

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.	:	

**BRIEF IN OPPOSITION TO PLAINTIFFS’  
MOTION FOR A PRELIMINARY INJUNCTION**

Defendant 2011 Legislative Reapportionment Commission, through its undersigned counsel, Del Sole Cavanaugh Stroyd LLC, submits this Brief in Opposition to Plaintiffs’ Motion for a Preliminary Injunction and states the following in support:

**I. INTRODUCTION**

On January 25, 2012, the Pennsylvania Supreme Court found the initial 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. The Pennsylvania Supreme Court’s order also provided that the 2001 Legislative Reapportionment 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 related to nominating petitions.

On June 8, 2012, the LRC adopted a revised reapportionment plan as required by the Pennsylvania Supreme Court. Arguments on the objections raised with respect to the revised plan will be heard by the Pennsylvania Supreme Court on September 13, 2012.

In their Complaint, Plaintiffs aver that elections held under the 2001 Legislative Reapportionment Plan will “violate the ‘one person, one vote’ principle of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States” and would “unlawfully dilute their voting strength under the federal Voting Rights Act of 1965”<sup>1</sup> because the current Senate and House legislative districts are malapportioned in light of the population shifts that have occurred in the Commonwealth of Pennsylvania since the 2000 federal decennial census.<sup>2</sup>

In their Motion for a Preliminary Injunction, the Plaintiffs are requesting that those Senators 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 this Court to enter an order 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.<sup>3</sup> With respect to the 2011 Legislative Reapportionment Commission, the Plaintiffs are seeking an order of Court 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

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<sup>1</sup> Complaint, ¶ 1.

<sup>2</sup> Complaint, ¶¶ 1; 34-37 and 50-51.

<sup>3</sup> Plaintiffs’ Motion for a Preliminary Injunction, pp. 1-3.

the LRC to be contrary to law so that the 2013 special election ordered by this Court can proceed.<sup>4</sup>

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. As a result, the Plaintiffs' request must be denied. If the Court determines that the Plaintiffs request with respect to the LRC is ripe for adjudication, 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.

## **II. BACKGROUND FACTS**

### **A. The Pennsylvania Supreme Court Found the 2011 Reapportionment Plan to Be Contrary to Law and Ordered the LRC to Adopt a Revised Plan.**

On December 12, 2011, the LRC adopted its final reapportionment plan (hereinafter, the "2011 Plan") and filed it with the Secretary of the Commonwealth of Pennsylvania.<sup>5</sup> In their Complaint, Plaintiffs aver that: "three additional majority Latino House legislative districts were proposed by Defendant 2011 State Legislative Reapportionment Commission: the 180<sup>th</sup> and 197<sup>th</sup> House Legislative districts in Philadelphia; the 22<sup>nd</sup> House legislative district in Allentown; and the 127<sup>th</sup> House legislative district in Reading" in the 2011 Plan.<sup>6</sup> Twelve (12) separate appeals were filed with the Pennsylvania Supreme Court challenging the constitutionality of the

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<sup>4</sup> Plaintiffs' Motion for a Preliminary Injunction, pp. 1-3.

<sup>5</sup> Complaint, ¶ 17; February 8, 2012 Memorandum signed by the Honorable R. Barclay Surrick Denying Plaintiffs' Request for a Temporary Restraining Order, p. 6.

<sup>6</sup> Complaint, ¶ 33.

2011 Plan.<sup>7</sup> The three (3) Plaintiffs in this action did not file appeals with the Pennsylvania Supreme Court challenging the constitutionality of the 2011 Plan.<sup>8</sup>

On January 25, 2012, the Pennsylvania Supreme Court issued a *per curium* Order in which it held that the 2011 Plan was “contrary to law.”<sup>9</sup> It remanded the 2011 Plan to the LRC “with a directive to reapportion the Commonwealth in a manner consistent with this Court’s Opinion, which will follow.”<sup>10</sup> The Pennsylvania Supreme Court further ordered that the 2001 Legislative Reapportionment Plan “shall remain in effect until a revised final 2011 Legislative Reapportionment Plan having the force of law is approved.”<sup>11</sup> It also ruled that “all 2012 election dates shall remain the same” with the exception of several dates related to nominating petitions.<sup>12</sup> The Pennsylvania Supreme Court retained jurisdiction over the matter.<sup>13</sup>

