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

JOE GARCIA, FERNANDO QUILES, DALIA RIVERIA MATIAS,	:	
Plaintiffs,	:	
v.	:	**CIVIL ACTION**
2011 LEGISLATIVE REAPPORTIONMENT COMMISSION and CAROL AICHELE, in Her Capacity as Secretary of the Commonwealth of Pennsylvania, and as Chief Election Officer of the Commonwealth of Pennsylvania,	:	**NO. 12-0556 RBS**
Defendants.	:	

MOTION OF SENATOR DOMINIC PILEGGI FOR LEAVE TO FILE MEMORANDUM AS AMICUS CURIAE

Senator Dominic Pileggi moves this Court for leave to file the accompanying memorandum concerning the Motion for Preliminary Injunction filed by Joe Garcia, Fernando Quiles, and Dalia Riveria Matias, and in support thereof states as follows:

1. Dominic Pileggi is a Pennsylvania State Senator, Majority Leader for the Senate of the Commonwealth of Pennsylvania, and a member of the Commonwealth's Legislative Reapportionment Commission, a Defendant in this matter.

2. In Senator Pileggi's official capacities—and in defense of the constitutional right and obligation of the Commonwealth of Pennsylvania's Legislative Reapportionment Commission and Supreme Court to adopt and approve a legislative reapportionment plan and address all attendant issues unfettered in the first instance—Senator Pileggi respectfully requests leave to submit the attached brief *amicus curiae* in this proceeding to urge this Court

to deny Plaintiffs' Motion in deference to the reapportionment process already underway before the Commonwealth's Legislative Reapportionment Committee and Supreme Court, which process "is primarily the duty and responsibility of the State through is legislature or other body, rather than of a federal court." *Chapman v. Meier*, 420 U.S. 1, 27 (1975).

4. The decision to permit an *amicus curiae* to participate in a pending action is within the broad discretion of the district court. *Waste Mgt. of Pa., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995). Pertinently, a court may grant leave to appear as an *amicus* if the information offered is "timely and useful." *Id.*; *Yip v. Pagano*, 606 F. Supp. F. Supp. 1566, 1568 (D.N.J. 1985), *aff'd mem.*, 782 F.3d 1033 (3d Cir.), *cert. denied*, 476 U.S. 1141 (1986).

5. Given the briefing schedule already established in this matter, no party will be prejudiced by Senator Pileggi's participation as *amicus curiae*, and Senator Pileggi's submission of this *amicus* brief will not delay resolution of this action.

Dated: July 16, 2012

Respectfully submitted,

BLANK ROME LLP

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CERTIFICATE OF SERVICE

I, William R. Cruse, hereby certify that a copy of the foregoing Motion Of Senator Dominic Pileggi For Leave To File Memorandum As Amicus Curiae was served this 16th day of July, 2012 by electronic ECF filing upon the following:

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ORDER GRANTING MOTION FOR LEAVE

AND NOW, this ___ day of July 2012, upon consideration of Senator Dominic Pileggi's Motion for Leave to File Memorandum as Amicus Curiae, IT IS HEREBY ORDERED and DECREED that the motion is GRANTED.

BY THE COURT:

_____
R. Barclay Surrick, U.S.D.J.

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
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JOE GARCIA, FERNANDO QUILES, DALIA RIVERIA MATIAS,	:	
Plaintiffs,	:	
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2011 LEGISLATIVE REAPPORTIONMENT COMMISSION and CAROL AICHELE, in Her Capacity as Secretary of the Commonwealth of Pennsylvania, and as Chief Election Officer of the Commonwealth of Pennsylvania,	:	NO. 12-0556 RBS
Defendants.	:	

MEMORANDUM OF LAW OF SENATOR DOMINIC PILEGGI AS *AMICUS CURIAE* CONCERNING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Senator Dominic Pileggi, by and through his attorneys, Blank Rome LLP, states as follows as *amicus curiae* in this matter:

