

IN THE SUPREME COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA
PARRILLA; REBECCA
POYOUROWN; 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. 7 MM 2022

LEIGH M. CHAPMAN, in
her official capacity as the Acting
Secretary of the Commonwealth of
Pennsylvania; JESSICA MATHIS, in
her official capacity 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,

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.

**ANSWER IN SUPPORT OF EMERGENCY APPLICATION FOR
EXERCISE OF EXTRAORDINARY JURISDICTION**

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Pursuant to Pa. R. App. P. 3309(b), Intervenor, Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives (“House Democratic Caucus Intervenor” or “Representative McClinton”), by and through their attorneys, hereby files this Answer in support of the Application of the *Carter* Petitioners¹ requesting that this Court exercise its extraordinary jurisdiction set forth at 42 Pa. C.S. § 726:

I. INTRODUCTION

As this Court previously recognized, this Court possesses “broad authority to craft meaningful remedies when required,” including when necessary to enforce the Free and Equal Elections Clause in the Pennsylvania Constitution. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 371 (Pa. 2020) (citing *League of Women Voters v. Commonwealth*, 178 A.3d 737, 822 (Pa. 2018)(“*LWV*”)); Pa. Const. art. 1, § 5 (“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.”).

On January 10, 2022, this Court denied the *Carter* Petitioners’ December 21, 2021, Application for Extraordinary Relief (“First Application”), without prejudice to their right “to reapply for similar relief in this Court, as future developments may

¹ The *Carter* Petitioners consist of 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.

dictate.” *See Gressman v. Degraffenreid*, No. 142 MM 2021, 2022 Pa. LEXIS 52 (Jan. 10, 2022). Since then, the following developments occurred:

- At the time this Court entered its January 10, 2022, Order denying without prejudice the *Carter* Petitioners’ First Application, the constitutionally prescribed legislative process had yet to reach fruition. Two weeks later on January 24, 2022, the Pennsylvania Senate passed House Bill 2146, Printer’s Number 2541 (“Congressional Redistricting Act of 2021”), which was then sent to Governor Wolf for his review. Two days later, on January 26, 2022, Governor Wolf returned that bill without his approval thereby vetoing the legislature’s proposed redistricting plan. *See* January 26, 2021, Veto statement of Governor Tom Wolf, a copy of which is attached hereto, made a part hereof and marked Exhibit “A.”
- On January 19, 2022, the Commonwealth Court granted the Petitions to Intervene in this matter of the House Democratic Caucus Intervenor and others, granting those intervenors party status.
- Additionally, the January 19, 2022 Order of the Commonwealth Court required all parties to submit at least one, but not more than two proposed “17-district congressional redistricting plan(s) that are consistent with the results of the 2020 Census and, if the party chooses to do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on Monday, January 24, 2022.” The January 19, 2022, Order also made provisions for responsive expert reports and briefs and other deadlines in advance of a two day “evidentiary hearing” scheduled on January 27 and 28, 2022.
- The Parties submitted the required redistricting plans and conducted a two-day evidentiary hearing on January 27 & 28, 2022, where expert testimony was presented together with opening statements and closing arguments.
- Significantly, prior to and during closing arguments the Commonwealth Court specifically asked each party to address their positions regarding the primary election schedule. *See, e.g.,* N.T., 1/28/22 at 1042-43; 1055-56.

Importantly, this matter is now in the same posture in which this Court assumed plenary jurisdiction and appointed a Commonwealth Court judge as master to make a

report and recommendation nearly three decades ago in *Mellow v. Mitchell*, 607 A.2d 204, 206 (Pa. 1992).

This Court should similarly assume plenary jurisdiction over this matter pursuant to its Extraordinary Jurisdiction and King’s Bench Power. As Justice Wecht observed, “[t]he adoption of a congressional map that satisfies the dictates of state and federal law is of immediate public importance to the citizens of the Commonwealth,¹¹ and considerations occasioned by further delay of these proceedings counsel strongly in favor of this Court’s intervention.” *Gressman*, at *3 (Wecht, J., dissenting).

