

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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SENATOR DOMINIC PILEGGI, :  
 REPRESENTATIVE MICHAEL TURZAI, and :  
 LOUIS B. KUPPERMAN, :  
 :  
 Plaintiffs, :  
 :  
 v. :  
 :  
 CAROL AICHELE, IN HER OFFICIAL :  
 CAPACITY AS SECRETARY OF THE :  
 COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 Defendant. :

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CIVIL ACTION  
No. 2:12-588-RBS

**ORDER DENYING PETITIONERS’ MOTION TO INTERVENE AND GRANTING  
PLAINTIFFS’ MOTION TO STRIKE**

AND NOW, this \_\_\_ day of February, 2012, upon consideration of the Motion to Intervene of Senator Jay Costa and Representative Frank Dermody (“Petitioners”) and Plaintiffs’ Motion to Strike, and it appearing that Petitioners are not entitled to intervene in this case, the Court hereby denies Petitioners’ Motion to Intervene, and strikes all filings of Petitioners in this litigation with the exception of their Motion to Intervene.

**IT IS SO ORDERED.**

BY THE COURT:

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R. Barclay Surrick, U.S.D.J.



Plaintiffs respectfully request that the Court grant the relief sought in this Motion to Strike.

Dated: February 8, 2012

Respectfully submitted,

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and Louis B. Kupperman*



that interest.” Fed. R. Civ. P. 24(a)(2). The Third Circuit Court of Appeals has held that Rule 24(a) thus amounts to four separate requirements: “(1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation.” *Brody v. Sprang*, 957 F.2d 1108, 1115 (3d Cir. 1992).

In their motion to intervene, Petitioners assert that they may intervene as of right as party defendants under Rule 24(a)(2) because they have a sufficient interest in the outcome of the litigation. Petitioners also assert that their interests are not adequately represented by the Secretary of the Commonwealth of Pennsylvania because of a tenuous connection to an offhand comment to the press made by the Governor of Pennsylvania. None of these interests is sufficient to establish a right to intervene, and even if the Court should so hold, those interests are adequately represented by the Secretary of the Commonwealth of Pennsylvania.

**A. Petitioners Do Not Have a Sufficient Interest in the Litigation**

To meet Rule 24(a)(2)’s requirements, “the legal interest asserted must be a cognizable legal interest, and not simply an interest of a general and indefinite character.” *Brody*, 957 F.2d at 1116 (citation omitted). The Third Circuit Court of Appeals has clearly stated that the determination as to whether the proposed intervenor’s interest in the litigation is sufficient must be pragmatic and flexible. *See Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 969-70 (3d Cir. 1998). This does not mean, however, that there are no standards. The heart of inquiry remains whether the interest is direct or remote. *See id.* at 972. Furthermore, the claim must be one belonging to or owned by the proposed intervenor. *Mt. Top Condo. Ass’n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995).

Petitioners assert that three potential interests are cognizable legal interests permitting intervention as of right: Petitioners are members of the 2011 Legislative Reapportionment Commission (“LRC”), Senator Costa was a petitioner in a reapportionment appeal presented to the Pennsylvania Supreme Court, and Petitioners are Pennsylvania voters. Each is insufficient.

First, Petitioners assert that they have a sufficient interest in this litigation because of their membership in the 2011 LRC. But membership in the 2011 LRC affords Petitioners no special relationship creating a direct interest sufficient to intervene in this litigation as of right under Rule 24. As counsel for the Petitioners admitted in a February 6, 2012, hearing before this Court: “The Legislative Reapportionment Commission did develop and approve a 2011 plan ... It has been put in the shredder... The [Pennsylvania] Supreme Court clearly indicated that ... once that 2011 plan is ruled unconstitutional, the only map that exists is the one that currently exists, the 2001 map.” *See* Transcript of the February 6, 2012, Hearing on Plaintiffs’ Motion for Temporary Restraining Order, 12:19 -13:23 (true and correct copies of the relevant pages of that transcript are attached as Exhibit 1). That which is at issue in this lawsuit is not the 2011 Plan or any product of the 2011 LRC. Instead, that which is at issue is the constitutionality of the use of the 2001 Plan (which was the product of the **2001** LRC) in any upcoming Pennsylvania election. In short, Petitioners must identify a legally cognizable interest *directly* implicated by an existing lawsuit in order to intervene as of right under Rule 24; here, their status as members of the 2011 LRC – in and of itself – is an interest insufficient to meet Rule 24(a)(2)’s stringent requirement.

