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

FREEDOM FROM RELIGION FOUNDATION, INC.,	:	
Plaintiff,	:	Civil Action No. 1:12-cv-00536-CCC
v.	:	(Conner, J.)
REP. RICK SACCONE, CLANCY MYER, and ANTHONY FRANK BARBUSH,	:	
Defendants.	:	

REPLY BRIEF OF THE LEGISLATIVE DEFENDANTS IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT

The legislative defendants submit this reply brief in further support of their motion pursuant to Rule 12(b)(6) to dismiss the complaint of plaintiff, Freedom From Religion Foundation, Inc. ("FFR").[1]

I. Introduction

By adopting the 2012 Resolution, the Pennsylvania House of Representatives simply proclaimed its collective opinion regarding an issue of importance to the citizens of Pennsylvania – something it does many hundreds of times in any given legislative session. In this particular instance, it recognized the

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[1] The legislative defendants alternatively seek dismissal under Rule 12(b)(1), because all of FFR's claims are non-justiciable due to its lack of Article III standing.

value of America's religious heritage. What the Pennsylvania House did was neither novel nor controversial. For centuries, American presidents, legislators, and other government officials and entities have routinely offered recognition of the role that religion has played throughout our Nation's history. Presidential prayer proclamations are an annual occurrence. References to the divine are engraved on our currency, enshrined in Pennsylvania's original state Constitution, embedded in our national Pledge of Allegiance, and exclaimed by witnesses throughout our courtrooms. Indeed, officials of all three branches of federal and state governments – Executive, Judicial, and Legislative – make reference to God as they swear to uphold their constitutional duties. This practice is not contrary to the First Amendment, but rather is part of the tapestry of American life.

This current lawsuit may have had its origins almost 30 years ago when, on October 4, 1982, the 97th Congress of the United States adopted a joint resolution authorizing and requesting that President Ronald Regan proclaim 1983 as the "Year of the Bible." President Regan subsequently did so by way of Proclamation 5018, delivered on February 3, 1983.[2] Yet none of the above examples of government acknowledgement of religion and the religiosity of the

[2] The text of Congress's "Year of the Bible" resolution is almost word-for-word identical to that adopted this year by the Pennsylvania House. A copy of the Congressional resolution is attached as Exhibit A, and a copy of President Regan's subsequent proclamation is attached as Exhibit B.

American People have been found to violate the Establishment Clause, and neither does the Resolution here. As Justice Brennan so aptly observed, "not every involvement of religion in public life violates the Establishment Clause." Sch. Dist. of Abington Twp. Pennsylvania v. Schempp, 374 U.S. 203, 294 (1963) (Brennan, J., concurring) (noting many examples of permissible governmental acknowledgements of religion).

The Court need not delve into the substance of FFR's Establishment Clause claim, however, because this case can and should be disposed of on threshold issues: legislative immunity protects the legislative defendants from suit for their legislative speech, and FFR lacks standing to sue.

II. Argument

As discussed below and in the legislative defendants' moving brief: (A) the legislative defendants acted well within the "legitimate legislative sphere" and, as such, are absolutely protected from suit by the doctrine of legislative immunity; and (B) FFR's purported philosophical disagreement with the content of the 2012 Resolution does not amount to a constitutional "injury in fact," and therefore FFR lacks Article III standing. Accordingly, the complaint must be dismissed with prejudice in its entirety.

A. Legislative Immunity

1. The introduction of, voting for, and publication of *legislative* resolutions falls squarely within the sphere of legitimate *legislative* activity.

FFR argues that the actions at issue here, namely, the introduction of, voting for, and publication of a *legislative* resolution, somehow fall outside the purview of *legislative* immunity. Such an absurd argument runs directly contrary to more than a century of Supreme Court precedent and must be rejected.

