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

Barbara Diamond, *et al.*,	:	
	:	
Plaintiffs,	:	**Civil Action No. 5:17-cv-05054**
	:	
v.	:	
	:	
Robert Torres, *et al.*,	:	
	:	
Defendants.	:	
	:	

REPLY IN FURTHER SUPPORT OF MOTION TO STAY OR ABSTAIN

Having failed to file their complaint until November 9, 2017, six years and three elections after Pennsylvania's 2011 Plan[1] was passed, Plaintiffs unsurprisingly find themselves last in line—4 years behind plaintiffs in *Benisek v. Lamone*, No. 13-cv-03233 (D. Md. Nov. 5, 2013); 2 years and 4 months behind plaintiffs in *Whitford v. Gill*, No. 15-cv-00421 (W.D. Wisc. July 8, 2015); 1 year and 3 months behind plaintiffs in *Common Cause v. Rucho*, No. 1:16-cv-1026 (M.D.N.C. Aug. 5, 2016); 5 months behind petitioners in *League of Women Voters v. Commonwealth*, No. 159 MM 2017 (Pa.) ("*LWV*"); and even a month behind plaintiffs in *Agre v. Wolf*, No. 2:17-cv-04392 (E.D. Pa. Oct. 2, 2017) ("*Agre*"). Dissatisfied with their place in line, Plaintiffs continue to demand that this Court completely overturn the efficient and orderly administration of justice and hear their claims immediately. But Plaintiffs (and their now-allies, Executive Defendants) offer no good reason for this Court to do so.

First, today the Pennsylvania Supreme Court struck down the 2011 Plan as unconstitutional and enjoined its use for the upcoming 2018 elections. Moreover, the Pennsylvania Supreme Court: (1) afforded the General Assembly and the Governor until

[1] Unless otherwise noted herein, capitalized terms shall have the meanings afforded such terms in Legislative Defendants' Memorandum of Law in Support of their Motion to Stay or Abstain (ECF No. 69-2).

February 15, 2018 to present it with an alternative Congressional districting plan for use in the upcoming 2018 elections; and (2) ruled that absent a duly enacted plan being presented to the Court by February 15, 2018, the Court will craft its own plan based upon the record before it. Order, No. 159 MM 2017 (Jan. 22, 2018) (attached as **Exhibit A**). In other words, the Pennsylvania Supreme Court's decision in *LWV* has, at least for the time being, mooted this case. This Court is required to defer to Pennsylvania's legislative, executive and judicial branches where they have "begun to address that highly political task itself." *Growe v. Emison*, 507 U.S. 25, 33 (1993).

Second, there is no reason for this Court to decide this case without the guidance of the U.S. Supreme Court's forthcoming decisions in *Gill v. Whitford*, No. 16-1161 (U.S.) and *Benisek v. Lamone*, No. 17-333 (U.S.), among others. While Plaintiffs devote extensive space in their Opposition (ECF No. 73, hereafter "Opp.") attempting to distinguish their Complaint from the claims in *Gill* and *Benisek*, they cannot. Moreover, that approach misses the forest for the trees. The simple, incontrovertible truth is that there are myriad ways in which the Supreme Court's decisions in *Gill* and *Benisek* could significantly affect the disposition of this case. The Supreme Court may rule that all partisan gerrymandering claims are nonjusticiable; it may articulate the appropriate standards to evaluate those claims; or it may simply announce general principles that lower courts should follow in fashioning their own standards.

A stay is further warranted in light of two additional pending U.S. Supreme Court appeals: *Common Cause v. Rucho*, No. 17A745 (U.S.) (stay order issued January 18, 2018) and *Agre*, No. 17-631 (U.S.) (appeal filed January 18, 2018). Like Plaintiffs here, plaintiffs in both of these cases advance claims under the Elections Clause of the U.S. Constitution. *Rucho* also involves claims under the First and Fourteenth Amendment that are substantially similar to the

claims here. A stay in the instant action is particularly appropriate in light of the U.S. Supreme Court's recent 7-2 vote implementing an emergency stay of *Rucho*. Order, No. 17-745 (Jan. 18, 2018) (attached as **Exhibit B**).

