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

SENATOR DOMINIC PILEGGI, REPRESENTATIVE MICHAEL TURZAI, AND LOUIS B. KUPPERMAN,

Plaintiffs,

v.

CAROL AICHELE, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA,

Defendant.

CIVIL ACTION

No. 2:12-cv-00588-RBS

BRIEF IN OPPOSITION TO TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION

Filed on Behalf of Intervenors, Senator Jay Costa and Representative Frank Dermody:

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BRIEF IN OPPOSITION TO TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION

Intervenors, Senator Jay Costa and Representative Frank Dermody, by and through their undersigned counsel, file the following Brief in Opposition to Plaintiffs' Temporary Restraining Order, Preliminary and Permanent Injunction, stating as follows:

INTRODUCTION

The Pennsylvania Primary Election is to be held on April 24, 2012. In accordance with the Pennsylvania Election Code, potential candidates for offices including U.S. President, U.S. Senate, U.S. Representative, Attorney General, Auditor General, State Treasurer, Delegate and Alternate Delegate to the National Conventions, as well as the Pennsylvania General Assembly, are well into the process of gathering petition signatures to have their names placed on the ballot for the Primary Election. The 2012 Pennsylvania Primary Election is in progress. Yet, based on a transparent pretext of an Equal Protection claim, the Plaintiffs here ask this Court to derail the Primary Election, without seeking any viable remedy that would protect the right of the Pennsylvania electorate to nominate candidates for the upcoming general election.

Once every 10 years, the Pennsylvania Constitution requires reapportionment of the districts for all of the seats of the Pennsylvania General Assembly. A reapportionment plan must comply with the Constitution's parameters of compact and contiguous districts, equal in population, without unnecessary divisions of counties or municipalities. The lead Plaintiffs are two members of the Pennsylvania Reapportionment Commission ("LRC" or "Commission"), which was charged, under the Constitution, with the responsibility of developing a constitutional reapportionment plan that is to remain in place until the elections following the next federal decennial census in 2021.[1] With its January 25, 2012 Order, followed by an 87-page Opinion issued on February 3, 2012, the Pennsylvania Supreme Court rejected the LRC's reapportionment plan as unconstitutional.[2] The Court remanded the reapportionment proceeding to the LRC, retaining jurisdiction until the Court finally approves a constitutional plan.

The Court understood that the remand proceeding will require due consideration of its directives, public input and its own subsequent review of any new plan the Commission adopts. Given the Pennsylvania Supreme Court's clear directive that the formulation of a new reapportionment plan must adhere to the provisions of the Pennsylvania Constitution, which requires time for public participation, 30 days to file exceptions to the LRC's new preliminary plan, and 30 days to appeal a new final plan to the Pennsylvania Supreme Court, it is obvious that no approved reapportionment plan can be adopted until after the April 24, 2012 Primary Election. Further, once the Supreme Court approves a new reapportionment plan, the Election Code's statutory timelines require at least another thirteen weeks from the commencement of

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[1] The lead Plaintiffs are State Senator Dominic Pileggi and State Representative Michael Turzai, joined by nominal Plaintiff Louis B. Kupperman.

[2] Citations "Order at __" and "Slip Op. at ___" refer to the January 25, 2012 Order and February 3, 2012 Opinion in *Holt, et al. v. 2011 Legislative Reapportionment Commission*, --- A.3d ---, 7 MM 2012 (Pa. Feb. 3, 2012). References to concurring and dissenting Opinions include the name of the authoring Justice.

obtaining signatures on petitions to the Primary Election day. Thus, to avoid a vacuum where no legislative districts exist, the Court, following the clear language of the Pennsylvania Constitution, ordered that the districts it approved with the 2001 Legislative Reapportionment Plan ("2001 Plan") remain in effect and govern the 2012 elections.

With their contrived claims, the Plaintiffs ask this Court to countermand the Pennsylvania Constitution and the Pennsylvania Supreme Court's Order by declaring that the 2001 Plan cannot be used for the Primary Election already in progress. Yet, they offer no viable solution that this Court – or any other court – could implement in a manner that would not have a federal court cancel the April 24, 2012 Primary Election. Federal court decisions consistently reinforce the rule that a state must be given an opportunity to develop its own reapportionment plan and that the federal court should abstain from interference, particularly where, as here, the election process is well underway.

The Plaintiffs, like every voter, are entitled to a periodic reapportionment process. That process is ongoing in Pennsylvania. Performing its constitutional responsibility, the Pennsylvania Supreme Court found that the plan that Plaintiffs Pileggi and Turzai favored was unconstitutional and ordered them, with the other Commission members, to prepare a plan that meets all constitutional requirements and is consistent with *Reynolds v. Sims*. Development of that plan, through the remand process that the Pennsylvania Supreme Court has directed and will oversee, will provide Pennsylvania voters with a new reapportionment plan as soon as possible, and will be in place for all General Assembly elections after 2012.

Because the Plaintiffs demand an immediate stay to the Pennsylvania Primary Election that are already in progress, in a maneuver that would violate the Pennsylvania Supreme Court's

Order and the clear principles of abstention, the Intervenors ask this Court to deny Plaintiffs' request for injunctive relief and to dismiss the Complaint.

FACTUAL BACKGROUND

I. INTERVENING PARTIES

State Senator Jay Costa, in his capacity as a State Senator, the minority leader of the Senate, a member of the LRC, a petitioner in the reapportionment appeal before the Pennsylvania Supreme Court and as a voter in the Commonwealth of Pennsylvania; and Representative Frank Dermody, in his capacity as State Representative, the minority leader of the House of Representatives, member of the LRC and as a voter in the Commonwealth of Pennsylvania, have intervened in this action seeking dismissal pursuant to Federal Rule of Procedure 24.

II. STATEWIDE PRIMARY ELECTION SCHEDULED FOR APRIL 24, 2012

With the Complaint, the Plaintiffs ask this Court to enjoin the Secretary of the Commonwealth from implementing the statewide Primary Election scheduled for April 24, 2012. Although the Complaint challenges the propriety of using the existing 2001 Plan in those elections, it is indiscriminant in asking this Court to halt not only primary elections for State Senators and State Representatives but the statewide primary elections for candidates for offices including U.S. President, U.S. Senate, U.S. Representative, Attorney General, Auditor General, State Treasurer and Delegate and Alternate Delegate to the National Convention.

