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IN THE

Supreme Court of Pennsylvania

Middle District

159 MM 2017

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA, CARMEN FEBO SAN MIGUEL, JAMES SOLOMON, JOHN GREINER, JOHN CAPOWSKI, GRETCHEN BRANDT, THOMAS RENTSCHLER, MARY ELIZABETH LAWN, LISA ISAACS, DON LANCASTER, JORDI COMAS, ROBERT SMITH, WILLIAM MARX, RICHARD MANTELL, PRISCILLA MCNULTY, THOMAS ULRICH, ROBERT MCKINSTRY, MARK LICHTY, LORRAINE PETROSKY,

Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA; THE PENNSYLVANIA GENERAL ASSEMBLY; THOMAS W. WOLF, IN HIS CAPACITY AS GOVERNOR OF PENNSYLVANIA; MICHAEL J. STACK III, IN HIS CAPACITY AS LIEUTENANT GOVERNOR OF PENNSYLVANIA AND PRESIDENT OF THE PENNSYLVANIA SENATE; MICHAEL C. TURZAI, IN HIS CAPACITY AS SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES; JOSEPH B. SCARNATI III, IN HIS CAPACITY AS PENNSYLVANIA SENATE PRESIDENT PRO TEMPORE; ROBERT TORRES, IN HIS CAPACITY AS ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; JONATHAN M. MARKS, IN HIS CAPACITY AS COMMISSIONER OF THE BUREAU OF COMMISSIONS, ELECTIONS, AND LEGISLATION OF THE PENNSYLVANIA DEPARTMENT OF STATE,

Respondents.

On Appeal from the Commonwealth Court of Pennsylvania at No. 261 MD 2017

BRIEF FOR *AMICUS CURIAE* COMMON CAUSE

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PRELIMINARY STATEMENT

Pennsylvania has a proud tradition of protecting the voting rights of its citizens. From the 1776 Pennsylvania Declaration of Rights to the "free and equal elections clause" of the 1790 Pennsylvania Constitution, as well as the more recent decisions in *Applewhite v. Commonwealth* and *Holt v. 2011 Legislative Reapportionment Com'n*, the Commonwealth has long recognized the critical importance of ensuring that elections are free, equal, and unbiased. *Applewhite*, 617 Pa. 563 (2012); *Holt*, 614 Pa. 364 (2012). This Court stands as the guarantor of those rights against partisan abuse and should act here to protect the citizens of the Commonwealth from an egregious gerrymander.

The 2011 Pennsylvania Congressional map reflects partisan overreach. The undisputed facts are that one political party using the latest technology, secrecy, and a series of "shell bills" created legislative districts designed to provide it with an undue advantage in Congressional elections. Nevertheless, Respondents and the Commonwealth Court urge inaction. They assert that the question before the Court today is controlled by federal law and that in practical effect, federal paralysis should tie this Court's hands. But the constitutional guarantees at issue here were created by Pennsylvania almost a century before passage of the federal Equal Protection Clause. Pennsylvania has its own unique history, constitution and interests, and the Court should not abdicate the task assigned to it, but instead lead

the way in making an unequivocal statement that gerrymandering will not be tolerated in the Commonwealth of Pennsylvania.

While federal law is consumed with the definition of a practical standard for measuring gerrymandering, Pennsylvania provided a workable standard long ago, demanding compact, contiguous districts with a minimum of political subdivision splits. These principles are enshrined in the text of the Constitution for state districts and provide a minimum standard by which to judge Congressional districts. The citizens of Pennsylvania are entitled to the same level of integrity in the setting of Congressional districts as state districts, and the free and equal elections clause demands application of these basic principles to Congressional redistricting.

In *Holt*, the Court struck down the complex Pennsylvania Senate and House district maps for violating these principles, and application to the relatively simple 18-district Congressional map at issue here is straightforward. A cursory review of the Congressional map shows that compactness and political subdivision integrity have been violated, contiguity has been honored in the breach, and that the Congressional map has been illegally gerrymandered. This Court should exercise its constitutional power to protect the voting rights of Pennsylvanians and strike down the 2011 Congressional district map as violative of the free and equal elections clause.

