

IN THE SUPREME COURT OF PENNSYLVANIA

No. 159 MM 2017

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA, *et al.*,

Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Respondents.

**PETITIONERS' ANSWER TO LEGISLATIVE RESPONDENTS' SECOND
APPLICATION FOR STAY**

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INTRODUCTION

This Court struck down Pennsylvania’s 2011 congressional plan on January 22. The next day, Legislative Respondents filed an Application for Stay. Also on January 23, the Intervenors filed their own Application for Stay. After accepting responses, the Court denied both Applications on January 25.

Legislative Respondents’ Second Application for Stay raises no new arguments. Fittingly, they have informed the United States Supreme Court that they believe their Second Application “will be denied in short order.” Letter of Jason Torchinsky, dated Feb. 22, 2018, attached as Exhibit A.

DISCUSSION

Petitioners responded at length to Legislative Respondents’ arguments in their Answer of January 25, 2018. This Answer will not repeat those responses, but will briefly address certain subsequent developments.

A. Events Since January 25, 2018

On the same day this Court denied their first Application, Legislative Respondents filed an Emergency Application for Stay with Justice Samuel A. Alito, Jr. of the United States Supreme Court. Justice Alito denied the Application on February 5 without even referring it to the full court.

This Court’s January 22 Order gave the General Assembly the opportunity to submit a remedial plan to the Governor by February 9, consistent with the time

counsel for the Legislative Respondents told this Court they needed to draw a map. The General Assembly did not submit any such plan by February 9, and indeed never submitted a remedial plan. Instead, Legislative Respondents individually submitted a proposed remedial plan to the Governor on February 9, but that plan was not passed by or even considered by the full General Assembly, and the Governor rejected it because, like the unconstitutional 2011 plan, it was an extreme partisan gerrymander.

As recently as February 13, Legislative Respondents indicated in a letter to Governor Wolf, which they also filed with this Court, that the window of opportunity for a legislative enactment had not yet closed. Letter of Speaker Turzai and Senator Scarnati, dated Feb. 13, 2018 (“Produce your map and we will put it up for a vote. We will assess how logical it is, how compact it is, and whether it unduly splits counties, municipalities and communities of interest We look forward to reviewing your ‘fair’ map and are ready and willing to meet at your earliest convenience to see if, together, we can reach consensus on a ‘fair’ map that can garner majorities in the House and Senate and that you will sign.”).

After considering multiple proposed remedial plans, the Court issued an Opinion and Order on February 19 setting forth the new plan to be used in Pennsylvania’s upcoming primary and general elections for the United States House of Representatives. This Opinion and Order also approved adjustments to

the election calendar. As discussed below, the Department of State and congressional candidates have begun taking action under the new plan.

Legislative Respondents filed a second Emergency Application for Stay with Justice Alito on February 21.

B. The Orderly Administration of the May 15 Primary

The Court's February 19 remedial plan has received intense media coverage, and there is a high level of public awareness that the May 15 primary will be conducted according to the new plan. The Department of State and county election officials are well underway with preparations to carry out the May 15 primary according to the new plan. For example, nomination petition packets were made available to congressional candidates starting on February 22. And many candidates have publicly announced their campaigns for Congress *vel non* according to the new plan.¹

¹ See, e.g., Lauren Muthler, *Jodun to continue campaign in the new 15th District*, Centre Daily Times (Feb. 24, 2018), <http://goo.gl/YHs33B>; Paul Engelkemier, *Dean Ends LG Bid, Enters Race for PA-4*, PoliticsPA (Feb. 22, 2018), <http://goo.gl/QKQ48o>; Paula Reed Ward, *Shannon Edwards, linked to Tim Murphy downfall, announces GOP congressional campaign*, Pittsburgh Post-Gazette (Feb. 21, 2018), <http://goo.gl/7a5maK>; Barbara Miller, *If court's map stands, Saccone says he'll run in reconfigured Washington-Greene area*, Observer-Reporter (Feb. 21, 2018), <http://goo.gl/NBxf2X>; Alex Rose, *Dems position for runs in new 1st, 5th districts*, Delaware County Daily Times (Feb. 20, 2018), <http://goo.gl/6pXnPu>; Lynn Schraf, *Candidates react to new map*, Butler Eagle (Feb. 19, 2018), <http://goo.gl/P8o262>.

These factors only amplify the importance of denying the Application. To stay the order now would confuse voters, severely complicate the work of election officials, and risk necessitating the costly postponement of the primary elections for the United State House of Representatives. *See, e.g., Page v. Bartels*, 248 F.3d 175, 195 (3d Cir. 2001) (“Any interim injunctive or restraining action on our part, particularly action that broadly proscribes the implementation of the redistricting plan adopted by the Apportionment Commission, would likely delay or suspend the legislative elections. Further, if the legislative elections were delayed in this fashion, the State of New Jersey, if it desired to avoid also postponing the concurrent gubernatorial and local elections, would be required to hold two separate primaries and general elections for its state offices, at great expense to the taxpayers.”).

CONCLUSION

For the foregoing reasons, and for the reasons detailed in Petitioners’ January 25 Answer, this Court should deny a stay.

Dated: February 26, 2018

Respectfully submitted,

/s/ Mary M. McKenzie

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Counsel for Petitioners

CERTIFICATION OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Record of the Appellate and Trial Courts that require filing confidential information and documents differently than confidential information and documents.

I certify that this Answer does not contain confidential information.

/s/ Mary M. McKenzie
Mary M. McKenzie

Dated: February 26, 2018

Exhibit A

HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC

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February 22, 2018

Ms. Mara Silver
Emergency Applications Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: *In re: Michael C. Turzai, in his capacity as Speaker of the Pennsylvania House of Representatives, et al.*

Dear Ms. Silver,

Counsel to Michael C. Turzai, in his capacity as Speaker of the Pennsylvania House of Representatives, and Joseph B. Scarnati III, in his capacity as Pennsylvania Senate President Pro Tempore, write this letter to advise the Court that we have filed a Motion for Stay of the Pennsylvania Supreme Court's February 19, 2018 Order redrawing Pennsylvania's Congressional Districts. A copy of that Motion is attached.

Given the urgency of this matter to our clients and the citizens of Pennsylvania we sought relief nearly simultaneously with relief from the Pennsylvania Supreme Court, which we believe will be denied in short order. Our Motion for Stay in Pennsylvania was filed at approximately 1:33pm on February 22, 2018.

Sincerely,



Jason Torchinsky
Counsel of record

CC: All counsel of record via first-class mail.