III. PROVISIONS OF THE PENNSYLVANIA CONSTITUTION CONTROLLING THE REAPPORTIONMENT PROCESS

A. Parameters Of Reapportionment

Article II, Section 16 of the Pennsylvania Constitution prescribes the reapportionment process in Pennsylvania and states:

> The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of

> compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

Pa. Const. art. II, § 16. The Constitution thus sets the standards of achieving equality of population for each district as nearly "as practicable," within "compact and contiguous territory." In addition, the Constitution mandates that political subdivisions shall not be divided "unless absolutely necessary." Article II, Section 17(a) requires the establishment of a Reapportionment Commission that is charged with the responsibility of developing a reapportionment plan that effectuates these requirements.

B. Without The Final Approval Of The Pennsylvania Supreme Court, A Reapportionment Plan Does Not Have The Force Of Law

Article II, Sections 17(d) and (e) of the Constitution describe the role of the Pennsylvania Supreme Court in considering any appeals from a final reapportionment plan, providing that "[i]f the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing the commission to reapportion the Commonwealth in a manner not inconsistent with such order." Pa. Const. art. II, § 17(d). Only when the Supreme Court has "finally decided" all appeals, or when the time for filing an appeal has passed with no appeal taken, does a reapportionment plan have the force of law. Pa. Const. art. II, § 17(e). Thereafter, the districts established in the final, approved plan are to be used until the next reapportionment plan is developed and approved consistent with Section 17. *Id*.

IV. RELEVANT FACTUAL BACKGROUND RELATING TO THE ONGOING 2011 REAPPORTIONMENT PROCESS

A. Establishment Of The Reapportionment Commission

In 2011, the year following the 2010 Federal decennial census, the 2011 Pennsylvania Legislative Reapportionment Commission was established for the purpose of reapportioning the Commonwealth. The Commission is composed of Senator Dominic Pileggi, the majority leader of the Senate and Representative Michael Turzai, the majority leader of the House of Representatives, the lead Plaintiffs here, and Senator Costa, the minority leader of the Senate and Representative Frank Dermody, the minority leader of the House of Representatives. The fifth member is the Honorable Stephen McEwen, who the Pennsylvania Supreme Court selected when the other Commission members were unable to agree on a fifth member.

B. Presentation Of The Preliminary Plan

Following the establishment of the Commission and the certification of the census data in August 2011, throughout the late summer and early autumn, the Commission members had informal discussions regarding certain adjustments to the existing district maps, with the goal of achieving equitable and collective adjustments for the reapportionment. The Commission conducted two public hearings, intended to elicit testimony from citizens but did not discuss any specific reapportionment plan.

A Commission meeting was scheduled for October 31, 2011 for the purpose of voting on a preliminary plan ("Preliminary Plan"). Thirty minutes before the time scheduled for the vote, the Senate and House majority leader Commissioners, Senator Pileggi and Representative Turzai, presented a plan that was radically different from any plan the full Commission had previously reviewed or discussed. The Preliminary Plan had never been presented to the Senate and House minority leader Commissioners, or to the public, for consideration, scrutiny or even

review. A cursory review made clear that the plan contained a variety of deficiencies, obviously intended to promote partisan purposes. After a 30-minute recess to review the majority members' plan, the Senate and House minority leader Commissioners, Senator Costa and Representative Dermody, were required to vote on it. Over their objections to both the plan's substantive deficiencies and the flawed process imposed, the Commission approved the Preliminary Plan by a 3 to 2 vote.

C. Public Hearings And Comments On The Preliminary Plan

The Commission conducted public hearings on the Preliminary Plan on November 18 and November 23, 2011 and allowed for the submission of written testimony and comments. In the course of the hearings, witnesses from across the Commonwealth testified regarding their concerns as to the various deficiencies plan. Almost uniformly, witnesses urged the Commission to refrain from dividing their political subdivisions, stressing the arbitrary divisions that diminished the political voices of their communities and made interaction with the Commonwealth a difficult and fragmented process.

D. Approval Of The Final Plan

Without any analysis or consideration of the alternatives for eliminating divisions of political subdivisions or consideration of the public comments, the Commission voted to approve the Final Plan on December 12, 2011.

E. Petitions For Review

On January 10, 2012, the Democratic Senators for the Commonwealth of Pennsylvania joined in filing a Petition for Review of the 2011 Final Reapportionment Plan with the Pennsylvania Court. Other petitioners also filed appeals challenging the Final Plan as being contrary to the Constitution and contrary to law.

F. The Pennsylvania Supreme Court's Review And Consideration Of The Final Plan

The Pennsylvania Supreme Court heard oral argument on all of the appeals to the Final Plan on January 23, 2012 and on January 25, 2012 issued its Order. The Court found that the 2011 Legislative Reapportionment Plan is "contrary to law" and remanded it to the Commission "with a directive to reapportion the Commonwealth in a manner consistent with the Court's Opinion, which will follow." Order at 1. In accordance with Article II, Section 17(e) of the Pennsylvania Constitution, the Court also directed that the existing 2001 Legislative Reapportionment Plan, which the Court had previously approved, "shall remain in effect until a revised final 2011 Legislative Reapportionment Plan having the force of law is approved." Order at 2. The Court retained jurisdiction to oversee the Commission's development of a constitutional reapportionment plan, consistent with its directives.

On February 3, 2012, the Supreme Court issued its 87-page Opinion, authored by Chief Justice Castille, which explains the historical context and parameters for constitutional reapportionment and how the 2011 Legislative Reapportionment Plan fails to comply with those requirements. The Court set forth explicit guidelines and timelines for a remand of the proceeding to the Commission. Six of the seven Justices joined in the establishment of the guidelines.[3]

[3] In his Concurring and Dissenting Opinion, Mr. Justice Saylor noted that the majority opinion "is remarkable in many aspects, including its timeliness, its scope, and the passages of salutary guidance which it provides," and supported "the clarification of the appellate review for redistricting challenges, particularly in terms of: the acceptance that alternate plans may be employed by challengers to address their heavy burden of proof; the movement toward a more circumspect position regarding the role of population equality; and the recognition of the interplay among the several requirements of the Pennsylvania Constitution pertaining to redistricting. (*See* Slip Op. at 5 (Saylor, J. concurring and dissenting).)