Both the United States Supreme Court and the Court of Appeals for the Third Circuit have specifically and repeatedly declared that the adoption of legislative resolutions is conduct protected by legislative immunity.[3] See, e.g., United States v. Brewster, 408 U.S. 501, 516 & n.10 (1972) (citing "voting for a *resolution*" as an example of an act that is "clearly a part of the legislative process") (emphasis added); Powell v. McCormack, 395 U.S. 486, 502 (1969) ("Committee reports, *resolutions*, and the act of voting are equally covered . . . .") (emphasis added); Kilbourn v. Thompson, 103 U.S. (13 Otto) 168 (1881) (holding

[3] Common law legislative immunity protects state lawmakers from being subjected to suit in federal courts for any actions taken by them "'in the sphere of legitimate legislative activity.'" Bogan v. Scott-Harris, 523 U.S. 44, 54 (1998) (quoting Tenney v. Brandhove, 341 U.S. 367, 376 (1951)). The immunity for state legislative personnel is "coterminous" with the absolute immunity afforded to members of Congress and their staff under the Speech or Debate Clause of the United States Constitution. Youngblood, 352 F.3d at 839 (3d Cir. 2003) (citing Supreme Court of Virginia v. Consumers Union of the United States, Inc., 446 U.S. 719, 732 (1980)).

that legislative immunity protected legislators from liability arising from a House *resolution*); Youngblood v. DeWeese, 352 F.3d 836, 840 (3d Cir. 2003) ("[T]he legitimate legislative sphere includes such acts as: voting for a *resolution* . . . .") (emphasis added). The doctrinal pronouncements in these cases flow directly from the Supreme Court's long-standing jurisprudence construing legislative immunity "broadly to effectuate its purposes,"[4] Doe v. McMillan, 412 U.S. 306, 311 (1973), and conclusively embed legislative resolutions within the "legitimate legislative sphere."

2. Further evidencing the *legislative* character of defendants' actions, the Resolution was adopted in accordance with the House's General Operating Rules.

Here, the Resolution passed unanimously in a session of the House pursuant to the legislative rules and procedures governing a wide range of legislative activity, including the multitude of similar resolutions adopted during legislative sessions. Any casual observer of a legislative body in action would

[4] As recognized by the Framers of the United States Constitution, a robust application of legislative immunity is essential to the very preservation of our American form of government. See THE FEDERALIST NO. 48 (James Madison) (explaining the immunity's importance in securing a separation of governmental powers). In the words of James Wilson, it is "indispensably necessary" that legislative personnel "enjoy the fullest liberty of speech, and that [they] should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense." II WORKS OF JAMES WILSON 38 (Andrews ed. 1896) (quoted in Tenney, 341 U.S. at 373).

quickly learn that the adoption of non-binding resolutions has historically been one of the most common and routine official functions of state and federal lawmakers, and is a quintessential "legitimate legislative activity." Indeed, the Pennsylvania House of Representatives has a specific Operating Rule dedicated entirely to the process.

The Resolution was adopted in accordance with Rule 35 of the General Operating Rules of the Pennsylvania House of Representatives, which sets forth House procedure for the introduction of, voting on, and publication of resolutions. First, newly introduced resolutions must be "signed by their sponsors, dated and filed with the Chief Clerk," after which "one copy of all resolutions shall be given to the news media and all other copies delivered to the Speaker." House Rule 35. "Noncontroversial" resolutions, such as that at issue here, are "considered under the proper order of business on the same day as introduced or within two legislative days thereafter without being referred to committee." House Rule 35. They are then placed by the Speaker, in conjunction with the Majority Leader and Minority Leader, onto an "uncontested resolution calendar" and voted on. House Rule 35. Finally, every resolution on the "uncontested calendar" must be "printed separately in the [legislative] journal with the vote recorded on the approval of the uncontested calendar as the vote on final passage of each resolution contained therein." House Rule 35.

As this Operating Rule demonstrates, it is simply beyond question that the legislative defendants' actions in introducing, voting for, and publishing the Resolution are by their very nature *legislative*, regardless of whether that legislative conduct ultimately resulted in substantive policy implementation. To hold otherwise would result in the conduct of a legislator being judged not on the nature of the conduct itself, but rather on its outcome – that is, whether it results in "substantive" legislation. Such a nonsensical and overly-restrictive mode of inquiry was specifically rejected by the Court in Eastland v. United States Servicemen's Fund, 421 U.S. 491, 509 (1975) (explaining that the legitimacy of legislative action is not "defined by what it produces").

3. Legislative immunity is not limited to the narrow subset of legislative action aimed at the creation of "substantive" legislation.

