

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER, MONICA	:	No.: 132 MD 2021
PARRILLA, REBECCA	:	
POYOUROW, WILLIAM TUNG,	:	
ROSEANN MILAZZO, BURT	:	APPLICATION OF PROPOSED
SIEGEL, SUSAN CASSANELLI,	:	INTERVENORS THE
LEE CASSANELLI, LYNN	:	REPUBLICAN PARTY OF
WACHMAN, MICHAEL	:	PENNSYLVANIA AND
GUTTMAN, MAYA FONKEU,	:	INDIVIDUAL REPUBLICAN
BRADY HILL, MARY ELLEN	:	VOTERS FOR LEAVE TO FILE
BALCHUNIS, TOM DEWALL,	:	A REPLY TO PETITIONERS'
STEPHANIE MCNULTY, and	:	AND RESPONDENTS'
JANET TEMIN,	:	OPPOSITION MEMORANDA

Petitioners,	:	Filed on Behalf of Proposed
	:	Intervenors - Respondents:
v.	:	Republican Party of
	:	Pennsylvania, Inc., et al.

VERONICA DEGRAFFENREID, in	:	
her official capacity as the Acting	:	Counsel for Proposed
Secretary of the Commonwealth of	:	Intervenors:
Pennsylvania; and JESSICA	:	
MATHIS, in her official capacity as	:	Thomas W. King, III, Esquire
Director of the Bureau of Election	:	Pa. I.D. No. 21580
Services and Notaries,	:	Thomas E. Breth, Esquire
	:	Pa. I.D. No. 66350
Respondents,	:	Jordan P. Shuber, Esquire
	:	Pa. I.D. No. 317823

v.	:	
REPUBLICAN PARTY OF	:	Jason B. Torchinsky
PENNSYLVANIA, INC.; PATRICIA	:	(Va. ID No. 47481)**
K. POPRIK; DAVID TORRES;	:	<i>pro hac vice application</i>
BILLY LANZILOTTI; NANCY	:	<i>forthcoming</i>

BECKER; MICHAEL D. STRAW;	:	Jonathan P. Lienhard
JAMES DEPP; JOSEPH P.	:	(Va. ID No. 41648) <i>**pro hac vice</i>
VICHOT; JUSTIN BEHRENS;	:	<i>application forthcoming</i>
THOMAS WHITEHEAD; LEE	:	
BECKER; LOUIS CAPOZZI; KIRK	:	Shawn T. Sheehy
RADANOVIC; PAUL NYMAN;	:	(Va. ID No. 82630) <i>** Admitted</i>
JAMES MAGUIRE, JR.; KRISTINE	:	<i>pro hac vice</i>
L. ENG; DONNA COSMELLO;	:	
JAMES FOREMAN; DAVID BALL;	:	
JAMES VASILKO; LYNNE RYAN;	:	
CINDY KIRK; DARYL METCALFE;	:	
LUKE NEGRON; and SUE ANN	:	
MEANS, REV. TODD JOHNSON,	:	
MICHAEL HARVEY, LOUISA	:	
GAUGHEN	:	
	:	
Proposed Intervenors.	:	

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MEANS, REV. TODD JOHNSON,	:	
MICHAEL HARVEY, LOUISA	:	
GAUGHEN	:	
	:	
Proposed Intervenors.	:	
	:	
	:	

APPLICATION OF PROPOSED INTERVENORS THE REPUBLICAN PARTY OF PENNSYLVANIA AND INDIVIDUAL REPUBLICAN VOTERS FOR LEAVE TO FILE A REPLY TO PETITIONERS’ AND RESPONDENTS’ OPPOSITION MEMORANDA

Pursuant to Pennsylvania Rule of Appellate Procedure 123, Proposed Intervenors, The Republican Party of Pennsylvania Inc., a Pennsylvania non-profit corporation, and individual Republican Voters, (“Proposed Intervenors”), by and through the undersigned counsel, apply for leave to file a reply to Petitioners’ Memorandum in Opposition to the Application To Intervene by the Pennsylvania Republican Party and Individual Republican Voters and to Respondents’ Memorandum in Opposition to the Application

for Leave To Intervene of the Republican Party of Pennsylvania and Individual Republican Voters. A copy of the proposed reply is attached to this application.

In support of this application, Proposed Intervenors state as follows:

1. In their Petition for Review, Petitioners assert that “Pennsylvania’s congressional plan [is] unconstitutionally malapportioned.” Pet. at ¶ 2.

2. Petitioners claim that “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.” *Id.* at ¶ 3.

3. Petitioners contend that they “will be forced to cast unequal votes if the current congressional map is not brought into compliance with constitutional requirements” and their “right to associate with other voters in support of their preferred candidates will be infringed” unless “a new congressional plan is [put] in place in a timely manner.” *Id.* at ¶ 4.

4. Petitioners believe that “[t]here 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.”

Id. at ¶ 7.

5. Petitioners acknowledge that “there is still time for the General Assembly and the Governor to enact a new congressional plan,” but nevertheless they ask “this Court [to] 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.* at ¶ 9.

6. Petitioners assert four causes of action, see *id.* at ¶¶ 34–53, and ask this Court to: (1) declare that Pennsylvania’s current congressional district map is unconstitutional; (2) enjoin Respondents “from implementing, enforcing, or giving any effect to Pennsylvania’s current congressional plan”; (3) “[e]stablish 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 a plan by that time”; and (4) “[i]mplement a new congressional district plan . . . if the political branches fail to enact a plan by a date certain set by this Court.” Pet. Prayer for Relief.

7. On June 1, 2021, Proposed Intervenors filed their Application for Leave To Intervene.

8. In their Application for Leave To Intervene, Proposed Intervenors explain how their associational rights, competitive rights, significant interests

in their resources, and their right to vote could be irreparably harmed if Petitioners obtain their requested relief.

9. Proposed Intervenors have demonstrated that they are entitled to intervene in this matter under Pennsylvania Rules of Civil Procedure 2327(3) and (4).

10. Proposed Intervenors have explained why this Court should not exercise its discretion to deny their Application for Leave To Intervene under Pennsylvania Rule of Civil Procedure 2329.

11. On June 15, 2021, Respondents filed an answer and memorandum in opposition to Proposed Intervenors' Application for Leave to Intervene.

12. Respondents claim that Proposed Intervenors: (1) do not assert a legally cognizable interest; (2) that their claims are speculative; and (3) that even if Proposed Intervenors have asserted a legally enforceable interest, this Court should deny intervention on the grounds that Proposed Intervenors' rights are already adequately represented. Resps. Opp. at 2.

13. On June 17, 2021, Petitioners filed an answer and memorandum in opposition to Proposed Intervenors' Application for Leave To Intervene.

14. Petitioners claim that Proposed Intervenors have failed to assert a legally enforceable interest, and that even if they have asserted a legally

enforceable interest, this Court should nonetheless deny their application on the grounds that Proposed Intervenors' interests are already adequately represented, because adding more parties would complicate the case, and because Proposed Intervenors could protect their rights through amicus briefs. Pets. Opp. at 2, 13–15.

15. Proposed Intervenors seek to file a reply so that they may refute these assertions and further explain the legally enforceable interests that may be irreparably harmed if Petitioners' proposed relief is granted.

WHEREFORE, Proposed Intervenors respectfully request that this Honorable Court grant them leave to file their Reply to Petitioners' and Respondents' Opposition Memoranda.

DATED: July 2, 2021

Respectfully Submitted,

By: /s/ Thomas W. King, III

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PROPOSED INTERVENORS’, THE REPUBLICAN PARTY OF PENNSYLVANIA AND INDIVIDUAL REPUBLICAN VOTERS, REPLY TO PETITIONERS’ AND RESPONDENTS’ OPPOSITION MEMORANDA

Proposed Intervenors, The Republican Party of Pennsylvania Inc., a Pennsylvania non-profit corporation, for itself and on behalf of its more than three million members, and individual Republican Voters, (“Proposed Intervenors”), by and through the undersigned counsel, file this Reply to Petitioners’ Memorandum in Opposition to the Application To Intervene by the Pennsylvania Republican Party and Individual Republican Voters and to Respondents’ Memorandum in Opposition to the Application for Leave To Intervene of the Republican Party of Pennsylvania and Individual Republican Voters.