V. RELEVANT TIMELINES FOR ELECTIONS

A. The Supreme Court's Directives For The Remand Of The 2011 Reapportionment Plan

In its 87-page Opinion, the Pennsylvania Supreme Court remanded the proposed plan to the LRC to formulate a new plan pursuant to the guidelines set forth in the Opinion. (*See* Slip Op. at 80.) The Supreme Court provided prospective guidance as to the reapportionment precepts contained in the Pennsylvania Constitution and stated that it trusted the LRC would avoid delay on remand. It noted, however, that citizens would have 30 days to object to the LRC's new preliminary plan, and a subsequent right to file appeals with the Supreme Court. (*Id.* at 87, n. 40.) Under the Pennsylvania Constitution, any person aggrieved by the preliminary plan shall have 30 days to file exceptions in which case the LRC "shall have thirty days after the date the exceptions were filed to prepare and file a revised reapportionment plan. Pa. Const. art. II, § 17(c). Further, under the Constitution, "[a]ny aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof." *Id.* at § 17(a). Thus, at a minimum, once the LRC presents a preliminary plan, two 30-day periods must elapse and a final plan would not attain the force of law for at least 60 days from the date a new plan is proposed. (*See* Slip Op. at 87 n. 40.) Recognizing these constitutional requisites, and the fact that at present the LRC has not discussed or formulated a preliminary plan, it is more likely that even an expedited process would require a much greater time period for the appropriate consideration and review.[4]

[4] Once the petitions for review of the proposed final plan are filed with the Supreme Court, even an expedited review would require additional time. The Supreme Court's review of the appeal, including submission of briefs and oral argument, required approximately 24 days from the filing of the appeals on January 12, 2012 to the Court's issuance of its Opinion on February 3, 2012.

B. Timeline For Primary Elections Under The Pennsylvania Elections Code

The Pennsylvania Election Code sets forth clear and specific timelines for the orderly process of elections. Pursuant to Section 603 of the Code, in the year of a Presidential nomination, the general primary "shall" be held on the fourth Tuesday of April. 25 P.S. § 2753. Candidates for all other offices, both federal and state, to be filled at the next general election are also to be nominated at the general primary on that date. *Id.* According to Sections 901 and 905, on or before the thirteenth Tuesday preceding the primary, the Secretary of the Commonwealth is to provide to each county board a list of the political parties which are to nominate candidates and written notices designating the offices for which candidates are to be nominated. 25 P.S. §§ 2861 and 2865. Circulation of the nomination petitions for those elections is to begin as of that thirteenth Tuesday preceding the primary election and is to continue until the tenth Tuesday preceding the primary. 25 P.S. § 2868. Thereafter, the Election Code allows for challenges to the nomination petitions. The Pennsylvania Commonwealth Court is to hear the challenges and must reach a determination on the validity of the petitions within 15 days of the last filing. 25 P.S. § 2937.

The website for the Pennsylvania Department of State provides the schedule for the process that the Election Code mandates, a copy of which is attached hereto as Exhibit A. As indicated on that schedule, the first day to circulate and file nomination petitions for U.S. President, U.S. Senate, U.S. Representative, Attorney General, Auditor General, State Treasurer and Delegates to the National Conventions was January 24, 2012 and the last day is to be February 14, 2012. The first day to circulate and file nomination petitions for Senator and Representative to the Pennsylvania General Assembly, as adjusted in accordance with the

Pennsylvania Supreme Court's January 25, 2012 Order was January 26, 2012 and the last is to be February 16, 2012.[5] (Order at 6.)

VI. ACTION BEFORE THIS COURT

A. Federal Complaint And Request For Emergency Injunctive Relief

On February 3, 2012, without benefit of review of the Pennsylvania Supreme Court's Opinion issued on that same date, the majority members of the Commission, Senator Dominic Pileggi and Representative Michael Turzai, joined by Louis B. Kupperman, an individual voter, filed a Complaint with this Court, ostensibly directed at Carol Aichele, in her capacity as Secretary of the Commonwealth ("Secretary Aichele"). With their Complaint and request for injunctive relief, the Plaintiffs demand that this Court stop the Pennsylvania Primary Election process on the spurious basis of a claim that the Supreme Court's directed use of the 2001 Plan for the 2012 elections would violate the constitutional requirement of "one person, one vote." The Plaintiffs do not and cannot allege any immediate harm that has or could result from the orderly completion of the reapportionment process, in accordance with the directives the Pennsylvania Supreme Court has directed and intends to oversee.

The Plaintiffs detail the reapportionment process, to date, acknowledging that the Supreme Court, in accordance with its constitutional authority, is to oversee the process until a constitutional plan, which has the force of law, is approved. Yet, as relief, they ask this Court to countermand the Pennsylvania Supreme Court's Order by prohibiting the use of the 2001 Plan, as the Supreme Court directed, until a constitutional 2011 Legislative Reapportionment Plan attains the force of law. The Plaintiffs are required to acknowledge the Supreme Court's

[5] The Pennsylvania Supreme Court's Order extended the time period to circulate petitions for the General Assembly. This extension reflected to the two days at the beginning of the circulation period (January 24 and 25) in which candidates may have been awaiting clarification, which the Court provided in its January 25, 2012 Order.

determination that the December 12, 2011 Plan is unconstitutional. Yet, they insist that the April 24, 2012 Primary Election should take place using the 2001 Plan. Because they do not and cannot suggest substitution of any other plan, the Plaintiffs ask this Court to enjoin the Secretary of the Commonwealth from implementing not just the legislative primaries but any and all primary elections, throughout the Commonwealth of Pennsylvania.

B. Intervention Of Senator Costa And Representative Dermody

On February 5, 2012, Senator Jay Costa and Representative Frank Dermody, in their individual capacity as elected officials and voters, and their official capacities as the Senate and House minority leaders and LRC members, and in Senator Costa's capacity as a petitioner in the Pennsylvania Supreme Court appeals, filed a motion to intervene in this matter because the matter affects their interests which are not represented by any party currently in the case.

