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159 MM 2017

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January 31, 2018

VIA PACFILE

Supreme Court of Pennsylvania
601 Commonwealth Avenue
Suite 4500
P.O. Box 62575
Harrisburg, Pennsylvania 17106

**Re: League of Women Voters of Pennsylvania et al. v. Commonwealth et al.,
No. 159 MM 2017**

Dear Justices,

We write of behalf of Senate President Pro Tempore Scarnati (“Senator Scarnati”), one of Legislative Respondents in the above-captioned case, in response to this Court’s Order (4-3), dated January 26, 2018 (the “January 26 Order”), which indicates, *inter alia*, that this Court is making preparations to draft and adopt its own congressional redistricting plan “in anticipation of the possible eventuality that the General Assembly and the Governor do not enact a remedial congressional districting plan” in the time period established by the Court’s prior order.

The January 26 Order is entered on the heels of the Court’s January 22, 2018 Order (the “January 22 Order”), which held, without providing any rationale, that Pennsylvania’s 2011 congressional districting map (the “2011 Plan”) violated some unidentified aspect of the Pennsylvania Constitution. The January 22 Order establishes, among other things, that if the General Assembly cannot pass an alternate map and convince the Governor to sign it into law within three weeks, the Court will assume complete control of the process and draft its own map.¹ Yet notwithstanding this fast approaching deadline, the Court has failed to provide the General Assembly with guidance advising how a new map can be drawn without once again violating Pennsylvania’s Constitution.

As explained in detail in Legislative Respondents’ request for a stay of the January 22 Order, that Order violates the U.S. Constitution’s Elections Clause. The Elections Clause provides

¹ The Court has separately retained jurisdiction to review any alternate map passed by the General Assembly and signed by the Governor.

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that “[t]he Times, Places and Manner” of congressional elections “shall be prescribed in each State by the Legislature thereof” unless “Congress” should “make or alter such Regulations.” U.S. CONST. art. I, § 4, cl. 1. Thus, the Elections Clause unambiguously vests exclusive authority over congressional elections in the state legislatures subject only to limitations imposed by the United States Congress. Conversely, state courts, including this Court, enjoy none of this delegated authority. In fact, consistent with the Election Clause’s plain language, the U.S. Supreme Court has held “that redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking.” *Arizona State Legis. v. Arizona Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2668 (2015). Indeed, every Justice participating in *Arizona State Legislature* agreed that redistricting is legislative in character, while no Justice suggested that state courts might share in that legislative function.

The Court’s January 22 Order deprives Legislative Respondents of the ability to draft the court-ordered alternate map because it provides no explanation as to how the 2011 Plan violates the Pennsylvania Constitution or what the General Assembly must do to fashion a map that complies with Pennsylvania’s Constitution. Put simply, the January 22 Order renders it untenable for the General Assembly to formulate and pass an alternate map within the timeframe established by the Court, thus divesting the General Assembly of any meaningful opportunity to draft a new map compliant in the Court’s eyes. This, in turn, makes it highly likely that the Court, not the General Assembly, will ultimately draft an alternate map.²

The January 26 Order only further clarifies this Court’s intention to unconstitutionally usurp the General Assembly’s authority and ability to draft an alternate map. Like the January 22 Order, the January 26 Order does not explain why the Court deemed the 2011 Plan unconstitutional, nor does it provide the General Assembly with any guidance as to how to draft an alternate map. Instead, the January 26 Order can only be fairly read to indicate the Court’s intention to begin drafting an alternate map well in advance of the deadline the Court has established for the General Assembly’s submission of an alternate map to the Governor.

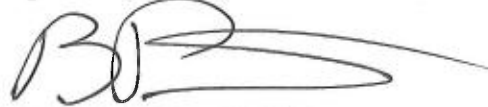
The January 26 Order also requires that statewide municipal and precinct map data be provided to the Court, presumably to assist the Court in its efforts to draft an alternate map. In light of the unconstitutionality of the Court’s Orders and the Court’s plain intent to usurp the

² Despite the Court’s failure to provide parameters for what it perceives to be a constitutional alternate map and the short timeframe afforded by the Court’s January 22 Order, the General Assembly is currently advancing bills aimed at creating an alternate map. See S.B. 1034 (2018); H.B. 2020 (2018).

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General Assembly's constitutionally delegated role of drafting Pennsylvania's congressional districting plan, Senator Scarnati will not be turning over any data identified in the Court's Orders.³

Respectfully yours,

A handwritten signature in black ink, appearing to read 'BP', with a long horizontal flourish extending to the right.

BRIAN S. PASZAMANT

cc: All counsel of record (via PacFile)

³ Senator Scarnati does not possess any documents responsive to paragraph "Fourth" of the Court's January 26 Order.