

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

JOE GARCIA, FERNANDO QUILES,	:	
DALIA RIVERIA MATIAS,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	NO. 12-0556 RBS
v.	:	
	:	
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,	:	
	:	
Defendants.	:	

**REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO DISMISS
COMPLAINT PURSUANT TO FED. R. CIV. P. 12(B)(1)**

Defendant 2011 Legislative Reapportionment Commission, through its undersigned counsel, Del Sole Cavanaugh Stroyd LLC, submits this Reply Brief in Further Support of Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and states the following in support:

I. INTRODUCTION

On January 25, 2012, the Pennsylvania Supreme Court found the reapportionment plan adopted by the 2011 Legislative Reapportionment Commission (hereinafter, the “LRC”) to be “contrary to law.” It remanded the plan to the LRC and ordered it to reapportion the Commonwealth in a manner consistent with its opinion of February 3, 2012. The Pennsylvania Supreme Court’s order provided that the 2001 Legislative Reapportionment Plan (the “2001 Plan”) shall remain in effect until a revised plan is approved and that all 2012 election dates shall remain the same with the exception of several dates, now passed, related to nominating petitions. The Pennsylvania Supreme Court retained jurisdiction over the matter.

In their Complaint filed on February 2, 2012, the Plaintiffs are seeking injunctive relief to prevent the present year's elections from proceeding under the 2001 Plan as ordered by the Pennsylvania Supreme Court. They are also seeking the imposition of a deadline by which a properly apportioned plan of reapportionment must be adopted.

On February 6, 2012, the Plaintiffs filed a Motion for a Temporary Restraining Order seeking to restrain the Secretary of the Commonwealth from calling, holding, supervising or certifying the April 24, 2012 primary election under the 2001 Plan. That motion was denied by this Court on February 8, 2012.

On June 8, 2012, the LRC adopted a revised final reapportionment plan as required by the Pennsylvania Supreme Court's January 25, 2012 Order (the "2012 Plan"). Arguments on the appeals filed with respect to the revised final plan will be heard by the Pennsylvania Supreme Court on September 13, 2012.

On June 29, 2012, the Plaintiffs filed a Motion for a Preliminary Injunction requesting that those Senators and Representatives who will be elected in the November 2012 general election under the 2001 Legislative Reapportionment Plan serve shortened one-year terms. With respect to the Secretary of the Commonwealth, Plaintiffs are requesting a preliminary injunction mandating her to hold a special election in 2013 so that legislators will be elected under a newly-approved reapportionment plan that takes into consideration the population shifts that have occurred in the Commonwealth of Pennsylvania since the 2000 federal decennial census. With respect to the LRC, the Plaintiffs are seeking a preliminary injunction setting and enforcing a deadline by which it must adopt a revised reapportionment plan in the event that the Pennsylvania Supreme Court finds the current reapportionment plan adopted by the LRC to be contrary to law so that the 2013 special election ordered by this Court can proceed.

The Plaintiffs have not amended their Complaint so that its prayer for relief reflects the new relief that they are now seeking in their Motion for a Preliminary Injunction. Accordingly, the Plaintiffs are still seeking to prevent the present year's elections from proceeding under the 2001 Plan. On July 2, 2012, the LRC moved to dismiss the Plaintiffs' Complaint pursuant to Fed. R. Civ. P. 12(b)(1) on the grounds that the Plaintiffs lacked standing to seek to enjoin it from calling, holding, supervising or certifying the present year's elections under the 2001 Plan because the LRC does not and cannot call, hold, supervise or certify elections. The LRC further asserted that the Plaintiffs' request for the imposition of a deadline by which the LRC must adopt a revised plan was moot because it adopted a revised plan on June 8, 2012.

