No. 22O155

In the

Supreme Court of the United States

STATE OF TEXAS

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Defendants.

MOTION FOR LEAVE (1) TO FILE AMICUS BRIEF OF MEMBERS OF THE DEMOCRATIC CAUCUS OF THE SENATE OF PENNSYLVANIA AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS AND IN OPPOSITION TO THE PLAINTIFF'S LEAVE TO FILE A COMPLAINT, AND (2) TO DO SO IN AN UNBOUND FORMAT ON 8 1⁄2-BY-11-INCH PAPER UNDER RULE 33.2, AND (3) TO DO SO WITHOUT TEN DAYS' ADVANCE NOTICE TO THE PARTIES AS ORDINARILY REQUIRED UNDER RULE 37.2(a)

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

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December 11, 2020

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December 11, 2020

Movant, the Pennsylvania Senate Democratic Caucus "Democratic Caucus",[1] respectfully seeks leave to file the brief as *amici curiae* in support of the filing of the Attorney General of the Commonwealth of Pennsylvania in Opposition to Motion for Leave to file Bill of Complaint and Motion for Preliminary Injunction, Temporary Restraining Order, or Stay to the Emergency Application for Writ of Injunction Pending the filing and Disposition of a Petition for a Writ of Certiorari filed in the above-captioned matter.

Amicus curiae Democratic Caucus submits this motion and accompanying brief. Democratic Caucus seeks to present herein and in the accompanying brief a unique perspective concerning the actions of the members of the Senate Democratic Caucus of the Pennsylvania General Assembly concerning the November 3, 2020 General Election, certification of the results of that election by the Secretary of the Commonwealth and voting of the Pennsylvania Presidential Electors in the selection of the President of the United States as provided by the Constitutions of the United States and the Commonwealth of Pennsylvania and the laws of the United States and the Commonwealth of Pennsylvania.

[1] The following members of the Senate Democratic Caucus seek to join this brief in full: Senator Jay Costa, Senator Vincent Hughes, Senator Anthony Williams, Senator Wayne Fontana, Senator Maria Collett, Senator John Blake, Senator Katie Muth, Senator Lisa Boscola, Senator Jim Brewster, Senator Amanda Cappelletti, Senator Carolyn Comitta, Senator Art Haywood, Senator John Kane, Senator Timothy Kearney, Senator John Sabatina, Senator Kikil Saval, Senator Judith Schwank, Senator Sharif Street, Senator Christine Tartaglione and Senator Lindsey Williams.

Amicus curiae requests permission to file its proposed brief on 8 ½ inch by 11 inch paper pursuant to Rule 33.2. Time does not allow for the printing of booklets under rule 33.1 due to the Court's expedited briefing schedule. Accordingly, *amicus* respectfully moves this Court to accept the filing of its *amicus* brief using the format specified in Rule 33.2.

Additionally, *amicus curiae* requests permission to file its proposed brief without 10 days' advance notice to the parties of *amicus*' intent to file as ordinarily required by Rule 37.2(a). Because of the expedited briefing schedule, it was not feasible to provide 10 days' notice to the parties.

For these reasons, *amicus curiae* respectfully requests the Court's leave to file the attached *amicus* brief containing 3,867 words, for leave to file the brief pursuant to Rule 33.2, and for leave to file the *amicus* brief without 10 days' advance notice to the parties of *amicus'* intent to file as ordinarily required by Rule 37.2(a).

Respectfully submitted,

/s/ Jay Costa, Jr.

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Dated: December 11, 2020

TABLE OF AUTHORITIES

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STATEMENT OF INTEREST

Amicus curiae, the Democratic Caucus of the Senate of Pennsylvania "Democratic Caucus", submits this *amicus curiae* brief in support of the filing of the Attorney General of the Commonwealth of Pennsylvania in Opposition to Motion for Leave to File a Bill of Complaint and Motion for Preliminary Injunction, Temporary Restraining Order or Stay to the Emergency Application for Writ of Injunction Pending the filing and Disposition of a Petition for a Writ of Certiorari filed in the above-captioned matter.[2]

Amicus curiae Democratic Caucus has an interest in the outcome of this matter as members of the Pennsylvania General Assembly to insure that the laws of the Commonwealth, as enacted by the General Assembly, concerning the conduct and certification of the 2020 General Election and resulting in the selection, credentialing and performance of statutory duties by the elected Presidential Electors of the Commonwealth are completed. Disappointingly, certain Pennsylvania Senate Republicans, through its filing to this Court, have decided not to take a position on this action by the State of Texas but rather to once again raise state claims that are before this Court and that have been previously litigated and decided in state court. *Republican Party of Pa. v. Boockvar*, No. 20-542 (U.S.); *Scarnati v. Boockvar*, No. 20-

[2] No party's counsel authored any part of this brief. No person other than amici and their counsel contributed any money intended to fund the preparation or submission of this brief. Due to the updated timeline for submission of briefs in this case, there has been no opportunity to seek the parties' consent to this brief.

