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

LEAGUE OF WOMEN VOTERS, OF PENNSYLVANIA, et al., Plaintiffs, v. THE COMMONWEALTH OF PENNSYLVANIA, et al., Defendants.	No. 2:17-cv-05137-MMB Honorable Michael M. Baylson

PLAINTIFFS' EMERGENCY MOTION TO REMAND

Mary M. McKenzie
Attorney ID No. 47434
Michael Churchill
Attorney ID No. 4661
Benjamin D. Geffen
Attorney ID No. 310134
PUBLIC INTEREST LAW CENTER
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 190103
(215) 627-7100 (telephone)
(215) 627.3183 (fax)
mmckenzie@pubintlaw.org

David P. Gersch
(*pro hac vice* motion forthcoming)
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001
(202) 954-5000 (telephone)
(202) 942-5999 (fax)
david.gersch@apks.com

Counsel for Plaintiffs

TABLE OF CONTENTS

Page

INTRODUCTION

Defendant Scarnati's notice of removal is an egregious and transparent attempt to derail state court proceedings in this case. It is procedurally defective on its face and offers no good-faith basis for federal subject matter jurisdiction. This case should be remanded immediately.

Plaintiffs filed this action in Pennsylvania state court asserting exclusively state-law claims under the Pennsylvania Constitution, seeking to invalidate the Pennsylvania statute that established Pennsylvania's 2011 congressional districting plan. On November 9, 2017, the Pennsylvania Supreme Court assumed plenary jurisdiction, and trial has been scheduled to begin December 11. Yesterday, on the literal eve of a pre-trial conference in the state court, Scarnati notified Plaintiffs that he had removed the case a day earlier. The removal is baseless:

- Scarnati did not obtain the consent of all "properly joined" defendants as required by 28 U.S.C. § 1446(b)(2)(C), including the Governor, whom Scarnati had previously described as "indispensable" because he must sign into law any newly enacted plan.

- Scarnati filed the notice of removal three months after the 30-day deadline to remove under § 1446(b)(2)(B), bizarrely asserting that the upcoming special election to replace a resigned congressman somehow triggered a new 30-day window to remove.

- There is obviously no federal question jurisdiction over Plaintiffs' exclusively state constitutional claims challenging a state statute.

- Scarnati's entire theory of federal jurisdiction rests on the false premise that Plaintiffs seek to change the districting plan for the special election set for March 2018. Plaintiffs seek no relief with respect to the special election.

- Even if Plaintiffs were seeking relief with respect to the special election (and they are not), Scarnati's purported federal-law defense would not create a federal question.

Scarnati's motive for pursuing such a frivolous removal is obvious: to delay and derail the expedited schedule ordered by the Pennsylvania Supreme Court. He's already has some success. In light of the removal, the state court cancelled today's pre-trial conference. With trial

set to begin in barely three weeks, any delay impedes the state court's ability to resolve this case in time for the November 2018 elections, as the Pennsylvania Supreme Court ordered.

This Court should not countenance such vexatious tactics. For the reasons set forth below, the Court should expedite resolution of this motion, immediately remand this case to state court without awaiting an opposition from Scarnati, and award attorneys' fees to Plaintiffs.

BACKGROUND

Plaintiffs are eighteen Pennsylvania voters, one from each congressional district in the Commonwealth.[1] They filed this action in the Pennsylvania Commonwealth Court on June 15, 2017. Their Petition for Review asserts that Senate Bill 1249, the state statute establishing Pennsylvania's 2011 congressional districting plan (the "2011 Plan"), violates the Pennsylvania Constitution—in particular, its Free Expression and Association Clauses, Art I, §§ 7, 20, Equal Protection guarantees, Art. I, §§ 1 and 26, and Free and Equal Clause, Art. I, § 5. *See* Dkt. 1-3. Plaintiffs do not assert any federal constitutional claims or other federal claims.

In line with prior redistricting challenges in Pennsylvania state courts, Plaintiffs have named as defendants several legislative parties (including Scarnati) as well as Governor Thomas W. Wolf, Lieutenant Governor Michael J. Stack III, Acting Secretary of the Commonwealth Robert Torres, and Commissioner Jonathan Marks of the Bureau of Commissions, Elections, and Legislation (BCEL).[2] Plaintiffs seek an injunction prohibiting Defendants from using the 2011 Plan and requiring them to enact a new plan that comports with the Pennsylvania Constitution.