At bottom, Plaintiffs and Executive Defendants have nothing more than their repeated refrain that absent their preferred schedule, "the citizens of Pennsylvania will have to live under an unconstitutional map for yet another election." Opp. at 2. But that simply presupposes this case's outcome. Stripped of that assumption, there is no prejudice. And Plaintiffs' interests are not the only ones at stake. Legislative Defendants have a due process right to a fair trial, which requires them to have adequate time to prepare a substantive defense to Plaintiffs' claims. The weighty issues presented in this case deserve sufficient time to ensure the right result—not merely a hasty result, borne of a dubious, expedited process. Staying this matter will neither deny Plaintiffs their day in court nor prejudice them. But adopting Plaintiffs' proposed schedule will substantially prejudice Legislative Defendants, the Commonwealth of Pennsylvania, and its voters.

For these additional reasons, more fully set forth below, the Court should stay this matter.

I. THE COURT SHOULD STAY AND ABSTAIN FROM PROCEEDING WITH THIS CASE PENDING *LEAGUE OF WOMEN VOTERS*

Plaintiffs and Executive Defendants cannot dispute that, if the Pennsylvania Supreme Court invalidates the 2011 Plan in *LWV*, this case is moot. Counsel for Plaintiffs as well as Executive Defendants conceded as much at the Scheduling Conference in this matter:

> THE COURT: [D]o you agree that that would moot this case?
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> MR. SPIVA: …. [I]f the Pennsylvania Supreme Court … to answer your question directly, Your Honor, were to invalidate the map under the Pennsylvania Constitution and order a remedy then I think at that point it would make sense to -- for this court to reevaluate whether it wanted to stay this case until that process was completed and this case may go away. That's -- that is certainly possible, Your Honor.

> …
>
> MR. ARONCHICK: Well, first of all I think this case is separate from the *League of Women Voters* [case]….
>
> THE COURT: True enough, but it's the same map at issue; right? So – I mean, it's unavoidable … if there is a finding for the plaintiffs there on a liability side and some remedy is given we'd have to at a minimum we'd have to have everything on hold here, because we wouldn't know what map we were looking at; right?
>
> MR. ARONCHICK: Well, that presupposes a certain outcome that may or may not occur.

(Trans. of 1/11/2018 at 11:13-14, 11:21-12:3, 16:22-23, 17:4-5, 17:7-14; *see* Opp. at 4).

This has now happened. Today the Pennsylvania Supreme Court struck down the 2011 Plan as unconstitutional and enjoined its use for the upcoming 2018 elections. Moreover, the Pennsylvania Supreme Court: (1) afforded the General Assembly and the Governor until February 15, 2018 within which to present it with an alternate Congressional districting plan for use in the upcoming 2018 elections; and (2) ruled that absent a duly enacted plan being presented to the Court by February 15, 2018, the Court will craft its own plan based upon the record before it. (*See* **Exhibit A**). In other words, the Pennsylvania Supreme Court's decision in *LWV* has, at least for the time being, mooted this case.

As such, this Court should adhere to the clear mandate of the U.S. Supreme Court: "the Court has **required** federal judges to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself." *Growe*, 507 U.S. at 33 (emphasis added). And, while Plaintiffs and Executive Defendants now contend that this mandate only applies where state courts "have *already invalidated a redistricting plan,*"[2] (Opp. at 5 (emphasis in original); *see also* Exec.

[2] Plaintiffs seem to be of two minds concerning the Plan's "invalidity." On one hand, they claim that because no state court has invalidated the Plan, *Growe*'s mandate is inapplicable. (Opp. at 5). But, elsewhere Plaintiffs act as if

Defs.' Resp. in Opp. To Legis. Defs.' Mot. to Stay or Abstain ("EDs' Resp.") at 2-3), such contention not only ignores the plain language of *Growe* and that federal district courts have, in fact stayed federal litigation *before* state courts have invalidated a redistricting plan, *see, e.g., Rice v. Smith*, 988 F. Supp. 1437, 1438, 1440 (M.D. Ala. 1997) (twice staying federal litigation to allow state court to first consider constitutionality of state reapportionment plan), but is simply irrelevant given that the 2011 Plan has now been invalidated, *see also Lance v. Davidson*, No. Civ.A. 03-Z-2453(CBS), 2004 WL 2359555, at *1 (D. Colo. Oct. 14, 2004) (noting district court stayed redistricting challenge pending outcome of appeal to U.S. Supreme Court from state Supreme Court decision).