II. FACTUAL AND PROCEDURAL BACKGROUND

In the interest of brevity and as this Court is already familiar with the facts of this matter together with its procedural background and the current procedural posture of the case following its January 10, 2022, Order as described above, House Democratic Caucus Intervenor, will not repeat same here.

III. THE EXERCISE OF EXTRAORDINARY JURISDICTION IS WARRANTED

This Court is vested with plenary authority to exercise jurisdiction over a matter pending in a tribunal of this Commonwealth:

Notwithstanding any other provision of law, the Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.

42 Pa.C.S. §726.6. An exercise of extraordinary jurisdiction is warranted where, as here, a case 1) is pending in one of the lower courts of this Commonwealth; 2) involves a matter of immediate public importance; and 3) where this Court’s exercise of jurisdiction is necessary to cause right and justice to be done. Each of these factors exists in this case and, consequently, this Court should exercise its extraordinary jurisdiction.²

A. This Court Has Plenary Discretion To Determine Whether A Case Warrants The Exercise Of Extraordinary Jurisdiction

This Court has never set forth a rigid or comprehensive definition of what type of issue will be deemed to be of “immediate public importance.” Rather, this Court addresses each case on an individual basis. An examination of cases where this Court has exercised its extraordinary jurisdiction demonstrates a broad view of what constitutes a matter of sufficient importance that will warrant extraordinary review, A comprehensive examination of these cases reveals that one or more of the following overarching factors have generally been present;

² Intervenors ask this Court to exercise its statutory extraordinary jurisdiction, **without** its King’s Bench power. “While similar, the two are not the same. Section 726 enables the Court to assume plenary jurisdiction over a matter pending before a court or district justice at any stage, while King’s Bench jurisdiction allows the Court to exercise power of general superintendency over inferior tribunals even when no matter is pending in a lower court.” *In re Dauphin County Fourth Investigating Grand Jury*, 943 A.2d 929, 933 n.3 (Pa. 2007). Because this Application arises out of consolidated actions pending in the Commonwealth Court, statutory extraordinary jurisdiction is the proper basis for review. Additionally, this Court should also exercise its King’s Bench Power to the extent the modification of the May 17, 2022, primary and pre-primary schedule is not properly before the Commonwealth Court in this case and also because the Commonwealth Court lacks authority to render such relief.

- (1) The need for a prompt, final decision;
- (2) Impact on the administration of the Unified Judicial System; and/or
- (3) Presence of a constitutional issue.

See 20 West’s Pennsylvania Practice, Appellate Practice §10:22 (Statutory extraordinary or plenary jurisdiction of the Supreme Court) (collecting cases) (internal citations omitted).

Notably, in the two most recent prior cases related to congressional redistricting, *LWV* and *Mellow* this Court found it necessary to exercise its statutory Extraordinary Jurisdiction. *Id.*

B. This Case Warrants this Court’s Exercise of its Extraordinary Jurisdiction

Here, the exercise of extraordinary jurisdiction is especially warranted because this case implicates all of the considerations addressed above. It involves critical constitutional issues, *i.e.*, whether a particular congressional redistricting plan following the decennial United States Census passes muster under both the United States and Pennsylvania Constitutions. Moreover, by the very nature of its subject matter it is a matter affecting every single voter in the Commonwealth of Pennsylvania. Further, the pending Application implicates concerns relating to the administration of the Unified Judicial System, specifically whether the Commonwealth Court sitting in its original jurisdiction, has the statutory jurisdiction, power, and authority to “select” a

redistricting plan out of more than a dozen of such proposed plans and thereafter order its implementation together with modifying the primary election schedule.

