. Mich.); *King v. Whitmer,* No. 2:20-cv-13134-LVP-RSW (E.D. Mich. Dec. 7 2020) (denying emergency motion for injunctive relief); *Wood v. Raffensperger,* No. 20-14418, 2020 WL 7094866 (11th Cir. Dec. 5, 2020) (affirming denial of emergency relief); *Pearson v. Kemp,* No. 20-14480 (11th Cir. Dec. 4, 2020) (dismissing appeal and denying leave to appeal); *Feehan v. Wisconsin Elections Comm'n,* No. 2:20-cv-1771-PP, filed Dec. 1, 2020 (E.D. Wis.); *Bowyer v. Ducey,* No. 2:20-cv-0231-DJH, filed Dec. 2, 2020 (D. Ariz.); *Stoke v. Cegavske,* No. 2:20-cv-02046-APG-DJA, voluntarily dismissed, Nov. 24, 2020 (D. Nev.).

would surely follow suit. Like Gresham's law, the bad would drive out the good.

What the Court said in *Rucho v. Common Cause,* 139 S. Ct. 2484 (2019), is at least as prudent here:

> [I]t is vital in such circumstances that the Court act only in accord with especially clear standards: "With uncertain limits, intervening courts – even when proceeding with best intentions – would risk assuming political, not legal, responsibility for a process that often produces ill will and distrust."

Id. at 2498-99 (quoting *Vieth v. Jubelirer,* 541 U.S. 267, 307 (2004) (Kennedy, J., concurring in the judgment)).

This does not mean that every interpretation of state law by a final state supreme court decision in a federal election dispute is immune to direct review by this Court. As *Chiafolo* held, this Court can review if state election law, or any remedial issue thereunder, as interpreted by a state supreme court, violates "some *other* constitutional constraint." 140 S. Ct. at 2324. In particular, this Court can review whether the Due Process Clause was violated because a state supreme court's decision so contradicts prior, clearly established state law as to be "indefensible." *Metrish v. Lancaster,* 569 U.S. 351, 360 (2013) (quotations and citation omitted). That is not remotely this case.

III. TO THE EXTENT FEDERALISM AND THE TENTH AMENDMENT APPLY, THEY INDEPENDENTLY SUPPORT DENIAL OF THE APPLICATION.

If federalism and the Tenth Amendment do not apply, this provides one reason that Applicants have no standing to raise claims under the Elections or Electors Clause. *See Bognet v. Secretary Commonwealth of Pa.,* No. 20-3214, 2020 WL 6686120, at *7 (3d Cir. Nov. 13, 2020); *see also Virginia House of Delegates v. Bethune-Hill,* 139 S. Ct. 1945, 1953 (2019); *Lance v. Coffman,* 549 U.S. 437, 442 (2007) (per curiam). *Assuming* that federalism and the Tenth Amendment would apply, they independently would support application of the more deferential standard of review in *Metrish,* not the standard in the *Bush v. Gore* concurrence.

The Tenth Amendment provides: "The *powers* not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people." U.S. Const., amend. X (emphasis added). The state "powers" protected by the Tenth Amendment include the judicial powers of state courts to interpret definitively *all* state statutes.

If federalism and the Tenth Amendment apply, the text of the Tenth Amendment would literally govern here. This is because a state

court's judicial power to interpret a state's election law, and decide any remedial issue thereunder, is neither a "power . . . delegated to the United States by the Constitution, nor prohibited by it to the states. . . ." U.S. Const., amend. X.[6]

Under each of federalism and the Tenth Amendment, with respect to the particular exercise of power, including judicial power, "[w]hen the federal Constitution is silent, authority resides in the states or the people." *Chiafolo v. Washington,* 140 S. Ct. 2316, 2333 (2020) (Thomas, J., joined by Gorsuch, J. concurring); *see id.* at 2333-35.[7] There is nothing in the text of the Elections Clause or the Electors Clause that transfers the power of state courts to interpret state election law, and decide any remedial issue thereunder, to this Court. Only the Due Process Clause gives this Court very limited, direct review over whether a state supreme

[6] No one has ever contended that the words quoted in the text above exclude from the Tenth Amendment state powers concerning federal elections. Rather, the dispute has been whether "reserved" does so. *Compare U.S. Term Limits, Inc. v. Thornton,* 514 U.S. 779, 802 (1995), *with id.* at 851-52 (Thomas, J., joined by Rehnquist, C.J., and O'Connor and Scalia, JJ., dissenting). This case is not a vehicle for addressing the Tenth Amendment because whether it applies does not affect the outcome.