II. THE COURT SHOULD STAY THIS CASE PENDING *GILL* AND *BENISEK*

Additionally, the U.S. Supreme Court's dispositions of *Gill* and *Benisek* in the coming months are highly likely to directly affect how this Court should address the claims advanced by Plaintiffs. Nothing in Plaintiffs' or Executive Defendants' Oppositions suggests otherwise.

First, Plaintiffs' contention that the Supreme Court is "extraordinarily unlikely" to find all partisan gerrymandering claims nonjusticiable is curious given that a near-majority of the U.S. Supreme Court came to that very conclusion in *Vieth v. Jubelirer*, 541 U.S. 267, 281 (2004). And even Justice Kennedy, whom Plaintiffs cite approvingly, acknowledged in his concurring opinion that "[t]here are … weighty arguments for holding cases like these to be nonjusticiable; and those arguments may prevail in the long run." *Id.* at 309. Moreover, although the Supreme Court has yet to overturn its determination that partisan gerrymandering claims are justiciable in theory, it has continued to struggle to adopt any standard to evaluate such claims in practice. *See, e.g.*, *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006) (producing

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the Plan has already been invalidated so as to argue that this Court must act quickly so that this case can be decided in advance of the 2018 elections. *See, e.g., id.* at 3 ("And, as other similarly situated courts have recognized, a delay that has the effect of subjecting voters to *unconstitutional districting plans for another election* …").

six separate opinions); *see also Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, 827 F.3d 333, 348 (4th Cir. 2016); *Shapiro v. McManus*, 203 F. Supp. 3d 579, 594 (D. Md. 2016); *Ala. Legislative Black Caucus v. Alabama,* 988 F. Supp. 2d 1285, 1296, (M.D. Ala. 2013). Given the above, a decision by the Supreme Court that partisan gerrymandering claims are nonjusticiable is hardly implausible or far-fetched.[3]

Second, Plaintiffs' attempts to distinguish their claims from those presented in *Gill* and *Benisek* are unpersuasive. For example, while Plaintiffs attempt to contrast their First Amendment claim with the First and Fourteenth Amendment standard adopted by the *Gill* district court, (*see* Opp. at 7-8), they neglect to mention that they also advance their own "*Whitford*-style First and Fourteenth Amendment claim," (Pls.' Mem. in Supp. of Mot. for Reconsideration ("Recon. Memo."), ECF No. 43-1, at 9)—a point that did not escape this Court when granting its initial stay in this action on November 22, 2017, (Order, ECF No. 40). Similarly, Plaintiffs strain to distinguish their First Amendment viewpoint discrimination claim from the First Amendment claim advanced in *Benisek*, but can do no better than to note that they will employ quantitative and statistical evidence and challenge more than one district. (Opp. at 8). But Plaintiffs cannot escape that they rely on the same basic legal theory suggested by Justice Kennedy's concurrence in *Vieth*. *Compare id.* ("Accordingly, Plaintiffs assert the same First Amendment framework set forth by Justice Kennedy in *Vieth*: 'if a court were to find that a State did impose burdens and restrictions on groups or persons by reason of their views, there

[3] Plaintiffs suggest that this case should proceed because, in Plaintiffs' view, "[i]n elections cases, the Supreme Court has generally proceeded by articulating a workable principle that lends itself to a manageable test, while allowing the lower courts to adapt and refine that test over time." (Opp. at 11). But the U.S. Supreme Court has yet to articulate such a workable principle or manageable test for partisan gerrymandering claims. In the absence of such guidance, leaving it entirely in the hands of lower courts does not work. As the *Vieth* plurality observed, "lower courts were set wandering in the wilderness for 18 years not because the *Bandemer* majority thought it a good idea, but because five Justices could not agree upon a single standard, and because the standard the plurality proposed turned out not to work." 541 U.S. at 303.

would likely be a First Amendment violation, unless the State shows some compelling interest.'") *with* Second Am. Compl. ¶¶ 32-34, 37, *Benisek*, No. 1:13-cv-03233 (D. Md. Mar. 3, 2016) (quoting the same passage and articulating the same First Amendment framework).