On August 15, 2012, the LRC filed a Brief in Opposition to the Plaintiffs' Motion for a Preliminary injunction in which it argued that the Plaintiffs' request that this Court set and enforce a deadline by which the LRC must adopt a revised reapportionment plan in the event that the Pennsylvania Supreme Court finds the current reapportionment plan adopted by the LRC to be contrary to law is not ripe for adjudication because it rests entirely on a contingent future event that may not occur.

On that same date, the Plaintiffs filed a Memorandum of Law in Opposition to the LRC's Motion to Dismiss in which they contend that their "injury [i.e., that Pennsylvania's 2012 state legislative elections will take place under the 2001 Plan in violation of the One Person, One Vote doctrine of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution] is directly traceable to Defendant 2011 LRC's inaction and delay in drafting an appropriate plan capable of surviving judicial scrutiny to date."¹ Plaintiffs argue that:

in the event that the Revised Final Plan is again found by the
Pennsylvania Supreme Court to be contrary to law, a favorable

¹ Plaintiffs' Memorandum of Law in Opposition to the LRC's Motion to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(1), p. 2.

decision with respect to Defendant 2011 LRC in the form of an order to timely promulgate a lawful Reapportionment Plan by a date certain to permit the special election to proceed as requested will redress Plaintiffs' injury.²

The Plaintiffs' alleged injury-in-fact, i.e., that Pennsylvania's 2012 state legislative elections will take place under the 2001 Plan in violation of the One Person, One Vote doctrine of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, is not traceable to any action taken by the LRC and a favorable decision with respect to the LRC will not redress the Plaintiffs' alleged injury-in-fact. Even if the Plaintiffs' alleged injury-in-fact is traceable to the actions of the LRC, the Plaintiffs' only request for relief with respect to the LRC, i.e., that this Court set and enforce a deadline by which the LRC must adopt a revised reapportionment plan in the event that the Pennsylvania Supreme Court finds the current reapportionment plan adopted by the LRC to be contrary to law, is not ripe for adjudication because it rests entirely on a contingent future event that may not occur. As a result, no "case" or "controversy" currently exists between the Plaintiffs and the LRC and, therefore, the Plaintiffs' Complaint must be dismissed with respect to the LRC. Additionally, if the Court determines that a "case" or "controversy" does exist between the Plaintiffs and the LRC, it should nonetheless abstain from adjudicating it so that the reapportionment process can be completed in compliance with the Pennsylvania Constitution under the review of the Pennsylvania Supreme Court.

² Plaintiffs' Memorandum of Law in Opposition to the LRC's Motion to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(1), p. 2.

II. ARGUMENT³

A. **Plaintiffs' Alleged Injury-in-Fact Is Not Traceable to Any Action That the LRC Has Taken or Could Take.**

1. **The LRC Did Not Delay in Issuing a Reapportionment Plan.**

Plaintiffs contend that the LRC's "delay in timely issuing a reapportionment plan resulted in the 2001 Plan remaining in effect during the 2012 election given that insufficient time was allotted for any appeals regarding the 2011 Plan to be addressed in time for the 2012 elections."⁴ They allege that the LRC adopted its 2011 Preliminary Plan (and, by extension, its Final Plan) outside of the time frame established by Article II, §17 of the Pennsylvania Constitution. Specifically, the Plaintiffs contend that the 2010 Census data was "available" on March 9, 2011, rather than on August 17, 2011, the date upon which it was certified as "usable" by the LRC. The Plaintiffs are simply wrong.

Article II, Section 17(c) of the Pennsylvania Constitution provides that:

No later than ninety days after either the commission has been duly certified or the population data for the Commonwealth as determined by the Federal decennial census are available, whichever is later in time, the commission shall file a preliminary reapportionment plan with such elections officer.