Should the Court nonetheless find Petitioners’ tangential relationship to be a sufficient interest, however, it should limit Petitioners’ intervention to the remedy stage. The Court can bifurcate the sufficiency of the interest inquiry between the merits stage and the remedy stage. *See Brody*, 957 F.2d at 1116 (liability stage may concern straightforward question of whether

defendant's policy violates the constitution, resolution of which may not alter any legal right or responsibility of intervention applicant); *Harris v. Pemsley*, 820 F.2d 592, 599 (3d Cir. 1987).

When dividing the analysis this way, it is even clearer that Petitioners have no interest in the merits stage of this suit: The use of the 2001 Plan in a 2012 election is either violative of the Federal Constitution or it is not. A determination of this question does not impose liability on Petitioners, who, unlike the Secretary of the Commonwealth, play no role in the oversight, administration, or implementation of the election process in Pennsylvania.

Second, Petitioners assert that they have a sufficient interest in this lawsuit because Senator Costa was a challenger to the LRC's 2011 proposed Reapportionment Plan ("2011 Plan") that was rejected by the Pennsylvania Supreme Court. First, this interest would be personal only to Senator Costa and would not give Representative Dermody any interest to allow him to intervene. Second, Senator Costa's interest might very well be direct, and therefore sufficient, if this litigation stated a challenge to the LRC's 2011 proposed Reapportionment Plan ("2011 Plan"). But it does not; instead, this action concerns that which follows as a result of the Pennsylvania Supreme Court's rejection of the LRC's 2011 Plan, not the decision to reject the 2011 Plan itself. As stated above, this lawsuit challenges, under the Federal Constitution, the use of the 2001 Plan in any upcoming election in Pennsylvania. Thus, the fact that Senator Costa was merely a challenger in a case that led to the rejection of the LRC's 2011 Plan does not confer an interest sufficient to gain the right to intervene in this litigation. Indeed, Senator Costa's potential interest is too removed, rendering it illustrative of the difference between direct and remote interests.

Third, Petitioners assert that simply their status as voters in the Commonwealth of Pennsylvania gives them a sufficient interest in this action. While one who is a voter who holds

another particular, individualized interest may possess a sufficient interest to intervene, voting status *simpliciter* has never been a sufficient interest. *See, e.g., Fletcher v. Lamone*, 2011 U.S. Dist. LEXIS 139306 (D. Md. Dec. 2, 2011) (rejecting voters' motion to intervene under adequacy prong because being a voter added little to the ongoing litigation). Indeed, the implications of allowing intervention because of voting status, without more, are absurd. The Court could not possibly allow, as an intervenor in this matter, every voter in the state who wished to be heard. It appears that Petitioners have confused the requirements of sufficiency of interest with the injury-in-fact threshold for Article III standing.

**B. Petitioners' Interests are Adequately Represented by the Secretary of the Commonwealth of Pennsylvania**

In the unlikely event Petitioners are found to possess a sufficient interest in this litigation, they nonetheless still fail to meet an additional requirement of Rule 24(a)(2): the lack of adequate representation of their interest by an existing party. Petitioners bear the burden of demonstrating that the Secretary of the Commonwealth would not adequately represent their interests, as a government entity is presumed adequate. *See Kleissler*, 157 F.3d at 972; *United States v. Law Sch. Admission Council, Inc.*, 2001 U.S. Dist. LEXIS 15922 (E.D. Pa. August 7, 2001). There are three grounds for finding inadequacy: "(1) that although the applicant's interests are similar to those of a party, they diverge sufficiently that the existing party cannot devote proper attention to the applicant's interests; (2) that there is collusion between the representative party and the opposing party; or (3) that the representative party is not diligently prosecuting the suit." *Brody*, 957 F.2d at 1123.

Petitioners have filed no formal complaint or asserted any new claim in this lawsuit. They merely seek to dismiss Plaintiffs' complaint, which is the province of the current Defendant, the Secretary of the Commonwealth. Indeed, Petitioners' motion to intervene

appears to hang, virtually entirely, on an argument that collapses, or muddles, the collusion and diligence grounds. Petitioners assert that the Secretary is either partial towards Plaintiffs, or at least not diligent in defense of this action, because she was appointed by Governor Tom Corbett. A charge of lack of diligence by the Secretary, at this extremely early stage of the litigation, fails on its face.

