

No. 21A457

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**IN THE SUPREME COURT OF THE UNITED STATES**

WILLIAM C. TOTH JR., *et al.*,

*Applicants,*

v.

LEIGH CHAPMAN, in her official capacity as Acting Secretary  
of the Commonwealth of Pennsylvania, *et al.*,

*Respondents,*

&

CAROL ANN CARTER, *et al.*,

*Intervenor-Respondents.*

**On Emergency Application for Writ of Injunction  
from the United States District Court  
for the Middle District of Pennsylvania**

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**APPENDIX TO INTERVENOR-RESPONDENTS'  
RESPONSE IN OPPOSITION TO EMERGENCY  
APPLICATION FOR WRIT OF INJUNCTION**

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## **CORPORATE DISCLOSURE STATEMENT**

Per Supreme Court Rule 29.6, no Intervenor-Respondent has a parent company or a publicly-held company with a 10 percent or greater ownership interest in it.

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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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No. 464 M.D. 2021

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Carol Ann Carter; Monica Parrilla; Rebecca Poyourow; William Tung; Roseanne Milazzo; Burt Siegel; Susan Cassanelli; Lee Cassanelli; Lynn Wachman; Michael Guttman; Maya Fonkeu; Brady Hill; Mary Ellen Bachunis; Tom DeWall; Stephanie McNulty; and Janet Temin,

Petitioners,

vs.

Veronica Degraffenreid, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

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No. 465 M.D. 2021

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Philip T. Gressman; Ron Y. Donagi; Kristopher R. Tapp; Pamela A. Gorkin; David P. Marsh; James L. Rosenberger; Amy Myers; Eugene Boman; Gary Gordon; Liz McMahan; Timothy G. Feeman; and Garth Isaak

Petitioners,

vs.

Veronica Degraffenreid, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

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**MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR  
LEAVE TO INTERVENE BY BRYAN CUTLER, SPEAKER OF THE  
PENNSYLVANIA HOUSE OF REPRESENTATIVES; KERRY  
BENNINGHOFF, MAJORITY LEADER OF THE PENNSYLVANIA  
HOUSE OF REPRESENTATIVES; JAKE CORMAN, PRESIDENT PRO  
TEMPORE OF THE PENNSYLVANIA SENATE; AND KIM WARD,  
MAJORITY LEADER OF THE PENNSYLVANIA SENATE**

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Bryan Cutler, Speaker of the Pennsylvania House of Representatives (“Speaker Cutler”); Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives (“Leader Benninghoff” and, together with Speaker Cutler, the “House Leaders”); Jake Corman, President *Pro Tempore* of the Pennsylvania Senate (“President Corman”); Kim Ward, Majority Leader of the Pennsylvania Senate (“Leader Ward” and, together with President Corman, the “Senate Leaders,” and, together with the House Leaders, the “Proposed Intervenors”) hereby file this Memorandum of Law supporting their Application for Leave to Intervene in the above-captioned matters (“Application”), matters that were filed by Carol Ann Carter, *et al.* (“Carter Petitioners”) and Philip T. Gressman, *et al.* (“Gressman Petitioners”) (collectively, “Petitioners”).

The Proposed Intervenors satisfy the requirements for intervention under Pa.R.Civ.P. 2327 and, as members of the Pennsylvania General Assembly (the “General Assembly”) and leaders of the General Assembly as an institution, seek to protect their exclusive authority under Article I, Section 4 of the United States Constitution to prescribe the “Times, Places, and Manner” of congressional elections, and under the Pennsylvania Constitution to legislate and appropriate for elections in Pennsylvania. Petitioners’ requested relief would usurp this exclusive authority. Previously, in a nearly identical lawsuit that the Carter Petitioners filed in April 2021, in which they sought the same relief that they are seeking here,

Proposed Intervenors were granted leave to intervene, after which this Court dismissed the suit. As this Court stated in authorizing the intervention, “it seems clear that Legislators’ ability to legislate would be impaired if the Court imposes a deadline on the General Assembly and the Governor to put in place a new congressional district map and takes control of the redistricting process.” *Carter v. Degraffenreid*, No. 132 M.D. 2021 (Slip. Op. Sept. 2, 2021) at pg. 12 (copy attached as Appendix 1). The same point holds true now, and Proposed Intervenors should be permitted to intervene in both of these actions.

In support of their Application, the Proposed Intervenors respectfully state as follows:

**I. BACKGROUND**

1. The United States and Pennsylvania Constitutions vest the General Assembly with the authority to redistrict this Commonwealth’s congressional districts. Specifically, Article I, Section 4 of the United States Constitution (the “Elections Clause”) provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof...” Pursuant to the Elections Clause, as a matter of federal law, “redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking.” *Arizona State Legislature v. Arizona Indep.*

*Redistricting Comm'n*, 576 U.S. 787, 808 (2015). The Commonwealth’s legislative power is vested in the General Assembly. PA. CONST. ART. II, § 1.

2. Congressional districting plans are legislative enactments of the General Assembly, passed like any other legislation. The Pennsylvania Supreme Court has confirmed that the “primary responsibility and authority for drawing federal congressional legislative districts rests squarely with the state legislature.” *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 821–22 (Pa. 2018), citing *Butcher v. Bloom*, 216 A.2d 457, 458 (Pa. 1966) (identifying the General Assembly as “the organ of government with the primary responsibility for the task of apportionment”) and *Grove v. Emison*, 507 U.S. 25, 34 (1993) (“the Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts”).

3. By statute, the Secretary of Commerce, on behalf of the United States Census Bureau, must deliver to the President of the United States the apportionment figures from the decennial census by December 31 of the year in which the Census is taken, and must deliver redistricting data (known as P.L. 94-171 data)<sup>1</sup> to the states by April 1 of the year after the year in which the Census is taken. 13 U.S.C. § 141.

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<sup>1</sup> The redistricting data consists of population counts for every census block in each state as of the decennial census date (here, April 1, 2020). Apportionment numbers are simply statewide population counts and, unlike the granular redistricting data, offer no insight about how the population is distributed within the state.



Apportionment data is used to allocate U.S. House of Representatives seats to the states, and redistricting data is used by state legislatures or other state redistricting authorities to draw representational districts.

4. This year’s Census results, however, were significantly delayed. The apportionment results were delivered on April 26, 2021, but the Census Bureau did not deliver the P.L. 94-171 data until August 12, 2021.<sup>2</sup>

5. Unlike with some other states, there is no express deadline set forth in Pennsylvania’s Constitution or statutes by which the Commonwealth must enact a new congressional district plan following the publication of a new census. *Carter*, 132 M.D. 2021, at pg. 12.

6. There is indeed still time for the General Assembly and Governor to reach an agreement on a congressional redistricting plan. Candidates for congressional seats cannot begin collecting the signatures that they need in order to be placed on the ballot until February 15, 2022 – over 45 days from now. And, in the past, those nominating petition deadlines have been moved for Congressional elections, and therefore could still be moved in this election cycle. *See, e.g., Mellow v. Mitchell*, 607 A.2d 204, 237 & 244 (Pa. 1992) (adopting the “Revised Election Calendar attached to this Order as Appendix B,” which moved the first day to

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<sup>2</sup> *See* <https://www.census.gov/data/datasets/2020/dec/2020-census-redistricting-summary-file-dataset.html> (last accessed December 22, 2021).

circulate and file nominating petitions from January 28 to March 10). Regardless, Proposed Intervenors certainly have an interest in any litigation that seeks to usurp their authority, especially when there is still time for the legislature to act, and even if, as Petitioners believe, the enactment of a redistricting plan is unlikely.

7. In *Mellow v. Mitchell*, the last case that involved an impasse like the one that Petitioners claim is certain to materialize here, the action was not filed until the first day when nominating petitions could be circulated. 607 A.2d at 205. Here, Petitioners' actions were filed over a month before the first day when nominating petitions can be circulated.

8. Speaker Cutler is a duly elected, qualified, and serving Member of the House of Representatives from the 100th House District, and is also the duly elected Speaker of the House of Representatives and in such capacity is the presiding officer of that body.

9. Leader Benninghoff is a duly elected, qualified, and serving Member of the House of Representatives from the 171st House District, and is also the duly elected Majority Leader of the House of Representatives and, in such capacity, leads the Republican Caucus of the House of Representatives (the "House Republican Caucus"). The House Republican Caucus consists of 113 out of 203 Members of the House.

10. President Corman is a duly elected, qualified, and serving Member of the Senate from the 34th Senatorial District, and is also the duly elected President *Pro Tempore* of the Senate. In such capacity, he is the highest-ranking officer of the Senate and presides over that body in the absence of the Lieutenant Governor. *See* Pa. Const. art. II, § 9.

11. Leader Ward is a duly elected, qualified, and serving Member of the Senate from the 39th Senatorial District, and is also the duly elected Majority Leader of the Senate and, in such capacity, leads the Republican Caucus of the Senate (the “Senate Republican Caucus”). The Senate Republican Caucus consists of 29 out of 48 Members of the Senate: 28 Republican Senators and 1 independent Senator who caucuses with the Republicans.

12. Attached to the Application as **Exhibits A** and **B**, respectively, are the Proposed Intervenors’ proposed Answers to the Petitions for Review.

## **II. THE PROPOSED INTERVENORS HAVE A RIGHT TO INTERVENE**

13. Under Pennsylvania law, a person has an absolute right to intervene in an action if he falls within one of the categories enumerated in Pa.R.Civ.P. 2327. *See id.*; Pa.R.Civ.P. 2329; *see also Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Cmwlth. 1999).

14. The grant of intervention is mandatory where the intervenor meets any one of the four criteria set forth in Pa.R.Civ.P. 2327. *Larock*, 740 A.2d at 313 (“if

the petitioner is a person within one of the classes described in Rule 2327, the allowance of intervention is mandatory, not discretionary . . .”) (internal citations omitted).

15. Here, two independent bases exist to support the Proposed Intervenors’ right to intervene. First, Pa.R.Civ.P. 2327(3) provides that a person must be permitted to intervene if he “could have joined as an original party in the action or could have been joined therein.” *Id.* Second, Pa.R.Civ.P. 2327(4) provides that a person must be permitted to intervene if “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” *Id.*

16. Pennsylvania courts have established “that the inquiry to determine whether a party has standing to initiate litigation is different than the inquiry to determine whether a party can intervene in existing litigation.” *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1288 (Pa. Cmwlth. 2019). Indeed, “[s]tanding to file a formal complaint requires the moving party to have a direct, immediate, and substantial interest in the subject matter of the controversy. . . . Conversely, a person seeking to intervene in a proceeding need have only an ‘interest of such nature that participation . . . may be in the public interest.’” *Id.* at 1288-1289 (citation omitted).

17. Moreover, the Proposed Intervenors are the presiding officers of both Houses of the General Assembly and seek to intervene to protect the official,

individual, and/or institutional interests described in this memorandum. As this Court held just last year, “there is a difference between personal standing and legislative standing,” and a legislator “may be able to initiate litigation in his legislative capacity, where the legislator can demonstrate an injury to his ability ‘to act as a legislator.’” *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep’t of Human Servs.*, 225 A.3d 902, 909 (Pa. Cmwlth. 2020). These principles of legislative standing are relevant to whether a legally enforceable interest exists. *Id.* at 902.

18. This Court again recognized and re-affirmed these principles when it granted Proposed Intervenors’ request to intervene in the first lawsuit filed by the Carter Petitioners. *Carter*, 132 M.D. 2021, at pgs. 10-11.

19. Because the Proposed Intervenors have legally enforceable interests at play and could have been original parties to this case, they must be permitted to intervene as of right under both Pa.R.Civ.P. 2327 (3) and (4).

**A. Determination of This Action Will Affect the Proposed Intervenors’ Enforceable Interest in Vindicating and Protecting Their Exclusive Interest and Right to Legislate Redistricting and Election Laws, which Petitioners Seek to Divest.**

20. The Proposed Intervenors unquestionably have an enforceable interest in defending the constitutional authority of Pennsylvania’s legislative actors to prescribe the “Times, Places, and Manner of holding elections for Senators and Representatives,” U.S. CONST. ART. I, § 4, which includes the authority to enact congressional districting plans. *League of Women Voters*, 178 A.3d at 821–22. This

action seeks to dilute, abrogate, impair, or abolish that constitutional prerogative. Petitioners ask the Court to take control over the congressional redistricting process and impose unreasonable, restrictive deadlines on Proposed Intervenors' constitutional prerogative.

21. This enforceable interest satisfies Pa.R.Civ.P. 2327 and, accordingly, Proposed Intervenors have the right to intervene. Pennsylvania law affirms the exclusive authority of Pennsylvania's legislators to engage in congressional redistricting, and that authority lies at the heart of this case.

22. The Proposed Intervenors have an enforceable interest warranting intervention, and can "initiate litigation in [their] legislative capacity, where the legislator can demonstrate an injury to his ability 'to act as a legislator.'" *Allegheny Reprod. Health Ctr.*, 225 A.3d at 909 (citing *Sunoco Pipeline L.P.*, 217 A.3d at 1288).

23. In *Fumo v. City of Philadelphia*, the Pennsylvania Supreme Court determined that a city's issuance of a license for the construction of a casino on a Pennsylvania river invaded the General Assembly's exclusive authority to regulate submerged lands. 972 A.2d 487, 501–03 (Pa. 2009). In relevant part, the *Fumo* court held that six state legislators had legislative standing to "seek redress for an alleged usurpation of their authority as members of the General Assembly," to "vindicate a power that only the General Assembly has," and to "ask that this Court uphold their

right as legislators to cast a vote or otherwise make a decision on licensing the use of the Commonwealth's submerged lands." *Id.* at 502.

24. The Proposed Intervenors' Application presents a stronger case for intervention. Regulating the times, places, and manner of congressional elections in Pennsylvania—a task that includes redistricting legislation—is an exclusively legislative function, not only under Pennsylvania law, but also under the U.S. Constitution. *See, e.g.*, U.S. CONST. ART. I, § 4; PA. CONST. ART. II, § 1; *League of Women Voters*, 178 A.3d at 821–22; *Butcher*, 216 A.2d at 458; *Arizona State Legislature*, 576 U.S. at 808; *Growe*, 507 U.S. at 34.

25. The power to redistrict is part of the General Assembly's overall power to regulate elections. More than a century ago, the Pennsylvania Supreme Court acknowledged that "[t]he power to regulate elections is a legislative one, and has been exercised by the general assembly since the foundation of the government." *Winston v. Moore*, 91 A. 520, 522 (Pa. 1914) (citing *Patterson v. Barlow*, 60 Pa. 54, 75 (1869)). The primacy of the General Assembly in the area of elections is manifest. *See In re Guzzardi*, 99 A.3d 381, 386 (Pa. 2014) ("[s]ubject to constitutional limitations, the Pennsylvania General Assembly may require such practices and procedures as it may deem necessary to the orderly, fair, and efficient administration of public elections in Pennsylvania"). For that reason, "the judiciary should act with restraint, in the election arena, subordinate to express statutory directives." *Id.*

26. Here, as in their last lawsuit, the Carter Petitioners seek, in pertinent part, a declaratory judgment that the Commonwealth's current congressional district plan is unconstitutional, an injunction prohibiting Respondents from "implementing, enforcing, or giving any effect to" that plan, and this Court's "[a]dopt[ion] [of] a new congressional district plan that complies with Article I, Section 5 of the Pennsylvania Constitution; Article I, Section 2 of the U.S. Constitution; and 2 U.S.C. § 2." Carter Pet. at 18-19 (Prayer for Relief).

27. Similarly, the Gressman Petitioners seek a declaration that Pennsylvania's current congressional districts are unconstitutional and an order enjoining Respondents from "implementing, enforcing, or giving any effect to Pennsylvania's current congressional district plan in any future election." Gressman Pet. at 14 (Prayer for Relief). The Gressman Petitioners also seek "implementation of a new congressional district map with the correct number of congressional districts that adheres to the one-person, one-vote standard and all other applicable constitutional and legal requirements." Gressman Pet. ¶ 1. Both sets of Petitioners, in addition, have already asked the Pennsylvania Supreme Court to take extraordinary jurisdiction of these matters and set an expedited schedule, culminating in the court's adoption of a new congressional district map.

28. These requests directly seek to divest the Proposed Intervenors' exclusive authority to determine the times, places, and manner of holding



congressional elections under U.S. Const. Art. I, § 4, and to transfer that authority to the Judiciary.

29. As this Court expressly recognized in the Carter Petitioners' prior suit, "it seems clear that Legislators' ability to legislate would be impaired if the Court imposed a deadline on the General Assembly and the Governor to put in place a new congressional district map and takes control of the redistricting process." *Carter*, 132 M.D. 2021, at pg. 12. But here, once again, Petitioners are asking the Court to take precisely those actions.

30. In addition, in the Carter Petitioners' prior suit, this Court recognized that "Legislators would have a legally enforceable interest in the submission of a proposed plan for the Court's consideration if called upon to draw a new congressional map, as in the *Mellow* case." *Carter*, 132 M.D. 2021, at pg. 12. Nothing about that interest has changed in the last three months.

31. Thus, as previously recognized by this Court, determination of this action necessarily and directly affects the Proposed Intervenors' legally enforceable interests, giving them a right to intervene. *Fumo*, 972 A.2d at 502 ("the claim reflects the state legislators' interest in maintaining the effectiveness of their legislative authority and their vote, and for this reason, falls within the realm of the type of claim that legislators, qua legislators, have standing to pursue.").

**B. The Proposed Intervenors Could Have Joined as an Original Party in the Action or Could Have Been Joined Herein.**

32. Pennsylvania courts recognize that parties with special interests implicated by an action could have been joined as original parties. *See, e.g., Appeal of Denny Bldg. Corp.*, 127 A.2d 724, 729 (1956) (finding intervention appropriate when parties “have an obvious special interest apart from that of the general public which would certainly have justified their joining as original parties in the action”); *Harrington v. Philadelphia City Emps. Fed. Credit Union*, 364 A.2d 435, 441 (Pa. Super. 1976) (recognizing that candidates “could have been an original party or could have been joined in the action . . . [because they] had interests which would be drastically affected by the outcome of the equity action”).

33. Further, 42 Pa.C.S. § 7540(a) provides that “[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.”

34. The Proposed Intervenors, as the parties to whom the constitutional authority to redistrict has been assigned, have a special interest in these actions. The actions seek to divest—or, at a minimum, significantly impair—the Proposed Intervenors’ authority to conduct congressional redistricting for the Commonwealth for the 2022 elections and beyond.

35. Moreover, the Proposed Intervenors could have joined as original parties in these actions. In fact, it is not uncommon for the presiding officers of the House and Senate—like Speaker Cutler and President Corman—to be named as original parties in cases challenging the constitutionality of, and seeking to alter, redistricting plans enacted by the General Assembly. For example, in both *League of Women Voters* and *Erfer*, the then-presiding officers of the General Assembly were named as original parties, including former Speaker Mike Turzai and former President *Pro Tempore* Joseph Scarnati III in *League of Women Voters*, and former Speaker Matthew Ryan and then-Lieutenant Governor and President of the Senate Robert Jubelirer in *Erfer*. Further, in *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), an action brought to seek judicial intervention to draft a congressional districting plan when the General Assembly and Governor reached an impasse and failed to pass such a plan, the petitioners were eight Members of the Senate, who were therefore original parties. *Id.* at 205; *see also Carter*, 132 M.D. 2021, at pg. 12 (finding that “in *Mellow* were eight senators who sought nearly the same relief as sought here, and several members of the state House of Representatives and Senate were permitted to intervene”).<sup>3</sup>

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<sup>3</sup> Notably, *Mellow* was not filed until January 28, 1992, which was the first day on which nominating petitions for the U.S. House could begin circulating that year. 607 A.2d at 205.

36. The Proposed Intervenors could have joined as original parties in these actions, and, as these cases show, the General Assembly's presiding officers are typically joined in these types of cases. The instant actions seek declaratory judgments and injunctive relief that would impose improper restraints upon, and usurp, the exclusive domain of the General Assembly. If granted, the requested relief would directly impact the Proposed Intervenors' authority and interest as legislators and the official, institutional, and other interests that they are further authorized to represent. Therefore, the Proposed Intervenors are entitled to intervene here as a matter of right.

**C. There Is No Other Reason for the Court to Deny the Application.**

37. The Proposed Intervenors have shown an entitlement to intervene in these cases. Given this showing, Pa.R.Civ.P. 2329 provides only three reasons that could justify a refusal of intervention. None of them applies.

38. First, Pa.R.Civ.P. 2329(1) permits refusal of intervention if "the claim or defense of the petitioner is in subordination to and in recognition of the propriety of the action," which has been interpreted to mean that an "intervenor cannot question supported findings of fact made prior to the intervention" and that "an intervenor must take the suit as he finds it." *Com. ex rel. Chidsey v. Keystone Mut. Cas. Co.*, 76 A.2d 867, 870 (Pa. 1950). There are no subordination concerns here, given the early stage of this litigation.

39. Second, Pa.R.Civ.P. 2329(2) permits a court to refuse an application for intervention if “the interest of the petitioner is already adequately represented.” Here, Proposed Intervenors seek to vindicate rights and interests held by themselves and their members in their capacity as legislators. Their interests are not already adequately represented by the originally named Respondents in these cases, as those Respondents are simply responsible for election administration and do not possess the interest in drafting and passing congressional districting plans that Petitioners seek to impair or abrogate. *See Shapp*, 391 A.2d at 608 (holding that “[s]urely, the defense of legislation adopted by the General Assembly must be within the authority of its elected leaders”). After all, “an executive branch agency is simply not in a position to represent Proposed Intervenors’ interest in the exercise of legislative power under Article III of the Pennsylvania Constitution.” *Allegheny Reprod. Health Ctr.*, 225 A.3d at 913. Petitioners practically concede this point in alleging repeatedly that the divided Commonwealth government—where the legislative chambers are controlled by Republicans and the Governor is a Democrat—is categorically incapable of compromise. Petitioners cannot, after making this allegation, claim that the Democratic Secretary of State or the Director of Elections represents Proposed Intervenors’ interests.

40. Finally, Pa.R.Civ.P. 2329(3) permits a refusal of intervention where “the petitioner has unduly delayed in making application for intervention or the

intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” No such concern exists here. The Proposed Intervenors filed their Application just ten days after the filing of the Petition and well before this Court’s scheduled deadline of December 31 to intervene. The Proposed Intervenors’ participation in this case will simplify this action and is necessary, as they will bring before the Court arguments and law that otherwise would not be present.

41. In summary, there is no basis for refusing the Proposed Intervenors’ request to intervene in these matters.

**WHEREFORE**, for the foregoing reasons, the Proposed Intervenors respectfully request that the Court grant their Application for Leave to Intervene and enter the proposed order attached to it as **Exhibit “C,”** thereby granting the Application.

Dated: December 27, 2021

Respectfully submitted,

/s/ Anthony R. Holtzman

/s/ Jeffrey Duffy

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*\* Pro Hac Vice application forthcoming*

*Counsel for Proposed-Intervenors Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives*

## CERTIFICATION OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Anthony R. Holtzman  
Anthony R. Holtzman



# Appendix 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter; Monica Parrilla; :  
Rebecca Poyourow; William Tung; :  
Roseanne Milazzo; Burt Siegel; :  
Susan Cassanelli; Lee Cassanelli; :  
Lynn Wachman; Michael Guttman; :  
Maya Fonkeu; Brady Hill; Mary Ellen :  
Balchunis; Tom DeWall; Stephanie :  
McNulty; and Janet Temin, :

Petitioners :

v. :

No. 132 M.D. 2021  
Held: August 24, 2021

Veronica Degraffenreid, in her official :  
capacity as the Acting Secretary of :  
the Commonwealth of Pennsylvania; :  
Jessica Mathis, in her official :  
capacity as Director for the :  
Pennsylvania Bureau of Election :  
Services and Notaries, :

Respondents :

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE WOJCIK

Filed: September 2, 2021

Petitioners<sup>1</sup> filed a petition for review (Petition) addressed to this  
Court's original jurisdiction. The Petition seeks, among other things, a  
declaration

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<sup>1</sup> Petitioners are Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael

that the Commonwealth of Pennsylvania’s 2018 congressional district map is unconstitutional and may not be used for the 2022 election year. Currently, the Court considers three applications for leave to intervene. Speaker of the Pennsylvania House of Representatives Bryan Cutler; Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff; President Pro Tempore of the Pennsylvania Senate Jake Corman; and Majority Leader of the Pennsylvania Senate Kim Ward (collectively, Legislators) filed the first application for leave to intervene. The Republican Party of Pennsylvania and Individual Republican Voters<sup>2</sup> (collectively, Republican Party) filed the second application for leave to intervene, and Voters of the Commonwealth of Pennsylvania (Voters of Commonwealth)<sup>3</sup> filed the third

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Guttman, Maya Fonkeu; Brady Hill; Mary Ellen Balchunis, Tom DeWall, Stephanie McNulty, and Janet Temin. Each named petitioner is a United States citizen and registered voter in Pennsylvania and intends to advocate and vote for Democratic candidates. *Id.*

<sup>2</sup> The application for leave to intervene identifies the following individuals as proposed intervenors: Patricia K. Poprik, David Torres, Billy Lanzilotti, Nancy Becker, Michael D. Straw, James Depp, Joseph P. Vichot, Justin Behrens, Thomas Whitehead, Lee Becker, Louis Capozzi, Kirk Radanovic, Paul Nyman, James McGuire, Jr., Kristine L. Eng, Donna Cosmello, James Foreman, David Ball, James Vasilko, Lynne Ryan, Cynthia Kirk, Daryl Metcalfe, Luke Negron, Sue Ann Means, Reverend Todd Johnson, Michael Harvey, and Louisa Gaughen. *See* Appl. for Leave to Intervene by Proposed Intervenors the Republican Party of Pennsylvania and Individual Republican Voters, ¶¶ 2-28. The application provides each proposed intervenor’s congressional district number; any position within the Republican Party that he or she may hold or has held in the past; where applicable, an indication of whether the individual is considering running for public office; and the individual’s participation in the election process whether it be volunteering/advocating for a Republican candidate or intent to vote for Republican candidates.

<sup>3</sup> “Voters of the Commonwealth of Pennsylvania” is not an organization but rather is used to generally refer to the named proposed intervenors in the application. The application is brought on behalf of Haroon Bashir, Vallerie Biancaniello, Debra A. Biro, Tegwyn Hughes, James D. Bee, Richard L. Lawson, David Dillon, Rico Timothy Elmore, Barbara Steinour, James Curtis Jarrett, Jeffrey Wenk, and Donald Beishl, Jr. *See* Appl. for Leave to Intervene by Voters of the Commonwealth of Pennsylvania, ¶¶ 10-21. The application identifies the voter by name, general area of residency and congressional district number, as well as the individual’s intention in voting in the 2022 elections. *Id.* Each allegation also indicates that the proposed intervenor voted for his/her General Assembly representatives with the expectation that the representatives would have the authority to enact a new congressional district map based on the 2020 Census data.

application. All proposed intervenors seek to be aligned with Respondents Veronica Degraffenreid, Acting Secretary of the Commonwealth of Pennsylvania, and Jessica Mathis, Director for the Pennsylvania Bureau of Election Services and Notaries (collectively, Secretary). Petitioners oppose all three applications, while the Secretary opposes only the applications of the Republican Party and Voters of Commonwealth. After hearing held August 24, 2021 and argument on the issue, we grant Legislators' application but deny the applications of the Republican Party and Voters of Commonwealth based on our conclusion that they lack a legally enforceable interest in the Petition and that they could not be named as original parties to the action.

#### **I. Petition for Review**

The Petition provides details regarding the results of the 2020 Census, the dates by which the United States (U.S.) Secretary of Commerce must provide the President of the United States and the states with the apportionment data, and the effect of the Covid-19 pandemic on the delivery of that data. The Petition further explains that, while the Commonwealth's population increased from the last decennial census, the 2020 Census shows that the Commonwealth will lose a representative seat in the U.S. House of Representatives. Starting with the upcoming 2022 elections, the Commonwealth will have 17 representatives in the House of Representatives, one fewer than the current 18 representatives. The Commonwealth's congressional district map must be redrawn to accommodate for the loss of a seat in the House of Representatives.

Petitioners claim that the Commonwealth's current congressional districts are malapportioned due to shifts in population within the Commonwealth.

They believe that the congressional districts in which they live are overpopulated, while other districts are underpopulated, and that, consequently, their votes for members of the U.S. House of Representatives are diluted.

The Petition observes that Pennsylvania law does not set a deadline by which a new congressional district map must be put in place prior to the first congressional election following a census. According to Petitioners, it is in the best interest of voters, candidates, and the Commonwealth's entire electoral apparatus to have a new, final congressional district map in place prior to February 15, 2022, the date on which candidates may begin collecting signatures for placement on the primary election ballot.

The Petition informs that the Commonwealth's current congressional district map was drawn by the Pennsylvania Supreme Court in *League of Women Voters of Pennsylvania v. Commonwealth*, 181 A.3d 1083 (Pa. 2018), after the Republican-controlled General Assembly and Democratic Governor failed to agree upon a new congressional district map following the Supreme Court's invalidation of the Commonwealth's 2011 congressional district map. The current political climate has not changed since 2018, as Republican representatives maintain the majority in both houses of the General Assembly and Governor Tom Wolf is a Democrat. For these reasons, Petitioners contend that it is unlikely that the "political branches" of the government will agree upon a new congressional district map.

Petitioners allege that the current congressional district map violates: (1) article I, section 5 of the Pennsylvania Constitution (free and equal elections

clause);<sup>4</sup> (2) 2 U.S.C. §2c (relating to districting for House of Representatives);<sup>5</sup> (3) article I, section 20 of the Pennsylvania Constitution (relating to right to petition);<sup>6</sup> and (4) Article I, Section 2 of the U.S. Constitution (relating to qualifications for member of the House of Representatives).<sup>7</sup> Petitioners seek a declaration that the

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<sup>4</sup> Article I, section 5 of the Pennsylvania Constitution, PA. CONST. art. I, § 5, states: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

<sup>5</sup> 2 U.S.C. §2c provides:

In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress).

<sup>6</sup> Article I, section 20 of the Pennsylvania Constitution, PA. CONST. art. I, § 20, provides: “The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.”

<sup>7</sup> Article I, Section 2 of the U.S. Constitution, U.S. CONST. art. I, § 2, provides:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and

Commonwealth's current congressional district map violates the above constitutional provisions; an injunction enjoining the Secretary, her agents, officers, employees, and successors from implementing, enforcing, or giving effect to the 2018 congressional district map; establishment of a schedule that will enable the Court to adopt and implement a new congressional district map by a date certain should the political branches fail to enact such a map by that time; implementation of a new congressional district map that complies with the U.S. and Pennsylvania Constitutions in the event that the political branches do not enact a new map by a date certain; an award of attorneys' fees, costs, and disbursements; and an award of any other relief the Court deems just and proper.

## **II. Applications for Leave to Intervene**

### **A. Standards for Intervention**

Although this matter was filed in the Court's original jurisdiction, the right to intervene is governed by Pennsylvania Rules of Civil Procedure Nos. 2326-

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within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

2350. Rule No. 2327, titled “Who May Intervene,” provides in relevant part and as asserted by the proposed intervenors:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if

....

(3) such person could have joined as an original party in the action or could have been joined therein; or

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa. R.C.P. No. 2327.<sup>8</sup>

Rule No. 2329, titled “Action of Court on Petition,” declares:

Upon the filing of the petition and after hearing, of which due notice shall be given to all parties, the court, if the allegations of the petition have been established and are found to be sufficient, shall enter an order allowing intervention; but an application for intervention may be refused, if

(1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or

(2) the interest of the petitioner is already adequately represented; or

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<sup>8</sup> Pursuant to Pennsylvania Rule of Civil Procedure No. 2328(a), the proposed intervenors attached to their respective applications for leave to intervene copies of the pleading that they would file if permitted to intervene. Each group of proposed intervenors would file preliminary objections to the Petition. Pa. R.C.P. No. 2328(a).



(3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

Pa. R.C.P. No. 2329.

The determination of whether a proposed intervenor has a “legally enforceable interest” calls for “a careful exercise of discretion and consideration of all the circumstances involved,” *Realen Valley Forge Greenes Associates v. Upper Merion Township Zoning Hearing Board*, 941 A.2d 739, 744 (Pa. Cmwlth. 2008) (citations omitted), because the exact boundaries of the “legally enforceable interest” limitation in Rule No. 2327(4) are not clear. *Id.* Nevertheless, an applicant for intervention must have some right, either legal or equitable, that will be affected by the proceedings. *See generally Keener v. Zoning Hearing Board of Millcreek Township*, 714 A.2d 1120, 1122 (Pa. Cmwlth. 1998).

At this point, it is important to note that although we summarize the applications for leave to intervene, the Court has considered the entirety of the applications and supporting briefs, the law cited therein, the replies to Petitioners’ and the Secretary’s opposition to the intervention applications, and the arguments, testimony and exhibits presented at the August 24, 2021 hearing in our determination of whether to grant intervention in this case.

#### **B. Legislators’ Application**

Legislators’ application for leave to intervene asserts that the named legislators are the highest-ranking members of their respective chambers, that the Republican Caucuses of their chambers have authorized them to seek intervention, and that the U.S. Constitution empowers the General Assembly to establish the time, place, and manner of elections to Congress, which includes the authority to redistrict.

