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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' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Intervenors Brian McCann, Daphne Goggins, Carl Edward Pfeifer, Jr., Michael Baker, Cynthia Ann Robbins, Ginny Steese Richardson, Carol Lynne Ryan, Joel Sears, Kurtes D. Smith, C. Arnold McClure, Karen C. Cahilly, Vicki Lightcap, Wayne Buckwalter, Ann Marshall Pilgreen, Ralph E. Wike, Martin C.D. Morgis, Richard J. Tems, James Taylor, Lisa V. Nancollas, Hugh H. Sides, Mark J. Harris, William P. Eggleston, Jacqueline D. Kulback, Timothy D. Cifelli, Ann M. Dugan, Patricia J. Felix, Scott Uehlinger, Brandon Robert Smith, Glen Beiler, Tegwyn Hughes, Thomas Whitehead, David Moylan, James R. Means, Jr., Barry O. Christenson, Kathleen Bowman, and Bryan Leib file the following Proposed Findings of Fact and Conclusions of Law in accordance with the Court's Order of November 17, 2017:

INTRODUCTION

The Intervenors expect that the various allegations, arguments, testimony, and evidence in the record relating to the Petitioners' claims pertaining to the 2011 Congressional Map will be thoroughly addressed in the Legislative Respondents' Proposed Findings of Fact and Conclusions of Law. As such, Intervenors are limiting their Proposed Findings of Fact and Conclusions of Law to principally address how the Petitioners' demand for relief would disrupt the 2018 primary and general election process as a result of the Petitioners' inexplicable six-year delay in asserting their challenge; which delay ensured that the Intervenors and candidates who relied, justifiably, on the 2011 Plan for 2018 did so at their peril and risk of their Constitutional rights.

PROPOSED FINDINGS OF FACT

BACKGROUND

1. Senate Bill 1249 became law on December 22, 2011 (the "2011 Plan"). J. Stip. ¶ 60.

2. Prior to passage of the Bill, the joint House and Senate State Government Committee held three hearings over thirty-three days to receive testimony and public comment on redistricting. J. Stip. ¶ 38.

3. Philadelphia Democratic Senator Tina Tartaglione's vote was necessary to report Senate Bill 1249 out of committee because "two Republicans

voted with the Democrats to prevent the bill from coming out of committee." Ex. P-178 (Dinniman Dep.) at 61:11–16, 62:9–14, 62:24–63:4, 63:16–18.

4. Senate Bill 1249 would not have passed the Pennsylvania House of Representatives without Democratic votes. J. Stip. ¶¶ 57–58; Ex. P-179 (Vitali Dep.) at 107:10–24.

5. Three congressional general elections occurred under the 2011 Plan before Petitioners initiated this action. J. Stip. ¶ 14.

6. No lawsuit was filed to challenge the 2011 Plan until Petitioners filed this action. Ex. P-179 at 115:17–116:5.

7. The principal data that the Petitioners assert supports their allegations was available prior to 2011. Petitioners' expert Dr. Jowei Chen used 2008 and 2010 statewide election data in his analysis. Tr. 186:19–187:9.

8. In each of the three congressional general elections under the 2011 Plan, Republicans have won thirteen seats and Democrats have won five seats. J. Stip. ¶ 102.

9. Petitioners filed this action on June 15, 2017. J. Stip. ¶ 10.

10. Petitioners filed their Application for Extraordinary Relief Under 42 Pa.C.S. § 726 and Pa. R.A.P. 3309 on October 11, 2017. Application for Extraordinary Relief Under 42 Pa.C.S. § 726 and Pa. R.A.P. 3309, *League of Women Voters of Pa. v. Pa. Gen. Assembly*, No. 159 MM 2017 (Pa. filed Oct. 11,

2017).

THE INTERVENORS

11. The Intervenors are registered Republican voters in each of Pennsylvania's eighteen congressional districts. J. Stip. ¶ 159; *see also* J. Stip. ¶¶ 160–195.