Plaintiffs attempt to draw as many distinctions without a difference as they can between their purported standards and methodologies and those adopted by the district courts in *Gill* and *Benisek* is unavailing and disingenuous. As Legislative Defendants previously demonstrated, a side-by-side comparison of Plaintiffs' First Amended Complaint and the *Gill* complaint demonstrates that their basic factual and constitutional claims *are identical*. (Legis. Defs.' Mem. of Law in Supp. of Their Mot. to Stay or Abstain, ECF 69-2, at 8-9). Plaintiffs do not and cannot rebut this fact. And the brief redo above of this same exercise demonstrates that Plaintiffs' First Amendment claim is substantially similar to the one advanced in *Benisek*.

The fact is that all partisan gerrymandering plaintiffs, including Plaintiffs here, start from substantially the same factual and constitutional claims. While each set of plaintiffs might rely on slightly different metrics or propose slightly different standards, the Supreme Court's review is not confined to those metrics and standards. *See, e.g.*, *Lopez v. Wilson*, 426 F.3d 339, 363 (6th Cir. 2005) ("Neither state supreme courts [n]or the Supreme Court of the United States exist merely to correct errors of the lower courts, but rather sit to address other matters of larger public import."). In its review, the Supreme Court will inevitably engage with the basic factual and constitutional claims underpinning these partisan gerrymandering cases. As a result, the simple, incontrovertible truth is that there are myriad ways in which the Supreme Court's upcoming decisions will impact the instant case: the Supreme Court may rule that all partisan gerrymandering claims are nonjusticiable; it may adopt one of the standards brought before it or

may articulate its own standards; or it may simply announce general principles that lower courts should follow in fashioning their own standards.[4]

As Plaintiffs acknowledge, "the Supreme Court has generally proceeded by articulating a workable principle that lends itself to a manageable test, while allowing the lower courts to adapt and refine that test over time." Opp. at 11. And yet, Plaintiffs and Executive Defendants irrationally resist allowing the Supreme Court the few short months (at most) it needs to articulate that workable principle (if any) to guide this Court. There is simply no good reason why Legislative Defendants, this Court, and the Commonwealth of Pennsylvania should be compelled to litigate this case in the dark when the Supreme Court will have numerous opportunities in the next few months to illuminate the way.

III. THE COURT SHOULD ALSO STAY THIS CASE PENDING *AGRE* AND *RUCHO*

Plaintiffs and Executive Defendants make much ado about their contention that no pending U.S. Supreme Court case will address their Elections Clause claim. This contention is errant; two pending cases will likely impact this claim. *See Common Cause v. Rucho*, Nos. 1:16-CV-1026, 1:16-CV-1164, 2018 WL 341658, at *71-*72 (M.D.N.C. Jan. 9, 2018) (finding that the North Carolina General Assembly exceeded its delegated authority under the Elections Clause); Memorandum at 1, *Agre* (E.D. Pa. Jan. 10, 2018) (Smith, J.) ("Plaintiffs allege a direct violation of the 'Elections Clause.'"); *see also* Order, ECF No. 40 (Nov. 22, 2017) (noting that Plaintiffs' Elections Clause claim was duplicative of the claim in *Agre*).

[4] Executive Defendants argue that neither case will affect "the need for discovery in this case". (EDs' Resp. at 4). Of course they will. Even setting aside the possibility that the Supreme Court finds all partisan gerrymandering claims nonjusticiable (obviating the need for discovery), *any* decision that defines the legal principles and standards to be employed in assessing claims predicated upon the Constitutional provisions underpinning Plaintiffs' claims will necessarily affect the scope and contours of discovery required to determine whether Plaintiffs' claims satisfy those principles and standards.