As stated above, in *Mellow*, the last time this Court was faced with the issue of congressional redistricting, it exercised extraordinary jurisdiction to take plenary jurisdiction over the matter and thereafter appointed the President Judge of Commonwealth Court to act as a master in developing the factual record and to thereafter issue a report and recommendation. In both *LWV* and *Mellow* (relating to congressional redistricting plans), the Supreme Court fashioned the remedy while at the same time deputizing the Commonwealth Court to conduct “all necessary and appropriate discovery, pre-trial and trial proceedings so as to create an evidentiary record on which Petitioners’ claims may be decided.” *LWV* at 766-67. *See also Mellow* at 206 (designating “President Judge David W. Craig of the Commonwealth Court as Master to conduct hearings and report to us not later than February 26, 1992.”). Regardless of the designation bestowed by this Court upon the Commonwealth Court, in both instances, the Commonwealth Court’s final determination was transmitted to this not as a “final order and judgment” of that Court, to the contrary, on both occasions the Commonwealth Court transmitted findings of fact, conclusions of law and recommendations as to the remedy. *See LWV* at 838 n.1 (referring to the Commonwealth Court’s “December 29, 2017 Recommended Findings of Fact and Conclusions of Law”); and *Mellow* at 206 (referring to Commonwealth Court President

Judge Craig's submission of "Findings, Recommended Decision and Form Order,' along with a proposed election schedule revision").

Accordingly, this Court most certainly has the jurisdiction, power, and authority to exercise its plenary extraordinary jurisdiction over this case, and moreover should do so.

IV. The Remedy Required In This Matter Requires This Court To Exercise Both Its Statutory Extraordinary Jurisdiction And its King's Bench Power

It cannot be gainsaid that the Commonwealth Court is a court of limited jurisdiction. That Court's jurisdiction is circumscribed by statute (42 Pa. C.S. §§ 761 – 764). Relevant to this matter, the Commonwealth Court's jurisdiction can only be predicated upon 42 Pa. C.S. § 761(a)(1), as the Commonwealth Court has original (but not exclusive) subject matter jurisdiction over all civil actions and proceedings against the Commonwealth government, including any officer thereof, acting in their official capacity. *Id.*³ Furthermore, 42 Pa. C.S. § 562 specifically cabins the Commonwealth Court's powers by limiting those powers to issuing:

every lawful writ and process necessary or suitable for the exercise of its jurisdiction and for the enforcement of any order which it may make, including such writs and process to or to be served or enforced by system and related personnel as the courts of common pleas are authorized by law or usage to issue. The court shall also have all powers of a court of record possessed by the courts of

³ While 42 Pa. C.S. § 764 delegates to the Commonwealth Court exclusive original jurisdiction over certain contests related to nominations and elections pursuant to the Pennsylvania Election Code, this matter does not involve any contested election or nomination for any office in particular over which the Commonwealth Court has original exclusive jurisdiction.

common pleas and all powers necessary or appropriate in aid of its appellate jurisdiction which are agreeable to the usages and principles of law.

Id. Simply put the Commonwealth Court’s power is limited to performing all necessary acts and the issuance of all process necessary in order to exercise its jurisdiction as an appellate court or as a court of original jurisdiction, like that of a court of common pleas within one of Pennsylvania’s 60 judicial districts. *Id.*

By contrast, this Court, the Supreme Court of Pennsylvania, possesses original, appellate, extraordinary, special, and plenary jurisdiction over all matters within Pennsylvania’s Unified Judicial System. *See* Pa. Const. art. V, §§ 1, 2, 10. *See also* 42 Pa. C.S. §§ 721 – 727. No statute nor the Pennsylvania Constitution limits the judicial power of this Court within the Commonwealth of Pennsylvania. To the contrary, “The Supreme Court (a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth;” Pa. Const. Art. V, § 2(a). *See also* 42 Pa. C.S. § 501 (“The [Supreme] court shall be the highest court of this Commonwealth and in it shall be reposed the supreme judicial power of the Commonwealth.”). Finally, the “general powers” of our Supreme Court are statutorily set forth as follows:

The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King’s Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722.

The Supreme Court shall also have and exercise the following powers:

(1) All powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law.

(2) The powers vested in it by statute, including the provisions of this title.