12. The Intervenors include announced or potential candidates for Congress. J. Stip. ¶ 196; *see also* J. Stip. ¶¶ 186, 191, 195.

13. The Intervenors include County Party Committee Chairpersons ("County Party Chairs"). J. Stip. ¶ 197; *see also* J. Stip. ¶¶ 163, 165, 168–170, 177, 180, 182, 190.

14. As exemplified by the Affidavit of the Chair of the Monroe County Republican Committee, Intervenor Thomas Whitehead ("Whitehead"), the duties and responsibilities of the County Party Chair Intervenors include (1) overseeing the activities of the County Committee Members; (2) overseeing campaigns for all elected offices in the County, including for Congress; (3) recruiting candidates for elected office, including Congress; (4) fundraising for candidates and for the County Committee (which supports the candidates on the Republican ticket in the County); (5) organizing and supervising grassroots campaign activities for the elections (including lawn signs, palm cards, and slate cards to support the candidates, including the Congressional candidate); (6) recruiting of volunteers to

support the candidates; and (7) communicating and coordinating campaign activities with the Congressional campaign and the candidate, the state party, and others. Ex. I-16 (Whitehead Aff.) ¶ 4.

15. The Intervenors include active Republicans. J. Stip. ¶ 198; *see also* J. Stip. ¶¶ 160–195.

CAMPAIGNS FOR CONGRESS

16. Campaigns for members of Congress start far in advance of the year of election, and can start as soon as the last campaign for Congress ends. J. Stip. ¶ 199; Ex. I-16 ¶ 5; Ex. I-17 (Ryan Aff.) ¶ 6.

17. It is important for Congressional candidates and their campaigns to start campaigning, fundraising, recruiting volunteers, and hiring a campaign team immediately after the last election and not wait for the start of the congressional election year. Ex. I-17 ¶ 7.

18. Before the filing of the Petition for Review in June 2017, the Intervenors did not expect that the existing congressional districts would change between the 2016 and 2018 elections. J. Stip. ¶ 202.

19. As exemplified by the Whitehead Affidavit, the County Party Chair Intervenors have been performing their duties and responsibilities in connection with the 2018 elections since November 2016. Ex. I-16 ¶ 5.

20. As exemplified by the Affidavit of Intervenor Carol Lynne Ryan

("Ryan"), the active Republican Intervenors participated in their first campaign activity for the 2018 congressional elections as early as December 2016. Ex. I-17 ¶ 8.

21. In 2017, the County Party Chair Intervenors and active Republican Intervenors, as exemplified by the Whitehead Affidavit and the Ryan Affidavit, engaged in a number of campaign activities for the 2018 congressional elections, including recruiting candidates, registering voters, planning and inviting candidates to events, fundraising, and recruiting donors and volunteers. Ex. I-16 ¶¶ 6, 8–10, 20; Ex. I-17 ¶ 9.

22. As exemplified by the Whitehead Affidavit, the County Republican Committees consider endorsements for candidates for Congress in February or March of 2018. Ex. I-16 ¶ 16.

23. The Intervenors work to elect their preferred candidates to Congress in reliance on the existing congressional districts. J. Stip. ¶ 201; Ex. I-16 ¶ 17; Ex. I-17 ¶ 26.

24. Congressional district boundaries affect campaign activities such as recruiting candidates, volunteers, and donors; organization of grassroots activities; public political communications in support of congressional candidates; and allocating campaigning activities and County Committee resources amongst other candidates on the ballot. Ex. I-16 ¶ 17; Ex. I-17 ¶ 9.

25. Voters have become familiar with congressional district boundaries and their congresspersons over the past three election cycles under the 2011 Plan. Ex. I-17 ¶ 20.

26. It would take time to educate voters of a change in political and election process, such as a change in congressional districts, similar to efforts to inform voters when their polling place changes at or near an election. Ex. I-17 ¶ 19.