DISCUSSION

I. STANDARD OF REVIEW

Injunctive relief is an "extraordinary remedy" that should be granted "only in limited circumstances." *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004). "A temporary restraining order is a 'stay put,' [an] equitable remedy that has [as] its essential purpose the preservation of the status quo while the merits of the cause are explored through litigation." *EXL Labs., LLC v. Egolf*, No. 10-6282, 2010 WL 5000835, at *3 (E.D. Pa. Dec. 7, 2010) (*quoting J.O. v. Orange Twp. Bd. of Educ.*, 287 F.3d 267, 273 (3d Cir. 2002)).

When deciding whether to grant a temporary restraining order, a district court must consider the following four factors: "(1) the likelihood that the moving party will succeed on the merits; (2) the extent to which the moving party will suffer irreparable harm without injunctive relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interests." *Steven B.*

Golden Assoc., Inc. v. Royal Consumer Prods., LLC, No. 09-3890, 2009 WL 2914366, at *2 (E.D. Pa. Sept. 10, 2009) (*citing Liberty Lincoln-Mercury, Inc. v. Ford Motor Co.*, 562 F.3d 553, 556 (3d Cir. 2009)).

II. GRANTING INJUNCTIVE RELIEF IS AGAINST THE PUBLIC INTEREST

A. The Strong Public Interest In An Orderly Election Process Requires Denial Of The Plaintiffs' Request for Temporary Restraining Order and Injunction In This Reapportionment Case

The public's interest in the orderly function of the electoral machinery outweighs any alleged population deviation, thus requiring the elections at issue to proceed as scheduled. Faced with circumstances directly analogous to those existing in this case, federal courts have routinely denied requests for preliminary injunctive relief that would either (i) require the development of new redistricting plans in time for use in imminent elections or (ii) postpone such elections until new plans could be developed. In a case strikingly similar to the case at hand, the Middle District of Pennsylvania refused to enjoin an election despite plaintiffs' claims that the districts resulted in an impermissible population deviation of 39 percent. *In re Congressional Districts Reapportionment Cases*, 535 F. Supp. 191, 193-94 (M.D. Pa. 1982) (Weis, Nealon and Rambo, JJ.). The court correctly recognized that it was required to consider "expense to the public, the disruption of campaign organizations, and the confusion which would inevitably result" if the congressional primary were to be delayed. *Id.* at 194. The court also found relevant that, in addition to electing United States Representatives, Pennsylvania voters would be voting for Governor, Lieutenant Governor, a United States Senator, one State Supreme Court Justice, one-half of the state senatorial seats and all state house seats. *Id.*

Ultimately, the court concluded that "although the plaintiffs have raised questions which merit serious consideration, the evidence produced and proffered, when weighed against the public interest in having the May primary continue on schedule, is not sufficient to warrant the

entry of a preliminary injunction." *Id.* at 195. *See also Diaz v. Silver*, 932 F. Supp. 462 (E.D.N.Y. 1996) (denying motion for preliminary injunction prohibiting election under allegedly unconstitutional plan and holding that "[t]he harm to the public in delaying either the primary or the general election or even changing the rules as they now stand substantially outweighs the likely benefit to the plaintiffs of granting a preliminary injunction"); *Ashe v. Bd. of Elections in the City of New York*, No. 88-2566, 1988 WL 68721 (E.D.N.Y. June 8, 1988) (where plaintiffs sought preliminary injunction preventing holding of primary election on scheduled date and where court held that plaintiffs had demonstrated likelihood of success on claim under Voting Rights Act, the court denied motion for preliminary injunction and held that risk of "immediate harm to plaintiffs" was outweighed by "the public interest in maintaining an orderly system of registration and in holding a primary election on a regularly scheduled date"); *Cardona v. Oakland Unified Sch. Dist.*, 785 F. Supp. 837, 842–43 (N.D. Cal. 1992) (more than three months before primary election, the court denied motion seeking preliminary injunction either to compel redistricting in time for election or to postpone election, reasoning that "election machinery [was] already in gear for the [scheduled] primary election," and "[e]ven if the Court could now adopt a redistricting plan, . . . it would still be too late to implement new districts in time for the . . . primary election"); *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1362 (M.D. Ala. 1986) (the court held "even if it were clear that all of the counties should be required to adopt single-member districts, it would be unfair and infeasible to require them to do so by June and noted that preliminary injunctive relief is rarely appropriate where requested relief "goes well beyond merely preserving the status quo while the litigation is pending"); *MacGovern v. Connolly*, 637 F. Supp. 111, 116 (D. Mass.1986) (harm resulting from massive disruption to the political

process, when weighed against "the harm to plaintiffs of suffering through one more election based on an allegedly invalid districting scheme," required denial of preliminary injunction).

B. The Imminence Of Elections Requires This Court To Withhold Relief

1. The U.S. Supreme Court, As Followed By Numerous Circuit And District Courts, Has Recognized That The Federal Courts Should Not Interfere With A State Election Process That Is Already In Motion

The use of districts created in 2001 for the 2012 elections does not violate either the United States or Pennsylvania Constitutions. Pennsylvania has historically and continuously met its obligation to adjust its legislative districts in response to the federal decennial census. The LRC's failure to satisfy the Pennsylvania constitutional prerequisites for reapportionment required the Pennsylvania Supreme Court to reject the LRC's proposed plan and to order the Commission to produce a new, constitutionally-sound plan. Due, in part, to the rare overlap of decennial redistricting and early primaries mandated by the presidential election, the Commission's task cannot be completed in time for the 2012 elections. As the Pennsylvania Supreme Court anticipated in both its Order and Opinion, the LRC will, no doubt, develop a new plan for Pennsylvania legislative districts, subject to the proper citizen appeal period, in time for the next general election after 2012.