42 Pa. C. S. § 502. Accordingly, our Constitution and judiciary code make plain that, unlike every other court in this Commonwealth, this Court has all the necessary powers in aid of its original and appellate jurisdiction, and also all “powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons **and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King’s Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722.**”

Id. (Emphasis added). As such, this Court, by definition has the power, authority, and jurisdiction to fashion **any** judicial remedy: legal, equitable, criminal, or otherwise. As is self-evident, this Court is the only court within this Commonwealth to be so invested.

Id.

With regard to the sole issue before the Commonwealth Court in this proceeding, selecting which of more than a dozen of proposed congressional redistricting plans should be adopted by the Commonwealth following the constitutionally required census, as noted above, this Court has been called upon previously to fashion such a remedy *i.e.*, select between competing redistricting plans or

simply fashioning one itself that meets both the federally mandated requirements and those of the Free and Equal Elections Clause of the Pennsylvania Constitution. Pa. Const. Art. I, § 5. *See L WV* and *Mellow*. *See also Butcher v. Bloom*, 203 A.2d 556, 559 (Pa. 1964) (relating to “Pennsylvania Reapportionment Acts and the election of state senators and representatives thereunder.”). The *L WV* Court in summarizing those prior decisions stated:

Thus, it is beyond peradventure that it is the legislature, in the first instance, that is primarily charged with the task of reapportionment. However, the Pennsylvania Constitution, statutory law, our Court’s decisions, federal precedent, and case law from our sister states, all serve as a bedrock foundation on which stands the authority of the state judiciary to formulate a valid redistricting plan when necessary. Our prior Order, and this Opinion, are entirely consistent with such authority.¹¹

Id. at 824. Furthermore, the *L WV* Court held:

When, however, the legislature is unable or chooses not to act, it becomes the judiciary’s role to determine the appropriate redistricting plan. Specifically, while statutes are cloaked with the presumption of constitutionality, **it is the duty of this Court**, as a co-equal branch of government, to declare, when appropriate, certain acts unconstitutional. **Indeed, matters concerning the proper interpretation and application of our Commonwealth’s organic charter are at the end of the day for this Court — and only this Court.**

Id. at 822 (emphasis added). Specifically with regard to the crafting of a remedy, the

L WV Court found:

Further, our Court possesses broad authority to craft meaningful remedies when required. Pa. Const. art. V, §§ 1, 2, 10; 42 Pa.C.S. § 726 (granting power to “enter a final order or otherwise cause right and justice to be done”).

Id. (emphasis added).

Accordingly, what any fair reading of *LWV*, *Mellow*, and *Butcher* bring into sharp focus is that it is this Court that uniquely possess both the jurisdiction **and power** to “craft” the necessary remedy in this case. The Commonwealth Court simply does not have jurisdiction to craft a constitutional remedy in the form of either creating or selecting a redistricting plan.

As discussed above, the fact that the Commonwealth Court lacks the jurisdiction, power, and authority to implement one constitutionally satisfactory plan over another is further buttressed by *LWV*, *Mellow*, and *Butcher*. In each of those cases, once the legislature and governor failed to enact reapportionment or redistricting plans it was the Supreme Court that fashioned the remedy. *LWV* at 766-67. *See also Mellow* at 206 (designating “President Judge David W. Craig of the Commonwealth Court as Master to conduct hearings and report to us not later than February 26, 1992.”).

Unlike the present case, in *LWV*, the issue was whether the then existing and enacted “Pennsylvania Congressional Redistricting Act of 2011” violated our Commonwealth’s Constitution. *Id.* at 741. Here, there is currently no redistricting plan in place. Accordingly, no decision need be rendered on the constitutionality of any existing redistricting map. Furthermore, the parties stipulated that based upon the United States 2020 Census results, Pennsylvania shall be apportioned 17 seats in the United States House of Representatives as opposed to the 18 seats apportioned by to

the Commonwealth as a result of the 2010 United States Census. As a result, the current Pennsylvania congressional map enacted by the Pennsylvania Supreme Court in 2018 as a result of the *LWV* decision, is by definition unconstitutionally obsolete as it contains one more district than the Commonwealth has been apportioned. *See* USCS Const. Art. I, § 2, Cl 3.