---

[1] The League of Women Voters of Pennsylvania was originally also a petitioner in the state court action, but the Commonwealth Court dismissed the organization as a party.

[2] The Petition for Review initially named the Commonwealth of Pennsylvania, but the Commonwealth Court dismissed the Commonwealth from the case. The Petition also initially named Pedro A. Cortés in his capacity as Secretary of the Commonwealth, but Cortés has since stepped down from that position and been replaced by Acting Secretary Torres.

On October 16, 2017, the Commonwealth Court stayed the case, with the exception of briefing related to legislative and other purported privileges. In light of the stay, Plaintiffs asked the state high court to assume "extraordinary jurisdiction" over the case and implement proceedings to decide it in time for the May 2018 congressional primaries.

On November 9, 2017, the Pennsylvania Supreme Court granted Plaintiffs' request for extraordinary relief. Dkt. 1-6 at 67-69. It vacated the stay and directed the Commonwealth Court to conduct discovery, pre-trial, and trial proceedings, and to submit findings of fact and conclusions of law to the state high court no later than December 31, 2017.

On Monday, November 13, 2017, the Commonwealth Court issued an order (attached as **Exhibit A**) scheduling trial to begin December 11 at 9:30 a.m., and a pre-trial conference for November 16 at 1:00 p.m. (i.e., today). The order also confirmed that Defendants' brief regarding legislative and other purported privilege was due November 15, and directed Plaintiffs to file their response by November 17. The order further states that "[n]o extensions of filing deadlines and/or requests for continuances of scheduled proceedings will be considered and/or granted absent extraordinary circumstances."

A day later, on November 14, Scarnati removed the case to this Court. Scarnati served the notice of removal via U.S. mail and did not email Plaintiffs' counsel a courtesy copy. Plaintiffs and their counsel first learned of the removal on the afternoon of November 15 (i.e., yesterday) when Scarnati notified the state court that he had removed the case.

ARGUMENT

I. The Notice of Removal Facially Fails to Satisfy the Statutory Prerequisites

A. Scarnati Did Not Obtain the Consent of All Properly Joined Defendants

Under 28 U.S.C. §1446(b)(2)(A), "all defendants who have been properly joined and served must join in or consent to the removal of the action." But as Scarnati acknowledges, he

does not have the consent of all defendants here. Instead, only two defendants reportedly have consented—four others have not (the Governor, Lieutenant Governor, Acting Secretary of the Commonwealth, and Commissioner of BCEL). Scarnati asserts that these defendants' consent is unnecessary because they are "nominal" defendants. Notice at 6. That is absurd.

In the removal context, "[a] nominal party is defined as one neither necessary nor indispensable to the suit. A party is necessary and indispensable to the suit if the plaintiff states a cause of action against the party, and seeks relief from the party." *Dietz v. Avco Corp.*, 168 F. Supp. 3d 747, 759 (E.D. Pa. 2016). Because "[t]he removal statutes are to be strictly construed against removal," "all doubts should be resolved in favor of remand." *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990).

The Governor is an indispensable party, and this Court need not take Plaintiffs' word for it. In the state court proceedings in this case, Scarnati himself asserted that "it is 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 [Plaintiffs]." Legislative Resps.' Answer to Gov. Wolf's Preliminary Objections at 2 (attached as **Exhibit B**) (emphasis added). Scarnati criticized the Governor's request to be dismissed from the case as "curious," because the Governor "is actually responsible for implementing the relief that [Plaintiffs] seek." *Id.* at 1. And then: "the Governor is indispensable to this Petition, because the nature of the claim and relief sought here require his direct participation." *Id.* And again: "The simple fact remains that Petitioners cannot possibly achieve their requested relief without direct participation from the Governor." *Id.* at 2-3. Once more: "The Governor is indispensable; his interests here are unique and implicated." *Id.* at 3. To remove any

conceivable doubt as to his view on this matter, Scarnati declared: "There could be no clearer example of an indispensable party." *Id.*

Scarnati was right the first time, and the state court has correctly refused to dismiss the Governor from the case. If Plaintiffs prevail on the merits, the Governor would need to sign any new districting plan that the General Assembly enacts to replace the current one. Scarnati suggests that this would somehow be a "ministerial act," but a Governor's decision whether to sign a bill into law is anything but ministerial. Indeed, as Scarnati previously told the state court, the Governor might use his "veto power." *Id.* at 2. In short, the Governor is integral to the relief Plaintiffs seek: a districting plan that comports with the Pennsylvania Constitution.