In the seminal case of *Reynolds v. Sims*, the U.S. Supreme Court recognized the potential circumstances "where an ***impending election is imminent and a State's election machinery is already in progress.***" In that situation, the Court held equitable considerations may require a district court to withhold the grant of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid. *Reynolds v. Sims*, 377 U.S. 533, 583-84 (1964) (emphasis added). The *Reynold*s Court explicitly stated that:

> [i]n awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should

> act and rely upon general equitable principles. ***With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.***

Id. (emphasis added). The Court thus understood that, where the machinery of a state election is already in progress, a court should avoid interference in that process.

Following this guidance from *Reynolds*, numerous courts have withheld relief when an election was imminent. The Middle District of Alabama recently considered significantly analogous circumstances to those here in *Graves v. Montgomery*, --- F. Supp. 2d ----, 2011 WL 3503133 (M.D. Ala. Aug. 10, 2011). There, registered electors in the City of Montgomery alleged that the performance of August 2011 city council elections under the 2001 districts violated the Equal Protection Clause because those districts were "unconstitutionally malapportioned" based on the 2010 census. *Id.* at *1. Specifically, use of the 2001 districts resulted in a total deviation of 71.9 percent from the ideal district size. *Id.* at *3. The district court recognized that, although in progress, the reapportionment of the council districts based on the 2010 census date would not occur prior to the scheduled August elections. *Id.* at *8.

The court recognized that "the mere fact that a districting plan is shown to be malapportioned on the basis of some intervening event, such as a federal decennial census, does not mean that a federal court must *automatically* inject itself into a state or local government's legislative functions of reapportionment."[6] *Id.* at *8 (emphasis added). As long as a state has a

[6] The overarching principle in the U.S. Supreme Court's recent decision in *Perry v. Perez*, No. 11-713, 2012 WL 162610, at *2 (U.S. Tex. Jan. 20, 2012), actually supports the Intervenors' position. There, the U.S. Supreme Court held that reapportionment is a job for the state. Federal courts, therefore, must defer to the state whenever possible. For that reason, the Court criticized the district court for failing to follow the state's reapportionment plan to the extent possible. Moreover, in *Perry*, the state had completed its work on the reapportionment plan—significantly different circumstances from the situation here where the state is still working on a new plan.

"reasonably conceived plan" for redistricting that is in line with Equal Protection requirements, the court held, imbalances that occur prior to reapportionment do not require judicial intervention, especially when elections are imminent and the "election machinery" is already in progress. *Id.* (*quoting Reynolds*, 377 U.S. at 583-586). The court found that, when the plaintiffs' filed the action, the "election machinery wheels were in full rotation" and that stopping the election would be an impermissible disruption of the voting process. *Id.* at *13-14.

The plaintiffs argued that postponing redistricting would allow the 2001 plan to remain in effect through 2015, when the four-year terms of the next city council members expire. The court found this argument unconvincing, stating that "[t]he holdup in implementing the 2010 census data into the redistricting scheme . . . is a phenomenon that occurs only once every twenty years." *Id.* at *13 (*citing Political Action Conference of Illinois v. Daley*, 976 F.2d 335, 339 (7th Cir. 1992)). The *Montgomery* court thus appreciated the importance of implementing a constitutionally valid plan going forward, although it necessarily meant allowing elections to proceed for a year under the previous plan.

The Seventh Circuit applied similar reasoning in *Daley*. There, the plaintiff-voters alleged that their voting rights would be violated if Chicago's 1991 aldermanic elections were allowed to proceed pursuant to the existing wards. 976 F.2d at 337. The district court dismissed the claim, stating that "the Illinois statutory scheme [wa]s a rationally conceived plan, tied to the decennial census, to accomplish the necessary periodic adjustment" and that the procedure was not "unreasonably delayed." *Id*. at 338. The Seventh Circuit Court affirmed, noting that

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The facts in *Perry* are distinguishable. In *Perry*, Texas' extreme population growth resulted in the addition of multiple congressional districts. Thus, the status quo, even for a two-year period, would not have resulted in the appropriate number of congressional districts in Texas. In contrast, under the Pennsylvania Constitution, Pennsylvania continues to have the same number of senate districts (50) and the same number of house of representatives districts (203). In this case, where the 2001 Plan is still workable, the Court is not required to intervene, especially when elections are imminent. *Reynolds*, 377 U.S. at 583-84.

Reynolds explicitly contemplated that there would be a probable imbalance in a district map at the end of a decennial period. *Id.* at 340. This alone did not result in a constitutional violation. The court stated:

> In any system of representative government, it is inevitable that some elections for four-year or longer terms will occur on the cusp of the decennial census. The terms inevitably will last well into the next decade; and depending on shifts in populations in the preceding decade, the representation may be unequal in the sense that the districts no longer meet a one-person-one-vote test under the new census. . . . ***[But] we do not believe that considerations of mathematical equality in representation or the presumption in favor of redistricting every ten years outweigh the considerations outlined above concerning the validity of four-year terms, the settled expectations of voters and elected officials, the costs of elections, and the need for stability and continuity in office.***

Id. at 341 (*quoting French v. Boner*, 963 F.2d 890, 891-92 (6th Cir. 1992) (holding that "old" districts could be used in 1991 elections)) (alteration in original) (emphasis added).

Other courts, including the Ninth Circuit, have also held that use of "old" districts in an imminent election is constitutionally permissible. *See, e.g.*, *Gaona v. Anderson*, 989 F.2d 299, 301-302 (9th Cir. 1993) (use of "old" districts for special elections did not violate the Voting Rights Act or the California Constitution because reasonable transition periods were permissible absent findings of discriminatory intent); *Clark v. Marx*, No. 11-2149, 2012 WL 41926, at *7-9 (W.D. La. Jan. 9, 2012) (city council members complied with their Equal Protection obligation by reapportioning electoral districts because the Equal Protection Clause "requires only that a municipality have a reasonably conceived plan for periodic reapportionment, not that the plan be executed perfectly"); *Old Person v. Brown*, 182 F. Supp. 2d 1002, 1017-18 (D. Mont. 2002) (holding that potential candidates and voters in the 2002 election would be disadvantaged if the court attempted to impose a short-term remedy, especially when state was in the process of fashioning long-term relief).

