No. 24-1716

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

DAWN KEEFER, *et al.*,

Plaintiffs-Appellants,

v.

PRESIDENT OF THE UNITED STATES, *et al.*,

Defendants-Appellees,

On Appeal from the United States District Court for the Middle District of Pennsylvania, Case No. 1:24-cv-147

Response Brief of Governor Josh Shapiro, Secretary of the Commonwealth Al Schmidt, and Deputy Secretary Jonathan Marks

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INTRODUCTION

A small minority of Pennsylvania's state legislators (Appellants in this Court) filed this action advancing theories of standing that the Supreme Court and this Court have repeatedly and unequivocally rejected. The District Court below correctly followed the unbroken line of precedent and dismissed the legislators' action for lack of jurisdiction. Its order should be affirmed.

JURISDICTIONAL STATEMENT

The District Court had original jurisdiction under 28 U.S.C. § 1331 because the legislators purported to raise claims under the U.S. Constitution. This Court has appellate jurisdiction under 28 U.S.C. § 1291 because the legislators timely appealed from the District Court's final judgment. App. 1, 3.

STATEMENT OF THE ISSUES

Did the District Court correctly decide that individual legislators lack standing based on alleged injuries that would apply equally to all members of the Pennsylvania General Assembly? App. 19-24.

STATEMENT OF RELATED CASES

The legislator-appellants have petitioned the Supreme Court for a writ of certiorari before judgment. *See Keefer v. Biden*, No. 23-1162 (U.S. Apr. 23, 2024).

The federal defendants waived their right to respond to the petition and the state defendants did not respond.

The petition was distributed for the Supreme Court's September 30, 2024, conference.

STATEMENT OF THE CASE

Pennsylvania Voter Registration. Eligible individuals in Pennsylvania must register in order to vote. Pa. Const. art. VII, § 1; 25 P.S. § 2811. Federal and Pennsylvania law each governs aspects of the registration process.

The federal National Voter Registration Act requires that states make available certain methods of applying to register to vote. One of those methods is that an application for a new or renewed driver's license "shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application." 52 U.S.C. § 20504. This law is colloquially known as "Motor Voter."

To implement Motor Voter, Pennsylvania's General Assembly passed legislation instructing that a driver's license application "shall serve as an application to register to vote unless the applicant fails to sign the voter registration application." 25 Pa.C.S. § 1323(a)(1). The Secretary of the Commonwealth was assigned "primary responsibility for implementing and enforcing the driver's license voter registration system created under this section." *Id.* § 1323(a)(2). Further, the General Assembly directed that the "Department of Transportation shall provide for an application for voter registration as part of a driver's license application." *Id.* § 1323(b)(1). And "the format of the driver's license/voter registration application shall be determined and prescribed by the secretary [of the Commonwealth] and the Secretary of Transportation." *Id.* § 1323(b)(2).

The application form that the secretaries prescribe must request the applicant's name, address, prior registration address, political party, date of birth, telephone number, and race. *Id.* §§ 1323(b)(3), 1327(a). Applicants must also declare under penalty of perjury that they are qualified to vote in Pennsylvania. *Id.* § 1327(b).

Federal law supplements these registration requirements. The federal Help America Vote Act (HAVA) instructs that voter-registration

applications must include the applicant's driver's license number or the last four digits of their Social Security number (if the applicant has one). 52 U.S.C. § 21083(a)(5)(a)(i).[1] That number is compared to a department of transportation's database or to Social Security information. *Id.* § 21083(a)(5)(B). Although HAVA requires this matching process, it does not require that states reject registration applications for a non-match. Instead, HAVA allows states to determine whether the information provided by an applicant "is sufficient to meet the requirements [of HAVA], in accordance with State law." 52 U.S.C. § 21083(a)(5)(A)(iii). Pennsylvania's General Assembly has not required that an applicant's driver's license number or Social Security number must match as a prerequisite to registration. 25 Pa.C.S. §§ 1327, 1328.

