

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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Barbara Diamond, Steven Diamond, Samuel  
Bashioum, Tracy Baton, Nancy Chiswick,  
William Cole, Patrick Costello, Stephen  
Dupree, Ronald Fairman, Joseph Foster,  
Colleen Guiney, Robert Kefauver, Elizabeth  
King, Gillian Kratzer, James Landis, Matthew  
Munsey, Deborah Noel, Zachary Rubin,  
Thomas Spangler, Margaret Swoboda, Susan  
Wood, and Pamela Zidik,

Plaintiffs,

v.

Robert Torres, Acting Secretary of the  
Commonwealth of Pennsylvania, and  
Jonathan Marks, Commissioner of the Bureau  
of Elections, in their official capacities,

Defendants.

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CIVIL ACTION

No. 17-05054

**EXECUTIVE BRANCH DEFENDANTS’ EXHIBITS  
REGARDING THE TIMELINE FOR THE 2018 CONGRESSIONAL ELECTION**

Pursuant to the request of the Panel at the January 11, 2018 status and scheduling conference in this matter, Acting Secretary of the Commonwealth of Pennsylvania Robert Torres and Commissioner of the Bureau of Elections Jonathan Marks, in their official capacities, (together, “Executive Branch Defendants”) hereby submit the following exhibits:

- **Exhibit A:** Notarized Affidavit of Jonathan Marks, submitted as EBD Exhibit 2 at trial in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, No. 261 MD 2017 (Pa. Commw. Ct.) (the “Marks Affidavit”). The Marks Affidavit describes the current timeline of deadlines leading up to the 2018

congressional election, and the ability of the Executive Branch Defendants to adjust those deadlines, if necessary, in response to a court order.

- **Exhibit B:** Excerpt from the Joint Stipulation of Facts filed in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, No. 261 MD 2017 (Pa. Commw. Ct.) on Dec. 8, 2017. The excerpt contains the paragraphs of the Joint Stipulation of Facts that are referenced at ¶ 10 of the Marks Affidavit.

HANGLEY ARONCHICK SEGAL  
PUDLIN & SCHILLER

Dated: January 11, 2018

By: /s/ Michele D. Hangley

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# **EXHIBIT A**

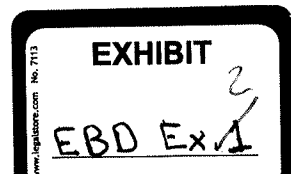
**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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

**AFFIDAVIT OF JONATHAN MARKS**

Jonathan Marks, being duly sworn, deposes and says:

1. I am Commissioner of the Bureau of Commissions, Elections and Legislation (the “Bureau”), a bureau of the Commonwealth’s Department of State (the “Department”).
2. I was appointed to the position of Commissioner in October 2011.
3. I have been with the Bureau since the Fall of 2002.
4. From 2008 to 2011, I served as the Chief of the Division of the Statewide Uniform Registry of Electors.
5. Prior to that, from 2004 to 2008, I served as the Chief of the Division of Elections.
6. I am responsible for overseeing the day to day operations of the Bureau, which include election administration.
7. I have supervised the administration of the Department’s duties in more than 20 regularly scheduled elections and a number of special elections.
8. The next Congressional primary is scheduled for May 15, 2018.



9. The current timeline of deadlines leading up to the May 15 primary is set forth at paragraphs 130-152 of the Joint Stipulation of Facts filed on December 8, 2017.

10. All of the deadlines set forth in paragraphs 130-152 of the Joint Stipulation of Facts are required by federal or state law.

11. The earliest deadline on the current election calendar is February 13, 2018, the first day for circulating and filing nomination petitions. *See* Joint Stipulation of Facts ¶ 131.

12. In order to prepare for this February 13 deadline, it would be highly preferable to have all Congressional district boundaries finalized and in place by January 23, 2018, which would give the Department three weeks to prepare.

13. However, should there be a Court order directing that a new plan be put in place, and that plan is not ready until after January 23, it may still be possible for the 2018 primaries to proceed as scheduled using the new plan.

14. Through a combination of internal administrative adjustments and Court-ordered date changes, it would be possible to hold the primaries on the scheduled May 15 date even if a new plan is not put into place until on or before February 20, 2018.

15. First, the current elections schedule gives the Counties ten weeks between the last date for circulating and filing nomination petitions (currently March 6) and the primary election date to prepare for the primary election.

16. Based on my experience, the Counties could fully prepare for the primary election in six to eight weeks.

17. Therefore, I believe that the close of the nomination petitions period could be moved back two weeks to March 20, without compromising the elections process in any way.