574 (U.S.). These Senate Republicans have chosen not to defend the voting rights of each and every voter in the Commonwealth of Pennsylvania from an unwarranted and unsupportable attack by the Attorney General of Texas.

Amicus Curiae moves for leave to file the attached brief as *amicus curiae* in support of defendants and in opposition to plaintiff's leave to file a complaint (i) without 10 days' advance notice to the parties of *amicus*' intent to file as ordinarily required by Sup. Ct. R. 37.2(a), and (ii) in an unbound format on 8½-by-11-inch paper rather than in booklet form.

Because of the expedited briefing schedule, it was not feasible to provide 10 days' notice to the parties. Additionally, the compressed schedule prevented the *Amicus* Democratic Caucus from having the brief printed and filed in booklet form.

As set forth in the attached brief, the listed members of *Amicus* Democratic Caucus have a strong interest in this case. Specifically, the *Amicus* Democratic Caucus are elected state officials with state constitutional responsibility for enacting state election laws. Further, the constitutional oath of office administered to each member of *Amicus* Democratic Caucus at beginning of every term of office requires them to uphold the Pennsylvania Constitution. It is in this capacity that *Amicus* Democratic Caucus offers its perspective to this Court.

To ensure that states retain their sovereign ability to safely and securely administer elections and give effect to votes legally cast by constituents represented by its members, *Amicus* Democratic Caucus seeks leave to file this brief in order to

support defendants' position that this Court should deny plaintiff's motion for leave to file a complaint.

SUMMARY OF THE ARGUMENT

The General Assembly of the Commonwealth enacted three statutes concerning the conduct of the 2020 General Election. As part of those enactments, voters were authorized to use mail in, or no excuse absentee ballots, for the first time. This method of voting provided a safe and effective method for hundreds of thousands of voters in the Commonwealth to exercise their right to vote in a global pandemic. The Pennsylvania Elections Code, which contains the mail in ballot provisions, also established the guidelines for requesting and returning such ballots, the method for local election officials and state elections officials to verify the qualifications of voters requesting mail in ballots and for political parties and campaign representatives to challenge and review the counting of such ballots. Each one of these issues has been litigated in state and federal courts in Pennsylvania. The laws of the Commonwealth concerning the administration and result of the 2020 General Election as it relates to the election of the President of the United States have been reviewed and upheld in each and every instance.

Now, at the last possible moment, comes the State of Texas with a claim that outstrips the usual and customary false bravado of that state—to wit—undoing the lawful election and certification of the vote of four states of this Union—Pennsylvania, Georgia, Michigan and Wisconsin. The hubris with which Texas invokes the original jurisdiction of this Court for this purpose of undoing the Presidential Election in four sovereign states of the Union is breathtaking. However,

for the many reasons cited in these materials, Texas has failed to meet the heavy burden that it must meet in order to be granted relief that is beyond extraordinary in its scope and dangerous to the peace and welfare of the nation.

ARGUMENT

I. This case is not appropriate for this Court's original jurisdiction.

It is rare that this Court exercises original jurisdiction. Though this Court has "original and exclusive jurisdiction of all controversies between two or more States" pursuant to Article III of the U.S. Constitution[3] and 28 U.S.C. § 1251(a), this Court has long recognized that original jurisdiction "is of so delicate and grave a character that is was not contemplated that it would be exercised save when the necessity was absolute." *Louisiana v. Texas*, 176 U.S. 1, 15 (1900). This Court has repeatedly held that it will exercise original jurisdiction only "sparingly," as it is "obligatory only in appropriate cases." *Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992); *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972). Indeed, Article III and 28 U.S.C. § 1251(a) provide this Court with "substantial discretion to make case-by-case judgments as to the practical necessity of an original forum in this Court." *Texas v. New Mexico*, 462 U.S. 554, 570 (1983).

