

**RESPONDENTS PENNSYLVANIA GENERAL ASSEMBLY,
MICHAEL C. TURZAI, AND JOSEPH B. SCARNATI III'S
ANSWER TO GOVERNOR THOMAS W. WOLF'S PRELIMINARY
OBJECTIONS**

Respondents Pennsylvania General Assembly, Michael C. Turzai, and Joseph B. Scarnati III (collectively, "Opposing Respondents") file this Answer to Governor Thomas W. Wolf's Preliminary Objections to the Petition for Review filed by Petitioners League of Women Voters of Pennsylvania, *et al.* (collectively, "Petitioners") pursuant to Pennsylvania Rule of Appellate Procedure 1516(b).

PRELIMINARY STATEMENT

In this suit to invalidate the Commonwealth's current congressional district lines, Respondent Governor Thomas Wolf ("Governor Wolf" or "the Governor") wants to be dismissed under Pennsylvania Rule of Civil Procedure 1028(a)(4). It is a curious position. Like Petitioners, he is a Democrat who perceives the Commonwealth to be improperly gerrymandered (his re-election campaign has called the current congressional boundary lines "rigged").¹ Unlike Petitioners, however, he is actually "responsible for implementing the relief" that they seek. His bare-bones Preliminary Objections, then, are better characterized as more of a political maneuver as

¹ See, e.g., <https://petitions.signforgood.com/endgerrymandering> (Visited September 8, 2017).

it remains clear – and indeed undisputed – that the Governor is both a legally and practically indispensable party in this matter as his signature would be required to implement the relief sought by Petitioners.

Governor Wolf offers two related, but flawed, arguments in support of his request to be dismissed from this suit. First, he claims that because the relief sought can be ordered against the government Respondents, he is not an indispensable party who must be named. In support of this claim he cites cases in which plaintiffs sought to invalidate legislation where there was: (i) no requirement that the legislation be redrafted; and (ii) no request—as there is here—to enact a new law in its place. Other than that, he makes virtually no argument as to why he is not an indispensable party. In actuality, the Governor is indispensable to this Petition, because the nature of the claim and relief sought here require his direct participation. Most importantly, the remedy sought in this case (i.e. passage of a new redistricting law) legally mandates that the Governor sign any new law. But there are other rights unique to his office that could be implemented as part of the redistricting process sought here, including, *inter alia*, the potential use of his veto power, and his ability to call an extraordinary session of the General Assembly. The simple fact remains that Petitioners cannot possibly achieve their requested

relief without direct participation from the Governor. There could be no clearer example of an indispensable party.

Second, the Governor claims that the Petition is legally insufficient because there exists no substantive allegation against him. But there is no substantive allegation against any Respondent named in the suit in an official capacity. In fact, Petitioners specifically allege that “[m]ost of the Respondents named[, including Governor Wolf . . .] were not involved in drafting Pennsylvania’s current plan. They are named in their official capacities as parties *who would be responsible for implementing the relief Petitioners seek.*” (Pet. at ¶ 34 (emphasis added).) Regardless, “it cannot be the law that a party may be deemed essential only if the plaintiff specifically alleges that the party engaged in wrongdoing or seeks relief directly involving such party.” *City of Philadelphia v. Phila. Parking Auth.*, 798 A.2d 161, 166 (Pa. 2002) (per curiam) (Castille, J., concurring). Rather, where declaratory relief is sought—as it is here—Pennsylvania law is clear that all indispensable parties must be included. This analysis therefore collapses into the first inquiry. The Governor is indispensable; his interests here are unique and implicated.

Whatever political motivations may be driving the Governor in his efforts to bow out of this suit, they cannot change the fact that his direct

participation is legally necessary in order to obtain the relief sought in the Petition. Therefore, his Preliminary Objections fail and must be overruled.