Further, Petitioners contend that Governor Corbett's involvement is problematic because he, like Plaintiffs, is a Republican, and because he made a comment to the Pittsburgh Post-Gazette regarding the likely unconstitutionality of the use of the 2001 Plan in any upcoming election. Petitioners point to no case where the Court has found collusion, and their showing here does not meet that serious charge. The allegations of impartiality against Governor Corbett are far from conclusive, but regardless, they should have no relationship to the diligence and impartiality of the Secretary of the Commonwealth. The Secretary is bound to uphold the rule of law and follow the dictates of the Courts. Petitioners have fallen far short here, and have failed to overcome the presumption that in this suit, the Secretary will adequately represent the interests not only of Petitioners, but also of all citizens of Pennsylvania.

As noted above, Rule 24(a)(2) requires Petitioners to demonstrate the lack of adequate representation of their interest by an existing party. Not only have Petitioners failed to rebut the presumption that the Secretary will adequately represent their interests, but their counsel has suggested that Plaintiffs are also in the position to do so in this suit. Exh. 1 at 12:4-7 (“[L]ike Mr. Pileggi and Mr. Turzai, [Petitioners] are voters in Pennsylvania and have an interest in ensuring that elections proceed. So they are really in a parallel situation . . .”).

In sum, given that existing parties to this suit adequately represent the interests of Petitioners, their request for intervention as of right under Rule 24 fails.

**II. Petitioners Do Not Meet the Substantive Requirements of Rule 24(b) for Permissive Intervention**

In the alternative, Petitioners assert that they meet the standards for permissive intervention under Rule 24(b). That rule gives the Court discretion to grant intervention where a party “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). A separate requirement is that the intervention not “unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Petitioners assert that the common issues of law or fact are the reapportionment process, the Pennsylvania Supreme Court’s ruling, the upcoming primary election, and the constitutionality of the 2001 Plan. Petitioners assert that there will be no undue delay or prejudice because their motion was timely and because the current parties are not adequately addressing their interests.

Petitioners’ proposed common issues of law or fact are inadequate. All four of the common issues asserted are general and not tailored to any particular claim regarding those issues. Indeed, their entire Rule 24(b) argument raises the fundamental problem that there is no claim to which their proposed issues are common. With their motion to intervene, Petitioners have filed a motion to dismiss, which Petitioners contend is sufficient. But that motion makes no substantive claim of its own. As this Court has said before, “[t]he ambiguity of the Request as to the specific claim [Petitioner] seeks to bring before the Court renders difficult a determination of whether [their] claim poses a question of fact or law in common with the instant matter.” *Law Sch. Admission Council, Inc.*, 2001 U.S. Dist. LEXIS 15922, at \*7.

Furthermore, Petitioners’ intervention in this action will unduly delay the proceedings. As stated above, given that the Secretary of the Commonwealth is bound to uphold the law and act in the best interests of all Pennsylvania citizens, Petitioners’ presence in this litigation can only slow the resolution of Plaintiffs’ 42 U.S.C. §1983 claim with filings such as the one at issue

here. In light of the time-sensitive nature of these proceedings, needless parties will likely delay the outcome and therefore prejudice Plaintiffs. Petitioners' arguments on delay merely rehash the timeliness and adequacy of representation prongs of their Rule 24(a) motion. Yet, permissive intervention is distinct from intervention as of right. Petitioners have not shown that they will "add anything" to this litigation, *Heffner v. Murphy*, 2010 U.S. Dist. LEXIS 63254, 14 (M.D. Pa. June 25, 2010), other than the time it takes to reach a resolution.