On February 3, 2012, the Pennsylvania Supreme Court issued an eighty-seven page opinion.<sup>14</sup> In its opinion, it held that the LRC must abide by the framework set forth in Article II, § 17 of the Pennsylvania Constitution in devising a new plan upon remand:

We note that once the LRC approves a new preliminary plan, the Constitution affords persons aggrieved by the new plan a right to object, before the plan is finally approved by the LRC, and to a subsequent right to appeal to this Court. Should such appeals be

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<sup>7</sup> Complaint, ¶ 18; February 8, 2012 Memorandum signed by the Honorable R. Barclay Surrick Denying Plaintiffs’ Request for a Temporary Restraining Order, p. 6.

<sup>8</sup> Exhibit “A,” Declaration of Charles E. O’Connor, Jr., ¶ 3.

<sup>9</sup> Complaint, ¶ 19; February 8, 2012 Memorandum signed by the Honorable R. Barclay Surrick Denying Plaintiffs’ Request for a Temporary Restraining Order, p. 7.

<sup>10</sup> Complaint, ¶ 19; February 8, 2012 Memorandum signed by the Honorable R. Barclay Surrick Denying Plaintiffs’ Request for a Temporary Restraining Order, p. 7.

<sup>11</sup> Complaint, ¶ 20; February 8, 2012 Memorandum signed by the Honorable R. Barclay Surrick Denying Plaintiffs’ Request for a Temporary Restraining Order, p. 7.

<sup>12</sup> February 8, 2012 Memorandum signed by the Honorable R. Barclay Surrick Denying Plaintiffs’ Request for a Temporary Restraining Order, p. 7.

<sup>13</sup> February 8, 2012 Memorandum signed by the Honorable R. Barclay Surrick Denying Plaintiffs’ Request for a Temporary Restraining Order, p. 7.

<sup>14</sup> February 8, 2012 Memorandum signed by the Honorable R. Barclay Surrick Denying Plaintiffs’ Request for a Temporary Restraining Order, p. 7.

filed, we will decide them with alacrity, as we have decided the ones now before us.<sup>15</sup>

**B. The 2012 Primary Election Proceeded Under the 2001 Legislative Reapportionment Plan as Required by the Pennsylvania Supreme Court.**

The General primary election in the Commonwealth of Pennsylvania took place on April 24, 2012 in accordance with 25 P.S. § 2753(a).<sup>16</sup> It was conducted under the 2001 Legislative Reapportionment Plan as required by the Pennsylvania Supreme Court's January 25, 2012 Order.<sup>17</sup>

**C. The LRC Adopted a Revised Final Plan as Required by the Pennsylvania Supreme Court.**

On April 12, 2012, the LRC adopted a revised preliminary plan.<sup>18</sup> As required by Pa. Const. Art. II, § 17(c) and the Pennsylvania Supreme Court's February 3, 2012 Opinion, persons aggrieved by the revised preliminary plan were provided with thirty (30) days to file exceptions to it. The LRC held public hearings on May 2 and May 7, 2007 to consider the exceptions filed by persons who claimed to be aggrieved by the revised preliminary plan.<sup>19</sup>

On June 8, 2012, the LRC adopted a revised final reapportionment plan (hereinafter, the "2012 Plan") and filed it with the Secretary of the Commonwealth of Pennsylvania.<sup>20</sup> As required by Pa. Const. Art. II, § 17(d) and the Pennsylvania Supreme Court's February 3, 2012 Opinion, persons aggrieved by the 2012 Plan were provided thirty (30) days to file appeals to it with the Pennsylvania Supreme Court. Thirteen (13) separate appeals were filed with the Pennsylvania Supreme Court challenging the constitutionality of the 2012 Plan. The Pennsylvania Supreme Court consolidated those appeals for the purpose of pleading, briefing

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<sup>15</sup> Holt, et. al v. 2011 Legislative Reapportionment Comm'n, No. 7 MM 2012 (Pa. Feb. 3, 2012).