2. The Wheels Of The April 24, 2012 Pennsylvania Primary Election Are Already In Motion And That Process Should Not Be Derailed

Here, as in *Montgomery*, the Pennsylvania "election machinery wheels are in full rotation" for the Primary Election for both state and federal offices scheduled for April 24, 2012. The Pennsylvania Election Code provides for a 90-day period in which candidates must circulate and file nominating petitions and citizens may challenge the nominating petitions. 25 P.S. §§ 2753, 2873, 2937. That process began on January 24, 2012 and potential candidates are currently circulating nominating petitions that must be filed no later than February 16, 2012. After the petitions are filed, opponents have seven days to object and the Pennsylvania courts must have adequate time to adjudicate any challenges.

If this Court were to intervene in the manner that the Plaintiffs demand, this entire electoral process would have to be derailed and a new timeline would have to be imposed. Potential candidates for office have already spent significant time circulating petitions in the districts set forth in the 2001 Plan, which the Pennsylvania Supreme Court, following the Pennsylvania Constitution, ruled will be effective for this years' primary and general elections. Stopping the election now would substantially disrupt the voting process at great costs of time and energy and of the candidates' and taxpayers' money. It would result in enormous detriment to the candidates for office and would deprive citizens of their right to replace public officials whose terms are expiring. *Montgomery*, 2011 WL 3503133, at *14.

The assertion that the 2001 Plan may result in less than desirable population deviations after more than ten years is not reason enough for the Court to step in to halt all elections. Considerations of the proximity of elections, the expectations of voters and elected officials, the costs of elections, and the need for stability and continuity in office, override considerations of "mathematical equality" when a state court's election process is underway and the state is

following constitutionally-mandated guidelines in its attempt to that ensure that valid districts are adopted. *Daley*, 976 F.2d at 341.

3. The Plaintiffs' Demands Defy The Pennsylvania Supreme Court's Thorough And Considered Directives

On February 3, 2012, the Pennsylvania Supreme Court issued its 87-page Opinion which details both the flaws in the LRC's initial plan and the process for remand. The Plaintiffs' Complaint, filed on the same and without the benefit of the Court's Opinion, is based on a fundamental flaw that is clearly inconsistent with the Court's decision. Plaintiffs claim that, despite the Court's rejection of the LRC's initial plan, "there nonetheless remains time, before the April 24, 2012 elections, for revisions by the LRC so that a revised final 2011 Plan may be approved as constitutional and have the force of law." (Pl.' Mot. for TRO, p. 11.)

With its Opinion, however, the Pennsylvania Supreme Court definitively rejected the LRC's final plan as being contrary to law. In the Court's view, this is not a plan that can be tweaked into constitutional compliance in a day. In describing the evidence of unnecessary divisions set forth in the LRC plan, as compared to an alternative plan offered by one of the petitioners, Amanda Holt, the Court noted the following:

> The Holt appellants also highlighted that their alternative plan had deviations from the ideal population for both the House and Senate districts that were smaller than the deviations in the Final Plan. Although appellants' brief goes into great detail comparing their plan to the Final Plan, the most convincing point is the raw number difference in subdivision splits. In the House, the alternative plan splits seven fewer counties, 81 fewer municipalities, and 184 fewer wards; in the Senate: the Holt plan splits seven fewer counties, two fewer municipalities, and 22 fewer wards. In addition, with regard to political subdivisions which were split at least once, the Holt plan created: in the House: 39 fewer county fractures, 186 fewer municipality fractures, and 228 fewer ward fractures; and in the Senate: 37 fewer county fractures, six fewer municipality fractures, and 50 fewer ward fractures, than the Final Plan. In total, for the House, 184 fewer subdivisions were divided, and 453 fewer

> fractures were established; in the Senate, 31 fewer subdivisions were split, and 93 fewer divisions were established.

(Feb. 3, 2012 Majority Opinion, at 72.)

In applying the requirements of the Pennsylvania Constitution, the Court said: "Indeed, the proof is strong enough that we view it as inconceivable, to borrow from one of the U.S. Supreme Court's equal protection decisions, that the magnitude of the subdivision splits here was unavoidable." *Id.* at 78. The Court was very clear that, given the unconstitutional nature of the 2011 LRC plan, the LRC must develop a new plan: "[W]e trust that the LRC, in formulating its new plan, and necessarily reducing the political subdivision splits and fractures, will be attentive to the concerns of historically unified subdivisions, such as County seats." *Id.* at 80.

Recognizing the scope of work before the LRC, and its need to start essentially from scratch, the Supreme Court indicated that constitutional periods for any aggrieved party to file exceptions to a preliminary plan (30 days under Pa. Const. Art II, Section 17(c)) and file an appeal from the final plan (30 days under Pa. Const., Art II, Section 17(d)), would remain intact. "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 filed, we will decide them with alacrity, as we have decided the ones now before us."[7] *Id.* at 87, n. 40.

As of February 5, 2012, not even a preliminary plan exists for consideration. In fact, the LRC has not met since the Supreme Court issued its January 25, 2012 Order, and obviously not

[7] Federal courts are bound to accept the interpretation of state law by the highest court of the state. *See Hortonville Joint Sch. Dist. v. Hortonville Educ. Assoc.*, 426 U.S. 482, 489 (1976). To the extent that Plaintiffs argue that the mandatory timelines set forth in Article II, Section 17, of the Pennsylvania Constitution do not apply to plans which the LRC will draft upon remand from the Supreme Court, such a claim would ignore the Pennsylvania Supreme Court's province in interpreting the Pennsylvania Constitution. Here, the Court quite properly recognized that it must retain authority for future appeals that may challenge the LRC's next efforts to craft a constitutional plan.

since issuance of the February 3, 2012 Opinion. The Commissioners must review the Supreme Court's decision and work to develop a plan that meets the requirements of Article II, Section 16. Those requirements, based on a constitutional amendment passed in 1968, four years after the U.S Supreme Court issued *Reynolds v Sims*, require both population equality where practicable and compact and contiguous districts that do not divide political subdivisions unless "absolutely necessary." Once a new preliminary plan is prepared and approved, the Constitution requires least 60 days before a plan can be put in effect. Realistically, even if fast-tracked, this process cannot completed before the April 24, 2012 Primary Election. Further, the Commonwealth could not proceed with the April 24, 2012 Primary Election even if the Supreme Court finally approved the new plan shortly before that date.