[3] Article III, Section1 of the Constitution states, "[J]udicial Power of the United States, shall be vested in the one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Article III, Section 2 provides categories of cases and controversies to which this judicial power extends, including "Controversies between two or more States," and states that "in all Cases . . . in which a State shall be a Party, the supreme court shall have original jurisdiction." U.S. CONST. art. III, §§ 1, 2.

The Court determines whether a case is appropriate for original jurisdiction by examining two factors. First, the Court considers "the nature of the interest of the complaining State," focusing on the "seriousness and dignity of the claim." *Mississippi*, 506 U.S. at 76. This reflects the historical justification for original jurisdiction, which was created to provide an alternative means to resolve disputes between the States after relinquishing their rights to settle such disputes between themselves in exchange for joining the Union.[4] As such, "[t]he model case of invocation of this Court's original jurisdiction is a dispute between the States of such seriousness that it would amount to *casus belli* if the States were fully sovereign." *Mississippi*, 506 U.S. at 77 (quoting *Texas v. New Mexico*, 462 U.S. at 571, n.18). Second, the Court will assess the "availability of an alternative forum in which the issue tendered can be resolved." *Id.*

Regarding the first factor, Texas fails to demonstrate that its purported dispute is serious. This Court imposes a heightened pleading standard before it will exercise original jurisdiction to control one state's conduct "at the suit of another." *North Dakota v. Minnesota*, 263 U.S. 365, 374 (1923) (internal quotations omitted). The "threatened injury" must be "clearly shown to be of serious magnitude and imminent." *Alabama v. Arizona*, 291 U.S. 286, 292 (1934). Instead, Texas's claims

[4] Kristin A. Linsley, *Original Intent: Understanding the Supreme Court's Original Jurisdiction in Controversies Between States*, 18 J. App. Prac. & Process 21, 32-36 (2017) (describing the types of interstate disputes from the earliest cases of original jurisdiction – property or boundary controversies – to the later cases of original jurisdiction, including certain disputes on behalf of the interests of its citizens in a *parens patriae* capacity, tax disputes and pollution cases); *See also*, U.S. CONST. art. I, § 10 ("No State shall enter into any Treaty, Alliance, or Confederation," and that "[n]o State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State, . . . or engage in War.").

are based on a disagreement with other States' interpretations of their own election laws and as applied to other States' citizens. Texas takes issue with Pennsylvania's own application of its election law and state appellate court decisions to Pennsylvanians. In fact, nothing in Texas' bill of complaint or request for a preliminary injunction asserts a sovereign interest of its own. Rather, Texas explicitly and repeatedly seeks redress throughout its filings for the benefit of an individual – here, its thirty-eight presidential electors voting for President Donald J. Trump– by targeting areas within these four States where President-elect Joseph R. Biden, Jr. won the popular vote and have areas of historically heavy populations of registered Democrats but Republican-controlled state legislatures.[5] *Kansas v. Colorado*, 533 U.S. 1, 8 (2001) ("Those cases make it clear that a State is not permitted to enter a controversy as a nominal party in order to forward the claims of individual citizens.").

Texas's claims similarly fail with respect to the second factor because there is an alternative forum for the issues to be resolved. These claims have been litigated repeatedly in state and federal courts in Pennsylvania and each of the Defendant

[5] *See* Motion for Leave to File Bill of Complaint at 2 ("Intrastate differences in the treatment of voters . . . in areas administered by local government under Democrat control and with populations with higher ratios of Democrat voters than other areas of Defendant States."); *See also* Bill of Complaint at 13 ("Significantly, in Defendant States, Democrat voters voted by mail at two to three times the rate of Republicans . . .") and 40 (in the prayer for relief, asking that "[i]f any of Defendant States have already appointed presidential electors to the Electoral College using the 2020 election results, direct such States' legislatures, pursuant to 3 U.S.C. § 2 and U.S. CONST. art. II, § 1, cl. 2, to appoint a new set of presidential electors in a manner that does not violate the Electors Clause and the Fourteenth Amendment, or to appoint no presidential electors at all.").

States.[6] Texas simply seeks to reverse the judgments of all of these courts which have consistently rejected the same baseless claims Texas asserts here. This Court has recognized that original jurisdiction is not appropriate where States attempt to avoid the appeals process or seeking certiorari for previously denied claims. *Arizona v. New Mexico*, 425 U.S. 794, 797 (1976) ("In the circumstances of this case, we are persuaded that the pending state-court action provides an appropriate forum in which the Issues tendered here may be litigated . . . [T]he issues raised now may be brought to this Court by way of direct appeal under 28 U.S.C. § 1257(2).").