In Pennsylvania, registration applications are forwarded to the applicant's county registration commission for review and a decision whether the application will be approved. *Id.* §§ 1323(c)(1)-(3.1), 1328. County commissions reject a registration application if: (1) it is "not

[1] Applicants who have neither a driver's license number nor a Social Security number still may register. In those cases, the state is required to give the voter "a number which will serve to identify the applicant for voter registration purposes." 52 U.S.C. § 21083(a)(5)(A)(ii).

properly completed" and, following the Commission's reasonable efforts, "remains incomplete or inconsistent," (2) if the applicant is not qualified, or (3) if the applicant is not entitled to the transfer of registration they have requested. *Id.* § 1328(b)(2).

The Department of State's 2018 HAVA Directive. In 2018, under its authority to take any action "necessary to ensure compliance and participation by the commissions" with voter registration laws, 25 Pa.C.S. § 1803(a), Pennsylvania's Department of State directed county registration commissions not to reject an application solely because of a non-match between the driver's license number or Social Security number an applicant supplies and the external database against which HAVA requires those numbers be compared, if provided. *See* App. 73.

Pennsylvania's 2023 Application Redesign. In 2023, Governor Shapiro announced that Pennsylvania's Departments of State and Transportation had redesigned the format of the dual driver's license/voter registration application. *See* App. 111-12. The newly formatted application streamlined the process for applicants by, among other things, prescribing clearer language and eliminating duplicative parts of the application.

App. 337; *see also* App. 341-59 (depiction of old application); App. 361-73 (depiction of new application).[2]

The new format is described as implementing a form of "Automatic Voter Registration," because it shifts from a format in which individuals applying for a new or updated driver's license who also meet Pennsylvania's voter-eligibility criteria may "opt-in" to completing a voter registration application to a format in which those eligible individuals may "opt-out" from completing a voter registration application. App. 111-12; *compare* App. 344 *with* App. 363.

As before the redesign, anyone who meets the eligibility criteria may choose to complete a voter registration application or decline to do so. App. 336. Also as before, any completed application is directed to the appropriate county commission for review and an approval decision. App. 336; *see also* 25 Pa.C.S. §§ 1323(c)(1)-(3.1), 1328.

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[2] The voter-registration application is displayed and completed on a monitor screen after the driver's license application has been completed. Individuals applying for a driver's license who will not be 18 at the time of the next election or who have not been confirmed by the Pennsylvania Department of Transportation to be U.S. citizens are not presented with the voter-registration screens. App. 335-36.

The Legislators' Complaint. Twenty six of the 203 representatives in Pennsylvania's General Assembly and one of the 50 senators filed the complaint in this case, alleging that the 2018 HAVA directive and 2023 redesign violate Article I, § 4 (the Elections Clause) and Article II, § 1 (the Electors Clause) of the U.S. Constitution. App. 64-67. The legislators also moved for a preliminary injunction of the directive and redesign. App. 5. The District Court denied the request for an injunction and dismissed the complaint because the legislators lack standing. App. 3, 29-30.

SUMMARY OF THE ARGUMENT

The Supreme Court has repeatedly ruled that allegedly illegal acts that injure all members of a legislative body equally inflict only institutional injuries. *Raines v. Byrd*, 521 U.S. 811, 821, 829-30 (1997). And individual legislators have only a generalized interest in protecting a legislative body from institutional injuries, which is insufficient to satisfy Article III's demand for concrete and particularized injuries. *Id.* Not even one chamber of a bicameral legislature has standing based on injuries to the entire legislative body. *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 667-68 (2019).

Consistent with this precedent, this Court repeatedly has rejected arguments from legislators that they experience particularized injuries sufficient for Article III standing when executive action supposedly infringes upon a legislature's exclusive lawmaking powers. *See Yaw v. Delaware River Basin Comm'n*, 49 F.4th 302, 310 (3d Cir. 2022); *Goode v. City of Philadelphia*, 539 F.3d 311 (3d Cir. 2008); *Russell v. DeJongh*, 491 F.3d 130 (3d Cir. 2007); *see also Corman v. Torres*, 287 F. Supp. 3d 558, 565 (M.D. Pa. 2018) (three-judge panel).

