

IN SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

EDWARD J. KRESS,

Petitioner,

V.

**2021 LEGISLATIVE REAPPORTIONMENT
COMMISSION OF THE COMMONWEALTH
OF PENNSYLVANIA,**

Respondent

PETITION FOR REVIEW

**IN THE NATURE OF AN APPEAL FROM THE FINAL
PLAN OF THE 2021 LEGISLATIVE REAPPORTIONMENT
COMMISSION**

PRO SE

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WESTERN DISTRICT

EDWARD J. KRESS,

and

Petitioner,

No.

v.

2021 PENNSYLVANIA LEGISLATIVE
REAPPORTIONMENT COMMISSION,

Respondent.

PETITION FOR REVIEW

In the Nature of an Appeal from the Final Plan of the 2021 Legislative
Reapportionment Commission

Pursuant to Section 17(d) of Article II of the Pennsylvania Constitution and Pennsylvania Rule of Appellate Procedure 3321, the Pro Se Petitioner Edward J. Kress files the following PETITION FOR REVIEW to the Final Plan and Map released by the 2021 Pennsylvania Legislative Reapportionment Commission at the end of the day on Friday, February 4, 2022, and avers as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Petitioners because the Pro Se Petitioner resides in Allegheny County, Commonwealth of Pennsylvania.

2. This Court has original jurisdiction to hear these challenges to the LRC Final Plan and Map as pursuant to Article II, §17(d) of the Pennsylvania Constitution and 42 Pa.C.S. §725(1).

3. This Petition is addressed to the Court's appellate jurisdiction and is in the nature of Petition for Review pursuant to Rule 3321 and Rule 1501et. seq. the for Pennsylvania Rules of Appellate Procedure.

PARTIES

4. The Petitioner is Edward J. Kress who is domiciled and a registered voter in Shaler Township, Allegheny County, Pennsylvania currently residing in Pennsylvania State House District 30 and Pennsylvania State Senate District 38. However, following the new the 2021 Legislative Reapportionment Commission (LRC) Redistricting the Petitioner, Edward J. Kress will be residing in Pennsylvania State House District 21 that will now be a part of City of Pittsburgh State House District. Petitioner had filed written comments to the LRC stating that the City of Pittsburgh should only have 5 PA State House and 2 Senate Districts.

5. The Respondent is the 2021 Pennsylvania Legislative Reapportionment Commission (“LRC”) responsible for drawing maps following the 2020 U.S. decennial census.

DETERMINATION TO BE REVIEWED

6. The determination for which Petitioners seek review is the constitutionality of the 2021 Final Plan of the Commission approved on February 4, 2022.

OBJECTIONS TO THE 2021 FINAL PLAN

7. The Pennsylvania Constitution provides that House and Senate districts “shall be composed of compact and continuous territory as nearly equal in population as practicable. . . Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.” Pa. Const., art. II, § 16.

8. The evidence submitted to the LRC demonstrates that there are numerous political subdivisions that were unnecessarily split, the most egregious being the subdivision of the City of Pittsburgh into 9 Legislative Districts in the Pennsylvania State House and 3 in the PA State Senate, whereas the lasted Census dictates that the City of Pittsburgh should only have 5 Pennsylvania House Legislative Districts and 2 Pennsylvania Senate Legislative Districts.

9. The LRC has subdivided the City of Pittsburgh into 34 municipalities that now contain 277,837 non-Pittsburgh residents when all the LRC had to do was to keep Wilkinsburg Borough in PA House District 24.

10. Further, Wilkinsburg Borough shares a mutual interest with the City of Pittsburgh, as Wilkinsburg students from 7-12 attend Pittsburgh Public Schools while the City of Pittsburgh provides fire services and garbage collection. Even arguing more for its inclusion within PA District 24, Wilkinsburg not only wants to share services with the City of Pittsburgh, Wilkinsburg could actually become part of the City of Pittsburgh, as a Petition to Merge with the City of Pittsburgh was filed in the Allegheny County Court of Common Pleas, Pennsylvania on January 4, 2022.¹

11. The LRC Map violates the Voting Rights Act, (“VRA”), 42 U.S.C. §1973(b) as minorities were unconstitutionally subdivided in municipalities or removed from districts in the current LRC Map whose presence is essential to the creation of minority districts.

12. Wilkinsburg Borough located in Allegheny County was removed from Pennsylvania State House District 24, which is a district where all the residents of this district are either from the City of Pittsburgh or Wilkinsburg Borough.