The Acting Secretary of the Commonwealth and the Commissioner of BCEL are likewise proper parties. Both are responsible for the supervision and administration of Pennsylvania's elections, and thus are indispensable to Plaintiffs' request to enjoin use of the 2011 Plan. Any injunction would have to apply to these Defendants. In addition, relief against them would be necessary if any deadlines or dates for the November 2018 elections need to be adjusted, as Pennsylvania courts have ordered in prior redistricting cases. *See, e.g.*, *Holt v. 2011 Legislative Reapportionment Comm'n*, 38 A.3d 711, 721 n.10 (Pa. 2012); *Mellow v. Mitchell*, 607 A.2d 204, 244 (Pa. 1992). Indeed, in *Mellow v. Mitchell*, the Acting Secretary of the Commonwealth and the Commissioner of BCEL were the *only* defendants in the case. Obviously the only defendants in that case were not nominal parties. *See also Ryan v. People of the State of Illinois*, No. 91 C 6832, 1991 WL 247752 (N.D. Ill. Sept. 17, 2001).

Finally, Lieutenant Governor Stack is a proper party because he serves as the President of the Pennsylvania Senate. In that capacity, Defendant Stack would vote to break any tie in the Pennsylvania Senate in enacting a new districting plan.

This is not a close call. Scarnati's failure to obtain the consent of all properly joined defendants dooms his removal of this case. It should end the matter.

B. The Notice of Removal Is Untimely

Scarnati's disregard of the 30-day deadline to remove under § 1446(b)(2)(B) is equally glaring. Plaintiffs filed this action in state court on June 15, 2017, and the parties stipulated to an effective service date of July 14, 2017. Yet Scarnati did not file his notice of removal until November 14—123 days after service. It is untimely by three months.

To attempt to circumvent this time-bar, Scarnati relies on § 1446(b)(3), which provides that, if a case is not removable based on the initial pleading, a defendant may file a notice of removal within 30 days after receiving "an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." Scarnati contends that Governor Wolf's October 23, 2017 Writ of Election scheduling a special election for March 2018 is an "order or other paper" that triggered a new 30-day deadline to remove. Notice at 5-6.

But it is well-recognized that "documents not generated within the state litigation generally are not recognized as 'other papers,' receipt of which can start a 30-day removal period under Section 1446(b)." 14C Fed. Prac. & Proc. Juris. § 3731 (4th ed.). Indeed, this Court has held that the phrase "order or other paper" did not even include a U.S. Supreme Court decision in another case. *See Pennsylvania v. Tap Pharm. Prods., Inc.*, 415 F. Supp. 2d 516, 526-27 (E.D. Pa. 2005). Other federal courts likewise have held that "order or other paper" includes only documents directly related to the pending case. *See, e.g., Gibson v. Clean Harbors Env. Servs. Inc.*, 840 F.3d 515, 521 (8th Cir. 2016); *Romulus v. CVS Pharmacy, Inc.*, 770 F.3d 67, 78 (1st Cir. 2014); *McCormick v. Excel Corp.*, 413 F. Supp. 2d 967, 971 (E.D. Wis. 2006). If a court document from another case is not an "order or other paper" under § 1446(b)(3), *a fortiori*

neither is a document not arising from any judicial proceeding at all. Unsurprisingly, Scarnati does not cite a single case supporting his position.

In light of Scarnati's failure to satisfy the statutory consent and timeliness prerequisites for removal, this case should be remanded to state court.

II. This Court Lacks Subject Matter Jurisdiction

"A defendant may remove a case to federal court only if that court would have had original jurisdiction." *Ali v. DLG Dev. Corp.*, No. CV 17-1537, 2017 WL 4776754, at *4 (E.D. Pa. Oct. 23, 2017). Scarnati's assertion that there is federal question jurisdiction under 28 U.S.C. § 1331, *see* Notice ¶ 12, is nonsense. Plaintiffs assert claims *exclusively* under provisions of the Pennsylvania Constitution—they assert no federal claims, *see* Dkt. 1-3, a point Scarnati does not dispute. Because Plaintiffs' state-law claims do not "arise under" federal law, *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 807 (1986), there is no federal question jurisdiction.

Scarnati argues that the upcoming special election somehow creates federal question jurisdiction because "the relief Plaintiffs seek cannot be granted without resolving a substantial question of federal law," namely "whether a state court under state law can strike down a Federal congressional district in which a state 'Executive Authority' has, by Federal constitutional writ and federal law, already mandated and set a special election." Notice ¶ 18 (citing U.S. Const. art. I, § 2, and "the United States Code"). That is both factually and legally baseless.