27. If congressional districts are changed before the 2018 election, an announced candidate may no longer be a viable candidate in the new district. Ex. I-16 ¶ 15.

28. It is highly disadvantageous for a congressional candidate to live outside the district. Ex. I-16 ¶ 12.

29. If congressional districts are changed before the 2018 election, it could make it difficult to recruit a candidate and run an effective campaign in time for the November election. Ex. I-16 ¶ 21; Ex. I-17 ¶ 24.

30. Petitioners have not presented evidence that they have been prevented from voting. *E.g.*, Tr. 129:8–10 (Marx); Tr. 150:17–20 (Lawn); Tr. 684:5–8 (Rentschler).

31. Petitioners have not presented evidence that they been prevented from making campaign contributions. Tr. 128:20–22 (Marx); Tr. 150:25–151:3 (Lawn);

Tr. 684:13–16 (Rentschler); *see also* Ex. P-164 (Lancaster Dep.) 20:24–21:12; Ex. P-170 (Isaacs Dep.) at 14:1–7, 20:6–9.

32. Petitioners have not presented evidence that registered Democrats or Democratic voters have been prevented from participating in the political process. Tr. 128:23–129:3 (Marx); Tr. 684:17–20 (Rentschler); Ex. P-179 at 38:1–4 (Vitali).

33. The Petitioners, in some instances, made either no attempts or only recent attempts to communicate with their member of Congress. As examples, Petitioner Mary Elizabeth Lawn had not attempted to contact her member of Congress until she joined this litigation, Tr. 151:8–11; and Petitioner Lisa Isaacs has not attempted to contact her member of Congress. Ex. P-170 (Isaacs) at 20:1–6.

ELECTION DEADLINES

34. The first statutory deadline of the 2018 elections is February 13, 2018, the first day to circulate and file nomination petitions. J. Stip. ¶ 131 (citing 25 Pa. C.S. § 2868).

35. Nomination petitions must be filed by March 6, 2018. J. Stip. ¶ 132 (citing 25 Pa. C.S. § 2868).

36. The Bureau of Commissions, Elections and Legislation (the "Bureau") takes three weeks to prepare for the circulation of nomination petitions.

EBD Ex. 2 (Marks Aff.) ¶¶ 12, 19.

37. The Bureau could shorten its preparation to two weeks, but would require an addition of staff and increased hours. EBD Ex. 2 ¶ 20.

38. Local political parties begin recruiting and training volunteers in January 2018 to circulate nomination petitions for congressional candidates. Ex. I-16 ¶ 16.

39. Local political parties hold events to circulate nomination petitions in February of an election year. Ex. I-17 ¶ 15.

40. Changing congressional districts during the nomination petition circulation period could cause a higher risk that a voter may sign a nomination petition for the wrong district. Ex. I-17 ¶ 18.

41. Changing congressional districts before or after the nomination circulation petition period could confuse voters. Ex. I-17 ¶ 17.

42. There is not enough time to inform voters of a change in congressional districts before nomination petitions begin circulation. Ex. I-17 ¶ 21.

43. Governor Wolf issued a writ to hold a special election on March 13, 2018 in the 18th Congressional District to fill the vacancy for the duration of the term ending in January 2019. J. Stip. ¶ 223.

44. The special election for the existing 18th Congressional District will

be held twenty-eight days after nomination petitions begin to circulate for the 2018 primary and general election for the 18th Congressional District. J. Stip. ¶ 224.

45. The Pennsylvania Election Code sets Pennsylvania's 2018 primary election for May 15, 2018. J. Stip. ¶ 130 (citing 25 Pa. C.S. § 2753(a)).

46. Postponement of the primary in any manner would result in significant logistical challenges for county election administrators. EBD Ex. 2 ¶ 25.