INTRODUCTION

According to the State, this case began when “a group of Pennsylvania voters allege[d] that prompt Congressional redistricting is necessary to ensure that their votes will have the same weight as other Pennsylvanians votes in upcoming Congressional elections.” State Resps. Opp. at 1. The instant motion to intervene is brought on behalf of a similarly situated group of Pennsylvania voters who want to make their case that this Court should protect them from the Petitioners’ attempt to subvert their right not to have the redistricting process short-circuited. In other words, Proposed Intervenors simply ask the Court to allow intervention so that their position is represented—i.e., that Pennsylvania’s judicial branch should not proactively and prematurely take control of an intrinsically legislative process. Such arguments clearly belie Petitioners’ and Respondents’ arguments that this is merely ill-fated, partisan overreach.

Proposed Intervenors are not demanding a particular outcome. Instead, they want their voices to be heard. And in electoral politics, the best way for a party to voice its philosophy and policy positions is through its candidates. To ensure that their voices will be heard, they are asking that the Court decline Petitioners’ and Respondents’ request to exclude them from the redistricting process.

In their Briefs in Opposition, both Petitioners and Respondents argue that Proposed Intervenors fail to assert legally enforceable interests that would qualify them for intervention under Pennsylvania Rule of Civil Procedure 2327. In essence, they claim that Proposed Intervenors' only interest is in securing additional congressional seats for Republican candidates, which is not legally cognizable. Their objections amount to obfuscation through oversimplification, and they ignore that Proposed Intervenors have associational rights, competitive rights, and significant interests in their resources, which will be squandered if Petitioners' arguments carry the day. Additionally, just as Petitioners allege that their right to vote could be harmed if this Court declines to grant Petitioners' requested relief, as mirror opposites of Petitioners, Proposed Republican Individual Intervenors' right to vote could also be impacted if this Court acquiesces to the Petitioners' requested relief. These rights and interests could be irreparably harmed if Petitioners obtain their requested relief, and Proposed Intervenors' Application To Intervene therefore should be granted.

PENNSYLVANIA'S INTERVENTION STANDARDS

Proposed Intervenors seek to intervene pursuant to Pennsylvania Rule of Civil Procedure 2327(3) and (4). "At any time during the pendency of an

action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if . . .

(3) such person could have joined as an original party in the action or could have been joined therein; or,

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.”

Pa.R.C.P. 2327(3) and (4). After a proposed intervenor meets one of these criteria, then a court may—but is not required to—deny intervention only when: the proposed intervenor has unduly delayed in applying for intervention; the court determines that the intervention will unduly delay or prejudice the trial; the interest of the proposed intervenor is already adequately represented; or the proposed intervenor’s claims or defenses are “not in subordination to and in recognition of the propriety of the action.”

Pa.R.C.P. 2329.

When the proposed intervenor “is a person within one of the classes described in Rule 2327, the allowance of intervention is mandatory, not discretionary, unless one of the grounds for refusal under Rule 2329 is present.” *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999). Once one of the criteria listed in Pa.R.C.P. 2327 is met, a court may, but need not, refuse intervention under Rule 2329. *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Human Servs.*, 225 A.3d 902,

908 (Pa. Commw. Ct. 2020) (“[T]he court is given discretion to allow or to refuse intervention only where the petitioner falls within one of the classes enumerated in Rule 2327 *and* only where one of the grounds under Rule 2329 is present which authorizes the refusal of intervention.” (emphasis in original) (citation omitted)).

Contrary to Petitioners’ assertion, Pets. Opp. at 6–9, Pennsylvania does not require an intervenor to demonstrate that it would have had standing to initiate the litigation in which it asks to participate. See *Allegheny Reprod. Health Ctr.*, 225 A.3d at 910–11 (“Simply, the test for standing to initiate litigation is not co-terminus with the test for intervention in existing litigation.”); *Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1289 (Pa. Commw. Ct. 2019) (“[W]e agree, that the inquiry to determine whether a party has standing to initiate litigation is different than the inquiry to determine whether a party can intervene in existing litigation.”).¹ However, standing

¹ Respondents claim that in *In re Philadelphia Health Care Trust* “the Court explained, [that] a legally enforceable interest is one that would be sufficient *to establish standing*.” State Resps. Opp. at 8 (emphasis added). In that case, however, the court held that “it was not an abuse of discretion for the trial court to determine that both Nutter and Fumo *lacked standing under the criteria set forth under Pa. R.C.P. No. 2327* and therefore deny the petitions to intervene.” *In re Phila. Health Care Trust*, 872 A.2d 258, 261 (Pa. Commw. Ct. 2005) (emphasis added). In *dicta*, the court then analyzed appellants’ claims assuming they had met the Pa.R.Civ.P. 2327 criteria, and in the process included the language on standing quoted by Respondents. See *In re Philadelphia Health Care Trust*, 872 A.2d at 261–63; State Resps. Opp. at 8. Notably, however, that language itself quoted *In re Francis Edward McGillick Found.*, 642 A.2d 467, 469 (1992), which did not involve an application for intervention. The most likely reading of the *In re Philadelphia Health*

principles “are relevant to a determination of whether a putative intervenor has demonstrated a ‘legally enforceable interest’ for purposes of *Rule No. 2327(4)*.” *Allegheny Reprod. Health Ctr.*, 225 A.3d at 911.

“Speaking of the legally enforceable interest limitation of Pa.R.C.P. 2327(4), the Supreme Court has said:

‘the exact boundaries of the ‘legally enforceable interest’ limitation [of Pa.R.Civ.P. 2327(4)] are not clear. It owes its origin to the desire of the courts to prevent the curious and meddlesome from interfering with litigation not affecting their rights. The result is a flexible, although uncertain rule whose application in a given case calls for the careful exercise of discretion and a consideration of all the circumstances involved.’
3 Goodrich-Amram § 2327-1 (1963).

Luiziaga v. Psolka, 637 A.2d 645, 647 n.2 (Pa. Super. Ct. 1994) (citing *Pennsylvania Railroad Co. v. Hughart*, 222 A.2d 736, 738 (1966)). With that in mind though, the ability to protect any legally enforceable interest that *may* be affected by a judgment “should be accorded to anyone having an interest of his own which no other party on the record is interested in protecting.” *Keener v. Zoning Hearing Bd.*, 714 A.2d 1120, 1123 (Pa. Commw. Ct. 1998) (citing *Bily v. Allegheny County Board of Property Assessment, Appeal and Review*, 44 A.2d 250 (1945)).

Care Trust court’s dicta was that the court continued to analyze “standing under the criteria set forth under Pa.R.C.P. 2327,” not “standing” more broadly.

In Pennsylvania, courts have granted intervention status to the Republican Party of Pennsylvania, the Pennsylvania Democratic Party, and Republican voters in challenges to Pennsylvania’s election laws. See, e.g., *League of Women Voters of Pennsylvania v. Commonwealth*, 178 A.3d 737, 741 n.5 (Pa. 2018) (noting that the Commonwealth Court permitted intervention to Republican voters from each congressional district, “including announced or potential candidates for Congress and other active members of the Republican Party.”); *Pa. Democratic Party et al. v. Boockvar et al.*, No. 133 MM 2020 (Pa. Sept. 3, 2020) (granting intervention to The Republican Party of Pennsylvania); *NAACP Pennsylvania State Conference v. Boockvar*, No. 364 MD 2020 slip op. at 2 and n.3 (Pa. Comm. Ct. Sept. 11, 2020) (noting that the Republican Party of Pennsylvania was granted intervention, erring on the side of overinclusion and noting how the Commonwealth Court and the Supreme Court of Pennsylvania have sometimes granted the Republican Party of Pennsylvania intervention and other times denied intervention); *In re November 3, 2020 Gen. Election*, 244 A.3d 317 (Pa. 2020) (granting motions to intervene filed by the Republican Party of Pennsylvania, Republican National Committee, and National Republican Congressional Committee, in a case concerning voting rights); *In re Canvassing Observation*, 241 A.3d 339, 343 n.5 (Pa. 2020) (noting that

the Commonwealth Court permitted the Pennsylvania Democratic Party to intervene in a case alleging violations of the Election Code); *In re Canvass of Absentee & Mail-In Ballots of November 3, 2020 Gen. Election*, 241 A.3d 1058, 1068 n.1 (Pa. 2020) (noting the Democratic National Committee was permitted to intervene in proceedings before the trial court in a voting rights challenge).