Despite the unmistakably-legislature nature of the legislative defendant's actions here, FFR maintains that legislative immunity does not apply. It argues that legislative immunity attaches only to those actions instrumental to the creation of "substantive" and formally-enacted legislation, not non-binding resolutions. However, the Supreme Court simply has never limited the application of legislative immunity to only those instances where the legislative acts in question were carried on in furtherance of "substantive" law that ultimately makes its way through both chambers of a legislative body and under the pen of the

Executive.[5] To the contrary, as recognized by the Court of Appeals for the Third Circuit in Youngblood, the Supreme Court has not required that an act be "legislative in both formal character and substance in order to enjoy immunity." 352 F.3d at 840 (citing Bogan, 523 U.S. at 55-56) (internal quotations and alterations omitted).[6]

Indeed, following FFR's position to its logical conclusion, if the adoption of a non-binding resolution were not legitimate legislative activity, then a floor speech by a legislator in favor of such a resolution certainly would not qualify, because neither advances "substantive" legislation. Needless to say, such an absurd result would directly contravene the essential function and purpose of

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[5] This is made abundantly clear by the Supreme Court's decision in United States v. Johnson, where it held that a defendant-congressman's alleged criminal speech-for-hire practices – which certainly did not result in a successful statutory enactment and were in no way integral to the process of legislative policy-making – was nonetheless legislative activity and therefore protected by Speech or Debate immunity. 383 U.S. 169, 184-85 (1966). And, in Eastland, the Court expressly denounced any application of the privilege that would condition immunity on the outcome of legislative action. 421 U.S. at 509.

[6] In its opposition brief, FFR suggests that this Court should inquire whether the adoption of the Resolution was both "procedurally" and "substantively" legislative. However, in Youngblood, the Court of Appeals expressly refused to apply this two-part substantive/procedural analysis for determining whether the actions of a state legislator are legitimately legislative, explaining that such a test would be inconsistent with the Supreme Court's decision in Bogan. 352 F.3d at 841 n.4. While that two-part analysis may still have some relevance in distinguishing the legislative from administrative functions of non-legislative state and municipal officials, see Baraka v. McGreevey, 481 F.3d 187, 199 (3d Cir. 2007), this case does not present that question.

the deeply-engrained protections for legislative speech, which emanate from the Speech or Debate Clause of the United States Constitution. FFR also seems to imply that only bills (and legislative speech related to those bills) that pass both legislative chambers and are signed into law by the Executive are protected by legislative immunity. That, too, simply is not so. The only relevant question is "whether, stripped of all considerations of intent and motive, [the legislative defendants'] *actions* were legislative." Bogan, 523 U.S. at 55 (emphasis added). For all of the reasons set forth herein, legislative resolutions, like many other activities of legislators and legislative staff – including speaking before the legislative chamber, participating in a committee meeting, preparing legislative reports and innumerable other legislative-related conduct – all fall squarely within the "legitimate legislative sphere."

4. The motives of legislators are irrelevant to the application of legislative immunity.

In an effort to avoid application of legislative immunity, FFR cavalierly suggests that the Resolution was motivated by purely "political" interests, rather than an attempt to craft "substantive" legislation, and that this purported motive should somehow bear on the application of the privilege. However, it is well established that a legislator's motive is irrelevant to the application of legislative immunity. As the Supreme Court declared in Tenney, "[t]he claim of an unworthy purpose does not destroy the privilege," and it has

"remained unquestioned" that it is "not consonant with our scheme of government for a court to inquire into the motives of legislators." 341 U.S. at 376.

Indeed, in Tenney, the Court held that the plaintiff's claims against state legislators were barred by legislative immunity, despite the plaintiff's allegations that he was dragged before a committee hearing "not . . . for a legislative purpose" but rather so the committee could harass and "intimidate" him. 341 U.S. at 371. Similarly, in United States v. Johnson, which involved the prosecution of a congressman who allegedly accepted a bribe from a savings and loan institution in exchange for delivering a favorable speech on the floor of the U.S. House of Representatives, the Court held that the congressman was immune from any prosecution, despite his alleged criminal motivations for delivering the speech at issue, because the Speech or Debate Clause absolutely barred any inquiry into his motives. 383 U.S. at 184-85. In short, the Supreme Court has unwaveringly and unambiguously held that the application of legislative immunity does not hinge on the motives that FFR attaches to the Resolution's adoption.