Moreover, *Rucho* also involves First Amendment claims similar to Plaintiffs', *compare* Opp. at 8 *with Rucho*, 2018 WL 341658, at *64 (setting forth a three-part test requiring plaintiffs to prove discriminatory intent, burden on plaintiffs' political speech and associational rights, and a causal connection between the intent and burden), and Fourteenth Amendment claims similar to Plaintiffs', *compare* Recon. Memo. at 4-5 ("Plaintiffs will demonstrate that the 2011 Plan was designed with discriminatory intent, that the 2011 Plan causes a large and durable discriminatory effect, and that there is no valid justification for the effect based upon legitimate state prerogatives") *with Rucho*, 2018 WL 341658, at *32, *55, *57 (adopting a "three-step framework governing partisan gerrymandering claims under the Equal Protection Clause" that requires plaintiffs to establish discriminatory intent, a "durable" discriminatory effect, and no "legitimate redistricting objective"). And *Rucho* even relies on the same "computer simulation methods" (and one of the same experts) that Plaintiffs tout. *See* 2018 WL 341658, at *36-*41.

Additionally, that the U.S. Supreme Court granted a stay in *Rucho* pending appeal only further compels a similar stay in the instant case. Order, No. 17-745 (Jan. 18, 2018) (**Exhibit B**); *see also Hollingsworth v. Perry*, 558 U.S. 183, 190 (2009) (holding that to qualify for a stay, applicant must show *inter alia* "a fair prospect that a majority of the Court will vote to reverse the judgment below" and irreparable harm). Plainly, the Supreme Court's stay in *Gill* was no fluke; at this point, it has stayed each lower court decision that has ordered relief on a partisan gerrymandering claim. *See id.*; *Gill*, 137 S. Ct. 2289 (Jun. 19, 2017). This Court should heed the U.S. Supreme Court's clear message and defer consideration of the case at hand until it receives further guidance.

IV. PLAINTIFFS' PROPOSED SCHEDULE IS UNWORKABLE

In the face of these compelling reasons for a stay, Plaintiffs and Executive Defendants are left with nothing but their repeated refrain that delay will "subject[] voters to unconstitutional

districting plans for another election." Opp. at 3. But, that presupposes this case's outcome. Stripped of that assumption, Plaintiffs cannot identify any prejudice.

In contrast, Plaintiffs' proposed schedule—which requires completing trial in early February—plainly leaves insufficient time to fully and fairly litigate this case. Just in terms of discovery: Plaintiffs' Initial Disclosures (attached as **Exhibit C**) demonstrate that Plaintiffs seek extensive discovery from, *inter alia*, the Pennsylvania House Republican Caucus, Pennsylvania Senate Republican Caucus, and 32 named members and staff of the Pennsylvania General Assembly. (*See also* Subpoena, ECF No. 31-2). And less than two days after they claimed that they "are willing to reasonably limit the scope of discovery," Plaintiffs have changed position and now insist that they "must be permitted to conduct full and robust discovery … so that this Court can render its decision based on a complete record that encompasses all pertinent facts." (*See* Mem. in Supp. of Plaintiffs' Mot. to Compel Docs. Produced in *Agre v. Wolf*, ECF No. 79, at 2). Even if Plaintiffs ultimately seek only a fraction of what they have indicated previously, they will have gone far beyond what was sought and produced in *Agre* and *LWV*.[5] Two weeks is simply not enough time to collect, review, and produce tens, if not hundreds, of thousands of potentially responsive documents, litigate the complex issues of legislative and attorney-client privilege that may flow from those productions, depose potentially dozens of witnesses (there are 18 plaintiffs in this case, plus the aforementioned potential witnesses disclosed by Plaintiffs), prepare and produce responsive expert reports, and depose the three experts Plaintiffs have already retained in this case.

Plaintiffs' position on experts is particularly troubling. Plaintiffs contend that a hyper-abbreviated schedule for expert discovery is not prejudicial because Legislative Defendants

[5] Plaintiffs in *Agre* only obtained discovery from Legislative Defendants, and petitioners in *LWV* were precluded from obtaining discovery from the General Assembly. Notice of Additional Authority, *Agre*.

engaged experts in other cases who are allegedly "familiar" with Plaintiffs' experts' academic work, but Plaintiffs know full well that a review of academic work is not the same as responding to an expert report prepared for litigation.[6] (*See* Opp. at 16). No doubt Plaintiffs' experts created sophisticated mathematical, statistical, and computer simulation models and analyzed a plethora of Pennsylvania-specific data. The analysis, data, process, and conclusions of those experts will no doubt be highly tailored for this case and require significant time to vet. What is worse, Plaintiffs produced their experts' reports to the Executive Defendants in November 2017 but continue to withhold them from Legislative Defendants. (*See* **Exhibit D** (counsel communications)). Plaintiffs' actions clearly demonstrate that their true goal is to prejudice Legislative Defendants' ability to defend the 2011 Plan.