In the vein of standing principles being “relevant to a determination of whether a putative intervenor has demonstrated a ‘legally enforceable interest,’” *Allegheny Reprod. Health Ctr.*, 225 A.3d at 911, Pennsylvania courts similarly have allowed organizations to sue on behalf of their members under certain circumstances. See *Applewhite v. Commonwealth*, 2014 Pa. Commw. Unpub. LEXIS 756, at *21 (Commw. Ct. Jan. 18, 2014) (recognizing an organization “has standing to sue on behalf of its members or on its own behalf, particularly in lawsuits brought to challenge state laws affecting voters” and in litigation that “implicates the violation of the right to vote protected in the Pennsylvania Constitution”); *N.-Central Pa. Trial Lawyers Ass’n v. Weaver*, 827 A.2d 550, 554 (Pa. Commw. Ct. 2003) (an organization has standing when its members suffer “immediate or threatened injury as a result of the challenged action”).

ARGUMENT

I. Petitioners' Requested Relief May Impact Proposed Intervenors' Legal Interests

Proposed Intervenors seek to intervene to protect their rights. These are not mere policy preferences or generalized grievances. Rather they are legally enforceable interests that will be harmed if Petitioners' requested relief is granted. Essentially, Proposed Intervenors have various rights stemming from their participation in the redistricting process, which Petitioners' suit, if successful, will certainly curtail. Contrary to Petitioners' and Respondents' assertions, these interests should not be analyzed from the perspective of final outcomes.

The redistricting process has not begun, nor can it until the Census Bureau transmits the relevant data in August and again in September. Proposed Intervenors' rights therefore must be analyzed by assessing how the lack of certainty over who will draw the map—the legislature in consultation with the governor, or the courts—impacts the ability of the Republican Party of Pennsylvania to identify and recruit candidates, affects potential congressional candidates who are deciding whether to declare their candidacies, and alters how local County Republican officials identify and recruit candidates. Petitioners' and Respondents' assertions that Proposed Intervenors do not have a “legally protected interest in a particular partisan

outcome” or in protecting the role of the legislature, which is properly asserted by the legislature itself, is a false trail. Proposed Intervenors seek to preserve their rights to participate in the redistricting process in the first place. That participation necessarily impacts Proposed Intervenors’ associational, competitive, and resource interests, which will be harmed if Petitioners’ requested relief is granted.

A. Proposed Intervenors Have an Interest in Maintaining Their Associational Rights

As in all legislation, Proposed Intervenors have an interest in the ability to associate with their members, including those currently serving in the General Assembly. This includes the ability to communicate with those members about the interests of the association. See U.S. Const. amend. I; *Buckley v. Valeo*, 424 U.S. 1, 15 (1976). “It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). A person’s ability to exercise their rights guaranteed under the First Amendment is “[u]ndeniably enhanced by group association.” *Buckley*, 424 U.S. at 15 (quoting *NAACP v. Alabama*, 357 U.S. at 460). And both the First and the Fourteenth Amendments guarantee the “freedom to associate with others for the common advancement of political

beliefs and ideas.” *Id.* Such right surely “rank[s] among our most precious freedoms.” *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983). Proposed Intervenor’s First Amendment associational and free speech rights therefore may be impacted by Petitioners’ requested relief, just as the vested constitutional rights of the General Assembly will be impacted if Petitioners’ requested relief is granted. See U.S. Const. art. I, § 4.

Petitioners’ relief would curtail The Republican Party of Pennsylvania’s associational rights by having this Court assume jurisdiction before the General Assembly has even received the relevant data from the Census Bureau, which is required for it to begin drafting a new congressional map.

Petitioners’ requested relief impacts the reliance interest that the Proposed Intervenor’s association has on Pennsylvania’s settled redistricting procedure where the legislature draws a map subject to the Governor’s veto. *League of Women Voters of Pennsylvania*, 178 A.3d at 742 (“Pennsylvania’s congressional districts are drawn by the state legislature as a regular statute, subject to veto by the Governor.”). The Republican Party of Pennsylvania is in the process of recruiting candidates for Congress in 2022. It has been recruiting candidates with reliance on the redistricting process being led by the legislature in consultation with the Governor.

Petitioners' requested relief now interjects uncertainty into the process. Petitioners' lawsuit is attempting to change the rules of the game, particularly the request that this Court enter an order to have a map completed by a date certain. This requirement does not otherwise exist in law. What was a settled process for redistricting—where the General Assembly crafts, drafts, and passes redistricting legislation subject to the Governor's veto, *League of Women Voters of Pa*, 178 A.3d at 742—is now unsettled.

This unsettling of the rules of the redistricting process harms the effectiveness of the Proposed Intervenors' association. We are approximately seven months before petition circulation begins, and the rules of the redistricting process, particularly the time within which to complete redistricting, have now become unsettled. This injection of uncertainty impacts the election prospects of the Proposed Republican Intervenors who have a reliance interest on redistricting maps being completed by locally elected officials with familiarity of their districts' composition. App. for Leave To Intervene ¶¶ 3, 24, 27. Harm to election prospects is a legally cognizable interest. *Democratic Party of the United States v. National Conservative Political Action Comm* 578 F. Supp. 797, 810 (E.D. Pa. 1983) (three-judge court) *aff'd in part and rev'd in part on other grounds sub nom. FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 489–90 (1985); *cf.*

Whittman v. Personhuballah, 136 S. Ct. 1732 (2016) (evidence of impairment of reelection prospects can constitute an Article III injury for standing purposes); *Meese v. Kenne*, 481 U.S. 465, 475 (1987) (supporting the proposition that an impairment to a party's political career is sufficient injury for standing analysis).

Second, Petitioners' requested relief also harms The Republican Party of Pennsylvania's reliance interest on the General Assembly drawing districts. Petitioners' injection of uncertainty causes confusion about the rules of the redistricting process. This uncertainty has led to confusion because once settled and established rules concerning redistricting are now uncertain and seemingly fluid. This harm to the Party's reliance interest also harms the association's effectiveness at disseminating its message to the voters of Pennsylvania. *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 629 (1996) (Kennedy, J., concurring in part and dissenting in part) ("Political parties . . . exist to advance their members' shared political beliefs . . ."). Furthermore, The Republican Party of Pennsylvania's speech is how the Party seeks to impact change through the political process. The confusion Petitioners' requested relief causes harms the Party's ability to advance the goals of the association and its three million members. See *Ripon Soc. v. National Republican Party*, 525 F.2d 567, 587 (D.C. Cir. 1975)

(*en banc*) (recognizing that the Free Speech and Association rights are “means to effect change through the political process” and accordingly “[the Supreme Court] has declared that ‘any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents”) (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957)); *id.* at 585 (“Speeches and assemblies are after all not ends in themselves but means to effect change through the political process. If that is so, there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective.”).

If this Court were to take control of the redistricting process before it has even begun, then Proposed Intervenors’ associational interests would be impacted. Proposed Republican Intervenors recognize that the redistricting process, like the legislative process generally, is a familiar one. It is a process that includes deliberation, negotiation, the voicing of concerns and, ultimately the concerns of an equal branch of government, the executive. Petitioners want to upend this process and prematurely include this Court as the congressional cartographer. And while Petitioners suggest that Proposed Intervenors’ interests would be protected by filing an amicus brief, *Pets. Opp.* at 15, that misses the point. Petitioners’ requested relief harms the reliance interest of the Republican Party of Pennsylvania which

causes harm to the First Amendment associational rights of the Party and its members.

Petitioners acknowledge that “there is still time for the General Assembly and the Governor to enact a new congressional plan.” Pets. ¶ 5. But this too misses the point as Petitioners demand that this Court assume jurisdiction now and change the rules of the game by imposing a deadline to complete the redistricting process. Pets. ¶ 9; Prayer for Relief C. As a result, any order from this Court that imposes a shot clock on the time the legislature has to complete a map, harms the associational interests of The Republican Party of Pennsylvania because such a deadline interferes with the ability of the Party to advance the goals of the association.

