

Docket No. 159 MM 2017

IN THE SUPREME COURT OF PENNSYLVANIA

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA, CARMEN FEBO SAN MIGUEL, JAMES SOLOMON, JOHN GREINER, JOHN CAPOWSKI, GRETCHEN BRANDT, THOMAS RENTSCHLER, MARY ELIZABETH LAWN, LISA ISAACS, DON LANCASTER, JORDI COMAS, ROBERT SMITH, WILLIAM MARX, RICHARD MANTELL, PRISCILLA MCNULTY, THOMAS ULRICH, ROBERT MCKINSTRY, MARK LICHTY, LORRAINE PETROSKY,

Petitioners,

vs.

COMMONWEALTH OF PENNSYLVANIA; THE PENNSYLVANIA GENERAL ASSEMBLY; THOMAS W. WOLF, in his capacity as Governor of Pennsylvania; MICHAEL J. STACK III, in his capacity as Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate; MICHAEL C. TURZAI, in his capacity as Speaker of the Pennsylvania House of Representatives; JOSEPH B. SCARNATI III, in his capacity as Pennsylvania Senate President Pro Tempore; ROBERT TORRES (ACTING), in his official capacity as Secretary of the Commonwealth of Pennsylvania; JONATHAN M. MARKS, in his capacity as Commissioner of the Bureau of Commissions, Elections and Legislation of the Pennsylvania Department of State,

Respondents.

**RESPONDENT MICHAEL J. STACK III'S ANSWER TO APPLICATION FOR
EXTRAORDINARY RELIEF UNDER 42 Pa. C.S. §726 and Pa. R.A.P. 3309**

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On behalf of Respondent Michael J.
Stack III, in his Capacity as Lieutenant
Governor of Pennsylvania and
President of the Pennsylvania Senate

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3309**

Respondent Lt. Governor Michael J. Stack, III, in his official capacity as Lt. Governor of Pennsylvania and President of the Pennsylvania Senate, submits this Answer to Petitioners' Application for Extraordinary Relief Under 42 Pa. C.S. § 726 and Pa. R.A. P. 3309, and in support thereof, states the following¹:

INTRODUCTION

Petitioners have challenged the 2011 federal congressional redistricting of Pennsylvania (the "2011 Plan") as an impermissible partisan gerrymander under the Pennsylvania Constitution, and have sought that relief in time for resolution

¹ Pursuant to Pa. R.A.P. 1116 and 3309, Lt. Gov. Stack presents his answer in narrative form.

before the 2018 midterm elections. Petitioners ask this Court to consider their Application for Extraordinary Relief, particularly in the context of the Commonwealth Court's recent grant of a stay of Petitioners' action. Because gerrymandering represents a serious threat to Pennsylvania's civic institutions, Petitioners' Application should be granted.

FACTUAL BACKGROUND

In their Application, Petitioners restate the relevant facts related to the 2011 Plan. Lt. Gov. Stack presents the following additional factual considerations:

Because Secrecy Obscured The Development Of The 2011 Plan, Additional Discovery Is Needed

Lt. Gov. Stack was a Democratic member of the Pennsylvania Senate at the time of the development and promulgation of the 2011 Plan. Despite being a member of the Pennsylvania Senate, he had no information about the 2011 Plan until the day the 2011 Plan was presented for a vote: Republican lawmakers had drafted the entire plan in complete secrecy. Then-Sen. Stack strongly opposed the 2011 Plan. His opposition was based on the lack of transparency in developing the 2011 Plan and on its unconstitutional partisan effects. After election to his current office, Lt. Gov. Stack was not able to locate any records in the Lieutenant Governor's office related to the 2011 Plan. As a result, discovery is necessary as related to the Republican lawmakers' development of their 2011 Plan.

ARGUMENT

Petitioners Have Presented An Issue Of Significant Importance That Should Be Resolved Before The 2018 Elections

Partisan gerrymandering threatens Pennsylvania's civic institutions. Most Pennsylvanians, and most Americans, recognize the concrete harms associated with partisan gerrymandering. A recent poll indicated that 71% of Americans (80% of Americans, 68% of Independents, and 65% of Republicans) want clear rules setting out when redistricting becomes improper partisan gerrymandering.²

This Court has held that significant, intentional, partisan gerrymandering violates the Pennsylvania Constitution. *Erfer v. Commonwealth*, 794 A.2d 325 (Pa. 2002). Petitioners are apparently prepared to present evidence of exactly that type of significant, intentional and partisan gerrymandering, which affects every citizen of the Commonwealth.

Petitioners' presentation will, in contrast to many redistricting challenges, include the data from three election cycles under that partisan gerrymander, which will demonstrate the ripeness of this dispute. (Appl. at 2). Since the implementation of the 2011 Plan, the partisan composition of Pennsylvania's congressional delegation has remained static: 13 Republicans and 5 Democrats.

² See Lake Research Partners and WPA Intelligence, PARTISAN REDISTRICTING-NEW BIPARTISAN POLL, Sept. 11, 2017, *available at* <http://www.campaignlegalcenter.org/news/press-releases/supermajority-americans-want-supreme-court-limit-partisan-gerrymandering>.

