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BY CM/ECF

United States Court of Appeals for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

RE: Garcia, et al. v. 2011 Legislative Reapportionment Commission, et al., U.S. Court of Appeals, 3rd Circuit, No. 13-2319

Dear Panel Judges:

Pursuant to the Court's December 9, 2013 correspondence, Plaintiffs-Appellants Joe Garcia, Fernando Quiles, and Dalia Rivera Matias ("Appellants") submit this brief letter memorandum addressing whether Appellants have standing to pursue their claims of voter dilution in the 2012 Pennsylvania senatorial election given that, as residents of even-numbered districts, they were not eligible to vote in that election. For the reasons set forth below, Appellants have standing.

Based on the 2010 census, the ideal population for a Pennsylvania senatorial district is 254,048. (138a) Ms. Matias resides in Pennsylvania's 16th Senatorial District. (41a) The population of that district was 288,264 based on the 2010 census – 34,216 (or 13.468%) greater than the ideal population. (141a) Mr. Garcia and Mr. Quiles reside in

Pennsylvania's 2nd Senatorial District. (40a) The population of that district was 259,719 based on the 2010 census – 5,671 (or 2.232%) greater than the ideal population. (141a)

Based on the 2010 census, the population of 14 of Pennsylvania's odd-numbered senatorial districts was less than the ideal population as of the 2012 elections. (141a) Nine of them had populations that were more than 5% below the ideal population. (Id.) Three of them had populations that were more than 10% below the ideal population. (Id.) The 45th district had a population of 220,981 – 33,067 or 13% below the ideal population. (Id.) The 47th district had a population of 225,797 – 28,251 or 11.1% below the ideal population. (Id.) The 43rd district had a population of 227,651 – 26,397 or 10.391% below the ideal population. (Id.) Representatives from each of these odd-numbered districts were elected in 2012 from districts that were drawn based on the 2000 census.

To establish standing, a party must show (1) an "injury in fact," *i.e.*, an actual or imminently threatened injury that is "concrete and particularized" to the plaintiff; (2) causation, *i.e.*, traceability of the injury to the actions of the defendant(s); and (3) redressability of the injury in the event of a favorable decision by the Court. Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey, 730 F.3d 208, 218 (3d Cir. 2013) (citation omitted).

Appellants have demonstrated an actual, particularized injury. In the context of voting rights cases, the United States Supreme Court has liberally construed the "actual injury" requirement for standing, holding that voters need only "allege facts showing disadvantage to themselves as individuals" to "have standing to sue." Baker v. Carr, 369 U.S. 186, 206-208 (1962) (holding that Tennessee voters had standing to challenge a sixty-one year old apportionment statute that was alleged to dilute their vote and place them in a position of inequality vis-a-vis voters in irrationally favored counties because '[t]hey are asserting 'a plain, direct and adequate interest in maintaining the effectiveness of their votes.'"). See also Dep't of Commerce v. U.S. House of Representatives, 525 U.S. 316, 327-334 (1999) (holding that Pennsylvania citizens had standing to challenge use of statistical sampling methods that were proposed by the Census Bureau for use in 2000 decennial census because, inter alia, those methods were likely to result in intrastate vote dilution given Pennsylvania's use of decennial census numbers for state legislative redistricting – "the appellees who live in the aforementioned counties have a strong claim that they will be injured by the Bureau's plan because their votes will be diluted vis-à-vis residents of counties with larger 'undercount' rates"); Michel v. Anderson, 14 F.3d 623, 626-28 (D.C. Cir. 1994) (holding that individual voters had standing to challenge a House of Representatives' rule providing delegates from U.S. territories and the District of Columbia the right to vote in the Committee of the Whole because they had alleged a

distinct injury – the dilution of the voting power of their elected congressmen. "[V]oters have standing to challenge practices that are claimed to dilute their vote, such as being placed in a voting district that is significantly more populous than others.").

Here, Appellants, much like the plaintiffs in Baker, Dep't of Commerce, and Michel, have each alleged that they suffered an actual injury – dilution of their voting power and the voting power of their elected state senators. Simply stated, representational voting strength has been expanded for voters who live in odd-numbered districts having populations under the ideal population total. Conversely, voters living in the larger over-populated districts – such as Appellants – have had their representational voting strength diminished. Comparing the representational strength of the vote of Plaintiff Quiles in Senate District 16, for example, with that of her counterparts in Senate District 45 indicates a total population variance of over 26%, placing her relative voting strength at a significant disadvantage simply because she resides in such an over-populous district. Indeed, every bill that has been voted upon in the Pennsylvania Senate after the 2012 elections has been deliberated upon under a scheme that over-represented the voters from Pennsylvania's smaller, odd-numbered districts. Appellants thus have suffered concrete harm. They will vote for state senators in 2014 based on senatorial districts drawn from the 2010 census. But when compared to smaller, odd-numbered

districts that elected state senators in 2012 based on districts drawn from the 2000 census, their representational voting strength will continue to be diluted.

Against this backdrop, Appellants have "standing to challenge the entire legislative apportionment scheme that produced [their] harm." Larios v. Perdue, 306 F. Supp. 2d 1190, 1210 (N.D. Ga. 2003) (emphasis added). This is precisely because, as the court continued in Larios, "a plaintiff living in an underrepresented district suffers a discrete representational harm from the disproportionate weakness of his vote as compared to the vote possessed by a resident of an overrepresented district." 306 F. Supp. 2d at 1211.[1]

Further, because Appellants' injury has been caused as a result of the unlawful use of a decade-old reapportionment plan in the elections of 2012, and can be remedied by the Court shortening the four-year term of senators elected in 2012 and directing a special election, Appellants have satisfied the remaining prerequisites for Article III standing.

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[1] Any reliance on *United States v. Hays*, 515 U.S. 737 (1995), to deny standing to Appellants herein is misplaced. In *Hays*, the plaintiffs complained of an illegal racial gerrymander of another district – not their own. Nor did they allege an injury stemming from the unconstitutional use of race or that they had been "personally ... subjected to a racial classification." 515 U.S. at 738. Here Appellants are rightfully complaining of a direct injury to them because their own votes and representational strength is diluted precisely because of where they live – in overpopulated even-numbered Senatorial districts. Thus, they are asserting an injury to themselves, not to their counterparts in other parts of the Commonwealth.

For all of these reasons, Appellants have standing to maintain this appeal.

Respectfully submitted,

Henry F. Reichner

HFR/rp

cc: All counsel of record (via CM/ECF)