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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEAGUE OF WOMEN VOTERS :

OF PENNSYLVANIA, et al. :

Petitioners :

:

v. :

: Docket No. 261 MD 2017

THE COMMONWEALTH OF :

PENNSYLVANIA, et al. :

Respondents :

INTERVENORS' PRETRIAL MEMORANDUM

In accordance with the Court's Order of November 17, 2017, the Intervenors Brian McCann et al. hereby submit this Pretrial Memorandum.

I. Witnesses

The Intervenors have identified the following witnesses in an initial witness list circulated to counsel on December 4, 2017:

- A. Scott C. Uehlinger:** Mr. Uehlinger is a registered voter in Berks County, and a candidate for the 15th Congressional District. Mr. Uehlinger is representative of Intervenor announced or potential

Candidates for Congress. Mr. Uehlinger will testify that he began his campaign for the 15th Congressional District two days after the incumbent representative, Charles Dent, announced his retirement, and will testify as to the time, money, and effort he has taken and will take to run for Congress. He will testify that the existing boundaries of the 15th Congressional District were a critical factor in his decision to be a candidate for Congress in the 2018 election. He will testify he had to make a determination whether he is a viable candidate both geographically and demographically in the existing 15th Congressional District. He will testify that a change in Congressional Districts before the 2018 elections could terminate his candidacy for Congress if he is no longer a viable candidate, because he may no longer live in the district or a new district could geographically or demographically favor a primary opponent.

- B. Jacqueline D. Kulback:** Ms. Kulback is a registered voter in Cambria County, and the Chair of the Republican Party of Cambria County. Ms. Kulback is representative of Intervenor County Party Committee Chairs. Ms. Kulback will testify as to her duties as County Party Committee Chair, her responsibilities for Congressional elections, and the efforts she has taken and will take in Congressional

campaigns. She will testify that Congressional campaigns begin as soon as the last election occurs and changing Congressional Districts before 2018 could cause uncertainty and voter confusion. She will also testify as to changing voting patterns in Cambria County. She will testify that Congressional District boundaries affect Congressional campaigns, and that her efforts may be wasted even if just some of the voters and candidates no longer remain in the 12th Congressional District as a result of boundary changes. New Congressional District boundaries may interfere with her constitutional rights to effectively influence the political process.

- C. Thomas Whitehead:** Mr. Whitehead is a registered voter in Monroe County, and the Chair of the Republican Party of Monroe County. Mr. Whitehead is representative of Intervenor County Party Committee Chairs. Mr. Whitehead will testify as to his duties as County Party Committee Chair, his responsibilities for Congressional elections in a county split between two Congressional Districts, and the efforts he has taken and will take in Congressional campaigns. He As Party Chair of Monroe County, he will testify that he has been actively involved in two Congressional campaigns, in the 10th and 17th Congressional Districts. He will testify that Congressional

campaigns begin as soon as the last election occurs and changing Congressional Districts before 2018 could cause uncertainty and voter confusion. He will testify that the work he has done to date could be wasted if the boundaries of the 10th and 17th Congressional Districts are changed before the 2018 elections. New Congressional District boundaries may interfere with his constitutional rights to effectively influence the political process.

D. Mark J. Harris: Mr. Harris is a registered voter in Snyder County, and the former Chair of the Snyder County Republican Party. Mr. Harris is representative of Intervenor County Party Committee Chairs. Mr. Harris will testify as to the efforts he has taken and will take in campaigns for the 10th Congressional District. He will testify that Congressional campaigns begin as soon as the last election occurs and changing Congressional Districts before 2018 could cause uncertainty and voter confusion. He will testify that his efforts will be wasted if Snyder County is placed in another Congressional District. New Congressional District boundaries may interfere with his constitutional rights to effectively influence the political process.

E. Carol Lynne Ryan: Ms. Ryan is a registered voter in Lawrence County, and an active member of the Republican Party. Ms. Ryan is

representative of Intervenor active Republicans. Ms. Ryan will testify as to the efforts she has taken and will take in campaigns for the 3rd Congressional District. She will testify that Congressional campaigns begin as soon as the last election occurs and changing Congressional Districts before 2018 could cause uncertainty and voter confusion. She will also testify as to changing voting patterns in the 3rd Congressional District. New Congressional District boundaries may interfere with her constitutional rights to effectively influence the political process.

