

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEAGUE OF WOMEN VOTERS OF
PENNSYLVANIA, et al.,
Petitioners,

v.

COMMONWEALTH OF
PENNSYLVANIA, et al.,
Respondents.

Docket No. 261 MD 2017

[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2017, upon consideration of the Application to Stay filed by the Pennsylvania General Assembly, the Honorable Michael C. Turzai, and the Honorable Joseph B. Scarnati, III, and any answer thereto, it is hereby ORDERED that the Application to Stay is DENIED.

BY THE COURT:

, J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Docket No. 261 MD 2017

**ANSWER OF GOVERNOR TOM WOLF TO APPLICATION TO STAY
CASE OF THE PENNSYLVANIA GENERAL ASSEMBLY, MICHAEL C.
TURZAI, AND JOSEPH B. SCARNATI, III**

Governor Tom Wolf (Governor Wolf), by and through his undersigned counsel, and pursuant to Rule 123 of the Pennsylvania Rules of Appellate Procedure, file this Answer to the Application to Stay Case Pending the U.S. Supreme Court's Ruling in *Gill v. Whitford* ("Application") filed by the Pennsylvania General Assembly, the Honorable Michael C. Turzai, and the Honorable Joseph B. Scarnati, III ("Applicants"). For the Court's benefit, this response is presented as a narrative statement, rather than a point-by-point response to the numbered paragraphs of the original Application. Because Governor Wolf is not a proper defendant in this matter, he objects to the stay to the extent that it would delay his dismissal from this action.

I. GOVERNOR WOLF IS NOT A PROPER DEFENDANT IN THIS MATTER, AND THE COMPLAINT AGAINST HIM SHOULD BE DISMISSED REGARDLESS OF THE APPLICATION FOR STAY

As set forth in the Governor's Preliminary Objections, Act 131 was signed into law on December 22, 2011 by then-Governor Thomas W. Corbett. See, Act 131 of 2011 (Act of Dec. 22, 2011, P.L. 598, No. 131), as amended, 25 P.S. § 3596.101 et seq. Governor Wolf, who had no role in the enactment of Act 131, is not charged with any statutory or constitutional duties with respect to the enforcement or administration of Act 131.

Indeed, the Governor's general obligation to "faithfully execute" the laws or sign legislation into law is insufficient to render the Governor a proper respondent. See, e.g., *Pa. School Boards Ass'n, Inc. v. Commonwealth Ass'n of Sch. Adm'rs.*, 696 A.2d 859, 868 (Pa. Cmwlth. Ct. 1997) (challenge to constitutionality of a statute does not render the Governor proper defendant), *appeal dismissed*, 704 A.2d 631 (Pa. 1998); *Rode v. Delarciprete*, 845 F.2d 1195, 1208-09 (3d Cir. 1988) (same). Further, as set forth in Governor Wolf's Preliminary Objections, the instant Complaint seeks no substantive relief against Governor Wolf, and his participation is not necessary to resolve this matter.

Without a substantive allegation against Governor Wolf, the Petition is legally insufficient against Governor Wolf. See *Wagaman v. Attorney General*, 872 A.2d 244, 247 (Pa. Cmwlth. Ct. 2005). Further, because Petitioners seek no

relief against him, the Governor is not a proper defendant in this matter. As such, Governor Wolf respectfully requests that this Court promptly grant the Preliminary Objections filed on his behalf, without regard to the Application for Stay.

II. GOVERNOR WOLF OBJECTS TO THE APPLICATION FOR STAY TO THE EXTENT THAT IT WOULD DELAY THE ADJUDICATION OF THE GOVERNOR'S PRELIMINARY OBJECTIONS

As set forth above and in his Preliminary Objections, Governor Wolf is not a proper defendant in this matter. As such, to the extent that the issuance of a stay would delay adjudication of the Governor's Preliminary Objections, Governor Wolf objects to the Application for Stay.

Specifically, a stay that delays consideration of Governor Wolf's Preliminary Objections would inappropriately deprive the parties of certainty and require them to continue to incur the costs and burdens associated with litigating against a defendant (Governor Wolf) *against whom no relief is sought*. Notably, Applicants seek a stay based upon their view that the United States Supreme Court's decision in *Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016), *juris. statement filed*, No. 11-1161 (U.S. Mar. 24, 2017), will be dispositive of this matter. Nothing in *Whitford*, however, addresses any issue raised by Governor Wolf's Preliminary Objections. Therefore, Applicants have failed to articulate any justification to stay consideration of Governor Wolf's Preliminary Objections. Thus, to the extent that Applicants seek to stay consideration of those Preliminary Objections, such Application should be Denied.

III. CONCLUSION

Regardless of the Application for Stay, Governor Wolf is not a proper defendant in this matter. Therefore, this Court should expeditiously dismiss the Complaint as against Governor Wolf, without regard to the Application for Stay. Further, the Application for Stay is based wholly upon the United States' Supreme Court's pending decision in *Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016), *juris. statement filed*, No. 11-1161 (U.S. Mar. 24, 2017), which will not provide any guidance regarding Governor Wolf's Preliminary Objections. As such, there exists no reason to stay consideration of those Preliminary Objections pending the *Whitford* decision. Therefore, for these reasons, Governor Wolf respectfully requests that this Honorable Court grant his Preliminary Objections or alternatively deny the Application for Stay.

Respectfully submitted,

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Date: August 23, 2017

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CERTIFICATE OF SERVICE

I, THOMAS P. HOWELL, hereby certify that on this 23rd day of August 2017, the foregoing **Answer of Governor Tom Wolf to Application for Stay Case of the Pennsylvania General Assembly, Michael C. Turzai, and Joseph B. Scarnati, III** has been served upon counsel in the manner indicated below, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

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