

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
WILLIAMSPORT DIVISION

William C. Toth Jr., et al.

Plaintiffs,

v.

Leigh M. Chapman, et al.,

Defendants

Case No. 1:22-cv-00208-JPW

**NOTICE TO THE COURT AND RENEWED EMERGENCY
MOTION FOR TEMPORARY RESTRAINING ORDER**

Earlier today, the Supreme Court of Pennsylvania entered an order that purports to “adopt” a congressional map for the 2022 elections. *See* Exhibit 1. The map chosen by the state supreme court is known as the “Carter plan,” which was proposed by litigants represented by the Elias Law Group. Three justices dissented from the decision to adopt the Carter plan.

The state supreme court’s order instructs state election officials to “prepare textual language that describes the Carter Plan and submit the same to the Secretary of the Commonwealth without delay,” and to “publish notice of the Congressional Districts in the Pennsylvania Bulletin.” *Id.* The state supreme court also “modified” the statutory deadlines in General Primary Election calendar to accommodate its decision to impose a map for the 2022 congressional elections, and it commanded that its “modified” schedule “shall be

implemented by the Secretary of the Commonwealth and all election officers within the Commonwealth.” *Id.* It also directed the Secretary of the Commonwealth to “notify this Court by 4:00 P.M. on February 25, 2022, should it foresee any technical issues.” *Id.*

The state supreme court’s order is a flagrant violation of the Elections Clause and 2 U.S.C. § 2a(c)(5), and the plaintiffs respectfully ask the Court to immediately issue a TRO that restrains the defendants from implementing this unconstitutional order while the Court considers the plaintiffs’ request for preliminary-injunctive relief. If the Court does not grant the requested TRO by midnight tonight, the plaintiffs will deem the request denied and seek emergency relief from Justice Alito.

The accompanying brief contains our arguments and authorities, as well as a proposed order.

Respectfully submitted.

WALTER S. ZIMOLONG III
Pennsylvania Bar No. 89151
Zimolong LLC
Post Office Box 552
Villanova, Pennsylvania 19085
(215) 665-0842
wally@zimolonglaw.com

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Pennsylvania Bar No. 91505
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

Dated: February 23, 2022

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on February 23, 2022, I filed this document through CM/ECF, which will effectuate service on all counsel of record in this case. I also certify that I will serve this document by e-mail upon the following counsel, who represent the defendants in the state-court redistricting litigation:

ROBERT A. WIYGUL
CARY L. RICE
JOHN B. HILL
Hangley Aronchick Segal Pudlin & Schiller
One Logan Square, 27th Floor
Philadelphia, Pennsylvania 19103-6933
(215) 568-6200
rwygul@hangley.com
crice@hangley.com
jhill@hangley.com

JOE H. TUCKER JR.
DIMITRI MAVROUDIS
JESSICA RICKABAUGH
Tucker Law Group
Ten Penn Center
1801 Market Street, Suite 2500
Philadelphia, Pennsylvania 19103
(215) 875-0609
jtucker@tlgattorneys.com
dmavroudis@tlgattorneys.com
jrickabaugh@tlgattorneys.com

CALEB CURTIS ENERSON
Office Of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
1600 Arch Street, Suite 300
Philadelphia, Pennsylvania 19103
(717) 787-2717
cenerson@attorneygeneral.gov

GREGORY G. SCHWAB
Office of General Counsel
333 Market Street
Harrisburg, Pennsylvania 17101
gschwab@ogc.pa.gov

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Plaintiffs

[J-20-2022]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAROL ANN CARTER, MONICA : No. 7 MM 2022
PARRILLA, REBECCA POYOUROW, :
WILLIAM TUNG, ROSEANNE MILAZZO, : ARGUED: February 18, 2022
BURT SIEGEL, SUSAN CASSANELLI, LEE :
CASSANELLI, LYNN WACHMAN, :
MICHAEL GUTTMAN, MAYA FONKEU, :
BRADY HILL, MARY ELLEN BALCHUNIS, :
TOM DEWALL, STEPHANIE MCNULTY :
AND JANET TEMIN, :

Petitioners

v.

LEIGH M. CHAPMAN, IN HER OFFICIAL :
CAPACITY AS THE ACTING SECRETARY :
OF THE COMMONWEALTH OF :
PENNSYLVANIA; JESSICA MATHIS, IN :
HER OFFICIAL CAPACITY AS DIRECTOR :
FOR THE PENNSYLVANIA BUREAU OF :
ELECTION SERVICES AND NOTARIES, :

Respondents

----- :
PHILIP T. GRESSMAN; RON Y. DONAGI; :
KRISTOPHER R. TAPP; PAMELA GORKIN; :
DAVID P. MARSH; JAMES L. :
ROSENBERGER; AMY MYERS; EUGENE :
BOMAN; GARY GORDON; LIZ MCMAHON; :
TIMOTHY G. FEEMAN; AND GARTH :
ISAAK, :

Petitioners

v.