Plaintiffs' position that Legislative Defendants should be forced to try this case on such a compressed timetable because two other courts required them to do so (in *Agre* and *LWV*) is similarly unavailing. The breakneck speed with which those cases progressed caused considerable harm to Legislative Defendants, not the least of which was leaving their experts without adequate time to prepare rebuttal opinions (only 15 days in *Agre* and just one week in *LWV*). Thus, rather than showing that expedited adjudication of partisan gerrymandering claims is workable, both *Agre* and *LWV* exemplify the problems with moving too quickly on claims that involve complicated expert analysis and testimony, difficult legal issues including privilege, and standards that have yet to be identified.

But it will not just be Legislative Defendants who will be prejudiced. Plaintiffs' and Executive Defendants' cavalier insistence that Pennsylvania's 2018 Congressional elections be upended to accommodate Plaintiffs' tardiness will greatly harm voter interests: Potential

[6] Also, this assumes that Legislative Defendants will engage the same experts. Legislative Defendants are entitled time to find and retain the most appropriate experts for this case.

candidates will not know if and where to run; incumbents will not know who their constituents will be; political parties will be disrupted in their ability to manage endorsements and organize supporters; and voters will not know who their candidates are. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) ("Court order affecting elections ... can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase."). Plaintiffs are not the only parties with an interest in this Congressional map. While they dawdled for six years, countless other parties were investing time, money, and other resources in the 2018 Congressional elections in reliance on the 2011 Plan.[7] Plaintiffs should not be permitted to subordinate the interests of all those parties and compel them and the Court to participate in a fire drill of Plaintiffs' creation.

Finally, Plaintiffs' proposed schedule is not just difficult and prejudicial; it is almost certainly futile. Plaintiffs seek an expedited schedule in the hope of having the 2011 Plan declared unconstitutional and having a new map in place for the 2018 elections, but they are simply too late (and this was before today's decision by the Pennsylvania Supreme Court in *LWV*). Even if the Congressional primary was to be moved to later this summer (potentially costing the Commonwealth an additional $20 million and considerably disrupting the election process and causing voter confusion[8]), Executive Defendants have indicated they would still need a map by the first week of April at the latest—in just over two months. (EDs' Resp. at 5). In those two months: the parties must be able to conduct and complete extensive discovery, involving potentially hundreds of thousands of documents and dozens of depositions; the parties

[7] Intervenors in *LWV* compellingly detail, at length, the impact that delaying and/or changing Pennsylvania's Congressional districts will have on voters, political organizations, and candidates. (*See generally* Brief for Intervenors, *League of Women Voters v. Commonwealth*, No. 261 MD 2017 (Pa. Jan. 10, 2018)).

[8] "Postponing the Congressional primary alone would require the administration of two separate primary elections …. [E]ach will cost approximately $20 million." Marks Affidavit, ECF No. 70, ¶¶ 26-27. Meanwhile, postponing the entire primary will upset not only the 2018 *Congressional* elections, but also Pennsylvania's state and local elections as well.

and the Court must resolve numerous complicated discovery disputes and other pretrial motions and then conduct trial; the Court must then have reasonable time to render its decisions; and finally, assuming *arguendo* that it finds the 2011 Plan unconstitutional, there must be sufficient time for the General Assembly to go through the extensive process of drawing and passing a map through the House and Senate and securing the Governor's signature. It is unrealistic to expect all of that to occur in two months' time.

The only alleged harm to Plaintiffs by granting a stay is that the 2018 elections will proceed under the very same districts that Plaintiffs have failed to challenge for the last three election cycles. Even if *laches* does not bar Plaintiffs' claims entirely, it should bar their request for an expedited schedule. Because it is impracticable that any decision this Court renders could impact the 2018 elections, there is no reason not to grant a stay in light of today's Pennsylvania Supreme Court decision in *LWV* and pending the decisions of the U.S. Supreme Court in *Whitford*, *Benisek*, *Agre* and *Rucho*.

Date: January 22, 2018

Respectfully submitted,

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