STATEMENT OF INTEREST OF AMICUS CURIAE

Common Cause is a non-profit corporation organized and existing under the laws of the District of Columbia. It is a nonpartisan democracy organization with over 1.1 million members and local organizations in 35 states, including Pennsylvania. Common Cause in Pennsylvania has over 30,000 members and followers. Since its founding by John Gardner in 1970, Common Cause has been dedicated to fair elections and making government at all levels more representative, open and responsive to the interests of ordinary people. "For the past twenty-five years, Common Cause has been one of the leading proponents of redistricting reform." Jonathan Winburn, *The Realities of Redistricting* 205 (2008).

Gerrymanders have been used by both Democrats and Republicans to entrench their power almost since the founding of this Nation. Whether done by Democrats or Republicans, partisan gerrymanders are antithetical to our democracy. Common Cause is at the forefront of efforts to combat gerrymandering, no matter what party is responsible, in the belief that when election districts are created in a fair and neutral way, the People will be able to elect representatives who truly represent them. To that end, Common Cause has organized and led the coalitions that secured passage of ballot initiatives that created independent redistricting commissions in Arizona and California and

campaigned for ratification of an amendment to the Florida Constitution prohibiting partisan gerrymandering. Common Cause is a co-founder of the Fair Districts PA coalition, sponsor of the annual Gerrymander Standards Writing Competition, and the lead plaintiff in the challenge to the congressional gerrymander in North Carolina pending in *Common Cause v. Rucho,* 1:16-CV-1026 (M.D.N.C. filed Aug. 5, 2016), heard by a three-judge federal district court and now awaiting decision.

Common Cause submits this brief opposing a Republican gerrymander but at the same time Common Cause is opposing a Democratic gerrymander in Maryland, where it has appeared as amicus curiae in the Supreme Court in *Shapiro v. McManus*, 136 S. Ct. 450 (2015), and in the district court on remand, 1:13-cv-03233-JKB (D. Md.). For Common Cause, these are issues of principle, not of party, and it is committed to eliminating the harm caused to its members and all citizens by these practices.

ARGUMENT

I. THE PENNSYLVANIA CONSTITUTION PROVIDES ROBUST AND INDEPENDENT PROTECTION AGAINST PARTISAN GERRYMANDERING

In *Erfer v. Commonwealth*, this Court declined "at this juncture" to address the meaning of the free and equal elections clause and whether its scope is coextensive with the federal equal protection guarantee. 568 Pa. 128, 139 (2002).

Since then, the federal jurisprudence has zigged and zagged, and it may do so again. Respondents argue that Pennsylvania law is coextensive with federal law, but which version - the concurring opinion in *Davis v. Bandemer*, 478 U.S. 109, 144 (1986) (O'Connor, J. concurring), the plurality opinion in *Vieth v. Jubelirer*, 541 U.S. 267 (2004), or whatever future opinion musters a majority (if any) in *Gill v. Whitford*, No. 16-1161 (U.S. argued Oct. 3, 2017)? It makes no doctrinal sense to interpret the Pennsylvania free and equal elections clause in light of the Equal Protection Clause, which has an evolving scope and post-dates the free and equal elections clause by almost a century.

In *Erfer*, the Court noted that the parties had not adequately addressed the *Edmunds* factors. *Erfer*, 568 Pa. at 139. *Edmunds* applied a four-factor analysis to determine when Pennsylvania should eschew interpretation of its own constitution and follow a federal constitutional standard instead:

1) text of the Pennsylvania constitutional provision;

2) history of the provision, including Pennsylvania case-law;

3) related case-law from other states;

4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence

Commonwealth v. Edmunds, 526 Pa. 374, 390 (1991).

Evaluating these factors demonstrates that there is a separate "free and equal" requirement under Pennsylvania law and that this Court should lead in interpreting its own constitution, not follow.

A. The Constitutional Text

The text of Article I, Section 5 of the Pennsylvania Constitution states:

> Elections. Section 5. Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

This is a strong, direct statement enshrining the right to free and equal elections into the Pennsylvania Constitution. It is one of the founding principles of Pennsylvania constitutional law.