**III. All of Petitioners' Filings in This Action, with the Exception of Their Motion to Intervene, Should Be Stricken**

Although Rule 12(f) only contemplates striking improper pleadings, a federal district court has inherent authority to manage its docket by, for example, striking improper motions or filings. *Green v. Dauphin Cnty. Adult Prob./Parole Office*, 1:05-CV-2603, 2006 U.S. Dist. LEXIS 67312, at \*2 (M.D. Pa. Sept. 20, 2006) ("A district court has inherent power to manage its docket.") (citing *Chambers v. NASCO*, 501 U.S. 32, 44 (1991); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)); *Tilghman v. A.P. Electric Constr., Inc.*, 88-4363, 1991 U.S. Dist. LEXIS 14732, at \*6 (E.D. Pa. Oct. 10, 1991) ("Trial courts have the authority to dismiss, with prejudice, for failure to prosecute or comply with local court rules as part of their inherent power to ensure the efficient processing of matters on their dockets.") (citing *Link*, 370 U.S. at 629-30; *Hewlett v. Davis*, 844 F.2d 109, 114 (3d Cir. 1988)); see also *Ogle v. BAC Home Loans Servicing LP*, 2:11-cv-540, 2011 U.S. Dist. LEXIS 97104, at \*6 (S.D. Ohio Aug. 29, 2011) ("[T]he Court has the inherent power to strike filings that do not comply with court rules."); *Westerngeco L.L.C. v. ION Geophysical Corp.*, 4:09-cv-1827, 2011 U.S. Dist. LEXIS 91326, at \*38-39 (S.D. Tex. Aug. 15, 2011) (court has inherent power to strike motions pursuant to its power to manage its docket) (citing *In re Stone*, 986 F.2d 898, 903 (5th Cir. 1993)); *Computer Stores Nw., Inc. v. Dunwell Tech., Inc.*, No. CV-10-284-HZ, 2011 U.S. Dist. LEXIS 58660, at

\*11-12 (D. Or. May 31, 2011) (“[A] district court has the inherent power to strike a party’s submissions other than pleadings.”); *Westefer v. Snyder*, 00-162-GPM and 00-708-GPM, 2011 U.S. Dist. LEXIS 18707, at \*9 (S.D. Ill. Feb. 25, 2011) (recognizing that a Rule 12 motion to strike may be directed only to a pleading, but that the court has inherent power to strike documents other than pleadings).

As Petitioners’ motion to intervene has not yet been granted and, as argued above, should be denied, Petitioners are non-parties to this litigation and strangers to this Court.<sup>1</sup> *In re Fine Paper Antitrust Litig.*, 695 F.2d 494, 499 (3d Cir. 1982) (non-parties not granted intervenor status are strangers to the case and lack standing); *see also SEC v. Investors Security Leasing Corp.*, 610 F.2d 175, 177-78 (3d Cir. 1979) (non-parties who fail to comply with Rule 24 are not proper parties and court cannot rule on their claims); *Alexander v. Rendell*, 246 F.R.D. 220, 231 (W.D. Pa. 2007) (noting that proposed intervenors are not yet parties to a lawsuit). As such, Petitioners cannot be permitted to participate in this action unless and until they have demonstrated they have met Rule 24’s requirements and their motion to intervene has been granted by the Court. *See Michael v. Futhey*, No. 08-3932, 2009 U.S. App. LEXIS 28217, at \*11 (6th Cir. 2009) (noting that the district court denied proposed intervenors’ motion to dismiss without prejudice and subject to being granted permission to intervene because proposed intervenors were not parties to the suit at the time the motion was filed).

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<sup>1</sup> Outside the courtroom, and immediately prior to the commencement of the February 6, 2012, hearing on Plaintiffs’ TRO request, Petitioners served their motion to intervene, motion to dismiss, and brief in opposition to Plaintiffs’ motion for a TRO and preliminary and permanent injunction by hand upon Plaintiffs’ counsel. At the outset of that February 6, 2012, hearing, the Court indicated that Petitioners would be “permitted to intervene”; however, this statement, taken in context, appears merely to have been intended to permit Petitioners the right to be heard in that particular proceeding. *see* Exh. 1 at 10:13-18 (The Court: “I’m going to let [Petitioners] speak. I have not formally ruled on your request to intervene but you are going to be permitted to intervene. You are going – I will hear whatever you have to say.”) On the record, Plaintiffs lodged their objection to Petitioners’ participation in that February 6, 2012, hearing on Plaintiffs’ TRO request, *see id.* at 11:1-11; they did not waive, and indeed preserved, their right, pursuant to Federal Rule of Civil Procedure 6 and Local Rule 7.1(c), to oppose Petitioners’ motion to intervene in this litigation. *See also* Fed. R. Civ. P. 24(c) (requiring service of motion to intervene on parties).

Because Petitioners are non-parties and are not entitled to intervene in this action under Rule 24, all of the filings they have made in this suit, beyond that of their Motion to Intervene, are improper and should be stricken.

