

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,

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.

No. 7 MM 2022

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.

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Pennsylvania Bureau of Election Services and Notaries,

Respondents.

**CARTER PETITIONERS' OPPOSITION TO THE APPLICATION TO
INTERVENE OF PROPOSED INTERVENOR TEDDY DANIELS**

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Pursuant to this Court’s February 12, 2022 Order, the *Carter* Petitioners respectfully submit the following brief in opposition to the Emergency Application for Intervention of Proposed Intervenor Teddy Daniels (“Application to Intervene”).

I. INTRODUCTION

The *Carter* Petitioners, who live in congressional districts that are currently malapportioned, filed this action in the Commonwealth Court *two months ago* to protect their fundamental voting rights by ensuring a constitutional map would be enacted in time for the 2022 primary elections. *See generally* Pet. (Ex. A). The Commonwealth Court ordered anyone seeking intervention to file an application more than *six weeks ago*. *See* Ex. B. Nevertheless, Proposed Intervenor Daniels filed his Application to Intervene a mere *four days ago*, after all proceedings before the Special Master concluded and just one week before this Court hears oral argument on 13 congressional maps proposed by eight existing parties—including five intervenors who complied with the Commonwealth Court’s timeline—and four *amici* who also timely filed to intervene (the “Submitted Plans”).

Mr. Daniels’s application is not just untimely; it also asserts novel theories that baselessly raise the specter of federal law violations, seeking not to argue for a certain map, but instead to halt these proceedings entirely. This Court need not engage with Mr. Daniels’s far-fetched arguments, as it has more than good cause to reject his application under Rule 2329, because Mr. Daniels has “unduly delayed”

in seeking to intervene, his intervention would “unduly delay . . . or prejudice the trial or the adjudication of the rights of the parties,” and his interests are already “adequately represented” by the myriad of parties (including several intervenors) already in the litigation. Pa. R.C.P. 2329. Mr. Daniels’s Application to Intervene should be denied.

II. BACKGROUND

As this Court is well aware, the Pennsylvania Constitution tasks the General Assembly and the Governor with passing a congressional reapportionment plan each redistricting cycle in the first instance. Pet. ¶ 36. However, the political branches have not adopted a congressional plan this cycle: the Governor vetoed the General Assembly’s map three weeks ago, on January 26, 2022¹—just as he said he would do a month earlier, on December 28, 2021.²

On December 17, the *Carter* Petitioners filed this action (“*Carter II*”). *See generally* Pet. They previously filed a substantially similar suit in April 2021 (“*Carter I*”), alleging that the General Assembly and Governor were likely to come to an impasse in passing congressional plans in time for the 2022 election cycle. *See*

¹ A copy of the Governor’s veto message can be found at <https://www.governor.pa.gov/wp-content/uploads/2022/01/20220126-HB-2146-Veto-Message.pdf>.

² A copy of the Governor’s December 28, 2021 letter to Speaker Cutler and Leader Benninghoff can be found at <https://www.governor.pa.gov/wp-content/uploads/2021/12/12.28.21-TWW-Cutler-Benninghoff-HB-2146-Final.pdf>.

Ex. C. That suit was ultimately dismissed on ripeness grounds, but during the case’s pendency, Respondents Secretary of State and the Director of Elections explained that “timely congressional redistricting [] is necessary to protect th[e] right to vote” and that “if the political branches of Pennsylvania’s government fail to carry out that redistricting, the courts will be required to step in.” Ex. D at 1. They further explained: “[T]o ensure efficient election administration, allow for timely notice to candidates, and permit proper implementation of the new congressional districts, Respondents believe that the Department of State must receive a final and legally binding congressional district map no later than January 24, 2022,” and that a new plan “must be signed into law by the end of December 2021” to permit adequate time for judicial review. *Id.* at 5.

Indeed, even though the *Carter I* Petition was not adjudicated at the time, the Commonwealth Court explicitly noted that if an impasse did arise, the Pennsylvania Supreme Court had previously demonstrated “its ability to move swiftly to implement remedial congressional districting plans,” citing this Court’s resolution of Pennsylvania’s 1990 cycle impasse, as well as its swift implementation of remedial congressional plans just four years ago. *See* Ex. E at 11. As a result, *Carter I*—which began almost *ten months ago*—previewed both the judicial redistricting process and election deadline concerns at issue now.

After the current *Carter II* Petition was filed, both the Commonwealth Court and this Court acted swiftly. The Commonwealth Court issued a scheduling order immediately, requiring any application to intervene to be filed by December 31, 2021, and stating that it would select among the congressional plans submitted by the parties “[i]f the General Assembly and the Governor fail to enact a congressional reapportionment plan by January 30, 2022.” Ex. B. Ten parties, ranging from voters to state legislators to other elected officials, filed applications to intervene, and the court held a hearing on January 6. At both that intervention hearing and the later hearing on the Submitted Maps, held on January 27 and 28, the Commonwealth Court asked parties and applicants, among other things, about their position on changing election-related deadlines. *See* N.T. at 22 (Jan. 27, 2022) (“[A]s we have all discussed during the various conferences and hearings held to date, the Court wants to hear from the parties their views on whether this Court will need to consider revisions to the 2022 election schedule calendar.”); N.T. at 24-25 (Jan. 6, 2022).

Now, six weeks after the Commonwealth Court’s deadline to intervene, Teddy Daniels, a candidate for Lieutenant Governor in the Republican primary, requests an emergency application to intervene in this redistricting litigation. He does not seek to advocate for a particular congressional map or provide information that will be useful to this Court in making its decision. Rather, just days before this Court holds oral argument on the Submitted Plans and proceeds toward finalizing a

map for this year's elections, Mr. Daniels seeks to stop the judicial redistricting process in its tracks and deny the *Carter* Petitioners and all Pennsylvania voters their right to constitutional congressional districts. This the Court should not allow.

III. LEGAL STANDARD

Applications to intervene are evaluated under Rules 2327 and 2329 of the Pennsylvania Rules of Civil Procedure. To intervene, Mr. Daniels must establish that “the determination of [this] action may affect any legally enforceable interest” of his.³ *See* Pa. R.C.P. 2327(4).⁴ However, even if Mr. Daniels satisfies Rule 2327(4), this Court may deny intervention if his interests are already adequately represented in the litigation, if he has “unduly delayed” in applying for intervention, or if the intervention would “unduly delay, embarrass or prejudice the trial or the

³ Mr. Daniels does not contend that he qualifies to intervene under subsections (1), (2), or (3) of Rule 2327.

⁴ In determining whether a party has a “legally enforceable interest” for purposes of intervention, courts look to principles governing legal standing. *See Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016) (“[W]hether Appellants were properly denied intervenor status . . . turns on whether they satisfy our standing requirements.”); *Application of Biester*, 409 A.2d 848, 851 (Pa. 1979) (vacating order granting intervention where applicant lacked standing to advance the actions). A party has standing where they have “a substantial, direct, and immediate interest in the matter.” *Markham*, 136 A.3d at 140. “The fact that the proceeding may, in some way, affect the proposed intervenor is not sufficient to invoke a ‘legally enforceable interest.’” *In re L.J.*, 691 A.2d 520, 527 (Pa. Super. 1997) (citing *In re Subpoena of Pa. Crime Comm’n*, 453 Pa. 513, 309 A.2d. 401 (1973) (denying intervention where interest was too general and indirect to support intervention) and *Pa. R.R. Co. v. Hughart*, 222 A.2d 736, 739 (Pa. 1966) (denying intervention where applicants’ interest was “too tangential” to the proceedings)).

adjudication of the rights of the parties.” Pa. R.C.P. 2329; *Wilson v. State Farm Mut. Auto. Ins. Co.*, 517 A.2d 944, 947 (Pa. 1986) (explaining, under Rules 2327 and 2329, “a mere prima facie basis for intervention is not enough . . .” and that Rule 2329 can otherwise preclude intervention to a party who has already shown a legally enforceable interest).

IV. ARGUMENT

This Court need not reach Mr. Daniels’s eligibility to intervene under Rule 2327 because, even if Mr. Daniels had a legally enforceable interest in this action, this Court has every reason to reject his application under Rule 2329.

First, Mr. Daniels’s application is untimely. The *Carter* Petitioners brought this action in the Commonwealth Court on December 17, 2021, and that court set a deadline for all intervention applications to be filed by December 31—more than six weeks ago.⁵ Mr. Daniels claims that he had no justification to intervene at that time. App. ¶ 35. However, his assertion that his status vis-à-vis this litigation has somehow changed since the Governor’s January 26, 2022 veto of HB 2146 or this Court’s February 9 order suspending election deadlines is baseless. *See Id.* ¶¶ 36-38.

⁵ Following a lengthy hearing and careful review, the Commonwealth Court granted six of the ten proposed intervenors party status, resulting in five intervening parties after some consolidation. Ex. F. It allowed the four remaining proposed intervenors to proceed solely as *amici*. *Id.*

From at least this litigation’s inception, it has been clear that the political process would fail to produce a map. *See supra* Part II. In a brief filed in this Court on December 27, 2021, even the Republican Legislative Leaders explained that they do not “contest” that “[w]hen . . . the legislature is unable or chooses not to act, it becomes the judiciary’s role to determine the appropriate redistricting plan.” Ex. G at 3 (citing *League of Women Voters v. Commonwealth*, 645 Pa. 1, 130, 178 A.3d 737, 822 (2018)). Indeed, they interposed no objection to “the commencement of a judicial redistricting process” at that juncture. *Id.* at 6. The Republican Legislative Leaders’ position was unsurprising given that the General Assembly had adjourned for the year without passing a map. Pet. ¶ 41. And the political process’s failure crystallized even further on December 28, when Governor Wolf sent a letter to Speaker Cutler and Leader Benninghoff criticizing the proposed congressional plans that the General Assembly had released, suggesting they may be unconstitutional and making clear he would not approve them.⁶ Nevertheless, the General Assembly did not make any progress toward passing, or even considering, a map that Governor Wolf would approve, instead passing the very same proposal that he had already suggested he would veto.⁷ As a result, Mr. Daniels’s assertion that his alleged interests arose as a result of Governor Wolf’s veto on January 26, 2022 is meritless.

⁶ *See supra* note 2.

⁷ *See supra* note 1.

App. ¶ 37. And even if it had any merit, Mr. Daniels ignores the fact that *twenty days* have passed since January 26. During that time, the Commonwealth Court held a two-day hearing, the parties submitted hundreds of pages of post-trial briefing, this Court took emergency jurisdiction and resolved additional applications for relief, and the Special Master issued her report and recommendation. Given the expedited nature of the present proceedings and this year's elections, a delay of twenty days is itself undue.

Likewise, the possible shift in election deadlines was an issue in this litigation long before this Court's February 9 order. *See supra* Part II. On December 27, 2021, Respondents Secretary of State and the Director of Elections asked this Court to consider "whether any revisions to the 2022 primary election schedule are necessary." Ex. H at 5. The Commonwealth Court then expressly asked all parties *and potential intervenors* to opine on any necessary changes to the election calendar during a hearing on January 6, 2022, and then again at the Special Master's hearing held on January 27 and 28. *See* N.T. at 22 (Jan. 27, 2022); N.T. at 24-25 (Jan. 6, 2022). Numerous parties indicated that at least some election-related deadlines would need to change, including Congressman Reschenthaler, whose proposal the Special Master recommended for adoption. *See* Special Master's Rep. at 218-22. Again, Mr. Daniels's delay in raising concerns about changes to the election calendar, notwithstanding whether such concerns are legitimate, is unwarranted. He

had sufficient notice that his alleged interests were at stake before the December 31, 2021 deadline to intervene in the Commonwealth Court, and certainly well before February 11, 2022, when he finally filed.

Second, Daniels’s application will unduly delay the adjudication of the existing parties’ rights. Adding an additional party who seeks to raise unrelated—not to mention novel and baseless—claims in the litigation will unnecessarily complicate a case that already has a dozen parties and *amici*. See *E. Am. Transp. & Warehousing, Inc. v. Evans Conger Broussard & McCrea, Inc.*, No. 2187, 2002 WL 1803718, at *4 (Pa. Ct. Com. Pl. July 31, 2002) (denying intervention under Rule 2329(3) where there were already many parties in the case and allowing intervention “would unnecessarily delay and complicate” the case); *Tonkonogy v. Levin*, 162 A. 315, 316 (Pa. Super. 1932) (“It is the general rule that an intervention is not a proper proceeding where it will have the effect of . . . complicating the case and producing a multifariousness of parties and causes of action.”).

The need to move swiftly is particularly important in redistricting litigation. Adopting a reapportionment plan is no small task and must be completed expeditiously, as evidenced by the schedule in this very case and those like it. See, e.g., *Erfer v. Commonwealth*, 794 A.2d 325, 328 (Pa. 2002) (Pennsylvania Supreme Court ordered Commonwealth Court to hear redistricting claims on an expedited basis and produce findings of fact and conclusions of law within two weeks of the

Court's order). Adding Mr. Daniels as a party in this case at this late date will stall the approval of a congressional map just as the process enters its final phase. And by doing so, it will affect the fundamental constitutional voting rights of the *Carter* Petitioners and, indeed, all Pennsylvania voters.

Relatedly, the Declaratory Judgments Act is intended to provide relief from uncertainty, which would only be magnified by expanding these proceedings to include an unnecessary third party and his claims. *See* Act of July 9, 1976, P.L. 586, No. 142, § 2, *as amended*, 42 Pa. C.S. § 7541 (“This subchapter[’s] . . . purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.”). Thus far, the parties and *amici* have cooperated with the Special Master’s and this Court’s efforts to proceed in an appropriately expeditious manner that allows for the timely vindication of the *Carter* Petitioners’ and others’ rights. Mr. Daniels, on the other hand, seeks to derail the ongoing proceedings and force an upcoming election without a congressional map at all. In the interest of justice, his intervention should be denied under Pa. R.C.P. 2329(3).

