

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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464 M.D. 2021 & 465 M.D. 2021 (Consolidated)

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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*

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 of the Pennsylvania Bureau of Election Services and Notices,  
*Respondents*

and

PHILIP T. GRESSMAN, RON Y. DONAGI, KRISTOPHER R. TAPP, PAMELA  
GORKIN, DAVID P. MARSH, JAMES L. ROSENBERGER, AMY MYERS,  
EUGENE BOWMAN, GARY GORDON, LIZ MCMAHON, TIMOTHY G.  
FREEMAN, 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 of the Pennsylvania Bureau of Election Services and Notices,  
*Respondents*

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**POST-TRIAL SUBMISSION**

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## SENATE DEMOCRATIC CAUCUS' POST-TRIAL SUBMISSION

AND NOW come Intervenors Senator Jay Costa, et al. (the “Senate Democratic Caucus”), by and through the undersigned counsel, and file this Post-Trial Submission, and offer the following:

This action arises from Petitioners’ December 17, 2021 petitions for review seeking, *inter alia*, the judicial adoption of a remedial Congressional redistricting plan. On Thursday, January 27, and Friday, January 28, 2022, the parties proceeded to trial, at the conclusion of which this Honorable Court directed the parties to file any post-trial submissions by today, January 29, 2022, at 2 p.m. Senate Democratic Caucus now files this Post-Trial Submission.

The applicable legal standard is clear. This Honorable Court is obliged to apply our Supreme Court’s decision in *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018). That decision recognizes that the Free and Equal Elections Clause of our Commonwealth’s Constitution is a bulwark against dominant political factions’ use of election laws, and, in particular, redistricting plans, to entrench their power and dilute their opponents’ supporters’ votes. *See generally id.* It holds that our Constitution requires that a redistricting plan employ traditional redistricting criteria *and* avoid partisan vote dilution by providing all Pennsylvanian voters “an equal opportunity to translate their votes into representation.” *Id.* at 804. Thus, an

ideal map should employ traditional redistricting criteria and avoid diluting Democratic or Republican votes.

The parties herein have proposed numerous plans that comport with *League* by employing traditional redistricting criteria to avoid vote dilution to the degree it is possible to do so. Indeed, Senate Democratic Caucus’ plans, in particular, avoid vote dilution because they are structurally responsive in translating changes in vote share to changes in representation. As Senate Democratic Caucus’ testifying expert, Dr. Devin Caughey, explained in his report and at trial, Senate Democratic Caucus’ plans score exceptionally well in all vote-dilution-related metrics: partisan symmetry, efficiency gap, mean-median difference, and declination. *See* Supplemental Report of Dr. Devin Caughey (“Supplemental Report”), Senate Democratic Caucus’ Reply Brief, 1/25/22 (“Reply Brief”), Exh. A., at 3-5, 22-24; *see also* N.T., 1/28/22, at 211-66. And importantly, and contrary to Republican intervenors’ arguments at trial, these metrics do not serve to convert our electoral system into a proportional representation system:

Symmetry is not the same as *proportionality*, which requires that a party’s expected seat share is equal to its vote share. Due to the well-known “winner’s bonus” in majoritarian electoral systems, the majority party in a state usually wins a super-proportional share of seats unless the map is biased strongly against it. How much seat share changes as a function of a change in vote share—*i.e.*, the steepness of the seats-votes function—is called its *responsiveness*. . . . A symmetrical districting scheme need

not be proportional so long as seats-votes function is equally disproportionate for all parties, and reasonable arguments can be made for various degrees of responsiveness.

*See* Supplemental Report at 4. In other words, Senate Democratic Caucus' proposed plans achieve *League*'s second goal of avoiding partisan vote dilution by minimizing structural partisan advantage.

Not all parties, however, have fared so well. Both the Republican Legislative Intervenors' plan and the Republican Congressional Intervenors' plans facially comport with traditional redistricting criteria, but nevertheless grossly dilute votes, entrenching Republican power at the expense of the power of Democratic voters' votes. Indeed, as likewise explicated by Dr. Caughey and numerous other experts at trial, as compared to the other proposed plans, the Republican Legislative Intervenors' and Republican Congressional Intervenors' plans, multiply structural vote dilution by factors, not only in a predicted 51% Republican/49% Democratic election, but even more so in greater-margin elections. *See generally* Reply Brief at 4-9; Supplemental Report at 22-23; N.T., 1/28/22, at 211-66. Simply put, these plans are extreme outliers that serve to entrench Republican power by diluting Democratic supporters' votes.

Indeed, our Supreme Court in *League* presciently supposed that plans like these herein could emerge, admonishing against them:

[Demonstrating that traditional redistricting factors were subordinated to the entrenchment of partisan powers] is not the exclusive means by which a violation of Article I, Section 5 may be established. As we have repeatedly emphasized throughout our discussion, the overarching objective of this provision of our constitution is to prevent dilution of an individual's vote by mandating that the power of his or her vote in the selection of representatives be equalized to the greatest degree possible with all other Pennsylvania citizens. We recognize, then, that there exists the possibility that advances in map drawing technology, 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 congressional representatives. *See* N.T. Trial, 12/13/17, at 839-42 ([noting efficiency-gap testimony]).

*League*, 178 A.3d at 817. Although our high Court did not then adjudicate with precision whether and under what circumstances a claim challenging such a plan as unconstitutional could be advanced, it is clear that, particularly in the context of numerous other proposed plans that better serve *both* of *League*'s goals, it would be legal error to select Republican Legislative Intervenors' and Republican Congressional Intervenors' plans, which dilute Democratic supporters' votes and by subordinating their constitutional rights to Republican political advantage.

In light of all the foregoing, Senate Democratic Caucus respectfully requests that this Honorable Court enter an order selecting one of its proposed plans, any, in any event, a plan other than Republican Legislative Intervenors' and Republican Congressional Intervenors' plans.

Respectfully submitted,  
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