
**In The
Supreme Court of the United States**

Michael C. Turzai, in his capacity as Speaker of the Pennsylvania House of
Representatives, and Joseph B. Scarnati III, in his capacity as Pennsylvania
Senate President Pro Tempore,

Applicants,

v.

League of Women Voters of Pennsylvania, *et al.*,

Respondents.

**APPLICATION FOR EXTENSION OF TIME TO
FILE PETITION FOR WRIT OF CERTIORARI**

To the Honorable Samuel A. Alito, Jr.
Associate Justice of the United States Supreme Court
and Circuit Justice for the Third Circuit

**HOLTZMAN VOGEL JOSEFIAK
TORCHINSKY PLLC**

JASON TORCHINSKY

Counsel of Record

SHAWN SHEEHY

PHILLIP GORDON

45 North Hill Drive, Suite 100

Warrenton, Virginia 20186

Phone: 540-341-8808

Facsimile: 540-341-8809

Email: jtorchinsky@hvjt.law

Email: ssheehy@hvjt.law

Email: pgordon@hvjt.law

*Attorneys for Applicant Senator
Joseph B. Scarnati, III*

CIPRIANI & WERNER, P.C.

KATHLEEN GALLAGHER

CAROLYN BATZ MCGEE

RUSSELL D. GIANCOLA

650 Washington Road, Suite 700

Pittsburgh, Pennsylvania 15228

Phone: 412-563-4978

Email: kgallagher@c-wlaw.com

Email: cmcgee@c-wlaw.com

Email: rgiancola@c-wlaw.com

Attorneys for Applicant

Representative Michael C. Turzai

BLANK ROME LLP

BRIAN S. PASZAMANT
JASON A. SNYDERMAN
JOHN P. WIXTED
One Logan Square
130 N. 18th Street
Philadelphia, Pennsylvania 19103
Phone: 215-569-5791
Facsimile: 215-832-5791
Email: paszamant@blankrome.com
Email: snyderman@blankrome.com
Email: jwixed@blankrome.com

*Attorneys for Applicant Senator
Joseph B. Scarnati, III*

BAKER & HOSTETLER LLP

E. MARK BRADEN
RICHARD B. RAILE
Washington Square Suite 1100
1050 Connecticut Avenue, NW
Washington, DC 20036
Phone: 202-861-1500
Email: mbraden@bakerlaw.com
Email: rraile@bakerlaw.com

ROBERT J. TUCKER
200 Civic Center Drive
Suite 1200
Columbus, OH 43215-4138
Phone: 614-228-1541
Email: rtucker@bakerlaw.com

PATRICK T. LEWIS
Key Tower
127 Public Square
Suite 2000
Cleveland, Ohio 44144
Phone: 216-621-0200
Email: plewis@bakerlaw.com

*Attorneys for Applicant
Representative Michael C. Turzai*

To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States Supreme Court and Circuit Justice for the Third Circuit:

Applicant-Defendants, the Speaker of Pennsylvania's House of Representatives, Michael C. Turzai, and Senate President Pro Tempore, Joseph B. Scarnati III ("Applicants") respectfully request an extension of time to file a petition for writ of certiorari. Sup. Ct. R. 13.5. The earliest deadline for Applicants to file their petition is Monday, April 23, 2018, which is ninety days¹ from Monday, January 22, 2018, the date when the Pennsylvania Supreme Court issued an order invalidating Pennsylvania's congressional districting plan. For good cause set forth herein, Applicants ask that this deadline be extended by sixty days so that the new deadline would be Friday, June 22, 2018.

BACKGROUND

This case arises from the Pennsylvania Supreme Court's invalidation of Pennsylvania's congressional districting plan, which the General Assembly enacted in 2011. On January 22, 2018, that court issued an order enjoining the plan because it failed to comply with purported mandatory requirements that districts be "composed of compact and contiguous territory" and "do not divide any county, city, incorporate town, borough, township, or ward, except when necessary to ensure equality of population." But no act of legislation promulgated these requirements, which represent a dramatic departure from court precedent. In fact, the same Pennsylvania Supreme Court, in adjudicating Pennsylvania's 2001 Congressional

¹ Pursuant to Supreme Court Rule 30.1, one day was added to this calculation to move the due date from Sunday, April 22, 2018, to the "next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed," namely, Monday, April 23, 2018.

plan, expressly disclaimed the applicability of any such requirements to Pennsylvania congressional districts. *Erfer v. Commonwealth*, 794 A.2d 325, 334 n.4 (Pa. 2002).