Third, even assuming Mr. Daniels has any interests in this action, they are adequately represented by other parties. Despite Mr. Daniels’s assertions that “[n]o current party or intervenor is a candidate for office that is affected by the Court’s order of February 9, 2022,” App. ¶ 29, or has signature collection requirements, *id.* ¶ 30, there *are* other such candidates in this litigation. *See* Ex. I at 6 (“Intervenor

Reschenthaler[] . . . [is] a sitting Congressman who is participating in the 2022 midterm elections.”); *see also* “Jake Corman for Governor,” cormanforpa.com (last accessed Feb. 14, 2022) (Intervenor Senate Leader Corman’s gubernatorial campaign website). And to the extent Mr. Daniels contends he has an interest in the rules governing his election, that interest is far too generalized and widely shared—including, presumably, by the candidates that are already party to this litigation—to be legally enforceable at all. *See Bognet v. Sec’y Commonwealth of Pennsylvania*, 980 F.3d 336, 351 (3d Cir. 2020), *cert. granted, judgment vacated sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021) (dismissed as moot) (holding that election rule did not affect candidate “in a particularized way when, in fact, all candidates in Pennsylvania, including [his] opponent, are subject to the same rules”).

The eight existing parties also adequately represent Mr. Daniels’s alleged interests as a voter. Indeed, Mr. Daniels makes no attempt to explain why he is not adequately represented by the other voter parties, except by pointing to claims that they are not bringing. App. ¶¶ 31-32. But a proposed intervenor’s “desire to pursue a preferred litigation strategy or defense theory [is] not an interest entitling [him] to intervene.” *Pa. Ass’n of Rural & Small Schools v. Casey*, 613 A.2d 1198, 1201 (Pa. 1992). Moreover, his interest in enforcing a federal constitutional clause and statute is best characterized as a general interest that all citizens share “in having others comply with the law or the constitution,” which this Court has repeatedly explained

is insufficient to confer standing to advance a petition or, as relevant here, to demonstrate a legally enforceable interest as an intervenor. *Biestler*, 409 A.2d at 850 n.2, 851-52; *see also Albert v. Lehigh Coal and Navigation Co.*, 246 A.2d 840, 845 n.5 (Pa. 1968) (“There is a *prima facie* presumption of the regularity of the acts of public officials which exists until the contrary appears[.]”). For this reason, too, the Court should deny his application.

V. CONCLUSION

Accordingly, the *Carter* Petitioners respectfully request this Court deny Mr. Daniels leave to intervene.

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the Pennsylvania Bureau of Election Services and Notaries,

Respondents.

No.

PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

INTRODUCTION

1. This is an action challenging Pennsylvania's lack of constitutional congressional district boundaries for the 2022 election cycle. Petitioners ask the Court to (1) declare unconstitutional Pennsylvania's current congressional district plan, which has become malapportioned by a decade of population shifts and now allocates more congressional districts than Pennsylvania has been lawfully allotted; (2) enjoin Respondents from using the current plan in any future elections; and (3) adopt a new congressional district plan that adheres to the constitutional requirement

of one-person, one-vote now that it is clear that the General Assembly and Governor will not timely act to do so.

2. This past August, the U.S. Secretary of Commerce delivered census-block results of the 2020 Census to Pennsylvania's Governor and legislative leaders. These data confirm the inevitable reality that population shifts in the last decade have rendered Pennsylvania's congressional plan unconstitutionally malapportioned. *See Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (three-judge court) (explaining that "existing apportionment schemes become instantly unconstitutional upon the release of new decennial census data" (internal quotation marks omitted)). Census data also confirmed that Pennsylvania will be allocated only 17 Members in the next Congress, one fewer than currently allocated.

3. These changes render Pennsylvania's current congressional districts both unlawful and unconstitutional. Specifically, the current configuration of Pennsylvania's congressional districts violates (1) the Free and Equal Elections Clause of the Pennsylvania Constitution, which guarantees its citizens the right to "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." *Patterson v. Barlow*, 60 Pa. 54, 75 (1869); (2) Article I, Section 2 of the U.S. Constitution's requirement that states "achieve population equality 'as nearly as is practicable'" when drawing congressional districts. *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting

Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964)); and (3) 2 U.S.C. § 2c’s requirement that a state should have “a number of [congressional] districts equal to the number of Representatives to which such State is so entitled.”

4. While “the primary responsibility and authority for drawing federal congressional legislative districts rests squarely with the state legislature,” when “the legislature is unable or chooses not to act, it becomes the judiciary’s role to determine the appropriate redistricting plan.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 821-22 (Pa. 2018) (*League of Women Voters I*). It is now clear that Pennsylvania’s political branches will not timely act to pass such a plan, requiring the judiciary to step in.

5. Although Pennsylvania’s General Assembly and its Governor have now had months to attempt to reach compromise on a congressional plan, they have not done so. They are not even in agreement over basic criteria: shortly after Governor Wolf explicitly identified the criteria that any congressional plan would need to meet in order to receive his signature, the General Assembly released a plan violating those criteria.

6. More importantly, however, beyond this dispute over the substance of a new congressional plan, the General Assembly has now adjourned for the remainder of 2021 without passing a new constitutional congressional plan and will not reconvene until January 2022. This delay means that it is now impossible for

Pennsylvania's political branches to reach agreement on a congressional plan by the end of December 2021, the time by which the Department of State previously explained it would be necessary for the political branches to have enacted a map for the 2022 elections to proceed on time.

7. This mimics what happened the last time Pennsylvania began a redistricting cycle in which its political branches were politically split as they are now: they failed to enact a congressional redistricting plan, forcing Pennsylvania's judiciary to take responsibility for enacting a new plan. *See Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992). And, more recently, just three years ago, the General Assembly and Governor Wolf could not agree on a new congressional plan following the Pennsylvania Supreme Court's invalidation of the plan enacted in 2011, forcing the Court to draw its own. *See League of Women Voters of Pa. v. Commonwealth*, 181 A.3d 1083, 1086 (Pa. 2018) (*League of Women Voters II*). This time, too, the Court should intervene to protect the constitutional rights of Petitioners and voters across the Commonwealth.

JURISDICTION AND VENUE

8. This Court has original jurisdiction over this Verified Petition for Review under 42 Pa. C.S. § 761(a)(1) because this matter is asserted against Commonwealth officials in their official capacities.

PARTIES

9. Petitioners are citizens of the United States and are registered to vote in Pennsylvania. Petitioners reside in the following congressional districts:

Petitioner's Name	County of Residence	Congressional District
Carol Ann Carter	Bucks	1
Monica Parrilla	Philadelphia	2
Rebecca Poyourow	Philadelphia	3
William Tung	Philadelphia	3
Roseanne Milazzo	Montgomery	4
Burt Siegel	Montgomery	4
Susan Cassanelli	Delaware	5
Lee Cassanelli	Delaware	5
Lynn Wachman	Chester	6
Michael Guttman	Chester	6
Maya Fonkeu	Northampton	7
Brady Hill	Northampton	7
Mary Ellen Balchunis	Dauphin	10
Tom DeWall	Cumberland	10
Stephanie McNulty	Lancaster	11
Janet Temin	Lancaster	11

10. As shown below, Petitioners reside in districts that are overpopulated relative to other districts in the state. Thus, they are deprived of the right to cast an equal vote, as guaranteed to them by the U.S. Constitution and the Pennsylvania Constitution.

11. Respondent Veronica Degraffenreid is the Acting Secretary of the Commonwealth and is sued in her official capacity only. In that capacity, Acting Secretary Degraffenreid is charged with general supervision and administration of Pennsylvania's elections and election laws. Acting Secretary Degraffenreid is

Pennsylvania's Chief Election Official and a member of the Governor's Executive Board. Among her numerous responsibilities in administering elections, Acting Secretary Degraffenreid is responsible for receiving election results from counties for each congressional district in the Commonwealth, and tabulating, computing, canvassing, certifying, and filing those results. 25 P.S. § 3159.

12. Respondent Jessica Mathis is the Director for the Bureau of Election Services and Notaries, a branch of the Pennsylvania Department of State, and she is sued in her official capacity only. In this capacity, Director Mathis is charged with supervising and administering the Commonwealth's elections and electoral process. The Bureau of Election Services and Notaries is responsible for planning, developing, and coordinating the statewide implementation of the Election Code.

FACTUAL ALLEGATIONS

I. Pennsylvania's current congressional districts were drawn using 2010 Census data.

13. Pennsylvania's current congressional district map was drawn in 2018 as the result of litigation over the map that had been drawn and enacted in 2011.

14. On January 22, 2018, the Pennsylvania Supreme Court held that the then-controlling congressional district map "plainly and palpably" violated the Pennsylvania Constitution's Free and Equal Elections Clause because it was "corrupted by extensive, sophisticated gerrymandering and partisan dilution." *League of Women Voters I*, 178 A.3d at 741, 821.

15. The Court provided the General Assembly and the Governor an opportunity to enact a lawful map, but they failed to do so. Thus, the task of drawing a constitutionally compliant map fell to the Court. *See generally League of Women Voters II*, 181 A.3d at 1083.

16. Because the results of the 2010 Census were the most accurate population data at the time, the Court relied exclusively on that data in drawing a new map.

17. According to the 2010 Census, Pennsylvania had a population of 12,702,379. Based on that data, the ideal population for each of Pennsylvania's congressional districts (the state's total population divided by the number of districts) in 2010 was 705,688 persons.

18. The Court-drawn map was adopted on February 19, 2018. *See generally League of Women Voters II*, 181 A.3d at 1083. In it, the districts had perfectly equal populations, with each district's population deviating from all others by no more than one person, based on the 2010 data.

II. The 2020 Census is complete.

19. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution.

20. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President, and on August 12, 2021, the U.S.

Secretary of Commerce delivered census-block results of the 2020 Census to Pennsylvania's Governor and legislative leaders.

21. The results of the 2020 Census report that Pennsylvania's resident population is 13,002,700. This is a significant increase from a decade ago, when the 2010 Census reported a total population of 12,702,379.

22. Because Pennsylvania's population growth over the last decade has been slower compared to many other states, however, Pennsylvania lost a congressional district.

23. Pennsylvania has been apportioned only 17 congressional seats for the next Congress, one fewer than the 18 seats it was apportioned following the 2010 Census.

24. Thus, beginning with the upcoming 2022 election, Pennsylvania voters will elect only 17 members to the U.S. House of Representatives.

25. According to the 2020 Census results, the ideal population for each of Pennsylvania's congressional districts under a 17-seat allocation is 722,372, approximately 17,000 more persons per district than under the 2010 Census allocations.

III. As a result of significant population shifts, Pennsylvania's congressional districts are unconstitutionally malapportioned.

26. In the past decade, Pennsylvania's population has shifted significantly, skewing the presently drawn congressional districts far from population equality.

And now that the 2020 Census is complete, the 2010 population data used to draw those districts are obsolete, making any prior justifications for the existing map's deviations from population equality no longer applicable.

27. In August 2021, the U.S. Secretary of Commerce delivered detailed population data to the Commonwealth of Pennsylvania, which the State may use to tabulate the new population of each subdivision. These data are commonly referred to as "P.L. 94-171 data," a reference to the legislation enacting this process. *See* Pub. L. No. 94-171, 89 Stat. 1023 (1975).

28. This P.L. 94-171 data demonstrated that population shifts since 2010 have rendered Congressional Districts 8, 9, 12, 13, 14, 15, 16, and 18 significantly underpopulated, and Congressional Districts 1, 2, 3, 4, 5, 6, 7, 10, 11, and 17 significantly overpopulated.

29. Due to these population shifts, Pennsylvania's existing congressional districts are unconstitutionally malapportioned.

30. If used in any future election, the current congressional plan will unconstitutionally dilute the strength of Petitioners' votes because they live in districts with populations that are significantly larger than those in which other voters live.

IV. As a result of significant population shifts in the past decade across the United States, Pennsylvania's congressional districts are also unlawfully apportioned.

31. In addition to malapportionment, Pennsylvania’s congressional plan also contains more districts than the number of representatives that Pennsylvanians may send to the U.S. House in the next Congress.

32. After the 2010 Census, Pennsylvania was allocated 18 seats in the United States House of Representatives.

33. While Pennsylvania gained population over the past decade, it did not keep pace with the population growth across the rest of the United States, meaning that Pennsylvania is entitled to only 17 congressional seats for the next Congress.

34. 2 U.S.C. § 2c provides that a state should have “a number of [congressional] districts equal to the number of Representatives to which such State is so entitled.”

35. Because the General Assembly and Governor have not reached agreement on a congressional plan that contains only 17 congressional districts, any future use of Pennsylvania’s current apportionment plan would be unlawful.

V. Pennsylvania’s political branches will not enact lawful congressional district maps in time for the next election.

36. In Pennsylvania, congressional district plans are enacted via legislation, which must pass both chambers of the General Assembly and be signed by the Governor (unless the General Assembly overrides the Governor’s veto by a two-thirds vote in both chambers). *League of Women Voters I*, 178 A.3d at 742; Pa. Const., Art. III, § 4; Pa. Const., Art. IV, § 15.

37. The General Assembly and Governor Wolf have had months to reach agreement on a congressional district plan. They have not done so.

38. Weeks ago, Governor Wolf released criteria that he announced he would consider in deciding whether to approve the General Assembly's proposed congressional plans. These criteria were consistent with Pennsylvania law and straightforward: maps should be compact, contiguous, nearly as equal in population as practicable, should maintain communities of interest, and reflect the state's voter preferences as a whole, to name just a few.

39. Recently, the Pennsylvania House State Government Committee approved a redistricting plan that violates Governor's Wolf pre-existing criteria for congressional district plans across several fronts. Overall, contrary to Governor Wolf's redistricting criteria, the House Committee's congressional plan is not compact and fails to maintain communities of interest.