¹ <https://www.post-gazette.com/local/east/2022/01/05/wilkinsburg-merger-pittsburgh-annex-vote-council-supporters-protectors/stories/202201050136>

13. The Proposed PA Constitutional District Plan that the Petitioner submits, proves that the action of the LRC in regard to subdividing the City of Pittsburgh was not absolutely necessary.

14. The Proposed PA Constitutional District Plan is more compact, continuous, and equal than the LRC Map.

15. Wilksburg is an African American majority municipality, whose presence within PA House District 24 is essential in creating 2 African American Districts within the City of Pittsburgh per a Pennsylvania Constitutional State Map.

JOINDER OF OBJECTIONS TO THE 2021 FINAL PLAN
AS SET FORTH IN THE PETITION FOR REVIEW
OF KERRY BENNINGHOFF AND RYAN COVERT, ERIK
HULICK AND DARLENE COVERT

16. Petitioner hereby joins the objections, briefs, and all exhibits of all of the following Petitioners Ryan Covert, Erik Hulick, and Darlene J. Covert at 4 WM 2022, Petitioner Kerry Benninghoff docketed at 11 MM 2022, and Jackie Hutz at 11WM 2022 as set forth in his Petition for Review and that the Final Plan is unconstitutional and must be declared to be contrary to law.

A. THE 2021 FINAL PLAN DIVIDES NUMEROUS POLITICAL SUBDIVISIONS THAT ARE NOT ABSOLUTELY NECESSARY, BUT THE LRC'S DIVISION OF THE CITY OF PITTSBURGH WAS RATHER EGREGIOUS WHEREAS IT CREATED 9 DISTRICTS WHEN THE CITY OF PITTSBURGH SHOULD HAVE ONLY 5

17. The 2021 Final Plan fails to comply with the requirement of Article II, Section 16 of the Pennsylvania Constitution that “unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

18. Under the Pennsylvania Constitution, state legislative districts are reviewed every ten (10) years following the U.S. decennial census.

19. State Legislative District(s) “shall be composed of compact and continuous territory as nearly equal in population as practicable. . . Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.” Pa. Const. art. II, § 16.

20. The LRC was created via the Constitutional Convention of 1967-68 and is codified as Article II, section 17 of the Pennsylvania Constitution.

21. On September 16, 2021, the United States Census Bureau released data from the 2020 census to state redistricting authorities and the public.²

22. According to the 2020 Census, Pennsylvania has 13,002,700 residents and the Pennsylvania House of Representatives is made up of 203 districts and Pennsylvania State Senate is made up 50 districts. Thus, the ideal district population is about 64,053 persons per district for the Pennsylvania State

² Redistricting in Pennsylvania after the 2020 Census, http://ballotpedia.org/Redistricting_in_Pennsylvania_after_the_2020_census (accessed February 7, 2022).

House and 260,237 for the Pennsylvania State Senate, pursuant to Pa. Const. Art. II, § 16.

23. The Commonwealth of Pennsylvania reviewed and distributed population data received from the U.S. Secretary of Commerce. This data is commonly referred to as “P.L. 91-171 data,” (hereinafter “data”). Pub. L. No. 940171, 89 Stat. 1023 (1975).

24. A report by Dr. Michael Barber demonstrated that unnecessarily divided up cities in Allentown, Lancaster, Reading, Harrisburg, State College, Scranton, Pittsburgh, and South Whitehall for political advantage. (Please see the Kerry Benninghoff, Petition for Review.)

25. The 2021 Final Plan contains multiple divisions of political subdivisions that are not “absolutely necessary.”

26. At no time did the Commission demonstrate that these divisions were absolutely necessary and evidence presented to the Commission proves the contrary.

27. The Commission failed to address, consider or adjust the 2021 Final Plan in accordance with requests from the public regarding these unnecessary

splits and generally failed to comply with mandates of Article II, Section 16 of the Pennsylvania Constitution.

28. The 2021 Final Plan's House Splits 56 municipalities a total of 92 times.

29. Petitioner finds Pittsburgh probably to be the most egregious example being the City of Pittsburgh being split 9 times in the Pennsylvania State House and 3 times in the Pennsylvania State Senate.

