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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.*,

Respondents.

No. 261 MD 2017

**PRETRIAL MEMORANDUM OF RESPONDENTS THOMAS W. WOLF,
 ROBERT TORRES, AND JONATHAN MARKS
PURSUANT TO THE COURT'S NOVEMBER 17, 2017 ORDER**

Respondents Thomas W. Wolf, Governor of Pennsylvania; Robert Torres, Acting Secretary of the Commonwealth of Pennsylvania; and Jonathan Marks, Commissioner of the Bureau of Elections, in their official capacities, hereby submit this Pretrial Memorandum pursuant to paragraph 4 of the Court's November 17, 2017 Supplemental Scheduling Order.

A. BRIEF STATEMENT OF THE CASE

This matter challenges Pennsylvania's 2011 Congressional redistricting legislation (the "2011 Plan") as an unconstitutional partisan gerrymander. Neither Governor Wolf, Acting Secretary Torres, nor Commissioner Marks had any substantive legal role in the passage of the 2011 Plan. As a result, Respondents Wolf, Torres, and Marks do not know how the 2011 Plan was devised, and do not anticipate being able to offer evidence that can shed light on that question. However, Respondents Wolf, Torres, and Marks believe that this case involves issues of critical public importance, and that this Court can provide a forum for all the parties to address the concerns Petitioners have raised.

Respondents Wolf, Torres, and Marks are required to execute and administer laws of the Commonwealth of Pennsylvania, including the 2011 Plan, unless and until ordered to do otherwise by this Court or another competent Court. Should this Court find that the 2011 Plan is unconstitutional, however, Respondents Wolf, Torres, and Marks will work diligently with the parties and the Court to take

appropriate measures – including by making adjustments to the current election schedule, where possible – in order to ensure that new districts can be put in place and Pennsylvania’s elections can proceed fairly and efficiently.

B. LIST OF WITNESSES WHO MAY BE CALLED AT TRIAL

Respondents Wolf, Torres, and Marks may present the following witnesses at trial. Respondents Wolf, Torres, and Marks further reserve the right to call any witness identified in the witness list of any other party, and to call other witnesses in response to evidence or witnesses presented by other parties. The identification of these witnesses is not an admission regarding the admissibility of any particular testimony. Respondents Wolf, Torres, and Marks do not waive and specifically reserve the right to object to the admissibility of the testimony of any witnesses based on relevance, the scope of the trial, the Court’s pretrial rulings, or other grounds. Respondents Wolf, Torres, and Marks also reserve the right to amend or supplement this list in advance of trial, and depending on how the Court rules on subsequent motions *in limine*:

1. Jonathan Marks, Commissioner of the Bureau of Elections:
Commissioner Marks may provide testimony regarding the 2018 Pennsylvania elections schedule and potential alterations to that schedule, if any are necessary.

C. LIST OF EXHIBITS THAT MAY BE USED AT TRIAL

Respondents Wolf, Torres, and Marks may introduce the following exhibits at trial. Respondents further reserve the right to use any exhibits identified on the

exhibit lists of any other party, and to use additional exhibits in response to evidence or exhibits presented. Respondents also reserve the right to challenge the admissibility of any exhibit sought to be introduced at trial, notwithstanding its inclusion in the list below, and to amend or supplement this list in advance of trial, and depending on how the Court rules on subsequent motions *in limine*:

1. Exhibit 1: List of 2018 Pennsylvania Elections Important Dates to Remember, setting forth the current 2018 elections schedule

D. PROPOSED STIPULATIONS

All parties have stipulated to the facts contained in the Joint Stipulations of Fact, which have been submitted to the Court via PACFile. Respondents Wolf, Torres, and Marks do not propose any additional facts which have not been the subject of a stipulation, because all of their proposed facts have been stipulated to by all parties.

E. DIVISION OF TRIAL TIME

Respondents Wolf, Torres, and Marks reserve two hours of Respondents' trial time for direct testimony and one hour for cross-examination.

F. STATEMENT OF LEGAL ISSUES IN CASE

Pursuant to this Court's order, Petitioners submitted a statement setting forth the elements of their claims and the applicable burdens of proof. Respondents Wolf, Torres, and Marks do not take a position on Petitioners' statement of the law

at this time. However, they reserve the right to address legal issues as they are raised at trial.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
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Dated: December 8, 2017

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CERTIFICATE OF SERVICE

I, Michele D. Hangley, hereby certify that on this 8th day of December 2017, the foregoing Pretrial Memorandum of Respondents Wolf, Torres, and Marks has been served upon counsel in the manner indicated below, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

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