

**IN THE SUPREME COURT OF PENNSYLVANIA**

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**7 WM 2022**

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**TODD ELLIOTT KOGER, REPUBLICAN CANDIDATE  
APRIL 5, 2022, SPECIAL ELECTION PA HOUSE DISTRICT #24**

**V.**

**2021 PENNSYLVANIA LEGISLATIVE  
REAPPORTIONMENT COMMISSION**

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**SUPPLEMENT TO PETITIONER'S BRIEF**

- 1. THE CONSTITUTIONAL RIGHT TO DETERMINE REPRESENTATION AND HAVE SUCH INCLUDED IN THE "TOTAL PARTISAN COUNT" WHICH DETERMINES THE LEADERSHIP OF THE LEGISLATURE, IS IN NO MANNER A LOCAL CHALLENGE.**
- 2. PETITIONER HAS "SPECIFICALLY" IDENTIFIED FOR THE COURT "THE REMOVAL" OF THE REPUBLICAN OPPONENT FROM THE 2022 PRIMARY AS CONTRARY TO LAW.**
- 3. WITH "RACIAL GERRYMANDERING" THE 2021 REAPPORTIONMENT COMMISSION'S "FINAL PLAN" HAS USURPED A RIGHT GUARANTEED TO BLACK VOTERS**

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**Todd Elliott Koger, Pro Se  
515 Kelly Avenue  
Wilksburg, Pa 15221  
(412) 758-4510  
kogerfriend@gmail.com**

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Todd Elliott Koger, pro se, submits the forgoing as a “Supplement to Petitioner’s Brief.”

### **INTRODUCTION TO SUPPLEMENT**

The Free and Equal Elections Clause of 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.” Pa. Const. art. I, Section 5.

And this Court has explained that the first clause of Article I, Section 5 “mandates clearly and unambiguously, and in the broadest possible terms, that all elections conducted in this Commonwealth must be ‘free and equal.’” See *League of Women Voters v. Commonwealth*, 178 A.3d 737 at 804 (Pa. 2018).

The Free and Equal Elections Clause has at least two specific implications for redistricting:

1. The Clause prohibits partisan gerrymandering, because such gerrymandering “dilutes the votes of those who in prior elections voted for the party not in power to give the party in power a lasting electoral advantage.” *Id.* at 814.

Partisan gerrymandering dilutes the votes of citizens favoring the party out of power by placing those voters “in districts where

their votes are wasted on candidates likely to lose (cracking), or by placing such voters in districts where their votes are cast for candidates destined to win (packing).” Id.

2. Second, the Clause recognizes that voters should not have their votes diluted based on where they live. See id. at 809 (explaining that previous versions of the Free and Equal Elections Clause were meant to “exclude not only all invidious discriminations between individual electors, or classes of electors, but also between different sections or places in the State” (quotation omitted)).

See also id. at 808 (noting that the 1790 convention was motivated, in part, by “the primary cause of popular dissatisfaction which undermined the governance of Pennsylvania: namely, the dilution of the right of the people of this Commonwealth to select representatives to govern their affairs based on considerations of the region of the state in which they lived”).

By using this language, the Constitution’s framers intended that “all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth.” Id.

The clause protects, “to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.” *Id.*

In other words, all citizens have an equal right to elect their representatives, and “all voters have an equal opportunity to translate their votes into representation.” *Id.*

**In all, the Free and Equal Elections Clause serves to protect the fundamental precept that “the voters should choose their representatives, not the other way around.” *Id.* at 740-41.**

In this way, the constitutional criteria in Article II Section 16 are linked to the Free and Equal Elections Clause. Adherence to each of these criteria helps guard against vote dilution. See *id.* at 815-16.

Here, the petitioner (Todd Elliott Koger, Republican candidate for the April 5, 2022 PA House District #24 “Special Election”) has identified to the Court indisputable facts demonstrating violence to the neutral redistricting criteria of Article II Section 16 as one indication of the partisan gerrymander and a dilution of disfavored black votes in Wilkinsburg. See *League of Women Voters v. Commonwealth*, 178 A.3d 737 at 816 (Pa. 2018).