1. The Allegheny County Population Increased while the City of Pittsburgh Population Declined Yet the City of Pittsburgh Maintained the Same Amount of Pennsylvania State House Districts

30. The data showed a 2.2% population increase in Allegheny County from 2010 to 2020 with an increase from 1,223,348 to 1,250,578. However, the City of Pittsburgh's population continued to decline going from 305,704 residents to 302,971. Whereas the areas of major growth from 2010 to 2020 occurred in the suburban communities outside the City of Pittsburgh such as Ohio Township (48.5%), Marshall Township (35%), Pine Township (22%), and Collier Township (21.9%).

31. In reviewing the table below, you can see the population growth in the past 50 years in Allegheny County has occurred outside of the City of

Pittsburgh, whereas the representative share of the City of Pittsburgh population has declined from 32.40% in 1970 to 24.22% today.

**ALLEGHENY COUNTY POPULATION INCREASE COMPARED TO
CITY OF PITTSBURGH POPULATION LOSS**

<u>YEAR</u>	<u>ALLEGHENY COUNTY POPULATION</u>	<u>CITY OF PGH. POPULATION</u>	<u>PGH % ALLEGHENY POPULATION</u>
1970	1,605,016	520,117	32.40%
1980	1,450,085	423,938	29.23%
1990	1,336,449	369,879	27.67%
2000	1,281,666	334,563	26.10%
2010	1,233,348	305,704	24.78%
2020	1,250,578	302,971	24.22%

32. The City of Pittsburgh has lost population; even though it has lost population it has not lost districts in either the Pennsylvania State House or Senate.

33. A population of 64,053 is what the ideal PA State House District would contain for the current reapportionment plan.

34. Per the table below, as you can see in 1990, the City of Pittsburgh had 9 Pennsylvania House Districts within its borders even though it was eligible for 6.31947 of the seats based upon the 1990 Census.

CITY OF PITTSBURGH STATE HOUSE DISTRICTS FROM 1990 TO 2020

<u>YEAR</u>	<u>TOTAL PA POPULATION</u>	<u>PA NO. OF SEATS</u>	<u>CITY OF PGH. POPULATION</u>	<u>PA POPULATION DISTRIBUTION PER SEAT</u>	<u>PGH. STATISTICAL SEATS PER POPULATION</u>	<u>ACTUAL PGH. SEATS</u>
1990	11,881,643	203	369,879	58,530	6.31947	9
2000	12,281,054	203	334,563	60,498	5.53014	9
2010	12,702,379	203	305,704	62,573	4.88555	9
2020	13,011,844	203	302,971	64,053	4.73000	9

35. Despite the fact that the City of Pittsburgh only has enough population for 4.73 Pennsylvania House District Seats, the LRC, still in the new and Final Reapportionment Plan (hereinafter “Final Map”), again subdivided the City of Pittsburgh into 9 Pennsylvania State House Districts, those Districts being the 19th, 20th, 21st, 23rd, 24th, 27th, 34th, 36th, and 38th.

36. Not only was the City of Pittsburgh able to keep 9 districts with a decreasing population it did so even in the face of an increasing Pennsylvania population for the distribution of each Pennsylvania House District.

2. The LRC included 34 Municipalities with a total Population of 227,837 in with the City of Pittsburgh Districts, when the LRC only needed to include 2 Non-Pittsburgh Municipalities, Wilksburg and Mt. Oliver, with a combined Population of 17,743 to create 5 City of Pittsburgh PA House Districts

37. The LRC has included these 34 municipalities within City of Pittsburgh District Pennsylvania House Districts with a total population of 224,582:

<u>MUNICIPALITY</u>	<u>POPULATION</u>
Avalon	4,762
Baldwin Boro	21,510
Baldwin Twp.	1,985
Bellevue	8,311
Braddock	1,721
Braddock Hills	1,730
Chalfont	4,253
Churchill	3,157
Crafton	6,099
Dravosburg	1,612
East Pittsburgh	1,927
Edgewood	3,145
Etna	3,437
Forest Hills	6,429
Glassport	4,475
Green Tree	4,941
Heidelberg	1,288
Ingram	3,391
Millvale	3,376
Mt. Oliver	3,394
North Braddock	4,320
North Versailles	10,074
Rankin	1,896
Reserve	3,255
Roslyn Farms	441
Scott	17,649
Shaler	28,132
Swissvale	8,624
Thornburg	466
West Mifflin	19,589
West View	6,685
White Hall	15,064
Wilkins	6,350

Wilkinsburg	14,349
Total	227,837

- Source: U.S. Census Bureau, 2020 Decennial Census

38. In reviewing the calculations below, the City of Pittsburgh should be allocated 4.73 PA House Sets, based on the following math:

$$64,053 * 73 = 46,759 \text{ (Residents within the City of Pittsburgh)}$$

$$64,053 - 46,759 = 17,294 \text{ (Residents outside the City of Pittsburgh)}$$

39. There was no reason that the LRC should have included 34 municipalities with a combined population of 227,837, when the Pennsylvania Constitution is clear that no ... “city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district” unless absolutely necessary, particularly when the remedy is quite simple to include 17,294 non-Pittsburgh residents within these City of Pittsburgh House Districts.