B. The Individual Republican Voters Have an Additional Legally Enforceable Interest: Their Right To Vote

If Petitioners, who are all Democratic voters, have standing, then the Proposed Intervenors who are individual Republican voters, also have standing. Petitioners counter that:

the Petitioners and Republican Voter Applicants have not alleged remotely similar harms. Petitioners, for example, are Pennsylvania voters residing in over-populated congressional districts, and their asserted harm is specifically that their votes will be diluted compared to other Pennsylvania voters who live in now under-populated districts.

Pets. Opp. at 10. This purported distinction, however, is entirely spurious.

First, Petitioners cannot know which Pennsylvanians currently live in over-populated congressional districts and which Pennsylvanians live in under-populated congressional districts because the Census Bureau will not provide the relevant data to the General Assembly until August and again in September. Petitioners instead base their assertions on American Community Survey *estimates*. But the U.S. Supreme Court has consistently held that the only basis for good-faith attempts at achieving population equality in congressional districts is the census counts. *Karcher v. Daggett*, 462 U.S. 725, 738 (1983).

Nevertheless, if Petitioners are granted standing because they alleged that they reside in over-populated congressional districts, then the individual Proposed Intervenors' right to vote is also at issue. Some of the individual Proposed Intervenors live in the same districts as Petitioners. One person, one vote challenges allege that everyone's vote in a certain district is harmed, regardless of whether the voter is a Republican or Democrat. See *Bd. of Estimate v. Morris*, 489 U.S. 688, 693–94 (1989) ("If districts of widely unequal population elect an equal number of representatives, the voting power of *each citizen* in the larger constituencies is debased and the citizens in those districts have a smaller share of representation than do those in the smaller districts." (emphasis added)).

This assertion is not a generalized grievance by individual Proposed Intervenors as they are more than just voters. Individual Proposed Intervenors are Republican Party of Pennsylvania county officials and volunteers. See, e.g., App. for Leave To Intervene ¶ 69. Additionally, these individual Proposed Intervenor voters are the mirror-images of the Democratic voter Petitioners. These individual Proposed Intervenor voters should therefore be permitted to intervene to protect their interests. See *Democratic Nat'l Comm. v. Bostelmann*, No. 20-cv-249, 2020 U.S. Dist. LEXIS 54269 *14–*15, 2020 WL 1505640 (W.D. Wis. March 28, 2020) (“[T]he court will nevertheless permit [the Republican National Committee and the Republican Party of Wisconsin] to intervene as they are uniquely qualified to represent the ‘mirror-image’ interests of the plaintiffs, as direct counterparts to the [Democratic National Committee and the Democratic Party of Wisconsin].”).

Accordingly, Individual Proposed Intervenors’ legally enforceable interests may be impacted if Petitioners’ requested relief is granted.

C. Proposed Intervenors Have an Interest in Maintaining the Competitive Balance

Redistricting is inherently a political process. See *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) (“Politics and political considerations are inseparable from districting and apportionment. . . . The reality is that

districting inevitably has and is intended to have substantial political consequences.”). Relatedly, politics is a competitive process; both internally within a political party and externally against other political parties. Proposed Intervenor, The Republican Party of Pennsylvania and its three million members, have a competitive interest in selecting candidates that best represent the party and encouraging those candidates to campaign for Congress.

If this court assumes jurisdiction prematurely, injecting uncertainty into the redistricting process, then the competitive political process is thwarted because of the ensuing confusion over the rules of the redistricting process. Changing the competitive landscape harms The Republican Party of Pennsylvania’s competitive interest.

a. Courts Have Held that Article III Standing Exists When There is Harm to a Party’s Competitive Interests

In *Shays v. FEC*, the D.C. Circuit held that two sitting congressmen had standing as candidates to challenge Federal Election Commission regulations that, according to the plaintiff-appellants, violated the Bipartisan Campaign Finance Reform Act (“BCRA”). 414 F.3d 76, 85 (D.C. Cir. 2005). The *Shays* plaintiffs contended that what they enacted in BCRA protected them “from prohibited campaign practices,” but the FEC’s implementing

regulations actually permitted what BCRA prohibited. See *id.* at 83–84. The plaintiffs contended that the FEC regulations “infringe[d] their BCRA-protected interest in BCRA compliant elections.” *Id.* at 84. The FEC regulations that undercut BCRA’s prohibitions, according to these plaintiffs, exposed the plaintiffs to congressional opponents using “improper soft money spending against them” and required these plaintiffs to campaign against outside groups “seeking to evade the contribution limits, source prohibitions, and disclosure requirements imposed by [BCRA].” *Id.* at 84–85.

The D.C. Circuit held that the *Shays* plaintiffs established “competitive” standing where there is an “illegal structuring of a competitive environment.” *Id.* at 85. The FEC set the rules for federal campaigning, but these rules were in violation of BCRA’s directives. *Id.* at 85. When there is an “illegal structuring of a competitive environment, longstanding precedent establishes that when a statute reflects a legislative purpose to protect a competitive interest, an injured competitor has standing to require compliance with that provision.” *Id.* at 85.²

² State Respondents misunderstand Proposed Intervenors’ reliance on *Shays*. See State Resps. Opp. at 13–14. *Shays* stands for the proposition that when a regulation governing elections is contrary to a statute, a candidate has “competitive standing” to challenge the regulation because the regulation forces a candidate to compete in an illegal campaign environment. *Shays*, 414 F.3d at 85. Here, Petitioners’ requested relief effectively adds a shot clock to the redistricting competition. This is contrary to law because Pennsylvania does not require redistricting legislation to be enacted by a certain date. Furthermore,

b. The Republican Party of Pennsylvania, Its Members, and Its Congressional Candidates Have a Competitive Interest in this Litigation

As any political party would, The Republican Party of Pennsylvania has an interest in ensuring that its members who wish to serve in the General Assembly have the best opportunity to win their elections. As the U.S. Supreme Court has recognized, “[p]olitical victory accedes power to the winning party, enabling it to better direct the machinery of government toward the party’s interests.” *Storer v. Brown*, 415 U.S. 724, 745 (1974). Accordingly, courts have found standing when regulations reduce the likelihood of a candidate’s election. For example, the three-judge panel in *Democratic Party of the United States v. National Conservative Political Action Comm.*, held that the Democratic Party had Article III standing because:

[T]he political power of the Democratic Party depends significantly on whether its nominee comes to occupy the White House. Thus, speech that reduces the likelihood of its nominee’s victory injures the Democratic Party in more than an ideological way. The speech of PACs may be politics and it may be

Petitioners’ requested relief transfers the site of the redistricting competition, moving it from two politically accountable branches of government, which can act as checks on one another, see U.S. Const. art. I, § 4, to a single branch of government. This changes the rules of the game; where The Republican Party of Pennsylvania and its members understood the competitive environment, and now must compete in an environment where the rules are no longer certain. Here the Petitioners are seeking to change the rules without any basis whatsoever and to interfere with Proposed Intervenors’ First Amendment rights seven months prior to the date to circulate petitions.

protected by the Constitution, but, like any other speech, it can also hurt.

578 F. Supp. 797, 810 (E.D. Pa. 1983) (three-judge court) *aff'd in part and rev'd in part on other grounds sub nom. FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 489–90 (1985).

Political parties therefore have a keen interest in redistricting because “politics and political considerations are inseparable from districting and apportionment.” *Gaffney*, 412 U.S. at 753. Redistricting and political considerations are so inseparable that “it requires no special genius to recognize the political consequences of drawing a district line along one street rather than another.” *Id.* The placement of district lines can determine whether a “district will be predominantly Democratic or predominately Republican, or make a close race likely.” *Id.* The reality is, therefore, “that districting inevitably has and is intended to have substantial political consequences.” *Id.*; see also *Davis v. Bandemer*, 478 U.S. 109, 129 (1986) (“As long as redistricting is done by a legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended.”).³

³ Proposed Intervenor do not assert that *Rucho* or *Gaffney* grant standing to a political party in redistricting litigation. State Resps. Opp. at 12. *Rucho* and *Gaffney* are cited for the uncontroversial proposition that redistricting has political consequences. As described *infra*, when the rules of the redistricting game are altered, making it more difficult for a political party to assert its interests, then a political party has competitive standing.