F. James R. Means, Jr.: Mr. Means is a registered voter in Allegheny County, and an active member of the Republican Party. Mr. Means is representative of Intervenor active Republicans. Mr. Means will testify as to the efforts he has taken and will take in campaigns for the 18th Congressional District. He will also testify as to voter confusion as a result of a special election held in the existing 18th Congressional District after candidates for the 2018 general election must circulate petitions to a potentially different district. New Congressional District boundaries may interfere with his constitutional rights to effectively influence the political process.

II. Exhibits

The Intervenors have identified the following exhibits, which may be offered at trial:

Exhibit Number	Bates Numbers	Description
I-1	INT_001–INT_086	Intervenor Affidavits Previously Filed
I-2	INT_087–INT_091	Voter Registration Statistics
I-3	INT_092–INT_115	2012 Presidential Election Results by County
I-4	INT_116–INT_144	2016 Presidential Election Results by County
I-5	INT_145–INT_147	2016 Statewide Election Results
I-6	INT_148	Candidates for the 7th Congressional District in 2018 (Federal Election Commission)
I-7	INT_149–INT_150	Candidates for the 12th Congressional District in 2018 (Federal Election Commission)
I-8	INT_151	Candidate Financial Totals for the 6th District (Federal Election Commission)
I-9	INT_152–INT_153	Candidate Financial Totals for the 16th District (Federal Election Commission)
I-10	INT_154–INT_155	Cook Political Report 2018 House Race Ratings as of November 17, 2017
I-11	INT_156–INT_160	Larry J. Sabato’s Crystal Ball 2018 House Ratings as of November 29, 2017
I-12	INT_161	Inside Elections with Nathan L. Gonzales House Ratings as of December 1, 2017
I-13	INT_162	Pennsylvania Department of State 2018 Election Important Dates
I-14	INT_163	Governor Wolf Sets Special Election for Pennsylvania’s 18th Congressional District
I-15	INT_164–INT_174	Sean Trende & David Byler, “How Trump Won: The Northeast,” <i>RealClearPolitics</i> (Jan. 18, 2017)

III. Legal Issues

The Intervenors anticipate raising two legal issues at trial:

- A. Whether Petitioners are entitled to relief before the 2018 elections. The Intervenor will argue that the Petitioners are not entitled to relief in time for the 2018 elections under *Butcher v. Bloom*, 203 A.2d 556, 564 (Pa. 1964). In the event that the Congressional Districts are held unconstitutional, the Intervenor argues that the General Assembly must first be given an opportunity to pass a constitutional reapportionment plan. Second, the Court must consider whether reapportionment can be practically effectuated for the 2018 elections. Now that the 2018 elections are underway and circulation for nomination petitions begins in approximately two months, reapportionment for 2018 would result in “[s]erious disruption of orderly state election processes.” *Id.* at 569.
- B. Whether Petitioners’ relief can be granted without harming the Intervenor. The Intervenor will argue that Petitioners’ relief cannot be granted without harming the Intervenor. Each Intervenor is an individual voter, regardless of his or her other political activities. The discriminatory effects prong in *Erfer v. Commonwealth*, 794 A.2d 325, 331–32 (Pa. 2002) includes political power. Therefore, an individual Intervenor’s political power matters as a means to exercise his or her right to vote and, in turn, to influence the legislative process. This Court cannot grant Petitioners’ requested relief in

time for the 2018 elections without harming the Intervenor's political activities, rendering meaningless their activities to date.

Holding that the Intervenor's have no additional interests beyond voting would require holding that the Pennsylvania Constitution does not protect their political rights—rights to vote, to express political opinions, to organize, to work to elect candidates of choice, to run for political office. It would similarly require holding that the Petitioners have no additional rights beyond voting, as long as they have not been denied the right to vote.

IV. Stipulations

In accordance with this Court's Pretrial Conference, the Intervenor's sought to stipulate that certain Intervenor's would be specified as representative of other intervenor's within the following three categories: (1) candidates for Congress; (2) County Party Committee Chairs; and (3) active Republicans. On November 27, 2017, counsel for the Intervenor's, Lawrence J. Tabas, contacted counsel for the other parties by e-mail with their proposal. No other party responded to the Intervenor's e-mail. The intervenor's worked to make six witnesses available for trial, and provided their names to other parties by 9:30 AM on December 4, 2017. No party sought the witnesses' depositions.

At a meet and confer regarding the Joint Stipulation of Facts on December 7, 2017, the Petitioners refused to stipulate to the witnesses are representative of the

Intervenors within their respective categories. If these witnesses are not representative, the Intervenors may be forced to call more Intervenors as witnesses.

Respectfully submitted,

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