40. For example, the House Committee's congressional plan has several irregularly shaped districts that sprawl unnecessarily from central areas in districts such as CD 5 and CD 6. The House's congressional plan also splits clear communities of interest, by, for example, cracking Harrisburg's AAPI, Black, and Hispanic communities, as well as cracking Hispanic communities in Wilkes-Barre and throughout Chester County.

41. Even more concerning, however, the Pennsylvania General Assembly

has now adjourned for the year without even passing any congressional plans. By doing so, the General Assembly has jeopardized Pennsylvania's ability to conduct timely 2022 primary elections.

42. Specifically, the Pennsylvania Department of State has previously explained that it must receive final and legally binding district maps no later than January 24, 2022, and that, to meet that deadline, Pennsylvania's political branches must enact a congressional plan no later than December 2021. *See* State Respondents' Brief in Support of Preliminary Objections to Petitioners' Petition for Review at 5, *Carter v. Degraffenreid*, No. 132 MD 2021 (Sept. 16, 2021).

43. Because the General Assembly will not reconvene until January 4, 2022, it is no longer even possible for Pennsylvania's political branches to enact such a map by the end of 2021, and the Department of State's timeline cannot be met, thus jeopardizing Pennsylvania's ability to conduct timely elections for 2022.

VI. Pennsylvania needs a lawful congressional map imminently.

44. Voters, candidates, and Pennsylvania's election administration apparatus need new districts, and they need them soon.

45. Nomination papers for candidates seeking to appear on the ballot for the 2022 partisan primary election begin circulating February 15, 2022. 25 P.S. § 2868. And the deadline for filing those papers falls just a few weeks later. *Id.*

46. Finalized congressional districts need to be in place as soon as possible,

well before candidates in those districts must begin to collect signatures on their nomination papers. Potential congressional candidates cannot make strategic decisions—including, most importantly, whether to run at all—without knowing their district boundaries. And voters have a variety of interests in knowing as soon as possible the districts in which they reside and will vote, and the precise contours of those districts.

47. Pennsylvania’s judiciary is familiar with resolving this kind of impasse. The last time Pennsylvania’s political branches failed to adopt a congressional districting plan after a new census, it fell to the judiciary to adopt a congressional district map for the Commonwealth. *Mellow*, 607 A.2d 204. Similarly, after the Pennsylvania Supreme Court invalidated Pennsylvania’s congressional plan three years ago, the General Assembly was unable to come to agreement with Governor Wolf on a new plan, and the judiciary stepped in to adopt a remedial map. *League of Women Voters II*, 181 A.3d at 1086.

48. Now too, the current impasse over Pennsylvania’s congressional district plan must end, and Pennsylvania’s judiciary is the only actor able to break the stalemate.

CLAIMS FOR RELIEF

COUNT I

Violation of Free and Equal Elections Clause Pa. Const., Art. I, § 5 Congressional Malapportionment

49. Petitioners reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

50. The Pennsylvania Constitution’s Free and Equal Elections Clause 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. This clause “should be given the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people’s power to do so.” *League of Women Voters I*, 178 A.3d at 814.

51. The Free and Equal Elections Clause “establishe[s] a critical ‘leveling’ protection in an effort to establish the uniform right of the people of this Commonwealth to select their representatives in government.” *Id.* at 807.

52. The “equality” prong of the Free and Equal Elections Clause requires that voting districts be drawn “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.” *Id.* at 809 (quoting *Patterson*, 60 Pa. at 75). Thus, any scheme that “has the effect of impermissibly diluting the potency of an individual’s vote for candidates for elective office relative to that of other voters will violate the guarantee of ‘free and equal’ elections afforded by Article I, Section 5.” *Id.*

53. Pennsylvania’s current congressional district plan places voters into districts with significantly disparate populations, causing voters in underpopulated districts to have more “potent” votes compared to voters, like Petitioners, who live in districts with comparatively larger populations.

54. Any future use of Pennsylvania’s current congressional district plan would violate Petitioners’ right to an undiluted vote under the Free and Equal Elections Clause.

COUNT II

Violation of Article I, Section 2 of the United States Constitution Congressional Malapportionment

55. Petitioners reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

56. Article 1, Section 2 of the U.S. Constitution provides that members of the U.S. House of Representatives “shall be apportioned among the several States . . . according to their respective Numbers.” This provision “intends that when qualified voters elect members of Congress each vote be given as much weight as

any other vote,” *Wesberry*, 376 U.S. at 7, meaning that state congressional districts must “achieve population equality ‘as nearly as is practicable,’” *Karcher*, 462 U.S. at 730 (quoting *Wesberry*, 376 U.S. at 7-8).

57. Article I, Section 2 “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.” *Karcher*, 462 U.S. at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). Any variation from exact population equality must be narrowly justified. *Id.* at 731. Given this requirement, when the Pennsylvania Supreme Court adopted its own congressional plan in 2018, it crafted a plan in which the population deviation among districts was no more than *one person*. Now, the population deviation among Pennsylvania’s congressional districts is far higher, on the order of tens of thousands of people.

58. In light of the significant population shifts that have occurred since the 2010 Census, and the recent publication of the results of the 2020 Census, the current configuration of Pennsylvania’s congressional districts—which was drawn based on 2010 Census data—is now unconstitutionally malapportioned. No justification can be offered for the deviation among the congressional districts because any justification would be based on outdated population data.

59. Any future use of Pennsylvania’s current congressional district plan would violate Petitioners’ constitutional right to cast an equal, undiluted vote.

COUNT III

Violation of 2 U.S.C. § 2c Congressional Malapportionment

60. Petitioners reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

61. 2 U.S.C. § 2c provides that, in a state containing “more than one Representative,” “there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled.”

62. Pennsylvania’s current congressional district plan contains 18 districts. But Pennsylvania is currently allotted only 17 seats in the U.S. House. As a result, the current congressional district plan violates Section 2c’s requirement that the number of congressional districts be “equal to the number of Representatives to which [Pennsylvania] is so entitled.”

63. Any future use of Pennsylvania’s current congressional district plan would violate 2 U.S.C. § 2c and would unlawfully dilute Petitioners’ votes.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

- a. Declare that the current configuration of Pennsylvania’s congressional districts violates Article I, Section 5 of the Pennsylvania Constitution; Article I, Section 2 of the U.S. Constitution; and 2 U.S.C. § 2c.
- b. Enjoin Respondents, their respective agents, officers, employees, and

- successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Pennsylvania's current congressional district plan;
- c. Adopt 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.
 - d. Award Petitioners their costs, disbursements, and reasonable attorneys' fees; and
 - e. Grant such other and further relief as the Court deems just and proper.

Dated: December 17, 2021

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Christina A. Ford*
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Respectfully submitted,

/s/ Edward D. Rogers
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Marcel S. Pratt, No. 307483
Robert J. Clark, No. 308105
Michael R. McDonald, No. 326873
Paul K. Ort, No. 326044
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* *pro hac vice* forthcoming

Matthew Gordon*
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VERIFICATION

I, Rebecca Poyourow, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing Petition for Review are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said Petition for Review are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Signed:



A handwritten signature in black ink, appearing to read 'Rebecca Poyourow', is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

NOTICE TO PLEAD

TO: Acting Secretary Veronica Degraffenreid
Pennsylvania Department of State
Office of the Secretary
302 North Office Building, 401 North Street
Harrisburg, PA 17120

Director Jessica Mathis
Pennsylvania Bureau of Election Services and Notaries
210 North Office Building, 401 North Street
Harrisburg, PA 17120

You are hereby notified to file a written response to the enclosed
Petition for Review within thirty (30) days from service hereof or a judgment may
be entered against you.

Dated: December 17, 2021

/s/ Edward D. Rogers
Edward D. Rogers, No. 69337
Ballard Spahr LLP
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RogersE@ballardspahr.com
T: (215) 665-8500
F: (215) 864-8999

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing Petition for Review to be served upon the following parties and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 1514 and 121:

By Certified Mail:

Acting Secretary Veronica Degraffenreid
Pennsylvania Department of State
Office of the Secretary
302 North Office Building, 401 North Street
Harrisburg, PA 17120

Director Jessica Mathis
Pennsylvania Bureau of Election Services and Notaries
210 North Office Building, 401 North Street
Harrisburg, PA 17120

By Certified Mail and PACFile:

Office of Attorney General
Strawberry Square, 16th Floor
Harrisburg, PA 17120

Dated: December 17, 2021

/s/ Edward D. Rogers
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Exhibit B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter, Monica Parrilla,	:	CASES CONSOLIDATED
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. 464 M.D. 2021
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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	:	

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

v.	:	No. 465 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	:	

PER CURIAM

ORDER

AND NOW, this 20th day of December, 2021, in consideration of the petitions for review filed in the above-consolidated actions, which are addressed to this Court's original jurisdiction, and consistent with the process established in *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), it is hereby ORDERED:

1. Any applications to intervene, *see* Pa. R.A.P. 1531(b), shall be filed by December 31, 2021. Answers thereto shall be due within four (4) days of the date the application to intervene is filed.

2. Any party to this proceeding who wishes to submit to the Court for its consideration a proposed 17-district congressional reapportionment plan consistent with the results of the 2020 Census shall file the proposed plan by January 28, 2022.

3. If the General Assembly and the Governor fail to enact a congressional reapportionment plan by January 30, 2022, the Court will select a plan from those plans timely filed by the parties.

4. In the event the Court must select a congressional reapportionment plan, the Court will hold a final hearing beginning on January 31, 2022, to receive evidence and consider all timely filed proposed plans. The Court will also consider revisions to the 2022 election schedule/calendar as part of the hearing. The hearing will begin at 9:30 a.m. in Courtroom 3001 of the Pennsylvania Judicial Center, Harrisburg, PA. It shall be the responsibility of Petitioners to secure the services of a court reporter(s) throughout the duration of the hearing.

5. Consistent with the authority granted to the General Assembly under the Elections Clause of the United States Constitution, art. I, § 4, cl. 1, Petitioners are hereby directed to serve immediately a copy of this Order on the Pennsylvania Senate Majority and Democratic Leaders and on the Pennsylvania House of Representatives Majority and Democratic Leaders and file proof of service with this Court.

Exhibit C

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Counsel for Petitioners

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.

VERONICA DEGRAFFENREID, in her official capacity as
the Acting Secretary of the Commonwealth of Pennsylvania;
JESSICA MATHIS, in her official capacity as Director for

No.

the Pennsylvania Bureau of Election Services and Notaries,
Respondents.

PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

INTRODUCTION

1. This is an action challenging Pennsylvania's current congressional district map, which has been rendered unconstitutionally malapportioned by a decade of population shifts. Petitioners ask this Court to declare Pennsylvania's current congressional district plan unconstitutional; enjoin Respondents from using the current plan in any future elections; and implement a new congressional district plan that adheres to the constitutional requirement of one-person, one-vote should the General Assembly and Governor fail to do so.

2. On April 26, 2021, the U.S. Secretary of Commerce delivered the apportionment data obtained by the 2020 Census to the President. Those data confirm the inevitable reality that population shifts that occurred during the last decade have rendered Pennsylvania's congressional plan unconstitutionally malapportioned. *See Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 860 (E.D. Wis. 2001) (three-judge court) (explaining that "existing apportionment schemes become instantly unconstitutional upon the release of new decennial census data" (internal quotation marks omitted)).

3. Specifically, the current configuration of Pennsylvania's congressional

districts violates (1) the Free and Equal Elections Clause of the Pennsylvania Constitution; (2) Article I, Section 2 of the U.S. Constitution; (3) 2 U.S.C. § 2c; and (4) the Petition Clause of the Pennsylvania Constitution. The Pennsylvania Constitution's Free and Equal Elections Clause guarantees its citizens the right to "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." *Patterson v. Barlow*, 60 Pa. 54, 75 (1869). Article 1, Section 2 of the U.S. Constitution requires states to "achieve population equality 'as nearly as is practicable'" when drawing congressional districts. *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964)). 2 U.S.C. § 2c provides that a state should have "a number of [congressional] districts equal to the number of Representatives to which such State is so entitled." And the Petition Clause of the Pennsylvania Constitution secures voters' right to associate with other voters to elect their preferred candidates, "not simply as [a] restriction[] on the powers of government, as found in the Federal Constitution, but as [an] inherent and 'invaluable' right[] of man." *Commonwealth v. Tate*, 432 A.2d 1382, 1388 (Pa. 1981).

4. Petitioners will be forced to cast unequal votes if the current congressional map is not brought into compliance with constitutional requirements. Because the current congressional plan is unconstitutionally malapportioned, it cannot be used in any future election. Moreover, if a new congressional plan is not

in place in a timely manner, Petitioners' right to associate with other voters in support of their preferred candidates will be infringed.

5. While “the primary responsibility and authority for drawing federal congressional legislative districts rests squarely with the state legislature,” when “the legislature is unable or chooses not to act, it becomes the judiciary’s role to determine the appropriate redistricting plan.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 821-22 (Pa. 2018) (*League of Women Voters I*).

6. In Pennsylvania, congressional district plans must be enacted through legislation, which requires the consent of both legislative chambers and the Governor (unless both legislative chambers override the Governor’s veto by a two-thirds vote). *League of Women Voters I*, 178 A.3d at 742; Pa. Const., Art. III, § 4; Pa. Const., Art. IV, § 15.

7. There is no reasonable prospect that Pennsylvania’s political branches will reach consensus to enact a lawful congressional district plan in time to be used in the upcoming 2022 election. Currently, Republicans hold majorities (though not veto-proof majorities) in both chambers of the General Assembly, and Governor Wolf, who has veto power, is a Democrat. The last time Pennsylvania began a redistricting cycle in which its political branches were politically split as they are now, those branches failed to enact a congressional redistricting plan, forcing Pennsylvania’s judiciary to take responsibility for enacting a new plan. *See Mellow*

v. Mitchell, 607 A.2d 204 (Pa. 1992).