I. STATEMENT OF INTEREST OF AMICUS CURIAE

Dominic Pileggi is a Pennsylvania State Senator, Majority Leader of the State Senate, and a Member of the Commonwealth's 2011 Legislative Reapportionment Commission, a defendant in this proceeding. In Senator Pileggi's official capacities—and in defense of the constitutional right and obligation of the Commonwealth of Pennsylvania's Legislative Reapportionment Commission and Supreme Court to adopt and approve a legislative reapportionment plan and address all attendant issues unfettered in the first instance—

Senator Pileggi respectfully submits this memorandum of *amicus curiae* in this proceeding. Senator Pileggi urges this Court to deny the Motion for Preliminary Injunction of Plaintiffs Joe Garcia, Fernando Quiles, and Dalia Riveria Matias in deference to the reapportionment process already underway before the Commonwealth's Legislative Reapportionment Commission and Pennsylvania Supreme Court, which process "is primarily the duty and responsibility of the State through is legislature or other body, rather than of a federal court." *Chapman v. Meier*, 420 U.S. 1, 27 (1975).

II. STATEMENT OF FACTS

On June 29, 2012, Plaintiffs Joe Garcia, Fernando Quiles, and Dalia Riveria Matias ("Plaintiffs") filed a Motion for Preliminary Injunction (the "Motion"), asking that this Court intervene in the Commonwealth of Pennsylvania's legislative reapportionment process and essentially take over that process by granting the extraordinary relief of shortening the terms of legislators not yet elected and scheduling a special election in 2013 for these same legislative seats. As Plaintiffs' Motion for Preliminary Injunction concedes, since these parties were last before this Court for election purposes, the Commonwealth has made substantial progress toward finalizing a legislative reapportionment plan. On June 8, 2012, the Legislative Reapportionment Commission adopted a new final reapportionment plan (hereinafter, the "2012 Plan") and filed it with the Secretary of the Commonwealth of Pennsylvania. Pursuant to the Supreme Court of Pennsylvania's February 3, 2012 Opinion and Article II, Section 17 of the Constitution of the Commonwealth of Pennsylvania, persons aggrieved by the 2012 Plan submitted appeals to the Supreme Court of Pennsylvania by July 9, 2012. On July 10, 2012, the Supreme Court of Pennsylvania set a briefing

schedule on these appeals, which shall be fully briefed by August 20, 2012. Oral argument will take place during the Pennsylvania Supreme Court's September argument session. The 2012 Plan will attain the force of law when the Pennsylvania Supreme Court has "finally decided" all appeals. Pa. Const. Art. II, § 17.

III. ARGUMENT

United States Supreme Court precedent, and this Court's own February 8, 2012 Opinion on the prior Motions for Temporary Restraining Order, Preliminary, and Permanent Injunctions brought by Plaintiffs and by Senator Pileggi, Representative Michael Turzai, and voter Louis B. Kupperman, make plain that this Court should deny Plaintiffs' Motion in deference to the reapportionment process already underway before the Commonwealth's Legislative Reapportionment Commission and Supreme Court

A. Reapportionment Is the Responsibility of Pennsylvania's Legislative Reapportionment Commission and Supreme Court, Not Federal Courts.

The Supreme Court of the United States has repeatedly held that primary responsibility for reapportionment lies with the states and their legislatures and courts – not federal courts. *Chapman v. Meier*, 420 U.S. 1, 27 (1975) ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court."). Accordingly, the Supreme Court of the United States has overturned decisions by lower federal courts to intervene unnecessarily in state legislative reapportionment proceedings.

In *Scott v. Germano*, the Supreme Court of the United States rejected a federal district court effort to intervene in an as-yet-unresolved redistricting dispute. 381 U.S. 407, 409

(1965). In that case, the Illinois Supreme Court invalidated a redistricting plan and retained jurisdiction over the matter, but otherwise did not act, expressing confidence that the Illinois General Assembly would timely revise its plan in time for the upcoming general election. Id. at 407. Before the Illinois General Assembly passed a new plan of its own volition, the federal district court for the Northern District of Illinois took control of the creation of the plan by impleading all members of the General Assembly and ordering that any new plan be approved by the federal court before implementation. *Id.* The Supreme Court of the United States vacated the federal district court's order, holding that the lower court had usurped the state's authority:

> We believe that the District Court should have stayed its hand. The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged [by this Court].

Id. at 409 (counting cases).