The Pennsylvania Constitution also includes more general provisions that implicate voting rights. Article I, Section 1 declares that: "All men are born equally free and independent, and have certain inherent and indefeasible rights . . . ." Article I, Section 26 states that: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right." The Court has interpreted these provisions to be coextensive with the federal Equal Protection Clause. *Erfer*, 568 Pa. at 139 (citing *Love v. Borough of Stroudsburg*, 528 Pa. 320 (1991)).

The free and equal election clause should not be treated as surplusage to these provisions. Under ordinary rules of construction, these specific words of the Pennsylvania Constitution should be interpreted and given effect as part of the integrated whole of the Constitution, not simply subsumed into Sections 1 and 26, let alone federal jurisprudence. *Jubelirer v. Rendell*, 598 Pa. 16, 39 (2008). The text demands interpretation, and the history of the provision provides the context for doing so.

B. History of the Provision

1. Textual History

As this Court has observed, the Pennsylvania Constitutional Convention of 1776 was a seminal event in the development of the American form of government: "The Constitution that emerged from the convention, which came to be a model for other state charters, added extensive and now-familiar procedural protections, intra-governmental checks and balances, and a detailed declaration of rights." *William Penn School District v Pennsylvania Dep't of Education*, 170 A.3d 414, 419 (Pa. 2017). Chapter I, Section VII of the Declaration of Rights, approved by the Convention on September 28, 1776, stated: "That all elections ought to be free; and that all free men having a sufficient evident common interest with, and attachment to the community, have a right to elect officers, or to be elected into office." Pa. Const. of 1776, ch. I, § VII. That provision and other

innovations in the 1776 Constitution expanded the franchise to groups who historically had lacked the right to vote, such as farmers, artisans and mechanics, and was considered to be a radical departure from prior forms of government. Matthew J. Herrington, *Popular Sovereignty in Pennsylvania 1776-1791*, 67 Temp. L. Rev. 575, 580 (1993).

In the fall of 1790, the Pennsylvania Constitutional Convention adopted a new Constitution that included a simple, plain statement enshrining the right to fair elections as a constitutional right:

> That the general, great, and essential principles of liberty and free Government may be recognized and unalterably established, WE DECLARE,
>
> . . .
>
> Of elections.
> Sect. V. That elections shall be free and equal.

Pa. Const. of 1790, art. IX, pmbl, § V. During the Constitutional Convention of 1872-73, Section V was amended to read: "Freedom of elections. Section 5. Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. of 1874, art. I, § 5. The provision has remained unchanged since 1874.

In contrast to the long history undergirding the free and equal elections clause, there was no analog to the provision in the United States Constitution. The federal Constitution says little about Congressional elections, committing the

selection of representatives and senators largely to the states, subject to minimum age and eligibility requirements. U.S. Const. art. I, §§ 2-4. Indeed, at the founding of the nation, the relationship between the federal government and the rights of its state's citizens was a controversial issue. *Constitution of the United States—A History*, National Archives, https://www.archives.gov/founding-docs/more-perfect-union (last reviewed June 26, 2017). The original federal Constitution had no declaration of rights, and what is now known as the Bill of Rights was passed by amendment following much debate during the first Congress. *Id.* The Bill of Rights guarantees freedom of religion, freedom of speech and various other individual rights, but it says nothing about equality or free elections. U.S. Const. amends. I-X.

Thus, the Pennsylvania Constitution from its very early days enshrined the right to free and equal elections as one of the "general, great, and essential principles of liberty and free Government." Pa. Const. of 1790, art. IX, pmbl. The federal Constitution was silent.

While Respondents imply that the Pennsylvania Constitution should be read to approve of today's aggressive partisan gerrymandering techniques, the Pennsylvania Framers could not have approved a practice that did not yet exist. Indeed, there is little doubt how the Pennsylvania Framers would have viewed modern gerrymandering. If Benjamin Franklin had been told that future politicians

would have access to a machine capable of predicting voting preferences, and politicians would use the information to devise voting districts favorable to their factions, is there any doubt how he would have viewed the matter? Respondents seem to believe that it is part of the spoils of political war to redraw the district boundaries to entrench the victor. Plainly, the Founders would have taken a different view. It is inconceivable that, having radically expanded the right to vote, created a constitution with careful checks and balances to prevent factionalism, and guaranteed free and equal elections to all, they would have approved of modern gerrymandering techniques. The fact that the Framers did not outlaw what they could not predict is hardly evidence of acquiescence, much less constitutionality.