Because Pennsylvania's current congressional district map provides for 18 congressional districts rather than 17 it cannot legally be used for the upcoming election. As a result, the Commonwealth Court need not pass judgment upon the constitutionality of that map and, given the Governor's veto of House Bill 2146 on January 26 2022, there is no currently enacted redistricting plan for the Commonwealth Court to evaluate as to constitutionality. *See* Exhibit "A." Rather, the Commonwealth Court is being asked to fashion a remedy in the absence of a legislatively passed and approved redistricting plan. As discussed above, the jurisdiction, power, and authority to issue such a remedy is outside the statutorily prescribed jurisdiction and power of the Commonwealth Court and instead resides solely with the Supreme Court of Pennsylvania.

Given this matter's current procedural posture, it is more closely procedurally aligned with *Mellow*. Nevertheless, in *Mellow*, President Judge Craig did not order a remedy in the form of a redistricting plan. Instead, President Judge Craig made recommendations *to this Court* as follows:

The resulting recommendation, considering all of the elements reviewed above, is to advise in favor of approval of Plaintiffs’ Plan 2 as (1) having a low maximum deviation, (2) consistent with minimal splitting of precincts, (3) achieving an enlarged number of two congressional districts with a majority African-American population and (4) coming closest to implementing the community-of-interest factors in those regions across the state which have identified them.

Id. at 224 (Appendix “A” to the decision of the Supreme Court) (emphasis added). President Judge Craig then went on to provide “recommendations” to this Court relating to revisions of the election calendar based upon arguments advanced in that case regarding the congressional redistricting plan that was at issue in *Mellow* and “the separate case involving appeals to the Supreme Court from the Reapportionment Commission.” *Id.*

Simply stated, the Commonwealth Court lacks jurisdiction to issue a final judgment and order declaring which congressional redistricting plans should be utilized in the upcoming 2022 congressional election cycle. Furthermore, the most recent cases from this Court and the Commonwealth Court directly addressing this issue reveal that on the last two prior occasions the Commonwealth Court was called upon to review congressional redistricting plans, it did not enter an order declaring which plan would be adopted. Instead, it heard evidence, submitted findings of fact and conclusions of law and then issued its overall conclusions not as an order and final judgment, but instead as a “Recommended Decision.” *See Mellow* at 206, 224; *LWV* at 838, n.36

(referring to this Court’s December 29, 2017, decision as “Recommended Findings of Fact and Conclusions of Law”).

Accordingly, Intervenor Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives, respectfully submits that the Commonwealth Court lacks the jurisdiction, power or authority to adopt a remedy in any form other than that of a “recommendation.” As a result, this Court must exercise both its extraordinary jurisdiction and King’s Bench Power simultaneously in this matter so that it can issue full and complete relief. Any other result would be nothing more than a legal nullity as the Commonwealth Court lacks the jurisdiction, power, and authority to order such a remedy.

V. The Currently In-Force Primary Election Calendar Warrants This Court’s Plenary Exercise Of Its Extraordinary Relief And Its King’s Bench Power

These consolidated matters do not exist in a vacuum. Due to the constitutionally and statutorily limitations on the jurisdiction, power, and authority of the Commonwealth Court, this Court should assume plenary jurisdiction to address and conclusively resolve disputes affecting the current 2022 primary election cycle. As the President Judge Craig of the Commonwealth Court recognized nearly 30 years ago in *Mellow*, revisions to the 1992 primary election calendar were necessary both as a result of the litigation regarding the congressional redistricting plan that was at issue in *Mellow* as well as “from the separate case involving appeals to the Supreme Court from the Reapportionment Commission.” *Id.*

The approach followed by President Judge Craig in *Mellow* and thereafter adopted this Court, allows for resolution of critically important election matters implicating the constitutional right to cast an equally weighted vote, including anticipated appeals from the final state legislative reapportionment plan which are expected to be filed in this Court following the vote on a final plan scheduled for later this week,⁴ pending appeals from the January 28, 2022 decisions of the Commonwealth Court declaring no-excuse mail-in voting unconstitutional, *McLinko v. Commonwealth of Pa.*, No. 244 M.D. 2021 (Pa. Commw. Ct. Jan. 28, 2022) (non-precedential),⁵ and fulfilling the obligation imposed on the judiciary to craft a valid congressional redistricting plan, *see generally League of Women Voters*, 178 A.3d at 822 (“When . . . the Legislature is unable or chooses not to act, it becomes the judiciary’s role to determine the appropriate redistricting plan.”). This Court—and only this Court—can conclusively decide and resolve these state constitutional matters and should do so promptly.