As to the Pennsylvania defendants, the allegations in this case raise nothing more than general assertions that two executive branch actions were inconsistent with state law (and thus the U.S. Constitution), and therefore have usurped the Pennsylvania General Assembly's unique lawmaking powers. These allegations are indistinguishable from those that have been uniformly rejected. The legislators' contrary suggestion that this case involves executive action that has nullified their votes, as was held to be sufficient for standing in *Coleman v. Miller*, 307 U.S. 433 (1939), is wrong because, among other reasons, the executive acts they challenge have no bearing on any specific legislative act.

STANDARD OF REVIEW

This Court reviews legal conclusions related to standing *de novo*. *Edmonson v. Lincoln Nat. Life Ins. Co.*, 725 F.3d 406, 414 (3d Cir. 2013).

ARGUMENT

I. Individual Legislators Do Not Have Standing Based on Institutional Injuries

The U.S. Constitution confines a federal court's jurisdiction to "Cases" and "Controversies." U.S. Const. art. III, § 2. This limit is enforced by requiring that a plaintiff establish her standing, which in turn requires her to demonstrate that she suffered (1) an injury in fact, (2) caused by the conduct complained of, and that is (3) capable of judicial remedy. *Yaw v. Delaware River Basin Comm'n*, 49 F.4th 302, 310 (3d Cir. 2022).[3] Respect for separation of powers makes standing concerns "particularly acute" in cases brought by legislators. *Russell v. DeJongh*, 491 F.3d 130, 134 (3d Cir. 2007).

For injury in fact, a plaintiff cannot rely upon a general interest "in the proper application of the Constitution and laws." *Lujan v. Defenders*

[3] Contrary to the legislators' apparent belief, Leg. Br. at 44-45, this constitutional requirement is separate from whether there is a cause of action available to bring a particular claim in federal court, *e.g.*, *TransUnion LLC v. Ramirez*, 594 U.S. 413, 426 (2021); *Raines*, 521 U.S. at 820 n.3.

of Wildlife, 504 U.S. 555, 573 (1992). Injuries must be personal to the plaintiff as well as "concrete" and "particularized." *Raines v. Byrd*, 521 U.S. 811, 818-19 (1997); *see also Yaw*, 49 F.4th at 311, 314-15.

As the District Court correctly explained, App. 19-28, the Supreme Court and this Court have held without exception that these bedrock principles of federal jurisdiction mean individual legislators do not have standing to vindicate alleged injuries to the interests of the legislative body to which they belong. *Contra* Leg. Br. at 48-50. Nor do they have standing to vindicate alleged injuries shared equally by all members of a legislative body.

The Supreme Court said as much in *Raines v. Byrd*, 521 U.S. 811 (1997). There, six members of Congress filed suit challenging the Line Item Veto Act, which allowed the President to "'cancel' certain spending and tax benefit measures after he has signed them into law." *Id.* at 814. The legislators asserted they had standing because the act threatened the effectiveness of their votes. *Id.* at 821-22. The Court, however, ruled that such an interest was shared equally by every member of Congress's two bodies such that no individual member had a personal stake; the alleged injury was instead an "institutional injury." *Id.* at 821, 829-30.

Further, the legislators' powers remained unencumbered because nothing about the challenged statute would "nullify [the legislators'] votes in the future" and a "majority of Senators and Congressmen can pass or reject appropriation bills; the Act has no effect on this process." *Id.* at 824.

Since *Raines*, the Supreme Court has twice reiterated that alleged injuries shared equally by all members of a legislative body are institutional injuries that only a legislature has standing to assert.

In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015), Arizona's complete legislature brought an action against an independent redistricting commission that had been authorized by a constitutional amendment to adopt maps for Arizona's state and federal legislative districts. *Id.* at 792-93. The legislature alleged that the commission itself and the maps adopted for 2012 elections violated the U.S. Constitution's Elections Clause. *Id.* at 804. Arizona's legislature had standing to press that claim, the Supreme Court ruled. *Id.* at 800. The amendment completely stripped the legislature of its alleged redistricting prerogative and nullified, in both the present and

future, any legislative act related to redistricting. *Id.* at 800, 804.[4] The Supreme Court distinguished *Raines* as an action brought by only individual legislators, none of whom was individually injured by a statute that diluted the power of all Congressmembers' votes equally. *Id.* at 801-02. When no legislator is injured by an act any differently than any other legislator, the alleged injury is institutional and can be brought only by an institutional plaintiff. *Id.* at 802.