See U.S. CONST. art. I, § 4 (stating that the time, place and manner of elections are left to the states' legislatures). Legislators seek to intervene pursuant to Pa. R.C.P. No. 2327(3) and (4) to vindicate their authority to redistrict the Commonwealth.

Legislators' memorandum in support of their application expands upon the reasons why they should be permitted to intervene. They first claim that they could have been named as original parties to the action or could have been joined therein because they have a special interest in the action.<sup>9</sup> That special interest is Petitioners' alleged desire to divest Legislators of their constitutional authority to conduct congressional redistricting. Legislators also claim that their participation is required by the Declaratory Judgments Act,<sup>10</sup> which mandates that all persons who have or claim any interest that would be affected by a declaration be made parties to the action, and that absent their participation, no declaration may prejudice their rights. 42 Pa. C.S. § 7540(a). Legislators also claim a legally enforceable interest in defending their constitutional authority to prescribe the time, place, and manner of holding elections, which includes the authority to enact congressional district maps. *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787, 808 (2015) ("redistricting is a legislative function, to be performed in

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<sup>9</sup> Legislators claim that they could have been joined as original parties because it is not uncommon for the courts to allow legislators to intervene in actions challenging the constitutionality of, or seeking to alter, redistricting plans. We reject such a blanket assertion. The cases upon which Legislators rely involved legislator participation *after* a redistricting plan was implemented and later challenged.

We also reject any reliance on *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1288 (Pa. Cmwlth. 2019), as supporting the right to intervene based on a special interest. *Sunoco* addressed standing to *initiate* formal complaints before the Pennsylvania Public Utility Commission and did not directly involve the issue of intervention in formal complaint proceedings. Regardless, the Commission's regulations provide the standards upon which intervention may be granted. There is no statutory or regulatory law addressing intervention in cases such as the one currently before the Court.

<sup>10</sup> 42 Pa. C.S. §§ 7531-7541.

accordance with the State's prescriptions for lawmaking . . ."). They claim that Petitioners asked the Court to take over this process even before the General Assembly has the necessary tools to redistrict and to impose unreasonable deadlines.

The law is well settled as to legislator standing when seeking to intervene. In *Markham v. Wolf*, 136 A.3d 134 (Pa. 2016), legislators sought to intervene in an action challenging an executive order that authorized direct care workers to organize. This Court denied the legislators' application for leave to intervene, which the Supreme Court affirmed. In doing so, the Supreme Court identified the requirements for legislator standing.

Standing exists only when the legislator's direct and substantial interest in his or her ability to participate in the voting process is negatively impacted, *see* [*Wilt v. Beal*, 363 A.2d 876 (Pa. Cmwlth. 1976)], or when he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator, *see* [*Fumo v. City of Philadelphia*, 972 A.2d 487 [Pa. 2009),] (finding standing due to alleged usurpation of legislators' authority to vote on licensing).

Conversely, a legislator lacks standing

where he or she has an indirect and less substantial interest in conduct outside the legislative forum which is unrelated to the voting or approval process, and akin to a general grievance about the correctness of governmental conduct, resulting in the standing requirements being unsatisfied.

*Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*, 225 A.3d 902 (Pa. Cmwlth. 2020)<sup>11</sup> (quoting *Markham*, 136 A.3d at 145).

The Supreme Court has held that

members of the General Assembly have sufficient interest to participate in legal action in their official capacity and based upon their special status “where there [i]s a discernable and palpable infringement on their authority as legislators.” A legislator’s legal interest has been recognized “to protect [the] legislator’s right to vote on legislation” and “in actions alleging a diminution or deprivation of the legislator’s . . . power or authority.” But, a legislator has no legal interest “in actions seeking redress for a general grievance about the correctness of government conduct.”

*Robinson Township v. Commonwealth*, 84 A.3d 1054, 1054 (Pa. 2014) (alterations in original; citations omitted) (affirming Commonwealth Court order denying legislators intervention in action challenging constitutionality of amendments to the Oil and Gas Act<sup>12</sup>). The principles of legislator standing are therefore relevant to the issue of whether the putative intervenor has demonstrated the legally enforceable interest required of Pa. R.C.P. No. 2327(4).

We disagree with Petitioners’ claims that Legislators lack a legally enforceable interest in this matter because the Petition does not seek to deprive Legislators of their authority to redistrict the congressional district map and that

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<sup>11</sup> The opinion appearing at 225 A.3d 902 (Pa. Cmwlth. 2020), addresses legislator standing. Thereafter, on March 26, 2021, the Court issued an order sustaining the respondents’ preliminary objections and dismissing the petition for review. The petitioners filed an appeal to the Supreme Court, which remains pending. See *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services* (Pa. Cmwlth., No. 26 M.D. 2019, filed March 26, 2021), *appeal pending*, (Pa., No. 26 MAP 2021).

<sup>12</sup> 58 Pa. C.S. §§ 3201-3274.

Legislators are mischaracterizing the Petition as such. Among other things, the Petition seeks an order establishing a date certain by which the Court will take control of the redistricting process should the General Assembly and Governor fail to act. Pennsylvania law, however, does not establish a date by which a new congressional district map must be put in place. While Petitioners correctly cite *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), for the proposition that there is nothing in the law prohibiting the court from establishing a deadline for enactment of a new congressional map, it is noteworthy that the petitioners in *Mellow* were eight senators who sought nearly the same relief as that sought here, and several members of the state House of Representatives and Senate were permitted to intervene. When the Supreme Court exercised plenary jurisdiction in *Mellow* and appointed a judge of this Court as master to conduct hearings and report to the Supreme Court, Judge Craig directed that the parties, including intervenors, submit their proposed congressional district plans by a date certain.

At this juncture, it is not known how the redistricting process will proceed. But it seems clear that Legislators' ability to legislate would be impaired if the Court imposes a deadline on the General Assembly and the Governor to put in place a new congressional district map and takes control of the redistricting process. Likewise, Legislators would have a legally enforceable interest in the submission of a proposed plan for the Court's consideration if called upon to draw a new congressional district map, as in the *Mellow* case.

We therefore grant Legislators' application for leave to intervene. They have a legally enforceable interest because Pennsylvania law does not prescribe the date by which a new congressional district map must be put in place and because they, as members of the General Assembly, have the constitutional authority to

establish the time, place, and manner of elections, which includes the authority to redistrict. *Arizona State Legislature*. Any potential infringement of that right may diminish or deprive Legislators of their ability to act as legislators.

### **C. Republican Party's Application and Voters of Commonwealth's Application**

We next consider the applications for leave to intervene filed by the Republican Party and Voters of Commonwealth. Both applications claim that the Republican Party, including the individual Party Voters, and Voters of Commonwealth could have been named as original parties. We disagree. Clearly, the Republican Party, the individual Republican Voters, and Voters of Commonwealth could not be joined as petitioners because they oppose Petitioners' requested relief. Similarly, they could not be joined as respondents because Petitioners' claims do not affect their liabilities. *See* Pa. R.C.P. No. 2229(b) ("A [petitioner] may join as [respondents] persons against whom the [petitioner] asserts any right to relief . . . in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact *affecting the liabilities of all such persons* will arise in the action.") (emphasis added).<sup>13</sup> This factor militates against granting the Republican Party's and Voters of Commonwealth's applications for leave to intervene.

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<sup>13</sup> The Republican Party notes that the Court has permitted intervention in other cases, specifically *League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 n.5 (Pa. 2018). There, the Supreme Court noted that a judge of this Court, acting as master, permitted certain Republican voters, who included announced or potential candidates for Congress and other active members of the Republican Party, to intervene. The Court did not state the basis upon which intervention was granted, and our review of this Court's docket in *League of Women Voters* (Pa. Cmwlth., No. 261 M.D. 2017), indicates that the Court's order did not set forth its reasons for granting intervention.

We now address whether the Voters of Commonwealth or the Republican Party has shown a legally enforceable interest. For its part, the Voters of Commonwealth claim that they seek to intervene to preserve the existing framework that the General Assembly and Governor have until the first day to circulate nomination petitions to implement a new congressional district map. They claim that they are “mirror images” of Petitioners because they intend to advocate on behalf of Republican candidates in 2022. Voters of Commonwealth suggest that if the Court grants Petitioners the relief requested, such relief would curtail the ability of the Republican-controlled General Assembly to represent their interests. This would diminish or nullify their votes and would take away local officials’ constitutional duty to redistrict the Commonwealth. Local officials are more familiar with their constituents than Supreme Court jurists.

Voters of Commonwealth suggest that they have a special interest that allows them to intervene, that being that this matter may be of public interest. They allege an inalienable right to express and present their concerns regarding drawing of the congressional district map, and if this Court imposes a date certain by which the political branches must act or takes over the redistricting process, the General Assembly will be divested of its authority to draw the new map.<sup>14</sup> A court drawing

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<sup>14</sup> The Court admitted Voters of Commonwealth Exhibit 1, which contains the Affidavits of Tegwyn Hughes, Debra A. Biro, James Curtis Jarrett, James D. Bee, and Jeffrey Wenk, subject to Petitioners’ and the Secretary’s objections to the legal conclusions stated within the affidavits. The Affidavits largely echo the averments in the application for leave to intervene and are uniform for the most part. The affiants attest to their residency, registration as qualified electors in the Commonwealth, regularity in voting, voting with the expectation that their representatives would engage in the redistricting process based on the 2020 Census and ability to contact their representatives, and their intention in contacting their representatives relating to the new congressional district map. Each affiant states that he/she has an interest in the contours of his/her congressional districts and an inalienable right to express to his/her representatives concerns regarding redistricting under the First Amendment, U.S. CONST. amend. I. Further, affiants state that the Secretary does not have authority regarding redistricting and therefore does not represent the affiants’ interest.

the congressional district map will turn a legislative process into a judicial one, according to Voters of Commonwealth. Finally, newly enacted redistricting maps have been subject to voter challenges.

As for a legally enforceable interest, the Republican Party argues that it has an interest in expanding its power within the Commonwealth government and that redistricting is fundamentally about political power. It maintains that it has a legally enforceable interest in (1) the allocation of its resources, (2) advocating for its interest and that of its members in areas that are bipartisan, (3) who draws the new congressional district map, that being the Republican-controlled General

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They conclude that they have a substantial and particularized interest in preserving the existing framework that the General Assembly and the Governor have until the first day to circulate nomination petitions to implement a new district plan. Petitioners' requested relief would deprive them of their ability to contact their legislators regarding redistricting, thus nullifying their vote for a representative. Further, Petitioners' request that the Court invalidate the current congressional map would deprive affiants of their right to representation should a special election be needed in their district.

The Court also permitted Voters of Commonwealth to provide an additional exhibit after the proceedings, which Voters filed on August 26, 2021. Voters filed a supplemental affidavit in support of the Voters' application for leave to intervene by Vallerie Biancaniello. The affidavit is the same as those presented in Voters of Commonwealth Exhibit 1. The Secretary promptly responded, indicating that she does not object to the affidavit on hearsay grounds or the Court's consideration of the affidavit in lieu of live testimony, but she does object to the legal conclusions stated therein. Petitioners object on the same basis as the Secretary.

Upon review, we sustain the objections to the legal conclusions stated within each affidavit, including that: (1) the affiant has a substantial and particularized interest in preserving the existing framework; (2) the requested relief would have the effect of preventing the affiant from being able to interact with the elected representatives regarding redistricting and nullifies the affiants' votes in the 2020 election; (3) if the Court grants the requested relief, the General Assembly will be deprived of its authority to draw new congressional districts and deprive the affiant of his/her ability to provide input to his/her representative thus infringing on the affiant's free speech rights; (4) the affiants' votes would be nullified and their interests of having their representatives exercise their full scope of constitutional duties with respect to redistricting would be infringed; and (5) the affiants could be deprived of their right to representation if the current map is declared unconstitutional and a special election must take place before a new map is enacted. In sustaining the objections to the Exhibits, we did not consider the stated conclusions in our disposition of this matter.



Assembly or the Justices of the Supreme Court, who are mostly Democrats, (4) a change in the environment in how rival parties defend their concrete interests, (5) recruiting of candidates, (6) risk of confusion to voters, and (7) associational interests.<sup>15</sup> See PA. CONST. art. I, § 20 (“The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested

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<sup>15</sup> The Republican Party presented the testimony of Angela Alleman, Executive Director of the Pennsylvania GOP. Mrs. Alleman oversees all operations of the Party. She explained her concerns if the Supreme Court draws the congressional district map, including the removal of power to do so by the General Assembly, the Party’s ability to work with its legislators to influence the map but inability to advocate before the Supreme Court, and the Party’s diversion of funds to have experts prepare and analyze any map drawn by the Supreme Court. She believes that it is unfair to create a deadline for the General Assembly to act, especially when it is not clear when the 2020 Census data will be available. Mrs. Alleman stated that the uncertainty of the congressional district map affects candidate recruitment and makes it impossible for incumbents to know whether their districts will be realigned and the possibility that if realigned, whether the incumbent will be running against another incumbent. She acknowledged that regardless of who draws the new congressional district map, the Republican Party will have to spend money to educate voters, and for “get out and vote” campaigns. Mrs. Alleman agreed that Republican Party members may speak to their legislators regardless of who draws the map, and that the Republican Party has no power to make the General Assembly do what the Party wants. For Mrs. Alleman, the issue with the Petition is the request for a deadline by which the General Assembly and Governor must act and the allocation of the Party’s resources depending on who draws the congressional district map. She believes that if the General Assembly draws the map, the Republican legislators will negotiate the best possible map for the Party. Expenses the Republican Party would incur if the Supreme Court draws the map include legal fees, including fees for intervening in this action, expert fees for analyzing and preparing maps, and the diversion of the Party’s resources. The Court finds Mrs. Alleman’s testimony credible but not persuasive on the issue of whether the Republican Party has a legally enforceable interest.

The Court admitted 12 affidavits of the individual Republican Party members: Nancy Becker, James Depp, Thomas Whitehead, Louis Capozzi, Kirk Radanovic, Kristine L. Eng, David Ball, James Vailko, Daryl Metcalfe, Sue Ann Means, and Michael Harvey, and Justin Behrens. The affidavits are substantially the same and attest that the affiant is a U.S. citizen and registered voter in Pennsylvania; the district in which the affiant resides; the affiant’s participation in the election-related/Republican Party activities; the affiant is a long-time supporter of the Republican party; and that Petitioners’ and the Secretary are affiliated with the affiant’s political opponents, and that, therefore, they will not advocate for a congressional district map that represents the affiant’s interest as a supporter and/or official of the Republican Party. The affidavits also attest to the affiant’s resources invested in advocating on behalf of the Republican Party, including activities that may be affected by the Supreme Court’s drawing of the congressional district map.

with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.”).

First, the Court rejects the Voters of Commonwealth and the Republican Party’s argument that because they have a special interest in the matter, they are permitted to intervene. Both proposed intervenors rely on *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283 (Pa. Cmwlth. 2019), but in that case, the primary issue was whether a senator had standing, either as a legislator or as a private citizen, to initiate a formal complaint with the Pennsylvania Public Utility Commission; the question of intervention was not at issue in *Sunoco*. The brief discussion of intervention was limited to distinguishing between standing to initiate a formal complaint and standing to intervene, which the Commission’s regulations expressly address. Years ago, in *Application of Biester*, 409 A.2d 848 (Pa. 1979), our Supreme Court established the standards for intervention. In *Biester*, a taxpayer sought to intervene in an action seeking to impanel a statewide investigative grand jury. The Court, after initially allowing the taxpayer to intervene, later vacated its order granting intervention. The Court determined that to intervene, the taxpayer must meet the “substantial, direct, and immediate” test set forth in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975). That standard remains the law in this Commonwealth. *Markham*, 136 A.3d at 139 (“in order to intervene, individuals must have standing, Pa. R.C.P. [No.] 2327(3), (4), and to establish standing, one must have an interest that is substantial, direct[,] and immediate”). To have a substantial interest, the proposed intervenor’s concern in the outcome of the action must surpass “the common interest of all citizens in procuring obedience to the law.” *Markham*, 136 A.3d at 140. An interest is direct if the matter will cause

harm to the party's interest, and the concern is immediate "if that causal connection is not remote or speculative." *Id.*

We conclude that the Voters of Commonwealth and individual Republican Voters fail to meet the "substantial, direct, and immediate" test. Neither the individual Republican Voters, regardless of political interest, or Voters of Commonwealth have an interest that surpasses the interest of all qualified and registered voters in the Commonwealth. Based on the preliminary 2020 Census data, the Commonwealth will lose a seat in the U.S. House of Representatives and thus our current congressional district map must be redrawn. As counsel for Voters of Commonwealth stated, the current congressional district map is malapportioned across the state. *Every elector*, therefore, has an interest in redrawing a congressional district map that meets constitutional standards. Thus, the individual Republican Voters and Voters of Commonwealth do not have a substantial interest that surpasses the common interest of all citizens.<sup>16</sup>

The Republican Party, identified as non-profit organization, has no legally enforceable interest either. Based on our review, it appears that the Republican Party is complaining about what role it may play in the redistricting process, a role that is not protected by law. Redistricting, however, is fundamentally about protecting the one-person one-vote principle, that is, all votes have equal power as near as possible. *See Gray v. Sanders*, 372 U.S. 368, 381 (1963); *Holt v. 2011 Legislative Reapportionment Commission*, 38 A.3d 711, 739 (Pa. 2012). The

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<sup>16</sup> We further disagree that Voters of Commonwealth are the "mirror image" of Petitioners because they will advocate for Republican candidates in 2022, whereas, Petitioners allege, they will advocate for Democratic candidates. Petitioners allege that the congressional districts in which they live are overpopulated as evidenced by the 2020 Census and, thus, their voting power is diluted. *See* Voters of Commonwealth, Appl. for Leave to Intervene, ¶¶ 10-21. Voters of Commonwealth do not speculate how their congressional districts may be affected by redistricting.

activities of the Republican Party, and how the Party allocates its resources, do not constitute a legally enforceable interest in how the congressional district map is determined and by whom. The case law cited by the Republican Party does not stand for the proposition that the asserted interests constitute legally enforceable interests sufficient to confer standing to intervene. The case law cited by the Secretary, rather, suggests otherwise and is more persuasive. *Cf. Gill v. Whitford*, 138 S. Ct. 1916, 1932 (2018) (recognizing that under the U.S. Supreme Court’s precedent, achieving a party majority in the legislature is a collective political interest, not an individual legal interest recognized by law); *see also Pennsylvania Voters Alliance v. Centre County*, 496 F. Supp. 3d 861, 868 (M.D. Pa. 2020) (recognizing that “‘statewide harm’ to a voter’s interest in ‘collective representation in the legislature’” or “‘in ‘influencing the legislature’s overall composition and policymaking’” is insufficient to support standing under Article III of the U.S. Constitution, U.S. CONST. art. III; “[t]o the extent that the latter interest is recognized, it is ‘embodied in [an individual’s] right to vote for [his or her] representative’”) (quoting *Gill*, 138 S. Ct. at 1931); *Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002) (recognizing that Democratic committee lacked standing to challenge reapportionment plan because it was not an entity authorized to exercise the right to vote), *abrogated on other grounds by League of Women Voters*, 178 A.3d 737.

Moreover, we conclude that the Republican Party’s, individual Republican Voters,’ and Voters of Commonwealth’s claimed interests are speculative and not immediate. The U.S. Census Bureau has released the redistricting data to the states, with the final redistricting data toolkit to be delivered by September 30, 2021. *See* <https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census-results.html> (last visited August 30, 2021).

Therefore, our General Assembly can begin the process of moving forward with a new congressional district plan based on the Census data received. There is nothing preventing the Voters of Commonwealth, the individual Republican Voters, and the Republican Party from exercising their First Amendment and associational rights to make their positions known to their respective legislators.

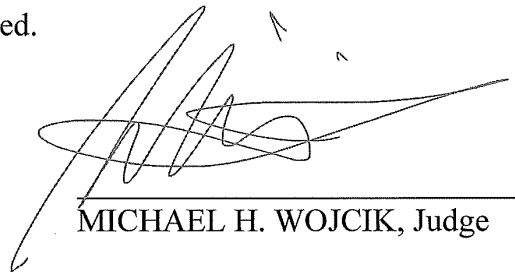
Because we conclude that the Republican Party, the individual Republican Voters, and Voters of Commonwealth have failed to show that they have legally enforceable interests in these proceedings, we deny their applications for leave to intervene.

### **III. Conclusion**

The General Assembly and the Governor are vested with authority to draw a new congressional district map. Pennsylvania law, however, does not provide a date by which they must act. The relief that Petitioners seek, the setting of a deadline by which the political branches must act, or taking control of the redistricting process, potentially infringes upon that authority. Accordingly, Legislators have shown a legally enforceable interest entitling them to intervene in this matter. *Markham; Allegheny Reproductive Health Center*; Pa. R.C.P. No. 2327(4).

Conversely, the Republican Party and Voters of Commonwealth have failed to demonstrate that they could be joined as original parties to the action or that they have a legally enforceable interest that would entitle them to intervene in this matter. Pa. R.C.P. No. 2327(3), (4).

Accordingly, the application for leave to intervene filed by Legislators is granted, and the applications for leave to intervene filed by the Republican Party and Voters of Commonwealth are denied.



MICHAEL H. WOJCIK, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter; Monica Parrilla; :  
Rebecca Poyourow; William Tung; :  
Roseanne Milazzo; Burt Siegel; :  
Susan Cassanelli; Lee Cassanelli; :  
Lynn Wachman; Michael Guttman; :  
Maya Fonkeu; Brady Hill; Mary Ellen :  
Balchunis; Tom DeWall; Stephanie :  
McNulty; and Janet Temin, :

Petitioners :

v. :

No. 132 M.D. 2021

Veronica Degraffenreid, in her official :  
capacity as the Acting Secretary of :  
the Commonwealth of Pennsylvania; :  
Jessica Mathis, in her official :  
capacity as Director for the :  
Pennsylvania Bureau of Election :  
Services and Notaries, :

Respondents :

**ORDER**

NOW 2<sup>nd</sup> day of September, 2021, upon consideration of the Applications for Leave to Intervene filed on behalf of (1) Speaker of the Pennsylvania House of Representatives Bryan Cutler, Majority Leader of the Pennsylvania House of Representatives Kerry Benninghoff, President Pro Tempore of the Pennsylvania Senate Jake Corman, and Majority Leader of the Pennsylvania Senate Kim Ward (collectively, Legislators); (2) the Republican Party of Pennsylvania and Individual Republican Voters (collectively, Republican Party); and (3) Voters of the

Commonwealth of Pennsylvania (Voters of Commonwealth), and after hearing and argument on the issue, it is hereby ordered as follows.

Legislators' Application for Leave to Intervene is **GRANTED**. The Prothonotary shall accept for filing Legislators' Preliminary Objections to the Petition for Review, attached to Legislators' June 1, 2021 Application for Leave to Intervene.

Respondents<sup>1</sup> shall file and serve their brief in support of their preliminary objections (4 copies) within 14 days of the exit date of this order.

Legislators shall file and serve their brief in support of their preliminary objections (4 copies) within 14 days of the exit date of this order. Petitioners shall file and serve their brief in opposition to Legislators' preliminary objections within 14 days of service of Legislators' brief. Upon completion of the briefing schedule, the Prothonotary shall list the preliminary objections on the appropriate argument list.

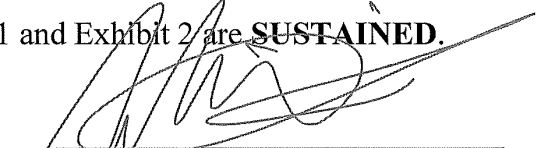
The Applications for Leave to Intervene filed by the Republican Party and the Voters of the Commonwealth are **DENIED**. The Republican Party's Application for Extraordinary Relief, attached to its Application for Leave to Intervene, is **DISMISSED AS MOOT**.

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<sup>1</sup> Although Respondents filed preliminary objections, it appears that they have not filed their brief in support thereof. Petitioners, however, filed their brief in opposition to Respondents' preliminary objections on August 2, 2021.



Voters of the Commonwealth Exhibits 1 and 2 are admitted to the record. Petitioners' and Respondents' objections to the legal conclusions in the Voters of the Commonwealth's Exhibit 1 and Exhibit 2 are **SUSTAINED**.



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MICHAEL H. WOJCIK, Judge

Order Exit  
09/02/2021

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

**Service by PACFile eService as follows:**

All counsel of record

Date: December 27, 2021

/s/ Anthony R. Holtzman  
Anthony R. Holtzman

**IN THE SUPREME COURT OF PENNSYLVANIA**

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No. 141 MM 2021

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Carol Ann Carter; Monica Parrilla; Rebecca Poyourow; William Tung; Roseanne Milazzo; Burt Siegel; Susan Cassanelli; Lee Cassanelli; Lynn Wachman; Michael Guttman; Maya Fonkeu; Brady Hill; Mary Ellen Bachunis; Tom DeWall; Stephanie McNulty; and Janet Temin,

Petitioners,

vs.

Veronica Degraffenreid, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

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No. 142 MM 2021

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Philip T. Gressman; Ron Y. Donagi; Kristopher R. Tapp; Pamela A. Gorkin; David P. Marsh; James L. Rosenberger; Amy Myers; Eugene Boman; Gary Gordon; Liz McMahon; Timothy G. Feeman; and Garth Isaak

Petitioners,

vs.

Veronica Degraffenreid, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

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**OPPOSITION OF PROPOSED INTERVENORS BRYAN CUTLER,  
SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES;  
KERRY BENNINGHOFF, MAJORITY LEADER OF THE PENNSYLVANIA  
HOUSE OF REPRESENTATIVES; JAKE CORMAN, PRESIDENT  
PRO TEMPORE OF THE PENNSYLVANIA SENATE; AND KIM  
WARD, MAJORITY LEADER OF THE PENNSYLVANIA SENATE TO  
PETITIONERS' APPLICATIONS FOR EXERCISE OF EXTRAORDI-  
NARY RELIEF OR KING'S BENCH POWER**

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*\* Pro Hac Vice application forthcoming*

*Counsel for Proposed Intervenors Bryan  
Cutler, Speaker of the Pennsylvania  
House of Representatives, and Kerry  
Benninghoff, Majority Leader of the  
Pennsylvania House of Representatives*

Neither set of Petitioners meets the “heavy burden” of justifying the exercise of extraordinary jurisdiction here. *Wash. Cty. Comm’rs v. Pa. Lab. Rels. Bd.*, 490 Pa. 526, 532, 417 A.2d 164, 167 (1980). Most of the issues in these matters are not difficult and do not call for this Court’s review, at least in this posture.

There is no dispute that the Commonwealth’s existing congressional district plan cannot be used in future elections. And, although there is still time for the General Assembly and the Governor to reach an accord and enact a new congressional redistricting plan, the Commonwealth Court, in its order of December 20, 2021, has ordered judicial redistricting proceedings. Based on that order, the Commonwealth Court has implicitly concluded that the process has advanced to a stage where judicial redistricting proceedings are appropriate even though the General Assembly has “the primary responsibility and authority for drawing federal congressional legislative districts.”<sup>1</sup> *League of Women Voters v. Commonwealth*, 645 Pa. 1, 129, 178 A.3d 737, 821 (2018). No matter which court adjudicates this case, it will have little or no difficulty enjoining the existing plan or ordering the commencement of remedial proceedings. That issue is not of “immediate public importance.” 42 Pa. Stat. and Cons. Stat. § 726.

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<sup>1</sup> The Commonwealth’s political actors continue to work toward a legislative solution. If these efforts succeed, the resulting legislation would set the congressional districts for future elections by operation of law, regardless of how far judicial proceedings have advanced and even if they have yielded a final judgment.

What *may* prove difficult and important is reviewing proposed plans and fashioning a remedy. Although Petitioners make these remedial proceedings the focus of their applications, they ignore institutional interests and competencies that counsel in favor of the familiar two-step process of trial-court adjudication and appellate review. And they inexplicably ask this Court to adopt a new redistricting plan without evidentiary proceedings or an opportunity for public input. A judicial redistricting process, like a legislative redistricting process, should be fact- and labor-intensive and involve opportunities for input and proposals, adversarial proceedings to establish facts germane to those proposals, and evidentiary hearings and submissions to ascertain an acceptable and lawful redistricting solution. In the prior impasse case that Petitioners cite, *Mellow v. Mitchell*, 530 Pa. 44, 607 A.2d 204 (1992), a full evidentiary record was developed and trial proceedings were conducted before this Court adopted congressional redistricting remedies. The Commonwealth Court is the best-situated institution to conduct evidentiary proceedings, and this Court is the best-situated institution to review that court's judgment.

The applications for extraordinary review fail to establish, or even address, why extraordinary review is preferable to that familiar process, appropriately expedited. They should be denied. Alternatively, even if this Court exercises extraordi-

nary jurisdiction, it should provide for evidentiary proceedings and reject Petitioners' request to select a new redistricting plan solely on the basis of legal briefs and lawyers' arguments, without the benefit of a full vetting that the process deserves.

## BACKGROUND

After each decennial census, “States must redistrict to account for any changes or shifts in population.” *Georgia v. Ashcroft*, 539 U.S. 461, 489 n.2 (2003). In Pennsylvania, “the primary responsibility and authority for drawing federal congressional legislative districts rests squarely with the state legislature.” *League of Women Voters*, 645 Pa. at 129, 178 A.3d at 821. However, it is not contested in this case that, “[w]hen . . . the legislature is unable or chooses not to act, it becomes the judiciary’s role to determine the appropriate redistricting plan.”<sup>2</sup> *League of Women Voters*, 645 Pa. at 130, 178 A.3d at 822.

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<sup>2</sup> Officers of the General Assembly have argued in prior litigation, including the *League of Women Voters* case, that the “Elections Clause” of Article I, section 4 of the U.S. Constitution forecloses state courts from enforcing *state* law against an act of the state’s legislature, or at least imposes limitations when they do so. The difference here is that the current congressional plan contravenes the U.S. Constitution, and it is settled law that state courts have authority to declare and remedy violations of the U.S. Constitution, even with respect to laws governing congressional elections. *See Growe v. Emison*, 507 U.S. 25, 32–36 (1993). Proposed Intervenors do not dispute that the Pennsylvania courts have the authority to adjudicate Petitioners’ claims for violations of the U.S. Constitution or other federal laws, and it appears that the state-law issues they raise implicate standards that duplicate federal standards.

The relevant facts of this case are not in dispute. Pennsylvania’s existing congressional plan was fashioned by this Court in 2018 based upon the 2010 census results. *League of Women Voters*, 645 Pa. 576, 583, 181 A.3d 1083, 1087 (2018) (finding that the adopted plan achieved “equality of population”); *see also Carter* Petition ¶ 18 (alleging that the Court’s adopted plan was “based on the 2010 data”); *Gressman* Petition ¶ 2 (same).

The 2020 census results have since been released, both in the form of initial apportionment results at the level of each state and later in the form of census-block level population data suitable for redistricting *within* states. *Carter* Petition ¶¶ 19, 27; *Gressman* Petition ¶¶ 26–27. The results show, among other things, that Pennsylvania’s population has increased; that it has not increased sufficiently to keep pace with neighboring states; that Pennsylvania must lose one congressional seat, dropping from 18 to 17 seats; and that the existing districting plan—aside from being improperly crafted to yield 18 seats rather than 17—is malapportioned. *Carter* Petition ¶¶ 19–28; *Gressman* Petition ¶¶ 26–27. It is therefore undisputed that redistricting is essential for the Commonwealth to fulfill the Equal Protection Clause’s guarantee of “one person, one vote.” *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964).

The two Petitions for Review commencing these suits were filed in the Commonwealth Court on December 17, 2021. In each case, Petitioners allege that they



reside in underpopulated districts, and they assert that, without a new, properly apportioned redistricting plan, their votes will be diluted in future elections. *Carter* Petition ¶¶ 9, 49–63; *Gressman* Petition ¶¶ 10–22, 34–52. Although Proposed Intervenor do not have sufficient information to verify Petitioners’ factual assertions (such as their residencies), at the end of the day, Proposed Intervenor do not dispute the basic notion that the Commonwealth cannot use the existing congressional districting plan in 2022 elections for the simple reason that the Commonwealth cannot elect an 18-member delegation to the next Congress since it has only been apportioned 17 seats in that Congress. Nor do Proposed Intervenor disagree with the principle that the U.S. Constitution requires equally apportioned districts.

Proposed Intervenor are officers of the Pennsylvania Senate and House of Representatives who have authorization from members of the Republican Caucuses of those bodies, who possess sufficient votes to pass legislation, to seek intervention on their behalf in this suit. Proposed Intervenor have worked together with other legislators in good faith to develop a congressional redistricting plan that complies with the law and that the General Assembly could pass and present to the Governor. Although a plan has not yet been enacted, Proposed Intervenor will continue to take this approach to the work. The legislative process will continue, but Proposed In-

tervenors acknowledge that the Commonwealth Court has ordered the commencement of a judicial redistricting process, and Proposed Intervenors do not intend to file preliminary objections in either action.<sup>3</sup>

The Commonwealth Court quickly processed the Petitions, issued a scheduling order, called for petitions to intervene, and otherwise prepared to proceed expeditiously to resolve this case by early February. Although both sets of Petitioners criticize this schedule as insufficiently expedited, they did not move the Commonwealth Court to amend it.