Significantly, on January 31, 2022, while Petitioner McLinko filed a “no answer letter” to Respondent’s Notice of Appeal and Statement of Jurisdiction, thereby acceding to the jurisdiction of this Court in that matter, on the same date, in violation

⁴ The Legislative Reapportionment Commission scheduled a vote on the final plan for Friday, February 4, 2022, at 1:00 pm. Pursuant to Article 2, Section 17 of the Pennsylvania Constitution, “[a]ny aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof.” Pa. Const. art. 2, § 17.

⁵ Respondent Commonwealth of Pennsylvania, Department of State filed a Notice of Appeal from the decision in *McLinko* on January 28, 2022. The appeal is docketed in this Court at Nos. 14 & 15 MAP 2022.

of Pa. R. App. P. 1701, he also filed a motion in the Commonwealth Court to “terminate the automatic stay,” which remains pending before the Commonwealth Court, despite the fact that the Commonwealth Court no longer possesses jurisdiction over that matter given that all parties agree (and the law provides) that this Court now properly has subject matter jurisdiction over that matter. Accordingly, if granted, the termination of the automatic stay by the Commonwealth Court in *McLinko* would result in the implementation of its order that no excuse mail-in balloting is unconstitutional, even while the appeal of that issue is still pending in this Court. Any delay occasioned by such a maneuver without a concomitant modification of the primary election calendar will result in millions of voters who believe they are going to receive a mail-in ballots, either being disenfranchised or having to go to their polling place and potentially voting in a new congressional district while voting in an old non-reapportioned legislative district.⁶ Such an anomalous result is not only unconstitutional but seems, at face value, a concerted effort by the various aligned parties and the Commonwealth Court to rush towards a statewide primary with new congressional districts, with old legislative districts, and with no paper ballots. Such a result simply cannot be harmonized with the Pennsylvania Constitution’s Free and Equal Election Clause.

⁶ Theoretically, left unabated, the failure to harmonize the primary election calendar with both the conclusion of this case and the final adjudication of any challenges to the state legislative redistricting plan, coupled with the destruction of no-excuse mail-in balloting would simply result in vote dilution and voter disenfranchisement.

There is no doubt that voters' rights to (1) cast their vote; and (2) to avoid having their vote diluted, will be better protected and state and local election officials will be better prepared if this Court acts *now* to conclusively determine which maps will be used to elect Pennsylvania's state and federal representatives and to clarify the timeline and ballot procedures for the upcoming primary election and. See *Pa. Democratic Party v. Boockvar*, 238 A.3d at 371 (exercising extraordinary jurisdiction to provide "clarity" as to election process).

VI. CONCLUION

For all the foregoing reasons, Intervenor Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives, respectfully requests that this Court grant the *Carter* Petitioners' Emergency Application for Extraordinary Relief and that this Court exercise its extraordinary jurisdiction over this matter together with its King's Bench Power in order to harmonize the primary election calendars and resolve the issues relating to the time, place, and manner of the exercise of the franchise by all registered voters in the Commonwealth of Pennsylvania. To do otherwise would be an abdication of one of this Court's foundational Constitutional duties – to ensure free and equal elections for all Pennsylvanians.

Respectfully submitted,



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Representatives*

Dated: February 1, 2022

Exhibit “A”



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

RECEIVED

2022 JAN 26 PM 2:40

DEPT OF STATE
BUREAU OF CE

THE GOVERNOR

January 26, 2022

TO THE HONORABLE HOUSE OF REPRESENTATIVES OF THE
COMMONWEALTH OF PENNSYLVANIA

Pursuant to Article IV, Section 15 of the Pennsylvania Constitution, I am returning herewith, without my approval, House Bill 2146, Printer's Number 2541.