<sup>16</sup> Exhibit "A," Declaration of Charles E. O'Connor, Jr., ¶ 7.

<sup>17</sup> Exhibit "A," Declaration of Charles E. O'Connor, Jr., ¶ 7.

<sup>18</sup> <http://www.redistricting.state.pa.us/>.

<sup>19</sup> <http://www.redistricting.state.pa.us/>.

<sup>20</sup> \Exhibit "A," Declaration of Charles E. O'Connor, Jr., ¶ 6; See also <http://www.redistricting.state.pa.us/>.

and argument.<sup>21</sup> The LRC will vigorously defend the 2012 Plan against its challengers. Its brief in opposition to the appeals must be filed by August 20, 2012.<sup>22</sup> Oral argument of the appeals will be conducted by the Pennsylvania Supreme Court on September 13, 2012.<sup>23</sup> The 2012 Plan will attain the force of law if and when the Pennsylvania Supreme Court dismisses all appeals of it. Pa. Const. Art. II, § 17.

**D. The 2012 General Election Will Proceed On November 6, 2012.**

The Pennsylvania Constitution provides that “[t]he general election shall be held biennially on the Tuesday next following the first Monday of November in each even-numbered year....” Pa. Const. Art. VII, § 2.<sup>24</sup> As a result, in the present year, the general election will take place on November 6, 2012. Representatives in the General Assembly and one half of the State Senate will be elected in this year’s general election. 25 P.S. § 2751.

**III. THE DENIAL OF PLAINTIFFS’ MOTION FOR A TEMPORARY RESTRAINING ORDER**

On February 6, 2012, three (3) days after the Pennsylvania Supreme Court issued its Opinion, the Plaintiffs filed a Motion for a Temporary Restraining Order and for Convening of a Three-Judge Panel (hereinafter, the “TRO Motion”). In its Motion, Plaintiffs sought a “Temporary Restraining Order to ensure that the Pennsylvania 2001 Legislative Reapportionment Plan is not used for the April 24, 2012 primary elections in the Commonwealth of Pennsylvania.”<sup>25</sup> They sought an order providing that: “Defendant Carol Aichele and anyone controlled by her, or in common control with her, is hereby enjoined from calling, holding,

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<sup>21</sup> Exhibit “B,” July 10, 2012 Order of the Pennsylvania Supreme Court in In Re: Petitions for Review Challenging the Final 2011 Reapportionment Plan Dated June 8, 2012.

<sup>22</sup> Exhibit “B,” July 10, 2012 Order of the Pennsylvania Supreme Court in In Re: Petitions for Review Challenging the Final 2011 Reapportionment Plan Dated June 8, 2012.

<sup>23</sup> Exhibit “C,” Supreme Court of Pennsylvania – Court Daily Argument Lists – From 09/11/2012 to 09/13/2012.

<sup>24</sup> See also 25 P.S. 2751 (“The general election shall be held biennially on the Tuesday next following the first Monday of November in each even-numbered year.”)

<sup>25</sup> Plaintiff’s Motion for a Temporary Restraining Order and for Convening of a Three-Judge Panel, p. 1.

supervising or certifying the April 24, 2012 primary election on the basis of the 2001 Legislative Reapportionment Plan until such time as a hearing for a Preliminary Injunction is adjudicated by this Court.”<sup>26</sup> The Plaintiffs did not seek any relief with respect to the LRC because as admitted in their TRO Motion: “Defendant Carole Aichele as the Secretary of the Commonwealth and the Chief Election Officer in Pennsylvania is the **only** official in the State that is authorized to call, hold, supervise and certify elections.”<sup>27</sup>

On February 6, 2012, this Court conducted a hearing on Plaintiffs’ Motion. By Order dated February 8, 2012, this Court denied Plaintiffs’ Motion. A Memorandum of the same date explained in detail why this Court denied Plaintiffs’ Motion.