Pa. Const. Art. II, § 17(c). In the course of the 1981 reapportionment process, the 1981 LRC sought guidance from the Pennsylvania Supreme Court with respect to the meaning of the term "available" as used in Article II, Section 17(c) of the Pennsylvania Constitution. The Chief

³ The LRC has only one duty - to devise a reapportionment plan for the Commonwealth in each year following the year of the Federal decennial census. See Pa. Const. Art. II, §17. It plays no role in the calling, holding, supervising or certifying of elections in the Commonwealth of Pennsylvania. As a result, the LRC cannot be compelled to hold a special election in 2013. Plaintiffs explicitly acknowledge this fact in their Motion for a Preliminary Injunction: "Defendant Carole Aichele, as the Secretary of the Commonwealth and the Chief Election Officer in Pennsylvania, is the *only* official in the State authorized to call, hold, supervise and certify elections. Accordingly, this motion for a Preliminary Injunction seeks to order her and her office to conduct a special election in 2013 based on an approved Reapportionment Plan in connection with scheduled statewide 2013 municipal primaries." Plaintiffs' Motion for Preliminary Injunction, pp. 3-4 (emphasis added).

⁴ Plaintiffs' Memorandum of Law in Opposition to the LRC's Motion to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(1), p. 2.

Justice issued an unpublished order stating that the ninety day period begins to run when the Commission receives the data broken down into usable form, i.e., broken down by ward and precinct.⁵ The Chief Justice's rational was entirely sound because the raw data released by the U.S. Census Bureau is not in a format that is even remotely usable for either legislative reapportionment or congressional redistricting purposes. The raw data must be broken down by county, municipality, precinct and ward before it can be used to create a reapportionment plan.

The U.S. Census Bureau released raw census data for Pennsylvania on March 9, 2011 and the 2011 LRC was certified on April 19, 2011.⁶ The raw data provided by the U.S. Census Bureau was then processed by the Pennsylvania Legislative Data Processing Center ("LDPC") and a vendor which converted it into a format which is usable in the reapportionment process - i.e., breaking it down by county, municipality, ward and precinct. This is the same process that has been used in *every* reapportionment conducted under the current Constitutional framework. The data processing vendor (Citygate GIS) encountered significant problems in processing the census data. As a result, it was not in usable form until August 17, 2011.⁷ Even then, two members of the Commission expressed concern that the data still contained errors.⁸

The LRC adopted its original preliminary plan of reapportionment on October 31, 2011⁹ (the "2011 Preliminary Plan"), well within the ninety day period following its declaration that the census data was "usable" on August 17, 2011 which was later than the date upon which the LRC was duly certified. The LRC adopted its original final plan of reapportionment on

⁵ Kenneth Gormley, *The Pennsylvania Legislative Reapportionment of 1991*, p 23 (1994).

⁶ Holt v. 2011 Legislative Reapportionment Commission, 38 A.3d 716, 719 (Pa. 2012).

⁷ Holt v. 2011 Legislative Reapportionment Commission, 38 A.3d 716, 719 (Pa. 2012).

⁸ Exhibit "A" hereto, Official Transcript of the August 17, 2011 Hearing of the 2011 LRC, pp. 91-93.

⁹ Holt v. 2011 Legislative Reapportionment Commission, 38 A.3d 716, 720 (Pa. 2012).

December 12, 2011 (the “2011 Final Plan”).¹⁰ As a result, the LRC has met all of the temporal milestones set forth in Article II, Section 17 of the Pennsylvania Constitution.

When compared to the prior reapportionment plans adopted under the current Constitutional framework, the LRC’s adoption of the 2011 Final Plan was not untimely. The LRC adopted the 2011 Final Plan on December 12, 2011 and the Pennsylvania Supreme Court issued its order adjudicating the appeals filed to it on January 25, 2012.¹¹ The dates of these two key milestones are close to the dates of the same two milestones in the prior four reapportionments. The 1971 LRC adopted its final plan of reapportionment on December 29, 1971 and the Pennsylvania Supreme Court issued its order adjudicating the appeals filed to it on February 7, 1972.¹² The 1981 LRC adopted its final plan of reapportionment on October 13, 1981 and the Pennsylvania Supreme Court issued its order adjudicating the appeals to it on December 29, 1982.¹³ The 1991 LRC adopted its final plan of reapportionment on November 15, 1991 and the Pennsylvania Supreme Court issued its order adjudicating the appeals filed to it on February 14, 1992.¹⁴ The 2001 LRC adopted its final plan of reapportionment on November 19, 2001 and the Pennsylvania Supreme Court issued its order adjudicating the appeals filed to it on February 15, 2002.