40. The City of Pittsburgh completely surrounds the Borough of Mt. Oliver, which has a population of 3,394 residents and therefore, must be included in any City of Pittsburgh Pennsylvania House District.

41. The Borough of Wilkinsburg’s School District has an agreement with the Pittsburgh Public School System, whereas the Pittsburgh Public School System educates Wilkinsburg students from grades 7 to 12.

42. In addition to sharing an educational system, the Borough of Wilkinsburg receives fire services and garbage collection from the City of Pittsburgh.

43. Further, the Borough of Wilkinsburg filed a Petition in the Court of Common Pleas of Allegheny County, Pennsylvania for Wilkinsburg residents to vote on whether Wilkinsburg should be merged into the City of Pittsburgh.

44. On January 5, 2022, Allegheny County Common Pleas Judge Joseph James approved the said Petition to place the merger proposal on the ballot for the voters of Wilkinsburg.³

45. The City of Pittsburgh Council voted the Wilkinsburg ballot measure down of February 8, 2022.⁴

46. Wilkinsburg Borough has a population of 14,349.

47. In revisiting our calculations from paragraph 16 of this Petition, the requirement that these districts have 17,294 non-Pittsburgh residents is satisfied with the below calculations:

$$64,053 * .73 = 46,759 \text{ (Residents within the City of Pittsburgh)}$$

$$64,053 - 46,759 = 17,294 \text{ (Residents outside the City of Pittsburgh)}$$

³ <https://www.wtae.com/article/wilkinsburg-pittsburgh-merger-proposal-issue-heats-up/38679106>; <https://www.post-gazette.com/local/east/2022/01/05/wilkinsburg-merger-pittsburgh-annex-vote-council-supporters-protesters/stories/202201050136>

⁴ <https://www.post-gazette.com/news/politics-local/2022/02/08/pittsburgh-wilkinsburg-annexation-merger-city-council-votes-no-investigation-analysis/stories/202202080091>

Now if we add:

Wilkinsburg Population	14,349
Mount Oliver Population	<u>3,394</u>
Total Combined Population	17,743

48. Having these two municipal entities combined with the City of Pittsburgh entities not only satisfies the 17,294 non-Pittsburgh resident requirement, it creates an excess of 449 non-Pittsburgh residents.

49. Instead of the LRC following the Constitutional Proposed Plan or a similar plan, the LRC included 34 other municipalities outside of the City of Pittsburgh like Shaler Township that has population of 28,132, a number greater than the total amount of non-Pittsburgh residents who need to be within a City of Pittsburgh PA House District.

50. The 28,132 residents of Shaler Township find themselves in PA House District 21, a district with a substantial amount of City of Pittsburgh voters that whose interests may outweigh those of Shaler Township.

51. Shaler Township has a strong mutual interest with the surrounding municipality of Hampton, having formed a partnership for public services such as the water authority known as Hampton Shaler Water and Shaler Hampton EMS. (Please see attached as Appendix A, letter from Shaler Township Manager Tim Rogers).

52. There is no constitutional justification to have Shaler Township or other municipalities outside of Mt. Oliver and Wilkinsburg within any City of Pittsburgh PA House District.

53. This is illegal political gerrymandering at the expense of suburban Allegheny County residents must be stricken as unconstitutional as a direct violation of Article II Section 16, of the Pennsylvania Constitution.

3. The LRC removed Wilkinsburg from PA House District 24 when Wilkinsburg not only shares an educational system and public services with the City of Pittsburgh, but there has been effort to merge Wilkinsburg with the City of Pittsburgh

54. Removing Wilkinsburg from the current PA House District 24 harms the goal of the LRC of trying to keep municipalities that have mutual interests together, such sharing a school district, municipal services or in this case a wish to merge as political unified entities.