18. Second, if the Court were to order a time period for circulating and filing nomination petitions that lasted two weeks, instead of three, the nominations period could start on March 6.

19. Third, as stated above, the Department would normally need three weeks of preparation time before the first date for filing and circulating nomination petitions.

20. However, with the addition of staff and increased staff hours, it would be possible for the Department to complete its preparations in two weeks instead of three.

21. Accordingly, if the first date for filing and circulating nomination petitions was moved to March 6, as described above, the Department would need to have a final plan in place by approximately February 20, 2018.

22. Should there be a Court order directing that a new plan be put in place, and that plan is not ready until after February 20, 2018, it would also be possible, if the Court so ordered, to postpone the 2018 primary elections from May 15 to a date in the summer of 2018.

23. There would be two options under this scenario: (1) the Court could postpone all of the primary elections currently scheduled for May 15; or (2) the Court could postpone the Congressional primary election alone. Either option would require a primary date no later than July 31, 2018.

24. Depending on the date of the postponed primary election, the date by which the new plan would be put in place could be as late as the beginning of April 2018.

25. Postponement of the primary in any manner would not be preferable, because it would result in significant logistical challenges for County election administrators. If postponement takes place, for administrative and cost savings reasons, the Department's preferred option would be postponement of the entire primary.


26. Postponing the Congressional primary alone would require the administration of two separate primary elections (one for Congressional seats and one for other positions), which would result in an additional expenditure of a significant amount of public funds.

27. The cost of holding a single primary in 2018 would be approximately \$20 million. If two primaries are held, each will cost approximately \$20 million.

28. For each primary, Pennsylvania's 67 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. The other costs of the primary are paid by the Counties. This is similar to the way that costs are allocated in special Congressional elections.

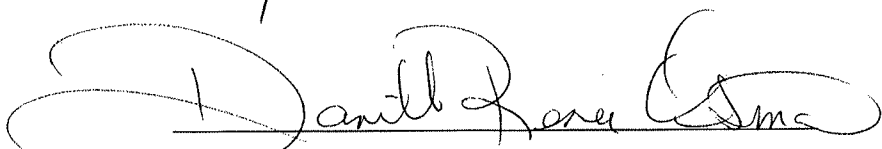
29. Should the Court wish for more details regarding the costs of postponing a primary or the timeline leading up to any primary date that the Court selects, I stand ready to provide them.

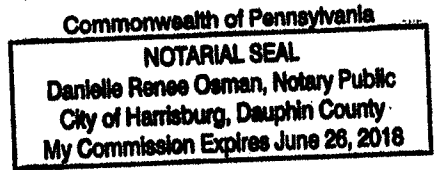
30. The Department will make every effort to comply with any schedule that the Court puts in place.

  
Jonathan Marks

Sworn to and subscribed before me

This 14<sup>th</sup> day of December, 2017

  
Notary Public



# **EXHIBIT B**



**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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)  
League of Women Voters of Pennsylvania, *et al.*, )  
)  
*Petitioners,* ) **No. 261 MD 2017**  
)  
v. )  
)  
The Commonwealth of Pennsylvania, *et al.*, )  
)  
*Respondents.* )  

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**JOINT STIPULATION OF FACTS**

Pursuant to paragraph 3 of the Court’s November 17, 2017 Supplemental Scheduling Order, Petitioners, Respondents, and Intervenor-Respondents hereby stipulate to the following facts:

**BACKGROUND**

1. Following the nationwide census that is mandated every ten years, each state is responsible for drawing its congressional districts based on how many districts the Department of Commerce assigns the state relative to the state’s population.
2. The decision to award a particular state a certain number of seats is known as apportionment.
3. Congressional seats were reapportioned in Pennsylvania after the 2010 Census.

122. The 2011 Plan paired two incumbents, Democratic representatives Mark Critz and Jason Altmire. No other incumbents were paired.

123. Critz had been in the 12th Congressional District and Altmire had been in the 4th Congressional District under the prior districting plan.

124. In the 2012 election cycle, Critz defeated Altmire in the Democratic primary.

125. In the 2012 election cycle, Critz lost to Republican Keith Rothfus in the general election.

126. Rothfus has won reelection in the 12th Congressional District in every election since.

127. In the 2016 elections, the 6th and 7th Congressional Districts re-elected Republican Congressman while voting for Hillary Clinton for President.

128. In the 2016 elections, the 17th Congressional District re-elected a Democratic Congressman while voting for Donald Trump for President.

129. 18 Democrats from the Pennsylvania House of Representatives from the Philadelphia area voted in favor of the 2011 Plan.