Once a plan has the force of law, the statutory election process must occur. Candidates begin collecting signatures for nomination petitions thirteen weeks, or 91 days, before a primary. They will not know the boundaries of the districts until the Supreme Court finally approves a final plan. Thus, applying the reasonable time to finalized a new plan with the subsequent election calendar imposed by statute, the Primary Election would have to be pushed back over five months. In a Presidential year, that type of delay would deprive Pennsylvania voters of the opportunity to select delegates to the national conventions[8] and would violate 25 P.S. §§ 2753 and 2862 of the Pennsylvania Election Code.[9] Further, it assumes that the LRC will work together and adopt a plan that addresses the Supreme Court's guidelines.

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[8] The Republican National Convention will be held on August 27-30, 2012 and the Democratic National Convention will be held on September 3-6, 2012.

[9] "In the years when candidates for the office of President of the United States are to be nominated, every registered and enrolled member of a political party shall have the opportunity ***at the Spring primary*** in such years to vote his preference for one person to be the candidate of his political party for president." 25 P.S. § 2862 (emphasis added).

The Supreme Court moved quickly and decisively in ensuring that the General Assembly's districts will meet all of the requirements of the Pennsylvania Constitution, including population standards based on *Reynolds v. Sims*. The LRC should move as quickly as the Constitution and due process permit. However, new districts simply cannot be created and approved in sufficient time for the April 24, 2012 Primary Election. An indefinite postponement, in the absence of an approved final plan, and in a Presidential year, would have the potential of depriving all voters of a chance to select candidates and officials in 2012.

C. This Court Should Abstain To Allow Completion Of The Reapportionment Process Because The Commonwealth's Process Is Working Properly And Expeditiously

1. This Court Should Stay Its Hand While The Commonwealth Addresses Its Reapportionment

Under abstention and deferral theories, a district court should stay its hand as to reapportionment issues until the state has a reasonable time to redraw its districts in a manner that is constitutionally sound. *Scott v. Germano*, 381 U.S. 407, 409 (1965). As the United States Supreme Court has recognized, a district court may only intervene if there is evidence that a state court will fail to constitutionally reapportion districts. *Growe v. Emison*, 507 U.S. 25, 34 (1993). "A State should be given the opportunity to make its own redistricting decisions so long as that is practically possible and the State chooses to take the opportunity. When it does take the opportunity, the discretion of the federal court is limited except to the extent that the plan itself runs afoul of federal law." *Lawyer v. Dep't of Justice*, 521 U.S. 567, 576-77 (1997).

In *Growe*, the Supreme Court held that the District Court of Minnesota erred in failing to defer to the state's redistricting proceedings. 507 U.S. at 31-32. "[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts." *Id.* at 34. A district court must "defer consideration of disputes involving

redistricting where the State, through its legislative or judicial branch, has begun to address that highly political task itself." *Id.* at 33. "At the very least, the elementary principles of federalism and comity embodied in the full faith and credit statute obligate[] the federal court to give [a state court's] judgment *legal effect* . . . ." *Id.* at 35-36 (emphasis in original).

2. Pennsylvania Is Still In The Midst Of Its Reasonably Conceived Reapportionment Process

The reapportionment process in Pennsylvania is currently operating as prescribed in the Pennsylvania Constitution. The Commission certified the census data for use on August 17, 2011, then filed its preliminary plan within the 90-day period which the Pennsylvania Constitution mandates on October 31, 2011. The public was provided a thirty day period to comment on the preliminary plan, which expired November 30, 2011. Twelve days later, the Commission filed its proposed "final" plan, subject to another thirty day appeal period.

Twelve parties filed appeals challenging the proposed final plan and, on January 25, 2012, only thirteen days after the period to file appeals expired, the Pennsylvania Supreme Court held that the Commission's proposed plan violated the Pennsylvania Constitution. On February 3, 2012, a mere ten days after oral arguments, the Pennsylvania Supreme Court issued the 87-page majority Opinion, explaining the failings of the proposed plan and issuing guidance for the Commission in its efforts to redraw the districts in the future. The LRC already has scheduled meetings to begin the process of developing a preliminary plan, with a meeting scheduled on February 8, 2012.

Given this background, it is abundantly clear that the Commission and especially the Pennsylvania Supreme Court have worked within the timeframes of the Pennsylvania Constitution. The state's interests in ensuring that the Pennsylvania voting districts are drawn in

a manner than comports with constitutional and Supreme Court mandates should, in and of itself, require the Court to withhold relief.

The Pennsylvania Supreme Court has issued a remand to allow the Commission to create a plan that complies with the Pennsylvania Constitution. The Commonwealth's Reapportionment Commission has not yet been given a reasonable time to set forth a valid reapportionment plan which adheres to the Pennsylvania Supreme Court's new constitutional guidance. Thus, this Court should refuse to interfere in reapportionment issues when the state is working, on its own accord and with all due rapidity, to ensure that Pennsylvania's voting districts are drawn in a manner that comports with constitutional and Supreme Court mandates.

3. This Court Should Abstain From Interfering With The Ongoing State Process

Similarly, *Younger* abstention dictates that the district court should refuse to interfere with the state court process. "A federal district court has discretion to abstain from exercising jurisdiction over a particular claim where resolution of that claim in federal court would offend principles of comity by interfering with an ongoing state proceeding." *Addiction Specialists, Inc. v. Township of Hampton*, 411 F.3d 399, 408 (3d Cir. 2005) (*citing Younger v. Harris*, 401 U.S. 37 (1971)). *Younger* abstention applies when (1) the state proceedings are judicial in nature, (2) the proceeding implicate important state interest and (3) the federal plaintiff has an adequate opportunity in the state proceedings to raise constitutional challenges. *Pierce v. Allegheny County Bd. of Elections*, 324 F. Supp. 2d 684 (W.D. Pa. 2003) (*citing Middlesex County Ethics Comm'n*, 457 US at 432 (1982)).