47. The cost of holding a single primary in 2018 would be approximately $20 million. EBD Ex. 2 ¶ 27.

48. If two primaries are held, each will cost approximately $20 million. EBD Ex. 2 ¶ 27.

49. For each primary, Pennsylvania's sixty-seven counties will be reimbursed a portion of the costs associated with mailing absentee ballots to certain military and overseas civilian voters and bedridden or hospitalized veterans. EBD Ex. 2 ¶ 28.

50. All of the other costs of the primary are paid by the counties. EBD Ex. 2 ¶ 28.

51. Scheduling a separate primary date in 2018 would add to the costs and efforts of participating in the election process, including for sending a second set of voter communications activities instead of one set that would include candidates

for all offices. Ex. I-16 ¶ 22; Ex. I-17 ¶ 25.

CHANGING VOTING PATTERNS

52. Voting patterns in Pennsylvania have changed since the enactment of the 2011 Plan. Ex. I-16 ¶ 26; Ex. I-17 ¶¶ 11–14.

53. For example, President Trump won Luzerne County 58.29 percent to 38.86 percent for Secretary Clinton, even though registered Democrats outnumber registered Republicans 52.62 percent to 36.10 percent in Luzerne County. J. Stip. ¶ 210; Ex. I-2.

54. Three counties that were won by President Obama in 2012 were won by President Trump in 2016: Erie County, Luzerne County, and Northampton County. J. Stip. ¶ 207.

55. In 2016, at least some voters voted Republican for President and Senate while voting Democratic for other statewide offices. J. Stip. ¶¶ 216, 218.

56. In 2016, not all registered Democrats in Pennsylvania voted straight Democratic. J. Stip. ¶ 217; *see also* Tr. 683:13–22 (Rentschler).

57. From November 2012 to November 2016, percentages of registered Republicans increased in fifty-nine counties, while percentages of registered Republicans decreased in eight counties. J. Stip. ¶ 204; Ex. I-2.

58. From November 2012 to November 2016, percentages of registered Democrats increased in five counties, while percentages of registered Democrats

decreased in sixty-two counties. J. Stip. ¶ 205; Ex. I-2.

59. Thirteen counties in Pennsylvania had more registered Democrats than registered Republicans at the time of the 2016 presidential election but voted for President Trump. J. Stip. ¶ 206.

HARM TO INTERVENORS

60. Ryan's efforts on behalf of Congressman Kelly will be wasted if Congressman Kelly no longer represents Lawrence County, exemplifying the same harm to the other active Republican Intervenors. Ex. I-17 ¶ 23.

61. Whitehead's efforts in Monroe County will be wasted as some of the voters and candidates may no longer be in the district if the boundary between the 10th and the 17th Districts changes, exemplifying the same harm to the other County Party Chair Intervenors. Ex. I-16 ¶ 11.

62. Candidates' time, money, and effort directed at voters who no longer remain in the district will be wasted. Ex. I-16 ¶¶ 14–15; Ex. I-17 ¶¶ 23–24.

63. If congressional districts are changed before the 2018 elections, some or all of the time, money, and effort undertaken by Intervenors in their campaign activities and political process would be lost, negated, or wasted. Ex. I-16 ¶¶ 18, 20; Ex. I-17 ¶ 23.

PROPOSED CONCLUSIONS OF LAW

REDISTRICTING STANDARDS

1. The Pennsylvania Supreme Court has adopted the standard of the U.S. Supreme Court plurality in *Davis v. Bandemer* for the prima facie claim of partisan gerrymandering. *Erfer v. Commonwealth*, 794 A.2d 325, 332 (Pa. 2002) (citing *In re 1991 Pa. Legis. Reapportionment Comm'n*, 609 A.2d 132, 142 (Pa. 1992)).

2. "[A] plaintiff raising a gerrymandering claim must establish that there was intentional discrimination against an identifiable political group and that there was an actual discriminatory effect on that group." *Id.* (citing *Davis v. Bandemer*, 478 U.S. 109, 127 (1986) (plurality op.)).