If this Court were to exercise original jurisdiction in this case, it would open the floodgates to other longstanding interstate disagreements that do not meet the

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[6] *See Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 369-72 (Pa. 2020) (holding that there was no violation of state law when the court allowed a 3-day extension of the deadline for the receipt of mail-in and absentee ballots for the November 3rd General Election because the Pennsylvania Constitution required it); *Trump for President, Inc. v. Sec'y of Pennsylvania*, 2020 WL 7012522, at *8 (3d Cir. Nov. 27, 2020) (affirming the dismissal of similar poll watcher claims regarding access to view the opening, counting and recording of absentee and mail-in ballots); *In re Canvass of Absentee & Mail-in Ballots of November 3, 2020 Gen. Election*, 29 WAP 2020, __ A.3d__, 2020 WL 6866415, *15 (Pa. Nov. 23, 2020) (holding that a signed but undated declaration is sufficient and "cannot result in a vote disqualification); *Trump v. Boockvar*, 2020 WL 6821992, *12 (M.D. Pa. 2020) ("it is perfectly rational for a state to provide counties discretion to notify voters that they may cure procedurally defective mail-in ballots"), *aff'd Trump for President, Inc. v. Sec'y of Pennsylvania*, 2020 WL 7012522; *Barnette v. Lawrence*, No. 2:20-cv-5477 (E.D. Pa. 2020) (voluntarily dismissing allegations that permitting voters to cure mail-in ballots was not permitted by state law); *In re Nov. 3, 2020 Election*, __ A.3d __, 2020 WL 6252803, *1, 4 (Pa. Oct. 23, 2020) (finding that state law does not authorize counties to reject mail-in ballots based on the voter signature analysis); *See In Donald Trump for President, Inc. v. Boockvar*, 2020 WL 5997680, at *58 (W.D. Pa. Oct. 10, 2020) (holding that state law does not require signature comparison for absentee and mail-in ballots); *Trump v. Boockvar*, 2020 WL 6821992 (M.D. Pa. Nov. 21, 2020) (dismissing claim that counties adopted differential standards favoring voters in Philadelphia and Allegheny Counties with intent to favor Joseph R. Biden); *aff'd*, *Trump for President, Inc. v. Sec'y of Pennsylvania*, 2020 WL 7012522, at *8 (3d Cir. Nov. 27, 2020).

aforementioned standards. Nothing would stop the States from overwhelming the Court with interstate complaints for every type of disagreement with the others' state laws such as the method by which they confer their allotments of electoral college votes[7] every four years or for differing laws amongst the States regarding medical marijuana.[8]

II. There is no case or controversy required under Article III.

1. Texas lacks standing.

Article III, Section 2 of the Constitution limits the jurisdiction of federal courts to "cases" or "controversies." U.S. CONST. art. III, § 2. In order for a plaintiff, including a State, to have standing to bring the case, it must allege an injury that is actual or imminent, concrete, and particularized. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Again, in the context of this Court's original jurisdiction, there is a higher standard imposed such that the "threatened injury" must be "clearly shown to be of serious magnitude and imminent." *Alabama*, 291 U.S. at 292. Additionally, it is "clear that a State is not permitted to enter a controversy as a nominal party in order to forward the claims of individual citizens." *Kansas v. Colorado*, 533 U.S. at 8. "[A] State has standing to sue only when its sovereign or

[7] *Delaware v. New York*, 385 U.S. 895 (1966) (denying Delaware's leave to file a bill of complaint under the Court's original jurisdiction against several states for their "winner-take-all" procedures of conferring electoral college votes).

[8] *Nebraska v. Colorado*, 136 S.Ct. 1034 (2016) (denying Nebraska and Oklahoma's motion for leave to file a bill of complaint against Colorado under the Court's original jurisdiction due to a dispute over Colorado's legalization and regulation of recreational marijuana.

quasi-sovereign interests are implicated and it is not merely litigating as a volunteer the personal claims of its citizens." *Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1973). Texas cannot meet this heightened standard.