**IV. CONCLUSION**

For the foregoing reasons, Plaintiffs, Senator Dominic Pileggi, Representative Michael Turzai, and Louis P. Kupperman, respectfully request that the motion of Senator Jay Costa and Representative Frank Dermody to intervene as party defendants as of right, or, alternatively, by permission of the Court, be denied. Plaintiffs further respectfully request that the Court enter an Order Striking all filings of Petitioners in this litigation with the exception of their motion to intervene.

Dated: February 8, 2012

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Mary Ann Mullaney, Esquire, hereby certify that I have caused the following documents to be filed electronically on February 8, 2012:

Plaintiffs' Memorandum of Law in Opposition to Motion to Intervene of Petitioners, Senator Jay Costa and Representative Frank Dermody, and in Support of Plaintiffs' Motion to Strike; Plaintiffs' Motion to Strike; and Proposed Order.

These documents are available for reviewing and downloading from the ECF System, and will be served electronically upon all counsel of record.

**BLANK ROME LLP**

Dated: February 8, 2012

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# **EXHIBIT 1**

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SENATOR DOMINIC PILEGGI : CIVIL ACTION  
REPRESENTATIVE MICHAEL TURZAI  
AND, LOUIS KUPPERMAN  
PLAINTIFFS

VS.

CAROL AICHELE, IN HER OFFICIAL  
CAPACITY AS SECRETARY OF THE  
COMMONWEALTH OF PENNSYLVANIA : 12-588  
DEFENDANT

- - -

SAMUEL H. SMITH, IN HIS CAPACITY : CIVIL ACTION  
AS SECRETARY OF THE COMMONWEALTH  
OF PENNSYLVANIA

VS.

CAROL AICHELE, IN HER CAPACITY  
AS SECRETARY OF THE COMMONWEALTH  
OF PENNSYLVANIA : 12-488

- - -

JOE GARCIA, FERNANDO QUILES : CIVIL ACTION  
DALIA RIVERA MATIAS

VS.

2011 LEGISLATIVE REAPPORTIONMENT  
COMMISSION AND CAROL AICHELE,  
IN HER CAPACITY AS SECRETARY  
OF THE COMMONWEALTH OF PENNSYLVANIA,  
AND AS CHIEF ELECTION OFFICER  
OF THE COMMONWEALTH OF PENNSYLVANIA : 12-556

- - -

MONDAY, FEBRUARY 6, 2012  
COURTROOM 8-A  
PHILADELPHIA, PA 19106

-----  
BEFORE THE HONORABLE R. BARCLAY SURRICK, J.

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MOTION FOR TEMPORARY RESTRAINING ORDER  
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PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,  
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 THE 2012 PLAN WAS THE CORRECT PLAN. FOR US TO GO BACK  
2 NOW TO THE 2001 PLAN WOULD MAKE LIFE EVEN MORE CHAOTIC  
3 THAN IT IS RIGHT NOW. WE HAVE 67 COUNTIES, YOUR HONOR,  
4 THAT WE ARE RESPONSIBLE FOR GIVING DIRECTION TO. AND AS  
5 I SAY, 30 OR 31 OF THOSE COUNTIES HAVE ALREADY GEARED UP  
6 OPERATING UNDER THE ASSUMPTION THAT THE 2012 PLAN IS THE  
7 PLAN THAT WE ARE ALL PROCEEDING WITH.

8 THE COURT: OBVIOUSLY THE 2012 PLAN IS NO  
9 LONGER A VIABLE PLAN.

10 MR. LAMB: NOT UNLESS YOU SAY IT IS.

11 THE COURT: UNLESS I SAY IT IS.

12 MR. LAMB: OR THIS COURT SAYS IT IS.

13 THE COURT: I THINK -- ALL RIGHT. WE  
14 HAVE INTERVENORS IN THIS MATTER. I'M GOING TO LET YOU  
15 SPEAK. I HAVE NOT FORMALLY RULED ON YOUR REQUEST TO  
16 INTERVENE BUT YOU ARE GOING TO BE PERMITTED TO  
17 INTERVENE. YOU ARE GOING -- I WILL HEAR WHATEVER YOU  
18 HAVE TO SAY.

