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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

League of Women Voters of Pennsylvania,

et al.,

Petitioners,

v.

The Commonwealth of Pennsylvania,

et al.,

)
)
)
)
) Civ. No. 261 MD 2017

Respondents.)

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**MOTION OF LEGISLATIVE RESPONDENTS TO SET DEADLINE FOR
PARTIES' WITNESS DISCLOSURES**

Respondents Michael C. Turzai, in his official capacity as Speaker of the Pennsylvania House of Representatives, and Joseph B. Scarnati III, in his official capacity as Senate President Pro Tempore (“Legislative Respondents”) respectfully request this Court set a deadline for the Parties’ disclosure of witnesses they intend to call at trial by Friday, December 1, 2017 at 5 p.m.¹

The Court’s November 17, 2017 Supplemental Scheduling Order states that the parties shall PAC-file a pretrial memorandum on or before December 8, 2017, at 4:00 p.m. The parties must include in that pre-trial memorandum “[a] list showing the names of all witnesses the partying submitting the memorandum intends to call at trial, along with a brief description of the proffered testimony.” The November 17 Order, however, states that “[a]ll discovery in this matter shall be completed by December 7, 2017” – one day prior to the deadline to disclose witnesses in the pre-trial memorandum. In other words, the parties will not know the identity of the witnesses – including fact witnesses – the other side is preparing to call at trial until *after* the close of discovery. In normal civil cases, it is the usual

¹ Legislative Respondents met and conferred with Petitioners on this deadline, but Petitioners would not agree to disclose witnesses by Friday at 5 p.m. Petitioners proposed Monday at 9:30 am, but that likely does not leave enough time to subpoena and depose any disclosed witnesses by the discovery deadline of Thursday, December 7, and the parties should have ample discovery at this time to disclose the witnesses they intend to call.

course for parties to disclose their trial witnesses after the close of discovery and before trial. However, as this Court is well aware, this case is not proceeding on any normal course, with discovery and trial being completed on an extremely expedited schedule and with discovery ending two business days before the start of trial.

To the extent any party is going to call fact witnesses at trial, the opposing party has the right to seek the deposition of such witnesses so they are not unfairly surprised by their testimony at trial. In order to allow ample time to subpoena and depose any fact witnesses before discovery closes, if necessary, Legislative Respondents propose that the Court order a deadline for disclosure of all witnesses each party intends to call at trial by Friday, December 1, 2017 at 5 p.m. Because discovery is still ongoing, however, Legislative Respondents propose that the parties be permitted to supplement the witness list with any witness that is identified through discovery obtained after 5 p.m. on December 1, so long as any supplement is done without delay. Indeed, this approach is consistent with the Court's admonishment in its November 28, 2017 Order that the parties should identify their trial exhibits and produce them "without delay" despite the ultimate deadline to provide them along with the pre-trial memorandum is not until Friday, December 8, 2017.

November 30, 2017

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Kathleen A. Gallagher, hereby certify that on November 30, 2017, a true and correct copy of the foregoing *Motion of Legislative Respondents to Set Deadline for Parties' Witness Disclosures* was filed electronically via PACFile with the Court, which will send a notice to all counsel of record, and which service satisfies the requirements of Pa. R.A.P. 121.

Respectfully submitted,

Dated: November 30, 2017

/s/ Kathleen A. Gallagher
KATHLEEN A. GALLAGHER