[7] Justice Thomas has explained that here, "silence" means "where the Constitution does not speak expressly or by necessary implication." *Chiafolo,* 140 S. Ct. at 2334 (quotations and citations omitted).

court correctly interpreted state election law or correctly decided any remedial issue thereunder. *See supra,* at 2-3, 11.

Federalism and the Tenth Amendment protect our liberties. *See Shelby County v. Holder,* 570 U.S. 529, 543 (2013). Federalism and the Tenth Amendment "divide[] power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day." *New York v. United States,* 505 U.S. 144, 187 (1992). Consistent with federalism and the Tenth Amendment, the federal Constitution and Congress have left it to each state to provide law and to adjudicate all controversies seeking to exclude votes counted by state officials in federal elections.

This Court should reject Applicants' request to transfer the powers of 50 state supreme courts to this Court. The caution of *Rucho* at least equally fits here as well:

> What the [Applicants] seek is an unprecedented expansion of [federal] judicial power. We have never struck down a [state court's interpretation of state law] as unconstitutional [under the Electors or the Elections Clauses]. The expansion of judicial authority would not be into just any area of controversy, but into one of the most intensely partisan aspects of American political life. That

> intervention would be unlimited in scope and duration – it would recur over and over again around the country with each [federal election]. Consideration of the impact of today's ruling on democratic principles cannot ignore the effect of the unelected and politically unaccountable branch of the Federal Government assuming such an extraordinary and unprecedented role.

139 S. Ct. at 2507.

CONCLUSION

This Court should deny the application.

December 7, 2020

Respectfully submitted,

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APPENDIX A

LIST OF AMICI CURIAE

Carter Phillips, Assistant to the Solicitor General, 1981-1984.

Stuart M. Gerson, Acting Attorney General, 1993; Assistant Attorney General for the Civil Division, 1989–1993; Assistant United States Attorney for the District of Columbia, 1972–1975.

John Danforth, United States Senator from Missouri, 1976-1995; United States Ambassador to the United Nations, 2004-2005; Attorney General of Missouri, 1969-1976.

Christine Todd Whitman, Administrator, Environmental Protection Agency, 2001–2003; Governor, New Jersey, 1994–2001.

Lowell Weicker, Governor, Connecticut, 1991-1995; United States Senator from Connecticut, 1971-1989; Representative of the Fourth Congressional District of Connecticut in the United States House of Representatives, 1969-1971.

Constance Morella, Representative of the Eighth Congressional District of Maryland in the United States House of Representatives, 1987-2003; Permanent Representative from the United States to the Organisation for Economic Co-operation and Development, 2003-2007.

Christopher Shays, Representative of the Fourth Congressional District of Connecticut in the United States House of Representatives, 1987-2009.

Donald Ayer, Deputy Attorney General 1989-90; Principal Deputy Solicitor General 1986-88; United States Attorney, E.D. Cal 1982-86; Assistant U.S. Attorney, N.D. Cal 1977-79.

John Bellinger III, Legal Adviser to the Department of State, 2005-2009; Senior Associate Counsel to the President and Legal Adviser to the National Security Council, 2001-2005.

Edward J. Larson, Counsel, Office of Educational Research and Improvement, United States Department of Education, 1986-1987; Associate Minority Counsel, Committee on Education and Labor, United States House of Representatives, 1983-1986.

Alan Charles Raul, Associate Counsel to the President, 1986-1988; General Counsel of the Office of Management and Budget, 1988-1989; General Counsel of the United States Department of Agriculture, 1989- 1993; Vice Chairman of the Privacy and Civil Liberties Oversight Board, 2006-2008.

Paul Rosenzweig, Deputy Assistant Secretary for Policy, Department of Homeland Security, 2005-2009; Office of Independent Counsel, 1998-1999; United States Department of Justice, 1986-1991.

Robert Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, 1981-1984.

Stanley Twardy, U.S. Attorney for the District of Connecticut, 1985–1991.

Richard Bernstein, Appointed by the United States Supreme Court to argue in *Cartmell v. Texas*, 529 U.S. 513, 515 (2000); *Montgomery v. Louisiana*, 136 S. Ct. 718, 725 (2016).