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**OPINION\* OF THE UNITED STATES COURT  
OF APPEALS FOR THE THIRD CIRCUIT  
(JANUARY 27, 2023)**

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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CONFERENCE OF PRESIDENTS OF MAJOR  
ITALIAN AMERICAN ORGANIZATIONS, INC.;  
MARK F. SQUILLA, Philadelphia City  
Councilmember; THE 1492 SOCIETY;  
JODY DELLA BARBA,

*Appellants.*

GRAND LODGE OF PENNSYLVANIA SONS  
AND DAUGHTERS OF ITALY

v.

CITY OF PHILADELPHIA;  
MAYOR JAMES F. KENNEY

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No. 22-1116

On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. No. 2:21-cv-01609)  
District Judge: Honorable C. Darnell Jones II

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\* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

App.2a

Submitted Under Third Circuit L.A.R. 34.1(a):  
January 18, 2023

Before: AMBRO, PORTER, and  
FREEMAN, Circuit Judges.

(Filed: January 27, 2023)

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PORTER, *Circuit Judge*.

Philadelphia Mayor James Kenney issued an executive order rescinding the city's recognition of Columbus Day and redesignating the holiday as Indigenous People's Day. A group of Italian Americans sued Mayor Kenney and the City of Philadelphia for depriving them of equal protection of the laws. The District Court dismissed their complaint after it found that they had alleged no injury-in-fact. We will affirm.

## I

The federal government observes Columbus Day on the second Monday in October to commemorate "the anniversary of the discovery of America." H.J. Res. 10, 73d Cong. (1934) (enacted), *see* J.A. 52; 5 U.S.C. § 6103. Until 2021, the city of Philadelphia similarly marked Columbus Day as a city holiday. In recognition of Christopher Columbus's Italian heritage, the Philadelphia City Council traditionally designates the week of the holiday as "Italian American Heritage Week." And since 1957, the city has conducted an annual Columbus Day Parade.

On January 27, 2021, Mayor Kenney issued Executive Order 2-21 replacing Columbus Day with Indigenous People's Day. J.A. 43-44 and Exhibit A

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hereto. The Conference of Presidents of Major Italian American Organizations, Inc. (COPOMIAO), Philadelphia Councilmember Mark Squilla, the 1492 Society, and the 1492 Society secretary Jody Della Barba (collectively, “Plaintiffs”) took offense.<sup>1</sup> They view Executive Order 2-21 to be the latest act in a pattern of hostility by Mayor Kenney against Italian Americans. According to Plaintiffs, additional evidence of Kenney’s discriminatory animus includes: removing a statue of Italian American mayor and police commissioner Frank Rizzo from the Municipal Services Building; refusing to return the statue to its owner, the Frank L. Rizzo Monument Committee; making preparations to remove a Christopher Columbus statue in Marconi Plaza; referring to Italian Americans who challenged the Columbus statue’s removal as “vigilantes”; reassigning police captain Lou Campione from his South Philadelphia command; omitting a zip code with a high concentration of Italian Americans from a COVID-19 vaccination list; and using derogatory language towards Italian Americans.

Plaintiffs sued Philadelphia and Mayor Kenney in the Eastern District of Pennsylvania under 42 U.S.C. § 1983 alleging that they violated the Equal Protection Clause by redesignating Columbus Day as Indigenous Peoples’ Day. They asked the District Court to nullify Executive Order 2-21 and hold it

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<sup>1</sup> COPOMIAO is a New York nonprofit that represents forty-six Italian American organizations across the country including in Pennsylvania. Squilla is an Italian American councilmember for Philadelphia’s First District. The 1492 Society is a Pennsylvania nonprofit based in Philadelphia that sponsors the Columbus Day parade and festival. Della Barba is an Italian American secretary of the 1492 Society and its parade organizer.

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unconstitutional, stop the city from changing the holiday, and declare that Italian Americans are a protected class.

The District Court dismissed the suit for lack of standing because Plaintiffs failed to plead an injury-in-fact. Plaintiffs timely appealed.<sup>2</sup> We have jurisdiction under 28 U.S.C. § 1291.

## II

We review de novo a motion to dismiss for lack of subject matter jurisdiction. In re Horizon Healthcare Servs. Data Breach Litig., 846 F.3d 625, 632 (3d Cir. 2017). In their motion to dismiss, Kenney and Philadelphia facially attacked the sufficiency of Plaintiffs' complaint. We apply the same Rule 12(b)(6) standard on review, accepting all well-pleaded factual allegations as true and drawing all reasonable inferences in Plaintiffs' favor. *Id.* at 632–33 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

## III

Article III of the Constitution limits our judicial power to “cases” and “controversies.” U.S. Const. art. III, § 1. We apply the doctrine of standing to identify those suits that are justiciable under Article III as cases or controversies. *See Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). Whether a party has Article

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<sup>2</sup> The Grand Lodge of Pennsylvania intervened on the side of the plaintiff in District Court. The Grand Lodge did not file a notice of appeal and was not named in the appeal filed by COPOMIAO, Squilla, the 1492 Society, and Della Barba. Its claims are dismissed for failure to comply with Federal Rule of Appellate Procedure 3(c)(1)(A).

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