8. Given the long and acrimonious history of partisan gerrymandering litigation challenging Pennsylvania's previous congressional district map, it is clear that Pennsylvania's political branches are extremely unlikely to agree to a new congressional district plan prior to the 2022 election. Just three years ago, the Republican-controlled General Assembly and Governor Wolf failed to agree on a new congressional plan following the Pennsylvania Supreme Court's invalidation of the plan enacted in 2011, forcing the Court to draw its own. *See League of Women Voters of Pa. v. Commonwealth*, 181 A.3d 1083, 1086 (Pa. 2018) (*League of Women Voters II*). Because there is no reason to believe that the General Assembly and the Governor will be able to reach agreement this time around, this Court should intervene to protect the constitutional rights of Petitioners and voters across the Commonwealth.

9. While there is still time for the General Assembly and the Governor to enact a new congressional plan, this Court should assume jurisdiction now and establish a schedule that will enable the Court to adopt its own plan in the near-certain event that the political branches fail to timely do so.

JURISDICTION AND VENUE

10. This Court has original jurisdiction over this Verified Petition for Review under 42 Pa. C.S. § 761(a)(1) because this matter is asserted against

Commonwealth officials in their official capacities.

PARTIES

11. Petitioners are citizens of the United States and are registered to vote in Pennsylvania. Petitioners intend to advocate and vote for Democratic candidates in the upcoming 2022 primary and general elections. Petitioners reside in the following congressional districts.

Petitioner's Name	County of Residence	Congressional District
Carol Ann Carter	Bucks	1
Monica Parrilla	Philadelphia	2
Rebecca Poyourow	Philadelphia	3
William Tung	Philadelphia	3
Roseanne Milazzo	Montgomery	4
Burt Siegel	Montgomery	4
Susan Cassanelli	Delaware	5
Lee Cassanelli	Delaware	5
Lynn Wachman	Chester	6
Michael Guttman	Chester	6
Maya Fonkeu	Northampton	7
Brady Hill	Northampton	7
Mary Ellen Balchunis	Dauphin	10
Tom DeWall	Cumberland	10
Stephanie McNulty	Lancaster	11
Janet Temin	Lancaster	11

12. As shown below, Petitioners reside in districts that are likely overpopulated relative to other districts in the state. Thus, they are deprived of the right to cast an equal vote, as guaranteed to them by the U.S. Constitution and the Pennsylvania Constitution.

13. Respondent Veronica Degraffenreid is the Acting Secretary of the

Commonwealth and is sued in her official capacity only. In that capacity, Acting Secretary Degraffenreid is charged with general supervision and administration of Pennsylvania's elections and election laws. Acting Secretary Degraffenreid is Pennsylvania's Chief Election Official and a member of the Governor's Executive Board. Among her numerous responsibilities in administering elections, Acting Secretary Degraffenreid is responsible for receiving election results from counties for each congressional district in the Commonwealth, and tabulating, computing, canvassing, certifying, and filing those results. 25 P.S. § 3159.

14. Respondent Jessica Mathis is the Director for the Bureau of Election Services and Notaries, a branch of the Pennsylvania Department of State, and she is sued in her official capacity only. In this capacity, Director Mathis is charged with supervising and administering the Commonwealth's elections and electoral process. The Bureau of Election Services and Notaries is responsible for planning, developing, and coordinating the statewide implementation of the Election Code.

FACTUAL ALLEGATIONS

I. Pennsylvania's current congressional districts were drawn using 2010 Census data.

15. Pennsylvania's congressional district map was most recently redrawn in 2018. On January 22, 2018, the Pennsylvania Supreme Court held that the then-controlling congressional district map enacted in 2011 by a Republican-controlled General Assembly and Republican Governor "plainly and palpably" violated the

Pennsylvania Constitution's Free and Equal Elections Clause because it was "corrupted by extensive, sophisticated gerrymandering and partisan dilution." *See League of Women Voters I*, 178 A.3d at 741, 821. The Court provided the General Assembly and the Governor an opportunity to enact a lawful map, but they failed to do so. Thus, the Court adopted its own map on February 19, 2018. *League of Women Voters II*, 181 A.3d 1083.

16. Because the results of the 2010 Census were the most accurate population data to date, the Court relied exclusively on those data when drawing the new map. According to the 2010 Census, Pennsylvania had a population at that time of 12,702,379. Therefore, a decade ago, the ideal population for each of Pennsylvania's congressional districts (i.e., the state's total population divided by the number of districts) was 705,688 persons.

17. While the districts crafted by the Court in 2018 had perfectly equal populations (with each district's population deviating from all others by no more than one person), those populations were determined using 2010 data.

II. The 2020 Census is complete.

18. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President.

19. The results of the 2020 Census report that Pennsylvania's resident

population, as of April 2020, is 13,002,700. This is a significant increase from a decade ago, when the 2010 Census reported a total population of 12,702,379.

20. However, because Pennsylvania's population growth over the last decade has been slower compared to many other states, Pennsylvania has lost a congressional district. Pennsylvania has been apportioned 17 congressional seats for the 2020 cycle, one fewer than the 18 seats Pennsylvania was apportioned following the 2010 Census. Thus, beginning with the upcoming 2022 election, Pennsylvania voters will elect only 17 members to the U.S. House of Representatives.

21. According to the 2020 Census results, the ideal population for each of Pennsylvania's congressional districts is 764,865.

III. As a result of significant population shifts in the past decade, Pennsylvania's congressional districts are unconstitutionally malapportioned.

22. In the past decade, Pennsylvania's population has shifted significantly. Because the 2020 Census has now been completed, the 2010 population data used to draw Pennsylvania's congressional districts are obsolete, and any prior justifications for the existing maps' deviations from population equality are no longer applicable.

23. By mid-to-late August 2021, the U.S. Secretary of Commerce will deliver to Pennsylvania its redistricting data file in a legacy format, which the Commonwealth may use to tabulate the new population of each political

subdivision.¹ On or around September 30, 2021, the U.S. Secretary of Commerce will deliver to Pennsylvania that same detailed population data showing the new population of each political subdivision in a tabulated format.² These data are commonly referred to as “P.L. 94-171 data,” a reference to the 1975 legislation that first required this process, and are typically delivered no later than April of the year following the Census. *See* Pub. L. No. 94-171, 89 Stat. 1023 (1975).

24. 2019 Census Bureau data make clear that significant population shifts have occurred in Pennsylvania’s congressional districts since 2010, skewing the current districts far from population equality.

25. The table below estimates how the populations of each of Pennsylvania’s congressional districts shifted between 2010 and 2019. For each district, the “2010 Population” column represents the district’s 2010 population according to the 2010 Census, and the “2019 Population” column indicates the estimated 2019 population according to the U.S. Census Bureau’s 2019 American Community Survey (ACS) 1-Year Survey. The “Shift” column represents the difference in district population between 2010 and 2019. The “Deviation from Ideal 2019 Population” column shows how far the estimated 2019 population of each

¹ *See U.S. Census Bureau Statement on Release of Legacy Format Summary Redistricting Data File*, U.S. Census Bureau (Mar. 15, 2021), <https://www.census.gov/newsroom/press-releases/2021/statement-legacy-format-redistricting.html>.

² *See Census Bureau Statement on Redistricting Data Timeline*, U.S. Census Bureau (Feb. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>.

district strays from the estimated ideal 2019 congressional district population. And the “Percent Deviation” column shows that deviation as a percentage of the ideal district population as of 2019.

District	2010 Population	2019 Population	Shift	Deviation from Ideal 2019 Population	Percent Deviation
1	705,687	713,411	+7,724	+2,189	+0.31%
2	705,688	722,722	+17,034	+11,500	+1.62%
3	705,688	741,654	+35,966	+30,432	+4.28%
4	705,687	730,701	+25,014	+19,479	+2.74%
5	705,688	719,973	+14,285	+8,751	+1.23%
6	705,688	735,283	+29,595	+24,061	+3.38%
7	705,688	731,467	+25,779	+20,245	+2.85%
8	705,687	698,973	-6,714	-12,249	-1.72%
9	705,687	699,832	-5,855	-11,390	-1.60%
10	705,688	744,681	+38,993	+33,459	+4.70%
11	705,688	734,038	+28,350	+22,816	+3.21%
12	705,688	701,387	-4,301	-9,835	-1.38%
13	705,688	697,051	-8,637	-14,171	-1.99%
14	705,688	678,915	-26,773	-32,307	-4.54%
15	705,688	672,749	-32,939	-38,473	-5.41%
16	705,687	678,333	-27,354	-32,889	-4.62%
17	705,688	706,961	+1,273	-4,261	-0.60%
18	705,688	693,858	-11,830	-17,364	-2.44%

26. The table above indicates population shifts since 2010 have rendered Congressional Districts 8, 9, 12, 13, 14, 15, 16, 17, and 18 significantly underpopulated, and Congressional Districts 1, 2, 3, 4, 5, 6, 7, 10, and 11 significantly overpopulated. Indeed, the figures in the table above indicate that, between 2010 and 2019, the maximum deviation among Pennsylvania’s 18

congressional districts (*i.e.*, the difference between the most and least populated districts divided by the ideal district population) increased from 0 to more than 10 percent. Notably, this table does not account for the severe malapportionment that will result from the fact that Pennsylvania has lost a congressional district.

27. Due to these population shifts, Pennsylvania's existing congressional district configuration is unconstitutionally malapportioned. It also contains more districts than the number of representatives that Pennsylvanians may send to the U.S. House in 2022.

28. If used in any future election, the current congressional district configuration will unconstitutionally dilute the strength of Petitioners' votes because they live in districts with populations that are significantly larger than those in which other voters live.

IV. Pennsylvania's political branches will likely fail to enact lawful congressional district maps in time for the next election.

29. In Pennsylvania, congressional district plans are enacted via legislation, which must pass both chambers of the General Assembly and be signed by the Governor (unless the General Assembly overrides the Governor's veto by a two-thirds vote in both chambers). *League of Women Voters I*, 178 A.3d at 742; Pa. Const., Art. III, § 4; Pa. Const., Art. IV, § 15. Currently, both chambers of Pennsylvania's General Assembly are controlled by the Republican Party, and the Governor is a Democrat. Republican control of the General Assembly is not large

enough to override a gubernatorial veto. This partisan division among Pennsylvania's political branches makes it extremely unlikely they will enact a lawful congressional districting plan in time to be used during the upcoming 2022 election.

30. Pennsylvania law does not set a deadline by which congressional redistricting plans must be in place prior to the first congressional election following release of the Census. Nonetheless, it is in the interests of voters, candidates, and Pennsylvania's entire electoral apparatus that finalized congressional districts be put in place as soon as possible, well before candidates in those districts must begin to collect signatures on their nomination papers. Potential congressional candidates cannot make strategic decisions—including, most importantly, whether to run at all—without knowing their district boundaries. And voters have a variety of interests in knowing as soon as possible the districts in which they reside and will vote, and the precise contours of those districts. These interests include deciding which candidates to support and whether to encourage others to run; holding elected representatives accountable for their conduct in office; and advocating for and organizing around candidates who will share their views, including by working together with other district voters in support of favored candidates.

31. Nomination papers for candidates seeking to appear on the ballot for the 2022 partisan primary election can be circulated as early as February 15, 2022,

less than a year away. 25 P.S. § 2868. And the deadline for filing those papers falls just a few weeks later. *Id.* It is in everyone’s interest—candidates and voters alike—that district boundaries are set well before this date. Delaying the adoption of the new plan even until the ballot petition deadline will substantially interfere with Petitioners’ abilities to associate with like-minded citizens, educate themselves on the positions of their would-be representatives, and advocate for the candidates they prefer. *Cf. Anderson v. Celebrezze*, 460 U.S. 780, 787-88 (1983) (“The [absence] of candidates also burdens voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens.”).

32. While the General Assembly was able to enact redistricting plans after the 2010 Census without court intervention, Republicans had trifecta control over the state government at that time. The last time Pennsylvania began a redistricting cycle with political branches divided along partisan lines, as they are now, they failed to enact a new congressional redistricting plan. This failure required intervention by Pennsylvania’s judiciary, which drew and adopted a congressional district map. *Mellow*, 607 A.2d 204. Similarly, after the Pennsylvania Supreme Court invalidated Pennsylvania’s congressional plan three years ago, the Republican-controlled General Assembly was unable to come to agreement with Governor Wolf on a new plan, forcing the Court to draw a remedial map. *League of Women Voters II*, 181

A.3d at 1086.

33. Pennsylvania is once again entering a redistricting cycle with political branches divided between the two major parties. If anything, the partisan differences among the major parties have only grown starker since their last attempt to reach consensus on redistricting plans in 1991. In just the last two years, Governor Wolf and the Republican-controlled General Assembly have repeatedly conflicted over a broad range of policies such as the state's response to the COVID-19 pandemic, emergency executive powers, environmental issues, and gun regulations, with the Governor using his veto power on numerous occasions. Additionally, the Census delays have compressed the amount of time during which the legislative process would normally take place. As a result, the political branches are highly likely to be at an impasse this cycle and to fail to enact a new congressional district plan. This would deprive Petitioners of equal representation in Congress and their freedom of association. To avoid such an unconstitutional outcome, this Court must intervene to ensure Petitioners and other Pennsylvanians' voting strength is not diluted.

CLAIMS FOR RELIEF

COUNT I

Violation of Free and Equal Elections Clause Pa. Const., Art. I, § 5 Congressional Malapportionment

34. Petitioners reallege and reincorporate by reference all prior paragraphs

of this Petition and the paragraphs in the count below as though fully set forth herein.