The entire premise for Scarnati's argument—that Plaintiffs supposedly seek to change the map for the March 2018 special election—is wrong. To be clear: Plaintiffs do not and will not seek any relief whatsoever with respect to the special election, so that election cannot conceivably create a federal question in this case. Plaintiffs have never suggested in the state court proceedings that they are seeking relief with respect to the special election. To the contrary, Plaintiffs unambiguously stated that they seek to resolve the case "before the due date

for nomination petitions for the 2018 elections, which is March 6, 2018." Dkt. 1-4 at Page 24 of 66. That is the due date for the May 2018 primaries, not the March 2018 special election.

Even if Plaintiffs were seeking to affect the March 2018 special election (which they are not), Scarnati's argument would still be frivolous. Scarnati is claiming that Article I, § 2 of the U.S. Constitution provides a federal *defense* to Plaintiffs' state constitutional claims. Scarnati nowhere suggests that construing the relevant provisions of the Pennsylvania Constitution would require a court to construe Article I, § 2 or any federal law. It obviously would not. That is fatal because "[a] defense that raises a federal question is inadequate to confer federal jurisdiction." *Merrell Dow*, 478 U.S. at 808; *see also N.J. Carpenters & the Trs. Thereof v. Tishman Const. Corp. of N.J.*, 760 F.3d 297, 302 (3d Cir. 2014) ("The existence or expectation of a federal defense is insufficient to confer federal jurisdiction.").

Scarnati's argument suffers yet another fatal flaw: the purported federal law issue that he identifies does not meet the test laid out in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 312 (2005). Scarnati concedes that federal law does not *create* any cause of action in this case. His theory is instead that those state causes of action require resolution of a "substantial question of federal law," Notice ¶ 18, the category described in *Grable*. But only a "slim category" of cases qualify for federal jurisdiction under *Grable*, *see Gunn v. Minton*, 568 U.S. 251, 258 (2013), and the claims here do not. Where federal law does not create the cause of action, "federal jurisdiction over a state law claim will [only] lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Id.* at 258.

First, no federal claim is "necessarily raised." That standard requires that the federal question be an "essential element" of the plaintiff's "*claim*," not a hypothetical part of the defendant's *defense*. *Grable*, 545 U.S. at 315 (emphasis added); *accord Manning v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 772 F.3d 158, 163, 165 (3d Cir. 2014), *aff'd*, 136 S. Ct. 1562 (2016). The *Grable* exception is for state causes of action where the state rule of decision turns on federal law, not for state causes of action where there might be a federal defense.

Second, the issue is not "actually disputed" because, again, Plaintiffs do not seek any relief with respect to the March 2018 special election.

Third, the issue Scarnati raises is not "substantial," but rather wholly meritless. Article I, § 2 of the U.S. Constitution states: "When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies." As Scarnati acknowledges, once Governor Wolf issued the Writ of Election, the "mandate of Article I, Section 2 was completed." Notice ¶ 16. Nothing in Article I, § 2 plausibly suggests that the U.S. Constitution would bar a change in the timing of that election.

To the contrary, Article I, § 4, makes clear that state law governs the timing of congressional elections unless Congress has enacted a statute on the topic: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations." U.S. Const. art. I, § 4. Congress, in turn, has confirmed by statute that "the time for holding elections in any State, District, or Territory for a Representative or Delegate to fill a vacancy … may be prescribed by the laws of the several States and Territories respectively." 2 U.S.C. § 8(a). The only exception is for "extraordinary circumstances," defined to mean a circumstance in which there are over *100* vacancies in the House. 2 U.S.C. § 8(b)(1), (4). That

provision does not apply. In the single case Scarnati cites, *Jackson v. Ogilvie*, 426 F.2d 1333 (7th Cir. 1970), the Illinois Governor had refused to issue the writ for the election at all; the court ordered him to do so, but expressly noted that the timing was up to the state and that the state statutes "require a lapse of at least 162 days from the call to the election." *Id.* at 1334-36. In other words, even in a hypothetical world in which relief in the state court would alter the timing of the March 2018 special election—which it will not because Petitioners do not seek such relief—nothing in the U.S. Constitution would prohibit that.