2. Pennsylvania case law

Pennsylvania case law supports applying Pennsylvania constitutional standards to the unique free and equal elections clause. In the analogous area of freedom of speech, the Court has observed that the Pennsylvania right to free speech is broader than the federal right and was the ancestor to, not the descendant of, the First Amendment. *Pap's A.M. v. City of Erie*, 571 Pa. 375, 399 (2002). The Pennsylvania free speech clause antedated the First Amendment by 15 years. There has never been a free and equal elections clause in the federal constitution, and the closest provision, the Fourteenth Amendment, which calls for "equal protection of the laws" was passed in 1868, 92 years after Pennsylvania declared

free elections to be a fundamental right. It is incoherent to assume that Pennsylvania's jurisprudence under the provision disappeared into the Fourteenth Amendment. The free and equal elections clause should be given independent effect.

With respect to this Court's decisions on the clause, the first significant treatment came in the 1860s when various attempts were made to create a registry for electors in Philadelphia. *Page v. Allen*, 58 Pa. 338 (1868); *Patterson v. Barlow*, 60 Pa. 54 (1869). The first such effort was struck down; the second survived scrutiny. *Page*, 58 Pa. at 353; *Patterson*, 60 Pa. at 77, 85. As this Court stated in addressing the meaning of the clause:

> 'How shall elections be made equal? Clearly by laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share in filling the offices of the Commonwealth. But how shall this freedom and equality be secured? The Constitution has given no rule and furnished no guide. It has not said that the regulations to effect this shall be uniform. It has simply enjoined the duty and left the means of accomplishment to the legislature. The discretion therefore belongs to the General Assembly, is a sound one, and cannot be reviewed by any other department of the government, except in a case of plain, palpable, and clear abuse of the power which actually infringes the rights of the electors.'

Patterson, 60 Pa. at 75.

Thus, from early times, this Court has recognized that the clause guarantees the creation of ***suitable districts*** and that voters shall have an equal share in filling

the offices of the Commonwealth. The legislature has broad discretion in carrying out those requirements, but where there is a plain, palpable, and clear abuse in connection with the creation of "suitable districts" and guaranteeing that every voter has an "equal share" in the election of state officials, the judicial branch is empowered to protect the people's rights and strike down the legislation.

The notion of the way to form a suitable district in the 18th and 19th Centuries rested heavily on three core principals – the integrity of political subdivisions, particularly at the county level, compactness and contiguity. *See generally*, *Holt*, 614 Pa. at 415-16. The Pennsylvanian Senate districts created under the 1790 Constitution were subject to the following prescription: "When a district shall be composed of two or more counties, they shall be adjoining. Neither the city of Philadelphia nor any county shall be divided, in forming a district." Pa. Const. of 1790, art. I, § VII. The 1874 Constitution required that each Senate district had to be "compact and contiguous" and that "[n]o ward, borough or township shall be divided in the formation of a district." Pa. Const. of 1874, art. II, § 16. Similarly, the 1874 Constitution mandated that House districts had to be composed of "compact and contiguous territory." *Id.* at § 17.

Moreover, the integrity of political subdivisions, particularly at the county level, was assumed for Congressional districts. At the time of the 1790 Constitution, the Commonwealth relied on county lines in drawing its

Congressional district maps. Shortly after the passage of the 1790 Constitution, Pennsylvania selected its allotted eight representatives for the Second Congress through the first Pennsylvania Congressional districting plan, which provided for the division of the Commonwealth into eight single representative districts. Act of March 16, 1791, 1790 Pa. Session L. 15-17, Ch.13. The legislation began with the statement that "a division of the state into districts . . . appears most conducive to a fair and equal representation of the people," echoing the language of the free and equal elections clause, and provided for the division of the state into eight county-based districts. *Id.* There were no county splits, and the populous City of Philadelphia was placed in a combined district with Delaware County.[1] The framers of the Pennsylvania Constitution and their contemporaries expected electoral districts to conform when possible with geographical boundaries, which by their nature are always contiguous and generally compact. As this Court put it in *Holt*, "the guiding principles respecting compactness, contiguity, and respect for the integrity of political subdivisions . . . have deep roots in Pennsylvania constitutional law . . . ." *Holt*, 614 Pa. at 420.