Instead, Petitioners filed applications for extraordinary review in this Court, seeking to bypass the Commonwealth Court. They have proposed a scheduling order that would call for presentation of proposed plans and briefing regarding those plans, but no discovery or evidentiary hearings. *See Carter* Application 11; *Gressman* Application 22. Proposed Intervenors, meanwhile, petitioned the Commonwealth Court to intervene. Given the time-sensitive nature of this case, they are simultaneously filing this brief in opposition to the applications for extraordinary review, to provide the Court with adversarial briefing on those applications.

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<sup>3</sup> As the *Carter* Petitioners recount, they filed similar claims months *before* usable redistricting data were even released, and the Commonwealth Court correctly sustained preliminary objections to their original petition for review, concluding that the suit was premature and unripe. The *Carter* Petitioners did not appeal that judgment.

## ARGUMENT

This case does not fall within the narrow and exceptional circumstances meriting a departure from the ordinary two-stage judicial process of trial court adjudication and appellate review. Quite the opposite. Under current conditions, it is both preferable and feasible to adhere to that traditional process, albeit on an expedited basis.

To qualify for extraordinary review, a case must raise “an issue of immediate public importance.” 42 Pa. Stat. and Cons. Stat. Ann. § 726. “This court’s exercise of extraordinary jurisdiction should be used sparingly.” *Commonwealth v. Morris*, 565 Pa. 1, 18, 771 A.2d 721, 731 (2001); *accord Wash. Cty.*, 490 Pa. at 532, 417 A.2d at 167. To begin, Petitioners must establish both that there is a heightened public interest in the issues at hand and that the ordinary litigation process is insufficient to timely remedy alleged violations of their rights. *Bd. of Revision of Taxes, City of Phila. v. City of Philadelphia*, 607 Pa. 104, 122, 4 A.3d 610, 620 (2010); *see also Carter* Application 7; *Gressman* Application 8–9. Furthermore, “[t]he presence of an issue of immediate public importance is not alone sufficient to justify extraordinary relief. As in requests for writs of prohibition and mandamus, we will not invoke extraordinary jurisdiction unless the record clearly demonstrates a petitioner’s rights.” *Cty. of Berks ex rel. Baldwin v. Pennsylvania Lab. Rels. Bd.*, 544 Pa. 541,

549, 678 A.2d 355, 359 (1996) (citation omitted). “Even a clear showing that a petitioner is aggrieved does not assure that this Court will exercise its discretion to grant the requested relief.” *Id.* This standard is not met here.

**A. These Matters Present Fact-Intensive Questions That Do Not Meet The High Standards For Extraordinary Jurisdiction**

Most of the issues in these cases are not difficult or important within the meaning of the extraordinary-jurisdiction standard, and those that *may* prove to be so are fact-intensive and not amenable to clean resolution as a matter of law.

First, the liability issues are governed by clearly established law such that no serious contest is likely to arise. Issues that qualify under the “public importance” test include those as to which this Court should “provide guidance” because they are “likely to recur,” *Morris*, 565 Pa. at 18, 771 A.2d at 731, and those that remain unresolved and concern a variety of state instrumentalities and citizens, *Bd. of Revision of Taxes*, 607 Pa. at 122, 4 A.3d at 620. But these cases raise no issues that are unresolved or are “likely to recur.” Rather, they present a “garden variety” dispute, *id.*, in the sense that there is no basis even to contest the governing legal principles or their application. *See Carter* Application 7 (“[T]can be no dispute that continuation of the status quo is unconstitutional.”); *Gressman* Application 1 (“The current map’s malapportionment violates the Pennsylvania Constitution.”). As the U.S. Supreme Court has explained, the one-person, one-vote rule is “easily administrable” because judges are able “to decide whether a violation has occurred (and to remedy

it) essentially on the basis of three readily determined factors—where the plaintiff lives, how many voters are in his district, and how many voters are in other districts.” *Vieth v. Jubelirer*, 541 U.S. 267, 290 (2004) (plurality opinion). There is no dispute here that the Commonwealth’s congressional districts are malapportioned, and there is unlikely to be a genuine dispute over where Petitioners reside. That portion of the case, at least, does not present “an issue of immediate public importance.” 42 Pa. Stat. and Cons. Stat. § 726.

Second, the issues that *may* rise to the level of public importance fail to qualify under independent elements of the extraordinary-review test. As noted, this Court “will not invoke extraordinary jurisdiction unless the record clearly demonstrates a petitioner’s rights.” *Cty. of Berks*, 544 Pa. at 549, 678 A.2d at 359 (citation omitted). As to any difficult and important issue, this record does not do so. The challenge in an impasse case lies in selecting a remedial districting plan. In that regard, Petitioners cannot show that the record clearly demonstrates their rights. There are infinite ways to divide the Commonwealth into 17 equally populated congressional districts, and Petitioners cannot establish a clear right to their preferred choice among numerous options. Neither set of Petitioners has even proposed a plan at this stage. The tribunal that adjudicates the facts of this case will be obliged to entertain competing proposals, take evidence, make factual findings, and make discretionary choices in fashioning a remedy. This situation is the opposite of one where “there is no factual

dispute,” and the matter of public importance raises an issue “of law, resolvable on the pleadings.” *Bd. of Revision of Taxes*, 607 Pa. at 122–23, 4 A.3d at 621. It is a poor fit for this Court’s extraordinary jurisdiction.

**B. There Is Time for an Expedited Proceeding in the Commonwealth Court and Review in This Court**

Petitioners are incorrect that proceedings in the Commonwealth Court “will be insufficient to timely remedy Petitioners’ rights.” *Carter* Application 8; *see also Gressman* Application 21–22 (“[T]he schedule established by the Commonwealth Court would effectively deny the parties any opportunity to appeal that Court’s judgment to this Court[.]”). Although proceedings undoubtedly must be expedited to ensure time for administration of any remedial plan, recent experience indicates that there is time for both trial and appellate proceedings here. Just three years ago, in the *League of Women Voters* litigation, this Court issued a liability ruling on January 22, 2018—after a full trial in the Commonwealth Court—and a remedial ruling on February 19, 2018. *League of Women Voters of Pa. v. Commonwealth*, 644 Pa. 287, 175 A.3d 282 (2018); *League of Women Voters of Pa. v. Commonwealth*, 645 Pa. 576, 181 A.3d 1083 (2018). In *Mellow v. Mitchell*, 530 Pa. 44, 607 A.2d 204 (1992), a final ruling came even later, on March 26 of 1992—which was an election year.

There is no indication that implementing remedies in either instance posed any administrative challenge.<sup>4</sup>

The Commonwealth Court is positioned to proceed on an expedited basis and issue a judgment in early February, which would permit review in this Court by the middle of February, achieve the *League of Women Voters* schedule, and outpace the *Mellow* schedule. Indeed, in *Mellow*, an order was issued providing that a court-selected plan would be imposed “if the Legislature failed to act by February 11, 1992.” *Id.* at 47, 607 A.2d at 205. Here, the Commonwealth Court set a more restrictive deadline of January 31, 2022. Furthermore, it is more important to take a few extra weeks to ensure that a suitable plan is adopted to govern the Commonwealth’s congressional elections for the next decade than to rush the process. But, if the Court perceives things differently, the appropriate remedy would be to direct the Commonwealth Court to expedite its proceedings beyond what it has already done. Yet Petitioners did not move the Commonwealth Court to amend its scheduling order.

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<sup>4</sup> Petitioners rely on prior assertions by the Department of State that January 24 is the deadline for a new plan, but they do not cite statutory authority for that proposition, and no one has explained why the dates that were found sufficient in *League of Women Voters* and *Mellow* are unworkable here.

**C. These Cases Cannot Be Resolved Without Evidentiary Hearings, and Petitioners Fail To Explain How Extraordinary Review Is Preferable to Appellate Review**

The applications contend that this Court may, through extraordinary review, bring this case to final judgment more expeditiously than adjudication in the Commonwealth Court followed by an appeal to this Court. But Petitioners ignore that, in all events, a two-step process is essential, because the fact-intensive issues of redistricting require a lengthy evidentiary hearing. The applications fail to explain why the familiar two-step process, appropriately expedited, is inferior to folding those two steps into one extraordinary review process. No reason is apparent and consolidating the entire process before this Court could lead to distrust of the process.

The two cases Petitioners rely on, *Mellow* and *League of Women Voters*, confirm the fact-intensive nature of the issues at hand and the necessity of evidentiary proceedings. Petitioners cite these cases for the proposition that they “are not asking this Court to do something it has not done before.” *Carter* Application 9; *see also Gressman* Application 5. But they *are*, in fact, making such a request, at least insofar as they request that a new plan be imposed without evidentiary proceedings and process for public input. *See id.* at 11; *Gressman* Application 22.

Both of the cases that Petitioners cite were decided after extensive evidentiary proceedings. In *Mellow*, the Court assigned a judge of the Commonwealth Court “as Master to conduct hearings” and issue a “report,” and, as a result, “three days of



hearings” were conducted “in the Commonwealth Court,” 607 A.2d at 206, resulting in a “Factual Analysis” subject to review in this Court, *id.* at 215. In *League of Women Voters*, this Court addressed remedial issues only after a liability trial had occurred in the Commonwealth Court (the case concerned “partisan gerrymandering,” not a decennial impasse), and this Court’s remedial ruling made it clear that “[t]he Remedial Plan is based upon the record developed in the Commonwealth Court.” *League of Women Voters*, 645 Pa. at 583, 181 A.3d at 1087. Here, however, Petitioners ask this Court to adopt a remedy (i.e., a new congressional redistricting plan that will be in place for the next decade) without evidentiary proceedings, either in the Commonwealth Court or this Court. Essentially, Petitioners request that this Court act as the map drawer and also the appellate court that reviews the legality of the adopted map. At a minimum, *this* request is untenable, unprecedented, and meritless.

To be sure, the *Mellow* decision signals that it is possible for this Court to exercise extraordinary jurisdiction in an impasse case and resolve evidentiary matters by resort to hearings before a special master (presumably, a Commonwealth Court judge) rather than through appellate review of a Commonwealth Court judgment. Although taking that approach is an *option*, the Court should decline to do so here. The difference between the options in terms of time to finality is marginal at most, since both options would entail the two steps of (1) evidentiary hearings in the

Commonwealth Court—whether before a “master” or a “judge”—and (2) subsequent briefing and argument in this Court.

And the Court’s interest in “promot[ing] confidence in the authority and integrity of our state and local institutions,” *Bd. of Revision of Taxes*, 607 Pa. at 122, 4 A.3d at 620, cuts in favor of respecting the traditional judicial process (on an expedited basis). On this point, it would be preferable for this Court to permit the Commonwealth Court to take evidence and issue findings and a judgment and, subsequently, exercise review as an appellate tribunal than to issue all findings itself after *de novo* review of a special master’s report. The former path would create two layers of review over the issues in this case and therefore afford disappointed litigants, and the public, recourse to an oversight process, which would highlight the integrity and fairness of the proceedings. Those values are essential to public faith in a redistricting process. By comparison, in an extraordinary-review process, the public would see this Court issue findings of fact and adopt a remedy and simultaneously declare those findings sound and the remedy lawful, leaving no room for additional oversight and review, except in the event of a colorable violation of federal law. Because it is almost certain that *someone* is bound to complain of any redistricting plan

adopted in any jurisdiction under any circumstances, interests of public confidence weigh against this approach.<sup>5</sup>

Denying the applications would also “conserve judicial resources,” *Morris*, 565 Pa. at 18, 771 A.2d at 731, by limiting this Court’s adjudication to those issues raised by the parties on appeal, after issues are narrowed in the Commonwealth Court. This approach would facilitate the narrowing of issues through trial-level litigation and the weeding out of issues that ultimately prove not to be material or worthy of this Court’s review. By contrast, folding both steps of adjudication into one process would, with or without a special master, make this Court responsible for resolving all disputes in the first instance, regardless of how material and difficult they prove to be.

Because Petitioners fail to acknowledge the need for evidentiary hearings, they are in no position to explain why evidentiary proceedings before a special master of the Commonwealth Court are preferable to evidentiary proceedings before a judge of the Commonwealth Court. And none is apparent. The *Mellow* decision did not address this question and appears not to have considered it. Therefore, contrary to what Petitioners suggest, it should not be read to establish that impasse cases must

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<sup>5</sup> One need not doubt the good faith of members of this Court to see that a process of oversight through ordinary appellate review enhances the appearance of fairness, due process, and integrity—which are all values underpinning the *League of Women Voters* decisions.

automatically be resolved in this Court's extraordinary jurisdiction. This is a differently composed Court, acting 30 years after *Mellow*, and is of course free to exercise its discretion in a different way, based on current circumstances and considerations.

## CONCLUSION

The applications should be denied. Alternatively, if this Court exercises extraordinary jurisdiction, it should adopt a scheduling order that provides for public evidentiary proceedings directed through an appointed special master.

Dated: December 27, 2021

Respectfully submitted,

/s/ Anthony R. Holtzman

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*\* Pro Hac Vice application forthcoming*

*Counsel for Proposed Intervenors Bryan Cutler, Speaker of the Pennsylvania House of Representatives, and Kerry Benninghoff, Majority Leader of the Pennsylvania House of Representatives*

## **CERTIFICATION OF COMPLIANCE**

I hereby certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Anthony R. Holtzman  
Anthony R. Holtzman

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

**Service by PACFile eService as follows:**

All counsel of record

Date: December 27, 2021

/s/ Anthony R. Holtzman  
Anthony R. Holtzman

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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CAROL ANN CARTER; MONICA PARRILLA; :  
 REBECCA POUYOUROW; WILLIAM TUNG; :  
 ROSEANNE MILAZZO; BURT SIEGEL; : **CASES**  
 SUSAN CASSANELLI; LEE CASSANELLI; : **CONSOLIDATED**  
 LYNN WACHMAN; MICHAEL GUTTMAN; :  
 MAYA FONKEU; BRADY HILL; MARY :  
 ELLEN BALCHUNIS; TOM DEWALL; :  
 STEPHANIE MCNULTY; AND JANET :  
 TEMIN, :

Petitioners, : No. 464 M.D. 2021

V. :

VERONICA DEGRAFFENREID, IN HER :  
 OFFICIAL CAPACITY AS THE ACTING :  
 SECRETARY OF THE COMMONWEALTH :  
 OF PENNSYLVANIA; JESSICA MATHIS, IN :  
 HER OFFICIAL CAPACITY AS DIRECTOR :  
 FOR THE PENNSYLVANIA BUREAU OF :  
 ELECTION SERVICES AND NOTARIES, :

Respondents. :

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PHILIP T. GRESSMAN; RON Y. DONAGI; :  
 KRISTOPHER R. TAPP; PAMELA GORKIN; : No. 465 MD 2021  
 DAVID P. MARSH; JAMES L. :  
 ROSENBERGER; AMY MYERS; EUGENE :  
 BOMAN; GARY GORDON; LIZ MCMAHON; :  
 TIMOTHY G. FREEMAN; AND GARTH :  
 ISAAK, :

Petitioners, :

V. :

VERONICA DEGRAFFENREID, IN HER :  
 OFFICIAL CAPACITY AS THE ACTING :  
 SECRETARY OF THE COMMONWEALTH :  
 OF PENNSYLVANIA; JESSICA MATHIS, IN :

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HER OFFICIAL CAPACITY AS DIRECTOR :  
FOR THE PENNSYLVANIA BUREAU OF :  
ELECTION SERVICES AND NOTARIES, :  
Respondents. :  
:

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**ORDER**

AND NOW this \_\_\_\_ day of January 2022, upon consideration of the Application for Leave to Intervene by Guy Reschenthaler, Jeffrey Varner, Tom Marino, Ryan Costello, and Bud Shuster (“Intervenors”), and any response thereto, it is hereby ORDERED that the Application is GRANTED and it is further ORDERED that the Intervenors shall be deemed parties to this matter.

BY THE COURT

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, J.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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CAROL ANN CARTER; MONICA PARRILLA; :  
REBECCA POUYOUROW; WILLIAM TUNG; :  
ROSEANNE MILAZZO; BURT SIEGEL; : **CASES**  
SUSAN CASSANELLI; LEE CASSANELLI; : **CONSOLIDATED**  
LYNN WACHMAN; MICHAEL GUTTMAN; :  
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ELLEN BALCHUNIS; TOM DEWALL; :  
STEPHANIE MCNULTY; AND JANET :  
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ELECTION SERVICES AND NOTARIES, :

Respondents. :

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PHILIP T. GRESSMAN; RON Y. DONAGI; :  
KRISTOPHER R. TAPP; PAMELA GORKIN; : No. 465 MD 2021  
DAVID P. MARSH; JAMES L. :  
ROSENBERGER; AMY MYERS; EUGENE :  
BOMAN; GARY GORDON; LIZ MCMAHON; :  
TIMOTHY G. FREEMAN; AND GARTH :  
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VERONICA DEGRAFFENREID, IN HER :  
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HER OFFICIAL CAPACITY AS DIRECTOR :  
FOR THE PENNSYLVANIA BUREAU OF :  
ELECTION SERVICES AND NOTARIES, :  
Respondents. :  
:

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**APPLICATION FOR LEAVE TO INTERVENE BY GUY  
RESCHENTHALER, JEFFREY VARNER, TOM MARINO, RYAN  
COSTELLO, AND BUD SHUSTER**

Under Pa.R.A.P. 1532(b), Guy Reschenthaler, Jeffrey Varner, Tom Marino, Ryan Costello, and Bud Shuster (“Intervenors”) hereby submit this application for leave to intervene as parties in the above matter. In support of this request, Intervenors aver as follows:

1. Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roeseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael Guttman, Maya Fonkeu, Brady Hill, Mary Ellen Balchunis, Tom DeWall, Stephanie McNulty and Janet Temin (“Carter Petitioners”), registered Pennsylvania voters, submitted a Petition for Review to this Court on December 17, 2021, docketed at 464 MD 2021 (the “Carter PFR”).

2. Also on December 17, 2021, Petitioners Philip T. Gressman, Ron Y. Donagi, Kristopher R. Tapp, Pamela Gorkin, David P. Marsh, James L. Rosenberger, Amy Myers, Eugene Boman, Gary Gordon, Liz

McMahon, Timothy G. Freeman, and Garth Isaak (“Gressman Petitioners”) filed a Petition for Review in this Court, docketed at 465 MD 2021 (the “Gressman PFR”).

3. Together, the Carter and Gressman Petitioners (jointly, the “Petitioners”) seek to enjoin Respondents Veronica Degraffenreid, the Acting Secretary of the Commonwealth of Pennsylvania, and Jessica Matthis, the Director of the Pennsylvania Bureau of Election Services and Notaries, from enforcing or implementing the current congressional district plan and ask this Court to adopt a new congressional district plan that complies with relevant state and federal requirements.

4. As relevant herein, in support of their request for expedited judicial action, the Carter Petitioners insist that further delay in adopting a redistricting plan risks causing substantial harm to the interests of “[v]oters, candidates, and Pennsylvania’s election administration apparatus . . . .” Carter PFR, at ¶ 44; *see also id.* at ¶ 45 (noting the impending deadline for submitting nominating petitions and papers); *id.* at ¶ 46 (“Potential congressional candidates cannot make strategic decisions—including, most importantly, whether to run at all—without knowing their district boundaries.”).

5. Similar to the Carter Petitioners, the Gressman Petitioners also seek “the implementation of a new congressional district map with the correct number of congressional districts that adheres to the one-person, one vote standard and all other applicable constitutional and legal requirements[,]” Gressman PFR at ¶ 1, and allege that the absence of a congressional districting plan has caused—and will continue to cause—substantial harm to voters and candidates. *See id.* at ¶ 44-45.

6. To that end, the Gressman Petitioners, who describe themselves as “registered voters and leading mathematicians and scientists in the Commonwealth of Pennsylvania[,]” *id.* at 1, intend to “advocate for a rigorous, data-driven, and scientifically based means of redistricting their malapportioned districts.”

7. On December 20, this Court entered a *per curiam* Order consolidating the Carter and Gressman Petitioners’ actions, instructed any parties seeking to intervene in this matter to submit their requests by December 31, 2021, directed the parties to submit their proposed redistricting plan by January 28, 2022, and relayed that if the General Assembly is unable to enact redistricting legislation by January 30,

2022, a hearing would be held on January 31, 2021 to commence the process for selecting one of the redistricting schemes proposed by the parties and, if necessary, “consider revisions to the 2022 election schedule/calendar as part of the hearing.” 12/20/2021 Order at 4.

8. The following day, the Carter and Gressman Petitioners also submitted separate Applications for Extraordinary Relief to the Supreme Court requesting that the Court assume original jurisdiction over the matter.

9. On December 27, 2021, Respondent Veronica Degraffenreid, Acting Secretary of the Department of State (the “Department”), filed an answer to the aforementioned application agreeing with the Carter and Gressman Petitioners that extraordinary relief was appropriate because, among other things, “the Department of State and county boards of elections require some lead time prior to the circulation of nomination petitions—normally about three weeks—to allow them to update the Statewide Uniform Registry of Electors (SURE) system, provide timely notice to candidates, and otherwise implement the new congressional districts.” Respondents’ Answer to Petitioners’

Application for Extraordinary Relief Under 42 § 726 and Pa.R.A.P. 3309 at 3.

10. The Intervenors' interest in these consolidated matters is as acute—and in certain respects, more so—than those of the existing parties.

11. Intervenor United States Representative Guy Reschenthaler is the representative in Pennsylvania's malapportioned 14th Congressional District.

12. Because Pennsylvania's current congressional plan is unconstitutional, Intervenor Reschenthaler's district will be impacted during the redistricting process.

13. Intervenor Reschenthaler's interest is far greater than any Petitioner in the case because, as a sitting Congressman who is participating in the 2022 midterm elections, he has an acute need to know the boundaries of his district before he begins circulating nominating petitions on February 15, 2022. *See* P.S. § 2868.

14. In fact, the Carter Petitioners also highlight how having a constitutional congressional plan in place is especially important for

congressional candidates who need to “collect signatures” and “make strategic decisions[.]”Carter PFR, at ¶ 46.

15. Intervenor Varner is a registered voter and resident of Swatara Township, Dauphin County, located in the malapportioned 10th Congressional District. *See* Carter PFR, at ¶ 28.

16. Accordingly, like the Carter Petitioners—and more specifically Petitioners Mary Ellen Balchunis and Tom DeWall—Varner has an interest in residing and voting in a congressional district that gives equal weight to his vote.

17. Intervenor Varner is also a duly elected member of Swatara Township Board of Commissioners, and has served as a Township Commissioner since 2012 in that capacity.

18. Acting through its Board of Commissioners, Swatara Township, like many municipalities throughout the Commonwealth, often engages with its member of Congress in various initiatives, including obtaining funding from the Federal government for essential services it provides to constituents.

19. In addition, Varner has substantial experience and understanding of the redistricting process, having participated in



efforts to implement a new districting scheme in Swatara Township following the 2010 decennial census.

20. As a local elected official with first-hand knowledge of the community and the multitude of considerations that inform efforts to redraw districts following a decennial census, Varner understands that the process cannot be reduced to a mathematic or scientific formula and, instead, intends to advocate for a process that accounts for the unique needs and configuration of each locale.

21. Further, based on his experience as local elected official, Varner intends to propose certain modest amendments to this Court's December 20, 2022 plan that would allow for increased transparency and broader public input, while ensuring that the process remains orderly and all necessary deadlines are met.

22. Intervenor Tom Marino is a former United States Representative who represented Pennsylvania's 10th Congressional district from 2011-2019, and Pennsylvania's 12th Congressional district<sup>1</sup> in 2019.

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<sup>1</sup> Carter Petitioners distinguish between those districts that are underrepresented and overrepresented as a result of the 2020 census data. In particular, the Carter Petitioners appear to emphasize that individuals who reside in, or represent the citizenry of, those districts—like the 12th Congressional District—that are

23. Intervenor Ryan Costello is a former United States Representative who represented Pennsylvania's 6th Congressional district from 2015-2019.

24. Intervenor Bud Shuster is a former United States Representative who represented Pennsylvania's 9th Congressional district from 1973-2001.

25. Collectively, Intervenor Former Congressmen have a deep understanding of the redistricting process having participated in this process before.

26. Intervenor Former Congressmen have first-hand knowledge of the community and the multitude of considerations that inform efforts to redraw districts following a decennial census, and each understands that the process cannot be reduced to a mathematic or

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overrepresented are somehow not aggrieved by Pennsylvania's malapportioned maps because their votes are more potent than those voters who reside in underrepresented districts. *See* Carter Petitioners' Memorandum in Opposition to the Application to Intervene by the Proposed Intervenor ("Carter Answer") at 8. But the Pennsylvania Constitution's guarantee of a free and equal election draws no such distinction. *See* Pa. Const., art I, § 5. It is in the interest of the intervenors, as members of a malapportioned district, to have an equal vote in the electoral process. *See Patterson v. Barlow*, 60 Pa. 54, 75 (1869) ("How shall elections be made equal? Clearly by laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share in filling the offices of the Commonwealth.").

scientific formula and, instead, intends to advocate for a process that accounts for the unique needs and configuration of each locale.

27. Intervenors have a direct, immediate, and substantial interest in the outcome of this case.

28. Intervenors are not named as either a petitioner or respondent in the Petitions for Review.

29. A party is entitled to intervene if they satisfy any one of the requirements set forth in Pennsylvania Rule of Civil Procedure 2327.

30. An application to intervene will be refused only when one of the four narrowly prescribed circumstances in Pennsylvania Rule of Civil Procedure 2329 is present. Rule 2329 provides an application will be refused if: “(1) the claim or defense of the petitioner is not subordinate to and in recognition of the propriety of the action; or (2) the interest of the petitioner is already adequately represented; or (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” Pa.R.C.P. 2329(1)-(3).

31. Here, Intervenor's satisfy at least two of the criteria of Pennsylvania Rule of Civil Procedure 2327, and none of the circumstances in Rule 2329 is present.

32. First, all Intervenor's "could have joined as an original party in this suit, or could have been joined therein[.]" because the current congressional plan is unconstitutional. Pa.R.C.P. 2327(3).

33. To begin, the 2020 Census data has rendered the current congressional maps unconstitutional pursuant to Article I, Section 5 of the Pennsylvania Constitution.

34. Specifically, Pennsylvania's population increased from 12,702,379 in 2010 to 13,002,700 in 2020.

35. Despite the increase in population, Pennsylvania's population growth over the last decade has been slower than other states, and thus the number of congressional districts in Pennsylvania has decreased from 18 to 17.

36. As a result, Pennsylvania's congressional districts are currently malapportioned.

37. The current congressional plan is therefore unconstitutional because it "has the effect of impermissibly diluting the potency of an

individual's vote for candidates for elective office relative to that of the other voters." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 809 (Pa. 2018) (emphasis omitted).

38. In *League of Women Voters*, the Pennsylvania Supreme Court declared a "broad interpretation" of Article I, Section 5, "guards against the risk of unfairly rendering votes nugatory, artificially entrenching representative power, and discouraging voters from participating in the electoral process because they have come to believe that the power of their individual vote has been diminished to the point that it 'does not count.'" *Id.* at 814.

39. And, more broadly, the citizenry represented by all Intervenors are not "equally potent[.]" and thus do not "have an equal share in filling the offices of the Commonwealth" because their districts are malapportioned. *Patterson*, 60 Pa. at 75.

40. In this light, and similar to Petitioners, Intervenors' Article I, Section 5 rights are violated by the unconstitutional congressional plan.

41. Moreover, the current congressional plan violates the United States Constitution because the number of congressional districts is not

equal to the number of Representatives to which Pennsylvania is entitled. *See* 2 U.S.C. § 2c (providing “there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled”); *see also Carstens v. Lamm*, 543 F.Supp. 68, 72-73 (C. Colo. 1982) (court created congressional redistricting plan when legislature and governor failed to agree on a new plan to account for the state’s addition of one congressional district).

42. But Intervenor also maintain interests that are separate and distinct from those of the Carter and Gressman Petitioners.

### **Intervenor Reschenthaler**

43. Intervenor Reschenthaler has a unique interest in any proposed congressional plan because such a plan will directly impact the boundaries of the district for which he seeks election in 2022.

44. Intervenor Reschenthaler is set to begin circulating nominating petitions in a little over a month, and in order to do so effectively, he must understand the boundaries of his district.

45. Again, Carter Petitioners acknowledge how uniquely important it is for congressional candidates to have a constitutional

redistricting plan in place for the start of the 2022 election cycle. *See* Carter PFR, at ¶ 45-46.

46. As such, Intervenor Reschenthaler “could have joined as an original party in this action.” Pa.R.C.P. 2327(3).

47. Intervenor Reschenthaler also has a “legally enforceable interest[,]” Pa.R.C.P. 2327(4), in the timely completion of the redistricting process—and this interest is greater than Petitioners who are not sitting members of Congress poised for re-election in 2022.

48. A delayed map, or worse yet, an unconstitutionally malapportioned map will adversely affect Intervenor Reschenthaler’s plans for re-election in the 2022 election cycle. *See William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975) (a substantial interest is “some discernable adverse effect to some interest other than the abstract interest of all citizens in having other comply with the law”).

49. Based on these facts, Intervenor Reschenthaler has a “substantial, direct, and immediate” interest in a timely and constitutional redistricting plan. *Id.* at 286.

50. In fact, allowing Intervenor Reschenthaler's intervention request would be consistent with this Court's blueprint for adjudicating challenges to the congressional redistricting process when there is a legislative impasse.

51. In *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992) this Court allowed two sets of congressional intervenors. Notably, one of those intervenors, Congressman Lucien Blackwell, was allowed intervention (limited to filing a brief) *after* the record closed, thus indicating the court's willingness to permit intervention. *See id.* at 212-13.

52. Indeed, it appears the *Mellow* Court liberally allowed intervention in an effort to promote equity and openness in the process. *See id.* at 205 ("The Attorney General intervened and additional parties, a number of whom submitted plans of their own, were also granted intervenor status to represent the interests of specific counties or other geographical areas around the State or to protect the voting rights of African-Americans in various congressional districts.").

53. Respondents have referred to *Mellow* as the "blueprint" for use when there is a legislative impasse with regard to congressional redistricting. *See* Respondents' Response to Intervenor's Opposition to



Petitioners' Application for Exercise of Extraordinary Relief or King's Bench Power at 4.

54. At this juncture, the Court should continue to execute the blueprint—which proved remarkably effective—as set forth in *Mellow*.

55. And, what's more, other jurisdictions also endorse the process of allowing individual congresspersons to intervene. *See, e.g., Johnson v. Wisconsin Elections Comm.*, \_\_\_N.W.2d\_\_\_, 2021 WL 5578395 (Nov. 30, 2021) (listing several Congresspersons as intervenors).

56. To alter the process this late in the game would needlessly undermine the fairness of the process.

### **Intervenor Varner**

57. Intervenor Varner could have joined as an original party because he could have filed an identical suit on behalf of the citizens of Sawarta, or as an individual taxpayer. *See Com ex rel. Maurer v. Witkin*, 25 A.2d 317, 318 (Pa. 1942) (intervenor, as a citizen, taxpayer, and elector, “was qualified to join as an original party” in a mandamus action seeking a declaration that a councilmember's office in his district

was vacant and that the election should be filled in the November election).

58. As a member of Swatara Township Board of Commissioners, he has a duty to act in the best interests of the citizenry he represents. He therefore could have filed a PFR comparable to the ones filed by Petitioners.

59. Intervenor Varner also has a legally enforceable interest at stake in this litigation.

60. As an elected official, Intervenor Varner will be substantially, directly, and immediately affected by the disposition of this case.

61. In particular, Intervenor Varner—as part of his official duties—often engages with member of Congress in various initiatives, including obtaining funding from the Federal government for essential services it provides to his constituents.

62. An untimely, or worse yet, unconstitutional, redistricting plan will directly, and materially restrict Intervenor Varner’s ability to identify which member of Congress he needs to work with to help provide essential services for his constituents.

63. Moreover, Intervenor Varner has a substantial, direct, and immediate interest in keeping Swatara Township in the same Congressional District.

64. Here, once again, the blueprint set forth in *Mellow* is instructive.

65. The *Mellow* Court liberally allowed multiple municipal and county intervenors. *See* 607 A.2d at 220-221 (listing the “[v]arious intervenors” that “raised community-of-interest issues with respect to” their particular regions—including, Cheltenham Township; Leigh, North Hampton, Berks, Schuylkill, and Cumberland Counties).

66. In *League of Women Voters*, the court viewed the following “foundational requirements” to be “a particularly suitable measure in assessing whether a congressional districting plan dilutes the potency of an individual’s ability to select the congressional representative of his or her choice”: “(1) the population of such districts must be equal, to the extent possible; (2) the district that is created must be comprised of compact and contiguous geographical territory; and (3) the district respects the boundaries of existing political subdivisions contained therein, such that the district divides as few of those subdivisions as

possible.” *League of Women Voters*, 178 A.3d at 815 (citing, Pa. Const. art 2, 16).<sup>2</sup>

67. Along those lines the *League of Women Voters’* Court observed “rather than impermissibly lessening the power of an individual’s vote based on geographical area in which the individual resides . . . the use of compactness, contiguity, and the maintenance of the integrity of the boundaries of political subdivisions maintains the strength of an individual’s vote in electing a congressional representative.” *Id.* at 816.