Fourth, any issue about what Art. I, § 2 means in this context is not "capable of resolution in federal court without disrupting the federal-state balance approved by Congress." In 2 U.S.C. § 8(a), Congress granted *state governors* the right to decide the timing of vacancy elections. This action is all about state law. It raises state constitutional challenges to a state statute. Even if Article I, § 2 were implicated here, which it is not, it would not create federal jurisdiction under the "slim category" enunciated in *Grable*. As this Court has said, "the court must consider 'the degree to which federal law [is] in the forefront of the case and not collateral, peripheral or remote.'" *Krause v. Phila. Soul*, No. CIV.A. 09-1132, 2009 WL 1175625, at *2 (E.D. Pa. Apr. 30, 2009) (Baylson, J.) (quoting *Merrell Dow*, 478 U.S. at 814 n.11).

Scarnati has repeatedly argued that state law issues are at the forefront of this case, including in an October 30 submission to the United States Supreme Court, a full week after Governor Wolf set the special election. Scarnati nonetheless told the U.S. Supreme Court that this Court should stay the pending federal gerrymandering case, *Agre v. Wolf*, in deference to Plaintiffs' state case, because federal courts "are required to defer adjudication of a redistricting matter that a state legislative or judicial branch is already considering." Pet. for Mandamus at 6-

7, No. 17-631 (U.S. Oct. 30, 2017). Scarnati expressly *referenced* the special election as part of his argument that the Supreme Court should order the *federal court* to defer to the *state court*:

> In addition, on October 23, 2017, the Governor of Pennsylvania called a Special Election to replace U.S. Representative Tim Murphy, who resigned effective October 21, 2017. … A rush to action by the District Court threatens to impede that ongoing federal election.

Id. at 24-25. In other words, Scarnati told the U.S. Supreme Court that a federal court could not resolve the question whether the 2011 Plan is unconstitutional—or whether the special election should go forward—without infringing on state judicial prerogatives. *Id.* at 6-7. He cannot turn around and now argue that the same question is "capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn*, 568 U.S. at 258.

III. This Motion Warrants Expedited Treatment and an Immediate Remand

Under § 1447(c), the Court may remand the case "at any time" based on the lack of subject matter jurisdiction. When a district court discovers a jurisdictional defect in an improperly removed case, the court should remand the case immediately. *Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 217 (3d Cir. 1999). Likewise, once a party raises by motion a failure in the statutory prerequisites for removal, an immediate remand is appropriate.

Given the patent deficiencies of the removal notice and this Court's lack of subject matter jurisdiction, as well as the expedited schedule for the state court proceeding mandated by the Pennsylvania Supreme Court, this Court should remand this matter *immediately*, without awaiting an opposition from Scarnati. Nothing he would say could salvage this removal.

Any delay in resolving this motion would substantially prejudice Plaintiffs. As stated, the Pennsylvania Supreme Court has ordered that this case be tried, and findings of fact and conclusions of law be issued, by the end of this calendar year. Trial in the state court has been set to begin December 11—barely three weeks from now. If this case is not remanded promptly,

the delay could derail the schedule imposed by the Pennsylvania Supreme Court to resolve critically important questions of state constitutional law. Indeed, Scarnati's vexatious conduct has already resulted in cancellation of the pre-trial conference that had been scheduled for today. Beyond that, Scarnati notified the state court of his removal just hours before the state court's deadline for him to submit his brief on legislative and other purported privileges, and indeed neither he nor the other legislative respondents filed such a brief on November 15. The state court had ordered Plaintiffs to file their response within two days, with a decision expected next week. Scarnati improperly used the notice of removal to avoid filing his privilege brief in an effort to delay the start of fact discovery and derail the December 11 trial.

IV. Plaintiffs Are Entitled to Attorneys' Fees Under 28 U.S.C. § 1447(c)

Under 28 U.S.C. § 1447(c), "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." "Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005). "Conversely, when an objectively reasonable basis exists, fees should be denied." *Id.* A party seeking fees need not establish that a notice of removal was frivolous. The Third Circuit, rather, has affirmed an award of attorneys' fees where "the assertion in the removal petition that the district court had jurisdiction was, if not frivolous, at best insubstantial." *Mints v. Educ. Testing Serv.*, 99 F.3d 1253, 1261 (3d Cir. 1996).

Here, Scarnati's notice of removal is worse than insubstantial—it is frivolous. The failure to obtain the Governor's consent to the removal alone proves the point. Scarnati now claims that the Governor is not indispensable, after repeatedly telling the state court that the Governor is "indispensable." Scarnati's tortured attempt to avoid the 30-day time-bar based on the Governor's Writ of Election is just as bad. And his entire theory of jurisdiction rests on the

falsehood that Plaintiffs are seeking to change the map for the upcoming special election—a falsehood that, even if true, would not come close to establishing jurisdiction.