Nevertheless, FFR demands that this Court embark on precisely the sort of judicial inquisition that the Tenney and Johnson Courts precluded. See Johnson, 383 U.S. at 177 ("[S]uch an intensive judicial inquiry . . . violates the

express language of the Constitution and the policies which underlie it.").[7] A review of the complaint, which is replete with speculation about the intentions and motivations of Representative Saccone and other legislators in introducing and voting for the Resolution, foreshadows the sort of invasive examination that FFR wishes to pursue. (See Compl. ¶¶ 24-35.) The doctrine of legislative immunity protects against such intrusions upon the legislative prerogative. Were courts to begin policing the actions of legislators to determine whether they were motivated by "political" interests, the constitutionally-based protections afforded to the legislature would be mangled, and the carefully-calibrated separation of powers among the branches and comity between federal and state governments would be thrown out of balance.

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[7] The principle that motive and intent have no bearing on the application of legislative immunity is firmly established throughout Supreme Court jurisprudence. See, e.g., Bogan, 523 U.S. at 54 ("Whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it."); Eastland, 421 U.S. at 508 ("Our cases make clear that in determining the legitimacy of a congressional act we do not look to the motives alleged to have prompted it."); Brewster, 408 U.S. at 512 (explaining that Speech or Debate Clause prohibits inquiry "into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts."); McMillan, 412 U.S. at 312-13 (rejecting argument that a court should review conduct of legislative personnel to determine whether it is "irrelevant to any legislative purpose"). See also Ex parte Wason, L.R. 4 Q.B. 573, 577 (1869) ("[W]e ought not allow it to be doubted for a moment that the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House.") (cited in Brewster, 408 U.S. at 509).

5. Disagreements over legislative speech must be resolved through the political – not judicial – process.

Boiled to its essence, the Resolution is simply the collective speech of the various members of the 2012 Pennsylvania House of Representatives. It is the opinion of a group of legislators. Such legislative speech lies at the heart of the legislative immunity doctrine – whether that speech sounds forth from the mouth of a single legislator standing in the well of the House, or whether, as here, it emanates from the legislative body as a whole through a unanimous resolution. See Hutchinson v. Proxmire, 443 U.S. 111, 133 (1979) (instructing that "individual and collective expressions of opinion within the legislative process" are protected). If FFR disagrees with the Resolution, its recourse is not in the courthouse but at the ballot box. As the Supreme Court explained in Tenney, "[c]ourts are not the place" for resolving controversies over legislative activity, as such issues should be left to "the voters." 341 U.S. at 378.

B. Article III Standing

1. FFR's strong desire to adjudicate the merits of its claims does not allow it to ignore the Constitution's standing requirement.

In an attempt to sow confusion and lure the Court into the substance of an Establishment Clause analysis, FFR spends a significant portion of its opposition brief (pages 4-9) ignoring the threshold standing issue and instead diving into an irrelevant merits argument that the legislative defendants have not

made (that is, whether "coercion" is a necessary element of an Establishment Clause claim). It appears that FFR, in its submission, is trying to inappropriately meld an underlying merits argument (which is not part of the motion to dismiss) with a standing argument. Curiously absent from FFR's brief, however, is any reference to the Supreme Court's three-part standing test. Also missing is any explanation as to how that standing test can possibly be satisfied here.

At an "irreducible constitutional minimum," a litigant seeking to harness the power of the federal courts must establish three elements: (1) the plaintiff must have suffered a concrete and particularized "injury in fact"; (2) the injury must be "fairly traceable" to the challenged action of the defendant; and (3) it must be "likely" that the injury will be "redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (internal quotation marks omitted). As the party invoking federal jurisdiction, FFR bears the burden of establishing all of these elements as an "indispensable part" of its case. Id. at 561.[8]

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[8] The concept of government "coercion" is not an element of the Supreme Court's standing analysis, and the legislative defendants have not suggested otherwise. Whether "coercion" is a necessary element of an Establishment Clause claim is a merits issue that is not before the Court at this juncture. Injury in fact, however, *is* a necessary element of Article III standing, and FFR has failed to establish it.