35. The Pennsylvania Constitution's Free and Equal Elections Clause 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. This clause "should be given the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people's power to do so." *League of Women Voters I*, 178 A.3d at 814.

36. The Free and Equal Elections Clause "establishe[s] a critical 'leveling' protection in an effort to establish the uniform right of the people of this Commonwealth to select their representatives in government." *Id.* at 807.

37. The "equality" prong of the Free and Equal Elections Clause requires that voting districts be drawn "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." *Id.* at 809 (quoting *Patterson*, 60 Pa. at 75). Thus, any scheme that "has the effect of impermissibly diluting the potency of an individual's vote for candidates for elective office relative to that of other voters will violate the guarantee of 'free and equal' elections afforded by Article I, Section 5." *Id.*

38. Pennsylvania’s current congressional district plan places voters into districts with significantly disparate populations, causing voters in underpopulated districts to have more “potent” votes compared to voters, like Petitioners, who live in districts with comparatively larger populations.

39. Any future use of Pennsylvania’s current congressional district plan would violate Petitioners’ right to an undiluted vote under the Free and Equal Elections Clause.

COUNT II

Violation of Article I, Section 2 of the United States Constitution Congressional Malapportionment

40. Petitioners reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

41. Article 1, Section 2 of the U.S. Constitution provides that members of the U.S. House of Representatives “shall be apportioned among the several States . . . according to their respective Numbers.” This provision “intends that when qualified voters elect members of Congress each vote be given as much weight as any other vote,” *Wesberry*, 376 U.S. at 7, meaning that state congressional districts must “achieve population equality ‘as nearly as is practicable,’” *Karcher*, 462 U.S. at 730 (quoting *Wesberry*, 376 U.S. at 7-8).

42. Article I, Section 2 “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for

which justification is shown.” *Karcher*, 462 U.S. at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). And “the State must justify each variance, no matter how small.” *Id.* (quoting *Kirkpatrick*, 394 U.S. at 530-31). Given this requirement, when the Pennsylvania Supreme Court adopted its own congressional plan in 2018, it crafted a plan in which the population deviation among districts was no more than *one person*. Now, as indicated in the table above, the population deviation among Pennsylvania’s congressional districts may be as high as 71,932 people.

43. In light of the significant population shifts that have occurred since the 2010 Census, and the recent publication of the results of the 2020 Census, the current configuration of Pennsylvania’s congressional districts—which was drawn based on 2010 Census data—is now unconstitutionally malapportioned. No justification can be offered for the deviation among the congressional districts because any justification would be based on outdated population data.

44. Any future use of Pennsylvania’s current congressional district plan would violate Petitioners’ constitutional right to cast an equal, undiluted vote.

COUNT III

Violation of 2 U.S.C. § 2c Congressional Malapportionment

45. Petitioners reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

46. 2 U.S.C. § 2c provides that, in a state containing “more than one Representative,” “there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled.”

47. Pennsylvania’s current congressional district plan contains 18 districts. But Pennsylvania is currently allotted only 17 seats in the U.S. House. As a result, the current congressional district plan violates Section 2c’s requirement that the number of congressional districts be “equal to the number of Representatives to which [Pennsylvania] is so entitled.”

48. Any future use of Pennsylvania’s current congressional district plan would violate 2 U.S.C. § 2c and would unlawfully dilute Petitioners’ votes.

COUNT IV

Violation of Petition Clause Pa. Const., Art. I, § 20 Freedom of Association

49. Petitioners reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

50. The Pennsylvania Constitution’s Petition Clause 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.” Pa. Const., Art. I, § 20. “The Pennsylvania Constitution affords greater protection of

speech and associational rights than does our Federal Constitution.” *Working Families Party v. Commonwealth*, 169 A.3d 1247, 1260 (Pa. Commw. Ct. 2017) (citing *DePaul v. Commonwealth*, 969 A.2d 536, 546 (Pa. 2009)); *see also Commonwealth v. Tate*, 432 A.2d 1382, 1388 (Pa. 1981) (“It is small wonder, then, that the rights of freedom of speech, assembly, and petition have been guaranteed since the first Pennsylvania Constitution, not simply as restrictions on the powers of government, as found in the Federal Constitution, but as inherent and ‘invaluable’ rights of man.”).

51. Impeding candidates’ abilities to run for political office—and consequently Petitioners’ abilities to assess candidate qualifications and positions, organize and advocate for preferred candidates, and associate with like-minded voters—infringes on Petitioners’ right to association.

52. Given the delay in publication of the 2020 Census data and the near-certain deadlock among the political branches in adopting a new congressional district plan, it is significantly unlikely that the legislative process will timely yield a new plan. This would deprive Petitioners of the ability to associate with others from the same lawfully apportioned congressional district, and, therefore, is likely to significantly, if not severely, burden Petitioners’ right to association.

53. There is no legitimate or compelling interest that can justify this burden.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

- a. Declare that the current configuration of Pennsylvania's congressional districts violates Article I, Section 5 of the Pennsylvania Constitution; Article I, Section 2 of the U.S. Constitution; 2 U.S.C. § 2c; and Article I, Section 20 of the Pennsylvania Constitution;
- b. Enjoin Respondents, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Pennsylvania's current congressional district plan;
- c. Establish a schedule that will enable the Court to adopt and implement a new congressional district plan by a date certain should the political branches fail to enact such plan by that time;
- d. Implement 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; 2 U.S.C. § 2; and Article I, Section 20 of the Pennsylvania Constitution, if the political branches fail to enact a plan by a date certain set by this Court;
- e. Award Petitioners their costs, disbursements, and reasonable attorneys' fees; and

f. Grant such other and further relief as the Court deems just and proper.

Dated: April 26, 2021

Respectfully submitted,

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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.

Submitted by: Edward D. Rogers

Signature: /s/ Edward D. Rogers

Name: Edward D. Rogers

Attorney No.: 69337

VERIFICATION

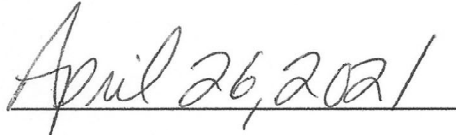
I, Carol Ann Carter, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing Petition for Review are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said Petition for Review are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Signed:



Dated:



NOTICE TO PLEAD

TO: Acting Secretary Veronica Degraffenreid
Pennsylvania Department of State
Office of the Secretary
302 North Office Building, 401 North Street
Harrisburg, PA 17120

Director Jessica Mathis
Pennsylvania Bureau of Election Services and Notaries
210 North Office Building, 401 North Street
Harrisburg, PA 17120

You are hereby notified to file a written response to the enclosed
Petition for Review within thirty (30) days from service hereof or a judgment may
be entered against you.

Dated: April 26, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing Petition for Review to be served upon the following parties and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 1514 and 121:

By Certified Mail:

Acting Secretary Veronica Degraffenreid
Pennsylvania Department of State
Office of the Secretary
302 North Office Building, 401 North Street
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Director Jessica Mathis
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Dated: April 26, 2021

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Exhibit D

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

v.

VERONICA DEGRAFFENREID, in her official
capacity as Acting Secretary of the Commonwealth of
Pennsylvania, *et al.*,
Respondents.

No. 132 MD 2021

**RESPONDENTS' BRIEF IN SUPPORT OF PRELIMINARY
OBJECTIONS TO PETITIONERS' PETITION FOR REVIEW**

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Respondents, Acting Secretary of the Commonwealth Veronica Degraffenreid and Director of the Bureau of Election Services and Notaries Jessica Mathis, submit the following Memorandum of Law in support of their Preliminary Objections.

I. INTRODUCTION

The Petition for Review raises serious and weighty issues. Respondents agree with Petitioners that the right to vote of the individual Petitioners, and of all Pennsylvania voters, must be protected. They agree that timely congressional redistricting that complies with federal and state law is necessary to protect this right to vote. And they agree that, if the political branches of Pennsylvania's government fail to carry out that redistricting, the courts will be required to step in.

Respondents do not agree, however, that the political branches have failed in their responsibilities to voters, or that Petitioners have shown that failure is inevitable. At this point, all that Petitioners allege is that it is possible that the General Assembly and the Governor will reach an impasse on congressional redistricting legislation and will not be able to enact such legislation in time for the 2022 primary election. But the possibility of an impasse does not suffice to state a claim, and cannot justify the Court stepping in at this point.

Before this Court can intercede, Pennsylvania law requires more than a chance that Petitioners' rights may be endangered some time down the road. Under

bedrock principles of standing, the harm to Petitioners cannot be wholly contingent on future events. And for Petitioners' claims to be ripe, the facts must be sufficiently developed to permit judicial resolution. Here, Petitioners' claims fail on both fronts.

Respondents do not argue that the Court's doors are or should be closed to Petitioners permanently. As of today, however, Petitioners' forecast—stormy though it may be—is too uncertain to establish Petitioners' standing and state a ripe claim for relief.

II. STATEMENT OF JURISDICTION

The Petition for Review is addressed to this Court's original jurisdiction, pursuant to 42 Pa. C.S. § 761(a)(1).

III. STATEMENT OF THE CASE

Petitioners—16 individuals living in 11 different Pennsylvania congressional districts—filed their Petition for Review addressed to the Court's original jurisdiction on April 26, 2021. Petitioners allege that their voting rights will be potentially burdened by a chain of events that was set in motion by the completion of the 2020 decennial census. According to Petitioners, once the United States Secretary of Commerce delivered the apportionment data obtained by the 2020 Census to the President, use of the existing congressional districts of each state—including those of Pennsylvania—became unconstitutional. *See, e.g.*, Pet. ¶¶

2-4. Petitioners allege that unless new congressional districts are put in place in time for 2022’s primary and general elections, their rights will be violated. *Id.* ¶ 7.

Petitioners acknowledge that under Pennsylvania law, congressional district maps are the responsibility of the political branches—the legislature and the executive—in the first instance. “In Pennsylvania, congressional district plans must be enacted through legislation, which requires the consent of both legislative chambers and the Governor (unless both legislative chambers override the Governor’s veto by a two-third vote).” Pet. ¶ 6 (citing *League of Women Voters v. Commonwealth*, 178 A.3d 737, 742 (Pa. 2018)).

Petitioners hypothesize, however, that redistricting is unlikely to proceed along ordinary legislative lines in 2021 and 2022, because Pennsylvania’s “political branches are highly likely to be at an impasse this cycle and to fail to enact a new congressional district plan.” *Id.* ¶ 33. The support Petitioners offer for this proposition is that Pennsylvania’s legislative and executive branches are controlled by different parties; that “[i]n just the last two years, Governor Wolf and the Republican-controlled General Assembly have repeatedly conflicted over a broad range of policies”; and that Census delays have compressed the legislature’s time to enact a new congressional district plan. *Id.* Without a new congressional district plan, Petitioners allege, they “will be forced to cast unequal votes[,]...[b]ecause the current congressional plan is unconstitutionally

malapportioned[.]” Pet. ¶ 4. Additionally, Petitioners allege that if they are forced to participate in upcoming elections that use the old map, their “right to associate with other voters in support of their preferred candidates will be infringed.” *Id.* As a result, Petitioners ask that the Court “assume jurisdiction now and establish a schedule that will enable the Court to adopt its own plan in the near-certain event that the political branches fail to timely do so.” *Id.* ¶ 9.

The potential harms that Petitioners allege are uncertain and far in the future. First, Petitioners do not allege that the political branches have announced an impasse. Second, they acknowledge that the legislature has not missed any deadlines. *See* Pet. ¶ 30 (“Pennsylvania law does not set a deadline by which congressional redistricting plans must be in place prior to the first congressional election following release of the Census.”).

Finally, Petitioners do not contend that it will be impossible for the legislative and executive branches to agree on a congressional district map, and could not reasonably contend this. While the Governor has exercised his veto power at times in the past two years, legislation has also passed during that time with bipartisan support and without a veto—including important voting-related legislation. For example, less than two years ago, the General Assembly enacted and the Governor signed Act 77 of 2019,¹ which allowed all eligible voters to vote

¹ Act of Oct. 31, 2019 (P.L. 552, No. 77), 2019 Pa. Legis. Serv. Act. 2019-77 (S.B. 421) (West).

by mail-in ballot and made many other important changes to Pennsylvania’s Election Code. Five months later, the General Assembly enacted and the Governor signed Act 12 of 2020,² which made further changes to the Election Code and included sweeping temporary measures to respond to the COVID-19 pandemic. Both of these important voting laws received bipartisan support in the General Assembly.

Petitioners also concede, as they must, that “there is still time for the General Assembly and the Governor to enact a new congressional plan[.]” *Id.* ¶ 9. The first day for candidates to circulate and file nomination petitions for the 2022 primary election is February 15, 2022. In order to ensure efficient election administration, allow for timely notice to candidates, and permit proper implementation of the new congressional districts, Respondents believe that the Department of State must receive a final and legally binding congressional district map no later than January 24, 2022. *See* Respondents’ Preliminary Objections ¶¶ 13-17. In order to account for potential litigation, Respondents believe that a new map must be signed into law by the end of December 2021. *Id.* ¶ 17. A map signed into law in late December would not be unprecedented. The congressional district map that followed the 2010 Census, for example, was signed into law on December 22, 2011. *League of Women Voters*, 178 A.3d at 743-44. If the political

² Act of Mar. 27, 2020 (P.L. 41, No. 12), 2020 Pa. Legis. Serv. Act 2020-12 (S.B. 422) (West).

branches act promptly, they could easily meet a similar deadline.³

IV. STATEMENT OF THE QUESTIONS INVOLVED

1. Where Petitioners allege harm that is speculative and uncertain, should the Court sustain Respondents' Preliminary Objection for lack of standing and ripeness?

Suggested Answer: Yes.