68. The Court further explained: “When an individual is grouped with other members of his or her community in a congressional district for purposes of voting, the commonality of the interests shared with

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<sup>2</sup> The Carter Petitioners minimize the importance of these interests as they relate to specific communities because, as they view it, these requirements are “already constitutional requirements . . . that this Court will surely consider when adopting a new plan.” Carter Answer at 9. *See id.* at 11 (“It cannot be that voters from all 67 counties in the Commonwealth must be allowed to intervene simply because they reside in different counties, as that would unnecessarily complicate and unduly a [*sic*] case that must be adjudicated expeditiously.”). Although this Court is already constitutionally required (when possible) to keep compact and contiguous the geographic boundaries of localities, this Court should follow the *Mellow* Court’s framework and allow various municipal and county intervenors. Not every county or municipality will seek intervention, but those that do clearly have unique community interests that they wish to bring to the Court’s attention. Indeed, the Commonwealth is not homogenous; and the diverse needs of certain localities may warrant additional consideration.

other voters in the community increases the ability of the of the individual to elect a congressional representative for the district who reflects his or her personal preferences.” *Id.*

69. The interests of Swatara’s community deserve representation in this litigation because their interests are unique from other municipalities or regions in the Commonwealth. *Cf. Mellow*, 607 A.2d at 220 (the “[e]vidence of a community of interest among neighboring areas in [the intereveloper’s] regions have been clear and undisputed”).

70. By liberally allowing municipality and county intervenors, the *Mellow* Court indicated that it understood the importance of these particular, and local interests—especially where the Court was tasked with selecting a redistricting plan because of a legislative impasse.

71. When the *Mellow* Court reached its conclusion, and selected a congressional redistricting plan, the court stated that the map it chose came “closest to implementing the community-of-interest factors *in those regions across the state which have identified them.*” *Id.* at 224 (emphasis added).

72. Had the municipal and county intervenors not identified their specific, and unique community interests, the *Mellow* Court’s attention may not have been focused on those interests.

73. Here, Intervenor Varner, and the residents of Swarata, will be substantially, directly, and immediately impacted by resolution of this case. *See Keener v. Zoning Hearing Bd. of Millcreek Tp.*, 714 A.2d 1120, 1122 (Pa. Cmwlth. 1998) (intervenor “must have some right, whether legal or equitable which will be affected by the proceedings”).

74. As in *Mellow*, this Court should allow Intervenor Varner to represent the particular geographic and communal interests of Sawarta Township.

**Intervenors Former Congressmen**

75. Intervenors Former Congressmen could have joined as an original party to this action. *See Pa.R.C.P. 2327(3)*.

76. As citizens and electors they could have filed suit challenging the unconstitutionally malapportioned districts.

77. Intervenors Former Congressmen also have a legally enforceable interest distinct from that of any Petitioner.

78. Intervenors Former Congressmen have an interest in advocating on behalf of the communities that they formerly served.

79. As former congressmen, the Intervenors, stand apart from Petitioners because they have intimate knowledge of the redistricting process, and understand the geographical and communal interests attendant to that process.

80. Their knowledge is particularly acute with respect to the districts they previously served, and thus they will be able to provide the Court with critical information regarding the communities and boundaries in their districts.

81. Additionally, this Court should grant Intervenors Former Congressmen request to intervene based on the *Mellow* Court's liberal allowance of intervention.

82. Here, as in *Mellow*, the Court will benefit from additional parties advocating on behalf of their geographic and communal interests.

### **Conclusion**

83. Because each Intervenor could have joined as original parties, and this matter affects the legally enforceable interests of each

Intervenor, they satisfy at minimum two categories for intervention.

Pa.R.C.P. No. 2327.

84. If permitted to intervene, Intervenors will adopt by reference Paragraphs 1-8; 11-38; and 41-63 of the Carter Petitioners' Petition for Review. *See* Pa.R.C.P. No. 2328(a).

85. Finally, none of the three considerations for denying intervention are present.

86. First, Intervenors' claim is in subordination to and in recognition of the propriety of the pending action as it concerns the adoption of a congressional redistricting plan. Pa.R.C.P. No. 2329(1).

87. Second, Intervenors' interests differ from and, therefore, are not already adequately represented by the existing parties. Petitioners, registered Pennsylvania voters in overpopulated congressional districts, seek to protect their right to cast an equal vote. Intervenors' interests diverge from those of Petitioners for the reasons set forth more fully above. Therefore, Intervenors' interests are not adequately represented. Pa.R.C.P. No. 2329(2).

88. Third, Intervenors have not unduly delayed in making this Application nor will the intervention delay, embarrass or prejudice the



trial or adjudication of rights of the parties. Petitioners filed their Petitions for Review two weeks prior to Intervenors' Application. Respondents have not yet filed an Answer or other responsive pleading. Further, this Application is timely filed under this Court's December 20 scheduling order. There is no prejudice or undue delay in granting intervention at this early stage. *See* Pa.R.C.P. No. 2329(3).

89. In accordance with Pa.R.A.P. 3707, Intervenors consulted with all counsel of record via email to request their concurrence or non-concurrence with this Application and solicited a response by close of business on December 31, 2021, otherwise Intervenors would note that counsel did not concur. Having received no response by close of business on the date of filing, Petitioners and Respondents do not concur with the relief sought in this Application.

WHEREFORE, Intervenors respectfully requests that this Court grant this Application and grant Intervenors leave to intervene as parties in this matter.

Respectfully submitted,

Dated: December 31, 2021

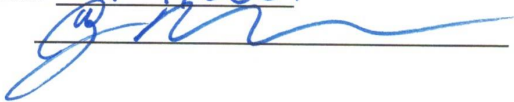
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*Attorneys for Guy Reschenthaler,  
Jeffrey Varner, Tom Marino, Ryan  
Costello, and Bud Shuster*

**VERIFICATION**

I, Guy Reschenthaler, United States Representative, verify that the statements made in the foregoing Application are true and correct to the best of my knowledge, information, and belief. I make this verification subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 12/31/2021

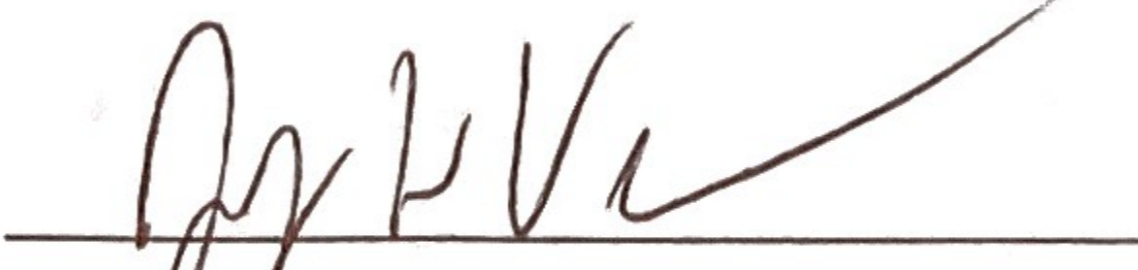


Guy Reschenthaler

**VERIFICATION**

I, Jeff Varner, Swatara Township Commissioner, verify that the statements made in the foregoing Application are true and correct to the best of my knowledge, information, and belief. I make this verification subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 12/31/21

  
\_\_\_\_\_  
Jeff Varner

{02185041;v1 }

## VERIFICATION

I, Matthew H. Haverstick, verify that the statements made in the foregoing Application are true and correct to the best of my knowledge, information, and belief, based upon information provided to me by Ryan Costello, who is outside the jurisdiction and whose verification cannot be obtained within the time allowed for filing. I make this verification subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: December 31, 2021

Matthew H. Haverstick

Attorney for Ryan Costello

**IN THE SUPREME COURT OF PENNSYLVANIA**

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No. 7 MM 2022

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Carol Ann Carter; Monica Parrilla; Rebecca Poyourow; William Tung; Roseanne Milazzo; Burt Siegel; Susan Cassanelli; Lee Cassanelli; Lynn Wachman; Michael Guttman; Maya Fonkeu; Brady Hill; Mary Ellen Balchunis; Tom DeWall; Stephanie McNulty; and Janet Temin,

Petitioners,

vs.

Leigh M. Chapman, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

---

Philip T. Gressman; Ron Y. Donagi; Kristopher R. Tapp; Pamela A. Gorkin; David P. Marsh; James L. Rosenberger; Amy Myers; Eugene Boman; Gary Gordon; Liz McMahon; Timothy G. Feeman; and Garth Isaak

Petitioners,

vs.

Leigh Chapman, in her Official Capacity as the Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Official Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

---

**BRIEF OF INTERVENORS BRYAN CUTLER, SPEAKER OF  
THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, AND  
KERRY BENNINGHOFF, MAJORITY LEADER OF THE  
PENNSYLVANIA HOUSE OF REPRESENTATIVES, IN  
SUPPORT OF JUDGE MCCULLOUGH'S REPORT AND  
RECOMMENDATION**

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## INTRODUCTION

This Court’s decision in *League of Women Voters v. Com.*, 178 A.3d 737 (Pa. 2018) (“*LWV*”), striking down the 2011 congressional plan, re-affirmed the primacy of adherence to traditional districting criteria and held that subordination of those traditional principles for partisan advantage violated the Free and Equal Elections Clause. The General Assembly took the guidance from this Court in *LWV* to heart, and passed House Bill 2146 (“H.B. 2146”) to redistrict the Commonwealth into seventeen congressional districts through the fairest and most transparent redistricting process in modern history. H.B. 2146 is not the 2011 congressional plan. It adheres to all traditional redistricting criteria and is a fair map—creating nine Democratic-leaning districts, eight Republican-leaning districts, and several highly competitive districts in this closely-divided state. An honest process yielded an honest map that does not discriminate against voters on the basis of their political views—consistent with the holding of *LWV*.

The Commonwealth Court issued an exhaustive 222-page report and recommendation after conducting a thorough analysis of the politics of this State, hearing the testimony of several expert witnesses, and reviewing hundreds of pages of briefing concerning the 13 proposed plans. That exhaustive record confirms that H.B. 2146 fulfills all the constitutional criteria and provides a plan that does not unfairly dilute the vote of any citizen of the Commonwealth on account of

partisanship. Due to the practically infinite number of ways a congressional map can be drawn, and the competing criteria, there is no “best” or “optimal” map other than one that achieves the goals of the map-drawer. But those are decisions best left to the Representatives and Senators elected by the people of Pennsylvania who are best suited to make those policy choices, and to whom the Framers of the U.S. Constitution assigned that responsibility. *See* U.S. Const. art. I, § 4.

The same cannot be said for many of the other map submissions. As set forth more fully herein and in the Special Master’s Report, several of the plans submitted—including those by the *Carter* Petitioners, the *Gressman* Petitioners, Governor Wolf, the Senate Democratic Caucus (Maps 1 and 2), and the House Democratic Caucus—either subordinate traditional districting principles for partisan gain, or otherwise intentionally draw districts for unfair partisan advantage. In particular, the Governor’s Plan and both Senate Democratic Caucus Plans split the City of Pittsburgh in half for partisan purposes, and the House Democratic Caucus kept Pittsburgh whole but instead drew a Freddy Krueger Claw district to “grab” Pittsburgh and combine it with Republican-leaning areas to the north.

Additionally, the *Carter* Petitioners, *Gressman* Petitioners, Governor Wolf, the Senate Democratic Caucus, and the House Democratic Caucus all gerrymander their proposed plans by drawing the four most competitive districts in their simulated plans to be as strongly Democratic-leaning as possible. Through this and other

means, those parties manage to draw plans that contain *ten* Democratic-leaning districts—a highly uncommon outcome when compared to a set of 50,000 simulated plans created without political data and that follow this state’s traditional criteria.

Several of these parties have attempted to defend their rigged proposed plans by saying those plans counteract or “override” a slight, naturally occurring Republican tilt in the state’s political geography. Such a methodology is an express invitation for the Court to override the actual voting patterns and preferences of the voters as expressed at the ballot boxes in their community, which is the literal subordination of political subdivision integrity in favor of partisan advantage. Judge McCullough rightly rejected this argument as a “subspecies” of unfair partisan gerrymandering of the sort prohibited in *LWV*, and so should this Court.

The *Carter* Petitioners also urge the adoption of their plan on the grounds that it is a “least change” plan from the Court’s 2018 remedial plan in *LWV*. However, they ground this argument on a fundamental misunderstanding of the “least change” case law (which does not apply here), and as a factual matter, their plan takes the remedial plan’s politically even, 9-9 plan and converts it to a heavily Democratic-advantaged 10-7 plan. Surely that is not a “least change” plan.

In the end, Judge McCullough recommended that:

our Supreme Court adopt and implement HB 2146 as a matter of state constitutional law as it meets all of the traditional criteria of the Free and Equal Elections Clause, and does so in respects even noted by the Governor’s expert, as well as the other considerations noted by the

courts, it compares favorably to all of the other maps submitted herein, including the 2018 redistricting map, it was drawn by a non-partisan good government citizen, subjected to the scrutiny of the people and duly amended, it creates a Democratic leaning map which underscores its partisan fairness, and, otherwise, is a reflection of the “policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature.”

Report of Special Master, 464 M.D. 2021, at 216 (Feb. 7, 2022) (bold removed, underline in original) (citing *Perry v. Perez*, 132 S. Ct. 934, 941 (2012)).

For all the reasons set forth in this brief as well as in the House Republican Legislative Intervenors’ briefing to the Commonwealth Court, and any further arguments advanced in response to any Exceptions filed by other parties, the House Republican Legislative Intervenors urge the Court to adopt the Special Master’s Report in its entirety and to select H.B. 2146 as the congressional district plan to govern the Commonwealth’s congressional elections.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. Framework of Redistricting**

At issue in this case is the congressional redistricting process mandated by the U.S. Constitution. Every ten years, a national census is conducted, and the 435 voting members of the U.S. House of Representatives are reapportioned among the states on the basis of population. U.S. Const. art. I, § 2. The federally conducted census determines the number of House seats apportioned to each state, and Congress can and does make regulations which govern the states’ redistricting



process. *See* U.S. Const. art. I, § 4. For example, if a state loses a seat in the apportionment process and fails to enact a new, valid redistricting plan, that state’s House delegation “shall be elected from the State at large.” 2 U.S.C. § 2a(c)(5).

In the first instance, the Constitution entrusts the “Times, Places and Manner” of House elections, including the task of drawing congressional districts, to state legislatures. *See id.* Thus, each decade, pursuant to this delegated constitutional authority, the Pennsylvania General Assembly, on behalf of the People of the Commonwealth, is tasked with creating a new congressional map for the Commonwealth that reflects the results of the latest census. As a general rule, each of these districts will have one member and will be of equal population, consistent with the one person, one vote principle, though minor deviations to achieve traditional redistricting objectives may be permissible. *See, e.g., Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (“Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives.”); *see also Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019) (“[E]ach representative must be accountable to (approximately) the same number of constituents. That requirement does not extend to political parties. It does not mean that each party must be influential in proportion to its number of supporters.”).

This familiar framework has received further elaboration in Pennsylvania law. In Pennsylvania, congressional redistricting plans are handled as regular legislation—that is, a congressional redistricting plan must pass both chambers of the General Assembly and be signed into law by the Governor in order to take effect. *See* Pa. Const. art. IV, § 15. A plan that emerges from the constitutionally created state legislative process is subject to review by the judicial branch, as occurred in 2018. *LWW*, 178 A.3d at 742-43.

Impasse cases, like this one, arise when the political branches deadlock and fail to redistrict the Commonwealth following the decennial census and apportionment. *See Mellow v. Mitchell*, 607 A.2d 204, 214 (Pa. 1992). Prior to Intervenors’ intervention, the Commonwealth Court entered an order on December 20, 2021 essentially finding that an impasse had occurred. Unfortunately, after failing to engage with the legislature during the process, Governor Wolf vetoed H.B. 2146 only a day before trial—in the apparent hope that this Court would adopt a map he publicly proposed only on January 15, 2022.

The Court has described the task of selecting a congressional map as an “unwelcome obligation.” *LWW*, 178 A.3d at 823 (citation and internal quotation marks omitted). But in assuming this unhappy task in the past, the Court has also clearly articulated the controlling constitutional and legal principles that govern

congressional redistricting plans in this Commonwealth. Those principles are worth recounting here.

The Court was last presented with an impasse situation similar to the one it faces now in 1992. *See Mellow*, 607 A.2d at 204-05. The 1990 census found that Pennsylvania was entitled to only 21 House members, where it previously had 23. *Id.* at 205. The General Assembly then failed to pass a 21-member map. *Id.* Thus, in the absence of a map approved by the General Assembly, the Court decided to select an appropriate redistricting plan. *Id.* at 205-07, 211.

After the political branches deadlocked, eight Members of the Pennsylvania Senate brought an action requesting judicial intervention. The Court ultimately approved a plan proposed by those eight Senators, and in its opinion, described the factors it considered. First, it evaluated the plans to ensure they complied with the one-person, one-vote standard required by federal law. *Id.* at 207-08. Second, it reviewed for compliance with Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. *Id.* at 208-10. And finally, it reviewed for minimization of political subdivision splits, and to evaluate whether the plan was “politically fair” in terms of the allocation of Democratic and Republican-leaning districts, and, in particular, how the maps dealt with the state’s loss of two congressional seats. *Id.* at 210-211.

The Court’s recent decision in *LWV* further elucidates this legal framework, although *LWV* arose from a challenge to an enacted map, and not, as here and in

*Mellow*, from a legislative impasse between the General Assembly and the Governor after a reduction in the number of House seats following the census. In *LWV*, the Court considered the Pennsylvania Constitution’s Free and Equal Elections Clause, which provides, “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. art. I, § 5. The Court concluded that this provision invalidated the then-existing congressional map from 2011 as an unconstitutional partisan gerrymander. *See LWV*, 178 A.3d at 824-25. The Court subsequently ordered the use of a remedial plan that has been in place since the 2018 elections. *League of Women Voters v. Commonwealth*, 181 A.3d 1083 (Pa. 2018) (“*LWV II*”).

The reasoning behind the Court’s decision in *LWV* was that the Free and Fair Elections Clause requires that “an individual’s electoral power not be diminished through any law which discriminatorily dilutes the power of his or her vote . . . .” *LWV*, 178 A.3d at 816. In framing this interpretation, the Court looked to Article II, Section 16, of the Pennsylvania Constitution, in which the Court identified the “neutral benchmarks” that serve to prevent the dilution of individual votes. *Id.* Thus, the Court held that to comply with the Free and Equal Elections Clause, congressional districts must (1) be compact, (2) be contiguous, (3) be “as nearly equal in population as practicable,” and (4) not divide any “county, city, incorporated town, borough, township, or ward, except where necessary to ensure

equality of population.” *See id.* at 816-17 (citations and internal quotation marks omitted). But while other factors “have historically played a role in the drawing of legislative districts, such as the preservation of prior district lines, protection of incumbents, or the maintenance of the political balance which existed after the prior reapportionment,” such extraneous, political factors are “wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts.” *Id.* at 817.

Thus, in evaluating the constitutionality of a congressional redistricting plan, whose creation is constitutionally committed to the General Assembly in the first instance, the Court must begin with the neutral redistricting criteria identified in *Mellow* and *LWV*. Other relevant factors, such as the preservation of communities of interest, preventing an undue departure from the existing map, and various metrics of partisan fairness may be considered, but not in ways that supplant or detract from the traditional, non-political factors that this Court has articulated over the course of several decades now.

## **II. Development of H.B. 2146**

Exercising their prerogative and fulfilling their duty under both the United States and Pennsylvania Constitutions, the House and Senate passed H.B. 2146, which redistricts the Commonwealth into 17 congressional districts.

H.B. 2146 was first introduced and referred to State Government Committee on December 8, 2021. *See* Bill History, House Republican Legislative Intervenors’ Opening Br., Ex. E (“Bill History”). The bill introduced, for what might be a first in the history of the Pennsylvania House, a plan proposed by “well-known nonpartisan citizen,” and good-government advocate, Ms. Amanda Holt. *See* Report of The Honorable Patricia McCullough, Special Master, Feb. 7, 2022, 42 (“the Report” or “Rep.”). The State Government Committee selected Ms. Holt’s proposal from among 19 submitted by the public because, as Rep. Seth Grove indicated, Ms. Holt drew it without political influence, it met constitutional standards, and it limited the splits of townships and other municipalities, offering compact and contiguous districts. House Republican Legislative Intervenors’ Opening Br., Ex. A, Grove Letter (Jan. 6, 2022) (“Grove Letter”); Ex. 1 to Ex. I, Affidavit of Bill Schaller.

The State Government Committee received 399 comments concerning the map in H.B. 2146 as introduced. *See* Grove Letter; Rep. at 48, FF8. The legislature considered and implemented changes based on these comments, increasing the compactness of certain districts and ensuring that the map preserved certain communities of interest. Rep. at 48; *see also* Grove Letter. From the time the bill was amended in, and reported from, the House State Government Committee on December 15, 2021, until the bill was passed by the House, the public had 28 days

to view the contents of the bill and review the proposed congressional plan. *See* Grove Letter; Bill History.

Under the Rules of the Pennsylvania House of Representatives, second consideration of a bill is the opportunity for any House Member to introduce and offer amendments to a bill. House Rules 21 and 23. While Members had ample to time to draft and file amendments to the bill, no amendment was timely filed to H.B. 2146. It received third consideration and final passage in the House on January 12, 2021. Rep. at 48.

The Senate then referred H.B. 2146 to the Senate State Government Committee. After being reported from committee without amendment, the Senate gave H.B. 2146 first consideration on January 18, 2022 and second consideration on January 19, 2022. The Senate passed H.B. 2146 on January 24, 2022, by a vote of 29 to 20. *See* Bill History; Rep. at 48.

The legislature then presented H.B. 2146 to Governor Tom Wolf on January 24, 2022. As described above, this bill included a map subject to public comment, review, and multiple revisions in response to those comments. At that point, 40 days had passed since H.B. 2146 had last been amended in the House State Government Committee. But only one day before this trial began, on January 26, 2022, Governor Wolf vetoed H.B. 2146. Throughout this process, the Governor had refused to meet with the legislature. *See* Grove Letter. He did not negotiate a redistricting plan with

either the House or the Senate, but instead proposed his own map, absent any legislative input.

### **III. Proceedings Below**

Before the commencement of the present action, the Carter Petitioners filed a case in the Commonwealth Court (“*Carter P*”) challenging the 2018 remedial plan as constitutionally deficient based on the 2020 census results. *See Rep* at 4 n.10. Subsequently, a three-judge panel of the Commonwealth Court dismissed that action without prejudice for lack of standing and ripeness. *Id.*

On December 17, 2021, the *Carter* Petitioners filed the instant Petition for Review (“*Carter IP*”) directed to the Commonwealth Court’s original jurisdiction, again claiming that the 2018 remedial congressional map was malapportioned and that the judiciary needed to step in and adopt the *Carter* Petitioners’ plan for the upcoming 2022 elections. *Rep.* at 4. On the same day, the *Gressman* Petitioners filed their own petition for review, making substantially similar claims and offering up their own map for the Commonwealth Court’s adoption. *Id.* at 7-8.

By order dated December 20, 2021, the Commonwealth Court consolidated both petitions for review, set December 31, 2021 as the deadline for applications to intervene, and ruled that any party to the consolidated cases could submit a proposed 17-district congressional redistricting plan. *Id.* at 10. The Commonwealth Court’s December 10 order further provided that the Commonwealth Court would select



from among the timely filed plans if a legislatively enacted plan was not in place by January 30, 2022. *Id.* at 10-11.

Immediately after the Commonwealth Court’s December 20 order, both the *Carter* and *Gressman* Petitioners filed applications for extraordinary relief, requesting that this Court exercise extraordinary jurisdiction over these matters. *Id.* at 11. This Court denied those applications on January 10, 2022. *Id.* at 12.

By order dated January 14, 2022, the Commonwealth Court granted applications to intervene by (i) the Speaker and Majority Leader of the Pennsylvania House of Representatives (“House Republican Legislative Intervenors”) and the President Pro Tempore and Majority Leader of the Pennsylvania State Senate (“Senate Republican Legislative Intervenors”) (collectively, “Republican Legislative Intervenors”), (ii) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams (“Democratic Senator Intervenors”)<sup>1</sup>; (iii) Tom Wolf, Governor of the Commonwealth of Pennsylvania (“Governor”); (iv) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania (“Senate Democratic Caucus Intervenors”); (v) Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives (“House Democratic Caucus Intervenors”); and (vi) Congressman

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<sup>1</sup> The Democratic Senator Intervenors and Senate Democratic Caucus Intervenors were joined as a single party. Rep. at 12-13, n.21.

Guy Reschenthaler, Swatara Township Commissioner Jeffrey Varner, and former Congressmen Tom Marino, Ryan Costello, and Bud Shuster (“Congressional Intervenors”). *Id.* at 12-13. The remaining applications to intervene were denied, but the entities that filed them were permitted to submit plans, briefs, and supporting materials as *amici*. *Id.* at 14.

The Commonwealth Court’s January 14 order also superseded the prior procedural schedule and required submission, by each party, of one or two proposed congressional plans and a supporting brief and/or expert report by January 24, 2022, with responsive briefs and/or expert reports by January 26, 2022. *Id.* at 13. The Commonwealth Court also directed the filing of a joint stipulation of facts and accelerated the trial to January 27 and 28, 2022. *Id.* at 14. The Commonwealth Court further indicated that it planned to issue an opinion based on the parties’ submissions and the record evidence if a legislative plan was not enacted by January 30, 2022. *Id.*

The parties submitted their briefs and expert reports in due course on January 24 and 26. Consistent with the Commonwealth Court’s amended procedural schedule, the Court conducted the trial on January 27 and 28, 2022. *Id.* at 58. Each party conducted a one-hour direct examination of one expert witness, with each party permitted to conduct a fifteen-minute cross-examination of every other party’s expert witness. *Id.* Each party was permitted to make an opening and closing

statement. *Id.* The expert reports and testimony submitted by the parties and *amici* are summarized in the Report. *See generally id.* at 58-114. The Report further provided that “exhibits introduced in trial and attached briefs were admitted into evidence. All exhibits are part of the record in this matter.” *Id.* at 117.

The day after trial, on Saturday, January 29, 2022, the parties made written post-hearing submissions.

Then, on January 29, 2022, the Carter Petitioners renewed their application for extraordinary relief, which this Court had previously denied on January 10. *Id.* at 15. On February 2, 2022, this Court granted the application for extraordinary relief, assumed jurisdiction over the proceedings, designated Commonwealth Court Judge McCullough as Special Master, and directed Judge McCullough to identify proposed findings of fact and conclusions of law, and a recommendation as to which plan should be selected and as to potential election calendar revisions, no later than February 7, 2022. Order, No. 7 MM 2022, 1-2 (Feb. 2, 2022.) The Court further ordered that parties and *amici* could file exceptions to the Special Master’s Report by February 14, and set oral argument for February 18. *Id.* at 2.

Judge McCullough’s Report was filed on February 7, 2022. The Report, coming in at 222 pages, exhaustively recounts the procedural history of these cases, the controlling constitutional and legal principles, proposed findings of fact and conclusions of law, a detailed analysis and comparison of each proposed map, and a

recommendation regarding which map should be selected and how the 2022 election schedule should be revised. *See generally* Report. Judge McCullough recommended adoption of H.B. 2146. *Id.* at 216.

Following the release of the Report, the Court issued a *per curiam* order dated Friday, February 11, 2022, in which it denied a joint application for leave to file briefs in response to exceptions and directed that parties and *amici* file any briefs in support of the Report by Monday, February 14, 2022. Order, No. 7 MM 2022, 2 (Feb. 11, 2022).<sup>2</sup>

The House Republican Legislative Intervenors now respectfully submit this brief in support of the Report.

### **LAW AND ANALYSIS**

**I. The Commonwealth Court Correctly Recognized that H.B. 2146 Adheres to the Traditional Redistricting Criteria Set Forth in Article II, Section 16, of the Pennsylvania Constitution, Which this Court Recognized as Neutral Benchmarks to Be Used in Detecting Gerrymanders.**

There is no dispute that H.B. 2146 adheres to the traditional redistricting criteria set forth in Article II, Section 16, of the Pennsylvania Constitution, which this Court indicated were “neutral benchmarks” in determining whether a plan violates the Free and Equal Elections Clause of the Pennsylvania Constitution. *LWV*,

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<sup>2</sup> Unfortunately, due to the denial of this application, the House Republican Legislative Intervenors will not be able to file a comprehensive brief responding to the various Exceptions anticipated to be filed challenging the Report and its recommendation that this Court adopt H.B. 2146.

178 A.3d at 815-16. H.B. 2146 is comprised of contiguous districts and has at most a plus/minus one-person population deviation between districts. Rep. at 137-39. Moreover, with a Polsby-Popper score of .324, it is reasonably compact and similar to the compactness score of the map adopted by this Court in *LWV II*, 181 A.3d 1083, 1087. See Rep. at 141, 211. It also does considerably well on political subdivision splits, splitting only 15 counties, 16 municipalities, and 18 wards. *Id.* at 144. H.B. 2146 splits the fewest municipalities of any plan. *Id.* at 146. As the Governor's expert, Dr. Duchin, opined, "[t]he Congressional districting plan passed by the Pennsylvania House of Representatives (HB - 2146) is population-balanced and contiguous, shows strong respect for political boundaries, and is reasonably compact." Duchin Opening Rep. at 2.

Not all plans even meet these neutral benchmarks. Unlike H.B. 2146, two plans have a population deviation of greater than one person. Both the Carter Plan and the House Democratic Caucus Plan have deviations of two-persons. Rep. at 138. While that might not seem like a big difference, the U.S. Supreme Court has recognized that congressional districts must be mathematically equal in population unless necessary to achieve a legitimate state objective. *Karcher*, 462 U.S. at 730, 740. Neither the *Carter* Petitioners nor the House Democratic Caucus identify a reason for their departure from mathematical equality. That other plans, like H.B. 2146, were able to achieve such equality without sacrificing other redistricting

criteria demonstrates that these plans are unconstitutional. Thus, Judge McCullough appropriately gave them less weight. Rep. at 139.

In addition, many of the plans unnecessarily split the City of Pittsburgh, including the Governor, Senate Democratic Caucus, Draw the Lines, and *Ali amici* plans. None of these parties or *amici* provide an explanation for splitting the state's second largest city. *Id.* at 151-52. The lack of any explanation is telling. As Dr. Barber found, splitting the city may allow a plan to use Pittsburgh's Democratic-leaning population to create two districts in the immediately surrounding area that are likely Democratic-leaning, instead of only one. *Id.* at 149. But achieving this partisan advantage at the behest of traditional redistricting criteria of avoiding city splits violates the principles enunciated by this Court in *LWV*. In addition, the City of Pittsburgh is a community of interest that should be preserved to best respect the interest of its residents. *Id.* at 149-50. Absent explanation, any plan that unnecessarily splits the City of Pittsburgh for partisan gain violates the Free and Equal Elections Clause as stated by this Court in *LWV*. Thus, Judge McCullough appropriately gave plans that split Pittsburgh with no explanation less weight. *Id.* at 195.

In addition, many plans unnecessarily split Bucks County and pair portions of it with Philadelphia to more evenly distribute Democratic voters. But the only evidence before the Court demonstrates that splitting Bucks County unnecessarily

divides a community of interest for partisan gain. *Id.* at 157-60. H.B. 2146 protects this community of interest and does not split Bucks County. Based upon this undisputed evidence, Judge McCullough appropriately gave less weight to maps that split Bucks County. Rep. at 195.

As such, Judge McCullough properly recognized based upon all the evidence submitted, including testimony from experts of proponents of other submitted plans, that “HB 2146 does not contravene, and in fact sufficiently satisfies, the standards of the Free and Equal Elections Clause of the Pennsylvania Constitution, the other criteria discussed by our Supreme Court in *LWV*, and further, reflects a non-partisan tilt in favor of Democrats.” Rep. at 191.