Standing "is not merely a troublesome hurdle to be overcome if possible so as to reach the 'merits' of a lawsuit which a party desires to have adjudicated." Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 476 (1982). Rather, it serves the essential function of minimizing the disharmonious clashes between co-equal branches of government. As the Supreme Court recently observed, "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases and controversies." Hein v. Freedom From Religion Foundation, Inc., 551 U.S. 587, 598 (2007) (rejecting FFR's standing to challenge the White House Office for Faith-based Organizations). The Court further cautioned that "[t]he federal courts are not empowered to seek out and strike down any governmental act that they deem repugnant to the Constitution." Id. For the reasons set forth below, FFR's claims must be dismissed because it simply does not have standing.

2. Generalized grievances or a mere desire to see the government administered according to one's conception of the law are insufficient to establish Article III standing.

FFR has not identified any constitutionally-significant injury suffered by it as a result of the legislative defendants' actions. Rather, it has only asserted a philosophical disagreement with the Resolution's content and a purported concern that the House's legislative speech may run afoul of FFR's own interpretation of

the Establishment Clause. FFR cannot manufacture a case or controversy out of generalized grievances. It is well established that "the psychological consequence presumably produced by observation of conduct with which one disagrees" does not amount to an "injury in fact," nor does "the generalized interest of all citizens in constitutional governance." Valley Forge, 454 U.S. at 483-85. Indeed, FFR's "claim that the Government has violated the Establishment Clause does not provide a special license to roam the country in search of governmental wrongdoing and to reveal [its] discoveries in federal court." Id. at 487. Rather, "concerned bystanders," like FFR, simply do not have standing to sue. Allen v. Wright, 468 U.S. 737, 756 (1984) (internal quotation marks omitted).[9]

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[9] See also Freedom From Religion Foundation v. Obama, 641 F.3d 803, 808 (7th Cir. 2011) ("[U]nless all limits on standing are to be abandoned, a feeling of alienation cannot suffice as injury in fact."); Newdow v. Lefevre, 598 F.3d 638, 643 (9th Cir. 2010) ("Although Newdow alleges the national motto turns Atheists into political outsiders and inflicts a stigmatic injury upon them, an 'abstract stigmatic injury' resulting from such outsider status is insufficient to confer standing.") (quoting Allen, 468 U.S. at 755-56); Newdow v. Rio Linda Union Sch. Dist., 597 F.3d 1007, 1016-17 (9th Cir. 2010) (holding that plaintiff's objection to "under God" in Pledge of Allegiance is "at most" a "generalized grievance[] more appropriately addressed in the representative branches, which do[es] not confer standing") (internal quotation marks omitted); In re Navy Chaplaincy, 534 F.3d 756, 763 (D.C. Cir. 2008) ("'[A]lthough a suitor may derive great comfort and joy' from knowing that the Government is following constitutional imperatives, 'that psychic satisfaction is not an acceptable Article III remedy because it does not address a cognizable Article III injury.'") (quoting Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 107 (1998)); Freedom From Religion Foundation v. Perry, No. 11-2585, 2011 WL 3269339, at *5 (S.D. Tex. July 28, 2011) ("[F]eelings of exclusion or being unwelcome arising from an invitation to engage in a religious observance

3. The Ninth Circuit's decision in *Catholic League* does not support FFR's claim of standing.

FFR invests a considerable portion of its opposition brief extolling the decision of the Court of Appeals for the Ninth Circuit in Catholic League for Religious and Civil Rights v. San Francisco, 624 F.3d 1043 (9th Cir. 2010), which FFR points to as authority for its assertion of standing here. However, the Ninth Circuit in Catholic League was faced with a unique factual scenario that was entirely different than that here, and it was that unique scenario that the majority found to be legally significant (and dispositive) with regard to the standing question.

In Catholic League, the Ninth Circuit was presented with the following question: "whether adherents to a religion have standing to challenge an official condemnation by their government of their religious views, and official urging by their government that their local religious representative defy their church." 624 F.3d at 1048-49. It was this unprecedented set of facts – a governmental entity directly and explicitly *condemning* the religious views of a discrete subset of its citizenry – that the Ninth Circuit majority found capable of causing an injury in fact to those particular citizens whose religious views were so

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that is contrary to their own principles are likely not sufficient to confer standing because they are nothing more than the value interest of concerned bystanders.") (internal quotation marks omitted) (citing United States v. SCRAP, 412 U.S. 669, 687 (1973)).

condemned. Id. at 1048 ("It would be outrageous if the government of San Francisco could condemn the religion of its Catholic citizens, yet those citizens could not defend themselves in court . . . .").