This legislation fails the test of fundamental fairness. The result of a partisan political process, HB 2146 does not deliver on the Pennsylvania Constitution's guarantee of free and equal elections. The people of Pennsylvania deserve a fair election map that promotes accountability and responsiveness to voters and is drawn in an open and honest way. Instead, HB 2146 adopts a map selected by politicians to take advantage of the process and choose their own voters. This directly contravenes a "core principle of our republican form of government" identified by the Pennsylvania Supreme Court: "that the voters should choose their representatives, not the other way around." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 740-41 (Pa. 2018).

Last year, I convened a Pennsylvania Redistricting Advisory Council made up of six members with expertise in redistricting, political science, and mapmaking, to establish a set of Redistricting Principles to help guide my review of maps considered and ultimately passed by the General Assembly. The Redistricting Advisory Council met numerous times, and subsequently held a series of in-person and virtual public listening sessions across the state to take public feedback on the Redistricting Principles and the redistricting process. The Redistricting Principles were finalized and made public in late November and consist of (1) Legal Principles, *i.e.*, directives for compliance with legal requirements, such as ensuring that population deviations between districts comply with the United States and Pennsylvania Constitutions; as well as (2) Principles of Representation, *i.e.*, guidance to ensure that communities of interest are maintained, that representation is fair, and that the public can participate meaningfully in the process. This bill fails to comply with the Redistricting Principles outlined by the Redistricting Advisory Council.

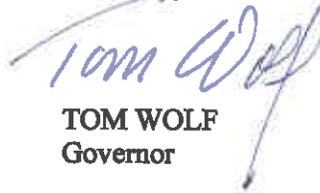
First, the revised map splits multiple communities of interest, including splits in Luzerne, Dauphin, Philadelphia and Chester counties that do not appear to be motivated by compelling legal principles, but rather by a desire to make districts more favorable to Republican candidates. Second, the Redistricting Advisory Council recommended that I review proposed maps to determine whether their expected performance is consistent with statewide voter preference. The HB 2146 map falls short on this basic measure of partisan fairness, giving a structural advantage to Republican candidates that far exceeds the party's voter support. A comparison of the HB 2146 map to prior election results and to neutrally drawn maps, using rigorous mathematical methodology, has demonstrated that the HB 2146 map would unnecessarily create noncompetitive districts unresponsive to Pennsylvania political trends and prevailing voter preference. Third, the HB 2146 map does not adequately satisfy the traditional redistricting criteria identified by the Pennsylvania Supreme Court in *League of Women Voters*. Last, despite promises of an open and transparent process, Democratic members of the General Assembly were completely cut out of the process of selecting the map from start to finish. As recently as January 18, 2022, as HB 2146 moved out of committee, the Pennsylvania Senate Republican Caucus issued a press release alerting the public that

"[a]dditional amendments are expected," in an effort to reach bipartisan compromise. Ultimately, these repeated promises of bipartisanship were only kept to the extent that several Republican members of the House of Representatives crossed the aisle to vote against this unfair map.

After this bill was introduced, I made my strong objections to the congressional redistricting map clear and urged bipartisan cooperation. I even provided the General Assembly with two congressional redistricting map options as examples of the type of map I would support – free of gerrymandering, consistent with the principles of the Redistricting Advisory Council, and in full accord with the Voting Rights Act and United States and Pennsylvania Supreme Court precedent – and to show that there are multiple ways to draw a fair map that meets the Redistricting Principles. Instead, the HB 2146 map was the only map considered by the General Assembly despite all the time they had to introduce maps for public comment and debate. The public deserves a fair map completed in a bipartisan manner; the General Assembly failed to adopt one.

For the reasons set forth above, I must withhold my signature from House Bill 2146, Printer's Number 2541.

Sincerely,



TOM WOLF
Governor

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