55. Wilkinsburg because of its substantial contacts with the City of Pittsburgh would benefit immensely in staying in PA House District 24, due to the convergence of mutual interest. Since, the residents of Wilkinsburg and the City of Pittsburgh are conjoined via education, services, and a potential merger, it be would logical and advantageous to keep the Wilkinsburg with PA House District 24.

56. The current Pennsylvania House District 24 only contains City of Pittsburgh or Wilkinsburg residents.

57. Instead, of keeping Wilkinsburg in the 24th the LRC cast Wilkinsburg into PA House District 34.

58. The PA House District 34 is a mostly suburban house district that includes only a portion of two wards of the City of Pittsburgh, but also Braddock, Braddock Hills, Forest Hills, North Braddock, Rankin, Swissvale, and Wilkins.

59. Wilkinsburg will lose that educational mutual interest that the 24th District provides, in joining with the mostly suburban communities in the 34th District that are all part of the Woodland Hills School District.

4. Wilkinsburg is a vital and necessary municipality that must be kept in the 24th PA House District in order to create two African American PA House Districts under the Proposed PA Constitutional District Plan

60. Wilkinsburg being within the 24th District would increase minority representation within all City of Pittsburgh House Districts as 55% of the residents of Wilkinsburg are African-American, while the City of Pittsburgh is 66% white.

61. When Wilkinsburg is included within 24th District, two African American House Districts with similar percentages to the LRC Plan can be established within the City of Pittsburgh PA House Districts.

62. Please see below the “Proposed PA Constitutional District Plan” (“Constitutional Proposed Plan”) that meets all the requirements of the Pennsylvania Constitution without dividing up any municipality and only divides one City of Pittsburgh Ward that being the 4th Ward. (Please see attached as Appendix B, is a map of the Proposed PA Constitutional Plan Districts.)

PROPOSED PA CONSTITUTIONAL DISTRICT PLAN

1st (Similar to LRC PA House District 24th) Proposed State House District (Pgh.): This proposed reapportioned District includes the following municipalities and wards from the city of Pittsburgh: Pittsburgh Wards 6, 9, 10, 11, 12, 13 and Wilkinsburg.

Under the 2020 census figures, the population of this district is **63,606** persons. Of these, 53,178 (84 percent) persons are age 18 or older and the **African American population is 28,582 (45 percent).**

2nd Proposed State House District (Pgh.): This proposed reapportioned District includes the following municipalities and wards from the city of Pittsburgh: Mount Oliver and Pittsburgh Wards 4 (2, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17), 15, 16, 17, 29, 30 and 31.

Under the 2020 census figures, the population of this district is **66,436** persons. Of these, 57,748 (87 percent) persons are age 18 or older and the African American population is 10,810 (16 percent).

3rd Proposed State House District (Pgh.): This proposed reapportioned District includes the following municipalities and wards from the city of Pittsburgh: Pittsburgh Wards 18, 19, 20, 28 and 32.

Under the 2020 census figures, the population of this district is **64,115** persons. Of these, 52,938 (83 percent) persons are age 18 or older and the African American population is 11,136 (17 percent).

4th Proposed State House District (Pgh.): This proposed reapportioned District includes the following municipalities and wards from the city of Pittsburgh: Pittsburgh Wards 7, 8 and 14.

Under the 2020 census figures, the population of this district is **62,077** persons. Of these, 54,610 (88 percent) persons are age 18 or older and the African American population is 3,223 (5 percent).

5th (Similar to LRC PA House District 19th) Proposed State House District (Pgh.): This proposed reapportioned District includes the following municipalities and wards from the city of Pittsburgh: Pittsburgh Wards 1, 2, 3, 4 (1, 3, 4, 6, 18 and 19), 5, 21, 22, 23, 24, 25, 26 and 27.

Under the 2020 census figures, the population of this district is **64,480** persons. Of these, 54,748 (85 percent) persons are age 18 or older and the **African American population is 24,995 (39 percent).**

63. The Constitutional Proposed Plan is more compact, continuous, and equal than the LRC Map.

64. The Constitutional Proposed Plan does not create far ranging districts outside of Pittsburgh.

65. The Constitutional Proposed Plan does not add 227,837, but only 17,743 to the Pittsburgh House Districts.

66. The Constitutional Proposed Plan does not add 34 municipalities, but only 2 to the Pittsburgh House Districts.

67. The Constitutional Proposed Plan compares quite favorably to the LRC Map when it comes to the creation of African American districts as part of the City of Pittsburgh.