LEIGH M. CHAPMAN, IN HER OFFICIAL :
CAPACITY AS THE ACTING SECRETARY :
OF THE COMMONWEALTH OF :

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PENNSYLVANIA; JESSICA MATHIS, IN :
HER OFFICIAL CAPACITY AS DIRECTOR :
FOR THE PENNSYLVANIA BUREAU OF :
ELECTION SERVICES AND NOTARIES, :
Respondents :

ORDER

PER CURIAM

AND NOW, this 23rd day of February, 2022, this Court, following full deliberation and consideration, hereby orders as follows:

First, the Pennsylvania primary and general elections for seats in the United States House of Representatives commencing in the year 2022 shall be conducted in accordance with the “Carter Plan” submitted in the record before the Special Master and as described by 2020 Census block equivalency (denominated the “Carter Plan – Block Assignments”) and ESRI shape files (denominated “Carter Plan – Shape Files”) uploaded to this Court’s website at <https://www.pacourts.us/2022-redistricting-opinions>.¹ The Carter Plan, in its constituent parts, is hereby made part of this Order, and is hereby **ADOPTED** as the division of this Commonwealth into seventeen congressional districts, unless and until the same shall be lawfully changed. For reference, images of the Carter Plan, submitted to the Court, are attached at Appendix A, and are available at the above website.

Second, Executive Respondents together with the General Assembly’s Legislative Data Processing Center (LDPC),² shall prepare textual language that describes the Carter Plan and submit the same to the Secretary of the Commonwealth without delay. The Secretary of the Commonwealth shall thereafter file with this Court’s Prothonotary a

¹ As noted, we adopt the “Carter Plan” submitted in the record before the Special Master as opposed to the additional plan submitted by Petitioner Carter in Exhibit A to the brief in support of exceptions to the Special Master’s Report.

² The LDPC was established by the Act of Dec. 10, 1968, P.L. 1158, No. 365, and routinely provides technical services relating to congressional and legislative redistricting.

certification of compliance of the preparation of the textual description of the Carter Plan, along with a copy of the textual description.

Third, Respondent Secretary of the Commonwealth shall, without delay, following the preparation of the textual description of the Carter Plan, publish notice of the Congressional Districts in the Pennsylvania Bulletin.

Fourth, this Court's February 9, 2022 order, that temporarily suspended the General Primary Election calendar, is **VACATED**. To provide for an orderly election process, the schedule for the primary election to be held May 17, 2022, for the election of Representatives to the United States Congress and statewide elections is **MODIFIED** only in the following respects:

First day to circulate and file nomination petitions	February 25, 2022
Last day to circulate and file nomination petitions	March 15, 2022
First day to circulate and file nomination papers	March 16, 2022
Deadline to file objections to nomination petitions	March 22, 2022
Last day that may be fixed by the Commonwealth Court for hearing on objections that have been filed to nomination petitions	March 25, 2022
Last day for the Commonwealth Court to render decisions in cases involving objections to nomination petitions	March 29, 2022
Last day for the County Boards of Elections to send remote military-overseas absentee ballots. See 25 Pa.C.S. §3508; 52 U.S.C. §20302(a)(8)(A)	April 2, 2022

In all other respects, the dates under the 2022 General Election Primary calendar for Congressional and statewide offices are not modified by this Order. Along these lines, it is **NOTED** that, with respect to Congressional and statewide offices, the appeal period set forth in Rule of Appellate Procedure 903(c)(1)(ii) (relating to appeals arising under the Election Code) remains in effect. This schedule shall be implemented by the Secretary of the Commonwealth and all election officers within the Commonwealth in accordance

with this Court's Order. By separate Order, this Court has temporarily suspended the General Primary Election calendar relative to seats in the Pennsylvania General Assembly. See *In re Petitions for Review Challenging the Final 2021 Legislative Reapportionment Plan*, 569 Judicial Administration docket (order dated February 23, 2022).

Fifth, should there be any congressional vacancies existing now or occurring after the entry of this Order, but prior to the commencement of the terms of the members to be elected in the General Election of 2022, the districts prescribed in the Remedial Plan adopted by this Court by Order dated February 19, 2018, shall control.

Sixth, the Secretary of the Commonwealth is directed to notify this Court by 4:00 p.m. on February 25, 2022, should it foresee any technical issues concerning the implementation of the Carter Plan.

So Ordered.

Jurisdiction retained.

Opinions to follow.

Justices Todd, Mundy, and Brobson dissent as to the selection of the Carter Plan as the congressional redistricting plan.