## **II. The Commonwealth Court Correctly Recognized that H.B. 2146 Is Fair to the Political Parties.**

### **A. Dr. Barber’s Simulation Analysis**

Dr. Barber conducted a simulation analysis generating 50,000 simulated congressional redistricting plans for Pennsylvania following only the constitutional criteria outlined in this Court’s decision in *LWV*. Barber Opening Rep. at 13-14. Notably, this simulation analysis is very similar to the simulation analyses utilized by Dr. Chen and Dr. Pegden and relied upon by this Court in *LWV*. 178 A.3d at 770-75, 776-77.<sup>3</sup> Dr. Barber’s simulation, like those of Dr. Chen and Dr. Pegden, use a

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<sup>3</sup> During the hearing, Dr. Barber’s simulation analysis was weakly attacked as unreliable because the algorithm he utilized was not peer reviewed. However, the

set of unbiased alternative maps to compare to a proposed map, like H.B. 2146, and to determine if the proposed map is an outlier from the simulated maps. Barber Opening Rep. at 11; Tr. 515-17. Dr. Barber’s simulated plans do not consider partisanship, race,<sup>4</sup> the location of incumbent legislators, or other political factors. They only consider the traditional redistricting criteria of contiguity, compactness, equalizing population, and minimizing political subdivision splits. Barber Opening Rep. at 13-14; Rep. at 87. Thus, if a map, like H.B. 2146, “significantly diverges from the set of simulated maps, it suggests that some other criteria that were not used in drawing the comparison set of maps may have guided the decisions made in drawing the proposed map.” *Id.*

Based upon an index of statewide elections from 2012-2020,<sup>5</sup> Dr. Barber predicts that H.B. 2146 will result in nine Democratic-leaning seats and eight

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algorithm has been validated. Tr. 662:7-25. And, the same algorithm has been used by other experts and relied upon in the recent Ohio redistricting litigation by Dr. Kosuke Imai. Tr. 663:24-664:4. Indeed, Dr. Imai used the same algorithm to provide a report and testimony before the Pennsylvania Legislative Reapportionment Commission who likewise relied upon his analysis. In addition, Judge McCullough, who had the benefit of viewing Dr. Barber’s testimony during the hearing, credited his opinions and methodology. Rep. at 165.

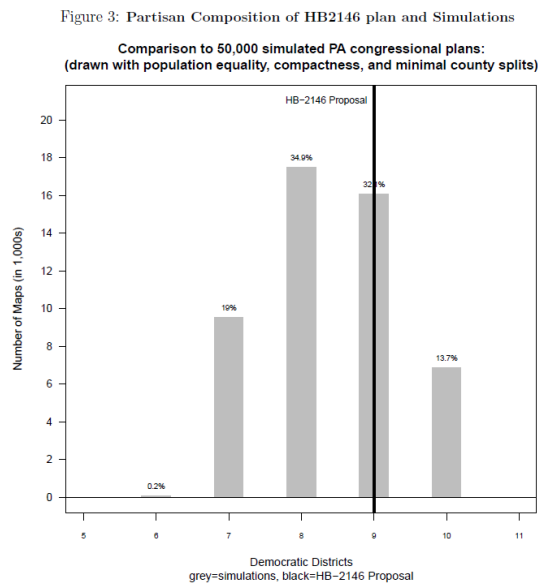
<sup>4</sup> Dr. Barber did, however, check the impact of race on his results. He reviewed a subset of his 50,000 simulations that contained two majority-minority districts, and ran a second set of simulations that drew three minority-influence districts, to check the robustness of his results. Barber Opening Rep. 35-37. His results were robust. *Id.*

<sup>5</sup> In *LWV*, Dr. Chen likewise used an index of statewide elections from 2008 and 2010, and this Court found his methodology reliable and utilized it in holding the 2011 congressional plan unconstitutional. *LWV*, 178 A.3d at 772-73, 818-21.



Republican-leaning seats.<sup>6</sup> Barber Opening Rep. at 23; Rep. at 88. Given that the current map adopted by this Court in 2018 has resulted in nine Democratic seats and nine Republican seats for the past two congressional elections, a map predicted to result in nine Democratic seats and eight Republican seats is demonstrably fair.

But Dr. Barber also then compared his prediction for the partisan lean of H.B. 2146 against the 50,000 unbiased simulated plans drawn only using traditional redistricting criteria and with no partisan data. The distribution of predicted seats for his simulated plans is below:



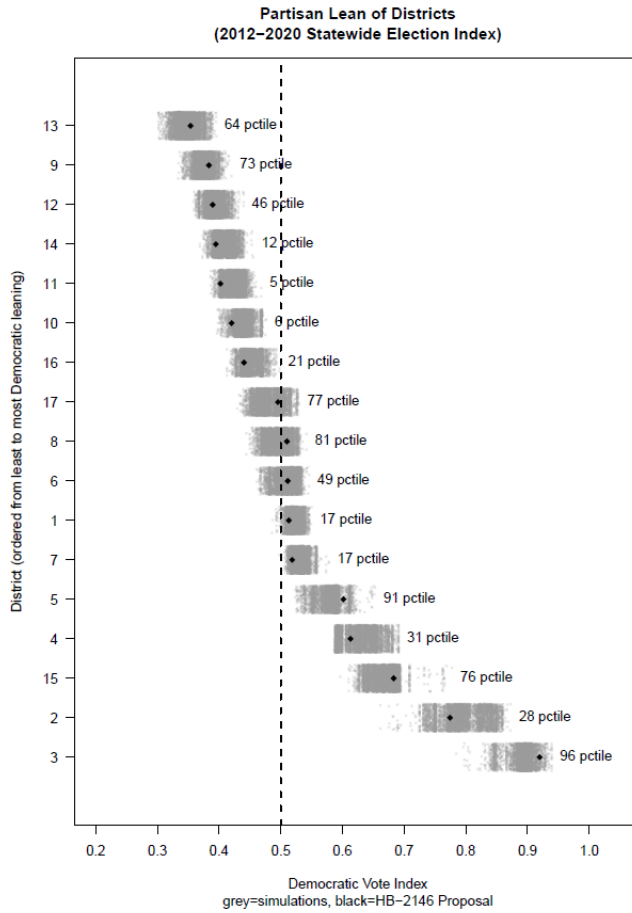
<sup>6</sup> When using an index of statewide elections from 2014-2020, Dr. Barber predicts that H.B. 2146 will result in eight Democratic-leaning seats and nine Republican-leaning seats. Barber Opening Rep. at 44 (App’x A). But this simply shows that different elections can lead to different outcomes. A map that sometimes results in eight Republican seats and sometimes nine Republican seats is fair.

Barber Opening Rep. at 23, Fig. 3. The most common outcome (34.9%) is eight Democratic-leaning seats—one less than Dr. Barber predicts for H.B. 2146. *Id.*; Rep. at 165. Nine Democratic-leaning seats results 32.1% of the time—very consistent with H.B. 2146. Barber Opening Rep. at 22. In other words, unlike the conclusions reached by Dr. Chen and Dr. Pegden in *LWV* that the 2011 plan was a partisan outlier when compared to a set of simulated maps, H.B. 2146 falls well within the range of likely outcomes and on the Democratic-favorable side of outcomes in the distribution of simulated plans. Dr. Barber’s analysis demonstrates that H.B. 2146 is not a partisan outlier and is fair to both political parties.

Dr. Barber next analyzed how the other plans submitted to the Commonwealth Court compared to the 50,000 simulated plans. Many of the plans (*Carter, Gressman, Governor, Senate D2, CCFD, Citizen Voters, Draw the Lines, Ali*) are predicted to result in 10 Democratic-leaning seats. Barber Reb. Rep. at 15, Table 3. However, only 13.7% of the simulations are predicted to result in 10 Democratic-leaning seats—significantly less than the other likely outcomes. Barber Opening Rep. at 23, Fig. 3. The much more common outcomes are either eight or nine Democratic-leaning seats. The House Democratic Caucus Plan is an extreme outlier, predicted to result in 11 Democratic-leaning seats, which occurs in *none* of the 50,000 simulated plans. Barber Reb. Report at 15, Table 3.

H.B. 2146 also creates the most competitive districts of any of the plans. H.B. 2146 creates five districts with a predicted Democratic vote share between .48 and .52. Barber Opening Rep. at 18-21, Fig. 2; Rep. at 89. No other plan creates as many competitive districts, and most create from zero to three such districts. Rep. at 89; Barber Reb. Rep. at 13. What is more, Dr. Barber’s analysis further shows that numerous plans draw these most competitive “up for grab” districts to generate more Democratic-leaning seats, making them much less competitive and safer for Democrats. In analyzing the most competitive seats, Dr. Barber found that, for example, both the *Gressman* and Governor plans “systematically generate districts that are at the most Democratic edge of the simulations in these competitive districts.” Barber Reb. Rep. at 17. He found similar results with many of the other plans. *Id.* at 19, Table 4. Thus, in the districts that are most up for grabs, these plans create districts that are more Democratic-leaning than nearly every one of the simulated plans. *Id.* This does not occur by accident. These plans are optimized to create more favorable Democratic-leaning seats in the districts that are the most competitive. To the contrary, these same middle districts in H.B. 2146 are generally within the middle range of the simulations:

Figure 4: Partisan Composition of HB2146 plan and Simulations



Note: The grey 'clusters' show the range of vote margins for each district, ordered from least Democratic to most Democratic in the 50,000 simulations. The black dot inside of each cluster shows the partisan index for the HB2146 plan. Next to each cluster is the percentile, or relative position of the HB2146 plan within each cluster of simulation results for each district.

Barber Opening Rep. at 26, Fig. 4; Rep. at 89. Thus, H.B. 2146 stands out as the least biased of all the proposals across these most competitive districts. Barber Reb. Rep. at 19.

Finally, during the hearing, several parties made unfounded accusations that Dr. Barber’s failure to consider race in his simulations was skewing the partisan results. Not so. Dr. Barber analyzed 1,852 of his 50,000 simulated plans that likewise created two majority-minority districts including one majority-Black district just by

following traditional redistricting criteria. Barber Opening Rep. at 35-36; Rep. at 90-91. He also generated another set of 5,000 simulated plans that had at least three districts that contained 35% or greater non-white voting age population for purposes of comparison. Barber Opening Rep. at 36; Rep. at 9. Even these race-conscious simulations demonstrated that the most common outcome in the simulated plans was eight or nine Democratic-leaning seats, the same as H.B. 2146 or less, and one or two less than the majority of the plans submitted to the Court. Barber Opening Rep. at 35-36; Rep. at 91. In other words, the alleged failure to intentionally draw certain majority-minority districts, for which there is no support in the record, is not the cause of any partisan skew shown by Dr. Barber's analysis.

In sum, Judge McCullough appropriately credited Dr. Barber's methodology and reasoning and found it to be persuasive. Rep. at 209. There is no reason to depart from that finding. Dr. Barber's analysis clearly and unequivocally demonstrates that H.B. 2146 is fair when compared to a set of unbiased maps. Based upon Dr. Barber's analysis, H.B. 2146 is actually the most "fair" map when comparing to a set of unbiased maps. This Court previously relied upon a similar methodology in evaluating the 2011 map's compliance with the Free and Equal Elections Clause and it should do so again here.

## **B. Partisan Fairness Metrics**

1. H.B. 2146's partisan fairness metric scores are good and do not indicate the plan confers an unfair advantage to any political party.

Under numerous partisan fairness metrics, H.B. 2146 is also very fair. Dr. Barber calculated a mean-median of  $-.015$  and an efficiency gap of  $-.02$  for H.B. 2146, which are close to zero but tilt slightly in favor of Republicans. Barber Opening Rep. at 28, 31. This is consistent with the political geography of Pennsylvania that all experts agree results in a natural tilt in favor of Republicans.

But these raw scores do not tell you much unless you have something to compare them to. They simply indicate a bias in favor of one party or another; they do not tell you the cause of that bias. Thus, Dr. Barber also calculated the mean-median and efficiency gap scores for each of his 50,000 simulated plans and found that H.B. 2146 has a mean-median that is smaller (more favorable to Democrats) than 85% of the simulated plans, and an efficiency gap that is smaller (more favorable to Democrats) than all of the 50,000 simulated plans. Barber Opening Rep. at 28-29, 32, Figs. 5 & 6. In other words, the bias seen in H.B. 2146 is consistent with the bias seen in plans drawn by a computer with no partisan data, and that simply follow traditional redistricting principles. This proves that the small Republican bias seen in H.B. 2146 is the result of political geography, not any intentional gerrymander. That is in stark contrast with the opinions of Dr. Chen and

Dr. Pegden in *LWV* regarding the 2011 congressional plan—namely, that it was a statistical outlier that could *not* be explained by political geography. *LWV, LWV*, 178 A.3d at 772-75, 776-77.

Many of the experts in this case opine that H.B. 2146 is less “fair” than other maps because other maps have partisan fairness metric scores that are closer to zero. Their idea of a “fair” map is one that has partisan fairness metric scores as close to zero as possible. But that is not the correct way of analyzing it. Only Dr. Duchin compares these measures of partisan fairness to any simulation result. *See Barber Reb. Rep.* at 20. As discussed more fully below, her analysis confirms Dr. Barber’s conclusions. Without comparing these metrics to a set of unbiased maps one “cannot disentangle any measures of partisan bias from impacts due to the political geography of the state.” *Id.*

Dr. Barber calculated the mean-median and efficiency gaps scores for each of the other submitted plans and compared them to the simulated maps. He was the only expert to do such an analysis. He concluded that all of the other plans are *more* Democratic-leaning than the non-partisan simulations. *Id.* at 21. In many cases, the other plans are in the 97-100th percentile of the simulations. *Id.* In other words, they are partisan outliers in favor of Democrats. To the contrary, H.B. 2146 is in the middle, *Barber Reb. Rep.* at 21, demonstrating its fairness when compared to a set of unbiased maps—the same methodology previously adopted by this Court to

evaluate the partisan fairness of the 2011 congressional plan in *LWV*. 178 A.3d at 828 (Baer, J., concurring in part) (“a petitioner may establish that partisan considerations predominated in the drawing of the map by, *inter alia*, introducing expert analysis and testimony that the adopted map is a statistical outlier in contrast with other maps drawn using traditional redistricting criteria . . .”).

Dr. Duchin is the only other expert that performed a simulation analysis, though she provided no details on her methodology or the parameters used to generate her “ensemble” of 100,000 maps. Tr. 445:1-23. Still, Dr. Duchin overtly admits, “[r]andom plans tend to exhibit pronounced advantage to Republicans across this full suite of recent elections.” Duchin Opening Rep. at 18, Fig. 7. The Governor’s plan, and many of the other plans, are drawn to overcome this tendency. *See id.* But in doing so, these plans are partisan outliers in favor of Democrats. Dr. Duchin admitted during cross-examination that the Governor’s map was an outlier when compared to her ensemble of maps. Tr. 452:20-25. It had a partisan bias score that was outside all of her ensemble of 100,000 maps. *See* Duchin Opening Rep. at 19, Fig. 8. Dr. Duchin absurdly asserts, however, that an outlier here is good. Tr. 450:10-16. But this Court rejected that notion in *LWV*.

Dr. Duchin’s analysis confirms Dr. Barber’s work. It confirms that drawing a set of random plans results in plans that have a natural tilt in favor of Republicans. Nobody disputes that H.B. 2146 has a partisan bias consistent with the unbiased



simulated plans. The plans that have lower partisan fairness scores (*i.e.*, closer to zero) based on metrics like mean-median and efficiency gap are drawn to intentionally overcome this unintentional geographic bias, and result in statistical outliers. They demonstrate that partisan considerations dominated the drawing of these maps as opposed to following traditional redistricting criteria, which is why many of them split cities like Pittsburgh, or split Bucks County to pair with parts of Philadelphia. But that is drawing lines to intentionally benefit one political party over another—gerrymandering—and this Court rejected that practice in *LWW*.

2. There is no requirement that partisan fairness metrics get to “zero”; the focus is on whether a plan is within a given range.

In addition, Judge McCullough properly rejected an attempt to “get to zero” on these partisan-fairness metrics. These measures do not point to ideals and condemn small variations from them. “One thing all the measures have in common is that they” look to “the *magnitude* of the bias.” Barry Burden & Corwin Smidt, *Evaluating Legislative Districts Using Measures of Partisan Bias and Simulations*, SAGE Publishing, Vol. 10 No. 4, at 2 (2020), <https://doi.org/10.1177/2158244020981054>.

Indeed, no other approach would make sense. Partisan-fairness measures are imperfect estimates that attempt to forecast future election results based on past results, often from different electoral units. Reading significance into small differences is like seeing two news channels make slightly different weather

forecasts—one predicts 30 degrees and the other 32 degrees—and concluding they are dramatically different when they offer practically the same forecast. Partisan fairness measures are like that—imprecise. They do not command adherence to *zero*. They afford a range and signal cause for concern when plans stray outside the range.

a. The Efficiency Gap. The efficiency gap defines all votes for a losing candidate as “wasted” and creates a measurement of the difference in the parties’ “wasted” votes divided by the total number of votes. A party benefitting from a partisan gerrymander will have fewer wasted votes than the burdened party. The authors of the efficiency gap metric did not argue for a “zero” efficiency gap. Rather, they proposed a limit of “two seats for congressional plans and 8 percent for state house plans” above which an efficiency gap score would be identified as a “presumptive[]” gerrymander. Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering & the Efficiency Gap*, 82 U. Chi. L. Rev. 831, 837 (2015). The authors included the important caveat that “plans not be expected, based on sensitivity testing, ever to have an efficiency gap of zero over their lifetimes.” Stephanopoulos & McGhee, 82 U. Chi. L. Rev. at 837. In fact, they did not recommend that a court adopt a “zero threshold” for several reasons, including that the efficiency gap’s calculation varies so much from election to election. *Id.* at 887. In practice, “beginning in 2000, there was a ‘very modest Republican advantage,’ but the efficiency gaps ‘were never very far from zero’” and some 75% of efficiency

gaps in Pennsylvania ranged from -10% to 10%. *LWV*, 178 A.3d at 778 (citations omitted).

b. The Mean-Median Measure. The mean-median measurement identifies the difference between the median or middle vote share across all districts and the mean or average vote share across all districts. When these numbers diverge significantly, the district vote distribution is skewed in favor of one party and, conversely, when it is close, that distribution is more symmetric. Among those limitations is the reality that it is “sensitive to the outcome in the median district.” *Ohio A. Philip Randolph Institute v. Householder*, 373 F. Supp. 3d 978, 1028 (S.D. Ohio 2019) (citation and internal quotation marks omitted), *rev’d on other grounds*, 140 S. Ct. 102. In *LWV*, Dr. Chen found his simulated plans ranged from “a little over 0 percent to the vast majority of them being under 3 percent,” a range he explained as “normal.” 178 A.3d at 774.

c. Partisan Symmetry. Another measure of partisan fairness is a partisan symmetry analysis that analyzes a “vote-seat curve.” The vote-seat curve is a computer-generated graph that plots the portion of seats a party will win for a certain vote share. The theory behind this metric is that a difference between seats won and vote share—*e.g.*, 70% of the seats won with only 50% of the overall votes—would suggest an asymmetrical partisan skew. This partisan symmetry metric was proposed during the 1990s and was the subject of debate in *League of United Latin American*

*Citizens v. Perry*, 548 U.S. 399 (2006) (“*LULAC*”). See generally Stephanopoulos & McGhee, 82 U. Chi. L. Rev. at 844-45. Both Justice Stevens, the metric’s main proponent, and Justice Kennedy, the “swing” justice, in their respective opinions acknowledged that any departure from zero was not suspect, and the debate—then, as now—is when a deviation exceeds a reasonable range and becomes suspect. See, e.g., *LULAC*, 548 U.S. at 420 (Kennedy, J.) (recognizing the need for a judicially-manageable standard based on partisan symmetry to evaluate “how much partisan dominance is too much”); *id.* at 468 n.9 (Stevens, J., concurring in part) (suggesting either that “deviations of over 10% from symmetry create a prima facie case of an unconstitutional gerrymander” or that “a significant departure from symmetry is one relevant factor in analyzing whether . . . a districting plan is an unconstitutional partisan gerrymander”). One of the principal concerns with the partisan symmetry standard, according to Justice Kennedy, is the measure’s resort to hypothetical, or “counterfactual,” elections; “the existence or degree of asymmetry may in large part depend on conjecture about where possible vote-switchers will reside.” *Id.* at 420 (Kennedy, J.).

d. The use of these partisan metrics as a range, rather than an absolute-zero standard, is consistent with the judicial scrutiny applied to other voting laws. For example, when evaluating a challenge to a voting law under the Voting Rights Act, “the size of the burden imposed by a challenged voting rule is highly relevant.”

*Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2338 (2021). “The concepts of ‘openness’ and ‘opportunity’ connote the absence of obstacles and burdens that block or seriously hinder voting, and therefore the size of the burden imposed by a voting rule is important.” *Id.* (edit marks omitted). The same is true under the so-called *Anderson-Burdick* framework for assessing burdens on the fundamental right to vote under the Equal Protection Clause. *See Daunt v. Benson*, 956 F.3d 396, 406-07 (6th Cir. 2020). “The level of scrutiny under this test ‘depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.’” *Id.* at 407 (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). “[W]hen a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters,” no strict-scrutiny standard applies, and “‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.” *Id.* (quoting *Burdick*, 504 U.S. at 434). The same is true with the one-person, one-vote standard under the federal Equal Protection Clause for congressional districts. *See Tennant v. Jefferson Co. Comm’n*, 567 U.S. 758, 760 (2012) (recognizing the vote-dilution standard “is a ‘flexible’ one” that depends, among other things, on “the size of the deviations”).

e. And using partisan fairness measurements as a comparison to a range, rather than as an absolute zero target, is not only consistent with that body of federal case law, but is also consistent with the Court’s treatment of these metrics in *LWV*.

In its discussion of the 2011 Plan, the Court viewed Dr. Chen’s simulations analysis as “the most compelling evidence.” 178 A.3d at 818. In relevant part, the Court credited Dr. Chen’s analysis that showed his set of simulated non-partisan plans exhibited pro-Republican mean-median gap ranging between 0 and 4%, whereas the 2011 Plan’s score was 5.9%. *Id.* at 820. The difference between the simulation range and the 2011 Plan was treated as an “outlier”—one that could not be explained as “an attempt to account for Pennsylvania’s political geography” or other non-partisan reasons. *Id.*

Likewise, the Court credited Dr. Warshaw’s testimony that:

similarly detailed how the 2011 Plan *not only preserves the modest natural advantage, or vote efficiency gap, in favor of Republican congressional candidates relative to Republicans' statewide vote share*—which owes to the fact that historically Democratic voters tend to self-sort into metropolitan areas and which he testified, until the 2011 Plan, was “never far from zero” percent—but also creates districts that *increase that advantage to between 15 to 24% relative to statewide vote share.*

*Id.* (emphasis added). Hence, just four years ago, this Court recognized that there is a range of typical or normal values for these metrics attributable to Pennsylvania’s political geography—and this Court struck down the 2011 Plan for exhibiting “unfair partisan advantage,” *id.* at 821, in part because the 2011 Plan fell outside that range. All of the Court’s analysis and its studious comparison of these scores to a non-partisan baseline (*i.e.*, Dr. Chen’s simulated plans) would have been a complete waste if the real test was a comparison between the 2011 Plan and zero.

As demonstrated above, the mean-median and efficiency gap scores for H.B. 2146 fall well within the range of reasonableness as opined by Dr. Chen and Dr. Warshaw four years ago. Although scoring can depend on the elections utilized by the expert, no expert found that H.B. 2146 had a mean-median gap greater than three percent, and no expert found that H.B. 2146 had an efficiency gap greater than seven percent. This demonstrates that the modest bias is the result of political geography, not the result of an intention to create a partisan advantage.

**III. Intentionally Drawing District Lines To “Correct For” A Slight, Natural Republican Tilt In The State’s Political Geography Is Gerrymandering.**

It is an undisputed fact that the present political geography of Pennsylvania has a slight tilt in favor of Republicans. This tilt is not caused by gerrymandering, but simply because voters who support Democratic candidates are densely clustered in urban areas and voters who support Republican candidates are more widely dispersed in the rural and suburban areas. Petitioners and other parties urged the Commonwealth Court to adopt plans with a strong Democratic skew, which they justify in the name of “correcting” that small tilt. But nothing in Pennsylvania’s Free and Equal Elections Clause or *LWV* either compels or permits that outcome—sorting voters based on their politics does *not* “equalize” the power of voters. And sorting voters by their partisan preferences is, by definition, gerrymandering.

A. **All experts confirmed that Pennsylvania’s political geography has a Republican tilt because Democratic voters are clustered in cities and urban areas, but Republican voters are more evenly distributed in the rest of the state.**

It is an undisputed fact in this case that the natural political geography in Pennsylvania today has a slight Republican tilt due to the geographic concentration of Democratic voters in cities. This Court noted that phenomenon in *LWV*. See 178 A.3d at 774 (recognizing a “small” advantage for Republicans). In that case, Dr. Chen attributed the small advantage to “the way that Democratic voters are clustered and Republican voters are a bit more spread out across different geographies of Pennsylvania.” Rep. at 162 (quoting *LWV*, 178 A.3d at 774).

As Judge McCullough concluded, the experts in this case confirmed that political geography exists today and results in a small (or slight) tilt. See, e.g., Rep. at 162-64 (citing testimony of Drs. Rodden, DeFord, and Duchin). Most notably, Governor Wolf’s expert, Dr. Duchin, created an ensemble of 100,000 simulated redistricting plans for Pennsylvania that were drawn using non-partisan criteria and without partisan data, and she found that her ensemble “tend[ed] to exhibit pronounced advantage to Republicans across this full suite of recent elections.” *Id.* at 164 (quoting Duchin Opening Rep. at 18).



**B. The Commonwealth Court correctly concluded that deliberate efforts to “correct” for a naturally occurring political tilt in a plan is a subspecies of partisan gerrymandering that this Court found violated the Free and Equal Elections Clause.**

This Court recognized in *LWV* the possibility that technological advances “can potentially allow mapmakers, in the future, to engineer congressional districting maps, which, although minimally comporting with these neutral ‘floor’ criteria, nevertheless operate to unfairly dilute the power of a particular group’s vote for a congressional representative.” 178 A.3d at 817. Petitioners and certain other parties in this case have, using advanced computational tools, presented the Commonwealth Court—and now this Court—with plans that do just that. They asked the Commonwealth Court to adopt plans that are intended to “overcome” the slight tilt in favor of Republicans found in Pennsylvania’s political geography, and have invoked *LWV* to do so. But nothing in Article I, Section 5, gives Petitioners a right to a rigged plan that “overcomes” a neutral and small pro-Republican tilt based on the state’s political geography. Their view, in fact, vaults political party interests over those of voters’ and turns over 200 years of Pennsylvania history and precedent on its head. Judge McCullough rightly rejected this theory, calling it a “subspecies of unfair partisan gerrymandering,” Rep. at 197, and so should this Court.

Pennsylvania elects its Representatives to Congress in single-member districts, a geographic-based system of representation. Respecting the integrity of counties and political subdivisions has *always* been paramount to the

Commonwealth’s redistricting policy. Since 1790, standards grounded in “neutral criteria” governed the crafting of General Assembly districts. *LWW*, 178 A.3d at 814. “These standards place the greatest emphasis on creating representational districts that both maintain the geographical and social cohesion of the communities in which people live and conduct the majority of their day-to-day affairs, and accord equal weight to the votes of residents in each of the various districts in determining the ultimate composition of the state legislature.” *Id.* The prevention of the “dilution of an individual’s vote was of paramount concern” to the framers of the Pennsylvania Constitution, and they “considered maintaining the geographical contiguity of political subdivisions . . . to afford important safeguards against that pernicious prospect.” *Id.* at 815.

Balancing the expectation of political parties has not been part of the equation. As this Court found, “[t]he constitutional reapportionment scheme [of Article II, Section 16] does not impose a requirement of balancing the representation of the political parties; it does not protect the ‘integrity’ of any party’s political expectations. Rather, the construct speaks of the ‘integrity’ of political subdivisions, which bespeaks history and geography, not party affiliation or expectations.” *Holt v. 2011 Legislative Reapportionment Comm’n*, 67 A.3d 1211, 1235-36 (Pa. 2013) (“*Holt II*”). That makes sense: redistricting law focuses on the rights of *voters*, not *parties*.

In *LWV*, this Court again recognized the primacy of using *geography*—and not *political preferences*—as the basis for drawing fair representational districts. By focusing on the neutral criteria, a map-drawer “maintains the strength of an individual’s vote in electing a congressional representative.” 178 A.3d at 816. The Court went on: “[w]hen an individual is grouped with other members of his or her community in a congressional district for purposes of voting, the commonality of the interests shared with other voters in the community increases the ability of the individual to elect a congressional representative for the district who reflects his or her personal preferences.” *Id.* Importantly, “[t]his approach inures to no political party’s benefit or detriment,” but “simply achieves the constitutional goal of fair and equal elections for all of our Commonwealth’s voters.” *Id.*

But if this Court were to select a plan intended to “overcome” any slight, naturally occurring Republican-leaning tilt in the state’s political geography, the Court would thereby place its thumb on the scale for Democrats—an approach that will “inure[]” to the Democratic Party’s benefit.

Petitioners believe this thumb-on-the-scale is defensible under *LWV* based on dicta in that case describing the intent of Article I, Section 5, as ensuring that each voter’s “power . . . in the selection of representatives be equalized to the greatest degree possible with other Pennsylvania citizens.” 178 A.3d at 817. If today’s political geography happens to offer a slight advantage to Republicans, to

Petitioners, it is essential to jimmy the district lines until that political geography is “overcome” and Democrats get the number of districts they desire. But when the Court spoke of “equalizing” voting power, it was doing so in the framework of hundreds of years of precedent that spoke of “equality” of representation in terms grounded in the number of people in each district and respecting the integrity of the boundaries of the counties and municipalities that form a major part of Pennsylvanians’ daily lives.

“Political geography” means the will of the voters as expressed in their own communities. Petitioners and other parties treat the voting patterns of Pennsylvania’s communities as an obstacle to be “overcome” through clever redistricting using computer algorithms and mathematical metrics. But “overcoming” a “tilt” in the state’s “political geography” is not an innocuous act, akin to the old barkeeper’s trick of putting sugar packets under an unlevel table leg to prevent the table from tilting. It requires conscious state action to treat the voters of urban areas (that are heavily Democratic) differently than voters in suburban areas (that are politically mixed), and both of those groups differently than rural areas (that are Republican-leaning), to convey a partisan advantage on Democrats. As *Carter* Petitioners’ expert, Dr. Rodden, explained in a 2019 book, to overcome this natural tilt, “Democrats would need a redistricting process that intentionally carved up large cities like pizza slices or spokes of a wheel, so as to combine some very Democratic urban areas with some

Republican exurbs in an effort to spread Democrats more efficiently across districts.” Rep. at 162-63 (citations omitted); *see also id.* at 177 (quoting public comments of Dr. David Wasserman that the process requires “conscious pro-Dem[ocrat] mapping choices” to give Democrats an advantage). Rather than do the work of persuading voters to elect their preferred candidates to Congress, Petitioners ask this Court to rig the map to spare them the effort. That is the very definition of gerrymandering, and it violates the rights of voters as enshrined in the Free and Equal Elections Clause.

Perhaps this point is illustrated most clearly with Governor Wolf’s proposed plan and evidentiary presentation. His expert, Dr. Duchin, praised the plans submitted by the Governor, the *Carter* Petitioners, and the House Democratic Caucus as “dominating the field” on her partisan-fairness metrics. Duchin Reb. Rep. at 5. But the Governor’s plan saws the City of Pittsburgh practically in half, placing 176,425 people into one district and 126,546 people into another. Barber Reb. Rep. at 10, Tbl. 2.<sup>7</sup> Governor Wolf’s plan also splits Bucks County unnecessarily. Rep. at

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<sup>7</sup> This analysis illustrates the danger in just looking at metrics like the number of split cities—doing so can mask important differences between plans. As Dr. Barber explained in his study of the various proposed plans’ municipal splits, “aside from necessary divisions of Philadelphia and unnecessary divisions of Pittsburgh [in some plans], . . . all of the remaining municipal splits are of very small municipalities and townships across the state that shift only a small population.” Barber Reb. Rep. at 9. Splitting a small municipality to move a few thousand people into another district (e.g., to achieve population equality) is one thing; moving 96,829, 126,546, or

160. Although the House Democratic Caucus plan draws Pittsburgh into a single district, it does so by combining it with northern areas in a shape the Commonwealth Court described as a “Freddy-Krueger like claw.” *Id.* at 203. Yet Dr. Duchin defended the Governor’s plan—despite her own analysis revealing it to be an “outlier” on partisan metrics—by saying it went the farthest to “overcome” the natural geographic “tilt.” Duchin Opening Rep. 2. Although Dr. Duchin may view these plans as “dominating the field” in certain mathematical metrics, Duchin Reb. Rep. at 5, the Pennsylvania Constitution and this Court’s precedents would say otherwise. In fact, they are all partisan outliers that draw *ten* Democratic-leaning districts (and eleven, in the case of the House Democratic Caucus plan).