3. Citizens who vote for Democratic congressional candidates have not yet been found to be an identifiable political group. *Id.* at 333 (assuming without deciding that Petitioners had shown an identifiable political group).

4. Petitioners have not shown that consistent Democratic voters for Congress are an identifiable political class for several reasons: (1) voters cannot be identified and discriminated or retaliated against at the precinct level; (2) precinct-level data based on election results for different races may include different sets of Democratic voters for different races, i.e., a 60% Democratic vote for Senator and a 60% Democratic vote for Governor does not mean that the same 60% of voters voted Democratic for both Senator and Governor; and (3) discrimination or

retaliation based on the Democratic vote for Congress at the precinct level necessarily requires discriminating or retaliating against Republican voters for Congress, the minority in the precinct.

5. Registered Democrats are not an identifiable political group because registered Democrats vote Republican in at least some races. *See* Findings of Fact ¶¶ 54, 57, 60. Party registration is not a predictor of voting behavior.

6. Petitioners "must prove two things in order to establish an actual discriminatory effect. First, [they] must show that the reapportionment plan works disproportionate results at the polls; this can be accomplished via actual election results or by projected outcomes of future elections. . . Second, [they] must adduce evidence indicating a 'strong indicia of lack of political power and the denial of fair representation.' . . . To meet this second prong of the effects test, the discriminated against group must show that it has 'essentially been shut out of the political process.'" *Erfer*, 794 A.2d at 333 (citations omitted) (quoting *Bandemer*, 478 U.S. at 139).

7. "[A] failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause." *Id.* (internal quotation marks omitted) (quoting *Bandemer*, 478 U.S. at 132).

8. The *Erfer* Plaintiffs did not show that they were essentially shut out of the political process where "at least five of the districts are 'safe seats' for

Democratic candidates." *Id.* at 334.

9. Petitioners have not shown that they have essentially been shut out of the political process:

- Petitioners have not provided evidence that they have been prevented from voting, making political contributions, or participating in the political process. Findings of Fact ¶¶ 30–32.
- As in *Erfer*, Democrats have won five seats in each election under the 2011 Plan. Findings of Fact ¶ 7.
- In addition, Senate Bill 1249 would not have passed out of committee without a Democratic vote. Findings of Fact ¶ 3.
- The 2011 Plan could not have passed the Pennsylvania House of Representatives without Democratic votes. Findings of Fact ¶ 4.

10. A plurality of the U.S. Supreme Court has concluded that partisan gerrymandering claims are nonjusticiable under federal law. *Vieth v. Jubelirer*, 541 U.S. 267, 306 (2004) (plurality op.).

11. The Pennsylvania Supreme Court should conclude that partisan gerrymandering claims are not justiciable under Pennsylvania law. *See id.* at 281–301 (criticizing standards for partisan gerrymandering claims, including *Bandemer*).

REMEDY

12. Petitioners have no right to relief in time for a particular election. In a reapportionment challenge, the Court must determine whether Petitioners' rights "can practically be effectuated" in time for the next election. *Butcher v. Bloom*, 203 A.2d 556, 568 (Pa. 1964) (internal quotation marks omitted) (quoting *Lucas v. Forty-Fourth Gen. Assembly*, 377 U.S. 713, 739 (1964)). The Court considers the "imminence" of the upcoming elections and the need to give the General Assembly "an opportunity to fashion a constitutionally valid reapportionment plan." *Id.* (internal quotation marks omitted) (quoting *WMCA, Inc. v. Lomenzo*, 377 U.S. 633, 655 (1964)).

13. The Pennsylvania Supreme Court will not order a new reapportionment plan before the next election where "[s]erious disruption of orderly state election processes and basic governmental functions would result from immediate action by any judicial tribunal restraining or interfering with the normal operation of the election machinery at this date." *Id.* at 568–69.