(Pet. for Review ¶ 4). This 72%-28% breakdown has endured significant swings in the statewide congressional vote through three congressional election cycles. This demonstrates the structural stranglehold that the 2011 Plan provides to the Republican lawmakers who drafted it. (*Id.*). Pennsylvania courts have traditionally addressed gerrymander challenges *before* any elections can take place under the challenged maps. *Cf. Erfer*, 794 A.2d at 325. Petitioners' concrete data will permit this Court to address this partisan gerrymandering challenge with the benefit of reviewing the 2011 Plan's real-world harms in action.

Those harms should not be allowed to continue through the Commonwealth Court's delay. When the Commonwealth Court granted a stay pending the resolution of the U.S. Supreme Court case *Gill v. Whitford*, No. 16-1161 (S. Ct.), it suspended Petitioners' challenge, possibly through June 2018, with the effect of denying Petitioners relief for the 2018 midterm elections. That effective denial of a well-pleaded, legally supportable claim justifies the grant of Petitioners' Application here.

This Court Has Resolved The Issues Presented Here Under Similar Timetables

This Court has resolved gerrymandering challenges in similar timetables. In *Erfer*, the challengers filed suit in January of a midterm election year. This Court was able to resolve the dispute in sufficient time for the relevant deadlines for midterm elections that year. This Court has been similarly responsive in other

challenges involving reapportionment. *See, e.g., Holt v. 2011 Legislative Reapportionment Comm'n*, 38 A.3d 711 (Pa. 2012), *Albert v. 2001 Legislative Reapportionment Comm'n*, 790 A.2d 989, 1000 n.3 (Pa. 2002), *In re Pennsylvania Legislative Reapportionment Comm'n*, 609 A.2d 132 (Pa. 1992), *In re Reapportionment Plan for Pennsylvania Gen. Assembly*, 442 A.2d 551 (Pa. 1981).

This matter can be resolved quickly and efficiently if the Application for Extraordinary Relief is granted. Without the requested relief, Petitioners would be effectively denied their day in court on a civic issue of fundamental importance.

This Court Has Robustly Enforced The Expanded Protections Of The Pennsylvania Constitution And Should Continue These Protections

This Court has repeatedly recognized that numerous provisions of the Pennsylvania Constitution protect a broader scope of activities than the counterparts identified in the federal Constitution. In turn, this Court has robustly enforced those rights. This expansion of rights includes the free expression clauses at issue in Petitioners' case. *See Pap's A.M. v. City of Erie*, 812 A.2d 591, 605 (Pa. 2002) (finding that Article I, § 7 of the Pennsylvania Constitution provides broader protection for freedom of expression than the federal Constitution).

This Court has protected the expanded rights extended that the Pennsylvania Constitution provides in numerous situations. *See, e.g., Commonwealth v. Muniz*, No. 47 MAP 2016, 2017 WL 3173066, at *26 (Pa. July 19, 2017) (holding that the

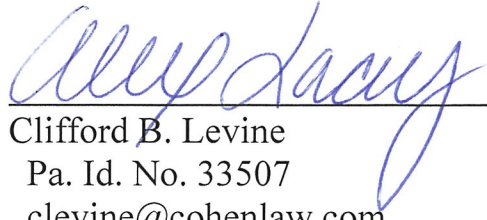
Pennsylvania Constitution's *ex post facto* clause is broader than its federal counterpart); *Commonwealth v. Edmunds*, 586 A.2d 887, 905–06 (Pa. 1991) (holding that Article I, § 8 of the Pennsylvania Constitution provides greater protection for individuals against invalid warrants than the federal Constitution). Further, this Court also has previously rejected automatically importing decisional law on federal constitution provisions into their Pennsylvania constitutional counterparts. *See, e.g., Commonwealth v. Sell*, 470 A.2d 457, 458 (Pa. 1983) (holding that the U.S. Supreme Court's abolition of "automatic standing" doctrine under the Fourth Amendment did not warrant the abolition of the same doctrine under the Pennsylvania Constitution.).

Petitioners' claims should not be delayed, and thus effectively denied. This Court can and should enforce the Pennsylvania Constitution's broader protections in time for the 2018 midterm elections.

CONCLUSION

For all the reasons cited herein, Respondent Lt. Gov. Stack respectfully requests that this Court grant Petitioners' Application for Extraordinary Relief.

Respectfully submitted,



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Dated: October 23, 2017

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this 23rd day of October 2017, a true and correct copy of the foregoing RESPONDENT MICHAEL J. STACK III'S ANSWER TO APPLICATION FOR EXTRAORDINARY RELIEF UNDER 42 Pa. C.S. §726 and Pa. R.A.P. 3309 was served electronically upon the following, through the PAC File system. To the extent we are informed by the PAC File system that any of the following were not served successfully electronically, a paper copy will be served by U.S. First Class mail on the 24th day of October 2017:

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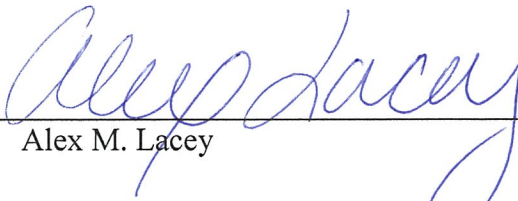
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