But while several of these plans might “dominate the field” in terms of maximizing the number of Democrat-leaning seats, they do so at representational cost to the voters. As Dr. Naughton testified at trial with respect to Pittsburgh, keeping the City together “unites people’s interests for resources” and “gives them a [series] of common interests.” Rep. at 96 (quoting Tr. 713.) After all, a Member of Congress represents *all* the constituents of the Member’s district—not only those of the Member’s party. Splitting Pittsburgh up might serve national Democratic interests by eking out one more Democratic seat, but dividing Pittsburgh’s voters

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140,884 Pittsburgh residents into another district is another. *See id.* at 10. Yet the metrics count each as “one” split even though the latter has a much larger impact.

into two districts “dilutes their advocacy” and reduces those voters’ power and influence in Washington, D.C. *Id.*

In addition to these other problems, trying to rig a redistricting plan to “correct” for the state’s political geography presumes political geography is static—that every blue and red dot on today’s map is no more likely to move than the Allegheny Mountains. That assumption is wrong: political geography is dynamic and unpredictable. As Dr. Rodden explained, a “pronounced trend in Pennsylvania” over the past decade was that “places that are gaining population are not only more Democratic to begin with, but are becoming *more* Democratic as they gain population” and that places losing population are becoming more Republican. Rodden Opening Rep. 10 (emphasis in original). Hence, places “like Lancaster and Cumberland, started out with strong Republican majorities, meaning that they are becoming more competitive over time as they gain population.” *Id.* After discussing Dr. Rodden’s analysis and other data about Pennsylvania voting patterns over the past decade, Dr. Barber concluded:

The upshot of these patterns is that if a map drawer is using contemporary partisan trends to guide their decision-making, we have no way of knowing if the geographic patterns they are trying to “correct” for will 1.) remain the same, 2.) perhaps become more pronounced, or 3.) reverse in direction. It very well could be the case that over the next 10 years Democratic voters start to win more in suburban and rural areas while Republicans begin to make inroads in the cities. In fact, recent research shows that the issues that divide the parties are shifting from economic to social and educational-based,

which could easily lead to a shift in the partisan coalitions that looks very different than it does today.

Barber Reb. Rep. 6-7.

At bottom, our nation elects Representatives to Congress using single-member districts—a fundamentally geographic-based system of representation. Our nation does so even though other electoral systems are available that are less tied to geography, like the party-list proportional representation system used in 94 countries. *See* Peter Buisseret et al., *Party Nomination Strategies in List Proportional Representation Systems*, *Am. J. Pol’y Sci.* (Jan. 14, 2022), <https://doi.org/10.1111/ajps.12691>, at 1 n.1. And that choice of system matters, and it must be respected—even if the current spatial distribution of voters produces a small advantage for Republicans.

**IV. H.B. 2146 Is the Only Plan Submitted to the Commonwealth Court That Went Through Any Meaningful Public Process.**

House Bill 2146 not only was legislation passed by both houses of the General Assembly, but it went through an open, public, and transparent process. It was drafted studiously over the course of months, with 11 public hearings, the work of non-partisan activists, and extensive public comments. This Court should not adopt the other proposals drafted under the cover of darkness with little or no public scrutiny.



A. **The General Assembly undertook a transparent, deliberative, and meaningful redistricting process that led to the passage of H.B. 2146.**

As described *supra*, H.B. 2146 went through a full transparent, deliberative, and meaningful process that ultimately led to its passage by both chambers of the General Assembly. The House began by soliciting proposals, and after evaluating the 19 proposals, chose one drafted by a well-known nonpartisan citizen, Amanda Holt. She drew this map without political influence, met constitutional requirements, and it limited unnecessary splits of communities, while creating compact, contiguous districts. Grove Letter; Ex. 1 to Schaller Aff. The legislature did not stop its request for input there, but again solicited the public's input, this time in the form of public comments. *See* Grove Letter; Rep. at 48. After considering each of the 399 comments they received, the legislature incorporated many of these suggestions to increase compactness and preserve certain communities of interest. *Id.* The public had four weeks to review and comment on every part of this plan. *See* Grove Letter. The legislature had the opportunity to review and amend the bill, and then passed it out of the House on January 12, 2021. The Senate then reviewed and considered the map for twelve days before ultimately passing it as well.

This means that H.B. 2146 was initiated with an open and transparent process. The legislature not only solicited additional input from citizens themselves and from the people's elected representatives in both the House and the Senate, but adjusted

the map in response to Pennsylvanian’s concerns and comments. This orderly legislative process allowed appropriate consideration of various parties’ concerns and ultimately, created a map that had gone through the entire legislative process with no short cuts or back-room deals. Even the Governor’s expert admitted that this process led to a map which fulfilled traditional criteria for evaluating redistricting maps, because H.B. 2146 “is population-balanced and contiguous, shows strong respect for political boundaries, and is reasonably compact.” Duchin Opening Rep. at 2.

The voice and will of the people of a state is expressed through their elected representatives, so the actions of the legislature are devices of “monumental import, and should be honored and respected by all means necessary.” Rep. at 214. The legislative branch, in this case, the General Assembly, is uniquely equipped to evaluate redistricting maps because of “the knowledge which its members from every part of the state bring to its deliberations, its techniques for gathering information, and other factors inherent in the legislative process.” *Butcher v. Bloom*, 203 A.2d 556, 569 (Pa. 1964). The legislature is able to “weigh[] and evaluate[]” key “criteria and standards” and “exercise its political judgment” in a way that no other branch of government can. *Perry v. Perez*, 132 S. Ct. 934, 941 (2012). The legislature’s unique position and tools to evaluate necessary criteria for redistricting while expressing the will of the people is why the General Assembly must be “the

organ of government with the primary responsibility for the task of apportionment.”

*Butcher v. Bloom*, 216 A.2d 457, 458 (Pa. 1966).

**B. The Governor’s plan was only published Nine Days before his submission was due in Court, and much of it is shrouded in secrecy.**

Rather than work with the General Assembly to agree on a congressional redistricting plan, or provide any meaningful and valid feedback on how H.B. 2146 was unconstitutional, the Governor simply created his own map. But in contrast to H.B. 2146, the Governor’s plan evaded any meaningful review or public input. To begin with, the origins of the Governor’s plan are a mystery. The Governor’s own expert, Dr. Duchin, does not know who drew the Governor’s plan. Tr. 436:24-437:8. There is no information regarding the process or considerations used by the architect of the Governor’s plan. Tr. 437:9-13. And the Governor has never shared that information with the public. Tr. 437:14-18. The governor then purposefully avoided any meaningful public review or consideration of his map, by introducing his map on January 15, 2022, less than two weeks before this trial began (and nearly forty days after the legislature introduced H.B. 2146). The governor released his own map only *after* the Commonwealth Court’s January 14, 2022 order requiring the intervenors to submit maps in this case, raising the question of whether he would have shared this map for public view *at all* if not required to do so by the court.

The Governor did not approach this redistricting process with the legislature in good faith. Although redistricting is inherently a legislative activity, as discussed

above, the Governor did not communicate at all with the legislature while drafting this plan. *See* Grove Letter. The House State Government Committee released detailed information regarding the choices it made to update H.B. 2146’s maps, but the Governor’s staff either did not reach out to Rep. Grove for this information or ignored it when it was provided on the “paredistricting.com” website. *Id.* at 3, 8-9. The Governor argued that his only ability to influence the maps was a veto, but that was only because he refused to participate in any earlier discussions. *Id.* A decision that permits the Governor to opt out of the legislative redistricting process, and then adopts his eleventh-hour plan (suited to his own interests) would create a perverse incentive for the executive branch to avoid the legislative process and responsibilities required of it by both state and federal law.<sup>8</sup>

C. **The House and Senate Democratic Caucuses never proposed their plans during the legislative process.**

Similarly, the House and Senate Democratic Caucuses have drafted plans from whole cloth without any input from the legislative process or from the People of Pennsylvania. These maps were never proposed during the lengthy legislative

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<sup>8</sup> During closing argument, the Senate Democratic Caucus argued that the General Assembly’s plan should not receive any special consideration because, counsel argued, it would create a perverse incentive for future legislators to refuse to compromise and then demand that the Court blindly defer to their plan. *See* Tr. 1027-28. But that is not what occurred here. It was Governor Wolf and the Democratic caucuses in the General Assembly that did not meaningfully engage in the legislative process—apparently in the hope that this Court would simply rubber-stamp one of their plans.

process, and none of the members of these caucuses proposed any of these maps as amendments to H.B. 2146. *See* Bill History, Republican Legislative Intervenors' Opening Br., Ex. E ("Bill History"). This Court should reject the attempt by a handful of officials to circumvent the legislative process and flood the court with maps that could not garner support in the duly-elected General Assembly.

**D. The Gressman plan was drawn in secret by a computer “optimization” algorithm.**

The *Gressman* plan is the most mysterious of all. Using a “computer algorithmic technique” to draw its districts, Tr. 276:21-22, the *Gressman* plan has no input from anyone besides the *Gressman* plaintiffs. The expert testifying in support of that plan did not know what technique was used—he only knew that it was an algorithm. Tr. 276:19-277:4. And he did not disagree that the “computational techniques” could have included optimizing for partisan fairness. Tr. 278:13-23. This is yet another plan that had no benefit of the legislative process or input from the public.

None of the above plans acknowledge the Legislature’s “primary role in redistricting.” *LWV*, 178 A.3d at 822. Moreover, they may be motivated by impermissible political criteria, and they involved minimal or no input from the public. Only H.B. 2146 can trace its origins, explain the traditional redistricting criteria and constitutional requirements it achieves, and show its implementation of broad public comment and support.

V. **The Commonwealth Court Properly Rejected the “Least Change” Approach Advocated by the Carter Petitioners.**

The *Carter* Petitioners argued below that their proposed plan is superior because it “takes a least-change approach” relative to the 2018 plan. Carter Post-Trial Br. at 22. Consistent with this Court’s existing case law, Judge McCullough correctly held that “using least-change metrics here is of limited utility because an 18-district plan is being replaced by a 17-district plan,” and that there is no legal requirement that the Court defer to its own prior redistricting choices in such circumstances. Rep. at 184, 186. Those conclusions should be affirmed.

First, when a version of the “least changes” argument was pressed in legislative reapportionment litigation a decade ago, the Supreme Court rejected it and reiterated that “the governing ‘law’ for redistricting” is “applicable constitutional and statutory provisions and on-point decisional law,” not “the specifics of prior reapportionment plans ‘approved’ by the Court.” *Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711, 735 (Pa. 2012) (“*Holt I*”).

Then, in *Holt II*, the Court again criticized arguments about “the supposed constitutionalization of prior redistricting plans” and emphasized the “limited constitutional relevance” of maintaining the outcomes of previous plans. *Holt II*, 67 A.3d at 1236. When a similar argument was again raised in 2018 in *LWV II*, the Court again rejected it and reiterated that “the preservation of prior district lines” is a consideration that is “wholly subordinate to the neutral criteria of compactness,

contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts.” *LWV*, 178 A.3d at 817.

Aside from the fact that their argument flies in the face of prior precedent, *Carter* Petitioners’ contention that making the “least changes” from the previous map is somehow a virtue is not sound. As the Supreme Court explained when rejecting the argument in *Holt I*, prioritizing similarity to a previous plan is not a traditional redistricting principle. That is because “prior ‘approvals’ of plans do not establish that those plans survived . . . all possible challenges. Instead, in the prior redistricting appeals, this Court merely passed upon the specific challenges that were made.” *Holt I*, 38 A.3d at 735-36.

The cases that the *Carter* Petitioners have identified on this point are inapplicable. In each case, unlike Pennsylvania in this cycle, the state “ha[d] not lost or gained any congressional seats,” *Johnson v. Wis. Elections Comm’n*, 2021 WI 87, ¶ 15, 399 Wis. 2d 623, 637 (Nov. 30, 2021); *see also LaComb v. Growe*, 541 F. Supp. 145, 154 (D. Minn. 1982), *aff’d sub nom. Orwoll v. LaComb*, 456 U.S. 966, 102 S. Ct. 2228, 72 L. Ed. 2d 841 (1982) (eight district plan was first enacted after the 1960 census, and revised eight district plan was challenged after the 1970 census) (Alsop, J. dissenting); *Hippert v. Ritchie*, 813 N.W.2d 374, 381 (Minn. 2012) (adjusting state house and senate districts). None of the courts in those cases grappled with a map where the number of districts itself had to change. Instead, they

recognized the fundamental principle that “[n]otwithstanding a history of political involvement in redistricting . . . it remains the legislatures’ duty,” *Johnson*, 2021 WL 87 at ¶ 19 (citations omitted). In other words, the goal of a “least change” approach is to respect the most recent choices of the *legislature*—not some imagined fidelity to calcified district lines. *See LWV*, 178 A.3d at 822 (the legislature has the “primary role in districting”).

Moreover, the *Carter* Petitioners are simply wrong when they argue that the 2018 remedial plan is the “benchmark” for any plan evaluated by this Court. Courts have recognized that “preserving the cores” of prior districts may be a “legitimate *state* objective[.]” in redistricting, *Mellow*, 607 A.2d at 207-08 (emphasis added), but no cases cited by the *Carter* Petitioners require *courts* to follow this objective as a constitutional directive. *See Karcher*, 462 U.S. at 740 (recognizing that “[a]ny number of consistently applied legislative policies might justify some variance . . . [including] preserving the cores of prior districts”); *see also Abrams v. Johnson*, 521 U.S. 74, 85-86 (1997) (requiring any judicial changes to a legislative plan to be consistent with the legislature’s “redistricting principles”); *Stone v. Hechler*, 782 F. Supp. 1116, 1126 (N.D. W.Va. 1992) (deferring to legislature’s definition of what “preserving the core” meant).

In addition to lacking a sound basis in the case law, a constitutional enshrinement of the “least change” approach would undermine the integrity of the



redistricting process. Evaluating redistricting plans against the traditional criteria—instead of similarity to previous plans—ensures that the new plan is scrutinized in each and every redistricting cycle against the applicable constitutional and statutory standards, and with reference to population and other changes. By contrast, the *Carter* Petitioners’ position would ensure that choices from prior plans would be “frozen” into future plans and tie the hands of future legislators, an outcome that Judge McCullough deemed “deeply troubl[ing].” Rep. at 188.

The record evidence and testimony further reinforce the weakness of the *Carter* Petitioners’ “least change” argument. As the Report noted, the *Carter* Petitioners’ expert, Dr. Rodden, “admitted in his report and testimony that, in the past 10 years, there has been dramatic population shifts in Pennsylvania and fluctuating levels of density in specific areas throughout the Commonwealth, which presumably would have resulted in differing communities of interest.” Rep. at 156-57. Even worse, by the admission of the *Carter* Petitioners’ own expert, their putatively “least-change approach” takes the current 9-9 partisan split and produces a 10-7 pro-Democrat map. Rodden Reb. Rep. at 9, Table 5.

For these reasons, comparing the prior map against any proposed map is not a viable or virtuous principle for redistricting, as this Court has recognized every time the argument surfaces. *Carter* Petitioners’ arguments touting the similarity of their plan to the previous map should fare no better than when this same contention

was rejected in previous redistricting cycles. This Court should reject them once more, in line with existing precedent.

### **CONCLUSION**

For all these reasons, plus those set forth in the House Republican Legislative Intervenors' briefs before the Commonwealth Court (that are incorporated herein by this reference) and that will be set forth in oral argument, House Republican Legislative Intervenors respectfully request that the Court adopt Judge McCullough's Special Master's Report in its entirety.

Dated: February 14, 2022

Respectfully submitted,

*/s/ Jeffrey Duffy*

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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

*/s/ Jeffrey Duffy*  
\_\_\_\_\_  
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**IN THE SUPREME COURT OF PENNSYLVANIA**

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No. 7 MM 2022

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Petitioners,

vs.

Leigh M. Chapman, in Her Capacity as Acting Secretary of the Commonwealth of Pennsylvania; and Jessica Mathis, in Her Capacity as Director of the Bureau of Election Services and Notaries,

Respondents.

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**SENATE REPUBLICAN INTERVENORS' BRIEF IN SUPPORT OF  
REPORT AND RECOMMENDATION OF SPECIAL MASTER**

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During the two-day trial that the Honorable Patricia A. McCullough conducted in this matter, one fact became crystal clear: most of the congressional redistricting plans that were submitted to the Commonwealth Court satisfy all of the traditional, constitutionally-derived criteria for redistricting. But only one of the plans that meets those criteria, House Bill 2146 (“H.B. 2146” or the “Bill”), was the product of a public, transparent, and legislative process. The importance of this factor cannot be overstated or ignored. The United States and Pennsylvania Constitutions have assigned the task of redistricting the Commonwealth’s congressional districts to the Pennsylvania General Assembly. *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 808 (2015); Pa. Const. art. II, § 1. The task, in other words, is expressly and constitutionally committed to the people’s elected representatives. It is a fundamentally legislative task.

H.B. 2146 embodies a 17-district congressional redistricting plan that both the Pennsylvania Senate and House of Representatives thoughtfully considered and passed. H.B. 2146 reflects a transparent, deliberative, and open legislative process, which involved negotiations, compromise, and policy judgments, and which the people’s elected representatives undertook in order to memorialize and implement state policy that reflects the will of their constituents.

During the trial, not a single expert witness testified that H.B. 2146 fails to satisfy the traditional redistricting criteria. Not a single expert witness offered



testimony to suggest that H.B. 2146 is otherwise unlawful, fractures communities of interest, or is insufficiently fair in light of partisan, racial, or other considerations. A witness, in fact, could not credibly offer testimony along those lines. H.B. 2146 meets all of the applicable redistricting requirements (compact and contiguous territory, population equality, and respect for the boundaries of political subdivisions), creates more highly competitive districts than any other map, preserves communities of interest, and, despite having been passed by the Republican-controlled General Assembly, favors Democratic candidates.

Against this backdrop, Judge McCullough was correct to conclude that “with all things being relatively equal with regard to the maps that the Court has not previously discounted or recommended not to be adopted, the Court respectfully recommends that our highest and most honorable institution in the judicial branch of government, our Supreme Court, recognize and revere the expressed will of the People, and the ‘policies and preferences of our State,’ as previously stated, and adopt HB 2146 to represent the boundary lines for the Commonwealth of Pennsylvania in its creation of geographically-unique congressional districts so that the citizens of our great Commonwealth are ensured fair and equal representation in the United States House of Representatives.” Report & Recommendation (“RR”) at 214-15 at ¶ 95 (quoting *Upham v. Seamon*, 456 U.S. 37, 41 (1982) and citing *Perry v. Perez*, 132 S. Ct. 934, 941 (2012)).

Senate Republican Intervenors Jake Corman, President *pro tempore* of the Pennsylvania Senate, and Kim Ward, Majority Leader of the Pennsylvania Senate, support Judge McCullough’s report and recommendation and respectfully request that this Court adopt H.B. 2146. In addition to the points that are discussed below, the Senate Republican Intervenors expressly reserve the right to present arguments at the oral argument in response to any exceptions that the parties and *amici* file to Judge McCullough’s report and recommendation.

### **SCOPE AND STANDARD OF REVIEW**

Under 42 Pa.C.S. § 726, this Court has exercised extraordinary jurisdiction over this matter and, in doing so, designated Judge McCullough as the Special Master. Under these circumstances, the Court’s scope of review is plenary and its standard of review is *de novo*. But where, as here, the Court designates a special master, the special master’s findings of fact, while not binding, are afforded “due consideration, as the jurist who presided over the hearings was in the best position to determine the facts.” *Annenberg v. Com.*, 757 A.2d 338, 343 (Pa. 2000). In this case, Judge McCullough presided over a two-day trial, heard extensive testimony from six expert witnesses, reviewed expert reports that those witnesses prepared, and likewise reviewed expert reports that several non-testifying experts prepared. Judge McCullough authored a comprehensive report and recommendation, setting forth more than 600 findings of fact and conclusions of law. Judge McCullough was in

the best position to make factual findings and credibility determinations and, accordingly, her report and recommendation is entitled to this Court’s careful consideration.

## **ARGUMENT**

### **A. H.B. 2146 Is a Product of the Legislative Process**

As the U.S. Supreme Court has stressed, under Article I, Section 4 of the United States Constitution, congressional “redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking.” *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 808 (2015). Pennsylvania’s legislative power (and therefore its power to engage in congressional redistricting) is vested exclusively in the General Assembly. *See* Pa. Const. art. II, § 1. In Pennsylvania, in other words, the “primary responsibility and authority for drawing federal congressional legislative districts rests squarely with the state legislature.” *League of Women Voters of PA v. Commonwealth*, 178 A.3d 737, 821-22 (Pa. 2018).

Of the multitude of plans that were submitted to the Commonwealth Court, only H.B. 2146 reflects this constitutional directive and represents the deliberation, compromise, and public input that is a part of a transparent legislative process. No other party or *amici* submitted a redistricting plan that has made its way through *any* part of the legislative process, let alone a plan that both the Senate and House have

passed – or even a plan that has been subject to any sort of meaningful public input process at all.

On December 8, 2021, H.B. 2146 was introduced and referred to the House State Government Committee. RR at 47 (FF5). The Bill “embodied a 17-district congressional redistricting plan that a citizen and good-government advocate, Amanda Holt, had created on her own.” RR at 47 (FF6). The House State Government Committee made the bill available for public comment, leading to 399 comments, which resulted in amendments to the bill that were designed to increase the compactness of certain districts and ensure that certain communities of interest were preserved. RR at 48 (FF8 & FF9). On January 11, 2022, the Bill was brought up for second consideration and, on January 12, 2022, the House of Representatives passed it. RR at 48 (FF10).

In the Senate, H.B. 2146 was referred to the State Government Committee. On January 18, 2022, the Bill was reported out of that committee and brought up for first consideration. RR at 48 (FF11). On January 19, 2022, the Bill was brought up for second consideration. RR at 48 (FF12). On January 24, 2022, it was referred to the Senate Appropriations Committee, reported out of that committee, and brought up for third consideration. RR at 48 (FF13). On the same day, the Senate passed H.B. 2146 and the Bill was presented to the Governor, who then vetoed it on January 26, 2022. RR at 48 (FF13 & FF14).

No other party's or *amici*'s plan has been through a similar process. Indeed, both the House Democrats and the Senate Democrats, as members of the General Assembly, could have circulated co-sponsorship memos for proposed plans, introduced their own bills that embodied proposed plans, or offered amendments to H.B. 2146 during the legislative process. They did not do so, instead choosing to forego the legislative process altogether. Similarly, between August 2021 and January 2022, the Governor refused to engage with legislative leaders on the drawing of congressional maps, suggesting that, in this context, he has "no role" in the bill passage process. His claimed lack of any role in the process is belied by his own position in this case, as well as his mid-January release of the very map that he now submits to this Court for consideration, which was essentially presented as a take-it-or-leave it option for the General Assembly at the last legislative moment.

The importance of these dynamics should not be overlooked or diminished. Undertaking redistricting through legislative means and a transparent public process is a fundamental constitutional principle that, as Judge McCullough correctly concluded, elevates H.B. 2146 above the plans that the other parties and *amici* have presented. RR at 214 at ¶ 95. The Constitution envisions that the legislature, not a supercomputer or individual expert witness, will create the redistricting map that governs Pennsylvania's congressional elections for the next decade.

## **B. H.B. 2146 Satisfies All of the Traditional Redistricting Criteria**

H.B. 2146 unquestionably satisfies all of the traditional, constitutionally-derived criteria for a redistricting plan: compact and contiguous territory, population equality, and respect for the boundaries of political subdivisions. *See League of Women Voters*, 178 A.3d at 816 (determining that, under Article I, Section 5 of the Pennsylvania Constitution, *i.e.*, the “Free and Equal Elections Clause,” the criteria in Article II, Section 16, which apply to the creation of state legislative districts, likewise apply to congressional redistricting).

The experts agreed, and Judge McCullough found, that all of the proposed plans satisfy the contiguity requirement. RR at 137 (CL1), 192 (¶ 16). All of the plans, moreover, perform well on the compactness metrics that the experts used. RR at 147 (FF1 & FF3), 193 (¶ 22). And, with the exception of the Carter Petitioners’ Plan and the House Democratic Plan, all of the plans also achieve population equality within a one-person deviation. RR at 138 (CL2), 192 (¶ 18).

With respect to maintaining the boundaries of political subdivisions, the Pennsylvania Constitution identifies six types of subdivisions to consider: counties, cities, incorporated towns, boroughs, townships, and wards. Pa. Const. art. II, § 16. H.B. 2146, in this regard, is among the plans that split the lowest total number of these subdivisions. RR at 147 (FF3), 193 (¶ 23).

It follows that, when it comes to the four fundamental constitutional requirements for a redistricting map, H.B. 2146 performs well, as do other plans. But what sets H.B. 2146 apart, as explained above, is its status as the only plan that has passed through the legislative process or, for that matter, *any* meaningful public input process at all.

As explained below, moreover, there is nothing to suggest that, in meeting the traditional redistricting criteria, H.B. 2146 is otherwise unlawful or fails to preserve communities of interest or, from a partisan perspective, is not sufficiently fair. To the contrary, H.B. 2146 performs *better* on these metrics than the other plans.

**C. H.B. 2146 Preserves Communities of Interest and there is Nothing to Suggest that, from a Partisan Perspective, it is Unfair**

**1. H.B. 2146 Preserves Communities of Interest**

As Judge McCullough noted, this Court in *League of Women Voters* emphasized the importance of “creating representational districts that both maintain the geographical and social cohesion of the communities in which people live and conduct the majority of their day-to-day affairs[.]” RR at 152-53 (quoting *League of Women Voters*, 178 A.3d at 814). See also *Holt v. 2011 Legislative Reapportionment Comm’n*, 67 A.3d 1211, 1241 (Pa. 2013) (“*Holt II*”) (“redistricting efforts may properly seek to preserve communities of interest which may not dovetail precisely with the static lines of political subdivisions”).

On this point, the proposed plans can be distinguished from one another based on whether they split the City of Pittsburgh. RR at 151 at CL3 (concluding that “the maintenance of the City of Pittsburgh within one district is an important factor, which is entitled to weight in the ultimate analysis”); RR at 155 (FF5). This variable is important because, as Judge McCullough observed, “it is undisputed that Pittsburgh’s population is not so great that it is *necessary* to divide the city into multiple congressional districts, as is the case with Philadelphia.” RR at 149 (FF4) (emphasis in original). As Judge McCullough likewise observed, “[t]he Court further heard credible evidence which supports the conclusion that the City of Pittsburgh in many ways constitutes a community of interest, such that its division would not be in the best interests of its residents.” RR at 149 (FF9). Judge McCullough heard evidence, for example, that Pittsburgh voters tend to favor local candidates in statewide elections and share common interests in acquiring federal funds and obtaining constituent services. RR at 150 (FF10 & FF11).

Despite the fact that Pittsburgh “in many ways constitutes a community of interest,” the plans from the Governor, the Senate Democratic Caucus, Draw the Lines PA, and Khalif Ali all split Pittsburgh. RR at 151. The House Democratic Caucus’s Plan, for its part, preserves Pittsburgh but “draws a Freddy Krueger-like claw district in Allegheny County to ‘grab’ Pittsburgh to combine it with small Republican-leaning areas to the north.” RR at 152 (FF20). Judge McCullough



determined that these tactics suggest a partisan aim to turn one Democratic-leaning district into two such districts. RR at 151 (FF18), 194 (¶ 28). H.B. 2146, on the other hand, preserves Pittsburgh.

Judge McCullough reached similar conclusions in connection with the parties' and *amici's* approach to Philadelphia, which, as noted above, must be split based on the size of its population. Judge McCullough found that Philadelphia's surplus population should not be joined with Bucks County in order to form a district. RR at 157-58 (FF16). She correctly determined, in this regard, that lower and upper Bucks County communities are similar to one another, but different from Philadelphia, when it comes to demography, economics, land use, and commercial and commuting interests, and that "[a]ttaching the lower Bucks communities to Philadelphia would render those communities 'orphans' from an interest and advocacy standpoint." RR at 158 (FF17) (quoting Dr. Naughton expert report). Crediting Dr. Naughton's unrebutted expert testimony, Judge McCullough, as a corollary, explained that "Philadelphia's surplus population would be best combined with a district with maximum commonality – that is, with common interests with Philadelphia, such as use of public transit, recipient of federal transfer payments and common commercial and industrial interests" and that communities in Delaware County fit this description. RR at 159 (FF18-FF21). H.B. 2146 accomplishes these preferred groupings unlike, for example, the Governor's proposed plan, which splits

Bucks County and connects Philadelphia's surplus population to the southern part of Bucks County instead of Delaware County. RR at 160 (FF22-FF26).

**2. There is Nothing to Suggest that, from a Partisan Perspective, H.B. 2146 Is Not Fair**

In *League of Women Voters*, this Court acknowledged that, under the Commonwealth's Constitution, factors like "protection of incumbents" and "the maintenance of the political balance which existed after the prior reapportionment" can play a role in the creation of a redistricting plan. 178 A.3d at 817. But the Court also concluded that, under the Free and Equal Elections Clause, those factors must be "wholly subordinate" to the "neutral [redistricting] criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among...districts." *Id.* The Court then stated that, along similar lines, when a redistricting body crafts a redistricting plan, it may not "unfairly dilute the power of a particular group's vote for a...representative." *Id.* It did not attempt to define the contours of "unfair" vote-dilution.

Although, during the trial in this matter, the experts testified at length about various ways to measure the partisan fairness of a map, no single metric can determine whether a map is fair. *See* RR at 164-176 (discussing the various metrics). Further, no expert opined that H.B. 2146 is unfair.

In this context, as Judge McCullough explained, any discussion of partisan fairness must take into account Pennsylvania's political geography. RR at 162 at FF2

(“Based upon the evidence credited, the Court finds that Pennsylvania’s unique ‘political geography’ affects the analysis of partisan advantage in any proposed map.”). In particular, a redistricting map for the Commonwealth that is drawn randomly and that complies with the traditional redistricting criteria, but that is not drawn with reference to any partisan data, will tend to yield more seats for Republicans than Democrats in comparison to vote share. RR at 162. As Judge McCullough noted, even Governor Wolf’s own expert, Dr. Moon Duchin, acknowledged this point. RR at 84-85 (FF166). The pro-Republican “tilt” is a function of the fact that Democratic voters tend to be concentrated in urban regions of Pennsylvania, while Republican voters tend to be distributed throughout the other parts of the Commonwealth. RR at 162 (FF1-FF3). And if a mapmaker, in drawing a congressional redistricting map, attempts to “adjust” or “control” for this phenomenon, that person is necessarily drawing the map with an intent to achieve a particular partisan outcome. RR 162-63 (FF4-FF6).

One way to evaluate partisan fairness, while properly taking account of political geography, involves comparing a proposed map to a set of randomly-generated simulated maps that follows only the traditional redistricting criteria. RR at 164 (FF1). As Judge McCullough correctly observed, in light of the Commonwealth’s political geography, “if a plan is not evaluated against a non-partisan set of maps, the potential issues or red flags in the maps may not at all be

due to partisan gerrymandering, but rather the geographic distribution of voters in the state.” RR at 164 (FF3) (citing Dr. Barber expert report at 11). The House Republican Intervenors’ expert, Dr. Michael Barber, therefore compared H.B. 2146 to a set of 50,000 simulated 17-district maps, all of which adhere to the traditional redistricting criteria and none of which were created with reference to any partisan data. RR 164-165 (FF4-FF6). And, as Judge McCullough confirmed, “[t]he simulation analysis performed by Dr. Barber demonstrates that HB 2146 is predicted to result in nine Democratic-leaning seats and eight Republican-leaning seats using an index of statewide elections from 2012-2020, whereas the most likely outcome in his 50,000 simulated maps, created without using partisan data, is eight Democratic-leaning seats and nine Republican-leaning seats.” RR at 165 (FF7).

What is more, H.B. 2146 creates five competitive seats, which is more competitive districts than any other plan, and four of those seats lean Democratic. RR at 212 (¶ 81). It also scores as a fair and unbiased plan under all of the other metrics that the experts used to assess partisan bias. RR at 212 (¶¶ 82-83).

All of these factors underscore that, as Judge McCullough correctly determined, H.B. 2146 is a fair map, and nothing in the record suggests otherwise.

## CONCLUSION

The legislative process is one that, under both the United States and Pennsylvania Constitutions, is the principal and preferred method for drawing congressional districts. As a legislatively-approved plan that meets all of the applicable redistricting criteria, the H.B. 2146 map is not only a reasonable choice, but should be the preferred choice in order to honor the General Assembly's constitutional prerogative to engage in redistricting and express the will of the voters.

For these reasons, the Senate Republican Intervenors respectfully request that the Court adopt the H.B. 2146 map.

Dated: February 14, 2022

Respectfully submitted,

/s/ Anthony R. Holtzman

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## CERTIFICATION OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Anthony R. Holtzman  
Anthony R. Holtzman

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

**Service by PACFile eService as follows:**

All counsel of record

Date: February 14, 2022

/s/ Anthony R. Holtzman  
Anthony R. Holtzman

**IN THE  
SUPREME COURT OF PENNSYLVANIA**

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**No. 7 MM 2022**

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**CAROL ANN CARTER, ET AL.,**  
**Petitioners,**  
**v.**  
**LEIGH M. CHAPMAN, ET AL.,**  
**Respondents,**

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**APPLICATION FOR LEAVE TO FILE AMICUS BRIEF ON BEHALF OF MICHAL  
BRILL, GENE DIGIROLAMO, AND BEAU PUSTIAK UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 531(b)(1)(iii)**

*Sean M. Gresh, Esquire  
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Proposed amicus curiae, Mike Brill, Gene DiGirolamo, and Beau Pustiak, by and through counsel, Begley, Carlin, and Mandio file this Application for Leave to file *Amicus Curiae* Brief pursuant to Pa.R.A.P. 531(b)(1)(iii), and in support thereof aver:

1. Each of your proposed *Amici Curiae* (“Applicants”) are citizens of the Commonwealth of Pennsylvania, and registered voters who reside within Bucks County, Pennsylvania.

