

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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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>	)	
_____	)	

**PROPOSED ORDER**

AND NOW this \_\_\_\_\_ day of December, 2017, upon consideration of Petitioners' Motion *in Limine* to Admit Evidence Produced by Speaker Turzai in the *Agre* Litigation and Properly Obtained by Petitioners, and after having heard argument on said Motion, IT IS HEREBY ORDERED that Petitioners' Motion *in Limine* is DENIED.

\_\_\_\_\_  
The Honorable P. Kevin Brobson

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League of Women Voters of Pennsylvania, *et al.*,  
*Petitioners*,  
v.  
The Commonwealth of Pennsylvania, *et al.*,  
*Respondents*.

Legislative Respondents respectfully submit the within Opposition to Petitioners’ “Motion *in Limine* to Admit Evidence Produced by Speaker Turzai in the *Agre* Litigation and Properly Obtained by Petitioners” (the “Motion”).

In their Motion, Petitioners argue that by obtaining the privileged documents, they would not violate any order by the *Agre* court. But Petitioners' argument misses the point. Legislative Respondents do not suggest that by obtaining the privileged documents, Petitioners have violated any order of the *Agre* court. Rather, Legislative Respondents' argument is, and always has been, that by allowing the *use* of such privileged documents in *this* case, the spirit and intent of the *Agre* court's order would be violated. That order expressly stated that it should

be interpreted to be “respectful” of this Court’s privilege orders. The *Agre* court never meant for its order to serve as a means by which Petitioners could circumvent this Court’s privilege findings with respect to any documents not admitted in the *Agre* case. Yet, that is exactly what Petitioners request this Court do in their Motion. The Court should deny this request.

Petitioners also suggest that the Court should allow the introduction of the privileged documents because they are in the “public domain.” But the subject documents were never admitted into evidence in *Agre*. And, as the following passage from the *Agre* court transcript makes clear, the mere fact that the documents were produced in discovery in the *Agre* case does not mean that they are in the public domain:

MR. ARONCHICK: ... [F]or example ... there were many references to things like ... the Turzai data and expert reports...those kinds of things that weren’t actually marked as exhibits and introduced as exhibits, but, they were referenced frequently throughout the record in this case. And is it our understanding that if they were involved in the record in this case that that’s in the public domain, even if the actual document that they were referring to wasn’t marked and put into the record?

JUDGE SMITH: *The reference is in the public domain.  
The underlying document is not.*

See **Ex. A**, *Agre, et al. v. Wolf, et al.*, Tr. Dec 7, 2017, PM Session, at p. 9 (emphasis added).

For these reasons, and the reasons set forth in Legislative Respondents' Motions *in Limine* to Exclude Certain Testimony by Jowei Chen and to Exclude Petitioners' Exhibits 27-31, 33, and 135-161, which Motions are incorporated by reference herein, Legislative Respondents respectfully request that the Court DENY Petitioners' Motion.

December 10, 2017

Respectfully Submitted

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*/s/ Brian S. Paszamant*

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## **EXHIBIT A**

1 are being respectful of -- of those proceedings at the same  
2 time, not limiting counsel for their ability to use materials  
3 as a part of this case in the way that we've described.

4 MS. HANGLEY: And, Your Honor, --

5 MR. ARONCHICK: Could -- could I just amplify a  
6 minute, just -- just to say?

7 JUDGE SMITH: Ver -- very quickly, sir.

8 MR. ARONCHICK: Very quickly. So, that in the -- in  
9 the record, for example, of this case, there were many  
10 references to things like, excuse me, the Turzai data and  
11 expert reports, I mean, those kinds of things that weren't  
12 actually marked as exhibits and introduced as exhibits, but,  
13 they were referenced frequently throughout the record in this  
14 case. And is it our understanding that if they were involved  
15 in the record in this case that that's in the public domain,  
16 even if the actual document that they were referring to wasn't  
17 marked and put into the record?

18 JUDGE SMITH: The reference is in the public domain.  
19 The underlying document is not.

20 MS. BALLARD: Your Honor, if I may?

21 JUDGE SMITH: Quickly, please.

22 MS. BALLARD: The -- we understood the Court's order  
23 regarding not -- not sharing documents to cover the -- the  
24 defendants' depositions and any exhibits used at their  
25 depositions. That's what the order referred to. Many of the