The only difference between the current reapportionment process and the past four reapportionment processes is that the Pennsylvania Supreme Court, for the first time ever, found a final plan to be “contrary to law.” The LRC vigorously defended the 2011 Plan against all appeals and had no way of knowing that the Pennsylvania Supreme Court would find it to be “contrary to law.” It should be noted that the Plaintiffs did not appear to have any objection to

¹⁰ Holt v. 2011 Legislative Reapportionment Commission, 38 A.3d 716, 720 (Pa. 2012).

¹¹ Holt v. 2011 Legislative Reapportionment Commission, 38 A.3d 716, 720 (Pa. 2012).

¹² Commonwealth ex rel. Specter v. Levin, 293 A.2d 15 (Pa. 1972).

¹³ In re Reapportionment Plan for the Pennsylvania General Assembly, 442 A.2d 661, 663 (Pa. 1982).

¹⁴ In re 1991 Pennsylvania Legislative Reapportionment Commission, 609 A.2d 132, 135 (Pa. 1992).

the 2011 Final Plan as they did not file appeals with the Pennsylvania Supreme Court asserting that it was “contrary to law”.¹⁵

2. The LRC Played No Role in the Decisions to Keep the 2011 Legislative Plan in Effect Until a Revised Final 2011 Legislative Reapportionment Plan is Implemented or to Keep the 2012 Election Dates the Same.

The LRC played no role, and could not have played any role, in the decision to keep the 2011 Legislative Plan in effect until a revised final 2011 Legislative Reapportionment Plan having the force of law is approved. That decision was made entirely by the Pennsylvania Supreme Court. The LRC also played no role, and could have played no role, in the decision to keep all 2012 election dates the same with the exception of several dates related to nominating petitions. Again, that decision was made entirely by the Pennsylvania Supreme Court. As a result, Plaintiffs’ alleged injury-in-fact is not traceable to any action that the LRC has taken or could take. It should be noted that the Plaintiffs in this matter, or any citizen of the Commonwealth, could have petitioned the Pennsylvania Supreme Court for an order mandating that future elections be conducted under the 2011 Final Plan on an interim basis until a revised final 2011 Legislative Reapportionment Plan having the force of law was approved. They chose not to.

B. A Favorable Decision with Respect to the LRC Will Not Redress the Injury-in-Fact Alleged by the Plaintiffs

The Plaintiffs contend that a favorable decision with respect to the LRC in the form of an order requiring it “to timely promulgate a lawful Reapportionment Plan by a date certain to permit the special election to proceed as requested will redress [their] injury” in the event that the

¹⁵ Exhibit “A” To the LRC’s Brief in Support of Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1), Declaration of Charles E. O’Connor, Jr., ¶ 3.

Pennsylvania Supreme Court finds the 2012 Final Plan to be “contrary to law.”¹⁶ A favorable decision with respect to the LRC would only redress the Plaintiffs’ injury if the LRC could implement a reapportionment plan without the input of the citizens of the Commonwealth and then unilaterally pronounce that it has the “force of law.” The LRC has no such power. Article II, Section 17 of the Pennsylvania Constitution provides the citizens of the Commonwealth with the right to appeal the reapportionment plans of Legislative Reapportionment Commissions and it vests the authority to adjudicate those appeals in the Pennsylvania Supreme Court. Given the mechanics of Article II, Section 17 of the Pennsylvania Constitution, a date certain by which a reapportionment plan having the “force of law” is in place cannot be ordered without potentially depriving the Citizens of the Commonwealth of their constitutional right of appeal and without divesting the Pennsylvania Supreme Court, in whole or in part, of its constitutional authority to adjudicate those appeals.