2. Applicants do not wish to participate in the instant action in any way other than the filing of a brief as *Amici Curiae*, and can claim no right as “Participants” under this Court’s *Per Curiam* Order of February 2, 2022.

3. Applicants do not seek to file exceptions to the Special Master’s Report and Recommendation, nor do they seek to challenge any of the Special Master’s proposed conclusions of law.

4. Applicants seek only to assist in the Court’s consideration and choice of a suitable congressional redistricting plan which respects the unique communities of Bucks County and their collective history and continuity.

5. Applicants do not advocate for any one specific plan which has been submitted to this Court by a party, intervenor, or other participant.

6. Rather, Applicants hope that the Court will benefit from their collective perspective in weighing the needs of the communities they call home.

7. Applicants acknowledge that the instant application comes after the date set by the Court for Participants to file Amicus Briefs, but request leave to submit such a brief under Rule 531 as they have only recently been able to acquire counsel to assist them.

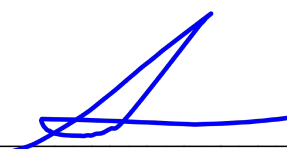
8. Applicants do not believe the timing of their application will prejudice any party, intervenor, or participant of this action, as oral argument is not scheduled until February 21, 2022, Applicants do not wish to participate therein, and Applicants do not advocate for any one specific plan or map.

9. A copy of the proposed Amici Curiae brief Applicants seek leave to file is attached hereto as Exhibit "A".

WHEREFORE, proposed amici curiae Mike Brill, Gene DiGirolamo, and Beau Pustiak respectfully request that this Court grant their Application for Leave to File an Amicus Brief.

Respectfully submitted,

**BEGLEY, CARLIN & MANDIO, LLP**

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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

**BEGLEY, CARLIN & MANDIO, LLP**

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**IN THE SUPREME COURT OF PENNSYLVANIA**

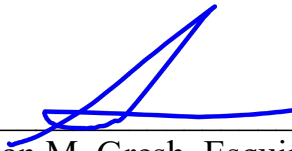
<b>CAROL ANN CARTER, et al.</b>	<b>:</b>	<b>7 MD 2022</b>
<b>Petitioners,</b>	<b>:</b>	
	<b>:</b>	
<b>vs.</b>	<b>:</b>	
	<b>:</b>	
<b>LEIGH M. CHAPMAN, et al.</b>	<b>:</b>	
<b>Respondents</b>	<b>:</b>	

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Application for Leave to File Brief of Amici Curiae was served upon all parties in this matter via the Court’s Unified Electronic Filing system on the date listed below:

Respectfully submitted,

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Dated: February 17, 2022

**IN THE  
SUPREME COURT OF PENNSYLVANIA**

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**No. 7 MM 2022**

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**CAROL ANN CARTER, ET AL.,**  
**Petitioners,**  
**v.**  
**LEIGH M. CHAPMAN, ET AL.,**  
**Respondents,**

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**BRIEF OF MICHAEL BRILL, GENE DIGIROLAMO, AND BEAU PUSTIAK  
*AMICI CURIAE***

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**I. STATEMENT OF INTEREST OF *AMICI CURIAE***

Your *amici curiae* are Michael Brill, Gene DiGirolamo, and Beau Pustiak. Each are residents of and registered voters in Bucks County, Pennsylvania. Bucks County is currently served by Pennsylvania's 1<sup>st</sup> Congressional District pursuant to the Congressional District map approved by this Court in *League of Women Voters of Pennsylvania v. Com.*, 181 A.3d 1083 (Pa. 2018) (per curiam).

No one, other than *amici curiae* and their counsel, is responsible for the preparation or authorship of this brief.



## **II. QUESTION ADDRESSED BY *AMICI CURIAE***

Should the Court adopt a congressional redistricting plan which maintains Bucks County as a whole and conterminous portion of a single congressional district in the event the Court is required to choose a congressional redistricting plan?

*Suggested answer: yes.*

### **III. SUMMARY OF ARGUMENT**

The County of Bucks is a compact 622 square mile County in Eastern Pennsylvania. Bucks County has remained a whole and conterminous portion of its Congressional district for over 170 years. The communities of Bucks County share both common history and continuity with each other that renders them collectively unique.

These communities include school districts, religious communities, ethnic communities, and geographic communities which share common bonds.

It is important and necessary to emphasize representational districts which maintain the geographical and social cohesion of the communities of Bucks County in which its people live and work.

When considering the potential Congressional redistricting plans before it, The Court must not only confirm that they pass Constitutional muster but must also ensure that any plan which meets with the Court's approval also protect the interests of the communities in that district.

In order to provide these communities with adequate representation in the Congress, their legislator must be able to rely upon reasonable similarity of the interests of her/his district. Likewise, a legislator must be able to understand and address the needs of her/his constituents. Dividing such similar communities between different districts leads to impractical if not unworkable conflict between communities when they share a common district but not geographical and social cohesion.

The communities of Bucks County share common needs, and common similarity of interests which are unique to the constituents of those communities. It is therefore necessary and appropriate for the entirety of Bucks County to remain as part of a single Congressional District.

#### **IV. ARGUMENT**

Bucks County was founded in 1682 by William Penn, the proprietor of the colony of Pennsylvania. It is one of the original three (3) counties of Pennsylvania, along with the Counties of Chester and Philadelphia. The current borders of Bucks County were established in 1752 with the creation of Northampton County to the North. The County consists of 54 municipalities occupying 622 square miles.

For approximately 170 years, Bucks County has remained whole and contiguous as part of a single congressional district. Currently, Bucks County is in Pennsylvania's 1<sup>st</sup> congressional district.

##### **A. The Current Congressional District**

In 2011 the General Assembly passed Act 131 which reapportioned Pennsylvania's congressional districts and reduced their number to 18 pursuant to the data generated by the 2010 census.<sup>1</sup> When this act was signed into law by Governor Tom Corbett, it included the entirety of Bucks County in Pennsylvania's 8<sup>th</sup> Congressional District.

Then, on January 22, 2018, this Honorable Court declared the General Assembly's 2011 redistricting plan unconstitutional, enjoining its further use. *League of Women Voters of Pennsylvania v. Com.*, 178 A.3d 737, 821 (Pa. 2018) (*League of Women Voters I*). In so finding the plan unconstitutional, the Court held that in addition to the requirements of federal law, the Free and Equal Elections Clause of the Pennsylvania Constitution required that congressional redistricting plans be: 1) compact; 2) contiguous; and 3) avoid dividing any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population between districts. *Id.* at 816-17.

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<sup>1</sup> Act of Dec. 22, 2011, P.L. 599, No. 131, 25 P.S. §§3596.101 et seq.

After the Governor and the General Assembly failed to agree on a new plan by the deadline set by the Court in *League of Women Voters I*, the Court adopted its own redistricting scheme for Pennsylvania. See, *League of Women Voters of Pennsylvania v. Com.*, 181 A.3d 1083 (Pa. 2018) (*League of Women Voters II*). The congressional districts drawn by the Court in *League of Women Voters II* remain in place to date and include the entirety of conterminous Bucks County in Pennsylvania's 1<sup>st</sup> Congressional District.

**B. Maintaining the Integrity of Municipal Boundaries**

This Court is now asked once again to determine which of the redistricting plans before it most completely satisfies the one-person-one vote requirement of the United States Constitution, complies with the Federal Voting Rights Act, and comports with Article I, Section 5 of the Pennsylvania Constitution (the “Free and Equal Elections Clause”).

Amici Curiae submit that several of the maps which are currently being considered by this Honorable Court pass Federal Constitutional muster and satisfy the Federal Voting Rights act. Likewise, a number of the same maps also satisfy *League of Women Voters I*'s tests for compactness and contiguity. However, it is the final neutral requirement identified in *League of Women Voters I* which we believe requires the Court to adopt a plan which does not split the communities of Bucks County into different districts.

The third neutral criteria identified by this Court in *League of Women Voters I* is the “minimization of the division of political subdivisions[.]” or the avoidance of “divid[ing] any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population.” *League of Women Voters I*, at 817(underline added).

In other words, a county should not be divided except where absolutely necessary to ensure the one-man-one-vote requirements of the United States

Constitution. There are several plans under consideration by the Court which pass Constitutional muster and also maintain Bucks County as a whole and contiguous portion of its district. Any one of these plans (i.e., Reschenthaler I, Reschenthaler II, H.B. 2146, and others) would satisfy the Court’s requirement to avoid dividing the communities of Bucks County if not necessary.

Indeed, no less an authority than this Honorable Court determined that maintaining Bucks County whole and intact as part of a single district was appropriate when the Court fashioned the Congressional redistricting plan which has been in place since 2018. The Court knew then to preserve the communities of Bucks County it should avoid splitting the county into different congressional districts, choosing instead to place the whole and conterminous County of Bucks into a single district as has been the practice in Pennsylvania for generations.

**C. A Proper Redistricting Plan Avoids Dividing Communities with Shared Interests and Concerns**

When explaining the adoption of the “neutral criteria” discussed in *League of Women Voters I*, the Court advised, “[t]hese standards place the greatest emphasis on creating representational districts that both maintain the geographical and social cohesion of the communities in which people live and conduct the majority of their day-to-day affairs[.]” *League of Women Voters I*, 178 A.3d at 814.

Simply put, the tests of compactness, contiguity, and respect for municipal boundaries are the tools utilized by the Court in achieving the goal of the Free and Equal Elections clause, namely the protection of the interests of Pennsylvania’s communities.

The Commissioners of Bucks County<sup>2</sup> signaled their recognition of the importance of community unity over politics when they unanimously resolved to

---

<sup>2</sup> Amicus Curiae Gene DiGirolamo – R serves as minority Commissioner to the County of Bucks.

urge the General Assembly to “maintain the entirety of the County of Bucks in a single congressional district”, recognizing that splitting the Bucks County community would “divide [our] community, create administrative problems, and violate fair redistricting principles that focus on keeping communities with defined boundaries, like the County of Bucks, undivided and contiguous.” See County of Bucks Resolution in Support of Maintaining the Entirety of The County of Bucks in a Single Congressional District (June 17, 2021), attached as Exhibit “A”.

It has been said that a redistricting [body] should traditionally take into account “a host of intangible communities, seeking to give them, where practicable, a voice in the government without unduly fracturing that voice.” *Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711, 746 (Pa. 2012), quoting, *Racial Mind-Games and Reapportionment*, 4 U. Pa. J. Const. L. 735, 779-81 (2002) (Dean Ken Gormley). Such communities may include school districts, religious communities, ethnic communities, geographic communities, and other “communities of interest”. *Id.*

Maintaining and preserving Bucks County as a conterminous portion of a single district would avoid a heterogeneity of interests and needs spread among separate districts, resulting instead in representatives who can then champion the preferences of their constituents with the knowledge that their work supports the needs of the communities they represent.

The citizens of Bucks County share common goals, common geography, common needs, and common bonds of community. These common bonds of community are separate and distinct from those of other neighboring counties. This Court must continue to emphasize the geographical and social cohesion of Bucks County’s Communities by ensuring that they are maintained together, contiguously as one whole portion of a congressional district.

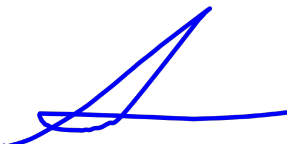
**V. CONCLUSION**

Wherefore, for the foregoing reasons, Amici Curiae, Michael Brill, Gene DiGirolamo, and Beau Pustiak, respectfully request that this Court adopt a congressional redistricting plan which honors Bucks County's history and community continuity by preserving the entirety of the County as one whole and conterminous portion of a single congressional district.

Respectfully submitted,

**BEGLEY, CARLIN & MANDIO, LLP**

By: \_\_\_\_\_



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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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By:  \_\_\_\_\_

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**IN THE SUPREME COURT OF PENNSYLVANIA**

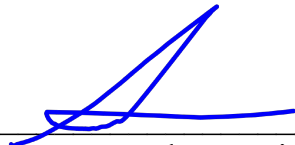
<b>CAROL ANN CARTER, et al.</b>	:	<b>7 MD 2022</b>
<b>Petitioners,</b>	:	
	:	
<b>vs.</b>	:	
	:	
<b>LEIGH M. CHAPMAN, et al.</b>	:	
<b>Respondents</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Brief of Amici Curiae was served upon all parties in this matter via the Court’s Unified Electronic Filing system on the date listed below:

Respectfully submitted,

**BEGLEY, CARLIN & MANDIO, LLP**

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Dated: February 17, 2022

**COUNTY OF BUCKS**

**RESOLUTION IN SUPPORT OF MAINTAINING THE ENTIRETY OF  
THE COUNTY OF BUCKS IN A SINGLE CONGRESSIONAL DISTRICT**

**WHEREAS**, the United States Constitution requires that the County of Bucks provides a full and accurate count of its people in the Federal decennial census; and

**WHEREAS**, the boundaries of state congressional districts in the Commonwealth of Pennsylvania are redrawn after every Federal decennial census by legislative action adopted by both chambers of the General Assembly and signed into law by the Governor; and

**WHEREAS**, the citizens of the County of Bucks and the Commonwealth of Pennsylvania deserve a fair, fully-transparent, impartial, and depoliticized process of the subsequent drawing of state congressional districts of near equal population; and

**WHEREAS**, the County of Bucks, in its entirety, is currently in Pennsylvania's 1<sup>st</sup> Congressional District; and

**WHEREAS**, the County of Bucks, in its entirety, has been in a single congressional district for over *170 years*; and

**WHEREAS**, the County of Bucks is a historically contiguous and compact 622 square-mile County with defined boundaries; and

**WHEREAS**, our community is unique and shares a common history, which includes many distinct characteristics and continuities across the County's 54 municipalities; and

**WHEREAS**, some have proposed to split the County of Bucks into two separate congressional districts; and

**WHEREAS**, the splitting of the County of Bucks into two separate congressional districts would (1) divide our community, (2) create administrative problems, and (3) violate fair redistricting principles that focus on keeping communities with defined boundaries, like the County of Bucks, undivided and contiguous.


**NOW, THEREFORE, BE IT RESOLVED** that the County of Bucks respectfully requests and urges the General Assembly to maintain the entirety of the County of Bucks in a single congressional district.

**BE IT FURTHER RESOLVED** that we call upon all elected officials in the Commonwealth of Pennsylvania who represent the people of the County of Bucks to publicly announce their support of and commitment to work towards passage of such legislative efforts and that a copy of this Resolution shall be delivered to each of them.

ADOPTED as a Resolution of the Board of Commissioners this 16<sup>th</sup> day of June, 2021.

COUNTY OF BUCKS, PENNSYLVANIA

ATTEST:


  
Gail Humphrey  
Chief Clerk

6/17/2021

BY:

  
Diane M. Ellis-Marseglia, LCSW  
Commissioner, Chair

BY:

  
Robert J. Harvie, Jr.  
Commissioner, Vice Chair

BY:

  
Gene DiGirolamo  
Commissioner

**IN THE SUPREME COURT OF PENNSYLVANIA**

Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milazzo, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael Guttman, Maya Fonkeu, Brady Hill, Mary Ellen Balchunis, Tom DeWall, Stephanie McNulty and Janet Temin, Petitioners : 7 MM 2022  
:  
:

v.

Leigh M. Chapman, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania; Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries, Respondents

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Philip T. Gressman; Ron Y. Donagi; Kristopher R. Tapp; Pamela Gorkin; David P. Marsh; James L. Rosenberger; Amy Myers; Eugene Boman; Gary Gordon; Liz McMahon; Timothy G. Feeman; and Garth Isaak, Petitioners

v.

Leigh M. Chapman, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania; Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries, Respondents

**PROOF OF SERVICE**

I hereby certify that this 17th day of February, 2022, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

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Respondent Kim Ward

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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IN THE SUPREME COURT OF PENNSYLVANIA

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Representing: Possible Intervenor Teddy Daniels

/s/ Sean Michael Gresh

*(Signature of Person Serving)*

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**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

CAROL ANN CARTER, MONICA : No. 7 MM 2022  
PARRILLA, REBECCA POYOUROW, :  
WILLIAM TUNG, ROSEANNE MILAZZO, :  
BURT SIEGEL, SUSAN CASSANELLI, LEE :  
CASSANELLI, LYNN WACHMAN, MICHAEL :  
GUTTMAN, MAYA FONKEU, BRADY HILL, :  
MARY ELLEN BALCHUNIS, TOM DEWALL, :  
STEPHANIE MCNULTY AND JANET :  
TEMIN, :

Petitioners

v.

LEIGH M. CHAPMAN, IN HER OFFICIAL :  
CAPACITY AS THE ACTING SECRETARY :  
OF THE COMMONWEALTH OF :  
PENNSYLVANIA; JESSICA MATHIS, IN :  
HER OFFICIAL CAPACITY AS DIRECTOR :  
FOR THE PENNSYLVANIA BUREAU OF :  
ELECTION SERVICES AND NOTARIES, :

Respondents

----- :  
PHILIP T. GRESSMAN; RON Y. DONAGI; :  
KRISTOPHER R. TAPP; PAMELA GORKIN; :  
DAVID P. MARSH; JAMES L. :  
ROSENBERGER; AMY MYERS; EUGENE :  
BOMAN; GARY GORDON; LIZ MCMAHON; :  
TIMOTHY G. FEEMAN; AND GARTH :  
ISAAK, :

Petitioners

v.

LEIGH M. CHAPMAN, IN HER OFFICIAL :  
CAPACITY AS THE ACTING SECRETARY :  
OF THE COMMONWEALTH OF :  
PENNSYLVANIA; JESSICA MATHIS, IN :  
HER OFFICIAL CAPACITY AS DIRECTOR :  
FOR THE PENNSYLVANIA BUREAU OF :  
ELECTION SERVICES AND NOTARIES, :

Respondents :

**ORDER**

**PER CURIAM**

**AND NOW**, this 17<sup>th</sup> day of February, 2022, the “Emergency Application for Intervention” is **DENIED**.

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

CAROL ANN CARTER, MONICA : No. 7 MM 2022  
PARRILLA, REBECCA POYOUROW, :  
WILLIAM TUNG, ROSEANNE MILAZZO, :  
BURT SIEGEL, SUSAN CASSANELLI, LEE :  
CASSANELLI, LYNN WACHMAN, MICHAEL :  
GUTTMAN, MAYA FONKEU, BRADY HILL, :  
MARY ELLEN BALCHUNIS, TOM DEWALL, :  
STEPHANIE MCNULTY AND JANET :  
TEMIN, :

Petitioners

v.

LEIGH M. CHAPMAN, IN HER OFFICIAL :  
CAPACITY AS THE ACTING SECRETARY :  
OF THE COMMONWEALTH OF :  
PENNSYLVANIA; JESSICA MATHIS, IN :  
HER OFFICIAL CAPACITY AS DIRECTOR :  
FOR THE PENNSYLVANIA BUREAU OF :  
ELECTION SERVICES AND NOTARIES, :

Respondents

----- :  
PHILIP T. GRESSMAN; RON Y. DONAGI; :  
KRISTOPHER R. TAPP; PAMELA GORKIN; :  
DAVID P. MARSH; JAMES L. :  
ROSENBERGER; AMY MYERS; EUGENE :  
BOMAN; GARY GORDON; LIZ MCMAHON; :  
TIMOTHY G. FEEMAN; AND GARTH :  
ISAAK, :

Petitioners

v.

LEIGH M. CHAPMAN, IN HER OFFICIAL :  
CAPACITY AS THE ACTING SECRETARY :  
OF THE COMMONWEALTH OF :  
PENNSYLVANIA; JESSICA MATHIS, IN :  
HER OFFICIAL CAPACITY AS DIRECTOR :  
FOR THE PENNSYLVANIA BUREAU OF :  
ELECTION SERVICES AND NOTARIES, :  
:

Respondents

**ORDER**

**PER CURIAM**

**AND NOW**, this 17<sup>th</sup> day of February, 2022, the “Emergency Application for Intervention” is **DENIED**.

A True Copy Amy Dreibelbis, Esquire  
As Of 02/17/2022

Attest:   
Deputy Prothonotary  
Supreme Court of Pennsylvania

**IN THE SUPREME COURT OF PENNSYLVANIA**

---

**No. 7 MM 2022**

---

**CAROL ANN CARTER *et al.*,**  
***Petitioners,***

**v.**

**LEIGH M. CHAPMAN, *et al.*,**  
***Respondents.***

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**RESPONDENTS' CERTIFICATION OF COMPLIANCE PURSUANT TO  
ORDER DATED FEBRUARY 23, 2022**

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On Review of the Special Master's Proposed Findings of Fact and  
Conclusions of Law, Nos. 464 M.D. 2021 and 465 M.D. 2021 (February 7, 2022)

---

HANGLEY ARONCHICK SEGAL  
PUDLIN & SCHILLER  
Robert A. Wiygul (I.D. No. 310760)  
Cary L. Rice (I.D. No. 325227)  
John B. Hill (I.D. No. 328340)  
One Logan Square, 27th Floor  
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(215) 568-6200

OFFICE OF ATTORNEY GENERAL  
Caleb Curtis Enerson (I.D. No.  
313832)  
15th Floor, Strawberry Square  
Harrisburg, PA 17120  
1600 Arch St., Suite 300  
Philadelphia, PA 19103  
(717) 787-2717

*(additional counsel on signature pages)*

Respondents, the Acting Secretary of the Commonwealth and Director of the Bureau of Election Services and Notaries, respectfully submit this Certification in response to the Court’s Order dated February 23, 2022 (the “Order”).

The Order directed that “the Pennsylvania primary and general elections for seats in the United States House of Representatives commencing in the year 2022 shall be conducted in accordance with the ‘Carter Plan’ submitted in the record before the Special Master and as described by 2020 Census block equivalency ... and ESRI shape files uploaded to th[e] Court’s website.” The Order further directed “Executive Respondents together with the General Assembly’s Legislative Data Processing Center (LDPC)” to “prepare textual language that describes the Carter Plan and submit the same to the Secretary of the Commonwealth without delay.” The Order directed the Acting Secretary of the Commonwealth thereafter to “file with th[e] Court’s Prothonotary a certification of compliance of the preparation of the textual description of the Carter Plan, along with a copy of the textual description.”

Respondents, including the Acting Secretary of the Commonwealth, hereby certify that, in compliance with the Court’s Order, the General Assembly’s Legislative Data Processing Center has prepared a textual description of the Carter Plan, and that a true and correct copy of that textual description is attached as Exhibit A hereto.



Respondents further state that they do not foresee any technical issues concerning the implementation of the Carter Plan.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL  
PUDLIN & SCHILLER

Dated: February 25, 2022

By: /s/ Robert A Wiygul  
Robert A. Wiygul (I.D. No. 310760)  
Cary L. Rice (I.D. No. 325227)  
John B. Hill (I.D. No. 328340)  
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TUCKER LAW GROUP  
Joe H. Tucker, Jr. (I.D. No. 56617)  
Dimitrios Mavroudis (I.D. No. 93773)  
Jessica Rickabaugh (I.D. No. 200189)  
Ten Penn Center  
1801 Market Street, Suite 2500  
Philadelphia, PA 19103  
(215) 875-0609

*Counsel for Respondents*

**CERTIFICATION REGARDING PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: February 25, 2022

/s/ Robert A. Wiygul  
Robert A. Wiygul

# **EXHIBIT “A”**

LEGISLATIVE DATA PROCESSING CENTER

COMPOSITE LISTING

OF

CONGRESSIONAL DISTRICTS

DISTRICT NUMBER

DESCRIPTION

Dist. 01   BUCKS and MONTGOMERY Counties.  
All of BUCKS County and Part of MONTGOMERY County  
consisting of the TOWNSHIPS of Franconia, Hatfield,  
Horsham (PART, Districts 01, 02 [PART, Divisions 01,  
02 and 03], 03 [PART, Divisions 01, 02, 04 and 05]  
and 04 [PART, Divisions 01 (only blocks 3006, 3007,  
3008, 3010, 3011 and 3020 of tract 200505), 02, 03  
and 04]), Marlborough, Montgomery, Salford and Upper  
Hanover and the BOROUGHs of East Greenville, Hatfield,  
Pennsburg, Red Hill, Souderton and Telford (Montgomery  
County Portion).  
Total population: 764,866

Dist. 02   PHILADELPHIA County.  
Part of PHILADELPHIA County consisting of the CITY of  
Philadelphia (PART, Wards 05 [PART, Divisions 01, 02,  
03, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16,  
17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,  
32, 33, 34, 35, 36 and 37], 07, 14, 16 [PART, Division  
05], 18, 19, 20, 23, 25, 31, 33, 35, 37, 41, 42, 43,  
45, 49, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 65  
and 66).  
Total population: 764,865

CONGRESSIONAL DISTRICTS

Dist. 03 PHILADELPHIA County.  
Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 01, 02, 03 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20], 04, 05 [PART, Divisions 04, 18 and 19], 06, 08, 09, 10, 11, 12, 13, 15, 16 [PART, Divisions 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17 and 18], 17, 21, 22, 24, 26 [PART, Divisions 08, 10, 11, 12, 16, 17, 19, 21 and 22], 27, 28, 29, 30, 32, 34, 36, 38, 39 [PART, Divisions 01, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 31, 32, 34, 35, 37, 38, 40, 42, 43, 45 and 46], 44, 46, 47, 48, 50, 51 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 26 and 28], 52, 59 and 60).  
Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 04 BERKS and MONTGOMERY Counties.  
Part of BERKS County consisting of the TOWNSHIPS of  
Alsace, Amity, Bern, Colebrookdale, District,  
Douglass, Earl, Exeter (PART, Precinct 10 (all blocks  
except 1008, 1011, 1014 and 1024 of tract 012103 and  
blocks 3000, 3001, 3003, 3004, 3005, 3006, 3007, 3008,  
3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017,  
3018 and 3019 of tract 012106)), Greenwich, Hereford,  
Longswamp, Lower Heidelberg (PART, Precincts 02 and  
03), Maiden creek, Maxatawny, Muhlenberg, Oley,  
Ontelaunee, Perry (all blocks except 1003, 1008, 1009,  
1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018,  
1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027,  
1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036,  
1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045,  
1046, 1050, 1051, 1052 and 3022 of tract 013702),  
Pike, Richmond, Rockland, Ruscombmanor and Washington  
and the BOROUGHS of Bally, Bechtelsville, Boyertown,  
Fleetwood, Kutztown, Laureldale, Leesport,  
Lenhartsville, Lyons and Topton and Part of MONTGOMERY  
County consisting of the TOWNSHIPS of Abington,  
Cheltenham, Douglass, East Norriton, Horsham (PART,  
Districts 02 [PART, Division 04], 03 [PART, Division  
03] and 04 [PART, Division 01 (all blocks except 3006,  
3007, 3008, 3010, 3011 and 3020 of tract 200505)]),  
Limerick, Lower Frederick, Lower Gwynedd, Lower Merion  
(PART, Wards 01, 02, 03, 06 [PART, Division 03], 09,  
11 [PART, Division 03 (all blocks except 3011B of  
tract 204900)], 12 [PART, Division 03 (only blocks  
2000, 2001, 2025 and 2028 of tract 204500)] and 13),  
Lower Moreland, Lower Pottsgrove, Lower Providence,  
Lower Salford, New Hanover, Perkiomen, Plymouth,  
Skippack, Springfield, Towamencin, Upper Dublin, Upper  
Frederick, Upper Gwynedd, Upper Merion (PART, District  
Belmont [PART, Division 05]), Upper Moreland, Upper  
Pottsgrove, Upper Providence, Upper Salford, West  
Norriton, West Pottsgrove, Whitemarsh, Whitpain and  
Worcester and the BOROUGHS of Ambler, Bryn Athyn,  
Collegeville, Conshohocken, Green Lane, Hatboro,  
Jenkintown, Lansdale, North Wales, Pottstown,  
Rockledge, Royersford, Schwenksville, Trappe and West  
Conshohocken.  
Total population: 764,865

CONGRESSIONAL DISTRICTS

Dist. 05 CHESTER, DELAWARE, MONTGOMERY and PHILADELPHIA Counties.  
Part of CHESTER County consisting of the TOWNSHIP of Birmingham (PART, Precinct 02 (only blocks 2021 and 2022 of tract 303100)); All of DELAWARE County; Part of MONTGOMERY County consisting of the TOWNSHIPS of Lower Merion (PART, Wards 04, 05, 06 [PART, Divisions 01 and 02], 07, 08, 10, 11 [PART, Divisions 01, 02 and 03 (only block 3011B of tract 204900)], 12 [PART, Divisions 01, 02 and 03 (all blocks except 2000, 2001, 2025 and 2028 of tract 204500)] and 14) and Upper Merion (PART, Districts Belmont [PART, Divisions 01, 02, 03 and 04], Candlebrook, Gulph, King, Roberts, Swedeland, Swedesburg and Town Center) and the BOROUGHS of Bridgeport, Narberth and Norristown and Part of PHILADELPHIA County consisting of the CITY of Philadelphia (PART, Wards 03 [PART, Divisions 21 and 22], 26 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 09, 13, 14, 15, 18, 20 and 23], 39 [PART, Divisions 02, 13, 14, 17, 24, 29, 33, 36, 39, 41 and 44], 40 and 51 [PART, Divisions 21, 24, 25 and 27]).  
Total population: 764,866

CONGRESSIONAL DISTRICTS

Dist. 06    BERKS and CHESTER Counties.  
Part of BERKS County consisting of the CITY of Reading and the TOWNSHIPS of Brecknock, Caernarvon, Cumru, Exeter (PART, Precincts 01, 02, 03, 04, 05, 06, 07, 08, 09, 10 (only blocks 1008, 1011, 1014 and 1024 of tract 012103 and blocks 3000, 3001, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018 and 3019 of tract 012106) and 11), Lower Alsace, Robeson, Spring and Union and the BOROUGHs of Adamstown (Berks County Portion), Birdsboro, Kenhorst, Mohnton, Mount Penn, New Morgan, Shillington, Sinking Spring, St. Lawrence, West Reading and Wyomissing and Part of CHESTER County consisting of the CITY of Coatesville and the TOWNSHIPS of Birmingham (PART, Precincts 01 and 02 (all blocks except 2021 and 2022 of tract 303100)), Caln, Charlestown, East Bradford, East Brandywine, East Caln, East Coventry, East Fallowfield, East Goshen, East Marlborough, East Nantmeal, East Nottingham, East Pikeland, East Vincent, East Whiteland, Easttown, Elk, Franklin, Highland, Honey Brook, Kennett, London Britain, London Grove, Londonderry, Lower Oxford, New Garden, New London, Newlin, North Coventry, Penn, Pennsbury, Pocopson, Sadsbury, Schuylkill, South Coventry, Thornbury, Tredyffrin, Upper Oxford, Upper Uwchlan, Uwchlan, Valley, Wallace, Warwick, West Bradford, West Brandywine, West Caln, West Fallowfield, West Goshen, West Marlborough, West Nantmeal, West Nottingham, West Pikeland, West Sadsbury, West Vincent, West Whiteland, Westtown and Willistown and the BOROUGHs of Atglen, Avondale, Downingtown, Elverson, Honey Brook, Kennett Square, Malvern, Modena, Oxford, Parkesburg, Phoenixville, South Coatesville, Spring City, West Chester and West Grove.  
Total population: 764,864



CONGRESSIONAL DISTRICTS

Dist. 07 CARBON, LEHIGH, MONROE and NORTHAMPTON Counties.  
All of CARBON County; All of LEHIGH County; Part of  
MONROE County consisting of the TOWNSHIPS of Eldred,  
Polk and Ross (all blocks except 1000, 1001, 1002,  
1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011,  
1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020,  
1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029,  
1030, 1031, 1032, 1033, 1034, 2000, 2001, 2002, 2003,  
2021, 3001, 3003, 3004, 3005, 4000, 4001, 4002, 4003,  
4004, 4005, 4006, 4007, 4009, 4010 and 4011 of tract  
301203) and All of NORTHAMPTON County.  
Total population: 764,865

CONGRESSIONAL DISTRICTS

Dist. 08 LACKAWANNA, LUZERNE, MONROE, PIKE and WAYNE Counties. All of LACKAWANNA County; Part of LUZERNE County consisting of the CITIES of Hazleton, Nanticoke, Pittston and Wilkes-Barre and the TOWNSHIPS of Bear Creek, Buck, Butler (PART, Districts 01, 02, 03, 04 and 05 (only blocks 1024, 1025, 2013, 2014, 2015 and 2020 of tract 216601 and blocks 1016, 1017, 1024, 1046, 1047, 1049, 1050, 1058, 1059, 1060, 1061, 1062, 1063 and 1064 of tract 216602)), Dallas, Dennison, Exeter, Fairview, Foster, Franklin, Hanover, Hazle, Jackson, Jenkins, Kingston, Newport (PART, Ward 02), Pittston, Plains, Plymouth, Rice, Wilkes-Barre and Wright and the BOROUGHS of Ashley, Avoca, Bear Creek Village, Courtdale, Dupont, Duryea, Edwardsville, Exeter, Forty Fort, Freeland, Harveys Lake, Hughestown, Jeddo, Kingston, Laflin, Larksville, Laurel Run, Luzerne, Nuangola, Penn Lake Park, Plymouth, Pringle, Sugar Notch, Swoyersville, Warrior Run, West Hazleton, West Pittston, West Wyoming, White Haven, Wyoming and Yatesville; Part of MONROE County consisting of the TOWNSHIPS of Barrett, Chestnuthill, Coolbaugh, Hamilton, Jackson, Middle Smithfield, Paradise, Pocono, Price, Ross (only blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 2000, 2001, 2002, 2003, 2021, 3001, 3003, 3004, 3005, 4000, 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4009, 4010 and 4011 of tract 301203), Smithfield, Stroud, Tobyhanna and Tunkhannock and the BOROUGHS of Delaware Water Gap, East Stroudsburg, Mount Pocono and Stroudsburg; All of PIKE County and All of WAYNE County.  
Total population: 764,866