#### **FACTS RELATING TO 2018 PENNSYLVANIA ELECTIONS SCHEDULE**

130. Under the current election schedule, Pennsylvania's 2018 general primary election is scheduled for May 15, 2018. *See* 25 P.S. § 2753(a).

131. Under the current election schedule, the first day to circulate and file nomination petitions is February 13, 2018. *See* 25 P.S. § 2868.

132. Under the current election schedule, the last day to circulate and file nomination petitions is March 6, 2018. *See* 25 P.S. § 2868.

133. Under the current election schedule, the first day to circulate and file nomination papers is March 7, 2018. *See* 25 P.S. § 2913(b).

134. Under the current election schedule, the last day for withdrawal by candidates who filed nomination petitions is March 21, 2018. *See* 25 P.S. § 2874.

135. Under the current election schedule, remote military-overseas absentee ballots must be sent by March 26, 2018. *See* 25 Pa.C.S. § 3508(b)(1).

136. Under the current election schedule, all remaining military-overseas absentee ballots must be sent by March 30, 2018. *See* 52 U.S.C. § 20302(a)(8)(A); 25 Pa.C.S. § 3508(a)(1).

137. Under the current election schedule, the last day for voters to register before the primary election is April 16, 2018. *See* 25 Pa.C.S. § 1326(b).

138. Under the current election schedule, the last day to apply for a civilian absentee ballot is May 8, 2018. *See* 25 P.S. § 3146.2a(a).

139. Under the current election schedule, the last day for County Boards of Elections to receive voted civilian absentee ballots is May 11, 2018. *See* 25 P.S. § 3146.6(a).

140. Under the current election schedule, the first day for voters to register after the primary election is May 16, 2018. *See* 25 Pa.C.S. § 1326(c)(2)(iii).

141. Under the current election schedule, the last day for County Boards of Elections to receive voted military-overseas ballots for the primary election is May 22, 2018. *See* 25 Pa.C.S. § 3511(a).

142. Under the current election schedule, the last day to circulate and file nomination papers is August 1, 2018. *See* Consent Decree, *Hall v. Davis*, No. 84-1057 (E.D. Pa. June 14, 1984).

143. Under the current election schedule, the last day for withdrawal by minor political party and political body candidates who filed nomination papers is August 8, 2018. *See* 25 P.S. § 2937.

144. Under the current election schedule, the last day for withdrawal by candidates nominated by a political party is August 13, 2018. *See* 25 P.S. § 2938.1.

145. Under the current election schedule, remote military-absentee ballots must be sent by August 28, 2018. *See* 25 Pa.C.S. § 3508(b)(1).

146. Under the current election schedule, all remaining military-overseas absentee ballots must be sent by September 21, 2018. *See* 52 U.S.C. § 20302(a)(8)(A); 25 Pa.C.S. § 3508(a)(1).

147. Under the current election schedule, the last day for voters to register before the November election is October 9, 2018. *See* 25 Pa.C.S. § 1326(b).

148. Under the current election schedule, the last day to apply for a civilian absentee ballot is October 30, 2018. *See* 25 P.S. § 3146.2a(a).

149. Under the current election schedule, the last day for County Boards of Elections to receive voted civilian absentee ballots is November 2, 2018. *See* 25 P.S. § 3146.6(a).

150. Under the current election schedule, Pennsylvania's 2018 general election is scheduled for November 6, 2018. *See* Pa. Const. Art. VII, § 2; 25 P.S. § 2751.

151. Under the current election schedule, the first day for voters to register after the General Election is November 7, 2018. *See* 25 Pa. C.S. § 1326(c)(2)(iii).

152. Under the current election schedule, the last day for County Boards of Elections to receive voted military-overseas ballots for the general election is November 13, 2018. *See* 25 Pa.C.S. § 3511(a).

153. In the year prior to the November 2010 elections, a majority of Representatives of the Pennsylvania House of Representatives were Democrats.

#### **ADDITIONAL FACTS**

154. In the year after the November 2010 elections, a majority of Representatives of the Pennsylvania House of Representatives were Republicans.

155. The following are the home addresses for each of the 17 current Pennsylvania members of the United States House of Representatives:

Dated: December 8, 2017

Respectfully submitted,

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*Counsel for Intervenors*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2018, I caused a true and correct copy of the foregoing Exhibits Regarding the Timeline for the 2018 Congressional Election to be electronically filed pursuant to the court's electronic court filing system, and that the filing is available for downloading and viewing from the electronic court filing system by counsel for all parties.

/s/ Michele D. Hangle

Michele D. Hangle