The Pennsylvania Supreme Court did not issue an opinion with its January 22 Order. It nevertheless gave the General Assembly a mere 18 days, until February 9, to enact new legislation before the Court would impose a plan of its own. It then proceeded to hire a political scientist to prepare for a judicial redistricting.

On February 7—two days before the deadline to enact a new plan—the Pennsylvania Supreme Court issued an opinion clarifying that it invalidated the 2011 Plan for its ostensible failure to comply with the newly invented subdivision-integrity and compactness rules. The Pennsylvania Supreme Court also announced a new requirement of proportional representation, holding that a congressional map must afford “all voters” an “equal opportunity to translate their votes into representation,” a rule not articulated in the January 22 Order. The General Assembly’s leadership rushed to prepare a plan to comply with the court’s opinion, but, given the two-day timeframe, it was unable to put a plan to a vote or negotiate a mutually agreeable plan with the executive branch. On February 19, the Pennsylvania Supreme Court adopted its own plan, which the parties to the litigation had never before seen and had no opportunity to vet for compliance with the court’s own criteria.

Accordingly, the Pennsylvania Supreme Court’s seizure of congressional redistricting is complete. The court achieved this by promulgating mandatory criteria the General Assembly had no way to anticipate in 2011, withholding guidance as to

how to achieve compliance with Pennsylvania law until two days before the deadline to enact a new plan, creating a proportional-representation criterion that is practically impossible to implement, and imposing a plan that had been in the works all along.

This course of action does not comport with either the plain text of the federal Constitution's Elections Clause, which delegates authority solely to "the Legislature" of each state, and with this Court's interpretive precedent, which holds that "[r]edistricting involves lawmaking in its essential features and most important aspect." *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2667 (2015) (quotation marks omitted). The Pennsylvania Supreme Court's position to the contrary, and the position articulated by the various Respondents in briefing related to the stay requests, is in essence that the Elections Clause simply delegates authority to the states and is indifferent to whether the Legislature or, alternatively, the courts or executive branch, either conducts the redistricting or creates the rules governing it. But that view simply reads the word "Legislature" out of the Constitution, and effectively delegates redistricting authority to whichever branch of state government wins the will-to-power contest to control elections to federal office. Because state courts have the final say over the meaning of state law, the courts will virtually always, as here, win that battle.

OPINIONS BELOW

The January 22 Order of the Pennsylvania Supreme Court enjoining the use of Pennsylvania's Congressional map (i.e. the 2011 Plan), along with a concurring

and dissenting statement, and two dissenting statements, are reproduced at Appendix A. The February 7 Opinion of the Pennsylvania Supreme Court, along with two dissenting and one partial dissenting statement, are reproduced at Appendix B. The February 19 Order of the Pennsylvania Supreme Court adopting an alternative plan is reproduced at Appendix C. The Report and Recommendation of the Commonwealth Court (Pennsylvania's intermediate level appellate court) is reproduced at Appendix D. The February 5 Response of Justice Christine Donohue is reproduced at Appendix E. The February 5 Memorandum Opinion and Order by Justice David N. Wecht is reproduced at Appendix F.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257.

REASONS EXTENSION IS JUSTIFIED

Supreme Court Rule 13.5 provides that “An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified.” Sup. Ct. R. 13.5. The specific reasons why an extension of time is justified are as follows:

1. The schedule of the remedial phase in this case was extremely compressed and work-intensive. The Pennsylvania Supreme Court issued its order on January 22, 2018, requiring that new maps be drawn, proposed in the legislature, and passed by a majority vote of the legislature in a matter of weeks. This tight and demanding schedule meant that Applicants necessarily were occupied with

complying with the heavy demands of the compressed timeframe while pursuing all options to slow the pace of such an important exercise.

2. The Pennsylvania Supreme Court did not issue an opinion related to its January 22 Order until February 7, 2018, just two days before Applicants were required to submit a proposed remedy. This delayed guidance further hampered Applicants' ability to comply with the January 22 Order while also seeking avenues to slow its effect, and challenge it.