This Court should refrain from interfering with the Pennsylvania reapportionment process. The Pennsylvania Supreme Court's January 25, 2012 Order and subsequent Opinion made it clear that the 2012 elections are to be conducted using the districts as adopted in 2001.

Article II, Section 16 imposes the identical standard for population equality set forth in Reynolds v. Sims. There is absolutely no reason to doubt that the new reapportionment plan that will govern the General Assembly districts until 2022 will incorporate those population-equality standards, as well as the constitutional mandate that districts not divide political subdivisions "unless absolutely necessary." The Pennsylvania Supreme Court retains jurisdiction over the reapportionment process by virtue of its constitutionally-required role in hearing all appeals from the LRC's upcoming plan, and is in the position to ensure compliance with these constitutional standards. These circumstances, coupled with the undeniably important interest the state has in its own reapportionment, require this Court to abstain from this matter entirely.

III. EVEN ASSUMING, ARGUENDO, THAT THE PUBLIC INTEREST DID NOT REQUIRE THE COURT TO WITHHOLD RELIEF, PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR EQUAL PROTECTION CLAIM

A. Use Of The 2001 Plan For The 2012 General Election Does Not Violate The Equal Protection Clause Because Pennsylvania Has A Reasonably Conceived Reapportionment Plan

The Equal Protection Clause does not require "daily, monthly, annual or biennial reapportionment, so long as a State has a ***reasonably conceived plan*** for periodic readjustment of legislative representation." *Reynolds*, 377 U.S. at 583-84 (1964) (emphasis added). "While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation." *Id*.

Pennsylvania has a reasonably conceived plan for reapportionment and is in the process of adopting a constitutional plan that meets both population and compactness requirements. This fact is undisputed. The very existence of this reasonably conceived plan, which does everything possible to ensure a constitutional reapportionment plan is adopted in the Pennsylvania—even

going so far as permitting the Supreme Court to strike down a proposed plan that fails to adhere to constitutional guidelines—is enough in itself to defeat an Equal Protection claim.

B. Equal Protection Claims Are Meritless Because The State Has A Rational Basis For Using The 2001 Plan For The Imminent Elections

As the Plaintiffs have necessarily recognized, a state may use a plan with population deviations as long as its reasoning is "based on legitimate considerations incident to the effectuation of a rational state policy." (Pl.'s Mem. of Law in Support of Mot. for TRO, at 9.) The state's interest in holding its imminent elections on time are based on legitimate considerations of the expectations of voters, the expectations of elected officials and candidates, the costs of elections, and the need for stability and continuity in office.

In *Donatelli v. Mitchell*, 2 F.3d 508, 510 (3d Cir. 1993), voters from the newly created 44th state senatorial district brought suit alleging that movement of the representative from the old 44th district to the new 44th district for the remaining two years of his term "unconstitutionally saddle them with a representative whom neither they nor any other voter in their district elected." The court concluded that the state action was subject only to rational-basis review. *Id.* That a state action imposes some burden on the right to vote does not make it subject to strict scrutiny. *Id.* at 513.

"Election laws will invariably impose some burden upon individual voters. . . Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation by narrowly tailored to advance compelling state interests . . . would tie the hands of States seeking to ensure that elections are operated equitably and efficiently." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). When a voting provision imposes only reasonable and nondiscriminatory restrictions upon the rights of voters, a state's regulatory interests are sufficient to justify the provisions. *Id.* at 434. *See also Old Person*, 182 F. Supp. 2d at 1019

(state had a legitimate electoral policy of preserving the orderly administration of elections and encouraging the highest possible participation by the electorate and potential candidates).

On the very day that the Plaintiffs filed their injunction action, the Pennsylvania Supreme Court issued guidance as to standards the LRC must follow in its next attempt to redistrict the state. The LRC must follow the Court's guidance and prepare districts that meet constitutional standards. Until then, Pennsylvania cannot exist in a district-less vacuum. Candidates for all offices and Presidential delegates have been gathering signatures for nomination petitions during the circulation period set by statute—January 24 to February 14.[10] That period is nearly over. The expectations of candidates and voters regarding the reliability and continuity of the election process provide a more-than-rational basis for using the 2001 Plan in the impending elections, and the Presidential election is a more than reasonable basis to ensure that the April 24, 2012 Primary Election be maintained.

IV. THE PLAINTIFFS WILL NOT BE IRREPARABLY HARMED BY DENIAL OF THE RELIEF SOUGHT

A temporary restraining order is a "stay put"—a preservation of the status quo. *See EXL Labs., LLC*, 2010 WL 5000835, at *3. The Plaintiffs do not seek to preserve the status quo. Instead, they seek to grind the election machinery to a sudden halt under the transparent guise of a claim of irreparable harm. The relief they demand would, in fact, destroy the status quo and force the state and the candidates for office to unnecessarily begin from square one.

The Plaintiffs have failed to allege convincingly that they, or any other party, will be irreparably harmed if a temporary restraining order is not granted. The Plaintiffs' interest under the Equal Protection Clause, and pursuant to *Reynolds,* is that Pennsylvania has a reasonably conceived plan for reapportionment. That a plan exists and is being implemented. To the extent

[10] *See* note 4, *supra*.

that Plaintiffs claim they are harmed because their plan was not adopted, as members of the LRC that voted to adopt the plan, which the Pennsylvania Supreme Court rejected, Plaintiffs Pileggi and Turzai helped to create the situation of which they now complain. As members of the LRC, they are subject to the Supreme Court's directive to develop a new reapportionment plan that is constitutionally sound and comports with the Supreme Court's mandates.

CONCLUSION

For the foregoing reasons, Intervenors, Senator Jay Costa and Representative Frank Dermody, ask this Court to deny Plaintiffs' Request for Temporary Restraining Order and allow the state court election process to move forward using the 2001 Plan until the Commission sets forth a new district plan that attains the force of law.

Respectfully Submitted,

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Date: February 5, 2012

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

SENATOR DOMINIC PILEGGI, REPRESENTATIVE MICHAEL TURZAI, AND LOUIS B. KUPPERMAN,	)	CIVIL ACTION
	)	No. 2:12-cv-00588-RBS
Plaintiffs,	)	
v.	)	
CAROL AICHELE, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA,	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to all counsel of record.

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