The fact that redistricting has political consequences is not a casual statement. The State Respondents wrongly assert that Proposed Intervenors offer only naked conjecture that a judicially drawn map may harm the interests of The Republican Party of Pennsylvania. State Resps. Opp. at 16–17. Petitioners also wrongly assert that because they bring a one person, one vote challenge, and not a partisan gerrymandering claim, The Republican Party of Pennsylvania's fears are misplaced. Pets. Opp. at 9.

Even in complying with the one person, one vote requirement, districts may be drawn to benefit one political party over another. See *Harris v. Arizona Independent Redistricting Commission*, 136 S. Ct. 1301, 1309–10 (2016) (agreeing with Republican appellants that majority Republican legislative districts were overpopulated while Democratic majority districts were underpopulated but holding that the defendant-appellees did not violate the Constitution in drawing districts); *Larios v. Cox*, 305 F. Supp 2d 1320, 1322, 1335–37 (N.D. Ga. 2004) (three-judge court) (declaring Georgia's congressional district map constitutional despite the map having a population deviation of 72 people, where the population deviation could have been as low as one person, and some of the irregular shaped districts were drawn to benefit certain political leaders including the Democrat Speaker of the House

who wanted a district drawn to make his Republican congressman more vulnerable to a Democrat challenge) *sum. aff.* 542 U.S. 947 (2004).

Furthermore, even conservative map-drawers acting as court appointed special masters have composed redistricting maps that unintentionally benefited the Democratic Party. *Vieth*, 504 U.S. at 309 (Kennedy, J., concurring) (citing “R. Bork, *The Tempting of America: The Political Seduction of the Law* 88-89 (1990) (documenting the author’s service as a special master responsible for redistricting Connecticut and noting that his final plan so benefited the Democratic Party, albeit unintentionally, that the party chairman personally congratulated him.”)). Accordingly, the Republican Party of Pennsylvania has an interest in this case to ensure that the map drawing process does not harm the electoral prospects of its members.

The whole point of political parties is to elect members to the government who then enact policies that are consistent with the party’s philosophy. *Colo. Republican Fed. Campaign Comm.*, 518 U.S. at 615–16 (a political party’s speech “[s]eeks to convince others to join those members in a practical democratic task, the task of creating a government that voters can instruct and hold responsible for subsequent success or failure”); see *id.* at 629 (Kennedy, J., concurring in part and dissenting in party) (“Political

parties . . . exist to advance their members' shared political beliefs. . . . [A] party can give effect to their views only by selecting and supporting candidates . . . in the context of particular elections, candidates are necessary to make the party's message known and effective, and vice versa."); *id.* at 646 (Thomas, J., joined by Rehnquist, C.J., and Scalia, J., concurring in judgment and dissenting in part) ("The very aim of a political party is to influence its candidate's stance on issues and, if the candidate takes office or is reelected, his votes.").

But by changing the competitive environment a mere seven months prior to circulating petitions, imposing a deadline to enact legislation—a deadline that does not otherwise exist—and transferring redistricting control from two political branches of government (the legislative and executive) to one (the judiciary), the Petitioners ask this Court to alter the competitive landscape, injecting uncertainty into the rules of the competition, impacting the ability of The Republican Party of Pennsylvania to compete. See Pets. P. ¶ 9 and Prayer for Relief C. One can compete when the rules are clear and are established. But when the rules become fluid and unsettled, this causes confusion. It is this confusion that disrupts the Republican Party of

Pennsylvania's efforts at preparing for the 2022 competition.⁴ See *Shays* 414 F.3D at 84–85; *Democratic National Committee*, 578 F. Supp. at 810; *Colo. Republican Fed. Campaign Comm.*, 518 U.S. at 615–16.

D. Proposed Intervenors Have an Interest in Preserving Their Resources

a. The Republican Party of Pennsylvania Has an Interest in Preserving Its Resources

Respondents state that “[t]he question raised by the present Petition is whether [the new redistricting] map should be drawn in the first instance by the courts or through the legislative process,” but “[e]ither way, there will be a new map, and political parties and candidates will have to spend resources addressing it.” State Resps. Opp. at 15. It is obvious that interested parties will spend resources addressing the new congressional map once the redistricting process begins. If Petitioners’ requested relief is granted, however, The Republican Party of Pennsylvania must instead consider the possibility of utilizing experts to analyze the proposed maps from those persons and organizations that would file amicus briefs before this Court or

⁴ *Mellow* was not filed until the very day petition circulation began for congressional elections. That lawsuit was not filed because petitioners *expected* an impasse, Pets. Opp. at 3, but because there *was* in fact an impasse. See *Mellow v. Mitchell*, 607 A.2d 204, 205 (Pa. 1992) (stating that from early 1991 to March 26, 1992, the legislature had not enacted a redistricting plan, and that Democratic candidates filed their suit on the first day petitions could be circulated for election to Congress and asked the court to enjoin the current congressional map by February 18, the last day to circulate petitions). Petitioners’ suit therefore is quite novel.

the Supreme Court of Pennsylvania. These experts might be necessary to ascertain how each proposed map impacts the Party and then inform the Court of the Party's position on the map.

The utilization of experts might also be needed to assist in drafting amicus briefs before this Court and the Supreme Court of Pennsylvania to demonstrate that the map that The Republican Party of Pennsylvania proposes is constitutional and in compliance with both state and federal law. This will divert resources from other programs, such as get-out-the-vote efforts, independent expenditures in support of the Party's congressional candidates, and direct mail, and into funding the drafting of proposed maps and analyzing proposed maps. This is an important legal interest. See, e.g., *Applewhite v. Commonwealth*, 2014 Pa. Commw. Unpublished LEXIS 756, at *21–*23 (finding that organizational petitioners had standing to challenge Pennsylvania's voter ID law due to the diversion of organizational resources that was necessary to educate voters).

The uncertainty during the pendency of Petitioners' suit also increases costs. While Petitioners' suit is active, The Republican Party of Pennsylvania must delay certain actions. This includes the purchasing of advertisements and direct mail purchases while Petitioners' suit is pending, and it is likely

that future purchases will become more expensive due to less lead time. This inhibits the ability of the Party to disseminate its message.

b. Potential Congressional Candidates Have an Interest in Preserving Their Resources

If a court draws a map, the congressional candidates will need to divert time and potentially money away from traditional get-out-the-vote efforts and other voter identification and mobilization efforts, to analyzing proposed maps. Congressional candidates will need to understand how the proposed maps impact the contours of their districts. Diverting precious time and other resources away from the campaign trail and towards redistricting harms potential congressional candidates' legal interests. App. for Leave To Intervene ¶¶ 3, 24, 27; see, e.g., *Applewhite*, 2014 Pa. Commw. Unpublished LEXIS 756, at *21–*23.

c. Republican Party County Chairs Have an Interest in Preserving Their Resources

If this Court or the Supreme Court of Pennsylvania takes control of redistricting and draws congressional districts, the County Chair applicants will have to divert resources from other programs to address the court-drawn map. Under normal circumstances, the County GOP chairs would rely upon their members in the General Assembly to represent their interests. But if the map is drawn by a court, the County GOP chairs will be required to divert

resources from get-out-the-vote efforts, mobilizations, and identifying additional supporters, to spending time analyzing proposed maps and how those proposed maps impact their county. See App. for Leave To Intervene ¶¶ 2, 5, 6, 8–13, 16–18.

For example, Bucks County is wholly contained in Pennsylvania’s First Congressional District. If Petitioners are granted their requested relief and the map is drawn by a court, Bucks County’s GOP, headed by Proposed Intervenor Patricia K. Poprik, will need to divert additional time, staff, and lawyers to analyze the proposed maps filed with the Court to ensure the County’s interests are represented. The First Congressional District is currently represented by a Republican, but there are some who want to split the county into two districts, potentially harming the Republican Party’s interests. The analysis from Bucks County will include how each map impacts Bucks County’s GOP members and will propose ways to improve the maps. Additionally, Bucks County will want to propose their own maps to the court, maps that would keep Bucks County wholly contained in one district. Accordingly, granting Petitioners’ requested relief may impact these interests. See, e.g., *Applewhite*, 2014 Pa. Commw. Unpublished LEXIS 756, at *21–*23.