Also in play here is the other major constitutional provision the voters of Pennsylvania adopted just last year, Article I Section 29, which prohibits discrimination on the basis of race and ethnicity.

This provision states: “Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the race or ethnicity of the individual.” Pa. Const. art. I, Section 29.

The petitioner (Todd Elliott Koger, Republican candidate for the April 5, 2022 PA House District #24 “Special Election”) has identified to the Court indisputable facts demonstrating “How the right to choose its representation has been abridged and denied based on race or ethnicity – ideals central to democracy and equality.

Lastly, the Pennsylvania Constitution is not the only source of law impacting the Commission’s work in redistricting the Commonwealth. The federal Constitution (14th Amendment to the United States Constitution and the federal Voting Rights Act, 52 U.S.C. Section 10301, et seq.), also impose certain requirements and limits on any redistricting efforts.

When these provisions conflict with state law, the federal requirements necessarily take precedence. See U.S. Const. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under

the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”); Holt I, 38 A.3d at 738 (acknowledging the impact of federal law on state redistricting efforts).

The petitioner (Todd Elliott Koger, Republican candidate for the April 5, 2022 PA House District #24 “Special Election”) has identified to the Court indisputable facts demonstrating the 2021 Pennsylvania Legislative Reapportionment Commission with its “Final Plan” has knowingly denied and abridged the voting rights of the black residents living in Wilkinsburg, in clear violation of U.S. Const. amends. XIV, XV; 52 U.S.C. Section 10301(a). See *Mellow v. Mitchell*, 530 Pa. 44, 50 (1992). And see also *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015).

Under federal law PA House District #24 must be drawn in a manner that keeps intact the common socio-economic and cultural interest of the black voters, and allow blacks to choose their political representation. Voting Rights Act of 1965, 52 U.S.C. Section 10301(b) (2018).

There is no available justification for separating Wilkinsburg and Homewood voters who share a middle and high school, fire and police



protection, garbage removal, a busway for transportation, and nonprofits providing human services, among other (planned annexation).

That is, the black voting demographic of Wilkinsburg and Homewood has similar work opportunities, standards of living and common environmental, healthcare, or educational concerns.

But by failing to keep the black neighborhoods of Wilkinsburg and Homewood intact the Reapportionment Commission “Final Plan” knowingly denies constitutionally protected bonds of ancestry, history, or religion, and the right to vote in community, not political identity or party.

The Reapportionment Commission “Final Plan” has allowed the “conflict of interest” present with Democrat Senator Jay Costa serving on the Reapportionment Commission, and the “removal of Wilkinsburg” that provides a direct advantage to his employee Martell Convington’s campaign to represent PA House District #24, to cause disenfranchisement of the black voters of Wilkinsburg (Todd Elliott Koger the black Republican candidate).

**The “Final Plan” is constitutionally flawed “statewide” because of the unjust impact the “removal of the republican opponent” will have on the “total partisan count” of the legislature which determines its leadership.**

The 2021 Reapportionment Commission can not explain away the unavoidable “conflict of interest” and their usurpation of the right to determine political representation. See *League of Women Voters v. Commonwealth*, 178 A.3d 737 at 740-41 (Pa. 2018).

The petitioner here, Todd Elliott Koger, is the Republican candidate for PA House District #24. Mr. Koger, is and has been at all relevant times a resident of 515 Kelly Avenue, Wilkinsburg, Pennsylvania 15221.

515 Kelly Avenue is situated in PA House District #24 for the date set April 5, 2022, “Special Election” but has been removed from PA House District #24 in the Pennsylvania Legislative Reapportionment Final Plan governing the 2022 Primary Election.

The Pennsylvania Legislative Reapportionment Final Plan governing the 2022 Primary Election, unconstitutionally benefits Democrat Martell Covington by removing the Republican opponent Todd Elliott Koger from PA House District #24 primary election.