In this case, Texas argues that it suffers from injury in fact as a State due to the effect of the alleged violations of state law in Pennsylvania under the Electors Clause, Due Process Clause and Equal Protection Clause of the Constitution because it has a distinct interest in who will be elected Vice President and the resulting tie-breaking vote in the Senate. As discussed above, there are no injuries related to the Electors Clause as all of its claims of violations of Pennsylvania law have now been litigated and rejected by both state and federal courts. Additionally, Texas does not have a distinct interest in who is elected Vice President. Texas has two Senators, as does every other State, and nothing in the way Pennsylvania or the other Defendant States conducted their own elections on November 3rd altered that fact. Moreover, Texas's attempt to tie its interest in the hypothetical scenario of the Vice President breaking a tie in the Senate is not cognizable. It is speculative. It is speculative as to a future tie on legislation, how that Vice President would vote if there were ever a tie and the assumption that the Vice President would vote differently than Texas's Senators. There is no cognizable injury here.

Texas also contends that it has standing to bring this case on behalf of its citizens' interests in a *parens patriae* capacity. This similarly fails because Texas is bringing this complaint on behalf of the interests of individual citizens – its thirty-eight presidential electors. *See Pennsylvania v. New Jersey*, 426 U.S. at 665 (States

cannot bring a case in *parens patriae* capacity when it is "litigating as a volunteer the personal claims of its citizens."). Texas is no more than a nominal party.

2. This matter is moot.

Texas's claims are moot. Texas filed this action on December 7, 2020, over a month after the general election, two weeks following Pennsylvania Governor Wolf's certification of the election results and one day prior to the "safe harbor" deadline under 3 U.S.C. § 5.

Simply put, it is too late for Texas to undo what has already been done in accordance with federal and Pennsylvania law and invalidate millions of legal votes. *See Socialist Labor Party v. Gilligan,* 406 U.S. 583 (1972). Furthermore, the people of Pennsylvania relied on existing law, including a valid court ruling from the highest court in the Commonwealth extending the mail-in and absentee ballot deadline by 3 days after the general election, in order to exercise their constitutional right to cast their ballots. *See, e.g., Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020). Texas asks this court to disenfranchise the voters of Pennsylvania and the Defendant States who relied upon existing law to cast their votes, when Texas could not bother to do its due diligence in bringing its case until well after all of the State actions with which it takes issue were final, including several of the aforementioned state and federal court actions rejecting the same speculative and baseless claims Texas makes in this case. Granting Texas leave to file its bill of complaint would undermine States' authority to regulate their own

elections and, more importantly, the constitutional right of the voters to cast their ballots in accordance with the law of the land at the time they do so, all because Texas disagreed with the election outcome in those particular States. *Andino v. Middleton*, 20A55 (Oct. 5, 2020) (This Court recognized voter reliance on existing law when it reinstated South Carolina's witness requirement for absentee ballots, after a lower court enjoined it during the COVID-19, but did not apply it to ballots cast before and up to 2 days after this Court issued its decision).

Texas had ample time to file this action anytime after the Pennsylvania Supreme Court temporarily extended the mail-in and absentee ballot deadline before the general election, but it chose not to. It now asks this Court to undo the actions of Pennsylvania election officials and the Defendant States. It is too late. This case is moot and, what's more, Texas's untimely actions should not result in the disenfranchisement of millions of Pennsylvania voters who followed the law at the time it existed on November 3, 2020.

III. Texas is not entitled to the extraordinary preliminary injunction it seeks.

Texas asks this Court to issue an injunction, or, alternatively, a stay, that would bar Pennsylvania, as well as three other states, from certifying its election results and from participating in the Electoral College. Motion at 1-2. Thereafter, Texas ignores the heightened threshold for issuance of an injunction in an original

jurisdiction suit between two states thus failing to meet the exceedingly high threshold required for the issuance of such a rare remedy.

Further, Texas fails to identify any specific judicial decision that this Court should enjoin or stay. Rather, it seeks to upend the status quo by requesting this Court to order a halt to the certification of election results by the Secretary of the Commonwealth and to prevent Pennsylvania from participating, through the actions of its duly elected Presidential Electors, in the Electoral College in 3 days' time. Unfortunately, Texas has identified the incorrect standard for the injunction it now seeks.

Texas cites to the standard for a preliminary injunction under Fed. R. Civ. P. 65 that a Federal district court would apply in a dispute between two private parties. *See* Motion at 6 (citing *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Although the rules of this Court's provide that original jurisdiction suits between states, the Federal Rules of Civil Procedure and Evidence "*may* be taken as guides," *see* Supreme Court Rule 17.2, this Court is not bound by those rules. *Alabama v. North Carolina*, 560 U.S. 330, 344 (2010). Further, the relief Texas requests which would effectively result in the judicial disenfranchisement of literally hundreds of thousands of voters in multiple states as well as calling into question the actions of millions of other voters in states whose results have not been challenged but also voted by mail in ballot including Texas—eclipses any resemblance to the typical and ordinary relief requested by private parties in disputes in lower federal

courts. This Court's decisions call for an appropriately heightened standard in seeking such unprecedented relief in a suit between sovereign states.

