

IN THE SUPREME COURT OF PENNSYLVANIA

NO. 159 MM 2017

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA, *et al.*,
Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA, *et al.*,
Respondents.

**ANSWER OF RESPONDENTS GOVERNOR THOMAS W. WOLF,
ACTING SECRETARY ROBERT TORRES, AND COMMISSIONER
JONATHAN MARKS TO LEGISLATIVE RESPONDENTS' AND
INTERVENORS' APPLICATIONS FOR STAY OF COURT'S ORDERS OF
FEBRUARY 19, 2018 AND JANUARY 22, 2018**

Review of the Commonwealth Court's Recommended Findings of Fact and
Conclusions of Law, No. 261 M.D. 2017

Thomas P. Howell, Deputy General
Counsel (ID No. 079527)
Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17101
Tel: (717) 783-6563

Timothy E. Gates,
Chief Counsel (ID No. 202305)
Kathleen M. Kotula, Deputy Chief
Counsel (ID No. 318947)
Ian B. Everhart, Assistant Counsel
(ID No. 318947)
Pennsylvania Department of State
Office of Chief Counsel
306 North Office Building
Harrisburg, PA 17120
Tel: (717) 783-0736

Mark A. Aronchick (ID No. 20261)
Michele D. Hangle (ID No. 82779)
Claudia De Palma (ID No. 320136)
Ashton R. Lattimore (*pro hac vice*)
HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER
One Logan Square, 27th Floor
Philadelphia, PA 19103
(215) 568-6200

Counsel for Respondents

On February 22, 2018, Speaker Turzai and President Pro Tempore Scarnati (“Applicants”) submitted an Application for Relief seeking a stay of this Court’s February 19, 2018 Order setting forth a constitutionally proper congressional districting plan (“Remedial Plan”), as well as this Court’s January 22, 2018 Order. Applicants set forth no new theories or facts, but simply “restate and incorporate by reference” the arguments set forth in their similar application of January 23, 2018, which this Court denied. Because Applicants submit nothing new for this Court’s consideration, their request should be summarily denied.

A stay is an extraordinary remedy and is only warranted if: “1. The petitioner makes a strong showing that he is likely to prevail on the merits[;] 2. The petitioner has shown that without the requested relief he will suffer irreparable injury[;] 3. The issuance of a stay will not substantially harm other interested parties in the proceedings[;] and 4. The issuance of a stay will not adversely affect the public interest.” *Pennsylvania Pub. Util. Comm’n v. Process Gas Consumers Grp.*, 467 A.2d 805, 809 (Pa. 1983). Applicants still cannot demonstrate any of these factors, and Executive Respondents renew and incorporate herein the arguments of their January 25, 2018 Answer to the January 23 Application.

Since Applicants last requested a stay, this Court has issued an opinion fully explaining the rationale for its January 22, 2018 Per Curium Order (“PCO”), which was fully consistent with the PCO. Additionally, this Court issued an Order amending the congressional election calendar. As provided in the Court’s

February 19 Order, the Department of State has certified the textual description of the Remedial Plan to this Court. *See* February 22, 2018 Torres Certification. The Department of State has also taken many other steps to implement the Remedial Plan, including updating the Department of State’s statewide computer voter database to reflect the Remedial Plan, and has provided copies of the Remedial Plan textual description to county election officials. *See* “Department of State Implementing PA Supreme Court’s Remedial Congressional Map,” Feb. 20, 2018.¹ Further, the Department of State has provided updated candidate petitions in advance of the circulation period, which begins on February 27,² and has publicized the Remedial Plan on the Department of State’s website and social media.³ Finally, the Department of State has submitted the textual description of the congressional districts in the Remedial Plan to the Pennsylvania Bulletin for publication, and will submit those descriptions to newspapers across the

¹ Available at <http://www.media.pa.gov/Pages/State-Details.aspx?newsid=263>.

² *See* <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Pages/default.aspx>.