ANSWER TO AVERMENTS

Opposing Respondents respond to the averments of the numbered paragraphs of Governor Wolf's Preliminary Objections as follows:

1. Admitted.
2. Admitted in part, and denied in part. Opposing Respondents admit that Act 131 of 2011 (Act of Dec. 22, 2011, P.L. 598, No. 131) ("the 2011 Plan") was proposed in the General Assembly as Senate Bill 1249 of 2011. Opposing Respondents admit further that Petitioners filed a Petition for Review (the "Petition") in this Court alleging that the 2011 Plan violates Pennsylvania's Free Speech and Expression Clause and the Freedom of Association Clause codified at Art. I, §§ 7, 20 of the Constitution of the Commonwealth of Pennsylvania, and the equal protection provisions in Pennsylvania Constitution, codified at Art. I, §§ 1 and 26, and Art. I, §5. The remaining averments are denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required. The Petition speaks for itself and any characterization thereof is strictly denied.

3. Admitted.

4. Admitted in part, and denied in part. Opposing Respondents admit only that Governor Wolf was elected in November 2014 and inaugurated on January 20, 2015. After reasonable investigation, Opposing Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph about Governor Wolf’s “role in the enactment of [the 2011 Plan.]” Therefore, Opposing Respondents deny those allegations.

5. Denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required.

6. Admitted in part, and denied in part. Opposing Respondents admit that Petitioners named Governor Wolf in his official capacity as Governor of the Commonwealth. But by way of further response, there are additional allegations against Governor Wolf that make clear that he is an indispensable party to this suit. For example, in addition to alleging that “Governor Wolf is responsible for signing bills into law as well as the faithful execution of the 2011 Plan,” Petitioners allege that the individual Respondents named in their official capacities, including Governor Wolf, are the parties “who would be responsible for implementing the relief Petitioners seek.” (Pet. at ¶ 34.) Otherwise, the Petition speaks for itself and any characterization thereof is strictly denied.

7. Denied. In fact, there are additional allegations regarding Governor Wolf, including Petitioners' allegation that he, along with the other individual Respondents named in their official capacities, are the parties "who would be responsible for implementing the relief Petitioners seek." (*Id.*) Indeed, the Petitioners seek as relief "enact[ment of] a new congressional districting plan comporting with the Pennsylvania Constitution in a timely manner[.]" which is a political process triggering the Governor's role of final approval of any such legislation. The Petition speaks for itself and any characterization thereof is strictly denied.

**Preliminary Objection of Respondent Governor Wolf – Legal
Insufficiency of the Pleading/Failure to State a Claim (Demurrer),
Pa.R.C.P. 1028(a)(4)**

8. Paragraphs 1-7 above are incorporated by reference as if fully set forth herein.

9. Admitted. By way of further response, Petitioners allege that Governor Wolf, along with the other individual Respondents named, are "named in their official capacities as parties who would be responsible for implementing the relief Petitioners seek." (Pet. at ¶ 34.)

10. Denied. Paragraph 35 of the Petition is not the "sole averment that mentions Governor Wolf." In fact, Paragraph 34 of the Petition makes clear that Governor Wolf, along with the other individual Respondents, are

named “as parties who would be responsible for implementing the relief Petitioners seek.” (Pet. at ¶ 34.) Likewise, in the Prayer for Relief, Petitioners “request that this Honorable Court enter judgment in their favor and against Respondents”—including Governor Wolf. (*Id.* at Prayer for Relief.) Moreover, Petitioners ask the Court to enjoin Respondents—including Governor Wolf—from “administering, preparing for, or moving forward with any future primary or general elections of Pennsylvania’s U.S. house members using the 2011 Plan.” (*Id.* at Prayer for Relief at (b).) And, perhaps most importantly, Petitioners want Respondents—including Governor Wolf—“to enact a new congressional districting plan comporting with the Pennsylvania Constitution” (*Id.* at Prayer for Relief at (c).) By way of further response, any such “enact[ment]” would necessarily involve the Governor.

11. Denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required. It is irrelevant that the Governor may not be “administering” the 2011 Plan, and that he did not sign it. What is critical is his involvement in the process of enactment of the new plan that Petitioners are seeking to have the Court mandate. The Governor’s office has many rights and duties that would be implicated by the relief sought in the Petition. The Petition speaks for itself

and any characterization thereof is strictly denied.

12. Denied. It is specifically denied that the Petition states—or can be read to imply—that only the “General Assembly, rather than the Governor . . . would be responsible for implementing the relief Petitioners seek.” While the Petition is a writing that speaks for itself, it clearly shows that the Respondents collectively named in their official capacities—including Governor Wolf—would be so responsible. Specifically, the Petition states:

“34. . . . Most of the Respondents named below were not involved in drafting Pennsylvania’s current plan. They are named in their official capacities as parties who would be responsible for implementing the relief Petitioners seek.