68. In regard to African American representation, the 1st Proposed State House District has a 45% African American compared to the LRC PA House District 24 of 41.1%.

69. The LRC PA House District 24 contains the following areas:

Part of ALLEGHENY County consisting of the CITY of Pittsburgh (PART, Wards 04 [PART, Divisions 03, 04, 06, 07 and 18], 05 [PART, Divisions 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 17 and 18], 07 PART, Divisions 03, 04, 08, 09, 11 and 12], 08, 10 [PART, Divisions 08, 09, 11, 12, 13, 14, 15, 16, 17, 18 and 19], 11, 12 and 13 [PART, Divisions 02, 03, 04, 05, 06, 07, 09, 11, 12, 15, 16, 17, 18 and 19]).

Total population: 61,444⁵

70. And the 5th Proposed State House District has a 39% African American population compared to the LRC PA House District 19 of 45.7%.

71. The LRC PA House District 19 contains the following areas:

Part of ALLEGHENY County consisting of the CITY of Pittsburgh (PART, Wards 01, 02 [PART, Division 01], 03, 04 [PART, Divisions 01, 02, 17 and 19], 05 [PART, Divisions 01, 02 and 16], 15 [PART, Divisions 13, 14, 15, 16, 17, 18 and 19], 17 [PART, Divisions 01, 02 and 03], 18 [PART, Divisions 02, 03, 04, 05, 06, 07, 08, 09, 10 and 11], 20 [PART, Divisions 08, 09, 10, 11, 12 and 13], 21, 22, 23 [PART, Division 02], 25, 26 [PART, Divisions 01, 02, 03, 04, 05, 06, 07, 08, 10, 11, 14 and 16], 27 [PART, Divisions 06, 09, 10, 11, 12 and 13] and 30).

⁵ Final Reapportionment Plan: <https://www.redistricting.state.pa.us/maps/>

Total population: 61,450⁶

72. As you can see the LRC Plan splits many wards in PA House Districts 19 and 24, whereas the Constitutional Proposed Plan only splits one ward, that being the 4th Ward for both the 19 and 24 Districts.

5. IN the 2021 Final Map the Pittsburgh PA 9 House Districts have great population deviations than the Constitutional Proposed Plan

73. Article II, Section 16 states that House and Senate districts “shall be . . . as nearly equal in population as practicable.” Equality of population is the primary directive in the efforts of the Commission. *Holt v. 2011 Legislative Reapportionment Commission* (“Holt I”), 614 Pa. 364, 437 (2012). Although a range is permissible, the Supreme Court of Pennsylvania warned that it would not “direct the LRC to develop a reapportionment plan that tests the outer limits of acceptable deviations.” *Id.* at 445.

74. To ensure equal protection and access, the districts must be set up to “make [each vote] equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share.” *League of Women’s Voters of Pa. v. Commonwealth*, 178 A.3d 809 (Pa. 2018).

75. The Pennsylvania Constitution sets up requirements for districts and these requirements include that district(s) be “as nearly equal in population as

⁶ Final Reapportionment Plan: <https://www.redistricting.state.pa.us/maps/>

practicable.” Pa. Const. art. II, § 16. To ensure equal protection and access, the districts must be set up to “make [each vote] equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share.” League of Women’s Voters of Pa. v. Commonwealth, 178 A.3d 809 (Pa. 2018).

76. The LRC Plan for the City of Pittsburgh Districts have the following deviations:

District	District Population	Deviation Number	Deviation Percentage
19	61,450	-2,603	4.1%
20	61,715	-2,338	3.6%
21	62,076	-1,977	3.1%
23	61,580	-2,473	3.9%
24	61,444	-2,609	4.1%
27	61,874	-2,179	3.4%
34	61,582	-2,471	3.9%
36	61,727	-2,326	3.6%
38	64,487	+434	.7%
		Average Deviation	3.3%

77. The Constitutional Proposed Plan has the following deviations:

District	District Population	Deviation Number	Deviation Percentage
1 (Similar to HD-24)	63,606	-447	.7%
2	66,436	+2,383	3.7%
3	64,115	62	0
4	62,077	-1,976	3.1%
5 (Similar to HD-19)	64,480	427	.7%
		Average Deviation	1.6%

78. Also, in the Constitutional Proposed Plan both the City of Pittsburgh African American PA House Districts have a higher amount of total residents in the two districts than the LRC Plan.