#### IV. **ARGUMENT**<sup>28</sup>

##### A. **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

<sup>26</sup> Proposed Temporary Restraining Order, p. 1.

<sup>27</sup> Plaintiff’s Motion for a Temporary Restraining Order and for Convening of a Three-Judge Panel, p. 2 (emphasis added).

<sup>28</sup> 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).

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 Env'tl., 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 Defendants 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.*”<sup>29</sup> 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 Court on September 13, 2012.<sup>30</sup> 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. Plaintiffs’ request that this

<sup>29</sup> Plaintiffs’ Motion for a Preliminary Injunction, p. 3 (emphasis added).

<sup>30</sup> Exhibit “C,” Supreme Court of Pennsylvania – Court Daily Argument Lists – From 09/11/2012 to 09/13/2012.

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 must therefore be denied.

**B. If the Court Determines that the Plaintiffs' Request With Respect to the LRC Is Ripe for Adjudication, 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 "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 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 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.

**V. CONCLUSION**

For the foregoing reasons, 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 must be denied.

**DEL SOLE CAVANAUGH STROYD LLC**

/s/ Bryan C. Devine

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Dated: August 15, 2012

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***Counsel for Defendant 2011 Legislative  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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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,	:	
	:	
Defendants.	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing ***Brief in Opposition to Plaintiffs’ Motion for Preliminary Injunction*** 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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Michael Turzai*

Date: August 12, 2012

/s/ Bryan C. Devine  
Bryan C. Devine

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

JOE GARCIA, FERNANDO QUILES,  
DALIA RIVERIA MATIAS,

Plaintiffs,

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.

CIVIL ACTION

NO. 12-0556 RBS

**DECLARATION OF CHARLES E. O'CONNOR, JR.**

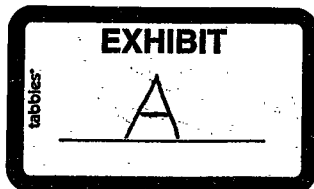
I, Charles E. O'Connor, Jr., being duly sworn, deposes and states the following facts:

1. I am the Executive Director of the 2011 Legislative Reapportionment Commission (hereinafter, the "LRC"), a defendant herein, and have held that position since the LRC was first constituted.

2. I have personal knowledge of the facts set forth in this declaration.

3. Joe Garcia, Fernando Quiles and Dalia Riveria Matias, the plaintiffs in the instant action, did not file appeals with the Pennsylvania Supreme Court challenging the constitutionality of the final reapportionment plan adopted by the LRC on December 12, 2011 (hereinafter, the "2011 Plan").

4. On April 12, 2012, the LRC adopted a new Preliminary Plan of Reapportionment (hereinafter, the "New Preliminary Plan") and filed it with the Secretary of the Commonwealth of Pennsylvania.



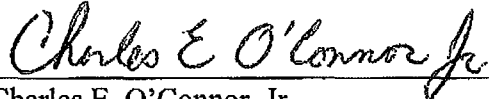
5. Joe Garcia, one of the three (3) Plaintiffs in the instant action, presented an exception to the New Preliminary Plan on behalf of Latino Lines Redistricting Coalition.

6. On June 8, 2012, the LRC adopted a new final reapportionment plan (hereinafter, the "2012 Plan") and filed it with the Secretary of the Commonwealth of Pennsylvania.

7. The General primary election in the Commonwealth of Pennsylvania took place on April 24, 2012 under the 2001 Legislative Reapportionment Plan.

I declare under penalty of perjury and consistent with the provisions of 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: 6/30/2012

  
\_\_\_\_\_  
Charles E. O'Connor, Jr.  
Executive Director  
2011 Legislative Reapportionment Commission



IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

IN RE: PETITIONS FOR REVIEW : Nos.: 126-134 MM 2012;  
CHALLENGING THE FINAL 2011 : 39-42 WM 2012  
REAPPORTIONMENT PLAN DATED JUNE :  
8, 2012 :  
:

ORDER

**AND NOW**, this 10<sup>th</sup> day of July, 2012, the above referenced matters are hereby consolidated for purposes of pleading, briefing and argument.