V. ARGUMENT

To establish standing to seek relief from this Court, a party must demonstrate that it is “aggrieved,” that is, that it has “a substantial, direct, and immediate interest in the matter.” *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016); *accord Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005). “[A]n interest is ‘immediate’ if the causal connection is not remote or speculative.” *Pittsburgh Palisades Park*, 888 A.2d at 660 (citation omitted).

Like standing, the principle of ripeness “mandates the presence of an actual controversy.” *Bayada Nurses, Inc. v. Department of Labor and Industry*, 8 A.3d

³ There is no indication that the political branches are delaying; they appear to be actively moving the redistricting process forward. The U.S. Census Bureau released redistricting data in legacy format on August 12, 2021. See <https://www.census.gov/programs-surveys/decennial-census/data/datasets/rdo.html>. Using that data, the House State Government Committee is soliciting public input on new maps, including by holding a series of hearings across the Commonwealth. See <http://www.paredistricting.com>. Governor Wolf is also soliciting the public's feedback, and has established a Redistricting Advisory Council to assist him in evaluating proposed maps. See <https://www.governor.pa.gov/redistricting-feedback/>; <https://www.governor.pa.gov/wp-content/uploads/2021/09/20210913-EO-2021-05-Redistricting-Advisory-Council.pdf>.

866, 874 (Pa. 2010). Unlike standing, however, ripeness “also reflects the separate concern that relevant facts are not sufficiently developed to permit judicial resolution of the dispute.” *Robinson Twp., Washington Cty. v. Com.*, 83 A.3d 901, 917 (Pa. 2013).

Here, all of Petitioners’ claims turn on one key fact—whether or not there will be a new congressional district plan in place in time for the 2022 election. Petitioners allege only that it is “highly likely” that Pennsylvania’s political branches will “be at an impasse this cycle” and “fail to enact a new congressional district plan.” Pet. ¶ 33. That fact, as Petitioners acknowledge, is still unresolved: “there is still time for the General Assembly and the Governor to enact a new congressional plan[.]” Pet. ¶ 9. Because no one knows what will happen in the negotiations between the legislature and the Governor—let alone whether the negotiations will break down, a necessary prerequisite to Petitioners’ claims—the facts underlying the Petition for Review are quintessentially “not sufficiently developed to permit judicial resolution of the dispute,” and therefore are not ripe. *Robinson*, 83 A.3d at 917; *see also Philips Bros. Elec. Contractors, Inc. v. Pennsylvania Turnpike Comm’n*, 960 A.2d 941, 945 (Pa. Commw. Ct. 2008) (factors considered in ripeness inquiry include “whether the claim involves uncertain and contingent events that may not occur as anticipated or at all”) (citations omitted). Similarly, “any possible harm to Petitioners is wholly

contingent on future events.” *Pittsburgh Palisades Park*, 888 A.2d at 660. “[A]s Petitioners do not offer that [negotiation over a new congressional district plan] has harmed them or will harm them in any way that is not remote or speculative, they fail to demonstrate that they have an immediate interest,” as is required for standing. *Id.* (citation omitted).

Petitioners’ Memorandum in Opposition to Respondents’ Preliminary Objections (“Mem. Opp.”) sets forth no persuasive reason for the Court to conclude that Petitioners have standing or that their claims are ripe. First, Petitioners argue, courts in Minnesota and Wisconsin have exercised jurisdiction under similar circumstances. *See* Mem. Opp. at 11-13, 15-16, 18-20. But the cases Petitioners rely upon are not at all similar to this one. The Minnesota state court cases of *Wattson v. Simon*, No. A21-0243, and *Sachs v. Simon*, No. A21-0546, involve the work of a hybrid entity with no counterpart in Pennsylvania: a “special redistricting panel,” made up of judges, that conducts public outreach and factfinding in order to prepare itself to address any redistricting litigation that may arise. *See Wattson v. Simon*, Nos. A21-0243 and A21-0546 (Minn. Spec. Redistricting Panel Sept. 13, 2021), *available at* https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/A21-0243%202021%20Redistricting/A21-0243_Order-Briefing-Scheduling_9-13-2021.pdf (stating that “the panel wishes to gather information about Minnesota

communities from Minnesota citizens” and scheduling ten public hearings across the state). Given the panel’s expansive and time-consuming role, and the fact that Minnesota, unlike Pennsylvania, has statutory deadlines for the establishment of new maps, *see* Minn. Stat. Ann. § 204B.14(1a), it is not surprising that the Minnesota Supreme Court concluded that the panel should begin its work in the summer of 2021. *See Wattson v. Simon*, Nos. A21-0243 and A21-0546 (Minn. June 30, 2021) at 2. That decision, under those unique circumstances, has no bearing on the standing and ripeness questions here.

Arrington v. Elections Board, 173 F. Supp. 2d 856 (E.D. Wisc. 2001), is similarly unhelpful. In that case, two groups of legislators—the State Senate Democratic Caucus, who intervened as plaintiffs, and the State Senate’s Speaker and Minority Leader, who intervened as defendants—filed briefs agreeing that the case was justiciable, and the Senate leaders agreed with the plaintiffs that impasse was a “very real possibility.” *Id.* at 858-59, 864. The court relied on these admissions to conclude that it had jurisdiction. *Id.* at 864. In this case, the political branches have not taken such a position. Moreover, *Arrington* interprets federal law as applied to the Wisconsin legislative process, and thus has no persuasive force here.

Petitioners’ second argument is that the Court must act now because the congressional districts are malapportioned. Mem. Opp. at 8-9. But the fact that the

current districts may not have equal numbers of voters causes no constitutional injury. “Malapportionment's harm is felt by individuals in overpopulated districts who actually suffer a diminution in the efficacy of their votes and their proportional voice in the legislature.” *Garcia v. 2011 Legislative Reapportionment Commission*, 559 Fed. Appx. 128, 133 (3d Cir. 2014). Accordingly, malapportionment cannot cause injury until an election occurs using the malapportioned districts—and, as discussed above, at this point such an injury is wholly speculative.

There may come a time when Petitioners’ claim ripens and they have standing, but as the allegations in their Petition show, that time has not arrived and may never arrive. Accordingly, this case cannot proceed.

VI. CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court sustain their Preliminary Objection for lack of standing and ripeness and enter an order dismissing the Petition for Review without prejudice.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: September 16, 2021

By: /s/ Michele D. Hangle

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Exhibit E

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
: Argued: October 5, 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 PATRICIA A. McCULLOUGH, Judge
HONORABLE MICHAEL H. WOJCIK, Judge (P.)
HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

FILED: October 8, 2021

Before this special panel¹ are the Preliminary Objections (POs) of Respondents Veronica Degraffenreid, in her official capacity as the Acting Secretary

¹ See Section 112(b) of the Internal Operating Procedures of the Commonwealth Court, 210 Pa. Code §69.112(b) (“The President Judge may designate Judges to serve on a special court . . . panel to hear election law matters, appellate or original jurisdiction, on an expedited basis.”).

of the Commonwealth of Pennsylvania, Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries (collectively, Respondents), and Intervenors 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, Intervenors)² to Petitioners³ Petition for Review (Petition) addressed to this Court’s original jurisdiction.⁴

I. Petition for Review

On April 26, 2021, Petitioners filed the Petition against Respondents challenging the current congressional district map based on the 2020 Census. Petitioners identify themselves as 16 citizens of the United States (U.S.) who are registered to vote in Pennsylvania in 11 different federal congressional districts.⁵

² Following a hearing, by Memorandum Opinion and Order dated September 2, 2021, this Court granted Intervenors leave to intervene. *Carter v. DeGraffenreid* (Pa. Cmwlth., No. 132 M.D. 2021, filed September 2, 2021).

³ Petitioners are 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.

⁴ Pursuant to Section 761(a)(1) of the Judicial Code, this Court has “original jurisdiction of all civil actions or proceedings . . . [a]gainst the Commonwealth, including any officer thereof, acting in his official capacity.” 42 Pa. C.S. §761(a)(1).

⁵ Specifically, Petitioners reside in Bucks, Chester, Cumberland, Dauphin, Delaware, Lancaster, Montgomery, Northampton, and Philadelphia Counties and in congressional districts 1 through 7, 10, and 11.

Petitioners intend to advocate and vote for Democratic candidates in the upcoming 2022 primary and general elections. Petition, ¶11.

As we detailed in the September 2, 2021 Memorandum Opinion,⁶ the Petition provides details regarding the results of the 2020 Census, the dates by which the U.S. Secretary of Commerce must provide the U.S. President 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 U.S. House of Representatives, 1 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 U.S. House of Representatives. Petitioners claim that the Commonwealth’s current congressional districts are “unconstitutionally malapportioned” due to shifts in population within the Commonwealth. Petition, ¶2. 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. Petition, ¶¶18-21.

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

⁶ See *Carter*, slip op. at 3-6.

date on which candidates may begin collecting signatures on nomination petitions for placement on the primary election ballot. Petition, ¶¶30-31.

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) (*League of Women Voters III*), 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. Petition, ¶¶8, 29, 32, 42, 52.

Petitioners present four counts alleging that the current congressional district map violates: (1) Article I, Section 5 of the Pennsylvania Constitution (free and equal elections clause);⁷ (2) 2 U.S.C. §2c (relating to districting for U.S. House of Representatives);⁸ (3) Article I, Section 20 of the Pennsylvania Constitution

⁷ Pa. Const. art. I, §5. Article I, Section 5 of the Pennsylvania Constitution, 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.”

⁸ 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

(Footnote continued on next page...)

(relating to right to petition);⁹ and (4) Article I, Section 2 of the U.S. Constitution (relating to qualifications for member of the U.S. House of Representatives).¹⁰

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).

⁹ Pa. Const. art. I, §20. Article I, Section 20 of the Pennsylvania Constitution 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.”

¹⁰ U.S. Const. art. I, §2. Article I, Section 2 of the U.S. Constitution 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 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,

(Footnote continued on next page...)

For relief, Petitioners seek both declaratory and injunctive relief.

Specifically, they ask the Court to:

a. Declare that the current configuration of Pennsylvania's congressional districts violates . . . the Pennsylvania Constitution [and] . . . the U.S. Constitution . . . ;

b. Enjoin Respondents, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Pennsylvania's current congressional district plan;

c. Establish a schedule that will enable the Court to adopt and implement a new congressional district plan by a date certain should the political branches fail to enact such plan by that time;

d. Implement a new congressional district plan that complies with . . . the Pennsylvania Constitution [and] . . . the U.S. Constitution . . . , if the political branches fail to enact a plan by a date certain set by this Court;

e. Award Petitioners their costs, disbursements, and reasonable attorneys' fees; and

f. Grant such other and further relief as the Court deems just and proper.

Petition at 21-22.

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.

II. Preliminary Objections

In response to the Petition, Respondents and Intervenors filed POs. Both Respondents and Intervenors preliminarily object on the bases that Petitioners lack standing and their claims are not ripe pursuant to Pa.R.Civ.P. 1028(a)(4), (5).¹¹ Additionally, Intervenors object on the grounds that the claims are nonjusticiable and that Petitioners fail to otherwise state a claim upon which relief may be granted.¹²

A. Standing

With regard to standing, Respondents and Intervenors both assert that Petitioners lack capacity to sue because they are not aggrieved. Petitioners' claims turn on one key fact – whether or not there will be a new congressional district plan in time for the 2022 primary election. Petitioners' claims are predicated on the supposition that because the General Assembly is controlled by one political party, the Governor is a member of another political party, and there has been “conflict” between these actors in the past, it is highly unlikely that Pennsylvania will enact a new congressional district plan in time for the 2022 primary election, which would cause them harm. The possible harm is wholly contingent on future events, which

¹¹ Pa.R.Civ.P. 1028(a)(4), (5) provides: “Preliminary objections may be filed by any party to any pleading and are limited to the following grounds: . . . (4) legal insufficiency of a pleading (demurrer); [and] (5) lack of capacity to sue[.]”

¹² “In ruling on preliminary objections, the courts must accept as true all well-pled facts that are material and all inferences reasonably deducible from the facts.” *Pennsylvania Independent Oil and Gas Association v. Department of Environmental Protection*, 135 A.3d 1118, 1123 (Pa. Cmwlth. 2015), *aff'd*, 161 A.3d 949 (Pa. 2017) (quoting *Guarrasi v. Scott*, 25 A.3d 394, 400 n.5 (Pa. Cmwlth. 2011)). “However, we ‘are not required to accept as true any unwarranted factual inferences, conclusions of law or expressions of opinion.’” *Id.* (quoting *Guarrasi*, 25 A.3d at 400 n.5). “To sustain preliminary objections, ‘it must appear with certainty that the law will permit no recovery’ and ‘[a]ny doubt must be resolved in favor of the non-moving party.’” *Id.* (quoting *Guarrasi*, 25 A.3d at 400 n.5).

may never happen. Petitioners' failure to demonstrate an immediate interest defeats standing.

The hallmark of standing is that “a person who is not adversely affected in any way by the matter he seeks to challenge is not ‘aggrieved’ thereby.” *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280 (Pa. 1975). An individual is aggrieved if he has a “substantial, direct and immediate interest in the outcome of the litigation.” *Fumo v. City of Philadelphia*, 972 A.2d 487, 496 (Pa. 2009). “[A]n interest is ‘immediate’ if the causal connection is not remote or speculative.” *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005).