[1] It is noteworthy that it took the first legislature a mere 130 words to define the Congressional map. The 2011 map consumed approximately 5,000 words.

C. Related Case Law from Other States

The third *Edmunds* factor involves an examination of case law from other states to assist, where applicable, in divining the intent of the Pennsylvania text. Here, that analysis demonstrates the exceptionality of Pennsylvania's Constitution and the Commonwealth's strong emphasis on voting rights.

Pennsylvania was a trailblazer in guaranteeing the right to vote. Of the 13 original states, only Pennsylvania, Delaware and Massachusetts had a clause guaranteeing free and equal elections.[2] As discussed above, Pennsylvania opened the vote to new classes of people by lowering the property ownership requirements, thereby demonstrating a stronger commitment to voting rights than its peers. It is the prerogative of a state to set its own rules and protections for voting rights, and at least one other state has reached the conclusion that its state constitution provides greater protection against gerrymandering than the federal Constitution. *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987) (finding redistricting valid under federal law, but not state law). From its inception, Pennsylvania has lead the fight for voting rights. That is a worthy tradition that this Court should extend, not end. As in 1776, Pennsylvania should lead the states in declaring the right to free and fair elections, this time by stamping out gerrymandering.

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[2] Del. Const. of 1792, art. I, § 3; Mass. Const. of 1780, pt. First, art. IX.

D. Policy Considerations

It is plain that elections cannot be free and equal when voting districts are gerrymandered. There are two traditional policy arguments made in support of gerrymandering: (1) the supposed difficulty in identifying a standard, and (2) the institutional impact on the separation of powers. Both are well answered under Pennsylvania law.

1. Pennsylvania Already Has a Workable Framework

We leave the statistical debate to the parties, but observe that three criteria have long been part of Pennsylvania law for drawing voting districts: (1) compactness, (2) contiguity, and (3) the integrity of political subdivisions. Considering the electoral map in light of these three principles is sufficient to demonstrate that it violates the free and equal elections clause.

Today's Pennsylvania Constitution recognizes compactness, contiguity, and maintaining the integrity of political subdivision boundaries as constitutional requirements in drawing state House and Senate districts:

> The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

Pa. Const. art. II, § 16. Plainly, for state districts, compactness and contiguity are sufficiently precise concepts to satisfy Pennsylvania constitutional requirements. Indeed, the Court struck down the House and Senate district maps in *Holt*, in part, for violating these norms. 614 Pa. at 433-35. It follows that whatever practical objection may be lodged at the federal level, the requirements of compactness, contiguity and integrity of political subdivisions pass muster under Pennsylvania law; indeed they are written into the Pennsylvania Constitution. And it is far easier to apply these principles to the 18-district Congressional map than the much more numerous state House and Senate districts. At least as a matter of Pennsylvania law, there can be no feasibility objection to applying the three traditional standards.

2. Legislative Deference is Unwarranted Here

The other principal objection to judicial intervention is the argument for legislative deference. There are two subordinate points. The first – a practical one and of significant concern to the U.S. Supreme Court – is whether judicial redistricting challenges will overwhelm and politicize the federal courts. While the U.S. Supreme Court may have an institutional difficulty in managing redistricting challenges in the fifty states, that presents no problem here. Unlike the U.S. Supreme Court, this Court's jurisdiction is limited to reviewing the decennial Pennsylvania maps. The Pennsylvania Constitution already requires the Court to review challenges to the state legislative district maps Pa. Const. art. II, § 17(d),

and the additional burden of reviewing the Congressional map every 10 years is a small price to pay in judicial resources for guaranteeing a basic fundamental right.