Then, in *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658 (2019), the Supreme Court expanded the rule articulated in *Raines*. In *Virginia House of Delegates*, one of the two chambers composing Virginia's legislative body tried to appeal an order invalidating a redistricting statute. 587 U.S. at 661-62. The Court held, however, that the House of Delegates did not have standing to do so. *Id.* at 667. Citing *Raines*, the Supreme Court ruled that not even an entire chamber of a bicameral

[4] When it again considered legislative standing several years later, the Supreme Court emphasized that in *Arizona* the legislature itself had standing because the referendum creating the commission had "*permanently* deprived the legislative plaintiffs of their role in the redistricting process." *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 668 (2019) (emphasis in original).

legislative body had standing to litigate the legislature's interests—only the legislature itself can. *Id.* at 667.

This Court, too, has repeatedly affirmed that alleged injuries shared by all members of a legislative body are institutional injuries and that only a legislative body itself may derive Article III standing from institutional injuries.[5]

Most recently, in *Yaw v. Delaware River Basin Commission*, this Court considered whether Pennsylvania senators had standing to challenge a localized ban on fracking that they alleged had "deprived them of their lawmaking authority." 49 F.4th at 311 (cleaned up). The senators tried seven different ways to describe how the ban had harmed them individually as legislators, including claiming that the ban "suspends law within the Commonwealth—a power reposed exclusively in the General

[5] This Court's decisions comport with those from other circuits. As examples of some relevant decisions see: *Blumenthal v. Trump*, 949 F.3d 14, 19 (D.C. Cir. 2020); *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 58 F.4th 580, 584 (1st Cir. 2023); *Baird v. Norton*, 266 F.3d 408, 410-11 (6th Cir. 2001); *Planned Parenthood of Mid-Missouri & E. Kansas, Inc. v. Ehlmann*, 137 F.3d 573, 578 (8th Cir. 1998); *Newdow v. U.S. Congress*, 313 F.3d 495, 499-500 (9th Cir. 2002); *Kerr v. Hickenlooper*, 824 F.3d 1207, 1214-15 (10th Cir. 2016); *Chiles v. Thornburgh*, 865 F.2d 1197, 1207 (11th Cir. 1989).

Assembly," "displaced and/or suspended the Commonwealth's comprehensive statutory scheme," "attempted to exercise legislative authority exclusively vested in the General Assembly," and that it "palpably and substantially diminishes the legislative powers of the Senate Plaintiffs." *Id.* at 313-14.

Relying on the trio of Supreme Court cases described above, this Court explained that each variation suffered the same flaw: Each described "[a] general loss of legislative power that is widely dispersed and necessarily damages all members of the General Assembly equally." *Id.* at 313-14 (cleaned up). That made them "classic examples of institutional injuries" that, under a rule "flow[ing] naturally from bedrock standing requirements," individual legislators lack standing to assert. *Id.* at 314.

Before *Yaw*, this Court enforced the same standing principle in *Common Cause of Pennsylvania v. Pennsylvania*, 588 F.3d 249 (3d Cir. 2009). In *Common Cause*, this Court ruled that an individual state representative did not have standing to challenge the procedure for passing a particular law that had excluded most legislators. *Id.* at 266. The representative had been allowed to vote on the bill and his vote was counted. *Id.* at 267. While the representative may not have had the opportunity to

provide much input on the bill, that "denial was not specific to him; rather, its impact was felt by all legislators other than the select leadership." *Id.*

And before that, this Court reached the same result in both *Goode v. City of Philadelphia*, 539 F.3d 311 (3d Cir. 2008) and *Russell v. DeJongh*, 491 F.3d 130 (3d Cir. 2007).