Our Supreme Court addressed standing in *Office of Governor v. Donahue*, 98 A.3d 1223, 1229 (Pa. 2014), explaining:

In Pennsylvania, the doctrine of standing . . . is a prudential, judicially created principle designed to winnow out litigants who have no direct interest in a judicial matter. *In re Hickson*, [821 A.2d 1238, 1243 (Pa. 2003)]. For standing to exist, the underlying controversy *must be real and concrete*, such that the party initiating the legal action has, in fact, been “aggrieved.” *Pittsburgh Palisades Park*, [888 A.2d at 659]. . . . As this Court explained in *William Penn Parking Garage*, “the core concept [of standing] is that a person who is not adversely affected in any way by the matter he seeks to challenge is not ‘aggrieved’ thereby and has no standing to obtain a judicial resolution to his challenge.” 346 A.2d at 280-81. A party is aggrieved for purposes of establishing standing when the party has a “substantial, direct and immediate interest” in the outcome of litigation. *Johnson [v. American Standard]*, 8 A.3d 318, 329 (Pa. 2010) (quoting *Fumo*[, 972 A.2d at 496]). A party’s interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, *a party’s interest is immediate when the causal*

connection with the alleged harm is neither remote nor speculative. Id. [(emphasis added).]

Here, Petitioners' allegations fail to meet the immediacy test. Petitioners do not allege that they have sustained a present or imminent legally cognizable injury or otherwise sufficiently develop facts to permit judicial resolution at this juncture. Petitioners' claims are predicated on what may happen in the event a new congressional map is not enacted before the 2022 primary election.

At this juncture, Petitioners' claims are premature. Petitioners filed this suit in April 2021 on the heels of the 2020 Census release without ever giving the General Assembly and the Governor an opportunity to act. In fact, Petitioners allege that the U.S. Secretary of Commerce was not expected to deliver to Pennsylvania the redistricting data in legacy format until mid-to-late-August 2021, or the same detailed population data showing the new population of each political subdivision in a tabulated format until September 30, 2021.¹³ Petition, ¶23.

Petitioners' action is premised on their belief that it is "extremely unlikely" that the branches will pass a lawful congressional redistricting plan in time for the upcoming 2022 election. Petition, ¶29. Petitioners attribute this unlikelihood to the divided political branches. Petition, ¶29. Both chambers of the General Assembly are controlled by the Republican Party and the Governor is a Democrat. Petition, ¶29. The Republican control of the General Assembly is not large enough to override a gubernatorial veto. Petition, ¶29. However, Petitioners do not allege that the political branches have announced a present impasse.

¹³ The U.S. Census Bureau provided redistricting data in legacy format for all states on August 12, 2021. See <https://www.census.gov/programs-surveys/decennial-census/data/datasets/rdo.html> (last visited October 5, 2021).

Nor do they allege that a legislative impasse is a *fait accompli* based on the political divide between the General Assembly and the Governor. In fact, Petitioners admit that, in the last two years, legislation has passed with bipartisan support and without a gubernatorial veto, despite the current political division. Respondents’ Preliminary Objections, ¶10; Petitioners’ Answer to Respondents’ Preliminary Objections, ¶10; *see, e.g.*, Act 77 of 2019¹⁴ (allowing all eligible voters to vote by mail-in ballot); Act 12 of 2020¹⁵ (changes to voting by mail-in electors and sweeping temporary measures to respond to the COVID-19 pandemic).

Petitioners acknowledge, as they must, that “there is still time for the General Assembly and the Governor to enact a new congressional plan.” Petition, ¶9. Petitioners also acknowledge that Pennsylvania law does not set a deadline by which congressional redistricting plans must be in place prior to the first congressional election following the census. Petition, ¶30. Petitioners allege that “it is in everyone’s interests – candidates and voters alike – that district boundaries are set” prior to February 15, 2022 – the first day for candidates to circulate and file nomination petitions for the 2022 primary election. Petition, ¶31. There is still ample time for the lawmakers to act.¹⁶ *See League of Women Voters of Pennsylvania v. Commonwealth*, 178 A.3d 737, 743 (Pa. 2018) (*League of Women Voters II*)

¹⁴ Act of October 31, 2019, P.L. 552, No. 77.

¹⁵ Act of March 27, 2020, P.L. 41, No. 12.

¹⁶ Respondents concede that February 15, 2022, is a key date for redistricting. “In order to ensure efficient election administration, allow for timely notice to candidates, and permit proper implementation of the new congressional districts,” Respondents assert that “the Department of State must receive a final and legally binding congressional district map no later than January 24, 2022.” Respondents’ Brief at 5; *see* Respondents’ Preliminary Objections, ¶¶13-17. “In order to account for potential litigation, Respondents believe that a new map must be signed into law by the end of December 2021.” Respondents’ Brief at 5; *see* Respondents’ Preliminary Objections, ¶17.

(noting that the congressional district map that followed the 2010 Census was signed into law on December 22, 2011).

Should lawmakers fail to act, Pennsylvania courts have demonstrated the ability to move swiftly to implement remedial congressional districting plans, which further undermines Petitioners' demand for immediate, premature relief. In *Mellow v. Mitchell*, 607 A.2d 204, 205 (Pa. 1992), eight Democratic state senators brought an action on January 28, 1992, the first day to circulate nominating petitions that year, asking the Supreme Court to create a new congressional district plan due to an impasse. On March 10, 1992, only 42 days after the suit was filed, the Supreme Court adopted a remedial plan. Similarly, in *League of Women Voters of Pennsylvania v. Commonwealth*, 175 A.3d 282 (Pa. 2018) (*League of Women Voters I*), on January 22, 2018, the Supreme Court struck down the 2011 congressional district plan. See *League of Women Voters II*, 178 A.3d at 825. On February 19, 2018, just 28 days later, the Supreme Court adopted a remedial plan. *League of Women Voters III*, 181 A.3d at 1089-1121.

Although it is possible that the General Assembly and the Governor may reach an impasse on the congressional redistricting legislation, the mere possibility is not sufficient to state a cognizable claim. “[A]ny possible harm to Petitioners is wholly contingent on future events,” which may never occur. *Pittsburgh Pallsades Park*, 888 A.2d at 660. Because no one can predict what will happen in negotiations between the General Assembly and the Governor, the facts underlying the Petition and alleged harm are far too speculative and uncertain to

constitute an immediate interest. Petitioners cannot reserve their place in line to be the lead petitioners in the event that future impasse litigation becomes necessary.¹⁷

¹⁷ Petitioners rely upon jurisprudence from Wisconsin and Minnesota to support their position that they have standing to prosecute their claims and that their claims are ripe at this juncture. Petitioners' Memorandum of Law in Opposition to Preliminary Objections, at 2; *see Arrington v. Elections Board*, 173 F. Supp. 2d 856 (E.D. Wis. 2001); *Watson v. Simon* (Minn., Nos. A21-0243, A21-0546, filed June 30, 2021); *see also Sachs v. Simon* (Minn., No. A21-0546, filed May 20, 2021). According to Petitioners, the courts in Wisconsin and Minnesota accepted jurisdiction in similar redistricting cases where a risk of impasse was alleged. The Wisconsin Supreme Court found that the complaint presented a justiciable controversy upon recognizing that "challenges to districting laws may be brought immediately upon release of official data showing district imbalance." *Arrington*, 173 F. Supp. 2d at 860 (citations omitted). Recently, the Minnesota Supreme Court appointed a special redistricting panel to "order implementation of judicially determined redistricting plans for state legislative and congressional seats that satisfy constitutional and statutory requirements in the event that the Legislature and the Governor have not done so in a timely manner," noting that the redistricting panel's "work . . . must commence soon in order to permit the judicial branch to fulfill its proper role in assuring that valid redistricting plans are in place for the state legislative and congressional election in 2022." *Watson*, Order at 2-3.

First, we are not bound by decisions from courts in other jurisdictions. *E.N. v. M. School District*, 928 A.2d 453, 466 n.20 (Pa. Cmwlth. 2007); *Ferraro v. Temple University*, 185 A.3d 396, 404 (Pa. Super. 2018). Second, although we may use such decisions "for guidance to the degree they are found to be useful, persuasive, and . . . not incompatible with Pennsylvania law," such is not the case here. *Ferraro*, 185 A.3d at 404. In Minnesota, a "special redistricting panel," comprised of judges, conducts public outreach and factfinding to prepare itself to address any redistricting litigation that may arise. *Watson*, Order at 2-3. Pennsylvania has no such counterpart. Minnesota also has statutory deadlines. *Watson*, Order at 2 (citing "Minn. Stat. §204B.14, subd. 1a (2020)," which provides that redistricting plans are to be implemented no "later than 25 weeks before the state primary election" in 2022). Given the panel's expansive role and the statutory deadline, the Minnesota Supreme Court concluded that the panel should commence its work in the summer of 2021. *Watson*, Order at 3. That decision, under those unique circumstances, has no bearing on the standing and ripeness issues under Pennsylvania jurisprudence. Furthermore, the Minnesota orders do not contain any analysis regarding the standing and ripeness issues presented here.

Arrington is similarly unpersuasive. There, two groups of legislators - the Wisconsin State Senate Democratic Caucus, who intervened as plaintiffs, and the Wisconsin State Senate's Speaker and Minority Leader, who intervened as defendants - filed briefs agreeing that the case was **(Footnote continued on next page...)**

Although we recognize that Petitioners' rights might be abridged at some future point in time, at this juncture, the alleged harm is too remote and too speculative to warrant judicial resolution of the dispute. Petitioners' allegations fail to demonstrate the immediacy required to confer standing. We, therefore, sustain Respondents' and Intervenors' POs on the basis that Petitioners lack standing to litigate their claims.

B. Ripeness

Next, Respondents and Intervenors preliminarily object to the Petition on the basis that Petitioners' claims are not ripe because the claims are based on uncertain and contingent events that may never occur.

“There is considerable overlap between the doctrines of standing and ripeness, especially where the contentions regarding lack of justiciability are focused on arguments that the interest asserted by the petitioner is speculative, not concrete, or would require the court to offer an advisory opinion.” *Robinson Township, Washington County v. Commonwealth*, 83 A.3d 901, 917 (Pa. 2013). Like standing, the principles of ripeness “mandates the presence of an actual controversy.” *Bayada Nurses, Inc. v. Department of Labor and Industry*, 8 A.3d 866, 874 (Pa. 2010). Unlike standing, “ripeness also reflects the separate concern that relevant facts are not sufficiently developed to permit judicial resolution of the dispute.” *Robinson Township*, 83 A.3d at 917.

Under the ripeness doctrine, “[w]here no actual controversy exists, a claim is not justiciable and a declaratory judgment action cannot be maintained.”

justiciable and that “legislative failure to redistrict is a very real possibility.” 173 F. Supp. 2d at 858-59, 864. Based on these admissions, the *Arrington* Court accepted jurisdiction. *Id.* at 864. Conversely, here, the political branches have not taken such a position. Further, *Arrington* interpreted federal law as applied to the Wisconsin legislative process, which is not applicable here.

Cherry v. City of Philadelphia, 692 A.2d 1082, 1085 (Pa. 1997). In other words, declaratory judgment is not appropriate to determine rights in anticipation of events that may never occur; the presence of an actual controversy is generally required. *Id.* The same holds true for actions seeking injunctive relief. *Mazur v. Washington County Redevelopment Authority*, 954 A.2d 50, 56 (Pa. Cmwlth. 2008).

“In deciding whether the doctrine of ripeness bars our consideration . . . we consider [(1)] whether the issues are adequately developed for judicial review and [(2)] what hardships the parties will suffer if review is delayed.” *Township of Derry v. Pennsylvania Department of Labor and Industry*, 932 A.2d 56, 57-58 (Pa. 2007) (internal citations and quotations omitted). As for whether the issues are “adequately developed,” we examine “whether the claim involves uncertain and contingent events that may not occur as anticipated or at all; the amount of fact finding required to resolve the issue; and whether the parties to the action are sufficiently adverse.” *Id.*

Rooted in the first part of this test is the principle that “[o]nly where there is a real controversy may a party obtain a declaratory judgment. A declaratory judgment must not be employed to determine rights in anticipation of events [that] may never occur or for consideration of moot cases or as a medium for the rendition of an advisory opinion which may prove to be purely academic.” *Gulnac by Gulnac v. South Butler County School District*, 587 A.2d 699, 701 (Pa. 1991) (internal citations omitted); accord *City of Philadelphia v. Philadelphia Transportation Co.*, 171 A.2d 768, 770 (Pa. 1961). “Under the ‘hardship’ analysis, we may address the merits even if the case is not as fully developed as we would like, *if refusal to do so would place a demonstrable hardship on the party.*” *Township of Derry*, 932 A.2d at 58 (emphasis added).

Petitioners' claims are premised on the fear that there will not be a new congressional district plan in place in time for the 2022 primary election. Petitioners allege that it is highly likely that Pennsylvania's political branches will "be at an impasse this cycle" and "fail to enact a new congressional district plan." Petition, ¶33. However, the issues are not adequately developed because these events may never occur. As Petitioners acknowledge, there is still time for lawmakers to enact a new congressional district plan. Petition, ¶9. Petitioners' claims also ignore the presumption that public officials will faithfully discharge their duties. *In re Redevelopment Authority of Philadelphia*, 938 A.2d 341, 345 (Pa. 2007).

Additionally, Petitioners will not suffer any hardship if review is delayed. *Only if* the General Assembly and the Governor fail to adopt a new congressional district plan by an arbitrary deadline will the alleged constitutional and statutory violations occur. As this Court observed, "[a]t this juncture, it is not known how the redistricting process will proceed." *Carter*, slip op. at 12. "The events which might bring these parties into actual conflict are thus too remote to justify our resolution of this dispute by declaratory judgment." *South Whitehall Township v. Department of Transportation*, 475 A.2d 166, 169 (Pa. Cmwlth. 1984).

The fact that the current districts may not have equal numbers of voters does not give rise to a constitutional injury. "Malapportionment's harm is felt by individuals in overpopulated districts who actually suffer a diminution in the efficacy of their votes and the proportional voice in the legislature." *Garcia v. 2011 Legislative Reapportionment Commission*, 559 F. App'x 128, 133 (3d Cir. 2014). Petitioners will not suffer an injury based on malapportionment harm until an election occurs using malapportioned districts.