Second, the proponents of gerrymandering argue that courts should always defer to legislatures as a matter of principle, but they mistake what principle is at stake when it comes to voting rights. In ordinary matters, the legislature best reflects the will of the people, and thus, judicial deference makes eminent sense. However, redistricting is not an ordinary matter relating to the setting of substantive policy, but a procedural matter that sets the rules for elections and by extension, how the Commonwealth will be governed. There is a very real danger in such matters that a single faction will take control and distort the rules to favor the faction and retain power *against the will of the people*. In such a case, the interests of the legislature conflict with the interests of the people, and the only guarantor against overreach is the judicial branch.

Thus, the critical question before the Court is not an abstract question of the proper division of authority in a multi-branch government. The real issue before the Court is a deeper one – whether the map reflects the true will of the people, or the will of the political party with control of the levers of power during redistricting. Did the faction in control of the legislature use those levers to implement the people's will or to create political advantage?

II. The 2011 Map Violates The Free and Equal Elections Clause

Much ink was spilled below on complex questions of statistical analysis, and the record strongly supports the Petitioners' claims. We observe, however, that the case can be decided by following a more mundane path and interpreting the free and equal elections clause to require compliance, as a minimum standard, with the three well-established principles of compactness, contiguity and respect for political subdivision boundaries. The voters of Pennsylvania should have the same right to integrity of their Congressional districts as they do for state legislative districts.

And there can be little doubt that the current Congressional districts fail to pass muster under those standards. Montgomery County has been split into five districts, Berks and Westmoreland Counties into four districts, and 25 other counties have been split at least twice. Opinion at 38-39; see also Petitioners' Exhibit 56 (showing dramatic increase in county and municipal splits). Visual inspection of the map shows bizarre shapes and that contiguity is respected in name only.

For instance, the boundary of the 7th District is not compact, splits 26 municipalities and is barely contiguous. As the Commonwealth Court observed:

> 323. Dr. Kennedy explained that the 7th Congressional District, which is commonly referred to as the "Goofy Kicking Donald Duck" district, has become famous as one of the most gerrymandered districts in the country. Dr. Kennedy described the 7th Congressional District as

> essentially 2 districts (an eastern district and a western district) that are held together at 2 locations: (1) a tract of land that is roughly the length of 2 football fields and contains a medical facility; and (2) a Creed's Seafood & Steaks in King of Prussia. Dr. Kennedy also indicated that the 7th Congressional District contains 26 split municipalities. (P-53 at 30-3; Petitioners' Exs. 81-83; N.T. at 598-602, 613-14.)

Opinion at 74. Respondents offered no justification for the bizarre shape of the 7th District or the numerous other anomalies in the map.[3]

Furthermore, this Court should also take account of the manner in which the map was created, and on this point, the record evidence is disheartening. Although the Pennsylvania Constitution requires that bills be read three times in each House before passage, Pa. Const. art. III, § 4, the proponents of this most important legislation used a series of "shell bills" that were bereft of substantive content to hide their plan from their fellow representatives and the public until the last minute. Opinion at 29-34.[4] The evidence strongly suggest that a combination of

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[3] While the challenge below was to the statewide map, there is ample evidence of the illegality of the 7th District when considered alone, and the same is true of at least the 1st, 3rd, 12th, 14th and 16th Districts. Based on visual inspection, these district maps fail to pass muster regardless what the Court decides with respect to the larger statewide challenge, and striking down these district maps would go a long way to correcting the gerrymander.

[4] Petitioners have not pressed the point, but it is difficult to see how voting on an empty shell could constitute voting on the same redistricting bill three separate times. At the minimum, the procedure violated the spirit, if not the letter of the law, and surely, a court of equity can consider that in the balance.

secrecy, partisan bias, and sophisticated computational analysis was used to create a highly partisan map.

While the principle of judicial deference is a strong one, it rests on the assumption that the legislature reflects the will of the people better than the courts. Here, the splitting of municipal boundaries, creation of non-compact and barely contiguous districts, coupled with the unusual manner in which the map was created, lead to the conclusion that the map reflects the will of one political party, not the will of the people. In such a case, this Court, and only this Court, can act to uphold the democratic principles of the Pennsylvania Constitution. The ready vehicle for doing so is the free and equal elections clause of Article I, Section 5 of the Pennsylvania Constitution. We urge the Court to breathe life into the provision and strike down the gerrymandered 2011 Congressional map.