In an original jurisdiction suit between states, the role of the Court differs significantly from the one it takes in suits between private parties. *Kansas v. Nebraska*, 574 U.S. 445, 453 (2015). In these cases, the Court's function serves "as a substitute for the diplomatic settlement of controversies between sovereigns[.]" *Id.* (citation omitted). "In exercising [its] original jurisdiction, this Court recognizes that flexibility is inherent in equitable remedies and awards them with reference of the facts of the particular case." *Id.* at 465 (internal brackets, quotation marks, and citations omitted).

This Court has held that "a complaining State must bear a burden that is much greater than the burden ordinarily shouldered by a private party seeking an injunction." *Florida v. Georgia*, 138 S. Ct. 2502, 2514 (2018) (internal quotation marks omitted). Based on the sovereign status and "equal dignity" of states, the need for caution in adjudicating the relative rights of diverse States requires "expert administrate rather than judicial imposition of a hard and fast rule." *Colorado v. Kansas*, 320 U.S. 383, 392 (1943). Therefore, "the complaining State must demonstrate that it has suffered a 'threatened invasion of rights' that is of 'serious magnitude" [ ] by "clear and convincing evidence" of a "real or substantial injury." *Florida*, 138 S.Ct. at 2414 (citations omitted).

Texas has not and cannot meet this exacting standard. There is nothing in the Constitution or in the history of the republic that supports the view proposed by Texas

that it is somehow entitled to dictate the manner in which four sister States administer elections in their states. Further, neither Texas nor any of its citizens have suffered any harm unlike the harm that the citizens of the four challenged states would suffer if Texas were to succeed in its claims. Imagine that by order of this Court on the petition of the State of Texas, the disenfranchisement of millions of voters, simply because Texas disagrees with the results of the elections conducted in those states.

The Texas's claims are also barred by laches. If Texas had any claim or right to challenge the process it now challenges, the time for Texas to have taken action was established long before Election Day. Unfortunately, it waited until after all four States certified their election results. Voters in Pennsylvania relied on the settled rules, as enacted by the statutes of the Pennsylvania General Assembly, in the time leading to Election Day. Pennsylvania's voters, as well as the voters of each and every other state in the Union, should not be punished for choosing a candidate other than the one preferred by the voters of Texas. Further, Texas should not be rewarded for its unreasonable delay in bringing this action.

IV. Texas's attempt to disenfranchise voters across the United States is a harmful affront to the public interest of Pennsylvania and the nation.

This Court's long history of decisions in election cases have consistently refused to invalidate an election after it has occurred despite constitutional or other legal infirmities with the election. *See, e.g., Connor v. Williams*, 404 U.S. 549, 550-551 (1972) (per curiam) (assuming Fourteenth Amendment violation in conduct of

elections but "declin[ing] to disturb" them); *Allen v. State Bd. of Elections*, 393 U.S. 544, 571-572 (1969) (rejecting request by appellants and Solicitor General that the Court "set aside" elections conducted in violation of federal law).

Texas seeks to do just that by invoking this Court's rarely used original jurisdiction to achieve the extraordinary relief of disenfranchising all Pennsylvanians who voted as well as voters in three other states. To request such relief in the first instance is breathtaking and such a grant of the requested relief would, of course, be "drastic and unprecedented, disenfranchising a huge swath of the electorate." *Trump for President, Inc. v. Sec'y of Pennsylvania*, 2020 WL 7012522, at *7 (3d Cir. Nov. 27, 2020). Further, Texas invokes the original jurisdiction jurisprudence to undo the votes of millions of people in an election where those people cast ballots under extraordinary circumstances, sometimes risking their very health and safety to do so. Not to mention, it insultingly discounts the work of literally tens of thousands of election workers in those states who also risked their health and safety to administer one of the most important elections in our lifetime. Accepting the view propounded by Texas does violence to the Constitution and the Framers' vision and would plunge this Court into "one of the most intensely partisan aspects of American political life." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019).

CONCLUSION

For the reasons set forth above, the Court should deny the motion for leave to file a bill of complaint and the motion for preliminary injunction and temporary restraining order or, alternatively, for stay and administrative stay.

Respectfully submitted,

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