Goode involved city lawmakers' challenge to a settlement agreement on behalf of Philadelphia that allegedly usurped their legislative powers. 539 F.3d at 313. The action was filed by a minority of the city council's members. *Id.* at 315. That minority lacked standing, this Court held, because they did not allege "that they have been deprived of meaningful participation in the legislative process, or that they have been unable to exercise their rights as legislators." *Id.* at 318. Nor did it matter that the council members alleged that the city was disobeying a duly enacted law; their interest in having city officials follow the law was just a generalized grievance. *Id.* at 319.

In *Russell*, one senator from the Virgin Islands had sued the Governor over judicial nominations that, the senator alleged, did not follow the proper process for obtaining the legislature's advice and consent on

nominations. 491 F.3d at 131-32. The senator alleged that deviating from that process nullified his vote. *Id.* at 134. But the Governor's conduct, this Court ruled, did not uniquely injure the senator who had no more of an interest in obedience with the law than did anyone else. *Id.* at 135. The allegations did not present an instance in which the process for making laws had been distorted such that it nullified the senator's vote. *Id.*

Finally, in 2018, a three-judge panel of the Middle District of Pennsylvania Court, which included Judge Jordan of this Court, held that leaders of Pennsylvania's General Assembly and members of the U.S. House of Representatives did not have standing to challenge an order of the Pennsylvania Supreme Court that they alleged violated the Elections Clause. *Corman v. Torres*, 287 F. Supp. 3d 558, 565 (M.D. Pa. 2018). The court order had declared a congressional districting map unconstitutional and imposed a remedial map. *Id.*

The three-judge panel, citing *Raines* and *Arizona*, held that Pennsylvania legislators did not suffer any particularized injury from the "purported usurpation of the Pennsylvania General Assembly's exclusive rights under the Elections Clause of the United States Constitution." *Id.* at 567. *Raines* and *Arizona*, the panel recognized, definitively resolved

that "a legislator suffers no Article III injury when alleged harm is borne equally by all members of the legislature." *Id.*

II. The Injuries Alleged Here Are Institutional Injuries

The District Court here properly ruled that the legislators failed to allege any concrete, particularized injury that they have experienced. Rather, they alleged only institutional injuries shared equally by every member of the General Assembly, precisely the sort of allegations that do not establish Article III standing.

The Amended Complaint makes abundantly clear that the injury claimed here is an intrusion upon the Pennsylvania General Assembly's institutional prerogative to pass election laws under the Elections and Electors Clauses. App. 36-38, 49, 55, 58 (alleging deprivation of constitutional powers belonging to legislature). Those alleged injuries were purportedly caused by acts that the legislators believe conflict with state or federal law. App. 48-53 (alleging that the 2023 redesign "was unsupported by Pennsylvania law and runs afoul of power prescribed to Pennsylvania legislators" and "is inconsistent with existing laws"); App. 53-57 (alleging that the 2018 HAVA "is in direct contravention of clearly established Pennsylvania law").

But the legislators have not alleged anything (nor could they) that identifies how any of them is adversely affected by either the 2018 HAVA directive or the 2023 redesign in a way that is any different from any other member of Pennsylvania's General Assembly. *See* App. 57-58. Rather, they articulate their interest as protecting what they view as "the authority of the legislature." App. 58. Therefore, just as in *Yaw*, they merely alleged that an actor other that the legislature has "attempted to exercise legislative authority exclusively vested in the General Assembly." 49 F.4th at 313-14.

The legislators' brief in this Court corroborates that they are advancing only a generalized interested in compliance with the law. *E.g.,* Leg. Br. at 11 (arguing they have standing because "[automatic voter registration] is not part of Pennsylvania's election code"); *id.* at 12 (stating that the "amended complaint alleged that the [2018 HAVA] directive contradicts laws enacted by both Congress and Pennsylvania"); *id.* at 15 (claiming Governor Shapiro "had no lawful authority to implement Automatic Voter Registration"); *id.* at 16 (arguing "when the Department promulgates directives that are inconsistent and contrary to election laws, individual legislator rights and duties are nullified").