CONCLUSION

For the reasons stated herein, this Court declare Act 131 of 2011[5] to be unconstitutional for violating Article I, Sections 5 of the Pennsylvania Constitution.

[5] Congressional Redistricting Act of 2011, 25 Pa. Stat. Ann. § 3596 (2011).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 2135, I certify the following:

This brief complies with the type-volume limitation of Rule 2135; this brief contains 4,583 words excluding the parts of the brief exempted by this rule.

/s/ Martin J. Black
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AFFIDAVIT OF SERVICE

DOCKET NO 159 MM 2017

----------X

League of Women Voters of Pennsylvania

v.

The Commonwealth of Pennsylvania

----------X

I, Elissa Diaz, swear under the pain and penalty of perjury, that according to law and being over the age of 18, upon my oath depose and say that:

on January 5, 2018

I served the **Brief for Amicus Curiae Common Case** within in the above captioned matter upon:

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IN THE

Supreme Court of Pennsylvania

Middle District

159 MM 2017

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA, CARMEN FEBO SAN MIGUEL, JAMES SOLOMON, JOHN GREINER, JOHN CAPOWSKI, GRETCHEN BRANDT, THOMAS RENTSCHLER, MARY ELIZABETH LAWN, LISA ISAACS, DON LANCASTER, JORDI COMAS, ROBERT SMITH, WILLIAM MARX, RICHARD MANTELL, PRISCILLA MCNULTY, THOMAS ULRICH, ROBERT MCKINSTRY, MARK LICHTY, LORRAINE PETROSKY,

Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA; THE PENNSYLVANIA GENERAL ASSEMBLY; THOMAS W. WOLF, IN HIS CAPACITY AS GOVERNOR OF PENNSYLVANIA; MICHAEL J. STACK III, IN HIS CAPACITY AS LIEUTENANT GOVERNOR OF PENNSYLVANIA AND PRESIDENT OF THE PENNSYLVANIA SENATE; MICHAEL C. TURZAI, IN HIS CAPACITY AS SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES; JOSEPH B. SCARNATI III, IN HIS CAPACITY AS PENNSYLVANIA SENATE PRESIDENT PRO TEMPORE; ROBERT TORRES, IN HIS CAPACITY AS ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; JONATHAN M. MARKS, IN HIS CAPACITY AS COMMISSIONER OF THE BUREAU OF COMMISSIONS, ELECTIONS, AND LEGISLATION OF THE PENNSYLVANIA DEPARTMENT OF STATE,

Respondents.

On Appeal from the Commonwealth Court of Pennsylvania at No. 261 MD 2017

STATEMENT OF *AMICUS CURIAE* COMMON CAUSE PURSUANT TO Pa.R.A.P. 531(b)(2)

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Statement of Interest of Amicus Curiae

Pursuant to Pa.R.A.P. 531(b)(2), no person or entity other than the amicus curiae, through its counsel, either paid for the preparation of this brief, or authored any part of it.

Respectfully submitted,

/s/ Martin J. Black

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DOCKET NO 159 MM 2017

----------X

League of Women Voters of Pennsylvania

v.

The Commonwealth of Pennsylvania

----------X

I, Elissa Diaz, swear under the pain and penalty of perjury, that according to law and being over the age of 18, upon my oath depose and say that:

on January 5, 2018

I served the **Statement of Amicus Curiae Common Cause Pursuant to Pa.R.A.P. 531(b)(2)** within in the above captioned matter upon:

SEE ATTACHED SERVICE LIST

via electronic service, or Express Mail for any party NOT registered with the PacFile system by depositing 2 copies of same, enclosed in a postal-paid, properly addressed wrapper, in an official depository maintained by United States Postal Service.

Upon acceptance by the Court of the PacFiled document, copies will be filed with the Court within the time provided in the Court's rules.

Sworn to before me on January 5, 2018

/s/ Robyn Cocho

_____

Robyn Cocho
Notary Public State of New Jersey
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Commission Expires January 8, 2022

/s/ Elissa Diaz

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