Fees are particularly warranted because of Scarnati's transparent ploy to delay. Scarnati (along with the General Assembly) filed an "emergency" mandamus petition asking the U.S. Supreme Court to stay proceedings in *Agre v. Wolf* until the state court resolves the present case. After insisting in the mandamus petition that this Court be ordered to abstain in favor of "the Pennsylvania appellate courts' decision on important questions of Pennsylvania constitutional law," Pet. for Mandamus at 20, Scarnati then removed the case to this Court.

In these circumstances, an award of attorneys' fees is warranted both to shift the cost of this sideshow to Scarnati and to deter others from engaging in such gamesmanship in the future.

CONCLUSION

For the foregoing reasons, the Court should immediately remand this case to state court and award attorneys' fees to Plaintiffs.

DATED: November 16, 2017

Respectfully submitted,

/s/ Mary M. McKenzie

Mary M. McKenzie
Attorney ID No. 47434
Michael Churchill
Attorney ID No. 4661
Benjamin D. Geffen
Attorney ID No. 310134
PUBLIC INTEREST LAW CENTER
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 190103
(215) 627-7100 (telephone)
(215) 627.3183 (fax)
mmckenzie@pubintlaw.org

David P. Gersch
(*pro hac vice* motion forthcoming)
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001
(202) 954-5000 (telephone)
(202) 942-5999 (fax)
david.gersch@apks.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this date, November 16, 2017, I caused the foregoing Plaintiffs' Emergency Motion to Remand to be filed and served on all counsel of record by operation of the CM/ECF system for the United States District Court for the Eastern District of Pennsylvania. I further certify that simultaneously with this filing via CM/ECF, I served the foregoing Plaintiffs' Emergency Motion to Remand by electronic mail on all counsel of record for all Respondents and Intervenors in the Commonwealth Court case:

Counsel for Respondent the Pennsylvania General Assembly
Jonathan F. Bloom
jbloom@stradley.com
Karl S. Myers
kmyers@stradley.com

Counsel for Respondent Gov. Thomas W. Wolf
Linda C. Barrett
lbarrett@pa.gov
Sean M. Concannon
sconcannon@pa.gov
Thomas P. Howell
thowell@pa.gov
Mark A. Aronchick (also representing Respondents Torres & Marks)
maronchick@hangley.com
Michele D. Hangley (also representing Respondents Torres & Marks)
mhangley@hangley.com
Claudia De Palma (also representing Respondents Torres & Marks)
cdepalma@hangley.com

Counsel for Respondent Lt. Gov. Michael J. Stack III
Alex M. Lacey
alacey@cohenlaw.com
Alice B. Mitinger
amitinger@cohenlaw.com
Clifford B. Levine
clevine@cohenlaw.com
Lazar M. Palnick
lazarp@earthlink.net

Counsel for Respondent Speaker Michael C. Turzai
Carolyn Batz McGee
cmcgee@c-wlaw.com
Kathleen A. Gallagher
kgallagher@c-wlaw.com
Jason Torchinsky (also representing Respondent Scarnati)
jtorchinsky@hvjt.law
Shawn Sheehy (also representing Respondent Scarnati)
ssheehy@hvjt.law

Counsel for Respondent Senate President Pro Tempore Joseph B. Scarnati III
Brian S. Paszamant
paszamant@blankrome.com
Jason A. Snyderman
snyderman@blankrome.com
John P. Wixted
jwixted@blankrome.com
Matthew H. Haverstick
mhaverstick@kleinbard.com
Mark E. Seiberling
mseiberling@kleinbard.com
Joshua J. Voss
jvoss@kleinbard.com

Counsel for Respondents Secretary Robert Torres & Commissioner Jonathan M. Marks
Ian B. Everhart
ieverhart@pa.gov
Kathleen M. Kotula
kkotula@pa.gov
Timothy E. Gates
tgates@pa.gov

Counsel for Intervenor-Respondents Brian McCann *et al.*
Lawrence J. Tabas
lawrence.tabas@obermayer.com
Rebecca L. Warren
rebecca.warren@obermayer.com
Timothy J. Ford
timothy.ford@obermayer.com

DATED: November 16, 2017

/s/ Mary M. McKenzie
Mary M. McKenzie