The absence of any distinction between any two Pennsylvania legislators' interests dooms these legislators' standing. The alleged non-compliance with the law that supposedly usurps the General Assembly's power is a grievance that belongs to "all members of the General Assembly equally" and is a "classic example[] of institutional injuries." *Yaw*, 49 F.4th at 314 (cleaned up); *see also Raines*, 521 U.S. at 821 (holding that legislators lacked standing because none had "been singled out for specially unfavorable treatment as opposed to other Members of their respective bodies"). Indeed, precedent "uniformly" holds that an allegation that executive action violated a duly enacted statute, and thus deprived a lawmaker of their powers, "is not an injury for standing purposes." *Russell*, 491 F.3d at 134.

Despite their own allegations, the legislators insist here that they are not merely complaining about allegedly unlawful acts that have intruded upon an allegedly exclusive legislative power, but instead about vote nullification in the mold of *Coleman v. Miller*, 307 U.S. 433 (1939). Leg. Br. at 30-34. Their insistence, however, badly misunderstands *Coleman*.

In *Coleman*, Kansas's Senate had evenly split on a resolution; the Lieutenant Governor resolved the divide by voting in favor of that same resolution. 307 U.S. 433, 436 (1939). The defeated bloc filed an action challenging the Lieutenant Governor's right to vote on the resolution and seeking an order that the resolution had not passed. *Id.* The Supreme Court allowed the case to proceed because the senators' "votes against ratification [had] been overridden and virtually naught" and the senators had an "interest in maintaining the effectiveness of their votes." *Id.* at 438.

The Supreme Court has since explained that *Coleman* "stands (at most) for the proposition that [1] legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if [2] ***that legislative action*** goes into effect (or does not go into effect), on the ground that their votes have been completely nullified." *Raines*, 521 U.S. at 823 (emphasis added); *see also Chenoweth v. Clinton*, 181 F.3d 112, 116 (D.C. Cir. 1999) (describing *Coleman's* "narrow rule").

This Court has recognized that the rationale in *Coleman* applies only when legislators "identify a specific legislative act that would have passed (or been defeated) but for the alleged usurpation of legislative

power." *Yaw*, 49 F.4th at 315-16; *accord Common Cause*, 558 F.3d at 266; *see also Baird v. Norton*, 266 F.3d 408, 412 (6th Cir. 2001) (explaining that *Coleman* means "[f]or legislators to have standing as legislators … they must possess votes sufficient to have either defeated or approved the measure at issue.").

Here, the legislators do not identify a specific legislative act that they have voted for (or against) that has gone into effect (or not) contrary to their votes.

For the 2018 HAVA directive, they explicitly argue that their grievance is only that the directive allegedly violates Pennsylvania law. Leg. Br. at 25-26.

For the 2023 redesign, the legislators point to a (still-pending) bill introduced in the General Assembly—SB 40 of 2023—that proposes sweeping changes to Pennsylvania's registration law. Leg. Br. at 11, 18, 23 (citing App. 52-53, 79-110).[6] The legislators claim the bill was defeated

[6] Although not legally relevant, SB 40 and the 2023 redesign are not comparable. *Contra* App. 52 (alleging that the two mirror each other). SB 40 proposes to: (1) automatically register to vote any eligible individual who applies for a driver's license without an additional application and require that they contact their county's registration commission if they wish not to be registered, App. 85-89; (2) add procedures to

because it (like similar bills introduced in past legislative sessions) has not been referred out of Committee. Leg. Br. at 42-43. And they imply that 2023 redesign nullifies their defeat of that bill. *Id*.

The 2023 redesign, however, has no effect on SB 40 (or any other bill). If there were ever a vote on SB 40, that vote alone would dictate what happens with that legislative act. And if there is never a vote on SB 40 (in Committee or before the full Senate), nothing about the 2023 redesign will change that, will move SB 40 through the legislative process, or will lead to SB 40 becoming law. The outcome of SB 40 remains within the General Assembly's control.[7]

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automatically register eligible individuals during certain interactions with government entities agencies other than the Department of Transportation, App. 94-98; and (3) create new privacy and security standards for voter information. App. 106-110. The 2023 redesign shares none of these characteristics. *Supra* at 5-6.