E. Contrary to Respondents' Assertion, Proposed Intervenors Are Not Claiming a Generalized Grievance

Respondents argue that Proposed Intervenors' assertions amount to nothing more than "a generalized grievance," State Resps. Opp. at 11, but their assessment misses the mark. Proposed Intervenors are a diverse group of individuals and The Republican Party of Pennsylvania, which represents over three million registered Republican voters in the State of Pennsylvania, who may suffer various injuries from the case at bar. The circumstances of this case are vastly different from the straightforward examples cited by Respondents.

For instance, Respondents state that "in *Fraenzl v. Secretary of the Commonwealth*, 478 A.2d 903 (Pa. Commw. Ct. 1984), a minor party candidate sought to be placed on the ballot, and the Republican candidate in the race attempted to intervene," and "[t]his Court denied the intervention application," *id.* at 904–05. State Resps. Opp. at 9. Or "[i]n *Gill v. Whitford*, 138 S. Ct. 1916 (2018), the Supreme Court of the United States explained that although voters can potentially establish standing by showing that legislative maps had infringed on their own 'individual legal rights,' the mere assertion of an interest in 'achieving a Democratic majority in the legislature' is insufficient," *id.* at 1932. State Resps. Opp. at 10. But those cases focused on outcomes—the end results. Here, Proposed Intervenors seek to protect

their legally enforceable interests in participating in the redistricting process in the first place.⁵

Every one of the individual Proposed Intervenors is more than simply a voter. App. for Leave To Intervene ¶ 69. Some of the individual Proposed Intervenors “are either past or potential future congressional candidates,” and others are “county Republican chairs, members of the State Party committee, and/or consistent campaign volunteers.” *Id.* Respondents attempt to reduce Proposed Intervenors’ claims into an overly simplified proposition that they just want more Republicans to win congressional seats in upcoming elections. That completely ignores the fundamental point that each Proposed Intervenor is likely to suffer cognizable, particularized injuries through their loss of participating in the redistricting process if Petitioners obtain their requested relief.

F. Contrary to Petitioners’ Assertion, the *Albert/Erfer* Line of Cases Is Not Applicable

⁵ The Supreme Court’s holding in *Gill* does not preclude Proposed Intervenors here. *Gill* stands for the proposition that the *Gill* plaintiffs lacked standing because they failed to present evidence that their individual right to vote was harmed. See *Gill*, 138 S. Ct. at 1933. The evidence the *Gill* plaintiffs presented, namely the efficiency gap, was an “average measure” that did not “address the effect that a gerrymander has on the votes of particular citizens.” *Id.* Instead, the efficiency gap measured the impact of a gerrymander on the fortunes of political parties. *Id.* By contrast, the Proposed Republican Intervenors have adduced evidence of how Petitioners’ requested relief would impact their constitutional rights of association, competitive rights, and an interest in preserving resources. These are concrete harms to their individual rights, not group rights.

Petitioners claim that it is “a fundamental tenet of Pennsylvania redistricting litigation” that “entities other than individual voters do not, as a matter of law, have a ‘substantial, direct and immediate’ interest in challenges to reapportionment plans.” *Pets. Opp.* at 7. First, Petitioners cite *Albert v. 2001 Legislative Reapportionment Comm’n* for the proposition that “any non-voting entity lacked a direct interest in the outcome of the [reapportionment] litigation” and therefore lacked standing. *Id.* In *Albert*, the Pennsylvania Supreme Court had to determine whether five “‘non-voting’ appellants [we]re . . . ‘aggrieved persons’ as required by *Article II, Section 17(d) of the Pennsylvania Constitution* and therefore, lack[ed] standing.” 790 A.2d 989, 994 (Pa. 2002). The Court recounted “that Article II, Section 17(d) provides that ‘any aggrieved person may file an appeal from the final plan directly to the Supreme Court within thirty days after the filing thereof’” and, up to that point, “neither the Constitution, nor this Court, ha[d] defined the term ‘aggrieved person’ for purposes of Section 17(d).” *Id.* The Court therefore looked to general standing principles. *Id.* at 994–95.

Albert is distinguishable from the case at bar. Notably, Article II, Section 17(d) applies to “any aggrieved person” who wishes to challenge “the final plan . . . within thirty days after the filing thereof.” *Id.* at 994 (citation and quotation marks omitted). First, Petitioners do not explain how standing

under Article II, Section 17(d) relates to standing under Pa.R.C.P. 2327. As discussed above, a party seeking to intervene does not need to demonstrate the same level of standing that it would need to initiate litigation. See *Sunoco Pipeline L.P.*, 217 A.3d at 1289 (“[W]e agree, that the inquiry to determine whether a party has standing to initiate litigation is different than the inquiry to determine whether a party can intervene in existing litigation.”).

Additionally, Petitioners fail to explain why Proposed Intervenor The Republican Party of Pennsylvania should be viewed similarly to the nonvoting entities in the malapportionment challenge in *Albert*. Here, The Republican Party of Pennsylvania is seeking to preserve its rights in connection with the process of creating and adopting a Constitutionally permissible congressional map for Pennsylvania. The perspective of the analyses between *Albert* and the case at bar are exact opposites—with *Albert* viewing the final plan after the fact and Proposed Intervenor working to protect their rights before any proposals have even been drafted. Petitioners fail to acknowledge that nonvoting entities’ interests may change over the course of an action, and they do not explain why *Albert* should be applicable here. The Proposed Intervenor, including The Republican Party of Pennsylvania, have associational interests in advocating the legislature to

compose a map that is best for them. These interests are simply not present when the challenge is to a final, enacted map.

Relatedly, Petitioners' use of *Erfer v. Commonwealth* provides little value. See Pets. Opp. at 9 (“Petitioners do not bring a partisan gerrymandering challenge to Pennsylvania’s districts . . . [a]ny potential injury to a political party from partisan gerrymandering is thus immaterial in this litigation.”). In *Erfer*, “[w]hile Petitioners raised several state constitutional law claims, they focused primarily on their claim that the legislature engaged in unconstitutional political gerrymandering.” *Erfer v. Commonwealth*, 794 A.2d 325, 328 (Pa. 2002). Additionally, those petitioners waived their “one person, one vote” claims. *Id.* at 328 n.2.

Although *Erfer* focused on gerrymandering, however, the court quoted *Albert* in its discussion of standing. *Id.* at 136 (“Shortly after the Presiding Officers filed their brief in this matter, we declared that ‘any entity not authorized by law to exercise the right to vote in this Commonwealth lacks standing to challenge the reapportionment plan.’” (quoting *Albert*, 790 A.2d at 989)). Petitioners' use of *Erfer* therefore suffers from the same infirmities of *Albert*. Once a final map is drawn, it is understandable that nonvoting entities' interests become too attenuated to assert standing because they do not vote. But there is no final map in this case; the General Assembly cannot

even begin drawing maps until it receives the Census Bureau data in August and again in September. Given that posture, it is unsurprising that nonvoting entities have been granted standing in cases where, as here, a redistricting map was not yet finalized. See *Mellow*, 607 A.2d 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.”).

Finally, Petitioners cite *Erfer* for the proposition “that political committees would not have the requisite direct interest in redistricting litigation sufficient to participate as a party.” Pets. Opp. at 7–8 (citing *Erfer*, 568 Pa. at 136–37). Petitioners read *Albert* and *Erfer* too broadly. As discussed above, those cases involve redistricting maps that were final. See *Erfer*, 794 A.2d at 330 (“we declared that ‘any entity not authorized by law . . . to vote in this Commonwealth lacks standing to challenge the reapportionment plan.’ This conclusion was compelled by the fact that it is ‘the right to vote and the right to have one’s vote counted that is the subject matter of a reapportionment challenge’” (citations omitted)). These

cases do not stand for the proposition that nonvoting entities never have standing in redistricting litigation.