CONGRESSIONAL DISTRICTS

Dist. 09    BERKS, BRADFORD, COLUMBIA, LEBANON, LUZERNE,  
LYCOMING, MONTOUR, NORTHUMBERLAND, SCHUYLKILL,  
SULLIVAN, SUSQUEHANNA and WYOMING Counties.  
Part of BERKS County consisting of the TOWNSHIPS of  
Albany, Bethel, Centre, Heidelberg, Jefferson, Lower  
Heidelberg (PART, Precinct 01), Marion, North  
Heidelberg, Penn, Perry (only blocks 1003, 1008, 1009,  
1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018,  
1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027,  
1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036,  
1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045,  
1046, 1050, 1051, 1052 and 3022 of tract 013702),  
South Heidelberg, Tilden, Tulpehocken, Upper Bern,  
Upper Tulpehocken and Windsor and the BOROUGHS of  
Bernville, Centerport, Hamburg, Robesonia,  
Shoemakersville, Wernersville and Womelsdorf; All of  
BRADFORD County; All of COLUMBIA County; All of  
LEBANON County; Part of LUZERNE County consisting of  
the TOWNSHIPS of Black Creek, Butler (PART, District  
05 (all blocks except 1024, 1025, 2013, 2014, 2015  
and 2020 of tract 216601 and blocks 1016, 1017, 1024,  
1046, 1047, 1049, 1050, 1058, 1059, 1060, 1061, 1062,  
1063 and 1064 of tract 216602)), Conyngham, Dorrance,  
Fairmount, Hollenback, Hunlock, Huntington, Lake,  
Lehman, Nescopeck, Newport (PART, Ward 01), Ross,  
Salem, Slocum, Sugarloaf and Union and the BOROUGHS  
of Conyngham, Dallas, Nescopeck, New Columbus and  
Shickshinny; Part of LYCOMING County consisting of  
the CITY of Williamsport (PART, Wards 01, 02, 03, 04,  
05 (all blocks except 1034, 1035, 1036, 1042, 1043,  
1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052,  
1053, 1055, 1056, 1057, 2073, 2074, 2075, 2076, 2077,  
2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086,  
2087, 2088 and 2089 of tract 000900), 06, 07, 08, 09,  
10, 11, 12 and 13) and the TOWNSHIPS of Clinton,  
Eldred, Fairfield, Franklin, Jordan, Loyalsock, Mill  
Creek, Moreland, Muncy, Muncy Creek, Penn, Plunketts  
Creek, Shrewsbury, Upper Fairfield and Wolf and the  
BOROUGHS of Hughesville, Montgomery, Montoursville,  
Muncy and Picture Rocks; All of MONTOUR County; All  
of NORTHUMBERLAND County; All of SCHUYLKILL County;  
All of SULLIVAN County; All of SUSQUEHANNA County and  
All of WYOMING County.  
Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 10 CUMBERLAND, DAUPHIN and YORK Counties.  
Part of CUMBERLAND County consisting of the TOWNSHIPS of Cooke, Dickinson, East Pennsboro, Hampden, Lower Allen, Lower Frankford, Middlesex, Monroe, North Middleton, North Newton (only blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1009, 1010, 1011, 1012, 1013, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1033, 1034, 1035, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1045, 1066, 1067, 1070 and 1071 of tract 012802), Penn, Silver Spring, South Middleton, South Newton, Upper Allen and West Pennsboro and the BOROUGHs of Camp Hill, Carlisle, Lemoyne, Mechanicsburg, Mount Holly Springs, New Cumberland, Newville, Shiremanstown and Wormleysburg; All of DAUPHIN County and Part of YORK County consisting of the CITY of York and the TOWNSHIPS of Carroll, Conewago, Dover, East Manchester, Fairview, Franklin, Jackson (PART, Precincts 01 (all blocks except 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 3008, 3009, 3015, 3016, 3019, 3020, 3021, 3022, 3023, 3024, 3025, 3026, 3027, 3028, 3029, 3030 and 3031 of tract 020522 and blocks 2031 and 2032 of tract 020524) and 02), Manchester, Monaghan, Newberry, Spring Garden, Springettsbury, Warrington, Washington and West Manchester and the BOROUGHs of Dillsburg, Dover, Franklinton, Goldsboro, Lewisberry, Manchester, Mount Wolf, North York, Wellsville, West York and York Haven.  
Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 11 LANCASTER and YORK Counties.  
All of LANCASTER County and Part of YORK County  
consisting of the TOWNSHIPS of Chanceford, Codorus,  
East Hopewell, Fawn, Heidelberg, Hellam, Hopewell,  
Jackson (PART, Precinct 01 (only blocks 2019, 2020,  
2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029,  
3008, 3009, 3015, 3016, 3019, 3020, 3021, 3022, 3023,  
3024, 3025, 3026, 3027, 3028, 3029, 3030 and 3031 of  
tract 020522 and blocks 2031 and 2032 of tract  
020524)), Lower Chanceford, Lower Windsor, Manheim,  
North Codorus, North Hopewell, Paradise, Peach Bottom,  
Penn, Shrewsbury, Springfield, West Manheim, Windsor  
and York and the BOROUGHS of Cross Roads, Dallastown,  
Delta, East Prospect, Fawn Grove, Felton, Glen Rock,  
Hallam, Hanover, Jacobus, Jefferson, Loganville, New  
Freedom, New Salem, Railroad, Red Lion, Seven Valleys,  
Shrewsbury, Spring Grove, Stewartstown, Windsor,  
Winterstown, Wrightsville, Yoe and Yorkana.  
Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 12 ALLEGHENY and WESTMORELAND Counties.  
Part of ALLEGHENY County consisting of the CITIES of Clairton, Duquesne, McKeesport and Pittsburgh and the TOWNSHIPS of Elizabeth, Forward, North Versailles, South Park, South Versailles, Upper St. Clair and Wilkins and the BOROUGHS of Baldwin, Bethel Park, Braddock, Brentwood, Bridgeville, Chalfant, Dravosburg, East McKeesport, East Pittsburgh, Elizabeth, Glassport, Homestead, Jefferson Hills, Liberty, Lincoln, Monroeville, Mount Oliver, Munhall, North Braddock, Pitcairn, Pleasant Hills, Plum, Port Vue, Rankin, Swissvale (PART, Districts 01, 02 (only blocks 2014, 2015, 3007, 3008, 3009 and 3010 of tract 515100), 06, 07, 08, 09, 10 and 11), Trafford (Allegheny County Portion), Turtle Creek, Versailles, Wall, West Elizabeth, West Homestead, West Mifflin, Whitaker, White Oak, Whitehall and Wilmerding and Part of WESTMORELAND County consisting of the CITY of Jeannette and the TOWNSHIPS of Hempfield (PART, Districts East Adamsburg, High Park, Lincoln Heights West, Middletown (all blocks except 1000, 1001, 1004, 1009, 1010, 1011, 1020, 1021, 1022, 1026, 1027 and 1055 of tract 804701, blocks 1015, 2018 and 2019 of tract 804804 and blocks 2000, 2002, 2003 and 2004 of tract 804901), Wegley, Wendel Herm and West Hempfield), North Huntingdon, Penn, Sewickley and South Huntingdon (PART, District Yukon) and the BOROUGHS of Adamsburg, Arona, Export, Irwin, Madison, Manor, Murrysville, North Irwin, Penn, Sutersville and Trafford (Westmoreland County Portion).  
Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 13 ADAMS, BEDFORD, BLAIR, CAMBRIA, CUMBERLAND, FRANKLIN, FULTON, HUNTINGDON, JUNIATA, MIFFLIN, PERRY and SOMERSET Counties.

All of ADAMS County; All of BEDFORD County; All of BLAIR County; All of CAMBRIA County; Part of CUMBERLAND County consisting of the TOWNSHIPS of Hopewell, Lower Mifflin, North Newton (all blocks except 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1009, 1010, 1011, 1012, 1013, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1033, 1034, 1035, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1045, 1066, 1067, 1070 and 1071 of tract 012802), Shippensburg, Southampton, Upper Frankford and Upper Mifflin and the BOROUGHs of Newburg and Shippensburg (Cumberland County Portion); All of FRANKLIN County; All of FULTON County; All of HUNTINGDON County; All of JUNIATA County; All of MIFFLIN County; All of PERRY County and Part of SOMERSET County consisting of the TOWNSHIP of Conemaugh (PART, District 02 (all blocks except 1026 of tract 020101)).

Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 14    FAYETTE, GREENE, INDIANA, SOMERSET, WASHINGTON and WESTMORELAND Counties.  
All of FAYETTE County; All of GREENE County; Part of INDIANA County consisting of the TOWNSHIPS of Armstrong, Blacklick, Brush Valley, Buffington, Burrell, Center, Cherryhill, Conemaugh, East Wheatfield, Green, Pine, Rayne, South Mahoning (PART, District 01 (all blocks except 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2042, 2043, 2044, 3000 and 3001 of tract 960200)), Washington, West Wheatfield, White and Young and the BOROUGHS of Armagh, Blairsville, Cherry Tree, Clymer, Creekside, Ernest, Homer City, Indiana, Plumville, Saltsburg and Shelocta; Part of SOMERSET County consisting of the TOWNSHIPS of Addison, Allegheny, Black, Brothersvalley, Conemaugh (PART, Districts 01, 02 (only block 1026 of tract 020101), 03, 04 and 05), Elk Lick, Fairhope, Greenville, Jefferson, Jenner, Larimer, Lincoln, Lower Turkeyfoot, Middlecreek, Milford, Northampton, Ogle, Paint, Quemahoning, Shade, Somerset, Southampton, Stonycreek, Summit and Upper Turkeyfoot and the BOROUGHS of Addison, Benson, Berlin, Boswell, Callimont, Casselman, Central City, Confluence, Garrett, Hooversville, Indian Lake, Jennerstown, Meyersdale, New Baltimore, New Centerville, Paint, Rockwood, Salisbury, Seven Springs (Somerset County Portion), Shanksville, Somerset, Stoystown, Ursina, Wellersburg and Windber; All of WASHINGTON County and Part of WESTMORELAND County consisting of the CITIES of Arnold, Greensburg, Latrobe, Lower Burrell, Monessen and New Kensington and the TOWNSHIPS of Allegheny, Bell, Cook, Derry, Donegal, East Huntingdon, Fairfield, Hempfield (PART, Districts Alwine, Bovard, Carbon, Eastview, Fort Allen, Foxhill, Gayville, Grapeville, Hannastown, Haydenville, Lincoln Heights, Luxor, Maplewood, Middletown (only blocks 1000, 1001, 1004, 1009, 1010, 1011, 1020, 1021, 1022, 1026, 1027 and 1055 of tract 804701, blocks 1015, 2018 and 2019 of tract 804804 and blocks 2000, 2002, 2003 and 2004 of tract 804901), New Stanton, North Carbon, Sibel, Todd, University, Valley, Weavers Old Stand and West Point), Ligonier, Loyalhanna, Mount Pleasant, Rostraver, Salem, South Huntingdon (PART, Districts



CONGRESSIONAL DISTRICTS

Hixon, Jacobs Creek, Mineral, Port Royal, South  
Huntingdon, Wayne and Wyano), St. Clair, Unity, Upper  
Burrell and Washington and the BOROUGHs of Avonmore,  
Bolivar, Delmont, Derry, Donegal, East Vandergrift,  
Hunker, Hyde Park, Laurel Mountain, Ligonier, Mount  
Pleasant, New Alexandria, New Florence, New Stanton,  
North Belle Vernon, Oklahoma, Scottdale, Seward,  
Smithton, South Greensburg, Southwest Greensburg,  
Vandergrift, West Leechburg, West Newton, Youngstown  
and Youngwood.

Total population: 764,866

CONGRESSIONAL DISTRICTS

Dist. 15    ARMSTRONG, CAMERON, CENTRE, CLARION, CLEARFIELD, CLINTON, ELK, FOREST, INDIANA, JEFFERSON, LYCOMING, MCKEAN, POTTER, SNYDER, TIOGA, UNION, VENANGO and WARREN Counties.

All of ARMSTRONG County; All of CAMERON County; All of CENTRE County; All of CLARION County; All of CLEARFIELD County; All of CLINTON County; All of ELK County; All of FOREST County; Part of INDIANA County consisting of the TOWNSHIPS of Banks, Canoe, East Mahoning, Grant, Montgomery, North Mahoning, South Mahoning (PART, District 01 (only blocks 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2042, 2043, 2044, 3000 and 3001 of tract 960200)) and West Mahoning and the BOROUGHS of Glen Campbell, Marion Center and Smicksburg; All of JEFFERSON County; Part of LYCOMING County consisting of the CITY of Williamsport (PART, Ward 05 (only blocks 1034, 1035, 1036, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1055, 1056, 1057, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088 and 2089 of tract 000900)) and the TOWNSHIPS of Anthony, Armstrong, Bastress, Brady, Brown, Cascade, Cogan House, Cummings, Gamble, Hepburn, Jackson, Lewis, Limestone, Lycoming, McHenry, McIntyre, McNett, Mifflin, Nippenose, Old Lycoming, Piatt, Pine, Porter, Susquehanna, Washington, Watson and Woodward and the BOROUGHS of Duboistown, Jersey Shore, Salladasburg and South Williamsport; All of MCKEAN County; All of POTTER County; All of SNYDER County; All of TIOGA County; All of UNION County; Part of VENANGO County consisting of the CITY of Oil City and the TOWNSHIPS of Allegheny, Cherrytree, Clinton, Cornplanter, Cranberry, Oakland, Oil Creek, Pinegrove, Plum, President, Richland, Rockland, Scrubgrass and Victory (only blocks 1045, 1046, 1047, 1048, 1050, 1051, 1053, 1058, 1059 and 1060 of tract 201400) and the BOROUGHS of Clintonville, Emlenton (Venango County Portion), Pleasantville and Rouseville and All of WARREN County.

Total population: 764,864

CONGRESSIONAL DISTRICTS

Dist. 16 BUTLER, CRAWFORD, ERIE, LAWRENCE, MERCER and VENANGO Counties.  
All of BUTLER County; All of CRAWFORD County; All of ERIE County; All of LAWRENCE County; All of MERCER County and Part of VENANGO County consisting of the CITY of Franklin and the TOWNSHIPS of Canal, Frenchcreek, Irwin, Jackson, Mineral, Sandycreek and Victory (all blocks except 1045, 1046, 1047, 1048, 1050, 1051, 1053, 1058, 1059 and 1060 of tract 201400) and the BOROUGHS of Barkeyville, Cooperstown, Polk, Sugarcreek and Utica.  
Total population: 764,865

Dist. 17 ALLEGHENY and BEAVER Counties.  
Part of ALLEGHENY County consisting of the TOWNSHIPS of Aleppo, Baldwin, Collier, Crescent, East Deer, Fawn, Findlay, Frazer, Hampton, Harmar, Harrison, Indiana, Kennedy, Kilbuck, Leet, Marshall, McCandless, Moon, Mount Lebanon, Neville, North Fayette, O'Hara, Ohio, Penn Hills, Pine, Reserve, Richland, Robinson, Ross, Scott, Shaler, South Fayette, Springdale, Stowe and West Deer and the BOROUGHS of Aspinwall, Avalon, Bell Acres, Bellevue, Ben Avon, Ben Avon Heights, Blawnox, Brackenridge, Braddock Hills, Bradford Woods, Carnegie, Castle Shannon, Cheswick, Churchill, Coraopolis, Crafton, Dormont, Edgewood, Edgeworth, Emsworth, Etna, Forest Hills, Fox Chapel, Franklin Park, Glen Osborne, Glenfield, Green Tree, Haysville, Heidelberg, Ingram, Leetsdale, McDonald (Allegheny County Portion), McKees Rocks, Millvale, Oakdale, Oakmont, Pennsbury Village, Rossllyn Farms, Sewickley, Sewickley Heights, Sewickley Hills, Sharpsburg, Springdale, Swissvale (PART, Districts 02 (all blocks except 2014, 2015, 3007, 3008, 3009 and 3010 of tract 515100), 03, 04 and 05), Tarentum, Thornburg, Verona, West View and Wilkinsburg and All of BEAVER County.  
Total population: 764,864

Population of all districts: 13,002,700

**The Statewide population = 13,002,700**

**The Average population per district = 764,865**

<b>DISTRICT</b>	<b>POPULATION</b>	<b>DEVIATION</b>
1	764,866	+1 (0.00%)
2	764,865	+0 (0.00%)
3	764,864	-1 (0.00%)
4	764,865	+0 (0.00%)
5	764,866	+1 (0.00%)
6	764,864	-1 (0.00%)
7	764,865	+0 (0.00%)
8	764,866	+1 (0.00%)
9	764,864	-1 (0.00%)
10	764,864	-1 (0.00%)
11	764,864	-1 (0.00%)
12	764,864	-1 (0.00%)
13	764,864	-1 (0.00%)
14	764,866	+1 (0.00%)
15	764,864	-1 (0.00%)
16	764,865	+0 (0.00%)
17	764,864	-1 (0.00%)

COUNTIES SPLIT BY CONGRESSIONAL DISTRICTS

14 TOTAL COUNTIES

17 TOTAL SPLITS

ALLEGHENY	012 017
BERKS	004 006 009
CHESTER	005 006
CUMBERLAND	010 013
INDIANA	014 015
LUZERNE	008 009
LYCOMING	009 015
MONROE	007 008
MONTGOMERY	001 004 005
PHILADELPHIA	002 003 005
SOMERSET	013 014
VENANGO	015 016
WESTMORELAND	012 014
YORK	010 011

## PLACES SPLIT BY CONGRESSIONAL DISTRICTS

20 TOTAL PLACES

21 TOTAL SPLITS

## ALLEGHENY COUNTY

SWISSVALE                      BOROUGH                      012 017

## BERKS COUNTY

EXETER                      TOWNSHIP                      004 006

LOWER HEIDELBERG              TOWNSHIP                      004 009

PERRY                      TOWNSHIP                      004 009

## CHESTER COUNTY

BIRMINGHAM                      TOWNSHIP                      005 006

## CUMBERLAND COUNTY

NORTH NEWTON                      TOWNSHIP                      010 013

## INDIANA COUNTY

SOUTH MAHONING                      TOWNSHIP                      014 015

## LUZERNE COUNTY

BUTLER                      TOWNSHIP                      008 009

NEWPORT                      TOWNSHIP                      008 009

## LYCOMING COUNTY

WILLIAMSPORT                      CITY                      009 015

## MONROE COUNTY

ROSS                      TOWNSHIP                      007 008

## MONTGOMERY COUNTY

HORSHAM                      TOWNSHIP                      001 004

LOWER MERION                      TOWNSHIP                      004 005

UPPER MERION                      TOWNSHIP                      004 005

## PHILADELPHIA COUNTY

PHILADELPHIA                      CITY                      002 003 005

## SOMERSET COUNTY

CONEMAUGH                      TOWNSHIP                      013 014

## VENANGO COUNTY

VICTORY                      TOWNSHIP                      015 016

## PLACES SPLIT BY CONGRESSIONAL DISTRICTS

## WESTMORELAND COUNTY

HEMPFIELD	TOWNSHIP	012 014
SOUTH HUNTINGDON	TOWNSHIP	012 014

## YORK COUNTY

JACKSON	TOWNSHIP	010 011
---------	----------	---------

WARDS SPLIT BY CONGRESSIONAL DISTRICTS

22 TOTAL WARDS		22 TOTAL SPLITS
ALLEGHENY COUNTY		
SWISSVALE	BOROUGH	
WARD 02		012 017
BERKS COUNTY		
EXETER	TOWNSHIP	
WARD 10		004 006
CHESTER COUNTY		
BIRMINGHAM	TOWNSHIP	
WARD 02		005 006
INDIANA COUNTY		
SOUTH MAHONING	TOWNSHIP	
WARD 01		014 015
LUZERNE COUNTY		
BUTLER	TOWNSHIP	
WARD 05		008 009
LYCOMING COUNTY		
WILLIAMSPORT	CITY	
WARD 05		009 015
MONTGOMERY COUNTY		
HORSHAM	TOWNSHIP	
WARD 02		001 004
WARD 03		001 004
WARD 04		001 004
LOWER MERION	TOWNSHIP	
WARD 06		004 005
WARD 11		004 005
WARD 12		004 005
UPPER MERION	TOWNSHIP	
WARD BELMONT		004 005
PHILADELPHIA COUNTY		
PHILADELPHIA	CITY	
WARD 03		003 005
WARD 05		002 003



## WARDS SPLIT BY CONGRESSIONAL DISTRICTS

WARD 16		002 003
WARD 26		003 005
WARD 39		003 005
WARD 51		003 005
SOMERSET COUNTY		
CONEMAUGH	TOWNSHIP	
WARD 02		013 014
WESTMORELAND COUNTY		
HEMPFIELD	TOWNSHIP	
WARD MIDDLETOWN		012 014
YORK COUNTY		
JACKSON	TOWNSHIP	
WARD 01		010 011

**IN THE SUPREME COURT OF PENNSYLVANIA**

Carol Ann Carter, Monica Parrilla, Rebecca : 7 MM 2022  
Poyourow, William Tung, Roseanne Milazzo, Burt :  
Siegel, Susan Cassanelli, Lee Cassanelli, Lynn :  
Wachman, Michael Guttman, Maya Fonkeu, Brady  
Hill, Mary Ellen Balchunis, Tom DeWall, Stephanie  
McNulty and Janet Temin, Petitioners

v.

Leigh M. Chapman, in her official capacity as the  
Acting Secretary of the Commonwealth of  
Pennsylvania; Jessica Mathis, in her official capacity  
as Director for the Pennsylvania Bureau of Election  
Services and Notaries, Respondents

-----  
Philip T. Gressman; Ron Y. Donagi; Kristopher R.  
Tapp; Pamela Gorkin; David P. Marsh; James L.  
Rosenberger; Amy Myers; Eugene Boman; Gary  
Gordon; Liz McMahon; Timothy G. Feeman; and  
Garth Isaak, Petitioners

v.

Leigh M. Chapman, in her official capacity as the  
Acting Secretary of the Commonwealth of  
Pennsylvania; Jessica Mathis, in her official capacity  
as Director for the Pennsylvania Bureau of Election  
Services and Notaries, Respondents

**PROOF OF SERVICE**

I hereby certify that this 25th day of February, 2022, I have served the attached document(s) to the persons on the  
date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

IN THE SUPREME COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

(Continued)

**Service**

Served: Anthony Michael Pratt  
Service Method: eService  
Email: prattam@pepperlaw.com  
Service Date: 2/25/2022  
Address: Pepper Hamilton LLP  
3000 Two Logan Square  
Philadelphia, PA 19103  
Phone: 215-981-4386  
Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

Served: Anthony Richard Holtzman  
Service Method: eService  
Email: anthony.holtzman@kigates.com  
Service Date: 2/25/2022  
Address: K&L Gates LLP  
17 N. Second Street, 18th Floor  
Harrisburg, PA 17101  
Phone: 717--23-1-4500  
Representing: Respondent Jake Corman  
Respondent Kim Ward

Served: Clifford B. Levine  
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Email: clifford.levine@dentons.com  
Service Date: 2/25/2022  
Address: Dentons Cohen & Grigsby P.C.  
625 Liberty Avenue  
Pittsburgh, PA 15222-3152  
Phone: 412-297-4998  
Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

Served: Corrie Allen Woods  
Service Method: eService  
Email: cwoods@woodslawoffices.com  
Service Date: 2/25/2022  
Address: One Oxford Centre, Suite 4300  
301 Grant Street  
Coraopolis, PA 15219  
Phone: 412-345-3198  
Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

IN THE SUPREME COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

Served: Daniel Thomas Brier  
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Email: dbrier@mbklaw.com  
Service Date: 2/25/2022  
Address: 425 Spruce Street  
Scranton, PA 18503  
Phone: 570--34-2-6100  
Representing: Respondent Joanna McClinton

Served: David Samuel Senoff  
Service Method: eService  
Email: dsenoff@firstlawstrategy.com  
Service Date: 2/25/2022  
Address: 121 S. Broad Street  
Suite 300  
Philadelphia, PA 19107  
Phone: 215--25-8-4700  
Representing: Respondent Joanna McClinton

Served: Devin Michael Misour  
Service Method: eService  
Email: dmisour@reedsmith.com  
Service Date: 2/25/2022  
Address: Reed Smith LLP  
225 Fifth Avenue  
Pittsburgh, PA 15222  
Phone: 412-288-3091  
Representing: Petitioner Philip T. Gressman, et al.

Served: Edward David Rogers  
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Email: rogerse@ballardspahr.com  
Service Date: 2/25/2022  
Address: 1735 Market Street  
51st Floor  
Philadelphia, PA 19103  
Phone: 215-864-8144  
Representing: Petitioner Carol Ann Carter, et al.

IN THE SUPREME COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

Served: Emma Frances Elizabeth Shoucair  
Service Method: eService  
Email: emma.shoucair@dentons.com  
Service Date: 2/25/2022  
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Pittsburgh, PA 15222  
Phone: 412-417-1889  
Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

Served: James Guthrie Mann  
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Email: jmann@pahousegop.com  
Service Date: 2/25/2022  
Address: B-6 Main Capitol  
P.O. Box 202228  
Harrisburg, PA 17120  
Phone: 717--78-3-1510  
Representing: Respondent Bryan Cutler  
Respondent Kerry Benninghoff

Served: Jeffry William Duffy  
Service Method: eService  
Email: jduffy@bakerlaw.com  
Service Date: 2/25/2022  
Address: Baker & Hostetler LLP  
2929 Arch St., 12th Floor  
Philadelphia, PA 19104  
Phone: 215--56-4-2916  
Representing: Respondent Bryan Cutler  
Respondent Kerry Benninghoff

Served: Jonathan Richard Vaitl  
Service Method: eService  
Email: jon.vaitl@klgates.com  
Service Date: 2/25/2022  
Address: 17 N. 2nd Street  
18th Floor  
Harrisburg, PA 17101  
Phone: 717--23-1-4500  
Representing: Respondent Jake Corman  
Respondent Kim Ward

IN THE SUPREME COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

Served: Joshua John Voss  
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Email: jvoss@kleinbard.com  
Service Date: 2/25/2022  
Address: Three Logan Sqaure, 5th Floor  
1717 Arch Street  
Philadelphia, PA 19103  
Phone: 267--44-3-4114  
Representing: Respondent Guy Reschenthaler, Jeffrey Varner, Tom Marino, Ryan Costello, Bud Shuster (Congressio

Served: Kathleen Marie Kotula  
Service Method: eService  
Email: kkotula@pa.gov  
Service Date: 2/25/2022  
Address: Room 306 North Office Building  
401 North Street  
Harrisburg, PA 17120-0500  
Phone: (71-7) -783-0736  
Representing: Respondent Bureau of Elections

Served: Kevin Michael Greenberg  
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Email: greenbergk@gtlaw.com  
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Suite 400  
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Phone: 215--98-8-7800  
Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

Served: Kim M. Watterson  
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Email: kwatterson@reedsmith.com  
Service Date: 2/25/2022  
Address: 225 Fifth Avenue  
Pittsburgh, PA 15222  
Phone: 412--28-8-7996  
Representing: Petitioner Philip T. Gressman, et al.

IN THE SUPREME COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

Served: Lam Dang Truong  
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Address: 620 Main Capitol Building  
Harrisburg, PA 17120  
Phone: 717-787-3002  
Representing: Respondent Joanna McClinton

Served: Marcel S. Pratt  
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Phone: 215-864-8506  
Representing: Petitioner Carol Ann Carter, et al.

Served: Marco Santino Attisano  
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Email: marco@arlawpitt.com  
Service Date: 2/25/2022  
Address: 707 Grant Street  
Suite 2750  
Pittsburgh, PA 15219  
Phone: 412-438-8209  
Representing: Respondent Jay Costa, et al. & Senate Democratic Caucus

Served: Matthew Hermann Haverstick  
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Service Date: 2/25/2022  
Address: Three Logan Square, 5th Floor  
1717 Arch Street  
Philadelphia, PA 19103  
Phone: 215-568-2000  
Representing: Respondent Guy Reschenthaler, Jeffrey Varner, Tom Marino, Ryan Costello, Bud Shuster (Congressio

IN THE SUPREME COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

Served: Matthew S. Salkowski  
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Email: Msalkowski@pahouse.net  
Service Date: 2/25/2022  
Address: Pennsylvania House of Representatives  
Democratic Caucus, Office of Chief Counsel  
Harrisburg, PA 17111  
Phone: 717--78-7-3002  
Representing: Respondent Joanna McClinton

Served: Michael R. McDonald  
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Phone: 215-864-8425  
Representing: Petitioner Carol Ann Carter, et al.

Served: Paul Keller Ort  
Service Method: eService  
Email: ortp@ballardspahr.com  
Service Date: 2/25/2022  
Address: 1735 Market Street 51st Floor  
Philadelphia, PA 19103  
Phone: 215-864-8287  
Representing: Petitioner Carol Ann Carter, et al.

Served: Robert Joseph Clark  
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1735 Market Street, 51st Floor  
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Phone: 215--86-4-8659  
Representing: Petitioner Carol Ann Carter, et al.



IN THE SUPREME COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

Served: Samantha G. Zimmer  
Service Method: eService  
Email: szimmer@kleinbard.com  
Service Date: 2/25/2022  
Address: Three Logan Square, 5th Floor  
1717 Arch Street  
Philadelphia, PA 19103  
Phone: 267-443-4143  
Representing: Respondent Guy Reschenthaler, Jeffrey Varner, Tom Marino, Ryan Costello, Bud Shuster (Congressio

Served: Shannon Elise McClure  
Service Method: eService  
Email: smcclure@reedsmith.com  
Service Date: 2/25/2022  
Address: 1717 Arch Street  
Suite 3100  
Philadelphia, PA 19103  
Phone: 215-241-7977  
Representing: Petitioner Philip T. Gressman, et al.

Served: Shohin Hadizadeh Vance  
Service Method: eService  
Email: svance@kleinbard.com  
Service Date: 2/25/2022  
Address: Three Logan Square  
1717 Arch Street, 5th Floor  
Philadelphia, PA 19103  
Phone: 267-443-4142  
Representing: Respondent Guy Reschenthaler, Jeffrey Varner, Tom Marino, Ryan Costello, Bud Shuster (Congressio

IN THE SUPREME COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

(Continued)

**Courtesy Copy**

Served: Adam Craig Bonin  
Service Method: eService  
Email: adam@boninlaw.com  
Service Date: 2/25/2022  
Address: 121 S Broad St, Suite 400  
Phila, PA 19107  
Phone: 267-242-5014  
Representing: Amicus Curiae et al. Charlene David

Served: Andrew Michael Rocco  
Service Method: eService  
Email: andrew.rocco@dechert.com  
Service Date: 2/25/2022  
Address: 315 Green St  
Apt. C  
Philadelphia, PA 19123  
Phone: 856-693-0378  
Representing: Amicus Curiae Khalif Ali, et al

Served: Benjamin David Geffen  
Service Method: eService  
Email: bgeffen@pilcop.org  
Service Date: 2/25/2022  
Address: 1709 Benjamin Franklin Parkway, 2nd Floor  
Philadelphia, PA 19103  
Phone: 215--62-7-7100  
Representing: Amicus Curiae Khalif Ali, et al

Served: Bernard T. Kozykowski Jr.  
Service Method: First Class Mail  
Service Date: 2/25/2022  
Address: 7237 Standing Stone Rd  
Huntingdon, PA 16652  
Phone: 814-667-2034  
Pro Se: Amicus Curiae Bernard T. Kozykowski Jr.

IN THE SUPREME COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

Served: Brian Anthony Gordon  
Service Method: eService  
Email: Briangordon249@gmail.com  
Service Date: 2/25/2022  
Address: One Belmont Avenue  
Suite 519  
Bala Cynwyd, PA 19004  
Phone: 610--66-7-4500  
Representing: Amicus Curiae Concerned Citizens for Democracy

Served: Christopher D. Carusone  
Service Method: eService  
Email: ccarusone@cohenseglia.com  
Service Date: 2/25/2022  
Address: 240 North 3rd Street  
7th Floor  
240 North Third Street, 5th floor, PA 17101  
Phone: 717--23-4-5530  
Representing: Amicus Curiae Greater Susquehanna Valley Chamber of Commerce  
Amicus Curiae Williamsport/Lycoming Chamber of Commerce

Served: James McCune  
Service Method: eService  
Email: jmccune@bowlesrice.com  
Service Date: 2/25/2022  
Address: 62 East Wheeling St  
Washington, PA 15301  
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/s/ Robert Andrew Wiygul

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