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IN THE SUPREME COURT OF PENNSYLVANIA

League of Women Voters of Pennsylvania, *et al.*,)
)
Petitioners,) No. 159 MM 2017
v.)
)
The Commonwealth of Pennsylvania, *et al.*,)
)
Respondents.)

**RESPONDENTS, PENNSYLVANIA GENERAL ASSEMBLY, MICHAEL C.
TURZAI AND JOSEPH B. SCARNATI III’S ANSWER TO PETITIONERS’
APPLICATION FOR LEAVE TO FILE A REPLY IN SUPPORT OF
APPLICATION FOR EXTRAORDINARY RELIEF
UNDER 42 PA C.S. § 726 AND PA R.A.P. 3309**

Respondents, Pennsylvania General Assembly, Michael C. Turzai and
Joseph B. Scarnati, III (“Legislative Respondents”), by and through their

undersigned counsel, respectfully submit this Answer to Petitioners' Application for Leave to File a Reply in Support of Petitioners' Application for Extraordinary Relief Under 42 Pa.C.S. § 726 and Pa.R.App.P. 3309 ("Application for Leave").

I. PRELIMINARY STATEMENT

Since filing their Application for Extraordinary Relief ("Application for Extraordinary Relief") on October 11, Petitioners have made no less than three additional filings in purported support of their Application: (1) On October 16: Praecipe to Provide Supplemental Authority in Support of Petitioners' Application for Extraordinary Relief ("Praecipe"); (2) On October 20: Application for Leave to Supplement Application for Extraordinary Relief; and (3) On October 23: Application for Leave. These additional filings manifest only one thing—Petitioners are concerned that their Application for Extraordinary Relief alone does not adequately satisfy their heavy burden. *See, e.g., Washington Cty. Comm'rs v. Pa. Labor Relations Bd.*, 417 A.2d 164, 167 (Pa. 1980); *see also In re Bruno*, 101 A.3d 635, 670 (Pa. 2014) (extraordinary relief only available as a last resort).

And while Petitioners' concerns are justified for all of the reasons explained in detail within Legislative Respondents' Answer to Petitioners' Application for Extraordinary Relief ("Answer"), Petitioners' Application for Leave and associated Reply ("Proposed Reply") do nothing to alleviate Petitioners' predicament. Indeed, as explained briefly below, Petitioners' Proposed Reply is little more than

a rehash of positions and arguments already advanced within Petitioners' Application for Extraordinary Relief coupled with a futile effort to portray Legislative Respondents as duplicitous. In the end, Petitioners' Application for Leave should be denied not only because it requests the ability to advance a substantive brief beyond those contemplated by Pa. R.A.P. 3309 but, more importantly, because Petitioners' Proposed Reply advances nothing that should cause this Court to grant Petitioners' Application for Extraordinary Relief.¹

II. RELEVANT FACTS AND ARGUMENT

A. Whitford Will Undoubtedly Impact This Case

Petitioners contend in their Proposed Reply that the U.S. Supreme Court's upcoming decision in *Whitford* will not impact this case. Proposed Reply at 2. This contention, which Petitioners initially advanced in their Application for Extraordinary Relief, is unfounded, as Legislative Respondents have explained in their Answer. Answer at 20-24; *see* Application for Extraordinary Relief at 13, 18-19.

B. Legislative Respondents Have Not Advanced Inconsistent Positions

Petitioners dedicate a portion of their Proposed Reply to suggesting that Legislative Respondents have somehow advanced inconsistent positions in this action and *Agre v. Wolf*, No. 2:17-cv-04392 (E.D. Pa.) ("Federal Action").

¹ Pa. R.A.P. 3309 contemplates only an Application and an Answer.

Petitioners' suggestion is unfounded. In their Answer, Legislative Respondents have explained why the Commonwealth Court properly stayed this action pending the U.S. Supreme Court's adjudication of *Whitford*. See Answer at 20-25. In the Federal Action, Legislative Respondents have accurately advised that under governing U.S. Supreme Court precedent, the District Court is obligated to defer consideration until resolution of this matter. In fact, the basis for Legislative Respondents' position is set forth in detail in Legislative Respondents' Motion to Stay and/or Abstain recently filed in the Federal Action (which has since been denied). Plainly there is nothing inconsistent between these positions.