Finally, Petitioners mention and summarily dismiss *Pa. Democratic Party v. Boockvar*. Pets. Opp. at 8. Petitioners state that *Boockvar* was a mail-in voting case and that *Albert* “is far more applicable to Petitioners’ present malapportionment claim,” *id.*, but they fail to explain why that must be the case. Statutes and regulations affecting mail-in voting clearly impact an individual’s right to vote. The fact that the Supreme Court of Pennsylvania granted The Republican Party of Pennsylvania’s application to intervene in *Boockvar*, 2020 LEXIS 4685 (Pa. 2003), in a case that directly affected voting rights, certainly has bearing on Proposed Intervenors’ Application To Intervene, and Petitioners have failed to cite any authority that suggests otherwise.⁶

II. Respondents—Democratic Officials—Do Not Adequately Represent the Interests of the Republican Party of Pennsylvania or the Individual Republican Voters

⁶ In a footnote, Petitioners claim that the “natural assumption” for why “the Commonwealth Court permitted Republican candidates for Congress to intervene” in *League of Women Voters v. Commonwealth*, 645 Pa. 1 (2018), was that “intervention was proper based on the candidates’ status as voters.” Pets. Opp. at 8 n.2. As support, Petitioners point to the fact that nonvoting entity the League of Women Voters was dismissed for lack of standing. The Republican candidates for Congress were permitted to intervene and the League of Women Voters were determined to lack standing in separate decisions on different days. Petitioners have not provided further support for their “natural assumption” reading, and Proposed Intervenors disagree and believe it is unwarranted.

Respondents have made it abundantly clear that they will not adequately represent Proposed Intervenors' specific interests. See Pa.R.C.P. 2329(2). Proposed Intervenors took great care in drafting their Application To Intervene to present nuanced, fact-based arguments. Rather than addressing many of those arguments directly, Respondents instead mischaracterized and manipulated Proposed Intervenors' analyses in an effort to stoke controversy.

At no point in the Proposed Intervenors' filings did they state, suggest, or imply that the justices of the Supreme Court of Pennsylvania would violate the law or abandon their oaths. State Resps. Opp. at 17, 20–21. Proposed Intervenors merely stated the obvious: that they are concerned that Pennsylvania's congressional district map will not be drawn through the locally elected General Assembly members. App. for Leave To Intervene ¶¶ 61–66, 74, 80, 84–85, 87, 93–95; see *Agre v. Wolf*, 284 F. Supp.3d 591, 595 (E.D. Pa. 2018) (three-judge court) (Smith, J.) (“[T]he Framers decided to confer a discretionary power over elections to politically accountable legislature.”). Proposed Intervenors merely recognize the reality that the justices of the Supreme Court of Pennsylvania campaign under partisan banners affiliated with a political party. See Pa. Const. Art. V, §§ 13(a); 15(b); PA Code of Judicial Ethics 4.2(B)(7) (allowing judicial candidates to identify

themselves as members or candidates of a political organization); see *also* Daren M. Breslin, *Judicial Merit-Retention Elections in Pennsylvania*, 48 *Duquesne Law Review* 891, 900 (2010) (describing that the current Article V of the Pennsylvania Constitution calls for partisan elections “followed by nonpartisan merit retention elections”).⁷

Maps can be both legally compliant and beneficial to a political party. See *Harris*, 136 S. Ct. at 1309–10 (agreeing with Republican appellants that majority Republican legislative districts were overpopulated while Democratic majority districts were underpopulated, but holding that the defendant-appellees did not violate the Constitution in drawing districts); *Larios*, 305 F. Supp 2d at 1322, 1335–37 (upholding constitutionality of Georgia’s congressional map despite testimony that a smaller population deviation was possible and testimony that some districts were drawn to benefit certain political leaders including the Democrat Speaker of the House who wanted a district drawn to make his Republican congressman more

⁷ Additionally, it is public knowledge that Petitioners’ suit is part of a nationwide effort from the National Democratic Redistricting Committee to file preemptive lawsuits in various states, including Pennsylvania. See John L. Micek, *The First of Many: Democratic Redistricting Group Files Preemptive Lawsuit in Pennsylvania Court*, *Pennsylvania Capital-Star* (April 27, 2021) available at <https://www.penncapital-star.com/government-politics/the-first-of-many-democratic-redistricting-group-files-preemptive-lawsuit-in-pa-court/>. Accordingly—and contrary to Respondents’ suggestion that granting intervention would introduce a partisan sideshow, State Resp. Opp. at 21—this litigation is a partisan wolf that comes to this Court as a partisan wolf. See *Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting).

vulnerable to a Democrat challenge). Even the most well-intentioned map drawer, appointed by a court to act as a special master, can draw a map that is legally compliant but still unintentionally benefits the party opposite the map drawer. See *Vieth*, 504 U.S. at 309 (Kennedy, J., concurring) (citing “R. Bork, *The Tempting of America: The Political Seduction of the Law* 88-89 (1990) (documenting the author's service as a special master responsible for redistricting Connecticut and noting that his final plan so benefited the Democratic Party, albeit unintentionally, that the party chairman personally congratulated him.”).

Proposed Intervenor are confident that if the Supreme Court of Pennsylvania draws congressional districts, it will do so in compliance with both federal and state law. This does not mean, however, that the Republican Party of Pennsylvania's interests, or the interests of its members, are protected. Ultimately, however, Proposed Intervenor's assertions are a far cry from believing that the Supreme Court of Pennsylvania will violate the law or abandon their oaths. State Resps. Opp. at 17, 20–21.

Accordingly, State Respondents' suggestion that Proposed Intervenor are unethical is spurious. It is Respondents who are acting recklessly with their rhetoric. State Respondents have replaced the cautious words of Proposed Intervenor's concerns with State Respondents'

hyperbolic accusations. *Compare* App. for Leave To Intervene ¶¶ 81, 93 (stating that if the map is drawn by the Supreme Court of Pennsylvania, “The Republican Party of Pennsylvania’s interests *may* be impacted” or “*may* be diminished” (emphasis added)) *with* State Respondents’ Mem. In Opposition at 17 and note 5 (describing these paragraphs as “breaktakingly [sic] irresponsible”).

There is, therefore, a certain irony in State Respondents’ suggestion that The Republican Party of Pennsylvania and individual Proposed Intervenors are unethical, while in the same brief they assure this Court that State Respondents’ will represent Proposed Intervenors’ interests adequately. Moreover, putting aside State Respondents’ tactics in their Brief in Opposition, it is clear that State Respondents are not in a position to adequately represent Proposed Intervenors’ interests. State Respondents are the Acting Secretary of the Commonwealth of Pennsylvania and the Director of the Pennsylvania Bureau of Election Services and Notaries. Although they were appointed by a Democratic Governor, neither the Secretary nor the Director advocate in their official capacities for or on behalf of any particular candidate or political party.

“As neutral election administrators, Respondents are charged with impartially executing the law and protecting the integrity of all election-related

process,” State Resps. Opp. at 19, but such generalized assertions are not sufficient to protect Proposed Intervenors’ associational interests. It is evident, therefore, that State Respondents would not adequately represent Proposed Intervenors’ specific interests. See *Pa.R.C.P. 2329(2)*; *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015) (“[W]e look skeptically on government entities serving as adequate advocates for private parties.”).

Proposed Intervenors, on the other hand, would adequately represent the interests of The Republican Party of Pennsylvania and Pennsylvania’s Republican voters. Proposed Intervenors “have invested substantial time, efforts, and resources to support and recruit Republican congressional candidates.” App. for Leave To Intervene ¶ 29. Certain Proposed Intervenors may become congressional candidates in 2022 and/or have been congressional candidates in past campaigns, and “[o]thers are involved in recruiting campaigning, mobilizing, and encouraging voters to support Republican congressional candidates.” *Id.* ¶¶ 30–31. Moreover, “The Republican Party of Pennsylvania is responsible for nominating candidates for office and then promoting and supporting those candidates in the general election.” *Id.* ¶ 32. Furthermore, Proposed Republican Intervenors contend that this Court lacks jurisdiction because the Petitioners failed to include the

counties in this litigation, an argument that the State Respondents do not raise in their preliminary objections. Consequently, no other party before the court could adequately represent Proposed Intervenors' interests.

III. Proposed Intervenors' Application Is Timely

Under Pennsylvania Rule of Civil Procedure 2329(3), this Court may refuse to grant Proposed Intervenors' Application To Intervene if Proposed Intervenors "ha[ve] unduly delayed in making application for intervention." Pa.R.C.P. 2329(3). Proposed Intervenors moved to intervene promptly, with only five weeks passing between when Petitioners filed their lawsuit and Proposed Intervenors filed their Application for Leave To Intervene. Moreover, Respondents have only just yesterday, July 1, filed their Answer to Petitioners' petition. Proposed Intervenors' application therefore is timely.