Because Petitioners have alleged no immediate harm and their claims are contingent on future uncertainties, Petitioners' claims are not ripe for disposition. We, therefore, sustain Respondents' and Intervenors' POs on the basis that the dispute is not ripe.¹⁸

III. Conclusion

Based on the foregoing discussion, we sustain Respondents' and Intervenors' POs based on a lack of standing and ripeness as to all four counts of the Petition. Accordingly, we dismiss the Petition without prejudice.¹⁹



MICHAEL H. WOJCIK, Judge

¹⁸ We recognize that there may come a time when Petitioners' claims ripen, and they will have standing to pursue the claims in the Petition; however, that time is not now.

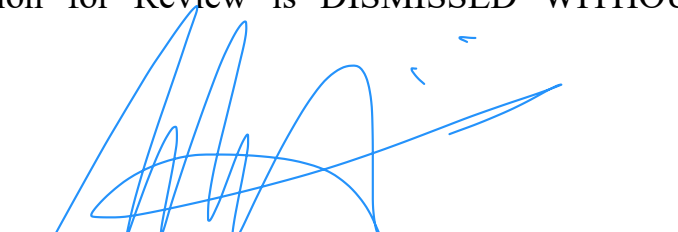
¹⁹ In light of this disposition, we decline to address Intervenors' additional POs.

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

AND NOW, this 8th day of October, 2021, Respondents’ and Intervenors’ Preliminary Objections relating to lack of standing and ripeness are SUSTAINED. Petitioners’ Petition for Review is DISMISSED WITHOUT PREJUDICE.



MICHAEL H. WOJCIK, Judge

Exhibit F

ORDER

AND NOW, this 14th day of January, 2022, in consideration of the petitions to intervene and the applications for expedited review and the responses thereto filed in the above-consolidated actions, it is hereby ORDERED:

1. This Order supersedes this Court's December 20, 2021 Order.
2. The Applications for Leave to Intervene of: (i) the Speaker and Majority Leader of the Pennsylvania House of Representative and the President Pro Tempore and Majority Leader of the Pennsylvania Senate, (ii) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams; (iii) Tom Wolf, Governor of the Commonwealth of Pennsylvania; (iv) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania; (v) Representative Joanna E. McClinton, Leader of the Democratic Caucus of the Pennsylvania House of Representatives; and (vi) Congressman Guy Reschenthaler, Swatara Township Commissioner Jeffrey Varner, Tom Marino, Ryan Costello, and Bud Shuster are **GRANTED**.

Pursuant to the Notice of Amendment and Joinder from Senate Democratic Caucus Intervenors and Democratic Senator Intervenors, the Applications for Leave to Intervene of: (i) Pennsylvania State Senators Maria Collett, Katie J. Muth, Sharif Street, and Anthony H. Williams; and (ii) Senator Jay Costa and members of the Democratic Caucus of the Senate of Pennsylvania are hereby joined, and these individuals shall constitute a single party. The Application for Intervention filed by Democratic Senator Intervenors shall be withdrawn. Democratic Senator Intervenors are added to the Senate Democratic Caucus Intervenors' Application for Intervention.

These intervenors which are hereinafter referred to as Parties shall be allowed to participate in these consolidated actions as parties. Any answers to the Petitions for Review attached to applications to intervene as exhibits are deemed filed.

3. All Parties shall submit for the Court's consideration at least one (1) but no more than two (2) 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.**

4. Parties must file a responsive brief and/or a responsive expert report (from the same expert who prepared the **January 24** report or any other expert), addressing other parties' **January 24** submissions, by 5:00 p.m. on **Wednesday, January 26, 2022.**
5. The Applications for Leave to Intervene as parties filed by (i) Voters of the Commonwealth of Pennsylvania; (ii) Citizen-Voters; (iii) Draw the Lines-PA; and (iv) Khalif Ali et al. are **DENIED.**

Voters of the Commonwealth of Pennsylvania, Citizen-Voters, Draw the Lines-PA, and Khalif Ali et al., are permitted to participate in these matters as Amicus Participants, which means that their participation shall be limited to submissions to the Court **in writing** as set forth in Paragraph 6 of this Order.

6. Amicus Participants who wish to submit for the Court's consideration one (1) proposed 17-district congressional redistricting map/plan that is consistent with the results of the 2020 Census shall file the proposed map/plan and, if the Amicus Participant chooses to do so, a supporting brief and/or a supporting expert report, by 5:00 p.m. on **Monday, January 24, 2022.**
7. All proposed 17-district congressional redistricting maps/plans shall comply with constitutional standards and any other standards required by law.
8. After submission, no proposed plan/map may be later modified or amended.
9. No Party or Amicus Participant may take discovery in this matter.
10. The Parties shall submit to the Court a Joint Stipulation of Facts by 2:00 p.m. on **Wednesday, January 26, 2022.**
11. The Court shall conduct an evidentiary hearing on **Thursday, January 27, 2022, and Friday, January 28, 2022,** participation in which is limited to the Parties as identified herein. The hearing will begin at 9:30 a.m. in Courtroom 3001 of the Pennsylvania Judicial Center, Harrisburg, PA. It shall be the responsibility of Petitioners to secure the services of a court reporter(s)

throughout the duration of the hearing. Each Party is limited to presenting one witness at the hearing, who shall be subject to cross examination by the other Parties. Opening and closing statements and argument by Parties shall be permitted. The Court will also consider revisions to the 2022 election schedule/calendar as part of the hearing.

- 12.If the General Assembly has not produced a new congressional map by January 30, 2022, the Court shall proceed to issue an opinion based on the hearing and evidence presented by the Parties.

s/ Patricia A. McCullough
PATRICIA A. McCULLOUGH, Judge

Exhibit G

IN THE SUPREME COURT OF PENNSYLVANIA

No. 141 MM 2021

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.

No. 142 MM 2021

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.

**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.”¹ *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.

¹ 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.”² *League of Women Voters*, 645 Pa. at 130, 178 A.3d at 822.

² 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.³

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.

³ 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.⁴

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.

⁴ 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.⁵

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

⁵ 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

/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

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

Exhibit H

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IN THE SUPREME COURT OF PENNSYLVANIA

CAROL ANN CARTER *et al.*,

Petitioners,

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.

No. 141 MM 2021

**RESPONDENTS' ANSWER TO
PETITIONERS' APPLICATION FOR EXTRAORDINARY RELIEF
UNDER 42 PA. C.S. § 726 AND PA. R.A.P. 3309**

Respondents, Veronica Degraffenreid, in her official capacity as the Acting Secretary of the Commonwealth of Pennsylvania, and Jessica Mathis, in her official capacity as Director for the Pennsylvania Bureau of Election Services and Notaries, submit this Answer to Petitioners' Application for Extraordinary Relief Under 42 Pa. C.S. § 726 and Pa. R.A.P. 3309.

I. THIS COURT SHOULD EXERCISE EXTRAORDINARY JURISDICTION OVER THE CONSOLIDATED CASES BELOW

Respondents agree that this Court should exercise extraordinary jurisdiction, pursuant to 42 Pa. C.S. § 726, over the consolidated cases pending in the Commonwealth Court at docket numbers 464 MD 2021 and 465 MD 2021, respectively entitled *Carter v. Degraffenreid* and *Gressman v. Degraffenreid*.¹ Both sets of petitioners seek an injunction prohibiting the use of Pennsylvania's current congressional district map in future elections, as well as the judicial implementation of a new map reflecting the number of congressional representatives currently allocated to Pennsylvania and adhering to other applicable legal requirements.

As a result of the 2020 Census, the number of congressional representatives allocated to Pennsylvania has been reduced from 18 to 17. It is therefore clear that Pennsylvania's current congressional map, containing 18 districts, cannot be used

¹ The Petitioners in 464 MD 2021 and 465 MD 2021 have filed separate applications seeking this Court's exercise of extraordinary jurisdiction. See Docket Nos. 141 MM 2021 and 142 MM 2021.

in future elections, and that a new map, containing 17 congressional districts, must be adopted before the next congressional election. *See* 2 U.S.C. § 2c (“there shall be established by law a number of districts equal to the number of Representatives to which [each] State is ... entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative”). If a new congressional map is not legislatively enacted in the very near future, it will be necessary and appropriate for the Pennsylvania judiciary to implement one. *See Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992) (implementing a congressional district map when, following the 1990 Census, the Legislature failed to enact a map reflecting the reduced number of congressional seats to which Pennsylvania was entitled); *see also Growe v. Emison*, 507 U.S. 25, 34 (1993) (recognizing “the possibility and legitimacy of state *judicial* redistricting” where the state legislative process fails to produce a lawful map (emphasis in original)).

As this Court has previously recognized, this kind of redistricting litigation presents a particularly compelling case for invoking this Court’s plenary jurisdiction. *See Mellow*, 607 A.2d at 206 (Court granted application for exercise of extraordinary jurisdiction). This Court may exercise extraordinary jurisdiction over “any matter pending before any court ... involving an issue of immediate public importance.” 42 Pa. C.S. § 726. Pennsylvania’s need to adopt a new, lawful congressional district map is indisputably of great public importance, as it

implicates the fundamental right of all Pennsylvanians to equal and adequate political representation in the nation's legislature.

This need is also “immediate” and urgent. *Id.* As Petitioners note, the 2022 primary election, currently scheduled to occur on May 17, 2022, *see* 25 P.S. § 2753(a), is fast approaching. Under the current election schedule, the first day to circulate and file nomination petitions is February 15, 2022. 25 P.S. § 2868. To be eligible to sign a congressional candidate's nomination petition, an elector must be a resident of the congressional district the candidate seeks to represent. *Id.* Accordingly, a new district map must be in place, so that the boundaries of the new congressional districts are known to candidates, before the circulation of nomination petitions can begin. Further, 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.

Given this calendar, the Legislature's ability to enact a timely new map is in serious doubt. As Petitioners note, a bill must be considered by each full house of the General Assembly at least three times on three different legislative days before it becomes law. *See* PA. CONST. art. III, § 4. To date, however, no redistricting bill has received more than a first consideration in either chamber. Further, the

General Assembly is currently adjourned and will not reconvene until January 4, 2022. And each chamber has scheduled only a very limited number of session days in January.² Finally, legislative leaders have stated that they believe a final map will not be passed until lengthy discussions and negotiations have taken place.³ Under these circumstances, there is a substantial prospect that the legislative process will fail to produce a timely map, and a court-ordered map will be necessary.

If the political branches do not enact a 17-district map in short order, the judiciary will have to act quickly to protect Pennsylvanians' voting rights and minimize disruption to the primary election process. Although the Commonwealth Court immediately consolidated the two redistricting lawsuits and issued an accelerated litigation schedule, even that expedited timetable would not allow this Court to begin its review of the case until February. By exercising extraordinary jurisdiction, this Court can eliminate the need for separate courts to issue two successive judgments and reduce the time required to issue a final map.

² See Pa. House of Representatives, *House Session Days*, at <https://www.house.state.pa.us/Session.cfm?Chamber=H> (last visited Dec. 26, 2021); Pa. Senate, *Senate Session Days*, at <https://www.pasen.gov/Session.cfm?Chamber=S> (last visited Dec. 26, 2021).

³ See, e.g., Jan Murphy, *Pa. House panel approved preliminary congressional map as 'a starting point' for negotiation*, Pennlive.com, Dec. 16, 2021, <https://www.msn.com/en-us/news/politics/pa-house-panel-approves-preliminary-congressional-map-as-e2-80-98a-starting-point-e2-80-99-for-negotiation/ar-AARRqZX?ocid=uxbndlbing> (last visited Dec. 27, 2021).

II. THIS COURT SHOULD SET A DEADLINE FOR SUBMISSIONS REGARDING THE LITIGATION SCHEDULE AND ELECTION CALENDAR

Petitioners in both of the consolidated cases below propose that, after exercising plenary jurisdiction, this Court enter a scheduling order that is even more accelerated than the Commonwealth Court's, whereby this Court would implement a final map by no later than January 24, 2022. Respondents do not take a position on the appropriate litigation schedule at this time. If the Court elects to exercise extraordinary jurisdiction, Respondents request that the Court set a deadline, coincident with or following the deadline for the filing of applications to intervene, for submissions addressing the schedule that should govern this case, as well as whether any revisions to the 2022 primary election schedule are necessary.

Respectfully submitted,

Dated: December 27, 2021

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

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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: December 27, 2021

/s/ Robert A. Wiygul
Robert A. Wiygul

Exhibit I

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER; MONICA PARRILLA; :
REBECCA POUYOUROW; 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, :

CASES
CONSOLIDATED

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. :

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, :

Petitioners, :

No. 465 MD 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. :
:

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

, J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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. :

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 :

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

**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 district¹ in 2019.

¹ 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

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, Intervenors 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 Intervenors “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 Intervenors 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).²

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

² 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 intereviewer’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

s/ Matthew H. Haverstick
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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

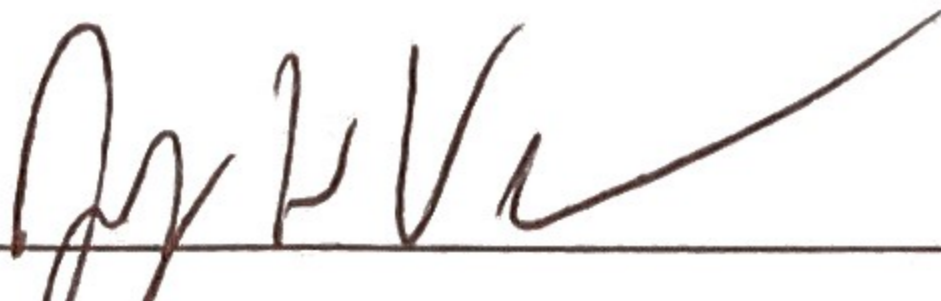


Guy Reschenthaler

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

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