19 MR. KATSIFF: THANK YOU, YOUR HONOR. MY  
20 NAME IS TIM KATSIFF. I'M HERE TO MOVE FOR THE ADMISSION  
21 PRO HAC VICE OF THE LAWYERS REPRESENTING THE  
22 INTERVENORS, CLIFF LEVINE, YOUR HONOR, LEAH IMBROGNO AND  
23 RICHARD EJZAK. THEY ARE ALL MEMBERS IN GOOD STANDING OF  
24 THE PENNSYLVANIA BAR.

25 THE COURT: ALL RIGHT.

1 MS. MULLANEY: YOUR HONOR, IF I MAY  
2 INTERJECT FOR JUST A MOMENT, MARY ANN MULLANEY, ON  
3 BEHALF OF THE PLAINTIFFS, SENATOR DOMINIC PILEGGI AND  
4 LOUIS KUPPERMAN. ALTHOUGH THE COURT IS ALLOWING THE  
5 INTERVENORS TO SPEAK, WE WOULD LIKE TO NOTE A STANDING  
6 OBJECTION SINCE THE COURT NEEDS TO SEE THAT RULE 24'S  
7 REQUIREMENTS HAVE BEEN MET, NEEDS TO GRANT THEM STATUS  
8 AS INTERVENORS BEFORE THEY CAN MEANINGFULLY PARTICIPATE  
9 IN THIS PROCEEDING. UNTIL SUCH TIME THEY ARE STRANGERS  
10 TO THE COURT WITHOUT STANDING, WE WOULD LIKE TO PUT A  
11 STANDING OBJECTION ON THE RECORD.

12 THE COURT: YOU HAVE AN OBJECTION. I  
13 WILL HEAR WHAT THEY HAVE TO SAY.

14 MR. LEVINE: THANK YOU, YOUR HONOR.

15 MY NAME IS CLIFFORD LEVINE. MAY I  
16 APPROACH THE PODIUM?

17 THE COURT: CERTAINLY.

18 MR. LEVINE: I AM CLIFFORD LEVINE ON  
19 BEHALF OF THE PROPOSED INTERVENORS, SENATOR JAY COSTA  
20 AND STATE REPRESENTATIVE FRANK DERMODY. LET ME JUST  
21 FIRST ADDRESS THE INTERVENTION. THIS IS AN ACTION THAT  
22 IS BROUGHT BY SENATOR PILEGGI AND REPRESENTATIVE TURZAI.  
23 SO THOSE ARE THE -- THEY ARE THE REPUBLICAN LEADERS IN  
24 THE SENATE AND HOUSE. MR. COSTA AND DERMODY ARE THE  
25 DEMOCRATIC LEADERS. ALL FOUR OF THOSE INDIVIDUALS ARE

1 MEMBERS OF THE REAPPORTIONMENT COMMISSION. IN ADDITION,  
2 SENATOR COSTA WAS A PETITIONER BEFORE THE SUPREME COURT  
3 AND I ARGUED ON BEHALF OF SENATOR COSTA IN THE SUPREME  
4 COURT ON THIS CASE. IN ADDITION, LIKE MR. PILEGGI AND  
5 MR. TURZAI, THEY ARE VOTERS IN PENNSYLVANIA AND HAVE AN  
6 INTEREST IN ENSURING THAT ELECTIONS PROCEED. SO THEY  
7 ARE REALLY IN ABSOLUTELY A PARALLEL SITUATION AND FOR  
8 THAT REASON WE THINK THAT INTERVENTION WOULD BE  
9 APPROPRIATE AND AS YOU INDICATED OR THE SECRETARY OF  
10 STATE'S COUNSEL INDICATED THEY ARE NOT TAKING A POSITION  
11 ON THIS MATTER AND SO THE INTEREST IN TERMS OF HAVING A  
12 FAIR ADJUDICATION WOULD NOT BE REALIZED. SO BOTH UNDER  
13 24 A AND B, WHETHER IT'S AN INTERVENTION AS A RIGHT OR  
14 BY PERMISSION OF COURT, EITHER WOULD BE APPROPRIATE AND  
15 APPLICABLE IN THIS SITUATION.