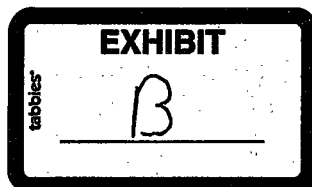
A consolidated answer or no answer letter to the petitions for review is due by 1 p.m. Monday, July 23, 2012. Any prior directives regarding time frame for filing an answer is/are hereby rescinded.

Petitioners' briefs are to be received by the Supreme Court of Pennsylvania Prothonotary's Office by 1:00 p.m. Monday, August 6, 2012. If hand delivered, briefs may be filed at the nearest Supreme Court Prothonotary's Office. Service of said briefs shall be made via personal service or e-mail as agreed to by the parties.

Respondent's consolidated brief is due on or before 1:00 p.m. Monday, August 20, 2012, under the same filing and service constraints as aforementioned. Due to the nature of these appeals and the constricted time frame, no applications for extensions of time will be entertained.

Oral argument will be scheduled during the September argument session in Philadelphia, by separate order.

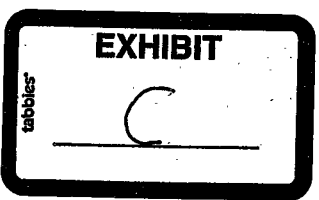
  
Prothonotary





**Supreme Court of Pennsylvania**  
**Court Daily Argument Lists**  
**From 09/11/2012 to 09/13/2012**

Panel:		2-FULL COURT-2012-1		
Listed/Submitted:		09/11/2012		
Location:		Philadelphia Supreme Court, Courtroom 456		
City:		Philadelphia		
Docket No	Journal No	Daily List	Short Caption	Consideration Type
1764 DD3		1	In the Matter of Kevin Joseph Kidurf	Public Censure
1800 DD3	J-97-2012	2	ODC, Pet v. Melvin T. Sharpe, Jr.	Oral Argument Supreme Ct.
93 MAP 2011	J-82A-2012	3	In Re: Maryesther S. Merlo, MDJ, District 31-1-02	Oral Argument Supreme Ct.
94 MAP 2011	J-82B-2012	3	In Re: Maryesther S. Merlo, MDJ, District 31-1-02	Oral Argument Supreme Ct.
74 MAP 2011	J-83-2012	4	Commonwealth v. Neiman Jr., J., Apit	Oral Argument Supreme Ct.
63 EAP 2011	J-84A-2012	5	Daniel, M. v. Wyeth Pharmaceuticals, Inc, Apit	Oral Argument Supreme Ct.
64 EAP 2011	J-84B-2012	5	Daniel, M. v. Wyeth, Inc, Apit	Oral Argument Supreme Ct.
9 EAP 2012	J-85A-2012	6	Commonwealth, Apit v. Fisher, N.	Oral Argument Supreme Ct.
10 EAP 2012	J-85B-2012	6	Commonwealth, Apit v. Stanton, K.	Oral Argument Supreme Ct.
11 EAP 2012	J-85C-2012	6	Commonwealth, Apit v. Best, A.	Oral Argument Supreme Ct.
65 EAP 2011	J-67-2012	7	Ingeman Housing, Apit v. Margolis Edelstein	Oral Argument Supreme Ct.
52 EAP 2011	J-86-2012	8	Commonwealth, Apit v. Turner, E.	Oral Argument Supreme Ct.
24 EAP 2012	J-87-2012	9	Lipsky, M. v. State Farm, Apit	Oral Argument Supreme Ct.
27 EAP 2012	J-88-2012	10	Commonwealth, Apit v. Alicia, J.	Oral Argument Supreme Ct.