[7] The legislators maintain that they "voted in committee not to pass [automatic voter registration] bills," Leg. Br. at 23, and that bills proposing automatic voter registration were "out-right rejected in legislative committee votes," Leg. Br. at 15. While the 2023 redesign would not affect those votes in any way, the amended complaint here does not allege any votes—in Committee or otherwise—ever occurred, *see* App. 52-53 (alleging only that SB 40 was introduced but had not passed). Indeed, there has never been a vote of any kind on SB 40. *See* Bill Information – Votes, Senate Bill 40; Regular Session 2023-2024, available at: https://www.legis.state.pa.us/cfdocs/billInfo/bill_votes.cfm?syear=2023&sind=0&body=S&type=B&bn=40 (showing bill history).

The legislators mistakenly believe that *Dennis v. Luis*, 741 F.3d 628 (3d Cir. 1984), (a decision that precedes *Raines*, *Arizona*, and *Virginia House of Delegates*) aids their case. Leg. Br. at 33-34. In *Dennis*, a majority of the Virgin Islands Legislature challenged the Governor's appointment of a commissioner after the legislature had just voted to reject the very same appointment. *Dennis*, 741 A.3d at 628-21.[8] Both criteria from *Coleman* were therefore satisfied.

Nor does *Silver v. Pataki*, 755 N.E.2d 842 (N.Y. 2001) benefit the legislators. *Contra* Leg. Br. at 41-42. That case—one "in a state court not limited by the exacting federal standing requirements," *Goode*, 539 F.3d at 318—concerned a governor's allegedly unlawful veto of portions of bill that the plaintiff-legislator had just voted for, *id*; *see also Russell*, 491 F.3d at 135 n.4 (noting that the state assembly member "had voted in favor of the bills in question"). So again, the challenged gubernatorial conduct had stopped a specific legislative act that plaintiffs had voted on from taking effect consistent with their votes.

[8] Further, in *Russell*, this Court noted that the legislators involved in *Dennis* "had no effective remedies in the political process." 491 F.3d at 135. Here, the legislators retain every legislative tool if they believe there is a problem with either the 2018 HAVA directive or 2023 redesign.

Neither the 2018 HAVA directive nor the 2023 redesign stops a legislative act from going into effect (or not) despite legislators' contrary votes such that this case involves vote nullification of any sort. *Raines*, 521 U.S. at 823; *Yaw*, 49 F.4th at 315-16; *Russell*, 491 F.3d at 135. Rather, these legislators simply believe the 2018 HAVA directive and the 2023 redesign do not comply with the law. That (incorrect) view does not give rise to federal jurisdiction under Article III.

CONCLUSION

Because no legislator has standing, the amended complaint was properly dismissed. The District Court's order should be affirmed.

July 26, 2024

Respectfully submitted,

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CERTIFICATES

I, Jacob B. Boyer, certify that:

1. I am a member of the bar of this Court in good standing;

2. Virus detection software was run on this file and no virus was detected;

3. The text of this brief is identical to the text in paper copies that will be filed with the Court; and

4. This response contains 4,640 words and therefore complies with Federal Rule of Appellate Procedure 32(a)(7)(b)(i). In making this certificate, I have relied on the word count of the word-processing system used to prepare the brief.

July 26, 2024

/s/ *Jacob B. Boyer*
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Counsel for Governor Josh Shapiro, Secretary of the Commonwealth Al Schmidt, and Deputy Secretary Jonathan Marks

CERTIFICATE OF SERVICE

I, Jacob B. Boyer, hereby certify that a copy of this response has been served on all counsel of record using the Court's CM/ECF system.

July 26, 2024

/s/ *Jacob B. Boyer*
Jacob B. Boyer

Counsel for Governor Josh Shapiro, Secretary of the Commonwealth Al Schmidt, and Deputy Secretary Jonathan Marks