

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

SENATOR DOMINIC PILEGGI,	:	
REPRESENTATIVE MICHAEL TURZAI, AND	:	
LOUIS B. KUPPERMAN,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	No. 2:12-588-RBS
v.	:	
	:	
CAROL AICHELE, IN HER OFFICIAL CAPACITY AS :	:	
SECRETARY OF THE COMMONWEALTH OF :	:	
PENNSYLVANIA,	:	
	:	
Defendant.	:	

**REPLY IN FURTHER SUPPORT OF PLAINTIFFS’
MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiffs, Senator Dominic Pileggi, Representative Michael Turzai and Louis B. Kupperman (collectively, “Plaintiffs”) hereby file this reply in further support of their Motion for Temporary Restraining Order (the “Motion”).

During the hearing on Plaintiffs’ Motion, the Court asked counsel to address “the question of the necessity for a temporary restraining order at this juncture in light of what has been going on as it relates to the redistricting.” Transcript of February 6, 2012 hearing (the “Transcript”) at 4:18-21.¹ Stated differently, the Court was inquiring as to the advisability, if not necessity, of immediately enjoining Defendant’s² use of the 2001 Plan in connection with the impending election cycle.

¹ For the Court’s convenience, portions of the Transcript cited herein are collectively attached hereto as **Exhibit 1**.

² Capitalized terms used herein shall have the meanings attributed to such terms in Plaintiffs’ Motion unless otherwise defined herein.

While considerable time was expended at the hearing theorizing about what might occur in the future (e.g., whether the Pennsylvania legislature will postpone the April primary; how quickly the LRC will agree upon a new reapportionment plan; how quickly the Supreme Court of Pennsylvania could be expected to rule on the constitutionality of that plan), considerably less time was expended discussing two unassailable facts that confirm Plaintiffs' right to the temporary restraining order that they seek: (1) use of the 2001 Plan is violative of the Constitution of the United States; and (2) the 2001 Plan's unconstitutionality will not change with the passage of time.³ Hence, each day that Defendant is obligated to take action, or otherwise takes action, in conformance with the 2001 Plan is a day of wasted action. Plainly this Court is authorized to, and should immediately, discontinue any such waste by promptly enjoining it. *See also* Memorandum in support of Plaintiffs' Motion at 12-14 (discussing the irreparable harm that will flow from permitting

³ Notably, during the hearing no one suggested that the deviation figures identified in Plaintiffs' Complaint were infirm or otherwise inaccurate (nor could they) or that the Court lacked the authority to issue the temporary restraining order that Plaintiffs seek. In fact, the most counsel for the prospective intervenors could argue was that use of the 2001 Plan was better than the alternative, nothing. In truth, because use of the 2001 Plan would be unconstitutional, the Court respectfully does not have the option of authorizing the use of that Plan. Even the Supreme Court of Pennsylvania was forced to acknowledge that the 2011 LRC Final Plan that it deemed unconstitutional was better than the 2001 plan: "Again, we do not doubt that this Final Plan is an improvement over the 2001 Final Plan." *See* February 3, 2012 Opinion at 75.

Defendant to proceed using the 2001 Plan, and the equities that justify issuance of the requested temporary restraining order).⁴

Dated: February 7, 2012

Respectfully submitted,

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⁴ Because the remainder of prospective intervenors' opposition to Plaintiffs' Motion is redundant of arguments set forth in prospective intervenors' motion to dismiss Plaintiffs' Complaint, Plaintiffs will refrain from addressing those arguments herein, and will instead address these arguments in Plaintiffs' forthcoming opposition to that motion to dismiss.

CERTIFICATE OF SERVICE

I, Brian S. Paszamant, Esquire, hereby certify that I have caused the following documents to be filed electronically on February 7, 2012:

Reply in Further Support of Plaintiffs' Motion for Temporary Restraining Order.

This document is available for reviewing and downloading from the ECF System, and will be served electronically upon all counsel of record.

BLANK ROME LLP

Dated: February 7, 2012

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