Panel: 2-FULL COURT-2012-1  
Listed/Submitted: 09/11/2012  
Location: Philadelphia Supreme Court, Courtroom 456  
City: Philadelphia

Docket No Journal No Daily List Short Caption

Consideration Type

Total for 09/11/2012: 14



Panel: 2-FULL COURT-2012-1  
 Listed/Submitted: 09/12/2012  
 Location: Philadelphia Supreme Court, Courtroom 456  
 City: Philadelphia

Docket No	Journal No	Daily List	Short Caption	Consideration Type
622 CAP	J-89-2012	1	Commonwealth v. Mattison, K., Apit	Oral Argument Supreme Ct.
68 EAP 2011	J-90-2012	2	Commonwealth v. Estepp, V., Apit	Oral Argument Supreme Ct.
79 MAP 2009	J-91-2012	3	Commonwealth v. Batts, Apit	Oral Argument Supreme Ct.
38 EAP 2012	J-112-2012	4	Commonwealth v. Cunningham, I., Pet	Oral Argument Supreme Ct.
76 MAP 2011	J-92-2012	5	Seitzinger, Esq., et al., Apits v. Comm., et al.	Oral Argument Supreme Ct.
3 MAP 2012	J-93A-2012	6	Commonwealth, Apit v. Clay, J.	Oral Argument Supreme Ct.
4 MAP 2012	J-93B-2012	6	Commonwealth, Apit v. Claybrook, J.	Oral Argument Supreme Ct.
5 MAP 2012	J-93C-2012	6	Commonwealth, Apit v. Lewis, R.	Oral Argument Supreme Ct.
6 MAP 2012	J-94-2012	7	Pulse Technologies, Apit v. Notaro, P., et al	Oral Argument Supreme Ct.
13 MAP 2012	J-95-2012	8	Commonwealth, Apit v. Fortenbaugh II, J.	Oral Argument Supreme Ct.
17 MAP 2012	J-96-2012	9	Stuckley, et al v. ZHB of Newtown Twp, et al	Oral Argument Supreme Ct.

Total for 09/12/2012: 11

Panel:		2-FULL COURT-2012-1		
Listed/Submitted:		09/13/2012		
Location:		Philadelphia Supreme Court, Courtroom 456		
City:		Philadelphia		
Docket No	Journal No	Daily List	Short Caption	Consideration Type
39 WM 2012	J-99-2012	1	Costa, et al, Pets v. 2011 Legislative Reapp Comm	Oral Argument Supreme Ct.
133 MM 2012	J-100-2012	2	Holt, et al, Pets v. 2011 Legislative Reapp Comm	Oral Argument Supreme Ct.
134 MM 2012	J-101-2012	3	Shapiro, et al, Pets v. 2011 Legislative Reapp Comm	Oral Argument Supreme Ct.
131 MM 2012	J-102-2012	4	Doherty, et al, Pets v. 2011 Legislative Reapp Comm	Oral Argument Supreme Ct.
132 MM 2012	J-103-2012	5	Cruz, et al, Pets v. 2011 Legislative Reapp Comm	Oral Argument Supreme Ct.
127 MM 2012	J-104-2012	6	Reps. Sabatina & Callagrone v. 2011 Leg Reap Comm	Oral Argument Supreme Ct.
42 WM 2012	J-105-2012	7	Vargo, et al., Pet v. 2011 Legislative Reapp Comm	Oral Argument Supreme Ct.
41 WM 2012	J-106-2012	8	Lattanzi, R., Pet v. 2011 Legislative Rep Comm	Oral Argument Supreme Ct.
129 MM 2012	J-107-2012	9	Kim, Patty, Pet v. 2011 Legislative Reapp Comm	Oral Argument Supreme Ct.
130 MM 2012	J-108-2012	10	Brown, et al, Pets v. 2011 Legislative Reapp Comm	Oral Argument Supreme Ct.
128 MM 2012	J-109-2012	11	Schiffer, et al, Pets v. 2011 Leg Reapp Commission	Oral Argument Supreme Ct.
40 WM 2012	J-110-2012	12	Amadio, T., Pet v. 2011 Legislative Rep Comm	Oral Argument Supreme Ct.
126 MM 2012	J-111-2012	13	Baylor, Pet v. 2011 Legislative Reapp Commission	Oral Argument Supreme Ct.
<b>Total for 09/13/2012:</b>			<b>13</b>	