C. Petitioners Cannot Explain Away Their Inexplicable Delay In Filing This Matter

Petitioners' Proposed Reply advances two rationales in an effort to legitimize their inexplicable delay in filing their Application for Extraordinary Relief: (1) commencing suit in the Commonwealth Court in June insulates their delay in filing the Application for Extraordinary Relief; and (2) had Petitioners' filed their Application for Extraordinary Relief sooner, Legislative Respondents would have claimed that the Application was premature. Proposed Reply at 3. Not only is the latter merely rote speculation, it tellingly fails to articulate why Petitioners needed three election cycles to occur before advancing their claims, and even then, opted to advance them before the Commonwealth Court. And the former is an exercise in chopped logic—filing a standard track action in the

Commonwealth Court in June does not address, much less explain away, why Petitioners waited four months to file their Application for Extraordinary Relief, and only then filed the Application because they had received an adverse decision from the Commonwealth Court. *See Answer* at 11-14.²

D. What Occurred in *Erfer* Should Not Save Petitioners' Application

Finally, Petitioners try to excuse their delay in seeking relief by arguing that *Erfer* was adjudicated at a rapid pace. Proposed Reply at 3, 4. Although *Erfer* proceeded at a rapid pace, the situation presented was different than in the instant matter. For example, in *Erfer* the Presiding Officers appear to have advanced little, if any factual presentation at trial, whereas here significant factual questions remain open about various social science methods being advanced by Petitioners, questions that require reasonable examination periods as well as expert and judicial review. *Answer* at 13 n.9; *see also id.* at 15 (distinguishing *Erfer* from the present situation). Further, it does not appear that the assertion of Legislative and other privileges was an issue in *Erfer*, but they are a significant issue in this matter, as

² Petitioners attempt to justify their forum shopping by suggesting that it was prudent to await the Commonwealth Court's ruling before approaching this Court. Proposed Reply at 5. But, this suggestion is plainly misdirected and unavailing. Petitioners knew well in advance of the October 4 argument before the Commonwealth Court the pace with which that court was progressing. For example, the order scheduling the October 4 argument before the Commonwealth Court was issued on August 23, and did not list Legislative Respondents' pending, potentially dispositive Preliminary Objections for argument. *See Answer* at 8. Yet, Petitioners did not approach this Court for relief; instead they waited almost another two months to do so. *See also Answer* at 9, 12 (citing transcript of October 4 argument before the Commonwealth Court wherein Petitioners' counsel acknowledged that Petitioners could have filed the Application for Extraordinary Relief in June or thereafter, but chose not to).

established by, *inter alia*, the Commonwealth Court's October 16, 2017 Order (affixed as Exhibit A to Petitioners' Praecipe); *See also* Answer at 8, Application for Extraordinary Relief at 13. In any event, the above makes plain that these very issues are already covered in Petitioners' Application for Extraordinary Relief and Legislative Respondents' Answer thereto.³

III. CONCLUSION

For all of the foregoing reasons, Petitioners' Application for Leave should be denied. Moreover, for all of the reasons set forth above and in Legislative Respondents' Answer, Petitioners' Application for Extraordinary Relief should be denied. Petitioners have simply not satisfied the heavy burden prerequisite to the extraordinary relief that they request.

Dated: October 27, 2017

Respectfully Submitted,

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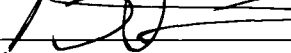
³ Petitioners' theory that a new map can be "done overnight" (Proposed Reply at 4) is, at best, overly simplistic, as it completely disregards, *inter alia*, that any map generated must be considered and passed by both bodies of the General Assembly, as well as the Governor. Answer at 15-20 (explaining in detail why a new map cannot be created and implemented in time for the 2018 elections), *id.* at 17 n.12 (identifying time needed to pass Pennsylvania map legislation following receipt of 2000 and 2010 census results).

*Joseph B. Scarnati III and the Pennsylvania
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