79. The LRC leaves the City of Pittsburgh districts underpopulated more than the Constitutional Proposed Plan.

80. The 1st Proposed State House District would have a population of 63,606 compared to the LRC 24th District population of 61,444; and the 5th Proposed State House District has a 64,480 residents compared to the LRC 19th District population of 61,450.

81. The current LRC Pittsburgh African American Districts show a greater number of deviations from the ideal number of 64,053 residents for a Pennsylvania House District than the Constitutional Proposed Plan, as LRC PA House District 24 is ranked number 4 and PA House District 19 is ranked number 5 for the most underpopulated districts in the LRC Map.

82. Not only does the Constitutional Proposed Plan for the City of Pittsburgh residents create similar African American percentages in two PA House Districts, it does so in a way that follows the Pennsylvania Constitution, as it does not subdivide the City of Pittsburgh whatsoever, into another 32 municipalities outside of just adding the municipalities of Wilksburg and Mt. Oliver.

83. If the LRC just keeps Wilkinsburg within the 24th District, the City of Pittsburgh would have the sufficient population outside the City of Pittsburgh to create 5 PA House Districts.

84. The Proposed Constitutional Plan explicitly makes clear that it was not “absolutely necessary” to subdivide the City of Pittsburgh into 9 different PA House Districts.

6. The LRC also has not decreased the number of City of Pittsburgh PA Senate Districts even though the City of Pittsburgh Population has declined to where they barely qualified for 2 PA Senate Districts

85. Per the table below, as you can see in regard to the Pennsylvania Senate, the same issue has occurred. In 1970, the population of the City of Pittsburgh justified being divided up into 3 Senate Districts, but as early as 1980, the justification for the City of Pittsburgh into having 3 PA Senate Districts had already dwindled. Today the City of Pittsburgh can barely justify 2 PA Senate Districts.

CITY OF PITTSBURGH STATE SENATE DISTRICTS 1970 TO 2020

<u>YEAR</u>	<u>TOTAL PA POPULATION</u>	<u>PA NO. OF SEATS</u>	<u>CITY OF PGH. POPULATION</u>	<u>PA POPULATION PER DISTRICT</u>	<u>PGH. STATISTICAL DISTRICT PER POPULATION</u>	<u>ACTUAL PGH. SEATS</u>
1970	11,793,909	50	520,117	235,878	2.2	3

1980	11,863,895	50	423,938	237,278	1.7866	3
1990	11,881,643	50	369,879	237,633	1.5565	3
2000	12,281,054	50	334,563	245,621	1.362	3
2010	12,702,379	50	305,704	254,048	1.203	3
2020	13,011,844	50	302,971	260,237	1.164	3

86. Based upon simple math there is no justification for the City of Pittsburgh to have more than 2 PA Senate Districts.

87. Per the above table, the City Pittsburgh just qualifies for 1.164 Senate Seats.

88. In order to calculate how many non-Pittsburgh residents should be in a PA Senate District here is the following calculation:

$$302,971 * .164 = 42,678.87 \text{ (Residents outside the City of Pittsburgh)}$$

89. The City of Pittsburgh sections in Senate District 38 could either be distributed to either PA Senate District 42 or District 43 to create 2 Pittsburgh PA Senate Districts.

90. The Final Map is an unconstitutional political gerrymander and must be stricken.

91. It is quite clear that the neutral and Constitutional criteria of compactness, contiguity, and minimization of the division of political subdivisions was subordinate in the Final Map to other factors involving unfair distribution of

House and Senate Seats to the City of Pittsburgh over the interest of smaller municipal entities within Allegheny County.

92. LRC's multiple subdivisions of Pittsburgh in both the PA House and Senate could only be done for the purposes of politically motivated gerrymandering whether to promote partisanship or the interest of a political entity such as the City of Pittsburgh over the interest of the smaller municipalities within Allegheny County.

93. This is illegal political gerrymandering at the expense of suburban Allegheny County residents that must be stricken as unconstitutional as a direct violation of Article II Section 16, of the Pennsylvania Constitution.

7. A U.S. District nullified a similar redistricting map in Daily, et. al. v. Defazio, et. al. when the City Pittsburgh received too many Allegheny County Council Districts per population

94. Western Pennsylvania U.S. Judge District Robert J. Cindrich in Daily, et. al. v. DeFazio, et. al., 2:01CV01911 (2001) found a similar Allegheny County Council District Map violated the Allegheny County Administrative Code when the Allegheny County Democrats apportioned the City of Pittsburgh 6 Allegheny County Council Districts when they should have had 4.