In *Growe v. Emison*, the Supreme Court of the United States unanimously reiterated the *Germano* principle that "absent evidence that these state branches will fail timely to perform [its reapportionment duty,] a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." 507 U.S. 25, 34 (1993). In that case, the Supreme Court of the United States dismissed an injunctive proceeding initiated in the Federal District Court for the District of Minnesota and overruled orders by the district court which, it concluded, usurped the authority of the Minnesota Supreme Court. *Id.* The Supreme Court of the United States concluded that the district

court, in the form of an injunction, exceeded its authority by interjecting itself unnecessarily into the relationship between the legislative panel overseeing reapportionment and the Minnesota Supreme Court:

> The District Court's December injunction of state-court proceedings, vacated by this Court in January, was clear error. It seems to have been based upon the mistaken view that federal judges need defer only to the Minnesota Legislature and not at all to the State's courts. . . . But the doctrine of *Germano* prefers *both* state branches to federal courts as agents of apportionment. The Minnesota Special Redistricting Panel's issuance of its plan (conditioned on the legislature's failure to enact a constitutionally acceptable plan in January), far from being a federally enjoinable "interference," was precisely the sort of state judicial supervision of redistricting we have encouraged.

Id. at 34 – 35. Simply put, precedent of the Supreme Court of the United States requires that federal courts permit state legislatures and courts to have the final say on all reapportionment issues—or unequivocally fail in doing so—before they intervene. *See also Miss. State Conf. on the NAACP v. Barbour*, 2011 U.S. Dist. LEXIS 52822, *7, *28 (S.D. Miss. May 16, 2011) (declining to act on various federal court challenges to an in-progress reapportionment process, including a request for special elections, until after the completion or failure of the redistricting process).

B. Consistent with This Court's Prior Rulings Rejecting Injunctive Relief, the Court's Intervention Is Not Appropriate Now.

It is in the spirit of *Scott v. Germano* and *Growe v. Emison* that this Court rejected Motions for Temporary Restraining Order and Preliminary and Permanent Injunctions related to reapportionment brought by Plaintiffs and by Senator Pileggi, Representative Michael Turzai, and voter Louis B. Kupperman in a Memorandum Order issued February 8, 2012. At that time, this Court cited substantial precedent urging that it refrain from acting

unless or until its intervention was both required and appropriate. That reasoning applies with equal force to Plaintiffs' instant Motion.

In refusing to enjoin the April 24, 2012 primary election from proceeding under the 2001 reapportionment plan, this Court cited "the principle in *Mac Govern v. Connolly*, 637 F. Supp. 111, 116 (D. Mass. 1986), that federal courts should stay their hand where judicial intervention does nothing to clarify, at best, and could cause further confusion and disorder at worst. . . . ," and that a "federal court should stay its hand where judicial relief made no sense." (Mem. Order, E.D. Pa. Civil Act. No. 12-0556, Feb. 8. 2012 at 20.) Significantly, the Court at that time noted that "[t]here is no indication that the Commonwealth has adamantly refused to comply with clear constitutional mandates and clear orders. To the contrary, the [Legislative Reapportionment Commission] has complied with the law, albeit slowly, and has indicated an intention to unveil a revised 2011 Plan . . . ." (*Id.* at 18.)

As noted above, the Commonwealth's Legislative Reapportionment Commission and Supreme Court are currently and actively engaged in the process of reviewing for approval the 2012 Plan, and have satisfied every milestone necessary to do so since this Court's February 8, 2012 Order. There is no compelling reason proffered by the Plaintiffs for this Court to conclude that its intervention has become necessary since that Order issued – particularly at this pivotal stage in the resolution of the 2012 Plan. To wit, the equitable relief sought by Plaintiffs concerns an election nine months away. There is ample time for the Plaintiffs to petition this Court—or, perhaps more appropriately for the remedy now sought, a state court—for the relief they seek.

IV. CONCLUSION

For the foregoing reasons, Senator Pileggi urges this Court to defer to the reapportionment process already underway before the Commonwealth's Legislative Reapportionment Commission and Supreme Court, and thereby deny Plaintiffs' Motion for Preliminary Injunction.

Dated: July 16, 2012

Respectfully submitted,

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