³ *See* <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Pages/remedial-interactive-map.aspx>; <https://www.facebook.com/PADepartmentofState/>.

Commonwealth for further dissemination. The boundaries of the new plan have been widely publicized, receiving local, statewide and national media coverage.⁴

Granting a stay at this stage would confuse, complicate and undermine these preparations, which the Executive Branch Respondents, and voters, have undertaken pursuant to this Court’s PCO and the Remedial Plan. A stay would cause massive chaos and would interfere with the orderly administration of the upcoming primary election. Applicant’s unsupportable, “last-ditch” appeal to the United States Supreme Court, their second such effort, does nothing to change this analysis.⁵

In their Response to Applicants’ first Application for a Stay, the Executive Respondents demonstrated that as long as a map issued by February 20, 2018, the May 2018 Primaries could proceed smoothly. *See* Answer dated Jan. 25, 2018 at 3-6. Subsequent events have confirmed this—the Remedial Plan is in place, the nomination petition circulation period is about to begin, and no “chaos” has ensued. In contrast, it is Applicants who now seek to upset the status quo and

⁴ *See*, <https://slate.com/news-and-politics/2018/02/the-pennsylvania-supreme-courts-new-map-restores-the-states-democracy.html>; https://www.huffingtonpost.com/entry/pennsylvania-new-map_us_5a8b2cb6e4b0a1d0e12c1287

⁵ Even if the U.S. Supreme Court were to agree with Applicants that the Remedial Plan was adopted inappropriately – an extremely unlikely outcome, especially given that Justice Alito has already denied one stay application – the Court will likely defer to the lower Courts’ decision to keep such plans in place where an election is imminent. *See Upham v. Seamon*, 456 U.S. 37 (1982).

severely and irreparably impair the prospect of the May 15 primary election going ahead as scheduled.

In any event, regardless of Applicants' appeals and entreaties, they do not have the right to proceed under a map that violates others' constitutional rights. The fundamental rights guaranteed by the Pennsylvania Declaration of Rights "cannot lawfully be infringed, even momentarily[.]" *Pap's A.M. v. City of Erie*, 812 A.2d 591, 607 (2002). Petitioners imply that their mere intention to seek review before the United States Supreme Court justifies upending the status quo and imposing an unconstitutional law on the citizens of Pennsylvania. Such argument ignores the public's interest in maintaining (and proceeding under) a constitutional redistricting plan that provides for free and equal elections. None of Applicants' asserted inconveniences can overshadow these fundamental constitutional rights. To the contrary, Applicants seek to impose an unconstitutional enactment upon Pennsylvania's citizens. Such a result should not be countenanced, and this Court should therefore deny the Application for stay, and preserve the status quo established by the Remedial Plan.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: February 26, 2018

/s/ Mark A. Aronchick

Mark A. Aronchick (ID No. 20261)
Michele D. Hangle (ID No. 82779)
Claudia De Palma (ID No. 320136)

Ashton R. Lattimore (*pro hac vice*)
One Logan Square, 27th Floor
Philadelphia, PA 19103
Tel: (215) 568-6200
Fax: (215) 568-0300
maa@hangle.com
mdh@hangle.com
cdp@hangle.com
arl@hangle.com

*Attorneys for Respondents Governor Thomas
W. Wolf, Acting Secretary of the
Commonwealth Robert Torres, and
Commissioner Jonathan Marks*

Thomas P. Howell (ID No. 079527)
Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17101
Tel: (717) 783-6563
Fax: (717) 787-1788
thowell@pa.gov
Attorney for Governor Wolf

Timothy E. Gates (ID No. 202305)
Kathleen M. Kotula (ID No. 86321)
Ian B. Everhart (ID No. 318947)
Pennsylvania Department of State
Office of Chief Counsel
306 North Office Building
Harrisburg, PA 17120
Tel: (717) 783-0736
tgates@pa.gov
kkotula@pa.gov
ieverhart@pa.gov
*Attorneys for Acting Secretary Torres and
Commissioner Marks*