95. Allegheny County used the same criteria that the LRC used in determining PA Senate and House Districts when trying to redistrict the Allegheny County Council.

96. The Allegheny County Code states the following in regard to reapportionment:

Unless absolutely necessary, no city, borough, township or ward shall be divided in forming Councilmanic Districts. ... A municipality shall be divide into as few County Council districts as possible.

Administrative Code Section 301.03(B).

97. Allegheny County Council submitted a map termed the Fontana Plan that gave the City of Pittsburgh 6 Allegheny County Council Districts instead of 4 based upon the population. (Please see the attached as Appendix “C” the Fontana Plan.)

98. U.S. District Court Judge Cindrich found that “According to the 2000 Census, Pittsburgh lost substantial population, decreasing from 369,879 in 1990 to 334,563. Similarly, the average population for a county district decreased to 98,590. Thus, four council districts would comprise approximately 394,360 people, or 59,797 more people than reside in Pittsburgh. If Pittsburgh is to be divided only into “as few County Council districts as possible,” it should be divided among only four districts. Nevertheless, the Fontana adopted by the

County divides Pittsburgh among six different districts.” Daily, J. Cindrich, Finding of Fact and Conclusions of Law, No. 49.

99. “The undisputed evidence demonstrated that it would have been easy to divide the City of Pittsburgh into only four council districts while still meeting all other requirements of Section 301.03(B), including the requirements of compactness, contiguousness and equal population, while achieving equivalent levels of minority population in the council districts.” Id., at 56.

100. “Accordingly, we find that the Fontana Plan violates the Administrative Code because it did not divide the municipality of the City of Pittsburgh into as few County Council districts as possible.” Id., at 57.

101. In regard to splitting wards Judge Cindrich stated, “As demonstrated by Plaintiff’s Unified Ward Plan, I would have been easy to create a reapportionment plan that has compact and contiguous districts and has shorter aggregate district boundaries and has shorter aggregate district boundaries, reasonably equivalent minority population in majority –minority district, smaller deviation of population from the ‘ideal’ size, and less splitting of municipalities that present in the Fontanta Plan.” Id., at 57.

102. Similarly, the Petitioner has supplied the Proposed Constitutional Plan to show it would be easy to create a reapportionment plan that has compact

and contiguous districts and has shorter aggregate district boundaries and has shorter aggregate district boundaries, reasonably equivalent minority population.

103. Here, like in Daily, there is undisputed evidence that it would have been easy to divide the City of Pittsburgh into only 5 PA District House and 2 PA Senate Districts while still meeting all other requirements

B. THE 2021 FINAL PLAN VIOLATES THE VOTING RIGHTS ACT AND FIFTEENTH AMENDMENT

104. The LRC in failing to include Wilkinsburg within PA House 24th District cannot create 2 African American PA House Districts in the City of Pittsburgh.

105. Wilkinsburg not being part of the 24th District creates a violation of the Pennsylvania Constitution and the Voting Rights Act, 42 U.S.C. §1973(b) and the Fifteenth Amendment.

106. If the LRC would follow the Constitutional Proposed Plan there would be no violation of the Voting Rights Act as Wilkinsburg, clearly should be included within the 24th District.

REQUEST FOR RELIEF

107. For the foregoing reason, the Petitioner asks this Court to determine that the 2021 Final Plan contrary to under Article I, Section 5 and Article II, Section 16 of the Pennsylvania Constitution, the Voting Rights Act, Fifteenth

Amendments to the United States Constitution and to remand the 2021 Final Plan to the Commission with direction to make the following revisions:

- a. Eliminate the unnecessary splits of political subdivision;
- b. Grant Petitioner's request to joins the objections and brief of the Petitioner Benninghoff as set forth in his Petition for Review docketed at 11 MM 2022 and that the Final Plan is unconstitutional and must be declared to be contrary to law;
- c. Place all minority districts
- d. Award Petitioners their costs, disbursements, and reasonable attorneys' fees related to this action; and
- e. Grant such other and further relief as the Court deems just and proper

Respectfully submitted,

/s/ Edward J. Kress, Esquire

Pro Se Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing PETITION FOR REVIEW STATE HOUSE AND SENATE MAP Final Map to be served upon the following parties and in the manner indicated below, which service satisfies the requirements on March 7, 2022:

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