14. The General Assembly must be given an opportunity to correct an unconstitutional reapportionment plan. *Id.* at 568; *Vieth v. Pennsylvania*, 195 F. Supp. 2d 672, 678–69 (M.D. Pa. 2002) (quoting *White v. Weiser*, 412 U.S. 783, 794–95 (1973) ("[R]eapportionment is primarily a matter for legislation consideration and determination, and . . . judicial relief becomes appropriate only

when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having an adequate opportunity to do so.")).

15. The United Constitution vests the power to determine Pennsylvania's congressional districts in the Pennsylvania General Assembly. *Erfer*, 794 A.2d at 330–31 (citing U.S. Const. art. I § 4) ("It is true that the U.S. Constitution has granted our legislature the power to craft congressional reapportionment plans.").

16. "[R]eapportionment is 'the most political of legislative functions,' one not amenable to judicial control or correction save for the most egregious abuses of that power." *Id.* at 334 (quoting *Bandemer*, 478 U.S. at 143).

17. Likewise, when state legislative districts are held contrary to law, the Pennsylvania Constitution provides that the remedy is a remand to the Legislative Reapportionment Commission, not an order by a court. *Holt v. 2011 Legis. Reapportionment Comm'n*, 38 A.3d 711, 721, 756 (Pa. 2012) ("*Holt I*") (citing *Albert v. 2001 Legis. Reapportionment Comm'n*, 790 A.2d 989, 991 (Pa. 2002)).

18. Petitioners have presented no evidence that the General Assembly would be unwilling to enact a new reapportionment plan. *Butcher*, 203 A.2d at 559 & nn.6–7 (quoting *Lucas*, 377 at 716 n.3); *Vieth v. Pennsylvania*, 195 F. Supp. 2d at 678.

19. The General Assembly should be given a "reasonable" and "adequate" opportunity to pass a new reapportionment plan. *Butcher*, 203 A.2d at

569 ("The Legislature should not be denied a reasonable opportunity to enact a new reapportionment plan."); *Vieth v. Pennsylvania*, 195 F. Supp. 2d at 678 ("adequate opportunity").

20. The *Butcher* Court deferred to the General Assembly and gave it almost a full year—from its September 29, 1964 opinion until a September 1, 1965 deadline—to pass a new reapportionment plan. *Butcher*, 203 A.2d at 573.

21. Commissioner Marks offers several alternatives to hold the 2018 elections under new congressional districts, but none can be accomplished without consequences. None can be accomplished without interference with the normal operation of election machinery, at best, or serious disruption of orderly state election processes, at worst. *See id.* at 568–69.

22. A voter may sign a nomination petition for only one candidate per office. 25 Pa. C.S. § 2868. Thus, if a voter is moved to a new congressional district and signs a nomination petition for her old district, not only is her signature invalid, but she cannot sign a petition in her new district.

23. The 2018 election deadlines are specified as a matter of statute in the Pennsylvania Election Code. *See* J. Stip. ¶¶ 130–152. For example, the nomination petition circulation period is provided by 25 Pa. C.S. § 2868.

24. Commissioner Marks cites no authority to move election deadlines without a court order.

25. Petitioners have no right to relief in time for the 2018 election. *See Butcher*, 203 A.2d at 569; *Holt v. 2011 Legis. Reapportionment Comm'n*, 67 A.3d 1211, 1243 (Pa. 2013) ("*Holt II*").

26. "[N]o constitutional violation exists when an outdated legislative map is used, so long as the defendants comply with a reasonably conceived plan for periodic reapportionment." *Garcia v. 2011 Legis. Reapportionment Comm'n*, 938 F. Supp. 2d 542, 550 (E.D. Pa. 2013) (quoting *Reynolds*, 377 U.S. at 583–84); *see also Pileggi v. Aichele*, 843 F. Supp. 2d 584, 592–95 (E.D. Pa. 2012) (denying injunction against use of 2001 plan for the 2012 elections).