3. The Pennsylvania General Assembly has been in session every month since the January 22 Order and will be in session in April, May, and June. This means that following Applicants' efforts to address the January 22 Order, they have been occupied with the everyday work necessary to participate in, and prepare for, legislative sessions.

4. The Pennsylvania legislative leadership are appellees in another case before the Supreme Court, *Agre v. Wolf*, 17-cv-4392, in which the due date for response is identical to the earliest due date in this case for filing an application for writ of certiorari, namely, April 23, 2018.

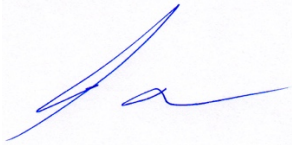
5. In sum, the heavy demands of complying with, and seeking to slow the effect of, the opinions challenged in this appeal; the limited and belated guidance from the Pennsylvania Supreme Court; the regularly scheduled workload of legislative leadership; and the demands of other cases before this Court, have occupied much of the ninety days afforded by the rules to applicants considering an appeal. Applicants seek a sixty-day extension to cope with these demands.

6. The requested extension also is necessary to accommodate pressing deadlines in Applicants' counsel's other matters.

7. The Pennsylvania Supreme Court's decisions warrant this Court's review because the federal question in this case—under what circumstances a state court improperly intrudes on authority allocated to the “Legislature” by the Elections Clause—has specifically been identified as meriting review by multiple Justices of this Court, and the Court has reviewed Elections Clause challenges and their kin in the past. In addition, the specific form of intrusion at issue here presents a plain violation of the Elections Clause because, while close cases can and have arisen as to whether a specific type of lawmaking function falls within the term “Legislature,” it is beyond dispute that the Pennsylvania Supreme Court lacks any legislative power. These and other reasons meriting this Court's review are further detailed in the Emergency Application For Stay Pending Resolution Of Appeal To This Court (17A909) filed with this Court on February 27, 2018.

CONCLUSION

For the foregoing reasons and good cause shown, Applicants respectfully request that this Court grant this application for an extension of time to file a petition for writ of certiorari.



HOLTZMAN VOGEL
JOSEFIAK TORCHINSKY
PLLC

Jason Torchinsky*

Counsel of Record
jtorchinsky@hvjt.law

Shawn Sheehy
ssheehy@hvjt.law

Phillip M. Gordon
pgordon@hvjt.law

45 North Hill Drive, Suite 100
Warrenton, Virginia 20186

Phone: 540-341-8808

Facsimile: 540-341-8809

*Attorneys for Applicant
Senator Joseph B.*

Scarnati III, President

Pro Tempore of the

Pennsylvania Senate

BLANK ROME LLP

Brian S. Paszamant
paszamant@blankrome.com

Jason A. Snyderman
snyderman@blankrome.com

John P. Wixted
jwixted@blankrome.com

One Logan Square
130 N. 18th Street
Philadelphia, Pennsylvania
19103

Phone: 215-569-5791

Facsimile: 215-832-5791

*Attorneys for Applicant
Senator Joseph B. Scarnati III,
President Pro Tempore of the
Pennsylvania Senate*

BAKER & HOSTETLER

E. Mark Braden

Richard B. Raile

mbraden@bakerlaw.com

rraile@bakerlaw.com

1050 Connecticut Ave. NW
Washington, DC 20036

Phone: 202-861-1504

Patrick T. Lewis

plewis@bakerlaw.com

Key Tower

127 Public Square, Suite 2000
Cleveland, Ohio 44114

Phone: 216-621-0200

Robert J. Tucker

rtucker@bakerlaw.com

200 Civic Center Drive, Suite
1200

Columbus, Ohio 43215

Phone: 614-462-2680

*Attorneys for Applicant
Representative Michael*

*Turzai, Speaker of the
Pennsylvania House of*

Representatives

CIPRIANI & WERNER PC

Kathleen Gallagher

kgallagher@c-wlaw.com

Carolyn Batz McGee

cmcgee@c-wlaw.com

Russell D. Giancola

rgiancola@c-wlaw.com

650 Washington Road, Suite
700 Pittsburgh, Pennsylvania
15228

Phone: 412-563-4978

*Attorneys for Applicant
Representative Michael*

*Turzai, Speaker of the
Pennsylvania House of*

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