35. Respondent Thomas W. Wolf is Governor of the Commonwealth and is sued in his official capacity only. As Governor, Respondent Wolf is responsible for signing bills into law as well as the faithful execution of the 2011 Plan.” (Pet. at ¶¶ 34-35.) Any characterization of the Petition is strictly denied.

13. Denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required. By way of further response, the Petition states that Governor Wolf is responsible for the “faithful execution of the 2011 Plan.” Furthermore, the Governor (albeit then-Governor Corbett) was involved in the process of enacting the

2011 Plan. (*See also* Pet. at ¶ 76 (“Pennsylvania’s Republican Governor, Tom Corbett, signed the bill into law”).) So too would Governor Wolf be required to participate in the enactment of any new plan ordered by the Court—relief which is specifically sought in the Petition. Under Pennsylvania constitutional law, the Governor would have to approve and sign any new plan, veto it, or review and consider it and choose to do nothing, in which case the plan could become law as if he had signed it.

14. Denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required. By way of further response, the Petition clearly states a cause of action against the Governor. The Petition specifically requests that this Court “[e]stablish a new congressional districting plan that complies with the Pennsylvania Constitution, if Respondents fail to enact a new congressional districting plan comporting with the Pennsylvania Constitution in a timely manner[.]” (Pet. at Prayer for Relief at (c).) The Petition speaks for itself and any characterization thereof is strictly denied.

15. Denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required. The Governor is a proper respondent and indispensable party. By way of further response, the cases cited in Paragraph 15 are writings that speak for

themselves and any characterization thereof is strictly denied.

16. Denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required. By way of further response, the Governor is a proper respondent.

17. Denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required. By way of further response, the focus on whether Petitioners have levied substantive allegations “against” the Governor of some wrongdoing is not appropriate here. The case cited in Paragraph 17 is a writing that speaks for itself and any characterization thereof is strictly denied.

18. Denied for the reasons set forth in Paragraph 17 above.

19. Denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required. By way of further response, the cases cited in Paragraph 19 are writings that speak for themselves and any characterization thereof is strictly denied.

20. Denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required. By way of further response, the case cited in Paragraph 20 is a writing that speaks for itself and any characterization thereof is strictly denied.

21. Denied as either disputed issues of fact, for which strict proof is demanded, or as conclusions of law to which no response is required. In the Commonwealth of Pennsylvania, the Governor plays a critical role—as the final say—in the enactment of congressional redistricting legislation, which has been expressly requested by Petitioners. He is therefore a proper and interested party in this Petition, because of his political role and because of the declaratory relief sought.

WHEREFORE, Respondents Pennsylvania General Assembly, Michael C. Turzai, and Joseph B. Scarnati III respectfully request that Governor Thomas W. Wolf’s Preliminary Objections to the Petition for Review filed by Petitioners League of Women Voters of Pennsylvania, *et al.* be overruled.

Dated: September 11, 2017

Respectfully Submitted,

BLANK ROME, LLP

By: /s/ Brian S. Paszamant
Brian S. Paszamant, Esquire
Jason A. Snyderman, Esquire
John P. Wixted, Esquire
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998

Counsel for Joseph B. Scarnati III

**HOLTZMAN VOGEL
JOSEFIAK TORCHINSKY PLLC**

By: /s/ Jason Torchinsky
Jason Torchinsky, Esquire
Shawn Sheehy, Esquire
45 North Hill Drive, Suite 100
Warrenton, Virginia 20186

*Admitted Pro Hac Vice Counsel for
Michael C. Turzai; Admission to be
filed for Pennsylvania General
Assembly and Joseph B. Scarnati III*

CIPRIANI & WERNER, P.C.

By: /s/ Kathleen A. Gallagher
Kathleen A. Gallagher
Carolyn Batz McGee
John E. Hall, Esquire
650 Washington Road, Suite 700
Pittsburgh, PA 15228

*Counsel for Michael C. Turzai and
The Pennsylvania General Assembly*