27. The Intervenors are engaged in political activities protected by the rights to free expression and free association under the Pennsylvania Constitution. Pa. Const. art. I §§ 7, 20; *see also DePaul v. Commonwealth*, 969 A.2d 536, 546 (Pa. 2009) (citing *Commonwealth v. Tate*, 432 A.2d 1382, 1391 (Pa. 1981)); *Working Families Party v. Commonwealth*, 169 A.3d 1247, 1261 (Pa. Commw. 2017) (quoting *In re Street*, 451 A.2d 427, 432 (Pa. 1982) (internal quotation marks omitted) (emphasis added) ("While *the right to associate for the advancement of political beliefs includes the right to advance a candidate who represents those interests*, . . . the right of association does not encompass the right to nominate as a candidate a particular individual who fails to meet reasonable eligibility requirements . . . .")).

28. Whitehead is representative of Intervenor County Party Committee Chairs. Ex. I-16.

29. Ryan is representative of Intervenor active Republicans. Ex. I-17.

30. Petitioners' relief cannot be granted before the 2018 elections without harming the Intervenors. Because campaigns for the 2018 elections for Congress are already underway and the election process is about to commence, the Court would negate Intervenors' constitutional rights if it orders a new reapportionment plan that removes candidates and voters from their current districts. *See* Findings of Fact ¶¶ 61–64.

31. A laches defense consists of two essential elements: (1) a delay arising from the Petitioners' failure to exercise due diligence; and (2) prejudice to the Intervenors resulting from the delay. *See Stilp v. Hafer*, 718 A.2d 290, 293 (Pa. 1998).

32. Petitioners have delayed in litigating their reapportionment challenge:

- Three congressional elections have been held under the 2011 Plan before Petitioners filed their action on June 15, 2017. Finding of Fact ¶ 5.
- Petitioners' expert relied on data available in 2011 to show the effects of the 2011 Plan. Findings of Fact ¶ 10.
- Petitioners waited until October 11, 2017 to seek the Pennsylvania

Supreme Court's extraordinary jurisdiction. Findings of Fact ¶ 9.

33. Having gone through three election cycles and offering no explanation for their delay in litigating their claims, Petitioners' demand for immediate relief, which would interfere with the electoral process, is not warranted.

34. A delay in bringing a reapportionment challenge is "troubling" and "inexplicable." *Holt I*, 38 A.3d at 723; *see also id.* at 722 ("Even with accelerated briefing and argument, the appeals could not be decided with a reasoned opinion before January 24, 2012. And, obviously, the lateness of the adoption of the Final Plan virtually ensured that no remand could be accomplished without disrupting the primary process.").

35. Petitioners' delay does not entitle them to relief inconsistent with the need to give the General Assembly an opportunity to pass a new reapportionment plan. *Erfer*, 794 A.2d at 330–31 (citing U.S. Const. art. I § 4) ("It is true that the U.S. Constitution has granted our legislature the power to craft congressional reapportionment plans.").

36. The U.S. Supreme Court is currently considering the justiciability of partisan gerrymandering claims under federal law in *Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016), *stayed pending disposition*, 137 S. Ct. 2289 (2017).

37. If the Pennsylvania Supreme Court orders a remedy under Pennsylvania law, and the U.S. Supreme Court's holding in *Gill v. Whitford*

impacts Pennsylvania law, the Pennsylvania Supreme Court may order a new reapportionment plan for a second time before the 2018 elections. A second order would further disrupt the 2018 elections.

38. Ordering a new reapportionment plan before the 2018 elections would cause serious disruption of orderly state election processes and interfere with the normal operation of the election machinery. *Butcher*, 203 A.2d at 568–69. A new reapportionment plan cannot "practically be effectuated" in time for the 2018 elections. *Id.* at 568; *see also Holt I*, 38 A.2d at 721, 761 (concluding that election "disruption was unavoidable" and ordering the unconstitutional plan to remain in effect).

Respectfully submitted,

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