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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

)
League of Women Voters of Pennsylvania, <i>et al.</i> ,)
) Civ. No. <u>261 MD 2017</u>
<i>Petitioners,</i>)
)
v.)
)
The Commonwealth of Pennsylvania, <i>et al.</i> ,)
)
<i>Respondents.</i>)

**LEGISLATIVE RESPONDENTS' MOTION *IN LIMINE* TO EXCLUDE
DOCUMENTS AND/OR TESTIMONY REGARDING REDMAP**

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”), move this Court for an order *in limine* prohibiting Petitioners from introducing documents and/or testimony regarding the Republican State Leadership Committee (RSLC)’s REDistricting MAjority Project (“REDMAP”).

In their Petition for Review, Petitioners allege that leading up to the 2010 census, “national Republicans undertook a concerted effort to gain control of state governments in critical swing states such as Pennsylvania.” They further allege that the Republican State Leadership Committee (RSLC) referred to this effort ‘the REDistricting Majority Project,’ or ‘REDMAP.’” (§ 42).

Notwithstanding these allegations, discovery has not revealed even a tenuous connection between REDMAP and Pennsylvania’s 2011 districting map (the “2011 Plan”) that is the subject of this litigation. There is simply no evidence suggesting that REDMAP played any role in, or had any influence over, drafting the district lines in the 2011 Plan.¹ Yet, included in Petitioners’ exhibit list are the

¹ Several Petitioners admitted at their depositions that they had no specific knowledge of collusion or communications between Republican leaders in Pennsylvania and Washington D.C. to create a plan to maximize the number of Republicans elected to the U.S. House, (Dep. of

following nine (9) unauthenticated exhibits that appear to suggest a tenuous connection between redistricting nationally and REDMAP: No. 126, “Redistricting 2010 Preparing for Success”; No. 127, “RSLC Announces Redistricting Majority Project (REDMAP)”; No. 128, “REDistricting Majority Project”; No. 129, “REDMAP Political Report: July 2010”; No. 130, C. Jankowski letter; No. 131, 2012 REDMAP Summary Report; No. 132, REDMAP Political Report: Final Report; No. 133, 2012: RSLC Year in Review; No. 134, REDMAP Pennsylvania fundraising letter. (*See* Pet. Exhibit List, p. 7) These exhibits, and any related testimony, should be excluded because they are irrelevant, they are inadmissible under Pa.R.E., Rule 403, and because they constitute hearsay.

First, any evidence or testimony should be excluded because such evidence is not relevant to this action. The Pennsylvania Rules of Evidence provide that only relevant evidence is admissible. Pa..R.E., Rule 402. Relevant evidence is evidence that has any tendency to make a fact of consequence in determining the action more or less probable. Pa.R.E., Rule 401. As this Court has recognized, Petitioners “challenge the constitutionality of the 2011 reapportionment of Pennsylvania’s congressional seats and the resulting congressional district maps.” (Memo and Order at 6). But the aforementioned documents identified by Petitioners do not in any way show that the RSLC or REDMAP had anything to do

Marx at 51:16-52:3; Dep. of Comas at 64:11-24), or the role REDMAP allegedly had in the drawing of the 2011 Plan. (Dep. of Petrosky at 74:24-74:2).

with drafting the district boundaries contained in the 2011 Plan, or any other state in the country. Thus, documents or testimony relating to REDMAP or RSLC are not a fact of consequence in determining any element of Petitioners' claims and should be excluded as irrelevant under Pa.R.E. 401.

In addition, even if the evidence and testimony related to the RSLC or REDMAP had some limited relevance to this case (and it does not), presentation of such evidence or testimony could only result in unnecessary and unfair prejudice to Legislative Respondents. Petitioners have repeatedly suggested the existence of some overarching conspiracy in which REDMAP somehow manipulated or controlled the drafting of the 2011 Plan. But, other than mere suggestion or conjecture, they have offered absolutely no evidence of REDMAP or the RSLC influenced the 2011 Plan in any way. Thus, admitting documents or testimony suggesting such a conspiracy (or even attempting to use documents suggesting such a conspiracy) would be unfairly prejudicial to Legislative Respondents. Such evidence should be excluded under Pa.R.E. 403. *See also Com v. Wright*, 621 Pa. 336, 473 (2013).

Additionally, the internet pages and news articles about REDMAP and the RSLC in Petitioners' Exhibit List constitute inadmissible hearsay. Hearsay is generally inadmissible and is defined as a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in

evidence to prove the truth of the matter asserted in the statement. Pa.R.E. 801(c), 802. Internet postings and websites, such the REDMAP documents Petitioners have identified and apparently seek to introduce, are classic examples of hearsay. *See Raintree Homes, Inc. v. Birkbeck*, 2011 Pa. Dist. & Cnty. Dec. LEXIS 164 (Ct. Cm. Pl. 2011). Thus, these exhibits should not be admitted into evidence.

For the reasons set forth herein, any testimony and/or documents relating to the RLSC or REDMAP should be excluded from evidence.

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Respectfully Submitted

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