IV. Granting Intervention Will Not Cause an Undue Burden or Delay to the Parties or this Court

Granting Proposed Intervenors' Application To Intervene would not "unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties." See Pa.R.C.P. 2329(3). Petitioners argue that adding Proposed Intervenors "to the litigation will unnecessarily complicate a case that already has numerous parties." Pets. Opp. at 14. Petitioners cite *E. Am. Transp. & Warehousing, Inc. v. Evans Conger Broussard & McCrea, Inc.* in support, *id.* at 14–15, but a case involving numerous tort and contract claims

against insurers is distinguishable from redistricting litigation. See, e.g., *League of Women Voters*, 178 A.3d at 741 n.5 (noting that “the Commonwealth Court permitted to intervene certain registered Republican voters from each district” in a case that already involved numerous parties).

It is curious that Petitioners then argue that “[t]he need to move swiftly is particularly important in redistricting litigation” because “[d]rawing a reapportionment plan is no small task and must often be completed in a matter of months, *if not mere weeks, or even days.*” Pets. Opp. at 15 (emphasis added). Given Petitioners’ acknowledgment that reapportionment plans often must be completed in a matter of days or weeks, it is odd that they filed their Petition more than eight months before nomination papers for the 2022 partisan primary ballot become available—and months before the redistricting process can even begin, as Census data will not be transmitted until August and again in September. Nevertheless, recent experience demonstrates that numerous parties in redistricting litigation do not necessarily lead to delays. See, e.g., *League of Women Voters v. Commonwealth*, 181 A.3d 1083, 1085 n.2 (Pa. 2018) (“In fashioning the remedy and the timeline, this Court took into consideration the request of the parties. . . . [C]ounsel for the Petitioners stated, ‘Our request on the remedy is that . . . the map be declared unconstitutional and the legislature be given

two weeks to come up with another map, subject obviously to the Governor's review.' He further stated, 'The map can be done in a day.' ' . . . frequently legislatures are given short time frames. . . . Yes, it's a serious task, but no, we don't believe it's unreasonable.'"); see also *Vieth*, 541 U.S. at 311 (Kennedy, J., concurring) ("Computer assisted districting has become so routine and sophisticated that legislatures, experts, and courts can use databases to map electoral districts in a matter of hours, not months.").⁸

Relatedly, Petitioners argue that "Proposed Intervenors have already complicated this litigation by . . . filing an Application for Extraordinary Relief" *Pets. Opp.* at 15 n.5. Attempting to expedite briefing on preliminary objections does not amount to good cause to deny Proposed Intervenors' Application To Intervene, but in any event, that is not what occurred. Proposed Intervenors' motion to expedite was a pleading attached to the application, and it has not actually been filed yet. Furthermore, it is difficult to understand why Petitioners would not be eager to expedite proceedings given the urgency expressed above.

⁸ See also *id.* ("Counsel for the Governor stated, '[W]e are recommending that, if the map is in place by February 20 or before, we can show you that we can run this election, we can run the congressional portion of the primary and all of the up and down ballot seats by May 15.' This accords with the attestations by the Commissioner of the Bureau of Commissions, Elections and Legislation . . . that it would be possible to hold the primary on May 15, 2018 provided a plan was in place on or before February 20, 2018.").

Respondents ask the court to exercise its discretion and deny Proposed Intervenors' Application To Intervene under Pa.R.C.P. 2329(3) because, *inter alia*, it "relies on the contention that the Pennsylvania court system is corrupted by political partisanship, that the Pennsylvania judiciary is a Democratic political actor" and it "make[s] these serious accusations with no factual support and no apparent concern about the consequences for Pennsylvania's system of justice and, indeed, the rule of law." State Resps. Opp. at 20. As discussed above, Respondents mischaracterize Proposed Intervenors' arguments—and if anything, Respondents demonstrate that they are guilty of the very accusations they levy at Proposed Intervenors.

Proposed Intervenors have put forth good-faith arguments grounded in precedent and factual context. Supreme Court Justices in Pennsylvania are elected to their seats as members of a political party. Redistricting is an inherently political process. All of Petitioners are members of the Democratic Party, and it is self-evident that they initiated their Petition in order to further their interests. It is understandable that Proposed Intervenors are concerned that their constitutionally protected rights and legally enforceable interests may be impacted. To date, if there has been any "embarrassment" or "delay" it has not come from Proposed Intervenors. The Court therefore should not

choose to exercise its discretion to deny Proposed Intervenors' Application on the basis of Rule 2329(3).

Conclusion

Petitioners and Respondents attempt to mischaracterize Proposed Intervenors' Application as an ill-fated Republican overreach to achieve partisan objectives—yet their tactics demonstrate why Proposed Intervenors must be party to this suit. Despite the framing of the Opposition Briefs, Proposed Intervenors are not demanding a particular outcome; rather they are asking the Court not to grant Petitioners' and Respondents' request to change the rules of the redistricting process after Proposed Republican Intervenors have developed reliance upon those rules—and prior to Petitioners' demonstrating a legitimate need to change the rules. At most, Petitioners claim that it is “highly likely” that an injury may occur in the future. And when Proposed Intervenors pointed out the speculative nature of that claim, Respondents incongruously responded that Proposed Intervenors merely “are seeking to intervene for the sole purpose of advancing their preferred partisan political outcome”—brushing aside the fact that all Petitioners are Democrats, whose motivations are self-evident—but nevertheless “Proposed Intervenors' interests are adequately represented by others and permitting their intervention would create a partisan sideshow.”

Apparently, their solution for preventing such a “sideshow” is to exclude the other major political party from this litigation. Were it otherwise, Petitioners would not have brought this action, when it is so manifestly unripe for adjudication.

For the foregoing reasons, Proposed Intervenors qualify for intervention under Pennsylvania Rule of Civil Procedure 2327, and the Court should not exercise its discretion to deny their application under Rule 2329. Proposed Intervenors therefore respectfully request that this Honorable Court enter an Order granting Proposed Intervenors’ Application To Intervene in the within case along with any other relief the Court deems appropriate or necessary.

DATED: July 2, 2021

Respectfully Submitted,

By: /s/ Thomas W. King, III

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Attorneys for Proposed Intervenors

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/ Thomas W. King, III
Thomas W. King, III

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CAROL ANN CARTER, MONICA
PARRILLA, REBECCA
POYOUROW, WILLIAM TUNG,
ROSEANN 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; and JESSICA
MATHIS, in her official capacity as
Director of the Bureau of Election
Services and Notaries,

Respondents,

v.

REPUBLICAN PARTY OF
PENNSYLVANIA, INC.; PATRICIA
K. POPRIK; DAVID TORRES;
BILLY LANZILOTTI; NANCY
BECKER; MICHAEL D. STRAW;
JAMES DEPP; JOSEPH P.
VICHOT; JUSTIN BEHRENS;
THOMAS WHITEHEAD; LEE
BECKER; LOUIS CAPOZZI; KIRK

No.: 132 MD 2021

PROPOSED ORDER

RADANOVIC; PAUL NYMAN; :
JAMES MAGUIRE, JR.; KRISTINE :
L. ENG; DONNA COSMELLO; :
JAMES FOREMAN; DAVID BALL; :
JAMES VASILKO; LYNNE RYAN; :
CYNTHIA KIRK; DARYL :
METCALFE; LUKE NEGRON; :
SUE ANN MEANS; REV. TODD :
JOHNSON; MICHAEL HARVEY; :
and LOUISA GAUGHEN, :
Proposed Intervenors. :

PROPOSED ORDER

AND NOW, this ____ day of _____ 2021, upon consideration of the Proposed Intervenors Application for Leave to File a Reply to Petitioners' and Respondents' Opposition Memoranda, and any opposition thereto, it is hereby ORDERED that the Proposed Intervenors' Application is GRANTED and Intervenors shall file the Reply to Petitioners' and Respondents' Opposition Memoranda attached to their Application for Leave forthwith.

_____ J.