Thirteen separate appeals were filed with respect to the 2012 Plan. The Pennsylvania Supreme Court will hear argument on those consolidated appeals on September 13, 2012. There is no way of knowing how long the adjudication of those appeals will take. If the Pennsylvania Supreme Court ultimately finds the 2012 Plan to be “contrary to law,” Article II, Section 17(d) of Pennsylvania’s Constitution requires that the Court remand the plan to the LRC to reapportion the Commonwealth in a manner not inconsistent with its order. Pa. Const. Art. II, § 17(d). Pursuant to Article II, Section 17(c) of Pennsylvania’s Constitution, the LRC would then be required to adopt a revised preliminary plan and to provide the public with a thirty day period to file exceptions to it. Pa. Const. Art. II, § 17(c). The LRC then has a thirty day period to consider any exceptions filed and to revise the preliminary plan. Id. Pursuant to Article II, Section 17(d),

¹⁶ Plaintiffs’ Memorandum of Law in Opposition to the LRC’s Motion to Dismiss Plaintiff’s Complaint Pursuant to Fed. R. Civ. P. 12(b)(1), p. 2.

any person aggrieved by the final plan would then have thirty days to file an appeal directly to the Pennsylvania Supreme Court asserting that it is “contrary to law.” Pa. Const. Art. II, § 17(d). The Pennsylvania Supreme Court would then adjudicate those appeals. There is no way to predict how long that adjudication would take.

Given the nature of legislative reapportionment, there is no doubt that appeals will be filed with respect to any revised reapportionment plan adopted by the LRC in the event that the 2012 Plan is found to be contrary to law. The adoption of a preliminary plan of reapportionment is the event that starts the multi-step appeal process guaranteed by Article II, Section 17 of Pennsylvania’s Constitution. Ordering a date certain by which the LRC must adopt a revised preliminary plan in the event that the 2012 Plan is found to be contrary to law, simply will not ensure that a final plan having the “force of law” is in place so that a special election can proceed in 2013. To ensure that a final plan having the “force of law” is in place so that a special election can proceed in 2013, this Court may need to enter an order shortening the time period citizens have to file exceptions to a revised preliminary plan and the time period citizens have to file appeals to the revised final plan. This Court would also need to mandate a date certain by which the Pennsylvania Supreme Court would have all appeals filed with respect to a revised final plan adjudicated because the revised final plan would only obtain the “force of law” upon the Pennsylvania Supreme Court’s “final” adjudication of all appeals. Pa. Const. Art. II, § 17(e).

C. Plaintiffs Request that this Court Set and Enforce a Deadline by which the LRC Must Adopt a Revised Reapportionment Plan in the Event that the Pennsylvania Supreme Court Finds the 2012 Plan Adopted by the LRC to be Contrary to Law is Not Ripe for Adjudication.

Article III of the Constitution limits federal “judicial power” to the adjudication of “Cases” or “Controversies.” U.S. Const. Art. III, § 2. “A declaratory judgment or injunction can

issue only when the constitutional standing requirements of a ‘case’ or ‘controversy’ are met.” National Parks Conservation Ass’n v. Lower Providence Twp., 608 F.Supp.2d 637, 643 (E.D. Pa. 2009)(quoting, St. Thomas-St. John Hotel & Tourism Ass’n, Inc. v. U.S. Virgin Islands, 218 F.3d 232, 241 (3d Cir. 2000)). “This limitation is essential to our system of separated powers.” Toll Bros., Inc. v. Twp. of Readington, 555 F.3d 131, 137 (3d Cir. 2009). “In cases involving state or local government, it ‘serves to protect and preserve the principle of dual sovereignty’ embedded in our founding charter.” Id. (quoting, Storino v. Borough of Point Pleasant Beach, 322 F.3d 293, 300 (3d Cir.2003)). “Courts ensure that the case or controversy requirement is met by following several justiciability doctrines, including standing, ripeness, mootness, the political question doctrine, and the prohibition against advisory opinions.” National Parks Conservation Ass’n, 608 F.Supp. at 643 (citing, Toll Bros., Inc., 555 F.3d at 137)).