In stark contrast, the Resolution at issue in this case is precisely the opposite of the resolution at issue in Catholic League. It does not single out and condemn the religious beliefs of any identifiable subset of Pennsylvania citizens. To the contrary, it is exactly the sort of "traditional patriotic formula[] that include[s] vague and general religiosity" that the majority in Catholic League conceded is insufficient to cause an Article III injury. Id. at 1051 n.26. This fact renders Catholic League inapplicable here.

Indeed, in attempting to explain why a finding of standing for the plaintiffs in Catholic League was not inconsistent with the Supreme Court's denial of standing in Valley Forge, the majority emphasized that "the plaintiffs [in Catholic League] are not suing on the mere principle of *disagreeing* with San Francisco, but because of that city's *direct attack and disparagement of their religion*." Id. (emphasis added). Again, the Pennsylvania House did not single out the religious views of FFR or its members for "direct attack and disparagement." Rather, the House Resolution contains only "vague and general religiosity" with

which FFR *disagrees*. Like the plaintiffs in Valley Forge, FFR is merely "offended but not affected." Id. Consequently, it does not have standing.[10]

4. FFR's purported "injury" is not redressable by the Court.

Not only has FFR failed to establish that it suffered a constitutionally significant injury, the only purported "injury" that it does identify (the psychological consequence of observing disagreeable government speech) is incapable of being redressed by this Court. There is no prospective conduct to enjoin, no statute to overturn, and no monument to dismantle. FFR merely seeks a series of declarations that the Establishment Clause has been violated and that "the theocratic principles of the Bible do not constitute the official, preferred, or endorsed religion of the State of Pennsylvania." While such declarations would presumably give FFR a sense of emotional contentment, the desire for judicial back-patting does not confer standing. See Steel Co., 523 U.S. at 107 ("[P]sychic

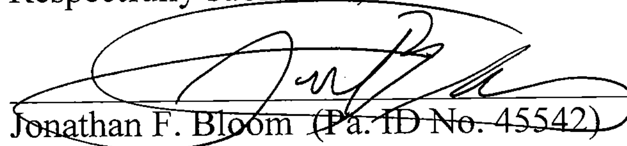
[10] The majority's standing decision in Catholic League resulted in a deeply fractured *en banc* bench of Ninth Circuit judges. Five dissenting judges concluded that the plaintiffs *lacked* standing because they were simply "akin to 'concerned bystanders' who have suffered no injury 'other than the psychological consequence presumably produced by observation of conduct with which one disagrees." 624 F.3d at 1075 (Graber, J., dissenting on the issue of jurisdiction) (quoting Valley Forge, 454 U.S. at 473, 485). In any event, FFR's claim of standing finds no support in this Ninth Circuit decision, even under the majority's analysis.

satisfaction is not an acceptable Article III remedy because it does not redress a cognizable Article III injury.") (citing Valley Forge, 454 U.S. at 582-83).[11]

III. Conclusion

For all the foregoing reasons, the motion of the legislative defendants to dismiss the complaint should be granted and the complaint dismissed with prejudice in its entirety.

Respectfully submitted,



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Dated: July 6, 2012

[11] While FFR also seeks costs and attorneys' fees under 42 U.S.C. § 1988, it is well established that an "interest in attorney's fees is, of course, insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim." Lewis v. Continental Bank Corp., 494 U.S. 472, 480 (1990). Nor does FFR's request for an order requiring defendants to "discontinue further publication" of the Resolution and "undertake corrective actions to publicly report the unconstitutionality" of the Resolution help its position, because neither form of relief is possible. Such acts would have to be carried out, if at all, by the Pennsylvania House of Representatives as a whole, because the individual defendants, on their own, lack the authority to institute such requested relief. Eleventh Amendment sovereign immunity absolutely prevents FFR from obtaining any such relief against the House itself.