The unavoidable “conflict of interest” at play with the Democrat candidate Martell Covington, an employee of Commission member Senator Jay Costa, magnifies the constitutional harm.

This, in no way, is just a “local” issue . . .

## SUPPLEMENT TO ARGUMENT

The Pennsylvania Legislative Reapportionment Final Plan governing the 2022 Primary Election, unconstitutionally benefits Democrat Martell Covington by removing the Republican opponent Todd Elliott Koger from PA House District #24 primary election.

The unavoidable “conflict of interest” at play with the Democrat candidate Martell Covington, an employee of Commission member Senator Jay Costa, magnifies the constitutional harm.

This, in no way, is just a “local” issue (it impacts the total partisan count “statewide” which determines the leadership of the legislature).

The 2021 Pennsylvania Legislative Reapportionment Commission with “racial gerrymandering” has created an irreparable harm.

By failing to keep the neighborhoods of Wilksburg and Homewood intact the Reapportionment Commission “Final Plan” knowingly denies constitutionally protected bonds on account of ancestry, history, religion, and the right of blacks living in Wilksburg and Homewood to vote in community for the representative of their choosing.

**There is no available justification for separating Wilksburg and Homewood voters who share a middle and high school, fire and police protection, garbage removal, a busway for transportation, and**

**nonprofits providing human services, among other (planned annexation).**

**That is, the voting demographic has similar work opportunities, standards of living and common environmental, healthcare, or educational concerns.**

Article II, § 17 provides a precise timeframe in which, and a specific mechanism by which, aggrieved individuals like Petitioners may raise challenges to reapportionment plans in the Pennsylvania Supreme Court.

March 7, 2022, is the last date set to file a challenge.

Todd Elliott Koger, the Republican candidate for the April 5, 2022, “Special Election” for PA House District #24, has additionally already asked this Court to consolidate all current known challenges (4 WM 2022; 7 WM 2022; and 11 MM 2022) with any other timely challenges as one “statewide” challenge demonstrating the complete unconstitutional effect of the 2021 Reapportionment Commission “Final Plan.”

In addition, Mr. Koger has also already requested from this Court an “enlargement of time” to fully brief in detail all of the consolidated facts which demonstrate the 2021 Reapportionment Commission “Final Plan” as having a statewide unconstitutional effect on the voters of Pennsylvania.

## **AMENDED CONCLUSION**

For the foregoing reasons, Todd Elliott Koger, the Republican candidate for PA House District #24, with this Supplement “clarifies” any misplaced narrative that the 2021 Reapportionment Commission’s usurpation of the constitutional right to determine political representation in any manner is limited to a “local impact.”

**In all, the Free and Equal Elections Clause serves to protect the fundamental precept that “the voters should choose their representatives, not the other way around.” Id. at 740-41.**

Leave is needed to “Amend” for clarification. Anything less will cause the black voting demographic of Wilkinsburg (Todd Elliott Koger the black Republican candidate) and Homewood irreparable harm.

/s/ Todd Elliott Koger, Pro Se

Republican Candidate  
PA House District #24  
515 Kelly Avenue  
Wilkinsburg, Pa 15221

## **CERTIFICATE OF COMPLIANCE**

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

/s/ Todd Elliott Koger

## **PROOF OF SERVICE**

I, the undersigned, do hereby certify that a true and correct copy of the within was served on the 7 day of March 2022.

1. 2021 Legislative Reapportionment Commission Attn. G. Reynolds Clark, Executive Director 209 Irvis Office Building Harrisburg, PA 17120.
2. The Honorable Josh Shapiro Office of Attorney General of Pennsylvania c/o Torts Litigation Unit 15th Floor, Strawberry Square Harrisburg, Pennsylvania 17120.
3. 2021 Legislative Reapportionment Commission Attn. Robert L. Byer, Esq., Chief Counsel c/o Duane Morris LLP 600 Grant Street, Suite 5010 Pittsburgh, PA 15219-2802 rlbyer@duanemorris.com

/s/ Todd Elliott Koger