The “‘concepts of standing and ripeness require related but distinct inquiries’ essential to the question of whether a case is justiciable.” Pennsylvania Family Institute, Inc. v. Black, 489 F.3d 156, 165 (3d Cir. 2007)(quoting, Pic-A-State Pa., Inc. v. Reno, 76 F.3d 1294, 1298 n.1 (3d Cir. 1996)). “Whereas ripeness is concerned with *when* an action may be brought, standing focuses on *who* may bring a ripe action.” Black, 489 F.3d at 165 (quoting, Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 411 n. 13 (3d Cir. 1992)). “The ripeness doctrine serves ‘to determine whether a party has brought an action prematurely and counsels abstention until such time as a dispute is sufficiently concrete to satisfy the constitutional and prudential requirements of the doctrine.’” County Concrete Corp. v. Twp. of Roxbury, 442 F.3d 159, (3d Cir. 2006)(quoting, Khodara Envntl., Inc. v. Blakey, 376 F.3d 187, 196 (3d Cir. 2004)(quoting, Peachlum v. City of York, 333 F.3d 429, 433 (3d Cir. 2003)).

The “ripeness doctrine requires that the challenge grow out of a ‘real, substantial controversy between parties’ involving a ‘dispute definite and concrete.’” Peachlum, 333 F.3d at 434. “The question in each case is whether the facts alleged show that there is a substantial controversy between parties having adverse interests, ‘of sufficient immediacy and reality’ to justify judicial resolution.” Id. In determining whether a dispute is ripe for adjudication, “courts must consider ‘the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.’” Wyatt, Virginia Islands, Inc. v. Govt. of the Virginia Islands, 385 F.3d 801, 806 (3d Cir. 2004)(quoting, Abbott Labs. v. Gardner, 387 U.S. 136 (1967), overruled on other grounds, Califano v. Sanders, 430 U.S. 99, 99 (1977)). “A dispute is not ripe for judicial determination “‘if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.’” Wyatt, 385 F.3d at 806 (quoting, Doe v. County of Centre, PA, 242 F.3d 437, 453 (3d Cir. 2001) (quoting, Texas v. United States, 523 U.S. 296, 300 (1998))). “Although it is true that injunctive relief is intended to affect future conduct and guard against future injury, a federal court must still ensure that the justiciability requirements of Article III, including ripeness, are satisfied regardless of the type of relief sought.” GI Holdings, Inc. v. The Bank of New York, 122 Fed.Appx 554, 555-56 (3d Cir. 2004).

With respect to the LRC, “Plaintiffs [are] request[ing] that this Court set and enforce a deadline by which Defendant 2011 Legislative Reapportionment Commission must enact a new district plan comporting with the Constitution *in the event the revised final reapportionment plan is ultimately rejected by the Pennsylvania Supreme Court.*”¹⁷ This request is simply not ripe for adjudication. It rests entirely on a contingent future event that may not occur at all – i.e., the Pennsylvania Supreme Court finding the 2012 Plan to be contrary to law. Oral argument of the appeals filed with respect to the 2012 Plan will be conducted by the Pennsylvania Supreme

¹⁷ Plaintiffs’ Motion for a Preliminary Injunction, p. 3 (emphasis added).

Court on September 13, 2012.¹⁸ The Pennsylvania Supreme Court could dismiss all appeals which would result in the 2012 Plan attaining the force of law. As a result, no “case” or “controversy” currently exists between the Plaintiffs and the LRC.