16 THE COURT: ALL RIGHT.

17 MR. LEVINE: HAVING SAID THAT, I FIRST  
18 WANT TO DISPEL THE NOTION THAT WE ARE SITTING HERE  
19 DEBATING WHICH PLAN IS IN EFFECT. THE LEGISLATIVE  
20 REAPPORTIONMENT COMMISSION DID DEVELOP AND APPROVE A  
21 2011 PLAN. UNDER THE PENNSYLVANIA CONSTITUTION, UNDER  
22 ARTICLE 2 SECTION 17 OF THE CONSTITUTION, THAT PLAN DOES  
23 NOT HAVE THE FORCE OF LAW UNTIL THE SUPREME COURT  
24 APPROVES THAT FOLLOWING ANY APPEAL. AND SO ON FRIDAY  
25 THE SUPREME COURT IN AN 87 PAGE OPINION SAID THIS IS AN

1 UNCONSTITUTIONAL PLAN. IT HAS BEEN PUT IN THE SHREDDER.  
2 IT DOES NOT EXIST. THERE IS NO PLAN BECAUSE IT WAS  
3 DEEMED TO BE UNCONSTITUTIONAL. WHEN THE COURT -- THERE  
4 SHOULD REALLY BE NO CONFUSION FROM THE POINT OF VIEW OF  
5 THE SECRETARY OF STATE AS TO HOW TO PROCEED. ALTHOUGH  
6 THE COURT ISSUED ITS 87 PAGE OPINION ON FRIDAY, TWO DAYS  
7 AFTER ORAL ARGUMENT, ON JANUARY 25, 2012, IT ISSUED A  
8 VERY BRIEF ORDER AND THE ORDER INDICATED THAT AFTER  
9 ENTERTAINING ARGUMENT, IT DETERMINED THAT THE 2011 PLAN  
10 WAS CONTRARY TO LAW, CITING ARTICLE 2, SECTION 17. AND  
11 THEN SAYS THAT IT'S REMANDED TO THE COMMISSION TO --  
12 CONSISTENT WITH THE OPINION THAT WILL FOLLOW AND THEN IT  
13 SAYS VERY EXPLICITLY, 2011 -- THE 2001 LEGISLATIVE  
14 REAPPORTIONMENT PLAN WHICH THIS COURT PREVIOUSLY ORDERED  
15 TO BE USED IN ALL FORTHCOMING ELECTIONS TO THE GENERAL  
16 ASSEMBLY UNTIL THE NEXT CONSTITUTIONALLY MANDATED  
17 REAPPORTIONMENT SHALL BE APPROVED, THEN THEY CITE THEIR  
18 CASE, SHALL REMAIN IN EFFECT UNTIL A REVISED FINAL 2011  
19 LEGISLATIVE REAPPORTIONMENT PLAN HAVING THE FORCE OF LAW  
20 IS APPROVED. THE SUPREME COURT CLEARLY INDICATED THAT  
21 THE 2001, BECAUSE ONCE THAT 2011 PLAN IS RULED  
22 UNCONSTITUTIONAL, THE ONLY MAP THAT EXISTS IS THE ONE  
23 THAT CURRENTLY EXISTS, THE 2001 MAP.

24 IN FACT, INDICATIVE OF THE COURT'S  
25 UNDERSTANDING THAT THE 2001 PLAN WAS TO APPLY, NOT ONLY

1 WE MAY NOT HAVE THE OPPORTUNITY TO VOTE FOR DELEGATES IN  
2 TIME FOR THE CONVENTIONS IN THE SUMMER. AND IF WE ARE  
3 GOING TO BIFURCATE IT, IF THE COURT IS NOW ASKING YOUR  
4 HONOR TO BIFURCATE IT AT A COST OF 20, \$25 MILLION  
5 DOLLARS AND HAVE TWO ELECTIONS, THERE AGAIN THEY ARE NOT  
6 ASKING FOR THIS, IT'S A VERY LIMITED REQUEST. JUST STOP  
7 EVERYTHING BUT WITH NOTHING ELSE IN PLACE.

8 THE COURT: ALL RIGHT. COUNSEL, I WILL  
9 TAKE A LOOK AT THE SITUATION AND WILL HAND DOWN AN  
10 APPROPRIATE ORDER WITH REGARD TO THE REQUEST FOR TRO.  
11 IT WILL BE DONE WITH DISPATCH. ALL RIGHT?

12 ALL COUNSEL: THANK YOU.

13 (HEARING ADJOURNED).

14

15

16

17 I CERTIFY THAT THE FOREGOING IS A CORRECT  
18 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
19 ABOVE-ENTITLED MATTER.

20

21

22 DATE

SUZANNE R. WHITE

23

OFFICIAL COURT REPORTER

24

25