D. If the Court Determines that a “Case” or “Controversy” Does Exist Between the Plaintiffs and the LRC, It Should Nonetheless Abstain from Adjudicating It So that the Reapportionment Process Can be Completed in Compliance with the Pennsylvania Constitution Under the Review of the Pennsylvania Supreme Court.

The LRC hereby joins in Section III. B. of the Brief of Defendant Aichele in Support of Her Motion to Dismiss and In Opposition to Plaintiffs’ Motion for a Preliminary Injunction. Pursuant to Scott v. Germano, 381 U.S. 407 (1965) and Grove v. Emison, 507 U.S. 25 (1993), this Court should abstain from adjudicating the Plaintiffs’ request that this Court set and enforce a deadline by which the LRC must enact a revised reapportionment plan in the event that the Pennsylvania Supreme Court finds the 2012 Plan to be contrary to law so that the reapportionment process can be completed in compliance with the Pennsylvania Constitution under the review of the Pennsylvania Supreme Court.

As this Court noted in its Memorandum Opinion denying the Plaintiffs’ Motion for a Temporary Restraining Order, “[e]quity demands that a federal court stay its hand when judicial relief does not make sense.” MacGovern v. Connolly, 637 F.Supp. 111, 116 (D. Mass. 1986). Intervention by this Court in Pennsylvania’s ongoing reapportionment process through the imposition of an artificial deadline by which the LRC must adopt a revised reapportionment plan in the event that the Pennsylvania Supreme Court finds the 2012 Plan to be contrary to law, makes no sense at this time. When the Supreme Court remanded the 2011 Plan to the LRC after finding that it was “contrary to law” and ordered that the 2001 Legislative Reapportionment Plan

¹⁸ Exhibit “C” to the LRC’s Brief in Opposition to Plaintiffs’ Motion for a Preliminary Injunction, Supreme Court of Pennsylvania – Court Daily Argument Lists – From 09/11/2012 to 09/13/2012.

“shall remain in effect until a revised final 2011 Legislative Reapportionment Plan having the force of law is approved,” it retained jurisdiction over the matter. The Pennsylvania Supreme Court will adjudicate the appeals pending with respect to the 2012 Plan. It will either dismiss the appeals in which case the 2012 Plan will attain the force of law or it will find that the 2012 Plan is “contrary to law.” In the event that it finds the 2012 Plan to be “contrary to law,” it must remand the plan back to the LRC again as required by Article II, Section 17 of the Pennsylvania Constitution for the LRC to adopt a revised plan in accordance with the requirements of the Pennsylvania Constitution. The Pennsylvania Supreme Court could provide a constitutionally compliant schedule pursuant to which the LRC must adopt a revised plan upon such a remand. Under these circumstances, this Court should abstain from adjudicating Plaintiffs’ request for the imposition of a deadline for the adoption of a revised plan by the LRC in the event that the Pennsylvania Supreme Court finds the 2012 Plan to be “contrary to law” so that the reapportionment process can be completed in compliance with the Pennsylvania Constitution subject to the review of the Pennsylvania Supreme Court.

III. CONCLUSION

For the foregoing reasons, Plaintiffs’ Complaint against the 2011 Legislative Reapportionment Commission should be dismissed pursuant to Fed.R.Civ.P. 12(b)(1) based on lack of subject matter jurisdiction. In the alternative, this Court should abstain from adjudicating the Plaintiffs’ request that this Court set and enforce a deadline by which the LRC must enact a revised reapportionment plan in the event that the Pennsylvania Supreme Court finds the 2012 Plan to be contrary to law.

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Dated: September 7, 2012

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

JOE GARCIA, FERNANDO QUILES,	:	
DALIA RIVERIA MATIAS,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	NO. 12-0556 RBS
v.	:	
	:	
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,	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Reply Brief in Further Support of Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1)** was served on the date set forth below by Notice of Docket Activity sent automatically by CM/ECF on the following counsel who are registered as CM/ECF filing users who have consented to accepting electronic service through CM/ECF:

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Date: September 7, 2012

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